

# **Governor's Commission on Sex Offender Policy**

## **Final Report**

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<b>Section I</b> <b>Executive Summary of Recommendations</b>
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When making his appointments to this Commission, Governor Pawlenty asked Members to focus on the current and best practices in six distinct areas: (1) Minnesota's practices for sentencing offenders for criminal sexual conduct; (2) the practices for supervising those with a history of sex offenses; (3) the process for civilly committing offenders under Minnesota's Sexually Dangerous Person (SDP) and Sexual Psychopathic Personality (SPP) statutes; (4) the circumstances under which the placement in health care settings of elderly and disabled persons, who have a criminal history of sex offenses, can be restricted; (5) the procedures for the conditional medical release of inmates, who have a criminal history of sex offenses, to health care settings in the community; and (6) the practice of granting those with a history of criminal misconduct special waivers for later employment in settings that are regulated by the State of Minnesota.

Between September 8, 2004 and January 4, 2005 the Governor's Commission on Sex Offender Policy convened 14 hearings and held 3 off-site seminars. During these meetings the Commission heard from 50 expert witnesses on matters relating to the sentencing, supervision, treatment and registration of sex offenders. (*See*, Appendix C)

In drafting sessions on October 20, November 24, December 1 and January 4, the Commission developed a series of recommendations for review by Governor Pawlenty and the Minnesota Legislature. Briefly stated, the Commission's recommendations are:

**Sentencing Practices:**

The Commission recommends:

- Development of a blended determinate-indeterminate sentencing system for sex offenders. Key features of this plan include improving public safety by doubling of the current statutory maximum sentences for criminal sexual conduct crimes, and vigorous, politically-independent reviews of the offender's response to treatment while in custody.
- Creating a Sex Offender Release Board that would have the authority to review an offender's confinement record, including treatment progress, and all other relevant factors to determine when sex offenders should be released from prison. The Sex Offender Release Board would establish release and supervision conditions for any sex offender on supervised release.
- Increasing the statutory maximum indeterminate sentence to life for those offenders with a prior history of criminal sexual conduct. A potential life sentence maximum for repeat offenders, represents the right balancing of competing public safety interests.

- Increasing the penalty for indecent exposure to an unaccompanied minor under the age of 13 from a gross misdemeanor to a felony. Believing that such exposure crimes represent particularly dangerous sexualizing of young children, and that this conduct is a precursor to very egregious offenses, Commission Members urge the Legislature to meet this conduct with more serious consequences than the current law provides.

### **Supervision Practices:**

The Commission recommends:

- The use – wherever it is practicable – of specialized sex offender caseloads for state and county supervision agents. Specialized training in sex offender supervision techniques and routine experience with the methods and deceptions used by this type of offender, will promote more effective supervision of offenders.
- Granting judges discretion to set aside sex offender registration requirements for a limited class of juvenile offenders. Judges in Juvenile Court should be afforded more discretion to balance the benefits of having particular juveniles register as sex offenders, against efforts to re-integrate those juveniles back into society.
- Establish a layered, three-pronged approach to ensuring the timely disclosure of sex offender registry information. To ensure that health care facilities have all information that is relevant to admission, transfer and abuse prevention decisions, at an early point in the admission process, modify Minnesota law so as to:
  - (1) Codify the current Department of Corrections’ policy – which requires a supervising agent to notify a health care facility if he or she knows that a supervised offender is receiving in-patient care – into statute; thereby making this best practice binding upon all state and local corrections agents.
  - (2) Require local law enforcement agencies to disclose a registrant’s status to the administration of a health care facility, if law enforcement officials are aware that a registered offender is receiving in-patient care.
  - (3) Add to the existing requirements of the Predatory Offender Registry statute a requirement obliging registered offenders to disclose to the administration of any health care facility, upon admittance, his or her status as a registering predatory offender – and punishing the failure to disclose with a felony penalty.
- Establishing an ongoing Sex Offender Policy Board, with members appointed by the Governor to four-year staggered terms. The timeline established for this Commission did not permit development of some needed and useful policy recommendations. This work should continue on with another, formalized panel.

## **Civil Commitment Practices:**

The Commission recommends:

- Developing methods of segregating patients who refuse treatment would improve results. Commission Members believe that if the Minnesota Sex Offender Program (MSOP) is to effectively operate as a treatment setting, those who refuse treatment should be segregated and securely confined.
- Establishing a Continuum of Structured Treatment Options. Commission Members believe that any patients transitioning from civil commitment should be bounded at all times by a strong and mutually reinforcing set of security measures – including supervision agents; highly structured living facilities; and electronic monitoring, Global Positioning Services and polygraph services.
- Replicating the Department of Human Service-Dakota County Community Corrections contract for supervision. When patients who have been civilly committed as Sexual Psychopathic Personalities or Sexually Dangerous Persons successfully complete treatment, and are transitioning back to community settings, they need to be supervised by effective and well-trained corrections agents. The Legislature should formalize these methods in statute, and thereby improve the overall effectiveness, safety and viability of “pass-eligible” status and provisional discharges.
- Amending the felony escape statute to include civil commitment patients who abscond from the treatment program prior to discharge. So as to facilitate the extradition and return of those patients committed under the SDP or SPP laws, who flee before their discharge from the program, the Commission recommends this change in the law.
- Transferring the process of screening of sex offenders for possible civil commitment to an independent panel. Mindful that several bills from the 2004 Legislative Session would have added additional personnel, tenure protections, or both, to the civil commitment review process, the Commission suggests that a Sex Offender Release Board would be well suited to perform this function.
- Encouraging the Minnesota Supreme Court to use existing statutory authority to establish a specialized panel for civil commitments. In the judgment of the Commission, such a statewide judicial panel would result in the development of valuable expertise and efficient economies of scale.
- Transferring the civil commitment transition process to an independent panel. In the Commission’s view, having a cabinet-level official involved in approving patient trips outside of the facility threatens to overly politicize the process. The Commission suggests that the Sex Offender Release Board would be transparent; insulated from political pressure; and trusted by patients, treatment staff and the public.

## **Offender Health Care Practices:**

The Commission recommends:

- Modifying Minnesota law so as to make clear that any registered predatory offender who does not disclose his or her status upon admission to a health care facility, and is subject to transfer or discharge when this fact is later discovered, may not rely upon the anti-discharge protections of state law to remain in the facility. One possible reading of *Minnesota Statutes* § 144A.135 is that it permits predatory offenders to receive a 30-day notice and to remain in health care settings, pending an appeal of their transfer or discharge, even when the health care facility could not adequately account for the added security risk of such patients.
- Modifying Minnesota law so as to make clear that details of a patient’s criminal history that are public information are not given a different and higher classification as confidential medical data when included in the patient’s health care records. The classification and permitted uses of criminal history data should be uniform across settings and agencies – and should not particularly disadvantage health care providers.
- Developing partnerships to provide medical care in a secure setting to those with a criminal history of sex offenses. State government has an interest in developing the infrastructure of willing providers that can deliver health care – at varying levels of security – to those with a criminal history.
- Supporting the development of secure health care settings by having the state assist in the site selection process. In order to overcome local controversies as to the placement of such facilities, state participation in the site development process may be necessary.

## **Conditional Medical Release Practices:**

The Commission recommends:

- Closely tracking the experience of Federal Medical Center-Fort Worth in administering secure hospice care facilities. As the demographics of Minnesota’s inmate population change, the state may find it useful to develop a lower-cost, long-term care facility within the corrections system. The FMC-Fort Worth facility has developed links between its hospice program and the prison's Medical Center that appear promising.

## **Variance and Set-Aside Practices:**

The Commission recommends:

- Streamlining Minnesota’s varied and disparate background check standards with a single, comprehensive standard. One possibility for eliminating gaps and confusion in Minnesota’s various background check processes would be to use the same list of criminal offenses – such as those listed in *Minnesota Statutes* § 245C.15 – as the trigger for employment disqualification.
- Dissemination of a list of the “collateral consequences” that attend conviction of a crime of criminal sexual conduct. Because the various registration requirements, restrictions on legal rights and disqualifications for employment that follow a criminal conviction for sexual misconduct are placed in different sections of Minnesota law, it would be a useful resource for judges, prosecutors, offenders, victims, employers and the public at large to have a short compilation of these consequences in one place.

## **Funding Issues:**

The Commission recommends:

- Moving toward a statewide approach to sex offender management. The Legislature should work toward achieving greater uniformity across Minnesota in supervision practices, treatment options, treatment infrastructure and the assessment of sex offenders.
- Examining in detail how the resources that are spent to prosecute and incarcerate sex offenders compare with the amount of public resources that are available to treat the victims of sex crimes and to prevent further sexual offending. As with other public safety programs, the Legislature should pursue a more uniform set of services across the state.
- Following any statutory changes to sex offender management practices with accompanying budgetary support that is expressed in separate line items. In the interests of transparency and accountability, the Legislature should designate separate budget line items for each of the improvements it makes to the sex offender management system.

## **The Next Frontiers:**

The Commission recommends:

- Increasing attention to the prevention of sex crimes. While the potential long-term cost savings to the public health system from preventing sex crimes are large – as is the potential to avoid suffering by victims – specific strategies on how to break cycles of offending are less clear. The Department of Health’s work on violence prevention is a valuable start; and more should be done to develop, research and discover effective prevention strategies.
- Increasing attention to the rise in the number of sexually dangerous offenders who are committed from the juvenile system. Given the fact that roughly 20 percent of the patients civilly committed to the MSOP as Sexual Psychopathic Personalities or Sexually Dangerous Persons are young men between the ages of 18 to 25, greater emphasis should be placed on early treatment responses to young, sexually-dangerous offenders. The alternative – namely, civil commitments that could span the lifetime of these patients – is both costly and tragic.

## **Section II Formation and Background of the Governor’s Commission on Sex Offender Policy**

In August of 2004, Governor Tim Pawlenty declared that “recent events have highlighted that Minnesota's laws regarding sex offenders need to be improved. We can and should do more to strengthen our laws and policies to better deal with these offenders.”

The recent events referred to by Governor Pawlenty were the abduction and murder of a Minnesota college student, and later, a set of offenses by nursing home patients who had histories of criminal sexual conduct. Continued Governor Pawlenty, “protecting the public is a top priority of state government. We must do everything we can to ensure that our laws and policies provide the best possible tools to deal with sex offenders.”



With this statement, Governor Pawlenty appointed a 12-member, all-volunteer Commission of experienced professionals to review relevant policies and suggest improvements. To assure the public that the Commission’s inquiry would be an “arms-length review” of state and local practices, none of the Members appointed to the Commission were current state policy-makers. (*See*, Appendix E).

Governor Pawlenty asked Members to focus on the current and best practices in six distinct areas: (1) Minnesota’s practices for sentencing offenders for criminal sexual conduct; (2) the practices for supervising those with a history of sex offenses; (3) the process for civilly committing offenders under Minnesota’s Sexually Dangerous Person (SDP) and Sexual Psychopathic Personality (SPP) statutes; (4) the circumstances under which the placement in health care settings of elderly and disabled persons, who have a criminal history of sex offenses, can be restricted; (5) the procedures for the conditional medical release of inmates who have a criminal history of sex offenses to health care settings in the community; and (6) the practice of granting those with a history of criminal misconduct special waivers for later employment in settings that are regulated by the State of Minnesota.

