

HOUSE RESEARCH

Bill Summary

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Table of Contents

	<u>Bill Page</u>
Article 1: Appropriations	3.....3
Article 2: Sex Offender Criminal Provisions	5.....10
Article 3: Sex Offender Policy and Review Boards	10.....27
Article 4: Predatory Offender Registry	12.....32
Article 5: Human Services Access to Predatory Offender Registry	18.....71
Article 6: Human Services Background Studies	19.....78
Article 7: Sex Offender Miscellaneous, Technical, and Conforming Provisions	21.....102
Article 8: Public Safety Policy	24.....127
Article 9: Fire Marshal	29.....145
Article 10: Emergency Communications	30.....161

Article 11: Law Enforcement Policy	34.....	179
Article 12: DNA Collection	39.....	204
Article 13: Corrections	42.....	217
Article 14: Courts and Public Defender	46.....	230
Article 15: Child Protection	50.....	246
Article 16: Criminal Sentencing Policy	52.....	262
Article 17: General Criminal Provisions	55.....	272
Article 18: DWI and Traffic Safety Policy	62.....	306
Article 19: Option B from House Resolution 8	66.....	318

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, and the Sentencing Guidelines Commission.

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 based on the increase provided to other state employees through the collective bargaining process. Authorizes a \$5,000 contingent fund account.

Subd. 2. 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.

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 past membership dues owed by the commission.

7 Board on Judicial Standards. Appropriates funds for FY06 and FY07. Allocates \$50,000 as a one-time appropriation to cover extraordinary 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. 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; financial crimes task force; human trafficking assessment; and youth intervention programs.

Subd. 7. 911 Emergency Services/ARMER. Appropriates funds from the 911 special revenue account for prior obligations to telephone companies and the shared public safety radio system.

Subd. 8. 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 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 Creek that is equal to or greater than the department's actual per diem.

Subd. 3. Community services. Allocates funds for: tracking bracelets for sex offenders [*See*, HF 384]; methamphetamine treatment grants; and methamphetamine law enforcement and supervision grants.

Subd. 4. Operations support. Allocates funds to reimburse counties for housing short-term offenders.

14 Sentencing guidelines. Appropriates funds for FY06 and FY07.

Article 2: Sex Offender Criminal Provisions

Overview

This article doubles the statutory maximum penalty for first- through fifth-degree criminal sexual conduct crimes and creates a new criminal sexual predatory conduct crime. Imposes a life penalty without the possibility of release on certain first- and second-degree criminal sexual conduct offenders in situations where one or more aggravating factors are present. Creates an indeterminate sentencing system for certain criminal sexual conduct offenses; under this system, a court must sentence an individual subject to this penalty to a minimum of 20 years imprisonment, unless some other provision of law requires a longer sentence, and a maximum penalty of life. The individual is eligible for release by the Sex Offender Review Board established in article 2 after the person has served the minimum sentence. If the person is released, the person remains on supervised release for life. This penalty applies to first- and second-degree criminal sexual conduct crimes committed with force, violence, coercion, use of a weapon, or where personal injury results to the victim. This penalty also applies to a repeat sex offender. The article imposes lifetime conditional release for repeat sex offenders and amends certain statutes covering issues of criminal sexual conduct and harassment. The article also requires the Sentencing Guidelines Commission to create a separate sentencing guidelines grid for sex offenses, increase presumptive sentences based upon the increased sentences in article 1, and change the manner in which criminal history scores are calculated for sex offenses.

This article also expands the definition of "coercion," modifies provisions relating to harassment restraining orders, modifies provisions in the harassment laws to take into account the capabilities of new forms of technology, and increases the conditional release period for sex offenders.

[This article contains all of H.F. 1406, article 1 as well as H.F. 383 and H.F. 1031. All sections are from H.F. 1406, unless otherwise noted below.]

1. 1 Data Practices Act. Adds to the Data Practices Act a cross-reference to the data sharing provision that has the Department of Corrections release information to the Sex Offender Review Board.
- 2 Minimum imprisonment, life sentence. Prohibits the commissioner of corrections from granting supervised release to an inmate sentenced to a life sentence without the possibility of release for aggravated first- and second-degree criminal sexual conduct crimes. Prohibits the commissioner of corrections from releasing certain other sex offenders until they have served the minimum sentence imposed by the court (usually 20 years in prison). These sex offenders include first- and second-degree criminal sexual conduct offenders who commit crimes with force, violence, coercion, use of a weapon, or where personal injury results to the victim and repeat sex offenders.
- 3 Supervised release, life sentence. Requires the commissioner of corrections to grant supervised release to sex offenders serving life sentences when so directed by the Sex Offender Review Board (SORB). Requires the commissioner to submit the community investigation report for a sex offender serving an indeterminate sentence to the SORB for consideration in release decisions.

- 4 Predatory crime. Redefines the term predatory crime for purposes of the section 609.108 (Mandatory Sentences for Patterned and Predatory Sex Offenders) by referring to a new subdivision in 609.341 (CSC definitions section). (*See*, Section 11.)
- 5 Danger to public safety. Requires the fact finder, as opposed to the court, to determine if a sex offender is a danger to public safety for purposes of imposing mandatory sentences for patterned and predatory offenders. This change addresses concerns raised by recent U.S. Supreme Court cases (*Apprendi* and *Blakely*), which require the prosecutor to prove beyond a reasonable doubt all findings that result in an increase in sentence beyond the statutory maximum sentence or sentencing guidelines presumptive sentence. The fact finder (jury or court) must determine these facts exist, as recent case law states it is unconstitutional for a court to make these determinations as part of sentencing, unless the defendant has waived the right to a jury trial.
- 6 Mandatory life sentence. Clarifies that a person who receives a mandatory life sentence for a sex offense may only be released as provided for in section 244.05, which requires review and approval of the Sex Offender Review Board. (*See*, section 4.)
- 7 Conditional release. Adds the new crime of criminal sexual predatory conduct to the list of crimes that require an offender to serve an additional ten years on conditional release. Increases the mandatory conditional release period from five to ten years. Imposes lifetime conditional release for offenders who have a subsequent violation. [*See*, H.F. 383]
- 8 Coercion. Redefines the term coercion for purposes of the CSC statutes to include the use of confinement, or the use of superior size or strength, against a victim that causes the victim to submit to sexual penetration or contact against the victim's will. [*See*, H.F. 1031]
- 9 Sex offense. Defines the term sex offense for purposes of the CSC statutes. The definition includes first through fifth degree CSC, the new crime of criminal sexual predatory conduct, solicitation of a child, indecent exposure, use of minors in sexual performance, child pornography, and similar federal statutes or laws from other states.
- The definition does not apply to section 609.3452 (Sex Offender Assessment) because that section has its own definition of the term.
- 10 Subsequent sex offense. Defines the term subsequent sex offense for the purposes of the CSC statutes. The definition includes first through fifth degree CSC and the new crime of criminal sexual predatory conduct when it follows a previous conviction for a separate felony-level sex offense, two non-felony-level sex offenses, or any felony-level predatory crime that the fact finder determines was motivated by the offender's sexual impulses or was part of a predatory pattern of behavior that had criminal sexual conduct as its goal.
- 11 Predatory crime. Defines the term predatory crime for the purposes of the CSC statutes. The definition includes first through third degree murder, first and second degree manslaughter, first through third degree assault, robbery (simple and aggravated), kidnapping, false imprisonment, incest, tampering with a witness, first degree arson and certain first degree burglaries.
- 12 Torture. Defines the term torture for the purposes of the CSC statutes.
- 13 Penalty. Increases penalties for first degree CSC (*i.e.*, sexual penetration and certain sexual contact with minors).

Para. (a). Increases the statutory maximum sentence from 30 to 60 years.

