

960070

Community Notification Work Group



Final Report to
the Minnesota Legislature

November 30, 1995

BACKGROUND

In Minnesota, the issue of community notification was first formally raised in a legislative context in the Task Force on Sexual Predators. In its final report, the Task Force recommended:

the enactment of legislation that provides for public notification when certain high risk sex offenders are released into a community, if the notification will result in increased public safety.¹

In response, legislation was introduced in the 1995 legislative session to accomplish that goal.² However, it was not enacted. Instead, the legislature called for further study of the issue by the Community Notification Work Group.

CREATION AND CHARGE

The Community Notification Work Group was created by the 1995 legislature to:

study issues relating to laws and proposed legislation authorizing community notification of information about convicted sex offenders...

The work group shall...study the implementation of community notification laws in other states, the positive and negative aspects of community notification laws, the costs of implementing the laws, the social and constitutional issues raised by the laws, and any anticipated federal requirements concerning community notification.³

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MEMBERSHIP

The Community Notification Work Group was made up of a wide range of professionals. The 14-member task force included representatives of victims, prosecutors, defense attorneys, legislators, the Attorney

¹ Task Force on Sexual Predators: Final Report to the Minnesota Legislature, January 4, 1995; See appendix one for the complete "community notification" recommendation of the task force.

² H.F. 181. See appendix two.

³ Laws of Minnesota for 1995, Chapter 226, Article 4, section 35. See appendix three.

General, law enforcement, and the Corrections and Human Services Departments.⁴

MEETINGS

The work group met eight times to gather information, seek input from a broad spectrum of individuals, and to formulate its recommendations.

It held over nineteen hours of hearings and heard from eighteen witnesses including representatives of prosecutors, probation officers, victims and their families, realtors, law enforcement and others. In addition, the work group also toured the DNA laboratory and the Criminal Assessment Program at the Bureau of Criminal Apprehension.

RECOMMENDATIONS

Based upon the input they received and their own personal expertise, the work group made the following recommendations:

First, the sex offender registration law should be amended to require persons convicted of child pornography offenses to register. The federal Violent Crime Control and Law Enforcement Act of 1994 requires states to register offenders if they have been convicted of using a minor in a sexual performance or if they have been convicted of engaging in any conduct that by its nature is a sexual offense against a minor. Minnesota does not fully comply with that mandate. To bring Minnesota into compliance, the work group recommends the enactment of legislation substantially similar to section 2 of bill draft ES130-2.⁵

Second, the work group further recommends the enactment of legislation that provides a process for notifying citizens when certain high risk sex offenders have been or are about to be released from custody and will live in or near their neighborhood. To accomplish that goal, the work group recommends the enactment of legislation substantially similar to sections 1 and 3-10 of bill draft ES130-2.⁶

The work group believes that if citizens are provided adequate notice about potentially dangerous offenders, they can

⁴ See appendix four for a complete list of the work group's membership.

⁵ See appendix five.

⁶ See appendix five.

develop constructive plans to prepare themselves and their children for the offender's presence in their community.

It is the opinion of the work group that the success or failure of this proposed community notification law depends in large measure on the way it is implemented by law enforcement, and not merely on the specific statutory language contained in the legislation.

Because of the importance the work group placed on the implementation phase, it specifically wanted to hear testimony from a law enforcement agency actually involved in implementing an already enacted community notification law.

To that end, it invited Seattle Police Department Detective Robert Shilling to appear before it. Detective Shilling is the "community notification officer" for the Seattle Police Department. In that capacity, he is responsible for implementing Washington's community notification law for the city of Seattle.

The work group was very impressed with his testimony and the way in which the Seattle Police Department implements Washington's community notification law. Consequently, the work group believes that section 9 of bill draft ES130-2 is critical to the community notification process.

Section 9 requires the Minnesota Chiefs of Police Association and the Minnesota Sheriffs Association to "develop a model policy for law enforcement agencies to follow when they disclose information on sex offenders to the public..."

This section of the bill has several important clauses. For example, paragraph (b) clause (1) requires law enforcement to recommend what type of information should be included in the community notification documents. Experience in other states has shown that it is important to provide citizens with the information they need to protect themselves, but unnecessary information that merely inflames their passions is unwarranted and not helpful.

Paragraph (b) clause (5) requires law enforcement to make it clear to the public that vigilantism or other forms of harassment of the offender will not be tolerated. It is imperative for the public to understand that sex offenders have a constitutional right to be free of harassment.

It is also important that the offenders understand that they have a constitutional right to be free from harassment. Paragraph (b) clause (6) requires law enforcement to provide this information to sex offenders. Obviously, the work group expects law enforcement officers to carry out their sworn duty and protect the constitutional rights of all citizens, including sex offenders.

Finally, if the legislature is going to enact a "community notification" bill, then it should provide the financial resources to do it appropriately. The effectiveness of a law is often determined by the resources that are provided to implement that statute. The work group expects "community notification" to be no exception to that rule.



State of Minnesota
Minnesota Department of Corrections
Office of the Commissioner

January 3, 1996

Honorable Wesley J. Skoglund
Minnesota House of Representatives
477 State Office Building
St. Paul, Minnesota 55155

Dear Representative Skoglund:

Thank you for the opportunity to review the report of the Community Notification Work Group. I would like to take this opportunity to respond to the report and proposed legislation, and I ask that you consider including my comments in the final report to the legislature.

In addition to reviewing the report, appendix and proposed legislation, I have had extensive discussions with Deputy Commissioner Mulcrone and my designee to the work group, Bill Guelker. I have no specific comments or problems with the body of the report, but I do have some valid concerns in relation to some of the concepts contained in the proposed legislation (ES130-2). In a memo dated November 20, 1995, to the members of the work group, my staff pointed out some items that should be in the bill and other provisions that should not be in the bill. The work group spent time considering those suggestions and adopted some of them. However, the department feels strongly about some of the provisions that were not adopted and they are outlined in this letter.

Our primary concern is focused on the End of Confinement Review Committee. Our position is that the determination of risk level should be made by the court at the time of sentencing for both those offenders to be incarcerated and those who receive probation. This will allow the offender and counsel to argue the merits of the factors at the time of sentencing, and these arguments will be more timely. For those already sentenced and serving time in either state or local facilities, the sentencing court should, in a non-personal proceeding, assign the risk level based on a recommendation from local probation officers or Department of Corrections agents. This administrative decision could thereafter be appealed for a personal hearing before the court as already provided for in subdivision 5. This process removes the need for a possible subsequent judicial review. With the sentencing court making the determination of the risk level, the role of corrections would be to provide law enforcement with relevant information at the time of release on the offender's adjustment and treatment while incarcerated. If law enforcement feels that a higher risk should be assigned based on this information, they could appeal to the sentencing court.

Representative Skoglund
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As currently written, the End of Confinement Review Committee requires representation by (1) the commissioner of corrections; (2) the head of the state or local correctional or treatment facility where the offender is currently confined in Minnesota, where applicable; (3) the chief of the law enforcement agency; (4) a treatment professional who is trained in the assessment of sex offenders; (5) if the offender will be under supervision, the offender's corrections agent; (6) a representative of a victim advocacy organization from the area where the offender expects to reside upon release; and (7) a public member from the area where the offender expects to reside upon release. With 250 to 300 sex offenders released from prison each year, the logistics of coordinating the meeting of those designated by ES130-2 will be virtually impossible (not to mention very costly to corrections and local government). We realize by putting the responsibility for this process with the court that the court's workload will increase, but interested parties such as those listed in ES130-2 will be nearby allowing greater community involvement.

