

House Research Act Summary

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Article 1: Appropriations

Overview

Article 1 contains appropriations for the following state government entities: Supreme Court, Court of Appeals, Trial Courts, Tax Court, Uniform Laws Commission, Board on Judicial Standards, Board of Public Defense, Department of Public Safety, Peace Officers Standards and Training Board, Private Detective Board, Department of Human Rights, Department of Corrections, Sentencing Guidelines Commission, and Board of Veterinary Medicine.

- 1 **Public safety appropriations.** Describes, in general terms, the appropriations contained in this article.
- 2 **Supreme Court.** Appropriates funds for FY06 and FY07.

Subd. 1. Total appropriation.

Subd. 2. Supreme Court operations.

- ▶ Authorizes a judicial salary increase of 1.5 percent each year.
- ▶ Authorizes a \$5,000 contingent fund account.
- ▶ Establishes a CHIPS working group to examine and make recommendations on (1) the use of the public defender in CHIPS hearings and (2) how to reduce the need for CHIPS hearings. Requires a report to the legislature in January, 2006.

Subd. 3. Civil legal services. Requires \$877,000 of the appropriation to be used for family law matters.

- 3 **Court of appeals.** Appropriates funds for FY06 and FY07.
- 4 **Trial courts.** Appropriates funds for FY06 and FY07.

- ▶ Appropriates \$250,000 each year to develop and expand specialty courts. Requires a report to the legislature on how the funds were used.

- 5 **Tax court.** Appropriates funds for FY06 and FY07.
- 6 **Uniform Laws Commission.** Appropriates funds for FY06 and FY07. Dedicates \$12,000 the first year and \$6,000 the second year to pay for membership dues owed by the commission.

- 7 **Board on Judicial Standards.** Appropriates funds for FY06 and FY07. Allocates \$25,000 each year as a one-time appropriation to cover special hearing costs.
- 8 **Board of Public Defense.** Appropriates funds for FY06 and FY07.
- 9 **Department of Public Safety.** Appropriates funds for FY06 and FY07.

Subd. 1. Total appropriation.

Subd. 2. Emergency management. Permits faith-based organizations to apply for homeland security grants.

Subd. 3. Criminal apprehension. Cuts the Department's budget by \$245,000 the first year and \$250,000 the second year. Allocates funds for: cross-jurisdictional investigations; BCA lab activities; DWI lab analysis (from the trunk highway fund); DWI policy reforms (*See*, Article 18); an automated fingerprint identification system; the predatory offender registration system; the Criminal Justice Information Systems Audit Trail; DNA analysis; livescan; and methamphetamine investigation (10 new officers).

Subd. 4. Fire Marshal.

Subd. 5. Alcohol and Gambling Enforcement.

Subd. 6. Office of Justice Programs. Allocates funds for: gang and narcotics strike force; crime victim assistance grants; battered women's shelters; methamphetamine treatment grants; financial crimes task force; human trafficking assessment; youth intervention programs; and homelessness pilot projects.

Subd. 7. 911 Emergency Services/ARMER. Appropriates funds from the 911 special revenue account for prior obligations to telephone companies, public safety answering points, medical resource communication centers, and the shared public safety radio system.

Subd. 8. 800 MHz Public Safety Radio and Communication System. Appropriates money from the 911 bond proceeds account for expanding the public safety radio system from Rochester to St. Cloud.

Subd. 9. Administration. Allocates funds for the public safety officers' health insurance reimbursement program.

Subd. 9. Driver and Vehicle Services. Allocates funds to suspend licenses of persons who steal gasoline.

- 10 **Peace Officers Standards and Training Board.** Appropriates funds for FY06 and FY07. Specifies that the appropriation is from the peace officer training account in the special revenue fund. Amounts deposited in the fund in excess of the amount appropriated must be deposited in the general fund. Specifies an amount that is available for technology improvements and peace officer training reimbursement grants.
- 11 **Private Detective Board.** Appropriates funds for FY06 and FY07.
- 12 **Department of Human Rights.** Appropriates funds for FY06 and FY07.
- 13 **Department of Corrections.** Appropriates funds for FY06 and FY07.

Subd. 1. Total appropriation.

Subd. 2. Correctional institutions. Requires the commissioner to charge a rental per diem at Rush City that is equal to or greater than the department’s actual per diem. Authorizes the commissioner to use the per diems collected to fund prison operations. Allocates funds for: apprehending and tracking level III sex offenders; sex offender treatment and transitional services; health services; chemical dependency treatment. Establishes a working group on inmate labor and requires the group to submit a report to the legislature.

Subd. 3. Community services. Allocates funds for: housing short-term offenders in county jails; tracking bracelets for sex offenders [*See*, HF 384]; end-of-confinement reviews; community supervision; intensive supervised release; sex offender assessment reimbursements; sex offender treatment and polygraphs; county probation officers; supervision and aftercare of drug offenders. Requires reports on electronic monitoring of sex offenders.

Subd. 4. Operations support. Provides for an agency cut and report on offenders released under article 13’s drug offender release provisions.

14 **Sentencing guidelines.** Appropriates funds for FY06 and FY07.

15 **Board of Veterinary Medicine.** Appropriates money for a methamphetamine study.

**Article 2: Sex Offenders
Mandatory Life Sentences for Certain Egregious
Repeat Sex Offenses; Conditional Release;
Other Sentencing Changes**

Overview

Article 2 contains the bill’s sex offender sentencing changes, including life-without-release and indeterminate life sentences, the conditional release changes, and the new crime of criminal sexual predatory conduct. It also provides for life-without-release sentences for premeditated first-degree murder.

1 **Reduction of sentence; inmates sentenced for crimes committed before 1993.** Makes a conforming change related to article 2, section 21.

2 **Rules.** Clarifies that the commissioner of corrections’ rulemaking authority relating to the revocation of supervised release also applies to conditional release.

3 **Minimum imprisonment, life sentence.** Provides that an offender serving a life without release sentence (see article 2, section 21) may not be released from prison. Provides that an offender serving an indeterminate life sentence (see article 2, section 21) may not be given supervised release without having served the minimum term of imprisonment as specified by the sentencing court. Requires life-without-release sentences for premeditated first-degree murder.

4 **Supervised release, life sentence.** Requires the commissioner of corrections, when considering whether to give supervised release to an offender serving an indeterminate life sentence (see article 2, section 21), to consider at a minimum:

- the risk the offender poses to the community, if released;

- the offender’s progress in treatment;
- the offender’s behavior while incarcerated;
- psychological or other diagnostic evaluations of the offender;
- the offender’s criminal history; and
- any other relevant conduct of the offender while incarcerated or before incarceration.

The commissioner may not give supervised release to the offender unless:

- while in prison, the offender has successfully completed appropriate sex offender treatment;
- while in prison, the offender has been assessed for chemical dependency and mental health needs and, if appropriate, has successfully completed necessary treatment; and
- a comprehensive individual release plan is in place for the offender that ensures that the offender will have suitable housing and receive appropriate aftercare and treatment, and includes an employment/education plan for the offender.

Also makes conforming changes relating to article 2, section 3.

- 5 Life without release.** Amends the criminal code=s heinous crimes sentencing provision to require a life- without-release sentence for premeditated first-degree murder.
- 6 Mandatory increased sentence.** Adds a cross-reference to the new crime of criminal sexual predatory conduct (see article 2, section 20). Strikes language relating to court findings regarding whether the necessary prongs of the law have been met. Substitutes for this a determination by the fact finder. These changes are necessary in light of the 2004 United States Supreme court decision, *Blakely v. Washington*. Strikes other language that is no longer necessary in light of the changes made by this article.
- 7 Predatory crime.** Strikes the definition of Apredatory crime.@ Replaces this with a cross-reference to what is essentially the same definition in article 2, section 11.
- 8 Danger to public safety.** Makes the same substitution of a fact finder determination for a court finding as was made in article 2, section 6.
- 9 Conditional release.** Strikes language relating to the conditional release of offenders sentenced under this law. Instead, adds a cross-reference to article 2, section 21.
- 10 Coercion.** Amends the definition of Acoercion@ for purposes of the criminal sexual conduct laws. Clarifies the language by explicitly including the use by the actor of confinement, or superior size or strength, against the victim, that causes the victim to submit to sexual penetration or contact against the victim=s will.
- 11 Predatory crime.** Defines Apredatory crime@ for purposes of the criminal sexual conduct laws. This definition is nearly identical to the definition stricken from the patterned and predatory offender sentencing law in article 2, section 7. The new definition does not include criminal sexual conduct in the first- to fourth-degrees because a reference to these crimes is unnecessary under the changes made by the article. In addition, it does not include incest.
- 12-13 Criminal sexual conduct – first-degree.** Amend the first-degree criminal sexual conduct

crime by making conforming changes relating to article 2, section 21.

- 14-15 Criminal sexual conduct – second-degree.** Amend the second-degree criminal sexual conduct crime by making conforming changes relating to article 2, section 21.
- 16-17 Criminal sexual conduct – third-degree.** Amend the third-degree criminal sexual conduct crime by making conforming changes relating to article 2, section 21.
- 18-19 Criminal sexual conduct – fourth-degree.** Amend the fourth-degree criminal sexual conduct crime by making conforming changes relating to article 2, section 21.
- 20 Criminal sexual predatory conduct.** Creates a new substantive crime known as Acriminal sexual predatory conduct.@ This crime occurs if an offender commits a predatory crime (see definition in article 2, section 11) that was motivated by the offender=s sexual impulses or was committed as part of a predatory pattern of behavior that had criminal sexual conduct as its goal. Provides that the statutory maximum sentence for this offense is 25 percent longer than for the underlying predatory crime.

If the violation is committed by a person with a previous sex offense conviction, as defined in article 2, section 21, the statutory maximum is 50 percent longer than for the underlying predatory crime. Also authorizes a fine of up to \$20,000. An offender convicted of violating this section may be subject to the life sentence and conditional release provisions of article 2, section 21.

- 21 Dangerous sex offenders; life sentences; conditional release.** Creates a new section of law addressing life-without-release and indeterminate life sentences for certain sex offenders and the conditional release of sex offenders.

Subd. 1. Definitions. Defines Aconviction,@ Aextreme inhumane conditions,@ Aheinous element,@ Amutilation,@ Aprevious sex offense conviction,@ Aprior sex offense conviction,@ Asex offense,@ Atorture,@ and Atwo previous sex offense convictions.@ Of note, Aconviction@ includes convictions as an extended jurisdiction juvenile for violations of first- through third-degree criminal sexual conduct or the new criminal sexual predatory conduct crime if the adult sentence has been executed. Aprevious sex offense conviction@ is defined to be a Atrue prior@ offense. That is to say that the offender must have committed, been convicted, and been sentenced for the previous sex offense before the commission of the present sex offense. APrior sex offense conviction@ does not require this sequencing of events. Thus, a person who has committed two sex offenses but has not been convicted of either would be considered to have a prior sex offense conviction once the offender has been convicted for the first offense even though the present offense occurred before the actual conviction for the prior offense. Asex offense@ includes first-through fifth-degree criminal sexual conduct offenses and criminal sexual predatory conduct, and similar laws from other jurisdictions. Aheinous element@ includes situations where: the offender tortured the victim; the offender intentionally inflicted great bodily harm upon the victim; the offender intentionally mutilated the victim; the offender exposed the victim to extreme inhumane conditions; the offender was armed with a dangerous weapon and used or threatened to use the weapon to cause the victim to submit; the offense involved sexual penetration or sexual contact with more than one victim; the offense involved more than one perpetrator engaging in sexual penetration or sexual contact with the victim; or the offender moved the victim from one place to another and did not release the victim in a safe place.

Subd. 2. Mandatory life sentence without release. Provides for a mandatory

life-without-release sentence for offenders who are convicted of certain clauses of first- or second-degree criminal sexual conduct involving force or violence (i.e., where circumstances exist that cause the victim to have a reasonable fear of great bodily harm; where the offender is armed with a dangerous weapon; where the offender causes personal injury to the victim under specified conditions; where the offender is aided or abetted by one or more accomplices under specified conditions; or where the offender has a family-type relationship to a victim under 16 and specified conditions exist), and:

- the fact finder determines (by the “beyond a reasonable doubt” standard) that two or more heinous elements exist; or
- the offender has a previous sex offense conviction (i.e., a “true prior” offense) for first-, second-, or third-degree criminal sexual conduct and the fact finder determines that a heinous element exists for the present offense.

Prohibits the fact finder from considering a heinous element if it was an element of the underlying first- or second-degree criminal sexual conduct violation. Also prohibits the fact finder from using the same underlying facts to support a determination that multiple heinous elements exist.

Subd. 3. Mandatory life; first-time offenders. Provides for a mandatory indeterminate life sentence for offenders who are convicted of certain clauses of first- or second-degree criminal sexual conduct (same clauses described in subdivision 2) and the fact finder determines that a heinous element exists. Prohibits the fact finder from considering a heinous element if it was an element of the underlying first- or second-degree criminal sexual conduct violation.

Subd. 4. Mandatory life; repeat offenders. Provides for a mandatory indeterminate life sentence for offenders who are convicted of violating first- through fourth-degree criminal sexual conduct or criminal sexual predatory conduct if:

- the offender has two previous sex offense convictions (i.e., true priors);
- the offender has a previous sex offense conviction (i.e., a true prior); and
- the present offense involved an aggravating factor that would provide grounds for an upward durational departure; or
- the offender received an upward durational departure for the previous sex offense conviction or was sentenced under the patterned and predatory sex offender sentencing law for the previous sex offense conviction; or
- the offender has two prior sex offense convictions (not necessarily true priors) and the prior convictions and present offense involved at least three separate victims, and:
- the present offense involved an aggravating factor that would provide grounds for an upward durational departure; or
- the offender received an upward durational departure for one of the prior sex offense convictions or was sentenced under the patterned and predatory offender sentencing law for one of the prior sex offense convictions.

Of note, if the present offense is a fourth-degree criminal sexual conduct offense, the offender is not subject to the indeterminate life sentence unless the offender=s

previous or prior sex offense convictions that are being used to enhance the sentence were for first- through third-degree criminal sexual conduct or criminal sexual predatory conduct.

Subd. 5. Life sentences; minimum term of imprisonment. Requires courts sentencing offenders to indeterminate life sentences under subdivision 3 or 4 to specify a minimum term of imprisonment, based on the sentencing guidelines or applicable mandatory sentences, that must be served before the offender may be considered for release.

Subd. 6. Mandatory ten-year conditional release term. Provides that when an offender is released from prison for a violation of first- through fourth-degree criminal sexual conduct or criminal sexual predatory conduct, the person must be placed on conditional release for ten years. Under current law, offenders released from prison for violating first- through fourth-degree criminal sexual conduct receive a five-year conditional release term unless the offender is a repeat offender, in which case the conditional release term is ten years.

Subd. 7. Mandatory life-time conditional release. Provides that if an offender sentenced to an indeterminate life sentence under subdivision 3 or 4 is released from prison, the offender must be placed on conditional release for the remainder of the offender=s life. Also provides that if an offender is released from prison for a violation of first- through fourth-degree criminal sexual conduct or criminal sexual predatory conduct, and the offender has a previous or prior sex offense conviction, the offender must be placed on conditional release for the remainder of the offender=s life. Similar to the eligibility for the indeterminate life sentence in subdivision 4, if an offender is released from prison for a violation of fourth-degree criminal sexual conduct, the offender will only be placed on lifetime conditional release if the offender=s previous or prior sex offense conviction that is being used as the basis for the lifetime conditional release term is for first- through third-degree criminal sexual conduct or criminal sexual predatory conduct.

Subd. 8. Terms of conditional release; applicable to all sex offenders. Specifies the conditional release terms that are applicable to all sex offenders placed on conditional release (i.e., any offender released from prison after a conviction for first- through fourth-degree criminal sexual conduct or criminal sexual predatory conduct, or after being sentenced under the patterned and predatory offender sentencing law). This language is substantively the same as that being stricken from the patterned and predatory offender sentencing law in article 2, section 9.

22 Sentencing guidelines modifications. Requires the Sentencing Guidelines Commission to propose to the Legislature modifications to the sentencing guidelines relating to sex offenders. The modifications must include a separate sex offender grid. These modifications will take effect August 1, 2006, unless the Legislature, by law, provides otherwise.

23 Repealer. Repeals a provision of the patterned and predatory offender sentencing law providing for an increased statutory maximum penalty. This provision is no longer necessary based on the changes made in this article. Also repeals a subdivision of the repeat sex offender sentencing law addressing conditional release of sex offenders. This provision is superseded by article 2, section 21.

Article 3: Sex Offenders: Predatory Offender Registration; Community Notification; Miscellaneous Provisions

Overview

This article clarifies the procedures individuals who lack a primary address (i.e., are homeless) must follow if they are required to register under the Predatory Offender Registration Law (POR Law). This clarification responds to the Minnesota Supreme Court's decision in *State v. Iverson*, 664 N.W.2d 346 (Minn. 2003), which essentially made the POR law inapplicable to homeless offenders. Numerous other changes are made to the POR law in this article to increase public safety and make it easier for law enforcement to track offenders. This article amends the community notification law and imposes notification, information sharing, and investigation obligations on the BCA, DOC, and local law enforcement authorities in relation to individuals who enter Minnesota from another state. It also sets up procedures to ensure that offenders from other states are subject to community notification under Minnesota law. Article 3 also requires notification of administrators of healthcare facilities when a registered sex offender intends to or is receiving inpatient care at the facility. The article requires level III sex offenders to have their photos taken every six months and allows the commissioner of corrections to collect co-pays from sex offenders receiving treatment. Finally, it requires courts to impose a 10-year conditional release on level III sex offenders who are convicted of failing to register.

- 1 Disclosure of predatory offender registrant status.** Amends the Data Practices Act to cross-reference the law enforcement agency duty to notify health care facilities of relevant predatory offender registration status (*See*, section 6, subdivision 4c).
- 2 Transfer and discharge appeals.** Prohibits a registered predatory offender residing in a nursing home or home care facility to avail himself of the facility transfer and appeal provisions established by the commissioner of health if the predatory offender knowingly fails to inform his current facility that he is a registered predatory offender.
- 3 Record of inmates; Department of Corrections.** Requires that when an offender who is subject to the POR law is being released from prison, the commissioner of corrections must provide the offender's prison records relating to psychological assessments, medical and mental health issues, and treatment to the corrections agency that is going to supervise the offender.
- 4 Programs for adult offenders committed to the commissioner.** Directs the commissioner of corrections to develop a plan to provide residential and outpatient sex offender programming and aftercare. Authorizes the commissioner to require a co-payment from offenders who participate in the program, third-party payers, local agencies, or other funding sources.
- 5 Funding priority; program effectiveness.** Amends the law requiring county and private sex offender programs to provide the Commissioner of Corrections with information related to program effectiveness. Strikes language that limits this provision to programs that seek new or continued state funding or reimbursements.
- 6 Community-based sex offender program evaluation.** Clarifies that the law requiring the Commissioner of Corrections to provide follow-up information on sex offenders for three years following their completion or termination from treatment programs, provide treatment programs in different geographical areas of the state, provide necessary data relating to sex

offender treatment programming, etc., is not a onetime project, but rather an ongoing obligation.

7 **Sex offender programs.** Authorizes the commissioner of corrections to collect co-payments to offset the cost of providing sex offender treatment to inmates.

8 **Registration of predatory offenders.** This section makes numerous substantive and technical changes to the Predatory Offender Registration Law.

Subd. 1. Registration required. Repeals current language in this subdivision in order to recodify it in the newly-created subdivision 1b. The purpose of this recodification is to relocate all of the law's definitions at the beginning of the statutory section.

Subd. 1a. Definitions. Contains the definitions used in the Predatory Offender Registration Act. These definitions are relocated in this new subdivision from the existing subdivisions 1, 4 and 8. Also adds new definitions for "bureau," "dwelling," "incarceration," and "confinement." The existing definitions of "primary residence" and "secondary residence" are changed to "primary address" and "secondary address" respectively. In addition, the definitions of "primary address" and "secondary address" are substantively overhauled.

