

CHAPTER 244

CRIMINAL SENTENCES, CONDITIONS, DURATION, APPEALS

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DEFINITIONS AND GENERAL PROVISIONS

244.01 DEFINITIONS.

Subdivision 1. For purposes of sections 244.01 to 244.11, the following terms shall have the meanings given them.

Subd. 2. "Inmate" means any person who is convicted of a felony, is committed to the custody of the commissioner of corrections and is confined in a state correctional facility or released from a state correctional facility pursuant to section 244.065 or 244.07.

Subd. 3. "Commissioner" means the commissioner of corrections or a designee.

Subd. 4. "Correctional facility" means any state facility under the operational authority of the commissioner of corrections.

Subd. 5. "Good time" means the period of time by which an inmate's term of imprisonment is reduced pursuant to section 244.04.

Subd. 6. "Commission" means the Minnesota sentencing guidelines commission established pursuant to section 244.09.

Subd. 7. "Supervised release" means the release of an inmate pursuant to section 244.05.

Subd. 8. "Term of imprisonment," as applied to inmates whose crimes were committed before August 1, 1993, is the period of time for which an inmate is committed to the custody of the commissioner of corrections minus earned good time. "Term of imprisonment," as applied to inmates whose crimes were committed on or after August 1, 1993, is the period of time equal to two-thirds of the inmate's executed sentence.

Subd. 9. **Executed sentence.** "Executed sentence" means the total period of time for which an inmate is committed to the custody of the commissioner of corrections.

History: 1978 c 723 art 1 s 1; 1979 c 102 s 13; 1980 c 417 s 12,13; 1984 c 589 s 1,2; 1986 c 444; 1992 c 571 art 2 s 1; 1993 c 326 art 9 s 3,4

244.02 MUTUAL AGREEMENT PROGRAMS.

Subdivision 1. Within seven days after the commissioner assumes custody of an inmate, the commissioner shall inform the inmate of the availability and scope of mutual agreement programs and of the fact that participation by the inmate is optional and has no effect on the length of the inmate's sentence. If the inmate decides to enter into a mutual agreement program, the commissioner shall draft one for the inmate within 90 days after receiving a request to do so from the inmate. The mutual agreement program shall be drafted after a classification study of the inmate has been made by the commissioner. In drafting a mutual agreement program, the commissioner shall also refer to the presentence investigation which has been made of the inmate. The agreement shall provide the following:

(a) A program of vocational or educational training with specific chronological and achievement objectives, including completion of specified educational and vocational programs;

(b) Frequent and regular evaluation of the inmate by the commissioner; and

(c) A consideration of any educational qualifications or skills of the inmate when specifying certain types of work expectations.

The participation of inmates in the mutual agreement program shall be limited by the appropriations made for that purpose.

Subd. 2. The inmate may decline to enter into the agreement drafted by the commissioner. Failure to enter into an agreement shall not affect the earning of good time by an inmate, nor shall violation of the terms of the agreement constitute a disciplinary offense which may result in the loss of good time.

History: 1978 c 723 art 1 s 2; 1986 c 444

244.03 REHABILITATIVE PROGRAMS.

The commissioner shall provide appropriate mental health programs and vocational and educational programs with employment-related goals for inmates who desire to voluntarily participate in such programs and for inmates who are required to participate in the programs under the disciplinary offense rules adopted by the commissioner under section 244.05, subdivision 1b. The selection, design and implementation of programs under this section shall be the sole responsibility of the commissioner, acting within the limitations imposed by the funds appropriated for such programs.

No action challenging the level of expenditures for programs authorized under this section, nor any action challenging the selection, design or implementation of these programs, may be maintained by an inmate in any court in this state.

History: 1978 c 723 art 1 s 3; 1986 c 444; 1992 c 571 art 2 s 2

244.04 GOOD TIME.

Subdivision 1. **Reduction of sentence; inmates sentenced for crimes committed before 1993.** Notwithstanding the provisions of section 609.11, subdivision 6, and section 609.346, subdivision 1, the term of imprisonment of any inmate sentenced to a presumptive fixed sentence after May 1, 1980, and whose crime was committed before August 1, 1993, shall be reduced in duration by one day for each two days during which the inmate violates none of the disciplinary offense rules promulgated by the commissioner. The reduction shall accrue to the period of supervised release to be served by the inmate, except that the period of supervised release for a sex offender sentenced and conditionally released by the commissioner under section 609.1352, subdivision 5, is governed by that provision.

Except as otherwise provided in subdivision 2, if an inmate whose crime was committed before August 1, 1993, violates a disciplinary offense rule promulgated by the commissioner, good time earned prior to the violation may not be taken away, but the inmate may be required to serve an appropriate portion of the term of imprisonment after the violation without earning good time.

Subd. 1a. Reduction of sentence; inmates sentenced before 1980. Every inmate sentenced before May 1, 1980, for any term other than life, confined in a state adult correctional facility or on parole therefrom, may diminish the maximum term of sentence one day for each two days during which the inmate has not violated any facility rule or discipline.

The commissioner of corrections, in view of the aggravated nature and frequency of offenses, may take away any or all of the good time previously gained, and, in consideration of mitigating circumstances or ignorance on the part of the inmate, may afterwards restore the inmate, in whole or in part, to the standing the inmate possessed before such good time was taken away.

Subd. 2. Loss of good time. By May 1, 1980, the commissioner shall promulgate rules specifying disciplinary offenses which may result in the loss of good time and the amount of good time which may be lost as a result of each disciplinary offense, including provision for restoration of good time. In no case shall an individual disciplinary offense result in the loss of more than 90 days of good time; except that no inmate confined in segregation for violation of a disciplinary rule shall be placed on supervised release until discharged or released from punitive segregation confinement, nor shall an inmate in segregation for violation of a disciplinary rule for which the inmate could also be prosecuted under the criminal laws earn good time while in segregation. The loss of good time shall be considered to be a disciplinary sanction imposed upon an inmate, and the procedure for the loss of good time and the rights of the inmate in the procedure shall be those in effect for the imposition of other disciplinary sanctions at each state correctional institution.

