

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 2010



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 Statute 253B.185, subdivision 8 (c) requires the Commissioner of the Department of Human Services (“DHS” or “Department”) to file an annual report with the Legislature documenting county compliance with the timeframes for reviewing and filing a petition for commitment as a sexually dangerous person (SDP) or sexual psychopathic personality (SPP) as required in subdivision 8 (a) of that statute.

The statute specifies that within 120 days of a referral from the court, under section [609.1351](#), or a referral from the Department of Corrections (“DOC”), pursuant to section [244.05, subdivision 7](#), that a county attorney must make a preliminary determination whether good cause exists to file a petition. If good cause exists, the county attorney or designee shall file the petition with the court within those same 120 days

The 120-day time period that begins when the county attorney receives:

1. A preliminary determination from the court that a petition for commitment may be appropriate for a person who is being sentenced for a criminal sexual conduct offense;
or
2. A referral from the commissioner of corrections that a petition for commitment may be appropriate for a person who is approaching eligibility for supervised release.

Third Year of Reporting

This is the third year this compliance report is being submitted to the Legislature. Compliance for the FY09 report was measured from July 1, 2008 to June 30, 2009. To prepare this report, DHS surveyed only those County attorneys who received referrals from the DOC in the twelve-month period of FY2009. The Department is unaware of any referrals made directly from the court to a county attorney.

Primary Findings

In Fiscal Year 2009, 124 referrals for possible commitment were sent from the DOC to county attorneys. These referrals were sent to 44 of the 87 Minnesota counties. Fewer referrals were sent to county attorneys from the DOC compared to the number of referrals sent in Fiscal Year 2007 and 2008. County attorneys made a decision on 77% of the referrals in FY09 versus 67% in FY08 and 76% in FY07.

As of December 31, 2009, 21 of the 124 DOC referrals (17%) 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. In FY08, 47 counties received DOC referrals and filed petitions for 16% of those referrals within 120 days) Of the petitions filed within 120 days, 23% were by the metro counties and 77% from the greater Minnesota counties. In addition, petitions were filed in an additional 13 cases outside of the 120 day requirement.

There were 28 referrals remaining from FY09 that were still under review a decision from the county attorney as of December 31, 2009. All cases “under review” had been awaiting a decision between 195 days and up to 454 days from referral.

Finally, the decision not to pursue a petition for civil commitment was made by the County attorneys on 62 referrals (49.6%) by December 31, 2009. Of the 62 referrals the county attorneys declined to file 39 (63%) were decided within 120 days.

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 subsequent 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 does not exist to file a petition for civil commitment..
Decision under review	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.
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 (FY09) was designated to be December 31, 2009. The end date for last year’s report (FY08) was designated to be October 28, 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.

II. BACKGROUND

During the 2007 session, the Minnesota State Legislature directed the Minnesota Department of Human Services (DHS) to present 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.

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 felt to be premature for a court to make a determination or decision for referral at sentencing, especially when a person is being sent to the DOC, when their history of treatment has yet to be established for commitment requirement purposes¹.

During FY09, 124 referrals were sent from the DOC to 44 County attorneys for a determination of whether “good cause” existed to file a petition 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 16 fewer referrals sent by the DOC to county attorneys in FY2009. There were fewer counties (a total of 44 versus 47 in FY08) which received a referral from the DOC in FY2009. Most of the referrals in FY2009 were sent to Hennepin, Anoka, Ramsey and St. Louis counties, which received 18%, 11%, 6% and 5% of all referrals, respectively. Sixteen referrals from the DOC went to counties that did not receive any referrals in FY2008. Furthermore, seventeen counties that received referrals in FY2008 did not receive any referrals in FY2009.

¹ *In re Dennis Darol Linehan*, 594 N.W.2d 867 (Minn. 1999).