Subd. 1b. Registration required. Sets forth the criteria governing who must register as a predatory offender under the law. These criteria were relocated from the repealed subdivision 1, with the following changes:

- ▶ it provides that the law applies to offenders who aid, abet, or conspire to commit an offense currently requiring registration;
- ▶ it expands the law to require registration for all false imprisonment offenses, not only those involving a child; and
- ▶ it requires a person to register if the person enters this state and remains for 14 days or longer.

Subd. 2. Notice. Contains technical changes relating to the recodification of subdivision 1.

Subd. 3. Registration procedure. Contains technical changes relating to the recodified definitions. Also clarifies that if a person subject to registration moves out of the state, registration with Minnesota terminates when the BCA confirms the address in the new state.

Subd. 3a. Registration procedure when person lacks primary address. Addresses a current gap in the law relating to persons who lack a primary address (i.e. are homeless).

- ▶ Provides that, when a person leaves a primary address and does not have a new one, the person must register with the law enforcement authority in the area where the person is staying within 24 hours of the time the person no longer has a primary address. Requires compliance with this registration

process every time the person moves to a new jurisdiction. Requires the person, in lieu of reporting a primary address, to describe the location where the person is staying with as much specificity as possible.

- ▶ Also provides that, if the person continues to lack a primary address, the person must report in person, on a weekly basis, to the law enforcement agency in the area where the person is staying. Does not require the person to re-register weekly but, rather, requires the person to inform the law enforcement authority of any changes to the information provided upon initial registration. Authorizes the law enforcement authority to allow an offender to follow an alternative reporting procedure if it determines that, due to an offender's unique circumstances, it is impractical to require the offender to report weekly. Specifies the parameters of such an alternative reporting procedure to ensure that it is practical and that it serves the needs of public safety.
- ▶ Requires the person lacking a primary address to re-register annually or, if civilly committed as a sexually dangerous person, every three months.
- ▶ Requires the law enforcement authority to forward this registration information to the Bureau of Criminal Apprehension within two business days of receiving it.
- ▶ Also provides that a person who fails to report a primary address will be deemed to be a person who lacks a primary address and will be subject to all of the responsibilities outlined in this subdivision.

Subd. 4. Contents of registration. Makes the following changes to the registration process:

- ▶ Requires an offender subject to registration to consent to allowing the offender's residential housing unit or shelter to release information on the offender to law enforcement.
- ▶ Establishes a verification procedure for the Bureau to use when a registered offender lacks a primary address. In such cases, the Bureau must mail the verification form to the law enforcement authority to which the person reports weekly, and the authority is required to ensure that the offender fills out the form at the next weekly meeting.
- ▶ Requires level II and III predatory offenders who are no longer under correctional supervision to have an annual in-person contact with the law enforcement authority with jurisdiction over where the offender lives, stays or attends school. During the month of the person's birth date, the offender must be photographed and the accuracy of the offender's registration information must be verified. Also requires the BCA to verify the address of level III offenders who are no longer under correctional supervision by mail every six months.

- ▶ Requires the BCA and the local law enforcement authority to immediately investigate a level III offender's location when the person fails to return a signed form to the BCA verifying the person's address.
- ▶ Requires level III sex offenders to appear for a photograph every six months.

Subd. 4a. Contains technical, conforming changes.

Subd. 4b. Health care facility; notice of status. Requires a person who is required to register as a predatory offender to notify a health care facility upon the person's admittance to the facility that the person is a registered predatory offender. The offender must also provide certain details related to his registration. Requires the agency responsible for maintaining a predatory offender's registration to notify the administrator of a health care facility if the agency learns the offender is living in the administrator's facility.

Subd. 5. Contains technical, conforming changes.

Subd. 5a. Requires courts to impose ten-year conditional release on level III sex offenders who are convicted of failing to register as a predatory offender.

Subd. 6. Registration period. Permits the commissioner of public safety to extend a person's registration period for five years if the person fails to provide the person's primary address as required, fails to comply with the registration procedure applicable to homeless persons, fails to provide accurate or updated registration information, or fails to return the address verification letter within ten days. Expands the provision restarting a person's registration period upon release from incarceration to include persons who are incarcerated based upon a revocation of probation, supervised release, or conditional release for *any* offense. Current law restarts the registration period in this context only when the revocation is related to the offense triggering the person's obligation to register.

Subd. 7 to 8. Contain either technical, conforming changes or no changes.

Subd. 9. Offenders from other states. Imposes notification, information sharing, and investigation obligations on the bureau, local law enforcement authorities, and the Department of Corrections regarding offenders who move to Minnesota from other states. Requires the bureau to notify the commissioner of corrections when:

- ▶ the bureau receives notice from a local law enforcement agency that an out-of-state offender has registered as a sex offender,
- ▶ a registration authority, corrections agent, or law enforcement agency in another state notifies the bureau that a sex offender is moving to Minnesota, or
- ▶ the bureau learns that a person from another state is in Minnesota and has unlawfully failed to register under the Predatory Offender Registration law.

Also provides that, if the bureau receives information from an out-of-state registration authority, corrections agent, or law enforcement authority which indicates that a person who may be subject to the registration law is moving to Minnesota, the bureau must ask if the person is subject to community notification in another state and, if so, what the person's assigned risk level is, if any. The bureau must notify the local law enforcement agency and provide all information available on the person when it receives notice from another state that a sex offender is moving to Minnesota. The bureau must also forward any information it receives to the commissioner of corrections. The commissioner of corrections must determine the supervised release status of out-of-state offenders referred to the department.

Subd. 10. Venue; aggregation. Adds a new provision to the registration law that specifies venue for prosecuting violations of the law. Provides that the prosecution takes place in any jurisdiction where an offense occurred. Requires the prosecutor where the person last registered a primary address to be responsible initially to review the case. Permits multiple offenses occurring in different locations to be prosecuted in any county in which one of them occurred.

Subd. 11. Certified copies as evidence. Provides that certified copies of registration records are admissible as substantive evidence when necessary to prove the commission of a designated offense.

Effective date. Except as otherwise provided, all provisions are effective the day following final enactment. Subdivision 4, paragraph (e)(3), is effective December 1, 2005. Subdivisions 4b and 5a are effective August 1, 2005. Subdivision 9 is effective July 1, 2005.

- 9 Registration under the predatory offender registration law for other offenses.** Amends the law that requires predatory offender registration by offenders who commit a crime against the person and who previously registered under the law but whose registration period ended or who would have had to register except the law did not apply to the offender at the time of the offense. Expands the definition of "crime against the person" to include fourth-degree assault. Also expands this law to apply to offenders who are convicted of a crime against the person and who previously completed registration in another state. [Effective August 1, 2005, for crimes committed on or after that date.]
- 10 Intensive supervised release.** Requires all level III predatory offenders be placed on intensive supervised release for the entire period of their supervised release.
- 11 Civil commitment determination.** Adds persons who are convicted of the new sexual predatory conduct crime to the list of offenders who may be civilly committed as sexually dangerous persons.

Amends the language requiring the commissioner of corrections to make a preliminary determination as to whether civil commitment may be appropriate for certain high risk sex offenders. Adds language stating that the commissioner's determination must be based on a recommendation of a Department of Corrections screening committee and a legal review and recommendation from outside counsel who is knowledgeable about the civil commitment law.

- 12 End-of-confinement review committee.** Provides timetables for the actions of the end of confinement review committees relating to offenders subject to indeterminate life sentences under article 2.

Strikes existing statutory language in the Community Notification Act relating to the process for assigning risk levels to offenders who move to Minnesota from other states or are released from federal correctional facilities located in Minnesota. Relocates that language, with changes, to the new subdivision created in section 10. [Effective July 1, 2005, and applicable to all persons subject to community notification on or after that date.]

Offenders from other states and offenders released from federal facilities. Amends the existing process under which the Department of Corrections assigns Community Notification Act risk levels to predatory offenders who are released from federal correctional facilities or out-of-state correctional facilities and who intend to reside in Minnesota.

- ▶ Expands the process to include offenders released from any federal correctional facility, offenders accepted for supervision under any interstate agreement, and out-of-state offenders not subject to an interstate agreement but for whom local law enforcement agencies wish to have a Minnesota risk level assigned.
- ▶ Requires the assignment of a risk level to all of these offenders, except those who are accepted for probation supervision. Such probationary offenders do not receive a risk level but, rather, are subject to a notification process similar to that applicable to level II offenders.
- ▶ Requires the end-of-confinement review committee responsible for assigning risk levels to out-of-state offenders to collect and review all relevant information on these offenders and to follow the same timelines, policies, and procedures applicable to in-state offenders in assigning a risk level.
- ▶ Requires law enforcement authorities to notify the BCA and the commissioner of corrections within three business days when they learn an offender living in Minnesota is subject to this section and has not yet been assigned a Minnesota risk level.
- ▶ Provides that if the commissioner of corrections receives reliable information from the BCA or a local law enforcement agency that an out-of-state offender is living in Minnesota and a local law enforcement authority so requests, the commissioner must determine if the offender was issued a risk level under a law comparable to Minnesota's law. If so, the commissioner shall notify the local agency and the local agency may proceed with community notification based on the offender's risk level assessment from another state. If the offender was not issued a risk level under a comparable law, the local agency may proceed with notification but only up to a level II notification. If an agency wishes to make a broader disclosure than a level II notification or as authorized by the offender's out-of-state risk level assessment, the agency may request that an end-of-confinement review committee at the Department of Corrections issue the offender a Minnesota risk level. Permits agencies to continue with up to a level II notification until the end-of-confinement review committee assigns the person a Minnesota risk level.

[Effective July 1, 2005, and applicable to all persons subject to community notification on

or after that date.]

- 14 Law enforcement agency; disclosure of information to the public.** Amends the Community Notification Act to clarify that the duty imposed by the Act on law enforcement agencies to continue to disclose information on registered offenders for as long as they are required to register applies as well to offenders who lack a primary address.

Bars offenders from attending their own community notification meetings. [Effective the day following final enactment and applicable to all persons subject to community notification on or after that date.]

- 15 Law enforcement agency; disclosure of information to a health care facility.** Requires law enforcement to notify the administrator of a health care facility where a registered predatory offender is receiving inpatient care. [Effective the day following final enactment.]
- 16 Predatory offender seeking housing in different corrections agency.** Provides that when a corrections agency supervising an offender who is required to register under the POR law and who is classified as a public risk monitoring case has knowledge that the offender is seeking housing arrangements in a location under the jurisdiction of a different corrections agency, the supervising agency must notify the other agency of this and initiate a supervision transfer request.
- 17 Placement of predatory offender in household with children.** Requires a corrections agency supervising an offender who is required to register under the POR law to notify the appropriate child protection agency before authorizing the offender to live in a household where children are residing.
- 18 Notice of information regarding predatory offenders.** Authorizes law enforcement to disclose the probationary status of predatory offenders granted mitigated dispositional departures (sentences where the presumptive guidelines' disposition is commitment to the Commissioner of Corrections but where this disposition is stayed by the court) to individuals that law enforcement believes may be victimized by the offender (thus, conforming this notification provision to the one in the Community Notification Law governing level II offenders).
- 19 Petition; notice of hearing; attendance; order.** Amends the law relating to the civil commitment of persons as being mentally ill and dangerous. Requires the special review board and Commissioner of Human Services to consider statements received from victims under article 3, section 9, when making recommendations and orders regarding release.
- 20 Victim notification of petition and release; right to submit statement.** Amends the law relating to the civil commitment of persons as being mentally ill and dangerous. Requires a county attorney who files a civil commitment petition alleging that a person is mentally ill and dangerous, has a sexual psychopathic personality, or is a sexually dangerous person to make a reasonable effort to provide prompt notice of the filing of the petition to a victim and to notify the victim of the resolution of the petition. Also requires the head of a treatment facility to make a reasonable effort to notify victims that a person civilly committed as being mentally ill and dangerous, as having a sexual psychopathic personality, or as being a sexually dangerous person may be discharged or released and that the victim has a right to submit a written statement regarding the release decision. Requires victims to request these notifications by contacting in writing the county attorney in the county where the conviction for the crime occurred. Defines key terms used in this section. Of note, defines "convicted" and "conviction" in a manner that includes certain mental illness procedures where the elements of the crime have been proven but the person has not actually been convicted and findings in certain civil commitment cases that the act or acts

occurred.

- 21 **Commissioner of corrections.** Authorizes the commissioner of corrections to collect co-payments to cover part of the cost of treating patterned and predatory sex offenders who are granted conditional release.
- 22 **Conditional release of sex offenders.** Authorizes the commissioner of corrections to collect co-payments to cover part of the cost of treating patterned and predatory sex offenders who are granted conditional release.
- 23 Assessment required. Clarifies that an independent professional assessment of a sex offender=s need for sex offender treatment must be conducted before sentencing.
- 24 **Use of polygraphs.** Authorizes a court or the Commissioner of Corrections to require a sex offender to submit to a polygraph exam as a probationary intermediate sanction or a condition of release from confinement. Allows the court or the commissioner to order all or part of the cost of the exam to be borne by the offender.
- 25 **Persons mandated to report.** Requires correctional supervision professionals to report incidents of neglect and physical or sexual abuse of children to the appropriate authorities. [Effective the day following final enactment.]
- 26 **Protocol for use of polygraphs.** Requests the Chief Justice of the Supreme Court, in consultation with the Conference of Chief Judges, to develop, by September 1, 2005, a protocol for the use of polygraph examinations for sex offenders on probation.
- 27 **Supreme Court study on sexually dangerous persons and sexual psychopathic personality civil commitments.**

Subd. 1. Establishment. Requests that the Supreme Court study and make recommendations to the Legislature on:

- ▶ developing and using a statewide panel of defense attorneys to represent persons subject to civil commitment petitions as being sexually dangerous persons or having sexual psychopathic personalities; and
- ▶ developing and using a statewide panel of judges to hear these petitions.

Subd. 2. Report. Requests preparation and submission of a report to the legislature by February 1, 2006.

28 **Working group on sex offender management.**

Subd. 1. Establishment. Requires the Commissioner of Corrections to convene a working group related to sex offender management and supervision.

Subd. 2. Issues to be studied. Requires the working group to study and make recommendations on specified issues.

Subd. 3. Review of new laws. Requires the working group to review the provisions of any laws enacted in the 2005 legislative session relating to sex offender supervision and treatment.

Subd. 4. Reports. Requires the working group to report recommendations to the Legislature.

Subd. 5. Policies required. Requires the Commissioner of Corrections to

implement policies and standards relating to the issues studied by the working group over which the commissioner has jurisdiction.

29 **Prison-based sex offender treatment program; report.** Requires the Commissioner of Corrections to report specified information to the Legislature on prison-based sex offender treatment programs.

30 **Revisor's instruction.** Technical. [Effective the day following final enactment.]

31 **Repealer.** Technical repealer, relating to the recodification of language in the Predatory Offender Registration Law. [Effective the day following final enactment.]

Article 4: Sex Offenders: Technical and Conforming Changes

Overview

This article makes technical and conforming changes that are necessary to complete the changes made in article 2 of the bill. It also includes a revisor's instruction to renumber a section. The entire article has an August 1, 2005, effective date.

[The provisions contained in this article, unless otherwise noted below, were originally found in H.F. 1406, articles 3 and 4.]

- 1 **Crime victims.** Classifies data regarding victims of CSC in the data privacy chapter.
- 2 **Rulemaking Procedures.** Clarifies that the definition of "rule" in chapter 14 does not include rules of the Commissioner of Corrections relating to the release or release terms of inmates on supervised or conditional release.
- 3 **Presumptive executed sentence.** Adds a cross-reference to the new criminal sexual predatory conduct crime in the Repeat Sex Offender Sentencing Law.
- 4 **Previous sex offense convictions.** Adds the new sexual predatory conduct crime to the list of offenses that qualify as a "previous sex offense."
- 5 **Petition for civil commitment.** Requires a sentencing court to make a preliminary determination on whether an offender is appropriate for civil commitment after a conviction for the new sexual predatory conduct crime.
- 6 **Evidence in criminal sexual conduct cases.** Extends the current rules governing evidence in CSC cases so that they apply to the new crime of sexual predatory conduct.
- 7 **Records pertaining to victim identity.** Extends the current rules governing disclosure of victims' identities in CSC cases to cover the new crime of sexual predatory conduct.
- 8 **Medical purposes; exclusion.** Extends the exception for sexual penetration necessary for medical purposes to the new crime of sexual predatory conduct.
- 9 **Jurisdiction.** Extends the current rule governing jurisdiction in CSC cases so that it applies to the new crime of sexual predatory conduct.
- 10 **Excluding spectators from the courtroom.** Extends the current rules governing exclusion of spectators in CSC cases involving a minor victim so that they apply to the new crime of sexual predatory conduct.
- 11 **Revisor instruction.** Requires the revisor to renumber a provision that would otherwise cause the new provisions in article 1 to appear out of order in the criminal code. The revisor also is instructed to correct cross-references and include a notation in Minnesota Statutes to inform readers of the renumbering of the statute.

Article 5: Human Services Access to Predatory Offender Registry

Overview

This article contains policy related to the Department of Human Services' access to, and ability to share, information contained in predatory offender databases to aid in the provision of state-operated services. It also contains a provision regarding development and use of abuse prevention plans for vulnerable adults.

[The content of this article is from H.F. 1406, article 6.]

1 Use of data. Allows the Department of Human Services and the Department of Corrections to have access to information in the Predatory Offender Registry.

2 Records of patients and residents receiving state-operated services.

Subd. 1. Requires that a vulnerable adult prevention plan be developed for, and included in **the** record of, all residents receiving state-operated services. Directs that DHS maintain an adequate and uniform system of records and statistics.

Subd. 2. Definitions; risk assessment and management.

▶ Adds the following definitions to § 246.13:

o **Appropriate and necessary medical and other records**

o **Community-based treatment**

o **Criminal history**

o **Designated agency**

o **Law enforcement agency**

o **Predatory offender and offender**

o **Treatment facility**

▶ Permits the commissioner to review and disclose information in state and federal (if approved by U.S. Department of Justice) criminal history databases

▶ Directs the commissioner to disseminate information to designated treatment facility staff, special review board members and end-of-confinement review committee members.

Subd. 3. Community-based treatment and medical treatment. Adds that when a patient is released to a community facility, state-operated services must disclose the patient's abuse prevention plan and may disclose necessary health and other information.

Subd. 4. Predatory offender registration notification.

▶ Adds that a state-operated facility provide written notice to a sex offender

patient that the patient is required to register as a predatory offender.

- ▶ Adds that if the patient is unwilling or unable to register that the state-operated facility will complete the registration form and submit it to the Bureau of Criminal Apprehension, and, if applicable, to the patient's correction agent, and the law enforcement agency and county attorney in the patient's community of residence.
- ▶ Provides that the patient is not relieved of the duty to comply with the predatory offender registration requirements even if the state-operated facility has submitted the registration form.

Subd. 5. Bloodborne pathogens. State-operated services facilities must comply with the limitations on use of bloodborne pathogen test results.

- 3 **Release on pass; notification.** Provides that when a state-operated services facility plans for a committed or confined individual to have a pass, the law enforcement agency where the facility is located must be notified.
- 4 **Database of registered predatory offenders.** Allows DHS access to the predatory offender database.
- 5 **Abuse prevention plan.** Provides that health care facilities, including home health agencies and personal care attendant services, develop an abuse prevention plan to address potential risks an individual may pose to other vulnerable adults.
- 6 **Repealer.** Repeals language directing the commissioner of human services to maintain a statistics and records database regarding patients at hospitals for the mentally ill.

Article 6: Human Services Background Studies

Overview

This article contains information regarding disqualification from employment in a DHS licensed facility or program.

[The content of this article is from H.F. 1406, article 7.]

