

## **PREDATORY OFFENDER REGISTRATION REQUIREMENTS**

### **Proposals from Outcomes Subcommittee Meeting**

#### **Five main proposals are offered regarding predatory offender registration:**

1. Eliminate registration requirement for adjudicated juveniles
2. Apply registration requirement to convictions only (not same or similar circumstances/probable cause determination)
3. Eliminate/modify the restart provisions
4. Provide an avenue of relief
5. Create a working group/task force on POR

In addition to these recommendations, a list was created of other suggestions that are not being considered for formal recommendations but will be noted in the report to the legislature. These are included at the end of this summary.

#### **PROPOSAL 1 – ELIMINATE REGISTRATION REQUIREMENT FOR ADJUDICATED JUVENILES**

##### **Discussion**

While a lot of discussion took place regarding the harsh consequences of the predatory offender registration requirements, particular attention was given to juvenile offenders, given their age, level of maturity, brain development, and nature of offenses (those based on age differential rather than predatory behavior). The need to reform predatory offender registration was brought up throughout most of the working group subcommittee meetings, with reform related to juveniles receiving uniform support.

The first proposal would eliminate the registration requirement for adjudicated juveniles, but keep in place the requirements for EJJ and certified as adult cases, thus ensuring that registration requirements remain in the more serious cases.

#### **PROPOSAL 2 – REGISTRATION ONLY FOR OFFENDERS WHO HAVE BEEN CONVICTED OF REGISTERABLE OFFENSE**

##### **Discussion**

Currently offenders who are convicted of offenses beyond those listed in section 243.166 are still required to register if the offense for which the offender was convicted arose out of the “same set of circumstances” as a registerable offense. This language loops in cases in which there has been a dismissal for lack of probable cause, acquittal at trials, or the offense was supported at charging but new evidence emerges making it less supported, as well as cases where the parties agree a conviction for that crime should not be the resolution. Eliminating this passage would eliminate registrations being triggered by initial probable cause determinations. The current scheme is viewed as unfair and inequitable, spreading the net too wide, and does not serve a public safety purpose.

##### **Proposed Statutory Language for Proposals 1 and 2**

243.166, subd. 1b. **Registration required.**

(a) A person shall register under this section if:

(1) the person was ~~charged with or petitioned for~~ convicted of a felony violation of or attempt to violate, or aiding, abetting, or conspiracy to commit, any of the following; ~~and convicted of or adjudicated delinquent for that offense or another offense arising out of the same set of circumstances:~~

...

(2) the person ~~was charged with or petitioned for~~ convicted of a violation of, or attempt to violate, or aiding, abetting, or conspiring to commit any of the following ~~and convicted of or adjudicated delinquent for that offense or another offense arising out of the same set of circumstances:~~

...

(4) the person ~~was charged with or petitioned for~~, including pursuant to a court martial, convicted of violating a law of the United States, including the Uniform Code of Military Justice, similar to the offenses described in clause (1), (2), or (3), and ~~convicted of or adjudicated delinquent for that offense or another offense arising out of the same set of circumstances.~~

(b) A person also shall register under this section if:

(1) the person was ~~charged with or petitioned for~~ convicted of an offense in another state that would be a violation of a law described in paragraph (a) if committed in this state and ~~convicted of or adjudicated delinquent for that offense or another offense arising out of the same set of circumstances~~

*Note: Section 243.167 would also need to be amended, and the language of the statute would need to explicitly state that registration is still required in EJJ and certified cases. This proposal would have prospective application only—for convictions on or after a specific date. There was discussion of retrospective application, however, that proposal did not have universal support; instead there was support for an avenue of relief from the registration requirements, discussed below.*

### PROPOSAL 3 – ELIMINATING/MODIFYING RESTART PROVISIONS

#### Discussion

There was extensive discussion of the impact of additional five- year registration period for registrants convicted of failure to register and the restart provisions for subsequent convictions. After much discussion, the subcommittee agreed on the recommendation to limit extension of registration through the period of supervision for the new conviction (when registrant is “off paper”) as opposed to a complete restart of the registration period.

#### Proposed Statutory Language

243.166, subd. 6. **Registration period.**

...

(c) If a person required to register under this section is incarcerated due to a conviction for a new offense or following a revocation of probation, supervised release, or conditional release for any offense, the person shall continue to register until ~~ten years have elapsed since~~ the person was last released from incarceration or until the person's probation, supervised release, current registration period, or conditional release period expires, whichever occurs later.

