Senate Counsel, Research and Fiscal Analysis

Minnesota Senate Bldg.
95 University Avenue W. Suite 3300
St. Paul, MN 55155
(651) 296-4791
Tom Bottern
Director

Senate

State of Minnesota

S.F. No. 8 - Omnibus Judiciary and Public Safety Funding Bill (First Special Session - 2019)

Author: Senator Warren Limmer

Prepared By: Kenneth P. Backhus, Senate Counsel (651/296-4396)

Date: May 24, 2019

Article 1 – Appropriations

This article contains appropriations to fund the Supreme Court (**section 2**), Court of Appeals (**section 3**), District Courts (**section 4**), Guardian ad Litem Board (**section 5**), Tax Court (**section 6**), Uniform Laws Commission (**section 7**), Board on Judicial Standards (**section 8**), Board of Public Defense (**section 9**), Department of Human Rights (**section 10**), Sentencing Guidelines Commission (**section 11**), Department of Public Safety (**section 12**), POST Board (**section 13**), Private Detective Board (**section 14**), and Department of Corrections (**section 15**). (See spreadsheet for details on the appropriations.)

Article 2– Courts and Public Safety

Section 1 adds a trial court judge unit in the Seventh Judicial District.

Sections 2, 3, 12, and 30 expand the current law for rideshare and transit customer data classifications to cover all government entities and make technical changes. Under current law, only rideshare data collected by the Department of Transportation and the Metropolitan Council are classified as private. **Section 2** expands current classifications to cover data collected by any government entity administering a rideshare program; adds a nonpublic data classification option; and classifies place of employment, a photograph, and biographical information as either private or nonpublic data. **Section 3** makes current transit customer data classifications applicable to all government entities and adds a nonpublic data classification. **Sections 12 and**

30 make conforming and technical changes.

Sections 4 and 8 make the statutory changes necessary to convert the POST Board to general fund funding. These changes include reallocating where the proceeds of the criminal and traffic surcharge are to be deposited (section 8).

Section 5 requires the Commissioner of Management and Budget to transfer $461,000 each year from the general fund to the community justice reinvestment account to be available for grants under Minnesota Statutes, section 299A.707. This clarifies that the transfer is part of the Department of Public Safety's base budget.

Section 6 expands the permitted uses of funds in the reduced cigarette ignition propensity account.

Section 7 clarifies that the commissioner of public safety shall approve microdistillery permits.

Section 9 authorizes the Department of Human Rights to share private or nonpublic data in a closed case file with a charging party and respondent when a charging party brings a court action under the Minnesota Human Rights Act, **Chapter 363A**.

Section 10 creates a definition for "911 telecommunicator" that is consistent with the definition used by the National Emergency Number Association.

Section 11 requires training and policies regarding telephone cardiopulmonary resuscitation (CPR). Requires public safety answering points to either train individuals taking 911 emergency calls in how to provide instruction for CPR or transfer such calls to another answering point that provides such training. Establishes minimum requirements for the training. Requires answering points to conduct ongoing quality assurance of its telephone CPR program. Directs the Statewide Emergency Communications Board to adopt and implement protocols to ensure compliance with these requirements. Provides that, if a caller refuses or is otherwise unwilling or unable to provide CPR, the 911 telecommunicator is not required to provide CPR instruction and is immune from civil liability for damages resulting from the fact that instruction was not provided. States that telephone CPR is a public duty. Identifies discretionary acts.

Sections 13 to 16 amend the statutes on exoneration.

Section 13 amends the definition of "exonerated" in response to a Minnesota Supreme Court decision. In *Back v. State*, the court of appeals and supreme court found that section 590.11 includes an unconstitutional violation of the right to equal protection. The supreme court addressed the equal protection violation by severing subdivision 1, clause (1), item (i) from the remainder of the statute. As a result, a person whose conviction was vacated or reversed on grounds consistent with innocence is not currently eligible for compensation as an exonerated person. The amended definition indicates that "exonerated" means either:

- a court vacated or reversed a judgment of conviction on grounds consistent with innocence and either (1) there are no remaining felony charges in effect against the petitioner arising from the same behavioral incident or (2) 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 (1) the prosecutor dismissed all felony charges against the petitioner that arose from the same behavioral incident or (2) 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 (1) the prosecutor has not filed new felony charges arising out of the same behavioral incident or (2) 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.