- 1 **Direct contact pending completion of background study.** Provides that prior to receipt of study results, notice of set aside or variance, the subject of a background study may not be issued a license; live in a household where a licensed program will operate; provide or have any contact with persons served by the program.
- 2 **Permanent disqualifications.** Adds the crimes of fifth degree criminal sexual conduct and criminal sexual predatory conduct as grounds to permanently bar employment at a DHS licensed facility or program.
- 3 **Time frame for notice of study results.** Requires immediate removal from positions allowing direct contact with patients when the person's prior background study resulted in an order for immediate renewal and more time is needed to complete a subsequent study. Establishes procedures for electronic notification of applicants.
- 4 **Disqualification notice to subject.** Provides the commissioner shall disclose to the disqualified subject of a background study restrictions on discretion to set aside a disqualification. Provides the commissioner shall notify the individual that if the disqualification is set aside or the facility is granted a variance, the individual's identity and the reason for disqualification will become public data. Provides the commissioner must

notify the individual of the immediate risk of harm posed by the individual. Provides that the commissioner inform the individual who does not pose an immediate risk of harm, the circumstances under which the individual may provide direct services.

5 Disqualification notice to applicant, license holder or other entity. Provides that the commissioner shall order the license holder to immediately remove a disqualified individual from direct services; or before allowing a disqualified applicant direct contact, the license holder must obtain a copy of the disqualified individual's notice of disqualification and assure the disqualified individual seeks reconsideration within 30 days of notice of disqualification.

6 Classification of data. Provides that if a disqualification is set aside, or a variance granted to a facility, the identity of the disqualified individual and the individual's disqualifying characteristics are public data under certain circumstances. Provides that the information will remain private data if the disqualification is not set aside and the variance is not granted, or rescinded because the information relied upon to disqualify the individual is incorrect.

Requires licensed family day care providers and child care centers to notify parents considering enrollment of their child and parents of children in the day care if the program employs or has living in the home any person who is the subject of either a set-aside or variance.

7 Permanent bar to set aside a disqualification. Provides that the commissioner cannot set aside the disqualification if an individual was disqualified for an offense that permanently disqualified the individual from employment in a DHS licensed facility or program.

Article 7: Methamphetamine Provisions

Overview

This article strengthens penalties already in place as well as introduces new crimes and programs concerning the manufacture, possession, and sale of methamphetamine and its precursors. Specifically, the article: places meth precursor drugs on Controlled Substance Schedule V; establishes limitations, requirements, and penalties relating to over-the-counter sales of methamphetamine precursors; increases the penalty for possession of certain substances with intent to manufacture methamphetamine; requires criminal restitution in cases where the crime required an emergency response due to the presence of dangerous chemicals; allows innocent property owners to receive restitution; requires notification of county health officials of clandestine lab sites; requires remediation of lab sites prior to re-occupation of the land or property; creates two new crimes related to the illegal use of anhydrous ammonia; criminalizes various methamphetamine-related activities that may impact children or vulnerable adults; establishes a methamphetamine laboratory cleanup revolving fund; amends the nuisance laws; and directs the Department of Public Safety to study the feasibility of a centralized computer database to log sales.

1 Ephedrine and pseudoephedrine products. Requires a written prescription from a veterinarian for drugs and products for any species of animal containing ephedrine or pseudoephedrine. Requires these drugs to be dispensed, sold, or distributed only by a veterinarian or a veterinary assistant under the supervision or direction of the veterinarian. Prohibits nonveterinarians from purchasing these drugs without a prescription.

- 2 **Narcotic drug.** Adds methamphetamine to the definition of narcotic drug in chapter 152. This change is intended to give law enforcement more crimes to charge meth defendants with. Currently sale and possession of meth are expressly addressed in first and second degree controlled substance offenses. These crimes require the defendant to have a certain minimum amount of the drug. Third degree *sale* does not mention meth but forbids the sale of any narcotic drug. By adding meth to the definition of narcotic drug, a prosecutor can charge a person who sells a small amount of meth with a third degree offense rather than a fourth degree offense. (Meth is covered by the fourth and fifth degree offenses.)
- 3 **Schedule V.** Adds methamphetamine precursor drugs to controlled substance schedule V. Regulates the over-the-counter sale of methamphetamine precursor drugs.

Para. (a): Definitions. Defines methamphetamine precursor drug and over-the-counter sale.

Para. (b): Schedule V. Adds methamphetamine precursor drugs to controlled substance schedule V.

Para. (c): Sale - Quantity limitations. Limits the amount that may be sold per transaction -- two package maximum and not to exceed six grams.

Para. (d): Limitations on form of package. Prohibits the sale of packages that contain more than three grams of precursor drugs, unless the product is sold in blister packs. If sold in blister packs, each blister may only contain two dosage units at most.

Para. (e): Storage, display, distribution restrictions. Requires display of the drugs behind a secure counter. Requires a pharmacist, pharmacy technician or a pharmacy clerk to dispense meth precursor drugs. Requires buyers to show photo id for purchase and to sign a log in writing or electronically.

Para. (f): Purchase amount limitation. Limits the quantity that a person may purchase to no more than six grams in a 30-day period.

Para. (g): Minors. Prohibits sale to minors.

Para. (h): Penalties. Imposes a misdemeanor for those who exceed purchasing limits and those who sell in violation of the sales restrictions (paragraphs c, d, e, f, or g).

Para. (i): Owner criminal immunity. Extends immunity to certain supervisors of employees who violate sale restrictions.

Para. (j): Reporting suspicious transactions. Requires employees to report to their supervisor any suspicious transactions involving meth precursor drugs.

Para. (k): Product exemptions. Exempts pediatric products, gel caps and liquid meth precursors, and forms of the drugs that are difficult to use in making methamphetamine.

Para. (l): Board of Pharmacy. Charges the Board of Pharmacy with responsibility for certifying substances that are exempt under paragraph (k).

Para. (m): Drug wholesalers; exemption. Exempts licensed wholesale distributors from the methamphetamine precursors drug storage requirements.

Para. (n): Local ordinance preemption. Preempts all local ordinances or regulations governing the sale of methamphetamine precursor drugs.

[Effective date: This section is effective July 1, 2005 and applies to crimes committed on or after that date.]

- 4 **Methamphetamine Precursors.** Requires the Board of Pharmacy to prohibit the over-the-counter sale of methamphetamine precursors in gel capsule or liquid form if the Board learns that the substances in these forms can be used to manufacture methamphetamine.

[Effective date: August 1, 2005.]

- 5 **Methamphetamine manufacture crime; possession of substances with intent to manufacture methamphetamine crime.** Amends the attempted manufacture of methamphetamine crime to clarify that this crime is not an "attempt crime" but rather a crime of possession of "any chemical reagents or precursors with the intent to manufacture methamphetamine." Provides that the list of chemical reagents or precursors in the statute is not an exclusive one. Strikes the cross-referenced definition of "anhydrous ammonia."

[Effective date: August 1, 2005 and applies to crimes committed on or after that date.]

- 6 **Penalty.** Increases the maximum criminal penalty for a violation of section 5 from a three-year/\$5,000 felony to a ten-year/\$20,000 felony and for a repeat offense from a four-year/\$5,000 felony to a 15-year/\$30,000 felony.
- 7 **Sale of schedule V controlled substances.** Exempts the authorized sales of meth precursor drugs regulated by section 3 of the bill from the current law that imposes a gross misdemeanor for the unlawful sale of a schedule V drug.
- 8 **Possession of schedule V controlled substances.** Exempts the lawful possession of meth precursor drugs provided for in section 3 of the bill from the current law that imposes a gross misdemeanor for the unlawful possession of a schedule V drug.
- 9 **Certain controlled substance offenses; restitution; prohibitions on property use.**

Subd. 1. Restitution. Requires restitution from persons convicted of manufacturing or attempting to manufacture a controlled substance or of illegal activities involving precursors where the crime involved an emergency response.

Para. (a): Definitions. Defines terms used in this section.

Para. (b): Restitution; public entities. Restitution may be awarded to the public entities that participated in the response.

Para. (c): Restitution; private citizens. Restitution may also be awarded to innocent property owners to cover removal and remediation costs.

Subd. 2. Property-related prohibitions. Places prohibitions and regulations on meth-tainted property.

Para. (a): Definitions. Defines clandestine lab site, property, remediation, and removal.

Para. (b): Police notification of health agency. Mandates that police officers who arrest a person at a clandestine lab site notify the appropriate county or local health department and other entities of the arrest and the location of the site.

Para. (c): Occupation prohibition order. Requires that local units of government, local health departments and sheriffs prohibit all clandestine property from being occupied, or used until it has been assessed and remediated. Requires use of a contractor to do the remediation.

Para. (d): Procedures and remedies. Specifies that the procedures of chapter 145A, the Local Public Health Act, and the remedies provided to property owners therein, apply to this subdivision.

Para. (e): Remediation verification procedures. Specifies the process for establishing remediation, including the circumstances under which the applicable authority must vacate its property use restriction order.

Para. (f): Contractor liability. Specifies contractor duties and imposes contractor liability if the remediation is not done properly.

Para. (g): Contaminated motor vehicles. The registrar of motor vehicles must be notified when a motor vehicle has been contaminated and also when the authority vacates its order.

Para. (h): Agency affidavit of remediation. Requires the applicable authority to give notice by affidavit to the county recorder for disclosure to any potential transferee that a piece of property was the site of a meth lab – if the property is remediated properly and agency order is vacated, requires notice by affidavit to the recorder of the same.

Para. (i): Property owner's affidavit of remediation. Allows owners of contaminated property to file with the county recorder an affidavit of removal and remediation completion. Specifies that failure to do so does not affect ability to transfer property ownership.

Para. (j): Recording affidavits. Requires the county recorder to file all affidavits submitted pursuant to this subdivision in a manner that assures their disclosure during a title search.

Para. (k): Internet posting. Requires the commissioner of health to list contact information for each local health services administrator on the Internet.

Para. (l): Local agency records. Requires each local community health services administrator to maintain information related to property within the administrator's jurisdiction that has been contaminated. Requires the information

to be made available to the public.

Para. (m): Owner disclosure. Requires the seller of land to disclose to the buyer if the seller knows meth has been produced on the property and related information.

Para. (n): Seller liability. Imposes liability on a seller who does not provide the required disclosure (para. (m)) for a buyer's remediation costs and reasonable attorneys' fees. Provides a six-year limitations period for a cause of action under this paragraph.

Para. (o): Preemption. Preempts similar local ordinances.

[Effective date: This section is effective January 1, 2006.]

10 Exceptions. Amends the current ephedrine statute to add a cross-reference to section 3.

[Effective date: This section is effective the 30th day following final enactment.]

11 Anhydrous ammonia; prohibited conduct; criminal penalties; civil liability.

Subd. 1. Definitions. Defines the term tamper.

Subd. 2. Prohibited conduct. Recodifies the prohibited fertilizer activities currently codified in Minnesota Statutes, sections 18C.201 and 18D.331. (These provisions are repealed in section 19.) A person may not steal, unlawfully take or carry away any amount of anhydrous ammonia; or purchase, possess, transfer or distribute any amount of anhydrous ammonia knowing or having reason to know that it will be used to unlawfully manufacture a controlled substance. Includes requirements for containing and transporting anhydrous ammonia.

Subd. 3. No cause of action. Prohibits a person who is injured while tampering with a container storing anhydrous ammonia to seek damages from a person who is the rightful owner of the container.

Subd. 4. Criminal penalty. A knowing violation of these provisions results in a felony and imprisonment of not more than five years or a fine of not more than \$50,000 or both.

12 Methamphetamine-related crimes involving children and vulnerable adults.

Subd. 1. Definitions. Defines chemical substance, child, methamphetamine paraphernalia, methamphetamine waste products, and vulnerable adult.

Subd. 2. Prohibited conduct. Criminalizes various methamphetamine-related activities that may impact children or vulnerable adults. Prohibited conduct includes knowingly engaging in manufacturing or attempting to manufacture methamphetamine, storing any chemical substance, storing any methamphetamine waste products, or storing any methamphetamine paraphernalia in the presence of a child or a vulnerable adult. These activities are prohibited in the residence, building, structure, conveyance, or outdoor location where a child or vulnerable adult may reasonably be, or in a room offered to the public for overnight accommodation or any multiple unit residential building. Also prohibits persons from knowingly causing or permitting a child or vulnerable adult to inhale, be exposed to, have contact with, or ingest methamphetamine, a chemical substance, or methamphetamine paraphernalia.

Subd. 3. Criminal penalty. Violation of these provisions results in a felony and imprisonment of not more than five years or a fine of not more than \$10,000 or both.

Subd. 4. Multiple sentences. A sentence under this section is not a bar to a sentence for any other crime committed by the defendant as part of the same conduct.

Subd. 5. Protective custody. Police officers may take children who are found in areas where prohibited activities are taking place into protective custody. Requires children taken into protective custody to undergo health screening assessments.

Subd. 6. Reporting maltreatment of vulnerable adult. Proposes reporting obligations for police officers and mandated reporters for vulnerable adults who were exposed to a methamphetamine lab. Instructs county entry point staff and county social service agency staff how to respond to a police report indicating a vulnerable adult has been exposed to a meth lab. Requires county social services to respond immediately when notified.

13 Content of certificate. Mandates that each certificate of title issued for a vehicle contaminated by methamphetamine production contain the term “hazardous waste contaminated vehicle” if the registrar has received the notice described in section 9.

14 Notice to school. Requires law enforcement to notify the chief administrator of a school when a student has been placed in protective custody after being exposed to a meth lab.

15 Methamphetamine laboratory cleanup revolving account.

Subd. 1. Definitions. Defines clandestine lab site, property, and remediate.

Subd. 2. Account established. Mandates the Public Facilities Authority to establish a methamphetamine laboratory cleanup revolving account.

Subd. 3. Applications. Specifies the application process for loans from the account.

Subd. 4. Loan eligibility. Specifies county or city eligibility for loans from the account including issuance of a revenue bond to secure the loan.

Subd. 5. Use of loan proceeds; reimbursement by property owner. Mandates that loans be used to remediate contaminated sites or to reimburse the applicable county or city fund. A loan recipient must seek reimbursement for the costs of remediation from the owner of the property containing the clandestine lab site. A mortgagee that takes ownership of real property through foreclosure is not liable for remediation costs.

Subd. 6. Award and disbursement of funds. Outlines the procedures for awarding and disbursing loans

Subd. 7. Loan conditions and terms. Specifies terms and conditions of loans made under this section.

Subd. 8. Authority to incur debt. Authorizes counties and cities to incur debt under this section by resolution of the board or council authorizing issuance of a revenue bond to the authority. Only revenues derived from the contaminated sites (*e.g.*, assessments or payments by the property owner) may be used to secure and pay the revenue bond.

16 Definitions. Expands the definition of “violent crime” in the criminal code’s sentencing provision for certain dangerous and repeat felony offenders to include the crimes in section

12 (meth crimes involving kids and vulnerable adults).

- 17 Notice.** Amends the nuisance law to allow a public nuisance involving the manufacture of methamphetamine to be established upon a showing of a single methamphetamine manufacturing incident within the building in the previous 12 months. The nuisance law generally requires two incidents to have occurred in a 12-month period.
- 18 Nuisance; motion to cancel lease.** Technical changes related to section 17.
- 19 Development of computer system; report.** Requires the commissioner of public safety to report to the Legislature on a plan for the implementation by July 1, 2006, of a centralized data system to enable pharmacies to carry out their duties under section 3 (i.e., documenting the sale of methamphetamine precursor drugs).
- 20 Board of Veterinary Medicine report, precursor animal products.** Requires the Minnesota Board of Veterinary Medicine to study and issue a report to the Legislature by February 1, 2006, on animal products that may be used in the manufacture of methamphetamine.
- 21 Revisor's instruction.** Instructs the Revisor to recodify a statute in a manner consistent with the changes contained in section 5.
- 22 Repealer.** Repeals provisions in Minnesota Statutes, chapters 18C and 18D, relating to anhydrous ammonia, that are addressed in this article.

Article 8: Public Safety Policy

Overview

This article makes the following changes to laws relating to public safety policy: modifies the Youth Intervention Program and transfers responsibility for the program from DEED to DPS; permits installation of vehicle-monitoring devices in authorized emergency vehicles; modifies provisions and procedures pertaining to insurance benefits for disabled police and firefighters; allows challenges to fines levied by the Office of Pipeline Safety to be heard in conciliation court or before an administrative law judge; modifies name change application procedures; authorizes the release of information maintained in the predatory offender database in conjunction with background checks for juvenile and adult offenders; authorizes the BCA to add information onto a person's criminal history under certain circumstances; increases fees relating to alcoholic beverages licenses; prohibits employer retaliation against victims who take time off work to attend hearings and proceedings; expands the definition of crime victim; clarifies notification procedures when a victim of criminal sexual conduct requests HIV testing of the perpetrator; expands eligibility for crime victims' reparations; and authorizes the transfer of unused special revenue funds to the general fund.

1 Grants-in-aid to youth intervention programs.

Subd. 1. Grants. Modifies the Youth Intervention Program to include mentoring services. Clarifies that the intent of the program is to provide an ongoing stable funding source to community-based early intervention programs for youth and that the program design may differ depending on community needs.

Subd. 2. Applications. Clarifies that the local matching requirement of two times the amount of the grant is intended to leverage state and community investment and support for the efforts of the programs.

Subd. 3. Grant allocation formula. Authorizes the use of up to one percent of the appropriations to be used for expenses incurred by the Minnesota Youth Intervention Programs Association in providing collaborative training and technical assistance to community-based grantees.

Subd. 4. Administrative costs. Authorizes the use of up to two percent of the biennial appropriation to pay the program's administrative costs incurred by the Department of Employment and Economic Development. [See, H.F. 950]

[Effective July 1, 2005.]

- 2 **Prohibitions generally; exceptions.** Authorizes drivers to attach the MNPASS toll collection device to their windshields. Permits installation of vehicle-monitoring devices in authorized emergency vehicles. A vehicle-monitoring device includes a small camera suspended from the rear-view mirror that records events that transpire directly in front of and behind the emergency vehicle. Similar cameras are authorized and used in police vehicles to produce a visual recording of the encounters peace officers have with citizens. The device also monitors and records the driver's operation of the vehicle and the functions of the vehicle (e.g., lights, siren, etc.). [See, H.F. 1218]

[Effective July 1, 2005.]

- 3 **Insurance benefits for disabled police and firefighters.** Under current law, peace officers and firefighters who suffer disabling injuries while acting in the course and scope of their duties are entitled to receive continued employer payments for health insurance. The public employer can apply to the commissioner of public safety for reimbursement of these costs, but the employers are reimbursed only to the extent of available appropriations. This section requires that the commissioner of public safety provide administrative services to the panel established in section **Error! Unknown switch argument.** of this article. (See, sections 7 and 8.)

[See, H.F. 1721]

[Effective day following final enactment.]

- 4 **Excavation notice system; penalties.** Allows challenges to fines levied by the Office of Pipeline Safety to be heard in conciliation court. If the amount of the fine exceeds the jurisdiction of the conciliation court, the person may request an administrative hearing. [H.F. 1608]

[Effective July 1, 2005.]

- 5 **Excavation notice system; settlement.** States that unless proceedings are commenced in district court, provisions of chapter 14 (administrative procedure) apply to orders of the commissioner imposing a penalty. [H.F. 1608]

[Effective July 1, 2005.]

- 6 **Name change application.** Allows courts to conduct a national search of FBI records to determine whether a name change applicant has a criminal history in this or any other state. Currently, the law obligates a court to determine whether the name change applicant has a

felony conviction. By changing felony conviction to criminal history, this bill expands the search to include gross misdemeanors and targeted misdemeanors.

To conduct the search, the court would need to submit a set of fingerprints and the appropriate fee to the Bureau of Criminal Apprehension. If a name change is granted for an applicant with a criminal history, the court and applicant must submit the name change to the Bureau of Criminal Apprehension. Failure by an applicant with a criminal history to report the change results in a gross misdemeanor penalty.

Clarifies that these provisions do not apply to name changes in conjunction with marriage or divorce. [See, H.F. 1200]

[Effective July 1, 2005.]

- 7 **Determination of scope and duties.** Provides that when a peace officer or firefighter has been approved to receive a duty-related disability pension, the person may apply to the panel established in section **Error! Unknown switch argument.** of this bill for a determination of whether the person meets the requirements for receiving the continued employer contribution health coverage. Under current law, this standard is if the disabling injury “occurs while the officer or firefighter is acting in the course and scope of their duties as a peace officer or firefighter.” This section provides that in making this decision, the panel shall determine whether or not the person’s occupational duties or professional responsibilities put the person at risk for the type of illness or injury sustained.

