

# Other Issues

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## SUMMARY

*Minnesota needs a more coordinated statewide strategy for supervising sex offenders. This should include improved communication among state and local corrections agencies, more consensus about “best practices,” and periodic external reviews of agency practices. The Legislature should direct the Minnesota Department of Corrections or, alternatively, a state sex offender policy board, to establish statewide policies and guidelines, with advice from a working group of state and local officials. If the Legislature considers additional spending for community-based sex offender services, priority should be given to increased support for (1) state-required sex offender assessments, (2) treatment and transitional housing for sex offenders released from prison, and (3) the state’s programs for “intensive” and “enhanced” offender supervision. Also, we recommend changes in state law so that (1) child protection agencies are informed before sex offenders under correctional supervision are authorized to live in households with children, and (2) care facility staff are informed of instances in which sex offenders are living at or seeking admission to their facilities.*

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In the preceding chapters, we discussed key findings and recommendations regarding sex offender supervision and treatment. This chapter discusses several related issues, and it addresses the following questions:

- **Is there sufficient statewide coordination and oversight of correctional agencies’ supervision of sex offenders in the community?**
- **Has there been sufficient transitional housing—such as halfway houses—for sex offenders released from prison?**
- **What aspects of community-based sex offender supervision and treatment should receive the highest priority for any additional state spending in this area?**
- **Have sufficient steps been taken to protect the safety of children and vulnerable adults who live with sex offenders?**

## POLICY COORDINATION AND OVERSIGHT

In Chapter 1, we noted that Minnesota’s community corrections system has multiple state and local agencies, with no single agency responsible for policy coordination. This fragmented administration does not necessarily mean that the system must be ineffective or inefficient. In fact, the Legislature adopted the Community Corrections Act to “more effectively [protect] society and to promote efficiency and economy in the delivery of correctional services.”<sup>1</sup> Sometimes a decentralized approach can produce creative, innovative ways to achieve state goals. It can also give individual agencies flexibility to tailor services to their resources.

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**Minnesota's diffuse structure for community corrections presents important challenges.**

But Minnesota’s diffuse structure for community corrections presents important challenges. Without special efforts to coordinate policies and practices, there can be inconsistencies, miscommunication, and “turf battles” among the various state and local agencies that supervise offenders. Administrative fragmentation can also create discontinuities in treatment and supervision for offenders who move within the state. In addition, without effective inter-agency communication, good practices used by individual agencies might not be shared and adopted on a broader basis. Given the risks posed by sex offenders, uncoordinated sex offender management practices could jeopardize public safety.

Minnesota’s structure for community corrections is unusual compared with other states, but we offer no recommendations for fundamental changes in this organization. The structure is in place for a wide range of offenders, not just sex offenders, and we did not comprehensively evaluate its merits. Within the existing structure, however, we think that Minnesota needs a more coordinated, statewide strategy for supervising sex offenders. The U.S. Department of Justice has expressed support for “statewide policy teams” that can establish consistent sex offender supervision policies and procedures for all jurisdictions within a state.<sup>2</sup> In Minnesota, the absence of statewide standards or “best practices” has resulted in the kinds of supervision-related variations we discussed in Table 2.5.

Several states have statewide sex offender management boards to help ensure that policies are administered consistently across agencies.<sup>3</sup> In Minnesota, the 2000 Legislature mandated that an inter-agency working group develop a plan for a statewide sex offender policy and management oversight board. The group concluded that there was a need to improve inter-agency communication, coordination, and collaboration, but it said that such a board would “add an

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<sup>1</sup> *Minn. Stat.* (2004), §401.01, subd. 1.

<sup>2</sup> U.S. Department of Justice, Center for Sex Offender Management, *The Collaborative Approach to Sex Offender Management* (Washington, D.C., October 2000), 6.

<sup>3</sup> Minnesota Department of Corrections, *Sex Offender Policy and Management Board Study* (St. Paul, December 2000), 4, reported that states with inter-agency boards or meetings included Iowa, Illinois, Colorado, Pennsylvania, Tennessee, and Wisconsin.

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**The Legislature should require the development of statewide standards for sex offender supervision.**

unnecessary layer of bureaucracy to the existing system.”<sup>4</sup> The group recommended that the departments of Corrections and Human Services prepare biennial reports about “all aspects of the sex offender management system,” including sentencing, supervision, treatment, registration, community notification, risk assessment, and fiscal impacts. However, these departments did not subsequently produce these reports.<sup>5</sup>

In our view, there is a need for:

- More opportunities for state and local corrections agencies to exchange information about sex offender management,
- More consensus among agencies regarding “best practices” (as reflected in statewide policies, where appropriate), and
- Periodic external review of agency practices.

Table 4.1 lists several approaches by which the Legislature could pursue a more coordinated statewide strategy. The table also identifies some pros and cons of these various approaches. In general, we prefer a process involving an ongoing working group of state and local officials, advising either the Minnesota Department of Corrections (Option 3) or a sex offender policy board that does not presently exist but was recommended by the Governor’s recent Commission on Sex Offender Policy (Option 4).

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**RECOMMENDATION**

*The Legislature should direct the Minnesota Department of Corrections or, alternatively, a state sex offender policy board, to develop state standards and guidelines regarding sex offender management, with input from a working group of state and local corrections officials.*

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A working group could recommend policies or “best practices” regarding offender assessment, classification of offenders for supervision purposes, “special conditions” of supervision, agent-offender contact standards, case documentation by agents, the role of polygraph examinations, inter-agency collaboration, and other practices. We suggest that the working group consider the standards developed in other states—such as Colorado—as a point of departure.<sup>6</sup> Although the working group’s immediate task should be to develop statewide policies,

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<sup>4</sup> DOC, *Sex Offender Policy and Management Board Study*, 7. This group concluded that there was room for improvement in inter-agency information sharing, although there have been some useful informal exchanges of information regarding sex offender supervision practices. For example, since 1995, Minnesota corrections and treatment staff working with sex offenders have met quarterly to discuss topics of interest.

<sup>5</sup> The chair of the work group told us that the Minnesota Legislature showed little interest in the work group’s report, and the departments decided not to prepare the biennial reports without direction to do so from the Legislature.

