

SENATE

STATE OF MINNESOTA

EIGHTY-EIGHTH SESSION

S.F. No. 2546

(SENATE AUTHORS: LATZ)

| DATE | D-PG | OFFICIAL STATUS |
|------------|-------|---|
| 03/12/2014 | 6156 | Introduction and first reading Referred to Judiciary |
| 03/26/2014 | 6815a | Comm report: To pass as amended |
| | 6864 | Second reading |
| 05/07/2014 | | Special Order: Amended |
| | | Third reading Passed |

1.1

A bill for an act

1.2

relating to public safety; modifying and clarifying predatory offender registration

1.3

requirements; clarifying sentence for crime of criminal sexual conduct in the third

1.4

degree; amending Minnesota Statutes 2012, section 609.344, subdivisions 1, 2;

1.5

Minnesota Statutes 2013 Supplement, section 243.166, subdivisions 1b, 3a, 4, 6.

1.6

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

1.7

Section 1. Minnesota Statutes 2013 Supplement, section 243.166, subdivision 1b,

1.8

is amended to read:

1.9

Subd. 1b. **Registration required.** (a) A person shall register under this section if:

1.10

(1) the person was charged with or petitioned for a felony violation of or attempt to

1.11

violate, or aiding, abetting, or conspiracy to commit, any of the following, and convicted

1.12

of or adjudicated delinquent for that offense or another offense arising out of the same

1.13

set of circumstances:

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(i) murder under section 609.185, paragraph (a), clause (2);

1.15

(ii) kidnapping under section 609.25;

1.16

(iii) criminal sexual conduct under section 609.342; 609.343; 609.344; 609.345;

1.17

609.3451, subdivision 3; or 609.3453; or

1.18

(iv) indecent exposure under section 617.23, subdivision 3;

1.19

(2) the person was charged with or petitioned for a violation of, or attempt to

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violate, or aiding, abetting, or conspiring to commit criminal abuse in violation of

1.21

section 609.2325, subdivision 1, paragraph (b);2 false imprisonment in violation of

1.22

section 609.255, subdivision 2; ~~soliciting a minor to engage in prostitution in solicitation,~~

1.23

inducement, or promotion of the prostitution of a minor or engaging in the sex trafficking

1.24

of a minor in violation of section 609.322 or; a prostitution offense involving a minor

1.25

under the age of 13 years in violation of section 609.324, subdivision 1, paragraph (a);

soliciting a minor to engage in sexual conduct in violation of section 609.352, subdivision 1 or 2a, clause (1); using a minor in a sexual performance in violation of section 617.246; or possessing pornographic work involving a minor in violation of section 617.247, and convicted of or adjudicated delinquent for that offense or another offense arising out of the same set of circumstances;

(3) the person was sentenced as a patterned sex offender under section 609.3455, subdivision 3a; or

(4) the person was ~~convicted of or adjudicated delinquent~~ charged with or petitioned for, including pursuant to a court martial, 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 ~~convicted of or adjudicated delinquent in another state~~ charged with or petitioned for 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;

(2) the person enters this state to reside, work, or attend school, or enters this state and remains for 14 days or longer; and

(3) ten years have not elapsed since the person was released from confinement or, if the person was not confined, since the person was convicted of or adjudicated delinquent for the offense that triggers registration, unless the person is subject to a longer registration period under the laws of another state in which the person has been convicted or adjudicated, or is subject to lifetime registration.

If a person described in this paragraph is subject to a longer registration period in another state or is subject to lifetime registration, the person shall register for that time period regardless of when the person was released from confinement, convicted, or adjudicated delinquent.

(c) A person also shall register under this section if the person was committed pursuant to a court commitment order under Minnesota Statutes 2012, section 253B.185, chapter 253D ~~or~~ ₂ Minnesota Statutes 1992, section 526.10, or a similar law of another state or the United States, regardless of whether the person was convicted of any offense.

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

(1) the person was charged with or petitioned for a felony violation or attempt to violate any of the offenses listed in paragraph (a), clause (1), or a similar law of another state or the United States, or the person was charged with or petitioned for a violation of

any of the offenses listed in paragraph (a), clause (2), or a similar law of another state or the United States;

(2) the person was found not guilty by reason of mental illness or mental deficiency after a trial for that offense, or found guilty but mentally ill after a trial for that offense, in states with a guilty but mentally ill verdict; and

(3) the person was committed pursuant to a court commitment order under section 253B.18 or a similar law of another state or the United States.