As Justice Esther M. Tomljanovich, Chairwoman of the Commission, summarized: “The issue of sex offenders is certainly a high-profile public concern, but it is also a very complex one as well.” In undertaking its work, Commission Members convened weekly hearings – which included testimony from a wide range of experts, from Minnesota and across the country – as well as detailed reviews of statutes, regulations, scholarly literature, court opinions and study results.<sup>1</sup> The material that follows is the Commission’s summary and assessment of this broad range of items.

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<sup>1</sup> Additional material regarding the Commission’s meetings and work is available on the internet at <http://www.doc.state.mn.us/commissionsexoffenderpolicy/default.htm>

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<b>Section III</b> <b>Sentencing Practices in Minnesota</b>
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### **Background on Determinate Sentencing in Minnesota**

For nearly a quarter-century, Minnesota has been a “determinate sentencing” state. As the label implies, under determinate sentencing, the offender is sentenced to serve a specified number of months in prison.

Ordinarily, under current law, the average offender who is committed to a state correctional institution will serve two-thirds of the pronounced sentence in prison. The remaining one-third of the pronounced sentence will be served by the offender on “supervised release” – a transitional phase, where the offender lives in the community but is under the supervision and control of state or county corrections agents.

Determinate sentences in Minnesota are arrived at through application of the state’s Sentencing Guidelines. The Guidelines establish a narrow range of possible sentences to be imposed by the courts for individual offenders in specific cases. The recommended sentences are based upon matching a specific offense with a score derived from the offender’s prior criminal record. In this way, the guidelines increase punishments upon offenders who have a prior history of misconduct and those who commit more serious offenses.

Minnesota’s sentencing guidelines system became effective on May 1, 1980 – and it quickly became a model for other states and the Federal Government to use in establishing their own determinate sentencing systems.

Key features of the determinate sentencing practice include the ability to: (1) assure the public that offenders who are convicted of similar types of crimes, and who have similar types of criminal records, are similarly sentenced; (2) inform the victims of crime, with some certainty, how long the offender will remain incarcerated; (3) maintain, through a global, system-wide perspective, rough proportionality among criminal sentences; and (4) implement changes to criminal sentencing practice quickly and uniformly throughout the criminal justice system by modifying the state’s Sentencing Guidelines.

### **A Key Shortcoming: When Offenders Serve to Expiration and are Still Dangerous**

Like any complex system, Minnesota’s sentencing practice has its limitations.

To be sure, Minnesota’s determinate sentencing laws provide real value by assuring the public that our state’s criminal sentences are applied evenly, proportionately and without racial animus. Yet, it is also true that the state’s options for handling sex offenders who remain dangerous at the end of their determinate sentences are too limited. The one formal option in these cases is to

attempt to civilly commit the inmate to the Minnesota Sex Offender Program<sup>2</sup> – a matter that can be legally difficult and is not, for constitutional reasons, available in a wide range of sex offense cases. (Further description and recommendations about Minnesota’s civil commitment process can be found in Section V, below.)

For these reasons, the Commission proposes a plan that blends the very best features of Minnesota’s pioneering determinate sentencing laws with other, indeterminate sentencing features that maximize public safety.

### **The Commission Outlines a New Approach**

Under the Commission’s plan, Minnesota’s current Sentencing Guidelines should be the beginning point of any imposed sentence for criminal sexual conduct. Further, the exact amount of time served by any one offender would be indeterminate, up to a new statutory maximum, which would be double that of current Minnesota law. In addition to pronouncing the indeterminate sentence maximum, the sentencing court would also establish a minimum sentence. This minimum sentence would either be the mandatory minimum penalty provided by law for the crime, if any, or two-thirds of the presumptive sentence that has been established for the crime under the current Minnesota Sentencing Guidelines, whichever is greater.<sup>3</sup> Offenders would be eligible to petition for release from prison after serving the minimum sentence, and, if denied release, permitted thereafter to periodically renew the application for release.

For example, a first-time sex offender given the presumptive sentence for Criminal Sexual Conduct in the First Degree, under the Commission’s plan, would serve a minimum of 96 months before being eligible to request release (two-thirds of the 144-month minimum sentence established by Minnesota Law for this crime), but could be held in custody up to a maximum of 60 years. Also important, is that the proposed minimum sentence under the blended approach to sentencing of sex offenders proposed by the Commission in no way guarantees the release from prison of a convicted sex offender at this time, but only marks the beginning date upon which the offender can petition the Sex Offender Release Board to consider the offender’s release. Such release will not occur unless adequate treatment progress has been made and, in the judgment of the Sex Offender Release Board, the offender no longer poses a risk to public safety.

In the view of Commission Members, the move to a blended determinate-indeterminate sentencing system for sex offenses makes good sense; particularly because it solves four key shortcomings of the current sentencing system:

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<sup>2</sup> See, *Minnesota Statutes* § 253B.02, Subdivisions 18b and 18c (2004).

<sup>3</sup> A minority of Commission Members believe that offenders should be eligible to petition the Sex Offender Release Board for release after serving one-half of the mandatory minimum penalty provided by law for the crime or one-half of the presumptive sentence that has been established for the crime under the current Minnesota Sentencing Guidelines. See, Appendix B.

- First, indeterminate sentencing would increase the ability of state correctional officials to hold, in custody, those offenders who present real dangers to the public at large. Offenders who cannot clearly demonstrate success in treatment, and who remain grave threats to public safety, would remain in custody up to the new, heightened maximum sentence.
- Second, an indeterminate sentencing plan would reduce pressures to civilly commit still-dangerous offenders to the more resource-intensive Minnesota Sex Offender Program (“MSOP”), at the end of their sentences. *See*, Section V, below.
- Third, an indeterminate sentencing program increases the incentives for sex offenders to actively participate in sex offender treatment options while in prison. Because of economies of scale, these treatment programs are more cost-effectively provided in a prison setting than they are in the MSOP.
- Lastly, with respect to upward departures for dangerous offenders, an indeterminate sentencing plan clears the constitutional hurdles that were highlighted by the United States Supreme Court in the case of *Blakely v. Washington*.<sup>4</sup> In August and September of 2004, the Minnesota Sentencing Guidelines Commission developed detailed modifications to our state’s sentencing laws so as to address key holdings of that case.<sup>5</sup>

Sharing Governor Pawlenty’s concerns that a crime victim might be required to re-live painful memories each time that their indeterminately-sentenced attacker petitions for release from prison, in their recommendations, Commission Members were eager to balance the competing interests of crime victims and the larger correctional system. Accordingly, in the Commission’s view, the best balancing of these different interests would make six points clear: (1) indeterminately-sentenced offenders would have the opportunity to request a hearing on their release once each year; (2) no Release Hearing would be necessary, if a review of the paper file were sufficient to deny parole; (3) no indeterminately-sentenced offender would ever be released to supervision in the community unless a release hearing were completed; (4) the crime victim would receive sufficient advance notice of the release hearing, if the Board scheduled a hearing on an offender’s request; (5) the crime victim, at the victim’s election, would be permitted to

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<sup>4</sup> In *Blakely v. Washington*, Mr. Blakely had originally been charged with first-degree kidnapping, but the charge was reduced upon reaching a plea agreement. He pled guilty to second-degree kidnapping involving domestic violence and use of a firearm. Under Washington law, second-degree kidnapping was a crime that was punished by a sentence between 49 and 53 months. The Washington statute, however, permitted the judge to impose a sentence above that range upon finding of “substantial and compelling reasons justifying an exceptional sentence.” During the defendant’s sentencing proceeding, the state court judge imposed an “exceptional sentence” of 90 months. On appeal, the United States Supreme Court held that the Sixth Amendment right to jury trial makes unconstitutional the imposition of any sentence above the statutory maximum prescribed by the facts found by a jury or admitted by the defendant. The *Blakely* Court held that beyond the elements of the crime, “every defendant has the right to insist that the prosecutor prove to a jury all facts legally essential to the punishment.” *Blakely*, 124 S. Ct. 2538, 2543 (2004).

<sup>5</sup> *See*, [http://www.msgc.state.mn.us/Data%20Reports/blakely\\_shortterm.pdf](http://www.msgc.state.mn.us/Data%20Reports/blakely_shortterm.pdf) (Short Term Report) and [http://www.msgc.state.mn.us/Data%20Reports/blakely\\_longterm.pdf](http://www.msgc.state.mn.us/Data%20Reports/blakely_longterm.pdf) (Long Term Report).

submit testimony to the Release Board in person or in writing; and (6) if the Board denied earlier requests to schedule a release hearing, at a minimum, an indeterminately-sentenced offender would be permitted one release hearing every three years. In the Commission's view, such a plan would simultaneously provide shelter to crime victims, accord due process and encourage genuine change among offenders.

### **The Commission Proposes a Sex Offender Release Board**

In order to steer incarcerated sex offenders toward meaningful changes in treatment, Commission Members felt strongly that a highly specialized panel would be needed to assess the progress of these offenders. Accordingly, the Commission recommends creation of a Board that would have the authority to review an offender's confinement record (including treatment progress, risk assessment data, psychological evaluations, and all other relevant factors), to determine when sex offenders should be released from prison. An offender would be eligible to petition the Sex Offender Release Board for release from prison after serving the minimum sentence term given by the sentencing judge and, if denied release, could renew the request for release annually thereafter. The Sex Offender Release Board would also set conditions for these same offenders during the period of any supervised release in the community.<sup>6</sup>

Because the work of such a Release Board would involve detailed assessments of psychological and behavioral changes, in cases that could be politically charged, the Commission further recommends that professionals with relevant forensic and sex offender management experience be appointed to the panel and that certain tenure protections be provided to those who serve. In the Commission's view, the Release Board should: (a) comprise five members; (b) provide for three Gubernatorial appointments, including the Chairperson; (c) provide for two appointments to be made by the Chief Justice of the Minnesota Supreme Court; (d) beyond the initial term, provide for staggered, six-year terms for Release Board members; and (e) include sufficient provisions of staff support from the Department of Corrections.

### **The Commission Proposes a Short List of Statutory Changes**

Believing that the greatest and most beneficial advances in Minnesota's sentencing practices could be made by developing and implementing an indeterminate sentencing system, the Commission only recommends a few specific changes to the state's sentencing laws. Those modifications include:

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<sup>6</sup> As a further efficiency, the Commission suggests that a Release Board could undertake useful work immediately if the release violation proceedings for sex offenders were transferred to such a panel. *See, Minnesota Statutes* §§ 243.05 and 244.05 (2004).