Subd. 3. Provisions not applicable to certain inmates. The provisions of this section do not apply to an inmate serving a mandatory life sentence or to persons whose crimes were committed on or after August 1, 1993.

History: 1978 c 723 art 1 s 4; 1980 c 417 s 14; 1983 c 274 s 6; 1984 c 381 s 1,2; 1986 c 444; 1989 c 290 art 4 s 3; 1992 c 571 art 2 s 3,4; 1994 c 636 art 6 s 33

244.05 SUPERVISED RELEASE TERM.

Subdivision 1. Supervised release required. Except as provided in subdivisions 1b, 4, and 5, every inmate shall serve a supervised release term upon completion of the inmate's term of imprisonment as reduced by any good time earned by the inmate or extended by confinement in punitive segregation pursuant to section 244.04, subdivision 2. Except for a sex offender conditionally released under section 609.1352, subdivision 5, the supervised release term shall be equal to the period of good time the inmate has earned, and shall not exceed the length of time remaining in the inmate's sentence.

Subd. 1a. Release on certain days. Notwithstanding the amount of good time earned by an inmate whose crime was committed before August 1, 1992, if the inmate's scheduled release date occurs on a Friday, Saturday, Sunday, or holiday, the inmate's supervised release term shall begin on the last day before the inmate's scheduled release date that is not a Friday, Saturday, Sunday, or holiday. For an inmate whose crime was committed on or after August 1, 1992, if the inmate's scheduled release date occurs on a Friday, Saturday, Sunday, or holiday, the inmate's supervised release term shall begin on the first day after the inmate's scheduled release date that is not a Friday, Saturday, Sunday, or holiday.

Subd. 1b. Supervised release; offenders who commit crimes on or after August 1, 1993. (a) Except as provided in subdivisions 4 and 5, every inmate sentenced to prison for a felony offense committed on or after August 1, 1993, shall serve a supervised release term upon completion of the inmate's term of imprisonment and any disciplinary confinement period imposed by the commissioner due to the inmate's violation of any disciplinary offense rule adopted by the commissioner under paragraph (b). The amount of time the inmate serves on supervised release shall be equal in length to the amount of time remaining in the inmate's executed sentence after the inmate has served the term of imprisonment and any disciplinary confinement period imposed by the commissioner.

(b) By August 1, 1993, the commissioner shall modify the commissioner's existing disciplinary rules to specify disciplinary offenses which may result in imposition of a disciplinary confinement period and the length of the disciplinary confinement period for each disciplinary offense. These disciplinary offense rules may cover violation of institution rules, refusal to work, refusal to participate in treatment or other rehabilitative programs, and other matters determined by the commissioner. No inmate who violates a disciplinary rule shall be placed on supervised release until the inmate has served the disciplinary confinement period or until the inmate is discharged or released from punitive segregation confinement, whichever is later. The imposition of a disciplinary confinement period shall be considered to be a disciplinary sanction imposed upon an inmate, and the procedure for imposing the disciplinary confinement period and the rights of the inmate in the procedure shall be those in effect for the imposition of other disciplinary sanctions at each state correctional institution.

Subd. 1c. Release to residential program; escort required. The commissioner shall provide an escort for any inmate on parole or supervised release status who is released to a halfway house or other residential community program. The escort shall be an employee of the commissioner or a person acting as the commissioner's agent for this purpose.

Subd. 2. Rules. The commissioner of corrections shall adopt by rule standards and procedures for the revocation of supervised release, and shall specify the period of revocation for each violation of supervised release. Procedures for the revocation of supervised release shall provide due process of law for the inmate.

Subd. 3. Sanctions for violation. If an inmate violates the conditions of the inmate's supervised release imposed by the commissioner, the commissioner may:

(1) continue the inmate's supervised release term, with or without modifying or enlarging the conditions imposed on the inmate; or

(2) revoke the inmate's supervised release and reimprison the inmate for the appropriate period of time.

The period of time for which a supervised release may be revoked may not exceed the period of time remaining in the inmate's sentence, except that if a sex offender is sentenced and conditionally released under section 609.1352, subdivision 5, the period of time for which conditional release may be revoked may not exceed the balance of the conditional release term.

Subd. 4. Minimum imprisonment, life sentence. An inmate serving a mandatory life sentence under section 609.184 must not be given supervised release under this section. An inmate serving a mandatory life sentence under section 609.185, clause (1), (3), (5), or (6); or 609.346, subdivision 2a, must not be given supervised release under this section without having served a minimum term of 30 years. An inmate serving a mandatory life sentence under section 609.385 must not be given supervised release under this section without having served a minimum term of imprisonment of 17 years.

Subd. 5. Supervised release, life sentence. (a) The commissioner of corrections may, under rules promulgated by the commissioner, give supervised release to an inmate serving a mandatory life sentence under section 609.185, clause (1), (3), (5), or (6); 609.346, subdivision 2a; or 609.385 after the inmate has served the minimum term of imprisonment specified in subdivision 4.

(b) The commissioner shall require the preparation of a community investigation report and shall consider the findings of the report when making a supervised release decision under this subdivision. The report shall reflect the sentiment of the various elements of the community toward the inmate, both at the time of the offense and at the present time. The report shall include the views of the sentencing judge, the prosecutor, any law enforcement personnel who may have been involved in the case, and any successors to these individuals who may have information relevant to the supervised release decision. The report shall also include the views of the victim and the victim's family unless the victim or the victim's family chooses not to participate.

(c) The commissioner shall make reasonable efforts to notify the victim, in

advance, of the time and place of the inmate's supervised release review hearing. The victim has a right to submit an oral or written statement at the review hearing. The statement may summarize the harm suffered by the victim as a result of the crime and give the victim's recommendation on whether the inmate should be given supervised release at this time. The commissioner must consider the victim's statement when making the supervised release decision.

(d) As used in this subdivision, "victim" means the individual who suffered harm as a result of the inmate's crime or, if the individual is deceased, the deceased's surviving spouse or next of kin.