Requires the panel to make a determination within 90 days. Provides that a determination by the panel is binding, subject to judicial review.

This subdivision expires July 1, 2008. (See, sections **Error! Unknown switch argument.** and **Error! Unknown switch argument.**) [See, H.F. 1721]

[Effective July 1, 2005, and applies to duty-related pension approvals made on or after that date.]

- 8 **Course and scope of duties panel.** Establishes a panel to make decisions relating to insurance benefits of disabled police and firefighters. (See, section **Error! Unknown switch argument.**) The panel consists of the following seven members:

- ▶ Two members recommended by the League of Minnesota Cities
- ▶ One member recommended by the Association of Counties
- ▶ Two members recommended by the Minnesota Police and Peace Officers Association
- ▶ One member recommended by the Minnesota Professional Firefighters Association
- ▶ One nonorganizational member, recommended by the other six.

Requires the commissioner of public safety to appoint the recommended members after determining they were properly recommended.

Provides that members serve two-year terms, and that no member may serve more than

three consecutive terms. Provides for expense reimbursement, but not for per diem payments. States that the panel's proceedings must comply with chapter 14. (*See*, sections **Error! Unknown switch argument.** and **Error! Unknown switch argument.**)

This section expires July 1, 2008. [*See*, H.F. 1721]

[Effective day following final enactment.]

- 9 Access to data on juveniles.** Authorizes the release of information maintained in the predatory offender database in conjunction with a background check, regardless of the age of the offender at the time of the offense. Although the Bureau of Criminal Apprehension may not release a juvenile adjudication history record and shall not release information in a manner that reveals the existence of the record, data maintained in the predatory offender database is not considered information that reveals the existence of a juvenile adjudication history. In general, access to data on juveniles is restricted to instances specifically listed in statute or rule. [*See*, H.F. 1124]

[Effective July 1, 2005.]

- 10 Identification data furnished to bureau.** Authorizes the Bureau of Criminal Apprehension to add any identifying information onto a person's criminal history, when the bureau learns that an individual, who the subject of a background check, has used or is using identification information that is not listed on the person's criminal history. Fingerprint data must support any new identification information added to a person's criminal history. New identification information includes, but is not limited to, name and date of birth. [*See*, H.F. 1150]

[Effective July 1, 2005.]

- 11 Special protective agent classification.** Requires the Board of Private Detective and Protective Agent Services to establish a special protective agent license classification for persons who escort funeral processions and oversized loads. [*See*, H.F. 325]

[Effective July 1, 2005.]

- 12 Alcohol manufacturers.** Increases license fees.

[Effective date: July 1, 2005.]

- 13 Importers of malt liquor.** Increases license fees.

[Effective date: July 1, 2005.]

- 14 Alcohol board registration.** Increases license fees.

[Effective date: July 1, 2005.]

- 15 Caterer's permit.** Increases license fee.

[Effective date: July 1, 2005.]

- 16 Common carrier liquor license.** Increases license fee.

[Effective date: July 1, 2005.]

- 17 Alcohol sale license.** Increases license fee.

[Effective date: July 1, 2005.]

18 **Sunday alcohol sales.** Increases license fee.

[Effective date: July 1, 2005.]

19 **Alcohol sales after 1 a.m.** Increases license fee.

[Effective date: July 1, 2005.]

20 **Prohibition against employer retaliation; order for protection hearings.** (a) Prohibits employer retaliation against a victim who takes a reasonable time off from work to obtain relief under the Domestic Abuse Act. An employee who is absent from work must give 48 hours' advance notice, except in cases of imminent danger to the health or safety of the employee or the employee's child. An employer may ask for verification as to the employee's whereabouts, but any information provided must be kept confidential.

(b) Establishes a misdemeanor penalty for an employer who discharges an employee in retaliation for exercising his or her rights under this section. In addition, the court shall award back wages and reinstatement. The court may also find the employer in contempt.

(c) Establishes a civil cause of action for an aggrieved employee. A prevailing plaintiff may seek damages, costs and disbursements, attorney's fees, reinstatement, injunctive relief, and other equitable relief. [See, H.F. 443]

[Effective August 1, 2005, for crimes committed on or after that date.]

21 **Prohibition against employer retaliation; restraining order hearings.** Prohibits employer retaliation against a victim of harassment who takes a reasonable time off from work to obtain a restraining order. This section contains the same provisions as found in section 20 pertaining to notice, verification, confidentiality, criminal penalties, and civil remedies. [See, H.F. 443]

[Effective August 1, 2005, for crimes committed on or after that date.]

22 **Crime victim definition.** Expands the term "victim" to include the family members, guardian, or custodian of a minor, incompetent, incapacitated, or deceased person. Currently, "victim" is defined as a natural person, corporation, government entity, or other entity that has incurred a loss or harm as a result of a crime. If the victim is deceased, "victim" also means the deceased's surviving spouse or next of kin. (This latter provision has been deleted.)

Clarifies that prosecutors shall establish reasonable procedures to give effect to crime victim rights when the number of family members makes according the right of *all* victims impractical. Clarifies that the term "victim" does not include a person charged with committing the crime. [See, H.F. 1094]

[Effective July 1, 2005.]

23 **Prohibition against employer retaliation; criminal proceedings.** Expands on the current provision in law that prohibits employer retaliation against a victim or witness who takes a reasonable time off from work to answer a subpoena or answer the request of a prosecutor.

Subd. 1. Victim or witness. Allows a victim or witness to take reasonable time off from work to answer a subpoena or answer the request of a prosecutor.

Subd. 2. Victim's spouse or next of kin. Allows the victim of a heinous crime, as well as the victim's spouse or next of kin, to take reasonable time off from work to

attend proceedings involving prosecution of the heinous crime. The victim and his or her family member need not be asked to attend or issued a subpoena for these protections to vest.

Subd. 3. Prohibited acts. Prohibits employer retaliation against an employee who takes a reasonable time off from work to attend a criminal proceeding as provided in this section.

Subd. 4. Verification; confidentiality. Provides that an employee who is absent from work must give advance notice, unless an emergency prevents the employee from doing so. An employer may ask for verification as to the employee's whereabouts, but any information provided must be kept confidential.

Subd. 5. Penalty. Provides the same criminal penalties as found in section 20.

Subd. 6. Civil action. Provides the same civil remedies as found in section 20.

Subd. 7. Definition. Defines "heinous crime" to include acts of homicide, first-degree assault, and criminal sexual conduct committed with force or involving a minor. [See, H.F. 443]

[Effective August 1, 2005, for crimes committed on or after that date.]

- 24 Testing of sex offenders for Human Immunodeficiency Virus.** Clarifies notification procedures when a victim of criminal sexual conduct requests HIV testing of the perpetrator. Requires an order from the court directing an offender to undergo HIV testing to include the name and contact information of the victim's choice of healthcare provider. Requires the Department of Corrections to provide test results to the victim's healthcare provider. Requires the victim's healthcare provider to give the results to the victim or the victim's parent or guardian. [See, H.F. 2085]

[Effective July 1, 2005.]

- 25 Minnesota residents injured elsewhere.** Expands eligibility for reparations to victims injured overseas.

[Effective August 1, 2005, and applies to those seeking reparations on or after that date.]

- 26 Special revenue spending authorization from criminal justice special projects account.** Transfers remaining balances in the special revenue fund authorized by Laws 2001, First Special Session, for which spending authorization ended June 30, 2003, to the general fund.

[Effective July 1, 2005.]

- 27 Homelessness pilot projects; grants.**

Subd. 1. Grants. Authorizes the awards of grants for homeless outreach programs to qualified applicants in Hennepin County, Ramsey County, and one county outside the metro area. Grants must be used for two-year pilot projects that reduce recidivism and promote stronger communities. The commissioner of public safety, in consultation with the director of ending long-term homelessness, the Ending Long-term Homelessness Advisory Committee, and the Department of Human Services Office of Economic Opportunity, shall award the grants.

Subd. 2. Applications. Delineates the criteria for grant awards.

Subd. 3. Annual Report. Requires grant recipients to report annually to the

commissioner with the following information: (1) the services provided, (2) expenditures of grant money, and (3) an evaluation of the program's success in connecting homeless individuals to housing and services and in reducing the use of public safety and corrections resources. The commissioner must in turn submit the reports with an evaluation of the projects' effectiveness to the chairs and ranking minority members of the house of representatives and senate committees having jurisdiction over public safety and health and human services.

28 **Transfer of responsibilities.** The responsibility of the Department of Employment and Economic Development for the youth intervention program is transferred to the Department of Public Safety. [See, H.F. 1423]

[Effective July 1, 2005.]

29 **Revisor instruction.** Instructs the Revisor to renumber and cross-reference changes regarding transfer of youth intervention programs. [See, H.F. 1423]

[Effective July 1, 2005.]

Article 9: Fire Marshal

Overview

This article contains a series of policy changes impacting the state fire marshal and the duties of that office.

- 1** **Removal of structures.** Adds language to Minnesota Statutes, section 84.362 to clarify the characteristics of property which may be deemed by the county board to be a fire or safety hazard. Deletes reference to Minnesota Statutes, section 299F.10, which is repealed in section 15. [See, H.F. 1980]
- 2** **Fire protection.** Requires all warehouses to protect against fire in accordance with the State Fire Code.
- 3** **Rights before sale; improvements, insurance, demolition.** Clarifies the authority of a county board to demolish property which is deemed by the board to be a fire or safety hazard. Deletes a reference to Minnesota Statutes, section 299F.10, which is repealed in section 15. [See, H.F. 1980]
- 4** **Fees.** Eliminates the Rules references for each plan review involving flammable liquids, motor vehicle fuel-dispensing stations, or liquified petroleum gases. Deletes references to obsolete administrative rules. [See, H.F. 1980]
- 5** **Rules for certain petroleum storage tanks; tank vehicle parking.** Deletes obsolete language by changing the name of the fire code from Uniform Fire Code to State Fire Code, which is the code in force in Minnesota. [See, H.F. 1981]
- 6** **Law enforcement powers; Information system.** Deletes the requirement that the state fire marshal inform the superintendent of the Bureau of Criminal Apprehension whenever the cause of a fire is determined to be arson, replacing it with a requirement to so inform the law enforcement authority having jurisdiction, typically at the local level of government. The authority having jurisdiction, rather than the superintendent, would determine the sufficiency of evidence and cause the arrest of the person involved. This is currently the standard practice.

Removes the requirement that the Bureau of Criminal Apprehension maintain a record of

arrests, charges, and final disposition of all fires reported and investigated under Minnesota Statutes, section 299F.04 and .05. This system is currently maintained by the state fire marshal. This system is currently maintained by the state fire marshal, and the authority to do so is retained.

[See, H.F. 1992]

- 7 **Cooperative investigation.** Removes the reimbursement to political subdivisions for a portion of the salary costs and the expenses incurred by police officers and firefighters attending arson investigation training offered by the state fire marshal's arson training unit. [See, H.F. 1992]
- 8 **Summons witnesses; produce documentary evidence.** Removes the authority of the state fire marshal to delegate summons authority to fire departments in cities of the first and second class. A summons under this section could only be issued by the state fire marshal and designated staff, who would provide that service to local fire departments when requested. Cities of the first and second class have not used this authority in the past. Various technical changes are also made. [See, H.F. 1992]
- 9 **Rules.** Deletes references to rules regarding flammable liquids and gases. The storage and handling of these substances is addressed in the State Fire Code. [See, H.F. 1980]
- 10 **Blasting agent defined; explosives classified.** Changes outdated definitions of various classes of explosives to commonly accepted definitions. [See, H.F. 1980]
- 11 **Smoke detector for any dwelling.** Deletes a reference to the International Conference of Building Officials which, as an organization, no longer exists. Deletes a reference to Underwriters Laboratory. Replaces them with a reference to the State Fire Code which appropriately addresses the issue. [See, H.F. 1980]
- 12 **Smoke detector for apartment, lodging house, or hotel.** Deletes a reference to the International Conference of Building Officials which, as an organization, no longer exists. Deletes a reference to Underwriters Laboratory. Replaces them with a reference to the State Fire Code which appropriately addresses the issue. [See, H.F. 1980]
- 13 **General requirements; permit; investigation; fee.** Deletes references to National Fire Protection Association Standards which are now part of the State Fire Code. [See, H.F. 1981]
- 14 **Instruction to the Revisor.** Instructs the revisor of statutes to eliminate references to the uniform fire code and replace them with State Fire Code and to delete references to the National Fire Protection Association Standards which is now part of the State Fire Code. [See, H.F. 1981]
- 15 **Repealer.** Repeals various statutes the subjects of which are addressed in the State Fire Code, making statute language redundant and, in some cases, obsolete. [See, H.F. 1980]

Article 10: 911 Emergency Telecommunications Services

Overview

Article 10 provides for a transition of the 911 fee from one that is based on each telephone line to one that is based on each telephone number, with the change to become effective July 1, 2006. It increases the current 911 emergency telephone services fee by 25 cents to fund the current deficiency in the costs of operating the 911 telephone system, to pay off prior year obligations of the 911 telephone fund, and to help defray the cost of operating public safety answering points (PSAPs). It authorizes the commissioner of public safety to impose certain cost controls on 911 emergency telephone services contracts. It shortens the time limit for telephone companies to certify to the commissioner their costs for providing 911 service. It replaces the current authorization for the Metropolitan Council to sell 911 revenue bonds for phases two and three of the 800 MHz public safety radio communications system with a similar authorization for the commissioner of finance to sell the bonds. It reduces the bond authorization for the second phase (in the metropolitan area) and increases the bond authorization for the third phase (in the areas around Rochester and St. Cloud). Finally, it sets priorities for payment of debt service costs from the 911 account.

Bonds for phases two and three of the 800 MHz radio system were previously authorized but not sold. They were authorized by Laws 2002, ch. 401, art. 1, § 7, and Laws 2003, First Sp. Sess. ch. 1, art. 2, §§ 116, and were to be paid for with fee increases totaling nine cents authorized by Laws 2002 ch. 401, art. 1, §§ 3, 8, and Laws 2003, First Sp. Sess. ch.1, art. 2, §§ 108, 117. The bonds were not sold because the Governor chose to divert the revenue from the nine-cent fee increase to pay operating costs of the telephone service when it became clear in the February 2004 forecast that actual revenue would fall short of the amounts forecast in February 2003.

- 1 **Combined per number fee.** Provides for a transition of the 911 fee from one that is based on each telephone line to one that is based on each telephone number, with the change to become effective July 1, 2006. It requires the commissioner of commerce to recommend to the Legislature by January 15, 2006, the new method for assessing the fee, which will become effective when enacted into law.
- 2 **Application, notice, financial administration, complaint investigation.** Transfers administration of the telephone assistance plan (TAP) from the Department of Administration to the Department of Public Safety. This is a conforming change to reflect a transfer that has already taken place.
- 3 **Automatic location identification.** Strikes a reference to a “special viewing screen” for the enhanced 911 program, which no longer uses one.
- 4 **Enhanced 911 service.** Updates the definition of enhanced 911 service to distinguish between the common network and database and the connections to the network.
- 5 **911 service.** Provides a more generic definition of the three elements of the 911 service to accommodate changing technology whereby telephones are looking more like computer networks
- 6 **911 emergency telecommunications service provider.** Adds a new definition of “911

emergency telecommunications service provider” to enable contracting with entities other than telephone companies.

- 7 **Connected telecommunications service provider requirements.** Adds wireless providers and packet-based telecommunication (VoIP) to the statute requiring phone companies to design their systems to provide 911 service. In spite of being included in the definition, VoIP providers like Vonage are not subject to state regulation without their consent, since they have been exempted by the FCC and federal court decisions.
- 8 **Contractual requirements.** Allows the state to contract with providers other than wire-line telecommunications service providers, in recognition of the growing role of nontelephone companies in providing 911 service.
- 9 **Agreements for service.** Likewise allows counties and other agencies to contract with providers other than wire-line telecommunications service providers.
- 10 **Database.** Changes the standard for the privacy of personal information in the 911 database from the federal Electronic Communications Privacy Act of 1986 to the federal Communications Act of 1932.
- 11 **Plan integration.** Allows the state to contract with providers other than wire-line telecommunications service providers, in recognition of the growing role of nontelephone companies in providing 911 service.
- 12 **Emergency telecommunications service fee; account.** Adds a reference to packet-based telecommunications service providers and increases the 911 emergency telephone services fee from 40 to 65 cents a month.
- 13 **Method of payment.** Limits the payment of telephone company charges for providing 911 service to those costs set forth in the company’s contract with the commissioner of public safety and adds a reference to include packet-based telecommunications service providers.
- 14 **Timely certification.** Shortens from two years to one year the time limit for a telephone company to certify to the commissioner of public safety its charges for providing 911 services and requires each contract to provide that the commissioner may limit payment of costs to 110 percent of the amount estimated when the contract was signed.
- 15 **Fee.** Adds a reference to include packet-based telecommunications service providers and strikes the current dedication of ten cents of the fee to paying the costs of operating PSAPs, since the future amount of the fee per month under the new system is unknown. Includes a direct appropriation of the amount raised by 20 cents of the fee, ten cents under current law plus ten cents of the increase.
- 16 **Subsystems.** Adds to the definition of “subsystems” for purposes of the 800 MHz public safety radio communications system a reference to those identified in the plan developed by the Statewide Radio Board.
- 17 **Authorization.** Strikes language authorizing the Metropolitan Council to sell bonds for phase three.
- 18 **Limitations.** Strikes language authorizing the Metropolitan Council to sell bonds for phases two and three.
- 19 **State 911 revenue bonds.** Authorizes the commissioner of finance to sell 911 revenue bonds to pay the costs of the 800 MHz statewide public safety radio communication system that the Statewide Radio Board determines are of regional or statewide benefit. The bonds are payable from revenue to the 911 account. This section is modeled on Minnesota

Statutes, section 473I.06, baseball park revenue bonds. The authority to borrow from the 911 account in anticipation of bond proceeds is modeled on Minnesota Statutes, section 16A.641, subdivision 8(b), for state general obligation bonds.

- 20 Standing appropriation; costs covered.** Provides an open appropriation for the payment of debt service on the bonds once they have been sold, and sets this appropriation as a first priority for the use of all the revenue in the 911 account so as to insure that the debt service will be paid on time.
- 21 Repealer.** Repeals a requirement that the commissioner of public safety transmit to the Metropolitan Council 1/12 of its total appropriation each month.
- 22 Effective date.** This article is effective the day following final enactment. It authorizes a fee change this calendar year to be made on 30 days' notice, rather than the usual 45, in order to put the new fees into effect by July 1.

Article 11: Law Enforcement Policy

Overview

This article addresses the following issues pertaining to law enforcement policy: reimbursement for bullet-resistant vests; establishment of the Gang and Drug Oversight Council; establishment of the MN Financial Crimes Oversight Council; creation of a human trafficking study and assessment; maintenance of suspense files; access to physical mark identification database; provisions pertaining to the Criminal and Juvenile Justice Information Policy Group and CrimNet; advertising for private detectives and protective agents; and preservation of electronic arrest records.

- 1 Bullet-resistant vests.** Authorizes the commissioner of public safety and political subdivisions to reimburse peace officers up to \$600 for the purchase of bulletproof vests. Peace officers may receive up to \$600 from both the commissioner and the political subdivision that employs them. Currently, the reimbursement is capped at \$300 from the state and \$300 from a political subdivision. Permits reimbursement for a new vest every five years. Exempts peace officers who purchase, before July 1, 2005, bullet-resistant vests constructed from a zylon-based material from the statutory reimbursement requirements that the purchaser either not own a vest or own a vest that is in excess of five years old. [See, H.F. 121, 2349]

[Effective day following enactment.]

- 2** See article 11, section 0. [See, H.F. 121,2349]
3 See article 11, section 0. [See, H.F. 121,2349]
4 **Gang and Drug Oversight Council.**

Subd. 1. Oversight council established. Established to provide guidance related to gang and drug crimes.

Subd. 2. Membership. Provides a list of 30 members to be appointed to the council.