Para. (b). Establishes a life sentence for offenders who commit the following first degree CSC offenses: (1) the victim has reasonable fear of bodily injury; (2) offender uses or threatens use of a weapon; (3) offender caused injury to an impaired victim or used force to achieve penetration; (4) offender was aided by either an armed or

coercive accomplice; (5) certain offenses where the offender has a significant relationship with the victim and victim is under 16 and the offense involves force or coercion, the victim suffered personal injury, or the abuse involved multiple acts over an extended period of time; and (6) when the sex offense is a subsequent sex offense. Offenders sentenced under this paragraph must serve a minimum of 20 years and may not be released from imprisonment until release is approved by the SORB. If released, an offender is placed on conditional release for life and may be returned to prison for a violation of their conditions of release.

Para. (c). Establishes a life sentence without the possibility for release for offenders who commit any of the offenses listed in paragraph (b) one or more of the following aggravating circumstances exist: (1) victim torture; (2) intentional infliction of great bodily harm; (3) offender moved victim from one place to another and did not release the victim in a safe place; (4) victim was 13 or younger; (5) the victim was age 70 or older; (6) offender threatened use of a weapon; (7) offense involved more than one victim; or (8) offense involved more than one perpetrator.

Clarifies that the fact finder may not consider an aggravating factor if it is an element of the underlying offense. Defines the term "torture."

Para. (d). Permits imposition of a fine of not more than \$40,000 in addition to any sentence imposed under paragraphs (a) to (c).

14 Stay. Amends the stay provision for offenses where the actor has a significant relationship to the victim (generally a family member, step-parent, or other person residing in the same household) and the victim was under 16 years of age at the time of the conduct. The stay will continue to apply in most cases because the conduct it pertains to is not included within the new penalties imposing life without the possibility of release or a minimum sentence of 20 years for a first offense. Thus, the amendment to the stay provision is impacted only in the case of a subsequent sex offense.

15 Penalty. Increases penalties for second degree CSC (*i.e.*, nonconsensual sexual contact and sexual contact with minors).

Para. (a). Increases the statutory maximum sentence from 25 to 50 years.

Para. (b). Establishes a life sentence for offenders who commit the following second degree CSC offenses: (1) the victim has reasonable fear of bodily injury; (2) offender uses or threatens use of a weapon; (3) offender caused injury and used force or the victim was impaired; (4) offender was aided by either an armed or coercive accomplice; (5) certain offenses where the offender has a significant relationship with the victim and victim is under 16 and the offense involves force or coercion, the victim suffered personal injury, or the abuse involved multiple acts over an extended period of time; and (6) when the sex offense is a subsequent sex offense. Offenders sentenced under this paragraph must serve a minimum of 20 years and may not be released from imprisonment until release is approved by the SORB. If released, an offender is placed on conditional release for life and may be returned to prison for a violation of their conditions of release.

Para. (c). Establishes a life sentence without the possibility for release for offenders who commit any of the offenses listed in paragraph (b) and one or more of the following aggravating circumstances exist: (1) victim torture; (2) intentional

infliction of great bodily harm; (3) offender moved victim from one place to another and did not release the victim in a safe place; (4) victim was 13 or younger; (5) the victim was age 70 or older; (6) offender threatened use of a weapon; (7) offense involved more than one victim; or (8) offense involved more than one perpetrator.

Clarifies that the fact finder may not consider an aggravating factor if it is an element of the underlying offense. Defines the term torture.

Para. (d). Permits imposition of a fine of not more than \$35,000 in addition to any sentence imposed under paragraphs (a) to (c).

16 Stay. Amends the stay provision for offenses where the actor has a significant relationship to the victim (generally a family member, step-parent, or other person residing in the same household) and the victim was under 16 years of age at the time of the conduct. The stay will continue to apply in most cases because the conduct it pertains to is not included within the new penalties imposing life without the possibility of release or a minimum sentence of 20 years for a first offense. Thus, the amendment to the stay provision is impacted only in the case of a subsequent sex offense.

17 Penalty. Increases penalties for third degree CSC (*i.e.*, sexual penetration with minors and adults who are in a vulnerable situation).

Para. (a). Increases the statutory maximum sentence from 15 to 30 years.

Para. (b). Establishes a life sentence for offenders who commit third degree CSC and it is a subsequent sex offense. Offenders sentenced under this paragraph must serve a minimum of 20 years and may not be released from imprisonment until release is approved by the SORB. If released, an offender is placed on conditional release for life and may be returned to prison for a violation of their conditions of release.

Para. (c). Permits imposition of a fine of not more than \$35,000 in addition to any sentence imposed under paragraphs (a) or (b).

18 Stay. Amends the stay provision for offenses where the actor has a significant relationship to the victim (generally a family member, step-parent, or other person residing in the same household) and the victim was at least 16 but under 18 years of age at the time of the conduct. The stay will continue to apply to a first-offense, but will not apply to a subsequent sex offense.

19 Penalty. Increases penalties for fourth degree CSC (*i.e.*, sexual contact with minors and adults who are in a vulnerable situation).

Para. (a). Increases the statutory maximum sentence from ten to 20 years.

Para. (b). Establishes a life sentence for offenders who commit fourth degree CSC and it is a subsequent sex offense. Offenders sentenced under this paragraph must serve a minimum of 20 years and may not be released from imprisonment until release is approved by the SORB. If released, an offender is placed on conditional release for life and may be returned to prison for a violation of their conditions of release.

Para. (c). Permits imposition of a fine of not more than \$20,000 in addition to any sentence imposed under paragraphs (a) or (b).

20 Stay. Amends the stay provision for offenses where the actor has a significant relationship

to the victim (generally a family member, step-parent, or other person residing in the same household) and the victim was at least 16 but under 18 years of age at the time of the conduct. The stay will continue to apply to a first-offense, but will not apply to a subsequent sex offense.

21 Criminal sexual predatory conduct. Creates the new crime of criminal sexual predatory conduct to replace the crime previously found in section 609.108, subdivision 2, which is repealed by this article.

Subd. 1. Crime defined. Defines a criminal sexual predatory crime as a predatory crime that was motivated by the offender's sexual impulses or was part of a predatory pattern of behavior that had criminal sexual conduct as its goal. The term "predatory conduct" is defined in section 9.

Subd. 2. Penalty.

Para. (a). Establishes a penalty of not more than twice the statutory maximum for the underlying crime.

Para. (b). Establishes a life sentence for offenders who violate subdivision 1 and the sex offense is a subsequent sex offense. Offenders sentenced under this paragraph must serve a minimum of 20 years.

Para. (c). Permits imposition of a fine of not more than \$20,000 in addition to any sentence imposed under paragraphs (a) or (b).

22 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. [*See*, H.F. 1031]

23 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. [*See*, H.F. 1031]

24 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.) [*See*, H.F. 1031]

25 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.) [*See*, H.F. 1031]

26 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. [*See*, H.F. 1031]

27 Sentencing guidelines; changes mandated.

Para. (a). Directs the Sentencing Guidelines Commission to modify the guidelines, including the sentencing grid, to reflect changes made in this bill.

Para. (b). Instructs the commission to make the sex offender-related changes to the guidelines and grid proposed in the commission's 2005 report to the legislature. Directs the SGC to create a separate sex offender grid and change the method used to

calculate the weights assigned to sex offenses when calculating an offender's criminal history. Clarifies, however, that these changes must be consistent with the restructuring of sex offense penalties in this article.

Para. (c). Establishes an August 1, 2005, effective date for the SGC's changes.

Effective Date. This section is effective the day following final enactment.

28 Repealer. Repeals subdivision 2 of the Patterned and Predatory Sex Offender statute, which is replaced by the new criminal sexual predatory conduct crime in section 21. The repealer eliminates language calling for an increased statutory maximum for certain underlying crimes punishable in this statute. Repeals section 609.109, subdivisions 2, 4, and 6, which pertain to increased and mandatory sentences for sex offenders but that are no longer needed in light of the sentencing changes contained in this article.