Subd. 6. Intensive supervised release. The commissioner may order that an inmate be placed on intensive supervised release for all or part of the inmate's supervised release or parole term if the commissioner determines that the action will further the goals described in section 244.14, subdivision 1, clauses (2), (3), and (4). In addition, the commissioner may order that an inmate be placed on intensive supervised release for all of the inmate's conditional or supervised release term if the inmate was convicted of a sex offense under sections 609.342 to 609.345 or was sentenced under the provisions of section 609.1352. The commissioner may impose appropriate conditions of release on the inmate including but not limited to unannounced searches of the inmate's person, vehicle, or premises by an intensive supervision agent; compliance with court-ordered restitution, if any; random drug testing; house arrest; daily curfews; frequent face-to-face contacts with an assigned intensive supervision agent; work, education, or treatment requirements; and electronic surveillance. In addition, any sex offender placed on intensive supervised release may be ordered to participate in an appropriate sex offender program as a condition of release. If the inmate violates the conditions of the intensive supervised release, the commissioner shall impose sanctions as provided in subdivision 3 and section 609.1352.

Subd. 7. Sex offenders; civil commitment determination. Before the commissioner releases from prison any inmate convicted under sections 609.342 to 609.345 or sentenced as a patterned offender under section 609.1352, and determined by the commissioner to be in a high risk category, the commissioner shall make a preliminary determination whether, in the commissioner's opinion, a petition under section 253B.185 may be appropriate. If the commissioner determines that a petition may be appropriate, the commissioner shall forward this determination, along with a summary of the reasons for the determination, to the county attorney in the county where the inmate was convicted no later than six months before the inmate's release date. Upon receiving the commissioner's preliminary determination, the county attorney shall proceed in the manner provided in section 253B.185. The commissioner shall release to the county attorney all requested documentation maintained by the department.

Subd. 8. Conditional medical release. The commissioner may order that an offender be placed on conditional medical release before the offender's scheduled supervised release date or target release date if the offender suffers from a grave illness or medical condition and the release poses no threat to the public. In making the decision to release an offender on this status, the commissioner must consider the offender's age and medical condition, the health care needs of the offender, the offender's custody classification and level of risk of violence, the appropriate level of community supervision, and alternative placements that may be available for the offender. An inmate may not be released under this provision unless the commissioner has determined that the inmate's health costs are likely to be borne by medical assistance, Medicaid, general assistance medical care, veteran's benefits, or by any other federal or state medical assistance programs or by the inmate. Conditional medical release is governed by provisions relating to supervised release except that it may be rescinded without hearing by the commissioner if the offender's medical condition improves to the extent that the continuation of the conditional medical release presents a more serious risk to the public.

History: 1978 c 723 art 1 s 5; 1983 c 274 s 7; 1984 c 381 s 3; 1986 c 444; 1989 c 290 art 2 s 5-7; art 4 s 4,5; 1990 c 568 art 2 s 32; 1991 c 258 s 1; 1992 c 571 art 1 s 3-7; art

2 s 5,6; art 3 s 3; art 11 s 3; 1993 c 326; art 4 s 5,6; art 8 s 9; art 9 s 5; 1994 c 636 art 6 s 13; 1Sp1994 c 1 art 2 s 22

244.051 EARLY REPORTS OF MISSING OFFENDERS.

All programs serving inmates on supervised release following a prison sentence shall notify the appropriate probation officer, appropriate law enforcement agency, and the department of corrections within two hours after an inmate in the program fails to make a required report or after program officials receive information indicating that an inmate may have left the area in which the inmate is required to remain or may have otherwise violated conditions of the inmate's supervised release. The department of corrections and county corrections agencies shall ensure that probation offices are staffed on a 24-hour basis or make available a 24-hour telephone number to receive the reports.

History: *1992 c 571 art 11 s 4*

244.06 EXTRAORDINARY DISCHARGE.

The commissioner of corrections may give extraordinary discharge to an inmate for reasons of serious health problems, senility, advanced age or other extraordinary circumstances. The commissioner shall promulgate rules specifying the circumstances under which extraordinary discharge may be approved and the appropriate procedures for approving the same. No extraordinary discharge shall be effective unless also approved by the Minnesota board of pardons.

History: *1978 c 723 art 1 s 6; 1983 c 274 s 8*

244.065 PRIVATE EMPLOYMENT OF INMATES OF STATE CORRECTIONAL INSTITUTIONS IN COMMUNITY.

When consistent with the public interest and the public safety, the commissioner of corrections may conditionally release an inmate to work at paid employment, seek employment, or participate in a vocational training or educational program, as provided in section 241.26, if the inmate has served at least one half of the term of imprisonment.

History: *1980 c 417 s 11; 1983 c 274 s 9; 1986 c 444; 1993 c 326 art 13 s 14*

244.07 FURLOUGHS.

Subdivision 1. If consistent with the public interest, the commissioner may, under rules prescribed by the commissioner, furlough any inmate in custody to any point within the state for up to five days. A furlough may be granted to assist the inmate with family needs, personal health needs, or reintegration into society. No inmate may receive more than three furloughs under this section within any 12-month period. The provisions of this section shall also apply to those inmates convicted of offenses prior to May 1, 1980.

Subd. 2. Notwithstanding the provisions of subdivision 1, if the commissioner determines that the inmate requires health care not available at the state correctional institution, the commissioner may grant the inmate the furloughs necessary to provide appropriate noninstitutional or extrainstitutional health care.

History: *1978 c 723 art 1 s 7; 1981 c 192 s 19; 1986 c 444*

244.08 COMMISSIONER OF CORRECTIONS.

Subdivision 1. Effective May 1, 1980, the commissioner of corrections shall have only those powers and duties in sections 244.01 to 244.11, 609.10, 609.145, subdivision 1, 609.165, subdivision 2, and 609.346, subdivision 1, with relation to persons sentenced for crimes committed on or after May 1, 1980.

The commissioner of corrections shall retain all powers and duties presently vested in and imposed upon the commissioner with relation to persons sentenced for crimes committed on or before April 30, 1980.

The commissioner of corrections shall take into consideration, but not be bound by, the sentence terms embodied in the sentencing guidelines promulgated by the Minnesota sentencing guidelines commission and the penal philosophy embodied in sections 244.01 to 244.11, 609.10, 609.145, subdivision 1, 609.165, subdivision 2, and 609.346, subdivision 1, in its deliberations relative to parole, probation, release, or other disposition of inmates who commit the crimes giving rise to their sentences on or before April 30, 1980.