Subd. 3. Oversight council's duties. Directs the council to develop an overall

strategy to ameliorate the harm caused to the public by gang and drug crimes.

Subd. 4. Statewide coordinator. Authorizes the commissioner of public safety to appoint a statewide coordinator, who shall serve in the unclassified service.

Subd. 5. Participating officers; employment status. Requires that all participating law enforcement officers be licensed and remain employees of their employing agency. The officers are not state employees.

Subd. 6. Jurisdiction and powers. Confers statewide jurisdiction and arrest powers to law enforcement officers.

Subd. 7. Grants authorized. Authorizes the commissioner to make grants to state and local governmental units to combat gang and drug crime.

Subd. 8. Oversight council is permanent.

Subd. 9. Funding. Authorizes participating agencies to accept grants and contributions.

Subd. 10. Role of the attorney general. Generally advise.

Subd. 11. Attorney general; community liaison. Lists the attorney general's role as a liaison between the Indian Affairs Council, the Council on Affairs of Chicano/Latino People, the Council on Black Minnesotans, and the Council on Asian-Pacific Minnesotans. [*See*, H.F. 1423, art. 2]

[Effective July 1, 2005.]

5 **Minnesota Financial Crimes Oversight Council.**

Subd. 1. Oversight council established. Establishes the Minnesota Financial Crimes Oversight Council to provide guidance in investigating and prosecuting identity theft and financial crimes.

Subd. 2. Membership. Provides for the membership of the council.

Subd. 3. Duties. Directs the council to: (1) develop a strategy to ameliorate the harm caused to the public by identity theft and financial crimes; (2) establish a multi-jurisdictional taskforce to investigate major financial crimes; (3) choose a statewide commander; (4) assist DPS in the grant process; (5) make funding recommendations; (6) assist in developing a process to collect and share identity theft information; (7) develop and approve an operational budget; (8) establish fiscal procedures with DPS; and (9) enter into contracts as necessary.

Subd. 4. Statewide commander. Provides that the current commander shall transition the Task Force and remain commander until July 1, 2008, at which time the commissioner of public safety shall appoint a statewide commander. Delineates the duties of the commander, including coordinating and monitoring enforcement activities, facilitating local and statewide efforts, facilitating training, monitoring compliance, implementing evaluation and quality control processes, selecting and removing investigators, providing supervision, and submitting budgets and quarterly activity reports to the council.

Subd. 5. Participating officers; employment status. Requires that all

participating law enforcement officers be licensed and remain employees of their employing agency. The officers are not state employees.

Subd. 6. Jurisdiction and powers. Confers statewide jurisdiction and arrest powers to law enforcement officers.

Subd. 7. Grants authorized. Authorizes the commissioner to make grants to state and local governmental units to combat identity theft and financial crimes. As funding permits, the commander may prepare a budget to establish four regional districts and fund grant allocation programs outside the counties of Hennepin, Anoka, Ramsey, Dakota, and Washington. Requires the council account to be transferred quarterly.

Subd. 8. Victims Assistance Program. (a) Authorizes the council to establish a victims assistance program to assist victims of economic crimes and provide prevention and awareness programs. The council may retain outside services to assist in development and delivery systems. Victim services are limited to helping victims obtain police assistance and directing victims on how to protect accounts and identities. Financial assistance is prohibited. Services include a 1-800 number, fax number, website, telephone service (Monday-Friday), e-mail response, and interface to other websites. The Minnesota Government Data Practices Act covers information collected by the service center.

(b) Authorizes up to a \$2,000 reward for tips leading to the apprehension and successful prosecution of individuals committing financial crimes against Minnesota citizens and businesses. The council may post or communicate the reward through various mediums. All rewards must meet the council's standards. The release of the funds shall be made to the individual whose information lead to the apprehension and prosecution of the offender(s). All rewards paid must be reported to the Department of Revenue along with the person's social security number.

Subd. 9. Council and task force are permanent. This section does not expire.

Subd. 10. Funding. Authorizes the council to accept grants and in-kind contributions.

Subd. 11. Forfeiture. Provides that property seized by the task force is subject to forfeiture if ownership cannot be established.

Subd. 12. Transfer equipment from current Minnesota financial crimes task force. Transfers the task force's equipment to the council for use by the task force. [See, H.F. 1568]

[Effective July 1, 2005.]

- 6 Statewide human trafficking assessment.** Defines nongovernmental organizations, blackmail, debt bondage, forced labor or services, labor trafficking, labor trafficking victim, sex trafficking, sex trafficking victim, trafficking, and trafficking victim. Requires the Department of Public Safety (DPS) to compile and analyze data on human trafficking in the state to establish a state plan to address trafficking and assist victims. Allows DPS to contract for professional services to carry out the duties in this article. [See, H.F. 1760]

[Effective July 1, 2005.]

- 7 Trafficking study.** Specifies trafficking data to be collected. Requires DPS to report to the legislature by September 1, 2006, and requires DPS to publish an annual report of trafficking statistics. [See, H.F. 1760]

[Effective July 1, 2005.]

8 Required fingerprinting.

Para. (a). Requires sheriffs, peace officers, and community correction agencies operating juvenile detention facilities to take fingerprints, photographs, and other identification data on persons involved in the criminal justice process, on probation, on parole, or in custody who have a suspense file. Fingerprints may be taken in post-arrest interviews, while making court appearances, while in custody, or while on probation, diversion, or supervised release.

Para. (c). Asks that prosecutors, courts, probation officers, *as well as* their agents, employees and subordinates, ensure that the requirements of paragraph (a) are met. Authorizes law enforcement to take fingerprints of an individual who is on probation. [*See*, H.F. 1984]

[Effective July 1, 2005.]

9 Court disposition record in suspense; fingerprinting. Requires the BCA to inform a prosecuting authority of the existence of a suspense file on any person prosecuted by that authority. Provides that upon notice, the prosecuting authority may bring a motion to compel the taking of a person’s fingerprints upon a showing that the person has a suspense file. [*See*, H.F. 1984]

[Effective July 1, 2005.]

10 Information on released prisoner. Places a duty on officials of penal institutions to furnish the BCA with fingerprints and identification data on prisoners confined in penal institutions to aid the BCA in maintaining criminal history files and reducing the number of suspense files. [*See*, H.F. 1984]

[Effective July 1, 2005.]

11 Authority to enter or retrieve data. Clarifies that only “criminal justice” agencies may submit to and obtain data from the distinctive physical mark identification system. Currently, the statute permits “law enforcement” agencies to submit and access data in the system. This section uses the following definition of criminal justice agency:

an agency of the state or an agency of a political subdivision charged with detection, enforcement, prosecution, adjudication or incarceration in respect to the criminal or traffic laws of this state. This definition also includes all sites identified and licensed as a detention facility by the commissioner of corrections under section 241.021.

“Distinctive physical mark identification data” means a photograph of a brand, scar, or tattoo, and a description of the body location where the distinctive physical mark appears. The Superintendent of the BCA is charged with maintaining a system that enables criminal justice agencies to submit and obtain distinctive physical mark identification data on persons who are under investigation for criminal activity. [*See*, H.F. 1149]

[Effective July 1, 2005.]

12 CriMNet; Membership, duties. Modifies the membership of the Criminal and Juvenile Justice Information Policy Group by adding the chair and the first vice-chair of the Criminal and Juvenile Justice Information Task Force. Modifies the duties of the policy group. Creates an unclassified position of executive director to manage CriMNet and serve at the pleasure of the policy group. [*See*, H.F. 1977]

- [Effective July 1, 2005.]
- 13 CriMNet; task force.** Modifies the membership and duties of the task force. Requires the task force to monitor, review and report to the Criminal and Juvenile Justice Information Policy Group on CriMNet-related projects and provide oversight to ongoing operations. [See, H.F. 1977]
- [Effective July 1, 2005.]
- 14 CriMNet; Report.** Requires the Criminal and Juvenile Justice Information Policy Group to file an annual report with the governor, supreme court, and the legislature. The annual report must provide a review of integration projects, recommendations on legislative changes or needed appropriations, and a summary of the activities of the policy group and task force. [See, H.F. 1977]
- [Effective July 1, 2005.]
- 15 CriMNet; review of funding and grant requests.** Authorizes the CriMNet program office, in consultation with the Criminal and Juvenile Justice Information Policy Group and task force, to create the requirements for grant requests and determine integration priorities. Requires the task force to review grant requests and make recommendations to the policy group, which in turn, will make a final recommendation to the commissioner of public safety. Authorizes the commissioner to make grants within the limits of available state and federal funding.
- Provides a matching requirement of up to one-half of the costs of the grant request, which may include operational or staffing costs. Requires the policy group to adopt policies concerning the use of in-kind resources to satisfy the match requirement. Prohibits grant recipients from reducing funds already available to be used in improving criminal justice technology. Requires the grant recipient to submit documents to the CriMNet program office as requested. [See, H.F. 1977]
- [Effective July 1, 2005.]
- 16 Private detectives and protective agents; prohibition.** Adds “state patrol” and “public safety” to a list of terms that private detectives and protective agents are not permitted to use in a way that implies that they are affiliated with a government agency. [See, H.F. 1397]
- [Effective day following enactment.]
- 17 Electronic arrest records.** Requires an agency that produces electronic recordings of arrests, booking, or testing processes to maintain the booking recording for at least 30 days after booking. [See, H.F. 2314]
- [Effective day following enactment.]
- 18 Repealer.** Repeals subdivisions 3, 4, 6, 7, 8, 8a, and 9 of section 299C.65, pertaining to the Criminal and Juvenile Justice Information Policy Group. Certain portions of these repealed sections have been recodified in this article. Also repeals sections 299A.64; 299A.65; 299A.66; and 299A.68 (relating to the Gang Strike Force). [See, H.F. 1977,1568]
- [Effective July 1, 2005 except for repeal of 299A.64 and 299A.65, which are effective January 1, 2006.]

Article 12: DNA Collection

Overview

Establishes an all predatory felon DNA database in Minnesota. Requires law enforcement to collect, after a probable cause determination, a biological specimen for DNA analysis purposes from all persons, including juveniles, who are charged with certain violent and predatory felony offenses.

Provides data privacy protection to DNA samples and records, and establishes grounds for expunging DNA samples. Requires law enforcement to maintain DNA samples for the period of time the subject of the sample is under sentence.

- 1 **DNA evidence.** Amends the Data Practices Act to insert a cross-reference to the statute on DNA records.
- 2 **Superintendent; rules.** Authorizes the Superintendent of the Bureau of Criminal Apprehension (BCA) to promulgate rules to implement the policy of collecting DNA from arrestees.
- 3 **Oath of superintendent and employees.** Requires the superintendent and each employee of the BCA to take an oath before performing duties related to DNA collection and testing.
- 4 **DNA data required.**

Subd. 1. Required collection of biological specimen for DNA testing. Requires law enforcement to collect, after a probable cause determination, a biological specimen for DNA analysis purposes from all persons, including juveniles, who are charged with certain violent and predatory felony offenses. The list of crimes is identical to the one currently found in section 609.117 (*i.e.*, the convicted felon DNA statute). Requires law enforcement to deliver the biological specimen to the Bureau of Criminal Apprehension within 72 hours of collecting the specimen.

Subd. 2. Law enforcement training; duties. Requires peace officers who collect biological specimens be trained according to BCA guidelines. Requires law enforcement to contact a juvenile's parent or guardian prior to collecting a biological specimen under this section.

Subd. 3. Bureau duty. Requires the BCA to destroy the biological specimen and return related records when a person who submitted a sample pursuant to subdivision 1 is found not guilty. If charges were dismissed, a person who submitted a sample under subdivision 1 may require the BCA to destroy the sample and return related records.

[Effective Date: July 1, 2005.]

- 5 **Identification data furnished to bureau.** Adds a new subdivision to the section of law that addresses issues related to the expungement of identification data submitted by law enforcement to the BCA. Currently, this section of law pertains primarily to fingerprint evidence. As amended, the section contains a subdivision specifically regulating the handling and expungement of DNA evidence that law enforcement submits to the BCA.

Subd. 1. Identification data other than DNA. Reiterates the requirement that law enforcement must submit fingerprint records to the BCA along with any other identifying information required by the BCA. Requires the BCA to return to a

defendant fingerprint and other non-DNA identifying data upon demand and without an expungement order when charges are dismissed prior to a determination of probable cause or the prosecuting authority declines to file charges and the grand jury does not return an indictment. In cases where a person who was charged with a crime but not convicted, the defendant may seek to have fingerprint and identifying information sealed pursuant to an expungement petition.

One very significant exception to the expungement of identifying data contained in the current version of section 299C.11 is that DNA samples and records of arrested persons “shall not be returned, sealed, or destroyed as to a charge supported by probable cause.” In other words, under current law if a person is charged with a crime and the charges are supported by probable cause, even if dismissed for some other reason, the person may not prevent the BCA from storing his or her DNA evidence in a DNA database and actively using the evidence for law enforcement purposes. This section carves out an exception for evidence collected pursuant to the authority granted in section 299C.105 (section 4). This exception is necessary because DNA collected under that section is subject to automatic destruction under certain circumstances.

Subd. 2. DNA samples and records. Creates a new subdivision for DNA evidence collected by the BCA that mirrors subdivision 1 in its structure and substance.

Subd. 3. Definitions. Contains the definitions that currently are found in section 299C.11.

[Effective date: July 1, 2005 and applies to offenders arrested on or after that date.]

6 Standardized evidence collection; DNA analysis. Amends the chapter of law that addresses standards for DNA evidence collection, DNA analysis, and DNA evidence storage. The new language adds privacy protections for DNA data and records.

Subd. 1. Definition. Defines “DNA analysis.” (Current law, no changes.)

Subd. 2. Uniform evidence collection. Charges the BCA with establishing uniform DNA collection procedures. (Current law, no changes.)

Subd. 3. DNA analysis and data bank. Charges the BCA with establishing a DNA database (current law). The new language classifies the DNA data contained in the BCA’s database as “private data on individuals,” which means that it is accessible to the individual who is the subject of the data but otherwise is not available to the public. Specifies that DNA data maintained by the BCA is only available to authorized law enforcement personnel for law enforcement identification purposes. Specifies that the remedies of chapter 13 apply to a violation of this provision.

Subd. 4. Record. Requires the BCA to provide results of DNA testing to the defendant and prosecutor upon request (current law). The new language classifies the results of the BCA’s DNA analysis and related records as “private data on individuals.” Specifies that the BCA’s DNA analysis results and related records may only be used for law enforcement identification purposes. Specifies that the remedies of chapter 13 apply to a violation of this provision.

[Effective date: July 1, 2005.]

7 Penalty on local officer refusing information. Requires a local governmental entity that employs a person who fails to comply with submitting DNA evidence to the BCA as

required by section 299C.105 to withhold the person's salary. This is the same penalty under current law that a person who is responsible for submitting fingerprint records faces if the person fails to comply with current statutory requirements.

[Effective date: July 1, 2005.]

- 8 Preservation of evidence.** Requires governmental entities to retain any biological evidence that is used to secure a conviction in a criminal case for the period of time that the convicted person remains incarcerated, on probation, or on parole, unless a court authorizes earlier disposition.

[Effective the day following final enactment.]

- 9 DNA analysis of certain offenders required.** Requires the collection of DNA samples from all convicted felons. Combines the original DNA collection statute (609.117) and the temporary DNA statute (609.119) so that section 609.117 requires DNA samples from all convicted felons.

[Effective date: July 1, 2005 and applies to offenders sentenced, released from incarceration or accepted for supervision on or after that date.]

- 10 Certain criminal proceedings not resulting in a conviction.** Amends the expungement chapter (609A) to reflect changes made in section 4 regarding the expungement of DNA samples and records.

[Effective date: July 1, 2005.]

- 11 Limitations of order.** Amends current language in the expungement chapter that prohibits a court from expunging DNA evidence when the charged crime was supported by probable cause. This change is needed because the bill allows for automatic expungement under section 4 for certain persons who submitted DNA samples.

[Effective date: July 1, 2005.]

- 12 Repealer.** Repeals the temporary DNA collection statute (609.119), which is scheduled to sunset in June of 2005.

Article 13: Corrections

Overview

This article addresses the following issues related to corrections: use of inmates for community services; discipline procedures for correctional officers; conditional release of nonviolent controlled substance offenders; seizures by the Fugitive Apprehension Unit; local correctional fees; jail construction thresholds; gate money; and dedication of space at MCF-Faribault. In addition, the article repeals a provision relating to data collection on interstate offenders and authorizes the commissioner of corrections to appoint individuals to the Advisory Council on Interstate Adult Offender Supervision.

- 1 Procedure for service contracts.** Exempts use of inmates for community services and conservation services from the restrictions on state contracts. (Before entering into a state contract, the commissioner of administration must determine that: 1) no current state employee is available; 2) the contractor is not a state employee; and 3) certain evaluation,

policy, and time provisions are in place.)

[Effective July 1, 2005.]

- 2 **Contracted services.** Exempts use of inmates for community services and conservation services from the restrictions on contracted services. (Before hiring outside consultants or services, an agency must demonstrate that it cannot use available staff and it must give priority to permanent employees if on a reduced operating budget.)

[Effective July 1, 2005.]

- 3 **Correctional officers discipline procedures act.**

Subd. 1. Definitions. Defines the following terms:

- ▶ “Correctional officer” and “officer” mean a person employed by a state or local correctional or detention facility in a security capacity.
- ▶ “Formal statement” means the questioning of an officer in the course of obtaining a recorded, stenographic, or signed statement to be used as evidence in a disciplinary proceeding against the officer.

Subd. 2. Applicability. Applies the procedures and provisions of the act to state or local correctional authorities.

Subd. 3. Governing formal statement procedures. Requires the formal statement of an officer to be taken according to subdivision 4.

Subd. 4. Place of formal statement. Requires the formal statement to be taken at an employer’s or investigating agency’s facility or another place agreed to by the parties.

Subd. 5. Complaint. Requires that a complaint be filed before an officer is required to give a formal statement.

Subd. 6. Disclosure of financial records. Requires an officer’s employer to obtain a search warrant or subpoena before the officer must produce personal financial records.

Subd. 7. Release of photographs. Prohibits a state or local correctional facility or governmental unit from disclosing a picture of an officer without written consent from the officer except for disclosure of photographs to prospective witnesses.

Subd. 8. Disciplinary letter. Prohibits placing a disciplinary letter in an officer’s file if a copy of the letter was not provided to the officer.

Subd. 9. Retaliatory action prohibited. Prohibits retaliation against an officer based on the officer’s exercise of the rights provided in this section.

Subd. 10. Rights not reduced. Establishes that the rights provided in this

section are in addition to any other rights an officer may have.

[Effective July 1, 2005.]

- 4 Interstate adult offender supervision.** Authorizes the commissioner of corrections to appoint individuals to the Advisory Council on Interstate Adult Offender Supervision. The council oversees and administers the state's participation in the Interstate Compact for Adult Offender Supervision.

[Effective July 1, 2005.]

- 5 Gate money.** Adds "supervised release" to the list of offenders eligible for \$100 gate money to be paid by the warden or chief executive officer upon leaving prison. Exempts from eligibility short-term offenders and offenders who received the gate money upon their initial release and are now up for a subsequent release.

[Effective July 1, 2005.]

- 6 Conditional release of nonviolent controlled substance offenders; opportunity for drug treatment.**

Subd. 1. Conditional release authority. Authorizes the Commissioner of Corrections to grant conditional early release to nonviolent drug offenders who have met the criteria outlined in subdivision 2.

Subd. 2. Conditional release of certain nonviolent controlled substance offenders. Provides the following offender criteria for consideration for conditional early release:

- ▶ the crime of conviction must be a first- to fifth-degree controlled substance crime (Minnesota Statutes, sections 152.021 to 152.025) (first degree-possession and manufacture crimes only, second degree-possession crime only);
- ▶ the offender must have committed the crime as a result of drug addiction and not primarily for profit;
- ▶ the offender has served at least 36 months or one-half of the offender's term of imprisonment;
- ▶ the offender has successfully completed a chemical dependency treatment program while in prison;
- ▶ the offender has not previously been conditionally released under this section; and
- ▶ the offender has not been previously convicted/adjudicated delinquent for a violent crime.