<sup>6</sup> For example, see Colorado Sex Offender Management Board, *Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders* (Denver, CO: Colorado Department of Public Safety, June 2004); [http://dcj.state.co.us/odvsom/Sex\\_Offender/SO\\_Pdfs/ADULTSDJUNE2004.pdf](http://dcj.state.co.us/odvsom/Sex_Offender/SO_Pdfs/ADULTSDJUNE2004.pdf).

**Table 4.1: Possible Strategies for Developing More Coordinated Sex Offender Supervision Policies**

Possible Strategies	Comments
<p><b>Option 1: Adopt laws:</b> The Legislature could adopt certain policies or practices into state law.</p>	<p><b>Pro:</b> Could take effect faster than adoption of state rules.  <b>Con:</b> May be impractical and unnecessary to address the details of offender supervision in state law. Statutory provisions would be more appropriate for large policy issues.</p>
<p><b>Option 2: Adopt rules:</b> The Legislature could authorize DOC to promulgate state administrative rules on certain policies or practices.</p>	<p><b>Pro:</b> Would provide a formal, structured process for getting input from agencies and the public.  <b>Con:</b> Time-consuming. May be an inflexible approach for adopting policies that will need ongoing revision. Possible statutory constraints.<sup>a</sup></p>
<p><b>Option 3: Authorize DOC (with input from others) to do ongoing policy development:</b> The Legislature could give DOC statutory authority to establish statewide supervision policies/best practices, based on advice from a sex offender supervision working group of state and local officials.</p>	<p><b>Pro:</b> Would bolster the authority of Minnesota's lead corrections agency in a fragmented community corrections system. Ongoing inter-agency discussions may be more valuable and flexible than a one-time rule-making effort.  <b>Con:</b> Some people may question whether DOC can provide objective leadership while it is also a key service provider in community corrections.</p>
<p><b>Option 4: Establish Sex Offender Policy Board (with input from others) to do ongoing policy development:</b> The Legislature could assign duties for developing policies/best practices to an independent board, with assistance from a sex offender supervision working group of state and local officials.</p>	<p><b>Pro:</b> Such a board may be viewed as more independent than DOC. Unlike DOC, this board would focus solely on sex offender policy issues.  <b>Con:</b> The board does not exist yet, so its composition, procedures, responsibilities, priorities, and staffing are unclear. Creation of a new board could diffuse authority for corrections policy.</p>

<sup>a</sup>*Minn. Stat.* (2004), §14.03, subd. 1 says that the state Administrative Procedures Act does not apply to agencies directly in the judicial branch, and some Minnesota probation officers are judicial branch employees. In addition, *Minn. Stat.* (2004), §14.03, subd. 3 exempts from the Administrative Procedures Act those rules developed by the Commissioner of Corrections regarding placement and supervision of offenders on supervised release.

SOURCE: Minnesota Office of the Legislative Auditor.

standards, and guidelines in key areas, it would be helpful for the group to play a continuing role in facilitating discussions about agency practices and recent research.

In late 2004, the Governor's Commission on Sex Offender Policy proposed the creation of a sex offender policy board to oversee the management of sex offenders in the community.<sup>7</sup> Even if such a board is given the lead role in statewide coordination of sex offender policies, we think that it would have to rely considerably on the expertise of staff within state and local corrections agencies that supervise sex offenders. Meanwhile, it is difficult to know what could be expected from a board that does not exist today. Until such a board is created, it is hard to predict the quality of its members, the adequacy of its staff, or the types of issues besides community-based supervision that might occupy its attention.

<sup>7</sup> The commission also proposed creating a board that would determine when sex offenders would be released from prison. The report of the commission is scheduled for release in early 2005.

Alternatively, an existing agency—the Minnesota Department of Corrections—could be authorized to adopt statewide policies and best practices, with input from a working group of state and local officials. DOC is the state’s lead agency on corrections issues, and it could provide staff expertise in a variety of topical areas. On the other hand, county corrections agencies may question whether an agency that provides supervision in many parts of the state could oversee the policy development process in an even-handed way.

In addition, we think there is a need for ongoing external review of sex offender supervision practices. Decisions regarding supervision of sex offenders have high stakes and are sometimes subject to limited scrutiny. In our view, it is appropriate for agents to have considerable discretion, as long as their actions are periodically examined by their own supervisors and outside reviewers. We think it would be valuable for all corrections agencies to follow standards regarding *internal* review of agents’ work by their own supervisors. However, we think that the Legislature should also authorize *external* reviews of agencies’ sex offender supervision practices:

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#### RECOMMENDATION

*The Legislature should require the Minnesota Department of Corrections (or, alternatively, a state sex offender policy board) to establish a process for periodic external reviews of sex offender supervision practices.*

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**External reviews of corrections agencies' sex offender supervision practices would enhance accountability and provide useful feedback to agents.**

External reviews could focus on agency policies for offender supervision, how individual offenders were actually supervised, or both. Such reviews would enhance accountability for sex offender supervision, provide feedback to agents, and perhaps identify issues needing a more coordinated statewide approach. Ideally, DOC or a state sex offender policy board would adopt selected statewide policies before the external reviews begin. We envision that external reviews would, in part, examine compliance with statewide policies. But we also think that such reviews could examine any practices that appear to enhance or endanger public safety, even in areas where statewide standards have not yet been adopted.

A model for such reviews might be the Minnesota Department of Human Services’ (DHS) reviews of local child protection agency practices. Like sex offender supervision, child protection involves potentially high-risk decisions, typically made with little public scrutiny. The department initiated its child protection reviews several years ago with existing funds, and department staff now review each county’s operations every four years. Each review involves an agency self-assessment, interviews with agency staff, and case reviews. DHS officials told us that the reviews have identified important deficiencies in county practices, and they said that counties generally view the reviews as fair.

External reviews of sex offender supervision practices could be conducted by (1) DOC central office staff, or (2) field staff from state and county corrections agencies. To ensure more independent reviews, we think it would be preferable to have the activities of DOC field offices reviewed by staff from county agencies.

## TRANSITIONAL HOUSING FOR SEX OFFENDERS RELEASED FROM PRISON

**State and local corrections officials share responsibility for planning inmates' housing and supervision arrangements after prison.**

As a prison inmate nears his date for supervised release, the Minnesota Department of Corrections initiates a process to plan for his transition into the community. At least 120 days prior to the scheduled release, a case manager at a DOC prison is supposed to send a “pre-release report”—including a “primary release plan” and an “alternative release plan”—to the corrections supervisor in the “county of the releasee’s intended residence.”<sup>8</sup> To determine which agency will monitor the offender while on supervised release, DOC uses the criteria in Table 4.2. The community-based corrections agency to which an offender will be released may reject DOC’s proposed release plan, but it must provide DOC with written reasons for the rejection.

