

**Minnesota Laws and Rules Relating to Less Restrictive Alternatives to
Commitment in a Secure Treatment Facility**

MINNESOTA STATUTES

Section 253B.185, subdivision 1

<https://www.revisor.mn.gov/statutes/?id=253B.185>

(d) In commitments under this section [i.e., SDP/SPP], the court shall commit the patient to a secure treatment facility unless the patient establishes by clear and convincing evidence that a less restrictive treatment program is available that is consistent with the patient's treatment needs and the requirements of public safety.

Section 253B.095 RELEASE BEFORE COMMITMENT.

<https://www.revisor.mn.gov/statutes/?id=253B.095>

Subdivision 1. Court release.

(a) After the hearing and before a commitment order has been issued, the court may release a proposed patient to the custody of an individual or agency upon conditions that guarantee the care and treatment of the patient.

(b) A person against whom a criminal proceeding is pending may not be released.

(c) A continuance for dismissal, with or without findings, may be granted for up to 90 days.

(d) When the court stays an order for commitment for more than 14 days beyond the date of the initially scheduled hearing, the court shall issue an order that must include:

(1) a written plan for services to which the proposed patient has agreed;

(2) a finding that the proposed treatment is available and accessible to the patient and that public or private financial resources are available to pay for the proposed treatment;

(3) conditions the patient must meet to avoid revocation of the stayed commitment order and imposition of the commitment order; and

(4) a condition that the patient is prohibited from giving consent to participate in a clinical drug trial while the court order is in effect.

(e) Notwithstanding paragraph (d), clause (4), during the period of a stay of commitment, the court may allow the patient to give consent to participate in a specific psychiatric clinical drug trial if the treating psychiatrist testifies or submits an affidavit that the patient may benefit from participating in the trial because, after providing other treatment options for a reasonable period of time, those options have been ineffective. The treating psychiatrist must not be the psychiatrist conducting the psychiatric clinical drug trial. The court must determine that, under the circumstances of the case, the patient is competent to choose to participate in the trial, that the patient is freely choosing to participate in the trial, that the compulsion of the stayed commitment is not being used to coerce the person to participate in the clinical trial, and that a reasonable person may choose to participate in the clinical trial.

(f) A person receiving treatment under this section has all rights under this chapter.

Subd. 2. Case manager. When a court releases a patient under this section, the court shall direct the case manager to report to the court at least once every 90 days and shall immediately report a substantial failure of a patient or provider to comply with the conditions of the release.

Subd. 3. Duration. The maximum duration of a stayed order under this section is six months. The court may continue the order for a maximum of an additional 12 months if, after notice and hearing, under sections 253B.08 and 253B.09 the court finds that (1) the person continues to be mentally ill, chemically dependent, or developmentally disabled, and (2) an order is needed to protect the patient or others.

Subd. 4. Modification of order. An order under this section may be modified upon agreement of the parties and approval of the court.

Subd. 5. Revocation of order. The court, on its own motion or upon the motion of any party that the patient has not complied with a material condition of release, and after notice and a hearing unless otherwise ordered by the court, may revoke any release and commit the proposed patient under this chapter.

Subd. 6. [Renumbered subd 4]

Subd. 7. [Renumbered subd 5]

Special Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act

https://www.revisor.mn.gov/court_rules/rule.php?name=msspec-toh

Rule 22. Stayed Orders (Mentally Ill and Dangerous to the Public, Sexually Dangerous Persons, and Sexual Psychopathic Personalities)

Stayed orders for commitment as mentally ill and dangerous to the public, sexually dangerous person, or a sexual psychopathic personality may be issued only by agreement of the parties and approval by the court.

Selected statutory provisions affecting placement of individuals who have already been committed to a secure treatment facility.

MINNESOTA STATUTES Section 253B.185 (2011)

<https://www.revisor.mn.gov/statutes/?id=253B.185>

Subd. 9. Petition for reduction in custody.

(a) This subdivision applies only to committed persons as defined in paragraph (b). The procedures in subdivision 10 for victim notification and right to submit a statement apply to petitions filed and reductions in custody recommended under this subdivision.