## PROPOSAL 4 – PROVIDE AVENUE FOR RELIEF FROM REGISTRATION REQUIREMENT

### Discussion:

Minnesota has no specific provision for early termination of the predatory offender obligation or ability to petition for relief from the registration requirements. Having an avenue of relief from the registration requirement may provide an incentive to comply with the conditions of release and for the person to remain law abiding.

While there was support for the concept of an avenue for relief, the subcommittee did not fully discuss the proposed language crafted by some members of the subcommittee. What follows is an example of possible language, based on the framework found in the expungement statute (section 609A.03),.

### Proposed language

Subd. XX. **Petition for Relief.** A person who is required to register as a predatory offender under this section may commence a proceeding to terminate their registration requirements by filing a petition in the district court in the county in which the person was convicted or adjudicated of an offense that requires current registration.

- (a) A petition for early termination of the registration requirement shall state the following:
  1. Why early termination is consistent with public safety;
  2. What steps the petitioner has taken since the time of the offense toward personal rehabilitation, including treatment, work, or other personal history that demonstrates rehabilitation.
  3. Petitioner's criminal conviction record indicating all convictions for misdemeanors, gross misdemeanors, or felonies in this state, and for all comparable convictions in any other state, federal court, or foreign country, whether the convictions occurred before or after the arrest or conviction for the offense that prompted the registration requirement, including all criminal charges that have been continued for dismissal or stayed for adjudication, or have been the subject of pretrial diversion;
  4. All pending criminal charges against the petitioner in this state or another jurisdiction; and
  5. All prior requests for early termination made by the petitioner, whether for the present offense requiring registration or for any other offenses, in this state or any other state or federal court.
- (b) The petitioner shall serve by mail the petition for early termination and a proposed early termination order on the prosecutorial office that had jurisdiction over the offense that triggered the petitioner's current registration requirement, and all other state and local government agencies and jurisdictions whose records would be affected by the proposed order.
- (c) The prosecutorial office that had jurisdiction over the offense which prompted the registration requirement shall serve by mail the petition for early termination and a proposed termination order on any victims of the offense.
- (d) A hearing on the petition shall be held no sooner than 60 days after service of the petition. A victim of the offense for which early termination is sought has a right to submit an oral or written statement to the court at the time of the hearing describing the harm suffered by the victim as a result of the crime and the victim's recommendation on whether early termination should be granted or denied. The judge shall consider the victim's statement when making a decision.

- (e) The Court shall grant the petition following the hearing if:
- a. Petitioner has completed, or has been discharged from, probation; or
  - b. If Petitioner received an executed prison sentence, Petitioner has completed conditional and supervised release; and
  - c. The Court finds by clear and convincing evidence that terminating the registration requirement is consistent with public safety.

## **PROPOSAL 5 – FURTHER EXAMINATION OF PREDATORY OFFENDER REGISTRATION SCHEME**

As a general recommendation, the subcommittee recommends that the legislature create a working group or task force to examine and provide recommendations regarding the predatory offender registration statutory scheme. There were many concerns raised about the fact that the current scheme casts too wide a net, requiring many convicted persons to register who do not pose a risk to public safety. As a result, Minnesota has a registry that is so large that it is not an effective tool for public safety. For a discussion of the many issues associated with the registry, see an article by one of the subcommittee members [here](#).

## **OTHER SUGGESTIONS TO BE INCLUDED IN THE REPORT – IDENTIFIED AS ISSUES TO EXPLORE**

The following suggestions were brought up during the discussion on predatory offender registration. They were not explored fully due to time constraints and the limits of the statutory mandate for the working group. It was agreed that these suggestions would be listed in the report as ones for further consideration.

1. Revise requirements of persons required to register:
  - a. Modify the requirements on persons without a permanent address: Change the reporting requirement from a weekly basis to every three months.
  - b. Allow for reporting/check-ins over the phone or through the internet, with sufficient location verification capability.
2. Modify sentencing for failure to register. Options suggested:
  - a. Reduce the level of offense for failure to register to a gross misdemeanor across the board.
  - b. Reduce offense to gross misdemeanor; keep as felony for situations where state proves that person provided false information.
  - c. Make first violation a gross misdemeanor with subsequent violations a felony.
  - d. Address issue through (a) using points with some cases potentially guideline stays or (b) structure like felony DUI: the first would be a presumptive stay if low points, but the second is an automatic commit.
3. Consider removing some crimes from the list of registerable offenses, for example, false imprisonment.
4. From the Age Subcommittee: Provide a statutory “vent” through stays of adjudication that would be available over the objection of the state.