

# CIVIL COMMITMENT STUDY GROUP

## 1998 Report to the Legislature

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## INTRODUCTION

In the 1998 Omnibus Crime Bill, Section 15, the Minnesota Legislature directed the commissioner of corrections, in cooperation with the commissioner of human services, to study and make recommendations on issues involving sexually dangerous persons and persons with sexual psychopathic personalities. The legislature mandated that the study examine the current system of treatment, commitment, and confinement of these individuals; financial costs associated with the current system; and the advantages and disadvantages of alternatives to the current system, including indeterminate criminal sentencing and changes to the patterned sex offender sentencing law. The study also must examine how other states have responded to these individuals. Finally, the legislature directed the commissioners of corrections and human services to include in the report a recommendation concerning whether and to what extent statements made by sex offenders during the course of sex offender treatment should be treated as confidential.

### THE CIVIL COMMITMENT STUDY GROUP

On April 29, 1998, the commissioner of corrections appointed a Civil Commitment Study Group (CCSG) to address the legislative mandate. This report is submitted in accordance with the reporting requirements of this legislation. The legislation in its entirety is in Appendix A. A list of the members of the CCSG is given in Appendix B of this report. Membership included representatives of the Minnesota Department of Human Services (DHS)

The CCSG met on 12 occasions from May to October 1998. Site visits were made to the Minnesota Sex Offender Program and the Minnesota correctional facility at Lino Lakes. The group heard testimony from a wide variety of persons interested in the process, including:

- ' County officials whose concerns about the cost of the current system resulted in the legislature creating the CCSG;

- ' A judge who has presided over more Psychopathic Personality/Sexually Dangerous Persons (PP/SDP) hearings than any other judge in the state;
- ' The former head of the Minnesota Corrections Board (parole board);
- ' County probation officers;
- ' An attorney active in civil commitment defense for several years who has argued cases before the Minnesota Supreme Court;
- ' Patients who are currently under commitment as PP/SDP;
- ' Inmates currently incarcerated for sex offenses, who might conceivably be committed at the end of their correctional sentence; and
- ' Sex offender treatment professionals.

This report is the result of the general consensus of the work group members. It offers alternative approaches to the issue of civil commitment that were thoroughly discussed by all group members. This report does not present a majority or minority opinion. It is offered as a summary of discussion by people from several agencies and several professional perspectives.

### BACKGROUND

The issue of civil commitment for sex offenders is one that has been studied at length on many occasions throughout the past decade.

In 1988, the Attorney General's Task Force on the Prevention of Violence against Women released a report which recommended increased sentences, increased treatment for sex offenders on probation or in prison, intensive supervision of sex offenders by trained probation officers, electronic monitoring, DNA testing, and continuation of the Psychopathic Personality statute. This group also discussed indeterminate sentences for sex offenders but recommended that indeterminate confinement take place under civil commitment procedures.

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In 1991, the Department of Corrections released a report (Risk Assessment and Release Procedures for Violent Offenders/Sexual Psychopaths) which called for establishing Public Risk Monitoring status for offenders believed to pose a danger to public safety. Such offenders were subject to residential placement and stricter conditions of supervision upon release. This report also called for the identification of alerting risk factors to assist the DOC in referring the highest risk sex offenders for civil commitment, and established a Civil Commitment Review Team to make such referrals.

In February 1994, the Legislative Auditor's Report Psychopathic Personality Commitment Law recommended three options to the Legislature:

1. Relying on the existing psychopathic personality statute, but improving the referral process and collecting data about referrals;
2. Replacing or revising the Psychopathic Personality statute with a more contemporary commitment law for sex offenders (i.e., one similar to the current Sexually Dangerous Persons statute);
3. Revising sentencing statutes to permit indeterminate prison sentences for high-risk sex offenders.

In August 1994 the legislature unanimously passed, and the governor signed a Sexually Dangerous Persons statute. Since that time, offenders have continued to be committed under both the Psychopathic Personality and Sexually Dangerous Persons statutes.

## THE MINNESOTA SYSTEM FOR THE MANAGEMENT OF SEX OFFENDERS

Through the actions of the Minnesota legislature, and the efforts of the DOC, the DHS, and the counties, Minnesota has now developed one of the most sophisticated and respected systems for management of sex offenders. It includes:

- ' Increased prison sentences, as well as longer periods of probation and supervised release

- ' Intensive supervision by specially trained probation officers
- ' Increased and improved resources for treatment of sex offenders on probation and in prison
- ' Aftercare programming for offenders on supervised release
- ' DNA testing of sex offenders
- ' Sex offender registration
- ' Community notification
- ' A sex offender risk assessment process which includes the Minnesota Sex Offender Screening Tool, developed by the DOC and used throughout the country
- ' Civil commitment of the highest risk sex offenders, including provision of a nationally recognized sex offender treatment program

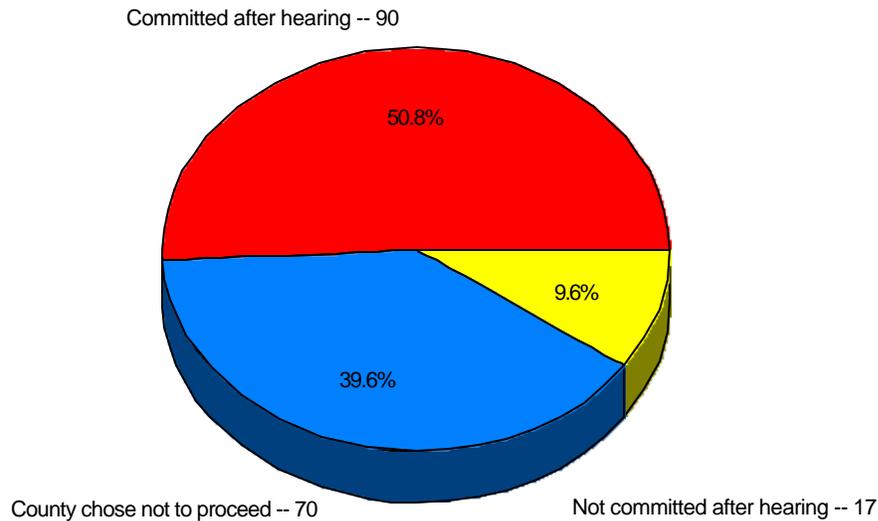
## BASIC STATISTICS ABOUT SEX OFFENDERS

- ' As of July 1, 1998, there were 1,097 incarcerated sex offenders (out of 5,507 inmates).
- ' Approximately 450 of these sex offenders are released from prison each year.
- ' As of July 1, 1998, there were 126 patients at the Department of Human Services Minnesota Sex Offender Program who had been civilly committed on either a final commitment order or a warrant of commitment.
- ' There are eight offenders committed to the DHS who are also committed to the Department of Corrections (DOC); these offenders are all housed in Minnesota correctional facilities.
- ' The DOC refers approximately 9-10 percent of sex offender releasees each year to the county of last conviction for consideration of civil commitment.
- ' During the past seven years, approximately 50 percent of offenders referred by the DOC have eventually been committed (see chart below).
- ' Referrals can also be made by persons outside the DOC.

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- ' Currently, the DHS is projecting that approximately 18 offenders will be civilly committed each year for the next 11 years.
- ' There are currently two sex offender treatment programs in medium custody facilities in the DOC (Lino Lakes and Moose Lake), housing 150 and 50 offenders respectively.
- ' Approximately 50 percent of sex offenders enter treatment while incarcerated; of these, approximately 50 percent successfully complete treatment.
- ' Most offenders referred are those who have either refused or failed sex offender treatment. A study of the DOC treatment history of civilly committed offenders revealed that 43 percent had never entered sex offender treatment while incarcerated, 48 percent had entered treatment but either quit or were terminated and only 9 percent had completed treatment while incarcerated.
- ' A study of the offense histories of 86 civilly committed offenders revealed that 16 percent had only one felony sex offense conviction; also, while 40 percent were eligible to be sentenced under patterned sex offender statutes, only one offender was sentenced in this manner.
- ' DOC research indicates that incarcerated sex offenders who complete sex offender treatment in prison are significantly less likely to be rearrested for new sex offenses and other offenses against persons.
- ' "Conditional Release" has resulted in longer periods of supervision upon release from prison (5 years for first-time offenders, 10 years for repeat offenders).
- ' Sex offense felony convictions have declined for the last two years for which statistics are available (880 in 1994, 775 in 1995, 660 in 1996).

**DOC Referrals for Civil Commitment**  
Referrals from July 1991 through July 1998



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## CURRENT LAW AND PRACTICES

### SPP/SDP SCREENING PROCESS

**Relevant Statutes:** Minn. Stat. 253B.185, 244.05, subd. 7, 609.1351

The county attorney of the county of last conviction is responsible for determining whether good cause exists to petition an offender for civil commitment. The county of financial responsibility and the county of last conviction may not be the same, which can cause disagreements about whether to proceed with a commitment hearing, and who will be liable for the costs. The civil commitment act provides that any interested person may seek a commitment petition. As a result, referrals for the commitment of sex offenders may come from the general public as well as probation or parole officers, judges, or prosecutors. Minn. Stat. 609.1351 directs the criminal court to make a preliminary determination at the time of sentencing as to whether a civil commitment petition may be appropriate, and to forward this determination along with supporting documentation to the county attorney. However, the CCSG found that this provision has not resulted in any civil commitments since 1994.

The majority of referrals are the result of the screening process employed by the DOC. In accordance with Minn. Stat. 244.05, subd. 7, the DOC screens and refers sex offenders for commitment one year prior to the offender's release date. The department conducts an independent review of the offender's history and interviews him/her. The civil commitment review coordinator may receive cases to review directly from case managers or from the End-of-Confinement-Review Committee, which assesses offenders for community notification purposes.

Some county attorney offices use their pre-petition screening agencies to investigate referrals. The Ramsey County Attorney's Office, for example, obtains records on a referred individual through appropriate court orders and forwards them to their pre-petition screening agency for review. Others conduct their own internal review of records, prosecution files, and other

documentation. A number of counties have elected to use the services of the Minnesota Attorney General's Office (AGO) to petition and try these cases.

The referrals are reviewed to determine whether clear and convincing evidence supports the commitment and to assess the legal issues that are likely to arise during trial. County attorneys may retain an expert to assist them during this process where difficult diagnostic or treatment issues occur.

### DEPARTMENT OF CORRECTIONS REFERRAL PROCEDURE

The current process of referring an offender for civil commitment involves:

1. The case worker at the institution completes a Minnesota Sex Offender Screening Tool (MnSOST) on the sex offender;
2. If the MnSOST score indicates moderate or higher risk to reoffend, or if the case worker has concerns about an offender, a referral is made to the DOC civil commitment review coordinator 14 months prior to the inmate's release date;
3. The civil commitment review coordinator reviews each case and obtains further collateral information, which may include documents from other states, police complaints on prior offenses, treatment reports, etc.;
4. If the offender does not meet referral criteria, the civil commitment review coordinator completes a report indicating that the offender was not referred, and places it in the offender's base file;
5. If the civil commitment review coordinator determines that the offender likely meets the criteria as a PP/SDP, then the offender is interviewed;
6. Following the review of file material and the interview, a decision is made as to whether the offender should be referred. This decision is reviewed by the Civil Commitment Review Team, which is comprised of psychologists and

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- supervisors from the DOC sex offender/ chemical dependency services unit;
7. The review team indicates whether they agree or not and a discussion of the case may follow;
  8. The director of the sex offender/chemical dependency services unit makes the final decision as to whether the offender is referred;
  9. The civil commitment review coordinator sends a referral letter to the county of last conviction.

## PETITION AND HEARING PROCESS

**Relevant Statutes:** Minn. Stat. 253B.18, 253B.185

(Note: Once the offender is undergoing the hearing process, he or she is properly referred to as the “respondent.”)

The costs associated with filing a commitment petition, detaining the respondent, and conducting the commitment hearing are generally borne by the county of financial responsibility. In some cases, however, the Office of the Attorney General carries the case for the petitioner and assumes the cost of staff attorney time and expenses. Once a petition for commitment is filed, the court appoints an attorney for the respondent. He or she also is served with a copy of the petition and accompanying documents, which includes copies of motions for the productions of records and a request to hold the person pending hearing. Hearing must begin within 14 days of the filing date, unless the matter is continued for good cause or by agreement of the parties. A court-appointed, licensed psychologist or psychiatrist is assigned to provide the court with an independent opinion on commitment. The offender may request that the court appoint a second examiner of their choosing to render an additional opinion.

