
T H E M I N N E S O T A
C O U N T Y A T T O R N E Y S
A S S O C I A T I O N

**STATUTORY RESPONSE TO SEX OFFENDERS
WHO REPRESENT AN ONGOING DANGER TO
PUBLIC SAFETY:
PRINCIPLES ADOPTED BY THE MINNESOTA COUNTY
ATTORNEYS ASSOCIATION
February 2004**

1. **Criminal sentences and the civil commitment process are both important tools for protecting public safety. But criminal sentences should be the primary tool for protecting public safety.**
 - The high legal standards required for civil commitment severely limit the number of offenders handled in the civil system and may exclude offenders who represent a real risk to public safety.
 - Criminal incarceration costs much less than civil commitment. Average criminal incarceration costs run under \$100.00 a day; civil commitment costs over \$300.00 a day. The criminal system saves over two-thirds the cost.
 - While the Minnesota County Attorneys Association recommends amendments to the criminal system, the Minnesota County Attorneys Association does not recommend repeal of the civil commitment system and supports efforts to strengthen that system. Obviously hundreds of offenders already convicted and still in prison must be screened within the existing system and cannot be subject to sentencing changes passed after the date of their conviction. Even in an improved criminal system the civil system will remain an important alternative for some offenders.

2. **For repeat predatory offenders, the offender's criminal sentence under the current system should become a minimum term of imprisonment followed by the possibility of long term incarceration if the offender represents an ongoing danger to public safety.**
 - Under current law all sentences (with the exception of murder in the first degree) are "determinate" – the sentencing term imposed on the day of sentencing is all the offender can ever serve. No matter how dangerous the offender remains he must be released at the end of his pronounced sentence. The Minnesota County Attorneys Association believes that for offenders with a history of sexually motivated crime, the current system for determining sentences should become the minimum term followed by the possibility of additional long term incarceration as long as the offender represents a danger to public safety. For example, an offender who receives a 144 month sentence

under the current law would serve a term of 144 months followed by the possibility of 60 years or, if certain procedural changes are enacted, life.

- The current system including present rankings under the Minnesota Sentencing Guidelines, aggravated and mitigated sentences and statutory sentencing enhancements, would remain in place. Instead of representing the most an offender can ever serve, that sentence represents the minimum the offender serves.
- At the end of the minimum term, the offender is no longer automatically entitled to release. Rather, dangerous offenders can be kept in prison to protect public safety. This allows the system to carefully gauge an offender's risk. The decision to release an offender can be based on failed or refused sex offender treatment, sex offender assessment tools, psychological exams, the discovery of past uncharged or out-of-state offenses, and a host of other information.
- A second look at an offender after he spends time in prison allows the system to identify the worse offenders with the most information. It is often difficult to gauge the future dangerousness of an offender in the whirlwind of the original trial. Criminal trials must occur within a few months of the crime. By definition, a criminal trial focuses on a single past crime. A later release decision, however, should consider the future danger posed by the offender. This broader decision should take place after the system had an opportunity to take a long hard look at the offender and his behavior and progress in the prison.
- Minimum terms followed by the possibility of longer prison terms and supervision are not foreign to Minnesota. Under current law first degree murders are subject to lifetime incarceration but after 17 years (if convicted before 1989) or 30 years (if convicted after 1989) the Commissioner of Corrections may release or hold the offender based on a finding of rehabilitation or future dangerousness.

3. Longer criminal sentences using the current system can also help protect public safety.

- The Minnesota County Attorneys Association also recommends a set of amendments to the existing sentencing system to ensure that offenders who represent an ongoing danger to society are incarcerated as long as possible. These include increasing the usefulness of the patterned sex offender statute, broadening the definition of a "prior offense" for sex offender sentencing enhancement purposes and simplifying the repeat sex offender statutes.
- Minnesota's patterned sex offender statute lengthens the statutory maximum of sex crimes to 40 years, but only if it is proven at trial that the offender exhibits a potential for future dangerousness and a need for long term supervision. The Minnesota County Attorneys Association recommends lengthening the statutory maximum for all sex crimes and sexually motivated violent offenses and permitting a judge to impose those long sentences if the prosecution can prove future dangerousness and the need for long term controls at sentencing instead of trial.
- Minnesota's other sex offense sentencing enhancement statutes largely depend on proving the number of prior offenses in a defendant's record. Unfortunately, these statutes are not consistent regarding what qualifies as a prior offense. The

Minnesota County Attorneys Association recommends a consistent definition of prior offense that includes all sex offenses and any other predatory offenses that were motivated by sexual intent. A review of offenders currently classified as the most dangerous (Level 3 offenders) reveals that many of these offenders have a history of either low level sex offenses or non-sex offenses that were sexually motivated. Put simply, sometimes offenders get caught or scared off before the sex crime is completed.

- Serial rapists should not be allowed to avoid sentencing enhancement. Current law restricts the definition of “prior offender” to those who are caught, sentenced and released before the current offense. An offender who commits 10 rapes before he is caught has no priors under current enhancement law. The Minnesota County Attorneys Association recommends redefining priors to include any offense that was committed or any conviction imposed before an offender is sentenced for a current offense.
- Minnesota’s sex offender enhancement statutes do not contain a logical progression of penalties. In addition to an inconsistent set of qualifying priors, the penalties that attach do not consistently increase with additional offenses. The Minnesota County Attorneys Association recommends the Legislature adopt a consistent set of mandatory minimums that increase with every offense.