Article 3: Sex Offender Policy and Review Boards

Overview

Article 2 lays the foundation for establishment of the Minnesota Sex Offender Review Board. The Board will be responsible for making release decisions regarding sex offenders who receive indeterminate sentences. Article 2 also establishes a Sex Offender Policy Board, which is charged with developing professional standards for treatment of sex offenders. Finally, Article 2 creates a Supreme Court Task Force to study the use of the courts to handle cases involving sexually dangerous persons.

[This article is comprised of H.F. 1406, articles 2 and 8, except for section 6, which is from article 4 of H.F. 1406.]

1. 1 Predatory offenders; Minnesota Sex Offender Review Board. Inserts language into the Data Practices Chapter (13) acknowledging that the SORB is entitled to access to certain data covered in that chapter.
- 2 When meeting must be closed. Requires the board to close a meeting when deliberating an inmate's release petition. Requires the board to identify the inmate under deliberation. Requires the board, at its next meeting, to summarize deliberations on the petition.
- 3 Sex Offender Policy Board. Creates a Sex Offender Policy Board and charges it with developing professional standards for treatment of sex offenders, including uniform supervision and treatment guidelines. Authorizes the governor to appoint the board to serve in an advisory capacity to the governor. Requires the governor to appoint five professionals with relevant and complementary experience in treatment, law enforcement, sex offender assessment, and sex offender treatment. Board members serve at the pleasure of the governor and their terms are coterminous with the governor's. Members serve without compensation other than reimbursement for expenses.
- 4 Requires the board to submit a report to the legislature on the professional standards for treatment of sex offenders.
- 4 Minnesota Sex Offender Review Board.

Subd. 1. Definitions. Defines the terms board and commissioner.

Subd. 2. Responsibilities. Charges the SORB with responsibility for making release decisions regarding sex offenders who receive indeterminate sentences.

Subd. 3. Exemption from chapter 14. Extends a general exemption to the SORB from complying with chapter 14. Permits the SORB to use the expedited rule-making procedures set forth in Minnesota Statutes, section 14.389, to implement Article 2.

5 Direction to the commissioner of corrections. Directs the commissioner of corrections to establish criteria and procedures for the SORB regarding the composition, duties, and procedures of the SORB. The commissioner shall also propose review criteria to be used by the board in making release decisions. The commissioner must seek input from the end-of-confinement review committee at each state correctional facility and state treatment facility that houses sex offenders. The commissioner must also seek input from knowledgeable practitioners.

Instructs the commissioner to submit recommendations to the legislature by December 15, 2005, addressing the composition, duties, and procedures of the SORB.

6 Supreme Court Task Force; study required.

Subd. 1. Establishment. Requests that the Supreme Court establish a task force to study the use of the court system as an alternative to the administrative process of the special review board for reductions in custody and discharge from commitment of persons committed as sexually dangerous persons.

Subd. 2. Membership. Lists the 17 members that the legislature wants to serve on the task force.

Subd. 3. Recommendations. Establishes an August 1, 2005, deadline for the Supreme Court to convene the task force. Directs the task force to make recommendations regarding establishment of a judicial process to replace the current practice of special review boards. The recommendations must be based on a review of the current law and practice in Minnesota and other jurisdictions.

Subd. 4. Report. Requires the task force to submit a report to the legislature by December 15, 2005.

Article 4: Predatory Offender Registry

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 5 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. Finally, it requires courts to impose lifetime conditional release on level III sex offenders who are convicted of failing to register.

[This article is based on 1406, article 5, except for a piece of section 3, which is from H.F. 386.]

1. 1 Disclosure of sex offender registrant status. Amends the Data Practices Act to cross-reference the law enforcement agency duty to notify health care facilities of relevant sex offender registration status (*See*, section 3, subdivision 4c).
- 2 Transfer and discharge appeals. Prohibits a registered sex 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 sex offender knowingly fails to inform his current facility that he is a registered sex offender.
- 3 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 6 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 sex offender to notify a health care facility upon the person's admittance to the facility that the person is a registered sex offender. The offender must also provide certain details related to his registration.

Subd. 4c. Healthcare facility; law enforcement notification duty. Requires the agency responsible for maintaining a sex 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. Conditional release. Requires courts to impose lifetime 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.

Subds. 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.

[Except for subdivisions 4, para (e), clause (3), 5a, and 9, section 1 is effective the day

following final enactment and applies to persons subject to registration on or after that date. Subdivision 4, para (e), clause (3) is effective December 1, 2005. Subdivision 5a is effective August 1, 2005, and applies to crimes committed on or after that date. Subdivision 9 is effective July 1, 2005.]

4 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.]

5 Sex offenders; civil commitment determination. 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 a representative of the attorney general's office who is knowledgeable about the civil commitment law.

6 End-of-confinement review committee. 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 7. [Effective July 1, 2005, and applicable to all persons subject to community notification on or after that date.]

7 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.]

- 8 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. [Effective the day following final enactment and applicable to all persons subject to community notification on or after that date.]
- 9 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 sex offender is receiving inpatient care. [Effective the day following final enactment.]
- 10 Persons mandated to report. Requires probation and correctional services professionals to report incidents of neglect and physical or sexual abuse of children to the appropriate authorities. [Effective the day following final enactment.]
- 11 Revisor's instruction. Technical. [Effective the day following final enactment.]
- 12 Repealer. Technical repealer, relating to the recodification of language in the Predatory Offender Registration Law. [Effective the day following final enactment.]

Article 5: Human Services Access to Predatory Offender Registry

Overview

This article contains information 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 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. 1 Use of information. 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 the state 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 Correctional employees; probation officers. Adds state-operated services employees to the group of individuals who are protected against assault.

6 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 patients, staff and others.

7 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, circumstances under which a variance can be granted, or a disqualification decision rescinded.

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

- 1 Disqualification from direct contact. Provides a cross-reference to section 245C.22 to reflect the classification procedure for data about disqualified individuals.
- 2 Set-aside data. Provides procedures for disclosure of data relative to individuals who obtain a set-aside of their disqualification.
- 3 Variance data. Provides procedures for disclosure of data relating to disqualified individuals who received a variance.
- 4 Licensed programs. Adds that prospective employees shall have a background study completed before having direct contact with clients in DHS licensed facilities or programs.
- 5 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.

- 6 Permanent disqualifications. Adds 24 felonies and two administrative determinations as grounds to permanently bar employment at a DHS licensed facility or program. Adds aiding and abetting in any of the disqualifying offenses as a permanent bar to employment.
- 7 15-year disqualifications. Deletes 17 offenses and classifies them as a permanent bar to employment. Adds three new offenses to the 15-year disqualification list. Adds aiding and abetting in any of the disqualifying offenses as a 15-year bar to employment.
- 8 Ten-year disqualifications. Changes offenses for 10-year disqualifications to include some misdemeanor offenses. Adds aiding and abetting in any of the disqualifying offenses as a 10-year bar to employment.
- 9 Seven-year disqualifications. Provides technical changes.
- 10 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.
- 11 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.
- 12 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.
- 13 Requests for reconsideration. Places responsibility on the disqualified individual who is requesting rescission of the disqualification to provide information to the commissioner that the decision to disqualify was based on incorrect information. Provides that the disqualified individual submit information that the individual is aware that the individual's identity and disqualifying characteristics will become public data if the disqualification is set aside.
- 14 Notice of request for reconsideration. Provides that upon request the commissioner can inform those individuals and entities informed of the subject's disqualification that the subject has requested reconsideration.
- 15 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. 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.
- 16 Notice of disqualification that is rescinded or set aside. Directs the commissioner when a disqualification is rescinded to notify the license holder that the information relied upon to disqualify the individual was incorrect.
- 17 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.
- 18 Ten-year bar to set aside disqualification. Provides the commissioner cannot set aside the disqualification of an individual who was disqualified for an offense under section 245C.15, subdivision 3, unless 10 years have passed since discharge of the sentence imposed, if any.
- 19 Seven-year bar to set aside disqualification. Adds that a disqualification cannot be set aside

for seven years if the individual is found to have committed a disqualifying act under section 245.15, subd. 4.

