SENATE
STATE OF MINNESOTA
EIGHTY-NINTH SESSION

S.F. No. 2297

(SENATE AUTHORS: BROWN and Anderson)

DATE	D-PG	OFFICIAL STATUS
03/08/2016	4897	Introduction and first reading Referred to Judiciary

A bill for an act

relating to crimes; authorizing death penalty for the murder of a peace officer; providing statutory framework, including procedures and criteria for imposition of death penalty; authorizing Board of Pardons to hear petitions for commutations of death penalty sentences; providing for automatic appellate review of death penalty cases; providing for appointment of attorneys in death penalty cases; providing administrative framework for implementing death penalty; amending Minnesota Statutes 2014, sections 243.05, subdivision 1; 609.10, subdivision 1; 609.106, by adding a subdivision; 609.12, subdivision 1; 609.135, subdivision 1; 609.185; proposing coding for new law in Minnesota Statutes, chapter 638; proposing coding for new law as Minnesota Statutes, chapter 244A.

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

ARTICLE 1

DEATH PENALTY PROCEDURES

Section 1. **[244A.01] REQUIRING NOTICE BY STATE IN DEATH PENALTY CASES.**

If the state intends to seek the death penalty for a capital offense, the prosecuting attorney shall sign and file with the court, and serve upon the defendant, a notice that the state will seek the sentence of death in the event of conviction. The notice must be filed and served within a reasonable time before trial or acceptance by the court of a plea of guilty. If the prosecuting attorney does not comply with the notice requirements of this section, the court may not impose the death penalty under section 244A.05.

Sec. 2. **[244A.02] APPOINTMENT OF ATTORNEYS IN CAPITAL CASES.**

Upon notification under section 244A.01 that the prosecuting attorney intends to seek the death penalty, the court shall order the appointment of two attorneys to counsel

the defendant, at least one of whom has had significant criminal defense experience, unless the court is satisfied that the defendant has retained a competent attorney. If the defendant is not represented by an attorney and is not able to afford one, the court shall order the appropriate district public defender to assign two public defenders. If the defendant is convicted and sentenced to death, the state public defender shall represent the defendant during the appeal process.

Sec. 3. **[244A.03] SENTENCE OF DEATH FOR CAPITAL OFFENSES; SENTENCING PROCEEDINGS.**

Subdivision 1. **Definitions.** For purposes of this section, the following terms have the meanings given in this subdivision:

(1) "capital offense" means the murder of a peace officer under section 609.185, paragraph (a), clause (4); and

(2) "peace officer" has the meaning given in section 626.84, subdivision 1, paragraph (c).

Subd. 2. **Capital offenses.** A person who commits a capital offense is eligible for the death penalty under this section.

Subd. 3. **Minors.** When a defendant is found guilty of a capital offense, the court shall impose a sentence other than death if the defendant was under 18 years of age at the time of the commission of the crime.

Subd. 4. **DNA evidence.** A court in a capital offense case must consider all DNA evidence that is offered by the prosecuting attorney or the defendant. The court must also grant each reasonable request by the defendant for forensic testing of biological matter.

Subd. 5. **Separate sentencing proceeding to determine if death penalty warranted.** (a) If a defendant is convicted of a capital offense, the court shall conduct a separate proceeding to determine whether the defendant should be sentenced to death or to a sentence other than death as required by law. The proceeding must be conducted before the court sitting with the jury that determined the defendant's guilt or, if the court, for good cause shown, discharges that jury, with a new jury impaneled for the purpose.

(b) In the proceeding, evidence may be presented about any matter that the court considers relevant to the sentence, including the nature and circumstances of the crime, the defendant's character, background, history, and mental and physical condition. Any evidence relevant to the sentence, not legally privileged, that the court considers to have probative force, may be received, regardless of its admissibility under the exclusionary rules of evidence. The defendant's counsel must be given a fair opportunity to rebut the

evidence. The prosecuting attorney and the defendant or defendant's counsel must be permitted to present arguments for or against a sentence of death.

(c) On conclusion of the presentation of the evidence, the court shall submit the following issues to the jury:

(1) whether there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society; and

(2) in cases in which the jury charge at the guilt or innocence stage permitted the jury to find the defendant guilty for criminal conduct of another, whether the defendant actually caused the death of the deceased or did not actually cause the death of the deceased but intended to kill the deceased or another or anticipated that a human life would be taken.

