

SENATE
STATE OF MINNESOTA
EIGHTY-NINTH SESSION

S.F. No. 994

(SENATE AUTHORS: LATZ and Dibble)

| DATE | D-PG | OFFICIAL STATUS |
|------------|-----------------------|---|
| 02/19/2015 | 367 | Introduction and first reading Referred to Judiciary |
| 03/16/2015 | 874a 893 | Comm report: To pass as amended Second reading |
| 04/01/2016 | 4868 5440a 5457 | Rule 47, returned to Judiciary Comm report: To pass as amended Second reading |

A bill for an act

relating to juvenile justice; addressing numerous issues relating to juveniles including risk assessments, alternatives to arrest, use of restraints, and sentencing; amending Minnesota Statutes 2014, sections 244.05, subdivision 4; 260B.125, by adding a subdivision; 260B.130, subdivision 4; 260B.176, by adding a subdivision; 609.106, by adding a subdivision; 609.3455, subdivision 2; Minnesota Statutes 2015 Supplement, sections 244.05, subdivision 5; 609.106, subdivision 2; proposing coding for new law in Minnesota Statutes, chapter 260B.

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

ARTICLE 1

JUVENILE PROCEEDINGS

Section 1. **[260B.008] USE OF RESTRAINTS.**

(a) As used in this section, "restraints" means a mechanical or other device that constrains the movement of a person's body or limbs.

(b) Restraints may not be used on a child appearing in court in a proceeding under this chapter unless the court finds that:

(1) the use of restraints is necessary:

(i) to prevent physical harm to the child or another; or

(ii) to prevent the child from fleeing in situations in which the child presents a substantial risk of flight from the courtroom; and

(2) there are no less restrictive alternatives to restraints that will prevent flight or physical harm to the child or another, including, but not limited to, the presence of court personnel, law enforcement officers, or bailiffs.

The finding in clause (1), item (i), may be based, among other things, on the child having a history of disruptive courtroom behavior or behavior while in custody for any current

2.1 or prior offense that has placed others in potentially harmful situations, or presenting a
 2.2 substantial risk of inflicting physical harm on the child or others as evidenced by past
 2.3 behavior. The court may take into account the physical structure of the courthouse in
 2.4 assessing the applicability of the above factors to the individual child.

2.5 (c) The court shall be provided the child's behavior history and shall provide the child
 2.6 an opportunity to be heard in person or through counsel before ordering the use of restraints.
 2.7 If restraints are ordered, the court shall make findings of fact in support of the order.

2.8 Sec. 2. **[260B.1755] ALTERNATIVE TO ARREST OF CERTAIN JUVENILE**
 2.9 **OFFENDERS AUTHORIZED.**

2.10 (a) A peace officer may refer a child that the officer has the lawful authority to arrest
 2.11 or has arrested to a program that the law enforcement agency with jurisdiction over the
 2.12 child deems appropriate.

2.13 (b) This section does not apply to violent felony offenses or to peace officers acting
 2.14 pursuant to an order or warrant described in section 260B.175, subdivision 1, paragraph
 2.15 (a), or other court order to take a child into custody.

2.16 (c) A program authorized by this section may defer prosecution of juvenile offenders
 2.17 who agree to complete appropriate conditions. Upon completion of the conditions, the
 2.18 charge shall be dismissed. Both petty offenders and delinquents are eligible for referrals
 2.19 under this section.

2.20 Sec. 3. **RULE SUPERSEDED.**

2.21 Minnesota Rules of Juvenile Procedure, rule 2.03, subdivision 1, is superseded to
 2.22 the extent it conflicts with section 1.

2.23 Sec. 4. **COMPLIANCE WITH JUVENILE RESTRAINT PROVISION.**

2.24 By July 1, 2017, each judicial district shall develop a protocol to address how to
 2.25 implement and comply with section 1. In developing the protocol, a district shall consult
 2.26 with law enforcement agencies, prosecutors, and public defenders within the district, as
 2.27 well as any other entity deemed necessary by the district's chief judge.

