

This Document can be made available in alternative formats upon request

State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 793

02/08/2021

Authored by Fischer

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

1.1 A bill for an act

1.2 relating to public safety; requiring probation and parole agents to consider and

1.3 recommend local options to address technical violations by offenders with mental

1.4 illness; providing courts with additional information and discretion regarding

1.5 defendants with mental illness; amending Minnesota Statutes 2020, sections 243.05,

1.6 subdivisions 1, 6; 244.05, subdivisions 2, 3; 244.19, subdivision 3; 244.198, by

1.7 adding a subdivision; 609.1055; 609.115, by adding a subdivision; 609.14,

1.8 subdivision 2a; 611.026; 629.53.

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

1.10 Section 1. Minnesota Statutes 2020, section 243.05, subdivision 1, is amended to read:

1.11 Subdivision 1. **Conditional release.** (a) The commissioner of corrections may parole

1.12 any person sentenced to confinement in any state correctional facility for adults under the

1.13 control of the commissioner of corrections, provided that:

1.14 (1) no inmate serving a life sentence for committing murder before May 1, 1980, other

1.15 than murder committed in violation of clause (1) of section 609.185 who has not been

1.16 previously convicted of a felony shall be paroled without having served 20 years, less the

1.17 diminution that would have been allowed for good conduct had the sentence been for 20

1.18 years;

1.19 (2) no inmate serving a life sentence for committing murder before May 1, 1980, who

1.20 has been previously convicted of a felony or though not previously convicted of a felony

1.21 is serving a life sentence for murder in the first degree committed in violation of clause (1)

1.22 of section 609.185 shall be paroled without having served 25 years, less the diminution

1.23 which would have been allowed for good conduct had the sentence been for 25 years;

2.1 (3) any inmate sentenced prior to September 1, 1963, who would be eligible for parole
2.2 had the inmate been sentenced after September 1, 1963, shall be eligible for parole; and

2.3 (4) any new rule or policy or change of rule or policy adopted by the commissioner of
2.4 corrections which has the effect of postponing eligibility for parole has prospective effect
2.5 only and applies only with respect to persons committing offenses after the effective date
2.6 of the new rule or policy or change.

2.7 (b) Upon being paroled and released, an inmate is and remains in the legal custody and
2.8 under the control of the commissioner, subject at any time to be returned to a facility of the
2.9 Department of Corrections established by law for the confinement or treatment of convicted
2.10 persons and the parole rescinded by the commissioner.

2.11 (c) The written order of the commissioner of corrections, is sufficient authority for any
2.12 peace officer, state correctional investigator, or state parole and probation agent to retake
2.13 and place in actual custody any person on parole or supervised release. In addition, when
2.14 it appears necessary in order to prevent escape or enforce discipline, any state parole and
2.15 probation agent or state correctional investigator may, without order of warrant, take and
2.16 detain a parolee or person on supervised release or work release and bring the person to the
2.17 commissioner for action.

2.18 (d) The written order of the commissioner of corrections is sufficient authority for any
2.19 peace officer, state correctional investigator, or state parole and probation agent to retake
2.20 and place in actual custody any person on probation under the supervision of the
2.21 commissioner pursuant to section 609.135. Additionally, when it appears necessary in order
2.22 to prevent escape or enforce discipline, any state parole and probation agent or state
2.23 correctional investigator may, without an order, retake and detain a probationer and bring
2.24 the probationer before the court for further proceedings under section 609.14.

2.25 (e) The written order of the commissioner of corrections is sufficient authority for any
2.26 peace officer, state correctional investigator, or state parole and probation agent to detain
2.27 any person on pretrial release who absconds from pretrial release or fails to abide by the
2.28 conditions of pretrial release.

2.29 (f) Persons conditionally released, and those on probation under the supervision of the
2.30 commissioner of corrections pursuant to section 609.135 may be placed within or outside
2.31 the boundaries of the state at the discretion of the commissioner of corrections or the court,
2.32 and the limits fixed for these persons may be enlarged or reduced according to their conduct.