An order to hold the person at the Minnesota Sex Offender Program may be obtained for respondents who have reached their release date prior to the date of the commitment hearing. The county pays the hold-related costs. From the date the petition is filed until an initial commitment decision is made, the respondent may not be held in a local jail or detention center unless all medical and safety needs are addressed. In almost

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### Factors considered by civil commitment review coordinator and the review committee:

1. The offender's score on the Minnesota Sex Offender Screening Tool (MnSOST);
  2. The offender's criminal history, including sex, sex-related, and non-sexual offenses (including juvenile and adult offense behavior);
  3. The circumstances of the offender's specific offenses, which includes examining: the relationship between the offender and victim (stranger versus known; family versus acquaintance, etc.); the ages and vulnerability of the victims; the type of offense committed (predatory, opportunistic, or elements of both); degree of force used (nonviolent, violent, sadistic, kidnapping, bondage, torture, use of weapons, threats, or killing of victim); duration of each offense; and length of offender's offense history.
  4. The offender's history of participation in recommended treatment (including sex offender, chemical dependency, anger management, counseling for mental illness, etc.); also, whether or not the offender reoffended following prior treatment or legal intervention;
  5. The offender's use and abuse of drugs and alcohol, and the effectiveness of prior treatment interventions;
  6. Information indicating the presence of additional victims and offenses not prosecuted (obtained from self report, treatment staff, police reports, the pre-sentence investigation report (PSI), and other collateral sources);
  7. The offender's attitude toward his/her offense behavior, treatment, and risk towards the community;
  8. Presence or absence of mental illness and mental disorders, and whether the offender has followed recommended treatments (such as taking medication, participating in aftercare and support groups, etc.);
  9. Prior mental health diagnoses (such as personality disorders, paraphilias, mood disorders, etc.);
  10. Testing and assessment reports, including psychological, intellectual, and court ordered assessments and evaluations;
  11. Assessed prediction of level of risk for reoffense, taking into account both the gravity and degree of future offense behavior; and,
  12. Information obtained from the offender from a clinical interview conducted by the civil commitment review coordinator.
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all cases, the respondent under a hold order is placed at the Minnesota Sex Offender Program.

At the close of hearing, the court has 90 days to file its initial order for commitment. The committed person remains at or is transported to the Minnesota Sex Offender Program for assessment. The program provides the court with a report within 60 days. The report identifies the respondent's diagnosis, treatment needs, and the need for continued commitment. A hearing must be held within 14 days after the court receives the report to determine whether the commitment should be made indeterminate. At the close of the hearing, the court has 90 days in which to issue its final order relating to indeterminate commitment.

Throughout the initial hearing and the review hearing, the respondent is represented by an attorney and has the right to attend hearing. He may appeal the initial and review hearing orders to the Minnesota Court of Appeals separately or appeal both orders when the hearing court issues its indeterminate commitment order. The respondent may seek review of the Minnesota Court of Appeals decision by the Minnesota Supreme Court. The Minnesota Supreme Court's decision may be appealed to the United States Supreme Court. The patient also may seek relief through the state and/or federal habeas process.

## OVERVIEW OF MINNESOTA SEX OFFENDER PROGRAM

(Note: Once the offender has been committed, he or she is properly referred to as the "patient.") The Minnesota Sex Offender Program is a residential, intensive treatment program for sexual offenders under civil commitment. The program's main orientation is cognitive-behavioral, with relapse prevention strategies providing the guiding principles. Treatment is provided in a humane and non-punitive manner within a secure environment. In addition to sex offender-specific programming, services include medical, psychiatric, chemical dependency, educational, vocational, recreational services, and family outreach/education.

The program is divided into three stages: the evaluation stage, the active inpatient treatment stage, and the transition stage. The evaluation and transition stages of treatment are housed on two adjoining units which are leased from the Minnesota Security Hospital in St. Peter. The active treatment stage (which consists of four phases) is housed at the Minnesota Sexual Psychopathic Personality Treatment Center, a free-standing secure treatment center solely for this population, located in Moose Lake. Both sites of the program are supervised by one clinical director, who travels between sites. Movement of patients within and outside the treatment center is carefully reviewed and supervised.

Components of the treatment program are designed to assist residents to move toward the following general goals:

1. Accepting responsibility for sexual behavior without cognitive distortion.
2. Identification of sex offense behavior cycle and development of a relapse prevention program.
3. Development of victim empathy.
4. Development of sexual identity, sexual knowledge, and awareness of sexual arousal. Also, reduction in disordered sexual arousal.
5. Resolution of issues related to personal victimization and family dysfunction which interfere with progress in treatment.
6. Identification of cognitive distortions in interpersonal relationships.
7. Identification and appropriate expression of feelings.
8. Development of appropriate social relationships.
9. Completion of educational and vocational goals.
10. Identification of appropriate recreation and leisure activities.
11. Management of identified psychiatric disorders.
12. Chemical dependency treatment when indicated.

The program stresses the importance of a patient being able to demonstrate consistent behavioral change both in and out of therapy groups; therefore, all disciplines of staff communicate extensively regarding the patients' behavior. In addition, rotation of staff assignments

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among living units and groups decreases the possibility that staff might begin to lose objectivity about a patient's progress.

This population requires a slow transition period during which patients demonstrate their ability to responsibly handle an increase in privileges. The transition stage of the program allows for a gradual progression from on-grounds supervised privileges, to off-grounds supervised privileges, and then to on-grounds unsupervised privileges. Each of these steps includes extensive monitoring and supervision. The final step of the transition stage provides for gradually increasing amounts of time on unsupervised passes into the community. This step is also closely monitored, and it is at this step of the transition stage that the patient begins attending sessions of the aftercare group to which he/she will be assigned upon provisional discharge.

Patients who complete the program will receive a recommendation to the Special Review Board (SRB) for release to a less restrictive environment. The continuation of treatment in the community on an outpatient basis is an important part of all provisional discharge plans.

## RELEASE PROCEDURES

### *Introduction*

After an indeterminate commitment has been ordered by the court and a person is committed as a PP/SDP, the Minnesota Commitment and Treatment Act requires that a SRB hear and consider all petitions for transfer out of a secure treatment facility, petitions relating to provisional discharge, the revocation of a provisional discharge, or for a full discharge from commitment.

Patients may be transferred between Minnesota Sex Offender Program sites without a SRB hearing.

A petition may be filed by the patient, the patient's attorney, or the facility medical director with the commissioner of human services for a hearing before

the SRB. Following the hearing, the commissioner issues an order either denying or granting the petition. The order of the commissioner may be appealed to a Supreme Court Appeal Panel. Decisions of this body may be appealed to the Minnesota Court of Appeals.

A person committed as a PP/SDP is subject to community notification under Minn. Stat. 244.052 (See Appendix C for community notification procedures).

### *Special Review Board*

#### *Definition*

The SRB is established by the commissioner of human services and is drawn from a pool of 13 persons experienced in the field of mental illness. Each SRB panel consists of three persons, and must include a psychiatrist and an attorney. The third member is a mental health professional. None of the members may be affiliated with the DHS.

Members of the SRB are appointed by and serve at the pleasure of the commissioner. The attorney member of each panel acts as the chairperson and is responsible for conducting the hearing and prepares the board's written findings for the commissioner. Board members may vary for each hearing.

#### *Responsibilities*

The SRB conducts hearings to review facts pertinent to a petition for relief submitted to the commissioner. The hearings are informal. The SRB hearings concern private data and therefore are not open to the public. Only those persons entitled to notice of the hearing or those persons who are administratively required to attend the hearing may be present.

SRB procedures are not contested cases. The rules of evidence, civil procedure, and the courts do not apply.

#### *Hearing*

The SRB may consider documents, medical records, and oral statements. The patient, facility staff, and others may be questioned by the board in order to assist the board in obtaining adequate information

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during the hearing. Any person or agency who has received notice of the hearing may submit written evidence to the SRB prior to the hearing. Copies of any information which is submitted also must be provided to the patient, the patient's counsel, the county attorney of the county of commitment, the case manager, and the commissioner.

### ***Representation by Counsel***

A patient committed as a PP/SDP is entitled to be represented by an attorney at SRB hearings, In re Hefler, 78 N.W.2d 808 (Minn. Ct. App. 1985). The attorney generally is the same attorney who represented the patient at the commitment hearing unless the committing court has appointed another attorney.

### ***Findings of Fact***

The SRB must determine whether the statutory criteria for the relief sought have been met and must submit its written findings with a written recommendation to the commissioner within 21 days of the hearing.

### ***Order***

The commissioner reviews SRB findings and recommendations and issues an order within 14 days of receipt. A copy of the order is sent to all persons who received notice of the hearing. The commissioner cannot grant any petition unless a favorable recommendation has been received from the SRB.

The order of the commissioner becomes effective 30 days after it is signed. An appeal of the order results in a suspension of the order until completion of the appeal.

### ***Provisional Discharge***

Provisional discharge planning (conditional release to the community without discharging the commitment) is the dual responsibility of the Minnesota Sex Offender Program and the agency designated by the county board to provide the required social services.

A provisional discharge may be granted only when the SRB is satisfied that the statutory criteria for release

have been met and the patient has demonstrated that he/she is capable of making an acceptable adjustment to open society.

An order for provisional discharge includes a provisional discharge plan (see Appendix D for sample) which spells out the terms and conditions of the person's release to the community, and the conditions under which the provisional discharge may be revoked.

If this provisional discharge order is not implemented within six months, further review is required by the SRB.

### ***Amending an Order for Provisional Discharge***

A petition may be filed for a hearing before the SRB to amend the order for provisional discharge. Any move from a community-based supervised living arrangement to independent living in the community requires approval by the SRB.

The provisional discharge is monitored by the county case manager, who is also responsible for providing quarterly reports to the commissioner regarding the individual's compliance with the terms and conditions of the provisional discharge order. Once the provisional discharge has been issued, a new hearing is required before the SRB to amend the order. However, in the event of an emergency situation, the provisional discharge may be revoked by the chief executive officer of the Minnesota Sex Offender Program and the individual may be immediately returned to the facility pending a further hearing on the matter.

The case management services necessary to support the provisional discharge plan are provided by local county social service agencies, or their contractors, under the Comprehensive Mental Health Act.

Aftercare and ongoing supervision are considered key elements for successful community placement. Because the civil commitment is indeterminate, the provisional discharge is not time-limited. A provisional discharge

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may be considered a necessary part of aftercare that continues for a number of years. Case managers require information and assistance to ensure effective monitoring to address community safety, personal safety and assistance in the development of transitional services. The provision of aftercare services and their funding are issues that require ongoing assessment as the DHS and counties gain experience in providing aftercare.

Under the current system, mental health funds are used to provide aftercare services for persons with serious and persistent mental illness (SPMI), and for persons civilly committed as a sex offender. Persons with SPMI have significantly different mental disorders than sex offenders. Therefore, treatment services are separate and distinct. Funding of these services should be segregated to assure adequate support for treatment of both populations.

### ***Study Group Recommendations***

- ' Explore ways to separate funding source for SPP/SDP provisional discharge aftercare and case management from other mental health funding.
- ' Explore ways to establish special funding at the DHS so that county agencies can apply for special grants to offset the case management and aftercare services costs related to the provisional discharge.
- ' The DHS should continue to have ongoing communications with the county agencies to evaluate and determine the most effective procedures for aftercare supervision. Currently the counties and the DHS have little experience in delivering aftercare services and more opportunities are needed to assess what is effective aftercare.

### ***Full Discharge from Civil Commitment***

If a petition for full discharge has been filed by or on behalf of a patient who is on provisional discharge, the SRB is required to consider the following statutory

criteria in determining whether the patient should be granted a full discharge:

- ' Whether the patient is capable of making an acceptable adjustment to open society;
- ' Whether the patient is dangerous to the public;
- ' Whether the patient needs inpatient treatment and supervision; and,
- ' Whether specific conditions exist to provide a reasonable degree of protection to the public and to assist the patient in adjusting to the community.

If the conditions do not exist, discharge may not be recommended.

### ***Appeal Procedures***

Any party aggrieved by the commissioner's decision may appeal by filing a petition for rehearing before the Supreme Court Appeal Panel within 30 days. The panel consists of three district court judges appointed by the Minnesota Supreme Court, and sits in the district court of its chief judge. The Supreme Court Appeal Panel will not entertain grounds for relief that have not been considered by the commissioner.

The Supreme Court Appeal Panel conducts a *trial de novo* on the petition for rehearing, which usually consists of records and testimony by treatment staff, county case managers, and other witnesses having contact with the patient. The patient is represented by an attorney and may obtain a court-appointed psychologist or psychiatrist to present a second opinion. The county attorney for the county of commitment and the attorney general, who represents the commissioner, may also be present.

If the patient is seeking a full discharge, the patient must first present evidence in support of the petition. The parties opposing discharge must prove the person still requires commitment by clear and convincing evidence. If the patient is seeking transfer to an open hospital or provisional discharge, the patient bears the burden of proof by a preponderance of the evidence.

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The Supreme Court Appeal Panel decision is due 90 days after the matter is submitted. If a settlement is reached, the Supreme Court Appeal Panel may not modify the terms of a provisional discharge or transfer without the commissioner's consent. The order does not take effect for 15 days after the date it is filed. A party may seek appellate review of the decision within 60 days. The filing of a notice of appeal stays the implementation of the Supreme Court Appeal Panel order.