The role of the End of Confinement Review Committee is further complicated by the fact that it will be responsible for offenders released from local correctional or treatment facilities. If this language were allowed to stand, in essence it would be necessary to create a statewide, traveling panel to do these reviews. The Department of Corrections should not be responsible for an end of confinement review for offenders who are not under the authority of the department as commitments to the commissioner of corrections. There was some discussion that the offender would not have to be present for this review. While this would simplify the process somewhat, the members of the committee would be required to travel sometimes from distant areas of the state.

Another issue regarding the End of Confinement Review Committee relates to juvenile offenders. ES130-2 includes juveniles because juveniles are included in the sex offender registration statute. As a result, the End of Confinement Review Committee will be required to review cases of Minnesota juveniles housed outside the state. The language should be amended to exclude the head of the institution in these juvenile cases since it would be unreasonable to expect them to travel to Minnesota for this proceeding.

The proposed legislation allows the offender to appeal the level of notification back to the End of Confinement Review Committee after two years have elapsed since the original review. Ultimately, the appeal of risk designation/notification ought to be back to the sentencing court. It would be difficult for our department to review such an appeal after having no contact with the individual for two years. We objected to this based on our reading of the risk factors, which, by and large, are objective and would not change over time.

Representative Skoglund

January 3, 1996

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In the section of the proposed legislation that calls for the probation officer to do an assessment of dangerousness, there is no requirement that this agent be trained in the area of assessing sex offenders. We believe that it should be a requirement that anyone involved in this process receive mandatory training on sex offenders. For offenders placed on probation and also doing jail time, it is not clear in the proposed legislation whether the probation officer will do a risk assessment or if the offender is subject to a review by the End of Confinement Review Committee.

I appreciate the fact that the report contains reference to the potential costs of the community notification process. We are currently working on the fiscal impact of the bill as it is written. I believe the cost to both the state and local government will be very significant. If the legislation is to be implemented correctly, the necessary resources must be appropriated. Given the number of sex offenders being placed on probation, the risk assessment requirement will impact probation caseload crowding and will add responsibilities to the officers' workloads that will detract from their current duties.

The proposed legislation should specifically define the "community" that is to be notified. There is concern that notification to only the community of residence may not be sufficient to notify other potential victims. Expanding notification beyond the community of residence could involve notification across city and/or county lines, creating confusion around authority and responsibility.

The proposed legislation does not address subsequent notifications; i.e., monthly, annual or semi-annual renotification. The process to be followed in the event that the offender moves to another community or neighborhood is not addressed.

We thank you for this opportunity to provide our suggestions, and we stand ready to continue working with and being of assistance to you and your staff on this important legislation.

Sincerely,



Frank W. Wood
Commissioner

FWW:wg

APPENDICES

Appendix 1

Community Notification Recommendation of the Task Force on Sexual Predators

Third, the Task Force further recommends the enactment of legislation that provides for public notification when certain high risk sex offenders are released into a community, if the notification will result in increased public safety.

If the state fails within three years to enact a public notification provision, it will lose 10% of its federal funding under the Omnibus Crime Control and Safe Streets Act of 1968 (approximately \$782,100).

However, the Task Force strongly believes that any such legislation must balance other competing interests with the public's right to know. With that goal in mind, the Task Force recommends that any public notification legislation meet several guidelines:

- a) Those offenders who fall within the scope of the public notification law should include certain offenders who have been committed to the Commissioner of Corrections and determined to be public risk monitoring cases.

The task force could not reach a consensus on whether other offenders who are not committed to the Commissioner of Corrections should also fall within the scope of the legislation.

- b) An exemption to the notification law should be made whenever an offender is placed or resides in a facility that provides 24 hour supervision of the individual or the facility can account for his/her whereabouts on a 24 hour basis.

This exemption should be granted only to those facilities whose staff have received training in sex offender supervision.

- c) Standards must be delineated in the legislation so that the scope of the disclosure to the public corresponds to the degree of risk a violator poses.

For example, for some offenders limited disclosure to school officials may be warranted. For others, a more general, widespread community notification may be appropriate.

Law enforcement and other officials charged with notifying the public will need these guidelines to assist them in determining how, when, and by what method the public disclosure should be made. These guidelines will also ensure that there is a consistent enforcement of the disclosure law by law enforcement agencies. Individual agencies should not be allowed to develop their own standards for disclosure, thereby creating the possibility for the inequitable application of the law.

State of Minnesota
HOUSE OF REPRESENTATIVES

SEVENTY-NINTH
SESSION

HOUSE FILE No. 181

January 26, 1995

 Authorized by Bishop, Skoglund, Solberg, Luther and Pawlenty

 Read First Time and Referred to the Committee on JUDICIARY

March 29, 1995

 Committee Recommendation and Adoption of Report

 To Pass as Amended and re-referred to the Committee on JUDICIARY FINANCE

1 A bill for an act

2 relating to crime prevention; requiring notification

3 of local authorities of the impending release of sex

4 offenders; authorizing the release to the public of

5 information on registered sex offenders under certain

6 circumstances; establishing an end-of-sentence review

7 committee to assess risks posed by release of sex

8 offenders; providing aggravating factors to be applied

9 in the risk assessment decision; clarifying law on HIV

10 testing of convicted offenders; amending Minnesota

11 Statutes 1994, sections 243.166, subdivisions 3, 4,

12 and 7; 609.115, by adding a subdivision; and 611A.19,

13 subdivision 1; proposing coding for new law in

14 Minnesota Statutes, chapters 244; and 609.

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

16 Section 1. [LEGISLATIVE FINDINGS AND PURPOSE.]

17 The legislature finds that if members of the public are

18 provided adequate notice and information about a sex offender

19 who is about to be released from custody and who will live in or

20 near their neighborhood, the community can develop constructive

21 plans to prepare themselves and their children for the

22 offender's release.

23 Sec. 2. Minnesota Statutes 1994, section 243.166,

24 subdivision 3, is amended to read:

25 Subd. 3. [REGISTRATION PROCEDURE.] (a) At least five days

26 before release or discharge, the person shall register with

27 the corrections-agent-as-soon-as-the-agent-is-assigned-to-the

28 person law enforcement agency that has jurisdiction in the area

29 where the person will reside upon release or discharge. If the

30 person is under supervision, the person's corrections agent

1 shall assist the person, if necessary, in determining the
2 appropriate law enforcement agency with which to register.

3 (b) At least five days before the person changes residence,
4 the person shall give written notice of the address of the new
5 residence to the ~~current-or-last-assigned-corrections-agent~~ law
6 enforcement agency with which the person currently is
7 registered. An offender is deemed to change residence when the
8 offender remains at a new address for longer than three days and
9 evinces an intent to take up residence there. The ~~agent~~ law
10 enforcement agency shall, within two business days after receipt
11 of this information, forward it to the bureau of criminal
12 apprehension and to the law enforcement agency that has
13 jurisdiction in the area of the offender's new residence.

