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# **Compliance by County Attorneys With 120-day Requirement to Determine “Good Cause” and File Petitions To Civilly Commit Certain Individuals As A Sexually Dangerous Person and/or A Sexual Psychopathic Personality (SDP/SPP)**

## **Annual Report**

Mandated by 2007 Minnesota Statutes, section 253B.185, subdivision 8.

February 2009



Minnesota Department of **Human Services**

# **Legislative Report**

**Per requirement of Minnesota Statutes, section 3.197, the cost of preparing this report was under \$10,000.**

## **Executive Summary**

### **Report Requirements**

Minnesota Statutes, section 253B.185, subdivision 8 (c) requires the Commissioner of the Department of Human Services (“DHS” or “Department”) to report annually to the Legislature on county compliance with the requirements of subdivision 8 (a) and (b).

The statute requires a County Attorney to determine whether “good cause” exists for civil commitment of an offender as a sexually dangerous person (SDP) or sexual psychopathic personality (SPP). This determination must be made within a 120-day time period that begins when the County Attorney receives notice:

1. From a Criminal Court stating an offender, convicted of a sexual conduct crime, may meet criteria for a petition for civil commitment as SDP or SPP;
- or
2. From the Department of Corrections (DOC) that an offender convicted of a sexual conduct crime and considered to be in a high risk category, is approaching eligibility for supervised release and may meet criteria for a petition for commitment as SDP or SPP.

If the County Attorney determines there is good cause, a petition for commitment must be filed within that same 120-day time period.

### **Second Year of Reporting**

This is the second year this compliance report is being submitted to the Legislature. To prepare this report, DHS surveyed only those County Attorneys and their designees who received referrals from the Department of Corrections in the twelve-month period of FY2008. Specifically, DHS asked for the dates associated with any action that was taken for each referral.

County compliance for the FY07 and FY08 reports was measured by two different end dates. The FY07 report used January 31, 2008, as an end date to measure how long it took for County Attorneys to make decisions on DOC referrals. The FY08 report looks only at the decisions and actions made within 120 days of the DOC referral, as required by Minnesota Statutes, section 253B.185, subdivision 8 (a).

### **Primary Findings**

In Fiscal Year 2008, fewer referrals were sent to County Attorneys from the DOC compared to the number of referrals sent in Fiscal Year 2007. County Attorneys made a decision on 67% of the referrals in FY08 versus 76% of the referrals in FY07.

Forty-seven counties received DOC referrals in FY08. As of October 28, 2008, 22 of the 140 DOC referrals (16%) sent to County Attorneys were determined to have “good cause” and petitions for civil commitment were filed in 120-days or less. (In FY07, 44 counties received DOC referrals and filed petitions for 18% of those referrals within 120 days.) Fifty-five percent of the petitions filed within 120 days were filed by Anoka, Hennepin, Todd and Washington counties. Greater Minnesota counties—Clay, Clearwater, Jackson, Kanabec,

Olmsted, Otter Tail, Pine and Stearns—also filed at least one petition each for civil commitment within 120 days from the referral date.

There were 46 referrals pending a decision from the County Attorney 120 days after the end of FY08. All “pending” cases had been anticipating a decision for at least 120 days and up to 466 days. These pending cases also included referrals transferred to another county and/or the Attorney General’s Office (AGO). There were 24 referrals transferred to another county or the AGO in FY08. Of these, 50% were “pending” for over 120 days, while the remaining 50% had decisions made within 120 days; petitions for commitment were filed for five of these referrals.

Finally, the decision not to pursue a petition for civil commitment was made by the County Attorneys on 64 referrals (46%) by October 28, 2008.

# Department of Human Services Report to the 2009 Minnesota Legislature

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## I. DEFINITIONS

|                      |   |
|----------------------|---|
| Case                 | see "Referral."   |
| Decision to file     | the determination by the County Attorney that good cause exists to file a petition for civil commitment and the consequent action by the county or designee to file the petition for commitment with the court under Minnesota Statutes section 253B.185.   |
| Decision not to file | the determination by the County Attorney that good cause to file a petition for civil commitment does not exist and whereby the county or designee does not pursue filing a petition for civil commitment with the courts.  |
| Decision pending     | any case where the County Attorney or designee has yet to determine the existence or absence of good cause to file a petition for civil commitment. This includes referral cases that are on hold and/or referral cases that are transferred from one county to another county or designee.   |
| Designee             | the third-party representative requested by a County Attorney to research whether good cause exists to file a petition for civil commitment and or pursue the commitment petition on behalf of a county (usually the Minnesota Attorney General).   |
| DOC                  | the Minnesota Department of Corrections.  |
| End Date             | for purposes of this report, the last day researchers tracked the status of referrals from the Department of Corrections. The end date for this report (FY08) was designated to be October 28, 2008—the date 120 days after the end of FY08. The end date for last year's report (FY07) was designated to be January 31, 2008.                  |
| Metro Counties       | the eleven counties in Minnesota located in the metro region. These counties include: Anoka, Carver, Chisago, Dakota, Goodhue, Hennepin, Ramsey, Scott, Sherburne, Washington, and Wright Counties.   |
| Referral             | an individual offender in the Department of Corrections system who is referred to a County Attorney for the purpose of filing a petition for civil commitment as a sexual psychopathic personality (SPP) or is a sexually dangerous person (SDP) pursuant to Minnesota Statutes, section 253B.185.  |
| Transfer             | an action by one county to recommend a case for civil commitment to another county or county designee by the county that received the initial case referral for civil commitment from the Department of Corrections. This includes actions that are a secondary referral from a county or county designee to another county or county designee. |

## II. BACKGROUND

During the 2007 session, the Minnesota State Legislature directed the Minnesota Department of Human Services (DHS) to make an annual report to the legislature, addressing County Attorney compliance with Minnesota Statutes, section 253B.185, subdivision 8, which states:

**Petition and report required.** (a) Within 120 days of receipt of a preliminary determination from a court under section 609.1351, or a referral from the commissioner of corrections pursuant to section 244.05, subdivision 7, a county attorney shall determine whether good cause under this section exists to file a petition [to civilly commit the individual who is the subject of the referral as a sexually dangerous person (SDP) or sexual psychopathic personality (SPP)], and if good cause exists, the County Attorney or designee shall file the petition with the court.