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### Table 4.2: Criteria for Determining the County That Will Supervise a Released Prisoner

The criteria below must be addressed in sequence until one of the criteria have been met:

1. The offender has a confirmed residence in a county and confirmed employment.
2. The offender has a confirmed residence in a county.
3. The offender has a significant historical involvement in a county prior to conviction for his current offense—as indicated by residence, employment, education, family ties, systems of support, or other long-term community involvement.
4. If the offender meets none of the above criteria, release planning will be the responsibility of the community-based corrections agency responsible for adult felons in the county where the offender’s current commitment to prison occurred.

NOTE: This policy applies to offenders who will be on supervised release or conditional release after leaving prison.

SOURCE: Minnesota Department of Corrections, Policy 203.010 (Case Management Process).

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About 60 days prior to the offender’s release, there is supposed to be a meeting of persons designated by the prison warden to finalize details regarding the offender’s release and subsequent supervision.<sup>9</sup> However, DOC and community corrections staff told us that release plans are sometimes not finalized until well after this time, particularly in the case of sex offenders. For example, it may be unclear which agency will assume responsibility for an offender’s supervision, perhaps reflecting unresolved questions about the offender’s post-release housing and employment arrangements. Some landlords are reluctant to rent to felons, and some families are reluctant to house relatives who have committed sex offenses. Also, the timeliness of the release planning process can be affected by

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<sup>8</sup> Minnesota Department of Corrections Policy 203.010. The policy says that DOC shall follow this schedule “if time permits.” The pre-release report is also supposed to discuss the offender’s adjustment during incarceration, recommended conditions of release, whether the offender is classified as a “public risk monitoring” case, DNA analysis, sex offender risk assessment and assignment to a risk level, predatory offender registration, and transportation at the time of release.

<sup>9</sup> *Ibid.* The offender may waive his appearance at this “re-entry review” meeting.

the offender's cooperation and the amount of initiative taken by state and local corrections agencies.<sup>10</sup>

If arrangements for a satisfactory private residence cannot be made prior to release from prison, DOC may consider placing an offender in a "halfway house" at the time of release. Halfway houses are residential facilities in the community that have on-site staff. Such residences provide more staff supervision than community corrections agencies could give to offenders who are living on their own. In addition, halfway houses provide assistance to offenders while they make other arrangements for housing and employment in the community. For the most part, DOC limits halfway house placements to (1) Level II and III sex offenders who have no satisfactory private residence, and (2) other offenders who are considered to be high risks to reoffend but who have no private residence or have failed previous releases to private residences.<sup>11</sup> We found that:

- **Halfway houses are an important resource for helping sex offenders make the transition from prison to the community, but this housing option has been seriously limited by state funding constraints.**

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**In 2003, sex offenders occupied a large share of the beds at Minnesota's four halfway houses.**

During 2004, DOC had contracts with four halfway houses to serve offenders released from prison. DOC does not maintain information on the types of offenders at these facilities, so we surveyed the halfway house directors in June 2004. We obtained information on the total number of offenders on supervised release at these facilities during 2003, as well as the number of sex offenders on supervised release. Offenders on supervised release occupied an average of 32 beds at Minnesota halfway houses on a given day in 2003. We determined that sex offenders occupied most of these beds, accounting for 74 percent of the offenders on supervised release and 80 percent of the "offender-days" at these facilities.<sup>12</sup> According to our survey, Level III offenders (who are considered the most likely sex offenders to reoffend) comprised 33 percent of the sex offenders at halfway houses during 2003, while Level II offenders comprised 41 percent and Level I offenders comprised 26 percent.

Halfway house staff help offenders find permanent housing and employment, so they prefer to work with offenders who intend to live in the general areas where the halfway houses are located. But Minnesota's four halfway houses are located in just three cities (Minneapolis, St. Paul, and Duluth), so this limits the number of counties for which the halfway houses are viable options for transitional housing. Sex offenders who lived at halfway houses in 2003 were scheduled to reside in just 16 of Minnesota's 87 counties following their halfway house stays.<sup>13</sup> The 3 counties in which the halfway houses are located were the counties of

<sup>10</sup> Inmates who do not cooperate with efforts to find a place of residence or employment face a possible extension of their incarceration period.

<sup>11</sup> Minnesota Department of Correction Policy 106.112. DOC can also consider halfway house placements for offenders paroled from life sentences, but these cases are rare. Level I sex offenders (and inmates who are not sex offenders) may be considered for halfway house placements if they are designated by DOC as "public risk monitoring" cases, as defined by DOC Policy 203.020. Many, but not all, Level I sex offenders are designated as public risk monitoring cases.

<sup>12</sup> Our estimate of sex offenders as a percentage of offenders on supervised release is based on the number of offenders who exited halfway houses during 2003. "Offender-days" is the sum of the number of days spent by individual offenders at halfway houses during 2003.

<sup>13</sup> Halfway house directors provided us with information on the counties to which their 2003 residents were released.

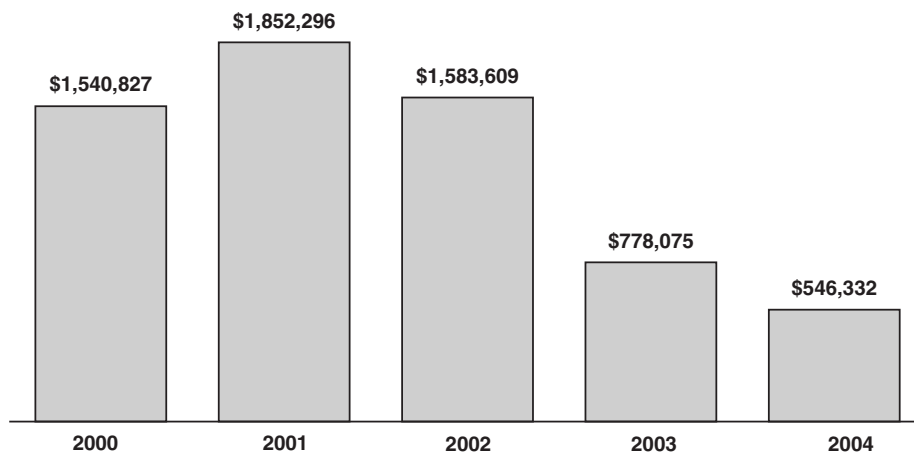
supervision for 84 percent of the sex offenders who lived at halfway houses in 2003, and the other 13 counties accounted for the remaining 16 percent of offenders.

