

HOUSE RESEARCH

Bill Summary

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Overview

This summary is for the public safety articles in the conference committee on S.F. 3656, the 2018 omnibus supplemental budget. It reflects provisions proposed as of May 16, 2018 (although the conference committee report is not finalized).

Article 1: Appropriations

Overview

This article contains appropriations for the following: GAL Board, Department of Public Safety, Department of Human Services, and Department of Corrections, and transfers money to the peace officer training account and disaster contingency account.

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- 1 Appropriations.** Summarizes direct appropriations by fund.
- 2 Guardian ad litem board.** Appropriates an additional \$2,940,000 in FY19 to the GAL board to hire additional staff. [**H.F. 4399/S.F. 3961**]
- 3 Public Safety.** Appropriates an additional \$423,000 in FY19. Of this amount, \$48,000 is for the task force on missing and murdered indigenous women [**H.F. 4273**]; \$100,000 from the

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driver services operating account is for ignition interlock [**H.F. 3276**] and \$275,000 is for two forensic scientists and laboratory supplies for the Bureau of Criminal Apprehension.

- 4 **Corrections.** Appropriates an additional \$6,600,000 in FY19 to the department of corrections for the inmate healthcare contract. [**S.F. 3656**]
- 5 **Human Services.** Appropriates \$12,000 in FY19 to the Department of Human Services to update a paternity training video. [**H.F. 1719/S.F. 3574**]
- 6 **Transfer; peace officer training account deficiency.** Transfers \$125,000 in fiscal year 2019 only from the general fund to the peace officer training account to pay for a projected deficiency in that account.
- 7 **Transfer; federal disaster, DR-4069.** Requires the commissioner of management and budget to transfer any unexpected balance appropriated to the Department of Public Safety for Federal Disaster DR-4069 to the disaster contingency account. This is a onetime transfer.

Article 2: Courts

Overview

This article contains provisions relating to the courts.

- 1 **Actions under section 257.55, subdivision 1, paragraph (a), (b), or (c).** Changes when an action for nonpaternity can be brought in cases where the parents are married from two years after the father had a reason to believe he is not the father to three years. Removes the bar to bringing an action from three years after the child's birth. [**H.F. 1719/S.F. 3574**]
- 2 **Actions under other paragraphs of section 257.55, subdivision 1.** Creates a limit to the time in which an action for nonpaternity can be brought after a father starts holding a child out as his own without paternity being established under any other section. [**H.F. 1719/S.F. 3574**]
- 3 **Nonexistence of father-child relationship.** Provides what should be in a petition for nonpaternity, what factors the court should consider in determining nonpaternity, what the court order must contain if the court grants the relief requested, and requires the proof to declare nonpaternity be proven by clear and convincing evidence. Current law does not provide a specific procedure for declaring nonpaternity. [**H.F. 1719/S.F. 3574**]
- 4 **Action to vacate a recognition.** Allows an action to vacate a recognition of paternity to be brought within three years of the time the person believes the father listed on the recognition of parentage is not the father of the child. This section is effective on July 1, 2018, and applies to recognition of parentage signed on or after that date. [**H.F. 1719/S.F. 3574**]
- 5 **Court technology fund.** Extends the sunset of the Court Technology Fund to June 30, 2023, and requires continuing reports to the Legislature regarding fund activity. The 2013 Legislature established the Court Technology Fund to develop, support, maintain, and upgrade court and court-related computer systems and initiatives. A \$2 technology fee, which pays for the projects, is collected on court filings and motions and deposited in the

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court technology account in the special revenue fund. Under current law, the fund sunsets June 30, 2018. [S.F. 3656/H.F. 3231]

6 Reopening. Provides that in actions to review a divorce decree for issues of mistake, fraud, or other reasons, when the basis of the action is to declare the nonexistence of the father and child relationship then the action must be brought within a reasonable time and within three years of the time the person has reason to believe the father is not the father of the child. Current law for all motions under this section is that the action must be brought within one year of the entry of the judgment and decree. [H.F. 1719/S.F. 3574]

