

CHAPTER 244

CRIMINAL SENTENCES, CONDITIONS, DURATION,
APPEALS

244.02	Repealed.	244.052	Sex offenders; notice.
244.03	Rehabilitative programs.	244.18	Local correctional fees; imposition on offenders.
244.035	Sanctions related to litigation.		
244.05	Supervised release term.		

244.02 [Repealed, 1999 c 126 s 13]

244.03 REHABILITATIVE PROGRAMS.

The commissioner shall provide appropriate mental health programs and vocational and educational programs with employment-related goals for inmates. 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, including employee assignments, may be maintained by an inmate in any court in this state.

The commissioner may impose disciplinary sanctions upon any inmate who refuses to participate in rehabilitative programs.

History: 1999 c 126 s 8; 1999 c 208 s 1

244.035 SANCTIONS RELATED TO LITIGATION.

(a) As used in this section, "board" means a licensing or certification board.

(b) The commissioner shall develop disciplinary sanctions to provide infraction penalties for an inmate who submits a frivolous or malicious claim to a court or board, or who is determined by the court or board to have testified falsely or to have submitted false evidence to a court or board. Infraction penalties may include loss of privileges, punitive segregation, loss of good time, or adding discipline confinement time. The determination of the commissioner regarding disciplinary sanctions under this section is limited to the nature and extent of the infraction penalty to be imposed. The commissioner is bound by the finding of the court or board that the inmate submitted a frivolous or malicious claim, testified falsely, or submitted false evidence.

(c) The court or board shall determine whether a claim is frivolous or malicious under section 563.02, subdivision 3.

History: 1999 c 208 s 2

244.05 SUPERVISED RELEASE TERM.

[For text of subs 1 and 1a, see M.S.1998]

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 rule adopted by the commissioner or refusal to participate in a rehabilitative program required under section 244.03. 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) No inmate who violates a disciplinary rule or refuses to participate in a rehabilitative program as required under section 244.03 shall be placed on supervised release until the in-

mate has served the disciplinary confinement period for that disciplinary sanction 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.

[For text of subds 1c to 8, see M.S.1998]

History: 1999 c 126 s 9

244.052 SEX OFFENDERS; NOTICE.

Subdivision 1. **Definitions.** As used in this section:

(1) "confinement" means confinement in a state correctional facility or a state treatment facility;

(2) "law enforcement agency" means the law enforcement agency having primary jurisdiction over the location where the offender expects to reside upon release;

(3) "residential facility" means a facility that is licensed as a residential program, as defined in section 245A.02, subdivision 14, by the commissioner of human services under chapter 245A, or the commissioner of corrections under section 241.021, whose staff are trained in the supervision of sex offenders; and

(4) "sex offender" and "offender" mean a person who has been:

(i) convicted of an offense for which registration under section 243.166 is required;

(ii) committed pursuant to a court commitment order under section 253B.185 or Minnesota Statutes 1992, section 526.10, regardless of whether the person was convicted of any offense; or

(iii) committed pursuant to a court commitment order under section 253B.18, under the circumstances described in section 243.166, subdivision 1, paragraph (d).

[For text of subd 2, see M.S.1998]

Subd. 3. End-of-confinement review committee. (a) The commissioner of corrections shall establish and administer end-of-confinement review committees at each state correctional facility and at each state treatment facility where sex offenders are confined. The committees shall assess on a case-by-case basis the public risk posed by sex offenders who are about to be released from confinement.

(b) Each committee shall be a standing committee and shall consist of the following members appointed by the commissioner:

(1) the chief executive officer or head of the correctional or treatment facility where the offender is currently confined, or that person's designee;

(2) a law enforcement officer;

(3) a treatment professional who is trained in the assessment of sex offenders;

(4) a caseworker experienced in supervising sex offenders; and

(5) a victim's services professional.

Members of the committee, other than the facility's chief executive officer or head, shall be appointed by the commissioner to two-year terms. The chief executive officer or head of the facility or designee shall act as chair of the committee and shall use the facility's staff, as needed, to administer the committee, obtain necessary information from outside sources, and prepare risk assessment reports on offenders.

(c) The committee shall have access to the following data on a sex offender only for the purposes of its assessment and to defend the committee's risk assessment determination upon administrative review under this section:

(1) private medical data under section 13.42 or 144.335, or welfare data under section 13.46 that relate to medical treatment of the offender;

(2) private and confidential court services data under section 13.84;

(3) private and confidential corrections data under section 13.85; and

(4) private criminal history data under section 13.87.

Data collected and maintained by the committee under this paragraph may not be disclosed outside the committee, except as provided under section 13.05, subdivision 3 or 4. The sex offender has access to data on the offender collected and maintained by the committee, unless the data are confidential data received under this paragraph.