In addition, state budget constraints significantly limited the availability of halfway house beds during the past two years. Figure 4.1 shows halfway house expenditures for fiscal years 2000-04, adjusted for inflation. Expenditures in fiscal year 2004 were about one-third the level of expenditures just two years earlier. According to DOC, the reduced spending levels in the past two years occurred because the department did not supplement legislative appropriations for halfway house placements with discretionary funds the department had previously used for this purpose. As a result of these funding constraints, DOC officials said they have referred fewer offenders to halfway houses, and the length of most halfway house stays has been capped at two months.<sup>14</sup> We found that:

- **Directors of community corrections agencies expressed widespread frustration about the lack of transitional housing options for sex offenders who are starting “supervised release” following their prison sentence.**

**State spending for halfway house placements declined significantly in the past two years.**

**Figure 4.1: Minnesota Department of Corrections Halfway House Expenditures, FY 2000-04 (in 2004 Dollars)**



NOTE: Annual expenditures unadjusted for inflation were as follows: \$1,361,055 (2000); \$1,704,044 (2001); \$1,488,354 (2002); \$756,882 (2003); and \$546,332 (2004).

SOURCE: Office of the Legislative Auditor analysis of Minnesota Department of Corrections data. The data were adjusted for inflation using U.S. Bureau of Economic Analysis price indices for state and local government consumption expenditures.

<sup>14</sup> In 2003, sex offenders spent an average of 48 days in halfway houses for each sex offender who left the facilities. Of the sex offenders who left the facilities, 59 percent “graduated” from the full program, and the remainder absconded, transferred, or were terminated prior to completion. Offenders who do not successfully complete their halfway house placements face possible revocation of their supervised release.

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**Directors of community-based corrections agencies think there are not enough halfway house beds available for sex offenders.**

In our statewide survey, 70 percent of directors said that finding suitable housing for sex offenders released from prison was “very difficult” in the past two years; 26 percent said that it was “somewhat difficult,” and none said it has “not been a significant problem.” Regarding the availability of halfway house beds, none of the directors reported that the number of placements of sex offenders at halfway houses in the past two years was sufficient to meet their agency’s needs.<sup>15</sup>

Directors of community-based corrections agencies also expressed concern to us about DOC’s release planning process. In our statewide survey, 44 percent of the directors said that DOC has not taken sufficient steps to ensure that sex offenders are released from prison to housing arrangements that do not put minors or vulnerable adults at risk.<sup>16</sup> Directors cited instances in which offenders have been released from prison to homeless shelters, cheap motels, and relatives’ homes that they considered unsatisfactory. One director we surveyed suggested that offenders scheduled for supervised release should remain in prison for all or part of their remaining sentence if they do not cooperate with efforts to find post-prison housing arrangements.<sup>17</sup>

In some cases, the corrections agency in an offender’s county of residence has referred the offender to live in temporary housing in another county, due to the lack of options in the county of residence.<sup>18</sup> For example, in the following case, an offender was released from prison to Dakota County without arrangements for an appropriate residence in Dakota County, so the Dakota agent directed the offender to live in Ramsey County. According to the agent’s notes,

“Alternative release plans have been investigated and rejected. Offender has no viable housing options other than homeless shelter. ... As it appears DOC is unwilling to fund transitional housing for offender, he is being directed to reside at Union Gospel Mission, St. Paul, until alternative housing is approved by this agent.”<sup>19</sup>

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<sup>15</sup> Office of the Legislative Auditor, survey of directors of DOC district offices and Community Corrections Act agencies, August 2004 ( $N=27$ ). Eighty-nine percent of the directors said the number of halfway house placements was short of the number they needed; 11 percent responded “don’t know” or “not applicable.”

<sup>16</sup> OLA survey of directors of community-based corrections agencies, August 2004. The survey included the following statement: “Based on my agency’s [or district office’s] experience, the Minnesota Department of Corrections has taken sufficient steps to ensure that sex offenders are released from prison to housing arrangements that do not put minors or vulnerable adults at risk.” Thirty-seven percent of responding directors agreed with the statement, 44 percent disagreed, and 19 percent responded “neither agree nor disagree” or “not applicable.”

<sup>17</sup> The director said that this option would be less expensive than the costs incurred by corrections staff trying to find suitable living arrangements on their own, then writing violation reports when housing is not found, attending violation hearings, and transporting the offender back to prison.

<sup>18</sup> DOC policy authorizes offenders who are released to the “county of commitment” to live outside of this county. Policy 203.010 states: “If no practical residential placement option can be made in the county where the offender was convicted, the local corrections agency for adult felons in the county of commitment will arrange for housing and supervision. This housing and supervision can occur within any county where it can be established and where the offender can most effectively be provided appropriate correctional programming.”

<sup>19</sup> Dakota County agent comments from DOC “Agent Assignment Request.” The offender’s prison release plan authorized placement to emergency housing.

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**The Department of Corrections set aside some additional funds for transitional housing in fiscal year 2005.**

In a 2003 report to the Legislature, DOC recommended additional state funding to help address transitional housing for sex offenders released from prison.<sup>20</sup> DOC recommended increased funding for halfway houses, “three-quarter way” houses,<sup>21</sup> emergency housing, and leases of scattered-site housing, and it recommended evaluating the possibility of offender housing at regional corrections centers. Through internal reallocations, DOC set aside additional funding in fiscal year 2005 to pay for transitional housing. The “new” funding included: (1) \$72,000 to lease housing in outstate Minnesota for selected offenders on intensive supervised release; (2) \$36,000 for emergency housing (short-term rent payments for offenders released from prison without suitable housing arrangements); (3) \$100,000 for additional halfway house placements; (4) \$276,000 for pilot housing projects in the Twin Cities metropolitan area and Duluth (the vendor will lease scattered site housing for selected offenders, typically for 60 to 120 days). This funding will provide DOC and community agencies with options they did not have in fiscal year 2004. However, DOC’s total Fiscal Year 2005 increase to fund new housing options (\$500,000) does not fully offset the \$1.3 million annual reduction in halfway house spending that occurred between fiscal years 2001 and 2004. In addition, it is too soon to evaluate how DOC’s leases of scattered-site housing will be accepted in the communities where the homes are located.<sup>22</sup>

Later in this chapter, we discuss areas related to sex offender supervision that may need additional state funding. We note that, in our statewide survey, community corrections directors (as a group) ranked an expansion of transitional housing options for sex offenders at the top of their list of strategies that would improve public safety, even above options such as expanded sex offender treatment, expanded intensive supervised release services, and reduced caseloads for sex offender agents. Also, DOC officials said that the department has facilitated many committees and work groups in recent years that have recommended increased funding for transitional housing, but they said that the Legislature has not acted on these recommendations.