Subd. 3. Offer of chemical dependency treatment. Requires the commissioner to offer chemical dependency treatment to the offenders described in subdivision 2 within 160 days after their term of imprisonment begins or as soon as possible

thereafter.

Subd. 4. Chemical dependency treatment program. Delineates the program components. Authorizes the commissioner to expel anyone who violates the rules, commits an offense, or presents a risk to others while in the program.

Subd. 5. Additional requirements. Requires the offender to sign a written contract agreeing to comply with the program requirements and agreeing to submit to random drug and alcohol tests and electronic monitoring.

Subd. 6. Extension of term of imprisonment for offenders who fail in treatment. Authorizes the commissioner to add the time the offender was in the treatment program to the offender's term of imprisonment if the offender fails to complete the program.

Subd. 7. Release procedures. Allows the commissioner to deny release, if the commissioner determines that an offender poses a threat to public safety. In making the determination, the commissioner must follow the release procedures established in Minnesota Statutes, section 244.05, subdivision 2, and applicable rules.

Subd. 8. Conditional release. Provides that the commissioner may rescind a conditional release without a hearing if the commissioner determines that continuation of the release poses a danger to the public or to an individual.

Subd. 9. Offenders serving other sentences. Prohibits the conditional release of an offender serving concurrent sentences for an offense eligible for conditional release and an offense ineligible for release under this section until the offender has served the entire term of imprisonment for the ineligible offense.

Subd. 10. Notice. Requires that notice and an opportunity to comment be given to the prosecuting authority and the sentencing court before an offender is given conditional release under this section.

Subd. 11. Sunset. This section expires on July 1, 2007.

[Effective July 1, 2005, and applies to persons in prison on or after that date.]

7 Local correctional fees. This section amends the provision in current law that authorizes a local jail to collect local correctional fees only from *convicted offenders*. Authorizes facilities to charge fees to persons who are under the control and supervision of the facility.

"Local correctional fees" include fees for the following correctional services: (1) community service work placement and supervision; (2) restitution collection; (3) supervision; (4) court ordered investigations; (5) any other court ordered service; (6) post-prison supervision or other form of release; or (7) supervision or other services provided to probationers or parolees.

[Effective July 1, 2005.]

8 Definitions. Adds the Department of Corrections' Fugitive Apprehension Unit to the definition of "appropriate agency" (i.e., law enforcement agency) in the criminal forfeiture

law.

[Effective July 1, 2005.]

- 9 **Associated property.** Prohibits the Fugitive Apprehension Unit from seizing real property under the forfeiture law that is associated with controlled substance offenses.

[Effective July 1, 2005.]

- 10 **Limitations on forfeiture of certain property associated with controlled substances.** Prohibits the Fugitive Apprehension Unit from seizing conveyance devices (including real property) under the forfeiture law that are associated with controlled substance offenses.

[Effective July 1, 2005.]

- 11 **Property subject to forfeiture.** Prohibits the Fugitive Apprehension Unit from seizing real property under the forfeiture law that was used to commit or facilitate any designated offense.

[Effective July 1, 2005.]

- 12 **Vehicle forfeiture for prostitution offenses.** Prohibits the Fugitive Apprehension Unit from seizing motor vehicles under the forfeiture law that are used to commit or facilitate a prostitution offense.

[Effective July 1, 2005.]

- 13 **Vehicle forfeiture for fleeing a peace officer.** Prohibits the Fugitive Apprehension Unit from seizing motor vehicles under the forfeiture law that are used to commit or facilitate a fleeing a peace officer offense.

[Effective July 1, 2005.]

- 14 **Property subject to administrative forfeiture; presumption.** Prohibits the Fugitive Apprehension Unit from administratively forfeiting any conveyance devices containing controlled substances or any guns, ammunition, or firearms that are associated with controlled substance offenses.

[Effective July 1, 2005.]

- 15 **Rental property.** Prohibits the Fugitive Apprehension Unit from seizing real property under the rental property forfeiture law; a law that permits the seizure of rental property under certain circumstances when illegal controlled substances are seized on the premises incident to a lawful search or arrest.

[Effective July 1, 2005.]

- 16 **Motor vehicles subject to forfeiture.** Prohibits the Fugitive Apprehension Unit from seizing motor vehicles under the forfeiture law that are used to commit or facilitate a drive-by shooting offense.

[Effective July 1, 2005.]

- 17 **Confinement when not employed.** Authorizes sheriffs to use electronic monitoring as an alternative to jail confinement for offenders who are sentenced to work-release. Prohibits offenders convicted of domestic abuse from being electronically monitored, unless the sentencing court directs otherwise. Permits the sheriff to assess the cost of electronic

monitoring to the offender.

[Effective July 1, 2005.]

- 18 Jail, advice as to construction.** Raises the monetary threshold upon which a county board must pass a resolution and seek the advice of the commissioner of corrections before purchasing, leasing, constructing, or repairing a jail. The threshold would be raised from \$5,000 to \$15,000.

[Effective July 1, 2005.]

- 19 MCF-Faribault dedication of space.** Requires that space be kept available at MCF-Faribault to allow Rice County to construct a local correctional facility there. This section sunsets in ten years.

[Effective day following enactment.]

- 20 Repealer.** Repeals section 243.162 of the Minnesota Statutes. Section 243.162 requires the commissioner of corrections to collect and report biannually on background and recidivism data on all individuals received by or sent from Minnesota pursuant to the Interstate Compact for Supervision of Parolees and Probationers.

[Effective July 1, 2005.]

Article 14: Courts and Public Defender

Overview

This article addresses issues pertaining to the courts and public defenders.

The article increases criminal surcharges, civil filing fee, and recording surcharges. The latter will be used, in part, to fund civil legal services. In addition, the article permits Ramsey County to impose an additional \$1 surcharge to fund the county's petty misdemeanor diversion program.

The article also modifies the deadline date for civil commitment hearings and places time limitations and procedural restrictions on petitions for postconviction relief.

Finally, it modifies seizure and forfeiture provisions, directs the courts to forward sentencing worksheets to the sentencing guidelines commission on all felony convictions, expands public defenders' access to certain criminal data, authorizes the board of public defense to provide surplus computers to employees, instructs the Revisor to create a collateral sanctions chapter, authorizes the assignment of a retired court commissioner to act in Ramsey county, authorizes the appointment of four new judges, and repeals a law prohibiting service of process on the Sabbath.

- 1 Description.** Authorizes the appointment of four new district court judges.

[Effective July 1, 2005.]

- 2 Time for commitment hearing.** Provides that hearings on civil commitment petitions relating to sexually dangerous persons or persons with sexual psychopathic personalities must be held within 90 days from the date of the petition's filing. Currently, the deadline is

14 days from filing.

[Effective July 1, 2005.]

3 Fee amounts. Increases the fee for filing a civil action in court from \$235 to \$240.

[Effective July 1, 2005.]

4 Surcharges on criminal and traffic offenders. Increases the current statutorily mandated criminal surcharge from \$60 to \$72, and increases the parking violation surcharge from \$3 to \$4. Permits the Ramsey County Board of Commissioners to authorize imposition of a \$1 criminal surcharge for every conviction of a felony, gross misdemeanor, misdemeanor, or petty misdemeanor offense, including a parking ticket. It is the responsibility of judges in the 2nd Judicial District (Ramsey County) to impose the \$1 surcharge and for the court administrator to collect the surcharge. The court administrator must collect the \$1 surcharge along with the statutorily mandated criminal surcharge. Surcharges will not be imposed when a person is convicted of a petty misdemeanor for which no fine is imposed.

[Effective July 1, 2005.]

5 Disbursement of surcharges by commissioner of finance. Deposits surcharge increases (above) in the general fund.

Requires the Ramsey County court administrator to transmit the \$1 surcharge to the commissioner of finance. The \$1 special surcharge is deposited in a Ramsey County surcharge account in the special revenue fund and amounts are appropriated to the trial courts for the petty misdemeanor diversion program.

[Effective July 1, 2005.]

6 County recorder.

Subd. 1. Limits fees imposed on the recording process to the fees established in this section. Imposes a flat \$46 fee to replace and supplement fees in current laws. Increases the amount going into the state general fund by \$6.50. Eliminates the per page charge. Eliminates the \$10 nonstandard document fee. Reserves \$10 of the \$46 fee for the County recorder technology fund. Adjusts miscellaneous fees.

Subd. 2. Applies the fees established in subdivision 1 to all counties.

Subd. 3. Deletes the surcharge.

Subd. 4. Establishes the technology fund where \$10 of each recording fee is deposited. The fund must be used to obtain, maintain, and update technology for recording services.

Subd. 5. Eliminates an additional \$10 fee for nonconforming documents.

Subd. 6. Provides a cross-reference for registrar of titles fees.

[Effective July 1, 2005.]

7 County fees and recording standards for the recording of real estate documents.

Subd. 1. Provides an August 1, 2005, effective date for the recording standards in this section.

Subd. 2. Prohibits counties from charging any fees for services related to recordable instruments other than the fees authorized under state law.

Subd. 3. Provides a 15-day limit for county recorders and registrar of titles for recording and returning properly filed instruments. This is reduced to ten days after calendar year 2011, and is limited to five days for electronic filings.

Subd. 4. Provides increasing thresholds for counties to comply with the subdivision 3 requirements. After 2010, a county is considered in compliance if 90 percent of recordable instruments are returned in compliance with subdivision 3 time limits.

Subd. 5. Allows counties to suspend the time limits for compliance for six months if the county is undertaking material enhancements to its recording systems.

Subd. 6. Requires counties to report on their compliance with the time limits under subdivision 3.

Subd. 7. Requires counties to segregate additional unallocated fees into a separate account for enhancements to the recording process.

[Effective July 1, 2005.]

8 Public certified copies. Eliminates a reference to a fee now covered by section 6.

[Effective July 1, 2005.]

9 Registrar of titles' fees. Establishes the same fee schedule and changes for Torrens property that is applied to county recorders in section 6, and CPT filings in section 10.

[Effective July 1, 2005.]

10 Registrar of titles' fees. Establishes the same fee schedule and changes for certificate of possessory title filings that is applied to county recorders in section 6, and Torrens property in section 9. It also deletes the surcharge.

[Effective July 1, 2005.]

11 Recording. Modifies the fees that apply to CIC (common interest community) property filings by imposing a flat \$40 fee for the first ten certificates within the CIC property and \$10 for each additional certificate.

[Effective July 1, 2005.]

12 Petition. Provides that a petition for postconviction relief after a direct appeal has been completed may not be based on grounds that could have been raised on direct appeal.

[Effective August 1, 2005.]

13 Time limit. Places a two-year limitation period on filing a petition for postconviction relief. The limitation period begins to run after the later of: the entry of judgment if no direct appeal is filed or the appellate court's disposition of a direct appeal.

The starting of the limitations period may be tolled if the following circumstances apply:

1. a physical disability or mental disease precluded a timely assertion of the claim;
- there is newly discovered evidence that could not have been obtained by due diligence, is not cumulative, is not for impeachment purposes, and clearly and convincingly establishes the petitioner's innocence;
- the U.S. Supreme Court or a Minnesota appellate court set forth a new interpretation of law which retroactively applies to the petitioner's case;
- the petitioner was convicted for a crime committed before May 1, 1980 and has grounds that a significant change in law occurred which should be applied retroactively in the interests of justice; or
- the court finds that the petition is not frivolous and is in the interests of justice.

A petition filed invoking an exception must be filed within two years of the claim.

[Effective August 1, 2005. Any person whose conviction became final before the effective date shall have two years from the effective date to file a petition.]

- 14 Sentencing worksheets; Sentencing Guidelines Commission.** Directs the court to complete and forward sentencing worksheets to the sentencing guidelines commission for all felony convictions, including those for which an indeterminate or mandatory life sentence is required by law.

[Effective July 1, 2005.]

- 15 Access to government data.** Eliminates the prohibition on public defenders accessing the criminal justice information network to obtain information on individuals other than their clients. Allows the public defender to access the network to obtain the criminal record of a witness. Clarifies that the public defender shall have access to data stored via CriMNet or other methods. Specifies that the public defender may not access data systems maintained by a prosecuting attorney.

[Effective July 1, 2005.]

- 16 Surplus property.** Authorizes the Board of Public Defense to provide surplus computers to its part-time employees.

[Effective July 1, 2005.]

- 17 Property; seizure, keeping, and disposal.** Allows a person to file a petition with the court for the return of seized property if not returned in 48 hours. The court shall send a copy of the petition to the custodian agency and a non-jury hearing shall be heard within 30 days of filing. In addition to a hearing, the custodian may request, or the court may by its own motion, request an ex parte hearing at which the custodian will summarize the status of the investigation. The court shall not order return of the property if it finds that the property is being held in good faith, the property may be subject to forfeiture proceedings, the property is contraband, or the property is subject to other lawful detention. If the property is ordered returned, the petitioner is not liable for storage costs. If the petitioner is denied, the court may award costs and fees.

[Effective July 1, 2005, and applies to property seized on or after that date.]

- 18 Collateral sanctions cross-references; creation of a new chapter.**

Subd. 1. Definition. Defines “collateral sanction” as a legal penalty, disability, or disadvantage that is imposed on a person upon conviction of a crime. A collateral sanction is not a direct consequence of a crime (*e.g.*, fine, restitution, or incarceration) or a requirement imposed by the sentencing court or official (*e.g.*, DNA analysis, fingerprinting, or assessment).

Subd. 2. Revisor instruction. Instructs the Revisor to create a new chapter in the Minnesota Statutes that contains cross-references to Minnesota laws that impose collateral sanctions, including sanctions relating to employment, driving, public safety, property rights, and civil rights.

Subd. 3. Cautionary language. Requires the Revisor to use appropriate cautionary language that notifies users that the cross-reference chapter is for reference only and does not have any substantive legal effect.

Subd. 4. Consultation with legislators and legislative staff. States that the Revisor shall consult with legislators and legislative staff to identify collateral sanctions.

[Effective July 1, 2005.]

19 Report of collateral sanctions laws. Requires agencies having responsibility to impose collateral sanctions to: (1) prepare a list of sanctions within the agency’s statutory jurisdiction and (2) submit the list to the Revisor by September 1, 2005.

20 Ramsey county court commissioner. Authorizes the Chief Justice of the Supreme Court to assign a retired court commissioner to act in Ramsey County as a commissioner and perform judicial duties as provided in section 489.02.

This provision sunsets on December 31, 2025.

[Effective July 1, 2005.]

21 Repealer. This article repeals the prohibition of service of legal process on the Sabbath day (§ 624.04).

Also repeals Minnesota Statutes, section 386.30 (30-day allowance for time to record and return recordable instruments.) This requirement is replaced by the changes in section 7.

[Effective July 1, 2005.]

Article 15: Child Protection

Overview

This article modifies requirements for adoption consents and adoptive placements. It also adds background check requirements for individuals being considered as a custodian of a child who has been removed from a home as a result of a child protection proceeding.

1 Exceptions. Amends § 259.24, subd. 1. States the commissioner must consent to the adoption if there is no parent qualified to consent. Adds that if the court accepts a parent’s consent to adopt as part of a child protection proceeding, the commissioner of human

services must also consent. Provides that the commissioner must also consent to the identified adoptive parent. Consent by the responsible social service agency is no longer sufficient.

2 **Time of consent; notice of intent to consent to adoption.** Amends § 259.24, subd. 2a. Provides that the provisions of chapter 260C (the child protection statutes) and the rules of juvenile court procedure apply to both parents when they consent to an adoption as part of a child protection proceeding under section 260C.201, subdivision 11.

3 **Execution.** Amends § 259.24, subd. 5. Provides that notice of the right to withdraw consent does not apply to parents who have consented to adoption as part of a child protection proceeding under section 260C.201, subdivision 11. In those proceedings the consent is irrevocable upon acceptance by the court.

4 **Withdrawal of consent.** Amends § 259.24, subd. 6a. States that a consent to adopt under section 260C.201, subdivision 11, is irrevocable following notice to both parents of the effect of the consent and acceptance by the court, unless the court finds the consent was obtained by fraud.

5 **Review of court-ordered placements; permanent placement determinations.** Amends § 260C.201, subd. 11.

- Provides that when a child cannot be returned to the home, the court may order the child into the guardianship and legal custody of the commissioner of human services. If this is ordered and there is a prospective adoptive home that has agreed to adopt the child, this section adds that the responsible social services agency having legal custody of the child must agree to the placement.
- Adds the provision that the commissioner of human services must pursue adoptive placement in another home as soon as the commissioner determines the prospective adoptive parent is not willing to adopt the child, is not cooperative in completing the steps to finalize the adoption, or upon the commissioner's decision to withhold consent to the adoption.

6 **Background checks.** Adds § 260C.209

Subd. 1. Subjects. Provides that a background check must be completed on:

(1) a noncustodial or nonadjudicated parent who is being assessed for providing day-to-day care of a child who has been temporarily or permanently removed from the home of a parent or guardian under the child protection statutes. A check must also be completed on any household member over the age of 13, if there is reasonable cause to believe the individual has a criminal history or history of maltreatment of a child or vulnerable adult;

(2) a relative whose suitability for placement is being established and any household member over the age of 13 when the relative must be licensed for foster care; the agency must conduct a background study under the adoption statute (259.53, subdivision 2); or there is reasonable cause to believe the individual has a criminal history or history of maltreatment of a child or vulnerable adult; and

(3) a parent following out-of-home placement when the agency has reasonable cause to believe the parent has been convicted of a crime related to the parent's ability to maintain the child's health, safety, or welfare; or the parent is the subject of a investigation, or has been the subject of a substantiated allegation of child or vulnerable adult maltreatment within the past ten years.

(4) Defines "reasonable cause to believe" as information from the subject or a third person that creates an articulable suspicion the individual has a history that may pose a risk to the health, safety, or welfare of the child.

Subd. 2. General procedures. (a) Provides the list of information an agency may require from the subject of a background check.

(b) Provides the list of agencies that must provide specific information to the responsible social services agency when the agency is performing a background check.

Subd. 3. Multistate information. (a) Provides that the subject of the background check must provide a classifiable set of fingerprints when the responsible social services agency has reasonable cause to believe the individual is a multistate offender.

(b) Provides that reasonable cause may be based on: information from the Bureau of Criminal Apprehension that indicates the individual is a multistate offender or indicates that multistate offender status is undetermined; information the agency has received that the individual has a criminal history outside the jurisdiction of Minnesota; or information that the individual has been a resident of a state other than Minnesota any time during the prior ten years.

7

Responsible social service agency's duties for children in placement.

- States that the responsible social services agency shall assess whether a noncustodial or nonadjudicated parent is able to care for the child temporarily or permanently and shall complete an assessment that includes background check information as outlined in section 260C.209.
- Provides that if the social services agency plans to use the information obtained under section 260C.209 to make a recommendation against placement, the agency shall give 15 days' notice to the parent. Provides that the court shall give the parent an opportunity to be heard.
- Provides that the social services agency shall only use the background study information to make a recommendation against placement if it believes placement of the child would endanger the child's health, safety or welfare.

Article 16: Criminal Sentencing Policy

Overview

This article makes substantive and procedural changes to sentencing law in response to the United States Supreme Court's decision in *Blakely v. Washington*, 124 S. Ct. 2531 (2004). In *Blakely*, the Court held that it was unconstitutional under a person's sixth amendment right to a jury trial to allow a court to make findings of fact that would increase the sentence for an offense beyond the sentencing guidelines presumptive sentence. The Court held that the government must prove to a jury beyond a reasonable doubt every aggravating factor that would justify an increase in the defendant's sentence beyond the presumptive sentence (except for the fact of a prior conviction). Minnesota's appellate courts have limited *Blakely's* holding to increases in sentence length only; therefore, *Blakely* does not apply to upward dispositional departures; *i.e.*, a court's decision to send a person to prison in lieu of a presumptive stayed sentence.

The article increases the presumptive range of sentences allowable under the sentencing guidelines without a departure, establishes procedures to govern a jury's finding of aggravating factors and the court's imposition of an upward departure, and deletes language in various statutes that refers to the court being able to impose a longer sentence on its own.

