

SENATE
STATE OF MINNESOTA
EIGHTY-EIGHTH SESSION

S.F. No. 2548

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| DATE | D-PG | OFFICIAL STATUS |
|------------|------|--|
| 03/12/2014 | 6157 | Introduction and first reading Referred to Health, Human Services and Housing |

A bill for an act

1.1 relating to human services; modifying provisions governing civil commitment of
 1.2 persons with sexual psychopathic personalities and sexually dangerous persons;
 1.3 establishing a Sex Offender Civil Commitment Screening Unit; implementing
 1.4 the statewide sex offender civil commitment judicial panel; establishing a Sex
 1.5 Offender Civil Commitment Defense Office; appropriating money; amending
 1.6 Minnesota Statutes 2012, section 253B.18, subdivision 4b; Minnesota Statutes
 1.7 2013 Supplement, sections 244.05, subdivision 7; 253B.18, subdivision 4c;
 1.8 253D.07, subdivision 1; 253D.08; 253D.09; 253D.11; 253D.12, subdivision
 1.9 2; 253D.14, subdivision 3; 253D.20; 253D.23; proposing coding for new
 1.10 law in Minnesota Statutes, chapter 253D; repealing Minnesota Statutes 2013
 1.11 Supplement, sections 253D.27; 253D.28.
 1.12

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

1.14 Section 1. Minnesota Statutes 2013 Supplement, section 244.05, subdivision 7, is
 1.15 amended to read:

1.16 Subd. 7. **Sex offenders; civil commitment determination.** (a) Before the
 1.17 commissioner releases from prison any inmate convicted under section 609.342, 609.343,
 1.18 609.344, 609.345, or 609.3453, or sentenced as a patterned offender under section
 1.19 609.3455, subdivision 3a, and determined by the commissioner to be in a high risk category,
 1.20 the commissioner shall make a preliminary determination whether, in the commissioner's
 1.21 opinion, a petition under chapter 253D may be appropriate. ~~The commissioner's opinion~~
 1.22 ~~must be based on a recommendation of a Department of Corrections screening committee~~
 1.23 ~~and a legal review and recommendation from independent counsel knowledgeable in the~~
 1.24 ~~legal requirements of the civil commitment process. The commissioner may retain a~~
 1.25 ~~retired judge or other attorney to serve as independent counsel~~ The commissioner shall
 1.26 establish a process for making a determination under this subdivision that is based on
 1.27 assessment standards established by the screening unit under section 253D.05.

2.1 (b) In making this decision, the commissioner shall have access to the following data
2.2 only for the purposes of the assessment and referral decision:

2.3 (1) private medical data under section 13.384 or sections 144.291 to 144.298, or
2.4 welfare data under section 13.46 that relate to medical treatment of the offender;

2.5 (2) private and confidential court services data under section 13.84;

2.6 (3) private and confidential corrections data under section 13.85; and

2.7 (4) private criminal history data under section 13.87.

2.8 (c) If the commissioner determines that a petition may be appropriate, the
2.9 commissioner shall forward this determination, along with a summary of the reasons for
2.10 the determination, to the ~~county attorney in the county where the inmate was convicted~~
2.11 Sex Offender Civil Commitment Screening Unit under section 253D.05, no later than
2.12 12 months before the inmate's release date. If the inmate is received for incarceration
2.13 with fewer than 12 months remaining in the inmate's term of imprisonment, or if the
2.14 commissioner receives additional information less than 12 months before release that
2.15 makes the inmate's case appropriate for referral, the commissioner shall forward the
2.16 determination as soon as is practicable. Upon receiving the commissioner's preliminary
2.17 determination, the ~~county attorney screening unit~~ shall proceed in the manner provided in
2.18 ~~chapter 253D~~ section 253D.05. The commissioner shall release to the ~~county attorney~~
2.19 screening unit all requested documentation maintained by the department.