14 Sec. 3. Minnesota Statutes 1994, section 243.166,
15 subdivision 4, is amended to read:

16 Subd. 4. [CONTENTS OF REGISTRATION.] The registration
17 provided to the ~~corrections-agent~~ law enforcement agency must
18 consist of a statement in writing signed by the person, giving
19 information required by the bureau of criminal apprehension, and
20 a fingerprint card, and photograph of the person ~~if-these-have~~
21 ~~not-already-been-obtained-in-connection-with-the-offense-that~~
22 ~~triggers-registration~~ taken at the time of the person's release
23 from incarceration or, if the person was not incarcerated, at
24 the time the person was arrested for the offense. Within three
25 days, the ~~corrections-agent~~ law enforcement agency shall forward
26 the statement, fingerprint card, and photograph to the bureau of
27 criminal apprehension. ~~The-bureau-shall-send-one-copy-to-the~~
28 ~~appropriate-law-enforcement-authority-that-will-have~~
29 ~~jurisdiction-where-the-person-will-reside-on-release-or~~
30 ~~discharge-~~

31 Sec. 4. Minnesota Statutes 1994, section 243.166,
32 subdivision 7, is amended to read:

33 Subd. 7. [USE OF INFORMATION.] Except as otherwise
34 provided in sections 244.052 and 609.1353, the information
35 provided under this section is private data on individuals under
36 section 13.01, subdivision 12. The information may be used only

1 for law enforcement purposes.

2 Sec. 5. [244.052] [SEX OFFENDERS; NOTICE.]

3 Subdivision 1. [DEFINITION.] As used in this section, "sex
4 offender" and "offender" mean a person who has been convicted of
5 an offense for which registration under section 243.166 is
6 required.

7 Subd. 2. [END-OF-SENTENCE REVIEW COMMITTEE.] (a) The
8 commissioner of corrections shall establish an end-of-sentence
9 review committee for the purpose of assessing, on a case-by-case
10 basis, the public risk posed by sex offenders who are about to
11 be released from confinement. The committee shall consist of
12 the following members or their designees:

13 (1) the commissioner of corrections;

14 (2) the head of the state or local correctional or
15 treatment facility where the offender is currently confined;

16 (3) the chief law enforcement officer having jurisdiction
17 in the area where the offender expects to reside upon release;

18 (4) a treatment professional who is trained in the
19 assessment of sex offenders; and

20 (5) if the offender will be under supervision, the
21 offender's corrections agent.

22 (b) At least 30 days before a sex offender is to be
23 released from confinement, the commissioner of corrections shall
24 convene the end-of-sentence review committee for the purpose of
25 assessing the risk presented by the offender's release and
26 determining the risk level to which the offender shall be
27 assigned under paragraph (c). In assessing the risk presented
28 by the offender, the committee shall take into account the
29 public risk monitoring guidelines established by the department
30 of corrections and aggravating factors such as those listed in
31 paragraph (e).

32 (c) A sex offender whose history includes fewer than three
33 aggravating factors presents a low risk to the community and may
34 be assigned by the committee to risk level I. A sex offender
35 whose history includes at least three aggravating factors
36 presents an intermediate risk to the community and may be

1 assigned by the committee to risk level II. A sex offender
2 whose history includes at least five aggravating factors or
3 includes both of the aggravating factors described in paragraph
4 (e), clauses (3) and (9), presents a high risk to the community
5 and shall be assigned by the committee to risk level III.

6 (d) Before the sex offender is released from confinement,
7 the committee shall communicate its risk assessment decision,
8 including the risk level to which the offender has been
9 assigned, to the offender and to the law enforcement agency
10 having jurisdiction where the offender expects to reside upon
11 release. The committee also shall inform the offender of the
12 availability of judicial review under subdivision 5.

13 (e) As used in this subdivision, "aggravating factors"
14 includes the following factors:

15 (1) the offender committed the crime or previous crimes
16 with a dangerous weapon or with the use of force;

17 (2) the offender has been convicted or adjudicated of or
18 has admitted to having committed more than one sex offense;

19 (3) the offender failed to successfully complete offered
20 sex offender treatment;

21 (4) the victim of the offender's offense was particularly
22 vulnerable due to age or physical or mental disability;

23 (5) the offender was convicted of an offense an element of
24 which involved the use of a position of authority or trust;

25 (6) the offender committed the offense by nurturing a
26 relationship with a victim who was a minor or a vulnerable
27 adult;

28 (7) the offender's prior offenses involved assaultive
29 behavior over an extended period of time;

30 (8) the offender's offense involved multiple victims;

31 (9) a psychological sex offender evaluation predicts that
32 the offender is highly likely to commit additional sex offenses
33 in the future; and

34 (10) the sentencing court determined that the offender's
35 prior offense or offenses were particularly cruel or violent.

36 (f) Upon the request of a law enforcement agency or a

1 corrections agent, the commissioner may reconvene the
2 end-of-sentence review committee for the purpose of reassessing
3 the risk level to which an offender has been assigned under
4 paragraph (c). In a request for a reassessment, the law
5 enforcement agency or agent must list the facts and
6 circumstances arising after the initial assignment under
7 paragraph (c), which support the request for a reassessment.
8 Upon review of the request, the end-of-sentence review committee
9 may reassign an offender to a different risk level. If the
10 offender is reassigned to a higher risk level, the offender has
11 the right to seek judicial review of the committee's
12 determination under subdivision 5.

13 Subd. 3. [LAW ENFORCEMENT AGENCY; DISCLOSURE OF
14 INFORMATION TO PUBLIC.] (a) The law enforcement agency with
15 which the sex offender must register under section 243.166 is
16 authorized to disclose information to the public regarding the
17 offender if the agency determines that disclosure of the
18 information is relevant and necessary to protect the public and
19 to counteract the offender's dangerousness. The extent of the
20 information disclosed and the community to whom disclosure is
21 made must relate to the level of danger posed by the offender.

22 (b) The law enforcement agency shall consider the following
23 guidelines in determining the scope of disclosure made under
24 this subdivision:

25 (1) if the offender is assessed as presenting a low risk to
26 the community, the law enforcement agency may maintain
27 information regarding the offender within the agency and may
28 disclose it to other law enforcement agencies. Additionally,
29 the agency may disclose the information to any victims of or
30 witnesses to the offender's offense of conviction;

31 (2) if an offender is assessed as presenting an
32 intermediate risk to the community, the law enforcement agency
33 also may disclose the information to appropriate school
34 officials and neighborhood groups; and

35 (3) if an offender is assessed as presenting a high risk to
36 the community, the law enforcement agency also may disclose the

1 information to those community members and establishments to
2 whom, in the agency's judgment, the offender may pose a direct
3 or potential threat.

4 Notwithstanding the assessment of a sex offender as presenting
5 an intermediate or high risk, a law enforcement agency shall not
6 make the disclosures permitted by clause (2) or (3) if the
7 offender is placed or resides in a residential facility that is
8 licensed as a residential program, as defined in section
9 245A.02, subdivision 14, by the commissioner of human services
10 under chapter 254A, or the commissioner of corrections under
11 section 241.021, and if the facility and its staff are trained
12 in the supervision of sex offenders.

13 (c) A law enforcement agency or official who decides to
14 disclose information under this subdivision shall make a good
15 faith effort to make the notification at least 14 days before an
16 offender is released from confinement. If a change occurs in
17 the release plan, this notification provision does not require
18 an extension of the release date.

19 Subd. 4. [RELEVANT INFORMATION PROVIDED TO LAW
20 ENFORCEMENT.] The department of corrections or the department of
21 human services, in the case of a person who was committed under
22 section 526.10 before September 1, 1994, or under section
23 253B.185 on or after September 1, 1994, shall, in a timely
24 manner, provide the appropriate law enforcement agency all
25 relevant information that the departments have concerning a sex
26 offender who is about to be released or placed into the
27 community, including information on aggravating factors in the
28 offender's history.