Parties may appeal Supreme Court Appeal Panel decisions as in other state district court cases,

proceeding first to the Minnesota Court of Appeals and then to the Minnesota Supreme Court. The patient may also seek state and federal writs of habeas corpus.

The commissioner of human services is required by statute to pay for the costs incurred during the Supreme Court Appeal Panel proceedings. Appeals to the Court of Appeals or the Supreme Court are the responsibility of the county.

The work group concludes that the current process is constitutionally satisfactory and recommends no change to this law or process.

## COMPARISON OF MINNESOTA'S SEX OFFENDER COMMITMENT LAW WITH THOSE OF OTHER STATES

### INTRODUCTION

Many states had enacted laws that provided for civil procedures to commit sex offenders to treatment programs instead of sending them to prison when Minnesota passed its psychopathic personality statute in 1939. Since the mid-1970s, most states repealed these laws due at least in part to doubts about the effectiveness of treatment and the ability to predict dangerousness and a trend in public opinion preferring the punishment of sexual predators rather than their treatment.<sup>1</sup> In Minnesota, after a period of early use in the 1940s and 1950s, the law was employed infrequently until 1991, when the effect of the abandonment of indeterminate sentences in favor of determinate sentencing began to appear as offenders were released upon completion of their determinate sentences despite whatever danger they might pose. Like Minnesota, Illinois and the District of Columbia retained and modified their original sexual predator commitment laws. Then, in the 1990s, 10 states – including Minnesota – enacted a new version of sexual predator commitment laws.

### DEVELOPMENT OF MINNESOTA'S TWO SEX OFFENDER COMMITMENT LAWS

#### *Development of the Psychopathic Personality Commitment Standard*

In the 1939 psychopathic personality law, the legislature defined the term "psychopathic personality" as:

the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of personal acts, or a combination of any such conditions, as to render such person irresponsible for personal conduct with respect to sexual matters and thereby dangerous to other persons.<sup>2</sup>

Later that year, in a vagueness challenge to the psychopathic personality law, the Minnesota Supreme Court in State ex rel Pearson v. Probate Court<sup>3</sup> gave

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<sup>1</sup> Office of the Legislative Auditor, State of Minnesota, Psychopathic Personality Commitment Law (1994).

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<sup>2</sup> 1939 Minn. Laws ch. 369, § 1.

<sup>3</sup> State ex rel Pearson v. Probate Court, 205 Minn. 545, 555, 287 N.W. 297, 302 (1939), aff'd, 309 U.S. 270 (1940).

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the statute a narrowing interpretation, holding that the law would apply only to:

those persons who, by a [1] habitual course of misconduct in sexual matters, have evidenced an [2] utter lack of power to control their sexual impulses and who, as a result, are [3] likely to attack or otherwise inflict injury, loss pain or other evil on the object of their uncontrolled and uncontrollable desire.

Then, in 1994, along with the adoption of the “sexually dangerous person” statute described below, the legislature recodified the psychopathic personality law, renaming it “sexual psychopathic personality” and incorporating the Pearson definition:

“Sexual psychopathic personality” means the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of personal acts, or a combination of any of these conditions, which render the person irresponsible for personal conduct with respect to sexual matters, if the person has evidenced, by a [1] habitual course of misconduct in sexual matters, an [2] utter lack of power to control the person’s sexual impulses and, as a result, is [3] dangerous to other persons.<sup>4</sup>

The legislature expressly stated that this was to be a continuation of, and not a change in, the prior law.<sup>5</sup>

### ***Enactment of the Sexually Dangerous Persons Commitment Law***

Because of the various challenges to the constitutionality and application of the psychopathic personality law, the 1994 Legislature created a task force “to study issues relating to the confinement of sexual predators, including commitment of

psychopathic personalities.”<sup>6</sup> The legislature met in special session on August 31, 1994, and enacted statutory amendments essentially as recommended by the Task Force.<sup>7</sup> The legislation added an additional commitment category to Minnesota’s Civil Commitment Act, Minn. Stat. ch. 253B. The new commitment category was for a “sexually dangerous person” or “SDP”.<sup>8</sup>

#### Subd. 18b. SEXUALLY DANGEROUS PERSON.

(a) A “sexually dangerous person” means a person who:

- (1) has engaged in a course of harmful sexual conduct as defined in subdivision 7a;
- (2) has manifested a sexual, personality, or other mental disorder or dysfunction; and
- (3) as a result, is likely to engage in acts of harmful sexual conduct as defined in subdivision 7a.

(b) For purposes of this provision, it is not necessary to prove that the person has an inability to control the person’s sexual impulses.

The term “harmful sexual conduct” used in the definition of “sexually dangerous person” is also defined in the statute.<sup>9</sup>

Subd. 7a. HARMFUL SEXUAL CONDUCT. (a) “Harmful sexual conduct” means sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another.

(b) There is a rebuttable presumption that conduct described in the following provisions creates a substantial likelihood that a victim will suffer serious physical or emotional harm: [Criminal sexual conduct, 1st-4th degrees]. If the conduct was motivated by the person’s sexual impulses or was part of a pattern of behavior that had criminal sexual conduct as a goal, the

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<sup>6</sup> 1994 Minn. Laws, ch. 636, art. 8, § 20.

<sup>7</sup> 1994 Minn. Laws, 1st Spec. Sess., ch. 1.

<sup>8</sup> Minn. Stat. § 253B.02, subd. 18b (1994) (the SPP and SDP laws were renumbered by 1997 Minn. Laws, ch. 217, art. 1 §§ 3 and 4 as 253B.02, subd. 18b and 18c, respectively).

<sup>9</sup> Id., subd. 7a.

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<sup>4</sup> Minn. Stat. § 253B.02, subd. 18b (Supp. 1997).

<sup>5</sup> 1994 Minn. Laws, 1st Spec. Sess., art. 1, § 5(a).

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presumption also applies to [Murder; Manslaughter; Assault, 1st-3d degrees; Robbery; Kidnapping; False Imprisonment; Incest; Witness Tampering; Arson, 1st degree; Burglary, 1st degree; Terroristic Threats; Harassment and Stalking].

A review of the SDP commitment category shows that it contains the same three elements as the Pearson standard, i.e., (1) a history of harmful sexual conduct, (2) a disorder, and (3) the resulting likelihood of future harmful sexual conduct. However, the SDP commitment standard made two important changes.

First, in response to the Minnesota Supreme Court's 1994 decision in In re Linehan,<sup>10</sup> the new statute defined the disorder differently than either the PP statute or the Pearson decision. The new law requires the person to have a "sexual, personality or other mental disorder or dysfunction." (That is, the person must have a mental disorder or dysfunction; sexual and personality disorders are two types of mental disorders which may be included.) The new statute makes it clear that this definition of disorder, and not the inability-to-control standard from Pearson, applies. The language of the new statute was drafted in consultation with mental health professionals, and was written in contemporary language used by such persons, rather than the archaic language of the PP statute and Pearson.

The second significant change brought about by the new statute responded to two Minnesota appellate court decisions reversing the commitment of "nonviolent" pedophiles. First, the Minnesota Supreme Court in In re Rickmyer<sup>11</sup> reversed the commitment of a pedophile concluding that the "unauthorized sexual 'touchings' and 'spankings,' while repellent, do not constitute the kind of injury, pain, 'or other evil' that is contemplated by the psychopathic personality

statute."<sup>12</sup> Shortly after Rickmyer, the court of appeals in In re Schweningen<sup>13</sup> also overturned the commitment of a pedophile who had molested at least 17 children, and engaged in "bribing" and "mutual fondling, exposure and oral sex," holding that the conduct was not sufficiently harmful to warrant commitment. The Schweningen court held that Supreme Court precedents "preclude[] the commitment of appellant as a non-violent pedophile under the psychopathic personality statute,"<sup>14</sup> and that a pedophile could not be committed "absent a showing of violence."<sup>15</sup> While the definition of "harmful sexual conduct" is taken essentially verbatim from Rickmyer, the new SDP statute creates a rebuttable presumption that conduct that would violate certain criminal statutes is sufficiently harmful to support civil commitment. This addressed the concern that the courts in Rickmyer and Schweningen had not given sufficient weight to the long-term, serious emotional harm caused to children by the acts of repetitive pedophiles.

## OVERVIEW OF STATE SEXUAL PREDATOR CIVIL COMMITMENT LAWS

Twelve states and the District of Columbia have statutes authorizing the confinement and treatment of dangerous sex offenders who present a high risk to reoffend. Three of these states (Minnesota, New Jersey, and Illinois) have enacted two different civil commitment standards for sexual predators. All of these state commitment laws can be classified under two different categories: post-criminal justice commitment and mental health commitment.

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<sup>12</sup> Id. at 190.

<sup>13</sup> 520 N.W.2d 446 (Minn. Ct. App.), rev. denied, (Minn. Dec. 12, 1997).

<sup>14</sup> Id. at 449.

<sup>15</sup> Id. at 450; but cf. In re Schweningen, No. C1-96-362 (Minn. Ct. App. Oct. 7, 1997) (unpublished) (where the court of appeals, in upholding the commitment, concluded that the Sexually dangerous person statute requires a showing of likelihood of either serious physical or emotional harm, but does not require both).

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<sup>10</sup> 518 N.W.2d 609 (Minn. 1994).

<sup>11</sup> 519 N.W.2d 188 (Minn. 1994).

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Nine states (Arizona - 1996,<sup>16</sup> California - 1996,<sup>17</sup> Florida - 1998,<sup>18</sup> Illinois - 1938/1955<sup>19</sup> and 1998,<sup>20</sup> Iowa - 1998,<sup>21</sup> Kansas - 1994,<sup>22</sup> South Carolina - 1998,<sup>23</sup> Washington - 1990,<sup>24</sup> and Wisconsin - 1994<sup>25</sup>) have established procedures for the involuntary civil commitment of dangerous sex offenders only upon their release from prison or final disposition under the criminal justice system. These laws apply to persons who have been convicted of a qualifying sexual offense, sentenced to prison, and confined in a correctional facility and also typically apply to persons charged with a sex offense and found incompetent to stand trial, and to persons found guilty or not guilty of a sex offense and insane. Three states (Minnesota - 1939/1994<sup>26</sup> and 1994,<sup>27</sup> New Jersey - 1994<sup>28</sup> and 1998<sup>29</sup> and North Dakota - 1997<sup>30</sup>) and the District of Columbia<sup>31</sup> have enacted sexual predator laws applying the civil commitment process to all persons whether or not they are currently subject to a conviction of a sex offense or are confined in a prison, provided the person has a mental disorder and presents a danger to the public to commit a sexual offense in the future.

There are common features characterizing all of the states' civil commitment statutes for sexual predators. However, there are some important differences in

procedures and the standards necessary for commitment. These common characteristics and the different approaches are briefly outlined below.

## Predicate Behavior

Although all states require some history of harmful sexual misconduct, most states require convictions for such conduct.<sup>32</sup> Minnesota and several other states do not require convictions but instead require proof of harmful sexual misconduct.<sup>33</sup>

## Minnesota's Law

Rather than proof of convictions of a course of harmful sexual conduct, Minnesota's commitment law requires proof of a history of harmful sexual conduct. This requirement is stated in two different but comparable forms: "habitual course of sexual misconduct"<sup>34</sup> and "a course of harmful sexual conduct."<sup>35</sup> Minnesota's law also defines "harmful sexual conduct" to mean "sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another." This standard is the same requirement established for the SPP law by Rickmyer - "a substantial likelihood of serious physical or mental harm."<sup>36</sup> Thus, the nature of the harmful

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<sup>16</sup> Ariz. Rev. Stat. Ann. §§ 13-4601 et seq. (West 1997).

<sup>17</sup> Cal. Welf. & Instit. Code §§ 6600 et seq. (West 1998).

<sup>18</sup> 1998 Fla. Laws ch. 98-64.

<sup>19</sup> Illinois amended its 1938 Sexual Psychopath Act, 38 Ill. Comp. Stat. §§ 105 et seq., in 1955 retitling it as the Sexually Dangerous Persons Act, 725 Ill. Comp. Stat. §§ 205 et. seq.

<sup>20</sup> 725 Ill. Comp. Stat. §§ 207 et seq. (West 1998).

<sup>21</sup> Iowa Code §§ 229A et seq. (1998)

<sup>22</sup> Kan. Stat. Ann. §§ 59-29a02 et seq. (Supp. 1997).

<sup>23</sup> S.C. Code Ann. §§ 44-48 et seq. (1998).

<sup>24</sup> Wash. Rev. Code §§ 71.09 et seq. (1997).

<sup>25</sup> Wis. Stat. Ann. §§ 980 et seq. (West 1997).

<sup>26</sup> Originally enacted as Minn. Stat. §§ 526.09 – 526.115, the law was amended and recodified as Minn. Stat. § 253B.02, subd. 18b (Supp. 1997).

<sup>27</sup> Minn. Stat. § 253B.02, subd. 18c (Supp. 1997).