- Increasing the statutory maximum indeterminate sentence to life for those offenders with a prior history of criminal sexual conduct. Commission Members believed that their combination of doubling the statutory maximums for Criminal Sexual Conduct, and indeterminate sentencing, would result in very lengthy prison sentences for especially violent first-time criminals. Given the strength of these recommendations, it was further agreed that a possible life-sentence maximum for repeat offenders, represented the right balancing of competing public safety interests.<sup>7</sup>
- Increasing the penalty for indecent exposure to an unaccompanied minor under the age of 13 from a gross misdemeanor to a felony. Believing that such exposure crimes represent particularly dangerous sexualizing of young children, and this conduct is a precursor to very egregious offenses, Commission Members urge the Legislature to meet this conduct with more serious consequences than current law provides.<sup>8</sup>
- Amending the felony escape statute to include civil commitment patients who abscond from the treatment program prior to discharge. So as to facilitate the extradition and return of those SDP or SPP civil commitment patients who flee before their discharge from the program, the Commission recommends this change in the law. (Further detail on this recommendation follows in Section V of this Report.)

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<sup>7</sup> Half of the Commission membership believes that the statutory maximum for certain first-time offenses should be life in prison, in addition to this sanction being applied to repeat offenders. *See*, Appendix A.

<sup>8</sup> One possible refinement to this plan, so as to balance the cost impact of increasing the sentences for this crime, would be to simultaneously reduce the penalty for exposure to accompanied minors over the age of 13 to a misdemeanor. This crime was punished as a misdemeanor as late as 1994. *See*, *Laws of Minnesota*, Chapter 636, Art. 2, § 54 (1994). Yet, because the 1995 change to the law treats all minors under the age of 16, whether accompanied or not, in the same way, it does not properly account for the more serious threat posed by those who expose themselves to unaccompanied young children. *Compare*, *Minnesota Statutes* § 617.23 (2) (2004).

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**Section IV  
Supervision Practices in Minnesota**

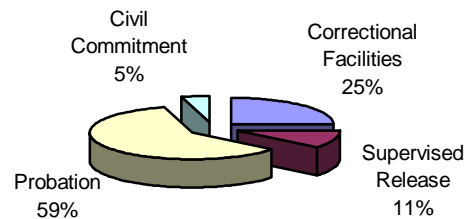
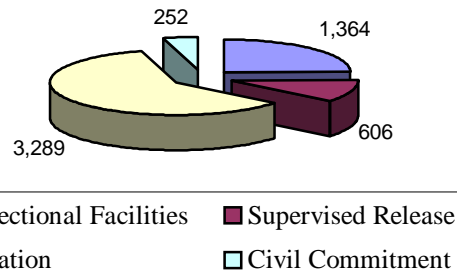
Supervision of sex offenders in the community is a key part of any public safety solution for Minnesota in the near term. First, Minnesota’s sentencing guidelines do not make prison a presumption for all instances of criminal sexual conduct – for some crimes, the guidelines presume that the offender will be sentenced to probation in the community. Indeed, only one-third of those who are convicted of criminal sexual conduct in Minnesota are committed to state prison. Over a fifteen-year period, the number of sex offenders that have been sentenced to prison in Minnesota has hovered between 30 and 38 percent of all convicted sex offenders. Therefore, for the “average offender” some local jail time and probation in the community is the more likely result.

Additionally, and equally important, is that most offenders who have been sentenced to prison under Minnesota’s determinate sentencing laws, will, in all likelihood, serve the last third of their pronounced sentence on supervised release in the community.<sup>9</sup> As of this writing, there are approximately 3,900 offenders with a “governing offense” of criminal sexual conduct that are being supervised in our communities.<sup>10</sup>

Moreover, as prison sentences lengthen, and supervision periods such as “Conditional Release” are extended, the periods that offenders will be under supervision by corrections officials likewise expand.

Because so many sex offenders are being supervised in the community, effective supervision practices are an essential element of public safety.

**Statistical Profile of Sex Offenders in Minnesota**



<sup>9</sup> For offenders committed to the Commissioner of Corrections’ custody on or after August 1, 1993, the period of supervised release is one-third of the total executed sentence pronounced by the court, minus any disciplinary time imposed on the offender in prison. The Commissioner establishes conditions, which the offender must obey during supervised release. If those conditions are violated, the Commissioner may revoke the supervised release and return the offender to prison for a period of time not to exceed the length of time left on the sentence.

<sup>10</sup> The governing offense is the offense that forms the basis of sentencing – even if certain types of misconduct could meet more than one category of criminal sexual conduct.

The good news is that aggressive supervision is a key element in lowering recidivism rates among sex offenders in Minnesota.

Local research confirms this point. In the early 1990s the Department of Corrections undertook tracking studies that suggested that offenders designated as Level III (the highest risk to re-offend) would, as a group, tend to re-offend at a rate between 52 and 63 percent of the time. This early comparison between various sample groups of offenders is shown below.

Later, the Department of Corrections reviewed the subsequent offense history of all sex offenders released in 1997, 1998 and 1999. The Department determined that as of March of 2002 roughly eight percent of the Level III offenders had been rearrested for a sex-related crime. While even one new sex crime in Minnesota is too many, this eight percent figure for Level III offenders compares favorably with the earlier estimates of what re-offense rates would likely be for Level I offenders – those with the least likelihood to re-offend.

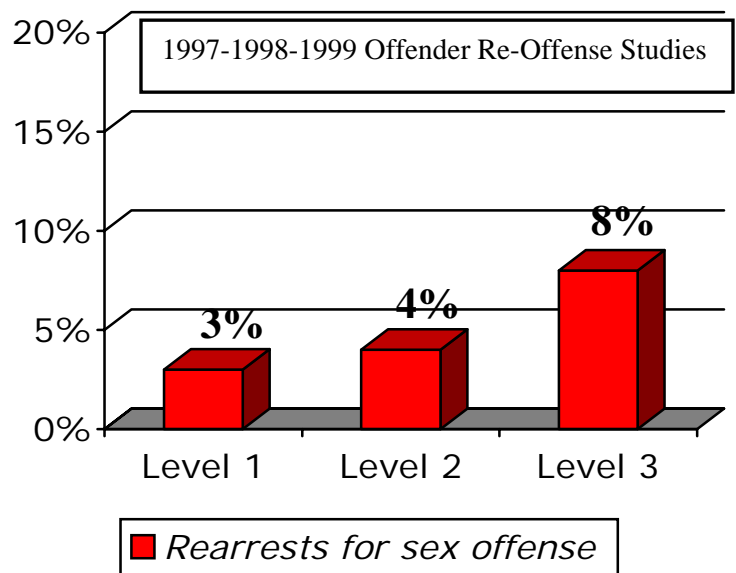
In the Commission’s view, aggressive supervision of offenders is a key part of the explanation of why re-offense rates are not nearly as high as 50 or 60 percent today.

In the Commission’s view, meeting the special public safety challenges that are presented by sex offenders requires experienced and well-trained supervision agents. Skilled agents are needed if communities hope to adequately assess the appropriateness of an offender’s place of residence and employment, restrict the offender’s contact with potential victims and effectively apply restrictions that reduce the likelihood of a re-offense. Elements of close and effective sex offender supervision strategies include:

- monitoring the offender’s activities though frequent, random checks at the offender’s home and place of employment;
- administration of unscheduled polygraph examinations;

**Early Studies Predicted High Recidivism Rates - Yet Actual Recidivism Rates Were Much Lower**

<u>Early Estimates of Recidivism Rates</u>			
Risk Level	Minnesota 1988 and 1990 Sample	Minnesota Validation Sample	North Dakota Validation Sample
1	14%	10%	10%
2	31%	19%	28%
3	61%	52%	63%



- ensuring that the offender is actively engaged in approved treatment programs; and,
- maintaining regular contact with the offender’s family, friends, and other community members, so as to detect risk factors for re-offending.

As the Commission learned, the reasons why intensive supervision works to prevent subsequent offenses is that specially-trained agents can often detect preparations for a re-offense, or elements of offender’s pattern of criminal offenses, before a new crime is committed. Strict restructuring of the offender’s terms of release, or returning the offender to prison following a violation, is very effective in preventing new crimes. Still, notwithstanding the successes that Minnesota has enjoyed, more can be accomplished. In the Commission’s view, a few reforms show special promise.

### **The Commission Urges Increased Use of Specialized Sex Offender Caseloads**

While acknowledging that many Community Corrections departments across Minnesota have “blended” caseloads that include sex offenders and other types of offenders, and they have successfully managed these caseloads, Commission Members believe that specialized caseloads is the better practice. Accordingly, where it is practicable and possible, the Commission urges the increased use of specialized caseloads for supervision agents. The witnesses testifying before the Commission were in broad agreement that specialized training in sex offender supervision techniques and routine experience with the methods and deceptions used by this type of offender, combines into a better supervision practice.<sup>11</sup>

### **The Commission Urges Modifications to Juvenile Offender Registration Practices**

The Commission supports a developed proposal by the Minnesota County Attorneys Association and the State Public Defender to give juvenile court judges greater discretion to avoid sex offender registration for a limited class of juvenile offenders. Not all juveniles convicted of sex crimes – particularly those committing less serious crimes – should be required to register as sex offenders. In the Commission’s view, judges should be afforded some discretion to evaluate the usefulness of this requirement in cases that do not involve either the certification of the juvenile as an adult or extended juvenile jurisdiction (EJJ).

Accordingly, the Commission recommends that Predatory Offender Registry requirements for juveniles convicted of sex crimes be modified so as to provide that registration would only apply to juveniles if any of five conditions was also satisfied: (1) the juvenile was certified as an adult for the criminal proceeding; (2) the juvenile was on Extended Juvenile Jurisdiction when the sex offense was committed; (3) the sex offense was part of a predatory pattern that had criminal sexual conduct as its goal; (4) the juvenile used a dangerous weapon in the commission of the

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<sup>11</sup> See also, *Community Supervision of the Sex Offender: An Overview of Current and Promising Practices*, at 9 (Center for Sex Offender Management, January 2000).

offense; or (5) the judge, based upon factors set forth in current statute, determines that the juvenile is a danger to public safety.

### **The Commission Encourages Clarification of the Sex Offender Registration and Community Notification Laws**

Among the thorniest and most difficult issues faced by the Commission during its review was access to health care by those who are listed on Minnesota’s Predatory Offender Registry. In this area, more than others considered by the Commission, the tensions between state policy and federal law were the most acute.

While the Commission describes these matters in greater detail in Section VI below, one element of this problem relates directly to supervision practice: How should health-care settings meet the dual obligations of providing care to those who need it, while also protecting against the risk of harm presented by these offenders?

At its core, the problem relates to access and use of critical information. If, for example, John Smith is a registered sex offender, out of prison on supervised release, and he later presents himself to City Hospital for care, the admission desk at the hospital is not likely to know about Mr. Smith’s registration status or offense history. Under such circumstances, the hospital’s ability to develop an adequate abuse prevention plan that guards against misconduct by Mr. Smith is quite limited.<sup>12</sup>

The Commission did consider, but later rejected, proposing a requirement that health care facilities licensed by the State of Minnesota undertake a criminal background check of each new patient presenting himself or herself for admission. The suggestion was rejected as impractical for a number of reasons – not least among them the training and infrastructure that would be required before health care facilities could adequately access and use this information, as well as the complicated safeguards that would be needed to assure that Predatory Offender Registry data would be protected from unauthorized disclosure or alteration. Also a significant factor for the Commission was the volume of persons and records that would be implicated by a pre-admission background search requirement. The Commission received testimony that Minnesota nursing homes admit approximately 40,000 patients each year. If hospital admissions were added to the file search requirement, approximately 600,000 background checks would be needed each year.<sup>13</sup>

In the Commission’s view, the better practice would be to add to the existing registration requirements of the Predatory Offender Registry statute an additional requirement obliging the offender to disclose to the administration of any health care facility upon admittance, his or her

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<sup>12</sup> See, *Minnesota Statutes* § 626.557, Subdivision 14 (2002) (“Each facility... shall establish and enforce an ongoing written abuse prevention plan. The plan shall contain an assessment of the physical plant, its environment, and its population identifying factors which may encourage or permit abuse, and a statement of specific measures to be taken to minimize the risk of abuse....”) (emphasis added). See, also, *Minnesota Statutes* § 243.166 (2002) (requirement for abuse prevention plans).

