

CHAPTER 244

CRIMINAL SENTENCES, CONDITIONS,
DURATION, APPEALS

244.04	Good time.	244.056	Predatory offender seeking housing in jurisdiction of different corrections agency.
244.05	Supervised release term.	244.057	Placement of predatory offender in household with children.
244.052	Predatory offenders; notice.	244.09	Minnesota Sentencing Guidelines Commission.
CONDITIONAL RELEASE OF NONVIOLENT CONTROLLED SUBSTANCE OFFENDERS		244.10	Sentencing hearing; deviation from guidelines.
244.055	Conditional release of nonviolent controlled substance offenders; opportunity for drug treatment.	244.18	Local correctional fees; imposition on offenders.

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 609.109, 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 conditionally released by the commissioner under section 609.3455 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.

[For text of subds 1a to 3, see M.S.2004]

History: 2005 c 136 art 2 s 1

244.05 SUPERVISED RELEASE TERM.

[For text of subds 1 to 1c, see M.S.2004]

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

[For text of subd 3, see M.S.2004]

Subd. 4. **Minimum imprisonment, life sentence.** (a) An inmate serving a mandatory life sentence under section 609.106 or 609.3455, subdivision 2, must not be given supervised release under this section.

(b) An inmate serving a mandatory life sentence under section 609.185, clause (3), (5), or (6); or 609.109, subdivision 3, must not be given supervised release under this section without having served a minimum term of 30 years.

(c) 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.

(d) An inmate serving a mandatory life sentence under section 609.3455, subdivision 3 or 4, must not be given supervised release under this section without having served the minimum term of imprisonment specified by the court in its sentence.

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 (3), (5), or (6); 609.109, subdivision 3; 609.3455, subdivision 3 or 4; 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) When considering whether to give supervised release to an inmate serving a life sentence under section 609.3455, subdivision 3 or 4, the commissioner shall consider, at a minimum, the following: the risk the inmate poses to the community if released, the inmate's progress in treatment, the inmate's behavior while incarcerated, psychological or other diagnostic evaluations of the inmate, the inmate's criminal history, and any other relevant conduct of the inmate while incarcerated or before incarceration. The commissioner may not give supervised release to the inmate unless:

(1) while in prison:

(i) the inmate has successfully completed appropriate sex offender treatment;

(ii) the inmate has been assessed for chemical dependency needs and, if appropriate, has successfully completed chemical dependency treatment; and

(iii) the inmate has been assessed for mental health needs and, if appropriate, has successfully completed mental health treatment; and

(2) a comprehensive individual release plan is in place for the inmate that ensures that, after release, the inmate will have suitable housing and receive appropriate aftercare and community-based treatment. The comprehensive plan also must include a postprison employment or education plan for the inmate.

(e) 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 section 609.342, 609.343, 609.344, 609.345, or 609.3453 or was sentenced under the provisions of section 609.108. The commissioner shall order that all level III predatory offenders be placed on intensive supervised release for the entire supervised release, conditional release, or parole term. 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 609.3455.

Subd. 7. Sex offenders; civil commitment determination. (a) Before the commissioner releases from prison any inmate convicted under section 609.342, 609.343, 609.344, 609.345, or 609.3453, or sentenced as a patterned offender under section 609.108, 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. The commissioner's opinion must be based on a recommendation of a Department of Corrections screening committee and a legal review and recommendation from independent counsel knowledgeable in the legal requirements of the civil commitment process. The commissioner may retain a retired judge or other attorney to serve as independent counsel.

(b) In making this decision, the commissioner shall have access to the following data only for the purposes of the assessment and referral decision:

- (1) private medical data under section 13.384 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.

(c) 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 12 months before the inmate's release date. If the inmate is received for incarceration with fewer than 12 months remaining in the inmate's term of imprisonment, or if the commissioner receives additional information less than 12 months before release that makes the inmate's case appropriate for referral, the commissioner shall forward the determination as soon as is practicable. 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.