In addition to seeking additional funding for transitional housing, we think that DOC’s central office should work with prison and community corrections officials on possible improvements in the process for planning the release of sex offenders from prison.<sup>23</sup> We recognize that successful placement of inmates in the community depends on the joint efforts of many individuals in the DOC central office, in prisons, and in community-based correctional agencies, and it also depends on cooperation from offenders. DOC has policies governing the prison release process, but perhaps there are opportunities to improve their implementation for sex offenders, whose placement in the community often poses important challenges. For example, some supervisors of DOC field offices and county corrections offices expressed a desire for more timely notifications

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<sup>20</sup> Minnesota Department of Corrections, *Level Three Sex Offenders, Residential Placement Issues: 2003 Report to the Legislature* (St. Paul, January 2003).

<sup>21</sup> “Three-quarter way” houses are community residences that are monitored by off-site rather than on-site staff.

<sup>22</sup> Some corrections officials told us that local elected officials have been reluctant to propose politically unpopular housing options for sex offenders, and this is one reason they have looked for housing assistance from the Legislature and DOC.

<sup>23</sup> DOC should consider including representatives of DOC field offices, county corrections agencies, the hearings and release unit in DOC’s central office, and DOC institution staff.

regarding pending releases, more information regarding released offenders' medical and treatment history (see discussion in Chapter 3), and better communication with prison staff.

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#### RECOMMENDATION

*The Minnesota Department of Corrections (or, alternatively, a state sex offender policy board) should establish a task force of DOC and local officials to identify improvements in the department's prison "release planning" practices for sex offenders.*

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**State law does not require inter-county notification and consultation when a sex offender on supervised release in one county moves to another county.**

We also heard concerns that some local corrections agencies have referred the offenders they supervise to look for *permanent* housing in other counties, particularly in Hennepin and Ramsey. The "receiving" counties told us they would prefer to be consulted about these residential arrangements because (1) some of the offenders have taken up residence at places that the receiving counties told us they would not authorize for the offenders they supervise (such as residences in close proximity to children or vulnerable adults), and (2) typically, correctional supervision for released prisoners who move to a new county eventually transfers to the new county of residence. However, there are no statutory provisions that require inter-county notification and consultation in such cases.

This issue could be addressed in several ways. First, DOC has proposed amending its intra-state transfer policy to require the "receiving" agency to grant approval for offender moves in certain circumstances.<sup>24</sup> However, DOC does not have authority to set such a statewide policy on its own and, as of late 2004, it was still working to get agreement from all 87 counties on a policy. Second, DOC has authority to set statewide policy for the Intensive Supervised Release program, and it could adopt intra-state transfer provisions that pertain just to participants in this program.<sup>25</sup> Third, the Legislature could adopt statutory language that addresses this issue. In our view, statutory provisions would be more enforceable than a policy based solely on intra-agency agreement, and such provisions could address a broader group of offenders than just those on Intensive Supervised Release. To help ensure that there is intra-agency consultation when potentially risky offenders are planning to move, we recommend:

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#### RECOMMENDATION

*In cases where offenders classified by the Minnesota Department of Corrections as "public risk monitoring" cases seek housing arrangements in a location under the jurisdiction of another corrections agency, state law should require that the supervising agency notify the "receiving" agency and initiate a supervision transfer request.*

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<sup>24</sup> Minnesota Department of Correction's policy would apply to offenders on supervised release classified by DOC as "public risk monitoring" (PRM) cases. Most, but not all, sex offenders released from prison are PRM cases.

<sup>25</sup> Offenders under Intensive Supervised Release are a subset of the broader category of "public risk monitoring" cases.

## STATE FUNDING FOR SEX OFFENDER SUPERVISION AND SERVICES

**There are strong arguments for increased state investment in sex offender assessment, supervision, treatment, and housing.**

This report has identified various weaknesses in Minnesota’s approach to supervising sex offenders in the community. In particular, some offenders receive less supervision and treatment than they need, according to our reviews of actual practices and the perceptions of many corrections staff. Also, there is a need for more interagency communication regarding “best practices” in sex offender supervision and, where possible, the development of more consistent policies across the state.

We think there are strong arguments for increased state investment in sex offender assessment, supervision, treatment, and transitional housing. However, we offer no recommendation regarding the “right” level of funding for these activities, for several reasons. First, although there is agreement in the corrections field about some of the general elements of good sex offender supervision (such as the use of specialized sex offender agents and periodic polygraphs), there is limited evidence on the appropriate *amount* of supervision elements (such as the optimal caseload size, number of agent-offender contacts, or frequency of polygraphs). There is much to be learned about which specific interventions are likely to have the most impact, and the U.S. Department of Justice notes that “there has been little research on the effectiveness of community supervision programs (exclusively) in reducing reoffense behavior in sex offenders.”<sup>26</sup>

Second, even if new funding will be required to improve supervision of sex offenders, many corrections officials believe that it is important for individual offenders to bear a share of their supervision and treatment costs.<sup>27</sup> For example, Dodge-Fillmore-Olmsted Community Corrections reduced its annual spending for sex offender treatment from \$90,000 to \$10,000 over a recent four-year period. It did this not to reduce the amount of treatment for offenders but because it preferred to have the offenders pay a larger share of the treatment costs. Likewise, Dakota County told us that its offenders pay 60 to 70 percent of treatment costs. On the other hand, some offenders are indigent, and the public could be placed at risk if assessments, treatment, or polygraphs are deferred until the offenders can afford to pay for them.<sup>28</sup> Overall, legislative decisions about the appropriate amount of state funding for sex offender supervision and treatment require judgments about offenders’ obligations to share in the cost.