Subd. 2. Nothing in sections 244.01 to 244.11, 609.10, 609.145, subdivision 1, 609.165, subdivision 2, and 609.346, subdivision 1, shall be deemed to limit the powers and duties otherwise provided by law to the commissioner of corrections with regard to the management of correctional institutions or the disposition of inmates unless those powers and duties are inconsistent with the provisions of sections 244.01 to 244.11, 609.10, 609.145, subdivision 1, 609.165, subdivision 2, and 609.346, subdivision 1, in which case those powers and duties shall be superseded by sections 244.01 to 244.11, 609.10, 609.145, subdivision 1, 609.165, subdivision 2, and 609.346, subdivision 1.

History: 1978 c 723 art 1 s 8; 1980 c 417 s 15; 1983 c 274 s 18; 1986 c 444

SENTENCING GUIDELINES COMMISSION

244.09 MINNESOTA SENTENCING GUIDELINES COMMISSION.

Subdivision 1. **Commission; establishment.** There is hereby established the Minnesota sentencing guidelines commission which shall be comprised of 11 members.

Subd. 2. The sentencing guidelines commission shall consist of the following:

- (1) the chief justice of the supreme court or a designee;
- (2) one judge of the court of appeals, appointed by the chief justice of the supreme court;
- (3) one district court judge appointed by the chief justice of the supreme court;
- (4) one public defender appointed by the governor upon recommendation of the state public defender;
- (5) one county attorney appointed by the governor upon recommendation of the board of directors of the Minnesota county attorneys association;
- (6) the commissioner of corrections or a designee;
- (7) one peace officer as defined in section 626.84 appointed by the governor;
- (8) one probation officer or parole officer appointed by the governor; and
- (9) three public members appointed by the governor, one of whom shall be a victim of a crime defined as a felony.

When an appointing authority selects individuals for membership on the commission, the authority shall make reasonable efforts to appoint qualified members of protected groups, as defined in section 43A.02, subdivision 33.

One of the members shall be designated by the governor as chair of the commission.

Subd. 3. Each appointed member shall be appointed for four years and shall continue to serve during that time as long as the member occupies the position which made the member eligible for the appointment. Each member shall continue in office until a successor is duly appointed. Members shall be eligible for reappointment, and appointment may be made to fill an unexpired term. The term of any member appointed or reappointed by the governor before the first Monday in January 1991 expires on that date. The term of any member appointed or reappointed by the governor after the first Monday in January 1991 is coterminous with the governor. The members of the commission shall elect any additional officers necessary for the efficient discharge of their duties.

Subd. 4. Each member of the commission shall be reimbursed for all reasonable

expenses actually paid or incurred by that member in the performance of official duties in the same manner as other employees of the state. The public members of the commission shall be compensated at the rate of \$50 for each day or part thereof spent on commission activities.

Subd. 5. The commission shall, on or before January 1, 1980, promulgate sentencing guidelines for the district court. The guidelines shall be based on reasonable offense and offender characteristics. The guidelines promulgated by the commission shall be advisory to the district court and shall establish:

- (1) The circumstances under which imprisonment of an offender is proper; and
- (2) A presumptive, fixed sentence for offenders for whom imprisonment is proper, based on each appropriate combination of reasonable offense and offender characteristics. The guidelines may provide for an increase or decrease of up to 15 percent in the presumptive, fixed sentence.

The sentencing guidelines promulgated by the commission may also establish appropriate sanctions for offenders for whom imprisonment is not proper. Any guidelines promulgated by the commission establishing sanctions for offenders for whom imprisonment is not proper shall make specific reference to noninstitutional sanctions, including but not limited to the following: payment of fines, day fines, restitution, community work orders, work release programs in local facilities, community based residential and nonresidential programs, incarceration in a local correctional facility, and probation and the conditions thereof.

In establishing and modifying the sentencing guidelines, the primary consideration of the commission shall be public safety. The commission shall also consider current sentencing and release practices and correctional resources, including but not limited to the capacities of local and state correctional facilities.

The provisions of sections 14.001 to 14.69 do not apply to the promulgation of the sentencing guidelines, and the sentencing guidelines, including severity levels and criminal history scores, are not subject to review by the legislative commission to review administrative rules. However, on or before January 1, 1986, the commission shall adopt rules pursuant to sections 14.001 to 14.69 which establish procedures for the promulgation of the sentencing guidelines, including procedures for the promulgation of severity levels and criminal history scores, and these rules shall be subject to review by the legislative commission to review administrative rules.

Subd. 6. The commission, in addition to establishing sentencing guidelines, shall serve as a clearing house and information center for the collection, preparation, analysis and dissemination of information on state and local sentencing practices, and shall conduct ongoing research regarding sentencing guidelines, use of imprisonment and alternatives to imprisonment, plea bargaining, and other matters relating to the improvement of the criminal justice system. The commission shall from time to time make recommendations to the legislature regarding changes in the criminal code, criminal procedures, and other aspects of sentencing.

Subd. 7. The commission shall study the impact of the sentencing guidelines promulgated by the commission after their implementation. The commission shall also, after implementation of the guidelines, review the powers and duties of the commissioner of corrections and make recommendations to the legislature on the appropriate role, if any, of the board under the guidelines.

Subd. 8. The commissioner of corrections shall provide adequate office space and administrative services for the commission, and the commission shall reimburse the commissioner for the space and services provided. The commission may also utilize, with their consent, the services, equipment, personnel, information and resources of other state agencies; and may accept voluntary and uncompensated services, contract with individuals, public and private agencies, and request information, reports and data from any agency of the state, or any of its political subdivisions, to the extent authorized by law.

Subd. 9. When any person, corporation, the United States government, or any

other entity offers funds to the sentencing guidelines commission to carry out its purposes and duties, the commission may accept the offer by majority vote and upon acceptance the chair shall receive the funds subject to the terms of the offer, but no money shall be accepted or received as a loan nor shall any indebtedness be incurred except in the manner and under the limitations otherwise provided by law.