2.20 Sec. 2. Minnesota Statutes 2012, section 253B.18, subdivision 4b, is amended to read:

2.21 Subd. 4b. **Pass-eligible status; notification.** ~~The following patients~~ A patient
2.22 committed to a secure treatment facility shall as a person who is mentally ill and dangerous
2.23 must not be placed on pass-eligible status unless without approval of that status has been
2.24 approved by the medical director of the secure treatment facility if the patient:

2.25 ~~(a) a patient who has been committed as a person who is mentally ill and dangerous~~
2.26 ~~and who:~~

2.27 (1) was found incompetent to proceed to trial for a felony or was found not guilty
2.28 by reason of mental illness of a felony immediately prior to the filing of the commitment
2.29 petition;

2.30 (2) was convicted of a felony immediately prior to or during commitment as a
2.31 person who is mentally ill and dangerous; or

2.32 (3) is subject to a commitment to the commissioner of corrections; ~~and.~~

2.33 ~~(b) a patient who has been committed as a psychopathic personality, a sexually~~
2.34 ~~psychopathic personality, or a sexually dangerous person.~~

3.1 At least ten days prior to a determination on the status, the medical director shall
3.2 notify the committing court, the county attorney of the county of commitment, the
3.3 designated agency, an interested person, the petitioner, and the petitioner's counsel of the
3.4 proposed status, and their right to request review by the special review board. If within ten
3.5 days of receiving notice any notified person requests review by filing a notice of objection
3.6 with the commissioner and the head of the treatment facility, a hearing shall be held before
3.7 the special review board. The proposed status shall not be implemented unless it receives
3.8 a favorable recommendation by a majority of the board and approval by the commissioner.
3.9 The order of the commissioner is appealable as provided in section 253B.19.

3.10 Nothing in this subdivision shall be construed to give a patient an affirmative right to
3.11 seek pass-eligible status from the special review board.

3.12 Sec. 3. Minnesota Statutes 2013 Supplement, section 253B.18, subdivision 4c, is
3.13 amended to read:

3.14 Subd. 4c. **Special review board.** (a) The commissioner shall establish one or more
3.15 panels of a special review board. The board shall consist of three members experienced
3.16 in the field of mental illness. One member of each special review board panel shall be a
3.17 psychiatrist or a doctoral level psychologist with forensic experience and one member
3.18 shall be an attorney. No member shall be affiliated with the Department of Human
3.19 Services. The special review board shall meet at least every six months and at the call of
3.20 the commissioner. It shall hear and consider all petitions for a reduction in custody or to
3.21 appeal a revocation of provisional discharge. A "reduction in custody" means transfer
3.22 from a secure treatment facility, discharge, and provisional discharge. Patients may be
3.23 transferred by the commissioner between secure treatment facilities without a special
3.24 review board hearing.

3.25 Members of the special review board shall receive compensation and reimbursement
3.26 for expenses as established by the commissioner.

3.27 ~~(b) A petition filed by a person committed as mentally ill and dangerous to the~~
3.28 ~~public under this section must be heard as provided in subdivision 5 and, as applicable,~~
3.29 ~~subdivision 13. a petition filed by A person committed as a sexual psychopathic~~
3.30 ~~personality or as a sexually dangerous person under chapter 253D, or committed as both~~
3.31 ~~mentally ill and dangerous to the public under this section and as a sexual psychopathic~~
3.32 ~~personality or as a sexually dangerous person must be heard as provided in section~~
3.33 ~~253D.27 is not entitled to file a petition for a reduction in custody.~~

3.34 Sec. 4. **[253D.05] SEX OFFENDER CIVIL COMMITMENT SCREENING UNIT.**

4.1 Subdivision 1. **Establishment.** (a) A Sex Offender Civil Commitment Screening
4.2 Unit is established. The screening unit is part of the executive branch of government.
4.3 The screening unit must operate as a centralized, professionally independent unit with
4.4 statewide jurisdiction to develop and implement a comprehensive assessment process to
4.5 evaluate individuals who may meet the criteria for civil commitment under this chapter
4.6 and the appropriate terms and conditions of commitment, including placement.

4.7 (b) An executive board comprised of two members appointed by the commissioner
4.8 of human services, two members appointed by the commissioner of corrections, and
4.9 one member appointed by the Supreme Court is responsible for overseeing the general
4.10 administrative operations of the screening unit but has no control over the performance of
4.11 professional duties of the screening unit. The member designated by the Supreme Court is
4.12 the chair of the board. Members serve two-year terms. A member of the board must not
4.13 be an employee of the Department of Human Services, the Department of Corrections, a
4.14 county attorney, or the judicial branch. Section 15.0575 applies to the compensation and
4.15 removal of members and filling of vacancies.

