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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 1267

02/18/2021 Authored by Long, Edelson, Lee and Lillie

The bill was read for the first time and referred to the Committee on Public Safety and Criminal Justice Reform Finance and Policy

03/04/2021 Adoption of Report: Amended and re-referred to the Committee on Ways and Means

1.1 A bill for an act
1.2 relating to corrections; providing for safety in licensed facilities; amending
1.3 Minnesota Statutes 2020, sections 241.021, subdivision 1, by adding subdivisions;
1.4 243.52.

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

1.6 Section 1. TITLE.

1.7 This act shall be known as the "Hardel Sherell Act."

1.8 Sec. 2. Minnesota Statutes 2020, section 241.021, subdivision 1, is amended to read:

1.9 Subdivision 1. **Correctional facilities; inspection; licensing.** (a) Except as provided
1.10 in paragraph (b), the commissioner of corrections shall inspect and license all correctional
1.11 facilities throughout the state, whether public or private, established and operated for the
1.12 detention and confinement of persons ~~detained or confined~~ or incarcerated therein according
1.13 to law except to the extent that they are inspected or licensed by other state regulating
1.14 agencies. The commissioner shall promulgate pursuant to chapter 14, rules establishing
1.15 minimum standards for these facilities with respect to their management, operation, physical
1.16 condition, and the security, safety, health, treatment, and discipline of persons ~~detained or~~
1.17 ~~confined~~ or incarcerated therein. ~~Commencing September 1, 1980, These minimum standards~~
1.18 shall include but are not limited to specific guidance pertaining to:

1.19 (1) screening, appraisal, assessment, and treatment for persons confined or incarcerated
1.20 in correctional facilities with mental illness or substance use disorders;

1.21 (2) a policy on the involuntary administration of medications;

1.22 (3) suicide prevention plans and training;

- 2.1 (4) verification of medications in a timely manner;
- 2.2 (5) well-being checks;
- 2.3 (6) discharge planning, including providing prescribed medications to persons confined
- 2.4 or incarcerated in correctional facilities upon release;
- 2.5 (7) a policy on referrals or transfers to medical or mental health care in a noncorrectional
- 2.6 institution;
- 2.7 (8) use of segregation and mental health checks;
- 2.8 (9) critical incident debriefings;
- 2.9 (10) clinical management of substance use disorders;
- 2.10 (11) a policy regarding identification of persons with special needs confined or
- 2.11 incarcerated in correctional facilities;
- 2.12 (12) a policy regarding the use of telehealth;
- 2.13 (13) self-auditing of compliance with minimum standards;
- 2.14 (14) information sharing with medical personnel and when medical assessment must be
- 2.15 facilitated;
- 2.16 (15) a code of conduct policy for facility staff and annual training;
- 2.17 (16) a policy on death review of all circumstances surrounding the death of an individual
- 2.18 committed to the custody of the facility; and
- 2.19 (17) dissemination of a rights statement made available to persons confined or
- 2.20 incarcerated in licensed correctional facilities.

2.21 No individual, corporation, partnership, voluntary association, or other private

2.22 organization legally responsible for the operation of a correctional facility may operate the

2.23 facility unless ~~licensed by it~~ it possesses a current license from the commissioner of corrections.

2.24 Private adult correctional facilities shall have the authority of section 624.714, subdivision

2.25 13, if the Department of Corrections licenses the facility with ~~such~~ the authority and the

2.26 facility meets requirements of section 243.52.

2.27 The commissioner shall review the correctional facilities described in this subdivision

2.28 at least once every ~~biennium~~ two years, except as otherwise provided ~~herein~~, to determine

2.29 compliance with the minimum standards established ~~pursuant~~ according to this subdivision

2.30 or other law related to minimum standards and conditions of confinement.

3.1 The commissioner shall grant a license to any facility found to conform to minimum
3.2 standards or to any facility which, in the commissioner's judgment, is making satisfactory
3.3 progress toward substantial conformity and the standards not being met do not impact the
3.4 interests and well-being of the persons ~~detained or confined therein~~ or incarcerated in the
3.5 facility are protected. A limited license under subdivision 1a may be issued for purposes of
3.6 effectuating a facility closure. The commissioner may grant licensure up to two years. Unless
3.7 otherwise specified by statute, all licenses issued under this chapter expire at 12:01 a.m. on
3.8 the day after the expiration date stated on the license.

