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Bill Summary

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Overview

This bill changes the sentences that apply to sex offenders. It:

- 1) imposes a life penalty without the possibility of release on first-degree criminal sexual conduct offenders;
- 2) establishes an indeterminate sentencing structure for second-, third-, and fourth-degree criminal sexual conduct when the sentencing guidelines presume imprisonment or when the sentencing guidelines do not presume imprisonment, but the court departs upward and sends the person to prison;

3) creates the crime of criminal sexual predatory conduct for situations where a person commits one of certain predatory crimes (not criminal sexual conduct crimes) and the crime is motivated by sexual impulses or a predatory pattern of behavior that has criminal sexual conduct as its goal;

4) repeals the existing patterned and predatory offender law and repeat sex offender law and replaces them with amended versions of these laws in the criminal sexual conduct section of the criminal code to eliminate constitutional infirmities, provide certain penalties, and ensure consistency with other changes made in the bill;

5) establishes a five-member Minnesota Sex Offender Review Board to evaluate whether offenders subject to indeterminate sentencing are appropriate for conditional release; and

6) makes numerous other changes, including technical and conforming changes.

The bill contains an August 1, 2005 effective date and applies to offenses committed on or after that date.

Article 1: Mandatory Life Sentences and Indeterminate Sentences for Sex Offenders; Other Sex Offender Sentencing Changes

This article contains increased and mandatory sentences for sex offenders and is effective August 1, 2005, for crimes committed on or after that date. It provides a life sentence without the possibility of release for first-degree criminal sexual conduct offenses where the offender commits sexual penetration with force, coercion, violence, or a dangerous weapon; the victim suffers personal injury; or the abuse involves multiple acts over an extended period of time. It also creates an indeterminate sentencing structure that applies to certain first-degree criminal sexual conduct offenders; the most serious second-, third-, and fourth- degree criminal sexual conduct offenders; and criminal sexual predatory conduct offenders (a modified version of a crime that currently exists and has been held unconstitutional by the Minnesota Supreme Court).

Under the indeterminate sentencing structure, the court must sentence an offender to both a minimum and maximum term of imprisonment. The maximum term of imprisonment for all offenses is life. The minimum term of imprisonment is two-thirds of the Sentencing Guidelines Commission presumptive sentence. A person sentenced under this structure is not eligible for release unless the person has served the entire minimum term of imprisonment plus any disciplinary time imposed by the Commissioner of Corrections. If and when released, the person is subject to conditional release for the remainder of the person's life.

1. 1 Legislative findings and purpose. States the legislature's findings and purpose in enacting this legislation. Notes that the legislature finds that sex offenders pose a significant threat to public safety, are unique in their psychological makeup, and are particularly likely to continue to be dangerous after their release from imprisonment. Also recognizes that sex offenders inflict longstanding psychological harm on their victims and undermine victim and community safety to a greater extent than most other criminal offenses. States that,

based on these findings, the legislature believes sex offenders need long-term treatment and supervision beyond that provided other offenders and that this treatment and supervision is best provided in a secure correctional facility.

Also notes that the legislature's purpose in enacting this legislation is to provide courts and corrections and treatment professionals with the tools necessary to protect public safety through use of longer, more flexible sentences than currently available. States the legislature's intent that a sex offender's past and future dangerousness be considered in both sentencing and release decisions.

1. 2 Definitions. Defines a number of terms for the purpose of the conditional release and indeterminate sentencing provisions in the bill (section 4 and article 2). Defines "conditional release," "first eligible for release," "minimum term of imprisonment," "Minnesota Sex Offender Review Board," and "sex offense."
- 3 Supervised release; life sentence. Strikes a reference to a statute repealed under the bill. Requires preparation of a community investigation report on sex offenders subject to conditional release under the indeterminate sentencing provisions of the bill. This report currently is prepared only for individuals who are subject to a life sentence and eligible for *supervised release* after serving the term of imprisonment specified in this statute. Also requires the commissioner to submit the community investigation report to the Minnesota Sex Offender Review Board at least six months before the sex offender is first eligible for release. Also requires the commissioner to give the board information gathered in compiling the report.
- 4 Conditional release term for sex offenders. Creates a new section of law that applies specifically to conditional release of sex offenders.