(b) Failure to meet the requirements of paragraph (a) does not bar filing a petition under subdivision 1 any time the county attorney determines pursuant to subdivision 1 that good cause for such a petition exists.

(c) By February 1 of each year, the commissioner of human services shall annually report to the respective chairs of the divisions or committees of the senate and house of representatives that oversee human services finance regarding compliance with this subdivision.

Last year's preliminary report<sup>1</sup> to the Legislature generalized the DOC referral information into judicial districts, whereas, this report specifically describes each County Attorney's compliance with the 120-day requirement. Similar to the FY2007 preliminary report, this report primarily describes how County Attorneys responded to initial referrals sent as candidates for civil commitment from the Department of Corrections (DOC) during fiscal year 2008.

For purposes of this report, there are data limitations in obtaining information required under Minnesota Statutes section 609.1351 (Supplement 1). Based on information received from representatives of the Hennepin County Attorney and Attorney General (AGO) offices, Minnesota Statutes section 609.1351 is not applicable to the cases reviewed in fiscal year 2008. In general, these cases rarely occur because it is premature for a court to make a determination or decision at the trial, especially when a person is being sent to the DOC, when their history of treatment has yet to be established for commitment requirement purposes<sup>2</sup>.

During FY08, 140 referrals were sent from the DOC to 47 County Attorneys for a determination of whether "good cause" existed for civil commitment as a sexually dangerous person (SDP) and a sexual psychopathic personality (SPP) under Minnesota Statutes section 253B.185.

Compared to the last report, there were 34 fewer referrals sent by the DOC to County Attorneys in FY2008. There were more County Attorneys (a total of 47 versus 44 in FY07) who received a letter of referral from the DOC in FY2008, with most of these referrals going to Hennepin, Anoka, and

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<sup>1</sup> First report written by the DHS commissioner under §253B.185 Subd. 8 titled *County Responsibility for Filing Petitions for Civil Commitment as Sexually Dangerous Persons/ Sexually Psychopathic Personality (SDP/SPP) 120 Days After Initial Referral from the Minnesota Department of Corrections*. February 1, 2008.

<sup>2</sup> *In re Dennis Darol Linehan*, 594 N.W.2d 867 (Minn. 1999).

Olmsted counties—received 26%, 7% and 4% of all referrals, respectively. Fifteen referrals from the DOC went to counties that did not receive any referrals in FY2007 (all from Greater Minnesota). Furthermore, twelve counties that received referrals in FY2007 did not receive any referrals in FY2008.

Results in this report are not directly comparable to FY07 results, except for those that measured compliance with the 120-day requirement under statute. The date used to measure “decisions not to file” or number of days “pending” in fiscal year 2007 was January 31, versus October 28 for FY2008. Compliance with the 120-day requirement was measured by the difference between the date the initial letter of referral was sent to the County Attorney from the DOC and:

- 1) The date a petition was filed for the individual case; or
- 2) October 28, 2008 (exactly 120 days after the last day in FY2008).

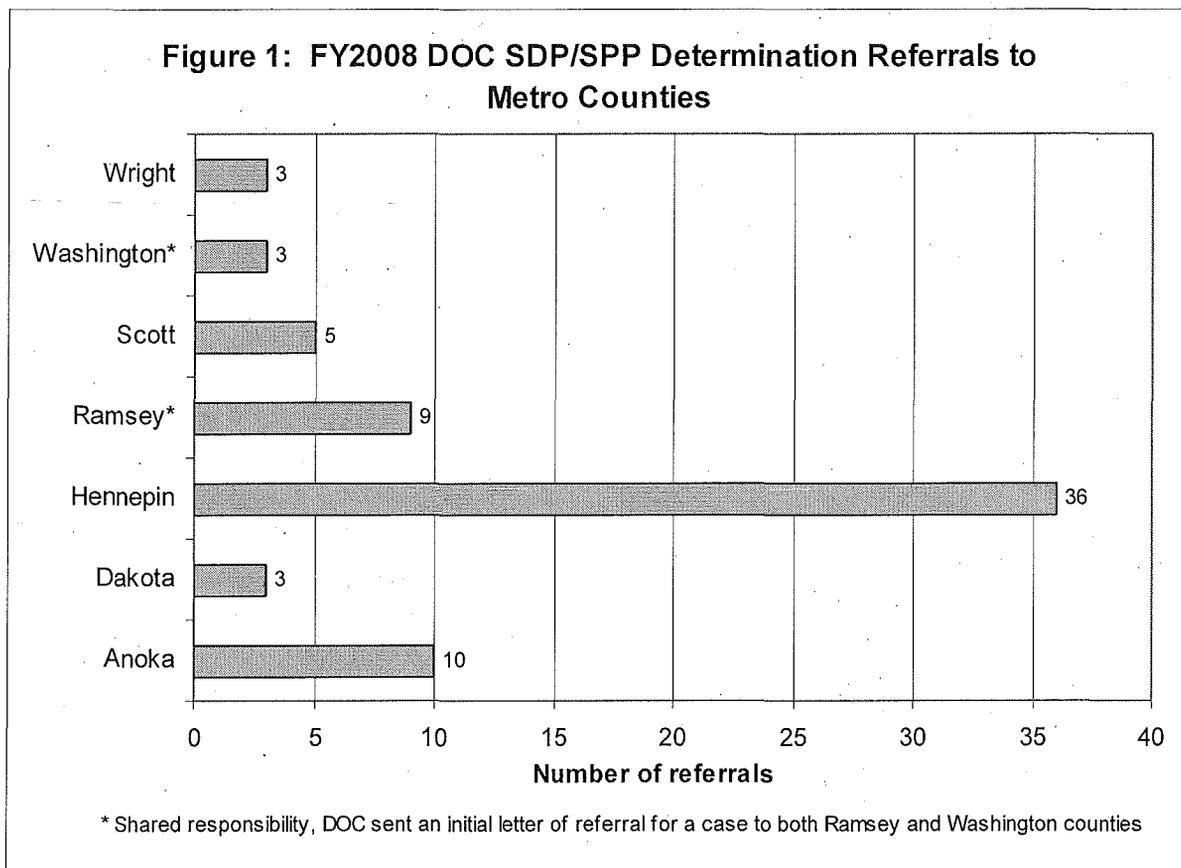
When any County Attorney transfers a case to another county or designee<sup>3</sup>, the transferred referral remains the responsibility of the County that received the initial referral from the DOC. It should be noted that Minnesota Statutes section 253B.185, subdivision 8, does not anticipate transferring of cases. This process has a significant impact on compliance and efficiency in determining “good cause” existence or non-existence, within the 120-day requirement. This was evident in data results from FY2007, but not as obvious in FY2008. In FY08, 9% of all the DOC referrals were transferred to another county attorney at least once *and* did not have a decision made by October 28, 2008 (NOTE: this is almost one-half (48%) of all the referrals transferred before the October end-date).

