

**SENATE
STATE OF MINNESOTA
NINETIETH SESSION**

S.F. No. 3140

(SENATE AUTHORS: PRATT)

DATE
03/08/2018

D-PG
6369

OFFICIAL STATUS
Introduction and first reading
Referred to Judiciary and Public Safety Finance and Policy

1.1 A bill for an act

1.2 relating to public safety; regulating the lawful possession, purchase, and transfer

1.3 of firearms and ammunition; amending the definition of crime of violence;

1.4 establishing mandatory minimum sentences; creating new criminal offenses;

1.5 providing procedures for restoring firearms rights; directing the commissioner of

1.6 human services to report mental health commitment information to the National

1.7 Instant Criminal Background Check System for the purpose of facilitating firearms

1.8 background checks; creating a reporting requirement; requiring timely transmittal

1.9 of certain data to certain state and federal searchable databases; amending

1.10 Minnesota Statutes 2016, sections 245.041; 609.165, subdivision 1b; 609.505, by

1.11 adding a subdivision; 624.712, subdivision 5; 624.713, subdivisions 1, 2, by adding

1.12 subdivisions; 624.7141, subdivisions 2, 3; proposing coding for new law in

1.13 Minnesota Statutes, chapters 299C; 624; repealing Minnesota Statutes 2016, section

1.14 624.713, subdivision 4.

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

1.16 Section 1. Minnesota Statutes 2016, section 245.041, is amended to read:

1.17 **245.041 PROVISION OF FIREARMS AND EXPLOSIVES BACKGROUND**

1.18 **CHECK INFORMATION.**

1.19 Notwithstanding section 253B.23, subdivision 9, the commissioner of human services

1.20 shall provide commitment information to ~~local~~ law enforcement agencies on an individual

1.21 request basis by means of electronic data transfer from the Department of Human Services

1.22 through the Minnesota Crime Information System and the National Instant Criminal

1.23 Background Check System for the sole purpose of facilitating a firearms background check

1.24 under section 624.7131, 624.7132, or 624.714, or an explosives background check under

1.25 section 299F.73, 299F.74, 299F.75, 299F.77, or 299F.785. The information to be provided

1.26 is limited to whether the person has been committed under chapter 253B and, if so, the type

1.27 of commitment. No later than August 1, 2018, the commissioner must make available in

electronic data format the commitment information required by this section for commitments occurring on or after August 1, 1994.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 2. **[299C.089] INFORMATION RECEIVED BY BUREAU.**

Within 72 hours of receipt of data, the bureau shall convert into an electronic format for entry into the appropriate searchable database all data received from a criminal justice agency that is not electronically entered by that agency into a bureau-managed or federal searchable database. For the purposes of this section, "criminal justice agency" has the meaning given under section 299C.46, subdivision 2.

Sec. 3. Minnesota Statutes 2016, section 609.165, subdivision 1b, is amended to read:

Subd. 1b. **Violent felons in possession; violation and penalty; mandatory sentences.**

(a) Any person who has been convicted of a crime of violence, as defined in section 624.712, subdivision 5, and who ships, transports, possesses, or receives a firearm or ammunition, commits a felony and may be sentenced to imprisonment for not more than 15 years or to payment of a fine of not more than \$30,000, or both.

(b) A conviction and sentencing under this section shall be construed to bar a conviction and sentencing for a violation of section 624.713, subdivision 2.

(c) The criminal penalty in paragraph (a) does not apply to any person who has received a relief of disability under United States Code, title 18, section 925, or whose ability to possess firearms and ammunition has been restored under subdivision 1d.

(d) Unless a longer mandatory minimum sentence is otherwise required by law or the sentencing guidelines provide for a longer presumptive executed sentence, a person convicted of violating paragraph (a) shall be committed to the commissioner of corrections for:

(1) 60 months; or

(2) 120 months if the person has a prior conviction under this section, section 624.713, subdivision 2, paragraph (b), or a comparable law of another state or the United States.

Sentencing a person in a manner other than that described in this paragraph is a departure from the sentencing guidelines.

EFFECTIVE DATE. This section is effective August 1, 2018, and applies to crimes committed on or after that date.

Sec. 4. Minnesota Statutes 2016, section 609.505, is amended by adding a subdivision to read:

Subd. 3. **Lost or stolen firearms; false reporting.** (a) Whoever files a written report with a law enforcement officer that a firearm has been lost or stolen, knowing that the report is false, is guilty of a gross misdemeanor.

