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State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH SESSION

HOUSE FILE No. **2996**

February 14, 2008

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The bill was read for the first time and referred to the Committee on Public Safety and Civil Justice

March 11, 2008

Committee Recommendation and Adoption of Report:

Amended and re-referred to the Committee on Finance without further recommendation

April 17, 2008

Committee Recommendation and Adoption of Report:

To Pass as Amended and re-referred to the Committee on Rules and Legislative Administration

April 21, 2008

Committee Recommendation and Adoption of Report:

To Pass

Read Second Time

1.1 A bill for an act

1.2 relating to public safety; allowing persons facing civil commitment as sexually

1.3 dangerous persons or sexual psychopathic personalities to choose to be confined

1.4 in correctional facilities while the petition is being adjudicated; addressing the

1.5 cost of care for persons facing civil commitment; addressing access to certain

1.6 data by county attorneys on persons facing civil commitment; establishing a

1.7 working group to review, assess, and make recommendations regarding the

1.8 modification and application of controlled substance laws; providing for a report;

1.9 amending Minnesota Statutes 2006, sections 13.851, by adding a subdivision;

1.10 253B.045, subdivisions 1, 2, by adding a subdivision; 253B.185, subdivision 5;

1.11 609.115, by adding a subdivision; Minnesota Statutes 2007 Supplement, section

1.12 253B.185, subdivision 1b.

1.13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.14 Section 1. Minnesota Statutes 2006, section 13.851, is amended by adding a

1.15 subdivision to read:

1.16 Subd. 9. **Civil commitment of sexual offenders.** Data relating to the preparation

1.17 of a petition to commit an individual as a sexual psychopathic personality or sexually

1.18 dangerous person is governed by section 253B.185, subdivision 1b.

1.19 Sec. 2. Minnesota Statutes 2006, section 253B.045, subdivision 1, is amended to read:

1.20 Subdivision 1. **Restriction.** Except when ordered by the court pursuant to a finding

1.21 of necessity to protect the life of the proposed patient or others or as provided under

1.22 subdivision 1a, no person subject to the provisions of this chapter shall be confined in a

1.23 jail or correctional institution, except pursuant to chapter 242 or 244.

1.24 **EFFECTIVE DATE.** This section is effective the day following final enactment.

2.1 Sec. 3. Minnesota Statutes 2006, section 253B.045, is amended by adding a
2.2 subdivision to read:

2.3 Subd. 1a. **Exception.** A person who is being petitioned for commitment
2.4 under section 253B.185 and who is placed under a judicial hold order under section
2.5 253B.07, subdivision 2b or 7, may be confined at a Department of Corrections or a
2.6 county correctional or detention facility, rather than a secure treatment facility, until a
2.7 determination of the commitment petition as specified in this subdivision.

2.8 (a) A court may order that a person who is being petitioned for commitment under
2.9 section 253B.185 be confined in a Department of Corrections facility pursuant to the
2.10 judicial hold order under the following circumstances and conditions:

2.11 (1) The person is currently serving a sentence in a Department of Corrections
2.12 facility and the court determines that the person has made a knowing and voluntary (i)
2.13 waiver of the right to be held in a secure treatment facility and (ii) election to be held in a
2.14 Department of Corrections facility. The order confining the person in the Department of
2.15 Corrections facility shall remain in effect until the court vacates the order or the person's
2.16 criminal sentence and conditional release term expire.

2.17 In no case may the person be held in a Department of Corrections facility pursuant
2.18 only to this subdivision, and not pursuant to any separate correctional authority, for more
2.19 than 210 days.

2.20 (2) A person who has elected to be confined in a Department of Corrections facility
2.21 under this subdivision may revoke the election by filing a written notice of intent to revoke
2.22 the election with the court and serving the notice upon the Department of Corrections and
2.23 the county attorney. The court shall order the person transferred to a secure treatment
2.24 facility within 15 days of the date that the notice of revocation was filed with the court,
2.25 except that, if the person has additional time to serve in prison at the end of the 15-day
2.26 period, the person shall not be transferred to a secure treatment facility until the person's
2.27 prison term expires. After a person has revoked an election to remain in a Department of
2.28 Corrections facility under this subdivision, the court may not adopt another election to
2.29 remain in a Department of Corrections facility without the agreement of both parties and
2.30 the Department of Corrections.