Subd. 1. Conditional release required. Requires every inmate sentenced for a sex offense to serve a conditional release term upon the person's release from a state correctional facility.

Subd. 2. Relationship to supervised release. Clarifies that the provisions applicable to supervised release under section 244.05 apply to conditional release, except as otherwise provided.

Subd. 3. Minimum imprisonment; life sentence. Provides that an inmate serving a mandatory life sentence for first-degree criminal sexual conduct shall not be given conditional release unless the person is serving an indeterminate sentence. Provides that an inmate serving an indeterminate sentence shall not be given conditional release without first serving the minimum term of imprisonment specified by the court. An inmate sentenced as a repeat sex offender under section 20 may not be given conditional release until serving a minimum of 30 years imprisonment.

Subd. 4. Conditional release; life sentence. Allows the Minnesota sex offender review board established in article 3 to give conditional release to an inmate serving a life sentence under the indeterminate sentencing provisions after the inmate has served the minimum term of imprisonment. The board may give an inmate sentenced under the repeat sex offender law (section 20) conditional release after the inmate has served a minimum of 30 years imprisonment. Specifies that the terms of conditional release are governed by this section and section 609.3459, a new section dealing exclusively with conditional release.

- 5 End-of-confinement review committee. Amends language in the community notification

law to require the commissioner of corrections to convene the appropriate end-of-confinement review committee at least nine months before an offender subject to an indeterminate sentence is first eligible for release. Identifies the procedure to follow in cases where the inmate is received for confinement with fewer than nine months remaining before the person is first eligible for release. Requires the committee to give the assessment report to the offender, the commissioner, and the Minnesota Sex Offender Review Board at least six months before the offender is first eligible for release.

Also requires the end-of-confinement review committee to review the risk level of an offender granted conditional release by the Sex Offender Review Board at its first regularly scheduled meeting after the decision to release the inmate is made. Requires the commissioner of corrections to make reasonable efforts to ensure that the offender's earlier risk level determination is reviewed and confirmed or reassigned at least 60 days before the offender's release date. Specifies that the assessment report shall be given to the offender and law enforcement agency at least 60 days before the offender is released from confinement.

6 Report. Requires the commissioner of corrections to file a report with the legislature each fiscal year. The report must identify the instances where the commissioner failed to notify properly the appropriate county attorney when the commissioner releases a sex offender who should be considered for civil commitment. In order to provide proper notice, the commissioner must provide 12-month advance notice for inmates held longer than one year and must merely provide advance notice for inmates held less than one year.

7 Conditional release. Amends the definitions in the criminal sexual conduct section of the criminal code by adding the definition of conditional release created in section 2 of this article.

8 First eligible for release. Amends the definitions in the criminal sexual conduct section of the criminal code by adding a definition of "first eligible for release." "First eligible for release" means the day after the offender has served the entire minimum term of imprisonment, plus any disciplinary time imposed by the commissioner of corrections. Or, if the person was sentenced to life under the repeat sex offender law, the person is first eligible the day after the inmate has served 30 years imprisonment.

9 Minimum term of imprisonment. Amends the definitions in the criminal sexual conduct section of the criminal code by adding a definition of "minimum term of imprisonment." "Minimum term of imprisonment" means the minimum length of time an offender is incarcerated under an indeterminate sentence and is equal to two-thirds of the sentence length called for by the presumptive sentence under the appropriate cell of the sentencing guidelines grid, plus any disciplinary time imposed by the commissioner of corrections. States that, if the sentencing guidelines do not provide the presumptive sentence for the offense, the minimum term of imprisonment is as provided by statute or, if not so provided, as determined by the court.