Third, the state’s biennial budget process provides an opportunity for policy makers to make judgments about what the state can afford in a time of budget constraints and what services it needs to enhance. During this process, proposals

<sup>26</sup> U.S. Department of Justice, Center for Sex Offender Management, *Recidivism of Sex Offenders* (Washington, D.C., May 2001), 14-15. Also, Faye S. Taxman, “Supervision: Exploring the Dimensions of Effectiveness,” *Federal Probation* (September 2002), 14-27, notes that there has been little rigorous assessment of various elements of corrections supervision.

<sup>27</sup> Some corrections officials favor having offenders pay a portion of costs as a matter of fairness, and they told us that most sex offenders can do so without undue hardship. Others told us that offenders “buy in” to their treatment programs more when they bear a portion of the costs.

<sup>28</sup> Even if state funds paid for treatment up-front—so that offenders could start treatment as soon as possible—the state could seek subsequent repayment of a portion of these costs once the offenders’ financial situation improved.

to enhance community-based supervision and treatment of sex offenders will compete with proposals in other areas of state spending.

In August 2004, we surveyed directors of Community Corrections Act agencies and DOC district offices regarding seven possible strategies for improving the supervision of sex offenders in the community. The stated preferences of corrections directors provide policy makers with useful guidance regarding activities that may require additional investment. As shown in Table 4.3, the survey indicated that expansion of transitional housing options for sex offenders was the leading choice of the directors. For example, more directors chose this strategy over others as the “most important” means of improving public safety. Besides expanded transitional housing, corrections directors gave high priority to several strategies that we discussed in previous chapters, including increases in sex offender treatment (Chapter 3), reduced caseloads for specialized sex offender agents (Chapter 2), expansion of Intensive Supervised Release services (Chapter 2), and additional polygraph tests for sex offenders (Chapter 2). Meanwhile, directors gave significantly lower rankings to two of the strategies listed in Table 4.3. Directors expressed little enthusiasm for expanded use of electronic monitoring for sex offenders—for example, through ankle bracelets or global positioning system devices.<sup>29</sup> In addition, “attraction testing” is a type of assessment to determine persons’ sexual preferences—for example, to determine

**Corrections officials generally favor more transitional housing for sex offenders as a strategy to improve public safety.**

**Table 4.3: Community Corrections Directors’ Opinions Regarding Possible Strategies for Improving Public Safety**

Possible community-based strategies for reducing sex offenders’ risk to public safety	Number of directors who:		Weighted score <sup>a</sup>
	Ranked this strategy as the most important	Ranked this strategy among the top 3 choices	
More transitional housing (following prison)	11	23	160
More high-quality sex offender treatment	6	19	138
Lower caseloads for specialized sex offender agents	5	15	128
More Intensive Supervised Release (ISR) services	2	11	113
More polygraphs	3	9	108
More electronic surveillance	0	3	62
More attraction testing	0	1	47

<sup>a</sup>Strategies identified as “most important” counted as 7 points, “2<sup>nd</sup> most important” counted as 6 points, etc.

SOURCE: Office of the Legislative Auditor survey of directors of DOC district offices and CCA agencies, August 2004. N=27.

<sup>29</sup> Elsewhere on our August 2004 survey, 30 percent of directors said there is a need for “somewhat more” use of global positioning system devices to monitor sex offenders, and another 7 percent said there is a need for “much more” use of these devices. In addition, 37 percent of directors said there is a need for “somewhat more” use of other electronic monitoring devices, while none said there is a need for “much more.”

sexual attraction to young children.<sup>30</sup> While many corrections professionals think that attraction testing can be a useful element of a comprehensive approach to sex offender assessment and treatment, most of Minnesota's corrections directors ranked such testing—by itself—as a low priority for improving public safety.

In addition, the Legislature should consider state mandates as it evaluates the need for additional funding. Activities that corrections agencies are mandated by state law to conduct may be better candidates for state funding than other activities. For example, courts are required to order assessments for convicted sex offenders, but the Minnesota Department of Corrections eliminated state funding for this activity in 2003. Also, state law says that the Commissioner of Corrections “shall provide for residential and outpatient sex offender programming and aftercare when required” for offenders on supervised release and conditional release, but Chapter 3 noted that state treatment funding has been very limited for such offenders.<sup>31</sup>

While we offer no recommendations on specific spending levels, we think that there are several areas that justify close legislative review for possible state spending increases.

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#### RECOMMENDATION

*The Legislature should consider additional state spending for: (1) reimbursement of pre-sentence sex offender assessment costs, (2) treatment of sex offenders on supervised release, (3) transitional housing for sex offenders released from prison, (4) expansion of the state's “enhanced sex offender supervision grants”—for example, to reduce the caseloads of specialized agents or to increase the number of polygraphs conducted, and (5) expansion of Intensive Supervised Release to areas poorly served by this program.*

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**The Department of Corrections should consider changing the way it allocates sex offender treatment funds.**

This list of candidates for additional funding may not be exhaustive. Still, the activities cited above are either state-mandated or were listed as higher priorities by community corrections directors.

Regarding treatment funding for sex offenders on supervised release and probation, DOC should consider changes in the approach that it presently uses to allocate these funds. DOC allocates most state funding for sex offender treatment in the form of grants to individual treatment providers that have submitted proposals for funding. In the past, DOC has dispersed this funding broadly to help ensure the availability of treatment services in most parts of the state. This approach has been consistent with a statutory directive that DOC work toward development of “treatment programs in several geographical areas in the state.”<sup>32</sup> However, this approach has not allocated funding in a way that accurately reflects the distribution of offenders around the state. Thus, for example, the

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<sup>30</sup> In response to another question on our August 2004 survey, 22 percent of directors said that there is a need for “somewhat more” attraction testing as part of sex offender treatment, and another 15 percent said there is a need for “much more” attraction testing.

<sup>31</sup> *Minn. Stat.* (2004), §241.67, subd. 3.

<sup>32</sup> *Minn. Stat.* (2004), §241.67, subd. 8.

community-based corrections agencies that serve most of Minnesota's offenders on supervised release have been particularly dissatisfied with the availability of treatment funding for these offenders. This suggests that DOC should consider allocating a significant portion of treatment funds by having "funding follow offenders"—that is, so that agencies receive treatment funding in closer proportion to the number of sex offenders they serve.<sup>33</sup>

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#### RECOMMENDATION

*The Minnesota Department of Corrections should allocate at least some portion of sex offender treatment funding in proportion to the location of sex offenders throughout the state.*

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## ADDITIONAL PROTECTION FOR POTENTIAL VICTIMS

The primary goal of community correctional supervision is public safety. Through supervision and treatment, corrections officials hope to reduce the likelihood that known offenders will commit new offenses. But, in our file reviews and interviews with corrections officials, we identified some public safety issues that need legislative attention.