(d)(i) Except as otherwise provided in item (ii), at least 90 days before a sex offender is to be released from confinement, the commissioner of corrections shall convene the appropriate end-of-confinement review committee for the purpose of assessing the risk presented by the offender and determining the risk level to which the offender shall be assigned under paragraph (e). The offender and the law enforcement agency that was responsible for the charge resulting in confinement shall be notified of the time and place of the committee's meeting. The offender has a right to be present and be heard at the meeting. The law enforcement agency may provide material in writing that is relevant to the offender's risk level to the chair of the committee. The committee shall use the risk factors described in paragraph (g) and the risk assessment scale developed under subdivision 2 to determine the offender's risk assessment score and risk level. Offenders scheduled for release from confinement shall be assessed by the committee established at the facility from which the offender is to be released.

(ii) If an offender is received for confinement in a facility with less than 90 days remaining in the offender's term of confinement, the offender's risk shall be assessed at the first regularly scheduled end of confinement review committee that convenes after the appropriate documentation for the risk assessment is assembled by the committee. The commissioner shall make reasonable efforts to ensure that offender's risk is assessed and a risk level is assigned or reassigned at least 30 days before the offender's release date.

(e) The committee shall assign to risk level I a sex offender whose risk assessment score indicates a low risk of reoffense. The committee shall assign to risk level II an offender whose risk assessment score indicates a moderate risk of reoffense. The committee shall assign to risk level III an offender whose risk assessment score indicates a high risk of reoffense.

(f) Before the sex offender is released from confinement, the committee shall prepare a risk assessment report which specifies the risk level to which the offender has been assigned and the reasons underlying the committee's risk assessment decision. The committee shall give the report to the offender and to the law enforcement agency at least 60 days before an offender is released from confinement. If the risk assessment is performed under the circumstances described in paragraph (d), item (ii), the report shall be given to the offender and the law enforcement agency as soon as it is available. The committee also shall inform the offender of the availability of review under subdivision 6.

(g) As used in this subdivision, "risk factors" includes, but is not limited to, the following factors:

(1) the seriousness of the offense should the offender reoffend. This factor includes consideration of the following:

- (i) the degree of likely force or harm;
- (ii) the degree of likely physical contact; and
- (iii) the age of the likely victim;

(2) the offender's prior offense history. This factor includes consideration of the following:

- (i) the relationship of prior victims to the offender;
- (ii) the number of prior offenses or victims;
- (iii) the duration of the offender's prior offense history;
- (iv) the length of time since the offender's last prior offense while the offender was at risk to commit offenses; and

(v) the offender's prior history of other antisocial acts;

(3) the offender's characteristics. This factor includes consideration of the following:

- (i) the offender's response to prior treatment efforts; and
- (ii) the offender's history of substance abuse;

(4) the availability of community supports to the offender. This factor includes consideration of the following:

(i) the availability and likelihood that the offender will be involved in therapeutic treatment;

(ii) the availability of residential supports to the offender, such as a stable and supervised living arrangement in an appropriate location;

(iii) the offender's familial and social relationships, including the nature and length of these relationships and the level of support that the offender may receive from these persons; and

(iv) the offender's lack of education or employment stability;

(5) whether the offender has indicated or credible evidence in the record indicates that the offender will reoffend if released into the community; and

(6) whether the offender demonstrates a physical condition that minimizes the risk of reoffense, including but not limited to, advanced age or a debilitating illness or physical condition.

(h) Upon the request of the law enforcement agency or the offender's corrections agent, the commissioner may reconvene the end-of-confinement review committee for the purpose of reassessing the risk level to which an offender has been assigned under paragraph (e). In a request for a reassessment, the law enforcement agency which was responsible for the charge resulting in confinement or agent shall list the facts and circumstances arising after the initial assignment or facts and circumstances known to law enforcement or the agent but not considered by the committee under paragraph (e) which support the request for a reassessment. The request for reassessment must occur within 30 days of receipt of the report indicating the offender's risk level assignment. Upon review of the request, the end-of-confinement review committee may reassign an offender to a different risk level. If the offender is reassigned to a higher risk level, the offender has the right to seek review of the committee's determination under subdivision 6.

(i) An offender may request the end-of-confinement review committee to reassess the offender's assigned risk level after two years have elapsed since the committee's initial risk assessment and may renew the request once every two years following subsequent denials. In a request for reassessment, the offender shall list the facts and circumstances which demonstrate that the offender no longer poses the same degree of risk to the community. The committee shall follow the process outlined in paragraphs (a) to (e), and (g) in the reassessment.