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<sup>3</sup> Every fiscal year, the Attorney General’s Office (AGO) anticipates responsibility for pursuing and filing petitions for civil commitment with the court when invited by the County Attorney. In FY2008, the AGO coordinated referrals recommended by attorneys from the 87 counties, except for referrals assigned to Anoka, Dakota, Hennepin, Olmsted, Ramsey, Saint Louis, and Washington Counties of financial responsibility.

## II. RESULTS

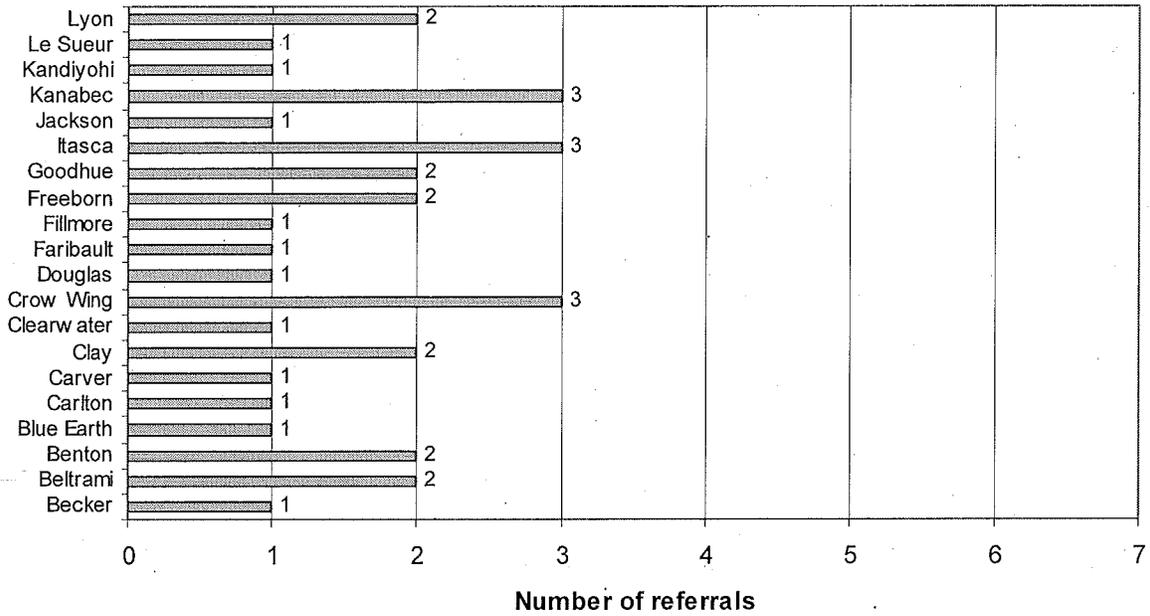
In Fiscal Year 2008, the Minnesota Department of Corrections (DOC) referred 140 DOC inmates to counties where the initial crime was committed for a determination to be made on whether they should be civilly committed as sexually dangerous persons and sexual psychopathic personalities. **Figures 1, 2, and 3** describe where the 140 referrals for civil commitment were sent in the Metro and Greater Minnesota areas. From these referrals, the County Attorneys responded by either making a decision to file a petition, transferring the case to the county of residence of the individual, or determining that good cause did not exist to file a petition for civil commitment.



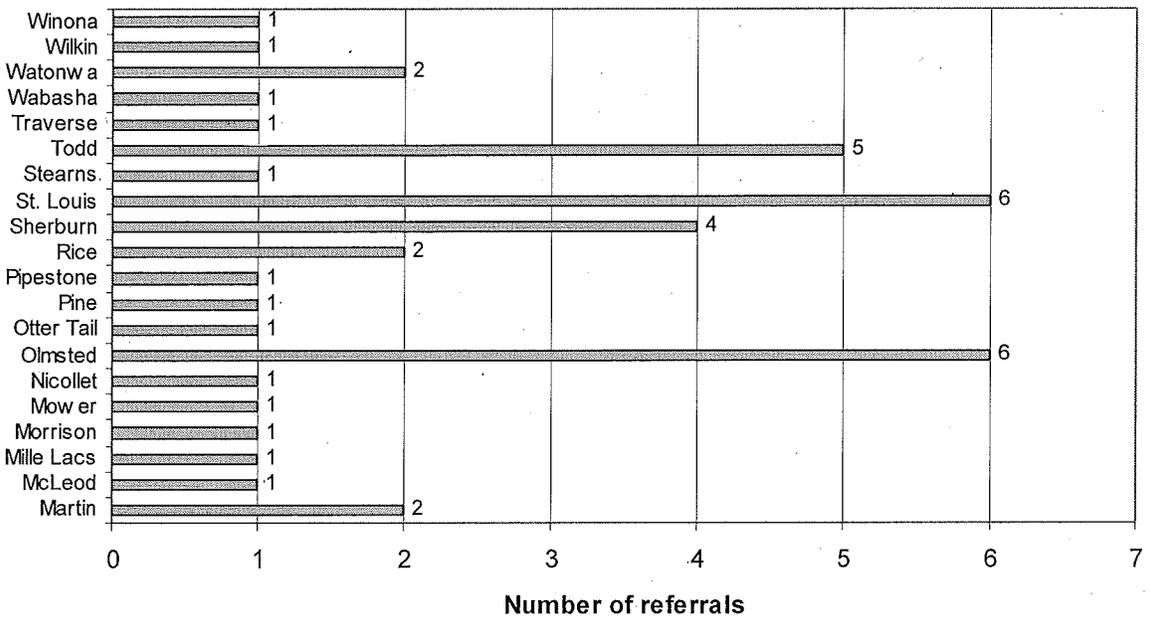
**Figure 1:** The Metro counties received a total of 69 referrals (49% of all referrals) from the DOC in FY2008. Hennepin County received the greatest number of referrals with 52% of the referrals to Metro Counties. The average number of referrals to counties considered in the Metro in FY2008 was 9.9 cases –average is 5.5 cases without Hennepin County. The shared responsibility case was determined by both counties that Washington was the county of financial responsibility, and is reflected similarly in this report.