3.9 The commissioner shall have access to the buildings, grounds, books, records, staff, and
3.10 to persons ~~detained or confined~~ or incarcerated in these facilities. The commissioner may
3.11 require the officers in charge of these facilities to furnish all information and statistics the
3.12 commissioner deems necessary, at a time and place designated by the commissioner.

3.13 All facility administrators of correctional facilities defined under subdivision 1g are
3.14 required to report all deaths of individuals who died while committed to the custody of the
3.15 facility, regardless of whether the death occurred at the facility or after removal from the
3.16 facility for medical care stemming from an incident or need for medical care at the
3.17 correctional facility, within 24 hours of receiving knowledge of the death, including any
3.18 demographic information as required by the commissioner.

3.19 All facility administrators of correctional facilities defined under subdivision 1g are
3.20 required to report all other emergency or unusual occurrences as defined by rule, including
3.21 uses of force by facility staff that result in substantial bodily harm or suicide attempts, to
3.22 the commissioner of corrections within ten days from the occurrence, including any
3.23 demographic information as required by the commissioner. The commissioner of corrections
3.24 shall consult with the Minnesota Sheriffs' Association and a representative from the
3.25 Minnesota Association of Community Corrections Act Counties who is responsible for the
3.26 operations of an adult correctional facility to define "use of force" that results in substantial
3.27 bodily harm for reporting purposes.

3.28 The commissioner may require that any or all such information be provided through the
3.29 Department of Corrections detention information system. The commissioner shall post each
3.30 inspection report publicly and on the department's website within 30 days of completing
3.31 the inspection. The education program offered in a correctional facility for the ~~detention or~~
3.32 confinement or incarceration of juvenile offenders must be approved by the commissioner
3.33 of education before the commissioner of corrections may grant a license to the facility.

4.1 (b) For juvenile facilities licensed by the commissioner of human services, the
4.2 commissioner may inspect and certify programs based on certification standards set forth
4.3 in Minnesota Rules. For the purpose of this paragraph, "certification" has the meaning given
4.4 it in section 245A.02.

4.5 (c) Any state agency which regulates, inspects, or licenses certain aspects of correctional
4.6 facilities shall, insofar as is possible, ensure that the minimum standards it requires are
4.7 substantially the same as those required by other state agencies which regulate, inspect, or
4.8 license the same aspects of similar types of correctional facilities, although at different
4.9 correctional facilities.

4.10 (d) Nothing in this section shall be construed to limit the commissioner of corrections'
4.11 authority to promulgate rules establishing standards of eligibility for counties to receive
4.12 funds under sections 401.01 to 401.16, or to require counties to comply with operating
4.13 standards the commissioner establishes as a condition precedent for counties to receive that
4.14 funding.

4.15 ~~(e) When the commissioner finds that any facility described in paragraph (a), except~~
4.16 ~~foster care facilities for delinquent children and youth as provided in subdivision 2, does~~
4.17 ~~not substantially conform to the minimum standards established by the commissioner and~~
4.18 ~~is not making satisfactory progress toward substantial conformance, the commissioner shall~~
4.19 ~~promptly notify the chief executive officer and the governing board of the facility of the~~
4.20 ~~deficiencies and order that they be remedied within a reasonable period of time. The~~
4.21 ~~commissioner may by written order restrict the use of any facility which does not substantially~~
4.22 ~~conform to minimum standards to prohibit the detention of any person therein for more than~~
4.23 ~~72 hours at one time. When, after due notice and hearing, the commissioner finds that any~~
4.24 ~~facility described in this subdivision, except county jails and lockups as provided in sections~~
4.25 ~~641.26, 642.10, and 642.11, does not conform to minimum standards, or is not making~~
4.26 ~~satisfactory progress toward substantial compliance therewith, the commissioner may issue~~
4.27 ~~an order revoking the license of that facility. After revocation of its license, that facility~~
4.28 ~~shall not be used until its license is renewed. When the commissioner is satisfied that~~
4.29 ~~satisfactory progress towards substantial compliance with minimum standard is being made,~~
4.30 ~~the commissioner may, at the request of the appropriate officials of the affected facility~~
4.31 ~~supported by a written schedule for compliance, grant an extension of time for a period not~~
4.32 ~~to exceed one year.~~