[For text of subd 8, see M.S.2004]

History: 2005 c 10 art 1 s 40,41; 2005 c 136 art 2 s 2-4; art 3 s 10,11

244.052 PREDATORY OFFENDERS; NOTICE.

[For text of subds 1 and 2, see M.S.2004]

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 predatory offenders are confined. The committees shall assess on a case-by-case basis the public risk posed by predatory 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 predatory 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 13.384 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 predatory 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 items (ii), (iii), and (iv), at least 90 days before a predatory 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.

(iii) If the offender is subject to a mandatory life sentence under section 609.3455, subdivision 3 or 4, the commissioner of corrections shall convene the appropriate end-of-confinement review committee at least nine months before the offender's minimum term of imprisonment has been served. If the offender is received for confinement in a facility with less than nine months remaining before the offender's minimum term of imprisonment has been served, the committee shall conform its procedures to those outlined in item (ii) to the extent practicable.

(iv) If the offender is granted supervised release, the commissioner of corrections shall notify the appropriate end-of-confinement review committee that it needs to review the offender's previously determined risk level at its next regularly scheduled meeting. The commissioner shall make reasonable efforts to ensure that the offender's earlier risk level determination is reviewed and the risk level is confirmed or reassigned at least 60 days before the offender's release date. 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.

(e) The committee shall assign to risk level I a predatory 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 predatory 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. Except for an offender subject to a mandatory life sentence under section 609.3455, subdivision 3 or 4, who has not been granted supervised release, 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 offender is subject to a mandatory life sentence and has not yet served the entire minimum term of imprisonment, the committee shall give the report to the offender and to the commissioner at least six months before the offender is first eligible for release. 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 by the law enforcement agency must occur within 30 days of receipt of the report indicating the offender's risk level assignment. The offender's corrections agent, in consultation with the chief law enforcement officer in the area where the offender resides or intends to reside, may request a review of a risk level at any time if substantial evidence exists that the offender's risk level should be reviewed by an end-of-confinement review committee. This evidence includes, but is not limited to, evidence of treatment failures or completions, evidence of exceptional crime-free community adjustment or lack of appropriate adjustment, evidence of substantial community need to know more about the offender or mitigating circumstances that would narrow the proposed scope of notification, or other practical situations articulated and based in evidence of the offender's behavior while under supervision. 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 three 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. In order for a request for a risk level reduction to be granted, the offender must demonstrate full compliance with supervised release conditions, completion of required post-release treatment programming, and full compliance with all registration requirements as detailed in section 243.166. The offender must also not have been convicted of any felony, gross misdemeanor, or misdemeanor offenses subsequent to the assignment of the original risk level. The committee shall follow the process outlined in paragraphs (a) to (c) in the reassessment. An offender who is incarcerated may not request a reassessment under this paragraph.

(j) Offenders returned to prison as release violators shall not have a right to a subsequent risk reassessment by the end-of-confinement review committee unless substantial evidence indicates that the offender's risk to the public has increased.

(k) If the committee assigns a predatory 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. 3a. Offenders from other states and offenders released from federal facilities. (a) Except as provided in paragraph (b), the commissioner shall establish an end-of-confinement review committee to assign a risk level:

(1) to offenders who are released from a federal correctional facility in Minnesota or a federal correctional facility in another state and who intend to reside in Minnesota;

(2) to offenders who are accepted from another state under the interstate compact authorized by section 243.16 or 243.1605 or any other authorized interstate agreement; and

(3) to offenders who are referred to the committee by local law enforcement agencies under paragraph (f).

(b) This subdivision does not require the commissioner to convene an end-of-confinement review committee for a person coming into Minnesota who is subject to probation under another state's law. The probation or court services officer and law enforcement officer shall manage such cases in accordance with section 244.10, subdivision 8.

(c) The committee shall make reasonable efforts to conform to the same timelines applied to offenders released from a Minnesota correctional facility and shall collect all relevant information and records on offenders assessed and assigned a risk level under this subdivision. However, for offenders who were assigned the most serious risk level

by another state, the committee must act promptly to collect the information required under this paragraph.