2.28 **ARTICLE 2**

2.29 **SENTENCES**

2.30 Section 1. **LEGISLATIVE FINDINGS AND INTENT.**

2.31 The legislature finds that emerging research on brain development indicates that
 2.32 adolescent brains, and thus adolescent intellectual and emotional capabilities, differ

3.1 significantly from those of mature adults. It is appropriate to take these differences into
3.2 consideration when sentencing extended jurisdiction juveniles and juveniles tried as
3.3 adults. The legislature further finds that requiring mandatory minimum sentences for these
3.4 juveniles prevents judges from taking these differences into consideration in appropriate
3.5 circumstances. The legislature intends to eliminate the nondiscretionary application of
3.6 mandatory minimum sentences to extended jurisdiction juveniles and to juveniles tried as
3.7 adults while continuing to apply all other adult sentencing provisions to these juveniles.

3.8 Sec. 2. Minnesota Statutes 2014, section 244.05, subdivision 4, is amended to read:

3.9 Subd. 4. **Minimum imprisonment, life sentence.** (a) An inmate serving a
3.10 mandatory life sentence under section 609.106, subdivision 2, or 609.3455, subdivision 2,
3.11 paragraph (a), must not be given supervised release under this section.

3.12 (b) Except as provided in paragraph (f), an inmate serving a mandatory life sentence
3.13 under section 609.185, clause (3), (5), or (6); or Minnesota Statutes 2004, section 609.109,
3.14 subdivision 3, must not be given supervised release under this section without having
3.15 served a minimum term of 30 years.

3.16 (c) An inmate serving a mandatory life sentence under section 609.385 must not
3.17 be given supervised release under this section without having served a minimum term of
3.18 imprisonment of 17 years.

3.19 (d) An inmate serving a mandatory life sentence under section 609.3455, subdivision
3.20 3 or 4, must not be given supervised release under this section without having served the
3.21 minimum term of imprisonment specified by the court in its sentence.

3.22 (e) An inmate serving a mandatory life sentence under section 609.106, subdivision
3.23 3, or 609.3455, subdivision 2, paragraph (c), must not be given supervised release under
3.24 this section without having served a minimum term of imprisonment of 20 years.

3.25 (f) An inmate serving a mandatory life sentence for a crime described in paragraph
3.26 (b) who was under 18 years of age at the time of the commission of the offense requiring
3.27 the life sentence, and who was certified under section 260B.125 or designated an extended
3.28 jurisdiction juvenile under section 260B.130, must not be given supervised release under
3.29 this section without having served a minimum term of imprisonment of 20 years.

3.30 Sec. 3. Minnesota Statutes 2015 Supplement, section 244.05, subdivision 5, is
3.31 amended to read:

3.32 Subd. 5. **Supervised release, life sentence.** (a) The commissioner of corrections
3.33 may, under rules promulgated by the commissioner, give supervised release to an inmate
3.34 serving a mandatory life sentence under section 609.185, paragraph (a), clause (3), (5), or

4.1 (6); 609.106, subdivision 3; 609.3455, subdivision 2, paragraph (c), 3, or 4; 609.385; or
4.2 Minnesota Statutes 2004, section 609.109, subdivision 3, after the inmate has served the
4.3 minimum term of imprisonment specified in subdivision 4.

4.4 (b) The commissioner shall require the preparation of a community investigation
4.5 report and shall consider the findings of the report when making a supervised release
4.6 decision under this subdivision. The report shall reflect the sentiment of the various
4.7 elements of the community toward the inmate, both at the time of the offense and at the
4.8 present time. The report shall include the views of the sentencing judge, the prosecutor,
4.9 any law enforcement personnel who may have been involved in the case, and any
4.10 successors to these individuals who may have information relevant to the supervised
4.11 release decision. The report shall also include the views of the victim and the victim's
4.12 family unless the victim or the victim's family chooses not to participate.

4.13 (c) The commissioner shall make reasonable efforts to notify the victim, in advance,
4.14 of the time and place of the inmate's supervised release review hearing. The victim has
4.15 a right to submit an oral or written statement at the review hearing. The statement may
4.16 summarize the harm suffered by the victim as a result of the crime and give the victim's
4.17 recommendation on whether the inmate should be given supervised release at this time.
4.18 The commissioner must consider the victim's statement when making the supervised
4.19 release decision.