2.31 (3) Upon petition by the commissioner of corrections, after notice to the parties
2.32 and opportunity for hearing and for good cause shown, the court may order that the
2.33 person's place of confinement be changed from the Department of Corrections to a secure
2.34 treatment facility.

2.35 (4) While at a Department of Corrections facility pursuant to this subdivision, the
2.36 person shall remain subject to all rules and practices applicable to correctional inmates

3.1 in the facility in which the person is placed including, but not limited to, the powers and
3.2 duties of the commissioner of corrections under section 241.01, powers relating to use of
3.3 force under section 243.52, and the right of the commissioner of corrections to determine
3.4 the place of confinement in a prison, reformatory, or other facility.

3.5 (5) A person may not be confined in a Department of Corrections facility under this
3.6 provision beyond the end of the person's executed sentence or the end of any applicable
3.7 conditional release period, whichever is later. If a person confined in a Department of
3.8 Corrections facility pursuant to this provision reaches the person's supervised release
3.9 date and is subject to a period of conditional release, the period of conditional release
3.10 shall commence on the supervised release date even though the person remains in the
3.11 Department of Corrections facility pursuant to this provision. At the end of the later of
3.12 the executed sentence or any applicable conditional release period, the person shall be
3.13 transferred to a secure treatment facility.

3.14 (6) Nothing in this section may be construed to establish a right of an inmate in a
3.15 state correctional facility to participate in sex offender treatment. This section must be
3.16 construed in a manner consistent with the provisions of section 244.03.

3.17 (b) The committing county may offer a person who is being petitioned for
3.18 commitment under section 253B.185 and who is placed under a judicial hold order under
3.19 section 253B.07, subdivision 2b or 7, the option to be held in a county correctional or
3.20 detention facility rather than a secure treatment facility, under such terms as may be agreed
3.21 to by the county, the commitment petitioner, and the commitment respondent. If a person
3.22 makes such an election under this paragraph, the court hold order shall specify the terms
3.23 of the agreement, including the conditions for revoking the election.

3.24 **EFFECTIVE DATE.** This section is effective the day following final enactment.

3.25 Sec. 4. Minnesota Statutes 2006, section 253B.045, subdivision 2, is amended to read:

3.26 Subd. 2. **Facilities.** Each county or a group of counties shall maintain or provide by
3.27 contract a facility for confinement of persons held temporarily for observation, evaluation,
3.28 diagnosis, treatment, and care. When the temporary confinement is provided at a regional
3.29 treatment center, the commissioner shall charge the county of financial responsibility for
3.30 the costs of confinement of persons hospitalized under section 253B.05, subdivisions 1
3.31 and 2, and section 253B.07, subdivision 2b, except that the commissioner shall bill the
3.32 responsible health plan first. If the person has health plan coverage, but the hospitalization
3.33 does not meet the criteria in subdivision 6 or section 62M.07, 62Q.53, or 62Q.535,
3.34 the county is responsible. When a person is temporarily confined in a Department
3.35 of Corrections facility solely under subdivision 1a, and not based on any separate

4.1 correctional authority: (1) the commissioner of corrections may charge the county of
4.2 financial responsibility for the costs of confinement; and (2) the Department of Human
4.3 Services shall use existing appropriations to fund all remaining nonconfinement costs.
4.4 The funds received by the commissioner for the confinement and nonconfinement costs
4.5 are appropriated to the department for these purposes. "County of financial responsibility"
4.6 means the county in which the person resides at the time of confinement or, if the person
4.7 has no residence in this state, the county which initiated the confinement. The charge
4.8 for confinement in a facility operated by the commissioner of human services shall be
4.9 based on the commissioner's determination of the cost of care pursuant to section 246.50,
4.10 subdivision 5. When there is a dispute as to which county is the county of financial
4.11 responsibility, the county charged for the costs of confinement shall pay for them pending
4.12 final determination of the dispute over financial responsibility. Disputes about the county
4.13 of financial responsibility shall be submitted to the commissioner to be settled in the
4.14 manner prescribed in section 256G.09.

4.15 **EFFECTIVE DATE.** This section is effective the day following final enactment.