### Children Living with Sex Offenders

In 84 percent of Minnesota's 2003 criminal sexual conduct sentences, the victim was under age 18. Typically, in such cases, the courts or Minnesota Department of Corrections prohibit the offender from contacting the victim. Often, they also prohibit the offender from having any contact with minors, unless authorized by the supervising agent. In such cases, offenders who are parents may not be allowed to live with or visit their children under age 18. In addition, offenders may be prohibited from living with or visiting persons who have children.

Corrections agents have considerable discretion regarding offender supervision. Among agents' more important decisions are those involving the modification of a "no contact with minors" condition of supervision. Agents sometimes ease such restrictions after an offender has completed sex offender treatment. Or, agents may judge that an offender whose prior victim was an eight-year-old girl is not likely to be a threat to the 16-year-old son of the offender's girlfriend.

Some agencies take special steps to prevent such cases from resulting in new victims. For example, several agencies told us that they authorize offenders to have "supervised contact" with minors only after ensuring that the person who will supervise the contact has received special training. Also, corrections agents may seek advice from their supervisors or the offender's treatment staff before authorizing an offender to have contact with minors.

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**Many sex offenders are prohibited from having contact with children.**

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<sup>33</sup> At a minimum, funding should be more in proportion to the locations of offenders on *supervised release*—given the seriousness of their offenses and DOC's statutory obligation to provide post-prison programs for these offenders.

Still, there appears to be a need for further precautions to safeguard potential victims. State law requires the Minnesota Department of Human Services to create a state “child mortality review panel” to examine deaths and near deaths of children.<sup>34</sup> Recently, this panel raised questions about the actions (or inactions) of some corrections agents. According to a department official:

“In reviewing cases during 2003, the panel discussed several deaths of children in which the role of the probation officer was critical. Probation officers did not appear to recognize the potential danger of a sex offender living with children nor the need to report the situation to the child protection agency. The offender was able to continue to expose children to abuse.”<sup>35</sup>

The panel made several recommendations to address these concerns. The panel observed, as we did during our interviews with corrections officials, that:

- **Corrections agencies do not always consult with child protection agencies before they authorize sex offenders to have ongoing contact with minors.**

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**Corrections agency decisions that allow sex offenders to live with children should be made with particular care.**

According to state law, a child who “resides with or would reside with a perpetrator of domestic child abuse or child abuse” is classified as a “child in need of protection or services.”<sup>36</sup> We think that notification of child protection agencies in such cases is consistent with state policy “to protect children whose health or welfare may be jeopardized through physical abuse, neglect, or sexual abuse.”<sup>37</sup> Notification does not guarantee that individual child protection agencies will always review each case and discuss it with the corrections agency. Some child protection agencies may place a higher priority on investigating actual allegations of abuse than on reviewing cases in which children are “at risk.” But we think it is reasonable to seek an added measure of protection for potential child victims. The developers of the nationally-recognized sex offender “containment model” suggest the following:

“The well-being of the victim—and the potential for other children and adults to become victimized—should be the fundamental criterion applied by all agencies to family unification decisions. The rigorous use of clear protocols for family reunification—protocols that fully explore the offender’s risk to other children in the household—may be the most important way the criminal justice system can intervene to protect children from sexual assaults by known sex offenders.”<sup>38</sup>

<sup>34</sup> *Minn. Stat.* (2004), §256.01, subd. 12.

<sup>35</sup> Erin Sullivan Sutton, Director, Child Safety and Permanency Division, Minnesota Department of Human Services, letter to Joan Fabian, Commissioner, Minnesota Department of Corrections, August 27, 2004.

<sup>36</sup> *Minn. Stat.* (2004), §260C.007, subd. 6.

<sup>37</sup> *Minn. Stat.* (2004), §626.556, subd. 1.

<sup>38</sup> Kim English, Suzanne Pullen, and Linda Jones, *Managing Adult Sex Offenders in the Community: A Containment Approach*, NIJ Research Brief (Washington, D.C., U.S. Department of Justice, National Institute of Justice, January 1997), 8.

Corrections staff who have worked with an offender for a long period may lose their objectivity or be deceived by the offender, and it may be useful to seek the perspective of another agency.<sup>39</sup>

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**Child protection agencies should be notified about situations that may place children at risk of sexual abuse.**

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### RECOMMENDATIONS

*The Legislature should amend state law so that an agency supervising a sex offender is required to notify the local child protection agency prior to authorizing the offender to live in a household with children.*

*The Legislature should require the Department of Corrections to develop a standard statewide protocol that specifies the information that should be shared by corrections agencies for this purpose—for example, indicating the offender's prior offense(s), treatment history, and compliance with the conditions of supervision, as well as the corrections agency's rationale for the new living arrangements.*

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**State law does not specify that probation officers are "mandated reporters" of child maltreatment.**

The state child mortality review panel recommended changes in Minnesota's statutes beyond what we recommend above. The panel recommended amending *Minn. Stat.* (2004), §609.378 so that sex offenders would be considered guilty of child endangerment if they lived with, cared for, or remained in the presence of minor children without written documentation (such as an opinion from a treatment provider) that this was appropriate. Likewise, the panel recommended amending the law so that parents, caretakers, or guardians who knowingly allowed children to live with convicted sex offenders (without authorization) could be charged with child endangerment. Such proposals for statutory changes appear to be based on the presumption that all sex offenders pose a potential threat to children—even in cases where an offender's prior crimes were not against children, and even if the offender has no restrictions on contacts with minors. In contrast, some corrections officials believe that there is no basis for restricting sex offenders' contacts with children if their past offenses have not involved children. We offer no recommendations on the panel's suggestions, but we think they deserve the Legislature's consideration.