<sup>28</sup> N.J. Rev. Stat. § 30:4-82.4 (1997).

<sup>29</sup> 1998 N.J. Laws ch. 71.

<sup>30</sup> N.D. Cent. Code §§ 25-03.3 et seq. (1997).

<sup>31</sup> D.C. Code Ann. §§ 22-3503 – 22-3511 (1997).

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<sup>32</sup> Ariz. Rev. Stat. Ann. §§ 13-4601(5) (West 1997); Iowa Code § 229A.2(8) (requires conviction or charge of a sexually violent offense) (1998); 725 Ill. Comp. Stat. § 207/5(f) (West 1998); Kan. Stat. Ann. § 59-29a02(a) (Supp. 1997); N.J. Rev. Stat. § 30:4-82.4(b); 1998 N.J. Laws ch. 71 § 3; S.C. Code Ann. § 44-48-30(1)(a) (1998); Wash. Rev. Code § 71.09.030(5) (1997); Wis. Stat. Ann. § 980.02(2)(a)2 (West 1997).

<sup>33</sup> D.C. Code Ann. § 22-3503(1) (1997) (no showing of course of habitual sexual misconduct necessary – see Lomax v. District of Columbia, 211 A.2d 772 (App. D.C. 1965)); Minn. Stat. § 253B.02, subd. 18b ("habitual course of sexual misconduct") and subd. 18c(a)(1) ("a course of harmful sexual conduct"); N.D. Cent. Code § 25-03.3-01(7) (1997); cf. Wash. Rev. Code § 71.09.030(5) (1997) (requirement that released offenders commit a recent overt act that "caused harm of a sexually violent nature or creates a reasonable apprehension of such harm").

<sup>34</sup> Minn. Stat. § 253B.02, subd. 18b (Supp. 1997).

<sup>35</sup> Id. at subd. 18c(a)(1).

<sup>36</sup> Rickmyer, 519 N.W.2d at 190 (Minn. 1994).

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sexual conduct required by the SDP law is similar to that required by the SPP law.<sup>37</sup>

### ***Laws of Other States***

Washington appears to most clearly typify the alternative scheme, in that it requires a conviction at some previous time of a sexually violent offense, yet a recent overt act of a sexually violent nature may trigger a petition of a person who has been released from “total confinement.”<sup>38</sup> California requires that the person have been convicted of a sexually violent offense against two or more victims for which a sentence was received.<sup>39</sup> In the District of Columbia, the filing of a statement alleging the person is a sexual psychopath stays any pending criminal proceeding until the proceeding is dismissed or the person is discharged from commitment.<sup>40</sup> Although the practice in all states has been to show a number of instances of harmful sexual misconduct, most states’ commitment statutes do not specifically require the showing of more than a single conviction for or a single instance of harmful sexual misconduct.

### ***Study Group Recommendation***

No change to Minnesota’s law, since the purpose of the law is to focus upon conduct, not convictions. Further, Minnesota’s requirement adequately provides due process since it requires that the committing court find a sufficient history of harmful sexual misconduct by clear and convincing evidence.

### **Persons Qualifying for Commitment *Minnesota’s Law***

Minnesota’s commitment law does not impose limitations upon persons subject to commitment other than that they satisfy the statutory criteria related to their dangerousness as a potential sex offender. Although Minnesota law does not prohibit the

commitment of juveniles, the Minnesota Sex Offender Program is not licensed to accept them.

### ***Laws of Other States***

Several states require that the person must be confined at the time the petition for commitment is filed or be serving a sentence for a conviction of a sexual offense.<sup>41</sup> Although Iowa,<sup>42</sup> Minnesota, the District of Columbia,<sup>43</sup> North Dakota,<sup>44</sup> and Washington<sup>45</sup> do not require that the person be confined at the time the petition is filed, Iowa<sup>46</sup> and Washington<sup>47</sup> require that the person, if not confined, must be shown to have committed a recent overt act. Under Illinois’ original commitment law,<sup>48</sup> the state must choose either to convict and punish an offender through the criminal system or to pursue a civil commitment.<sup>49</sup> By contrast, Illinois’ Sexually Violent Persons Commitment Act, which became effective in 1998,<sup>50</sup> provides for the civil commitment of persons who have been convicted of a sexually violent offense or have been found not guilty or not responsible by reason of insanity, mental disease or defect and are about to be released from a correctional facility or from a criminal commitment order that was entered as a result of a sexually violent offense.<sup>51</sup> Although some states do not require any current criminal proceeding,<sup>52</sup> many states require a current predicate offense before commitment can proceed, but specify that the offense may consist of a conviction, a finding of guilty but insane or not responsible for the

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<sup>41</sup> Fla. Stat. § 916.33 (1998); 725 Ill. Comp. Stat. § 207/15(a)(1) (West 1998); Kan. Stat. Ann. § 59-29a04 (Supp. 1997); Wis. Stat. Ann. § 980.02(2)(ag) (West 1997).

<sup>42</sup> Iowa Code § 229A.2(2) (1998).

<sup>43</sup> D.C. Code Ann. § 22-3504(a) (1997).

<sup>44</sup> N.D. Cent. Code § 25-03.3-01(7) (1997).

<sup>45</sup> Wash. Rev. Code § 71.09.030(5) (1997).

<sup>46</sup> Iowa Code § 229A.2(2) (1998).

<sup>47</sup> Wash. Rev. Code § 71.09.030(5) (1997).

<sup>48</sup> 725 Ill. Comp. Stat. §§ 205 et seq. (1998).

<sup>49</sup> 725 Ill. Comp. Stat. § 205/3 (West 1998); *People v. Patch*, 9 Ill. App. 3d 134, 293 N.E.2d 661 (1972).

<sup>50</sup> 725 Ill. Comp. Stat. §§ 207 et seq. (West 1998).

<sup>51</sup> 725 Ill. Comp. Stat. §§ 207/10 and 207/15(b)(1) (West 1998).

<sup>52</sup> Ariz. Rev. Stat. Ann. § 13-4601(5)(b) (West 1997); Minn. Stat. § 253B.02, subds. 18b and 18c(a)(1) (Supp. 1997).

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<sup>37</sup> In re Gleason, No. C2-97-2194 (Minn. Ct. App. May 5, 1998) (unpublished).

<sup>38</sup> Wash. Rev. Code § 71.09.030(5) (1997).

<sup>39</sup> Cal. Welf. & Instit. Code § 6600(a) (West 1998).

<sup>40</sup> D.C. Code Ann. § 22-3510 (1997).

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offense, or a charge of a sexual offense but a determination of incompetency to stand trial.<sup>53</sup> Several states specifically provide for the commitment of persons who have been convicted of a sexual offense, released on parole, and returned to confinement for violations of the terms of their release. Several states specifically authorize the commitment of juveniles adjudicated delinquent for a sexual offense.<sup>54</sup> Two states require that the person must be at least 18 years old at the time the petition is filed.<sup>55</sup>

### ***Study Group Recommendation***

No change to Minnesota's law, since the purpose of the law is to address all persons, regardless of their current setting or residence in the state, who present the requisite danger to the public. However, the state should study the issue of sex offender treatment for juveniles. There exists a growing population of juvenile sex offenders who may meet criteria for commitment as a PP/SDP, but for whom there currently is no appropriate treatment program.

### **Qualifying Offenses**

#### ***Minnesota's Law***

Like other states, Minnesota has identified certain offenses that are considered to constitute harmful sexual misconduct. Minnesota's SDP law creates a rebuttable presumption that the conduct described in specified criminal statutes presents a substantial likelihood of serious physical or emotional harm.<sup>56</sup>

### ***Laws of Other States***

All states specify the types of offenses that qualify a person for civil commitment as a sexual predator. Most states specifically provide that crimes committed against children are qualifying offenses. Arizona<sup>57</sup> and California<sup>58</sup> specifically provide that rape of a spouse is a qualifying offense.

### ***Study Group Recommendation***

No change to Minnesota's law, since the present law is adequate to address the types of conduct that present a danger to the public and may readily be modified or adjusted as the legislature sees fit.

### **Mental Condition**

#### ***Minnesota's Law***

The second requirement of Minnesota's SDP law is the mental disorder requirement, specifically that the person "has manifested a sexual, personality, or other mental disorder or dysfunction."<sup>59</sup> Although the requirement is stated in the past tense, it is clear that, in order to be committed, the person must currently have such a disorder. The Minnesota Supreme Court has recognized that the statute was written with the aid of psychiatrists and psychologists and is intended to use the terms "sexual disorder," "personality disorder" and "other mental disorder" as those terms are used by mental health professionals, with particular reference to the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (currently "DSM-IV").<sup>60</sup>

### ***Laws of Other States***

All states require that the person exhibit a mental condition before a commitment may occur. The terminology for the medical condition varies and includes "mental abnormality" or "mental

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<sup>53</sup> Ariz. Rev. Stat. Ann. § 13-4602(A) (West 1997); Iowa Code § 229A.4(2) (1998); Fla. Stat. § 916.32(9) (1998); 725 Ill. Comp. Stat. § 207/15(b)(1) (West 1998); Kan. Stat. Ann. § 59-29a(a) (Supp. 1997); 1998 N.J. Laws ch. 71 § 3; S.C. Code Ann. § 44-48-30(6) (1998); Wash. Rev. Code § 71.09.030(3) and (4) (1997); Wis. Stat. Ann. §§ 980.01(7) and 980.02(2)(a)3 (West 1997).

<sup>54</sup> D.C. Code Ann. § 22-3503(4) (1997); S.C. Code Ann. § 44-48-30(10); Wis. Stat. Ann. § 980.02(2)(a)2 (West 1997).

<sup>55</sup> Ariz. Rev. Stat. Ann. § 13-4602(A) (West Supp. 1997); Fla. Stat. § 916.32(6) (1998).

<sup>56</sup> Minn. Stat. § 253B.02, subd. 7a (Supp. 1997).

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<sup>57</sup> Ariz. Rev. Stat. Ann. § 13-4601(3) (West 1997).

<sup>58</sup> Cal. Welf. & Instit. Code § 6600(b) (West 1998).

<sup>59</sup> Minn. Stat. § 253B.02, subd. 18c (Supp. 1997).

<sup>60</sup> In re Linehan ("Linehan II"), 557 N.W.2d 171, 185 (Minn. 1996), vacated and remanded, 118 S. Ct. 596 (1997).

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disorder” “affecting the emotional or volitional capacity which predisposes the person to commit sexually violent offenses,”<sup>61</sup> “paraphilia,”<sup>62</sup> “personality disorder,”<sup>63</sup> “sexual psychopath,”<sup>64</sup> and “sexual psychopathic personality.”<sup>65</sup>

### ***Study Group Recommendation***

No change to Minnesota’s law, since the present law adequately identifies the types of mental disorders that may cause a person to present a danger to the public.

### **Burden of Proof**

#### ***Minnesota’s Law***

Minnesota’s commitment law provides that the petitioner must prove by clear and convincing evidence that the person satisfies the criteria for commitment.<sup>66</sup>

#### ***Laws of Other States***

The majority of states require that the petitioner prove beyond a reasonable doubt that the person satisfies the criteria for commitment.<sup>67</sup> The remaining states provide that the petitioner must prove by clear and convincing evidence that the person satisfies the criteria for commitment.<sup>68</sup>

### ***Study Group Recommendation***

No change to Minnesota’s law, since the present law provides adequate due process to protect against erroneous determinations, and the United States Supreme Court in *Addington v. Texas*<sup>69</sup> held that proof by clear and convincing evidence is constitutionally sufficient in civil commitment matters.

### **Trier of Fact**

#### ***Minnesota’s Law***

Minnesota does not provide that the petition for commitment of a sexual predator may be heard by a jury; as a result, it must be heard by a judge.<sup>70</sup> Minnesota judges make detailed “Findings of Fact and Conclusions of Law” when making a ruling on a case. These findings can be reviewed by the appellate courts for their sufficiency. A jury verdict does not provide this information and therefore it would be more difficult for a respondent to challenge a jury verdict. The Findings and Conclusions of Law also provide details regarding the respondent’s history of sex offenses. These details and the court’s findings regarding them prove to be an asset in the treatment process by putting to rest the respondent’s ability to argue about the occurrence or nature of his/her offenses.

#### ***Laws of Other States***

Most states provide that the factual determinations be made by a jury and that either party may request that the hearing be before a jury. Only Minnesota<sup>71</sup>, North Dakota,<sup>72</sup> and New Jersey<sup>73</sup> do not provide that the petition for commitment of a sexual predator may be heard by a jury.

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<sup>61</sup> Cal. Welf. & Instit. Code § 6600(c) (West 1998); Iowa Code § 229A.2(3) (1998); Fla. Stat. § 916.32(5) (1998); Kan. Stat. Ann. § 59-29a02(b) (Supp. 1997); 725 Ill. Comp. Stat. § 705/(b) (1998); 1998 N.J. Laws ch 71 § 3; S.C. Code Ann. § 44-48-30(3) (1998); Wis. Stat. Ann. § 980.01(2) (West 1997); Wash. Rev. Code § 71.09.020(2) (1997).