29 Subd. 5. [JUDICIAL REVIEW.] (a) A sex offender assigned to
30 level II or III under subdivision 2, paragraph (c), by an
31 end-of-sentence review committee has the right to seek judicial
32 review of the committee's determination. The petition for
33 review may be filed in the district court having jurisdiction
34 either where the offender is confined or where the offender will
35 reside upon release. The filing of the petition shall not stay
36 the law enforcement agency's community notification actions

1 unless the court orders otherwise.

2 (b) The court shall schedule and hold a hearing on the
3 petition in an expedited manner. The county attorney with
4 prosecutorial jurisdiction where the offender will reside upon
5 release shall represent the end-of-sentence review committee's
6 decision at the hearing. The offender shall be entitled to
7 present evidence and supporting witnesses and confront and
8 cross-examine opposing witnesses. The county attorney has the
9 burden of proof to show, by a preponderance of the evidence,
10 that:

11 (1) the end-of-sentence review committee's risk assessment
12 was reasonable;

13 (2) disclosure of information about the offender to the
14 community is appropriate; and

15 (3) the notification actions proposed to be taken by the
16 law enforcement agency are reasonably related to the level of
17 danger presented by the offender.

18 Subd. 6. [IMMUNITY FROM LIABILITY.] A law enforcement
19 agency or state agency shall not be civilly or criminally liable
20 for disclosing or failing to disclose information as permitted
21 by this section.

22 Sec. 6. [244.053] [NOTICE OF RELEASE OF CERTAIN
23 OFFENDERS.]

24 Subdivision 1. [NOTICE OF IMPENDING RELEASE.] At least 30
25 days before the release of any inmate convicted of an offense
26 requiring registration under section 243.166, the commissioner
27 of corrections shall send written notice of the impending
28 release to the sheriff of the county and the police chief of the
29 city in which the inmate will reside or in which placement will
30 be made in a work release program. The sheriff of the county
31 where the offender was convicted also shall be notified of the
32 inmate's impending release.

33 Subd. 2. [ADDITIONAL NOTICE.] The same notice shall be
34 sent to the following persons concerning a specific inmate
35 convicted of an offense requiring registration under section
36 243.166:

1 (1) the victim of the crime for which the inmate was
2 convicted or the victim's next of kin if the crime was a
3 homicide, if the victim or victim's next of kin requests the
4 notice in writing;

5 (2) any witnesses who testified against the inmate in any
6 court proceedings involving the offense, if the witness requests
7 the notice in writing; and

8 (3) any person specified in writing by the prosecuting
9 attorney.

10 If the victim or witness is under the age of 16, the notice
11 required by this section shall be sent to the parents or legal
12 guardian of the child. The commissioner shall send the notices
13 required by this provision to the last address provided to the
14 commissioner by the requesting party. The requesting party
15 shall furnish the commissioner with a current address.
16 Information regarding witnesses requesting the notice,
17 information regarding any other person specified in writing by
18 the prosecuting attorney to receive the notice, and the notice
19 are private data on individuals, as defined in section 13.02,
20 subdivision 12, and are not available to the inmate.

21 The notice to victims provided under this subdivision does
22 not limit the victim's right to request notice of release under
23 section 611A.06.

24 Subd. 3. [NO EXTENSION OF RELEASE DATE.] The existence of
25 the notice requirements contained in this section shall in no
26 event require an extension of the release date.

27 Sec. 7. Minnesota Statutes 1994, section 609.115, is
28 amended by adding a subdivision to read:

29 Subd. 10. [SEX OFFENDER RISK ASSESSMENT.] (a) If a person
30 is convicted of an offense for which registration under section
31 243.166 is required, and the offender's presumptive sentence
32 under the sentencing guidelines is a stayed sentence, the
33 probation officer shall assess the risk presented by the
34 offender to the community where the offender will reside while
35 on probation and shall determine the risk level to which the
36 offender shall be assigned under paragraph (b). In assessing

1 the risk presented by the offender, the officer shall take into
2 account the public risk monitoring guidelines established by the
3 department of corrections and aggravating factors such as those
4 listed in paragraph (d).

5 (b) An offender whose history includes fewer than three
6 aggravating factors presents a low risk to the community and
7 shall be assigned by the officer to risk level I. An offender
8 whose history includes at least three aggravating factors
9 presents an intermediate risk to the community and shall be
10 assigned by the officer to risk level II. An offender whose
11 history includes at least five aggravating factors or includes
12 both of the aggravating factors described in paragraph (d),
13 clauses (3) and (9), presents a high risk to the community and
14 shall be assigned by the officer to risk level III.

15 (c) The officer shall include the risk assessment,
16 including the risk level to which the offender has been
17 assigned, in the presentence investigation report. If the
18 offender is assigned to the intermediate or high risk level, the
19 probation officer shall include in the report a description of
20 the notification actions likely to be taken by the local law
21 enforcement agency under section 609.1353.

22 (d) As used in this subdivision, "aggravating factors"
23 includes the following factors:

24 (1) the offender committed the crime or previous crimes
25 with a dangerous weapon or with the use of force;

26 (2) the offender has been convicted or adjudicated of or
27 has admitted to having committed more than one sex offense;

28 (3) the offender failed to successfully complete offered
29 sex offender treatment;

30 (4) the victim of the offender's offense was particularly
31 vulnerable due to age or physical or mental disability;

32 (5) the offender was convicted of an offense an element of
33 which involved the use of a position of authority or trust;

34 (6) the offender committed the offense by nurturing a
35 relationship with a victim who was a minor or a vulnerable
36 adult;

- 1 (7) the offender's prior offenses involved assaultive
2 behavior over an extended period of time;
3 (8) the offender's offense involved multiple victims;
4 (9) a psychological sex offender evaluation predicts that
5 the offender is highly likely to commit additional sex offenses
6 in the future; and
7 (10) the sentencing court determined that the offender's
8 prior offense or offenses were particularly cruel or violent.

9 Sec. 8. [609.1353] [SENTENCING OF SEX OFFENDERS;
10 DISCLOSURE OF INFORMATION.]

11 Subdivision 1. [DEFINITION.] As used in this section, "sex
12 offender" and "offender" mean a person who has been convicted of
13 an offense for which registration under section 243.166 is
14 required.

15 Subd. 2. [RISK ASSESSMENT REVIEW.] When a court sentences
16 a sex offender to a stayed sentence, the court shall review the
17 risk assessment included in the presentence investigation report
18 under section 609.115, subdivision 10, and the risk level to
19 which the offender was assigned by the probation officer. If
20 the risk assessment assigns the offender to level II or III, the
21 court shall make a determination at the sentencing hearing on
22 the following issues:

23 (1) whether the probation officer's risk assessment was
24 reasonable;

25 (2) whether disclosure of information about the offender to
26 the community is appropriate; and

27 (3) whether the notification actions proposed to be taken
28 by the law enforcement agency are reasonably related to the
29 level of danger presented by the offender.

30 The offender has the right to contest the risk assessment at the
31 sentencing hearing by presenting evidence and witnesses in
32 opposition to evidence contained in the risk assessment and by
33 confronting and cross-examining opposing witnesses. The
34 prosecuting attorney has the burden of proof to show, by a
35 preponderance of the evidence, that the risk assessment and
36 proposed notification actions are reasonable and appropriate.