10 Predatory crime. Amends the definitions in the criminal sexual conduct section of the criminal code by adding a definition of "predatory crime." A predatory crime means any felony violation of, or felony attempt to violate, the following crimes: first-, second-, and third-degree murder; manslaughter in the first and second degree; first-, second-, and third-degree assault; simple and aggravated robbery; kidnapping; false imprisonment; incest, or first-degree burglary.

This definition of predatory crime is similar to the definition of predatory crime under the current predatory and patterned offender law (section 609.108), which is amended by this article, except that it does not include first- through fourth-degree criminal sexual conduct,

arson, and witness tampering. This definition is used for the purpose of the criminal sexual predatory conduct crime in section 17.

11 Sex offense. Amends the definitions in the criminal sexual conduct section of the criminal code by adding a definition of "sex offense." States that, unless otherwise provided, "sex offense" means any violation of, or attempt to violate, first- through fourth-degree criminal sexual conduct, criminal sexual predatory conduct (see section 17), or any similar statute of the United States or any other state.

12 Criminal sexual conduct in the first degree.

Subd. 1. Crime defined. No changes.

Subd. 2. Penalty. Increases the statutory maximum penalty for first-degree criminal sexual conduct from 30 years to life. An offender is subject to a life sentence without the possibility of release when the offender commits sexual penetration with force, coercion, violence, or a dangerous weapon; causes personal injury to the victim; or commits multiple acts over an extended period of time.

For all other types of first-degree criminal sexual conduct, the offender is subject to a mandatory life sentence and indeterminate sentencing under section 18. These offenses involve situations where the victim's age or the victim's and offender's age are elements of the offense. The law continues to call for a presumptive executed sentence of 144 months for these first-degree criminal sexual conduct offenders. For the purpose of indeterminate sentencing, the minimum term of imprisonment is 96 months for a completed offenses and 48 months for an attempted offense. The maximum sentence is life.

Subd. 3. Stay. Retains the subdivision allowing a court to stay imposition or execution of sentence when the offense is a certain type of criminal sexual conduct occurring within a family context. The stay does not apply if the person is subject to a life sentence (minimum of 30 years of imprisonment) as a repeat sex offender.

13 Criminal sexual conduct in the second degree.

Subd. 1. Crime defined. No changes.

Subd. 2. Penalty. Increases the statutory maximum penalty for second-degree criminal sexual conduct from 25 years to life. Requires the court to sentence the person to an indeterminate sentence if section 18 applies. Specifies that, if the indeterminate sentencing law does not apply, then the person shall be sentenced to an executed sentence of 90 months if the offense involved force, coercion, injury, etc. (non-age related offenses).

If the indeterminate sentencing law applies, the court must presume a minimum term of imprisonment of 60 months if the offender is convicted of a non age-related offense and 30 months if the offender is convicted of an attempted violation of a non age-related offense, unless the law otherwise requires a longer sentence for the offense.

Subd. 3. Stay. Amends the subdivision allowing a court to stay imposition or execution of sentence when the offense is a certain type of criminal sexual conduct occurring within a family context. Allows the court to stay the sentence except when

imprisonment is required under the patterned and dangerous offender law or law providing penalties for repeat or aggravated offenses (sections 19 and 20). Current law permits the stay except when the person is a repeat offender or has committed a sex crime where the court imposes an upward departure under the sentencing guidelines.

Specifies that, if a person receiving a stay under this subdivision violates the stay, the person shall be subject to an indeterminate sentence under section 18.

14 Criminal sexual conduct in the third degree.

Subd. 1. Crime defined. No changes.

Subd. 2. Penalty. Increases the statutory maximum penalty for second-degree criminal sexual conduct from 15 years to life. Requires the court to sentence the person to an indeterminate sentence if section 18 applies. Specifies that, if the indeterminate sentencing law does not apply, then the person shall be sentenced to the presumptive sentence under the sentencing guidelines for the offense.