20 Notification of disqualification. Provides the commissioner shall expand notification of disqualifications to entities and inform the public about disqualifications.

21 License holder variance. Provides that a variance must be requested by the license holder, except for programs to provide family child care, foster care for children in the provider's own home, or foster or day care services for adults in the provider's own home.

22 Disclosure of reason for disqualification. Adds that the commissioner must have documentation showing that the disqualified individual has been informed that if a variance is granted, the individual's identity, reason for disqualification and terms of the variance will become public data.

23 Data management. Changes retention date of substantiated reports of maltreatment of a vulnerable adult from seven to at least ten years.

Article 7: Sex Offender Miscellaneous, Technical, and Conforming Provisions

Overview

This article contains a variety of initiatives related to sex offenders. This article also makes technical and conforming changes that are necessary to complete the changes made in the preceding articles 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. 1 Crime victims. Classifies data regarding victims of CSC in the data privacy chapter.

2 Criminal history information; classification. Prohibits criminal history data that is classified as public data from being reclassified as confidential medical data when it is included in the patient's health record.

3 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.

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

5 Registration required. Amends the predatory offender registration statute so that persons convicted of the new sexual predatory conduct crime must register as predatory offenders.

6 Intensive supervised release. Extends application of intensive supervised release by adding offenders sentenced under the new criminal sexual predatory conduct crime as well as third- and fourth-degree criminal sexual conduct to the list of offenses that require intensive supervised release.

Requires the commissioner of corrections to order all level III sex offenders be placed on intensive supervised release for the entire period of their non-prison sentence and requires level III offenders to submit to polygraph tests as a condition of release. [*See*, H.F. 385]

7 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.

- 8 Petition; notice of hearing; attendance; order. Requires the special review board charged with reviewing petitions for discharge of civilly committed sex offenders to consider statements received from victims prior to taking action on a request.
- 9 Victim notification. Requires notification of victims when a civilly committed sex offender is released, even temporarily, from an institution. The head of the treatment facility only needs to notify victims who request such notification through the appropriate county attorney.
- 10 Conditional release. Requires the commissioner of corrections to order all level III sex offenders be placed on intensive supervised release for the entire period of their non-prison sentence and requires level III offenders to submit to polygraph tests as a condition of release. [See, H.F. 385]
- 11 Commissioner of corrections. Authorizes the commissioner of corrections to collect copayments to cover part of the cost of treating patterned and predatory sex offenders who are granted conditional release.
- 12 Previous sex offense convictions. Adds the new sexual predatory conduct crime to the list of offenses that qualify as a "previous sex offense."
- 13 Conditional release of sex offenders. Authorizes the commissioner of corrections to collect copayments to cover part of the cost of treating repeat sex offenders who are granted conditional release.

Requires the commissioner of corrections to order all level III sex offenders be placed on intensive supervised release for the entire period of their non-prison sentence and requires level III offenders to submit to polygraph tests as a condition of release. [See, H.F. 385]

- 14 DNA collection. Requires persons convicted of the new sexual predatory conduct crime to submit a biological sample for DNA testing upon being sentenced for the crime.
- 15 DNA collection. Requires persons convicted of the new sexual predatory conduct crime to submit a biological sample for DNA testing upon release from prison, if they have not already done so.
- 16 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.
- 17 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.
- 18 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.
- 19 Medical purposes; exclusion. Extends the exception for sexual penetration necessary for medical purposes to the new crime of sexual predatory conduct.
- 20 Jurisdiction. Extends the current rule governing jurisdiction in CSC cases so that it applies to the new crime of sexual predatory conduct.
- 21 Acts prohibited. Adds escaping while on pass status or provisional discharge when committed as a sexually dangerous person to the list of felony escape offenses.
- 22 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 21.
- 23 Definitions. Adds the crimes of solicitation of children to engage in sexual conduct and possession of pornographic work involving minors to the list of "designated offenses" relating to forfeitures. [See, H.F. 971]
- 24 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.

[See, H.F. 971]

- 25 Gross misdemeanor. Eliminates the gross misdemeanor offense for indecent exposure in the presence of a minor under the age of 16. This offense is now a felony pursuant to section 26.
- 26 Felony. Creates a five-year felony for persons who commit indecent exposure in the presence of a minor under the age of 16.
- 27 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.
- 28 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 8: Public Safety Policy

Overview

This article makes the following changes to laws relating to public safety policy: authorizes fees for Internet searches on the BCA's criminal history database; 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; 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; 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. 1 Internet access. Deletes the August 1, 2005, sunset date for the \$5 fee for access to the BCA's public criminal history database. Authorizes the BCA to collect the fee and direct it to a special revenue fund. [See, H.F. 1423, art. 2]

[Effective July 1, 2005.]

- 2 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.]

- 3 Prohibitions generally; exceptions. 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.]

- 4 **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 0of this article. (See, sections 0and 0.)

[See, H.F. 1721]

[Effective day following final enactment.]

- 5 **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.]

- 6 **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 0of 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 0and 0.) [See, H.F. 1721]

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

7 Course and scope of duties panel. Establishes a panel to make decisions relating to insurance benefits of disabled police and firefighters. (*See*, section 0.) 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 0 and 0.)

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

[Effective day following final enactment.]

8 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.]

9 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.]

10 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.]

11 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 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. The total damage award under this section is limited to six weeks of lost wages. [See, H.F. 443]

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

12 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 0pertaining 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.]

13 **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.]

14 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 0.

Subd. 6. Civil action. Provides the same civil remedies as found in section 0.

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.]

- 15 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.]

- 16 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.]

- 17 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.]

- 18 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.]

- 19 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. 1 Removal of structures. Adds language to Minnesota Statutes 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 299F.10, which is repealed in section 18. [See, H.F. 1980]
- 2 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 299F.10, which is repealed in section 18. [See, H.F. 1980]
- 3 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]
- 4 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]
- 5 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 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]
- 6 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]
- 7 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]
- 8 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]
- 9 Blasting agent defined; explosives classified. Changes outdated definitions of various

- classes of explosives to commonly accepted definitions. [See, H.F. 1980]
- 10 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]
- 11 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]
- 12 Definitions. Replaces the term "lodging house" with "dormitory" and defines the new term. Modifies the definition of "hotel" and eliminates the definition of "school." [See, H.F. 1423]
- 13 Inspection of Hotels and other lodging facilities. Requires lodging facilities with five or more rooms to undergo an inspection by the fire marshal every three years. [See, H.F. 1423]
- 14 Inspection fees; hotels and dormitories. Establishes a new per-room fire inspection fee schedule for lodging facilities. The proposal calls for a \$7 per-room fee for facilities with 35 to 99 units or 50 cents per-bed in group sleeping areas. These fees are on top of the base fee of \$435.
- Establishes a new fee schedule for lodging facilities with less than 35 rooms. Calls for a triennial inspection fee of \$217.50 and a per-room charge of \$3 for a hotel or dormitory and a per-cabin charge of \$2.50, or a per-bed charge of 50 cents per bed in group sleeping areas. Permits a follow-up charge of \$112.50. [See, H.F. 1423]
- 15 Flame resistant tents and sleeping bags. Exempts two-person backpacking tents from the requirement that tents be durably flame resistant. [See, H.F. 1980, as amended in Public Safety]
- 16 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]
- 17 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]
- 18 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: Emergency Communications

Overview

This article makes technical changes to the 911 System and addresses financing provisions for the third phase of the Statewide Public Safety Radio Communication System.