1 Subd. 3. [LAW ENFORCEMENT AGENCY; DISCLOSURE OF
2 INFORMATION TO PUBLIC.] (a) At the conclusion of the hearing
3 under subdivision 2, the court shall notify the law enforcement
4 agency with which the offender must register under section
5 243.166 of the risk level to which the offender has been
6 assigned, as approved or modified by the court.

7 (b) Consistent with the court's notification under
8 subdivision 1, the law enforcement agency is authorized to
9 disclose information to the public regarding the offender if the
10 agency determines that disclosure of the information is relevant
11 and necessary to protect the public and to counteract the
12 offender's dangerousness. The extent of the information
13 disclosed and the community to whom disclosure is made must
14 relate to the level of danger posed by the offender.

15 (c) The law enforcement agency shall consider the following
16 guidelines in determining the scope of disclosure made under
17 this subdivision:

18 (1) if an offender is assessed as presenting a low risk to
19 the community, the law enforcement agency may maintain
20 information regarding the offender within the agency and may
21 disclose it to other law enforcement agencies. Additionally,
22 the agency may disclose the information to any victims of or
23 witnesses to the offender's offense of conviction;

24 (2) if an offender is assessed as presenting an
25 intermediate risk to the community, the law enforcement agency
26 also may disclose the information to appropriate school
27 officials and neighborhood groups; and

28 (3) if an offender is assessed as presenting a high risk to
29 the community, the law enforcement agency also may disclose the
30 information to those community members and establishments to
31 whom, in the agency's judgment, the offender may pose a direct
32 or potential threat.

33 Subd. 4. [IMMUNITY FROM LIABILITY.] A law enforcement
34 agency or state agency shall not be civilly or criminally liable
35 for disclosing or failing to disclose information as permitted
36 by this section.

1 Sec. 9. Minnesota Statutes 1994, section 611A.19,
2 subdivision 1, is amended to read:

3 Subdivision 1. [TESTING ON REQUEST OF VICTIM.] (a) The
4 sentencing court ~~may~~ shall issue an order requiring a person
5 convicted of a violent crime, as defined in section 609.152, or
6 a juvenile adjudicated delinquent for violating section 609.342,
7 609.343, 609.344, or 609.345, to submit to testing to determine
8 the presence of human immunodeficiency virus (HIV) antibody if:

9 (1) evidence exists that the broken skin or mucous membrane
10 of the victim was exposed to or had contact with the offender's
11 semen or blood during commission of the crime in a manner which
12 has been demonstrated epidemiologically to transmit the HIV
13 virus; and

14 (2) the victim requests the test or the prosecutor moves
15 for the test order in camera;

16 ~~{2}-the-victim-requests-the-test;-and~~

17 ~~{3}-evidence-exists-that-the-broken-skin-or-mucous-membrane~~
18 ~~of-the-victim-was-exposed-to-or-had-contact-with-the-offender's~~
19 ~~semen-or-blood-during-commission-of-the-crime-in-a-manner-which~~
20 ~~has-been-demonstrated-epidemiologically-to-transmit-the-HIV~~
21 ~~virus.~~

22 (b) If the court grants the prosecutor's motion, the court
23 shall order that the test be performed by an appropriate health
24 professional who is trained to provide the counseling described
25 in section 144.763, and that no reference to the test, the
26 motion requesting the test, the test order, or the test results
27 may appear in the criminal record or be maintained in any record
28 of the court or court services.

29 Sec. 10. [EFFECTIVE DATE.]

30 Sections 1 to 8 are effective August 1, 1995, and apply to
31 persons released or sentenced on or after that date. Section 9
32 is effective the day following final enactment.

Appendix 3

Sec. 35. [COMMUNITY NOTIFICATION WORK GROUP.]

(a) A 15-member work group is created to study issues relating to laws and proposed legislation authorizing community notification of information about convicted sex offenders, including offenders who have been or are about to be released from incarceration and offenders who have been sentenced to stayed prison sentences.

(b) The work group consists of three members of the senate appointed by the chair of the committee on crime prevention and three members of the house of representatives appointed by the chair of the committee on judiciary. Legislative membership from each body shall consist of two members of the majority caucus and one member of the minority caucus. The work group also consists of the commissioner of corrections or the commissioner's designee, the attorney general or the attorney general's designee, and of the following additional members approved by the legislative membership:

(1) one sheriff nominated by the Minnesota sheriffs association;

(2) one chief of police nominated by the Minnesota chiefs of police association;

(3) one county attorney nominated by the county attorneys association;

(4) one defense attorney nominated by the state public defender;

(5) one sex offender treatment professional nominated by the commissioner of human services;

(6) the crime victim ombudsman or a representative of sexual assault victims nominated by the ombudsman; and

(7) one member of the public appointed by the chairs of the senate crime prevention committee and the house judiciary committee.

Members of the work group should represent a cross-section of regions within the state. The work group shall select a chair from among its membership.

The chairs of the senate crime prevention committee and the house judiciary committee may authorize alternate legislative members to attend sessions of the work group when an appointed legislative member is unable to attend.

(c) The work group shall be convened no later than August 1, 1995, and shall study the implementation of community notification laws in other states, the positive and negative aspects of community notification laws, the costs of implementing the laws, the social and constitutional issues raised by the laws, and any anticipated federal requirements concerning community notification.

(d) The work group shall report its findings and recommendations to the chairs of the house judiciary committee and the senate crime prevention committee by January 31, 1996.

COMMUNITY NOTIFICATION WORK
GROUP

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1

A bill for an act

2 relating to crime prevention; expanding the sex
3 offender registration act to include child pornography
4 offenses; requiring notification of local authorities
5 of the impending release of sex offenders; authorizing
6 the release to the public of information on registered
7 sex offenders under certain circumstances;
8 establishing an end-of-confinement review committee to
9 assess risks posed by release of sex offenders;
10 providing risk factors to be applied in the risk
11 assessment decision; amending Minnesota Statutes 1994,
12 section 609.115, by adding a subdivision; and
13 Minnesota Statutes 1995 Supplement, section 243.166,
14 subdivisions 1 and 7; proposing coding for new law in
15 Minnesota Statutes, chapters 244 and 609.

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

17 Section 1. [LEGISLATIVE FINDINGS AND PURPOSE.]

18 The legislature finds that if members of the public are
19 provided adequate notice and information about a potentially
20 dangerous sex offender who has been or is about to be released
21 from custody and who lives or will live in or near their
22 neighborhood, the community can develop constructive plans to
23 prepare themselves and their children for the offender's release.

24 Sec. 2. Minnesota Statutes 1995 Supplement, section
25 243.166, subdivision 1, is amended to read:

26 Subdivision 1. [REGISTRATION REQUIRED.] (a) A person shall
27 register under this section if:

28 (1) the person was charged with or petitioned for a felony
29 violation of or attempt to violate any of the following, and
30 convicted of or adjudicated delinquent for that offense or of

1 another offense arising out of the same set of circumstances:

2 (i) murder under section 609.185, clause (2);

3 (ii) kidnapping under section 609.25, involving a minor
4 victim; or

5 (iii) criminal sexual conduct under section 609.342;
6 609.343; 609.344; or 609.345; or

7 (2) the person was charged with or petitioned for using a
8 minor in a sexual performance in violation of section 617.246,
9 or possessing pictorial representations of minors in violation
10 of section 617.247, and convicted of or adjudicated delinquent
11 for that offense or another offense arising out of the same set
12 of circumstances; or

13 (3) the person was convicted of a predatory crime as
14 defined in section 609.1352, and the offender was sentenced as a
15 patterned sex offender or the court found on its own motion or
16 that of the prosecutor that the crime was part of a predatory
17 pattern of behavior that had criminal sexual conduct as its
18 goal; or

19 ~~(3)~~ (4) person was convicted of or adjudicated delinquent
20 for violating a law of the United States similar to the offenses
21 described in clause (1) or, (2), or (3).