(d) The state must prove each issue submitted under paragraph (c) beyond a reasonable doubt, and the jury shall return a special verdict of "yes" or "no" on each issue submitted under paragraph (c).

(e) The court shall charge the jury that:

(1) in deliberating on the issues submitted under paragraph (c), it shall consider all evidence admitted at the guilt or innocence stage and the punishment stage, including evidence of the defendant's background or character or the circumstances of the offense that militates for or mitigates against the imposition of the death penalty;

(2) it may not answer "yes" to any issue submitted under paragraph (c) unless it agrees unanimously; and

(3) members of the jury need not agree on what particular evidence supports a negative answer to any issue submitted under paragraph (c).

(f)(1) The court shall instruct the jury that if the jury returns an affirmative finding to each issue submitted under paragraph (c), it shall answer the following issue:

Whether, taking into consideration all of the evidence, including the circumstances of the offense, the defendant's character and background, and the personal moral culpability of the defendant, there is a sufficient mitigating circumstance or circumstances to warrant that a sentence of life imprisonment without parole rather than a death sentence be imposed.

(2) The court shall:

(i) instruct the jury that if the jury answers that a circumstance or circumstances warrant that a sentence of life imprisonment without parole rather than a death sentence be imposed, the court will sentence the defendant to imprisonment for life without parole; and

(ii) charge the jury that a defendant sentenced to confinement for life without parole under this article is ineligible for release on parole.

(g) The court shall charge the jury that in answering the issue submitted under paragraph (f), the jury:

(1) shall answer the issue "yes" or "no";

(2) may not answer the issue "no" unless it agrees unanimously;

(3) need not agree on what particular evidence supports an affirmative finding on the issue; and

(4) shall consider mitigating evidence to be evidence that a juror might regard as reducing the defendant's moral blameworthiness.

(h) If the jury returns an affirmative finding on each issue submitted under paragraph (c) and a negative finding on an issue submitted under paragraph (f), clause (1), the court shall sentence the defendant to death. If the jury returns a negative finding on any issue submitted under paragraph (c) or an affirmative finding on an issue submitted under paragraph (f), clause (1), or is unable to answer any issue submitted under paragraph (c) or (f), the court shall sentence the defendant to confinement in the Minnesota Department of Corrections for life imprisonment without parole.

Sec. 4. **[244A.04] DEVELOPMENTALLY DISABLED; EXCLUSION FROM DEATH PENALTY.**

Subdivision 1. **Definitions.** As used in this section, "developmentally disabled" means the condition of significantly subaverage general intellectual functioning existing concurrently with significant deficits in adaptive behavior and manifested prior to the age of 18.

Subd. 2. **Notice; developmentally disabled hearing.** In any case in which the prosecution has provided notice of an intent to seek the death penalty under section 244A.01, the defendant may, at a reasonable time prior to the commencement of trial, apply for an order directing that a developmentally disabled hearing be conducted. The court shall promptly conduct a hearing without a jury to determine whether the defendant is developmentally disabled.

Subd. 3. **Hearing.** At a developmentally disabled hearing, the defendant shall have the initial burden to present some evidence of developmental disability. Once this evidence is presented by the defendant, the burden of proof shall be on the prosecution to prove beyond a reasonable doubt that the defendant is not developmentally disabled. The defendant may present further evidence in response to the prosecution's case. If the court finds that the prosecution has failed to meet its burden of proof, it shall preclude the death penalty, and a trial thereafter shall be conducted as in any other case in which a sentence of death is not sought by the prosecution.

Subd. 4. **Inadmissibility.** If the defendant is subjected to an examination for purposes of this section, any statement made by the defendant during the examination shall

be inadmissible in evidence against the defendant in any criminal action or proceeding on any issue other than whether the defendant is developmentally disabled.

Subd. 5. **Developmentally disabled evidence; trial.** A ruling by the court that the death penalty is not precluded under this section shall not restrict the defendant's opportunity to introduce evidence of developmental disability during trial or to argue that the evidence should be given mitigating significance. The jury shall not be informed of any ruling denying a defendant's motion under this section.