Subd. 10. The commission may select and employ a research director who shall perform the duties the commission directs, including the hiring of any clerical help and other employees as the commission shall approve. The research director and other staff shall be in the unclassified service of the state and their compensation shall be established pursuant to chapter 43A. They shall be reimbursed for the expenses necessarily incurred in the performance of their official duties in the same manner as other state employees.

Subd. 11. **Modification.** The commission shall meet as necessary for the purpose of modifying and improving the guidelines. Any modification which amends the sentencing guidelines grid, including severity levels and criminal history scores, or which would result in the reduction of any sentence or in the early release of any inmate, with the exception of a modification mandated or authorized by the legislature or relating to a crime created or amended by the legislature in the preceding session, shall be submitted to the legislature by January 1 of any year in which the commission wishes to make the change and shall be effective on August 1 of that year, unless the legislature by law provides otherwise. All other modifications shall take effect according to the procedural rules of the commission. On or before January 1 of each year, the commission shall submit a written report to the committees of the senate and the house of representatives with jurisdiction over criminal justice policy that identifies and explains all modifications made during the preceding 12 months and all proposed modifications that are being submitted to the legislature that year.

Subd. 11a. **Retroactivity.** Any person who is serving a sentence for which there is a modification in the numbers in the cells of the guidelines grid may institute a proceeding applying for retroactive application of the modification and the court may grant a petition for retroactivity subject to the same procedures, standards and conditions as set forth for post conviction remedies in section 590.01, subdivision 3. The right to petition for relief pursuant to this subdivision does not apply to modifications in the sentencing guidelines other than modification of the numbers in the cells of the guidelines grid. The right to petition for relief pursuant to this subdivision does not apply to offenders on supervised release or to offenders who have had their supervised release revoked and who have been reimprisoned.

Subd. 12. The guidelines shall be submitted to the legislature on January 1, 1980, and shall be effective May 1, 1980, unless the legislature provides otherwise.

Subd. 13. **Rulemaking power.** The commission shall have authority to promulgate emergency and permanent rules to carry out the purposes of subdivision 5.

Subd. 14. **Report on mandatory minimum sentences.** The sentencing guidelines commission shall include in its annual report to the legislature a summary and analysis of reports received from county attorneys under section 609.11, subdivision 10.

History: 1978 c 723 art 1 s 9; 1982 c 424 s 130; 1982 c 536 s 1-3; 1982 c 642 s 3; 1983 c 216 art 1 s 35; 1983 c 274 s 10,18; 1983 c 299 s 24; 1984 c 589 s 3-6; 1984 c 640 s 32; 1986 c 444; 1987 c 377 s 1-3; 1987 c 384 art 2 s 1; 1988 c 618 s 1; 1989 c 290 art 2 s 8; 1990 c 422 s 10; 1991 c 258 s 6; 1994 c 636 art 3 s 1; art 6 s 14

244.095 [Repealed, 1991 c 279 s 41]

SENTENCING

244.10 SENTENCING HEARING; DEVIATION FROM GUIDELINES.

Subdivision 1. **Sentencing hearing.** Whenever a person is convicted of a felony, the court, upon motion of either the defendant or the state, shall hold a sentencing hearing.

The hearing shall be scheduled so that the parties have adequate time to prepare and present arguments regarding the issue of sentencing. The parties may submit written arguments to the court prior to the date of the hearing and may make oral arguments before the court at the sentencing hearing. Prior to the hearing, the court shall transmit to the defendant or the defendant's attorney and the prosecuting attorney copies of the presentence investigation report.

At the conclusion of the sentencing hearing or within 20 days thereafter, the court shall issue written findings of fact and conclusions of law regarding the issues submitted by the parties, and shall enter an appropriate order.

Subd. 2. Deviation from guidelines. Whether or not a sentencing hearing is requested pursuant to subdivision 1, the district court shall make written findings of fact as to the reasons for departure from the sentencing guidelines in each case in which the court imposes or stays a sentence that deviates from the sentencing guidelines applicable to the case.

Subd. 3. Computation of criminal history score. If the defendant contests the existence of or factual basis for a prior conviction in the calculation of the defendant's criminal history score, proof of it is established by competent and reliable evidence, including a certified court record of the conviction.

History: 1978 c 723 art 1 s 10; 1986 c 444; 1988 c 520 s 1

244.101 SENTENCING OF FELONY OFFENDERS WHO COMMIT OFFENSES ON AND AFTER AUGUST 1, 1993.

Subdivision 1. Executed sentences. When a felony offender is sentenced to a fixed executed sentence for an offense committed on or after August 1, 1993, the executed sentence consists of two parts: (1) a specified minimum term of imprisonment that is equal to two-thirds of the executed sentence; and (2) a specified maximum supervised release term that is equal to one-third of the executed sentence. The amount of time the inmate actually serves in prison and on supervised release is subject to the provisions of section 244.05, subdivision 1b.

Subd. 2. Explanation of sentence. When a court pronounces an executed sentence under this section, it shall explain: (1) the total length of the executed sentence; (2) the amount of time the defendant will serve in prison; and (3) the amount of time the defendant will serve on supervised release, assuming the defendant commits no disciplinary offense in prison that results in the imposition of a disciplinary confinement period. The court shall also explain that the amount of time the defendant actually serves in prison may be extended by the commissioner if the defendant commits any disciplinary offenses in prison and that this extension could result in the defendant's serving the entire executed sentence in prison. The court's explanation shall be included in a written summary of the sentence.

Subd. 3. No right to supervised release. Notwithstanding the court's explanation of the potential length of a defendant's supervised release term, the court's explanation creates no right of a defendant to any specific, minimum length of a supervised release term.

Subd. 4. Application of statutory mandatory minimum sentences. If the defendant is convicted of any offense for which a statute imposes a mandatory minimum sentence of imprisonment, the statutory mandatory minimum sentence governs the length of the entire executed sentence pronounced by the court under this section.