The date used to measure “decisions not to file” or number of days “under review” in fiscal year 2009 was December 31, 2009. 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:

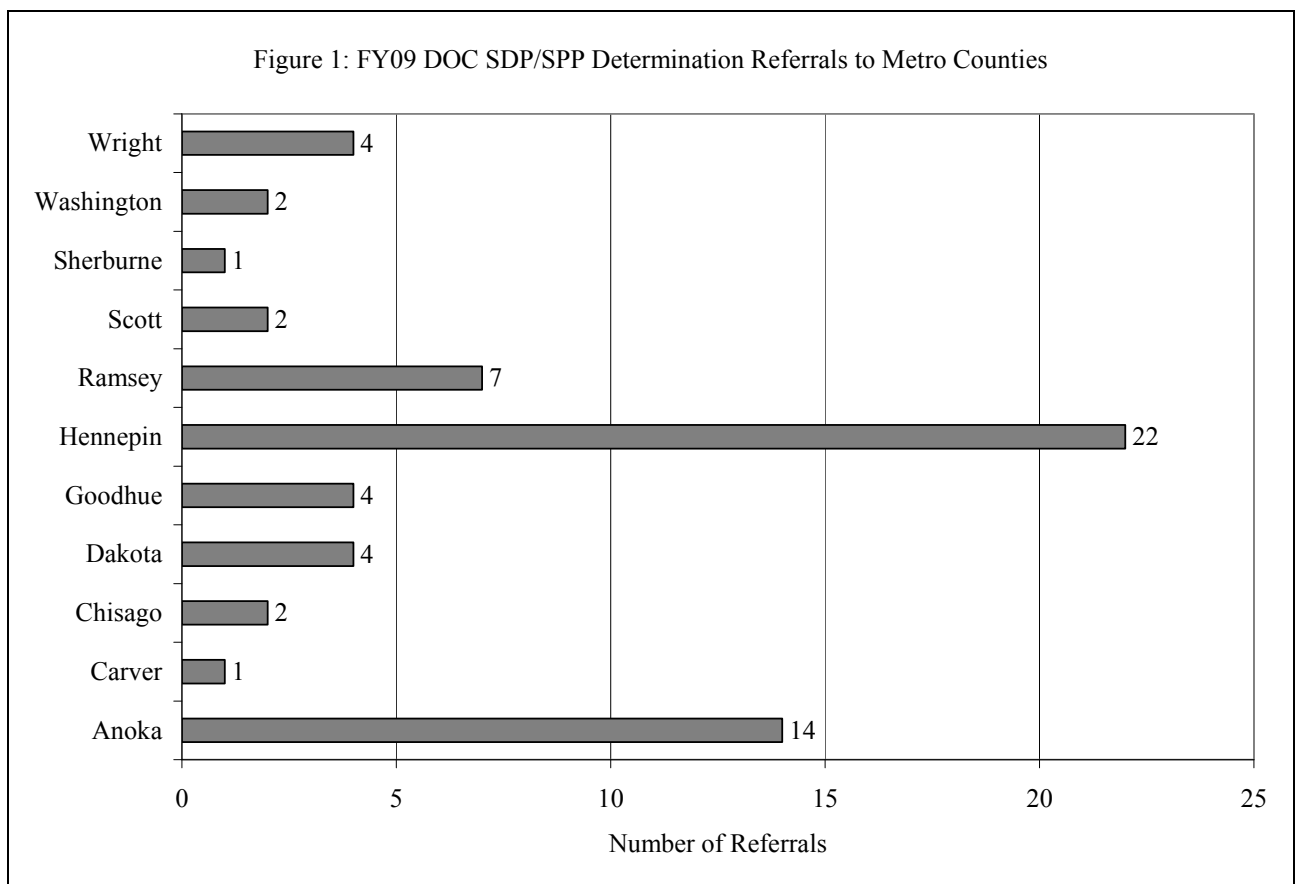
- 1) The date a petition was filed for the individual case; or
- 2) The date of notification by the county to the DOC regarding a decision; or
- 3) December 31, 2009.

II. RESULTS

In Fiscal Year 2009, the Minnesota Department of Corrections (DOC) referred 124 DOC inmates to counties for a determination to be made on whether they should be petitioned for civil commitment as a sexually dangerous person and/or sexual psychopathic personality.

Figures 1, 2, and 3 show by county, where each of the 124 referrals for civil commitment were sent separated in the figures between 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 appropriate county, determining that good cause did not exist to file a petition for civil commitment or keeping the referral under review.

Figure 1: The Metro counties received a total of 63 referrals (51% of all referrals) from the DOC in FY2009. Hennepin County received the greatest number of referrals with 35% of the referrals to Metro Counties (18% overall referrals). The average number of referrals to each Metro county in FY2009 was 5.7 cases. The average referral sent to each Metro county lowers to 2.2 cases without Hennepin County included.