<sup>13</sup> See, Hospital Admissions by Type (Minnesota Department of Health, 2000) (<http://www.health.state.mn.us/divs/hpsc/dap/hccis/admissions00.pdf> ).

status as a registered predatory offender. The failure of the offender to so disclose could result in prosecution of the registrant or revocation of any supervised release status.

Likewise, in the Commission's view, there are no circumstances where the information that a particular patient has been designated as a predatory offender that would not be relevant and useful to abuse prevention plans. Yet, under *Minnesota Statutes* § 244.052, law enforcement has complete discretion as to whether it will disclose to health care administrators the fact that a given patient is a Level II offender.<sup>14</sup> Moreover, as to Level I offenders, the same statute forbids disclosure of the offender's status by law enforcement to hospital administrators.<sup>15</sup> Under the current law, health care administrators are only assured of learning of the placement of Level III offenders, as broad, community notification is undertaken.

The benefits of broader disclosure policy are clear. Armed with this added information at an early point in the admission process, the health care facility could effectively make all of the admission, transfer and abuse prevention decisions that are required under state and federal law.

The Commission recommends:

- Establishing a layered, three-pronged approach to ensuring the timely disclosure of sex offender registry information. So as to ensure that health care facilities have all information that is relevant to admission, transfer and abuse prevention decisions, at an early point in the admission process, modify Minnesota law so as to:
  - (1) Codify the current Department of Corrections' policy<sup>16</sup> – which requires a supervising agent to notify a health care facility if he or she knows that a supervised offender is receiving in-patient care – into statute; thereby making this best practice binding upon all state and local corrections agents.
  - (2) Require local law enforcement agencies to disclose a registrant's status to the administration of a health care facility, if law enforcement officials are aware that a Level I, Level II or Level III offender is receiving in-patient care. In the Commission's view, there are no circumstances where this information would not be relevant and useful to abuse prevention plans, and therefore should be disclosed by law enforcement if they are in a position to do so.

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<sup>14</sup> See, *Minnesota Statutes* § 244.052 (4) (b) (1) ("if the offender is assigned to risk level II, the agency also may disclose the information to agencies and groups that the offender is likely to encounter for the purpose of securing those institutions and protecting individuals in their care while they are on or near the premises of the institution") (2004).

<sup>15</sup> See, *Minnesota Statutes* § 244.052 (4) (b) (1) ("if the offender is assigned to risk level I, the agency may maintain information regarding the offender within the agency and may disclose it to other law enforcement agencies. Additionally, the agency may disclose the information to any victims of or witnesses to the offense committed by the offender. The agency shall disclose the information to victims of the offense committed by the offender who have requested disclosure and to adult members of the offender's immediate household") (2004).

<sup>16</sup> See, e.g., DOC Policy 203.205 (2004) ("Predatory Offender Management In a Nursing Home").

- (3) Add to the existing requirements of the Predatory Offender Registry statute a requirement obliging registered offenders to disclose to the administration of any health care facility, upon admittance, his or her status as a registering predatory offender – and punishing the failure to disclose with a felony penalty.
- Modifying Minnesota law so as to prohibit the holding of Level III community notification meetings in a health care facility. Anticipating the future case where a Level III offender is receiving long-term care at a particular site, the Commission believes that it is not appropriate to conduct such a meeting at the facility. Community members and others should be notified at a nearby site in the community.

### **The Commission Proposes a Sex Offender Policy Board**

During its survey of best practices, Commission Members were favorably impressed by the efforts in Colorado and Indiana to regularize and institutionalize the process of updating sex offender management practice. Colorado, for example, has had a Sex Offender Management Board to undertake development of uniform standards in the assessment, treatment and monitoring of sex offenders, since 1992. Colorado has recognized that the methods for managing and treating sex offenders are developing over time, and so it has impaneled the Management Board to follow developments in the scientific literature and to update the state's practices as necessary. Also, by creating a regular Policy Board, Colorado has found that changes in their law and procedures more often follow recognized improvements in best practices, than they do high-profile criminal cases. Colorado's most recent set of state standards is a testament to the breadth and seriousness of its ongoing work, as well as that state's leadership role in public safety.<sup>17</sup>

In the Commission's judgment, this is a model that Minnesota should likewise embrace. Particularly so, because there were several matters presented to the Commission as to which a single, comprehensive state policy would have meant better results; yet the timeline established for this Commission did not permit development of those policies in this setting. This work should continue on with another, formalized panel.

For instance, several witnesses testified as to both the barriers faced in Minnesota to the widespread use of polygraph services in the supervision of sex offenders, and the success that other states have had in increasing the availability of this technology. Polygraph services can be a valuable tool when delving into an offender's history of criminal sexual conduct – whether reported or unreported – and structuring community supervision plans accordingly. The New Mexico Sentencing Commission detailed in a 2003 Report, the wide range of offense information that can be made available to law enforcement through use of the polygraph:

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<sup>17</sup> See, *Standards and Guideline for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders* (Colorado Sex Offender Management Board, 2004)  
[http://dcj.state.co.us/odvsom/Sex\\_Offender/SO\\_Pdfs/ADULTSDJUNE2004.pdf](http://dcj.state.co.us/odvsom/Sex_Offender/SO_Pdfs/ADULTSDJUNE2004.pdf)

The frequency of sexual offense behaviors committed by sex offenders, when revealed through self-reporting and polygraph exams, is often many times higher than would be expected or identified through official criminal histories. A report on 23 rapists and 30 child molesters who were undergoing institutional treatment found that while in treatment, the rapists admitted to committing 5,090 various sex offenses, including 319 child molestations and 178 rapes, though each rapist had an average of 1.9 arrests for sex offenses. The child molesters had an average of 1.5 arrests each, though as a group admitted to 20,667 individual offenses including 5,891 child molestations and 213 rapes of adult women. A Colorado Department of Corrections study used polygraph examinations of incarcerated sex offenders and found that, on average, each offender admitted to committing 521 sex offenses on 182 victims in the years before they were identified as a sex offender. Of all of these offenses, less than 1% were reported in the offenders' official criminal records.<sup>18</sup>

While Commission Members surmise that greater use of polygraph services in Minnesota would improve our supervision practice, and further depress recidivism rates, the best methods to increase the availability and affordability of these services are not clear. A new panel, however, could help to identify the right methods to pursue.



Likewise, in Commission testimony, Hennepin County officials outlined the special challenges that it faces because large numbers of offenders on supervised release relocate to that community. The pyramiding issues that arise out of developing, and then distributing throughout the state, housing opportunities for offenders in transition, was beyond this Commission's charge; and yet it would be a worthwhile and important set of policy challenges for a new panel.

Similarly, while the Department of Corrections has completed a thorough set of regulatory standards for the operation of residential treatment centers (*see, e.g., Minnesota Statutes* § 241.021 (1) (2004) (“Licensing and supervision of institutions and facilities”)), no certification standards exist for the operation of outpatient facilities providing services to sex offenders. As the Office of the Legislative Auditor remarked in 1994:

Over 60 percent of outpatient providers are not regulated by the state, except through professional licensing boards. Current licensing requirements do not contain specific qualifications for individuals providing sex offender treatment on an outpatient basis, yet two-thirds of the offenders receiving treatment were treated by outpatient providers. According to 30 percent of the probation officers we interviewed, their local outpatient

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<sup>18</sup> *See, Research Overview: Sex Offender Treatment Approaches and Programs*, at 6 (New Mexico Sentencing Commission, 2003) (footnotes omitted).

treatment program was inadequate due to poorly trained counselors, narrow program focus, or lack of intensity.

*Sex Offender Treatment Programs*, at xix (Office of Legislative Auditor, 1994). In the Commission's view, a Sex Offender Policy Board could help establish the missing treatment standards – a role that has been accomplished by the Board in Colorado.

While mindful that the Department of Human Services is considering impaneling independent Treatment Advisory Boards, in order to review the practices and protocols now in use at the Minnesota Sex Offender Program, Commission Members believe that this is a function that would be well suited to an independent policy board. A thorough review of treatment practices, and a candid comparison of Minnesota's practices to those in other states, requires both the professionalism and independence that a Policy Board could provide.

Lastly, Commission Members were especially impressed by the testimony of Indiana officials who recounted the success of their semi-annual Stakeholder Conference. Indiana officials detailed how they were able to develop early and far-reaching agreements on the development of sex offender policy and the contours of new legislation, simply by convening a Conference twice each year among key policymakers. In Indiana, the Stakeholder Conferences were scheduled so as to preview legislative proposals, receive helpful feedback, and solicit support for new initiatives from affected constituencies. Indiana officials reported that the Conferences help to develop working relationships among officials and to reduce conflict in policymaking relating to sex offenders. In the view of Commission Members, a semi-annual conference hosted by the state's Sex Offender Policy Board would be a useful and helpful contribution.

For all of these reasons, the Commission recommends:

- Establishing an ongoing Sex Offender Policy Board, with members appointed by the Governor to four-year, staggered terms to undertake the development of policy and professional standards.

The Commission further believes that the representative model used by Governor Pawlenty when naming this Commission, would work well for a successor Policy Board. The Commission recommends establishing a Policy Board with the broad range of training and professional experience as this Commission had – namely, Policy Board members with backgrounds in corrections, criminal law, health care, law enforcement, psychology, sex offender treatment, and victim services.

## **Section V**

### **Civil Commitment Practices in Minnesota**

As early as the 1930s, states began efforts to identify and segregate sex offenders who suffered from mental disorders from other offenders. Civil commitment statutes – often referred to as Mentally Disordered Sex Offender Statutes, or Sexual Psychopath Laws – soon followed. The State of Michigan was the first state to pass such legislation in 1937. Historically, these statutes had two purposes: First, to offer mentally ill offenders hospitalization in lieu of imprisonment; and second, to provide greater protection to the public at large by committing to secure hospitals those offenders whose psychological disorders blocked the ordinary paths to rehabilitation. By the 1960s, most of the states in the Union had enacted some form of civil commitment.

### **Minnesota’s Two Civil Commitment Statutes**

The State of Minnesota uses two subdivisions of the Minnesota Commitment Act to civilly commit sex offenders for treatment – the Sexual Psychopathic Personality provision and the Sexually Dangerous Person provision. A court may commit a person for sex offender treatment if it determines that the individual is a “Sexual Psychopathic Personality,” a “Sexually Dangerous Person,” or both.