Subd. 3. Stay. Amends the subdivision allowing a court to stay imposition or execution of sentence when the offense is a certain type of criminal sexual conduct occurring within a family context. Allows the court to stay the sentence except when imprisonment is required under the patterned and dangerous offender law or law providing penalties for repeat or aggravated offenses (sections 19 and 20). Current law permits the stay except when the person is a repeat offender or has committed a sex crime where the court imposes an upward departure under the sentencing guidelines.

Specifies that, if a person receiving a stay under this subdivision violates the stay, the person shall be subject to an indeterminate sentence under section 18.

15 Criminal sexual conduct in the fourth degree.

Subd. 1. Crime defined. No changes.

Subd. 2. Penalty. Increases the statutory maximum penalty for second-degree criminal sexual conduct from 15 years to life. Requires the court to sentence the person to an indeterminate sentence if section 18 applies. Specifies that, if the indeterminate sentencing law does not apply, then the person shall be sentenced to the presumptive sentence under the sentencing guidelines for the offense.

Subd. 3. Stay. Amends the subdivision allowing a court to stay imposition or execution of sentence when the offense is a certain type of criminal sexual conduct occurring within a family context. Allows the court to stay the sentence except when imprisonment is required under the patterned and dangerous offender law or law providing penalties for repeat or aggravated offenses (sections 19 and 20). Current law permits the stay except when the person is a repeat offender or has committed a sex crime where the court imposes an upward departure under the sentencing guidelines.

Specifies that, if a person receiving a stay under this subdivision violates the stay, the person shall be subject to an indeterminate sentence under section 18.

16 Definition. Changes the definition of "sex offense" in the law requiring sex offender
assessments to include a violation of the criminal sexual predatory conduct law (section 17).
17 Criminal sexual predatory conduct.

Subd. 1. Crime defined. Provides that a person is guilty of criminal sexual predatory conduct if the person commits a predatory crime and the predatory crime was motivated by the offender's sexual impulses or was part of a predatory pattern of behavior that had criminal sexual conduct as its goal. "Predatory crime" is defined in section 10.

A somewhat different version of this crime exists in section 609.108 of current law. The current version of the law is unconstitutional under *State v. Grossman*, 636 N.W.2d 545 (Minn. 2001). (See note under section 19.)

Subd. 2. Penalty. Specifies that a person convicted under subdivision 1 or for an attempted violation of subdivision 1 is subject to indeterminate sentencing under section 18. Calls for a fine of not more than \$30,000. Provides that the minimum term of imprisonment for a conviction under subdivision 1 is double the minimum term of imprisonment that would apply to the predatory crime. The minimum term of imprisonment for an attempted violation is the minimum term of imprisonment that would apply to the predatory crime.

18 Indeterminate sentences for sex offenses.

Subd. 1. Applicability. Identifies the offenders who are subject to indeterminate sentencing for a sex offense. This section applies to criminal sexual predatory conduct offenses and attempted criminal sexual predatory conduct offenses. It also applies to an offender convicted of a violation or attempted violation of first-degree criminal sexual conduct (age-related offenses only) and second- through fourth-degree criminal sexual conduct when:

- ▶ the sentencing guidelines presume an executed sentence for the offense,
- ▶ the law for repeat or aggravated offenses applies (section 20), or
- ▶ the sentencing guidelines presume a stayed sentence for the offense and the court imposes an upward dispositional departure.

This provision also applies to offenders convicted of certain first- through fourth-degree criminal sexual conduct offenses occurring within the family context when the offender previously received a stay of imposition or execution of sentence and violated a condition of the stayed sentence.

Requires the court to sentence an offender covered by this subdivision to a minimum and maximum term of imprisonment.

Subd. 2. Minimum and maximum term of imprisonment. Specifies that the minimum term of imprisonment for an offense shall be the minimum term of imprisonment for the offense committed or, in the case of an upward dispositional departure, the minimum term of imprisonment set by the court, unless a longer mandatory minimum sentence is otherwise required by law.