EFFECTIVE DATE. Paragraphs (a) and (b) are effective August 1, 2014, and apply to crimes committed on or after that date.

Sec. 2. Minnesota Statutes 2013 Supplement, section 243.166, subdivision 3a, is amended to read:

Subd. 3a. **Registration procedure when person lacks primary address.** (a) If a person leaves a primary address and does not have a new primary address, the person shall register with the law enforcement authority that has jurisdiction in the area where the person is staying within 24 hours of the time the person no longer has a primary address.

(b) Notwithstanding the time period for registration in paragraphs (a) and (c), a person with a primary address of a correctional facility who is scheduled to be released from the facility and who does not have a new primary address shall register with the law enforcement authority that has jurisdiction in the area where the person will be staying at least three days before the person is released from the correctional facility.

(c) A person who lacks a primary address shall register with the law enforcement authority that has jurisdiction in the area where the person is staying within 24 hours after entering the jurisdiction. Each time a person who lacks a primary address moves to a new jurisdiction without acquiring a new primary address, the person shall register with the law enforcement authority that has jurisdiction in the area where the person is staying within 24 hours after entering the jurisdiction.

(d) Upon registering under this subdivision, the person shall provide the law enforcement authority with all of the information the individual is required to provide under subdivision 4a. However, instead of reporting the person's primary address, the person shall describe the location of where the person is staying with as much specificity as possible.

(e) Except as otherwise provided in paragraph (f), if a person continues to lack a primary address, the person shall report in person on a weekly basis to the law enforcement authority with jurisdiction in the area where the person is staying. This weekly report shall occur between the hours of 9:00 a.m. and 5:00 p.m. The person is not required to provide the registration information required under subdivision 4a each

time the offender reports to an authority, but the person shall inform the authority of changes to any information provided under this subdivision or subdivision 4a and shall otherwise comply with this subdivision.

(f) If the law enforcement authority determines that it is impractical, due to the person's unique circumstances, to require a person lacking a primary address to report weekly and in person as required under paragraph (e), the authority may authorize the person to follow an alternative reporting procedure. The authority shall consult with the person's corrections agent, if the person has one, in establishing the specific criteria of this alternative procedure, subject to the following requirements:

(1) the authority shall document, in the person's registration record, the specific reasons why the weekly in-person reporting process is impractical for the person to follow;

(2) the authority shall explain how the alternative reporting procedure furthers the public safety objectives of this section;

(3) the authority shall require the person lacking a primary address to report in person at least monthly to the authority or the person's corrections agent and shall specify the location where the person shall report. If the authority determines it would be more practical and would further public safety for the person to report to another law enforcement authority with jurisdiction where the person is staying, it may, after consulting with the other law enforcement authority, include this requirement in the person's alternative reporting process;

(4) the authority shall require the person to comply with the weekly, in-person reporting process required under paragraph (e), if the person moves to a new area where this process would be practical;

(5) the authority shall require the person to report any changes to the registration information provided under subdivision 4a and to comply with the periodic registration requirements specified under paragraph (g); and

(6) the authority shall require the person to comply with the requirements of subdivision 3, paragraphs (b) and (c), if the person moves to a primary address.

(g) If a person continues to lack a primary address and continues to report to the same law enforcement authority, the person shall provide the authority with all of the information the individual is required to provide under this subdivision and subdivision 4a at least annually, unless the person is required to register under subdivision 1b, paragraph (c), following commitment pursuant to a court commitment under Minnesota Statutes 2012, section 253B.185, chapter 253D, Minnesota Statutes 1992, section 526.10, or a similar law of another state or the United States. If the person is required to register under subdivision 1b, paragraph (c), the person shall provide the law enforcement authority

with all of the information the individual is required to report under this subdivision and subdivision 4a at least once every three months.

(h) A law enforcement authority receiving information under this subdivision shall forward registration information and changes to that information to the bureau within two business days of receipt of the information.

(i) For purposes of this subdivision, a person who fails to report a primary address will be deemed to be a person who lacks a primary address, and the person shall comply with the requirements for a person who lacks a primary address.