<sup>62</sup> Ariz. Rev. Stat. Ann. § 13-4601(2) (West 1997).

<sup>63</sup> *Id.*; Minn. Stat. § 253B.02, subd. 18c(2) (Supp. 1997).

<sup>64</sup> D.C. Code Ann. § 22-3503(1) (1997).

<sup>65</sup> Minn. Stat. § 253B.02, subd. 18b (Supp. 1997).

<sup>66</sup> Minn. Stat. § 253B.18, subd. 1 (Supp. 1997); *In re Blodgett*, 510 N.W.2d 910, 915 (Minn. 1994); *In re Linehan*, 518 N.W.2d 609, 610 (Minn. 1994).

<sup>67</sup> Ariz. Rev. Stat. Ann. § 13-4606(A) (West 1997); Cal. Welf. & Instit. Code § 6604 (West 1998); Iowa Code § 229A.7(3) (1998); 725 Ill. Comp. Stat. § 207/35(d)(1) (West 1998); Kan. Stat. Ann. § 59-29a07(a) (Supp. 1997); S.C. Code Ann. § 44-48-100 (1998); Wash. Rev. Code § 71.09.060(1) (1997); Wis. Stat. Ann. § 980.05(3)(a) (West 1997).

<sup>68</sup> Fla. Stat. § 916.37(1) (1998); Minn. Stat. § 253B.18, subd. 1 (continued...)

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(...continued)

(Supp. 1997); N.D. Cent. Code § 25-03.3-13 (1997); 1998 N.J. Laws ch. 71 § 9; N.J. Rev. Stat. § 30:4-27.15(a) (1997).

<sup>69</sup> 441 U.S. 418, 99 S. Ct. 1804 (1979).

<sup>70</sup> Minn. Stat. § 253B.18 (Supp. 1997).

<sup>71</sup> Minn. Stat. § 253B.18 (Supp. 1997).

<sup>72</sup> N.D. Cent. Code § 25-03.3-13 (1997).

<sup>73</sup> 1998 N.J. Laws ch. 71 §§ 8-9.

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### ***Study Group Recommendation***

No change to Minnesota's law, since the present law provides adequate due process to protect against erroneous determinations.

### **Psychological Evaluation**

#### ***Minnesota's Law***

The requirements of pre-petition screening and the petition's accompaniment by an examiner's statement, applicable to other types of commitments,<sup>74</sup> do not apply to SPP and SDP commitments.<sup>75</sup> The reason for this is that, under Minn. Stat. § 253B.185, the county attorney is responsible to determine whether good cause exists for the petition.<sup>76</sup> The lack of a pre-petition examiner's report does not deprive the respondent of his/her due process right to receive notice of the psychological basis for the commitment, where the petition provides him/her that information.<sup>77</sup> Nonetheless, the commitment law requires that, after a petition has been filed, the court appoints a knowledgeable, trained, and practicing licensed psychologist or physician to personally examine the offender and file a report with the court.<sup>78</sup> The court also must appoint a second examiner at the offender's request.<sup>79</sup>

### ***Laws of Other States***

Some states allow the person to be evaluated prior to the filing of a petition for commitment.<sup>80</sup> In all states, the court may order a psychological evaluation of the person after the filing of a petition for commitment and provide for the appointment of an expert on behalf of the respondent.

### ***Study Group Recommendation***

No change to Minnesota's law, since the present law provides adequate authority to pre-screen petitions and for the appointment of qualified examiners to advise the court, including an examiner selected by the offender. Moreover, the current system of pre-petition screening has not resulted in filing of improvident petitions.

### **Rights of the Respondent**

#### ***Minnesota's Law***

Minnesota's commitment law provides that the offender has the right to be represented by counsel at all proceedings, and the court is to appoint a qualified attorney if none is otherwise provided.<sup>81</sup> In all proceedings, the attorney is to consult with the offender, be given adequate time and access to records to prepare for all hearings, and be a vigorous advocate on behalf of the offender.<sup>82</sup> The offender and counsel are to receive timely notice of all hearings<sup>83</sup> and of the offender's right to attend and testify.<sup>84</sup> The offender may present and cross-examine witnesses, including examiners, at the hearing.<sup>85</sup> Because sexual predator civil commitments are not criminal or punitive, the privilege against self-incrimination does not generally

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<sup>74</sup> Minn. Stat. § 253B.07, subs. 1 and 2 (Supp. 1997).

<sup>75</sup> In re Woodruff, No. C6-98-118 (Minn. Ct. App. June 30, 1998) (unpublished); In re Anderson, No. C9-97-2225 (Minn. Ct. App. June 2, 1998) (unpublished); In re Fries, No. C5-96-1997 (Minn. Ct. App. June 17, 1997) (unpublished), rev. denied, (Minn. Aug. 21, 1997); In re Call, No. C9-93-501 (Minn. Ct. App. June 15, 1993) (unpublished), aff'd (Minn. Feb. 4, 1994); In re Reeves, No C5-91-1589 (Minn. Ct. App. Dec. 24, 1991) (unpublished).

<sup>76</sup> In re Reeves, No C5-91-1589 (Minn. Ct. App. Dec. 24, 1991) (unpublished).

<sup>77</sup> In re Fries, No. C5-96-1997 (Minn. Ct. App. June 17, 1997) (unpublished), rev. denied, (Minn. Aug. 21, 1997).

<sup>78</sup> Minn. Stat. §§ 253B.02, subd. 7 and 253B.07, subs. 3 and 5 (Supp. 1997).

<sup>79</sup> Minn. Stat. § 253B.07, subd. 5 (Supp. 1997).

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<sup>80</sup> Cal. Welf. & Instit. Code § 6601(c) (West 1998); Iowa Code § 229A.3(3) (1998); Fla. Stat. § 916.33(3) (1998); 725 Ill. Comp. Stat. § 205/3.01(c)(23) (West 1998); 725 Ill. Comp. Stat. § 207/10(c)(23) (West 1998); 1998 N.J. Laws ch. 71 § 5; S.C. Code Ann. § 44-48-40 (1998).

<sup>81</sup> Minn. Stat. § 253B.07, subd. 2c (Supp. 1997).

<sup>82</sup> Id. Rule 4 of the Special Rules of Procedure Governing Proceedings Under the Minnesota Commitment Act of 1982 also specify the duties of counsel.

<sup>83</sup> Minn. Stat. § 253B.08, subd. 2 (Supp. 1997).

<sup>84</sup> Id. at subd. 3.

<sup>85</sup> Id. at subd. 5a.

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apply to such proceedings, and the respondent can be required to testify against himself, even though the result may be commitment.<sup>86</sup> However, as in other civil proceedings, a respondent may invoke the privilege against self-incrimination question-by-question if the answers may incriminate the respondent with respect to pending or possible criminal charges.<sup>87</sup>

### ***Laws of Other States***

All states provide that the person has the right to the assistance of counsel and, if indigent, the right to court-appointed counsel. All statutes also provide that the person has the right to request an expert or examiner on his/her own behalf and, if indigent, the state will pay for the cost of the expert. Most states provide that the person has the right to be present during the proceedings. The statutes of two states specifically allow the respondent to remain silent.<sup>88</sup> By contrast, the District of Columbia<sup>89</sup> and Washington deny the person the right to remain silent. Most states specifically provide the person with the right to be present and cross-examine witnesses. The statutes of several states specifically provide that the person is entitled to all the constitutional rights available to a criminal defendant (e.g., jury trial, standard of proof beyond a reasonable doubt, etc.).<sup>90</sup>

### ***Study Group Recommendation***

No change to Minnesota's law, since the present law provides adequate due process protections for persons subject to the petition.

### ***Evidentiary Issues***

#### ***Minnesota's Law***

A presumption in favor of admissibility applies to all commitment cases.<sup>91</sup> The statute waives any privilege otherwise existing between patient and physician, patient and psychologist, examiner or social worker who provides information with respect to a patient under the commitment law.<sup>92</sup>

#### ***Laws of Other States***

Several states specifically provide for the admissibility of evidence regarding the person's prior bad acts.<sup>93</sup> Other states have court rulings making admissible evidence of prior bad acts.<sup>94</sup> North Dakota's law specifically provides that evidence of prior bad acts may be shown through juvenile court records.<sup>95</sup> By contrast, two states specifically provide that evidence of a prior conviction or bad act alone is insufficient to support a commitment.<sup>96</sup> Two states provide that the rules of evidence in criminal proceedings are applicable to sexual predator commitment proceedings.<sup>97</sup>

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<sup>86</sup> *Allen v. Illinois*, 478 U.S. 364, 106 S. Ct. 2988 (1986); *In re Woodruff*, No. C6-98-118 (Minn. Ct. App. June 30, 1998) (unpublished).

<sup>87</sup> *Woodruff*, previous note; see also *In re E.D.F.*, No. C0-95-1556 (Minn. Ct. App. Dec. 19, 1995) (unpublished); *Minnesota State Bar Ass'n v. Divorce Assistance Ass'n, Inc.*, 311 Minn. 276, 248 N.W.2d 733 (1976).

<sup>88</sup> *Ariz. Rev. Stat. Ann.* § 13-4606(E) (West 1997); 725 Ill. Comp. Stat. § 207/25(c)(2) (West 1998); *Wis. Stat. Ann.* § 980.03(2)(b) (West 1997); see e.g., *Kan. Stat. Ann.* § 59-29a07(b) (providing all constitutional rights available to defendants in criminal trials).

<sup>89</sup> *D.C. Code Ann.* § 22-3506(a) (1997).

<sup>90</sup> *Kan. Stat. Ann.* § 59-29a07(b) (Supp. 1997); *Wis. Stat. Ann.* § 980.05(1m) (West 1997).

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<sup>91</sup> *In re Morton*, 386 N.W.2d 832, 835 (Minn. Ct. App. 1986) (commitment for mental retardation).

<sup>92</sup> *Minn. Stat.* § 253B.23 (Supp. 1997).

<sup>93</sup> *Ariz. Rev. Stat. Ann.* § 13-4606(E) (West 1997); *D.C. Code Ann.* § 22-3508 (1997) (evidence of relevant criminal convictions admissible); 725 Ill. Comp. Stat. § 207/35(b) (West 1998); *N.D. Cent. Code* § 25-03.3-15 (1997).

<sup>94</sup> E.g., *People v. P.T.*, 47 N.E.2d 703 (Ill. 1992).

<sup>95</sup> *N.D. Cent. Code* § 25-03.3-15 (1997).

<sup>96</sup> *Cal. Welf. & Instit. Code* § 6600(a) (West 1998); 725 Ill. Comp. Stat. § 207/35(e) (West 1998).

<sup>97</sup> 725 Ill. Comp. Stat. § 207/35(b) (West 1998); *Wis. Stat. Ann.* § 980.05(1m) (West 1997); see *Ariz. Rev. Stat. Ann.* § 13-4606(E) (West 1997).

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### ***Study Group Recommendation***

With the exception of the confidentiality of disclosures made by an offender in treatment, which is addressed in a separate section of this report, no change is recommended to Minnesota's law, since the court needs access to all relevant evidence in order to make an accurate and informed decision.

### **Placement of Respondent**

#### ***Minnesota's Law***

Minnesota's commitment law requires that the court commit a person found to be SPP and/or SDP to a secure treatment facility or a treatment facility willing to accept the person.<sup>98</sup> A secure treatment facility is defined to mean the Minnesota Security Hospital or the Minnesota Sexual Psychopathic Personality Treatment Center,<sup>99</sup> both of which are operated by the DHS and not connected to a prison. The Minnesota commitment law does not require that a SPP or SDP be committed to the least restrictive setting.<sup>100</sup>

#### ***Laws of Other States***

Several states provide no discretion to the court and require that a person found to be a sexual predator must be committed to a specified secure treatment facility.<sup>101</sup> Other states, however, require that the person be committed to the least restrictive alternative facility if appropriate.<sup>102</sup> Virtually all states specifically require that the person be committed to the custody of the human services or other non-correctional department for care and treatment.<sup>103</sup> However, some of these treatment programs, although operated by the

human services department, are located within a state correctional facility.<sup>104</sup>

### ***Study Group Recommendation***

Minn. Stat. 253B.18, Subd. 1 be amended to require the court to commit the patient to the custody of the commissioner of Human Services for placement in a secure treatment facility. It also is recommend that Minn. Stat. 253B.02, Subd. 18A be amended to define a "secure treatment facility" as the Minnesota Security Hospital, the Minnesota Sexual Psychopathic Personality Treatment Center, or another facility operated by the commissioner which has comparable security.