Figures 2 and 3: The counties in Greater Minnesota received a total of 61 referrals (49% of all referrals) from the DOC in FY2009. The average number of referrals to counties in Greater Minnesota in FY2009 was 1.8 cases.

Figure 2: FY09 DOC SDP/SPP Determination Referrals to Greater MN Counties I

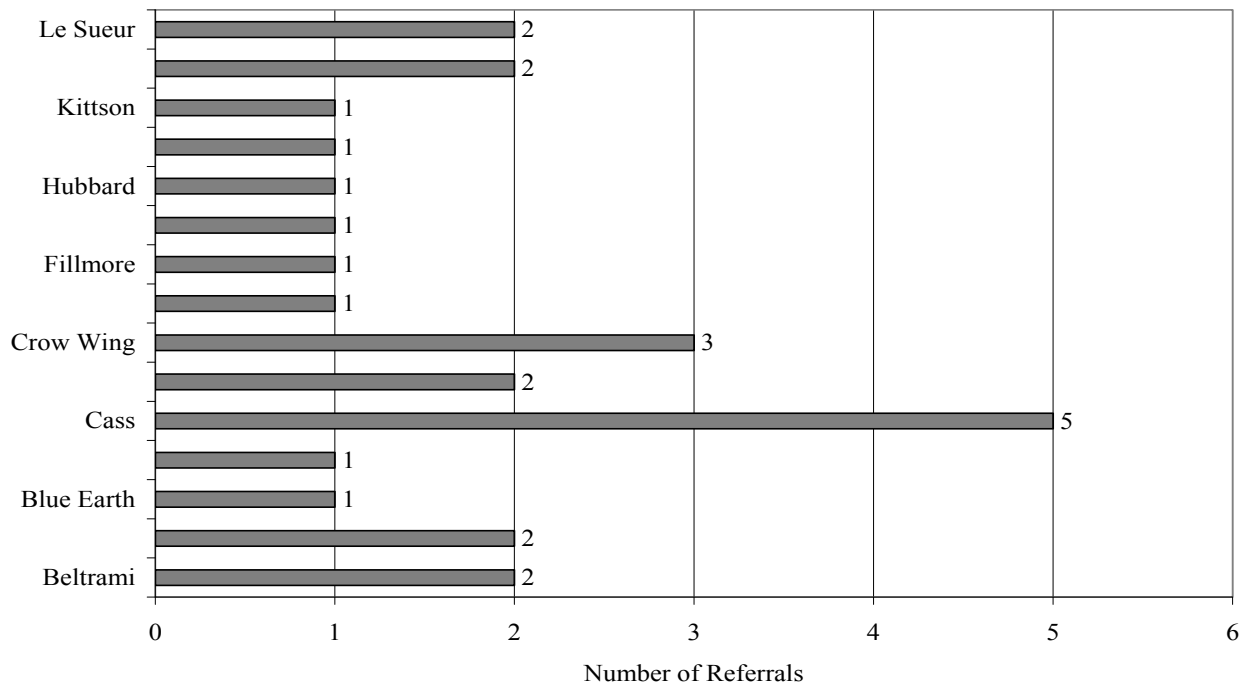
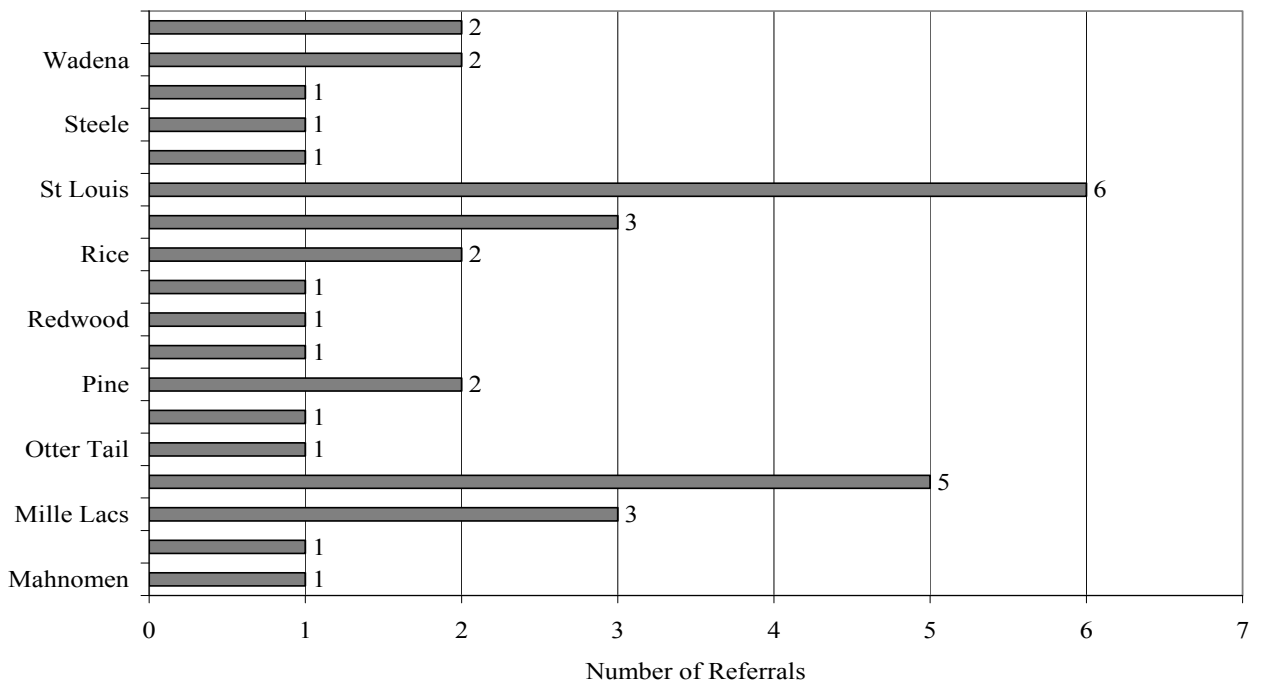