7 Definition. Amends the definition of “exonerated” to mean either:

- a court vacated or reversed a judgment of conviction on grounds consistent with innocence and either (a) there are no remaining felony charges in effect against the petitioner arising from the same behavioral incident or (b) if there are remaining felony charges arising from the same behavioral incident, the prosecutor dismissed those charges; or
- a court ordered a new trial on grounds consistent with innocence and either (a) the prosecutor dismissed all felony charges against the petitioner that arose from the same behavioral incident or (b) the petitioner was found not guilty of all felony charges that arose from the same behavioral incident.

Further amends the definition to apply only to situations where 60 days have passed since the court reversed or vacated the judgment of conviction and either (a) the prosecutor has not filed new felony charges arising out of the same behavioral incident or (b) any newly filed felony charges were dismissed or resulted in a not guilty verdict at trial. Defines “on grounds consistent with innocence” as either exonerated through (1) a pardon based on factual innocence or (2) the vacation or reversal of a judgment of conviction based on evidence of factual innocence. [H.F. 3677/S.F. 2778]

8 Procedure. Eliminates a deadline for individuals exonerated before the law went into effect in 2014 which required those individuals to file a petition for compensation based on exonerated by July 1, 2016. Permits a person who did not meet both requirements of subdivision 1, clause (1), item (i) before July 1, 2018 to file a petition for compensation based on exonerated at any time between July 1, 2018 and July 1, 2020. [H.F. 3677/S.F. 2778]

9 Elements. Removes references to “in prison” and “imprisonment” and inserts the term “incarceration.” Expands the category of individuals permitted to file a petition for compensation despite serving a term of incarceration for another crime to include those sentenced to additional executed sentences that had been stayed, but were executed as a result of the conviction that is the basis of the petition. [H.F. 3677/S.F. 2778]

10 Order. Replaces the term “imprisonment” with “incarceration.” [H.F. 3677/S.F. 2778]

11 Common law crimes abolished. Amends the statute abolishing common law crimes to clarify that the common law doctrine known as amelioration does not apply unless a statute specifically states otherwise. The amelioration doctrine arises from common law. Under the doctrine, an act mitigating or otherwise reducing the punishment for an offense applies to all

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cases that were not final at the time the new law took effect, even if the offense took place earlier. [H.F. 2855/S.F. 2756]

- 12 **Reimbursement; monetary damages; attorney fees.** Permits a person to apply for actual damages in addition to statutory damages for each year of incarceration. [H.F. 3677/S.F. 2778]
- 13 **Limits on damages.** Replaces the term “imprisonment” with “incarceration.” [H.F. 3677/S.F. 2778]
- 14 **Compensating exonerated persons; appropriations.** Removes the requirement that consideration of an appropriation for the amount of any award to an exonerated person take place during the next legislative session. [H.F. 3677/S.F. 2778]
- 15 **Short title.** Amends the title of provisions related to compensation based on exoneration from the “Imprisonment and Exoneration Remedies Act” to the “Incarceration and Exoneration Remedies Act.” [H.F. 3677/S.F. 2778]
- 16 **Application and orders.** Amends the statute concerning the sealing and disclosure of a warrant for wire, electronic, or oral communications to distinguish and exempt location-tracking warrants from the general requirements. Location-tracking warrants have unique restrictions and requirements under statute. [H.F. 2309/S.F. 1589]
- 17 **Nondisclosure of existence of pen register, trap and trace device, or mobile tracking device.** Amends the statute concerning the sealing of a warrant for a pen register, trap-and-trace device, or mobile tracking device to distinguish and exempt location-tracking warrants from the requirements. [H.F. 2309/S.F. 1589]

Article 3: Public Safety, Corrections, and General Crime

Overview

This article contains provisions relating to public safety and corrections, and provisions modifying existing criminal penalties and creating new penalties.