Sec. 5. **[244A.05] IMPOSITION OF DEATH SENTENCE; MODE OF EXECUTION.**

Subdivision 1. **Decision.** (a) Only the jury sitting as a trier of fact may return a sentence of death. The jury vote for the sentence of death must be unanimous.

(b) The court shall instruct the jury on the requirements of this subdivision. At that time, the court shall also inform the jury of the nature of the sentence of imprisonment that may be imposed if the jury verdict is against a sentence of death.

Subd. 2. **Imposition of death.** (a) The court shall sentence the defendant to death when the jury unanimously:

(1) finds beyond a reasonable doubt that the offender committed a capital offense; and

(2) recommends that the sentence of death be imposed under section 244A.03, subdivision 5.

(b) When the jury does not recommend a sentence of death, the court shall sentence the defendant to imprisonment as provided by law.

Subd. 3. **Sentence of death precluded.** A sentence of death must not be carried out upon a person who is under 18 years of age at the time the crime was committed. A sentence of death must not be carried out upon a person who, by reason of a mental disease or defect, is unable to understand the impending death or the reasons for it. A sentence of death must not be carried out upon a person who is pregnant. A sentence of death must not be carried out upon a person whom the prosecution has failed to prove not developmentally disabled under section 244A.04.

Subd. 4. **Execution by lethal injection.** When the court sentences a defendant to death under subdivision 2, the order of execution must be carried out by administration of a continuous, intravenous injection of a lethal quantity of an ultra-fast-acting barbiturate in combination with a chemical paralytic agent until a licensed physician pronounces that the defendant is dead according to accepted standards of medical practice. The execution by lethal injection must be performed by a person selected by the chief executive officer of the maximum security facility at which the execution will take place and trained to

administer the injection. The person administering the injection need not be a physician, registered nurse, or licensed practical nurse licensed or registered under the laws of this or another state.

Sec. 6. **[244A.06] SENTENCING COURT; ADMINISTRATIVE REQUIREMENTS.**

Subdivision 1. **Date of execution.** In pronouncing a sentence of death, the court shall set the date of execution not less than 60 days nor more than 90 days from the date the sentence is pronounced. If execution has been stayed by a court and the date set for execution has passed before dissolution of the stay, the court in which the defendant was previously sentenced shall, upon dissolution of the stay, set a new date of execution not less than five nor more than 90 days from the day the date is set. The defendant is entitled to be present in court on the day the new date of execution is set.

Subd. 2. **Copies of order of execution.** When a person is sentenced to death, the court administrator shall prepare certified copies of the judgment and order of execution and send these documents to the governor, defendant, defendant's counsel, attorney general, chief justice of the Supreme Court, state court administrator, and the state public defender's office within five business days following entrance of the order of execution.

Subd. 3. **Delivery of defendant to maximum security facility.** Pending execution of a sentence of death, the sheriff or other chief law enforcement officer who has custody of the defendant shall deliver the defendant to the maximum security facility designated by the commissioner of corrections to be the place where the execution is to be held.

Sec. 7. **[244A.07] REVIEW OF DEATH SENTENCES BY SUPREME COURT.**

Subdivision 1. **Automatic review.** The judgment of conviction and a sentence of death are subject to automatic review by the Supreme Court within 60 days after certification by the sentencing court of the entire record. The review by the Supreme Court has priority over all other cases and must be heard in accordance with rules adopted by the Supreme Court.

Subd. 2. **Transcript.** The court administrator, within ten days after receiving the transcript, shall transmit the entire record and transcript to the Supreme Court together with a notice prepared by the administrator and a report prepared by the trial judge. The notice must set forth the title and docket number of the case, the name of the defendant, the name and address of the defendant's attorney, a narrative statement of the judgment, the offense, and the punishment prescribed. The report must be in the form of a standard questionnaire prepared and supplied by the Supreme Court.

Subd. 3. **Review guidelines; reformation of sentence in capital case.** In determining whether a death sentence should be reformed to a sentence of life without parole, the Supreme Court shall determine whether:

(1) there is legally sufficient evidence to support an affirmative answer to an issue submitted to the jury under section 244A.03, subdivision 5, paragraph (c); or

(2) there is reversible error.

Subd. 4. **Briefs.** Both the defendant and the state have the right to submit briefs within the time provided by the court and to present oral argument to the court.