4.33 (f) As used in this subdivision, "correctional facility" means any facility, including a
4.34 group home, having a residential component, the primary purpose of which is to serve
4.35 persons placed therein by a court, court services department, parole authority, or other

5.1 ~~correctional agency having dispositional power over persons charged with, convicted, or~~
5.2 ~~adjudicated to be guilty or delinquent.~~

5.3 Sec. 3. Minnesota Statutes 2020, section 241.021, is amended by adding a subdivision to
5.4 read:

5.5 Subd. 1a. **Correction order; conditional license.** (a) When the commissioner finds that
5.6 any facility described in subdivision 1, except foster care facilities for delinquent children
5.7 and youth as provided in subdivision 2, does not substantially conform to the minimum
5.8 standards established by the commissioner and is not making satisfactory progress toward
5.9 substantial conformance and the nonconformance does not present an imminent risk of
5.10 life-threatening harm or serious physical injury to the persons confined or incarcerated in
5.11 the facility, the commissioner shall promptly notify the facility administrator and the
5.12 governing board of the facility of the deficiencies and must issue a correction order or a
5.13 conditional license order that the deficiencies be remedied within a reasonable and specified
5.14 period of time.

5.15 The conditional license order may restrict the use of any facility which does not
5.16 substantially conform to minimum standards, including imposition of conditions limiting
5.17 operation of the facility or parts of the facility, reducing facility capacity, limiting intake,
5.18 limiting length of detention for individuals, or imposing detention limitations based on the
5.19 needs of the individuals being confined or incarcerated therein.

5.20 The correction order or conditional license order must clearly state the following:

5.21 (1) the specific minimum standards violated, noting the implicated rule or law;

5.22 (2) the findings that constitute a violation of minimum standards;

5.23 (3) the corrective action needed;

5.24 (4) time allowed to correct each violation; and

5.25 (5) if a license is made conditional, the length and terms of the conditional license, any
5.26 conditions limiting operation of the facility, and the reasons for making the license
5.27 conditional.

5.28 (b) The facility administrator may request review of the findings noted in the conditional
5.29 license order on the grounds that satisfactory progress toward substantial compliance with
5.30 minimum standards has been made, supported by evidence of correction, and, if appropriate,
5.31 may include a written schedule for compliance. The commissioner shall review the evidence
5.32 of correction and the progress made toward substantial compliance with minimum standards

6.1 within a reasonable period of time, not to exceed ten business days. When the commissioner
6.2 has assurance that satisfactory progress toward substantial compliance with minimum
6.3 standards is being made, the commissioner shall lift any conditions limiting operation of
6.4 the facility or parts of the facility or remove the conditional license order.

6.5 (c) Nothing in this section prohibits the commissioner from ordering a revocation under
6.6 subdivision 1b prior to issuing a correction order or conditional license order.

6.7 Sec. 4. Minnesota Statutes 2020, section 241.021, is amended by adding a subdivision to
6.8 read:

6.9 Subd. 1b. **License revocation order.** (a) When, after due notice to the facility
6.10 administrator of the commissioner's intent to issue a revocation order, the commissioner
6.11 finds that any facility described in this subdivision, except county jails and lockups subject
6.12 to active condemnation proceedings or orders as provided in sections 641.26, 642.10, and
6.13 642.11, does not conform to minimum standards, or is not making satisfactory progress
6.14 toward substantial compliance with minimum standards, and the nonconformance does not
6.15 present an imminent risk of life-threatening harm or serious physical injury to the persons
6.16 confined or incarcerated in the facility, the commissioner may issue an order revoking the
6.17 license of that facility.

6.18 The notice of intent to issue a revocation order shall include:

6.19 (1) the citation to minimum standards that have been violated;

6.20 (2) the nature and severity of each violation;

6.21 (3) whether the violation is recurring or nonrecurring;

6.22 (4) the effect of the violation on persons confined or incarcerated in the correctional
6.23 facility;

6.24 (5) an evaluation of the risk of harm to persons confined or incarcerated in the correctional
6.25 facility;

6.26 (6) relevant facts, conditions, and circumstances concerning the operation of the licensed
6.27 facility, including at a minimum:

6.28 (i) specific facility deficiencies that endanger the health or safety of persons confined
6.29 or incarcerated in the correctional facility;

6.30 (ii) substantiated complaints relating to the correctional facility; or

7.1 (iii) any other evidence that the correctional facility is not in compliance with minimum
7.2 standards.