Section 14 eliminates a deadline for individuals exonerated before the law went into effect in 2014 that required those individuals to file a petition for compensation based on exoneration by July 1, 2016. Permits a person who did not meet both requirements of subdivision 1, clause (1), item (i), before July 1, 2019, to file a petition for compensation based on exoneration at any time between July 1, 2019, and July 1, 2021.

Section 15 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.

Section 16 replaces the term "imprisonment" with "incarceration."

Sections 17 to 21, 26, and 29 change definitions and terminology related to the harassment/stalking crime. These changes are technical and not substantive.

Sections 22 to 25 amend the statutes on exoneration.

Sections 22 and 23 replace the term "imprisonment" with "incarceration."

Section 24 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.

Section 25 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."

Section 27 adds violations of domestic abuse no contact orders (DANCOs) to the list of prior conduct that can be admitted into evidence against an accused.

Section 28 creates a task force to address missing and murdered indigenous women. Specifies what the task force is to examine and who is to serve on it. Requires a report to the legislature.

Article 3 – Corrections

Sections 1, 2, and 5 to 11 reestablish the Ombudsperson for Corrections, which the legislature eliminated in 2003. The ombudsperson is tasked with promoting "the highest standards of competence, efficiency, and justice in the administration of corrections." The ombudsperson is empowered with the authority to investigate decisions, acts, and other matters of the Department of Corrections. Delineates the specific powers granted to the ombudsperson, including subpoena power, the right to access agency data and information, and the authority to file suit to invoke its powers. Defines the scope of appropriate investigations and authorizes the ombudsperson to investigate complaints from jails and detention facilities.

These sections also provide guidance on ombudsperson qualifications, employee selection, access to data, complaint form and handling, publication of ombudsperson recommendations, annual reports, and issues related to the treatment of data collected and maintained by the office.

Sections 3 and 4 regulate security screening systems as they are used in correctional facilities.

Section 12 authorizes the use of administrative and disciplinary segregation for inmates in state prisons. Establishes a statutory framework and provides protections regarding its use. Requires reporting.

Section 13 establishes an exception to the requirement that inmates transferred more than 100 miles receive a custodial escort of the same sex as the transferee when the vehicle used for the transfer is equipped with video and audio recording equipment that actively records the portion of the vehicle where the transferee is held for the duration of the transfer. Requires the recording to be stored for at least 12 months after the date of transfer.

Article 4 – Sexual Offenders

Section 1 requires a sentencing judge to justify in writing a stay of adjudication for felony criminal sexual conduct offenses.

Section 2 expands the definition of "position of authority" to "current or recent" position of authority for the purposes of the criminal sexual conduct statutes. Defines "recent" as within 120 days immediately preceding the act. Includes persons who "assume" a duty or responsibility to a child as well as those who are charged with those duties or responsibilities.

Sections 3, 4, and 19 make conforming changes related to sections 2 and 8.

Sections 5 to 8 amend the criminal sexual conduct in the 1st- to 4th-degree statutes to include the expanded definition of "position of authority" in section 2. Provides that certain first 1st degree criminal sexual conduct crime provisions applicable to victims under 13 years old do not require proof of sexual penetration (sexual contact will suffice). Also, sections 7 and 8 expand the 3rd and 4th degree crimes to include peace officers who engage in any type of sexual contact or penetration with a person being restrained or who is not free to leave the officer's presence.

Section 9 amends the 5th-degree criminal sexual conduct crime to eliminate the exception for

intentionally touching the clothing covering the immediate area of the buttocks.

Section 10 allows a victim of sexual assault to initiate a law enforcement investigation by contacting any law enforcement agency, regardless of where the crime may have occurred. The agency must prepare a summary of the allegation and provide the person with a copy of it. The agency must then begin an investigation or refer the matter along with the summary of the allegation to the agency that has jurisdiction.

Section 11 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 the offense was committed with sexual intent. A person convicted under this provision must also register as a predatory offender under article 5, section 3.

Section 12 to 18 amend the various child pornography crimes. Adds enhanced felony statutory maximum penalties for those crimes if the crime involved a victim under the age of 13. Also adds enhanced statutory maximums for repeat offenders and offenders who are registered predatory offenders. (Some of these enhancements (the repeat offender and the predatory offender ones) are already present for some of the offenses. The net effect of these changes are to apply all three enhancements to each child pornography crime.) Also, extends the conditional release term for repeat child pornography offenders.