(b) As used in this subdivision:

(1) "committed person" means an individual committed under this section, or under this section and under section 253B.18, as mentally ill and dangerous. It does not include persons committed only as mentally ill and dangerous under section 253B.18; and

(2) "reduction in custody" means transfer out of a secure treatment facility, a provisional discharge, or a discharge from commitment. A reduction in custody is considered to be a commitment proceeding under section 8.01.

(c) A petition for a reduction in custody or an appeal of a revocation of provisional discharge may be filed by either the committed person or by the head of the treatment facility and must be filed with and considered by a panel of the special review board authorized under section 253B.18, subdivision 4c. A committed person may not petition the special review board any sooner than six months following either:

(1) the entry of judgment in the district court of the order for commitment issued under section 253B.18, subdivision 3, or upon the exhaustion of all related appeal rights in state court relating to that order, whichever is later; or

(2) any recommendation of the special review board or order of the judicial appeal panel, or upon the exhaustion of all appeal rights in state court, whichever is later. The head of the treatment facility may petition at any time. The special review board proceedings are not contested cases as defined in chapter 14.

(d) The special review board shall hold a hearing on each petition before issuing a recommendation under paragraph (f). Fourteen days before the hearing, the

committing court, the county attorney of the county of commitment, the designated agency, an interested person, the petitioner and the petitioner's counsel, and the committed person and the committed person's counsel must be given written notice by the commissioner of the time and place of the hearing before the special review board. Only those entitled to statutory notice of the hearing or those administratively required to attend may be present at the hearing. The patient may designate interested persons to receive notice by providing the names and addresses to the commissioner at least 21 days before the hearing.

(e) A person or agency receiving notice that submits documentary evidence to the special review board before the hearing must also provide copies to the committed person, the committed person's counsel, the county attorney of the county of commitment, the case manager, and the commissioner. The special review board must consider any statements received from victims under subdivision 10.

(f) Within 30 days of the hearing, the special review board shall issue written findings of fact and shall recommend denial or approval of the petition to the judicial appeal panel established under section 253B.19. The commissioner shall forward the recommendation of the special review board to the judicial appeal panel and to every person entitled to statutory notice. No reduction in custody or reversal of a revocation of provisional discharge recommended by the special review board is effective until it has been reviewed by the judicial appeal panel and until 15 days after an order from the judicial appeal panel affirming, modifying, or denying the recommendation.

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Subd. 10a. Scope of community notification.

(As amended in 2012 by

<https://www.revisor.mn.gov/laws/?id=123&doctype=Chapter&year=2012&type=0>)

(a) Notification of the public and disclosure of information under section 244.052, subdivision 4, regarding an individual who was committed under this section or Minnesota Statutes 1992, section 526.10, is as provided under section 244.052, subdivision 4, paragraphs (b), clause (3), and (g), and subdivision 4b, regardless of the individual's assigned risk level. The restrictions under section 244.052, subdivision 4, paragraph (b), clause (3), placed on disclosing information on individuals living in residential facilities do not apply to persons committed under this section or Minnesota Statutes 1992, section 526.10. The local law enforcement agency may proceed with the broadest disclosure authorized under section 244.052, subdivision 4.

(b) After four years from the date of an order for provisional discharge or discharge of civil commitment, the individual may petition the head of the treatment facility from which the individual was provisionally discharged or discharged to have the scope of notification and disclosure based solely upon the individual's assigned risk level under section 244.052.

(c) If an individual's provisional discharge is revoked for any reason, the four-year time period under paragraph (b) starts over from the date of a subsequent order for provisional discharge or discharge except that the head of the treatment facility or designee may, in the sole discretion of the head or designee, determine that the individual may petition before four years have elapsed from the date of the order of the subsequent provisional discharge or discharge and notify the individual of that determination.

(d) The head of the treatment facility shall appoint a multidisciplinary committee to review and make a recommendation on a petition made under paragraph (b). The head of the treatment facility or designee may grant or deny the petition. There is no review or appeal of the decision. If a petition is denied, the individual may petition again after two years from the date of denial.