Sec. 3. Minnesota Statutes 2013 Supplement, section 243.166, subdivision 4, is amended to read:

Subd. 4. **Contents of registration.** (a) The registration provided to the corrections agent or law enforcement authority, must consist of a statement in writing signed by the person, giving information required by the bureau, ~~a fingerprint card~~ fingerprints, and photograph of the person taken at the time of the person's release from incarceration or, if the person was not incarcerated, at the time the person initially registered under this section. The registration information also must include a written consent form signed by the person allowing a treatment facility or residential housing unit or shelter to release information to a law enforcement officer about the person's admission to, or residence in, a treatment facility or residential housing unit or shelter. Registration information on adults and juveniles may be maintained together notwithstanding section 260B.171, subdivision 3.

(b) For persons required to register under subdivision 1b, paragraph (c), following commitment pursuant to a court commitment under Minnesota Statutes 2012, section 253B.185, chapter 253D, Minnesota Statutes 1992, section 526.10, or a similar law of another state or the United States, in addition to other information required by this section, the registration provided to the corrections agent or law enforcement authority must include the person's offense history and documentation of treatment received during the person's commitment. This documentation is limited to a statement of how far the person progressed in treatment during commitment.

(c) Within three days of receipt, the corrections agent or law enforcement authority shall forward the registration information to the bureau. The bureau shall ascertain whether the person has registered with the law enforcement authority in the area of the person's primary address, if any, or if the person lacks a primary address, where the person is staying, as required by subdivision 3a. If the person has not registered with the law enforcement authority, the bureau shall send one copy to that authority.

(d) The corrections agent or law enforcement authority may require that a person required to register under this section appear before the agent or authority to be photographed. The agent or authority shall forward the photograph to the bureau.

(1) Except as provided in clause (2), the agent or authority ~~shall require a person required to register under this section who is classified as a level III offender under section 244.052 to appear before the agent or authority at least every six months to be photographed~~ may photograph any offender at a time and frequency chosen by the agent or authority.

(2) The requirements of this paragraph shall not apply during any period where the person to be photographed is: (i) committed to the commissioner of corrections and incarcerated, (ii) incarcerated in a regional jail or county jail, or (iii) committed to the commissioner of human services and receiving treatment in a secure treatment facility.

(e) During the period a person is required to register under this section, the following provisions apply:

(1) Except for persons registering under subdivision 3a, the bureau shall mail a verification form to the person's last reported primary address. This verification form must provide notice to the offender that, if the offender does not return the verification form as required, information about the offender may be made available to the public through electronic, computerized, or other accessible means. For persons who are registered under subdivision 3a, the bureau shall mail an annual verification form to the law enforcement authority where the offender most recently reported. The authority shall provide the verification form to the person at the next weekly meeting and ensure that the person completes and signs the form and returns it to the bureau. Notice is sufficient under this paragraph, if the verification form is sent by first class mail to the person's last reported primary address, or for persons registered under subdivision 3a, to the law enforcement authority where the offender most recently reported.

(2) The person shall mail the signed verification form back to the bureau within ten days after receipt of the form, stating on the form the current and last address of the person's residence and the other information required under subdivision 4a.

(3) In addition to the requirements listed in this section, ~~a person who is assigned to risk level II or III under section 244.052, and~~ an offender who is no longer under correctional supervision for a registration offense, or a failure to register offense, but who resides, works, or attends school in Minnesota, shall have an ~~annual~~ in-person contact with a law enforcement authority as provided in this section. If the person resides in Minnesota, the ~~annual~~ in-person contact shall be with the law enforcement authority that has jurisdiction over the person's primary address or, if the person has no address, the location where the person is staying. If the person does not reside in Minnesota but

works or attends school in this state, the person shall have an ~~annual~~ in-person contact with the law enforcement authority or authorities with jurisdiction over the person's school or workplace. During the month of the person's birth date, the person shall report to the authority to verify the accuracy of the registration information and to be photographed. Within three days of this contact, the authority shall enter information as required by the bureau into the predatory offender registration database and submit an updated photograph of the person to the bureau's predatory offender registration unit.

(4) If the person fails to mail the completed and signed verification form to the bureau within ten days after receipt of the form, or if the person fails to report to the law enforcement authority during the month of the person's birth date, the person is in violation of this section.