22 (b) A person also shall register under this section if:

23 (1) the person was convicted of or adjudicated delinquent
24 in another state for an offense that would be a violation of a
25 law described in paragraph (a) if committed in this state;

26 (2) the person enters and remains in this state for 30 days
27 or longer; and

28 (3) ten years have not elapsed since the person was
29 released from confinement or, if the person was not confined,
30 since the person was convicted of or adjudicated delinquent for
31 the offense that triggers registration.

32 Sec. 3. Minnesota Statutes 1995 Supplement, section
33 243.166, subdivision 7, is amended to read:

34 Subd. 7. [USE OF INFORMATION.] Except as otherwise
35 provided in sections 244.052 and 609.1353, the information
36 provided under this section is private data on individuals under

1 section 13.01, subdivision 12. The information may be used only
2 for law enforcement purposes.

3 Sec. 4. [244.052] [SEX OFFENDERS; NOTICE.]

4 Subdivision 1. [DEFINITION.] As used in this section:

5 (1) "law enforcement agency" means the law enforcement
6 agency having primary jurisdiction over the location where the
7 offender expects to reside upon release; and

8 (2) "sex offender" and "offender" mean a person who has
9 been convicted of an offense for which registration under
10 section 243.166 is required.

11 Subd. 2. [END-OF-CONFINEMENT REVIEW COMMITTEE.] (a) The
12 commissioner of corrections shall establish and administer an
13 end-of-confinement review committee for the purpose of
14 assessing, on a case-by-case basis:

15 (1) the public risk posed by sex offenders who are about to
16 be released from confinement in a state or local correctional or
17 treatment facility; and

18 (2) the public risk posed by sex offenders who are accepted
19 from another state under a reciprocal agreement under the
20 interstate compact authorized by section 243.16.

21 The committee shall consist of the following members or
22 their designees:

23 (1) the commissioner of corrections;

24 (2) the head of the state or local correctional or
25 treatment facility where the offender is currently confined in
26 Minnesota, where applicable;

27 (3) the chief of the law enforcement agency;

28 (4) a treatment professional who is trained in the
29 assessment of sex offenders;

30 (5) if the offender will be under supervision, the
31 offender's corrections agent;

32 (6) a representative of a victim advocacy organization from
33 the area where the offender expects to reside upon release; and

34 (7) a public member from the area where the offender
35 expects to reside upon release.

36 The commissioner of corrections shall act as chair of the

1 committee and shall use department of corrections staff, as
2 needed, to administer the committee, obtain necessary
3 information from outside sources, and prepare assessment reports
4 on offenders.

5 (b) The committee shall have access to the following data
6 on a sex offender only for the purposes of its assessment under
7 this section:

8 (1) private medical data under section 13.42;

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

11 (3) private and confidential corrections data under section
12 13.85; and

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

14 Data collected and maintained by the committee under this
15 paragraph shall not be disclosed outside the committee.

16 (c) At least 90 days before a sex offender is to be
17 released from confinement or accepted for supervision in this
18 state under the interstate compact, the commissioner of
19 corrections shall convene the end-of-confinement review
20 committee for the purpose of assessing the risk presented by the
21 offender's release and determining the risk level to which the
22 offender shall be assigned under paragraph (d). In assessing
23 the risk presented by the offender, the committee shall take
24 into account risk factors such as those listed in paragraph (f).

25 (d) A sex offender whose history includes fewer than three
26 risk factors presents a low risk to the community and may be
27 assigned by the committee to risk level I. A sex offender whose
28 history includes at least three risk factors presents an
29 intermediate risk to the community and may be assigned by the
30 committee to risk level II. A sex offender whose history
31 includes at least five risk factors or includes both of the risk
32 factors described in paragraph (f), clauses (3) and (9),
33 presents a high risk to the community and shall be assigned by
34 the committee to risk level III.

35 (e) Before the sex offender is released from confinement or
36 accepted for supervision in this state under the interstate

1 compact, the committee shall prepare a risk assessment report
2 which specifies the risk level to which the offender has been
3 assigned and the reasons underlying the committee's risk
4 assessment decision. The committee shall give the report to the
5 offender and to the law enforcement agency. The committee also
6 shall inform the offender of the availability of judicial review
7 under subdivision 5.

8 (f) As used in this subdivision, "risk factors" includes
9 the following factors:

10 (1) the offender committed the crime or previous crimes
11 with a dangerous weapon or with the use of force;

12 (2) the offender has been convicted or adjudicated of or
13 has admitted to having committed more than one sex offense;

14 (3) the offender failed to successfully complete offered
15 sex offender treatment;

16 (4) the victim of the offender's offense was particularly
17 vulnerable due to age or physical or mental disability;

18 (5) the offender was convicted of an offense an element of
19 which involved the use of a position of authority or trust;

20 (6) the offender committed the offense by nurturing a
21 relationship with a victim who was a minor or a vulnerable
22 adult;

23 (7) the offender's prior offenses involved assaultive
24 behavior over an extended period of time;

25 (8) the offender's offense involved multiple victims;

26 (9) a psychological sex offender evaluation predicts that
27 the offender is highly likely to commit additional sex offenses
28 in the future;

29 (10) the sentencing court determined that the offender's
30 prior offense or offenses were particularly cruel or violent;
31 and

32 (11) any other specific factor that, in the committee's
33 opinion, significantly increases the risk presented to the
34 community by the offender's release.

35 (g) Upon the request of the law enforcement agency or the
36 offender's corrections agent, the commissioner may reconvene the

1 end-of-confinement review committee for the purpose of
2 reassessing the risk level to which an offender has been
3 assigned under paragraph (d). In a request for a reassessment,
4 the law enforcement agency or agent must list the facts and
5 circumstances arising after the initial assignment under
6 paragraph (d), which support the request for a reassessment.
7 Upon review of the request, the end-of-confinement review
8 committee may reassign an offender to a different risk level.
9 If the offender is reassigned to a higher risk level, the
10 offender has the right to seek judicial review of the
11 committee's determination under subdivision 5.

12 (h) An offender may ask the end-of-confinement review
13 committee to reassess the offender's assigned risk level after
14 two years have elapsed since the committee's initial risk
15 assessment. In a request for reassessment, the offender must
16 list the facts and circumstances which demonstrate that the
17 offender no longer poses the same degree of risk to the
18 community. If the committee denies the offender's request for
19 reassessment, the offender may renew the request after two years
20 have elapsed since the committee's denial.

21 Subd. 3. [LAW ENFORCEMENT AGENCY; DISCLOSURE OF
22 INFORMATION TO PUBLIC.] (a) The law enforcement agency in the
23 area where the sex offender resides, expects to reside, is
24 employed, or is regularly found, is authorized to disclose
25 information to the public regarding the offender if the agency
26 determines that disclosure of the information is relevant and
27 necessary to protect the public and to counteract the offender's
28 dangerousness. The extent of the information disclosed and the
29 community to whom disclosure is made must relate to the level of
30 danger posed by the offender and to the need of community
31 members for information to enhance their individual and
32 collective safety. The agency shall notify the offender of its
33 disclosure decision at least 45 days before the offender is
34 released from confinement.