[Sections 1-14 and 24 are from H.F. 2103. Sections 15-22 are from H.F. 1423. Section 23 is from H.F. 1993.] [See also, H.F. 498, 1st engrossment]

1. 1 Application, notice, financial administration, complaint investigation. Technical change that requires each local service provider to remit surcharge revenues to the Department of Public Safety. This is consistent with the prior transfer of the 911 program from the Department of

Administration to the Department of Public Safety. (In connection with the 911 fee, DPS also collects the Telephone Assistance Plan (TAP) fee under section 237.70 and the Telecommunications Access Minnesota (TAM) fee.)

[Effective day following enactment.]

- 2 Automatic location identification. Deletes the obsolete term "special viewing screen." In the present automated environment, location information is often integrated into CAD systems and mapping systems.

[Effective day following enactment.]

- 3 Enhanced 911 service. Clarifies the meaning of "enhanced 911 service" by making a distinction between a common network (selective router and databases) and the connections to that network. ("Enhanced 911 service" means the use of automatic location identification.)

[Effective day following enactment.]

- 4 911 service. Clarifies the various components of the 911 network, as follows:
- ▶ Local data and trunked lines connection to the common 911 network.
 - ▶ Common network, including the selective router and database, and trunked connections connecting to the public safety answering point.
 - ▶ Automatic location identification (traditionally has been considered a separate enhancement to the network). There are still three counties in Minnesota with local location identification.

This definition uses more generic terms in recognition of the changing technical environment.

[Effective day following enactment.]

- 5 911 emergency telecommunications service provider. Defines "911 emergency telecommunication service provider" as a telecommunications service provider determined by the commissioner to be capable of providing components of the 911 network. (The statute currently provides for contracts with "telephone companies" to provide 911 service. Many telephone components are actually computer networks.)

[Effective day following enactment.]

- 6 Connected telecommunications service provide requirements. Adds wireless providers and packet based telecommunication (VoIP) to the statute requiring phone companies to design their systems to provide 911 service. This adjustment is designed to provide for the changing technology of telecommunication. It would not be applicable to providers covered by the FCC and the federal court decision enjoining local regulation.

[Effective day following enactment.]

- 7 Contractual requirements. Allows the State to contract with telephone companies and 911 service providers to provide 911 services in the state. Provides greater flexibility in providing 911 services. Recognizes that many elements are now computer networks and telecommunication is merging with data communication.

[Effective day following enactment.]

8 Operate and maintain. Provides that wireless calls and wired line calls from the same geographic location should be routed to the same PSAP. Wireless 911 calls were originally routed to the state patrol. Calls can now be routed based upon geographic location of the caller.

[Effective day following enactment.]

9 Agreements for service. Allows the State to contract with telephone companies and 911 service providers to provide 911 services in the state. Provides greater flexibility in providing 911 services. Recognizes that many elements are now computer networks and telecommunication is merging with data communication.

[Effective day following enactment.]

10 Database. Corrects the reference to federal law concerning privacy of telephone records.

[Effective day following enactment.]

11 Plan integration. Allows the State to contract with telephone companies and 911 service providers to provide 911 services in the state. Provides greater flexibility in providing 911 services. Recognizes that many elements are now computer networks and telecommunication is merging with data communication.

[Effective day following enactment.]

12 Emergency telecommunications service fee; account. Enlarges the definition of telecommunication service provider subject to the 911 fee. This change provides some flexibility to adapt to the changing technology, but still would be limited by federal regulations prohibiting local regulation or fee assessment. Specifies fee ranges.

[Effective day following enactment.]

13 Method of payment. Adds 911 service providers to the budgetary process. The added language coincides with provisions allowing the State to contract with telephone companies and 911 service providers.

[Effective July 1, 2005.]

14 Timely certification. Reduces the certification process from two years to one year for all new contracts.

[Effective day following enactment.]

15 Fee. Expands the definition of telecommunication service provider subject to the 911 fee. This change provides some flexibility to adapt to the changing technology, but still would be limited by federal regulations prohibiting local regulation or fee assessment.

[Effective July 1, 2005.]

16 Authorization; third phase. Authorizes the commissioner of finance, if request by a two-thirds vote of all the members of the Statewide Radio Board, to issue revenue bonds for any of the following purposes:

(1) provide funds for elements of the third phase of the statewide public safety radio communication system that are of regional or statewide benefit;

(2) provide funds for the third phase of the public safety radio communication system; and

(3) refund bonds issued under this section.

[Effective July 1, 2005.]

17 Limitations. Deletes bonding provisions relating to financing of local subsystems and improvements to systems that interoperate with the Regionwide Public Safety Radio Communications System. Authorizes the commissioner of finance to issue bonds under subdivision 1a (third phase) (section 16). Appropriates the proceeds of the bonding for phase 3.

18 Security (Metropolitan Council bonds). Technical. Specifies that current law addressing security for bonds only applies to the bonds issued by the Metropolitan Council, and not those issued by the state under the new subdivision 1a (section 16). Section 19 addresses the security requirements for the bonds issued under subdivision 1a.

[Effective July 1, 2005.]

19 Security (state bonds). Specifies that the revenue bonds issued by the state are payable only from the emergency telephone service fee and are not general obligations bonds.

[Effective July 1, 2005.]

20 Standing appropriation; costs covered. Automatically appropriates costs related to debt service under section 403.27, subdivision 1 and costs authorized under section 403.27, subdivision 1a to the commissioner of public safety.

[Effective July 1, 2005.]

21 Standing appropriation; costs covered. Automatically appropriates the following costs to the commissioner of public safety:

- 1. debt service under section 403.27, subdivision 1a;
- 2. repayment of the right-of-way acquisition loans;
- 3. improvement costs for elements of the system backbone; and
- 4. lease charges (system backbone).

Paragraph (b) limits and prioritizes the appropriation authorized in paragraph (a).

[Effective July 1, 2005.]

22 Appropriation transfers. Requires the commissioner of public safety to transfer to the commissioner of finance sufficient funds from the 911 surcharge to meet the debt service costs and reserves for bonds issued under both sections 403.27, subdivision 1, and 403.27, subdivision 1a.

[Effective July 1, 2005.]

23 See article 10, section 0.

24 Transfer of responsibilities. Authorizes assignment of contracts and obligations from the Statewide Radio Board to the commissioner of public safety or the commissioner of transportation should the Metropolitan Radio Board not assume those contracts and obligations as a regional board. Changes the Metropolitan Radio Board transition date from

June 30, 2006 to June 30, 2005.

[Effective July 1, 2005.]

25 Repealer. Repeals sections 403.025, subdivision 4 and 403.30, subdivision 2.

[Effective July 1, 2005.]

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. 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 six years old. [See, H.F. 121, 2349]

[Effective day following enactment.]

2 See article 11, section **Error! Unknown switch argument.** [See, H.F. 121,2349]

3 See article 11, section **Error! Unknown switch argument.** [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 a list of 16 members to be appointed to 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.

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 a report to the

legislature by DPS in September 2006, and an annual published report of trafficking statistics. [See, H.F. 1760]

[Effective July 1, 2005.]

8 Trafficking analysis and initiatives. Specifies initiatives that may be included in the DPS plan to address trafficking. Requires DPS to provide training for relevant officials in addressing trafficking. Requires that plans and materials be made available to the Peace Officers Standards and Training Board. [See, H.F. 1760]

[Effective July 1, 2005.]

9 Trafficking victim assistance. Requires DPS to establish policies for state government to work with nongovernmental organizations to assist trafficking victims. [See, H.F. 1760]

[Effective July 1, 2005.]

10 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.]

11 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.]

12 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.]

13 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.]

14 CriMNet; Membership, duties. Modifies the membership and duties of the Criminal and Juvenile Justice Information 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.]

15 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.]

16 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.]

17 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.]

18 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.]

19 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.]

20 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. [See, H.F. 1977,1568]

[Effective July 1, 2005.]

Article 12: DNA Collection

Overview

Establishes an all felon DNA database in Minnesota. Requires all persons convicted of a felony to submit a DNA sample. Also requires persons arrested for a felony to submit a DNA sample. The arrestee requirement is implemented in two phases. Phase one, which would begin July 1, 2005, requires collection of samples from persons arrested for certain violent and predatory felonies. Phase two requires any person arrested for a felony to submit a DNA sample. Phase two would begin on July 1, 2010.