Subd. 5. **Decision.** The Supreme Court shall:

(1) affirm the sentence of death;

(2) reform the sentence to life without parole; or

(3) set the sentence aside and remand the case for resentencing by the trial judge based on the record and argument of counsel.

Subd. 6. **Notice to governor.** Within five business days after reaching a decision under subdivision 5, the Supreme Court shall notify the governor whether the death sentence has been affirmed, reformed, or set aside.

Sec. 8. **[244A.08] UNIFIED REVIEW PROCEDURE.**

Subdivision 1. **Procedure.** The Supreme Court shall establish by rule a unified review procedure to provide for the presentation to the sentencing court and to the Supreme Court of all possible challenges to the trial, conviction, sentence, and detention of defendants upon whom the sentence of death has been or may be imposed. The unified review procedure governs both pretrial and posttrial appellate review of death penalty cases.

Subd. 2. **Writ of habeas corpus.** Nothing in this section or in the rules of the Supreme Court limits or restricts the grounds of review or suspends the rights or remedies available through the procedures governing the writ of habeas corpus.

Sec. 9. **[244A.09] STAY OF EXECUTION OF DEATH.**

Subdivision 1. **Governor or appeal.** The execution of a death sentence may be stayed only by the governor or incident to an appeal.

Subd. 2. **Proceedings when inmate under sentence of death appears to be mentally ill or pregnant.** If the governor is informed that an inmate under sentence of death may be mentally ill or pregnant, the governor shall stay execution of the sentence and require the sentencing court to order a mental or physical examination of the inmate, as appropriate.

Subd. 3. **Examination and hearing.** (a) If the court orders a mental examination of the inmate, it shall appoint at least one qualified psychiatrist, clinical psychologist, or physician experienced in the field of mental illness to examine the defendant and report on the defendant's mental condition. If the inmate or prosecution has retained a qualified psychiatrist, clinical psychologist, or physician experienced in the field of mental illness, the court on request of the inmate or prosecuting attorney shall direct that the psychiatrist, clinical psychologist, or physician be permitted to observe the mental examination and to conduct a mental examination of the inmate.

(b) At the conclusion of the examination, the examiner shall submit a written report to the court and send copies to the prosecuting attorney and defense attorney. The report must contain a diagnosis of the inmate's mental condition and whether the inmate has the mental capacity to understand the nature of the death penalty and the reasons why it was imposed.

(c) If the court orders a physical examination, it shall appoint a qualified physician to examine the inmate and report on whether the inmate is pregnant.

(d) The hearing shall be scheduled so that the parties have adequate time to prepare and present arguments regarding the issue of mental illness or pregnancy. The parties may submit written arguments to the court before the date of the hearing and may make oral arguments before the court at the sentencing hearing. Before the hearing, the court shall send to the defendant or the defendant's attorney and the prosecuting attorney copies of the mental or physical examination.

Subd. 4. **Mental illness.** (a) If the court decides that the inmate has the mental capacity to understand the nature of the death penalty and why it was imposed, the court shall so inform the governor. The governor shall issue a warrant to the chief executive officer of the maximum security facility where the execution is to be held directing the officer to execute the sentence at a time designated in the warrant.

(b) If the court decides that the inmate does not have the mental capacity to understand the nature of the death penalty and why it was imposed, the court shall so inform the governor. The governor shall have the inmate committed to the St. Peter Regional Treatment Center.

(c) A person under sentence of death who has been committed to the St. Peter Regional Treatment Center shall be kept there until the proper official of the hospital determines that the person has been restored to mental health. The hospital official shall then notify the governor of the official's determination, and the governor shall request the sentencing court to proceed as provided in this section.

Subd. 5. **Pregnancy.** (a) If the court determines that the inmate is not pregnant, the court shall inform the governor. The governor shall issue a warrant to the chief executive

officer of the maximum security facility where the execution is to be held directing the chief executive officer to execute the sentence at a time designated in the warrant.

(b) If the court determines that the inmate is pregnant, the court shall inform the governor. The governor shall stay execution of sentence during the pregnancy.

