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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 3856

02/28/2022 Authored by Hollins, Long and Hamilton

The bill was read for the first time and referred to the Committee on Public Safety and Criminal Justice Reform Finance and Policy

03/10/2022 Adoption of Report: Re-referred to the Committee on Judiciary Finance and Civil Law

1.1 A bill for an act
1.2 relating to public safety; presuming departure from the Sentencing Guidelines for
1.3 certain offenders who have been the victim of domestic abuse, sexual assault, or
1.4 sex trafficking; providing for resentencing for certain offenders who have been
1.5 the victim of domestic abuse, sexual assault, or sex trafficking; proposing coding
1.6 for new law in Minnesota Statutes, chapter 609.

1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8 Section 1. [609.1057] CRIMES COMMITTED BY DOMESTIC ABUSE AND
1.9 SEXUAL ASSAULT VICTIMS; DEPARTURE AUTHORIZED.

1.10 Subdivision 1. Definitions. (a) As used in this section, the following terms have the
1.11 meanings given.

1.12 (b) "Domestic abuse" has the meaning given in section 518B.01, subdivision 2, paragraph
1.13 (a).

1.14 (c) "Prosecutor" means the attorney general, county attorney, or city attorney responsible
1.15 for the prosecution of individuals charged with a crime.

1.16 (d) "Sexual assault" means an act that would constitute a violation of section 609.342,
1.17 609.343, 609.344, 609.345, 609.3451, or 609.3458.

1.18 (e) "Sex trafficking" has the meaning given in section 609.321, subdivision 7a.

1.19 Subd. 2. Offenses committed by domestic abuse, sexual assault, and sex trafficking
1.20 victims. (a) When a court is sentencing an offender, the court shall consider information
1.21 that the person has been the victim of domestic abuse, sexual assault, or sex trafficking.

2.1 (b) The court may also consider information that the domestic abuse, sexual assault, or  
2.2 sex trafficking caused or exacerbated sexual trauma, post-traumatic stress disorder, or any  
2.3 other mental health condition.

2.4 (c) The court may consider the statement of the offender and any other information,  
2.5 including court records, military service records, social services records, medical records,  
2.6 and statements of witnesses. The court may issue an order permitting the filing of records  
2.7 that are not otherwise public, including military service records, social services records,  
2.8 and medical records under seal or as confidential and may issue any other order to maintain  
2.9 the confidentiality of records including excising any part of the records or requiring that  
2.10 review be made in camera.

2.11 **Subd. 3. Stay of imposition or execution.** (a) Notwithstanding any mandatory minimum  
2.12 sentence or other law to the contrary, when (1) an offender who has been the victim of  
2.13 domestic abuse, sexual assault, or sex trafficking is convicted of an offense, (2) the  
2.14 presumptive sentence under the Sentencing Guidelines is commitment to the custody of the  
2.15 commissioner of corrections, and (3) the court finds that the offender committed the offense  
2.16 as a result of being the victim of domestic abuse, sexual assault, or sex trafficking, the  
2.17 offender is presumed to be particularly amenable to probation and a stay of imposition or  
2.18 execution of sentence is presumed to be in the public interest unless there is clear and  
2.19 convincing evidence that a mitigated dispositional departure would increase the risk that  
2.20 the offender poses to a specific individual or the public.

2.21 (b) In determining whether a mitigated dispositional departure would increase the risk  
2.22 that the offender poses to a specific individual or the public, the court shall consider the  
2.23 statement of any victim.

2.24 (c) Nothing in this subdivision prohibits the court from announcing a sentence that is a  
2.25 mitigated dispositional departure based on any other mitigating factor.

2.26 **Subd. 4. Duration of confinement.** The court may determine that the conduct of an  
2.27 offender who was the victim of domestic abuse, sexual assault, or sex trafficking that caused  
2.28 or exacerbated sexual trauma, post-traumatic stress disorder, or any mental health condition  
2.29 was significantly less serious than that typically involved in the commission of the offense.  
2.30 Notwithstanding any mandatory minimum sentence or other law to the contrary, if the court  
2.31 determines that a history of domestic abuse, sexual assault, or sex trafficking mitigates the  
2.32 offender's culpability, the court may execute a sentence that is a mitigated durational  
2.33 departure.

3.1 Subd. 5. Supportive services. If the court places an offender who was the victim of  
3.2 domestic abuse, sexual assault, or sex trafficking on probation, the court may require as a  
3.3 condition of probation that the offender participate in treatment or programming to support  
3.4 the offender in addressing behaviors and mental health conditions arising from or exacerbated  
3.5 by experiences of domestic abuse, sexual assault, or sex trafficking.

3.6 Subd. 6. Sentences imposed before August 1, 2022; petition for resentencing. (a) An  
3.7 offender who was the victim of domestic abuse, sexual assault, or sex trafficking and was  
3.8 sentenced for an offense before August 1, 2022, may petition for resentencing under this  
3.9 subdivision by filing a petition in the district court in the county in which the person was  
3.10 convicted.