Requires a court sentencing an offender under this section to consider whether a longer mandatory minimum sentence is required under the second degree criminal sexual conduct law, the patterned and dangerous offender law (section 19), or the law providing penalties for offenders committing repeat and aggravated offenses (section 20). Clarifies that the minimum term of imprisonment must be served before the offender may be granted conditional release.

Specifies that the maximum sentence for an offender sentenced under subdivision 1 is life. Prohibits the court from staying imposition or execution of sentence under this section and provides that an offender committed to the commissioner's custody under this section may not be released from incarceration except as provided by the conditional release and medical release provisions in chapter 244.

Allows the prosecutor to file a motion for a downward durational departure under the sentencing guidelines. The court may grant this motion if substantial and compelling reasons support the departure.

Subd. 3. Conditional release. Specifies that a person released from a state correctional facility after receiving an indeterminate sentence shall be subject to conditional release for the remainder of the person's life.

19

Mandatory minimum sentences for certain dangerous, patterned sex offenders; no previous conviction required. This section creates a new patterned and dangerous offender law, to replace the current version in section 609.108, parts of which have been declared unconstitutional. Most of section 609.108 is amended and moved to this section. This article separately amends the predatory offender part of the law, which becomes the new criminal sexual predatory conduct crime in section 17. The amendments to this section (1) address constitutional defects in section 609.108, as explained below, and (2) provide references to the indeterminate sentencing law (section 18).

Subd. 1. Mandatory increased sentence. Contains language from section 609.108, subdivision 1, as amended. Requires the court to commit a person to the commissioner of corrections for a period of time not less than double the presumptive Sentencing Guidelines sentence and not more than the statutory maximum, or if the statutory maximum is less than double the presumptive sentence, for a period of time equal to the statutory maximum if:

- ▶ the court is imposing an executed sentence on a person convicted of committing or attempting to commit a violation of first-, second-, third-, and fourth-degree criminal sexual conduct or criminal sexual predatory conduct;
- ▶ the court finds the offender is a danger to public safety; and
- ▶ the court finds the offender needs long-term treatment or supervision beyond the presumptive term of imprisonment and supervised release.

This language is the same as the language that currently exists in section 609.108, subdivision 1 except that it removes a provision allowing a court to make a finding that the crime was motivated by the offender's sexual impulses or was part of a predatory pattern of behavior that had criminal sexual conduct as its goal. This language was ruled unconstitutional in *State v. Grossman*, 636 N.W.2d 545 (Minn. 2001) under *Apprendi v. New Jersey*, 530 U.S. 466 (2000). In *Apprendi*, the United

States Supreme Court held that, "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the statutory maximum must be submitted to a jury and proved beyond a reasonable doubt." The *Grossman* court determined that allowing a court to make a finding on an offender's sexual motivation was unconstitutional under the reasoning of *Apprendi* and held the provision unconstitutional. (Another provision in section 609.108, which is repealed by this bill, allows the court to impose a sentence in excess of the statutory maximum for various crimes if various criteria are satisfied.)

Also adds language stating that, if a person sentenced under this subdivision is subject to indeterminate sentencing, the minimum term of imprisonment will be two-thirds of the minimum sentence specified by this subdivision, plus disciplinary time.

Subd. 2. Danger to public safety. Contains the language from section 609.108 that may be used to determine a person is a danger to public safety under subdivision 1.

Subd. 3. Departure from guidelines. Retains language from section 609.108 specifying that a sentence imposed under subdivision 1 is a departure from the sentencing guidelines.

20

Mandatory minimum sentences for repeat or aggravated sex offenses. This law currently exists as section 609.109, but is moved to section 609.3458 so that it is placed in the criminal sexual conduct section of the criminal code. This section also changes the penalty provision for one repeat criminal sexual conduct offense and provides a new penalty for another situation where the offender has repeat criminal sexual conduct offenses within a five-year period of discharge from sentence. Finally, the section is amended to require sentencing under the indeterminate sentence provision when appropriate.