A Sexual Psychopathic Personality is a person who, as a result of a mental or emotional condition: (1) has engaged in a “habitual course of misconduct in sexual matters;” (2) has an “utter lack of power to control the person's sexual impulses;” (3) and, as a result of this inability to control his or her behavior is “dangerous to other persons.”<sup>19</sup>

A person can also be committed as a Sexually Dangerous Person. Unlike the Sexual Psychopathic Personality provision, a judge does not have to find that the person has an “inability to control the person's sexual impulses.” A Sexually Dangerous Person means a person who: (1) has “engaged in a course of harmful sexual conduct” that creates a “substantial likelihood of serious physical or emotional harm to another;” (2) the person has a sexual, personality or mental disorder; and (3) the person is likely to engage in harmful sexual conduct in the future.<sup>20</sup>

Indefinite civil commitment of sex offenders has always been controversial. From the days immediately following enactment, these statutes have faced continuous and vigorous challenges on constitutional grounds. Sometimes, the Courts have responded by narrowing these statutes. For example, recognizing that indefinite civil commitment represents a dramatic limitation on a

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<sup>19</sup> See, *Minnesota Statutes* § 253B.02, Subdivisions 18b (2004).

<sup>20</sup> See, *Minnesota Statutes* § 253B.02, Subdivisions 18c (2004).

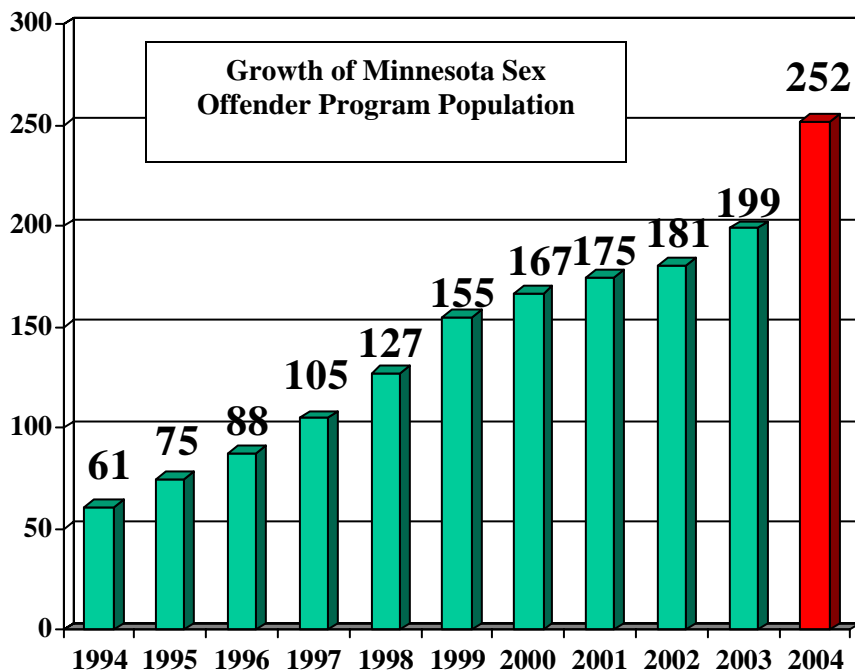
patient’s liberty, the United States Supreme Court insists that the higher standard of “clear and convincing” proof must be met before a person may be placed unwillingly into confinement.<sup>21</sup>

Moreover, civil commitment is resource-intensive. The reason is plain – for constitutional, statutory and regulatory reasons the MSOP operates like other treatment facilities in the state; it does not operate like a prison. While the MSOP does have rigorous security regimens, it has staffing ratios – approximately 1.66 staff for each patient – and rosters of treatment professionals that more closely resemble local hospitals than correctional facilities. These arrangements necessarily result in a higher per-diem cost.

Yet proponents of an aggressive civil commitment program are quick to assert that the MSOP represents a very valuable public safety “bargain” for Minnesota. As one Commission witness pointed out, for a few dollars per taxpayer the MSOP provides a year’s worth of secure treatment for the state’s most violent and dangerous sexual offenders. For proponents of civil commitment, even a high-cost program measures favorably against the avoidance of further victimization and misery.

**Limited Options**  
**Constrain the Civil**  
**Commitment Program**

In the Commission’s view, our state’s system of civilly committing highly disturbed and dangerous predators is of great value and should be maintained.



In the Commission’s view, the proper understanding of civil commitment is that it is just one part of a broad and segmented continuum of sex offender management services. This continuum extends from civil commitment of some patients in the Minnesota Sex Offender Program, at one end, to intensive supervision in the community of other patients, at the other end.

<sup>21</sup> See, *Addington v. Texas*, 441 U.S. 418, 425 (1979) (“[The state] has authority under its police power to protect the community from the dangerous tendencies of some who are mentally ill.... Loss of liberty calls for a showing that the individual suffers from something more serious than is demonstrated by idiosyncratic behavior. Increasing the burden of proof is one way to impress the factfinder with the importance of the decision and thereby perhaps to reduce the chances that inappropriate commitments will be ordered.”)

Even within the MSOP, not all patients can be classified in the same way. Approximately 20 percent of those who have been civilly committed – are not, as is their right, participating in treatment. At best, these 50 patients account for a considerable amount of state resources each year but are not making progress in any way. At worst, many of those who refuse treatment also seek to block the progress and positive changes being made by fellow patients.

### **As it Plans Budgets and New Construction, the Commission Urges the Legislature to Consider Development of a Broader Continuum of Services**

In the view of the Commission, a broader continuum of services could address these dual problems. Steps toward developing this broader array of services include:

- *During the Commitment Process:* Developing methods of segregating patients who refuse treatment would improve results. Some of the higher costs incurred by the MSOP, when compared to other secure settings, follow from staffing arrangements and design features that are required in a treatment facility. Commission Members believe that if the MSOP is to effectively operate as a treatment setting, those who refuse treatment should be segregated and securely confined. Moreover, as it is with the successful Department of Human Services – Department of Corrections collaborative at the Moose Lake facilities, Commission Members believe that a similar partnership between the agencies could result in lower-cost, secure containment of those patients who refuse treatment.
- *Near the End of the Commitment Process:* Establishing a Continuum of Structured Treatment Options. Commission Members were concerned that as civil commitment patients make their transition back into the community there are no highly-structured treatment facilities providing supervised living arrangements for patients in transition. Commission Members believe that a better model would be to have a series of treatment settings – beginning at the Minnesota Sex Offender Program, but proceeding along a true continuum – each of which included vigorous security regimens. Commission Members believe that any patients transitioning from civil commitment should be bounded at all times by a strong and mutually-reinforcing set of security measures; including supervision agents; highly structured living facilities; and electronic monitoring, Global Positioning Services and polygraph services.
- *Near the End of the Commitment Process:* The DHS Dakota County Community Corrections contract for supervision services is a good model and should be replicated. For all of their talents and skills, social workers and psychologists do not have the specialized training to be effective supervision agents. When patients who have been civilly committed successfully complete treatment, and are in transition back to community, they need to be vigorously supervised by well-trained agents. On the one occasion where supervision of a patient on provisional discharge by local corrections officials was tried, it worked well. Yet, this kind of arrangement may not come to pass again. No statute or regulation obliges local corrections officials to accept these patients, and the risks they represent, on to their supervision caseloads – even for a fee. For that

reason, the Legislature should formalize these methods in statute, and thereby ensure that there are effective controls when civilly committed SDP or SPP patients make their transitions back to the community.

- *Near the End of the Commitment Process: Amend the felony escape statute to include absconding while subject to a civil commitment.* So as to facilitate the extradition and return to Minnesota of SDP or SPP civil commitment patients who flee before their final discharge, the Commission recommends this change in the law. Commission Members urge the Legislature to meet this unauthorized – and potentially dangerous conduct – with more serious consequences than our current law provides.<sup>22</sup>

### **Greater Insulation from Political Pressure Would Improve the Civil Commitment Process**

There are no two ways about it: Those patients who have been civilly committed to the Minnesota Sex Offender Program are, by definition, the least able to control their sexually predatory behavior. The dangerousness of this population obliges very aggressive treatment regimens and confinement from the rest of society.

Yet, it is also true that for a variety of constitutional, budget and therapeutic reasons, those who have made progress in treatment should have an expectation that their confinement in civil commitment will end one day. In the Commission's view, the best civil commitment process would be one that is better insulated from political pressures.

- *The Legislature should transfer the process of screening of sex offenders for possible civil commitment to an independent panel.* Under *Minnesota Statutes* § 244.05 (7), the Commissioner of Corrections makes “a preliminary determination whether, in the commissioner's opinion” a civil commitment petition “may be appropriate.” Mindful that several bills from the 2004 Legislative Session would have added additional personnel, tenure protections, or both, to the civil commitment review process, the Commission suggests that the Sex Offender Release Board proposed in Section III of this Report would be well suited to perform this function.<sup>23</sup>
- *The Legislature should encourage the Minnesota Supreme Court to use existing statutory authority to establish a specialized panel for civil commitments.* Under *Minnesota Statutes* § 253B.185 (4), the Minnesota Supreme Court is authorized to “establish a panel of district judges with statewide authority to preside over commitment proceedings of sexual psychopathic personalities and Sexually Dangerous Persons.” The court, however, has never seen fit to do so. In the judgment of the Commission, such a statewide judicial panel would result in the development of valuable expertise and efficient economies of scale.

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<sup>22</sup> Compare, *Minnesota Statutes* § 253B.15 (5) (2004).

<sup>23</sup> Compare, Section III above with Senate Files 1848, 2008, 2548 and House Files 2028 and 2876 (2004).

- The Legislature should transfer decisions regarding the transition of civilly committed sex offenders to an independent panel. Under *Minnesota Statutes* § 253B.18, ad hoc Special Review Boards are convened by the Department of Human Services to hear “all petitions for discharge, provisional discharge, and revocation of provisional discharge” and “make recommendations to the commissioner concerning them.” In the view of the Commission, having a cabinet-level official involved in approving passes for patient trips outside of the facility, and for provisional discharges, threatens to overly politicize the process. The Commission suggests that the Sex Offender Release Board proposed in Section III of this Report would be well suited to perform this function.<sup>24</sup> Such a panel would be transparent and insulated from potential political pressure.

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<sup>24</sup> Compare, Section III, above.

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## **Section VI Offender Health Care Practices in Minnesota**

At first glance, it may appear that the public only believes in one method of enhancing public safety: Longer prison sentences.

In truth, however, public attitudes about crime and punishment are more complex. There are a number of studies that suggest that when citizens have an opportunity to learn about different policy options, and to help chart the direction that these policies will take, they can support a wide range of approaches to public safety problems. In states as diverse as Alabama, North Carolina, New Hampshire, Pennsylvania and Vermont, researchers have found that there can be broad support for different alternatives – one need only to take the time to ask.<sup>25</sup>

In the view of the Commission, it is this kind of openness to innovation that is required now – particularly as to the difficult set of issues surrounding offender health care. To be sure, in this Section, and throughout the remainder of this Report, the Commission recommends policy options that include segregating and containing some sex offenders for very long periods of time. But that is not the whole story of this Report. Like the views of the broader public, the Commission’s recommendations represent a broad and diverse set of problem-solving strategies.