35 (b) The law enforcement agency shall consider the following
36 guidelines in determining the scope of disclosure made under

1 this subdivision:

2 (1) if the offender is assessed as presenting a low risk to
3 the community, the law enforcement agency may maintain
4 information regarding the offender within the agency and may
5 disclose it to other law enforcement agencies. Additionally,
6 the agency may disclose the information to any victims of or
7 witnesses to the offender's offense of conviction;

8 (2) if an offender is assessed as presenting an
9 intermediate risk to the community, the law enforcement agency
10 also may disclose the information to appropriate school
11 officials and neighborhood groups; and

12 (3) if an offender is assessed as presenting a high risk to
13 the community, the law enforcement agency also may disclose the
14 information to those community members and establishments to
15 whom, in the agency's judgment, the offender may pose a direct
16 or potential threat.

17 Notwithstanding the assessment of a sex offender as
18 presenting an intermediate or high risk, a law enforcement
19 agency shall not make the disclosures permitted by clause (2) or
20 (3) if the offender is placed or resides in a residential
21 facility that is licensed as a residential program, as defined
22 in section 245A.02, subdivision 14, by the commissioner of human
23 services under chapter 254A, or the commissioner of corrections
24 under section 241.021, and if the facility and its staff are
25 trained in the supervision of sex offenders.

26 (c) A law enforcement agency or official who decides to
27 disclose information under this subdivision shall make a good
28 faith effort to make the notification at least 14 days before an
29 offender is released from confinement. If a change occurs in
30 the release plan, this notification provision does not require
31 an extension of the release date.

32 Subd. 4. [RELEVANT INFORMATION PROVIDED TO LAW
33 ENFORCEMENT.] At least 60 days before a sex offender is released
34 from confinement, the department of corrections or the
35 department of human services, in the case of a person who was
36 committed under section 526.10 or section 253B.185 shall provide

1 the appropriate law enforcement agency all relevant information
2 that the departments have concerning the offender, including
3 information on risk factors in the offender's history.

4 Subd. 5. [JUDICIAL REVIEW.] (a) A sex offender assigned to
5 level II or III under subdivision 2, paragraph (d), by an
6 end-of-confinement review committee has the right to seek
7 judicial review of the committee's determination. The offender
8 must exercise this right within 14 days of receiving notice of
9 the law enforcement agency's community notification decision
10 under subdivision 3. The petition for review may be filed in
11 the district court having jurisdiction either where the offender
12 is confined or where the offender will reside upon release. The
13 filing of the petition shall not stay the law enforcement
14 agency's community notification actions unless the court orders
15 otherwise.

16 (b) The court shall schedule and hold a hearing on the
17 petition in an expedited manner. The county attorney with
18 prosecutorial jurisdiction where the offender expects to reside
19 shall represent the end-of-confinement review committee's
20 decision at the hearing. The offender shall be entitled to
21 present evidence and supporting witnesses and confront and
22 cross-examine opposing witnesses. The county attorney has the
23 burden of proof to show, by a preponderance of the evidence,
24 that:

25 (1) the end-of-confinement review committee's risk
26 assessment was reasonable;

27 (2) disclosure of information about the offender to the
28 community is appropriate; and

29 (3) the notification actions proposed to be taken by the
30 law enforcement agency are reasonably related to the level of
31 danger presented by the offender.

32 (c) Either the offender or the county attorney may appeal
33 the risk assessment decision made by the district court.

34 Subd. 6. [IMMUNITY FROM LIABILITY.] A state or local
35 agency or official, or a private organization or individual
36 authorized to act on behalf of a state or local agency or

1 official, is not civilly or criminally liable for disclosing or
2 failing to disclose information as permitted by this section.

3 Sec. 5. [244.053] [NOTICE OF RELEASE OF CERTAIN
4 OFFENDERS.]

5 Subdivision 1. [NOTICE OF IMPENDING RELEASE.] At least 60
6 days before the release of any inmate convicted of an offense
7 requiring registration under section 243.166, the commissioner
8 of corrections shall send written notice of the impending
9 release to the sheriff of the county and the police chief of the
10 city in which the inmate will reside or in which placement will
11 be made in a work release program. The sheriff of the county
12 where the offender was convicted also shall be notified of the
13 inmate's impending release.

14 Subd. 2. [ADDITIONAL NOTICE.] The same notice shall be
15 sent to the following persons concerning a specific inmate
16 convicted of an offense requiring registration under section
17 243.166:

18 (1) the victim of the crime for which the inmate was
19 convicted or a deceased victim's next of kin if the victim or
20 deceased victim's next of kin requests the notice in writing;

21 (2) any witnesses who testified against the inmate in any
22 court proceedings involving the offense, if the witness requests
23 the notice in writing; and

24 (3) any person specified in writing by the prosecuting
25 attorney.

26 If the victim or witness is under the age of 16, the notice
27 required by this section shall be sent to the parents or legal
28 guardian of the child. The commissioner shall send the notices
29 required by this provision to the last address provided to the
30 commissioner by the requesting party. The requesting party
31 shall furnish the commissioner with a current address.
32 Information regarding witnesses requesting the notice,
33 information regarding any other person specified in writing by
34 the prosecuting attorney to receive the notice, and the notice
35 are private data on individuals, as defined in section 13.02,
36 subdivision 12, and are not available to the inmate.

1 The number of victims provided under this subdivision does
2 not limit the victim's right to request notice of release under
3 section 611A.06.

4 Subd. 3. [NO EXTENSION OF RELEASE DATE.] The existence of
5 the notice requirements contained in this section shall in no
6 event require an extension of the release date.

7 Sec. 6. Minnesota Statutes 1994, section 609.115, is
8 amended by adding a subdivision to read:

9 Subd. 10. [SEX OFFENDER RISK ASSESSMENT.] (a) If a person
10 is convicted of an offense for which registration under section
11 243.166 is required, and either the offender's presumptive
12 sentence under the sentencing guidelines is a stayed sentence or
13 a motion for a mitigated dispositional departure has been made
14 by counsel, the probation officer shall assess the risk
15 presented by the offender to the community where the offender
16 will reside while on probation and shall determine the risk
17 level to which the offender shall be assigned under paragraph
18 (b). In assessing the risk presented by the offender, the
19 officer shall take into account risk factors such as those
20 listed in paragraph (d).

21 (b) An offender whose history includes fewer than three
22 risk factors presents a low risk to the community and shall be
23 assigned by the officer to risk level I. An offender whose
24 history includes at least three risk factors presents an
25 intermediate risk to the community and shall be assigned by the
26 officer to risk level II. An offender whose history includes at
27 least five risk factors or includes both of the risk factors
28 described in paragraph (d), clauses (3) and (9), presents a high
29 risk to the community and shall be assigned by the officer to
30 risk level III.

31 (c) The officer shall include the risk assessment,
32 including the risk level to which the offender has been
33 assigned, in the presentence investigation report. If the
34 offender is assigned to the intermediate or high risk level, the
35 probation officer shall include in the report a description of
36 the notification actions likely to be taken by the local law

1 enforcement agency under section 609.1353.