Subd. 1. Definition; conviction of offense. Defines "offense" to mean a completed offense or attempt to commit an offense.

Subd. 2. Presumptive executed sentence. Provides that a person convicted of second-through fourth-degree criminal sexual conduct who has a previous sex offense conviction shall be committed to the commissioner of corrections for a minimum sentence of not less than three years. Under current law, this penalty applies only if the second or subsequent offense occurs within 15 years of the time of the first conviction.

This subdivision also adds a new five-year felony penalty for situations where a person commits a second or subsequent criminal sexual conduct offense within five years of discharge from sentence for a previous sex offense conviction.

A court may stay execution of sentence under this subdivision only if indeterminate sentencing does not apply to the offense (all offenses will be covered) and a professional assessment indicates the offender is accepted by and can respond to a long-term inpatient treatment program for sex offenders, which has been approved by the commissioner of corrections. If the court stays execution of sentence, it must impose some incarceration time in a local correctional facility and a requirement that the offender successfully complete the treatment program as conditions of probation.

Finally, this subdivision provides that the minimum term of imprisonment for a sentence imposed under this section is two-thirds of the sentence, unless a longer minimum sentence applies. The maximum term of imprisonment is life.

Subd. 3. Mandatory life sentence. Requires the court to sentence a person to imprisonment for life if:

- ▶ the person is convicted of first-degree criminal sexual conduct; and
- ▶ the court determines that the person has previously been sentenced as a repeat offender, or the person has two previous first-, second-, or third-degree criminal sexual conduct offenses, or the person has one previous first-, second-, or third-degree criminal sexual conduct offense for which the person was sent to prison under an upward durational departure with a resulting sentence at least twice the sentencing guidelines presumptive sentence. Under the life penalty, the person is eligible for release by the Minnesota Sex Offender Review Board after 30 years. The court may not stay this sentence.

Subd. 4. Mandatory minimum 30-year sentence. Requires the court to commit a person to the commissioner of corrections for a minimum sentence of not less than 30 years if the person is convicted of a listed violent first- or second-degree criminal sexual conduct offense, the court determines that the crime involved an aggravating factor under the sentencing guidelines, and the person has a previous conviction for first-, second-, or third-degree criminal sexual conduct or attempted first-, second-, or third-degree criminal sexual conduct. A court may not stay a sentence under this subdivision. Under the indeterminate sentencing provision, the minimum term of imprisonment for this offense is two-thirds of the minimum sentence unless a longer minimum term of imprisonment is otherwise required for the offense. The maximum term of imprisonment is life.

Subd. 5. Previous sex offense conviction. Provides that an offense is a previous sex offense conviction if the person was convicted of a sex offense before the commission of the present offense of conviction.

Subd. 6. Mandatory minimum departure for sex offenders. Requires the court to sentence a person to at least twice the presumptive sentence recommended under the sentencing guidelines if the person is convicted for a listed violent first-, second-, or third-degree criminal sexual conduct offense and the court determines that the crime involved an aggravating factor that would provide grounds for an upward departure under the sentencing guidelines. Provides that, if an indeterminate sentence applies, the minimum term of imprisonment is two-thirds of the sentence imposed, unless a longer minimum term of imprisonment is required for the offense. The maximum term of imprisonment is life.

21 Conditional release for sex offenders.

Subd. 1. Applicability. Provides that this provision applies to those who commit a sex offense, as defined in section 11.

Subd. 2. Length of conditional release. Requires a court sentencing a person to the commissioner of corrections for first- through fourth-degree criminal sexual conduct or criminal sexual predatory conduct (including attempts) to provide that the

commissioner of corrections must place the person on conditional release upon the person's release from a state correctional facility. This provision applies notwithstanding the statutory maximum sentence for an offense or any provision of the sentencing guidelines

Provides a five-year conditional release period if the person was convicted for a violation or attempted violation of second-, third-, or fourth-degree criminal sexual conduct and the person was not sentenced under the indeterminate sentencing provision. A ten-year conditional release period applies if the person is convicted for a violation or attempted violation of second-, third-, or fourth-degree criminal sexual conduct after a previous sex offense conviction or the person was sentenced to a mandatory departure under section 609.3458, subdivision 5 (section 20), and the person was not sentenced under the indeterminate sentencing provision.