History: 1992 c 571 art 2 s 7; art 9 s 6

APPELLATE REVIEW

244.11 APPELLATE REVIEW OF SENTENCE.

An appeal to the court of appeals may be taken by the defendant or the state from any sentence imposed or stayed by the district court according to the rules of criminal procedure for the district court of Minnesota. A dismissal of an appeal brought under this section shall not prejudice an appeal brought under any other section or rule.

When an appeal taken under this section is filed, the court administrator of the district court shall certify the transcript of the proceedings and any files or records relating to the defendant, the offense, and the sentence imposed or stayed, that the supreme court by rule or order may require.

On an appeal pursuant to this section, the court may review the sentence imposed or stayed to determine whether the sentence is inconsistent with statutory requirements, unreasonable, inappropriate, excessive, unjustifiably disparate, or not warranted by the findings of fact issued by the district court. This review shall be in addition to all other powers of review presently existing. The court may dismiss or affirm the appeal, vacate or set aside the sentence imposed or stayed and direct entry of an appropriate sentence or order further proceedings to be had as the court may direct.

This section shall not be construed to confer or enlarge any right of a defendant to be released pending an appeal.

History: 1978 c 723 art 1 s 11; 1983 c 247 s 103; 1Sp1986 c 3 art 1 s 82

INTENSIVE COMMUNITY SUPERVISION

244.12 INTENSIVE COMMUNITY SUPERVISION.

Subdivision 1. **Generally.** The commissioner may order that an offender who meets the eligibility requirements of subdivisions 2 and 3 be placed on intensive community supervision, as described in sections 244.14 and 244.15, for all or part of the offender's sentence if the offender agrees to participate in the program and the commissioner notifies the sentencing court.

Subd. 2. **Eligibility.** The commissioner must limit the intensive community supervision program to the following persons:

- (1) offenders who are committed to the commissioner's custody following revocation of a stayed sentence; and
- (2) offenders who are committed to the commissioner's custody for a sentence of 30 months or less, who did not receive a dispositional departure under the sentencing guidelines, and who have already served a period of incarceration as a result of the offense for which they are committed.

Subd. 3. **Offenders not eligible.** The following are not eligible to be placed on intensive community supervision, under subdivision 2, clause (2):

- (1) offenders who were committed to the commissioner's custody under a statutory mandatory minimum sentence;
- (2) offenders who were committed to the commissioner's custody following a conviction for murder, manslaughter, criminal sexual conduct, or criminal vehicular homicide or operation resulting in death; and
- (3) offenders whose presence in the community would present a danger to public safety.

History: 1990 c 568 art 2 s 33; 1991 c 258 s 2; 1992 c 571 art 1 s 8; 1994 c 636 art 6 s 15,16

244.13 INTENSIVE COMMUNITY SUPERVISION AND INTENSIVE SUPERVISED RELEASE; ESTABLISHMENT OF PROGRAMS.

Subdivision 1. **Establishment.** The commissioner of corrections shall establish programs for those designated by the commissioner to serve all or part of a sentence on intensive community supervision or all or part of a supervised release or parole term on intensive supervised release. The adoption and modification of policies and procedures to implement sections 244.05, subdivision 6, and 244.12 to 244.15 are not subject to the rulemaking procedures of chapter 14. The commissioner shall locate the programs so that at least one-half of the money appropriated for the programs in each year is used for programs in community corrections act counties. In awarding contracts for

intensive supervision programs in community corrections act counties, the commissioner shall give first priority to programs that utilize county employees as intensive supervision agents and shall give second priority to programs that utilize state employees as intensive supervision agents. The commissioner may award contracts to other providers in community corrections act counties only if doing so will result in a significant cost savings or a significant increase in the quality of services provided, and only after notifying the chairs of the committees in the senate and house of representatives with jurisdiction over criminal justice policy.

Subd. 2. Training. The commissioner shall develop specialized training programs for intensive supervision agents assigned to the intensive community supervision and intensive supervised release programs. The agent caseload shall not exceed the ratio of 30 offenders to two intensive supervision agents. An intensive supervision agent must have qualifications comparable to those for a state corrections agent.

Subd. 3. Evaluation. The commissioner shall develop a system for gathering and analyzing information concerning the value and effectiveness of the intensive community supervision and intensive supervised release programs and shall compile a report to the chairs of the committees in the senate and house of representatives with jurisdiction over criminal justice policy by January 1 of each odd-numbered year.

Subd. 4. Definition. For purposes of section 244.05, subdivision 6, and sections 244.12 to 244.15, "intensive supervision agent" means a probation officer, a corrections agent, or any other qualified person employed in supervising offenders serving a period of intensive community supervision or intensive supervised release.

History: 1990 c 568 art 2 s 34; 1991 c 258 s 3; 1994 c 636 art 6 s 17,18

244.14 INTENSIVE COMMUNITY SUPERVISION; BASIC ELEMENTS.

Subdivision 1. Requirements. This section governs the intensive community supervision programs established under section 244.13. The commissioner shall operate the programs in conformance with this section. The commissioner shall administer the programs to further the following goals:

- (1) to punish the offender;
- (2) to protect the safety of the public;
- (3) to facilitate employment of the offender during the intensive community supervision and afterward; and
- (4) to require the payment of restitution ordered by the court to compensate the victims of the offender's crime.

Subd. 2. Good time not available. An offender serving a sentence on intensive community supervision for a crime committed before August 1, 1993, does not earn good time, notwithstanding section 244.04.

Subd. 3. Sanctions. The commissioner shall impose severe and meaningful sanctions for violating the conditions of an intensive community supervision program. The commissioner shall provide for revocation of intensive community supervision of an offender who:

- (1) commits a material violation of or repeatedly fails to follow the rules of the program;
- (2) commits any misdemeanor, gross misdemeanor, or felony offense; or
- (3) presents a risk to the public, based on the offender's behavior, attitude, or abuse of alcohol or controlled substances. The revocation of intensive community supervision is governed by the procedures in the commissioner's rules adopted under section 244.05, subdivision 2.

An offender whose intensive community supervision is revoked shall be imprisoned for a time period equal to the offender's term of imprisonment, but in no case for longer than the time remaining in the offender's sentence. "Term of imprisonment" means a time period equal to two-thirds of the sentence originally executed by the sentencing court, minus jail credit, if any.