4.16 Subd. 2. **Organization; multidisciplinary teams.** (a) The executive board
4.17 shall hire a director for the screening unit who must be chosen solely on the basis of
4.18 training, experience, and other qualifications and will serve at the pleasure of the board.
4.19 The director shall employ a sufficient number of individuals to serve as members of
4.20 the screening unit and may employ staff to assist the members. The members must
4.21 include individuals with the professional expertise, credentials, training, and professional
4.22 independence to perform duties under this section.

4.23 (b) Each case must be reviewed by a screening team comprised of at least three
4.24 members of the screening unit. At least two members of a team must be professionals
4.25 with training and credentials in the treatment, diagnosis, risk assessment, or management
4.26 of sex offenders that ensure that assessments, determinations, and recommendations are
4.27 evidence-based and use the most current and accurate science, including validated risk
4.28 assessment instruments.

4.29 Subd. 3. **Determinations and recommendations; use in court proceedings.** (a)
4.30 The screening unit shall:

4.31 (1) review cases submitted by the commissioner of corrections under section 244.05,
4.32 subdivision 7, or a county attorney under section 253D.07, subdivision 1, and determine
4.33 whether the person meets the legal criteria for commitment under this chapter;

4.34 (2) if a court makes a determination that a respondent is a person with a sexual
4.35 psychopathic personality or sexually dangerous person, make a recommendation regarding
4.36 the terms and conditions of the commitment, including the appropriate placement; and

5.1 (3) when a case is subject to biennial review under this chapter, conduct a forensic
5.2 evaluation and make a recommendation regarding whether the committed person should
5.3 be transferred, provisionally discharged, or discharged under this chapter and the
5.4 appropriate terms and conditions of any continued commitment, including placement.

5.5 (b) If a case is submitted to the screening unit by the commissioner of corrections
5.6 under section 244.05, subdivision 7, the screening unit shall notify the county attorney of
5.7 the county where the inmate was convicted and the county where the inmate resided before
5.8 incarceration of its determination regarding whether the person meets the legal criteria for
5.9 commitment under this chapter. If the commissioner of corrections provided a preliminary
5.10 determination to the screening unit at least 12 months before the inmate's scheduled release
5.11 from prison, the unit shall provide the notice within 90 days after receiving the preliminary
5.12 determination from the commissioner of corrections. If the commissioner of corrections
5.13 provided a preliminary determination to the screening unit less than 12 months before the
5.14 inmate's scheduled release, the unit shall provide the notice nine months before the inmate's
5.15 scheduled release or within 30 days after receiving the preliminary determination from the
5.16 commissioner of corrections, whichever is later. The screening unit shall release requested
5.17 documentation for its determination to the county attorney, including documentation
5.18 created by the screening unit or received from the commissioner of corrections.

5.19 (c) If a case is submitted to the screening unit by a county attorney under section
5.20 253D.07, subdivision 1, the screening unit shall notify the county attorney of its
5.21 determination regarding whether the person meets the legal criteria for commitment under
5.22 this chapter. The notice must be given within 30 days after the case is submitted.

5.23 (d) Failure to comply with the timelines under paragraph (b) or (c) does not affect
5.24 the validity or effectiveness of a determination. A determination or recommendation
5.25 of the screening unit is not binding but may be admissible in a proceeding under this
5.26 chapter. A member of the screening unit must not testify at a proceeding where a report
5.27 of the screening unit will be considered.

5.28 Subd. 4. **Access to data.** The screening unit has access to the data specified in
5.29 sections 244.05, subdivision 7, paragraph (b), and 253D.08, subdivision 2, for purposes of
5.30 making a determination under subdivision 3, clause (1). The screening unit may move
5.31 for an order under section 253D.08, subdivision 1, in the same manner as the county
5.32 attorney, to obtain access to other records regarding an inmate or potential respondent
5.33 that may be relevant to its determination.

5.34 Subd. 5. **Development and publication of standards.** (a) The screening unit shall
5.35 develop clear, consistent, and scientifically based standards by which individuals are
5.36 screened for civil commitment and for determining the appropriate treatment, including

6.1 standards for determining whether an individual meets the legal criteria for commitment;
6.2 terms and conditions of commitment, including placement; and standards for a transfer,
6.3 provisional discharge, or discharge. The standards must be evidence-based and use the
6.4 most current and accurate science, including validated risk assessment instruments.