7.3 (b) The facility administrator must submit a written response within 30 days of receipt
7.4 of the notice of intent to issue a revocation order with any information related to errors in
7.5 the notice, ability to conform to minimum standards within a set period of time including
7.6 but not limited to a written schedule for compliance, and any other information the facility
7.7 administrator deems relevant for consideration by the commissioner. The written response
7.8 must also include a written plan indicating how the correctional facility will ensure the
7.9 transfer of confined or incarcerated individuals and records if the correctional facility closes.
7.10 Plans must specify arrangements the correctional facility will make to transfer confined or
7.11 incarcerated individuals to another licensed correctional facility for continuation of detention.

7.12 (c) When revoking a license, the commissioner shall consider the nature, chronicity, or
7.13 severity of the violation of law or rule and the effect of the violation on the health, safety,
7.14 or rights of persons confined or incarcerated in the correctional facility.

7.15 (d) If the facility administrator does not respond within 30 days to the notice of intent
7.16 to issue a revocation order or if the commissioner does not have assurance that satisfactory
7.17 progress toward substantial compliance with minimum standards will be made, the
7.18 commissioner shall issue a revocation order. The revocation order must be sent to the facility
7.19 administrator and the governing board of the facility, clearly stating:

7.20 (1) the specific minimum standards violated, noting the implicated rule or law;

7.21 (2) the findings that constitute a violation of minimum standards and the nature,
7.22 chronicity, or severity of those violations;

7.23 (3) the corrective action needed;

7.24 (4) any prior correction or conditional license orders issued to correct violations; and

7.25 (5) the date at which the license revocation shall take place.

7.26 A revocation order may authorize use until a certain date, not to exceed the duration of the
7.27 current license, unless a limited license is issued by the commissioner for purposes of
7.28 effectuating a facility closure and continued operation does not present an imminent risk
7.29 of life-threatening harm or is not likely to result in serious physical injury to the persons
7.30 confined or incarcerated in the facility.

7.31 (e) After revocation of the facility's licensure, that facility shall not be used until the
7.32 license is renewed. When the commissioner is satisfied that satisfactory progress toward
7.33 substantial compliance with minimum standards is being made, the commissioner may, at

8.1 the request of the facility administrator supported by a written schedule for compliance,
8.2 reinstate the license.

8.3 Sec. 5. Minnesota Statutes 2020, section 241.021, is amended by adding a subdivision to
8.4 read:

8.5 Subd. 1c. **Temporary license suspension.** The commissioner shall act immediately to
8.6 temporarily suspend a license issued under this chapter if:

8.7 (1) the correctional facility's failure to comply with applicable minimum standards or
8.8 the conditions in the correctional facility pose an imminent risk of life-threatening harm or
8.9 serious physical injury to persons confined or incarcerated in the facility, staff, law
8.10 enforcement, visitors, or the public; and

8.11 (i) if the imminent risk of life-threatening harm or serious physical injury cannot be
8.12 promptly corrected through a different type of order under this section; and

8.13 (ii) the correctional facility cannot or has not corrected the violation giving rise to the
8.14 imminent risk of life-threatening harm or serious physical injury; or

8.15 (2) while the correctional facility continues to operate pending due notice and opportunity
8.16 for written response to the commissioner's notice of intent to issue an order of revocation,
8.17 the commissioner identifies one or more subsequent violations of minimum standards which
8.18 may adversely affect the health or safety of persons confined or incarcerated in the facility,
8.19 staff, law enforcement, visitors, or the public.

8.20 A notice stating the reasons for the immediate suspension informing the facility
8.21 administrator must be delivered by personal service to the correctional facility administrator
8.22 and the governing board of the facility.

8.23 Sec. 6. Minnesota Statutes 2020, section 241.021, is amended by adding a subdivision to
8.24 read:

8.25 Subd. 1d. **Public notice of restriction, revocation, or suspension.** If the license of a
8.26 facility under this section is revoked or suspended, or use of the facility is restricted for any
8.27 reason under a conditional license order, the commissioner shall post the facility, the status
8.28 of the facility's license, and the reason for the restriction, revocation, or suspension publicly
8.29 and on the department's website.