### **Segregating Ex-Offenders From Non-Offenders is Not Likely in the Near Term**

Even if it could be agreed that all of those who have a criminal history of sex offenses should be segregated from “everyone else,” when accessing health care, this would be difficult to accomplish.

The sheer numbers involved make this plain. There are approximately 13,000 registered offenders in Minnesota – roughly 4,000 of which are currently being supervised in the community.<sup>26</sup> In the coming year, approximately 900 sex offenders will reach the end of their confinement in prison and begin new periods of supervised release. Minnesota does not now have a separate infrastructure of hospitals, nursing homes and assisted-living facilities to serve those with criminal histories. Accordingly, the state needs a set of near-term and longer-term options that better reflects our current circumstances.

### **Improving the Current Practices**

Commission Members believe that, at least in the near-term, offenders who are not incarcerated will need to access health care from community settings. Accordingly, the Commission focused

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<sup>25</sup> See, *Public Opinion and the Criminal Justice System: Building Support for Sex Offender Management Programs*, at 3 (Center for Sex Offender Management, April 2000).

<sup>26</sup> For additional detail on the supervision of offenders in the community, see Section IV, above.

upon methods of making community-based delivery of health care safer and more sensible. The Commission recommends four key improvements to the state’s current practices:

- Obliging law enforcement officials to disclose to health care facilities the presence of any registered offender receiving in-patient care. (See, Section IV above).
- Adding to the existing requirements of the Predatory Offender Registry statute, an additional requirement obliging these offenders to disclose to the administration of any health care facility, upon admittance, his or her status as a registered predatory offender. As discussed in greater detail in Section IV above, if health care facilities have this information at an early point in the admission process, they can effectively make the admission, transfer and abuse prevention decisions required under state and federal law.
- Modifying Minnesota law so as to make clear that any registered predatory offender who does not disclose his or her status upon admission to a health care facility, and is subject to transfer or discharge when this fact is later discovered, may not rely upon the anti-discharge protections of state law to remain in the facility. One possible reading of *Minnesota Statutes* § 144A.135 is that it permits predatory offenders to receive a 30-day notice and to remain in health care settings, pending an appeal of their transfer or discharge, even when the health care facility could not adequately account for added security risk of such patients. Facilities should not be obliged to take a “wait and hope for the best” strategy when it comes to non-disclosing predatory offenders.
- Modifying Minnesota law so as to make clear that details of a patient’s criminal history that are public information are not given a different and higher classification as confidential medical data when included in the patient’s health care records. The classification and permitted uses of criminal history data should be uniform across settings and agencies – and should not particularly disadvantage health care providers.

### **Developing Infrastructure with Willing Partners**

Looking forward into the future, the Commission believes that the development of some additional and separate facilities, aimed at treating those who still present a risk of re-offending, makes sense.

The Volunteers of America in Minnesota detailed a “concept plan” to address the medical needs of sex offenders in three different categories – those who were on supervised release following prison; those who were on probation; and those who were not on any form of supervision, but whose sex offense history was such that other facilities regarded them as “too risky” to serve. The concept for this kind of specialized and secure health care facility would include: (1) A closer segmenting of living units according to the medical and security needs of patients, than may be possible in state institutions today; and (2) voluntary agreements by the patients to receive services in a setting that includes secure perimeter fencing, staff escorts for all patients who travel between buildings, and the wearing of wristband monitoring devices while admitted to the facility.

Similarly, Liberty Healthcare detailed how, in several different states, it is offering private-sector alternatives to government-run health care facilities for offenders.

Commission Members were favorably impressed by the testimony of the officials from the Volunteers of America and Liberty Healthcare, and of the work of those two corporations in other states. No doubt there are other providers that would be willing to deliver health care services in Minnesota to ex-offenders in secure settings.

Accordingly, the Commission recommends:

- Developing partnerships to provide medical care in a secure setting to those with a criminal history of sex offenses. State government has an interest in developing the infrastructure of willing providers that can deliver health care – at varying levels of security – to those with a criminal history.
- Supporting the development of secure health care settings by having the state assist in the site selection process. In order to overcome local controversies as to the placement of such facilities, state participation in the site development process may be necessary.

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## Section VII

### Conditional Medical Release Practices in Minnesota

As of January 1, 2004, Minnesota had 622 inmates in custody that were age 50 or older – roughly 7.5 percent of its entire inmate population.<sup>27</sup> As a percentage of the total inmate population, this number is on the rise in Minnesota and other states. Nationally, the number of inmates over age 50 has more than doubled in the last 10 years.

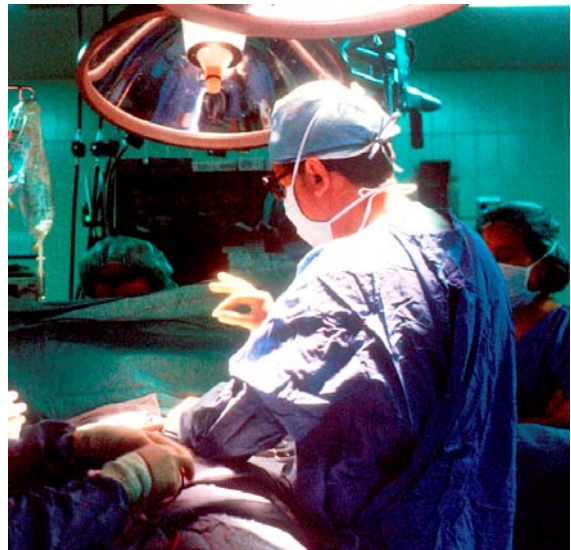
This aging of the prison population is the result of a number of factors: the overall graying of the “baby boom” generation; sentencing reforms which include longer sentences and significant mandatory minimum terms; and an increasing number of older people being convicted of serious violent crimes.

For Minnesota, and other states around the nation, an older prison population has significant policy and budget implications for the future. Not only do older inmates tend to require more intensive health care resources, they present both different health care needs than younger inmates and a wider range of health care needs than younger offenders.

#### **Avoiding Inmate Health Care Expenses is Not a Viable Option**

Addressing the medical needs of inmates is a requirement of federal law. Since 1976, the United States Supreme Court has held that “deliberate indifference to serious medical needs [of inmates] constitutes cruel and unusual punishment, which is prohibited by the 8th Amendment to the United State Constitution.”<sup>28</sup> In the years following this ruling, the consensus among the states is that if health care services are covered by Medicaid in the community, they must be provided to inmates on the same basis.<sup>29</sup>

In fulfilling these requirements, the Department of Corrections has issued a similarly broad policy. The Department declares that:



<sup>27</sup> See, *Adult Inmate Profile*, Minnesota Department of Corrections (July 2004).

<sup>28</sup> See, *Estelle v. Gamble*, 429 U.S. 97, 104 (1976).

<sup>29</sup> See, generally, *Inmate Health Care Performance Audit Report*, at 2 (Georgia State Auditor, Oct. 2004); *Inmate Health Care Performance Audit Report*, at 23 (New Hampshire Department of Corrections, Jan. 2003).

The department will provide for a quality health care delivery system, including medical, mental health, dental and nursing services, for all offenders under the custody of the department. This system will be consistent department-wide so that available resources are utilized in the most efficient, cost-effective manner; opportunities are provided for offenders to improve their health status; populations with special health care needs are serviced; the rights of offenders are respected; and the regular and systematic means of communication between health service providers and facility administration is accomplished.

*See*, Department of Corrections Policy 500.10 (2004).

With respect to terminally ill inmates, the Department of Corrections meets its obligations under this policy by contracting with HealthEast's St. Joseph's Hospital to provide hospice care at the MCF-Oak Park Heights.

### **The Commissioner's Power to Access Community Services**

In the event that the health care needs of any particular inmate cannot be met within the prison setting, the Commissioner of Corrections is authorized to draw upon health care resources in nearby communities. *Minnesota Statutes* § 244.05 (8) provides that "the commissioner may order that any offender be placed on conditional medical release before the offender's scheduled supervised release date or target release date if the offender suffers from a grave illness or medical condition and the release poses no threat to the public."

In fact, the Commissioner's Conditional Medical Release authority has been rarely used. Historically, these releases have included, on average, three or four inmates per year. As of this writing, there are only three inmates on Conditional Medical Release – and each of these is receiving treatment in the state's secure Ah-Gwah-Ching facility.

Yet, because releasing inmates from prison for treatment involves some risk to public safety, and the Ah-Gwah-Ching facility is not presently equipped to meet a wide variety of medical needs, in the near future, the state may wish to augment its capabilities for providing long-term care in a secure setting.<sup>30</sup>

The model that witnesses before the Commission pointed to is a federal program in Texas.

### **The Program at the Federal Medical Center-Fort Worth Deserves Closer Study**

Since its inception in 1994, the Inmate Hospice Program has helped to slim the federal government's costs in caring for terminally ill inmates in Texas. A key factor in the program's success is the strong link between the hospice program and the prison's Medical Center. As

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<sup>30</sup> The Department of Human Services has proposed construction of a Forensic Nursing Facility. While the Commission did receive copies of the budget pages for the proposed facility, the Commission's time-line did not permit a detailed review of this proposal. *See*, <http://edocs.dhs.state.mn.us/lfserver/Legacy/DHS-4352-ENG>

medical needs of the hospice patients are met in the Long-Term Care Unit, the number of trips to community health facilities has decreased dramatically, with commensurate savings. Further, the hospice program at the FMC-Fort Worth relies heavily upon the services of 50 healthy inmate volunteers from the general population of the prison. These prisoners provide staff support to the program's health care professionals and help to further reduce the costs of care.<sup>31</sup>

The Commission recommends that:

- The Department of Corrections should closely track the experience of the FMC-Fort Worth in administering secure hospice care facilities. As the demographics of Minnesota's inmate population change, the state may find it useful to develop a lower-cost, long-term care facility for elderly and infirm inmates modeled on this approach.

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<sup>31</sup> See also, A.M. Seidlitz, *FMC - Fort Worth: A Prison Hospice Model for the Future?*, National Prison Hospice Association News, Vol. 1, Issue 3 (Winter 1996-1997).

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**Section VIII**  
**Variance and Set-Aside Practices in Minnesota**

Since 1991, the Department of Human Services (DHS) has been conducting criminal background checks on individuals who provide “direct contact services” at facilities licensed by the state. The requirements for these background studies appear in Chapter 245A, and have been broadened by the Legislature every year since they were first enacted. The current law also requires the:

(a) DHS to conduct background studies on individuals providing direct contact services in non-licensed personal care provider organizations.

(b) Minnesota Department of Health (MDH) to contract with the DHS for background studies on individuals who provide direct contact services in MDH-licensed facilities, nursing homes and boarding care homes.

(c) Department of Corrections to contract with the DHS for background studies on individuals who provide direct contact services in DOC-licensed residential and detention programs for youth.

If a disqualifying offense is discovered during the background check, the disqualified applicant may not be employed by the agency providing services, or be in a position to be in direct contact to persons served by the licensed program, unless a variance is granted to the facility or the disqualification of the person is set aside. Further, for those who are affiliated with home-based family child care, the Commissioner of Human Services has no authority to set aside a disqualification that follows from a conviction for criminal sexual conduct in the first through fourth degrees.