(5) For any person who fails to mail the completed and signed verification form to the bureau within ten days after receipt of the form and who has been determined to be a risk level III offender under section 244.052, the bureau shall immediately investigate and notify local law enforcement authorities to investigate the person's location and to ensure compliance with this section. The bureau also shall immediately give notice of the person's violation of this section to the law enforcement authority having jurisdiction over the person's last registered address or addresses.

For persons required to register under subdivision 1b, paragraph (c), following commitment pursuant to a court commitment under Minnesota Statutes 2012, section 253B.185, chapter 253D, Minnesota Statutes 1992, section 526.10, or a similar law of another state or the United States, the bureau shall comply with clause (1) at least four times each year. For persons who, under section 244.052, are assigned to risk level III and who are no longer under correctional supervision for a registration offense or a failure to register offense, the bureau shall comply with clause (1) at least two times each year. For all other persons required to register under this section, the bureau shall comply with clause (1) each year within 30 days of the anniversary date of the person's initial registration.

(f) When sending out a verification form, the bureau shall determine whether the person to whom the verification form is being sent has signed a written consent form as provided for in paragraph (a). If the person has not signed such a consent form, the bureau shall send a written consent form to the person along with the verification form. A person who receives this written consent form shall sign and return it to the bureau at the same time as the verification form.

Sec. 4. Minnesota Statutes 2013 Supplement, section 243.166, subdivision 6, is amended to read:

Subd. 6. **Registration period.** (a) Notwithstanding the provisions of section 609.165, subdivision 1, and except as provided in paragraphs (b), (c), and (d), a person required to register under this section shall continue to comply with this section until ten years have elapsed since the person initially registered in connection with the offense, or until the probation, supervised release, or conditional release period expires, whichever occurs later. For a person required to register under this section who is committed under section 253B.18, Minnesota Statutes 2012, section 253B.185, or chapter 253D, the ten-year registration period does not include the period of commitment.

(b) If a person required to register under this section fails to provide the person's primary address as required by subdivision 3, paragraph (b), fails to comply with the requirements of subdivision 3a, fails to provide information as required by subdivision 4a, or fails to return the verification form referenced in subdivision 4 within ten days, the commissioner of public safety ~~may~~ shall require the person to continue to register for an additional period of five years. This five-year period is added to the end of the offender's registration period.

(c) If a person required to register under this section is ~~subsequently~~ incarcerated ~~following 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, or conditional release period expires, whichever occurs later.

(d) A person shall continue to comply with this section for the life of that person:

(1) if the person is convicted of or adjudicated delinquent for any offense for which registration is required under subdivision 1b, or any offense from another state or any federal offense similar to the offenses described in subdivision 1b, and the person has a prior conviction or adjudication for an offense for which registration was or would have been required under subdivision 1b, or an offense from another state or a federal offense similar to an offense described in subdivision 1b;

(2) if the person is required to register based upon a conviction or delinquency adjudication for an offense under section 609.185, paragraph (a), clause (2), or a similar statute from another state or the United States;

(3) if the person is required to register based upon a conviction for an offense under section 609.342, subdivision 1, paragraph (a), (c), (d), (e), (f), or (h); 609.343, subdivision 1, paragraph (a), (c), (d), (e), (f), or (h); 609.344, subdivision 1, paragraph (a), (c), or (g); or 609.345, subdivision 1, paragraph (a), (c), or (g); or a statute from another state or the United States similar to the offenses described in this clause; or

(4) if the person is required to register under subdivision 1b, paragraph (c), following commitment pursuant to a court commitment under Minnesota Statutes 2012, section 253B.185, chapter 253D, Minnesota Statutes 1992, section 526.10, or a similar law of another state or the United States.

(e) A person described in subdivision 1b, paragraph (b), who is required to register under the laws of a state in which the person has been previously convicted or adjudicated delinquent, shall register under this section for the time period required by the state of conviction or adjudication unless a longer time period is required elsewhere in this section.