6.5 (b) The screening unit shall maintain expertise on the most current and accurate
6.6 assessment methods and analysis and regularly publish guidance on these subjects for the
6.7 benefit of courts, petitioners, defense counsel, and those subject to civil commitment
6.8 proceedings under this chapter.

6.9 (c) The screening unit shall develop assessment standards for use by the
6.10 commissioner of corrections under section 244.05, subdivision 7, for purposes of making
6.11 a determination that an inmate is in a high-risk category and a preliminary determination
6.12 that a petition under this chapter may be appropriate.

6.13 Subd. 6. **Audit.** At least once every two years, the executive board established
6.14 under subdivision 1 shall arrange for an independent audit of the work of the screening
6.15 unit to ensure that the screening unit produces consistent, accurate, and quality evaluations
6.16 that identify the scientific basis for recommendations and that the screening unit operates
6.17 as a professionally independent entity that is not subject to pressure or retaliation from
6.18 any source in the performance of its duties.

6.19 Sec. 5. Minnesota Statutes 2013 Supplement, section 253D.07, subdivision 1, is
6.20 amended to read:

6.21 Subdivision 1. **Commitment generally.** (a) Before commitment proceedings are
6.22 instituted, the facts shall first be submitted case must be submitted to the Sex Offender
6.23 Civil Commitment Screening Unit under section 253D.05, provided that if the case
6.24 was submitted to the screening unit by the commissioner of corrections under section
6.25 244.05, subdivision 7, and the screening unit has not submitted its determination 48 hours
6.26 before the inmate's scheduled release, the county attorney may file a petition pending a
6.27 determination by the screening unit. In addition, the county attorney may file a petition
6.28 pending a determination if there is good cause for not submitting the case to the screening
6.29 unit in time to receive a determination before the filing of the petition. The petition must
6.30 include a statement of good cause. Upon a motion to dismiss for lack of good cause, or
6.31 when considering an application of the county attorney for a judicial hold order under
6.32 section 253B.07, subdivision 2b or 7, the court shall dismiss the petition unless the
6.33 court determines that the county attorney has established good cause. Dismissal does
6.34 not preclude the county attorney from filing a new petition after the requirements of
6.35 this paragraph have been satisfied.

7.1 (b) The screening unit must submit its determination regarding whether an individual
 7.2 meets the legal criteria for commitment under this chapter to the county attorney, who, if
 7.3 satisfied that good cause exists, will prepare the petition. The county attorney may request
 7.4 a prepetition screening report. A determination by the screening unit that an individual
 7.5 does not meet the criteria for commitment is not binding on the county attorney. The
 7.6 petition is to be executed by a person having knowledge of the facts and filed with the
 7.7 district court of the county of financial responsibility, as defined in section 253B.02,
 7.8 subdivision 4c, or the county where the respondent is present. If the respondent is in the
 7.9 eustody of the commissioner of corrections, the petition may be filed in the county where
 7.10 the conviction for which the person is incarcerated was entered Supreme Court for referral
 7.11 to the judicial panel under section 253D.11. The county attorney, as determined pursuant
 7.12 to section 253B.23, subdivision 1b, is responsible for making a decision regarding the
 7.13 filing of a commitment petition.

7.14 Sec. 6. Minnesota Statutes 2013 Supplement, section 253D.08, is amended to read:

7.15 **253D.08 COUNTY ATTORNEY ACCESS TO DATA.**

7.16 Subdivision 1. **Court order required.** (a) Notwithstanding sections 144.291
 7.17 to 144.298; 245.467, subdivision 6; 245.4876, subdivision 7; 260B.171; 260B.235,
 7.18 subdivision 8; 260C.171; and 609.749, subdivision 6, or any provision of chapter 13 or
 7.19 other state law, prior to filing a petition for commitment of a sexually dangerous person
 7.20 or a person with a sexual psychopathic personality, and upon notice to the proposed
 7.21 committed person, the county attorney or the county attorney's designee may move the
 7.22 court for an order granting access to any records or data, to the extent it relates to the
 7.23 proposed committed person, for the purpose of determining whether good cause exists to
 7.24 file a petition and, if a petition is filed, to support the allegations set forth in the petition.