Section 20 requires the chief law enforcement officer of every state and local law enforcement agency to establish and enforce a written policy addressing how the agency will respond to and investigate reports of sexual assault. The policy must substantially incorporate the main items from the POST Board model policy.

Section 21 requires the Commissioner of Public Safety to convene a working group of stakeholders to review and make recommendations for changes to criminal sexual conduct crimes and report back to the Legislature.

Section 22 requires the Minnesota Sentencing Guidelines Commission to comprehensively review and consider modifying how the Guidelines and the Grid treat child pornography crimes.

Article 5 – Predatory Offenders

Section 1 authorizes the use of an offender's driver's license photograph to locate a noncompliant predatory offender.

Section 2 defines "corrections agent" and redefines "law enforcement authority" for the purposes of the predatory offender registration statute.

Section 3 provides that a person who commits a registerable offense in another state must register in Minnesota if the person spends more than 30 days aggregate in Minnesota during a calendar year. Also requires persons convicted of the new enhanced felony surreptitious intrusion crime involving a minor (see article 4, section 11) to register as a predatory offender.

Section 4 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.

Section 5 provides the following.

- Requires collection of a DNA sample as part of registration. Establishes the protocol on how existing registrants who do not already have a DNA sample on file will comply with the new DNA requirement.
- Requires registrants to provide fingerprints to the probation agency or law enforcement authority within one year of the effective date of the legislation.
- Directs the Bureau of Criminal Apprehension (BCA) to monitor predatory offender compliance by individuals discharged from commitment as a sexually dangerous person or a sexually psychopathic personality and subject to community notification.

Section 6 expands the items that offenders must report to include expiration date of license plate tabs and telephone numbers (home, work, school, cellular telephone).

Section 7 requires a person who is a registered predatory offender and who is receiving services from a home care provider to take the same actions as the person would upon being admitted to a health care facility and for law enforcement or the person's corrections agent to do the same. If the person has been assigned a risk level classification, the home care provider must distribute a fact sheet on the person to any individual who will provide direct services to the person before the services begin.

Section 8 defines a signature to include ink, electronic means established by the BCA, or biometrics established by the BCA.

Section 9 modifies the criminal penalty section of the predatory offender statute. This change is in response to State v. Mikulak, a Minnesota Supreme Court decision that 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.

Sections 10 and 12 ensure that corrections agents share predatory offender data with child protection services as required under Minnesota Statutes, section 244.057.

Section 11 amends the community notification law to require law enforcement agencies to notify the entities and individuals who were initially provided notification when an offender for whom notification was initially made no longer resides, is employed, or is regularly found in their area of jurisdiction. Notification is to be made according to the current guidelines for each assigned risk level.

Article 6 – Vehicle Operations

Sections 1 and 2 direct that a person's snowmobile, ATV, and motorboat operating privileges must be revoked when a person fails a lawfully administered test to determine if the person was operating under the influence.

Section 3 expands the list of prior convictions that enhance an offense to first-degree (felony) DWI by including convictions from other states for impaired driving-related criminal vehicular operation offenses if the other state's statute is in conformity with Minnesota law.

Section 4 exempts a motor vehicle from forfeiture for driving under the influence if the driver enters the ignition interlock program. Essentially this provision stays the forfeiture so long as the person is in compliance with the program. Specifies future conduct that would result in the forfeiture proceeding being resumed.

Section 5 essentially converts an existing pilot project on driver's license reinstatement diversion to a permanent one.

Subd. 1. permits a city or county to establish a license reinstatement diversion program for individuals charged with driving after suspension or driving after revocation and defines which offenses are eligible offenses. All driving after suspension offenses are eligible for diversion programs. Driving after revocation offenses are only eligible if a defendant's license was revoked for a violation of (1) failing to provide proof of insurance, (2) failing to carry insurance, (3) test refusal, (4) DWI, or (5) repeat driving offenses. An individual who holds a commercial driver's license, or committed an offense in a commercial motor vehicle, is not eligible for the program. A person cannot obtain a license during the underlying suspension or revocation period.