2 (d) As used in this subdivision, "risk factors" includes
3 the following factors:

4 (1) the offender committed the crime or previous crimes
5 with a dangerous weapon or with the use of force;

6 (2) the offender has been convicted or adjudicated of or
7 has admitted to having committed more than one sex offense;

8 (3) the offender failed to successfully complete offered
9 sex offender treatment;

10 (4) the victim of the offender's offense was particularly
11 vulnerable due to age or physical or mental disability;

12 (5) the offender was convicted of an offense an element of
13 which involved the use of a position of authority or trust;

14 (6) the offender committed the offense by nurturing a
15 relationship with a victim who was a minor or a vulnerable
16 adult;

17 (7) the offender's prior offenses involved assaultive
18 behavior over an extended period of time;

19 (8) the offender's offense involved multiple victims;

20 (9) a psychological sex offender evaluation predicts that
21 the offender is highly likely to commit additional sex offenses
22 in the future;

23 (10) the sentencing court determined that the offender's
24 prior offense or offenses were particularly cruel or violent;
25 and

26 (11) any other specific factor that, in the probation
27 officer's opinion, significantly increases the risk presented to
28 the community by the offender.

29 Sec. 8. [609.1353] [SENTENCING OF SEX OFFENDERS;
30 DISCLOSURE OF INFORMATION.]

31 Subdivision 1. [DEFINITION.] As used in this section:

32 (1) "law enforcement agency" means the law enforcement
33 agency having primary jurisdiction over the location where the
34 offender resides or expects to reside; and

35 (2) "sex offender" and "offender" mean a person who has
36 been convicted of an offense for which registration under

1 section 243.166 is required.

2 Subd. 2. [RISK ASSESSMENT REVIEW.] When a court sentences
3 a sex offender to a stayed sentence, the court shall review the
4 risk assessment included in the presentence investigation report
5 under section 609.115, subdivision 10, and the risk level to
6 which the offender was assigned by the probation officer. If
7 the risk assessment assigns the offender to level II or III, the
8 court shall make a determination at the sentencing hearing on
9 the following issues:

10 (1) whether the probation officer's risk assessment was
11 reasonable;

12 (2) whether disclosure of information about the offender to
13 the community is appropriate; and

14 (3) whether the notification actions proposed to be taken
15 by the law enforcement agency are reasonably related to the
16 level of danger presented by the offender.

17 The offender has the right to contest the risk assessment
18 at the sentencing hearing by presenting evidence and witnesses
19 in opposition to evidence contained in the risk assessment and
20 by confronting and cross-examining opposing witnesses. The
21 prosecuting attorney has the burden of proof to show, by a
22 preponderance of the evidence, that the risk assessment and
23 proposed notification actions are reasonable and appropriate.

24 Subd. 3. [LAW ENFORCEMENT AGENCY; DISCLOSURE OF
25 INFORMATION TO PUBLIC.] (a) At the conclusion of the hearing
26 under subdivision 2, the court shall notify the offender, the
27 prosecuting attorney, and the law enforcement agency of the risk
28 level to which the offender has been assigned, as approved or
29 modified by the court. Either the offender or the prosecuting
30 attorney may appeal the court's risk assessment decision.

31 (b) Consistent with the court's notification under
32 subdivision 1, the law enforcement agency notified by the court
33 and any law enforcement agency where the offender is employed or
34 is regularly found are authorized to disclose information to the
35 public regarding the offender if the agency determines that
36 disclosure of the information is relevant and necessary to

1 protect the public and to counteract the offender's
2 dangerousness. The extent of the information disclosed and the
3 community to whom disclosure is made must relate to the level of
4 danger posed by the offender and to the need of community
5 members for information to enhance their individual and
6 collective safety.

7 (c) The law enforcement agency shall consider the following
8 guidelines in determining the scope of disclosure made under
9 this subdivision:

10 (1) if an offender is assessed as presenting a low risk to
11 the community, the law enforcement agency may maintain
12 information regarding the offender within the agency and may
13 disclose it to other law enforcement agencies. Additionally,
14 the agency may disclose the information to any victims of or
15 witnesses to the offender's offense of conviction;

16 (2) if an offender is assessed as presenting an
17 intermediate risk to the community, the law enforcement agency
18 also may disclose the information to appropriate school
19 officials and neighborhood groups; and

20 (3) if an offender is assessed as presenting a high risk to
21 the community, the law enforcement agency also may disclose the
22 information to those community members and establishments to
23 whom, in the agency's judgment, the offender may pose a direct
24 or potential threat.

25 Subd. 4. [IMMUNITY FROM LIABILITY.] A state or local
26 agency or official, or a private organization or individual
27 authorized to act on behalf of a state or local agency or
28 official, is not civilly or criminally liable for disclosing or
29 failing to disclose information as permitted by this section.

30 Sec. 9. [COMMUNITY NOTIFICATION ABOUT SEX OFFENDERS;
31 POLICY AND INSTRUCTION.]

32 Subdivision 1. [MODEL POLICY.] (a) By June 1, 1996, the
33 Minnesota chiefs of police association and the Minnesota
34 sheriffs association shall develop a model policy for law
35 enforcement agencies to follow when they disclose information on
36 sex offenders to the public under section 244.052, subdivision

1 3, and section 609.1353, subdivision 3. The model policy shall
2 be designed to further the objectives of providing adequate
3 notice to the community concerning sex offenders who are or will
4 be residing in the neighborhood and of helping community members
5 develop constructive plans to prepare themselves and their
6 children for residing near these sex offenders. In developing
7 the policy, the two associations shall consult with
8 representatives of the bureau of criminal apprehension, the
9 Minnesota association of women police, the Minnesota sex crimes
10 investigators association, the Minnesota police and peace
11 officers association, the Minnesota institute of community
12 policing, the county attorneys association, the commissioner of
13 corrections, local corrections agencies, the state public
14 defender, sex offender treatment professionals, victims groups,
15 and interested members of the public.

16 (b) The model policy shall, at a minimum, address the
17 following matters:

18 (1) recommended contents and form of community notification
19 documents;

20 (2) recommended method or methods of distributing community
21 notification documents;

22 (3) recommended methods of providing follow-up
23 notifications to community residents at specified intervals and
24 of disclosing information about offenders to law enforcement
25 agencies in other jurisdictions when necessary to protect the
26 public;

27 (4) recommended methods of educating community residents at
28 public meetings on how they can use the information in the
29 notification document in a reasonable manner to enhance their
30 individual and collective safety;

31 (5) procedures for ensuring that community members are
32 educated regarding the right of sex offenders not to be
33 subjected to harassment or criminal acts because of the
34 notification process;

35 (6) recommended ways of educating sex offenders before they
36 are released from incarceration on the nature and scope of the

1 notification process, the likely reaction of community residents
2 to their presence in the community, and their right to be free
3 from harassment or criminal acts committed by community
4 residents because of the notification process; and

5 (7) other matters that the associations deem necessary to
6 ensure the effective and fair administration of the community
7 notification law.

8 Subd. 2. [LOCAL POLICY.] By August 1, 1996, all chief law
9 enforcement officers shall establish and implement a written
10 policy governing the public disclosure of information on sex
11 offenders under section 244.052, subdivision 3, and section
12 609.1353, subdivision 3. A chief law enforcement officer shall
13 adopt a policy that is identical or substantially similar to the
14 model policy developed by the associations under subdivision 1.

15 Sec. 10. [EFFECTIVE DATE.]

16 Section 2 is effective August 1, 1996, and applies to
17 persons who are released from prison on or after that date, or
18 who are under supervision as of that date, or who enter this
19 state on or after that date.

20 Sections 1, and 3 to 8 are effective August 1, 1996, and
21 apply to persons released or sentenced on or after that date.

22 Section 9 is effective the day following final enactment.