**Figures 2 and 3:** The counties in Greater Minnesota received a total of 72 referrals (51% of all referrals) from the DOC in FY2008. The average number of referrals to counties in Greater Minnesota in FY2008 was 1.8 cases.

**Figure 2: FY2008 DOC SDP/SPP Determination Referrals to Greater Minnesota Counties I**

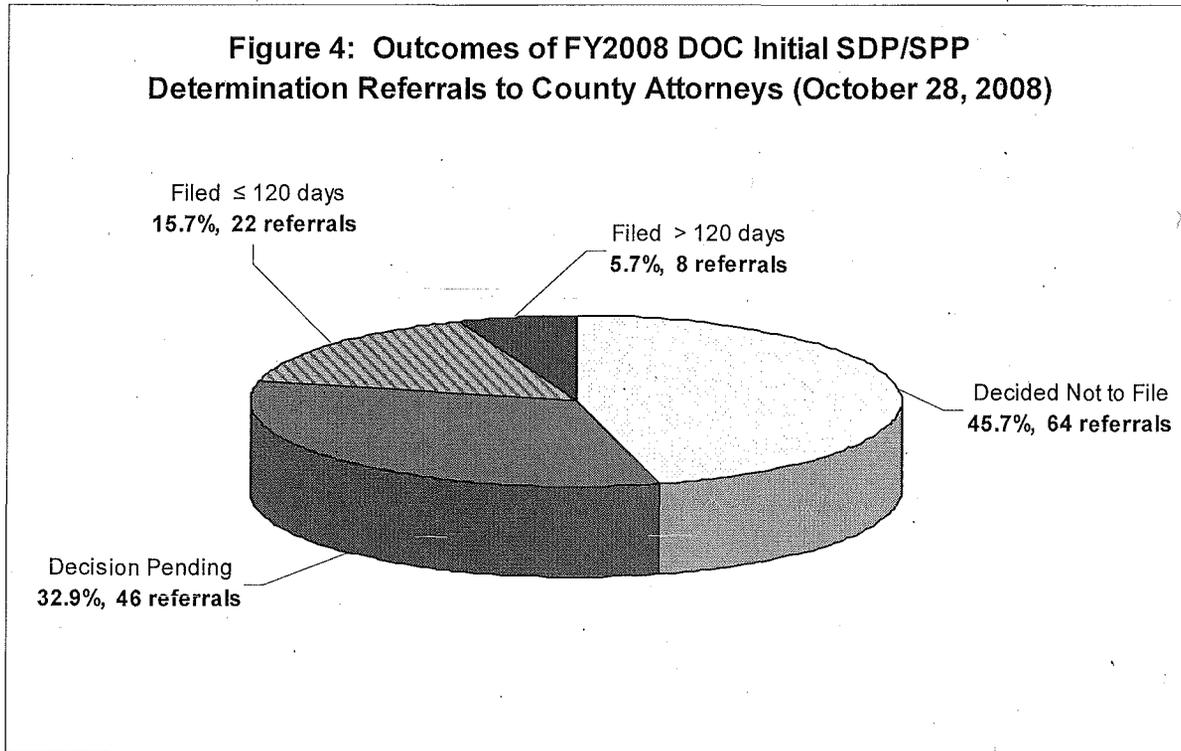


**Figure 3: FY2008 DOC SDP/SPP Determination Referrals to Greater Minnesota Counties II**



### **FY2008 Referral Outcomes**

To be compliant with Minnesota Statutes section 253B.185, all referrals made by the DOC to counties must have a petition filed within 120 days from the date the DOC sent the initial letter of referral. **Figure 4** shows that County Attorneys or their designee(s) pursued and filed petitions for 30 referrals, acted on a decision not to file a petition for 64 referrals, and had not made a decision on 46 referrals as of October 28, 2008.



**Figure 5** summarizes (1) which counties received referrals in FY2008; (2) the number of petitions filed in compliance with the 120-day requirement; (3) the number of cases pending; and (4) the individual County Attorney's response to the referral (i.e. transfers and decisions not to file).