(b) A person is guilty of a felony and may be sentenced to imprisonment for not more than five years, or to payment of a fine of not more than \$10,000, or both, if the person:

(1) is convicted a second or subsequent time of violating this subdivision; or

(2) violates paragraph (a) while knowing that the firearm has been transferred to someone who intends to use it in furtherance of a felony crime of violence, as defined in section 624.712, subdivision 5.

EFFECTIVE DATE. This section is effective August 1, 2018, and applies to crimes committed on or after that date.

Sec. 5. Minnesota Statutes 2016, section 624.712, subdivision 5, is amended to read:

Subd. 5. **Crime of violence.** "Crime of violence" means: felony convictions of the following offenses: sections 609.185 (murder in the first degree); 609.19 (murder in the second degree); 609.195 (murder in the third degree); 609.20 (manslaughter in the first degree); 609.205 (manslaughter in the second degree); 609.215 (aiding suicide and aiding attempted suicide); 609.221 (assault in the first degree); 609.222 (assault in the second degree); 609.223 (assault in the third degree); 609.2231 (assault in the fourth degree); 609.224 (assault in the fifth degree); 609.2242 (domestic assault); 609.2247 (domestic assault by strangulation); 609.229 (crimes committed for the benefit of a gang); 609.235 (use of drugs to injure or facilitate crime); 609.24 (simple robbery); 609.245 (aggravated robbery); 609.25 (kidnapping); 609.255 (false imprisonment); 609.322 (solicitation, inducement, and promotion of prostitution; sex trafficking); 609.342 (criminal sexual conduct in the first degree); 609.343 (criminal sexual conduct in the second degree); 609.344 (criminal sexual conduct in the third degree); 609.345 (criminal sexual conduct in the fourth degree); 609.377 (malicious punishment of a child); 609.378 (neglect or endangerment of a child); 609.486 (commission of crime while wearing or possessing a bullet-resistant vest); 609.505, subdivision 3, paragraph (b) (falsely reporting lost or stolen firearms); 609.52 (involving theft of a firearm and theft involving the theft of a controlled substance, an explosive, or an incendiary device); 609.561 (arson in the first degree); 609.562 (arson in the second degree); 609.582, subdivision 1 or 2 (burglary in the first and second degrees); 609.66, subdivision

1e (drive-by shooting); 609.67 (unlawfully owning, possessing, operating a machine gun or short-barreled shotgun); 609.71 (riot); 609.713 (terroristic threats); 609.749 (stalking); 609.855, subdivision 5 (shooting at a public transit vehicle or facility); 624.7141, subdivision 2 (transferring firearm to an ineligible person); and a second or subsequent conviction, adjudication of delinquency, or conviction as an extended jurisdiction juvenile for violating section 624.713, subdivision 1, clause (1) (certain persons not to possess firearms, ineligible persons, juveniles); and chapter 152 (drugs, controlled substances); and an attempt to commit any of these offenses.

EFFECTIVE DATE. This section is effective August 1, 2018, and applies to crimes committed on or after that date.

Sec. 6. Minnesota Statutes 2016, section 624.713, subdivision 1, is amended to read:

Subdivision 1. **Ineligible persons.** The following persons shall not be entitled to possess ammunition or a pistol or semiautomatic military-style assault weapon or, except for clause (1), any other firearm:

(1) a person under the age of 18 years except that a person under 18 may possess ammunition designed for use in a firearm that the person may lawfully possess and may carry or possess a pistol or semiautomatic military-style assault weapon (i) in the actual presence or under the direct supervision of the person's parent or guardian, (ii) for the purpose of military drill under the auspices of a legally recognized military organization and under competent supervision, (iii) for the purpose of instruction, competition, or target practice on a firing range approved by the chief of police or county sheriff in whose jurisdiction the range is located and under direct supervision; or (iv) if the person has successfully completed a course designed to teach marksmanship and safety with a pistol or semiautomatic military-style assault weapon and approved by the commissioner of natural resources;

(2) except as otherwise provided in clause (9), a person who has been convicted of, or adjudicated delinquent or convicted as an extended jurisdiction juvenile for committing, in this state or elsewhere, a crime of violence. For purposes of this section, crime of violence includes crimes in other states or jurisdictions which would have been crimes of violence as herein defined if they had been committed in this state;