9.1 Sec. 7. Minnesota Statutes 2020, section 241.021, is amended by adding a subdivision to
9.2 read:

9.3 Subd. 1e. **Reconsideration of orders; appeals.** (a) If the facility administrator believes
9.4 the correction order, conditional license order, or revocation order is in error, the facility
9.5 administrator may ask the Department of Corrections to reconsider the parts of the order or
9.6 action that are alleged to be in error. The request for reconsideration must:

9.7 (1) be made in writing;

9.8 (2) be postmarked and sent to the commissioner no later than 30 calendar days after
9.9 receipt of the correction order, conditional license order, or revocation order;

9.10 (3) specify the parts of the order that are alleged to be in error;

9.11 (4) explain why the correction order, conditional license order, or revocation order is in
9.12 error; and

9.13 (5) include documentation to support the allegation of error.

9.14 The commissioner shall issue a disposition within 60 days of receipt of the facility
9.15 administrator's response to correction, conditional license, or revocation order violations.

9.16 A request for reconsideration does not stay any provisions or requirements of the order.

9.17 (b) The facility administrator may request reconsideration of an order immediately
9.18 suspending a license. The request for reconsideration of an order immediately suspending
9.19 a license must be made in writing and sent by certified mail, personal service, or other means
9.20 expressly stated in the commissioner's order. If mailed, the request for reconsideration must
9.21 be postmarked and sent to the commissioner no later than five business days after the facility
9.22 administrator receives notice that the license has been immediately suspended. If a request
9.23 is made by personal service, it must be received by the commissioner no later than five
9.24 business days after the facility administrator received the order. The request for
9.25 reconsideration must:

9.26 (1) specify the parts of the order that are alleged to be in error;

9.27 (2) explain why they are in error; and

9.28 (3) include documentation to support the allegation of error.

9.29 A facility administrator and the governing board of the facility shall discontinue operation
9.30 of the correctional facility upon receipt of the commissioner's order to immediately suspend
9.31 the license.

10.1 (c) Within five business days of receipt of the facility administrator's timely request for
10.2 reconsideration of a temporary immediate suspension, the commissioner shall review the
10.3 request for reconsideration. The scope of the review shall be limited solely to the issue of
10.4 whether the temporary immediate suspension order should remain in effect pending the
10.5 written response to commissioner's notice of intent to issue a revocation order.

10.6 The commissioner's disposition of a request for reconsideration of correction, conditional
10.7 license, temporary immediate suspension, or revocation order is final and subject to appeal.
10.8 The facility administrator must request reconsideration as required by this section of any
10.9 correction, conditional license, temporary immediate suspension, or revocation order prior
10.10 to appeal.

10.11 No later than 60 days after the postmark date of the mailed notice of the commissioner's
10.12 decision on a request for reconsideration, the facility administrator may appeal the decision
10.13 by filing for a writ of certiorari with the court of appeals under section 606.01 and Minnesota
10.14 Rules of Civil Appellate Procedure, Rule 115.

10.15 Sec. 8. Minnesota Statutes 2020, section 241.021, is amended by adding a subdivision to
10.16 read:

10.17 Subd. 1f. **Report.** By February 15, 2022, and by February 15 each year thereafter, the
10.18 commissioner of corrections shall report to the chairs and ranking minority members of the
10.19 house of representatives and senate committees and divisions with jurisdiction over public
10.20 safety and judiciary on the status of the implementation of the provisions in this section
10.21 over the prior year, particularly the health and safety of individuals confined or incarcerated
10.22 in a state correctional facility and a facility licensed by the commissioner. This report shall
10.23 include but not be limited to data regarding:

10.24 (1) the number of confined or incarcerated persons who died while committed to the
10.25 custody of the facility, regardless of whether the death occurred at the facility or after
10.26 removal from the facility for medical care stemming from an incident or need for medical
10.27 care at the correctional facility, including aggregated demographic information and the
10.28 correctional facilities' most recent inspection reports and any corrective orders or conditional
10.29 licenses issued;

10.30 (2) the aggregated results of the death reviews by facility as required by subdivision 8,
10.31 including any implemented policy changes;

10.32 (3) the number of uses of force by facility staff on persons confined or incarcerated in
10.33 the correctional facility, including but not limited to whether those uses of force were

11.1 determined to be justified by the facility, for which the commissioner of corrections shall
11.2 consult with the Minnesota Sheriffs' Association and a representative from the Minnesota
11.3 Association of Community Corrections Act Counties who is responsible for the operations
11.4 of an adult correctional facility to develop criteria for reporting and define reportable uses
11.5 of force;