The end-of-confinement review committee must proceed in accordance with all requirements set forth in this section and follow all policies and procedures applied to offenders released from a Minnesota correctional facility in reviewing information and assessing the risk level of offenders covered by this subdivision, unless restrictions caused by the nature of federal or interstate transfers prevent such conformance. All of the provisions of this section apply to offenders who are assessed and assigned a risk level under this subdivision.

(d) If a local law enforcement agency learns or suspects that a person who is subject to this section is living in Minnesota and a risk level has not been assigned to the person under this section, the law enforcement agency shall provide this information to the Bureau of Criminal Apprehension and the commissioner of corrections within three business days.

(e) If the commissioner receives reliable information from a local law enforcement agency or the bureau that a person subject to this section is living in Minnesota and a local law enforcement agency so requests, the commissioner must determine if the person was assigned a risk level under a law comparable to this section. If the commissioner determines that the law is comparable and public safety warrants, the commissioner, within three business days of receiving a request, shall notify the local law enforcement agency that it may, in consultation with the department, proceed with notification under subdivision 4 based on the person's out-of-state risk level. However, if the commissioner concludes that the offender is from a state with a risk level assessment law that is not comparable to this section, the extent of the notification may not exceed that of a risk level II offender under subdivision 4, paragraph (b), unless the requirements of paragraph (f) have been met. If an assessment is requested from the end-of-confinement review committee under paragraph (f), the local law enforcement agency may continue to disclose information under subdivision 4 until the committee assigns the person a risk level. After the committee assigns a risk level to an offender pursuant to a request made under paragraph (f), the information disclosed by law enforcement shall be consistent with the risk level assigned by the end-of-confinement review committee. The commissioner of corrections, in consultation with legal advisers, shall determine whether the law of another state is comparable to this section.

(f) If the local law enforcement agency wants to make a broader disclosure than is authorized under paragraph (e), the law enforcement agency may request that an end-of-confinement review committee assign a risk level to the offender. The local law enforcement agency shall provide to the committee all information concerning the offender's criminal history, the risk the offender poses to the community, and other relevant information. The department shall attempt to obtain other information relevant to determining which risk level to assign the offender. The committee shall promptly assign a risk level to an offender referred to the committee under this paragraph.

Subd. 4. Law enforcement agency; disclosure of information to public. (a) The law enforcement agency in the area where the predatory 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 and to adult members of the offender's immediate household;

(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 predatory 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. This requirement on a law enforcement agency to continue to disclose information also applies to an offender who lacks a primary address and is registering under section 243.166, subdivision 3a.

(g) A law enforcement agency that is disclosing information on an offender assigned to risk level III to the public under this subdivision shall inform the commissioner of corrections what information is being disclosed and forward this information to the commissioner within two days of the agency's determination. The commissioner shall post this information on the Internet as required in subdivision 4b.

(h) A city council may adopt a policy that addresses when information disclosed under this subdivision must be presented in languages in addition to English. The policy may address when information must be presented orally, in writing, or both in additional languages by the law enforcement agency disclosing the information. The policy may provide for different approaches based on the prevalence of non-English languages in different neighborhoods.

(i) An offender who is the subject of a community notification meeting held pursuant to this section may not attend the meeting.

[For text of subds 4a and 4b, see M.S.2004]

Subd. 4c. Law enforcement agency; disclosure of information to a health care facility. (a) The law enforcement agency in the area where a health care facility is located shall disclose the registrant status of any predatory offender registered under section 243.166 to the health care facility if the registered offender is receiving inpatient care in that facility.

(b) As used in this section, "health care facility" means a hospital or other entity licensed under sections 144.50 to 144.58, a nursing home licensed to serve adults under section 144A.02, or a group residential housing facility or an intermediate care facility for the mentally retarded licensed under chapter 245A.