(3) a person who is or has ever been ordered committed in Minnesota or elsewhere by a judicial determination that the person is mentally ill, developmentally disabled, or mentally ill and dangerous to the public, as defined in section 253B.02, to a treatment facility, whether or not the order was stayed, or who has ever been found incompetent to stand trial or not

guilty by reason of mental illness, unless the person's ability to possess a firearm and ammunition has been restored under subdivision 4 6;

(4) a person who has been convicted in Minnesota or elsewhere of a misdemeanor or gross misdemeanor violation of chapter 152, unless three years have elapsed since the date of conviction and, during that time, the person has not been convicted of any other such violation of chapter 152 or a similar law of another state; or a person who is or has ever been committed by a judicial determination for treatment for the habitual use of a controlled substance or marijuana, as defined in sections 152.01 and 152.02, unless the person's ability to possess a firearm and ammunition has been restored under subdivision 4 6;

(5) a person who has been committed to a treatment facility in Minnesota or elsewhere by a judicial determination that the person is chemically dependent as defined in section 253B.02, unless the person has completed treatment or the person's ability to possess a firearm and ammunition has been restored under subdivision 4 6. Property rights may not be abated but access may be restricted by the courts;

(6) a peace officer who is informally admitted to a treatment facility pursuant to section 253B.04 for chemical dependency, unless the officer possesses a certificate from the head of the treatment facility discharging or provisionally discharging the officer from the treatment facility. Property rights may not be abated but access may be restricted by the courts;

(7) a person, including a person under the jurisdiction of the juvenile court, who has been charged with committing a crime of violence and has been placed in a pretrial diversion program by the court before disposition, until the person has completed the diversion program and the charge of committing the crime of violence has been dismissed;

(8) except as otherwise provided in clause (9), a person who has been convicted in another state of committing an offense similar to the offense described in section 609.224, subdivision 3, against a family or household member or section 609.2242, subdivision 3, unless three years have elapsed since the date of conviction and, during that time, the person has not been convicted of any other violation of section 609.224, subdivision 3, or 609.2242, subdivision 3, or a similar law of another state;

(9) a person who has been convicted in this state or elsewhere of assaulting a family or household member and who was found by the court to have used a firearm in any way during commission of the assault is prohibited from possessing any type of firearm or ammunition for the period determined by the sentencing court;

(10) a person who: is disqualified from possessing a firearm under United States Code, title 18, section 922(g);

~~(i) has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;~~

~~(ii) is a fugitive from justice as a result of having fled from any state to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding;~~

~~(iii) is an unlawful user of any controlled substance as defined in chapter 152;~~

~~(iv) has been judicially committed to a treatment facility in Minnesota or elsewhere as a person who is mentally ill, developmentally disabled, or mentally ill and dangerous to the public, as defined in section 253B.02;~~

~~(v) is an alien who is illegally or unlawfully in the United States;~~

~~(vi) has been discharged from the armed forces of the United States under dishonorable conditions;~~

~~(vii) has renounced the person's citizenship having been a citizen of the United States;~~
~~or~~

~~(viii) is disqualified from possessing a firearm under United States Code, title 18, section 922(g)(8) or (9), as amended through March 1, 2014;~~

(11) a person who has been convicted of the following offenses at the gross misdemeanor level, unless three years have elapsed since the date of conviction and, during that time, the person has not been convicted of any other violation of these sections: section 609.229 (crimes committed for the benefit of a gang); 609.2231, subdivision 4 (assaults motivated by bias); 609.255 (false imprisonment); 609.378 (neglect or endangerment of a child); 609.582, subdivision 4 (burglary in the fourth degree); 609.665 (setting a spring gun); 609.71 (riot); or 609.749 (stalking). For purposes of this paragraph, the specified gross misdemeanor convictions include crimes committed in other states or jurisdictions which would have been gross misdemeanors if conviction occurred in this state;

(12) a person who has been convicted of a violation of section 609.224 if the court determined that the assault was against a family or household member in accordance with section 609.2242, subdivision 3 (domestic assault), unless three years have elapsed since the date of conviction and, during that time, the person has not been convicted of another violation of section 609.224 or a violation of a section listed in clause (11); or

(13) a person who is subject to an order for protection as described in section 260C.201, subdivision 3, paragraph (d), or 518B.01, subdivision 6, paragraph (g).

A person who issues a certificate pursuant to this section in good faith is not liable for damages resulting or arising from the actions or misconduct with a firearm or ammunition committed by the individual who is the subject of the certificate.

The prohibition in this subdivision relating to the possession of firearms other than pistols and semiautomatic military-style assault weapons does not apply retroactively to persons who are prohibited from possessing a pistol or semiautomatic military-style assault weapon under this subdivision before August 1, 1994.