### **Period for Commitment**

#### ***Minnesota's Law***

Minnesota provides for an initial commitment for a 60-day period of evaluation and requires a second hearing, within 90 days, to make a final commitment determination.<sup>105</sup> Persons found to continue to satisfy the criteria for commitment at the final determination are committed for an indeterminate period of time.<sup>106</sup>

#### ***Laws of Other States***

Most states specifically provide that a person committed as a sexual predator shall be confined until the person no longer satisfies the statutory requirements of a sexual predator. California provides that a sexual predator be committed for a period of two years and another petition must be filed to extend the commitment beyond the second year.<sup>107</sup> Only Minnesota provides for an initial commitment for a 60-day period of evaluation and requires a second hearing within 90 days

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<sup>98</sup> Minn. Stat. § 253B.18, subd. 1 (Supp. 1997).

<sup>99</sup> Minn. Stat. 253B.02, subd. 18a (Supp. 1997).

<sup>100</sup> *In re Senty-Haugen*, No. C9-96-1095 (Minn. Aug. 20, 1998).

<sup>101</sup> Cal. Welf. & Instit. Code § 6600.05 (West 1998); Minn. Stat. § 253B.18, subd. 1 (Supp. 1997) (also allows commitment to a treatment facility willing to accept the person); Minn. Stat. § 253B.18, subd. 1 (Supp. 1997); S.C. Code Ann. § 44-48-100(A) (1998); Wash. Rev. Code § 71.09.060(1) (1997).

<sup>102</sup> 725 Ill. Comp. Stat. § 207/40(b)(2) (West 1998); N.D. Cent. Code § 25-03.3-13 (1997); Wis. Stat. Ann. § 980.06(b) (West 1997).

<sup>103</sup> But see 725 Ill. Comp. Stat. § 205/8 (West 1998).

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<sup>104</sup> See e.g., Iowa Code § 229A.7(4) (1998); 725 Ill. Comp. Stat. § 207/50(a) (West 1998); Wis. Stat. Ann. § 980.065(2) (West 1997).

<sup>105</sup> Minn. Stat. § 253B.18, subd. 2 (Supp. 1997).

<sup>106</sup> Minn. Stat. § 253B.18, subd. 3 (Supp. 1997).

<sup>107</sup> Cal. Welf. & Instit. Code § 6604 (West 1998).

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to make a final determination as to whether the person shall be committed for an indeterminate period.<sup>108</sup>

### ***Study Group Recommendation***

The initial commitment and the final determination be consolidated into a single commitment hearing, thereby eliminating the review hearing. The review hearing is of little if any value to the court and is typically a reaffirmation of the initial commitment decision. Ninety days is too short a time to complete treatment or accomplish anything beyond assessment. As a result, at the time of the review hearing no significant change can have occurred that would alter the initial decision of the court to commit. Under the current statutory scheme, the patient has the opportunity to petition for release six months following the date of the initial order of commitment. This is sufficient for persons committed as SDP or SPP. By contrast, the two-part commitment proceeding for persons to be committed as mentally ill and dangerous serves a valid purpose, since such respondents may respond to medications during the 60-day evaluation period pending the final review hearing.

Given the minimum of the four years necessary to complete the Minnesota Sex Offender Program, and the long-term underlying cause of the disorder for such offenders, a six-month review is more than adequate and provides a shorter review interval than other states.

### **Periodic Review or Release**

#### ***Minnesota's Law***

Minnesota allows the committed person to file a petition for release six months from the date of the indeterminate commitment or six months from the final disposition of any previous petition for release and subsequent appeal.<sup>109</sup>

### ***Laws of Other States***

About half of the states provide that the person committed must have an annual examination and has an annual right to petition for release.<sup>110</sup> Two states provide that the committed person must have a mental examination six months after commitment and once every year thereafter for the purpose of determining whether the person should be released.<sup>111</sup> Under its 1994 law, New Jersey provides for a review hearing three months and nine months after the first hearing and at 12-month intervals thereafter.<sup>112</sup>

### ***Study Group Recommendation***

No change to Minnesota law. The current system provides adequate opportunity for committed persons to petition for discharge and compares favorably with the period of review offered by other states.

### **Program Location**

#### ***Minnesota's Law***

Minnesota operates the Minnesota Sex Offender Program in a secure facility operated by the DHS.

### ***Laws of Other States***

States which are considering passing sexual predator statutes often struggle with the decision about whether to locate the treatment program within a mental health facility or a correctional facility. In five states, (Arizona, California, Florida, Minnesota, New Jersey) the civil commitment treatment program is located in a department of mental health facility (variously referred to as "Department of Human Services", "Department of Health Services", "Department of Social Services", etc.). Wisconsin currently is building a separate facility which will be run by corrections, but will have treatment

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<sup>110</sup> Ariz. Rev. Stat. Ann. § 13-4607(A) (West 1997); Cal. Welf. & Instit. Code § 6605(a) (West 1998); Iowa Code § 229A.8(1) (1998); Fla. Stat. § 916.38(1) (1998); Kan. Stat. Ann. § 59-29a08; 1998 N.J. Laws ch. 71 § 12; S.C. Code Ann. § 44-48-110 (1998); Wash. Rev. Code § 71.09.070 (1997).

<sup>111</sup> 725 Ill. Comp. Stat. § 207/55(a) (West 1998); Wis. Stat. Ann. § 980.07(1) (West 1997).

<sup>112</sup> N.J. Rev. Stat. § 30:4-27.16(a) (1997).

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<sup>108</sup> Minn. Stat. § 253B.18, subd. 2 (Supp. 1997).

<sup>109</sup> Minn. Stat. § 253B18, subd. 5(a) (Supp. 1997).

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provided by their Department of Health and Family Services, and two states (Iowa, North Dakota) have not yet determined the location for their programs. Two other states, (Kansas and Washington), have located their programs on special units within a prison; however, it should be noted that this arrangement has led to many unforeseen difficulties.

One factor creating many of the difficulties for civil commitment programs located within a prison is the need to keep the civilly committed population (who have all completed their DOC time) separate from incarcerated inmates. This requirement has resulted in odd scheduling of meal times for the civilly committed population, and a lack of access to educational, vocational, and recreational opportunities. In addition, it has been extremely difficult for those programs located within the prisons to maintain a 'treatment environment', due to the extremely strict contraband rules of the entire prison. Finally (and most importantly), treatment staff of those programs have been faced with barriers when they have attempted to

grant increased privileges for those civilly committed patients who show significant progress in the program. When the program is located within a prison, it is extremely difficult to allow for the special group of patients to have increased freedom and decreased restrictions in the facility, while still maintaining a separation between the civilly committed populations and the inmate population. This leads to an inability of treatment staff to adequately test the patient's responsibility with decreased supervision before beginning the patient's transition back into the community.

***Study Group Recommendation***

That Minnesota continue placement at the Minnesota Sex Offender Program for any SPP/SDP patients who have already completed their prison sentence. Only those patients dually committed to the DHS while serving their prison sentence would be appropriate for participation in a potential DOC site for the Minnesota Sex Offender Program.

***COSTS OF CURRENT PRACTICE***

	<b>DOC<sup>113</sup></b>	<b>DHS<sup>114</sup></b>	<b>COUNTIES<sup>114</sup></b>	<b>COURTS<sup>115</sup></b>	<b>AGO<sup>116</sup></b>	<b>TOTAL</b>
1998	\$188,000	\$13,325,920	\$1,491,680	\$1,670,000	\$320,000	\$16,995,600
2000	206,000	20,013,798	2,242,362	1,135,000*	340,000	23,937,160
2005	239,000	39,082,892	4,347,804	1,316,000	394,000	45,379,696
2010	277,000	67,153,323	7,454,319	1,526,000	456,000	76,866,642

**\* A decrease in hold order costs is expected, which will reduce total court costs, as a result of 1997 legislation that directs the DOC to make referrals to county attorneys 12 months prior to the inmate's release date.**

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<sup>113</sup> Calculated by DOC staff

<sup>114</sup> Calculated by DHS staff

<sup>115</sup> Calculated from figures provided by courts who responded to request for cost estimates

<sup>116</sup> Calculated by AGO staff

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## FINANCIAL COST OF CURRENT SYSTEM

The financial costs of civilly committing a sex offender to an indefinite period of time are considerable. Treatment of a patient in the DHS is much more expensive than incarceration of an inmate in the DOC. Calculations of current and projected financial costs are provided below.

The cost of the current system may be broken down to include the following categories:

**DOC:** The costs of referral (salaries for civil commitment review coordinator and institution personnel, administrative support, and expenses).

**DHS:** Housing and treatment of committed offenders, less 10 percent contributed by county.

**COUNTIES:** Ten percent of the cost of housing and treatment of offenders, plus case management and other services for provisionally-discharged offenders.

**COURTS:** Salaries for court personnel (e.g., judge, court reporter, clerks), expert witnesses, and costs for holding the offender before and during his/her commitment hearing, including housing and transportation.

**AGO:** Salaries for the AGO's attorneys and administrative staff.

When the commitment process takes so long that the offender reaches his/her release date from prison

before the commitment decision has been made, the offender may be placed on hold status, usually in a

DHS treatment facility. The costs for this are borne solely by the county. These costs are troublesome for counties to bear because they are difficult to anticipate and thus include in budget planning. Additionally, for a small county, the costs of a civil commitment hold can have a significant impact on the mental health budget for an entire year. Because of property tax caps, it may not be possible for counties to raise new revenues to fund such holds.

The statute requiring the DOC to screen offenders for civil commitment was amended last year to require the DOC to refer offenders 12 months prior to their release date. The DOC is complying with this statutory change. However, in some cases (e.g., offenders who enter the DOC with less than 12 months to serve, or offenders for whom significant new information surfaces after the 12-month deadline), referral at 12 months is not possible.

Transportation of the offender from the place of incarceration to the commitment hearing location is often a significant expense.

The largest expense of the current system is the cost of housing and treatment for civilly committed patients.

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## ALTERNATIVES TO THE CURRENT SYSTEM

The CCSG considered several alternatives to the current system. These are detailed below.

### ALTERNATIVE #1

Take measures to implement conformance to Minn. Stat. 609.1351, which states:

“When a court sentences a person under section 609.1352, 609.342, 609.343, 609.344, 609.345, the court shall make a preliminary determination whether in the court’s opinion a petition under section 253B.185 may be appropriate and include the determination as part of the sentencing order. If the court determines that a petition may be appropriate, the court shall forward its preliminary determination along with supporting documentation to the county attorney.”

#### *Advantages*

- ‘ This statute already exists and it is a matter of implementation.

#### *Disadvantages*

- ‘ This alternative does not lessen the costs of housing and treatment of a committed offender after the offender has served his/her prison sentence. It merely commits the offender at an earlier stage in the process, which might encourage the offender to enter and complete treatment while incarcerated. It is unknown whether this would subsequently decrease the amount of time the offender would be housed and treated at the Minnesota Sex Offender Program.
- ‘ It may not be possible to impact the actions of the court sufficiently to implement the statute. It appears that there currently exists a reluctance to civilly commit an offender who is being sentenced to a correctional facility.
- ‘ There is likely to be an increase in the number of referrals because the offender will not have had the opportunity to complete treatment while

incarcerated.

- ‘ The total number of cases under consideration for commitment throughout the state will increase because for new offenses the commitment issue is addressed at the time of sentencing. Concurrently those who have been previously sentenced and are currently incarcerated will also be subject to commitment review.
- ‘ This alternative also presents a need for more thorough sex offender assessments at the time of the pre-sentence investigation.

### ALTERNATIVE #2

Take measures to increase usage of Minn. Stat. 609.1352 (Patterned Sex Offender Sentencing). An offender may be sentenced to at least double the presumptive sentence, up to the statutory maximum, if the person is found to be a patterned sex offender (by evaluation), a danger to the public, and in need of long-term treatment and/or supervision. According to information supplied by the Minnesota Sentencing Guidelines Commission, only nine offenders were sentenced as patterned sex offenders in 1995 and 1996 combined.

#### *Advantages*

- ‘ This statute already exists and it is a matter of implementation.

#### *Disadvantages*

- ‘ It is difficult to predict the effect of the increased use of the patterned sex offender statute on treatment and housing of committed offenders. This alternative does not lessen the cost of housing and treatment of an offender who is civilly committed after he/she has served a prison sentence.

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### ALTERNATIVE #3

Sentence all sex offenders (or a significant subset, such as all sex offenders who have a prior felony sex offense conviction) to indeterminate sentences. The committee assumes that current statutes provide the commissioner of corrections the authority to require specific programming for sex offenders as well as the authority to determine release dates, conditions of release, and reincarceration for violation of those conditions of release. This alternative allows release dates and possible revocation of parole decisions to be partially determined by degree of successful participation in DOC sex offender programming during incarceration and parole.

#### *Advantages*

- ' This alternative may divert some sex offenders from commitment based upon their programming success in the DOC and close supervision upon release.
- ' This would eliminate pre-hearing holding costs because a release date from a correctional facility could be extended pending outcome of the commitment process.
- ' Offenders would likely be more motivated to enter and successfully complete DOC sex offender treatment programs.