Persons who are disqualified from later employment because of a prior criminal history may, in some circumstances, request that the disqualification be “set aside.”<sup>32</sup> Furthermore, the licensed entity may also seek a “variance” permitting employment of the ex-offender.<sup>33</sup> Variances may be subject to certain conditions being accepted by the employer and are typically reviewed at least once each year.

**Commission Proposes a More Transparent Variance and Set-Aside Process**

Following its review of current variance and set-aside practices, the Commission believes that the current process is effective, but could benefit from a few improvements. During the period between October 1, 1995 and June 30, 2004, for example, the Department of Human Services

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<sup>32</sup> See, e.g., *Minnesota Statutes* § 245C.22 (2004).

<sup>33</sup> See, e.g., *Minnesota Statutes* § 245C.30 (2004).

completed more than one million background studies of would-be employees to licensed facilities. Despite the breadth and reach of these inquiries, no person who was the subject of an employer variance has ever had a later conviction for criminal sexual conduct. The agencies' ten-year experience with set asides has similar results.<sup>34</sup>

Likewise significant is the fact that the availability of stable work is an important factor in curbing recidivism among ex-offenders. One recent study of 400 sex offenders suggested that an ex-offender was 37 percent less likely to be convicted of a new crime if the offender had an employment history that was stable.<sup>35</sup> Moreover, this estimate is buttressed by two decades of additional research that links unstable work histories of offenders with subsequent criminal behavior.<sup>36</sup> In the view of the Commission, so long as public safety concerns can be addressed thoroughly and first, work for ex-offenders is a good thing. Stable employment contributes to our collective safety because it further reduces the risk of a re-offense.

For these reasons, the Commission recommends:

- Streamlining Minnesota's varied and disparate background check standards, with a single, comprehensive standard. One possibility for eliminating the gaps and complexity in Minnesota's pyramiding background check processes would be to use the same list of criminal offenses – such as those listed in *Minnesota Statutes* § 245C.15 – as the trigger for employment disqualification. The system would benefit from greater clarity and streamlined administration of the review process.
- Dissemination of a list of the “collateral consequences” that attend conviction of a crime of criminal sexual conduct. As the many registration requirements, restrictions on legal rights and disqualifications for employment that follow a criminal conviction for sexual misconduct are placed in different sections of Minnesota law, it would be a useful resource for judges, prosecutors, offenders, victims, employers and the public at large to have a short compilation of these consequences that is accessible in one place.

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<sup>34</sup> See, *2004 Review of Human Services Background Study Process*, at 14-16 (DHS Licensing Division, August 2004).

<sup>35</sup> See, *Time to Work: Managing the Employment of Sex Offenders Under Community Supervision*, at 2 (Center for Sex Offender Management, January 2002).

<sup>36</sup> See, *id.*, at 1.

## **Section IX Funding Issues**

Commission Members are mindful that as they submit this Report, the State of Minnesota faces a projected \$700 million budget shortfall for Fiscal Years 2006 and 2007.<sup>37</sup> Given the budget shortfall, Commission Members have been asked whether those recommendations that have cost impacts are now untimely or inappropriate.

The reply of the Commission is three-fold: First, the original charter to the Commission from Governor Pawlenty was to search out and to identify the very best public safety practices. Commission Members took this charge seriously and developed a set of recommendations that they believe represents the best sex offender sentencing, supervision, treatment and management practices.

Second, a review of the recommendations in this Report makes clear that they are “scalable” to the budget negotiations. Some reforms can be implemented immediately with modest impacts to the state budget; other recommendations represent longer-term pathways for reform. Commission Members have every confidence that legislators can decide which items are which.

Lastly, it is clear that public safety programs are important priorities in Minnesota. This is true in times of budget surpluses and budget shortfalls; it is true in Republican, Democratic and Independent Administrations; and it is true regardless of which political parties control houses of the State Legislature. In Minnesota, good ideas for improving public safety get a fair hearing.

### **More Uniformity is Needed in Public Safety Practices**

One theme recurred again and again during the Commission’s inquiries. During discussions on sentencing, supervision, assessments, treatment options and civil commitment – to name but a few – it is clear that practices vary widely from county to county.

For Commission Members, this fact is troubling. A certain minimum level of public safety services should be available to Minnesotans throughout the state and without respect to geography. The precise elements of this uniform “floor” of services could be developed over time, but it is a discussion that the Minnesota Legislature can, and should, begin now.

### **A Separate Budget Line Item is an Important Element in Future Progress**

Likewise, Commission Members felt strongly that if any of the larger-scale proposals are accepted by the Governor, or enacted by the Minnesota Legislature, they should be accompanied

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<sup>37</sup> See, *November 2004 Economic Forecast Summary* (Minnesota Department of Finance, 2004).

by their own budget line items. In the Commission's view, separate budget line items for these reforms are the best method of assuring that these reforms would be successful following enactment. Indeed, Commission Members fear that our current systems might be undermined if policymakers were to establish new statutory and regulatory mandates, but funding for this additional work did not follow.

Believing that adequate funding is a key to later successes in public safety, the Commission recommends:

- Moving toward a statewide approach to sex offender management. The Legislature should work toward achieving greater uniformity across Minnesota in supervision practices, treatment options, treatment infrastructure and the assessment of sex offenders.
- Examining in detail how the resources that are spent to prosecute and incarcerate sex offenders compare with the amount of public resources that are available to treat the victims of sex crimes and to prevent further sexual offending. Because of the public safety imperatives of having a sound corrections and supervision system, it seems to Commission Members that crime victim services and prevention programs are often under-funded. As with other public safety programs, the Legislature should pursue a more uniform set of services across the state.
- Following any statutory changes to sex offender management practices with accompanying budgetary support that is expressed in separate line items. Commission Members feel strongly that unfunded mandates compromise the ability of state agencies, and their partners in local government, to operate effectively. In the interests of efficiency, transparency and accountability, the Commission recommends that the Legislature designate separate budget line items for each of the improvements it makes to the sex offender management system.

For example, Commission Members believe that the Release Board should have a line item budget to fund the community resources necessary to ensure the safest transition for offenders being released from prison. The Commission believes that adequate funding for community supervision and treatment is a critical part of the proposed conditional release portion of the indeterminate sentences being recommended. A separate budget line item will help to ensure that the resources that are required to properly structure conditional releases will be available as they are needed.

## Section X The Next Frontiers

While many people believe that most sex offenders are caught, convicted and in prison, the truth of the matter is that only a fraction of those who commit sexual assault are apprehended and convicted for their crimes. The National Crime Victimization Surveys conducted in 1994, 1995 and 1998 all indicate that roughly one out of every three sexual assaults is ever reported to law enforcement. Still other studies suggest that an even smaller share of serious assaults is reported. Overall, the low rates of reporting have led researchers to conclude that less than ten percent of those who have committed sexual offenses are placed under the authority of corrections agencies in the United States.<sup>38</sup>

The overall impact of reported and unreported misconduct is difficult to calculate. Examples of direct costs to the taxpayer might include costs for medical treatment, foster care in abuse cases, and expenses of the criminal justice system. Other cost impacts are more elusive. For example, researchers suggest that many victims of abuse are more likely to encounter difficulty at work and school, suffer mental health problems and have legal difficulties, following their abuse – but this is not true for all victims. Therefore, making an accurate tally of the costs is very difficult.

Whatever the precise impact is to government and our economy, the effects of sexual abuse are enormous. The Minnesota Department of Health, for example, estimates that the annual costs borne by adult victims of rape in the United States, is \$127 billion. To this figure, it projects an additional \$71 billion of annual costs arising out of sexually violent acts against children age 14 and younger.<sup>39</sup> The advocacy group Prevent Child Abuse America, makes a similar estimate. It pegs the nationwide impact of child abuse and neglect at \$94 billion a year.<sup>40</sup>

For all of these reasons, the Commission is unanimous in its view that prevention of sexual abuse presents the next important set of important policy challenges. The Commission recommends:

- Increasing attention to the prevention of sex crimes. While the potential long-term cost savings to the public health system from preventing sex crimes is large – as is the potential to avoid suffering by victims – specific strategies on how to break cycles of offending are less clear. The Department of Health’s work on violence prevention is a valuable start; and more should be done to develop, research and discover effective prevention strategies.

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<sup>38</sup> See, *Myths and Facts About Sex Offenders*, at 2 (Center for Sex Offender Management, June 2000).

<sup>39</sup> See, *Sexual Violence Basics: How Much Does Sexual Violence Cost*, at 1 (Minnesota Department of Health, 2000) (<http://www.health.state.mn.us/injury/pub/kit/basicscost.pdf>).

<sup>40</sup> See, S. Fromm, *Total estimated cost of child abuse and neglect in the United States*, at 3 (Prevent Child Abuse America, 2001) ([http://www.preventchildabuse.org/learn\\_more/research\\_docs/cost\\_analysis.pdf](http://www.preventchildabuse.org/learn_more/research_docs/cost_analysis.pdf)).

- Increasing attention to the rise in the number of sexually dangerous offenders who are committed from the juvenile system. Given the fact that roughly 20 percent of the patients civilly committed to the MSOP as Sexual Psychopathic Personalities or Sexually Dangerous Persons are young men between the ages of 18 to 25, greater emphasis should be placed on early treatment responses to young, sexually-dangerous offenders. The alternative – namely, civil commitments that could span the lifetime of these patients – is both costly and tragic.

## **Appendix A**

### **First Minority Report Recommendation on Eligibility for Life Sentences**

The Commission has recommended establishing life in prison as the statutory maximum sentence possible for repeat offenders.

We, the undersigned, support this recommendation, but continue to believe that a statutory maximum sentence of life in prison should also be applicable to certain first-time serious and violent sex offenders. Specifically, we believe that the statutory maximum sentence should be increased to life if:

- (1) A sex offender commits Criminal Sexual Conduct in the First, Second or Third Degrees, and the offender has previously been convicted of any felony-level sex-related offense, two misdemeanor or gross misdemeanor sex-related offenses, or any other felony-level criminal offense where sex was the motivating factor for the criminal conduct; or
- (2) A sex offender tortures, mutilates, or causes a life threatening injury to a victim while committing Criminal Sexual Conduct in the First, Second or Third Degrees; or
- (3) A sex offender kidnaps the victim and does not release the victim in a safe place as part of the criminal conduct resulting in the offender's commission of Criminal Sexual Conduct in the First, Second or Third Degrees; or
- (4) A sex offender uses a dangerous weapon or threatens the safety of a minor child to force or coerce the victim into submitting to sexual contact or penetration while committing Criminal Sexual Conduct in the First, Second or Third Degrees.

For the above described serious, violent and repeat criminal conduct, the statutory maximum penalty of life in prison is both appropriate and in the interests of justice.