(c) If the court determines that an inmate whose execution has been stayed because of pregnancy is no longer pregnant, the court shall inform the governor. The governor shall issue a warrant to the chief executive officer directing the chief executive officer to execute the sentence at a time designated in the warrant.

Sec. 10. **[244A.10] GOVERNOR'S DUTIES; ISSUANCE OF DEATH WARRANT.**

When notified by the Supreme Court under section 244A.06 that a death sentence has been upheld, the governor shall issue a death warrant, attach it to a copy of the record, including the trial court's order of execution and the Supreme Court's affirming opinion, and send it to the chief executive officer of the maximum security facility where the inmate under sentence of death is being held. The warrant must direct that officer to execute the sentence at a time designated in the warrant. When notified by the Supreme Court under section 244A.06 that a death sentence has been set aside, the governor shall order the commissioner of corrections to remove the inmate under sentence of death from the unit where inmates under sentence of death are confined and reassign the inmate consistent with the Supreme Court's opinion.

Sec. 11. **[244A.11] COMMISSIONER OF CORRECTIONS; DUTIES; DESIGNATION OF PLACE OF EXECUTION.**

Subdivision 1. **Maximum security facilities.** The commissioner of corrections shall designate one or more maximum security facilities at which executions of inmates under death sentence will take place. In each maximum security facility designated as a place where executions will take place, the commissioner shall establish and maintain a unit for the segregated confinement of inmates under sentence of death. The commissioner may establish a capital punishment unit under the supervision of a deputy or assistant commissioner to administer the functions relating to administering the death penalty under this chapter.

Subd. 2. **Place of execution.** The chief executive officer of a maximum security facility where executions will take place shall provide a suitable and efficient room or place in which executions will be carried out, enclosed from public view, and all implements necessary to executions. The chief executive officer shall select the person to

perform executions and the chief executive officer or the officer's designee shall supervise the execution.

Subd. 3. **Executioner's identity; private data.** Information relating to the identity and compensation of the executioner is private data as defined in section 13.02, subdivision 12. The chief executive officer of the maximum security facility is not required to record the name of an individual acting as an executioner or any information that could identify that individual.

Subd. 4. **Regulation of execution.** The chief executive officer of the maximum security facility holding an execution or a deputy designated by that officer must be present at the execution. The chief executive officer shall set the day for execution within the week designated by the governor in the warrant.

Subd. 5. **Witness to execution.** Twelve citizens selected by the chief executive officer must witness the execution. The chief executive officer shall select six representatives of the news media to witness the execution. Counsel for the inmate under sentence of death and members of the clergy requested by the inmate may be present at the execution. All other persons, except correctional facility officers and the executioner, must be excluded during the execution.

Subd. 6. **Reading death warrant.** The warrant authorizing the execution must be read to the convicted person immediately before death.

Subd. 7. **Return of death warrant of execution issued by governor.** After the death sentence has been executed, the chief executive officer of the maximum security facility where the execution took place shall return to the governor the warrant and a signed statement of the execution. The chief executive officer shall file an attested copy of the warrant and statement with the court administrator that imposed the sentence.

Subd. 8. **Sentence of death unexecuted for unjustifiable reasons.** If a death sentence is not executed because of unjustified failure of the governor to issue a warrant or for any other unjustifiable reason, on application of the attorney general, the Supreme Court shall issue a warrant directing the sentence to be executed during a week designated in the warrant.

Subd. 9. **Return of warrant of execution issued by Supreme Court.** After the sentence has been executed under a warrant issued by the Supreme Court, the chief executive officer shall return to the Supreme Court the warrant and a signed statement of the execution. The chief executive officer shall file an attested copy of the warrant and statement with the court administrator that imposed the sentence. The chief executive officer shall send to the governor an attested copy of the warrant and statement.

Sec. 12. **[244A.12] ATTORNEY GENERAL ASSISTANCE.**

The attorney general shall assist in the prosecution of cases involving the death penalty if requested to do so by the county attorney.

Sec. 13. **EFFECTIVE DATE.**

Sections 1 to 12 are effective August 1, 2017, and apply to crimes committed on or after that date.

ARTICLE 2

COMMUTATION OF DEATH PENALTY SENTENCES

Section 1. **[638.09] BOARD OF PARDONS; COMMUTATION OF DEATH PENALTY SENTENCES.**

Subdivision 1. **Petitions.** (a) The Board of Pardons shall hear petitions for commutations of death penalty sentences as provided in this subdivision.