2.33 (g) Except as otherwise provided in subdivision 1b, in considering applications for
2.34 conditional release or discharge, the commissioner is not required to hear oral argument

3.1 from any attorney or other person not connected with an adult correctional facility of the
3.2 Department of Corrections in favor of or against the parole or release of any inmates. The
3.3 commissioner may institute inquiries by correspondence, taking testimony, or otherwise,
3.4 as to the previous history, physical or mental condition, and character of the inmate and, to
3.5 that end, has the authority to require the attendance of the chief executive officer of any
3.6 state adult correctional facility and the production of the records of these facilities, and to
3.7 compel the attendance of witnesses. The commissioner is authorized to administer oaths to
3.8 witnesses for these purposes.

3.9 (h) Unless the district court directs otherwise, state parole and probation agents may
3.10 require a person who is under the supervision of the commissioner of corrections to perform
3.11 community work service for violating a condition of probation imposed by the court.
3.12 Community work service may be imposed for the purpose of protecting the public, to aid
3.13 the offender's rehabilitation, or both. Agents may impose up to eight hours of community
3.14 work service for each violation and up to a total of 24 hours per offender per 12-month
3.15 period, beginning with the date on which community work service is first imposed. The
3.16 commissioner may authorize an additional 40 hours of community work services, for a total
3.17 of 64 hours per offender per 12-month period, beginning with the date on which community
3.18 work service is first imposed. At the time community work service is imposed, parole and
3.19 probation agents are required to provide written notice to the offender that states:

- 3.20 (1) the condition of probation that has been violated;
- 3.21 (2) the number of hours of community work service imposed for the violation; and
- 3.22 (3) the total number of hours of community work service imposed to date in the 12-month
3.23 period.

3.24 An offender may challenge the imposition of community work service by filing a petition
3.25 in district court. An offender must file the petition within five days of receiving written
3.26 notice that community work service is being imposed. If the offender challenges the
3.27 imposition of community work service, the state bears the burden of showing, by a
3.28 preponderance of the evidence, that the imposition of community work service is reasonable
3.29 under the circumstances.

3.30 Community work service includes sentencing to service.

3.31 (i) Prior to revoking a nonviolent controlled substance offender's parole or probation
3.32 based on a technical violation, when the offender does not present a risk to the public and
3.33 the offender is amenable to continued supervision in the community, a parole or probation
3.34 agent must identify community options to address and correct the violation including, but

4.1 not limited to, inpatient chemical dependency treatment. If a probation or parole agent
 4.2 determines that community options are appropriate, the agent shall seek to restructure the
 4.3 offender's terms of release to incorporate those options. If an offender on probation stipulates
 4.4 in writing to restructure the terms of release, a probation agent must forward a report to the
 4.5 district court containing:

4.6 (1) the specific nature of the technical violation of probation;

4.7 (2) the recommended restructure to the terms of probation; and

4.8 (3) a copy of the offender's signed stipulation indicating that the offender consents to
 4.9 the restructuring of probation.

4.10 The recommended restructuring of probation becomes effective when confirmed by a
 4.11 judge. The order of the court shall be proof of such confirmation and amend the terms of
 4.12 the sentence imposed by the court under section 609.135. If a nonviolent controlled substance
 4.13 offender's parole or probation is revoked, the offender's agent must first attempt to place
 4.14 the offender in a local jail. ~~For purposes of this paragraph, "nonviolent controlled substance~~
 4.15 ~~offender" is a person who meets the criteria described under section 244.0513, subdivision~~
 4.16 ~~2, clauses (1), (2), and (5), and "technical violation" means any violation of a court order~~
 4.17 ~~of probation or a condition of parole, except an allegation of a subsequent criminal act that~~
 4.18 ~~is alleged in a formal complaint, citation, or petition.~~

4.19 (j) Prior to revoking the parole or probation of an offender based on a technical violation,
 4.20 a parole or probation agent must identify community options to address and correct the
 4.21 violation, including but not limited to inpatient mental health treatment if the offender has
 4.22 a mental illness, does not present a risk to the public, and is amenable to continued
 4.23 supervision in the community. If a probation or parole agent determines that community
 4.24 options are appropriate, the agent shall seek to restructure the offender's terms of release to
 4.25 incorporate those options. If an offender on probation stipulates in writing to restructure
 4.26 the terms of release, a probation agent must forward a report to the district court containing:

4.27 (1) the specific nature of the technical violation of probation;

4.28 (2) the recommended restructure to the terms of probation; and

4.29 (3) a copy of the offender's signed stipulation indicating that the offender consents to
 4.30 the restructuring of probation.