11.6 (4) the number of suicide attempts, number of people transported to a medical facility,
11.7 and number of people placed in segregation;

11.8 (5) the number of persons committed to the commissioner of corrections' custody that
11.9 the commissioner is housing in facilities licensed under subdivision 1, including but not
11.10 limited to:

11.11 (i) aggregated demographic data of those individuals;

11.12 (ii) length of time spent housed in a licensed correctional facility; and

11.13 (iii) any contracts the Department of Corrections has with correctional facilities to provide
11.14 housing; and

11.15 (6) summary data from state correctional facilities regarding complaints involving alleged
11.16 on-duty staff misconduct, including but not limited to the:

11.17 (i) total number of misconduct complaints and investigations;

11.18 (ii) total number of complaints by each category of misconduct, as defined by the
11.19 commissioner of corrections;

11.20 (iii) number of allegations dismissed as unfounded;

11.21 (iv) number of allegations dismissed on grounds that the allegation was unsubstantiated;
11.22 and

11.23 (v) number of allegations substantiated, any resulting disciplinary action, and the nature
11.24 of the discipline.

11.25 Sec. 9. Minnesota Statutes 2020, section 241.021, is amended by adding a subdivision to
11.26 read:

11.27 Subd. 1g. **Definition.** As used in this section, "correctional facility" means any facility,
11.28 including a group home, having a residential component, the primary purpose of which is
11.29 to serve persons placed therein by a court, court services department, parole authority, or
11.30 other correctional agency having dispositional power over persons charged with, convicted,
11.31 or adjudicated guilty or delinquent.

12.1 Sec. 10. Minnesota Statutes 2020, section 241.021, is amended by adding a subdivision
12.2 to read:

12.3 Subd. 7. **Intake release of information.** All correctional facilities that confine or
12.4 incarcerate adults are required at intake to provide every person an authorization form to
12.5 release information related to their health or mental health condition and when that
12.6 information should be shared. This release form shall allow the individual to select if they
12.7 want to require the correctional facility to make attempts to contact the designated person
12.8 to facilitate the sharing of health condition information upon incapacitation or if the individual
12.9 becomes unable to communicate or direct the sharing of this information, so long as contact
12.10 information was provided and the incapacitated person or individual who is unable to
12.11 communicate or direct the sharing of this information is not subject to a court order
12.12 prohibiting contact with the designated person.

12.13 Sec. 11. Minnesota Statutes 2020, section 241.021, is amended by adding a subdivision
12.14 to read:

12.15 Subd. 8. **Death review teams.** In the event a correctional facility as defined in subdivision
12.16 1g receives information of the death of an individual while committed to the custody of the
12.17 facility, regardless of whether the death occurred at the facility or after removal from the
12.18 facility for medical care stemming from an incident or need for medical care at the
12.19 correctional facility, the administrator of the facility, minimally including a medical expert
12.20 of the facility's choosing who did not provide medical services to the individual, and, if
12.21 appropriate, a mental health expert, shall review the circumstances of the death and assess
12.22 for preventable mortality and morbidity, including recommendations for policy or procedure
12.23 change, within 90 days of death. The investigating law enforcement agency may provide
12.24 documentation, participate in, or provide documentation and participate in the review in
12.25 instances where criminal charges were not brought. A preliminary autopsy report must be
12.26 provided as part of the review and any subsequent autopsy findings as available. The facility
12.27 administrator shall provide notice to the commissioner of corrections via the Department
12.28 of Corrections detention information system that the correctional facility has conducted a
12.29 review and identify any recommendations for changes in policy, procedure, or training that
12.30 will be implemented. Any report or other documentation created for purposes of a facility
12.31 death review is confidential as defined in section 13.02, subdivision 3. Nothing in this
12.32 section relieves the facility administrator from complying with the notice of death to the
12.33 commissioner as required by subdivision 1, paragraph (a).