- 1 **Violations; driving without valid license.** Enhances the penalties for driving without a valid license under some circumstances. Under current law, it is generally a misdemeanor to drive after a license has been suspended, revoked, or canceled, or after the person is disqualified for or denied a commercial driver’s license. The bill makes it a gross misdemeanor if the person drives after loss of driving privileges and:
 - causes a crash resulting in substantial bodily harm or death; or
 - commits the violation for a third or subsequent time within ten years and, at the time of the current violation, the loss of driving privileges was due to (1) committing one of the listed driving offenses, (2) being an habitual offender, (3)

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having been found to be incompetent or unsafe to drive a motor vehicle, or (4) being classified as legally blind or having a vision impairment.

[H.F. 192/S.F. 1097]

- 2 **Cancellation for disqualifying and other offenses.** Requires the Commissioner of Public Safety to cancel the school bus driver's endorsement for a person who receives a stay of adjudication for a disqualifying offense. **[H.F. 2934]**
- 3 **Background check.** Prohibits the Commissioner of Public Safety from issuing or renewing a school bus driver's endorsement to a person who receives a stay of adjudication for a disqualifying offense. **[H.F. 2934]**
- 4 **Charges to counties.** Removes the requirement that expenses and revenue balance over a two-year period from the formula used to calculate the per diem cost of confinement for juveniles committed to the commissioner or corrections. **[H.F. 3554/S.F. 3216]**
- 5 **Annual transfer.** Directs the commissioner of management and budget to make an annual transfer of \$461,000 to the community justice reinvestment account. **[S.F. 3656]**
- 6 **Critical infrastructure; vicarious liability.** Allows an individual who trespasses or causes damage to a utility, oil or gas pipeline, or transportation facility to be held liable for any damage the individual committed when the individual was (1) convicted of trespass or damage, or (2) arrested for one of those offenses and convicted of another offense arising out of the same behavioral incident. Further establishes that a group or entity that knowingly recruits, trains, aids, advises, hires, counsels, conspires with, or otherwise procures a person for the purpose of trespassing or causing damage is also liable for any damages caused by the person. **[H.F. 3693/S.F. 3463]**
- 7 **Prohibited conduct; penalty.** Establishes a felony for trespassing on property that contains a utility, oil or gas pipeline, or transportation facility with the intent to cause damage or interfere with the entity's operations. **[H.F. 3693/S.F. 3463]**
- 8 **Public nuisance.** Amends the criminal code's public nuisance crime. Makes it a gross misdemeanor to intentionally interfere with or obstruct traffic on a freeway or a major airport's public roadway. Creates certain exceptions for law enforcement and other officials. Defines freeways and airports. **[H.F. 390/S.F. 676]**
- 9 **Prohibition on disarming local law enforcement officers.** Requires law enforcement agencies to allow peace officer's employed by the agency who are in good standing to carry firearms while on duty. **[H.F. 3611/S.F. 3794]**
- 10 **Certified copy of disqualifying offense convictions sent to public safety and school districts.** Requires a criminal court to notify the Department of Public Safety and relevant school districts if the court grants a stay of adjudication for a disqualifying offense to an offender who has a school bus driver's endorsement. **[H.F. 2934]**
- 11 **Task force on missing and murdered indigenous women.** Creates a task force to address violence against indigenous women and defines the standards and requirements for the task force.

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Subd. 1. Creation and duties. Creates a task force effective September 1, 2018 and directs that the task force examine and report on five specific subjects addressing the systemic causes behind violence against indigenous women, appropriate methods for tracking and collecting data, government policies and institutions that impact violence against indigenous women, and appropriate measures to address the violence and assist victims and their families.

Subd. 2. Membership. Identifies multiple categories of individuals to serve on the task force including legislators, representatives from law enforcement, prosecutors or judges, the Department of Health, tribal governments, and nongovernment agencies who work with indigenous women and girls.