4.31 The recommended restructuring of probation becomes effective when confirmed by a
 4.32 judge. The order of the court shall be proof of such confirmation and amend the terms of
 4.33 the sentence imposed by the court under section 609.135.

5.1 (k) For purposes of this subdivision, "nonviolent controlled substance offender" is a
5.2 person who meets the criteria described under section 244.0513, subdivision 2, clauses (1),
5.3 (2), and (5); "technical violation" means any violation of a court order of probation or a
5.4 condition of parole, except an allegation of a subsequent criminal act that is alleged in a
5.5 formal complaint, citation, or petition; and "mental illness" has the meaning given in section
5.6 245.462, subdivision 20, paragraph (a).

5.7 Sec. 2. Minnesota Statutes 2020, section 243.05, subdivision 6, is amended to read:

5.8 **Subd. 6. Supervision by commissioner of corrections; agents.** (a) The commissioner
5.9 of corrections, as far as possible, shall exercise supervision over persons released on parole
5.10 or probation pursuant to this section and section 242.19.

5.11 (b) The commissioner of corrections shall exercise supervision over probationers as
5.12 provided in section 609.135, and over persons conditionally released pursuant to section
5.13 241.26.

5.14 (c) For the purposes of ~~clauses~~ paragraphs (a) and (b), and sections 609.115 and 609.135,
5.15 subdivision 1, the commissioner shall appoint state agents who shall be in the classified
5.16 service of the state civil service. The commissioner may also appoint suitable persons in
5.17 any part of the state or enter into agreements with individuals and public or private agencies,
5.18 for the same purposes, and pay the costs incurred under the agreements. Each agent or
5.19 person shall perform the duties the commissioner may prescribe in behalf of or in the
5.20 supervision of those persons described in ~~clause~~ paragraph (b). In addition, each agent or
5.21 person shall act under the orders of the commissioner in the supervision of those persons
5.22 conditionally released as provided in ~~clause~~ paragraph (a). Agents shall provide assistance
5.23 to conditionally released persons in obtaining employment, and shall conduct relevant
5.24 investigations and studies of persons under supervision upon the request of the commissioner.
5.25 Agents supervising a person as described in paragraphs (a) and (b) who has a mental illness,
5.26 as defined in section 245.462, subdivision 20, paragraph (a), shall provide assistance to the
5.27 supervised person in obtaining appropriate mental health services; determine if the person
5.28 is receiving case management services, including but not limited to targeted case management
5.29 pursuant to section 256B.0924; obtain appropriate permission to consult with case
5.30 management service providers; and ensure that conditions of supervision are consistent with
5.31 ongoing mental health treatment. Regional supervisors may also supervise state parole
5.32 agents as directed by the commissioner of corrections. This duty shall not interfere with the
5.33 supervisor's responsibility under the County Probation Act, Laws 1959, chapter 698.

6.1 Sec. 3. Minnesota Statutes 2020, section 244.05, subdivision 2, is amended to read:

6.2 Subd. 2. **Rules.** The commissioner of corrections shall adopt by rule standards and
6.3 procedures for the revocation of supervised or conditional release, and shall specify the
6.4 period of revocation for each violation of release. Procedures for the revocation of release
6.5 shall provide due process of law for the inmate. Procedures shall further include a
6.6 determination of whether the inmate has a mental illness, as defined in section 245.462,
6.7 subdivision 20, paragraph (a); whether the inmate is receiving case management services,
6.8 including but not limited to targeted case management pursuant to section 256B.0924; and
6.9 whether the revocation of supervised or conditional release is consistent with ongoing mental
6.10 health treatment.