| <b>Figure 5: Summary of County Actions &amp; Response to the DOC Referrals in FY2008</b>                 |             |            |                 |            |  |
|--|-------------|------------|-----------------|------------|--|
| <small>(Key: N/A (Not Applicable) County did not receive any DOC referrals in Fiscal Year 2008.)</small> |             |            |                 |            |  |
| COUNTY   | CASES FILED |            | CASES PENDING   |            | OUTCOMES SUMMARY   |
|  | ≤ 120 days  | > 120 days | Number of cases | ≥ 120 days |  |
| Aitkin   | N/A         |            |                 |            |  |
| Anoka  | 1           | 0          | 2               | 2          | Ten referrals were sent to the Anoka County Attorney's office. Two referrals were transferred, one to Ramsey and the other to Isanti County. One transferred referral had a petition filed in 95 days. As of October 28, 2008, two referrals were pending a decision for 120 days and 158 days respectively. The decision not to file a petition was made on seven cases—including the second transferred referral—in 11, 34, 54, 67, 78, 91 and 253 days, respectively. |
| Becker   | 0           | 0          | 1               | 1          | One referral was sent to the Becker County Attorney and as of October 28, 2008, the referral was pending for 420 days.   |
| Beltrami   | 0           | 1          | 0               | 0          | Two referrals were sent to the Beltrami County Attorney's office and a petition was filed for one case in 146 days. The decision not to file a petition was made on the second referral in 45 days.  |
| Benton   | 0           | 0          | 1               | 1          | Two referrals were sent to the Benton County Attorney's office. As of October 28, 2008, one case was pending a decision for 466 days. The Benton County Attorney decided not to pursue a petition on the other case within 44 days.  |
| Big Stone  | N/A         |            |                 |            |  |
| Blue Earth   | 0           | 0          | 1               | 1          | One referral was sent to the Blue Earth County Attorney's office and as of October 28, 2008, the referral was pending for 295 days.  |
| Brown  | N/A         |            |                 |            |  |
| Carlton  | 0           | 0          | 0               | 0          | One referral was sent to the Carlton County Attorney's office and in 28 days, the County Attorney decided not to pursue a petition.  |
| Carver   | 0           | 0          | 1               | 1          | One referral was sent to the Carver County Attorney's office and as of October 28, 2008, the case was pending for 316 days.  |
| Cass   | N/A         |            |                 |            |  |
| Chippewa   | N/A         |            |                 |            |  |
| Chisago  | N/A         |            |                 |            |  |
| Clay   | 1           | 0          | 1               | 1          | Two referrals were sent to the Clay County Attorney's office, the County Attorney determined that good cause existed to file a petition for one case only and acted within 88 days. As of October 28, 2008 the other case was pending for 162 days.  |
| Clearwater   | 1           | 0          | 0               | 0          | One referral was sent to the Clearwater County Attorney's office and a petition was filed in 97 days.  |
| Cook   | N/A         |            |                 |            |  |
| Cottonwood   | N/A         |            |                 |            |  |
| Crow Wing  | 0           | 0          | 1               | 1          | Three referrals were sent to the Crow Wing County Attorney's office and as of October 28, 2008, one case was pending for 428 days. The County Attorney decided not to file a petition on two cases in an average time of 373 days.   |

**Figure 5: Summary of County Actions & Response to the DOC Referrals in FY2008**

(Key: N/A (Not Applicable) County did not receive any DOC referrals in Fiscal Year 2008.)

| COUNTY    | CASES FILED |            | CASES PENDING   |            | OUTCOMES SUMMARY   |
|-----------|-------------|------------|-----------------|------------|--|
|           | ≤ 120 days  | > 120 days | Number of cases | ≥ 120 days |  |
| Dakota    | 0           | 0          | 2               | 2          | Three referrals were sent to the Dakota County Attorney's office. The County Attorney transferred one case to Ramsey. The decision not to file a petition was on the transferred referral was made and acted on in 46 days. As of October 28, 2008, the other cases were pending for 190 and 375 days respectively.  |
| Dodge     | N/A         |            |                 |            |  |
| Douglas   | 0           | 0          | 0               | 0          | One referral was sent to the Douglas County Attorney's office and the decision not to file a petition was made in six days.  |
| Faribault | 0           | 0          | 1               | 1          | One referral was sent to the Faribault County Attorney's office and was transferred to Watonwan County Attorney's office. The decision not to file a petition was made on the transferred referral within 235 days.  |
| Fillmore  | 0           | 0          | 0               | 0          | One referral was sent to the Fillmore County Attorney's office and the County Attorney decided not to file a petition within 51 days.  |
| Freeborn  | 0           | 0          | 1               | 1          | Two referrals were sent to the Freeborn County Attorney's office and as of October 28, 2008, one referral was pending for 379 days – transfer to Ramsey, then back to Freeborn. The decision not to file a petition was made in 78 days for the second referral which was transferred to Mower County.   |
| Goodhue   | 0           | 0          | 2               | 2          | Two referrals were sent to the Goodhue County Attorney's office. As of October 28, 2008, both cases were pending for 280 and 319 days respectively.  |
| Grant     | N/A         |            |                 |            |  |
| Hennepin  | 7           | 0          | 3               | 3          | There were 36 referrals for civil commitment sent to the Hennepin County Attorney's office. A petition was filed in less than 120 days on all seven referrals with an average time of 20.3 days. As of October 28, 2008, three cases were pending—two of were transferred to Ramsey and Washington counties—for 120, 179 and 224 days respectively. The third pending case was sent to Ramsey County and a decision not to file a petition was made within 82 days. The County Attorney determined not to file a petition for 26 cases – only two decisions were made over 120 days (124 and 210 days respectively) with the average time for the decision being made in approximately 37.5 days per case. |
| Houston   | N/A         |            |                 |            |  |
| Hubbard   | N/A         |            |                 |            |  |
| Isanti    | N/A         |            |                 |            |  |
| Itasca    | 0           | 2          | 0               | 0          | Three referrals were sent to the Itasca County Attorney's office and a petition was filed for two referrals within 199 days and 433 days (approx 1.2 yrs) respectively. The County Attorney decided not to file a petition on the third referral within 33 days.   |
| Jackson   | 1           | 0          | 0               | 0          | One referral was sent to the Jackson County Attorney's office and the county decided to file a petition within 94 days.  |
| Kanabec   | 3           | 0          | 0               | 0          | Three referrals were sent to the Kanabec County Attorney's office and petitions were filed for all three cases in 25, 44, and 75 days respectively (Kanabec County Attorney transferred one case to Isanti County).  |

**Figure 5: Summary of County Actions & Response to the DOC Referrals in FY2008**

(Key: N/A (Not Applicable) County did not receive any DOC referrals in Fiscal Year 2008.)