Subd. Officers; meetings. Directs the task force to elect a chair and vice-chair from its legislative members and meet at least quarterly. Further directs the task force to enlist the cooperation of experts and hold open meetings.

Subd. 4. Report. Requires a report to the legislature by June 30, 2020.

Subd. 5. Expiration. States that the task force expires on June 30, 2020.

[H.F. 3375]

- 12 Superseding amendment.** States that the amendment to section 631.40, subdivision 1a, in section 10, supersedes any other amendment to that section that is enacted in this act.
- 13 Revisor's instruction.** Directs the revisor to make cross-referencing changes to statutes and rules relating to 2016 changes to the criminal vehicular operation crime. [S.F. 3656]
- 14 Repealer.** Repeals section 401.13 which directs the commissioner to charge the Community Corrections Act (CCA) counties the full per diem cost for juveniles confined in a state correctional facility. This change treats CCA counties in the same manner as other counties from which the commissioner of corrections charges 65 percent of the per diem cost of confinement of juveniles. [H.F. 3354/S.F. 3216]

Article 4: Sex Offenders

Overview

This article contains a variety of provisions that either modify existing penalties or create new penalties for sex offenses.

- 1 Duty to ensure placement prevention and family reunifications; reasonable efforts.** Provides that family reunification efforts otherwise required under the CHIPS law are not required when a parent receives a stay of adjudication for an offense that constitutes sexual abuse. [H.F. 2934/S.F. 2669]
- 2 Limits of sentences.** Requires a sentencing judge to justify in writing a stay of adjudication for felony criminal sexual conduct offenses. [H.F. 2906]

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- 3** **Current or recent position of authority.** Broadens the definition of “position of authority” in the criminal sexual conduct statutes. Currently, felony penalties apply to an adult who sexually penetrates or contacts a 16 or 17 year old juvenile when the adult is in a position of authority over the juvenile. This section:
- Extends the definition so that an adult who was recently (*i.e.*, within the past 120 days) in a position of authority over a 16 or 17 year old is also subject to criminal penalties for having a sexual relationship with the juvenile. [H.F. 3260]
 - Extends the definition of position of authority to cases where an adult “assumed” authority over a victim. Currently, the provision only applies when the adult is “charged” with providing some parental obligation to the juvenile. [H.F. 3260]
- 4** **Crime defined.** Updates a reference to “position of authority” to reflect changes made to the definition of the term in section 3. [H.F. 3260/S.F. 2864]
- 5** **Crime defined.** Updates a reference to “position of authority” to reflect changes made to the definition of the term in section 3. [H.F. 3260/S.F. 2864]
- 6** **Crime defined.** Contains two changes to the offense of 3rd degree criminal sexual conduct:
- Updates a reference to “position of authority” to reflect changes made to the definition of the term in section 3. [H.F. 3260/S.F. 2864]
 - Creates a new criminal sexual conduct offense specific to peace officers. Prohibits a peace officer from sexually penetrating a person who is restrained by the peace officer or otherwise does not reasonably feel free to leave the officer’s presence. A peace officer would not be entitled to assert victim consent as a defense. Provides an exception for lawful searches. [H.F. 3371/S.F. 3291]
- 7** **Crime defined.** Contains three changes to the offense of 4th degree criminal sexual conduct:
- Updates a reference to “position of authority” to reflect changes made to the definition of the term in section 3. [H.F. 3260/S.F. 2864]
 - Strikes language related to the marital rape exception which is repealed in section 18. [H.F. 3465/S.F. 3139]
 - Creates a new criminal sexual conduct offenses specific to peace officers. Prohibits a peace officer from sexually contacting a person who is restrained by the peace officer or otherwise does not reasonably feel free to leave the officer’s presence. A peace officer would not be entitled to assert victim consent as a defense. [H.F. 3371/S.F. 3291]
- 8** **Crime defined.** Eliminates the exclusion to fifth degree criminal sexual conduct—a first-time violation of which is a gross misdemeanor—for intentionally touching the clothing covering the immediate area of the buttocks. [H.F. 2800/S.F. 3425]
- 9** **Surreptitious intrusion; observation device.** Creates a new enhanced felony penalty (statutory maximum sentence of up to four years imprisonment and/or \$5,000 fine) for a violation of section 609.746, subdivision 1 (surreptitious intrusion), if the offense involved use of a recording device, the victim was a minor, the offender was more than 36 months older than the victim, the offender knew or had reason to know of the minor’s presence, and