The lifetime prohibition on possessing, receiving, shipping, or transporting firearms and ammunition for persons convicted or adjudicated delinquent of a crime of violence in clause (2), applies only to offenders who are discharged from sentence or court supervision for a crime of violence on or after August 1, 1993.

For purposes of this section, "judicial determination" means a court proceeding pursuant to sections 253B.07 to 253B.09 or a comparable law from another state.

EFFECTIVE DATE. This section is effective August 1, 2018, and applies to crimes committed on or after that date.

Sec. 7. Minnesota Statutes 2016, section 624.713, subdivision 2, is amended to read:

Subd. 2. Penalties; mandatory sentences. (a) A person named in subdivision 1, clause (1), who possesses ammunition or a pistol or semiautomatic military-style assault weapon in violation of that clause is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

(b) A person named in subdivision 1, clause (2), who possesses any type of firearm or ammunition is guilty of a felony and may be sentenced to imprisonment for not more than 15 years or to payment of a fine of not more than \$30,000, or both. Sentencing a person in a manner other than that described in this paragraph is a departure from the sentencing guidelines. This paragraph does not apply to any person who has received a relief of disability under United States Code, title 18, section 925, or whose ability to possess firearms and ammunition has been restored under section 609.165, subdivision 1d. Unless a longer mandatory minimum sentence is otherwise required by law or the sentencing guidelines provide for a longer presumptive executed sentence, a person convicted of violating paragraph (a) shall be committed to the commissioner of corrections for:

(1) 60 months; or

(2) 120 months if the person has a prior conviction under this paragraph, section 609.165, or a comparable law of another state or the United States.

(c) A person named in any other clause of subdivision 1 who possesses any type of firearm or ammunition is guilty of a gross misdemeanor.

EFFECTIVE DATE. This section is effective August 1, 2018, and applies to crimes committed on or after that date.

Sec. 8. Minnesota Statutes 2016, section 624.713, is amended by adding a subdivision to read:

Subd. 3a. **Prompt reporting of disqualifying mental health data.** When a court orders a commitment under chapter 253B or makes a finding or adjudication by which a person becomes subject to the provisions of section 624.713, subdivision 1, clause (3), or United States Code, title 18, sections 922(d)(4) and 922(g)(4), the court administrator shall electronically enter the nature of the court's action and only the information necessary to identify the person into the National Instant Criminal Background Check System database. The court shall also notify the person of the prohibitions of section 624.713, subdivision 1, clause (3), and United States Code, title 18, sections 922(d)(4) and 922(g)(4).

EFFECTIVE DATE. This section is effective August 1, 2018.

Sec. 9. Minnesota Statutes 2016, section 624.713, is amended by adding a subdivision to read:

Subd. 6. **Restoration of firearms eligibility to civilly committed person; petition authorized.** (a) A person who is subject to the disabilities in section 624.713, subdivision 1, clauses (3) and (5), or United States Code, title 18, section 922(d)(4) or 922(g)(4), because of an adjudication or commitment that occurred under the laws of this state may petition the court in which the adjudication or commitment proceedings occurred or a district court of competent jurisdiction to remove all the disabilities. A copy of the petition for relief shall be served upon the county attorney's office of the jurisdiction in which the petition is filed. The office may, as it deems appropriate, represent the interests of the state in the restoration proceedings.

(b) The court shall receive and consider evidence in a closed proceeding, including evidence offered by the petitioner, concerning:

(1) the circumstances regarding the firearm disabilities from which relief is sought;

(2) the petitioner's mental health and criminal history records, if any;

9.1 (3) the petitioner's reputation, developed at a minimum through character witness
9.2 statements, testimony, or other character evidence; and

9.3 (4) changes in the petitioner's condition or circumstances since the original adjudication
9.4 or commitment relevant to the relief sought.

9.5 The court shall grant the petition for relief if it finds by a preponderance of the evidence
9.6 that the petitioner will not be likely to act in a manner dangerous to public safety and that
9.7 the granting of the relief would not be contrary to the public interest. A record shall be kept
9.8 of the proceedings, but it shall remain confidential and be disclosed only to a court in the
9.9 event of an appeal. The petitioner may appeal a denial of the requested relief, and review
9.10 on appeal shall be de novo.