Finally, the Department of Human Services staff person for the child mortality review panel told us that the panel favors having the Legislature specify, in law, that probation officers are "mandated reporters" of child maltreatment. Minnesota law identifies categories of persons—such as law enforcement officials—who are required to report maltreatment of children, but the law does not specifically mention probation officers.<sup>40</sup> Minnesota Department of Corrections officials told us that, although their probation officers are not required by law to report instances of potential maltreatment, these officers have a professional duty to do so. We see no harm in designating probation officers in statute as mandated

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<sup>39</sup> In some cases, corrections agencies may need to more aggressively enforce the offender's special conditions of supervision. We reviewed a case where an offender allowed a woman and her children to move into his house despite supervision conditions that prohibited "unsupervised contact" with minors. Although the probation officer learned of the living arrangement from a concerned third party and not from the offender, the agent did not cite the offender for a violation. Rather, the agent relied on child protection staff to advise the woman and her children to move from the house.

<sup>40</sup> *Minn. Stat.* (2004), §626.556, subd. 3.

reporters of child maltreatment. If anything, such a change may clarify the obligations of probation officers in any agencies where this has been unclear.

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#### RECOMMENDATION

*The Legislature should amend Minn. Stat. (2004), §626.556 to designate correctional supervision staff as mandatory reporters of child maltreatment.*

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## Sex Offenders in Care Facilities

Sex offenders may also pose special threats to public safety when they reside in care facilities, such as nursing homes or hospitals. During 2004, there were legislative hearings regarding several sex offenders who resided at a Minneapolis nursing home. The Minnesota Attorney General filed suit against the nursing home, claiming that its failure to take adequate precautions led to sexual and physical assaults against some residents.

Our study did not specifically focus on sex offenders living in care facilities, but we encountered some such instances among the individual cases we reviewed at random. The following two examples, summarized from case records and interviews, show that corrections agencies do not always know when offenders under their supervision are admitted to care facilities:

*An elderly Level II sex offender on supervised release fell and was injured. He was treated at a hospital, which discharged the offender to a nursing home. Nursing home staff did not initially know that the person was a sex offender whose conditions of supervision prohibited any contact with vulnerable adults. The supervising corrections agency's most recent contact with the offender was 11 weeks prior to the nursing home admission, and the agency was not informed of the offender's accident and new living arrangements until after the offender had been at the nursing home for a week.<sup>41</sup> The corrections agent then notified nursing home staff that the resident was a sex offender. One week later, nursing home staff contacted the corrections agency because the offender had tried to "seduce another resident into going somewhere secluded." When confronted by nursing home staff, the offender decided to have himself discharged from the facility. Nursing home staff said they did not receive a copy of the offender's conditions of supervision from the corrections agency until after the offender left the facility.*

*A sex offender on supervised release was in a hospital for more than two weeks, and his supervising agent only learned of this the following month. The hospitalization occurred during a period when there were 8 months between agent-offender phone contacts and 18 months between face-to-face contacts.*

Corrections agents cannot effectively supervise an offender if they do not know immediately about changes in the offender's living arrangements. Minnesota's

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<sup>41</sup> A friend of the offender contacted the supervising agency.

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**Probation officers do not always know when offenders under their supervision are admitted to care facilities.**

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**State law should require sex offenders to disclose pending or recent admissions to care facilities.**

predatory offender registration law requires offenders to provide written notice to the assigned corrections agent or law enforcement at least five days before an offender starts to live at a new primary address.<sup>42</sup> However, in the cases above, the offenders' primary address did not change; rather, the offenders lived temporarily at other residences to receive care. We recommend that registered predatory offenders should be required to disclose, as soon as possible, any pending or recent admissions to care facilities. If possible, they should also disclose their status as registered predatory offenders to care facilities prior to admission.<sup>43</sup> If such provisions are adopted, registered offenders should be carefully informed about their self-reporting obligations.

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**RECOMMENDATIONS**

*The Legislature should amend Minn. Stat. (2004), §243.166 to require registered predatory offenders to disclose, as soon as possible, their pending or recent admission to a care facility to (1) their assigned corrections agent, or (2) a law enforcement agency, if the offender is no longer supervised by a corrections agent. The offenders should also be required to disclose their predatory offender status to the care facilities prior to admission, if possible.*

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State law does not require corrections agents or law enforcement to provide community notification regarding sex offenders on probation. For Level I offenders, the law requires notification of the offender's "immediate household," but there is no specific requirement for notification of other residents in a care facility. For Level II offenders, the law authorizes notification of "agencies and groups that the offender is likely to encounter," including those "that primarily serve individuals likely to be victimized by the offender." For Level III offenders, the law authorizes broad community notification.<sup>44</sup> According to the Minnesota Office of the Attorney General, "consumer laws require a nursing home to notify consumers (residents, applicants, and their families) if predatory offenders are placed in the home. . . . This notification, however, comes from the nursing home."<sup>45</sup> We think that corrections agents or law enforcement officials should immediately inform a care facility's administration when they learn that a predatory offender resides at the facility. This would allow the administrator to take any precautions that may be appropriate to protect other residents.

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<sup>42</sup> *Minn. Stat.* (2004), §243.166, subd. 3(b).

<sup>43</sup> There may be cases where an offender is mentally or physically incapable of contacting his corrections agent or a law enforcement official, due to the injury or illness that led to admission to the facility. For such circumstances, the law should provide exemptions to the reporting requirement.

<sup>44</sup> *Minn. Stat.* (2004), §244.052, subd. 4.

<sup>45</sup> Kristine L. Eiden, Chief Deputy Attorney General, letter to Dan McElroy, Chief of Staff, Office of the Governor, Peter Orput, Director of Policy and Legal Services, Minnesota Department of Corrections, and Mary McComb, Litigation Manager, Minnesota Department of Corrections, June 25, 2004.

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**RECOMMENDATION**

*Minn. Stat. (2004), §244.052 should be amended to require corrections or law enforcement agents to inform a care facility administrator if they have information that a registered predatory offender is living at the facility.*

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Finally, some corrections officials expressed a desire for additional options for housing and monitoring developmentally disabled sex offenders. To receive the services they need, these offenders are sometimes placed in environments that allow regular contact with other vulnerable adults. We reviewed a case in which a low-functioning offender convicted of second-degree criminal sexual conduct was released from a secure state hospital to a community-based facility that specialized in services to vulnerable adults. The offender's release was revoked for sexually abusing a vulnerable woman enrolled in the facility's programs. The offender's probation agent told us that this offender needed 24-hour supervision if he was to live in the community at all, but few options for these types of offenders are available in the community.