(b) Only the person who has been sentenced to death or the person's counsel may petition the board for commutation. The petition must be in writing, signed by the person sentenced to death, and include a statement of the grounds upon which the petitioner seeks review.

(c) The state shall be permitted to respond in writing to the petition as may be established by board rules under subdivision 4. The board shall review the petition and determine whether the petition presents a substantial issue which has not been reviewed in the judicial process.

(d) The board must not consider legal issues, including constitutional issues, which:

(1) have been reviewed previously by the courts;

(2) should have been raised during the judicial process; or

(3) if based on new information, are subject to judicial review.

(e) If the board does not find a substantial issue, the board shall deny the hearing to the petitioner. If the board finds a substantial issue, the board shall conduct a hearing in which the petitioner and the state may present evidence and argument as may be provided by board rules.

Subd. 2. **Procedures.** (a) A petition for commutation may be filed at any time after the sentencing court has issued an order of execution after completion of an inmate's appeal from conviction. For purposes of this subdivision, "appeal" does not include any action for postconviction relief or any other form of collateral attack. The inmate shall file the petition no later than 23 days before the scheduled execution date and shall mail a copy by U.S. mail, postage prepaid, to the attorney representing the state. If the execution

date is stayed by any court between the time of the sentencing court's issuance of the warrant and the beginning of the commutation hearing, the hearing will continue and the board will render its decision in accordance with this section.

(b) The petition must include:

(1) the petitioner's name and the address of any attorney who is requesting the petitioner in the commutation proceeding;

(2) a statement of reasons why the petitioner believes the sentence of death is not appropriate due to the specific circumstances pertinent to the petitioner;

(3) whether any of the reasons stated as grounds for the petition have been reviewed in the judicial process;

(4) if new information is alleged, a statement of why the information is considered new, why it could not have been reviewed in the judicial process, and why the information is not still subject to judicial review;

(5) if the petitioner has received one commutation hearing, the petition shall include a statement explaining what, if any, new and significant information exists that justifies a second hearing; and

(6) copies of all written evidence upon which the petitioner intends to rely at the hearing, along with the names of all witnesses the petitioner intends to call and a summary of the anticipated testimony.

Subd. 3. **Board action.** (a) If the board grants the petition, a commutation hearing shall be scheduled as soon as reasonably possible.

(b) The board may temporarily stay an execution to fully hear the petition for commutation.

(c) Within seven days of receiving the petition, the attorney general or county attorney shall provide to the board and the petitioner copies of all written evidence, names of witnesses, and summary of anticipated testimony. The board may request additional information from either side.

(d) The day after receiving the state's response, the board shall hold a prehearing conference to limit the number of witnesses that each side calls, clarify issues that will be addressed, and take whatever other action it considers necessary and appropriate to control and direct proceedings.

(e) The board shall place all witnesses under oath and may impose a time limit on each side for presenting its case. During the hearing, the board may take whatever actions it considers necessary and appropriate to maintain order.

(f) The board shall reconvene in open session to announce and distribute its written decision.

Subd. 4. **Rules.** The board shall adopt rules to implement the commutation procedures specified in this section.

Subd. 5. **Decision.** The board may decide that the sentence of death be allowed to stand and be carried out in accordance with law or that the death sentence be commuted to life without the possibility of release.

Sec. 2. **EFFECTIVE DATE.**

Section 1 is effective August 1, 2017.

ARTICLE 3

TECHNICAL AMENDMENTS

Section 1. Minnesota Statutes 2014, section 243.05, subdivision 1, is amended to read:

Subdivision 1. **Conditional release.** (a) Except for a person sentenced to death under section 244A.05, the commissioner of corrections may parole any person sentenced to confinement in any state correctional facility for adults under the control of the commissioner of corrections, provided that:

(1) no inmate serving a life sentence for committing murder before May 1, 1980, other than murder committed in violation of clause (1) of section 609.185 who has not been previously convicted of a felony shall be paroled without having served 20 years, less the diminution that would have been allowed for good conduct had the sentence been for 20 years;