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the offense was committed with sexual intent. A person convicted under this provision must also register as a predatory offender. (See Article 5 summary.) [S.F. 2699]

- 10 **Use of minor.** Increases the statutory maximum penalty for using a minor in a sexual performance or pornographic work if the victim is under the age of 13 or the offender is a repeat offender or is registered as a predatory offender. [S.F. 2699]
- 11 **Operation or ownership of business.** Increases the statutory maximum penalty for a business owner who shows a pornographic work involving a minor if the victim is under the age of 13 or the offender is a repeat offender or is registered as a predatory offender. [S.F. 2699]
- 12 **Dissemination.** Increases the statutory maximum penalty for dissemination of child pornography for a profit to 15 years if the victim is under the age of 13 or the offender is a repeat offender or is registered as a predatory offender. [S.F. 2699]
- 13 **Conditional release term.** Increases the conditional release term for offenders convicted of child pornography for profit from ten years to 15 years for repeat offenders. [S.F. 2699]
- 14 **Dissemination prohibited.** Increases the statutory maximum sentence for dissemination of child pornography to 15 years for offenses that have a victim under the age of 13. [S.F. 2699]
- 15 **Possession prohibited.** Increases the statutory maximum sentence for possession of child pornography to ten years for offenses that have a victim under the age of 13. [S.F. 2699]
- 16 **Conditional release term.** Increases the conditional release term for offenders convicted of child pornography from 10 years to 15 years for repeat offenders. [S.F. 2699]
- 17 **Sentencing Guidelines Modification.** Directs the Sentencing Guidelines Commission to comprehensively review the issue and consider modifications of the sex offender grid for the offenses of manufacturing, disseminating, and possessing child pornography. [S.F. 2699]
- 18 **Repealer.** Repeals the shield to prosecution for certain criminal sexual conduct offenses granted to participants in designated voluntary relationships, commonly referred to as the marital rape exception. [H.F. 3465/S.F. 3139]

Article 5: Predatory Offenders

Overview

This article contains a variety of provisions modifying the process of predatory offender registration.

- 1 **Filing photograph or image.** Authorizes the use of an offender's driver's license photograph to locate a non-compliant predatory offender. [H.F. 3578/S.F. 3604]
- 2 **Registration required.** Adds the new enhanced felony surreptitious intrusion crime involving a minor to the list of crimes that require predatory offender registration. [S.F. 2699]