| COUNTY            | CASES FILED |            | CASES PENDING   |            | OUTCOMES SUMMARY  |
|-------------------|-------------|------------|-----------------|------------|---|
|                   | ≤ 120 days  | > 120 days | Number of cases | ≥ 120 days |   |
| Kandiyohi         | 0           | 0          | 1               | 1          | One referral was sent to the Kandiyohi County Attorney's office and as of October 28, 2008, the referral was pending for 440 days (approx 1.2 years).   |
| Kittson           | N/A         |            |                 |            |   |
| Koochiching       | N/A         |            |                 |            |   |
| Lac Qui Parle     | N/A         |            |                 |            |   |
| Lake              | N/A         |            |                 |            |   |
| Lake of the Woods | N/A         |            |                 |            |   |
| Le Sueur          | 0           | 0          | 1               | 1          | One referral was sent to the Le Sueur County Attorney's office and as of October 28, 2008, it was pending for 167 days.   |
| Lincoln           | N/A         |            |                 |            |   |
| Lyon              | 0           | 0          | 1               | 1          | Two referrals were sent to the Lyon County Attorney's office. The County Attorney transferred both cases – one to Lincoln and the other to Redwood County—and as of October 28, 2008 one referral was pending for 221 days. The decision not to file a petition for the second was made in 77 days.             |
| Mahnomen          | N/A         |            |                 |            |   |
| Marshall          | N/A         |            |                 |            |   |
| Martin            | 0           | 0          | 2               | 2          | Two referrals were sent to the Martin County Attorney's office and as of October 28, 2008, both cases were pending for 158 days and 179 days, respectively.   |
| McLeod            | 0           | 0          | 0               | 0          | One referral was sent to the McLeod County Attorney's office and the decision not to file a petition was made in 21 days.   |
| Meeker            | N/A         |            |                 |            |   |
| Mille Lacs        | 0           | 0          | 1               | 1          | One referral for civil commitment sent to the Mille Lacs County Attorney's office where it was transferred to the Ramsey County Attorney's office. As of October 28, 2008, the transferred referral was pending for 183 days.   |
| Morrison          | 0           | 0          | 1               | 1          | One referral was sent to the Morrison County Attorney's office then transferred to the Mille Lacs County Attorney's office and as of October 28, 2008, the transferred referral was pending for 435 days (approx 1.2 years).  |
| Mower             | 0           | 0          | 1               | 1          | One referral was sent to the Mower County Attorney's office then transferred to the Fillmore County Attorney's office and as of October 28, 2008, the transferred referral was pending for 242 days.  |
| Murray            | N/A         |            |                 |            |   |
| Nicollet          | 0           | 0          | 0               | 0          | One referral was sent to the Nicollet County Attorney's office where the decision not to file a petition was made in 61 days.   |
| Nobles            | N/A         |            |                 |            |   |
| Norman            | N/A         |            |                 |            |   |
| Olmsted           | 1           | 1          | 3               | 3          | Six referrals were sent to the Olmsted County Attorney's office. A petition was filed for two cases within 17 and 125 days respectively and the decision not to file a petition was made on only one case in 58 days. As of October 28, 2008, three cases were pending for 225, 333 and 445 days, respectively. |
| Otter tail        | 1           | 0          | 0               | 0          | One referral was sent to the Otter Tail County Attorney's office and a petition was filed in 38 days.   |
| Pennington        | N/A         |            |                 |            |   |

**Figure 5: Summary of County Actions & Response to the DOC Referrals in FY2008**

(Key: N/A (Not Applicable) County did not receive any DOC referrals in Fiscal Year 2008.)

| COUNTY    | CASES FILED |            | CASES PENDING   |            | OUTCOMES SUMMARY  |
|-----------|-------------|------------|-----------------|------------|---|
|           | ≤ 120 days  | > 120 days | Number of cases | ≥ 120 days |   |
| Pine      | 1           | 0          | 0               | 0          | One referral was sent to the Pine County Attorney's office and a petition was filed in 105 days.  |
| Pipestone | 0           | 1          | 0               | 0          | One referral was sent to the Pipestone County Attorney's office and a petition was filed in 137 days.   |
| Polk      | N/A         |            |                 |            |   |
| Pope      | N/A         |            |                 |            |   |
| Ramsey    | 0           | 1          | 6               | 6          | Nine referrals were sent to the Ramsey County Attorney's office and a petition was filed for only one case in 255 days. As of October 28, 2008, six referrals were pending (including a transferred referral to Dakota County) for over 120 days—162, 167, 168, 183, 239 and 287 days, respectively. The decision not to file a petition for two cases occurred in 30 days and 72 days, respectively. |
| Red Lake  | N/A         |            |                 |            |   |
| Redwood   | N/A         |            |                 |            |   |
| Renville  | N/A         |            |                 |            |   |
| Rice      | 0           | 0          | 1               | 1          | Two referrals were sent to the Rice County Attorney's office. One referral was transferred to Steel County and was pending for 333 days as of October 28, 2008 and a decision not to file a petition was made in 99 days on the second referral.  |
| Rock      | N/A         |            |                 |            |   |
| Roseau    | N/A         |            |                 |            |   |
| Scott     | 0           | 0          | 1               | 1          | Four referrals were sent to the Scott County Attorney's office. The decision not to file was made on one case in 20 days and on two cases that were transferred to Hennepin County in 19 and 60 days respectively. As of October 28, 2008, the fourth referral was pending for 167 days.  |
| Sherburne | 0           | 0          | 3               | 3          | Four referrals were sent to the Sherburne County Attorney's office and as of October 28, 2008, three referrals were pending for 131, 221, and 344 days respectively. The decision not to file a petition on the remaining case was made in 70 days.   |
| Sibley    | N/A         |            |                 |            |   |
| St. Louis | 0           | 0          | 0               | 0          | Six referrals were sent to the St. Louis County Attorney's office and the decision not to pursue a petition was made on all six cases in 19, 21, 40, 47, 81 and 159 days respectively.  |
| Stearns   | 1           | 0          | 0               | 0          | One referral was sent to the Stearns County Attorney's office and a petition was filed in 67 days.  |
| Steele    | N/A         |            |                 |            |   |
| Stevens   | N/A         |            |                 |            |   |
| Swift     | N/A         |            |                 |            |   |
| Todd      | 3           | 0          | 2               | 2          | Five referrals were sent to the Todd County Attorney's office and a petition was filed for three referrals in 32, 62 and 84 days respectively (including a transfer to Stearns County). As of October 28, 2008, two cases were pending, including a transferred case to Morrison County, for 179 days and 186 days respectively (total of 365 days).  |
| Traverse  | 0           | 1          | 0               | 0          | One referral was sent to the Traverse County Attorney's office and a petition was filed in 361 days.  |

**Figure 5: Summary of County Actions & Response to the DOC Referrals in FY2008**

(Key: N/A (Not Applicable) County did not receive any DOC referrals in Fiscal Year 2008.)