(2) no inmate serving a life sentence for committing murder before May 1, 1980, who has been previously convicted of a felony or though not previously convicted of a felony is serving a life sentence for murder in the first degree committed in violation of clause (1) of section 609.185 shall be paroled without having served 25 years, less the diminution which would have been allowed for good conduct had the sentence been for 25 years;

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

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

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

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

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

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

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

(g) Except as otherwise provided in subdivision 1b, in considering applications for conditional release or discharge, the commissioner is not required to hear oral argument from any attorney or other person not connected with an adult correctional facility of the Department of Corrections in favor of or against the parole or release of any inmates. The commissioner may institute inquiries by correspondence, taking testimony, or otherwise, as to the previous history, physical or mental condition, and character of the inmate and, to that end, has the authority to require the attendance of the chief executive officer of any state adult correctional facility and the production of the records of these facilities, and to compel the attendance of witnesses. The commissioner is authorized to administer oaths to witnesses for these purposes.

(h) Unless the district court directs otherwise, state parole and probation agents may require a person who is under the supervision of the commissioner of corrections to perform community work service for violating a condition of probation imposed by the court. Community work service may be imposed for the purpose of protecting the public, to aid

the offender's rehabilitation, or both. Agents may impose up to eight hours of community work service for each violation and up to a total of 24 hours per offender per 12-month period, beginning with the date on which community work service is first imposed. The commissioner may authorize an additional 40 hours of community work services, for a total of 64 hours per offender per 12-month period, beginning with the date on which community work service is first imposed. At the time community work service is imposed, parole and probation agents are required to provide written notice to the offender that states:

(1) the condition of probation that has been violated;

(2) the number of hours of community work service imposed for the violation; and

(3) the total number of hours of community work service imposed to date in the 12-month period.

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

Community work service includes sentencing to service.

Sec. 2. Minnesota Statutes 2014, section 609.10, subdivision 1, is amended to read:

Subdivision 1. **Sentences available.** (a) Upon conviction of a felony and compliance with the other provisions of this chapter and chapter 244A the court, if it imposes sentence, may sentence the defendant to the extent authorized by law as follows:

(1) to death; or

(2) to life imprisonment; or

~~(2)~~ (3) to imprisonment for a fixed term of years set by the court; or

~~(3)~~ (4) to both imprisonment for a fixed term of years and payment of a fine; or

~~(4)~~ (5) to payment of a fine without imprisonment or as an intermediate sanction on a stayed sentence; or

~~(5)~~ (6) to payment of court-ordered restitution in addition to either imprisonment or payment of a fine, or both; or

~~(6)~~ (7) to payment of a local correctional fee as authorized under section 609.102 in addition to any other sentence imposed by the court.

(b) If the court imposes a fine or orders restitution under paragraph (a), payment is due on the date imposed unless the court otherwise establishes a due date or a payment plan.

Sec. 3. Minnesota Statutes 2014, section 609.106, is amended by adding a subdivision to read:

Subd. 3. **Capital punishment; alternative, life without the possibility of release.** The court shall sentence a person to life without the possibility of release if:

(1) the defendant is convicted of a capital offense under section 244A.03;

(2) the defendant is eligible for the death penalty under chapter 244A; and

(3) the jury recommends the sentence of life without the possibility of release under section 244A.05, subdivision 2, be imposed.

Sec. 4. Minnesota Statutes 2014, section 609.12, subdivision 1, is amended to read:

Subdivision 1. **Authority; conditions.** A person sentenced to the commissioner of corrections for imprisonment for a period less than life may be paroled or discharged at any time without regard to length of the term of imprisonment which the sentence imposes when in the judgment of the commissioner of corrections, and under the conditions the commissioner imposes, the granting of parole or discharge would be most conducive to rehabilitation and would be in the public interest. A person sentenced to death is not eligible for supervised release or discharge at any time.

Sec. 5. Minnesota Statutes 2014, section 609.135, subdivision 1, is amended to read:

Subdivision 1. **Terms and conditions.** (a) Except when a sentence of death has been imposed under chapter 244A, a life ~~imprisonment~~ sentence is required by law, or when a mandatory minimum sentence is required by section 609.11, any court may stay imposition or execution of sentence and:

(1) may order intermediate sanctions without placing the defendant on probation; or

(2) may place the defendant on probation with or without supervision and on the terms the court prescribes, including intermediate sanctions when practicable. The court may order the supervision to be under the probation officer of the court, or, if there is none and the conviction is for a felony or gross misdemeanor, by the commissioner of corrections, or in any case by some other suitable and consenting person. Unless the court directs otherwise, state parole and probation agents and probation officers may impose community work service or probation violation sanctions, consistent with section 243.05, subdivision 1; sections 244.196 to 244.199; or 401.02, subdivision 5.