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.

[All of the provisions in this section were originally contained in H.F. 1244, the first engrossment, except section 9.]

1. 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, at the time of booking, a biological specimen for DNA analysis purposes from all persons, including juveniles, who are arrested on suspicion of 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. Requires peace officers who collect biological

specimens be trained according to BCA guidelines.

Subd. 3. Bureau duty. Requires the BCA to perform DNA analysis on all specimens collected.

Effective Date: July 1, 2005.

5 **Additional DNA data required.**

Subd. 1. Required collection of biological specimen for DNA testing. Requires law enforcement to collect, at the time of booking, a biological specimen for DNA analysis purposes from all adults who are arrested on suspicion of a felony offense that is not listed in 299C.105 (section 4).

Subd. 2. Law enforcement training. Requires peace officers who collect biological specimens be trained according to BCA guidelines.

Subd. 3. Bureau duty. Requires the BCA to perform DNA analysis on all specimens collected.

Effective Date: July 1, 2010.

6 **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 bill removes the limitation on expunging DNA evidence.

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. Specifies that the remedies of chapter 13 apply to a violation of this provision.

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

299C.11.

7 **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.

8 **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.

9 Preservation of evidence. Requires governmental entities to retain any item of physical evidence that contains biological material 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 parole, civilly committed, or subject to registration as a sex offender as a result of the conviction. [Effective the day following final enactment.] [*See*, H.F. 2028, 3rd Eng. (2004)]

10 **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.

11 **Certain criminal proceedings not resulting in a conviction.** Amends the expungement chapter (609A) to reflect changes made in section 6 regarding the expungement of DNA samples and records.

12 **Limitations of order.** Strikes 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 certain offenders to expunge their DNA records (see sections 6 and 11).

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

14 **Revisor instruction.** Instructs the Revisor to insert a cross-reference to section 299C.106 (section 5) in all places that section 299C.105 (section 4) is cross-referenced. This provision is necessary to ensure that all appropriate statutes are updated when section 5 goes into

effect in July of 2010.

Effective Date: July 1, 2010.

Article 13: Corrections

Overview

This article addresses the following issues related to corrections: discipline procedures for correctional officers, seizures by the Fugitive Apprehension Unit, local correctional fees, jail construction thresholds, community reintegration of offenders, and gate money. 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. 1 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. [See, H.F. 1448]

[Effective July 1, 2005.]

2 Community reintegration; placement of certain offenders with less than 180 days to serve. Authorizes the commissioner of corrections, with the approval of the local authority, to place an offender who is committed to the custody of the commissioner and who has less than 180 days remaining in the offender's term of imprisonment at a county or regional jail in the jurisdiction where the offender plans to reside while on supervised release. The goal of this policy is help offenders prepare for reintegration into the community. The commissioner must pay a county that incarcerates an offender under this section a per diem equal to the amount paid to counties to house offenders who the commissioner has insufficient beds. [See, H.F. 2351]

[Effective July 1, 2005.]

3 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. [See, H.F. 1607]

[Effective July 1, 2005.]

4 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.]

5

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. [See, H.F. 1880]

[Effective July 1, 2005.]

6 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. [See, H.F. 1849]

[Effective July 1, 2005.]

7 Associated property. Prohibits the Fugitive Apprehension Unit from seizing real property under the forfeiture law that is associated with controlled substance offenses. [See, H.F. 1849]

[Effective July 1, 2005.]

8 Limitations on forfeiture of certain property associated with controlled substances. Prohibits the Fugitive Apprehension Unit from seizing conveyance devices (including motor vehicles and real property) under the forfeiture law that are associated with controlled substance offenses. [See, H.F. 1849]

[Effective July 1, 2005.]

9 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. [See, H.F. 1849]

[Effective July 1, 2005.]

10 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. [See, H.F. 1849]

[Effective July 1, 2005.]

11 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. [See, H.F. 1849]

[Effective July 1, 2005.]

12 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. [See, H.F. 1849]

[Effective July 1, 2005.]

13 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. [See, H.F. 1849]

[Effective July 1, 2005.]

14 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. [*See*, H.F. 1849]

[Effective July 1, 2005.]

- 15 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. [*See*, H.F. 2351]

[Effective July 1, 2005.]

- 16 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. [*See*, H.F. 2005]

[Effective July 1, 2005.]

- 17 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. [*See*, H.F. 1606]

[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 and recording surcharges. The latter will be used to fund civil legal services. In addition, the article permits Ramsey County to impose an additional \$1 surcharge to fund the petty misdemeanor diversion program.

The article also amends several statutory provisions related to public defender representation. It limits representation by public defenders to statutorily designated persons, limits the discretionary appointment of public defenders by the court, modifies the access rights of public defenders to certain government data, and repeals a statute addressing the appointment of public defenders.

The article also amends the government's responsibility to pay for attorneys' fees and costs in criminal appeals. In addition, it places time limitations and procedural restrictions on petitions for postconviction relief.

Finally, the article modifies seizure and forfeiture provisions, instructs the Revisor to create a collateral sanctions table, authorizes the assignment of a retired court commissioner to act in Ramsey county, authorizes the appointment of new judges, and repeals a law prohibiting service of process on the Sabbath.

1. 1 Description. Authorizes the appointment of nine new district court judges. [*See*, amendment]

[Effective July 1, 2005.]
- 2 Surcharges on criminal and traffic offenders. Increases the current statutorily mandated criminal surcharge from \$60 to \$70, 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. [*See*, H.F. 1423, art. 2; H.F. 764; and amendment in committee)

[Effective July 1, 2005.]
- 3 **Disbursement of surcharges by commissioner of finance.** 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. [*See*, H.F. 764]

[Effective July 1, 2005.]
- 4 **Civil legal services.** Sections 0to 0increase funding for civil legal services through an increase in surcharges to be collected on certain recording and registration fees. The civil

legal service programs provide services to individuals who are financially unable to afford legal assistance.

Surcharges. Increases the surcharge imposed on indexing or recording deeds and instruments, filing an abstract of title, and filing certain documents related to real property containing multi-unit housing. The surcharge is increased from \$4.50 to \$8.50. [*See*, H.F. 1228]

[Effective July 1, 2005.]

- 5 Standard documents. Increases the surcharge that is imposed in court supervised cases for registering a certificate of title, registering instruments transferring fee simple title for which a new certificate of title is issued, entering a memorial on a certificate, filing two copies of any plat, filing an amendment to a declaration under chapter 515, filing an amendment to a common interest community declaration and plat, filing a certified copy of a plat, and filing a registered land survey in triplicate. The surcharge is increased from \$4.50 to \$8.50. (See article 14, section 0.) [*See*, H.F. 1228]

[Effective July 1, 2005.]

- 6 Standard documents. Increases the surcharge that is imposed in noncourt supervised cases for registering a Certificate of Possessory Title (CPT), registering a new CPT pursuant to a title transfer, entering a memorial on a CPT, filing two copies of a plat, filing an amendment to a declaration, filing an amendment to a common interest community declaration and plat, and filing a registered land survey in triplicate. The surcharge is increased from \$4.50 to \$8.50. (See article 14, section 0.) [*See*, H.F. 1228]

[Effective July 1, 2005.]

- 7 **Appeal of pretrial orders; attorney fees; defendant; not government responsibility.** Amends the responsibility of the government to pay attorneys' fees and costs in certain criminal case appeals. Pursuant to the current Minnesota Rules of Criminal Procedure, the Minnesota Supreme Court has adopted rules requiring a governmental unit to pay the attorneys' fees and costs incurred by a defendant on the unit's appeal in the following cases:
- ▶ from a pretrial order of the trial court,
 - ▶ from an order granting postconviction relief,
 - ▶ from a judgment of acquittal by the trial court entered after the jury returns a guilty verdict,
 - ▶ from an order of the trial court vacating judgment and dismissing the case after the jury returns a guilty verdict, and
 - ▶ from an order for a new trial which is based exclusively upon a question of law that is important or doubtful.