9.11 (c) The court administrator shall promptly electronically transmit information of the
9.12 order granting relief to the person under this section to the National Instant Criminal
9.13 Background Check System or to any official issuing a permit under section 624.7131,
9.14 624.7132, or 624.714 and notify the United States attorney general that the basis for the
9.15 person's record of firearm disabilities being made available no longer applies.

9.16 **EFFECTIVE DATE.** This section is effective August 1, 2018, and applies to crimes
9.17 committed on or after that date.

9.18 Sec. 10. Minnesota Statutes 2016, section 624.7141, subdivision 2, is amended to read:

9.19 Subd. 2. **Felony.** A violation of this section is a felony:

9.20 (1) if the transferee possesses or uses the weapon within one year after the transfer in
9.21 furtherance of a felony crime of violence; or

9.22 (2) if the transferor knows the transferee intends to use the weapon in the furtherance
9.23 of a felony crime of violence.

9.24 **EFFECTIVE DATE.** This section is effective August 1, 2018, and applies to crimes
9.25 committed on or after that date.

9.26 Sec. 11. Minnesota Statutes 2016, section 624.7141, subdivision 3, is amended to read:

9.27 Subd. 3. **Subsequent eligibility.** ~~This section~~ Subdivision 2, clause (1), is not applicable
9.28 to a transfer to a person who became eligible to possess a pistol or semiautomatic
9.29 military-style assault weapon ~~under section 624.713~~ after the transfer occurred but before
9.30 the transferee used or possessed the weapon in furtherance of any crime.

EFFECTIVE DATE. This section is effective August 1, 2018, and applies to crimes committed on or after that date.

Sec. 12. **[624.7163] CRIMES AGAINST LICENSED FIREARMS DEALERS.**

Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms have the meanings given.

(b) "Ammunition" means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in a firearm other than an antique firearm. Ammunition shall not include (1) any shotgun shot or pellet not designed for use as the single, complete projectile load for one shotgun hull or casing, or (2) any unloaded, nonmetallic shotgun hull or casing not having a primer.

(c) "False information" means material information that portrays an illegal transaction as legal or a legal transaction as illegal.

(d) "Licensed dealer" means a person who is licensed pursuant to United States Code, title 18, section 923, to engage in the business of dealing in firearms.

(e) "Private seller" means a person who sells or offers for sale ammunition or any firearm, as that term is defined in section 609.669, subdivision 2, clause (2).

Subd. 2. **Crime.** (a) Whoever does any of the following is guilty of a felony:

(1) knowingly solicits, persuades, encourages, or entices a licensed dealer or private seller of firearms or ammunition to transfer a firearm or ammunition under circumstances that the person knows would violate the laws of this state or the United States; or

(2) provides to a licensed dealer or private seller of firearms or ammunition what the person knows to be false information with intent to deceive the dealer or seller about the legality of a transfer of a firearm or ammunition.

(b) Any person who willfully procures another person to engage in conduct prohibited by this section shall be held accountable as a principal.

Subd. 3. **Exception.** This section does not apply to a law enforcement officer acting in the officer's official capacity or to a person acting at the direction of the law enforcement officer.

EFFECTIVE DATE. This section is effective August 1, 2018, and applies to crimes committed on or after that date.

11.1 Sec. 13. **REPEALER.**

11.2 Minnesota Statutes 2016, section 624.713, subdivision 4, is repealed.

11.3 **EFFECTIVE DATE.** This section is effective August 1, 2018, and applies to crimes

11.4 committed on or after that date.

624.713 CERTAIN PERSONS NOT TO POSSESS FIREARMS.

Subd. 4. **Restoration of firearms and ammunition eligibility to civilly committed person; petition authorized.** (a) A person who is prohibited from possessing a firearm or ammunition under subdivision 1, due to commitment resulting from a judicial determination that the person is mentally ill, developmentally disabled, mentally ill and dangerous, or chemically dependent, may petition a court to restore the person's ability to possess a firearm or ammunition.

(b) The court may grant the relief sought in paragraph (a) in accordance with the principles of due process if the circumstances regarding the person's disqualifying condition and the person's record and reputation are determined to be such that:

- (1) the person is not likely to act in a manner that is dangerous to public safety; and
- (2) the granting of relief would not be contrary to the public interest.

(c) When determining whether a person has met the requirement of paragraph (b), clause (1), the court may consider evidence from a licensed medical doctor or clinical psychologist that the person is no longer suffering from the disease or condition that caused the disability or that the disease or condition has been successfully treated for a period of three consecutive years.

(d) Review on appeal shall be de novo.