4.20 (d) When considering whether to give supervised release to an inmate serving a life
4.21 sentence under section 609.3455, subdivision 3 or 4, the commissioner shall consider, at
4.22 a minimum, the following: the risk the inmate poses to the community if released, the
4.23 inmate's progress in treatment, the inmate's behavior while incarcerated, psychological
4.24 or other diagnostic evaluations of the inmate, the inmate's criminal history, and any
4.25 other relevant conduct of the inmate while incarcerated or before incarceration. The
4.26 commissioner may not give supervised release to the inmate unless:

4.27 (1) while in prison:

4.28 (i) the inmate has successfully completed appropriate sex offender treatment;

4.29 (ii) the inmate has been assessed for chemical dependency needs and, if appropriate,
4.30 has successfully completed chemical dependency treatment; and

4.31 (iii) the inmate has been assessed for mental health needs and, if appropriate, has
4.32 successfully completed mental health treatment; and

4.33 (2) a comprehensive individual release plan is in place for the inmate that ensures
4.34 that, after release, the inmate will have suitable housing and receive appropriate aftercare
4.35 and community-based treatment. The comprehensive plan also must include a postprison
4.36 employment or education plan for the inmate.

5.1 (e) As used in this subdivision, "victim" means the individual who suffered harm as
5.2 a result of the inmate's crime or, if the individual is deceased, the deceased's surviving
5.3 spouse or next of kin.

5.4 Sec. 4. Minnesota Statutes 2014, section 260B.125, is amended by adding a
5.5 subdivision to read:

5.6 Subd. 11. **Applicability of mandatory minimum sentences.** Notwithstanding
5.7 any other law to the contrary, when a person who has been convicted of an offense that
5.8 has been certified under this section is sentenced, the sentencing court is not required
5.9 to sentence the person under the terms of a mandatory minimum sentence that would
5.10 otherwise be applicable to the offense.

5.11 Sec. 5. Minnesota Statutes 2014, section 260B.130, subdivision 4, is amended to read:

5.12 Subd. 4. **Disposition.** (a) If an extended jurisdiction juvenile prosecution results in a
5.13 guilty plea or finding of guilt, the court shall:

5.14 (1) impose one or more juvenile dispositions under section 260B.198; and

5.15 (2) impose an adult criminal sentence, the execution of which shall be stayed on
5.16 the condition that the offender not violate the provisions of the disposition order and
5.17 not commit a new offense.

5.18 (b) If a child prosecuted as an extended jurisdiction juvenile after designation by
5.19 the prosecutor in the delinquency petition is convicted of an offense after trial that is not
5.20 an offense described in subdivision 1, clause (2), the court shall adjudicate the child
5.21 delinquent and order a disposition under section 260B.198. If the extended jurisdiction
5.22 juvenile proceeding results in a guilty plea for an offense not described in subdivision 1,
5.23 clause (2), the court may impose a disposition under paragraph (a) if the child consents.

5.24 (c) Notwithstanding any other law to the contrary, when imposing an adult sentence
5.25 under paragraph (a), clause (2), the court is not required to sentence the child under the
5.26 terms of a mandatory minimum sentence that would otherwise be applicable to the offense.

5.27 Sec. 6. Minnesota Statutes 2015 Supplement, section 609.106, subdivision 2, is
5.28 amended to read:

5.29 Subd. 2. **Life without release.** Except as provided in subdivision 3, the court shall
5.30 sentence a person to life imprisonment without possibility of release under the following
5.31 circumstances:

5.32 (1) the person is convicted of first-degree murder under section 609.185, paragraph
5.33 (a), clause (1), (2), (4), or (7);

6.1 (2) the person is convicted of committing first-degree murder in the course of a
6.2 kidnapping under section 609.185, paragraph (a), clause (3); or

6.3 (3) the person is convicted of first-degree murder under section 609.185, paragraph
6.4 (a), clause (3), (5), or (6), and the court determines on the record at the time of sentencing
6.5 that the person has one or more previous convictions for a heinous crime.

6.6 Sec. 7. Minnesota Statutes 2014, section 609.106, is amended by adding a subdivision
6.7 to read:

6.8 Subd. 3. **Offender under age 18; life imprisonment with possibility of release.** If
6.9 the defendant was under 18 years of age at the time of the commission of an offense that
6.10 would require a life without release sentence under subdivision 2, and the child has been
6.11 certified under section 260B.125 or designated an extended jurisdiction juvenile under
6.12 section 260B.130, the court shall sentence the defendant to imprisonment for life.