Subd. 4. All phases. Throughout all phases of an intensive community supervision program, the offender shall submit at any time to an unannounced search of the offender's person, vehicle, or premises by an intensive supervision agent. If the offender received a restitution order as part of the sentence, the offender shall make weekly payments as scheduled by the agent until the full amount is paid.

History: 1990 c 568 art 2 s 35; 1991 c 258 s 4; 1993 c 326 art 9 s 7; art 13 s 15

244.15 INTENSIVE COMMUNITY SUPERVISION; PHASES I TO IV.

Subdivision 1. Duration. Phase I of an intensive community supervision program is six months, or one-half the time remaining in the offender's term of imprisonment, whichever is less. Phase II lasts for at least one-third of the time remaining in the offender's term of imprisonment at the beginning of Phase II. Phase III lasts for at least one-third of the time remaining in the offender's term of imprisonment at the beginning of Phase III. Phase IV continues until the commissioner determines that the offender has successfully completed the program or until the offender's sentence, minus jail credit, expires, whichever occurs first. If an offender successfully completes the intensive community supervision program before the offender's sentence expires, the offender shall be placed on supervised release for the remainder of the sentence.

Subd. 2. Random drug testing. (a) During phase I, the offender will be subjected at least weekly to urinalysis and breath tests to detect the presence of controlled substances or alcohol. The tests will be random and unannounced.

(b) During phase II, the tests will be done at least twice monthly.

(c) During phases III and IV, the tests will be done at random at the frequency determined by the intensive supervision agent.

Subd. 3. House arrest. (a) During phase I, the offender will be under house arrest in a residence approved by the offender's intensive supervision agent and may not move to another residence without permission. "House arrest" means that the offender's movements will be severely restricted and continually monitored by the assigned agent.

(b) During phase II, modified house arrest is imposed.

(c) During phases III and IV, the offender is subjected to a daily curfew instead of house arrest.

Subd. 4. Face-to-face contacts. (a) During phase I, the assigned intensive supervision agent shall have at least four face-to-face contacts with the offender each week.

(b) During phase II, two face-to-face contacts a week are required.

(c) During phase III, one face-to-face contact a week is required.

(d) During phase IV, two face-to-face contacts a month are required.

(e) When an offender is an inmate of a jail or a resident of a facility which is staffed full time, the assigned agent may reduce face-to-face contacts to one per week during all phases.

Subd. 5. Work required. During phases I, II, III, and IV, the offender must spend at least 40 hours a week performing approved work, undertaking constructive activity designed to obtain employment, or attending a treatment or education program as directed by the commissioner. An offender may not spend more than six months in a residential treatment program that does not require the offender to spend at least 40 hours a week performing approved work or undertaking constructive activity designed to obtain employment.

Subd. 6. Electronic surveillance. During any phase, the offender may be placed on electronic surveillance if the intensive supervision agent so directs.

Subd. 7. Other requirements. The commissioner may include any other conditions in the various phases of the intensive community supervision program that the commissioner finds necessary and appropriate.

History: 1990 c 568 art 2 s 36; 1991 c 258 s 5; 1993 c 326 art 13 s 16; 1994 c 636 art 6 s 19

DAY-FINES

244.16 DAY-FINES.

Subdivision 1. **Model system.** The sentencing guidelines commission shall develop a model day-fine system. The commission shall report its model system to the legislature by February 1, 1993. Upon request of a judicial district, the commission may establish one pilot project for the development of a day-fine system.

Subd. 2. **Components.** A day-fine system adopted under this section must provide for a two-step sentencing procedure for those receiving a fine as part of a probationary felony, gross misdemeanor, or misdemeanor sentence. In the first step, the court determines how many punishment points a person will receive, taking into account the severity of the offense and the criminal history of the offender. The second step is to multiply the punishment points by a factor that accounts for the offender's financial circumstances. The goal of the system is to provide a fine that is proportional to the seriousness of the offense and largely equal in impact among offenders with different financial circumstances. The system may provide for community service in lieu of fines for offenders whose means are so limited that the payment of a fine would be unlikely.

History: 1990 c 568 art 2 s 102; 1991 c 292 art 8 s 6

CHALLENGE INCARCERATION PROGRAM

244.17 CHALLENGE INCARCERATION PROGRAM.

Subdivision 1. **Generally.** The commissioner may select offenders who meet the eligibility requirements of subdivisions 2 and 3 to participate in a challenge incarceration program described in sections 244.171 and 244.172 for all or part of the offender's sentence if the offender agrees to participate in the program and signs a written contract with the commissioner agreeing to comply with the program's requirements.

Subd. 2. **Eligibility.** The commissioner must limit the challenge incarceration program to the following persons:

(1) offenders who are committed to the commissioner's custody following revocation of a stayed sentence; and

(2) offenders who are committed to the commissioner's custody for a term of imprisonment of not less than 18 months nor more than 36 months and who did not receive a dispositional departure under the sentencing guidelines.

Subd. 3. **Offenders not eligible.** The following offenders are not eligible to be placed in the challenge incarceration program:

(1) offenders who are committed to the commissioner's custody following a conviction for murder, manslaughter, criminal sexual conduct, assault, kidnapping, robbery, arson, or any other offense involving death or intentional personal injury; and

(2) offenders who were convicted within the preceding ten years of an offense described in clause (1) and were committed to the custody of the commissioner.

History: 1992 c 513 art 9 s 3; 1992 c 571 art 11 s 5,17; 1993 c 326 art 8 s 10

244.171 CHALLENGE INCARCERATION PROGRAM; BASIC ELEMENTS.

Subdivision 1. **Requirements.** The commissioner shall administer an intensive, structured, and disciplined program with a high level of offender accountability and control and direct and related consequences for failure to meet behavioral expectations. The program shall have the following goals:

- (1) to punish and hold the offender accountable;
- (2) to protect the safety of the public;
- (3) to treat offenders who are chemically dependent; and
- (4) to prepare the offender for successful reintegration into society.

Subd. 2. **Program components.** The program shall contain all of the components described in paragraphs (a) to (c).