1 Promulgation of sentencing guidelines. Provides the guidelines shall reflect a presumptive sentencing range of 20 percent above and 15 percent below the presumptive, fixed sentence.

2 Modification. Changes the statutory deadline for the Minnesota Sentencing Guidelines Commission to submit reports to the Legislature relating to proposed guidelines modifications from January 1 to January 15.

[Effective August 1, 2005, and applies to reports submitted on or after that date.]

3 Aggravated departures. Requires the state to provide reasonable notice to the defendant and the court if the state intends to rely on factors other than those specified in the sentencing guidelines in seeking an aggravated departure.

[Effective day following enactment, and applies to sentencing hearings, resentencing hearings, and sentencing departures sought on or after that date. This section expires on February 1, 2007.]

4 Procedures in cases where the state intends to seek an aggravated departure. Mandates a sentencing hearing upon reasonable notice by the state that it will seek a durational departure from the sentencing guidelines. Requires a unitary trial if the evidence in support of an aggravated departure would be admissible in a trial in support of the elements of the offense or would not result in unfair prejudice to the defendant, and provides for a bifurcated trial otherwise. Allows the prosecutor to request a bifurcated trial. States that the existence of an aggravating factor must be determined by special verdict.

[Effective day following enactment, and applies to sentencing hearings, resentencing hearings, and sentencing departures sought on or after that date. This section expires on February 1, 2007.]

5 Defendants to present evidence and argument. Allows the defendant to present rebuttal

evidence regarding whether facts exist that would justify an aggravated departure. A defendant is not allowed to present evidence or argument to the jury or fact finder regarding facts in support of a mitigated departure during the trial, but may present evidence and argument in support of a mitigated departure to the judge as fact finder during a sentencing hearing.

[Effective day following enactment, and applies to sentencing hearings, resentencing hearings, and sentencing departures sought on or after that date. This section expires on February 1, 2007.]

- 6 Waiver of jury determination.** Permits a defendant to waive the right to a jury determination of aggravating factors. Upon waiver, the court shall determine beyond a reasonable doubt whether factors exist that support the state's motion for an aggravated departure.

[Effective day following enactment, and applies to sentencing hearings, resentencing hearings, and sentencing departures sought on or after that date. This section expires on February 1, 2007.]

- 7 Notice of information regarding predatory offenders.** Restates verbatim the existing law formerly in subdivision 2a of section 244.10, which is repealed by this bill. This change puts the new language related to upward dispositional departures together in sequence in the statute.

[Effective August 1, 2005, and applies to crimes committed on or after that date.]

- 8 Computation of criminal history score.** Restates verbatim the existing law formerly in subdivision 3 of section 244.10, which is repealed by this bill. This change puts the new language related to upward dispositional departures together in sequence in the statute.

[Effective August 1, 2005, and applies to crimes committed on or after that date.]

- 9 Mandatory 30-year sentence.** Requires the court to impose a 30-year sentence under certain circumstances if a person is a repeat sex offender. The person must have a previous sex offense conviction for first-, second-, or third-degree criminal sexual conduct and be subject to sentencing for a conviction of first- or second-degree criminal sexual conduct involving force or violence. Changes the current requirement that the court determine whether aggravating factors exist that would provide grounds for an upward departure. States that the factfinder will make that determination.

[Effective August 1, 2005, and applies to crimes committed on or after that date.]

- 10 Minimum departure for sex offenders.** Requires the court to sentence a person to at least twice the presumptive sentence when a person is convicted of first- or second-degree criminal sexual conduct involving force or violence and aggravating factors exist. Provides that the factfinder shall determine whether aggravating factors exist.

[Effective August 1, 2005, and applies to crimes committed on or after that date.]

- 11 Increased sentences for dangerous offender who commits a third violent crime.** Allows a court to impose an aggravated durational departure up to the statutory maximum if an offender commits a third violent crime and the factfinder determines the offender is a danger to public safety.

[Effective August 1, 2005, and applies to crimes committed on or after that date.]

12 **Increased sentence for offender who commits a sixth felony.** Requires the factfinder to determine whether the present offense is a felony committed as part of a pattern of criminal conduct before the court may impose an aggravated durational departure on an offender who commits a sixth felony offense.

[Effective August 1, 2005, and applies to crimes committed on or after that date.]

13 **Revisor's instruction.** Instructs the Revisor to include a reference next to the repealer of provisions in the bill that are being renumbered to inform the reader of the renumbering of those provisions.

[Effective August 1, 2005.]

14 **Certain Minnesota Sentencing Guidelines Commission recommendations adopted; others rejected.** Specifically adopts certain modifications proposed by the Minnesota Sentencing Guidelines Commission in its 2005 report to the Legislature.

The most significant of the adopted modifications relate to the commission's response to the U.S. Supreme Court's 2004 decision in *Blakely v. Washington*. They adopt: 1) a list of offenses for which permissive consecutive sentencing is authorized and 2) changes to the guidelines text related to the *Blakely* decision.

In addition, specifically adopts the proposed modification relating to ranking the anhydrous ammonia tampering/theft crime as a severity level III offense.

Finally, specifically rejects the commission's proposed expansion of the guidelines' grid (15 percent above and below the presumptive, fixed sentence), as well as modifications relating to sex offenses (creating a separate grid for sex offenses, making changes to the way in which criminal history is calculated for sex offenders, etc.). *Of note, in section 1, the grid is expanded 20 percent above and 15 percent below the presumptive, fixed sentence. Also, of note, in Article 2, section 22, the legislature is requesting that the commission propose a new sex offender grid by January 15, 2006.*

Minnesota Statutes, section 244.09, subdivision 11, requires the Sentencing Guidelines Commission to submit to the Legislature proposed changes to the guidelines by January 1 of the year in which the commission wishes to make the change. These modifications go into effect automatically on the following August 1 unless the Legislature by law provides otherwise. The report in which these modifications were proposed was not submitted to the Legislature in a timely fashion. Therefore, the Legislature has to specifically adopt these modifications if they are to go into effect on August 1, 2005. Of note, section 2 changes the reporting deadline from January 1 to January 15.

[Effective day following enactment.]

15 **Instruction to Sentencing Guidelines Commission.** Instructs the commission to make changes to the guideline grid consistent with the changes in section 1 (expanding the grid range to 20 percent above and 15 percent below the presumptive, fixed sentence).

[Effective day following enactment.]

16 **Repealer.** Repeals section 244.10, subdivisions 2a and 3, as explained in sections 7 and 8.

[Effective August 1, 2005.]

Article 17: General Criminal Provisions

Overview

This article creates and modifies various criminal and civil penalties. It addresses the following provisions: anabolic steroids, gasoline drive-offs, fighting animals, domestic assault by strangulation, crime victims, murder of a child, assault of secure treatment facility personnel, human trafficking, crimes against children committed by gang members, prostitution offenses, fleeing a peace officer on foot, interference with ambulance crews, false reports to peace officers, false reports of police misconduct, theft, identity theft, “phishing” schemes, trespass, computer forfeitures, vagrancy, gambling fraud, injured railroad workers, and pirating movies.

- Schedule III.** Adds “anabolic steroids” to statutory schedule III. Currently, steroids are housed in statutory schedule IV under the term “anabolic substances.” Pursuant to statutory authority (§152.02, *subd(s)* 8, 12), the Board of Pharmacy added anabolic steroids to schedule III over a decade ago to reflect a federal policy shift but the legislature never updated the statutory version of the schedule. Recently, Congress greatly expanded the list of illegal anabolic steroids when it enacted the Anabolic Steroid Control Act of 2004. Many of the new substances added to federal schedule III are so-called steroid precursors, which, before their scheduling, were available over the counter. Section 1 incorporates the recent federal changes into Minnesota law.

Moving steroids from schedule IV to schedule III automatically increases the penalties for selling steroids. A person who unlawfully sells steroids will have committed a 4th degree controlled substance offense and be subject to a 15-year felony and a fine of up to \$100,000. *Minn. Stat. § 152.024*. The same penalties apply to a person who is convicted of possessing steroids with the intent to sell. *Id.* A person who unlawfully sells steroids to a minor or who conspires with or employs a minor to unlawfully sell steroids will have committed a 3rd degree controlled substance offense and be subject to a 20-year felony and a fine of up to \$250,000. *Minn. Stat. § 152.023*.

The penalty of simply possessing/using steroids remains the same because schedule III and IV drugs are treated the same with regard to their possession or use. A person who possesses steroids, absent the intent to sell, will have committed a 5th degree controlled substance offense and be subject to a five-year felony and a fine of up to \$10,000. *Minn. Stat. § 152.025*.

This section retains the exception for those who properly and legally use steroids in raising animals (*e.g.*, cattle).

[Effective August 1, 2005, and applies to crimes committed on or after that date.]

- Schedule IV.** Strikes the term anabolic substances and its definition from schedule IV.

[Effective August 1, 2005, and applies to crimes committed on or after that date.]

- Theft of gasoline.** Requires the Department of Public Safety to impose a 30-day driver's license suspension for any persons convicted of, or juvenile adjudged delinquent for, theft of gasoline.

[Effective August 1, 2005, and applies to crimes committed on or after that date.]

4 Animal Fights and Possession of Fighting Animals.

Subd. 1. Animal fighting. Imposes a felony penalty on anyone who promotes, engages in, or trains an animal for animal fighting. Imposes a misdemeanor penalty on anyone who purchases a ticket or otherwise gains admissions to an animal fight.

Subd. 2. Presumption of training a fighting dog. Creates a rebuttable presumption that a dog is or has been trained for fighting if the dog exhibits wounds or scars and the person has training apparatus used to prepare dogs for fights.

Subd. 3. Presumption of training fighting birds. Creates a rebuttable presumption **that** a bird is or has been trained for fighting if the bird exhibits wounds or scars or the person has training apparatus used to prepare birds for fights.

Subd. 4. Peace officers duties. Authorizes a peace officer or animal control to remove and care for animals described in subdivisions 2 and 3. The officer must notify the owner. If the owner is unknown or cannot be ascertained within ten days after notice, the animal may be disposed of.

Subd. 5. Disposition. Provides procedures for disposition of an animal, including notice provisions, security posting, cost of care, and hearing procedures.

Subd. 6. Photographs. Specifies that photos of animals seized during an investigation are competent evidence if admissible under the rules of evidence, and are admissible into evidence as the animal itself.

Subd. 7. Veterinary investigative report. Specifies that a veterinarian report is competent evidence and is admissible into evidence as the animal itself.

[Effective August 1, 2005, and applies to crimes committed on or after that date.]

5 Domestic abuse no contact order. Amends the domestic abuse law by enlarging the definition of a domestic abuse no contact order[@] to include orders in criminal proceedings relating to violations of protection orders, violations of domestic abuse no contact orders, and harassment/stalking.

[Effective August 1, 2005.]

6 Theft of gasoline; civil penalties. Amends the law authorizing service charges and civil penalties for persons who receive gasoline and then drive off without paying. Sets the service charge at \$30 and authorizes a law enforcement agency to keep this charge when the agency obtains payment for the gasoline on behalf of the retailer. Clarifies how the civil penalty is to be set.

[Effective July 1, 2005, and applies to crimes committed on or after that date.]

7 Theft of gasoline; civil penalties. Clarifies that civil liability under section 6 is not a bar to criminal liability for the gasoline drive-off.

[Effective day following enactment.]

8 Qualified domestic violence-related offense. Adds the crime of domestic assault by strangulation to the list of qualified domestic violence-related offenses. Enhanced penalties apply to persons who commit more than one qualified domestic violence-related offense within a certain time frame.

[Effective August 1, 2005, and applies to crimes committed on or after that date.]

- 9** **Life without release.** Requires life-without-release sentences for first-degree murderers (premeditation and intent).
[Effective August 1, 2005, and applies to crimes committed on or after that date.]
- 10** **Murder in the first degree.** Expands the first-degree murder crime that applies when a person causes the death of a minor while committing child abuse to apply when the perpetrator has previously engaged in child abuse against any child, not just the child whose death the perpetrator causes. Currently, this crime occurs when a perpetrator causes the death of a child while committing child abuse and the person has engaged in a past pattern of child abuse upon “the child” and the death occurs under circumstances manifesting an extreme indifference to human life. Under this section, the crime would occur when a perpetrator has engaged in a past pattern of child abuse on “a child,” not necessarily the same child, and the death occurs under circumstances manifesting an extreme indifference to human life. The penalty for this crime is life, although the commissioner of corrections may release the offender from prison after the offender has served 30 years.
[Effective August 1, 2005, and applies to crimes committed on or after that date.]
- 11** **Secure treatment facility personnel.** Expands the felony-level crime of fourth degree assault to include certain assaults against those who provide care or treatment to persons held in secure treatment facilities. This crime currently covers assaults committed against correctional employees and probation officers where the assault involves demonstrable bodily harm or the intentional throwing or transferring of bodily fluids or feces at or onto the victim. The statutory maximum sentence for this crime is imprisonment for two years and/or a fine of not more than \$4,000.

Provides for a mandatory minimum prison sentence of a year and a day. Also provides that when the offender is released from prison, the offender must be placed on conditional release for five years.
[Effective August 1, 2005, for crimes committed on or after that date.]
- 12** **Domestic assaults; firearms.** Adds domestic assault by strangulation (*see below*) to the list of assaults subject to firearm restrictions. Provides that if any type of domestic assault took place and the offender owns or possesses a firearm and used it in any way during the commission of the assault, the court shall order the firearm be summarily forfeited. The court may also order that the person be prohibited from possessing any firearm for any period longer than three years or for the remainder of the person’s life.
[Effective August 1, 2005, for crimes committed on or after that date.]
- 13** **Domestic assault by strangulation.**
- Subd. 1. Definitions.** Defines the terms “family or household members” and “strangulation.”
- “Family or household member” includes spouses, former spouses, parents, children, blood relatives, persons with a child in common, persons residing together, persons who formerly resided together, and persons who are or have been involved in a significant romantic relationship.
- “Strangulation” means “intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of

another person.”

Subd. 2. Crime. Provides that domestic assault by strangulation is a felony and may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than \$5,000. (“Domestic assault” is an intentional act to cause fear of immediate bodily harm or death or an intentional act to inflict or attempt to inflict bodily harm upon a family or household member.)

[Effective August 1, 2005, for crimes committed on or after that date.]

14 Gang member; crime against a child. Amends the statute that punishes crimes committed for the benefit of a gang.

Establishes an enhanced penalty for a felony crime committed for the benefit of a gang when the victim is under the age of 18 years. The statutory maximum penalty for a felony crime is ten years longer than the statutory maximum for the underlying crime.

[Effective August 1, 2005, for crimes committed on or after that date.]

15 Human trafficking. Defines “blackmail,” “debt bondage,” “forced labor or services,” “labor trafficking,” and “labor trafficking victim” for purposes of sections 16 to 22.

[Effective August 1, 2005, and applies to crimes committed on or after that date.]

16 Labor trafficking. Makes it a felony (statutory maximum sentence of 15 years imprisonment and/or a \$40,000 fine) for a person to knowingly engage in the labor trafficking of another.

[Effective August 1, 2005, and applies to crimes committed on or after that date.]

17 Unlawful conduct with respect to documents in furtherance of labor or sex trafficking. Makes it a felony (statutory maximum sentence of five years imprisonment and/or a \$10,000 fine) for a person to knowingly destroy, conceal, remove, confiscate, or possess any passport, immigration document, or other government identification document of another person:

- in the course of violating section 16, or Minnesota Statutes, section 609.322 (solicitation, inducement, and promotion of prostitution);
- with the intent to violate those sections; or
- to prevent or restrict a person’s liberty to move or travel, in order to maintain the person’s labor or services, if that person is or has been a victim of those sections.

[Effective August 1, 2005, and applies to crimes committed on or after that date.]

18 Labor or sex trafficking crimes; defenses; civil liability; corporate liability. Provides:

- that consent or the age of the victim is not a defense to an action under this section;
- that a labor trafficking victim may bring a civil lawsuit against a person who violates sections 16 or 17; and
- that if a corporation or business enterprise is convicted of violating sections 16

or 17, or Minnesota Statutes, section 609.322, in addition to other applicable criminal penalties, the court may order specified remedies relating to the entity's business status (i.e., order its dissolution or reorganization, etc.)

[Effective August 1, 2005, and applies to crimes committed on or after that date.]

19 Scope. Makes a conforming change.

[Effective August 1, 2005, and applies to crimes committed on or after that date.]

20 Promotes the prostitution of an individual. Expands the definition of promoting prostitution under Minnesota Statutes, section 609.321, by adding sex trafficking.

21 Sex trafficking. Amends the criminal code's prostitution definitions to define Asex trafficking@ as Areceiving, recruiting, enticing, harboring, providing, or obtaining by any means an individual to aid in the prostitution of the individual.@ This makes sex trafficking either a 20-year or a 15-year felony under Minnesota Statutes, section 609.322, depending on the age of the victim.

[Effective August 1, 2005, and applies to crimes committed on or after that date.]

22 Sex trafficking victim. Amends the criminal code's prostitution definitions to define "sex trafficking victim."

[Effective August 1, 2005, and applies to crimes committed on or after that date.]

23 Public place. Expands the definition of "public place" for purposes of the prostitution statutes to include a motor vehicle on a public street, alley, or parking lot available to the public.

[Effective day following enactment and applies to crimes committed on or after that date.]

24 Loitering with intent to participate in prostitution. Creates a misdemeanor penalty.

25 Affirmative defense. Amends the criminal code's prostitution provisions by providing an affirmative defense to a charge under Minnesota Statutes, section 609.324 (prostitution crime involving patrons, prostitutes, and individuals housing prostitutes). Applies if a defendant charged with violating that section proves by a preponderance of the evidence that the defendant is a labor trafficking victim or a sex trafficking victim and that the defendant committed the act only under compulsion by another who by explicit or implicit threats created a reasonable apprehension in the mind of the defendant that if the defendant did not commit act, the other person would inflict bodily harm upon the defendant.

26 Acts prohibited. Adds escaping while on pass status or provisional discharge when committed as a mentally ill and dangerous person, sexually dangerous person, or sexually psychopathic personality, to the list of felony escape offenses.

27 Sentence. Establishes a penalty of up to one year and a day in prison or payment of a fine of up to \$3,000 for persons who violate section 26.

28 Fleeing; other than a vehicle. Establishes the crime of fleeing from a peace officer in a manner other than in a motor vehicle. It applies if a person attempts to evade or elude a peace officer to avoid arrest, detention, investigation, or to conceal or destroy potential evidence related to a crime. It includes running, hiding, or other means of eluding capture. The penalty is a misdemeanor.

[Effective August 1, 2005, for crimes committed on or after that date.]

29 Interference with ambulance. Establishes a crime for interfering with ambulance service

personnel engaged in providing, or attempting to provide, emergency care. This section utilizes a broad definition of “ambulance service personnel” from the chapter of statutes relating to the Emergency Medical Services Regulatory Board.

The new provision is placed in the section of the criminal code dealing with obstructing peace officers and firefighters. It uses the same penalty format as those offenses. A basic offense is a misdemeanor. If the act was accompanied by force or the threat of force, the penalty is a gross misdemeanor. If the act causes, or creates a risk of, death, substantial bodily harm, or serious property damage, the penalty is a felony (up to five years in prison; \$10,000 fine.)

Also, this section expands the existing crime relating to interfering with or obstructing the prevention or extinguishing of a fire or disobeying a lawful order of a firefighter present at a fire by adding broader language relating to interfering or obstructing a firefighter while the firefighter is engaged in a performance of official duties.

[Effective August 1, 2005, for crimes committed on or after that date.]

30 Lying to peace officers; falsely reporting police misconduct.

Subd. 1. Falsely reporting crime. Establishes a crime for providing false information to an on-duty peace officer, knowing that the person is a peace officer, regarding the conduct of others. The crime applies if the person knew the information was false and intended the officer to act in reliance upon it. Under current law in Minnesota, it is illegal to falsely report *a crime* to a law enforcement officer. Under another statute it is also illegal to vie a false name or date of birth to a peace officer.

Subd. 2. Reporting police misconduct. (a) Establishes a crime for falsely reporting police misconduct if the person knows the allegation is false. It is a misdemeanor if the reported act is not criminal in nature. It is a gross misdemeanor if the reported act is criminal in nature.