No intermediate sanction may be ordered performed at a location that fails to observe applicable requirements or standards of chapter 181A or 182, or any rule promulgated under them.

(b) For purposes of this subdivision, subdivision 6, and section 609.14, the term "intermediate sanctions" includes but is not limited to incarceration in a local jail or workhouse, home detention, electronic monitoring, intensive probation, sentencing to service, reporting to a day reporting center, chemical dependency or mental health treatment or counseling, restitution, fines, day-fines, community work service, work service in a restorative justice program, work in lieu of or to work off fines and, with the victim's consent, work in lieu of or to work off restitution.

(c) A court may not stay the revocation of the driver's license of a person convicted of violating the provisions of section 169A.20.

(d) If the court orders a fine, day-fine, or restitution as an intermediate sanction, payment is due on the date imposed unless the court otherwise establishes a due date or a payment plan.

Sec. 6. Minnesota Statutes 2014, section 609.185, is amended to read:

609.185 MURDER IN THE FIRST DEGREE.

(a) Whoever does any of the following is guilty of murder in the first degree and, unless sentenced to death under section 244A.05, shall be sentenced to imprisonment for life:

(1) causes the death of a human being with premeditation and with intent to effect the death of the person or of another;

(2) causes the death of a human being while committing or attempting to commit criminal sexual conduct in the first or second degree with force or violence, either upon or affecting the person or another;

(3) causes the death of a human being with intent to effect the death of the person or another, while committing or attempting to commit burglary, aggravated robbery, kidnapping, arson in the first or second degree, a drive-by shooting, tampering with a witness in the first degree, escape from custody, or any felony violation of chapter 152 involving the unlawful sale of a controlled substance;

(4) causes the death of a peace officer, prosecuting attorney, judge, or a guard employed at a Minnesota state or local correctional facility, with intent to effect the death of that person or another, while the person is engaged in the performance of official duties;

(5) causes the death of a minor while committing child abuse, when the perpetrator has engaged in a past pattern of child abuse upon a child and the death occurs under circumstances manifesting an extreme indifference to human life;

(6) causes the death of a human being while committing domestic abuse, when the perpetrator has engaged in a past pattern of domestic abuse upon the victim or

upon another family or household member and the death occurs under circumstances manifesting an extreme indifference to human life; or

(7) causes the death of a human being while committing, conspiring to commit, or attempting to commit a felony crime to further terrorism and the death occurs under circumstances manifesting an extreme indifference to human life.

(b) For the purposes of paragraph (a), clause (4), "prosecuting attorney" has the meaning given in section 609.221, subdivision 2, paragraph (c), clause (4).

(c) For the purposes of paragraph (a), clause (4), "judge" has the meaning given in section 609.221, subdivision 2, paragraph (c), clause (5).

(d) For purposes of paragraph (a), clause (5), "child abuse" means an act committed against a minor victim that constitutes a violation of the following laws of this state or any similar laws of the United States or any other state: section 609.221; 609.222; 609.223; 609.224; 609.2242; 609.342; 609.343; 609.344; 609.345; 609.377; 609.378; or 609.713.

(e) For purposes of paragraph (a), clause (6), "domestic abuse" means an act that:

(1) constitutes a violation of section 609.221, 609.222, 609.223, 609.224, 609.2242, 609.342, 609.343, 609.344, 609.345, 609.713, or any similar laws of the United States or any other state; and

(2) is committed against the victim who is a family or household member as defined in section 518B.01, subdivision 2, paragraph (b).

(f) For purposes of paragraph (a), clause (7), "further terrorism" has the meaning given in section 609.714, subdivision 1.

Sec. 7. **EFFECTIVE DATE.**

Sections 1 to 6 are effective August 1, 2017, and apply to crimes committed on or after that date.

APPENDIX
Article locations in 16-5433