#### *Disadvantages*

- ' Such a measure would set aside one type of offender for indeterminate sentencing.
- ' There would likely be increased pressure in plea bargaining to allow sex offenders to plead guilty to "non-sex" offenses.
- ' The increase in demand for DOC sex offender programs may result in a need for increasing the size, length, and intensity of such programming. This could increase costs to the DOC.
- ' The releasing authority may rely heavily on recommendations from program staff. This indirectly places the program in the position of releasing authority, at least in the opinion of the offender, which distorts the interaction between therapist and offender.

- ' The use of indeterminate sentences for a segment of the criminal offender population is a significant departure from the current sentencing laws (Minnesota sentencing guidelines) and presents the potential for successful constitutional challenge based upon due process issues.
- ' The introduction of indeterminate sentencing may conflict with current enhanced sentencing practices such as patterned sex offender sentencing, conditional release, truth in sentencing, and disciplinary confinement for noncompletion of treatment while under the authority of the DOC.

### ALTERNATIVE #4

**Combine Alternatives #1 (increased civil commitment of offenders at time of sentencing) and #3 (indeterminate sentencing of all sex offenders).** Take measures to implement conformance to Minn. Stat. 609.1351, and sentence all sex offenders to indeterminate sentences. The committee assumes that current statutes provide the commissioner of corrections the authority to require specific programming for sex offenders as well as the authority to determine release dates, conditions of release, and reincarceration for violation of those conditions of release. This alternative allows release dates and possible revocation of parole decisions to be partially determined by degree of successful participation in DOC sex offender programming during incarceration and parole.

#### *Advantages*

- ' Most offenders know of the likelihood of civil commitment early in the process.
- ' If offenders are dually committed to the DOC and the DHS, they have little reason to withhold information regarding their past; consequently, their program participation may improve.
- ' Those offenders who are criminally committed but not civilly committed are serving indeterminate sentences and can be required to complete DOC treatment prior to release.

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### *Disadvantages*

- ' It may not significantly reduce the population of civilly committed offenders or decrease the average length of stay in a DHS facility.
- ' Such a measure would set aside one type of offender for indeterminate sentencing.
- ' There would likely be increased pressure in plea bargaining to allow sex offenders to plead guilty to “non-sex” offenses.
- ' The increase in demand for DOC sex offender programs may result in a need for increasing the size, length, and intensity of such programming. This could increase costs to the DOC.
- ' The releasing authority may rely heavily on recommendations from program staff. This indirectly places the program in the position of releasing authority, at least in the opinion of the offender, which distorts the interaction between therapist and offender.

### **ALTERNATIVE # 5**

#### **Combine Alternatives #1 (increased civil commitment of offenders at time of sentencing) and #3 (indeterminate sentencing of all sex offenders) and include the operation of an additional site of the Minnesota Sex Offender Program.**

The committee assumes that current statutes provide the commissioner of corrections the authority to require specific programming for sex offenders as well as the authority to determine release dates, conditions of release, and reincarceration for violation of those conditions of release. The offender is identified as a likely civil commitment case at the time of sentencing. The commitment process begins immediately following sentencing. Some offenders would be dually committed (civil and criminal) upon entrance to the DOC. These offenders would be encouraged to enter a DOC program fairly early in their sentence and then transfer to the DHS program within two years of their release. Offenders who completed this course of treatment while incarcerated would be moved more quickly through treatment at the Minnesota Sex Offender Program..

Recommended procedures to assess which offenders should be committed at sentencing include:

- ' Utilize psychological and sex offender assessment reports typically conducted prior to sentencing and continue with these assessments as usual.
- ' Administer testing such as the Abel Assessment and/or Plethysmography. This would more clearly identify the offender’s degree of sexual pathology.
- ' Have the DOC civil commitment review coordinator review all cases, gather further information, conduct necessary testing, interview the offender, and then facilitate a report to the court.

### *Advantages*

- ' Most offenders know of the likelihood of civil commitment early in the process.
- ' If offenders are dually committed to the DOC and the DHS, they have little reason to withhold information regarding their past; consequently, their program participation may improve.
- ' Those offenders who are criminally committed but not civilly committed are serving indeterminate sentences and can be required to complete DOC treatment prior to release.
- ' Those offenders who are dually committed would probably be more strongly motivated to participate in DOC programming as well as DHS programming in the DOC facility.
- ' The average length of stay at a DHS facility should be reduced because offenders are receiving initial commitment treatment in a correctional facility.

### *Disadvantages*

- ' Such a measure would set aside one type of offender for indeterminate sentencing.
- ' There would likely be increased pressure in plea bargaining to allow sex offenders to plead guilty to “non-sex” offenses.
- ' The increase in demand for DOC sex offender programs may result in a need for increasing the size, length, and intensity of such programming.

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- ‘ This could increase costs to the DOC.
- ‘ The releasing authority may rely heavily on recommendations from program staff. This indirectly places the program in the position of releasing authority, at least in the opinion of the offender, which distorts the interaction between therapist and offender.
- ‘ In order to achieve operational and procedural consistency between the DOC and the DHS, intensive planning and staff training is necessary to implement the operation of an additional site of the Minnesota Sex Offender Program in a DOC facility.
- ‘ The start-up cost of an additional site of the Minnesota Sex Offender Program in a DOC facility would probably be quite high because DHS program space, accommodations, and resources need to be equivalent to a DHS facility. DOC facilities are not built or modified to house this type of programming. All of the space and resources within DOC facilities currently fully utilized.

### ALTERNATIVE # 6

Provide two sentencing options for judges. When an offender is convicted of first through fourth degree (felony) Criminal Sexual Conduct (CSC), the court may sentence the offender to either a guidelines sentence (e.g., for first degree CSC, 81 to 91 months), or to an indeterminate sentence (as in Alternative #3). This proposal assumes that cases not sentenced presumptively would have an in-depth evaluation (such as is currently done before an offender is sentenced as a patterned sex offender). It also assumes a sentencing hearing with the defendant having due process rights currently available in sentencing and civil commitment hearings. Repeal 609.1351 and 609.1352. Eliminate sentencing guideline durational departures for sex offenders. Eliminate patterned sex offender sentencing and civil commitment of offenders. The DOC and the DHS would be charged with developing appropriate screening, treatment, release, and supervision procedures and programs for indeterminately sentenced sex offenders.

### *Advantages*

- ‘ Offenders would likely be more motivated to enter and successfully complete DOC sex offender treatment programs.
- ‘ This would greatly reduce costs to the DHS (from current projections), as it would eliminate civil commitment of sex offenders.
- ‘ Offenders would likely be more motivated to enter and successfully complete DOC sex offender treatment programs.

### *Disadvantages*

- ‘ Such a measure would set aside one type of offender for indeterminate sentencing.
- ‘ There would likely be increased pressure in plea bargaining to allow sex offenders to plead guilty to “non-sex” offenses.
- ‘ The increase in demand for DOC sex offender programs may result in a need for increasing the size, length, and intensity of such programming. This could increase costs to the DOC.
- ‘ The releasing authority may rely heavily on recommendations from program staff. This indirectly places the program in the position of releasing authority, at least in the opinion of the offender, which distorts the interaction between therapist and offender.
- ‘ Elimination of civil commitment of sex offenders would remove the option of confining high-risk sex offenders for treatment after incarceration. Because of this, some high-risk offenders of the type currently committed would instead be released to the community and pose a danger to public safety.

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## ESTIMATING THE COSTS OF ALTERNATIVES:

In considering the possible costs of these alternatives, the CCSG realized that:

- ' Any savings resulting from implementation of alternatives will occur very gradually. A significant percentage of the offenders projected to be civilly committed within the next 12 years is already currently incarcerated, or will be sentenced prior to the time changes in the law take effect.
- ' Any change aimed at targeting the population of offenders who are civilly committed would have to be focused very narrowly in order to result in a net cost savings to the state. For example, sentencing changes could be instituted which would result in all sex offenders with prior felony

sex offense convictions being sentenced to lifetime incarceration. This would eliminate the need to commit 84 percent of those who are currently committed, and reduce projected civil commitments from approximately 18 per year to about three per year for the next 12 years. However, approximately 100 sex offenders with prior felony sex offense convictions are sentenced to prison each year. Such a change in sentencing would thus result in a rapid increase in the prison population.

- ' In general, any cost savings to the state resulting from adopting any of the above alternatives is due to a decrease in the cost of civil commitment to the DHS. However, it would also result in an increase in the cost to the DOC.

## CONFIDENTIALITY IN SEX OFFENDER TREATMENT

Confidentiality in treatment is an important and complex concept. On the one hand, treatment participants have a right against compulsory self-incrimination. Full disclosures which reveal additional abuse victims may lead to further prosecutions, or to the offender being referred for civil commitment. On the other hand, treatment programs strongly encourage offenders to fully disclose their history of sexually abusing others. It is believed that this self-disclosure is imperative for a full investment in treatment to occur. Full self-disclosure provides complete knowledge of the offender's pattern of offending, which is vital to learning an offender's sexual assault cycle and teaching interventions (commonly referred to as "reoffense prevention"). It also is important that the offender be held fully responsible and accountable for offense behavior, including offenses for which he/she has not been charged or convicted. Finally, it is crucial that additional victims, especially children, receive treatment.

The current practices related to confidentiality in DOC programs and civil commitment referral are:

- ' Upon entry into a treatment program, an offender is required to read and sign a document (see Appendix E) which explains that while honesty and self-disclosure are encouraged, there are limits to the confidentiality of information revealed in treatment. Offenders are informed that therapists are mandated reporters of known physical or sexual abuse, and are warned that clinical file information must be released in the event that a county pursues civil commitment. Other limits to confidentiality are also explained.
- ' Disclosures that occur in treatment can be made without providing specific victim identity. For example, the offender can indicate the age and gender of the victim, indicate what type of general relationship he/she had with the victim, and specify all of the sexual behavior that occurred. In this situation, a mandated report to the authorities may not be warranted because the specific identity of the victim is not provided, yet the offender disclosed vital information to invest in treatment.
- ' In general, offenders who are doing well in sex

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offender treatment as they approach release from prison are not referred for civil commitment.

Counties usually do not pursue such individuals for commitment, as offenders are already demonstrating some success in changing behavior.

- ' Full self-disclosure by an offender in treatment is a two-edged sword. It helps the offender in the treatment process, but if the offender subsequently quits or is terminated from sex offender treatment, disclosure of additional victims may make it more likely that he/she is referred for civil commitment.
- ' Offenders who do not make self-disclosures may avoid treatment altogether, or may enter treatment and keep secrets. Some of these may ultimately be referred, while others may not.

The CCSG heard from offenders who were currently incarcerated and in treatment, and also from civilly committed residents of the Minnesota Sex Offender Program. They acknowledged that decisions concerning self-disclosure were difficult to make, and that they were aware of other offenders who refused to disclose additional victims for fear of being committed or given a higher community notification risk level. One of the civilly committed residents stated that he believed he was committed based in large part on self-disclosures made during DOC sex offender treatment, which he completed. He has one known conviction for a sex offense, but disclosed additional instances of sexual abuse committed when he was younger. He stated that the judge in his commitment trial informed him that these disclosures contributed to the decision to commit him.

The CCSG discussed the option of offering offenders some form of immunity for disclosures made in treatment pertaining to the presence of additional victims. The sentiment of the group was against granting full immunity in both civil and criminal matters to offenders who make self-disclosures in treatment. Reasons cited included:

1. A grant of immunity could send a terrible

message to victims of such crimes, who would see offenders who sexually abused them escape any punishment for their crimes simply because they made the disclosure in treatment.

2. Immunity would diminish accountability for the offender in treatment, and may make such self-disclosures meaningless. If there are no consequences for making self-disclosures, then what is gained by making them? Offenders who make self-disclosures under current practices are taking a chance, and demonstrating a commitment to the treatment process in doing so. They face receiving additional consequences for their behavior. This concept is fully supported in sex offender treatment.

### Study Group Recommendations

1. Maintain current procedures. There do not appear to be reasonable or effective new options in regard to confidentiality pertaining to self-disclosure.
2. Improve procedures to ensure that each offender clearly understands the limits of confidentiality and that this is done on both a group and individual basis.
3. Better explain the civil commitment and end-of-confinement review process to offenders so that they understand the meaning of each process and understand the ramifications of their choice to participate or refuse to participate in sex offender treatment.
4. The CCSG was not able, given time constraints, to fully study the issue of confidentiality in sex offender treatment. If the legislature wishes to study this issue further, the group endorsed appointment of a separate group dedicated solely to this effort. It was believed that the membership of such a group should include sex offender treatment professionals from the DOC and the DHS, judges, prosecuting attorneys, public defenders, Department of Administration data practices staff, as well as members of the Boards of Psychology, Medical Practice, Social Work, etc.