(j) The commissioner shall establish an end-of-confinement review committee to assign a risk level to offenders who are released from a federal correctional facility in Minnesota or another state and who intend to reside in Minnesota, and to offenders accepted from another state under a reciprocal agreement for parole supervision under the interstate compact authorized by section 243.16. The committee shall make reasonable efforts to conform to the same timelines as applied to Minnesota cases. Offenders accepted from another state under a reciprocal agreement for probation supervision are not assigned a risk level, but are considered downward dispositional departures. The probation or court services officer and law enforcement officer shall manage such cases in accordance with section 244.10, subdivision 2a. The policies and procedures of the committee for federal offenders and interstate compact cases must be in accordance with all requirements as set forth in this section, unless restrictions caused by the nature of federal or interstate transfers prevents such conformance.

(k) If the committee assigns a sex offender to risk level III, the committee shall determine whether residency restrictions shall be included in the conditions of the offender's release based on the offender's pattern of offending behavior.

Subd. 4. Law enforcement agency; disclosure of information to public. (a) The law enforcement agency in the area where the sex offender resides, expects to reside, is employed, or is regularly found, shall disclose to the public any information regarding the offender contained in the report forwarded to the agency under subdivision 3, paragraph (f), that is relevant and necessary to protect the public and to counteract the offender's dangerousness, consistent with the guidelines in paragraph (b). The extent of the information disclosed and the community to whom disclosure is made must relate to the level of danger

posed by the offender, to the offender's pattern of offending behavior, and to the need of community members for information to enhance their individual and collective safety.

(b) The law enforcement agency shall employ the following guidelines in determining the scope of disclosure made under this subdivision:

(1) if the offender is assigned to risk level I, the agency may maintain information regarding the offender within the agency and may disclose it to other law enforcement agencies. Additionally, the agency may disclose the information to any victims of or witnesses to the offense committed by the offender. The agency shall disclose the information to victims of the offense committed by the offender who have requested disclosure;

(2) if the offender is assigned to risk level II, the agency also may disclose the information to agencies and groups that the offender is likely to encounter for the purpose of securing those institutions and protecting individuals in their care while they are on or near the premises of the institution. These agencies and groups include the staff members of public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender. The agency also may disclose the information to individuals the agency believes are likely to be victimized by the offender. The agency's belief shall be based on the offender's pattern of offending or victim preference as documented in the information provided by the department of corrections or human services;

(3) if the offender is assigned to risk level III, the agency shall disclose the information to the persons and entities described in clauses (1) and (2) and to other members of the community whom the offender is likely to encounter, unless the law enforcement agency determines that public safety would be compromised by the disclosure or that a more limited disclosure is necessary to protect the identity of the victim.

Notwithstanding the assignment of a sex offender to risk level II or III, a law enforcement agency may not make the disclosures permitted or required by clause (2) or (3), if: the offender is placed or resides in a residential facility. However, if an offender is placed or resides in a residential facility, the offender and the head of the facility shall designate the offender's likely residence upon release from the facility and the head of the facility shall notify the commissioner of corrections or the commissioner of human services of the offender's likely residence at least 14 days before the offender's scheduled release date. The commissioner shall give this information to the law enforcement agency having jurisdiction over the offender's likely residence. The head of the residential facility also shall notify the commissioner of corrections or human services within 48 hours after finalizing the offender's approved relocation plan to a permanent residence. Within five days after receiving this notification, the appropriate commissioner shall give to the appropriate law enforcement agency all relevant information the commissioner has concerning the offender, including information on the risk factors in the offender's history and the risk level to which the offender was assigned. After receiving this information, the law enforcement agency shall make the disclosures permitted or required by clause (2) or (3), as appropriate.

(c) As used in paragraph (b), clauses (2) and (3), "likely to encounter" means that:

(1) the organizations or community members are in a location or in close proximity to a location where the offender lives or is employed, or which the offender visits or is likely to visit on a regular basis, other than the location of the offender's outpatient treatment program; and

(2) the types of interaction which ordinarily occur at that location and other circumstances indicate that contact with the offender is reasonably certain.

(d) A law enforcement agency or official who discloses information under this subdivision shall make a good faith effort to make the notification within 14 days of receipt of a confirmed address from the department of corrections indicating that the offender will be, or has been, released from confinement, or accepted for supervision, or has moved to a new address and will reside at the address indicated. If a change occurs in the release plan, this notification provision does not require an extension of the release date.

(e) A law enforcement agency or official who discloses information under this subdivision shall not disclose the identity or any identifying characteristics of the victims of or witnesses to the offender's offenses.

(f) A law enforcement agency shall continue to disclose information on an offender as required by this subdivision for as long as the offender is required to register under section 243.166.