4.16 Sec. 5. Minnesota Statutes 2007 Supplement, section 253B.185, subdivision 1b,
4.17 is amended to read:

4.18 Subd. 1b. **County attorney access to data.** Notwithstanding sections 144.291
4.19 to 144.298; 245.467, subdivision 6; 245.4876, subdivision 7; 260B.171; 260B.235,
4.20 subdivision 8; 260C.171; and 609.749, subdivision 6, or any provision of chapter 13
4.21 or other state law, prior to filing a petition for commitment as a sexual psychopathic
4.22 personality or as a sexually dangerous person, and upon notice to the proposed patient,
4.23 the county attorney or the county attorney's designee may move the court for an order
4.24 granting access to any records or data, to the extent it relates to the proposed patient, for
4.25 the purpose of determining whether good cause exists to file a petition and, if a petition
4.26 is filed, to support the allegations set forth in the petition.

4.27 The court may grant the motion if: (1) the Department of Corrections refers the case
4.28 for commitment as a sexual psychopathic personality or a sexually dangerous person; or
4.29 (2) upon a showing that the requested category of data or records may be relevant to
4.30 the determination by the county attorney or designee. The court shall decide a motion
4.31 under this subdivision within 48 hours after a hearing on the motion. Notice to the
4.32 proposed patient need not be given upon a showing that such notice may result in harm or
4.33 harassment of interested persons or potential witnesses. Notwithstanding any provision
4.34 of chapter 13 or other state law, a county attorney considering the civil commitment of a
4.35 person under this section may obtain records and data from the Department of Corrections

5.1 or any probation or parole agency in this state upon request, without a court order, for the
5.2 purpose of determining whether good cause exists to file a petition and, if a petition is
5.3 filed, to support the allegations set forth in the petition. At the time of the request for
5.4 the records, the county attorney shall provide notice of the request to the person who is
5.5 the subject of the records.

5.6 Data collected pursuant to this subdivision shall retain their original status and, if not
5.7 public, are inadmissible in any court proceeding unrelated to civil commitment, unless
5.8 otherwise permitted.

5.9 **EFFECTIVE DATE.** This section is effective the day following final enactment.

5.10 Sec. 6. Minnesota Statutes 2006, section 253B.185, subdivision 5, is amended to read:

5.11 Subd. 5. **Financial responsibility.** (a) For purposes of this subdivision, "state
5.12 facility" has the meaning given in section 246.50 and also includes a Department of
5.13 Corrections facility when the proposed patient is confined in such a facility pursuant to
5.14 section 253B.045, subdivision 1a.

5.15 (b) Notwithstanding sections 246.54, 253B.045, and any other law to the contrary,
5.16 when a petition is filed for commitment under this section pursuant to the notice required
5.17 in section 244.05, subdivision 7, the state and county are each responsible for 50 percent of
5.18 the cost of the person's confinement at a state facility or county jail, prior to commitment.

5.19 (c) The county shall submit an invoice to the state court administrator for
5.20 reimbursement of the state's share of the cost of confinement.

5.21 (d) Notwithstanding paragraph (b), the state's responsibility for reimbursement is
5.22 limited to the amount appropriated for this purpose.

5.23 **EFFECTIVE DATE.** This section is effective the day following final enactment.

5.24 Sec. 7. Minnesota Statutes 2006, section 609.115, is amended by adding a subdivision
5.25 to read:

5.26 Subd. 10. **Veterans mental health status.** If a defendant convicted of a crime is
5.27 currently serving in the military or is a veteran and has been diagnosed by a qualified
5.28 psychiatrist or clinical psychologist or physician with a mental illness, the court may:

5.29 (1) order that the officer preparing the report under subdivision 1 consult with the
5.30 United States Department of Veterans Affairs, Minnesota Department of Veterans Affairs,
5.31 or another agency or person with suitable knowledge or experience, for the purpose
5.32 of providing the court with information regarding treatment options available to the
5.33 defendant including federal, state, and local programming; and

6.1 (2) consider the treatment recommendations of any diagnosing or treating mental
6.2 health professionals together with the treatment options available to the defendant in
6.3 imposing sentence.