Section O states that, notwithstanding the relevant Minnesota Rule of Criminal Procedure, the governmental unit is not required to pay attorneys' fees and costs in the first four instances or in an appeal from any sentence imposed or stayed by the trial court in a felony case. (Current law does not require the governmental unit to pay attorneys' fees and costs in this latter type of sentencing appeal.) Exempts defendants who are represented by the public defender. [*See*, H.F. 1252]

[Effective July 1, 2005.]

8 **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. [*See*, H.F. 1252]

[Effective August 1, 2005.]

9 **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:

- ▶ 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. [*See*, H.F. 1252]

[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.]

10 Right to representation by public defender. Limits representation by public defenders to the four circumstances currently prescribed by statute: (1) a person charged with a felony, gross misdemeanor, or misdemeanor; (2) a person pursuing post-conviction relief who has not already had a direct appeal, (3) a person entitled to be represented in a probation revocation hearing, and (4) a minor ten years of age or older entitled to be represented in a delinquency hearing or child protection hearing. [*See*, H.F. 848]

[Effective July 1, 2005.]

11 Request for appointment of public defender. Clarifies that public defender representation is limited to the circumstances described in section 0. [*See*, H.F. 848]

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

12 Representation. Eliminates the Supreme Court and Court of Appeals' discretionary authority to appoint public defenders. Eliminates the State Public Defender's authority to delegate representation of court appointed defendants to district public defenders. [*See*, H.F. 848]

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

13 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. [See, H.F. 848]

[Effective July 1, 2005.]

14 **Surplus property.** Authorizes the Board of Public Defense to provide surplus computers to its part-time employees. [See, amendment]

15 **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. [See, H.F. 256]

16 Collateral sanctions cross-references; publishing a table.

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 publish a table 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 table 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. [See, S.F. 607 (H.F. 734)]

[Effective July 1, 2005.]

17 **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. [See, H.F. 314 (S.F. 379)]

[Effective July 1, 2005.]

18 **Repealer .** This article repeals the prohibition of service of legal process on the Sabbath day (§ 624.04). In addition, it repeals section 611.18, which relates to the appointment of public

defenders. [See, H.F. 665]

[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.

[This article contains the provisions of H.F. 1251, as amended in the public safety committee]

1. 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.

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 an 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.

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 make 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 said 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.

[This article contains the provisions of H.F. 1602, as amended in the public safety committee]

1. 1 Promulgation of sentencing guidelines. Deletes the current allowable presumptive sentencing range under the sentencing guidelines that allows a range from 15% below to 15% above the presumptive, fixed sentence in each grid. Provides the guidelines shall reflect a presumptive sentencing range based on each appropriate combination of reasonable offense and offender characteristics.
- 2 Deviation from guidelines; imposition of sentence. Proscribes a court from imposing a sentence duration in excess of that provided by the guidelines unless the finder of fact has found that a severe aggravating factor exists. Requires a court to impose a sentence in excess of the presumptive range if severe aggravating factors are found.
- 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.

- 4 Procedures in cases where the state intends to seek an aggravated durational 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.
- 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.
- 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.
- 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.
- 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.
- 9 Mandatory increased sentence. Replaces language in current law requiring the court to impose a sentence that is a not less than double the presumptive sentence to provide that the sentence shall not be less than the high end of the new presumptive sentencing range (see article 16, section 0). This sentence applies to commission of a "predatory crime" motivated by an offender's sexual impulses or part of a predatory pattern of behavior that had criminal sexual conduct as its goal.
- 10 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. Eliminates the current requirement that the court determine whether aggravating factors exist that would provide grounds for an upward departure.
- 11 Minimum departure for sex offenders. Replaces language in current law requiring the court to impose a sentence that is a not less than double the presumptive sentence to provide that the sentence shall not be less than the high end of the new presumptive sentencing range (see article 16, section 0) if the person is convicted of first- or second-degree criminal sexual conduct involving force or violence. Also provides that the factfinder shall determine whether aggravating factors exist. Current law allows the court to determine whether aggravating factors exist.
- 12 Increased sentences for dangerous offender who commits a third violent crime. Deletes language requiring certain findings before the court may impose an aggravated durational departure in situations where an offender commits a third violent crime.
- 13 Increased sentence for offender who commits a sixth felony. Deletes language requiring the court to determine 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.

14 Instruction to Sentencing Guidelines Commission.

Subd. 1. Former presumptive, fixed sentence maintained as a reference point. Requires the court to retain in each cell of the sentencing guidelines grid the presumptive, fixed sentence in place at the time of enactment of this legislation, except that the commission shall make changes to presumptive, fixed sentences consistent with 2005 legislation and/or timely modifications proposed by the sentencing guidelines commission.

Subd. 2. Presumptive sentencing range. Requires the guidelines commission to expand the sentencing range in each cell of the grid to 85 to 200 percent of the presumptive, fixed sentence. This change allows judges greater discretion in sentencing as they will be able to impose up to double the current fixed, presumptive sentence. This change means there will likely be fewer cases in which prosecutors will need to prove specific factors to a jury in order to obtain a longer sentence.

Subd. 3. Additional modifications to sentencing guidelines. Directs the commission to amend the guidelines and comments to provide that a court may depart upward from the presumptive sentencing range when severe aggravating circumstances justify such a departure.

15 Revisor's instruction.

Subd. 1. Headnote change. Instructs the Revisor to change the heading of section 609.108 from "Mandatory Increased Sentences for Certain Patterned and Predatory Sex Offenders; No Prior Conviction Required" to "Mandatory Increased Sentences for Certain Predatory Sex Offenders; No Prior Conviction Required."

Subd. 2. Repealer; reference to renumbering. 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.

16 Repealer. Repeals section 244.10, subdivisions 2a and 3, as explained in sections 7 and 8. Also repeals section 609.108, subdivisions 4 and 5, relating to "danger to public safety" and departures. See article 16, section 0.

[Effective date: Sections 1 to 14 are effective August 1, 2005, and apply to crimes committed on or after that date. Sections 15 and 16 are effective August 1, 2005.]

Article 17: General Criminal Provisions

Overview

This article addresses the following general criminal provisions: anabolic steroids, fighting animals, domestic assault by strangulation, murder of a child, assault of facility personnel, crimes against children committed by gang members, neglect of a vulnerable adult, child neglect, prostitution crimes, fleeing a peace officer on foot, interference with ambulance crews, false reports to peace officers, false reports of police misconduct, theft provisions, identity theft, "phishing" schemes, injured railroad workers, pirating movies, and monetary thresholds for theft.

1. 1 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). [*See* , H.F. 1020]

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

- 2 Schedule IV. Strikes the term anabolic substances and its definition from schedule IV. [*See* , H.F. 1020]

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

- 3 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. [*See* , H.F. 1289]

[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 or 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. [*See* , H.F. 1867]

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

5 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. [*See* , H.F. 963]

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

6 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. [*See* , H.F. 741]

7 [Effective August 1, 2005, and applies to crimes committed on or after that date.]
Correctional employees; probation officers; and 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. [*See* , H.F. 1202]

8 [Effective August 1, 2005, for crimes committed on or after that date.]
Domestic assaults; firearms. 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. [*See* , H.F. 963]

9 [Effective August 1, 2005, for crimes committed on or after that date.]
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 gross misdemeanor. ("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.) [*See* , H.F. 963]

10 [Effective August 1, 2005, for crimes committed on or after that date.]
Gang member; crime against a child. Amends the statute that punishes crimes committed for the benefit of a gang. Establishes penalties for gang members who commit a crime against a child. The underlying crime does not need to be connected to the person's status as a gang member.