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- 3 **Notice.** Provides the correct name for a court form and directs that local law enforcement with jurisdiction over an offender provide notice of the registration requirements to the offender, if the offender does not have an assigned corrections agent. [H.F. 3578/S.F. 3604]
- 4 **Contents of registration.** Requires collection of a DNA sample as part of registration. Authorizes a corrections agent or law enforcement authority to determine if an individual is in compliance with the registration requirements chosen by the agent or authority. Establishes the protocol that existing registrants who do not already have a DNA sample on file will comply with the new DNA requirement. [H.F. 3578/S.F. 3604]
- 5 **Notices in writing; signed.** Defines a signature to include ink, electronic means established by the BCA, or biometrics established by the BCA. [H.F. 3578/S.F. 3604]
- 6 **Criminal penalty.** Amends the knowledge requirement in the criminal penalty section of the predatory offender statute to say that a person who was given notice, knows, or reasonably should know of the duty to register is guilty of a felony if that person commits an act, or fails to fulfill a requirement, in violation of the registration requirements. This change is in response to *State v. Mikulak*, a recent Minnesota Supreme Court decision which overturned a conviction for failing to register as a predatory offender because the defendant claimed he did not know about the specific registration requirement that he was convicted of violating. [H.F. 3578/S.F. 3604]
- 7 **Registration period.** Provides that if an individual is not in compliance with his registration requirement at the end of his registration period, the offender is required to register for an additional two years. [H.F. 3578/S.F. 3604]
- 8 **Use of data.** Authorizes corrections agents to share predatory offender data with child protection services as required under section 244.057. (See also section 10.) [H.F. 3578/S.F. 3604]
- 9 **Availability of information on offenders who are out of compliance with registration law.** Authorizes the BCA to disclose to the public that an offender—who is over 16 years old and out of compliance for 30 days or more—is out of compliance because the offender absconded. [H.F. 3578/S.F. 3604]
- 10 **Database of registered predatory offenders.** Authorizes corrections agents to share predatory offender data with child protection services as required under section 244.057. [H.F. 3578/S.F. 3604]

Article 6: DWI

Overview

This article contains provisions allowing the use of an out-of-state conviction for criminal vehicular homicide or injury to be used to enhance a DWI charge in Minnesota and expanding the required use of ignition interlock.

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1 Degree described. Expands the list of prior convictions that enhance an offense to first-degree driving while impaired by including convictions for a felony in another state for criminal vehicular homicide and injury committed while under the influence of a substance when the other state's statute is in conformity with Minnesota law. Under current law, a person who drives while under the influence commits a first-degree offense if the person:

- commits the violation within ten years of the first of three or more qualified prior impaired driving incidents;
- has previously been convicted of a first-degree driving while impaired offense; or
- has previously been convicted of a felony under Minnesota statutes addressing criminal vehicular homicide and injury committed while under the influence of a substance.

A qualified prior impaired driving incident can take place under Minnesota law or under the law of another state that is in conformity with Minnesota law. [**H.F. 2856/S.F. 2755**]

2 Reinstatement of driving privileges; multiple incidents. Requires certain DWI offenders to either (1) participate in the ignition interlock program or (2) not own or lease a vehicle and have no DWI or driver's license violations before the person's driver's license may be reinstated.

For a person who uses ignition interlock, that person must comply with the program for one year if the individual's license was revoked for (1) a second qualified prior impaired driving incident in ten years or more, or (2) a third qualified prior impaired driving incident in the person's lifetime. The provision requires two years of ignition interlock for a person whose license was revoked for either of those reasons and the person either (1) had an alcohol concentration of twice the legal limit or (2) refused to submit a required breath, blood, or urine sample. Under current law, offenders with fewer than three DWIs may either: (1) go on ignition interlock to be able to drive during their revocation period; or (2) not drive and "wait out" the revocation period. At the end of the revocation period, the offender can seek reinstatement of full driving privileges regardless of which option was chosen.

Requires the commissioner of public safety to follow the full rulemaking process in establishing performance standards and a process for certifying chemical monitoring devices. Under current law, those standards and procedures are exempt from rulemaking requirements. [**H.F. 3726/S.F. 3300**]

3 Conditions of issuance. Allows limited licenses for DWI offenders with drug-related offenses. Restricts limited licenses under the ignition interlock program to DWI offenders with alcohol-related offenses. [**H.F. 3726**]

4 Other waiting periods. Reinstates pre-2011 hard revocation periods that apply before a DWI offender with a drug-related offense can receive a limited license. [**H.F. 3726**]

5 Definitions. Limits participation in the ignition interlock program to DWI offenders with alcohol-related offenses. [**H.F. 3726**]

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Performance standards; certification; manufacturer and provider requirements.

Requires contracts between ignition interlock manufacturers and program participants to include a provision requiring the manufacturers to pay any towing or repair costs caused by device failure or malfunction, or by damage caused during device installation, servicing, or monitoring.