6.11 Sec. 4. Minnesota Statutes 2020, section 244.05, subdivision 3, is amended to read:

6.12 Subd. 3. **Sanctions for violation.** (a) If an inmate violates the conditions of the inmate's
6.13 supervised release imposed by the commissioner, the commissioner may:

6.14 (1) continue the inmate's supervised release term, with or without modifying or enlarging
6.15 the conditions imposed on the inmate; or

6.16 (2) revoke the inmate's supervised release and reimprison the inmate for the appropriate
6.17 period of time.

6.18 (b) Prior to revoking a nonviolent controlled substance offender's supervised release
6.19 based on a technical violation, when the offender does not present a risk to the public and
6.20 the offender is amenable to continued supervision in the community, the commissioner
6.21 must identify community options to address and correct the violation including, but not
6.22 limited to, inpatient chemical dependency treatment. If the commissioner determines that
6.23 community options are appropriate, the commissioner shall restructure the inmate's terms
6.24 of release to incorporate those options. If a nonviolent controlled substance offender's
6.25 supervised release is revoked, the offender's agent must first attempt to place the offender
6.26 in a local jail. For purposes of this subdivision, "nonviolent controlled substance offender"
6.27 is a person who meets the criteria described under section 244.0513, subdivision 2, clauses
6.28 (1), (2), and (5), and "technical violation" means a violation of a condition of supervised
6.29 release, except an allegation of a subsequent criminal act that is alleged in a formal complaint,
6.30 citation, or petition.

6.31 (c) Prior to revoking the supervised release of an offender based on a technical violation,
6.32 the commissioner must identify community options to address and correct the violation,
6.33 including but not limited to inpatient mental health treatment if the offender has a mental

7.1 illness, does not present a risk to the public, and is amenable to continued supervision in
7.2 the community. If the commissioner determines that community options are appropriate,
7.3 the commissioner shall restructure the inmate's terms of release to incorporate those options.

7.4 (d) The period of time for which a supervised release may be revoked may not exceed
7.5 the period of time remaining in the inmate's sentence, except that if a sex offender is
7.6 sentenced and conditionally released under Minnesota Statutes 2004, section 609.108,
7.7 subdivision 5, the period of time for which conditional release may be revoked may not
7.8 exceed the balance of the conditional release term.

7.9 (e) For purposes of this subdivision, "nonviolent controlled substance offender" is a
7.10 person who meets the criteria described under section 244.0513, subdivision 2, clauses (1),
7.11 (2), and (5); "technical violation" means a violation of a condition of supervised release,
7.12 except an allegation of a subsequent criminal act that is alleged in a formal complaint,
7.13 citation, or petition; and "mental illness" has the meaning given in section 245.462,
7.14 subdivision 20, paragraph (a).

7.15 Sec. 5. Minnesota Statutes 2020, section 244.19, subdivision 3, is amended to read:

7.16 Subd. 3. **Powers and duties.** All county probation officers serving a district court shall
7.17 act under the orders of the court in reference to any person committed to their care by the
7.18 court, and in the performance of their duties shall have the general powers of a peace officer;
7.19 and it shall be their duty to make such investigations with regard to any person as may be
7.20 required by the court before, during, or after the trial or hearing, and to furnish to the court
7.21 such information and assistance as may be required; to take charge of any person before,
7.22 during or after trial or hearing when so directed by the court, and to keep such records and
7.23 to make such reports to the court as the court may order.

7.24 All county probation officers serving a district court shall, in addition, provide probation
7.25 and parole services to wards of the commissioner of corrections resident in the counties
7.26 they serve, and shall act under the orders of said commissioner of corrections in reference
7.27 to any ward committed to their care by the commissioner of corrections.

7.28 All probation officers serving a district court shall, under the direction of the authority
7.29 having power to appoint them, initiate programs for the welfare of persons coming within
7.30 the jurisdiction of the court to prevent delinquency and crime and to rehabilitate within the
7.31 community persons who come within the jurisdiction of the court and are properly subject
7.32 to efforts to accomplish prevention and rehabilitation. They shall, under the direction of the
7.33 court, cooperate with all law enforcement agencies, schools, child welfare agencies of a
7.34 public or private character, and other groups concerned with the prevention of crime and

8.1 delinquency and the rehabilitation of persons convicted of crime and delinquency. All
 8.2 probation officers serving a district court shall determine whether a person coming within
 8.3 the jurisdiction of the court has a mental illness, as defined in section 245.462, subdivision
 8.4 20, paragraph (a); determine whether the inmate is receiving case management services,
 8.5 including but not limited to targeted case management pursuant to section 256B.0924; obtain
 8.6 appropriate permission to consult with case management service providers; and ensure that
 8.7 conditions of supervision are consistent with ongoing mental health treatment.