[For text of subds 5 to 8, see M.S.2004]

History: 2005 c 136 art 3 s 12-15; art 16 s 13

CONDITIONAL RELEASE OF NONVIOLENT CONTROLLED SUBSTANCE OFFENDERS

244.055 CONDITIONAL RELEASE OF NONVIOLENT CONTROLLED SUBSTANCE OFFENDERS; OPPORTUNITY FOR DRUG TREATMENT.

Subdivision 1. Conditional release authority. The commissioner of corrections has the authority to release offenders committed to the commissioner's custody who meet the requirements of this section and of any rules adopted by the commissioner.

Subd. 2. Conditional release of certain nonviolent controlled substance offenders. An offender who has been committed to the commissioner's custody may petition the commissioner for conditional release from prison before the offender's scheduled supervised release date or target release date if:

(1) the offender is serving a sentence for violating section 152.021, subdivision 2 or 2a; 152.022, subdivision 2; 152.023; 152.024; or 152.025;

(2) the offender committed the crime as a result of a controlled substance addiction, and not primarily for profit;

(3) the offender has served at least 36 months or one-half of the offender's term of imprisonment, whichever is less;

(4) the offender successfully completed a chemical dependency treatment program of the type described in this section while in prison;

(5) the offender has not previously been conditionally released under this section; and

(6) the offender has not within the past ten years been convicted or adjudicated delinquent for a violent crime as defined in section 609.1095 other than the current conviction for the controlled substance offense.

Subd. 3. Offer of chemical dependency treatment. The commissioner shall offer all offenders meeting the criteria described in subdivision 2, clauses (1), (2), (5), and (6), the opportunity to begin a suitable chemical dependency treatment program of the type described in this section within 160 days after the offender's term of imprisonment begins or as soon after 160 days as possible.

Subd. 4. Chemical dependency treatment program components. (a) The chemical dependency treatment program described in subdivisions 2 and 3 must:

- (1) contain a highly structured daily schedule for the offender;
- (2) contain individualized educational programs designed to improve the basic educational skills of the offender and to provide vocational training, if appropriate;
- (3) 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;
- (4) be licensed by the Department of Human Services and designed to serve the inmate population; and
- (5) 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.

(b) The commissioner shall expel from the chemical dependency treatment program, any offender who:

- (1) commits a material violation of, or repeatedly fails to follow the rules of the program;
- (2) commits any criminal offense while in the program; or
- (3) presents any risk to other inmates based on the offender's behavior or attitude.

Subd. 5. Additional requirements. To be eligible for release under this section, an offender shall sign a written contract with the commissioner agreeing to comply with the requirements of this section and the conditions imposed by the commissioner. In addition to other items, the contract must specifically refer to the term of imprisonment extension in subdivision 6. In addition, the offender shall agree to submit to random drug and alcohol tests and electronic or home monitoring as determined by the commissioner or the offender's supervising agent. The commissioner may impose additional requirements on the offender that are necessary to carry out the goals of this section.

Subd. 6. Extension of term of imprisonment for offenders who fail in treatment. When an offender fails to successfully complete the chemical dependency treatment program under this section, the commissioner shall add the time that the offender was participating in the program to the offender's term of imprisonment. However, the offender's term of imprisonment may not be extended beyond the offender's executed sentence.

Subd. 7. Release procedures. The commissioner may deny conditional release to an offender under this section if the commissioner determines that the offender's release may reasonably pose a danger to the public or an individual. In making this determination, the commissioner shall follow the procedures contained in section 244.05, subdivision 5, and the rules adopted by the commissioner under that subdivision. The commissioner shall consider whether the offender was involved in criminal gang activity during the offender's prison term. The commissioner shall also consider the offender's custody classification and level of risk of violence and the availability of appropriate community supervision for the offender. Conditional release granted under this section continues until the offender's sentence expires, unless release is rescinded under subdivision 8. The commissioner may not grant conditional release unless a release plan is in place for the offender that addresses, at a minimum, plans for aftercare, community-based chemical dependency treatment, gaining employment, and securing housing.