(e) Nothing in this subdivision shall be construed to give an individual an affirmative right to petition the head of the treatment facility earlier than four years after the date of an order for provisional discharge or discharge.

(f) The head of the treatment facility shall act in place of the individual's corrections agent for the purpose of section 244.052, subdivision 3, paragraph (h), when the individual is not assigned to a corrections agent.

Subd. 11. Transfer.

(a) A patient who is committed as a sexually dangerous person or sexual psychopathic personality shall not be transferred out of a secure treatment facility unless it appears to the satisfaction of the judicial appeal panel, after a hearing and recommendation by a majority of the special review board, that the transfer is appropriate. Transfer may be to other treatment programs under the commissioner's control.

(b) The following factors must be considered in determining whether a transfer is appropriate:

(1) the person's clinical progress and present treatment needs;

(2) the need for security to accomplish continuing treatment;

(3) the need for continued institutionalization;

(4) which facility can best meet the person's needs; and

(5) whether transfer can be accomplished with a reasonable degree of safety for the public.

Subd. 11a. Transfer; voluntary readmission to a secure facility.

(a) After a patient has been transferred out of a secure facility pursuant to subdivision 11 and with the consent of the executive director of the Minnesota sex offender program, a patient may voluntarily return to a secure facility operated by the Minnesota sex offender program for a period of up to 60 days.

(b) If the patient is not returned to the facility to which the patient was originally transferred pursuant to subdivision 11 within 60 days of being readmitted to a secure facility, the transfer is revoked and the patient shall remain in a secure facility. The patient shall immediately be notified in writing of the revocation.

(c) Within 15 days of receiving notice of the revocation, the patient may petition the special review board for a review of the revocation. The special review board shall review the circumstances of the revocation and shall recommend to the judicial appeal panel whether or not the revocation shall be upheld. The special review board may also recommend a new transfer at the time of the revocation hearing.

(d) If the transfer has not been revoked and the patient is to be returned to the facility to which the patient was originally transferred pursuant to subdivision 11, with no substantive change to the conditions of the transfer ordered pursuant to subdivision 11, no action by the special review board or judicial appeal panel is required.

Subd. 11b. Transfer; revocation. (a) The executive director of the Minnesota sex offender program or designee may revoke a transfer made pursuant to subdivision 11 and require a patient to return to a secure treatment facility if:

(1) remaining in a nonsecure setting will not provide a reasonable degree of safety to the patient or others; or

(2) the patient has regressed in clinical progress so that the facility to which the patient was transferred is no longer sufficient to meet the patient's needs.

(b) Upon the revocation of the transfer, the patient shall be immediately returned to a secure treatment facility. A report documenting reasons for revocation shall be issued by the executive director or designee within seven days after the patient is returned to the secure treatment facility. Advance notice to the patient of the revocation is not required.

(c) The patient must be provided a copy of the revocation report and informed, orally and in writing, of the rights of a patient under this subdivision. The revocation report shall be served upon the patient and the patient's counsel. The report shall outline the specific reasons for the revocation including, but not limited to, the specific facts upon which the revocation recommendation is based.

(d) A patient whose transfer is revoked must successfully re-petition the special review board and judicial appeal panel prior to being transferred out of a secure facility.

(e) Any patient aggrieved by a transfer revocation decision may petition the special review board within seven days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of the revocation report for a review of the revocation. The matter shall be scheduled within 30 days. The special review board shall review the circumstances leading to the revocation and, after considering the factors in subdivision 11, paragraph (b), shall recommend to the judicial appeal panel whether or not the revocation shall be upheld. The special review board may also recommend a new transfer out of a secure facility at the time of the revocation hearing.

Subd. 12. Provisional discharge. A patient who is committed as a sexual psychopathic personality or sexually dangerous person shall not be provisionally discharged unless it appears to the satisfaction of the judicial appeal panel, after a hearing and a recommendation by a majority of the special review board, that the patient is capable of making an acceptable adjustment to open society.