7.25 (b) The court may grant the motion if: (1) the Department of Corrections refers
 7.26 the case for commitment of a sexually dangerous person or a person with a sexual
 7.27 psychopathic personality; or (2) upon a showing that the requested category of data or
 7.28 records may be relevant to the determination by the county attorney or designee. The court
 7.29 shall decide a motion under this section within 48 hours after a hearing on the motion.
 7.30 Notice to the proposed committed person need not be given upon a showing that such
 7.31 notice may result in harm or harassment of interested persons or potential witnesses.

7.32 Subd. 2. **Court order not required; Department of Corrections, probation, or**
 7.33 **parole data.** Notwithstanding any provision of chapter 13 or other state law, a county
 7.34 attorney considering the civil commitment of a person under this chapter may obtain
 7.35 records and data from the Department of Corrections or any probation or parole agency in

8.1 this state upon request, without a court order, for the purpose of determining whether good
 8.2 cause exists to file a petition and, if a petition is filed, to support the allegations set forth in
 8.3 the petition. At the time of the request for the records, the county attorney shall provide
 8.4 notice of the request to the person who is the subject of the records.

8.5 Subd. 3. Data retain classification; limited use in other proceedings. Data
 8.6 collected pursuant to this section shall retain their original status and, if not public, are
 8.7 inadmissible in any court proceeding unrelated to civil commitment, unless otherwise
 8.8 permitted.

8.9 Sec. 7. Minnesota Statutes 2013 Supplement, section 253D.09, is amended to read:

8.10 **253D.09 PETITION DETERMINATION REQUIRED.**

8.11 (a) Within 120 days of receipt of a preliminary determination from a court under
 8.12 section 609.1351, or a ~~referral~~ determination from the ~~commissioner of corrections~~ Sex
 8.13 Offender Civil Commitment Screening Unit pursuant to section ~~244.05, subdivision 7~~
 8.14 253D.05, a county attorney shall determine whether good cause under section 253D.07
 8.15 exists to file a petition, and if good cause exists, the county attorney or designee shall file
 8.16 the petition with the court.

8.17 (b) Failure to meet the requirements of paragraph (a) does not bar filing a petition
 8.18 under section 253D.07, subdivision 2, any time the county attorney determines pursuant
 8.19 to section 253D.07 that good cause for such a petition exists, provided that the case has
 8.20 been submitted to the screening unit under section 253D.05.

8.21 Sec. 8. Minnesota Statutes 2013 Supplement, section 253D.11, is amended to read:

8.22 **253D.11 STATEWIDE JUDICIAL PANEL.**

8.23 ~~Subdivision 1. Establishment.~~ The Supreme Court ~~may~~ shall establish a panel of
 8.24 district judges, which may include retired judges, with statewide authority to preside
 8.25 over commitment proceedings of sexually dangerous persons or persons with sexual
 8.26 psychopathic personalities. ~~Only One judge of the panel is required to~~ will preside over
 8.27 a particular commitment proceeding. Panel members shall serve ~~for one-year~~ terms
 8.28 specified by the Supreme Court. One of the judges shall be designated as the chief judge
 8.29 of the panel, and is vested with the power to designate the presiding judge in a particular
 8.30 case, to set the proper venue for the proceedings, and to otherwise supervise and direct
 8.31 the operation of the panel. The chief judge shall designate one of the other judges to act
 8.32 as chief judge whenever the chief judge is unable to act.

8.33 ~~Subd. 2. Petitions.~~ ~~If the Supreme Court creates the judicial panel authorized by this~~
 8.34 ~~section, all petitions for civil commitment brought under section 253D.07 shall be filed~~

9.1 ~~with the supreme court instead of with the district court in the county where the proposed~~
9.2 ~~patient is present, notwithstanding any provision of section 253D.07 to the contrary.~~
9.3 ~~Otherwise, all of The other applicable procedures contained in this chapter and sections~~
9.4 ~~253B.07 and 253B.08 apply to commitment proceedings conducted by a judge on the panel.~~

9.5 Sec. 9. Minnesota Statutes 2013 Supplement, section 253D.12, subdivision 2, is
9.6 amended to read:

9.7 Subd. 2. **Share of cost of confinement.** Notwithstanding sections 246.54, 253D.10,
9.8 and any other law to the contrary, when a petition is filed for commitment under this
9.9 chapter ~~pursuant to the notice required in~~ of a person who was referred under section
9.10 244.05, subdivision 7, the state and county are each responsible for 50 percent of the cost
9.11 of the person's confinement at a state facility or county jail, prior to commitment.