A person sentenced under the indeterminate sentencing provision who is granted conditional release is subject to conditional release for life.

Subd. 3. Terms of conditional release. Specifies that the conditions of release may include various requirements, including those set by the commissioner of corrections. (These requirements are the same requirements provided in sections 609.108 and 609.109 of current law.) Specifies that, if an offender fails to meet any condition of release, the commissioner may revoke the offender's conditional release and order that the person serve the remaining portion of the conditional release term in prison.

Specifies that conditional release under this section is governed by provisions related to supervised release, except as otherwise provided. Also provides that conditional release is governed by section 4. Requires the commissioner to develop a plan to pay the cost of treatment for sex offender parolees.

22 Instruction to Sentencing Guidelines Commission. Directs the Minnesota Sentencing Guidelines Commission to review the new and increased penalties for various crimes in this bill to ensure the presumptive sentences under the sentencing guidelines reflect the legislature's assessment of the severity of those crimes. If the presumptive sentences do not reflect the legislature's assessment of the severity of the crimes, the commission shall increase the level at which various crimes are ranked and set new presumptive sentences for the crimes, if necessary.

23 Repealer. Repeals sections 609.108 and 609.109 and requires the revisor to include a note accompanying the repeal to inform the reader that the statutes have been amended and recodified as set forth in sections 19 and 20.

Article 2: Minnesota Sex Offender Review Board

This article creates the Minnesota Sex Offender Review Board to review whether sex offenders subject to an indeterminate sentence are appropriate for conditional release. The article establishes the board's membership, appointment terms, and responsibilities. This article also establishes the board's hearing process and requires the development of criteria and procedures to govern the board's decision making.

1. 1 Predatory offenders; Minnesota Sex Offender Review Board. Amends the Data Practices Act to specify that certain data are made accessible to the Minnesota Sex Offender Review

- Board under section 244.0515 (section 3).
2. 2 Exceptions. Creates an exception to the Minnesota Open Meeting Law to permit meetings of the Minnesota Sex Offender Review Board (hereafter "board") to remain closed to the public.
 1. 3 Minnesota Sex Offender Review Board. Establishes the board to review and approve the conditional release of sex offenders who are sentenced to an indeterminate sentence under sections 609.3455 and 609.3458, subdivision 3.

Subd. 1. Definitions. Defines the following terms used in this section:

- ▶ "board" means the Minnesota Sex Offender Review Board;
- ▶ "end-of-confinement review committee" means the committee within the Department of Corrections that classifies offenders' risk levels under the community notification act; and
- ▶ "victim" means the person who suffered harm due to the inmate's crime or, if deceased, that person's surviving spouse or next of kin.

Subd. 2. Board; establishment. Creates the five-member board and provides that it will be governed by the statute that applies to other state-level administrative boards.

Subd. 3. Members. Provides that the board's membership consists of the following members:

- ▶ the commissioner of corrections or designee;
- ▶ the commissioner of human services or designee;
- ▶ a retired judge appointed by the governor;
- ▶ a sex offender treatment professional appointed by the governor who is not employed by DOC or DHS; and
- ▶ a public member appointed by the governor.

Also provides that the governor will designate one of the board members to serve as chair.

Subd. 4. Appointment terms. Provides four-year terms for board members and specifies procedures for the appointment of successors. Provides that commissioners' designees serve at the pleasure of the commissioner.