If the crime committed by a gang member against a child is a felony, the perpetrator would be subject to a statutory maximum prison sentence of five years longer than prescribed for the crime. If the underlying crime is a gross misdemeanor, the perpetrator would be subject to a 3-year felony sentence. If the underlying crime is a misdemeanor, the perpetrator would be subject to a gross misdemeanor sentence. [*See* , H.F. 988]

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

11 See article 17, section **Error! Unknown switch argument.** [See , H.F. 988]

12 Criminal neglect of a vulnerable adult. Eliminates the prior blanket gross misdemeanor penalty for criminal neglect and provides that a person guilty of criminal neglect will be sentenced as provided in section 13. [See , H.F. 1848]

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

13 **Penalties ; criminal neglect of a vulnerable adult.** Establishes a graduated penalty scheme based on the severity of harm to the vulnerable adult. If neglect results in death, the maximum penalty is ten years of imprisonment and/or a fine of \$20,000. If neglect results in substantial bodily harm or risk of death, the maximum penalty is five years of imprisonment and/or a fine of \$10,000. In all other cases, the maximum penalty is one year of imprisonment and/or a fine of \$3,000. [See , H.F. 1848]

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

14 **Public place.** Expands the definition of "public place" for purposes of the prostitution statutes to include a motor vehicle on a public street, alley, (public) parking lot, or driveway connecting a parking lot with a street or highway. [See , amendment]

[Effective August 1, 2005.]

15 **Child neglect/endangerment statute.** Amends the child neglect/endangerment statute to provide penalties for adults who leave children unattended in motor vehicles. Makes it illegal for a person who is responsible for a child under the age of eight to leave that child in a car without the supervision of at least a 14-year-old when one of two conditions is present. The first condition is when the car is parked in a location that presents a risk to the child's health or safety. The second alternative condition is when the engine of the motor vehicle is running or the keys are anywhere in the passenger compartment. A person who commits this crime is subject to no more than 90 days in jail and/or a fine of up to \$1,000 (*i.e.*, a misdemeanor). [See , H.F. 1752]

[Effective July 1, 2005.]

16 **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. [See , H.F. 382]

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

17 **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). [See , H.F. 465]

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

18 **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 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 give 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. [*See* , H.F. 618]

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

19 **Theft.** Expands the crime of theft. Currently, it is a crime for a person with a legal interest in movable property to, intentionally and without consent, take the property from a person having a superior right of possession, with the intent to permanently deprive the person of possession of the property. This section expands the crime to make it illegal for someone without a legal interest in the property to take the property from someone with a right of possession. [*See* , H.F. 2108]

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

20 **"Phishing" - identity theft.** 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." (See article 17, sections 23 and 24.) [*See* , H.F. 243]

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

21 **Identity theft - penalties & restitution 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. (See article 17, section 22.) [*See* , H.F. 929]

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

22 **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. (See article 17, section 21.) [*See* , H.F. 929]

- 23 [Effective August 1, 2005, for crimes committed on or after that date.]
"**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. (See article 17, sections 20 and 24.) [*See* , H.F. 243]
- 24 [Effective August 1, 2005, for crimes committed on or after that date.]
"**Phishing**" - **venue** . Expands venue in cases under section 23 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. (See article 17, sections 20 and 23.) [*See* , H.F. 243]
- 25 [Effective August 1, 2005, for crimes committed on or after that date.]
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. [*See* , H.F. 483]
- 26 [Effective August 1, 2005, for crimes committed on or after that date.]
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. [*See* , H.F. 483]
- 27 [Effective August 1, 2005, for crimes committed on or after that date.]
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. [*See* , H.F. 1099]
- 28 [Effective August 1, 2005, for crimes committed on or after that date.]
Injured railroad worker protection. Prohibits railroads and their employees from obstructing treatment of a railroad worker injured on the job and from disciplining or threatening to discipline an injured employee who requests treatment or first aid. Calls for a fine of up to \$10,000 for each offense. [*See* , H.F. 1703]
- 29 [Effective August 1, 2005, for crimes committed on or after that date.]
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. [See , H.F. 695]

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

30

Criminal property offense monetary threshold committee.

Subd. 1. Establishment; duties. Creates a Criminal Property Offense Monetary Threshold Committee to study and propose adjusting threshold dollar amounts of property crimes. The committee shall identify property crimes, and shall take into consideration the Consumer Price Index and other economic and historical factors.

Subd. 2. Resources. Enlists the resources of legislative staff, the Sentencing Guidelines Commission, the Department of Corrections, and the state court administrator to assist the committee.

Subd. 3. Membership. Provides a list of members to be appointed to the committee. The state court administrator will chair the committee.

Subd. 4. Recommendations. Requests that the committee present its recommendations in the form of a bill by January 15, 2006 to the chairs of the Senate and House of Representatives committees having jurisdiction over crime and public safety. [See , H.F. 1886]

[Effective July 1, 2005.]

Article 18: DWI and Traffic Safety Policy

Overview

This article addresses DWI and traffic issues. The article exempts certain emergency vehicles from the prohibition on operating a vehicle that contains a traffic signal override device; makes changes to the child restraint provisions; makes technical changes to the DWI laws; deletes the word *consecutively* from the 48-hour jail time requirement for second time DWI offenders; appropriates certain license reinstatement fees to POST; and repeals a reporting requirement of the 2004 DWI law.

1. 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 extend authorized in the order

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

- 2 [Effective August 1, 2005, and applies to crimes to crimes committed on or after that date.]
Child restraint system. Requires all vehicular passengers under age five in 2006, six in 2007, and seven after January 1, 2008, to be fastened into a child passenger restraint system. Under present law the restraint requirement applies to children under age four.

Imposes additional child restraint requirements as follows:

- Child under one year and weighing less than 20 pounds, restrained in rear-facing child restraint system
- Requires all children under age seven to sit in back seat unless (1) the vehicle has no back seat, (2) all the positions in the back seat are already occupied by other children under age seven, or (3) a child restraint system cannot be properly

installed in the back seat.

- Allows a child under age seven to wear a lap-only seat belt in the back seat if there are no shoulder belts in the back seat, or if all the shoulder belts are already being used by children under age 16.
- Requires the operator of a pickup truck or sport utility vehicle who transports a child under age seven at a speed over 15 mph to transport the child within the vehicle's passenger compartment.

Provides that the waiver of the \$50 fine for violation that is granted if the violator subsequently buys a child restraint system applies only to a fine for the first violation. [See, H.F. 319, and as amended]

[Effective January 1, 2006]

3 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.]

4 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.]

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 § 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 See article 18, section 0. [See, H.F. 765]

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 8 and 9. [See, H.F. 765]

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

11 Reinstatement fees. Provides that before a license may be reinstated after suspension in certain circumstances, the person must pay a \$20 fee. The fees shall be deposited in the special revenue fund and appropriated to the Peace Officers Standards and Training Board. [See, H.F. 1423, art. 2]

[Effective July 1, 2005.]

12 Money credited to funds. See article 18, section 0. [See, H.F. 1423, art. 2]

13 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.]

Article 19: Option B from House Resolution 8

1. 1 Public safety appropriations. The amounts in Option B are in addition to the appropriations in Article 1 and are only effective if the House of Representatives passes H.F. 1664.
2 Corrections.
 - ▶ Provides funding in FY06 and FY07 for methamphetamine treatment grants to counties.
 - ▶ Provides funding in FY06 and FY07 for methamphetamine enforcement and supervision aid grants to counties.
 - ▶ Provides funding in FY06 and FY07 for costs associated with housing and care for short-term offenders. Twenty percent is to be used for inpatient medical care. All remaining money is to be used for housing funds.
- 3 Public safety.
 - ▶ Provides a onetime appropriation in FY06 to issue grants to organizations that provide homeless outreach.
 - ▶ Provides funding in FY06 and FY07 for youth intervention programs. The money must be used to help existing programs serve unmet needs and to create new programs in underserved areas of the state.