Subd. 2. allows prosecutors to determine whether to accept an individual into the program and provides guidance for making that determination. Prosecutors may request a review without a formal city or county diversion program being established. A judge may also submit a request for an individual to apply for entry into a diversion program.

Subd. 3. permits the Department of Public Safety (DPS) to issue a diversion driver's license to a program participant who pays the applicable reinstatement fee. Allows DPS to place additional restrictions, including participation in the ignition interlock program, on program participants. Describes how payments made by program participants must be distributed. Prohibits an additional revocation of a program participant's license based purely on making payments.

Subd. 4. requires diversion program participants to (1) attend educational classes, (2) participate in a payment program, (3) comply with all traffic laws, and (4) maintain motor vehicle insurance. Establishes discounts on the program fee for individuals with citations of $500 or less.

Subd. 5. terminates participation in a program for individuals who violate the terms of the program. Termination for a violation results in cancellation of the diversion driver's license and permits prosecutors to reinstate the original charge of driving after suspension or revocation. If an individual successfully completes the program, the participant's driver's license must be reinstated and the original charge must be dismissed.

Subd. 6. provides that fees paid by an individual who leaves the program before completion must be retained for 12 months and, if the individual returns to the program, must be applied to the later participation. After 12 months, the fees are forfeited.

Subd. 7. requires a biennial report from the third-party administrator. Permits any city or county to request an audit of the administrator at the expense of the city or county.

Effective date. Makes the new law effective July 1, 2019, and permits a city or county participating in the pilot program to continue to accept individuals until June 30, 2019, and to disperse fees under current law until that time.

Section 6 addresses the transition of the current driver's license reinstatement diversion pilot program to the permanent program described in section 5. Permits individuals enrolled in the pilot program to transfer to the permanent program.

Article 7 – Firefighters

Section 1 amends the definition of "fire department" to exclude industrial fire brigades that do not have a fire department identification number issued by the state fire marshal. Currently, all industrial fire brigades are excluded from the definition.

Section 2 replaces the word "career" with "full-time" in the definition of "firefighter."

Section 3 makes a conforming change.

Section 4 extends the term of members of the Board of Firefighter Training and Education from one year to two years.

Section 5 adds maintaining a list of qualified instructors to the required duties of the Board of Firefighter Training and Education. Permits the board to accept funding from the fire safety account and reimburse fire departments for training, set guidelines regarding how allocated reimbursement funds must be distributed, and set standards governing the use of reimbursement funds.

Section 6 amends the definition of "fire department" consistent with the change in section 1.

Section 7 amends the definition of "full-time firefighter" to provide a statutory reference for the definition of "fire company."

Section 8 amends the definition of "licensed firefighter" to specifically include a state employee.

Section 9 creates a new definition "NFPA 1001 standard" by referencing standards created by the National Fire Protection Association.

Section 10 replaces the existing requirements for firefighter certification with the requirement that applicants demonstrate competency that meets the NFPA1001 standard or a national standard. Makes additional conforming changes.

Section 11 establishes two additional requirements for a firefighter to be eligible for permanent employment: (1) the firefighter must successfully complete a firefighter examination; and (2) the chief firefighting officer or a designee must provide employment verification.

Section 12 provides that a volunteer firefighter may receive a license if that person is affiliated with a department under the same terms as a full-time firefighter.

Section 13 requires that a firefighter be affiliated with a fire department to obtain a license and states that the firefighter must also meet the requirements of section 299N.04, 299N.05, or 299N.06.

Section 14 requires that a firefighter's license must be renewed if the application is completed and the firefighter or chief attest that the firefighter met the required hours of training; provide proof of training upon request; verify that the person is actively serving on a department; and attests that the person has not been convicted of a felony, arson-related charge, or another offense arising from the same set of circumstances. States that the renewal fee is $75 and lasts for three years.

Section 15 requires chief firefighting officers to verify whether individuals applying, reinstating, or renewing a license are affiliated with a Minnesota fire department.

Section 16 provides that fees collected under section 299N.05 must be credited to an account used to pay costs incurred under sections 299N.04, 299N.05, and 299N.06.

Section 17 creates a new right to apply for licensure for an applicant who becomes an active member of a fire department, has the appropriate certified accreditation by the International Fire Service Accreditation Congress or Pro Board, and has met the requirements in section 299N.04, contained in section 7. Makes conforming changes to the existing provision relating to military experience.