Figure 3: FY09 DOC SDP/SPP Determination Referrals to Greater MN Counties II



FY2009 Referral Outcomes

To be compliant with Minnesota Statutes section 253B.185, all referrals made by the DOC to counties must have a determination regarding disposition of the case within 120 days

Figure 4 shows that county attorneys pursued and filed petitions for 21 referrals, declined to file a petition for 62 referrals, and had 28 referrals still under review as of December 31, 2009.

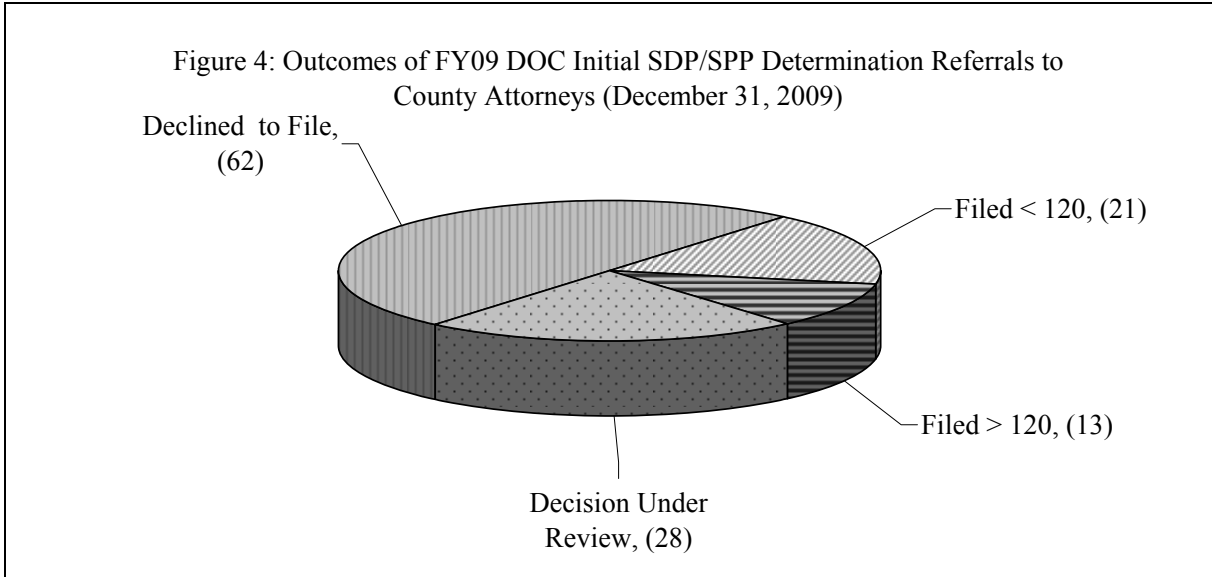


Figure 5 summarizes (1) which counties received referrals in FY2009; (2) the number of cases reviewed in compliance with the 120-day requirement; and (3) the number of cases from FY09 still under review as of December 31,