8.8 All probation officers serving a district court shall make monthly and annual reports to
 8.9 the commissioner of corrections, on forms furnished by the commissioner, containing such
 8.10 information on number of cases cited to the juvenile division of district court, offenses,
 8.11 adjudications, dispositions, and related matters as may be required by the commissioner of
 8.12 corrections.

8.13 Sec. 6. Minnesota Statutes 2020, section 244.198, is amended by adding a subdivision to
 8.14 read:

8.15 Subd. 1b. **Mental illness; preference for treatment.** At a sanctions conference, a
 8.16 probation agency must identify community options to address and correct a violation,
 8.17 including but not limited to inpatient mental health treatment if the offender has a mental
 8.18 illness, as defined in section 245.462, subdivision 20, paragraph (a), does not present a risk
 8.19 to the public, and is amenable to continued supervision in the community. If the agency
 8.20 determines that community options are appropriate, the county probation officer shall
 8.21 recommend a sanction that incorporates those options.

8.22 Sec. 7. Minnesota Statutes 2020, section 609.1055, is amended to read:

8.23 **609.1055 OFFENDERS WITH SERIOUS AND PERSISTENT MENTAL ILLNESS;**
 8.24 **ALTERNATIVE PLACEMENT.**

8.25 Subdivision 1. **State correctional facility; alternative placement.** When a court intends
 8.26 to commit an offender with a serious and persistent mental illness, as defined in section
 8.27 245.462, subdivision 20, paragraph (c), to the custody of the commissioner of corrections
 8.28 for imprisonment at a state correctional facility, either when initially pronouncing a sentence
 8.29 or when revoking an offender's probation, the court, when consistent with public safety,
 8.30 may instead place the offender on probation or continue the offender's probation and require
 8.31 as a condition of the probation that the offender successfully complete an appropriate
 8.32 supervised alternative living program having a mental health treatment component. This

9.1 section applies only to offenders who would have a remaining term of imprisonment after
 9.2 adjusting for credit for prior imprisonment, if any, of more than one year.

9.3 Subd. 2. **Local correctional facility; alternative placement.** When a court intends to
 9.4 require an offender with a mental illness, as defined in section 245.462, subdivision 20,
 9.5 paragraph (a), to serve incarceration in a county jail, a county regional jail, a county work
 9.6 farm, a county workhouse, or other local correctional facility as a condition of probation or
 9.7 an intermediate sanction, or intends to execute the nonfelony sentence of such an offender,
 9.8 either when initially pronouncing a sentence or when revoking an offender's probation, the
 9.9 court, when consistent with public safety, may instead place the offender on probation or
 9.10 continue the offender's probation and require as a condition of the probation that the offender
 9.11 successfully complete the least restrictive program which can meet the offender's treatment
 9.12 needs.

9.13 Sec. 8. Minnesota Statutes 2020, section 609.115, is amended by adding a subdivision to
 9.14 read:

9.15 Subd. 8a. **Mental health assessment.** If a person is convicted of a felony, the probation
 9.16 officer shall determine in the report prepared under subdivision 1 whether the person is
 9.17 currently or has ever been the subject of an order issued pursuant to chapter 253B. If any
 9.18 such order exists, the probation officer shall promptly notify the court, prosecuting attorney,
 9.19 and defendant's attorney or, if the defendant is not represented by counsel, the defendant
 9.20 of the existence of such an order. The court shall, before sentence is imposed, review any
 9.21 order issued pursuant to chapter 253B and may consider the treatment recommendations of
 9.22 any diagnosing or treating mental health professionals together with the treatment options
 9.23 available to the defendant in imposing sentence.