| COUNTY          | CASES FILED |            | CASES PENDING   |            | OUTCOMES SUMMARY   |
|-----------------|-------------|------------|-----------------|------------|--|
|                 | ≤ 120 days  | > 120 days | Number of cases | ≥ 120 days |  |
| Wabasha         | 0           | 0          | 0               | 0          | One referral was sent to the Wabasha County Attorney's office and the decision not to file a petition made in 190 days.  |
| Wadena          | N/A         |            |                 |            |  |
| Waseca          | N/A         |            |                 |            |  |
| Washington      | 1           | 1          | 1               | 1          | Three referrals were sent to the Washington County Attorney's office. The Department of Corrections also sent an initial letter to the Ramsey County Attorney's office for one of the three referrals sent to Washington County. Washington County was ultimately deemed the county of financial responsibility. A petition was filed for two referrals in 1 and 169 days respectively (including the shared-referral) and the third referral was pending for 224 days as of October 28, 2008. |
| Watonwan        | 0           | 0          | 1               | 1          | Two referrals were sent to the Watonwan County Attorney's office. As of October 28, 2008, one case was pending for 162 days. The decision not to file a petition was made in 101 days for the other referral.  |
| Wilkin          | 0           | 0          | 0               | 0          | One referral was sent to the Wilkin County Attorney's office where it was transferred to Clay County. The decision not to file a petition was made in 68 days.   |
| Winona          | 0           | 0          | 1               | 1          | One referral was sent to the Winona County Attorney's office and pending a decision for 305 days as of October 28, 2008.   |
| Wright          | 0           | 0          | 2               | 2          | Three referrals were sent to the Wright County Attorney's office. As of October 28, 2008, two referrals were pending for 236 and 428 days respectively, including the one transfer to Morrison County. The decision not to file a petition was made for the third referral in 431 days (approx 1.2 years).   |
| Yellow Medicine | N/A         |            |                 |            |  |

## Observations

Forty-seven counties received referrals from the DOC for a determination of “good cause” for civil commitment in fiscal year 2008. This was approximately a 4% increase from the number of counties that received referrals in the previous fiscal year. Of those 47 counties, 32% did not receive any referrals from the DOC in FY2007.

Seven metropolitan counties received almost half (49%) of the initial referrals from the DOC in FY2008, compared to 51% sent to 40 County Attorneys in Greater MN. The Hennepin County Attorney received the greatest number of referrals from the DOC in FY07 and FY08. All of the 46 referrals anticipating a decision from a County Attorney were pending for 120 days or more on October 28, 2008 (**Figure 5**).

### *Decision to File*

Of the 30 cases where petitions for civil commitment were filed by County Attorneys, 22 were filed within 120 days (about 16%) (**Figure 4**). The average time it took to make any decision (decision not to file or decision to file a petition) and act upon it was 76.04 days.

From July 1, 2007 to March 31, 2008, County Attorneys filed 60% of the total petitions for civil commitment reported for FY08 referrals; all the cases were filed in 120 days or less. The remaining 40% of petitions for commitment were filed between April 1 and October 28, 2008—of which 13% were filed in 120 days, and 27% over 120 days.

### *Decision Not to File*

The decision not to pursue a petition for civil commitment was made on 64 referrals (46%) and only eight of those referrals had the decision acted upon in over 120 days (**Figure 4**).

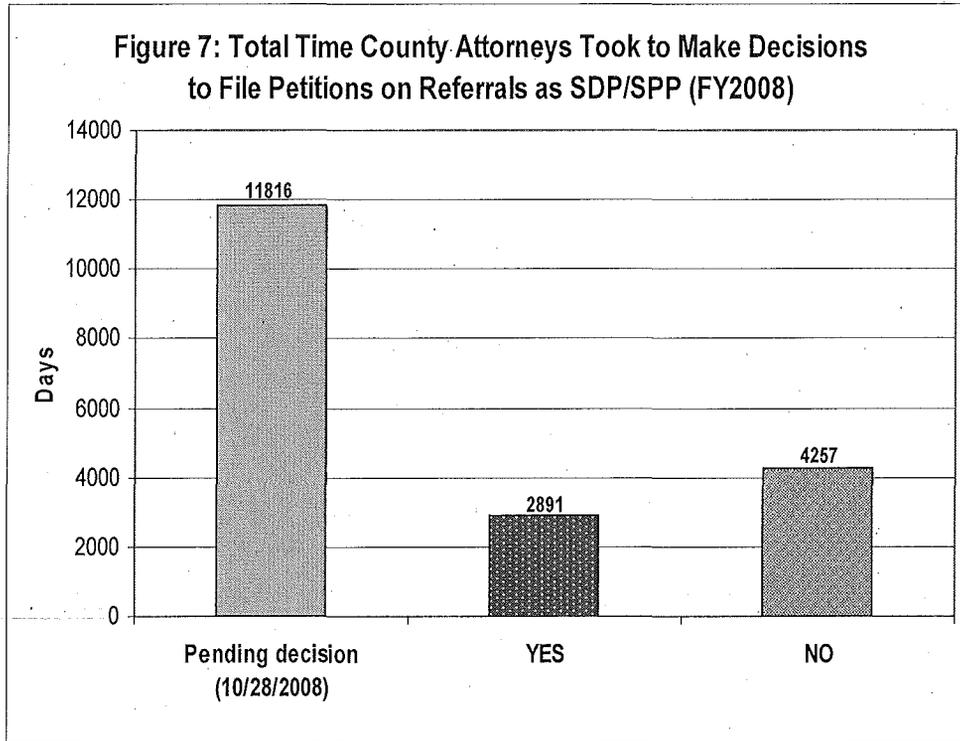
### *Decision Pending*

All “pending” referrals—total of 46 cases—spent an average of 256.9 days anticipating a decision (**Figure 4**). The amount of time spent “pending” ranged from 120 days to 466 days. Most of the cases anticipating any decision were pending a decision for over 200 days (**Figure 6**). Counties had not made any decision on 33% of the FY2008 referrals, and **Figure 6** shows that seven of those referrals had been pending for 437 days each (on average) as of October 28, 2008.