Respectfully Submitted:

COMMISSIONER JAMES C. BACKSTROM  
COMMISSIONER KRIS FLATEN  
COMMISSIONER GERALD KAPLAN  
COMMISSIONER BRIAN SCHLUETER  
COMMISSIONER JERRY SOMA  
COMMISSIONER STEVEN STRACHAN

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## **Appendix B**

### **Second Minority Report Recommendation on Eligibility for Petitioning for Release from an Indeterminate Sentence.**

The Commission has recommended an indeterminate sentencing plan under which the minimum sentence would either be the mandatory minimum penalty provided by law for the crime, if any, or two-thirds the presumptive sentence that has been established for the crime under the current Minnesota Sentencing Guidelines, whichever is greater.

We, the undersigned, disagree with the majority recommendation to require an offender to serve two-thirds of the presumptive sentence before being eligible to apply for release. We would permit an offender to apply for conditional release after having served one-half of his or her presumptive sentence.

The testimony we received emphasized that sex offender treatment works to protect public safety, especially when combined with intensive (state of the art) supervision practices that include the use of polygraphs. Therefore, we believe that those inmates who successfully complete sex offender treatment, maintain good behavior records in prison and are assessed as being at low risk of re-offending, could be safely released to the community, by the decision of the Sex Offender Review Board, after having served a minimum of at least half their sentence.

Under our recommendations most offenders will serve longer sentences resulting in significant growth in prison populations. A somewhat earlier release, for those exceptional offenders who vigorously engage in treatment and no longer present a risk to the community, would ease the swelling of the prison population while adequately protecting the public.

Respectfully Submitted:

COMMISSIONER LAURA BUDD  
COMMISSIONER KRIS FLATEN  
COMMISSIONER GERALD KAPLAN  
COMMISSIONER JOHN STUART  
COMMISSIONER ESTHER M. TOMLJANOVICH

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## **Appendix C**

### **Listing of Witnesses who Testified Before the Governor's Commission on Sex Offender Policy**

B. Jaye Anno, Ph.D., CCHP, Founder, Consultants in Correctional Care

Kenneth Backhus, Office of Senate Counsel, Minnesota State Senate

Jane Belau, former Member, Minnesota Corrections Board

Honorable David Bishop, State Representative (1982 – 2002)

Janis Bremer, Ph.D., Director of Adolescent Programming, Project Pathfinder

Yvonne Cournoyer, Program Director, Project Pathfinder

Patti Cullen, Vice President, Care Providers of Minnesota

Honorable Jack Davies, Minnesota Court of Appeals (Retired)

William B. Donnay, Director, Risk Assessment – Community Notification Unit, Minnesota Department of Corrections

Dennis M. Doren, Ph.D., Evaluation Director, Sand Ridge Secure Treatment Center, Madison, Wisconsin

C. Peter Erlinder, Professor of Law, William Mitchell College of Law

Michael S. Fall, Probation Supervisor, Minnesota Department of Corrections

Honorable Linda Finney, Superintendent, Bureau of Criminal Apprehension

Jim Golden, PhD, Chief Operating Officer of Midwest Center for HIPAA Education

Andrea Hern, M.A., Executive Director of Liberty Healthcare's Sex Offender Management and Monitoring Program

Sherry Hill, Probation Officer, Minnesota Department of Corrections

Richard G. Hodsdon, Assistant Washington County Attorney

Stephen J. Huot, Clinical Director, Minnesota Sex Offender Treatment Program – Moose Lake

John Hustad, Vice President for Public Affairs, Minnesota Health and Housing Alliance

Eric S. Janus, Professor of Law, William Mitchell College of Law

Honorable Douglas Johnson, Washington County Attorney

Gary Karger, Fiscal Analyst, Minnesota House of Representatives

Stephen King, Community Notification Manager, Minnesota Department of Corrections

John Kirwin, Assistant Hennepin County Attorney

Eric Knutson, Senior Special Agent, Bureau of Criminal Apprehension

Kathy Langer, Probation Officer, Todd-Wadena Community Corrections

Julie LeTourneau, CJIS Supervisor, Bureau of Criminal Apprehension

Warren G. Maas, Esq., Coordinator, Hennepin County Bar Association  
Commitment Defense Project

Jeanne Martin, Program Manager, Dodge-Fillmore-Olmsted Sexual Assault Program

Anne McCabe, Manager for the Public Sector Development, Liberty Healthcare

Deborah McKnight, House Research Department, Minnesota House of Representatives

Michael Miner, Ph.D., L.P., Associate Professor of Family Practice and Community Health,  
University of Minnesota

Richard Mulcrone, former Chairman, Minnesota Corrections Board

Craig S. Nelson, Freeborn County Attorney, and President of the Minnesota  
County Attorneys Association

Michael Nichols, Probation Officer, Hennepin County Corrections

AnnMarie O'Neill, Program Administrator, Bureau of Criminal Apprehension

Samuel D. Orbovich, Esq., Orbovich & Gartner, Chartered

Mario Paporozzi, Ph.D., Associate Professor of Criminal Justice,  
University of North Carolina at Pembroke

Jeff Peterson, Director of the Hearings and Release Unit, Minnesota Department of Corrections

Patty Rime, Dodge-Fillmore-Olmstead Community Corrections

Kate Santelmann, Program Director, Ramsey County Attorney's Office

Steven Sawyer, Executive Director, Project Pathfinder

Nan Schroeder, Director of Health Services, Minnesota Department of Corrections

Darrell Shreve, Director of Research and Regulations, Minnesota Health and Housing Alliance

Walter G. Suarez, MD, MPH, President and Chief Executive Officer of Midwest Center for  
HIPAA Education

Barbara Tombs, Executive Director, Minnesota Sentencing Guideline Commission

H. Michael Tripple, Assistant Director of the Division of Health Policy, Information and  
Compliance Monitoring, Minnesota Department of Health

Michael Webber, President and Chief Operating Officer, Volunteers of America of Minnesota

Sharon K. Zoesch, Ombudsman for Older Minnesotans

Judith Zollar, Research Department, Minnesota House of Representatives

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## **Appendix D**

### **Minnesota's Sex Offender Policies and Practices: A System that Developed Over Time**

Minnesota's policies for sentencing, supervising and treating sex offenders developed incrementally over the course of the last century. Below is a brief review of significant events in that timeline:

- 1939 – Civil Commitment: Minnesota enacts its Sexual Psychopathic Personality Law.
- 1979 – Determinate Sentencing: Minnesota enacts determinate sentences for criminal sexual conduct, according to a detailed set of Sentencing Guidelines.
- 1989 – Attorney General's Task Force: The Task Force recommends that sex crime sentences be lengthened for different types of offenders and that the existing psychopathic personality statute should be retained.
- 1989 – Sentences Increased: The Minnesota Legislature more than doubles prison terms for rape and increases the minimum time to be served on a life sentence from 17 years to 30 years.
- 1991 – Predatory Offender Registry: Minnesota establishes a computerized registry of predatory offenders.
- 1991 – DOC Report on Risk Assessment and Release Procedures for Violent Offenders and Sexual Psychopaths: The Department recommends changes in identification and supervision of high-risk sex offenders and begins the pre-screening of offenders and the referral of the most dangerous to counties for possible civil commitment. As a result, Minnesota became the second state in the Union to use civil commitment statutes to treat and confine sex offenders after offenders complete their sentence of imprisonment.
- 1994 – Legislative Auditor Report on the Psychopathic Personality Commitment Law: The Legislative Auditor recommends alternative policy options that included continuing to rely on civil commitments under the psychopathic personality statute; development of new civil commitment procedures; or removing sex offenses from sentencing guidelines and permitting indeterminate sentencing.
- 1994 – Legislative Task Force on Sexual Predators: The Task Force recommends language that forms the basis for the Sexually Dangerous Person statute. The Report also declares that: "The long-term goal of policymakers should be to diminish the use of that mental health system and increase the use of the criminal justice system to deal with these offenders."

- 1994 – SDP Statute Enacted: In a Special Session, the Minnesota Legislature unanimously broadens civil commitment law to include a new category – Sexually Dangerous Persons.
- 1996 – Community Notification: The Minnesota Legislature enacts a Community Notification Law.
- 1998 – Civil Commitment Study Group: The Study Group compared Minnesota’s civil commitment statutes to those of other states. The Group recommends few changes as it found that Minnesota’s laws compared favorably to the practices in other states.
- 2000 – Katie Poirer Law Enacted: The Minnesota Legislature establishes a lifetime registration requirement for some offenses, and adds a registration requirement for those with a criminal history of sex offense and who later commit a new offense against a person.
- 2000 – Sentences Increased: The Minnesota Legislature again doubles prison terms for first-degree criminal sexual conduct, this time to a minimum of 12 years.
- 2000 – The Minnesota Legislature enacts Minnesota Laws 2000, Chapter 359 directing the Department of Corrections, in collaboration with the Supreme Court, the Attorney General’s office, the Department of Human Services, and the Minnesota Sentencing Guidelines Commission, to “evaluate all aspects of the state's system of responding to sexual offenses; identify system problems and develop solutions; provide research and analysis for state and local policymakers and criminal justice and corrections agencies; and recommend policies and best practices that will reduce sexual victimization and improve public safety in the most cost-effective manner possible.”

## **Appendix E**

### **Appointment and Membership of the Governor's Commission on Sex Offender Policy**

#### **MEMBERS OF SEX OFFENDER POLICY COMMISSION NAMED ~ Commission chaired by former Supreme Court Justice Esther Tomljanovich ~ September 3, 2004**

Saint Paul -- Governor Tim Pawlenty's office today announced the members of the Sex Offender Policy Commission that was recently created. The Commission, which will be chaired by former Minnesota Supreme Court Justice Esther Tomljanovich, has been charged with reviewing current laws and policies to find ways to better protect the public from sex offenders.

The members of the commission include:

- Jim Backstrom -- Dakota County Attorney
- Brian Schlueter -- Otter Tail County Sheriff
- Steve Strachan -- Lakeville Chief of Police and former state representative
- Laura Budd -- Chair of the Public Defense Board
- John Stuart -- State Public Defender
- Kris Flaten -- Chair, State Advisory Council on Mental Health
- Terry Dempsey -- Minnesota Board of Aging
- Gerald Kaplan -- Executive Director, Alpha Human Services
- Jerry Soma -- Anoka County Human Services Director
- Susan Voigt -- Attorney, representative of care providers
- Carla Ferrucci -- Executive Director, Minnesota Coalition Against Sexual Assault

Governor Pawlenty directed the group, which will receive staff support from newly appointed State Sex Offender Policy Coordinator Eric Lipman, to review existing policies and laws regarding sex offenders, to recommend changes, and to identify best practices from around the country. The Governor has asked the group to focus first on the following areas: placement of elderly and disabled sex offenders; conditional medical release requirements; civil commitment procedures; and sex offender sentencing and supervision practices.

"Minnesota is not alone in finding our criminal justice and human services systems challenged by the complicated problem of sex offenders," said Governor Pawlenty. "Protecting the public is a top priority of state government. We must do everything we can to ensure that our laws and policies provide the best possible tools to deal with sex offenders. I am grateful that these experienced individuals are willing to serve on this important Commission."

The Commission's first meeting will be Wednesday, September 8 at 9:00 a.m. in Room 200 of the State Office Building in St. Paul.

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For additional information, please contact:

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