

HOUSE RESEARCH

Bill Summary

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Overview

This bill contains the Governor's omnibus sex offender proposal. The bill is comprised of eight articles. Article 1 contains increased and mandatory sentences for criminal sexual conduct crimes and creates a new criminal sexual predatory conduct crime. The increased sentences include life sentences for certain aggravated first- and second-degree criminal sexual conduct crimes and indeterminate sentences for repeat offenders and other specified crimes. Article 2 proposes the Sex Offender Review Board to make release decisions for sex offenders who receive an indeterminate sentence under Article 1. Article 3 contains technical and conforming changes necessary to implement the sentencing enhancements proposed in Article 1. Article 4 contains miscellaneous sex offender provisions. Article 5 proposes several changes to registration and community notification for predatory offenders including provisions for homeless sex offenders and sex offenders who move to Minnesota. Article 6 permits the Department of Human Services to access certain law enforcement databases including the sex offender registry. Article 7 establishes background checks on workers who work in facilities licensed by the Department of Human Services. Article 8 creates a Sex Offender Policy Board to develop professional standards for the treatment and supervision of sex offenders.

Section

Article 1

Sex Offenders:

Life Without Release Sentences for Certain Sex Offenders; Indeterminate Life Sentences for Other Sex Offenses; Increased Statutory Maximums; Direction to Sentencing Guidelines Commission

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 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.

- 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

Section

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 9.
- 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 **Conditional release of sex offenders.** Adds the new crime of criminal sexual predatory conduct to the list of crimes that require an offender to serve an additional 10 years on conditional release. Increases the mandatory conditional release period from 5 to 10 years. Imposes lifetime conditional release for offenders who have a subsequent violation.
- 7 **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.

- 8 **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.
- 9 **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.
- 10 **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

Section

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).

11 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.

12 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) one or more of the following

Section

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).

13 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.

14 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).

15 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.

16 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 10 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

Section

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).

17 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.

18 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 (see section 20).

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).

19 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.

20 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 18. The repealer eliminates language calling for an increased statutory maximum for certain underlying crimes punishable in this statute.

Section

Article 2

Minnesota Sex Offender Review Board

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.

- 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 **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.

- 4 **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.

Article 3

Sex Offenders: Technical and Conforming Changes

Overview

This article 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.

Sections 1 through 13, save section 3, contain the technical and conforming changes. Section 3, (1) 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 and (2) 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. Section 14 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.

The entire article has an August 1, 2005, effective date.

Article 4

Miscellaneous Provisions

Overview

This article contains a variety of initiatives related to sex offenders.

- 1 **1 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.
- 2 **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.
- 3 **Sex offender programs.** Authorizes the commissioner of corrections to collect co-payments to offset the cost of providing sex offender treatment to inmates.
- 4 **Crime against the person.** Defines the term crime for purposes of the civil commitment statute.
- 5 **Convicted; conviction.** Defines the terms convicted and conviction for purposes of the civil commitment statute.
- 6 **Victim.** Defines the term victim for purposes of the civil commitment statute.
- 7 **Notice of hearing.** Requires the county attorney to notify victims when the county attorney

Section

seeks civil commitment of a sex offender and when the county attorney receives a ruling on the petition.

- 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** **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.
- 11** **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.
- 12** **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.
- 13** **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 12.
- 14** **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 15.
- 15** **Felony.** Creates a five-year felony for persons who commit indecent exposure in the presence of a minor under the age of 16.
- 16** **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.

Section

Article 5

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

- 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 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.

Section

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

Section

civily 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. Health care facility; law enforcement notification duty. Requires the

Section

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

Section

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

Section

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

Section

report incidents of neglect and physical or sexual abuse of children to the appropriate authorities. [Effective the day following final enactment.]

11 Appropriation. Appropriates \$500,000 to fund GPS tracking of high risk sex offenders.

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

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

Article 6

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.

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

Section

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 Conditional release. Requires the commissioner of corrections to subject level III sex offenders to polygraph tests while on conditional release.

6 Conditional release of sex offenders. Requires the commissioner of corrections to subject level III sex offenders to polygraph tests while on conditional release.

7 Correctional employees; probation officers. Adds state-operated services employees to the group of individuals who are protected against assault.

8 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.

9 Repealer. Repeals language directing the commissioner of human services to maintain a statistics and records database regarding patients at hospitals for the mentally ill.

Section

Article 7

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.

- 1 1 **Disqualification from direct contact.** Provides a cross-reference to section 245C.22 to reflect the classification procedure for data about disqualified individuals.
- 2 2 **Set-aside data.** Provides procedures for disclosure of data relative to individuals who obtain a set-aside of their disqualification.
- 3 3 **Variance data.** Provides procedures for disclosure of data relating to disqualified individuals who received a variance.
- 4 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

Section

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.

Section

Article 8

Sex Offender Policy Board

Overview

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.

Requires the board to submit a report to the legislature on the professional standards for treatment of sex offenders.