Subd. 4a. **Level III offenders; location of residence.** When an offender assigned to risk level III is released from confinement or a residential facility to reside in the community or changes residence while on supervised or conditional release, the agency responsible for the offender's supervision shall take into consideration the proximity of the offender's residence to that of other level III offenders and, to the greatest extent feasible, shall mitigate the concentration of level III offenders.

Subd. 5. **Relevant information provided to law enforcement.** At least 60 days before a sex offender is released from confinement, the department of corrections or the department of human services, in the case of a person who was committed under section 253B.185 or Minnesota Statutes 1992, section 526.10, shall give to the law enforcement agency that investigated the offender's crime of conviction or, where relevant, the law enforcement agency having primary jurisdiction where the offender was committed, all relevant information that the departments have concerning the offender, including information on risk factors in the offender's history. Within five days after receiving the offender's approved release plan from the hearings and release unit, the appropriate department shall give to the law enforcement agency having primary jurisdiction where the offender plans to reside all relevant information the department has concerning the offender, including information on risk factors in the offender's history and the risk level to which the offender was assigned. If the offender's risk level was assigned under the circumstances described in subdivision 3, paragraph (d), item (ii), the appropriate department shall give the law enforcement agency all relevant information that the department has concerning the offender, including information on the risk factors in the offender's history and the offender's risk level within five days of the risk level assignment or reassignment.

Subd. 6. **Administrative review.** (a) An offender assigned or reassigned to risk level II or III under subdivision 3, paragraph (e) or (h), has the right to seek administrative review of an end-of-confinement review committee's risk assessment determination. The offender must exercise this right within 14 days of receiving notice of the committee's decision by notifying the chair of the committee. Upon receiving the request for administrative review, the chair shall notify: (1) the offender; (2) the victim or victims of the offender's offense who have requested disclosure or their designee; (3) the law enforcement agency that investigated the offender's crime of conviction or, where relevant, the law enforcement agency having primary jurisdiction where the offender was committed; (4) the law enforcement agency having jurisdiction where the offender expects to reside, providing that the release plan has been approved by the hearings and release unit of the department of corrections; and (5) any other individuals the chair may select. The notice shall state the time and place of the hearing. A request for a review hearing shall not interfere with or delay the notification process under subdivision 4 or 5, unless the administrative law judge orders otherwise for good cause shown.

(b) An offender who requests a review hearing must be given a reasonable opportunity to prepare for the hearing. The review hearing shall be conducted on the record before an administrative law judge. The review hearing shall be conducted at the correctional facility in which the offender is currently confined. If the offender no longer is incarcerated, the administrative law judge shall determine the place where the review hearing will be conducted. The offender has the burden of proof to show, by a preponderance of the evidence, that the end-of-confinement review committee's risk assessment determination was erroneous. The attorney general or a designee shall defend the end-of-confinement review committee's determination. The offender has the right to be present and be represented by counsel at the hearing, to present evidence in support of the offender's position, to call supporting witnesses and to cross-examine witnesses testifying in support of the committee's determination. Counsel for indigent offenders shall be provided by the Legal Advocacy Project of the state public defender's office.

(c) After the hearing is concluded, the administrative law judge shall decide whether the end-of-confinement review committee's risk assessment determination was erroneous and, based on this decision, shall either uphold or modify the review committee's determination.

The judge's decision shall be in writing and shall include the judge's reasons for the decision. The judge's decision shall be final and a copy of it shall be given to the offender, the victim, the law enforcement agency, and the chair of the end-of-confinement review committee.

(d) The review hearing is subject to the contested case provisions of chapter 14.

(e) The administrative law judge may seal any portion of the record of the administrative review hearing to the extent necessary to protect the identity of a victim of or witness to the offender's offense.

[For text of subs 7 and 8, see M.S.1998]

History: 1999 c 86 art 1 s 82; 1999 c 216 art 6 s 2-5; 1999 c 233 s 4,5

244.18 LOCAL CORRECTIONAL FEES; IMPOSITION ON OFFENDERS.

[For text of subs 1 and 2, see M.S.1998]

Subd. 3. Fee collection. The chief executive officer of a local correctional agency may impose and collect local correctional fees. The local correctional agency may collect the fee at any time while the offender is under sentence or after the sentence has been discharged. A local probation and parole agency established under section 244.19 or community corrections agency established under section 401.02 may not impose a fee under this section if the offender is supervised by the commissioner of corrections and the commissioner of corrections imposes and collects a fee under section 241.272. The agency may use any available civil means of debt collection in collecting a local correctional fee.

Subd. 4. Exemption from 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, the defendant shall be obligated to pay the restitution ordered before paying the local correctional fee. However, if the defendant is making reasonable payments to satisfy the restitution obligation, the local correctional agency may also collect a local correctional fee.

[For text of subd 6, see M.S.1998]

History: 1999 c 111 s 1-3; 1999 c 216 art 4 s 9