The following factors are to be considered in determining whether a provisional discharge shall be recommended:

(1) whether the patient's course of treatment and present mental status indicate there is no longer a need for treatment and supervision in the patient's current treatment setting; and

(2) whether the conditions of the provisional discharge plan will provide a reasonable degree of protection to the public and will enable the patient to adjust successfully to the community.

Subd. 13. Provisional discharge plan. A provisional discharge plan shall be developed, implemented, and monitored by the head of the treatment facility or designee in conjunction with the patient and other appropriate persons. The head of the treatment facility or designee shall, at least quarterly, review the plan with the patient and submit a written report to the designated agency concerning the patient's status and compliance with each term of the plan.

Subd. 14. Provisional discharge; review. A provisional discharge pursuant to this section shall not automatically terminate. A full discharge shall occur only as provided in subdivision 18. The commissioner shall notify the patient that the terms of a provisional discharge continue unless the patient requests and is granted a change in the conditions of provisional discharge or unless the patient petitions the special review board for a full discharge and the discharge is granted by the judicial appeal panel.

Subd. 14a. Provisional discharge; voluntary readmission.

(a) With the consent of the executive director of the Minnesota sex offender program, a patient may voluntarily return to the Minnesota sex offender program from provisional discharge for a period of up to 60 days.

(b) If the patient is not returned to provisional discharge status within 60 days of being readmitted to the Minnesota sex offender program, the provisional discharge is revoked. The patient shall immediately be notified of the revocation in writing. Within 15 days of receiving notice of the revocation, the patient may request a review of the matter before the special review board. The special review board shall review the circumstances of the revocation and, after applying the standards in subdivision 15, paragraph (a), shall recommend to the judicial appeal panel whether or not the revocation shall be upheld. The board may recommend a return to provisional discharge status.

(c) If the provisional discharge has not been revoked and the patient is to be returned to provisional discharge, the Minnesota sex offender program is not required to petition for a further review by the special review board unless the patient's return to the community results in substantive change to the existing provisional discharge plan.

Subd. 15. Provisional discharge; revocation.

(a) The head of the treatment facility may revoke a provisional discharge if either of the following grounds exist:

- (1) the patient has departed from the conditions of the provisional discharge plan; or
- (2) the patient is exhibiting behavior which may be dangerous to self or others.

(b) The head of the treatment facility may revoke the provisional discharge and, either orally or in writing, order that the patient be immediately returned to the treatment facility. A report documenting reasons for revocation shall be issued by the head of the treatment facility within seven days after the patient is returned to

the treatment facility. Advance notice to the patient of the revocation is not required.

(c) The patient must be provided a copy of the revocation report and informed, orally and in writing, of the rights of a patient under this section. The revocation report shall be served upon the patient, the patient's counsel, and the designated agency. The report shall outline the specific reasons for the revocation, including but not limited to the specific facts upon which the revocation recommendation is based.

(d) An individual who is revoked from provisional discharge must successfully re-petition the special review board and judicial appeal panel prior to being placed back on provisional discharge.

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Subd. 17. Appeal. Any patient aggrieved by a revocation decision or any interested person may petition the special review board within seven days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of the revocation report for a review of the revocation. The matter shall be scheduled within 30 days. The special review board shall review the circumstances leading to the revocation and shall recommend to the judicial appeal panel whether or not the revocation shall be upheld. The special review board may also recommend a new provisional discharge at the time of the revocation hearing.

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Subd. 19. Aftercare services. The Minnesota sex offender program shall provide the supervision, aftercare, and case management services for a person under commitment as sexual psychopathic personalities and sexually dangerous persons discharged after July 1, 1999. The designated agency shall assist with client eligibility for public welfare benefits and will provide those services that are currently available exclusively through county government.

Prior to the date of discharge or provisional discharge of any patient committed as a sexual psychopathic personality or sexually dangerous person, the head of the treatment facility or designee shall establish a continuing plan of aftercare services for the patient, including a plan for medical and behavioral health services, financial sustainability, housing, social supports, or other assistance the patient needs. The Minnesota sex offender program shall provide case management services and shall assist the patient in finding employment, suitable shelter, and adequate medical and behavioral health services and otherwise assist in the patient's readjustment to the community.