13.1 Sec. 12. Minnesota Statutes 2020, section 243.52, is amended to read:

13.2 **243.52 DISCIPLINE; PREVENTION OF ESCAPE; DUTY TO REPORT.**

13.3 Subdivision 1. Discipline and prevention of escape If any ~~inmate~~ person confined
13.4 or incarcerated in any adult correctional facility either under the control of the commissioner
13.5 of corrections or licensed by the commissioner of corrections under section 241.021 assaults
13.6 any correctional officer or any other person ~~or inmate~~, the assaulted person may use force
13.7 in defense of the assault, except as limited in this section. If any ~~inmate~~ confined or
13.8 incarcerated person attempts to damage the buildings or appurtenances, resists the lawful
13.9 authority of any correctional officer, refuses to obey the correctional officer's reasonable
13.10 demands, or attempts to escape, the correctional officer may enforce obedience and discipline
13.11 or prevent escape by the use of force. If any ~~inmate~~ confined or incarcerated person resisting
13.12 lawful authority is wounded or killed by the use of force by the correctional officer or
13.13 assistants, that conduct is authorized under this section.

13.14 Subd. 2. Use of force. (a) Use of force must not be applied maliciously or sadistically
13.15 for the purpose of causing harm to an inmate.

13.16 (b) Unless the use of deadly force is justified in this section, a correctional officer working
13.17 in a correctional facility as defined in section 241.021 may not use any of the following
13.18 restraints:

13.19 (1) a choke hold;

13.20 (2) a prone restraint;

13.21 (3) tying all of a person's limbs together behind the person's back to render the person
13.22 immobile; or

13.23 (4) securing a person in any way that results in transporting the person face down in a
13.24 vehicle, except as directed by a medical professional.

13.25 (c) For the purposes of this subdivision, the following terms have the meanings given
13.26 them:

13.27 (1) "choke hold" means a method by which a person applies sufficient pressure to a
13.28 person to make breathing difficult or impossible, and includes but is not limited to any
13.29 pressure to the neck, throat, or windpipe that may prevent or hinder breathing or reduce
13.30 intake of air. Choke hold also means applying pressure to a person's neck on either side of
13.31 the windpipe, but not to the windpipe itself, to stop the flow of blood to the brain via the
13.32 carotid arteries;

14.1 (2) "prone restraint" means the use of manual restraint that places a person in a face-down
14.2 position; and

14.3 ~~As used in this section, "use of force" means conduct which is defined by sections 609.06~~
14.4 ~~to 609.066.~~ (3) "deadly force" has the meaning given in section 609.066, subdivision 1.

14.5 (d) Use of deadly force is justified only if an objectively reasonable correctional officer
14.6 would believe, based on the totality of the circumstances known to the officer at the time
14.7 and without the benefit of hindsight, that deadly force is necessary:

14.8 (1) to protect the correctional officer or another from death or great bodily harm, provided
14.9 that the threat:

14.10 (i) can be articulated with specificity by the correctional officer;

14.11 (ii) is reasonably likely to occur absent action by the correctional officer; and

14.12 (iii) must be addressed through the use of deadly force without unreasonable delay; or

14.13 (2) to effect the capture or prevent the escape of a person when the officer reasonably
14.14 believes that the person will cause death or great bodily harm to another person under the
14.15 threat criteria in clause (1), unless immediately apprehended.

14.16 Subd. 3. **Duty to report.** (a) Regardless of tenure or rank, staff working in a correctional
14.17 facility as defined in section 241.021 who observe another employee engage in neglect or
14.18 use force that exceeds the degree of force permitted by law must report the incident in
14.19 writing as soon as practicable, but no later than 24 hours to the administrator of the
14.20 correctional facility that employs the reporting staff member.

14.21 (b) A staff member who fails to report neglect or excessive use of force within 24 hours
14.22 is subject to disciplinary action or sanction by the correctional facility that employs them.
14.23 Staff members shall suffer no reprisal for reporting another staff member engaged in
14.24 excessive use of force or neglect.

14.25 (c) For the purposes of this subdivision, neglect means:

14.26 (1) the knowing failure or omission to supply a person confined or incarcerated in the
14.27 facility with care or services, including but not limited to food, clothing, health care, or
14.28 supervision that is reasonable and necessary to obtain or maintain the person's physical or
14.29 mental health or safety; or

14.30 (2) the absence or likelihood of absence of care or services, including but not limited to
14.31 food, clothing, health care, or supervision necessary to maintain the physical and mental

- 15.1 health of the person that a reasonable person would deem essential for health, safety, or
- 15.2 comfort.
- 15.3 **EFFECTIVE DATE.** This section is effective the day following final enactment.