Figure 5: Summary of County Actions & Response to the DOC Referrals in FY09 (as of December 31, 2009)						
County	Cases Filed		Cases Declined to File Petition		Cases Under Review	Outcomes Summary
	≤120 Days	>120 Days	≤120 Days	>120 Days	Number of Cases > 120 Days	
Anoka	3	1	3	2	5	The five cases remaining under review have been under review between 302 days and 454 days.
Beltrami	1		1			One case was filed within 88 days. The other case was declined in 32 days.
Benton			1		1	Case was declined in 29 days. The case under review is at 335 days.
Blue Earth					1	As of December 31, 2009 the one referral has been under review for 342 days.
Brown			1			One referral was declined in 88 days.
Carver		1				One referral took 138 days.
Cass	2			1	2	The county took 240 days to make a determination to decline filing. There are two cases still under review at 199 days and 237 days.
Chisago				1	1	Of the two cases referred the decision to decline case took 333 days for determination and the case still under review is at 300 days.
Clay		1		1		Of the two cases referred the case declined took 283 days and the case filed took 414 days to make a determination.
Crow Wing	1	1			1	The one case currently under review is at 245 days. One case was filed at 379 days from referral date.
Dakota			1	3		Average number days that the three cases took to decline was 302 days.
Douglas	1					It took 68 days to to file the petition..
Fillmore		1				Took 330 days to file thePetition

Figure 5: Summary of County Actions & Response to the DOC Referrals in FY09
(as of December 31, 2009)

County	Cases Filed		Cases Declined to File Petition		Cases Under Review	Outcomes Summary
	≤120 Days	>120 Days	≤120 Days	>120 Days	Number of Cases > 120 Days	
Freeborn					1	The one case is still under review at 322 days
Goodhue			1	2	1	Three cases were declined. Two took 151 and one took 263 days to decide.. The case being still under review is at 295 days.
Hennepin		2	15	3	2	Of the three cases that took over 120 days to decline the average was 200 days. The two cases still under review are currently at 328 and 279 days.
Hubbard	1					One case referred took 115 days to file.
Isanti			1			One case referred took 22 days to decline.
Kittson					1	The case under review is at 261 days.
Koochiching	1		1			The case filed took 12 days and the case declined took 38 days to make the determination.
LeSueur		1	1			The case that was filed took 348 days.
Mahnomen				1		One case referred took 406 days to decline.
Martin	1					One case referred took 117 days to decline.
Mille Lacs				1	2	One case declined took 200 days. Two cases still under review are currently at 430 and 199 days.
Olmsted	2	1	1		1	The case under review is awaiting a criminal case decision. The case filed over the 120 days took 314 days to determine to file.
Ottertail			1			Case took 51 days to decline.
Pennington					1	Case has been under review for 402 days.
Pine					2	Two cases have been under review for 317 and 262 days.
Polk		1				One case took 380 days to file.

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(as of December 31, 2009)

County	Cases Filed		Cases Declined to File Petition		Cases Under Review	Outcomes Summary
	≤120 Days	>120 Days	≤120 Days	>120 Days	Number of Cases > 120 Days	
Ramsey	4	1	1	1		The one case took 234 days to file. One case took 130 days to decline.
Redwood			1			One case took 48 days to decline.
Renville		1				One case took 394 days to file the petition.
Rice			1	1		One case took 25 days to decline while the other took 330 days.
Roseau	2		1			On average it took 66 days to determine referred cases.
Scott			1		1	The decision to decline took 11 days whereas there is still a case under review at 255 days.
Sherburne					1	One case referred has been under review for 377 days.
St. Louis			2	4		The 4 cases determined after 120 days took on average 146 days to decide.
Stearns	1					One case referred took 20 days to determine.
Steele					1	One case has been under review for 287 days.
Todd			1			One case took 27 days to decline.
Wadena					2	The two cases under review are at 317 and 216 days.
Washington	1	1				One case took 11 days to determine, the other case took 179 days.
Winona			1		1	The case declined took 31 days while the case under review is at 413 days.
Wright			2	2		Four cases referred took 2, 53, 266 and 316 days to decline.