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## SUMMARY OF STUDY GROUP RECOMMENDATIONS

### THE CURRENT SYSTEM

- 1. DOC Referral Process:**  
No changes recommended. The DOC is already implementing the statutory change which moved referrals back from six months prior to release to 12 months prior to release.
- 2. Petition and Trial Process:**  
No changes recommended.
- 3. Minnesota Sex Offender Program:**  
No changes recommended.
- 4. Release Procedures:**

#### *Study Group Recommendation*

*Explore ways to separate funding source for SPP/SDP provisional discharge aftercare and case management from other mental health funding.*

#### *Study Group Recommendation*

*Explore ways to establish appropriation within the DHS; counties may apply for grants to pay for case management and aftercare services for SPP/SDPs on provisional discharge.*

### COMPARISON WITH OTHER STATES

- 1. Predicate Behavior:**  
No changes recommended.
- 2. Persons Qualifying:**  
No changes recommended.
- 3. Mental Condition:**  
No changes recommended.
- 4. Burden of Proof:**  
No changes recommended.
- 5. Trier of Fact:**  
No changes recommended.

- 6. Psychological Evaluation:**  
No changes recommended.
- 7. Rights of Respondent:**  
No changes recommended.
- 8. Evidentiary Issues:**  
No changes recommended.
- 9. Placement of Respondent:**

#### *Study Group Recommendation*

*Amend Minn. Stat. 253B.18, Subd. 1 to require the court to commit the patient to the custody of the commissioner of human services for placement in a secure treatment facility.*

#### *Study Group Recommendation*

*Amend Minn. Stat. 253B.02, Subd. 18A to define a "secure treatment facility" as the Minnesota Security Hospital, the Minnesota Sexual Psychopathic Personality Treatment Center, or another facility operated by the commissioner which has comparable security.*

- 10. Period for Commitment:**

#### *Study Group Recommendation*

*Consolidate the initial commitment and the final determination into a single commitment hearing, thereby eliminating the 60-day review hearing.*

- 11. Periodic Review:**  
No changes recommended.
- 12. Program Location:**  
No changes recommended. SPP/SDPs who are committed only to the DHS should continue to be treated at a DHS facility.

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**CONFIDENTIALITY IN  
SEX OFFENDER TREATMENT**

The consensus of the CCSG was that offenders should not be granted immunity for statements made during the course of sex offender treatment. However, the group did believe that the current system could be improved with adoption of the following recommendations:

***Study Group Recommendation***

*Improve DOC Tennessee-type warnings for offenders entering sex offender treatment.*

***Study Group Recommendation***

*Provide additional education to sex offenders on the civil commitment process, the community notification process, and treatment options.*

If further study of this issue is deemed necessary, the group recommends:

***Study Group Recommendation***

*Appoint a separate group to further study the issue of confidentiality in sex offender treatment. The membership of such a group should include sex offender treatment professionals from the DOC and the DHS, judges, prosecuting attorneys, public defenders, Department of Administration data practices staff, as well as members of the Boards of Psychology, Medical Practice, Social Work, etc.*

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**APPENDIX A**  
**LEGISLATION AUTHORIZING CIVIL COMMITMENT STUDY GROUP**

**From Minnesota Laws 1998, Chapter 367,  
Article 3, Section 15.**

**STUDY ON SEXUALLY DANGEROUS  
PERSONS/PERSONS WITH SEXUAL  
PSYCHOPATHIC PERSONALITIES.**

(a) The commissioner of corrections, in cooperation with the commissioner of human services, shall study and make recommendations on issues involving sexually dangerous persons and persons with sexual psychopathic personalities. The study must examine the current system of treatment, commitment, and confinement of these individuals; financial costs associated with the current system; and the advantages and disadvantages of alternatives to the current system, including indeterminate criminal sentencing and changes to the patterned sex offender sentencing law. In addition, the study must examine how other states have responded to these individuals.

(b) By December 15, 1998, the commissioner shall report on the results of the study to the chairs and ranking minority members of the senate and house committees and divisions having jurisdiction over criminal justice policy and funding. The report must include recommendations on alternative methods of addressing sexually dangerous persons and persons with sexual psychopathic personalities within constitutional limits and while balancing the need for public safety, ensuring that these individuals are treated humanely and fairly, and financial prudence.

**From Minnesota Laws 1998, Chapter 396,  
Section 8.**

**STUDY OF CONFIDENTIALITY OF  
STATEMENTS MADE DURING  
SEX OFFENDER TREATMENT.**

The commissioners of corrections and human services shall include in the report they are required to submit under Laws 1998, chapter 367, article 3, section 16, a recommendation concerning whether and to what extent statements made by sex offenders during the course of sex offender treatment should be treated as confidential. As used in this section, “sex offender” means a person who is required to register under Minn. Stat. 241.166, the sex offender registration act.

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**APPENDIX B**  
**CIVIL COMMITMENT STUDY GROUP MEMBERS**

Name	Title	Agency	Address
Stephen Huot	Director Sex Offender/Chemical Dependency Services Unit	MN Department of Corrections	1450 Energy Park Drive, Suite 200 St. Paul, MN 55108-5219
Anita Schlank	Clinical Director MN Sex Offender Program	MN Department of Human Services	1111 Highway 73 Moose Lake, MN 55767
Scott Johnson	Civil Commitment Review Coordinator	MN Department of Corrections	1450 Energy Park Drive, Suite 200 St. Paul, MN 55108-5219
Frank Milczark	Chief Executive Officer MN Sex Offender Program	MN Department of Human Services	1111 Highway 73 Moose Lake, MN 55767
Bill Donnay	Corrections Program Director	MN Department of Corrections	1450 Energy Park Drive, Suite 200 St. Paul, MN 55108-5219
Carolyn Peterson	Assistant County Attorney	Hennepin County	A-2000 Hennepin County Government Center 3005 6 <sup>th</sup> Street Minneapolis, MN 55487
Ann Alton	Judge Hennepin County District Court	4 <sup>th</sup> Judicial District	C-1253 Hennepin County Government Center Minneapolis, MN 55487
Bonnie Lee	Legal Issues Coordinator	MN Department of Human Services	444 Lafayette Road St. Paul, MN 55155-3826
Alan Held	Assistant Attorney General	Office of the Attorney General	900 NCL Tower 445 Minnesota Street St. Paul, MN 55101-2127
John Stuart	State Public Defender	Public Defender	2829 University Avenue SE Minneapolis, MN 55414

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## APPENDIX C COMMUNITY NOTIFICATION PROCEDURES

Effective January 1, 1997, persons committed as sexually dangerous persons or as a sexual psychopathic personality, regardless of whether the person was convicted of any offense, are subject to the provisions of the Community Notification Act. This requires that an end-of-confinement review committee meeting be held to assign a risk level. The risk level assigned determines the action the local law enforcement agency will take in providing notice to the community of the patient's presence.

Community notification requirements are triggered:

- ' Prior to implementation of pass-eligible status from the Minnesota Security Hospital or prior to implementation of any unsupervised pass from any regional treatment center.
- ' Prior to the transfer out of a secure treatment facility to a regional treatment center.
- ' Prior to provisional discharge.

Community notification does not apply when the patient is being released to a licensed facility where staff are trained in the supervision of sex offenders.

Facility staff must coordinate the end-of-confinement review committee with the facility coordinator and the special review board coordinator to ensure that a risk level is assigned and law enforcement notified in a timely fashion.

At the end-of-confinement review committee meeting, a risk level is assigned and a risk assessment report completed. The DHS is responsible for providing information to the law enforcement agency which has jurisdiction in the area in which the sex offender resides.

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**APPENDIX D**  
**SAMPLE PROVISIONAL DISCHARGE PLAN**

That \_\_\_\_\_ shall reside at \_\_\_\_\_. Phone number: \_\_\_\_\_. That any change in this residence requires the prior approval of the Commissioner of Human Services, after review by the SRB.

1. That \_\_\_\_\_ shall cooperate with \_\_\_\_\_ County Social Services as the designated agency for follow-up services. The frequency and location of contacts are left to the discretion of the designated agency.
2. That \_\_\_\_\_ shall receive follow-up sex offender-specific aftercare at \_\_\_\_\_ and shall provide verification of attendance to the designated agency.
3. That the frequency of contacts is left to the discretion of the treating therapist.
4. That \_\_\_\_\_ shall maintain full-time employment. Current employment is at \_\_\_\_\_.
5. That \_\_\_\_\_ shall totally abstain from the use of alcohol and other non-prescribed drugs.
6. That \_\_\_\_\_ shall cooperate with random drug screens or a Breathalyzer to monitor chemical abstinence when required to do so by the designated agency, or the treatment staff from \_\_\_\_\_.
7. (If applicable:) That \_\_\_\_\_ shall participate in Alcoholics Anonymous meetings on a weekly basis and will provide written verification of attendance to the designated agency.
8. That \_\_\_\_\_ shall not have in his possession any inherently dangerous instruments, including but not limited to knives (other than normal cutlery used for cooking/dining), firearms, explosives and incendiary materials or devices. Exceptions to this include those instruments which are required for use at his work site and tools needed for routine yard work and for the upkeep of his home.
9. That \_\_\_\_\_ shall not leave the State of Minnesota without prior written approval from the Commissioner of Human Services.
10. That \_\_\_\_\_ shall make available to all supervising agencies information on his progress for monitoring purposes.
11. That this provisional discharge may be removed upon documented evidence that \_\_\_\_\_ is not in compliance with the terms of the provisional discharge plan or upon any behavior which may be dangerous to self or others or if \_\_\_\_\_ is showing signs of lapse behavior which may require a return to the program for evaluation or treatment.

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12. Revocation of this provisional discharge may lead to the involuntary return to the Minnesota Sex Offender Program.
13. That the terms and conditions of the provisional discharge plan remain in effect unless the provisional discharge plan is amended, the provisional discharge is revoked, or a full discharge from commitment is granted.
14. That further review will be required by the SRB if this provisional discharge order is not implemented in six months.

## APPENDIX E DOC FORM EXPLAINING LIMITS TO CONFIDENTIALITY

### MINNESOTA CORRECTIONAL FACILITY SEX OFFENDER TREATMENT PROGRAM (SOTP)

#### LIMITS TO CONFIDENTIALITY

##### *Introduction*

Honesty and self-disclosure are encouraged in the treatment process. Failure to be honest about past and current thinking and behavior is likely to prevent an offender from benefitting fully from therapy. Almost all offenders have a more extensive criminal history than that which is reported in their PSI (Pre-Sentence Investigation) or Base File. Residents of the Sex Offender Treatment Program (SOTP) are encouraged to disclose past criminal behavior. Residents should realize, however, that being honest may have consequences. It is thus important that each resident be aware of limits on the confidentiality of information disclosed while in the SOTP. This allows the resident to make informed choices about the disclosure of information.

##### *Clinical File*

Information contained in the clinical file includes (but is not limited to) the treatment plan(s), progress notes and reports, chemical dependency assessment and sex offender assessments, contract agreements, consent forms, progress notes, and treatment summaries. The clinical file may also contain information from the base file (i.e., P.S.I., psychological evaluation, case summary, etc.). A resident can request to view the contents of his clinical file under the supervision of treatment staff. This request must be made in the form of a Kite.

##### *Confidentiality*

Information on residents or former residents of SOTP, which has been disclosed in the treatment process, is classified as Private Data under the Minnesota Government Data Privacy Act.

Residents should be aware that information about them is shared on a regular basis among treatment staff. Treatment staff will also share information with other DOC personnel at their discretion, based on treatment, security and/or community safety concerns.

Information which identifies residents or former residents of the SOTP is not given to persons outside of the Minnesota DOC - except upon signed permission of the resident, or as specified below:

1. If a resident states an intention to seriously harm another person, treatment staff may have a legal obligation to warn the intended victim, or legal authorities.
2. Treatment staff are required by law to report suspected or known child physical abuse, sexual abuse, or neglect to an identifiable child if the abuse has occurred within the past three years and the alleged abuser was in a position of authority over the child.

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3. Treatment staff are required by law to report suspected or known physical or sexual abuse or neglect of any identifiable vulnerable adult. A vulnerable adult is an adult who is mentally or physically impaired.
4. Suicide plans or other life-threatening behavior will be reported to the appropriate authorities.
5. Escape plans, breaches of security, or planned breaches of security will be reported to the appropriate authorities.
6. A judge may issue a Court Order for the release of your clinical records for various court proceedings. Treatment staff will comply with such a Court Order.
7. Supervised Release Agents and outpatient/aftercare treatment providers who contract with the DOC for services may receive a copy of your discharge summary and other clinical file documentation determined relevant to your supervision, ongoing treatment, or aftercare.
8. The ombudsman has access to clinical records when necessary.
9. Staff are required by law to release any requested documentation to the county attorney or Attorney General's Office when civil commitment proceedings have been initiated.
10. Staff are required by law to release information determined relevant to the End-of-Confinement Review Committee for the Committee's purpose of conducting a risk assessment or defending the Committee's risk assessment determination.
11. Staff will release information from the clinical record as required by any federal or state statute not cited above.

I have read, or been read, the above information and understand it. I have been given the opportunity to ask questions and receive explanation.

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Signature of Client

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Date

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Signature of Staff

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Date