Subd. 8. **Conditional release.** The conditions of release granted under this section are governed by the statutes and rules governing supervised release under this chapter, except that release may be rescinded without hearing by the commissioner if the commissioner determines that continuation of the conditional release poses a danger to the public or to an individual. If the commissioner rescinds an offender's conditional release, the offender shall be returned to prison and shall serve the remaining portion of the offender's sentence.

Subd. 9. **Offenders serving other sentences.** An offender who is serving both a sentence for an offense described in subdivision 2 and an offense not described in subdivision 2, is not eligible for release under this section unless the offender has completed the offender's full term of imprisonment for the other offense.

Subd. 10. **Notice.** Upon receiving an offender's petition for release under subdivision 2, the commissioner shall notify the prosecuting authority responsible for the offender's conviction and the sentencing court. The commissioner shall give the authority and court a reasonable opportunity to comment on the offender's potential release. This subdivision applies only to offenders sentenced before July 1, 2005.

Subd. 11. **Sunset.** This section expires July 1, 2007.

History: 2005 c 136 art 13 s 6

244.056 PREDATORY OFFENDER SEEKING HOUSING IN JURISDICTION OF DIFFERENT CORRECTIONS AGENCY.

If a corrections agency supervising an offender who is required to register as a predatory offender under section 243.166 and who is classified by the department as a public risk monitoring case has knowledge that the offender is seeking housing arrangements in a location under the jurisdiction of another corrections agency, the agency shall notify the other agency of this and initiate a supervision transfer request.

History: 2005 c 136 art 3 s 16

244.057 PLACEMENT OF PREDATORY OFFENDER IN HOUSEHOLD WITH CHILDREN.

A corrections agency supervising an offender required to register as a predatory offender under section 243.166 shall notify the appropriate child protection agency before authorizing the offender to live in a household where children are residing.

History: 2005 c 136 art 3 s 17

244.09 MINNESOTA SENTENCING GUIDELINES COMMISSION.

[For text of subds 1 to 4, see M.S.2004]

Subd. 5. **Promulgation of Sentencing Guidelines.** The commission shall 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 shall provide for an increase of 20 percent and a decrease of 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.

Although the Sentencing Guidelines are advisory to the district court, the court shall follow the procedures of the guidelines when it pronounces sentence in a proceeding to which the guidelines apply by operation of statute. Sentencing pursuant to the Sentencing Guidelines is not a right that accrues to a person convicted of a felony; it is a procedure based on state public policy to maintain uniformity, proportionality, rationality, and predictability in sentencing.

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; correctional resources, including but not limited to the capacities of local and state correctional facilities; and the long-term negative impact of the crime on the community.

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, 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 coordinating commission.

[For text of subds 6 to 10, see M.S.2004]

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 15 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 15 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.

[For text of subds 12 to 14, see M.S.2004]

History: 2005 c 136 art 16 s 1,2

244.10 SENTENCING HEARING; DEVIATION FROM GUIDELINES.

[For text of subds 1 and 2, see M.S.2004]

Subd. 2a. [Repealed, 2005 c 136 art 16 s 16; Renumbered subd 8]

Subd. 3. [Repealed, 2005 c 136 art 16 s 16; Renumbered subd 9]

Subd. 4. Aggravated departures. In bringing a motion for an aggravated sentence, the state is not limited to factors specified in the Sentencing Guidelines provided the state provides reasonable notice to the defendant and the district court prior to sentencing of the factors on which the state intends to rely.

Subd. 5. Procedures in cases where state intends to seek an aggravated departure.

(a) When the prosecutor provides reasonable notice under subdivision 4, the district court shall allow the state to prove beyond a reasonable doubt to a jury of 12 members the factors in support of the state's request for an aggravated departure from the Sentencing Guidelines as provided in paragraph (b) or (c).