9.12 Sec. 10. Minnesota Statutes 2013 Supplement, section 253D.14, subdivision 3, is
9.13 amended to read:

9.14 Subd. 3. **Notice of discharge or release.** Before provisionally discharging,
9.15 discharging, ~~granting pass-eligible status, approving a pass plan,~~ or otherwise permanently
9.16 or temporarily releasing a person committed under this chapter from a treatment facility,
9.17 the executive director shall make a reasonable effort to notify any victim of a crime for
9.18 which the person was convicted that the person may be discharged or released and that
9.19 the victim has a right to submit a written statement regarding ~~decisions of the executive~~
9.20 ~~director, or special review board~~ the decision, with respect to the person. To the extent
9.21 possible, the notice must be provided at least 14 days before ~~any special review board a~~
9.22 ~~hearing or before a determination on a pass plan.~~ Notwithstanding section 611A.06,
9.23 subdivision 4, the commissioner shall provide the judicial ~~appeal~~ panel under section
9.24 253D.11 with victim information in order to comply with the provisions of this chapter.
9.25 The judicial ~~appeal~~ panel shall ensure that the data on victims remains private as provided
9.26 for in section 611A.06, subdivision 4.

9.27 Sec. 11. Minnesota Statutes 2013 Supplement, section 253D.20, is amended to read:

9.28 **253D.20 RIGHT TO COUNSEL.**

9.29 A committed person has the right to be represented by counsel at any proceeding
9.30 under this chapter. The court shall appoint a qualified attorney from the sex offender
9.31 civil commitment defense panel established under section 253D.201, to represent
9.32 the committed person if neither the committed person nor others provide counsel.

10.1 The attorney shall be appointed at the time a petition for commitment is filed. In all
 10.2 proceedings under this chapter, the attorney shall:

- 10.3 (1) consult with the person prior to any hearing;
- 10.4 (2) be given adequate time and access to records to prepare for all hearings;
- 10.5 (3) continue to represent the person throughout any proceedings under this chapter
 10.6 unless released as counsel by the court; and
- 10.7 (4) be a vigorous advocate on behalf of the person.

10.8 Sec. 12. **[253D.201] SEX OFFENDER CIVIL COMMITMENT DEFENSE**
 10.9 **OFFICE.**

10.10 Subdivision 1. Establishment; operation. A Sex Offender Civil Commitment
 10.11 Defense Office is established. The office is part of, but not subject to the administrative
 10.12 control of, the judicial branch of government. The Supreme Court shall appoint a chief
 10.13 administrator who shall supervise the operation of the office. The office shall approve and
 10.14 administer a panel of defense counsel to represent respondents and committed persons in
 10.15 proceedings under this chapter and provide for investigative and professional resources
 10.16 necessary for the provision of quality legal representation.

10.17 Subd. 2. Costs of defense services. Notwithstanding section 253B.23, subdivision
 10.18 1, to the extent the costs of defense counsel, examiners, and witnesses employed or used
 10.19 by the defense office exceed in a proceeding under this chapter, those costs must
 10.20 be paid by the state.

10.21 Sec. 13. Minnesota Statutes 2013 Supplement, section 253D.23, is amended to read:

10.22 **253D.23 PASSES PROHIBITED.**

10.23 A committed person ~~may be released on~~ is not eligible for, and must not receive,
 10.24 a pass only as provided by. Section 253B.18, subdivisions 4a and 4b, do not apply to a
 10.25 committed person.

10.26 Sec. 14. **APPROPRIATIONS.**

10.27 \$..... in fiscal year 2015 is appropriated from the general fund to the Sex Offender
 10.28 Civil Commitment Screening Unit established under section 4.

10.29 \$..... in fiscal year 2015 is appropriated from the general fund to the Sex Offender
 10.30 Civil Commitment Defense Office established under section 12.

10.31 Sec. 15. **REPEALER.**

10.32 Minnesota Statutes 2013 Supplement, sections 253D.27; and 253D.28, are repealed.

253D.27 PETITION FOR REDUCTION IN CUSTODY.