Sec. 5. Minnesota Statutes 2012, section 609.344, subdivision 1, is amended to read:

Subdivision 1. **Crime defined.** A person who engages in sexual penetration with another person is guilty of criminal sexual conduct in the third degree if any of the following circumstances exists:

(a) the complainant is under 13 years of age and the actor is no more than 36 months older than the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant shall be a defense;

(b) the complainant is at least 13 but less than 16 years of age and the actor is more than 24 months older than the complainant. In any such case if the actor is no more than 120 months older than the complainant, it shall be an affirmative defense, which must be proved by a preponderance of the evidence, that the actor reasonably believes the complainant to be 16 years of age or older. In all other cases, mistake as to the complainant's age shall not be a defense. ~~If the actor in such a case is no more than 48 months but more than 24 months older than the complainant, the actor may be sentenced to imprisonment for not more than five years.~~ Consent by the complainant is not a defense;

(c) the actor uses force or coercion to accomplish the penetration;

(d) the actor knows or has reason to know that the complainant is mentally impaired, mentally incapacitated, or physically helpless;

(e) the complainant is at least 16 but less than 18 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

(f) the actor has a significant relationship to the complainant and the complainant was at least 16 but under 18 years of age at the time of the sexual penetration. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

(g) the actor has a significant relationship to the complainant, the complainant was at least 16 but under 18 years of age at the time of the sexual penetration, and:

10.1 (i) the actor or an accomplice used force or coercion to accomplish the penetration;
10.2 (ii) the complainant suffered personal injury; or
10.3 (iii) the sexual abuse involved multiple acts committed over an extended period of
10.4 time.

10.5 Neither mistake as to the complainant's age nor consent to the act by the complainant
10.6 is a defense;

10.7 (h) the actor is a psychotherapist and the complainant is a patient of the
10.8 psychotherapist and the sexual penetration occurred:

10.9 (i) during the psychotherapy session; or

10.10 (ii) outside the psychotherapy session if an ongoing psychotherapist-patient
10.11 relationship exists.

10.12 Consent by the complainant is not a defense;

10.13 (i) the actor is a psychotherapist and the complainant is a former patient of the
10.14 psychotherapist and the former patient is emotionally dependent upon the psychotherapist;

10.15 (j) the actor is a psychotherapist and the complainant is a patient or former patient
10.16 and the sexual penetration occurred by means of therapeutic deception. Consent by the
10.17 complainant is not a defense;

10.18 (k) the actor accomplishes the sexual penetration by means of deception or false
10.19 representation that the penetration is for a bona fide medical purpose. Consent by the
10.20 complainant is not a defense;

10.21 (l) the actor is or purports to be a member of the clergy, the complainant is not
10.22 married to the actor, and:

10.23 (i) the sexual penetration occurred during the course of a meeting in which the
10.24 complainant sought or received religious or spiritual advice, aid, or comfort from the
10.25 actor in private; or

10.26 (ii) the sexual penetration occurred during a period of time in which the complainant
10.27 was meeting on an ongoing basis with the actor to seek or receive religious or spiritual
10.28 advice, aid, or comfort in private. Consent by the complainant is not a defense;

10.29 (m) the actor is an employee, independent contractor, or volunteer of a state, county,
10.30 city, or privately operated adult or juvenile correctional system, or secure treatment
10.31 facility, or treatment facility providing services to clients civilly committed as mentally
10.32 ill and dangerous, sexually dangerous persons, or sexual psychopathic personalities,
10.33 including, but not limited to, jails, prisons, detention centers, or work release facilities, and
10.34 the complainant is a resident of a facility or under supervision of the correctional system.
10.35 Consent by the complainant is not a defense;

11.1 (n) the actor provides or is an agent of an entity that provides special transportation
11.2 service, the complainant used the special transportation service, and the sexual penetration
11.3 occurred during or immediately before or after the actor transported the complainant.
11.4 Consent by the complainant is not a defense; or

11.5 (o) the actor performs massage or other bodywork for hire, the complainant was a
11.6 user of one of those services, and nonconsensual sexual penetration occurred during or
11.7 immediately before or after the actor performed or was hired to perform one of those
11.8 services for the complainant.

11.9 Sec. 6. Minnesota Statutes 2012, section 609.344, subdivision 2, is amended to read:

11.10 Subd. 2. **Penalty.** Except as otherwise provided in section 609.3455, a person
11.11 convicted under subdivision 1 may be sentenced:

11.12 (1) to imprisonment for not more than 15 years or to a payment of a fine of not
11.13 more than \$30,000, or both; or

11.14 (2) if the person was convicted under subdivision 1, paragraph (b), and if the actor
11.15 was no more than 48 months but more than 24 months older than the complainant, to
11.16 imprisonment for not more than five years or a fine of not more than \$30,000, or both.

11.17 A person convicted under this section is also subject to conditional release under
11.18 section 609.3455.