(b) Requires restitution of expenses incurred in the investigation of the false allegation. A court may waive restitution if it makes a written finding that restitution is inappropriate under the circumstances. Restitution is capped at \$3,000.

[Effective August 1, 2005, for crimes committed on or after that date.]

31 Theft. Expands the crime of theft. Currently, it is a crime for a person with a legal interest in property to take the property from a bailee without consent. This section expands the crime to make it illegal for someone without a legal interest in the property to take the property from a bailee without consent.

[Effective August a, 2005, for crimes committed on or after that date.]

32 “Phishing” - definitions. Defines the term “false pretense” as “any false, fictitious, misleading, or fraudulent information or pretense or pretext depicting or including or deceptively similar to the name, logo, Web site address, e-mail address, postal address, telephone number, or any other identifying information of a business or organization or of a governmental agency, to which the user has no legitimate claim of right.” Expands the term “identity” to include the identity of an “entity.”

[Effective August 1, 2005, for crimes committed on or after that date.]

33 Identity theft – penalties. Extends the penalty for identity theft punishable by

imprisonment of not more than 20 years and/or a fine of not more than \$100,000 to include offenses related to possession or distribution of pornographic work involving minors.

[Effective August 1, 2005, for crimes committed on or after that date.]

- 34 Identity theft – restitution; items provided to victim.** Requires the court to order a minimum restitution payment of not less than \$1,000 to each direct victim of identity theft. Directs the court, upon written request, to provide the victim with free copies of the complaint, the judgment of conviction, and the order setting forth the facts of the case.

[Effective August 1, 2005, for crimes committed on or after that date.]

- 35 “Phishing” – crime of electronic use of false pretense to obtain identity.** Creates a new crime that prohibits a person, with intent to obtain another's identity, from using false pretense in an e-mail, Web page, or any other Internet communication. This offense is punishable by five years imprisonment and/or a \$10,000 fine. In prosecution under this section, it is not a defense that the person did not obtain or use another's identity, nor is it a defense that the crime did not result in a loss to any person.

[Effective August 1, 2005, for crimes committed on or after that date.]

- 36 “Phishing” – venue.** Expands venue in cases under section 35 to the county of residence of the person whose identity was obtained or sought. Currently, venue is limited to the county where the offense occurred or in the county of residence or place of business of the direct or indirect victim.

[Effective August 1, 2005, for crimes committed on or after that date.]

- 37 Definition.** Expands the definition of A designated offense@ in the criminal code=s forfeiture law to include prostitution and trafficking offenses. Generally, all personal property that is used or intended for use to commit or facilitate the commission of a designated offense is subject to forfeiture. In addition, all money and other property, real and personal, that represent the proceeds of a designated offense and all contraband property are also subject to forfeiture. A person must be convicted of a designated offense to trigger the forfeiture.

- 38 Computers and related property subject to forfeiture.**

Para. (a). Defines “property” as electronically processed or produced data and information contained in a computer or computer software in either machine or human readable form.

Para. (b). Authorizes forfeiture of a computer or computer parts used or intended to be used to commit a designated offense, unless prohibited by state or federal law.

Para. (c). Authorizes the agency that seized the computer or related property to charge the owner for the cost of separating contraband from the computer upon return of the property to the owner. The agency may not charge these costs to an owner (1) who was not privy to the unlawful act upon which the seizure was based, or (2) who did not have knowledge of or consent to the unlawful act. To avoid charges, the owner must request copies of legitimate data files and provide sufficient storage media or request return of the property without the storage devices on which the contraband resides.

- 39 Disposition.** Amends Minnesota Statutes, section 609.5315 (Disposition of Forfeited Property), by adding a cross-reference to section 40, regarding disposition of proceeds from

prostitution and trafficking offenses.

40 Disposition of certain forfeited proceeds; trafficking of persons; report required.

Creates a new subdivision under Minnesota Statutes, section 609.5315, providing that proceeds from forfeitures resulting from prostitution and trafficking offenses be distributed as follows:

- \$ 40 percent of the proceeds must be forwarded to the appropriate local agency for the use of law enforcement;
- \$ 20 percent must be forwarded to the prosecuting agency that handled the forfeiture; and
- \$ 40 percent must be forwarded to the commissioner of public safety for distribution to crime victim organizations providing services to victims of trafficking offenses.

Also requires the commissioner of public safety to report annually to the Legislature on the money forwarded to the commissioner under this section and distributed to crime victims= organizations providing services to trafficking victims.

41 Trespass. Prohibits a person from returning, without consent, to the property of another within one year after being told to leave the property and not to return. Currently, a person may return after 30 days have elapsed from the time of being told to leave and not to return.

Prohibits a person from entering a locked or posted aggregate mining site. Creates stricter posting requirements for aggregate mining sites. Signs must be posted at intervals of 500 feet or less.

[Effective August 1, 2005, for crimes committed on or after that date.]

42 Trespass; school property. Prohibits a person from returning to school property, without the principal's consent, within one year after being told by the school's principal or designee to leave and not to return. Currently, a person may return after six months have elapsed from the time of being told to leave and not to return. Also creates a misdemeanor penalty for being on a school roof without permission.

[Effective August 1, 2005, for crimes committed on or after that date.]

43 Surreptitious intrusion; observation device. Enhances the misdemeanor Ainterference with privacy@ crime (Minnesota Statutes, section 609.746) to a gross misdemeanor, and the gross misdemeanor crime (applicable to repeat offenders and crimes involving victims under the age of 18) to a felony. Increases the maximum age from 16 to 18 of the victim for purposes of triggering the enhanced penalty.

44 Restraining order; jurisdiction. Authorizes a stepparent to seek a restraining order on behalf of a minor. Currently, a parent or guardian can seek a restraining order for a minor.

45 Filing fee; cost of service. Waives the filing fees for a restraining order if the petition alleges an act of criminal sexual conduct. Currently, filing fees are waived for harassment and stalking crimes only.

46 Harassment and stalking crimes. Modifies the harassment and stalking crimes to include new forms of technology. Provides that in the case of wireless or electronic communication, the case may be prosecuted where the actor or victim resides. (Currently, the case may only be prosecuted at the place where the call is either made or received, or where the letter or

package is either sent or received.)

- 47 **Gambling fraud.** Clarifies that when a law enforcement agency is determining the amount at stake in a gambling fraud case the agency may look at the total amount “involved” in the fraud scheme and not just the amount “obtained” by the defendant. The term “involved” is currently used in the statute subject to amendment but in a different subdivision. By adding the term to subdivision 3, this section makes the law both internally consistent and more useful to law enforcement.

[Effective August 1, 2005, for crimes committed on or after that date.]

- 48 **Venue.** Provides that in the case of wireless or electronic communication, a case involving obscene or harassing telephone calls may be prosecuted where the actor or victim resides. (Currently, the case may only be prosecuted at the place where the call is either made or received.)

- 49 **Venue.** Provides that an offense involving harassing letters or telegrams may be prosecuted where the letter is sent or received, or in the case of wireless or electronic communication, where the actor or victim resides.

- 50 **Injured railroad worker protection.** Prohibits railroads and their employees from negligently or intentionally: 1) obstructing treatment of a railroad employee injured on the job; 2) disciplining an employee to discourage the employee from receiving treatment; or 3) threatening to discipline an injured employee who requests treatment or first aid. Clarifies that the railroad company may investigate injury claims and it is not a violation for the railroad company to enforce safety regulations. Creates a gross misdemeanor penalty.

[Effective August 1, 2005, for crimes committed on or after that date.]

- 51 **Pirating movies; criminal use of real property.**

Subd. 1. Definition. Defines the terms: audiovisual recording function, convicted, and motion picture theater.

Subd. 2. Crime. It is a crime for a person in a motion picture theater to knowingly operate the audiovisual recording function of a device while a motion picture is being exhibited without the consent of the theater’s owner/lessee. A first offense is a misdemeanor, a second offense is a gross misdemeanor, and a third or subsequent offense is a felony (statutory maximum of two years imprisonment and/or \$4,000 fine).

Subd. 3. Detaining suspects. Allows an owner/lessee of the motion picture theater to detain a person suspected of violating this section in the same manner that a merchant may detain a person suspected of shoplifting.

Subd. 4. Exception. Provides a law enforcement exception to the crime.

Subd. 5. Not preclude alternative prosecution. Specifies that nothing in this section prevents prosecution under other provisions of law.

[Effective August 1, 2005, for crimes committed on or after that date.]

- 52 **Limitations.** Amends the criminal statute of limitations law to allow a criminal case to be commenced for a trafficking offense, at any time if the victim was under the age of 18 at the

time of the offense. If the offense did not involve a minor victim, the statute of limitations is six years.

[Effective August 1, 2005, for crimes committed on or after that date.]

53

Repealer. Repeals Minnesota Statutes, section 609.725 (Vagrancy). This statute provides a misdemeanor penalty for the following acts of vagrancy:

- \$ a person, with ability to work, who is without lawful means of support, does not seek employment, and is not under 18 year of age;
- \$ a person found in or loitering near any structure, vehicle, or private grounds who is there without the consent of the owner and is unable to account for being there;
- \$ a prostitute who loiters on the streets or in a public place or in a place open to the public with intent to solicit for immoral purposes; or
- \$ a person who derives support in whole or in part from begging or as a fortune teller or similar imposter.

Article 18: DWI and Traffic Safety Policy

Overview

This article addresses DWI and traffic issues. The article prohibits the public from possessing or operating a traffic signal override device, while providing exemptions for certain authorities and emergency vehicles; restores language repealed in 2003 that resulted in a Supreme Court ruling overturning implied consent law as a violation of due process; authorizes the direct certification of chemical test results by the BCA to Public Safety for use in actions relating to implied consent violations; requires DWI offenders to submit to more rigorous chemical dependency evaluations for court and probation purposes; provides a ten-year lookback period for certain DWI violations for enhancing certain drivers licensing actions; deletes the word *consecutively* from the 48-hour jail time requirement for second time DWI offenders; makes other technical changes to the DWI laws; appropriates certain license reinstatement fees to POST; and repeals a law enforcement reporting requirement of the 2004 DWI law.

1 Traffic signal override device. Prohibits any person from operating a vehicle that contains a device that overrides traffic signals, except:

- police vehicle
- fire department vehicle
- ambulance
- certain mass transit vehicles
- signal maintenance vehicle
- other vehicle authorized by Department of Public Safety order

Prohibits any person from possessing a traffic signal override device except:

- operator of police or fire vehicle or ambulance, for use in that vehicle
- person performing signal maintenance
- person authorized by Department of Public Safety order, to the extent authorized in the order

Makes violation a misdemeanor. [See, H.F. 204]

[Effective August 1, 2005, and applies to crimes to crimes committed on or after that date.]

- 2 Mandatory minimum sentence; second time DWI offender.** Deletes the requirement that, if a second-time DWI offender is sentenced to jail, then that person must serve at least 48 hours of that jail time *consecutively*.

Current DWI law requires that, upon convicting a person for a second-time DWI violation within ten years, the court must sentence the person either:

- (1) to a minimum of 30 days in jail, *48 hours of which must be served consecutively*; or
- (2) to eight hours of community work service for each day less than 30 that the person is ordered to serve.

This bill deletes the requirement above that, if a second-time DWI offender is sentenced to jail, then that person must serve at least 48 hours of that jail time *consecutively*. [See, H.F. 1985]

[Effective August 1, 2005, and applies to crimes committed on or after that date.]

- 3 Direct certification of blood and urine test results.** Authorizes the Bureau of Criminal Apprehension (BCA) to certify lab test results directly to the Commissioner of Public Safety (DPS).

Under current law, the arresting agency submits the fluid sample of a suspected impaired driver to the BCA for analysis. When finished, the BCA returns the results to the arresting officer, who then must forward them to the DPS for entry on the violator's driving record, triggering the driver's license revocation by the State.

This section authorizes the BCA to certify the test results directly to the DPS. This change is intended to speed the license revocation action, while minimizing recording mistakes and lost reports. The responsibility for certifying to the DPS the probable cause for the arrest remains with the arresting officer. [See, H. F. 765]

[Effective August 1, 2006 – delayed.]

- 4 Restoring Implied Consent Law to Constitutionality.** Restores language repealed in 2003 that resulted in the overturn of implied consent law in *Fedziuk*. The restored language directs that a person who is judicially appealing an implied consent driver's license revocation must be provided a court hearing at the earliest practicable date and within no more than 60 days of the filing of the petition. It also states that the court must file its ruling within 14 days of the hearing.

[Effective the day following final enactment.]

- 5 License plate impoundment; clarifying the judicial review process.** New language in

paragraph (a) stipulates that when an impaired driving suspect petitions the court for review of the license plate impoundment order, the petition must include proof of service of a copy on Public Safety (DPS), and must include the name of the driver and the law enforcement agency that issued the order. This information is essential for the Attorney General, who represents the State in the appeal, to properly track and prepare for the appeal.

Other language in this section repeals clauses 1 and 2 in subdivision 10, paragraph (c), of section 169A.60, relating to the judicial appeal process under plate impoundment law.

Those subdivisions concern whether the registered owner might be eligible for “special series plates” (WX, WY, etc), and are not related to the validity of the plate impoundment order and, thus, are not relevant to or considered by the court during the judicial review process.

There is no need for a vehicle owner who is not the violator to pay a filing fee and go to court to get the special plates. Instead, the nonviolator-owner can simply fill out an application form at the local registrar’s office for the special coded plates. [See, H.F. 765]

[Effective August 1, 2005.]

6 Clarifying the prerequisites for rescinding the plate impoundment order. Clarifies that *both of two conditions* (not *either of the two*) must be met before a plate impoundment order is rescinded and the violator’s plates are returned:

- ▶ that the license revocation has been rescinded; *and*
- ▶ that the criminal charge for the violation underlying the impoundment order has been dismissed with prejudice, or the violator has been acquitted of the charge. [See, H.F. 765]

[Effective day following enactment.]

7 Vehicle forfeiture; requiring service of complaint on the law enforcement agency when requesting a judicial hearing to challenge the forfeiture. Currently, when a violator files with *the court* a complaint challenging an impaired-driving related vehicle forfeiture, the person must show proof of service of a copy of the complaint *on the prosecuting authority*. This section would require that the violator also show proof of service of a copy of that complaint on the *appropriate agency* – i.e., the law enforcement agency that initiated the forfeiture.

Background: A DWI forfeiture starts when a law enforcement officer serves a forfeiture notice on the qualified DWI offender (generally, a person who commits a third or subsequent impaired driving violation within ten years). The vehicle owner (not always the violator) then has 30 days to start a judicial challenge to the forfeiture, and must show proof of service of a copy of that challenge (i.e., the complaint) on the prosecutor. But if 30 days expires and no complaint has been served, the forfeiture is final and the vehicle can be sold.

However, current law does not require service of a copy of the complaint on the law enforcement agency that made the arrest, started the forfeiture, and is storing the vehicle. Thus, the vehicle must be stored until it can be determined that a challenge has *not* been

started (akin to *proving a negative*).

This is particularly problematic for the state patrol, since there are several local prosecuting authorities within any single state patrol area. Thus, before the state patrol can sell a seized vehicle, it must, after 30 days has passed, begin checking with a number of local prosecutors to ensure that there has been no challenge and that the vehicle forfeiture action may indeed be considered to be final. During this delay, additional storage costs are incurred as storage lots fill up.

The new service requirement in this section would enable the state patrol and other law enforcement agencies to begin disposing of vehicles forfeited from multiple repeat DWI violators on the 31st day following the person's arrest. [See, H. F. 765]

[Effective August 1, 2005, and applies to forfeiture actions initiated on or after that date.]

8 **Improving the chemical dependency assessment process.** Requires that the assessment be based not only on an interview with the offenders, as presently done, but that it also involve a number of other factors, including:

- ▶ consideration of the person's alcohol concentration at the time of arrest;
- ▶ checks with the person's *collateral contacts*, including the person's relevant family members, criminal justice agencies, and probation officer, if any; and
- ▶ a review of relevant records and reports, including police and arrest reports, driving records, and chemical testing and test refusal records.

This section would primarily affect those alcohol assessments that are done outside the court system, since those currently being done by court services personnel typically already involve the checking of police reports, driving records and alcohol concentration test results. However, many alcohol assessments are done independently from and outside the court system, by assessors who do not have access to such reports and records (unless the offender who has contracted for the assessment happens to provide them). Thus, it is commonly thought that chemical dependency assessments by independent assessors are less rigorous and less accurate than desired. In short, it is commonly felt that many assessments by independent assessors mistakenly report that the DWI offender does not have a problem. [See, H.F. 765]

[Effective August 1, 2005, and applies to chemical use assessment made on or after that date.]

9 **Method of assessing chemical dependency.** Specifies how the chemical dependency assessments must be done to meet the requirements in section 8. [See, H. F. 765]

[Effective August 1, 2005, and applies to chemical use assessment made on or after that date.]

10 **Use of the chemical dependency assessment by the court and public safety.** Prohibits the court and department of public safety from using chemical dependency assessments that do not meet the requirements specified in sections 0 and 0. [See, H. F. 765]

[Effective August 1, 2005, and applies to chemical use assessment made on or after that

date.]

- 11 B-Card restriction lifted after 10 years.** When a person commits a third or more impaired driving violation, Public Safety cancels the person's driver's license for at least one-year and requires the person to successfully complete treatment and rehabilitation before becoming eligible for a restricted license (typically called a *B-Card*), where the restriction is that the person must totally abstain from alcohol for the person's lifetime.

The new language provides that a person with a "no alcohol" restriction on the driving record may apply to have that restriction removed from (only) the person's driver's license card itself, provided that the person has had no repeat impaired driving related violations within the prior ten years. Upon the granting of such request by the DPS, the no alcohol restriction on the person's driving record becomes reclassified as "*private data on individuals*." However, the no-alcohol restriction is not rescinded from the record and, thus, the person is still subject to the restriction and may not consume any alcohol whatsoever indefinitely.

[Effective July 1, 2005 and expires July 1, 2006.]

- 12 Reinstatement fees.** Current law provides that, upon reinstatement of the driver's license following its suspension for failure to pay the fine for traffic citation or a parking ticket, a person must pay a \$20 fee. Directs this \$20 fee to the POST Board, for use in reimbursing local units of government for peace officer training.

[Effective July 1, 2005.]

- 13 Money credited to funds.** [Conforming language for section 0.]

[Effective July 1, 2005.]

- 14 Eligibility for limited driver's license – ten-year lookback established.** Impaired driving consequences – including both criminal penalties and civil sanctions – typically are *enhanced* using a *ten-year lookback period*. However, the statute that provides for the issuance of a limited driver's license (for driving to work, treatment, higher education or homemaking) uses a *lifetime lookback period*. Thus, eligibility for a limited license counts a prior impaired driving violation no matter how long ago it occurred.

This provision directs Public Safety to disregard, for purposes of eligibility for a limited driver's license, any first-time (only) impaired driving violation from more than ten years earlier, if the person has had no repeat impaired driving violation within that ten-year lookback period.

[Effective July 1, 2005.]

- 15 Study of the B-Card provision by the Statewide DWI Task Force.** Requesting the task force study the effects of the new provision in section 11 (above) relating to the no alcohol provision of the restricted driver's license, and report back to the legislature prior to the 2006 session with recommendations, if any. The Statewide DWI Task Force is a continuing forum of criminal justice professionals working throughout Minnesota's DWI control system.

- 16 Repealer.** The repealed section of Laws 2004 was enacted as a provision of the DWI .08 bill. That language, which was not codified, requires law enforcement agencies to record and report to the Commissioner of Public Safety information about preliminary breath alcohol tests, as well as information about the evidentiary level breath, blood and urine

alcohol concentration tests made in accordance with implied consent law.

The law enforcement agencies are required to record and report the reason for the stop and the nature of the interaction between the officer and the driver being tested, as well as the person's alcohol concentration level.

Repeal of this reporting requirement is expected to free up significant law enforcement resources that can then be directed at DWI traffic patrolling. [*See*, H.F. 765]

[Effective day following enactment.]