6.4 Sec. 8. **WORKING GROUP ON CONTROLLED SUBSTANCE LAWS;**
6.5 **REPORT TO LEGISLATURE.**

6.6 Subdivision 1. Establishment; membership; staff. (a) By July 1, 2008, the chair
6.7 of the house Public Safety Finance Division and the chair of the senate Public Safety
6.8 Budget Division shall jointly appoint a working group on the state's controlled substance
6.9 laws. The working group shall include:

6.10 (1) two representatives of the Minnesota County Attorneys Association;

6.11 (2) two representatives of the Board of Public Defense;

6.12 (3) three representatives of state law enforcement associations, including one
6.13 sheriff, one chief of police, and one member of the Minnesota Police and Peace Officers
6.14 Association;

6.15 (4) two representatives of the Judicial Council;

6.16 (5) one representative from community corrections or probation;

6.17 (6) one expert in the fields of drug treatment and controlled substance laws;

6.18 (7) one individual who is not affiliated with any of the associations in clauses (1) to
6.19 (6) and who has relevant experience related to sentencing policy or the criminal justice
6.20 field; and

6.21 (8) four community members who reside in areas adversely affected by controlled
6.22 substance crimes and violent crimes, two of whom shall be appointed by the speaker of
6.23 the house of representatives and two of whom shall be appointed by the Subcommittee
6.24 on Committees of the Committee on Rules and Administration of the senate. One of the
6.25 community members appointed by the senate must be a member of a community crime
6.26 prevention organization. Of the community members appointed by the senate, one must
6.27 reside in Minneapolis and one must reside in outstate Minnesota. Of the community
6.28 members appointed by the house, one must reside in St. Paul and one must reside in a
6.29 suburb of Minneapolis or St. Paul.

6.30 (b) Before making the appointments required under paragraph (a), the legislative
6.31 appointing authorities must consider the recommendations of the chairs and ranking
6.32 minority members of the committees and divisions in their respective legislative body
6.33 with jurisdiction over criminal justice and policy funding.

6.34 (c) The appointments under paragraph (a) must be completed by July 1, 2008.
6.35 Staff support for the working group shall be provided by the Sentencing Guidelines

7.1 Commission. The executive director of the Sentencing Guidelines Commission or the
7.2 executive director's designee shall convene the first meeting of the working group. The
7.3 working group shall elect its chair from its membership at the first meeting.

7.4 Subd. 2. **Subject matter.** (a) The working group must review, assess, and make
7.5 specific recommendations regarding the following alternatives for modification and
7.6 application of Minnesota's controlled substance laws:

7.7 (1) revising the threshold amounts for Minnesota's controlled substance crimes;

7.8 (2) establishing a separate sentencing guidelines grid for drug offenses;

7.9 (3) establishing additional aggravating factors so as to target certain particularly
7.10 dangerous offenders;

7.11 (4) revising the criminal history point calculations for repeat drug offenders;

7.12 (5) maximizing the use of deferred prosecutions for low-level drug offenders under
7.13 Minnesota Statutes, section 152.18 throughout the state; and

7.14 (6) increasing the use of the early release program for nonviolent controlled
7.15 substance offenders who successfully complete drug treatment while incarcerated as
7.16 provided in Minnesota Statutes, section 244.055.

7.17 (b) As part of its review of the various possible reforms, the working group may
7.18 also study and consider:

7.19 (1) the significance, if any, of current rates of departure from presumptive guidelines
7.20 sentences for controlled substance crimes;

7.21 (2) the significance, if any, of current rates of departure from presumptive guidelines
7.22 sentences for controlled substance crimes for identifiable categories of offenders;

7.23 (3) the impact that recent United States Supreme Court criminal sentencing decisions
7.24 have on implementing further reform;

7.25 (4) the barriers to comparing Minnesota's sentencing data with data from other states;

7.26 (5) strategies for imposing probation and supervised release violations on drug
7.27 offenders;

7.28 (6) strategies for increasing the efficacy of programs that are now available to treat
7.29 drug offenders;

7.30 (7) the likely impact of any recommended change in policy upon victims of
7.31 drug-related crimes and the neighborhoods in which these crimes occur;

7.32 (8) the likely impact of any recommended change in policy upon the efficacy of law
7.33 enforcement, prosecution, public defender, or court personnel; or

7.34 (9) any other sentencing-related matter that the working group sees fit to consider.

8.1 Subd. 3. **Report to legislature.** The working group shall report its findings and
8.2 recommendations to the chair of the house Public Safety Finance Division and the chair of
8.3 the senate Public Safety Budget Division by January 16, 2009.

8.4 **EFFECTIVE DATE.** This section is effective the day following final enactment.