

## **Governor's Commission on Sex Offender Policy (January 2005)**

### **Section I Executive Summary of Recommendations**

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.

## **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

## **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