

Signed by the governor April 4, 1989, 2:03 p.m.

CHAPTER 20—H.F.No. 27

An act relating to crimes; expanding the definition of "substantial bodily harm" in the crime of second degree assault of an unborn child to include premature birth; amending Minnesota Statutes 1988, section 609.2671.

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

Section 1. Minnesota Statutes 1988, section 609.2671, is amended to read:

609.2671 ASSAULT OF AN UNBORN CHILD IN THE SECOND DEGREE.

Whoever assaults a pregnant woman and inflicts substantial bodily harm on an unborn child who is subsequently born alive 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.

As used in this section, "substantial bodily harm" includes the birth of the unborn child prior to 37 weeks gestation if the child weighs 2,500 grams or less at the time of birth. "Substantial bodily harm" does not include the inducement of the unborn child's birth when done for bona fide medical purposes.

Sec. 2. EFFECTIVE DATE.

Section 1 is effective August 1, 1989, and applies to crimes committed on or after that date.

Presented to the governor April 3, 1989

Signed by the governor April 4, 1989, 2:02 p.m.

CHAPTER 21—H.F.No. 14

An act relating to crimes; restitution; revising current procedures relating to the ordering and collection of restitution; amending Minnesota Statutes 1988, sections 260.185, subdivisions 1 and 3a; 609.135, subdivision 1a; 611A.04, subdivisions 1, 2, and 3; and 611A.045; proposing coding for new law in Minnesota Statutes, chapter 611A.

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

Section 1. Minnesota Statutes 1988, section 260.185, subdivision 1, is amended to read:

New language is indicated by underline, deletions by ~~strikeout~~.

Subdivision 1. If the court finds that the child is delinquent, it shall enter an order making any of the following dispositions of the case which are deemed necessary to the rehabilitation of the child:

- (a) Counsel the child or the parents, guardian, or custodian;
- (b) Place the child under the supervision of a probation officer or other suitable person in the child's own home under conditions prescribed by the court including reasonable rules for conduct and the conduct of the child's parents, guardian, or custodian, designed for the physical, mental, and moral well-being and behavior of the child, or with the consent of the commissioner of corrections, in a group foster care facility which is under the management and supervision of said commissioner;
- (c) Subject to the supervision of the court, transfer legal custody of the child to one of the following:
 - (1) A child placing agency; or
 - (2) The county welfare board; or
 - (3) A reputable individual of good moral character. No person may receive custody of two or more unrelated children unless licensed as a residential facility pursuant to sections 245.781 to 245.812; or
 - (4) ~~Except for children found to be delinquent as defined in section 260.015, subdivision 5, clauses (e) and (d),~~ A county home school, if the county maintains a home school or enters into an agreement with a county home school; or
 - (5) A county probation officer for placement in a group foster home established under the direction of the juvenile court and licensed pursuant to section 241.021;
 - (d) ~~Except for children found to be delinquent as defined in section 260.015, subdivision 5, clauses (e) and (d),~~ Transfer legal custody by commitment to the commissioner of corrections;
 - (e) If the child is found to have violated a state or local law or ordinance which has resulted in damage to the person or property of another, the court may order the child to make reasonable restitution for such damage;
 - (f) Require the child to pay a fine of up to \$700; the court shall order payment of the fine in accordance with a time payment schedule which shall not impose an undue financial hardship on the child;
 - (g) If the child is in need of special treatment and care for reasons of physical or mental health, the court may order the child's parent, guardian, or custodian to provide it. If the parent, guardian, or custodian fails to provide this treatment or care, the court may order it provided;

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(h) If the court believes that it is in the best interests of the child and of public safety that the driver's license of the child be canceled until the child's 18th birthday, the court may recommend to the commissioner of public safety the cancellation of the child's license for any period up to the child's 18th birthday, and the commissioner is hereby authorized to cancel such license without a hearing. At any time before the termination of the period of cancellation, the court may, for good cause, recommend to the commissioner of public safety that the child be authorized to apply for a new license, and the commissioner may so authorize.