Subd. 5. Responsibilities. Describes the hearing process the board must follow in determining whether an inmate should be granted conditional release from prison. Requires the board to hold a conditional release hearing at least 90 days before an inmate becomes eligible for release. Also requires the board to hold a hearing whenever an inmate petitions for one under subdivision 6. Requires the board to consider the following in making its decisions:

- ▶ the risk assessment report prepared by the DOC's end-of-confinement review committee and the information the committee reviewed in making its decision;
- ▶ the community investigation report prepared by the DOC in advance of the

- inmate's release and the information gathered for use in compiling it;
- ▶ the inmate's criminal offense history;
- ▶ the inmate's behavior while in prison;
- ▶ the inmate's participation in and completion of appropriate treatment;
- ▶ the inmate's need for additional treatment, training, or supervision;
- ▶ the danger the inmate poses to the public if released; and
- ▶ any other information deemed relevant.

Requires the board to make a decision whether or not to grant conditional release within 14 days of the hearing. Sets forth procedures the board must follow if it decides not to grant conditional release. Provides that if the board decides to grant an inmate conditional release at the inmate's first hearing before the board, the commissioner of corrections must release the inmate at the time the inmate is first eligible for release. If conditional release is granted at a later hearing, the commissioner must release the inmate within 90 days of the board's release decision. Prohibits releasing an inmate on a weekend or holiday.

Identifies the data the board may have access to in making a release decision.

Subd. 6. Petition for release. Permits an inmate to petition the board for conditional release once the inmate has served the minimum term of imprisonment. Unless otherwise authorized by the board, prohibits an inmate from petitioning for release unless either two years have passed since the board's last release decision concerning the inmate or the inmate has satisfied all of the conditions set by the board when it previously denied release. Prohibits an inmate who is released by the board and subsequently reincarcerated from petitioning for release until two years have passed since the offender was reincarcerated, unless the commissioner grants the prisoner leave to file a petition sooner.

Subd. 7. Release hearing. Requires the commissioner of corrections to notify various individuals of the time and place of an inmate's release hearing within 45 days after the inmate becomes eligible for or petitions for release. The parties entitled to advance notice include the inmate, the sentencing court, the county attorney's office involved in the prosecution of the case, and the victim. Permits the victim to make an oral or written statement at the hearing summarizing the victim's harm and giving the victim's recommendation concerning release. Requires the board to consider the victim's statement when making this decision. Sets forth other procedural requirements for the hearing.

Subd. 8. Administrative services. Requires the commissioner of corrections to provide administrative support services for the board.

Subd. 9. Administrator. Authorizes the board to hire an administrator and other staff.

Subd. 10. Exemption from chapter 14. Allows the board and commissioner of corrections to adopt expedited rules when proceeding under this section and sections 244.0514 and 609.3459. Otherwise provides that chapter 14 does not apply to the

board and commissioner of corrections for the purposes of this section. Direction to commissioner of corrections. Requires the commissioner of corrections to develop criteria and procedures governing the board's conditional release decisions. Requires the commissioner to seek input from various parties, including the end-of-confinement review committee at each state correctional and treatment facility where predatory offenders are confined, as well as individuals who are knowledgeable in health and human services; public safety; Minnesota's Sex Offender Treatment Program; treatment of sex offenders; crime victim issues; criminal law; sentencing guidelines; law enforcement; and probation; supervised release; and conditional release. Requires the commissioner to establish these criteria and procedures by November 15, 2005, and provides that they will become effective on June 1, 2006, unless the legislature takes contrary action before that time. Requires the commissioner to report to the legislature by November 15, 2005, on the input gathered to develop these criteria and procedures and on the commissioner's proposed criteria and procedures. (Effective the day following enactment.)

Article 3: Sex Offender Technical and Conforming Changes

This article makes technical and conforming changes that are necessary to complete the changes made in the preceding articles of the bill. It also includes a revisor's instruction to renumber certain sections.

Sections 1 through 18 contain the technical and conforming changes. Section 19 requires the revisor to renumber two provisions that would otherwise cause the new provisions in article 1 to appear out of order in the criminal code. The revisor also is instructed to correct cross references and include a notation in Minnesota Statutes to inform readers of the renumbering of these two sections so that they are easy to find.

The entire article has an August 1, 2005, effective date.