(b) The district court shall allow a unitary trial and final argument to a jury regarding both evidence in support of the elements of the offense and evidence in support of aggravating factors when the evidence in support of the aggravating factors:

- (1) would be admissible as part of the trial on the elements of the offense; or
- (2) would not result in unfair prejudice to the defendant.

The existence of each aggravating factor shall be determined by use of a special verdict form.

Upon the request of the prosecutor, the court shall allow bifurcated argument and jury deliberations.

(c) The district court shall bifurcate the proceedings, or impanel a resentencing jury, to allow for the production of evidence, argument, and deliberations on the existence of factors in support of an aggravated departure after the return of a guilty verdict when the evidence in support of an aggravated departure:

- (1) includes evidence that is otherwise inadmissible at a trial on the elements of the offense; and
- (2) would result in unfair prejudice to the defendant.

Subd. 6. Defendants to present evidence and argument. In either a unitary or bifurcated trial under subdivision 5, a defendant shall be allowed to present evidence and argument to the jury or factfinder regarding whether facts exist that would justify an aggravated durational departure. A defendant is not allowed to present evidence or argument to the jury or factfinder regarding facts in support of a mitigated departure during the trial, but may present evidence and argument in support of a mitigated departure to the judge as factfinder during a sentencing hearing.

Subd. 7. Waiver of jury determination. The defendant may waive the right to a jury determination of whether facts exist that would justify an aggravated sentence. Upon receipt of a waiver of a jury trial on this issue, the district court shall determine beyond a reasonable doubt whether the factors in support of the state's motion for aggravated departure exist.

Subd. 8. Notice of information regarding predatory offenders. (a) Subject to paragraph (b), in any case in which a person is convicted of an offense and the presumptive sentence under the Sentencing Guidelines is commitment to the custody of the commissioner of corrections, if the court grants a dispositional departure and stays imposition or execution of sentence, the probation or court services officer who is assigned to supervise the offender shall provide in writing to the following the fact that the offender is on probation and the terms and conditions of probation:

- (1) a victim of and any witnesses to the offense committed by the offender, if the victim or the witness has requested notice; and
- (2) the chief law enforcement officer in the area where the offender resides or intends to reside.

The law enforcement officer, in consultation with the offender's probation officer, may provide all or part of this information to any of the following agencies or groups the offender is likely to encounter: public and private educational institutions, day care establishments, and establishments or organizations that primarily serve individuals likely to be victimized by the offender. The law enforcement officer, in consultation with the offender's probation officer, also may disclose the information to individuals the officer believes are likely to be victimized by the offender. The officer'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 Department of Human Services.

The probation officer is not required under this subdivision to provide any notice while the offender is placed or resides in a residential facility that is licensed under section 241.021 or 245A.02, subdivision 14, if the facility staff is trained in the supervision of sex offenders.

(b) Paragraph (a) applies only to offenders required to register under section 243.166, as a result of the conviction.

(c) The notice authorized by paragraph (a) shall be limited to data classified as public under section 13.84, subdivision 6, unless the offender provides informed

consent to authorize the release of nonpublic data or unless a court order authorizes the release of nonpublic data.

(d) Nothing in this subdivision shall be interpreted to impose a duty on any person to use any information regarding an offender about whom notification is made under this subdivision.

Subd. 9. 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: 2005 c 136 art 3 s 18; art 16 s 3-8,13; 1Sp2005 c 7 s 17

NOTE: Subdivisions 4, 5, 6, and 7, as added by Laws 2005, chapter 136, article 16, sections 3, 4, 5, and 6; expire February 1, 2007. Laws 2005, chapter 136, article 16, sections 3, 4, 5, and 6, the effective dates.

244.18 LOCAL CORRECTIONAL FEES; IMPOSITION ON OFFENDERS.

[For text of subd 1, see M.S.2004]

Subd. 2. Local correctional fees. A local correctional agency may establish a schedule of local correctional fees to charge persons 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.

[For text of subds 3 to 6, see M.S.2004]

History: 2005 c 136 art 13 s 7