Any order for a disposition authorized under this section shall contain written findings of fact to support the disposition ordered, and shall also set forth in writing the following information:

(a) Why the best interests of the child are served by the disposition ordered; and

(b) What alternative dispositions were considered by the court and why such dispositions were not appropriate in the instant case.

~~This subdivision applies to dispositions of juveniles found to be delinquent as defined in section 260.015, subdivision 5, clause (e) or (d) made prior to, on, or after January 1, 1978.~~

Sec. 2. Minnesota Statutes 1988, section 260.185, subdivision 3a, is amended to read:

Subd. 3a. **ENFORCEMENT OF RESTITUTION ORDERS.** If the court orders payment of restitution ~~as a condition of probation~~ and the child fails to pay the restitution ~~ordered before 60 days before the term of probation expires in accordance with the payment schedule or structure established by the court or the probation officer~~, the child's probation officer ~~shall may, on the officer's own motion or at the request of the victim~~, file a petition for violation of probation or ~~shall~~ ask the court to hold a hearing to determine whether the conditions of probation should be changed. The child's probation officer shall ask for the hearing if the restitution ordered has not been paid prior to 60 days before the term of probation expires. The court shall schedule and hold this hearing before the child's term of probation expires.

Sec. 3. Minnesota Statutes 1988, section 609.135, subdivision 1a, is amended to read:

Subd. 1a. **FAILURE TO PAY RESTITUTION.** If the court orders payment of restitution as a condition of probation and if the defendant fails to pay the restitution ~~ordered prior to 60 days before the term of probation expires in accordance with the payment schedule or structure established by the court or the probation officer~~, the defendant's probation officer ~~shall may, on the officer's own motion or at the request of the victim~~, ask the court to hold a hearing to determine whether or not the conditions of probation should be changed or

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probation should be revoked. The defendant's probation officer shall ask for the hearing if the restitution ordered has not been paid prior to 60 days before the term of probation expires. The court shall schedule and hold this hearing and take appropriate action before the defendant's term of probation expires.

Sec. 4. Minnesota Statutes 1988, section 611A.04, subdivision 1, is amended to read:

Subdivision 1. **REQUEST; DECISION.** (a) A victim of a crime has the right to request that restitution be considered as part of the disposition of a criminal charge or juvenile delinquency proceeding against the offender. The request for restitution shall be made by the victim in writing in affidavit form; describing. The request must describe the items or elements of loss and itemizing, itemize the total dollar amounts of restitution claimed, and specify the reasons justifying these amounts, if the request is for monetary or property restitution. A request for restitution may include, but is not limited to, any out-of-pocket losses resulting from the crime, including medical and therapy costs, replacement of wages and services, and funeral expenses. In order to be considered by the court, the request must be received by the court administrator of the appropriate court at least three business days before the sentencing or dispositional hearing. The court administrator shall provide copies of this request to the prosecutor and the offender at least 24 hours before the sentencing or dispositional hearing.

(b) The court may amend or issue an order of restitution after the sentencing or dispositional hearing if:

- (1) the offender is on probation or supervised release;
- (2) a request for restitution is filed by the victim or prosecutor in affidavit form as required under paragraph (a); and
- (3) the true extent of the victim's loss was not known at the time of the sentencing or dispositional hearing.

If the court holds a hearing on the restitution request, the court must notify the offender, the offender's attorney, the victim, and the prosecutor at least five business days before the hearing. The court's restitution decision is governed by this section and section 611A.045.

(c) The court shall grant or deny restitution or partial restitution and shall state on the record its reasons for its decision on restitution if a request for restitution has been made. If the court grants partial restitution it shall also specify the full amount of restitution that may be docketed as a civil judgment under subdivision 3. The court may not require that the victim waive or otherwise forfeit any rights or causes of action as a condition of granting restitution or partial restitution.