**Figure 6: FY2008 Pending Status Summary (as of 10/28/2008)**

| Time Pending              | Number of Cases | Average Time |
|---------------------------|-----------------|--------------|
| <i>Less than 200 days</i> | 19              | 164          |
| <i>201- 300 days</i>      | 12              | 244          |
| <i>301- 400 days</i>      | 8               | 338          |
| <i>Over 401 days</i>      | 7               | 437          |

*Note: 1 year = 365 days (or 366 days per leap year). CY2008 was a leap year.*



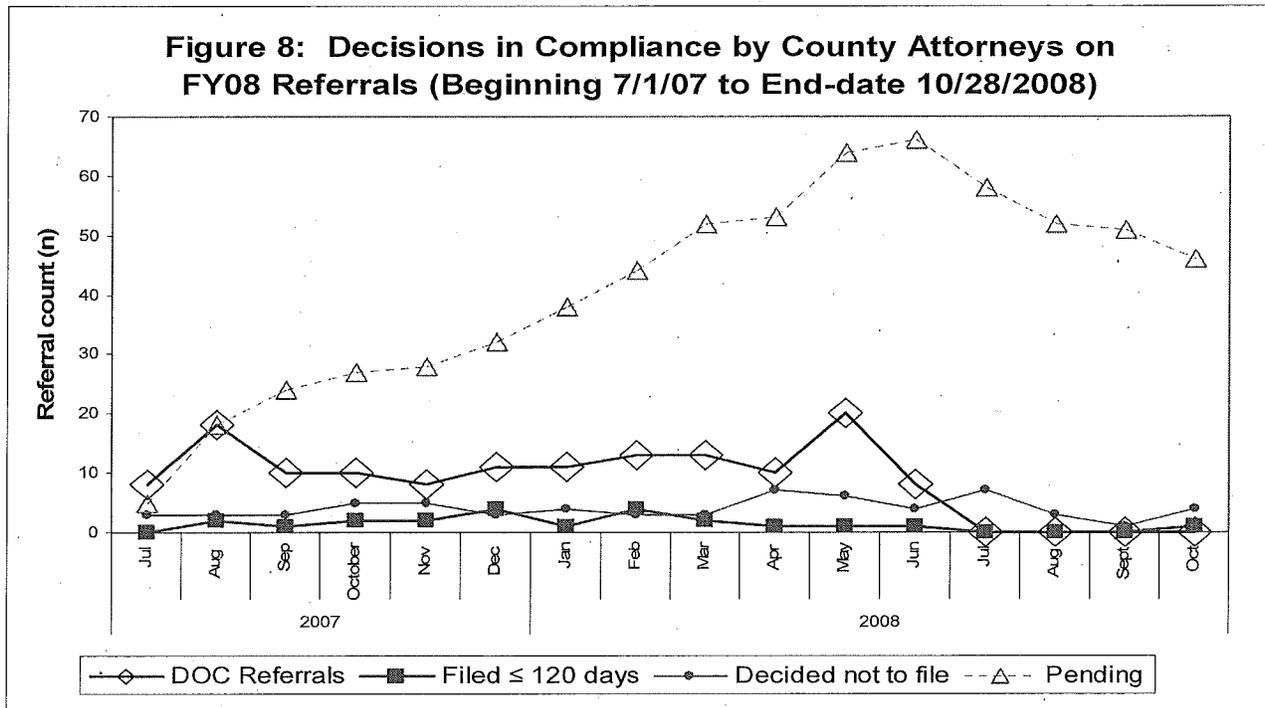
**Figure 7** demonstrates that more time was spent waiting for a decision, than the time it took to actually file or decide not to file a petition for civil commitment on a referral. MN County Attorneys and their designees spent: 2,891 total days on 30 referrals, determining whether those cases had good cause to file a petition and filing them (“YES”); 4,257 total days on 64 referrals deciding not to file petitions (“NO”); and as of October 28, 2008, had spent 11,816 days without making a decision on “pending” referrals.

## IV. CONCLUSIONS

County Attorneys acted in compliance with Minnesota Statutes section 253B.185, subdivision 8(c) on 16% of the referrals from the DOC in FY2008. The data suggests two assumptions about the County Attorneys' "good cause" determination process:

- (1) It took County Attorneys a significant amount of time to determine whether to file a petition. (While County Attorneys were determining "good cause," the DOC referred more cases to them sooner than they filed or decided not to file petitions.)
- (2) The order in which the County Attorneys acted on a referral was not based on the initial date the DOC sent the initial letter for determination of "good cause."

**Figure 8** captures actions by the DOC and County Attorneys each month from July 1, 2007 through the October 28, 2008 end-date. Only one petition (out of 5) was filed within 120 days after June 30, 2008 (Figure 8). The DOC referred eight or more cases to County Attorney offices each month. The number of decisions made by the County Attorney's offices never exceeded the number of referrals from the DOC at any point in time. The total number of cases pending increased each month, especially in March and May.



Overall, County Attorneys and designees spent an average of 2,891 days (almost double the time taken in FY2007) before filing petitions for civil commitment in FY2008. A lower percentage of referrals had petitions filed on time in FY08 compared to those reported for FY07. Fiscal year 2008 also had a lower percentage of total petitions filed for referrals from the DOC compared to those reported for FY2007 (attributed to the later deadline of January 31, 2008 in FY2008). The additional 95 days allotted in FY07 data collection provided more information on transfers and their impact on the referral process. In FY2008, half of the cases transferred to another county had a decision made on them. Transfers only affected 17% of the referrals in October 28, 2008, but it would be interesting to see if there is a significant difference in January 31, 2009.

## V. SUPPLEMENTS

### Supplement 1:

2008 Minnesota Statute, section 609.1351 states:

#### **609.1351. PETITION FOR CIVIL COMMITMENT.**

When a court sentences a person under section 609.342, 609.343, 609.344, 609.345, 609.3453, or 609.3455, subdivision 3a, the court shall make a preliminary determination whether in the court's opinion a petition under section 253B.185 may be appropriate and include the determination as part of the sentencing order. If the court determines that a petition may be appropriate, the court shall forward its preliminary determination along with supporting documentation to the County Attorney.

## VI. REFERENCES

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