9.24 Sec. 9. Minnesota Statutes 2020, section 609.14, subdivision 2a, is amended to read:

9.25 **Subd. 2a. Alternatives to incarceration.** (a) A probation agent must present the court
 9.26 with local options to address and correct the violation including, but not limited to, inpatient
 9.27 chemical dependency treatment or mental health treatment when the defendant at a summary
 9.28 hearing provided by subdivision 2 is:

- 9.29 (1) a nonviolent controlled substance offender or has a mental illness;
- 9.30 (2) subject to supervised probation;
- 9.31 (3) appearing based on a technical violation; and
- 9.32 (4) admitting or found to have violated any of the conditions of probation.

10.1 (b) For purposes of this subdivision, "nonviolent controlled substance offender" is a
 10.2 person who meets the criteria described under section 244.0513, subdivision 2, clauses (1),
 10.3 (2), and (5); ~~and~~; "technical violation" has the meaning given in section 244.196, subdivision
 10.4 6; and "mental illness" has the meaning given in section 245.462, subdivision 20, paragraph
 10.5 (a).

10.6 Sec. 10. Minnesota Statutes 2020, section 611.026, is amended to read:

10.7 **611.026 CRIMINAL RESPONSIBILITY OF PERSONS WITH A MENTAL**
 10.8 **ILLNESS OR COGNITIVE IMPAIRMENT.**

10.9 Subdivision 1. **No criminal responsibility.** No person having a mental illness or cognitive
 10.10 impairment so as to be incapable of understanding the proceedings or making a defense
 10.11 shall be tried, sentenced, or punished for any crime; but the person shall not be excused
 10.12 from criminal liability except upon proof that at the time of committing the alleged criminal
 10.13 act the person was laboring under such a defect of reason, from one of these causes, as not
 10.14 to know the nature of the act, or that it was wrong.

10.15 Subd. 2. **Mental illness; reduced culpability.** Nothing in this section prohibits a court
 10.16 from determining that a person's mental illness, as defined in section 245.462, subdivision
 10.17 20, paragraph (a), or cognitive impairment constitutes a substantial factor that mitigates the
 10.18 offender's culpability, although not excusing the person from criminal liability.

10.19 Sec. 11. Minnesota Statutes 2020, section 629.53, is amended to read:

10.20 **629.53 PROVIDING RELEASE ON BAIL; COMMITMENT.**

10.21 Subdivision 1. **Pretrial release.** A person charged with a criminal offense may be
 10.22 released with or without bail in accordance with rule 6.02 of the Rules of Criminal Procedure
 10.23 and this section.

10.24 Subd. 2. **Release conditions; mental health.** (a) In addition to the considerations required
 10.25 by the Rules of Criminal Procedure, when determining the conditions of release the court
 10.26 must consider whether a condition is likely to result in the pretrial detention of a defendant
 10.27 with a mental illness, as defined in section 245.462, subdivision 20, paragraph (a), and
 10.28 whether it is more probable than not that the detention will interfere with ongoing mental
 10.29 health treatment, including but not limited to receipt of prescribed medication. The court
 10.30 shall impose the least restrictive conditions of release that will provide access to ongoing
 10.31 mental health treatment and ensure the defendant's appearance and will not endanger the
 10.32 public safety.

11.1 (b) The court must review conditions of release on request of any party and may amend
11.2 the conditions of release or make any other reasonable order upon receipt of information
11.3 that the pretrial detention of a defendant has interfered with ongoing mental health treatment.

11.4 Subd. 3. Money bail; disposition. Money bail is the property of the accused, whether
11.5 deposited by that person or by a third person on the accused's behalf. When money bail is
11.6 accepted by a judge, that judge shall order it to be deposited with the court administrator.
11.7 The court administrator shall retain it until the final disposition of the case and the final
11.8 order of the court disposing of the case. Upon release, the amount released must be paid to
11.9 the accused personally or upon that person's written order. In case of conviction, the judge
11.10 may order the money bail deposit to be applied to any fine or restitution imposed on the
11.11 defendant by the court and, if the fine or restitution is less than the deposit, order the balance
11.12 to be paid to the defendant. Money bail deposited with the court or any officer of it is exempt
11.13 from garnishment or levy under attachment or execution.