Sec. 5. Minnesota Statutes 1988, section 611A.04, subdivision 2, is amended to read:

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Subd. 2. **PROCEDURES.** The offender shall make restitution payments to the court administrator of the county, municipal, or district court of the county in which the restitution is to be paid. The court administrator shall disburse restitution in incremental payments and may not keep a restitution payment for longer than 30 days. The court administrator shall keep records of the amount of restitution ordered in each case, any change made to the restitution order, and the amount of restitution actually paid by the offender. The court administrator shall forward the data collected to the state court administrator who shall compile the data and make it available to the supreme court and the legislature upon request.

Sec. 6. Minnesota Statutes 1988, section 611A.04, subdivision 3, is amended to read:

Subd. 3. **EFFECT OF ORDER FOR RESTITUTION.** An order of restitution may be enforced by any person named in the order to receive the restitution in the same manner as a judgment in a civil action. An order of restitution shall be docketed as a civil judgment by the court administrator of the district court in the county in which the order of restitution was entered. A juvenile court is not required to appoint a guardian ad litem for a juvenile offender before docketing a restitution order. Interest shall accrue on the unpaid balance of the judgment as provided in section 549.09. A decision for or against restitution in any criminal or juvenile proceeding is not a bar to any civil action by the victim or by the state pursuant to section 611A.61 against the offender. The offender shall be given credit, in any order for judgment in favor of a victim in a civil action, for any restitution paid to the victim for the same injuries for which the judgment is awarded.

Sec. 7. Minnesota Statutes 1988, section 611A.045, is amended to read:

611A.045 PROCEDURE FOR ISSUING ORDER OF RESTITUTION.

Subdivision 1. **CRITERIA.** The court, in determining whether to order restitution and the amount of the restitution, shall consider ~~the amount of the economic loss sustained by the victim as a result of the offense~~ the following factors:

(1) the amount of economic loss sustained by the victim as a result of the offense; and

(2) the income, resources, and obligations of the defendant.

Subd. 2. **PRESENTENCE INVESTIGATION.** ~~The court may order that the presentence investigation report made pursuant to section 609.115, subdivision 1, must~~ contain information pertaining to the factors set forth in subdivision 1.

Subd. 2a. PAYMENT STRUCTURE. The court shall include in every restitution order a provision requiring a payment schedule or structure. The court may assign the responsibility for developing the schedule or structure to

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the court administrator, a probation officer, or another designated person. The person who develops the payment schedule or structure shall consider relevant information supplied by the defendant. If the defendant is placed on supervised probation, the payment schedule or structure must be incorporated into the probation agreement and must provide that the obligation to pay restitution continues throughout the term of probation. If the defendant is not placed on probation, the structure or schedule must provide that the obligation to pay restitution begins no later than 60 days after the restitution order is issued.

Subd. 3. **DISPUTE; EVIDENTIARY BURDEN.** A dispute as to the proper amount or type of restitution must be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense and the appropriateness of a particular type of restitution is on the prosecution.

Sec. 8. [611A.046] VICTIM'S RIGHT TO REQUEST PROBATION REVIEW HEARING.

A victim has the right to ask the offender's probation officer to request a probation review hearing if the offender fails to pay restitution as required in a restitution order.

Presented to the governor April 3, 1989

Signed by the governor April 4, 1989, 2:01 p.m.

CHAPTER 22—H.F.No. 410

An act relating to public safety; defining high pressure piping; regulating the practice of pipefitting; amending Minnesota Statutes 1988, section 326.461, subdivision 2.

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

Section 1. Minnesota Statutes 1988, section 326.461, subdivision 2, is amended to read:

Subd. 2. **HIGH PRESSURE PIPING.** "High pressure piping" means all high pressure piping used in the installation of hot water or steam heating boilers, any systems of piping hot water or other medium used for heating that exceed 30 p.s.i. gauge and 250 degrees Fahrenheit, or any system of high pressure steam or ammonia piping, but shall not include any high pressure piping under the direct jurisdiction of the United States.

Presented to the governor April 5, 1989

Signed by the governor April 6, 1989, 8:32 a.m.

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