6.13 Sec. 8. Minnesota Statutes 2014, section 609.3455, subdivision 2, is amended to read:

6.14 Subd. 2. **Mandatory life sentence without release; egregious first-time and**
6.15 **repeat offenders.** (a) Except as provided in paragraph (c), notwithstanding the statutory
6.16 maximum penalty otherwise applicable to the offense, the court shall sentence a person
6.17 convicted under section 609.342, subdivision 1, paragraph (c), (d), (e), (f), or (h); or
6.18 609.343, subdivision 1, paragraph (c), (d), (e), (f), or (h), to life without the possibility of
6.19 release if:

6.20 (1) the fact finder determines that two or more heinous elements exist; or

6.21 (2) the person has a previous sex offense conviction for a violation of section
6.22 609.342, 609.343, or 609.344, and the fact finder determines that a heinous element exists
6.23 for the present offense.

6.24 (b) A fact finder may not consider a heinous element if it is an element of the
6.25 underlying specified violation of section 609.342 or 609.343. In addition, when
6.26 determining whether two or more heinous elements exist, the fact finder may not use the
6.27 same underlying facts to support a determination that more than one element exists.

6.28 (c) If the defendant was under 18 years of age at the time of the commission of an
6.29 offense that would require a life without release sentence under paragraph (a), and the child
6.30 has been certified under section 260B.125 or designated an extended jurisdiction juvenile
6.31 under section 260B.130, the court shall sentence the defendant to imprisonment for life.

6.32 Sec. 9. **EFFECTIVE DATE; RETROACTIVITY.**

7.1 Sections 2, 3, 6, 7, and 8 are effective the day following final enactment and apply to
 7.2 offenders sentenced on or after that date, and also retroactively to offenders sentenced to
 7.3 life without release before that date.

7.4 **ARTICLE 3**

7.5 **RISK ASSESSMENTS**

7.6 Section 1. Minnesota Statutes 2014, section 260B.176, is amended by adding a
 7.7 subdivision to read:

7.8 Subd. 1a. **Risk assessment instrument.** A person making a release decision
 7.9 under subdivision 1 shall use an objective and racially, ethnically, and gender-responsive
 7.10 juvenile detention risk assessment instrument developed by the commissioner, county,
 7.11 group of counties, or judicial district, in consultation with individuals associated with the
 7.12 Minnesota Juvenile Detention Alternative Initiative. The risk assessment instrument must
 7.13 assess the likelihood that a child released from preadjudication detention under section
 7.14 260B.176 or 260B.178 would endanger others or not return for a court hearing. The
 7.15 instrument must identify the appropriate setting for a child who might endanger others
 7.16 or not return for a court hearing pending adjudication, with either continued detention or
 7.17 placement in a noncustodial community-based supervision setting. The instrument must
 7.18 also identify the type of noncustodial community-based supervision setting necessary to
 7.19 minimize the risk that a child who is released from custody will endanger others or not
 7.20 return for a court hearing.

7.21 **EFFECTIVE DATE.** This section is effective January 1, 2017.

7.22 Sec. 2. **ADOPTION OF JUVENILE DETENTION RISK ASSESSMENT**
 7.23 **INSTRUMENT.**

7.24 Subdivision 1. **Adoption required.** By September 15, 2016, the commissioner
 7.25 of corrections shall adopt an objective and racially, ethnically, and gender-responsive
 7.26 juvenile detention risk assessment instrument.

7.27 Subd. 2. **Consultation required.** In adopting the risk assessment instrument
 7.28 required in subdivision 1, the commissioner shall consult and collaborate with the
 7.29 commissioners of public safety and human services, individuals associated with the
 7.30 Minnesota Juvenile Detention Alternative Initiative, and individuals throughout the state
 7.31 who are knowledgeable in matters relating to the detention and treatment of juvenile
 7.32 offenders and at-risk juveniles including, but not limited to, individuals from the courts,
 7.33 probation, law enforcement, prosecutorial offices, public defender's offices, communities

8.1 of color, social services, juvenile detention and shelter care facilities, and juvenile
8.2 residential treatment and correctional facilities. The commissioner shall also review
8.3 similar risk assessment instruments in use both inside and outside of the state.

APPENDIX
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