3.11 (b) A person financially unable to obtain counsel who desires to pursue the remedy  
3.12 provided in this subdivision may apply for representation by the state public defender. The  
3.13 state public defender shall represent the person under sections 611.14 to 611.27.

3.14 (c) The contents of the petition, cost, and filing shall be as provided in section 590.02,  
3.15 subdivision 1.

3.16 (d) Within 20 days after the filing of the petition under this subdivision or within the  
3.17 time that the judge to whom the matter has been assigned may fix, the prosecutor shall  
3.18 respond to the petition by answer or motion which shall be filed with the court administrator  
3.19 of the district court and served on the petitioner if unrepresented or on the petitioner's  
3.20 attorney. No further pleadings are necessary except as the court may order or permit. The  
3.21 court may at any time prior to its decision on the merits permit a withdrawal of the petition,  
3.22 may permit amendments thereto, and to the answer. The court shall liberally construe the  
3.23 petition and any amendments thereto and shall look to the substance thereof and waive any  
3.24 irregularities or defects in form.

3.25 (e) The prosecutor shall make a good faith and reasonable effort to notify any person  
3.26 determined to be a victim of the offense for which resentencing is sought of the existence  
3.27 of a petition. Notification under this paragraph does not constitute a violation of an existing  
3.28 order for protection, restraining order, or other no contact order. Notice to a victim of the  
3.29 offense must:

3.30 (1) specifically inform the victim of the right to object, orally or in writing, to the  
3.31 proposed resentencing;

3.32 (2) inform the victim of the day, time, and right to be present and to submit an oral or  
3.33 written statement at the hearing described in paragraph (f); and

4.1 (3) inform the victim that if the victim notifies the prosecutor of an objection to the  
4.2 proposed resentencing and is not present when the court considers the petition, the prosecutor  
4.3 shall make these objections known to the court.

4.4 (f) The court shall hold a hearing on the petition no sooner than 60 days after filing the  
4.5 petition. The hearing shall be scheduled so that the parties have adequate time to prepare  
4.6 and present arguments regarding the issue of resentencing. The parties may make oral  
4.7 arguments before the court at the hearing. The petitioner must be present at the hearing,  
4.8 unless excused under Rules of Criminal Procedure, rule 26.03, subdivision 1, clause (3).

4.9 (g) A victim of the offense for which resentencing is sought has a right to submit an oral  
4.10 or written statement to the court at the time of the hearing describing the harm suffered by  
4.11 the victim as a result of the crime and the victim's recommendation on whether resentencing  
4.12 should be granted or denied. The judge shall consider the victim's statement when making  
4.13 a decision.

4.14 (h) The court shall determine whether the petitioner has been the victim of domestic  
4.15 abuse, sexual assault, or sex trafficking and may consider information that the domestic  
4.16 abuse, sexual assault, or sex trafficking caused or exacerbated sexual trauma, post-traumatic  
4.17 stress disorder, or any other mental health condition. If the court determines that the petitioner  
4.18 was the victim of domestic abuse, sexual assault, or sex trafficking, and that the offender  
4.19 committed the offense as a result of being the victim of domestic abuse, sexual assault, or  
4.20 sex trafficking, the court shall determine if resentencing the petitioner is in the public interest.  
4.21 Resentencing is presumed to be in the public interest unless there is clear and convincing  
4.22 evidence that resentencing would increase the risk that the offender poses to any specific  
4.23 individual or the public. In making this determination, the court must consider any statement  
4.24 made or submitted by a victim and may consider factors relating to both the petitioner and  
4.25 the offense, including:

4.26 (1) information establishing that the petitioner was the victim of domestic abuse, sexual  
4.27 assault, or sex trafficking;

4.28 (2) court records, military service records, social services records, medical records, and  
4.29 statements of witnesses describing any incidents of domestic abuse, sexual assault, or sex  
4.30 trafficking and the impact on the petitioner's mental health;

4.31 (3) the petitioner's performance on probation or supervision;

4.32 (4) the petitioner's disciplinary record during any period of incarceration;

5.1 (5) records of any rehabilitation efforts made by the petitioner since the date of the  
5.2 offense and any plan to continue those efforts in the community; and

5.3 (6) any other information relevant to determining whether resentencing is in the public  
5.4 interest.

5.5 (i) Notwithstanding any mandatory minimum sentence or any other law to the contrary,  
5.6 if the court determines that resentencing is in the public interest, the court may modify the  
5.7 sentence in any way provided the adjustment does not:

5.8 (1) increase the period of confinement or, if the individual is serving a stayed sentence,  
5.9 increase the period of supervision;

5.10 (2) reduce or eliminate the amount of court-ordered restitution; or

5.11 (3) reduce or eliminate a term of conditional release required by law when a court  
5.12 commits an offender to the custody of the commissioner of corrections.

5.13 (j) The court shall state in writing or on the record the reasons for its decision on the  
5.14 petition.

5.15 (k) For purposes of appeal, an order issued under this subdivision shall not be considered  
5.16 a final judgment, but shall be treated as an order imposing or staying a sentence.

5.17 **EFFECTIVE DATE.** This section is effective August 1, 2022.