- (a) The program shall contain a highly structured daily schedule for the offender.
- (b) The program shall contain a rigorous physical program designed to teach personal discipline and improve the physical and mental well-being of the offender. It shall include skills designed to teach the offender how to reduce and cope with stress.
- (c) The program shall contain individualized educational programs designed to improve the basic educational skills of the offender and to provide vocational training.
- (d) The program shall contain programs designed to promote the offender's self-worth and the offender's acceptance of responsibility for the consequences of the offender's own decisions.

(e) The program shall contain culturally sensitive chemical dependency programs, licensed by the department of human services and designed to serve the inmate population. It shall require that each offender submit to a chemical use assessment and that the offender receive the appropriate level of treatment as indicated by the assessment.

Subd. 3. Good time not available. An offender in the challenge incarceration program whose crime was committed before August 1, 1993, does not earn good time during phases I and II of the program, notwithstanding section 244.04.

Subd. 4. Sanctions. The commissioner shall impose severe and meaningful sanctions for violating the conditions of the challenge incarceration program. The commissioner shall remove an offender from the challenge incarceration program if the offender:

- (1) commits a material violation of or repeatedly fails to follow the rules of the program;
- (2) commits any misdemeanor, gross misdemeanor, or felony offense; or
- (3) presents a risk to the public, based on the offender's behavior, attitude, or abuse of alcohol or controlled substances. The removal of an offender from the challenge incarceration program is governed by the procedures in the commissioner's rules adopted under section 244.05, subdivision 2.

An offender who is removed from the challenge incarceration program shall be imprisoned for a time period equal to the offender's term of imprisonment, minus earned good time if any, but in no case for longer than the time remaining in the offender's sentence. "Term of imprisonment" means a time period equal to two-thirds of the sentence originally executed by the sentencing court, minus jail credit, if any.

Subd. 5. Training. The commissioner shall develop specialized training for correctional employees who supervise and are assigned to the challenge incarceration program.

History: 1992 c 513 art 9 s 4; 1992 c 571 art 11 s 6,17; 1993 c 326 art 9 s 8; art 13 s 17

244.172 CHALLENGE INCARCERATION PROGRAM; PHASES I TO III.

Subdivision 1. Phase I. Phase I of the program lasts at least six months. The offender must be confined in a state correctional facility designated by the commissioner and must successfully participate in all intensive treatment, education and work programs required by the commissioner. The offender must also submit on demand to random drug and alcohol testing at time intervals set by the commissioner. Throughout phase I, the commissioner must severely restrict the offender's telephone and visitor privileges.

Subd. 2. Phase II. Phase II of the program lasts at least six months. The offender shall serve this phase of the offender's sentence in an intensive supervision and surveillance program established by the commissioner. The commissioner may impose such requirements on the offender as are necessary to carry out the goals of the program. Throughout phase II, the offender must be required to submit to drug and alcohol tests randomly or for cause, on demand of the supervising agent. The commissioner shall also require the offender to report daily to a day-reporting facility designated by the commissioner. In addition, if the commissioner required the offender to undergo acu-

puncture during phase I, the offender must submit to acupuncture treatment throughout phase II, on demand of the supervising agent.

Subd. 3. **Phase III.** Phase III continues until the commissioner determines that the offender has successfully completed the program or until the offender's sentence, minus jail credit, expires, whichever comes first. If an offender successfully completes phase III of the challenge incarceration program before the offender's sentence expires, the offender shall be placed on supervised release for the remainder of the sentence. The commissioner shall set the level of the offender's supervision based on the public risk presented by the offender.

History: 1992 c 513 art 9 s 5; 1992 c 571 art 11 s 7,17; 1993 c 326 art 8 s 11,12; 1994 c 636 art 6 s 20

244.173 CHALLENGE INCARCERATION PROGRAM; EVALUATION AND REPORT.

The commissioner shall develop a system for gathering and analyzing information concerning the value and effectiveness of the challenge incarceration program. The commissioner shall report to the committees of the house of representatives and senate with jurisdiction over criminal justice policy by January 1, 1996, on the operation of the program.

History: 1992 c 513 art 9 s 6; 1992 c 571 art 11 s 8,17; 1994 c 636 art 6 s 21

OFFENDER FEES

244.18 LOCAL CORRECTIONAL FEES; IMPOSITION ON OFFENDERS.

Subdivision 1. **Definition.** As used in this section, "local correctional fees" include fees for the following correctional services:

- (1) community service work placement and supervision;
- (2) restitution collection;
- (3) supervision;
- (4) court ordered investigations; or
- (5) any other court ordered service to be provided by a local probation and parole agency established under section 260.311 or community corrections agency established under chapter 401.

Subd. 2. **Local correctional fees.** A local correctional agency may establish a schedule of local correctional fees to charge persons convicted of a crime and under the supervision and control of the local correctional agency to defray costs associated with correctional services. The local correctional fees on the schedule must be reasonably related to defendants' abilities to pay and the actual cost of correctional services.

Subd. 3. **Fee collection.** The chief executive officer of a local correctional agency may collect local correctional fees assessed under section 609.102. The local correctional agency may collect the fee at any time while the offender is under sentence or after the sentence has been discharged. The agency may use any available civil means of debt collection in collecting a local correctional fee.

Subd. 4. **Exemption from fee.** The local correctional agency shall waive payment of a local correctional fee if so ordered by the court under section 609.102. If the court fails to waive the fee, the chief executive officer of the local correctional agency may waive payment of the fee if the officer determines that the offender does not have the ability to pay the fee, the prospects for payment are poor, or there are extenuating circumstances justifying waiver of the fee. Instead of waiving the fee, the local correctional agency may require the offender to perform community work service as a means of paying the fee.

Subd. 5. **Restitution payment priority.** If a defendant has been ordered by a court to pay restitution and a local correctional fee, the defendant shall be obligated to pay the restitution ordered before paying the local correctional fee.

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Subd. 6. Use of fees. The local correctional fees shall be used by the local correctional agency to pay the costs of local correctional services. Local correctional fees may not be used to supplant existing local funding for local correctional services.

History: 1992 c 571 art 11 s 9