Observations

Forty-four counties received referrals from the DOC in fiscal year 2009. This was almost a 3% decrease from the number of counties that received referrals in the previous fiscal year. Of those 44 counties, 34% did not receive any referrals from the DOC in FY2008.

Eleven metropolitan counties received half (51%) of the initial referrals from the DOC in FY2009, compared to 49% sent to 33 county attorneys in Greater Minnesota. The Hennepin County attorney received the greatest number of referrals from the DOC in FY07, FY08, and FY09. All of the 28 referrals waiting for a decision from a county attorney have been under review for 120 days or more as of December 31, 2009. (**Figure 5**).

Decision to File

Of the 34 cases where petitions for civil commitment were filed by county attorneys, 21 were filed within 120 days (approximately 62%) (**Figure 4**). The average time it took to make any decision (decision not to file or decision to file a petition) and act upon the decision was 50.62 days.

Decision Not to File

The decision to decline filing petition for civil commitment was made on 62 referrals (50%) which on average took 115 days anticipating a decision (**Figure 7**) and twenty-three of those referrals had the decision acted upon in over 120 days

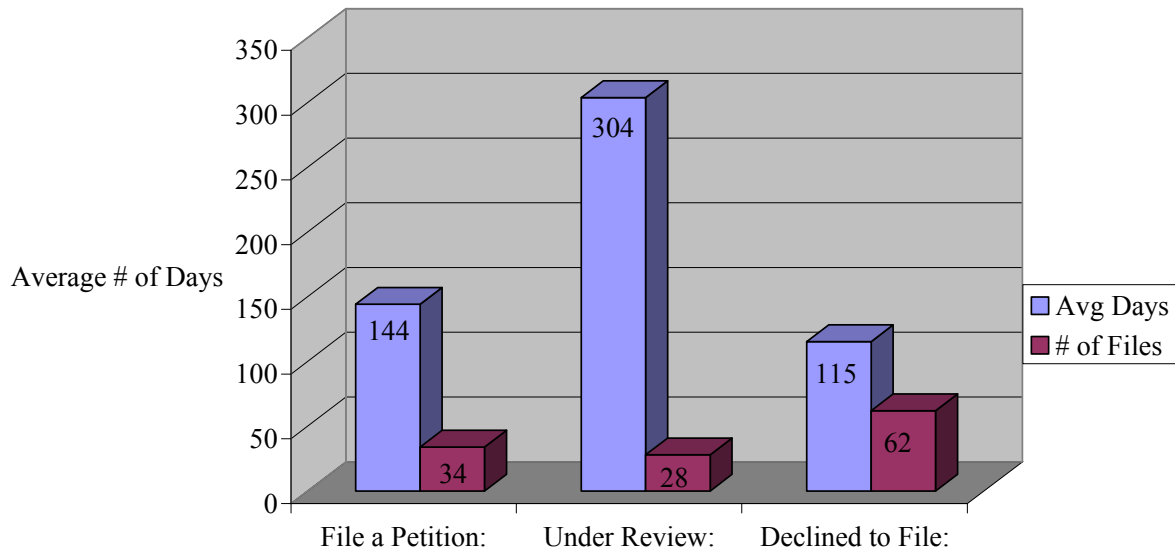
Decision Under Review

On average the “under review” referrals—total of 28 cases—spent 304 days waiting for a decision (**Figure 7**). Most of the cases were under review for over 200 days (**Figure 6**). As of December 31, 2009, counties still had 23% of the FY2009 referrals under review. **Figure 6** shows that four of those referrals had been under review for 425 days (on average).

Figure 6: FY09 Under Review Status Summary (as of 12/31/2009)

	< 200 Days	201-300	301-400	Over 401
# of Cases	3.00	12.00	9.00	4.00
Average of Time	198	260	344	425

Figure 7: Average Time For a Decision on Referrals (FY09)



IV. CONCLUSIONS

County attorneys complied with Minnesota Statutes section 253B.185, subdivision 8(c) on 48% of the referrals from the DOC in FY2009. The data compared to FY08 at 16% suggests that the county attorneys have increased the efficiency with which they act on DOC referrals by more than doubling their percentage of reviewed and filed cases within 120 days.

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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