Subdivision 1. **Victim notification.** (a) This section applies only to committed persons as defined in section 253D.02, subdivision 4. The procedures in section 253D.14 for victim notification and right to submit a statement apply to petitions filed and reductions in custody recommended under this subdivision.

(b) For the purposes of this section, "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.

Subd. 2. **Filing.** 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 executive director 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 253D.07, subdivision 5, 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 executive director may petition at any time. The special review board proceedings are not contested cases as defined in chapter 14.

Subd. 3. **Hearing.** (a) The special review board shall hold a hearing on each petition before issuing a recommendation and report under section 253D.30, subdivision 4. Fourteen days before the hearing, the committing court, the county attorney of the county of commitment, the county attorney of the county of financial responsibility, 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 committed person may designate interested persons to receive notice by providing the names and addresses to the commissioner at least 21 days before the hearing.

(b) 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, and the county attorney of the county of financial responsibility. The special review board must consider any statements received from victims under section 253D.14.

Subd. 4. **Report.** Within 30 days of the hearing, the special review board shall issue a report with 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 report 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.

253D.28 JUDICIAL APPEAL PANEL.

Subdivision 1. **Rehearing and reconsideration.** (a) A person committed as a sexually dangerous person or a person with a sexual psychopathic personality under this chapter, or committed as both mentally ill and dangerous to the public under section 253B.18 and as a sexually dangerous person or a person with a sexual psychopathic personality under this chapter; the county attorney of the county from which the person was committed or the county of financial responsibility; or the commissioner may petition the judicial appeal panel established under section 253B.19, subdivision 1, for a rehearing and reconsideration of a recommendation of the special review board under section 253D.27.

(b) The petition must be filed with the Supreme Court within 30 days after the recommendation is mailed by the commissioner as required in section 253D.27, subdivision 4. The hearing must be held within 180 days of the filing of the petition unless an extension is granted for good cause.

APPENDIX

Repealed Minnesota Statutes: 14-5139

(c) If no party petitions the judicial appeal panel for a rehearing or reconsideration within 30 days, the judicial appeal panel shall either issue an order adopting the recommendations of the special review board or set the matter on for a hearing pursuant to this section.

Subd. 2. **Procedure.** (a) The Supreme Court shall refer a petition for rehearing and reconsideration to the chief judge of the judicial appeal panel. The chief judge shall notify the committed person, the county attorneys of the county of commitment and county of financial responsibility, the commissioner, the executive director, any interested person, and other persons the chief judge designates, of the time and place of the hearing on the petition. The notice shall be given at least 14 days prior to the date of the hearing.

(b) Any person may oppose the petition. The committed person, the committed person's counsel, the county attorneys of the committing county and county of financial responsibility, and the commissioner shall participate as parties to the proceeding pending before the judicial appeal panel and shall, no later than 20 days before the hearing on the petition, inform the judicial appeal panel and the opposing party in writing whether they support or oppose the petition and provide a summary of facts in support of their position.

(c) The judicial appeal panel may appoint examiners and may adjourn the hearing from time to time. It shall hear and receive all relevant testimony and evidence and make a record of all proceedings. The committed person, the committed person's counsel, and the county attorney of the committing county or the county of financial responsibility have the right to be present and may present and cross-examine all witnesses and offer a factual and legal basis in support of their positions.

(d) The petitioning party seeking discharge or provisional discharge bears the burden of going forward with the evidence, which means presenting a prima facie case with competent evidence to show that the person is entitled to the requested relief. If the petitioning party has met this burden, the party opposing discharge or provisional discharge bears the burden of proof by clear and convincing evidence that the discharge or provisional discharge should be denied.

(e) A party seeking transfer under section 253D.29 must establish by a preponderance of the evidence that the transfer is appropriate.

Subd. 3. **Decision.** A majority of the judicial appeal panel shall rule upon the petition. The panel shall consider the petition de novo. No order of the judicial appeal panel granting a transfer, discharge, or provisional discharge shall be made effective sooner than 15 days after it is issued. The panel may not consider petitions for relief other than those considered by the special review board from which the appeal is taken. The judicial appeal panel may not grant a transfer or provisional discharge on terms or conditions that were not presented to the special review board.

Subd. 4. **Appeal.** A party aggrieved by an order of the appeal panel may appeal that order as provided under section 253B.19, subdivision 5.