

Signed by the governor May 27, 1993, 4:26 p.m.

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CHAPTER 5—H.F.No. 3

*An act relating to crime; clarifying certain sentencing provisions relating to repeat violators of the domestic abuse or harassment crimes; correcting an erroneous cross reference; amending Minnesota Statutes 1992, sections 518B.01, subdivision 14, as amended; 609.224, subdivisions 2, as amended, 4, as added; 609.748, subdivision 6, as amended; and Laws 1993, chapter 326, article 2, section 22, subdivision 4.*

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

Section 1. Minnesota Statutes 1992, section 518B.01, subdivision 14, as amended by Laws 1993, chapter 326, article 2, section 9, is amended to read:

Subd. 14. **VIOLATION OF AN ORDER FOR PROTECTION.** (a) Whenever an order for protection is granted pursuant to this section, and the respondent or person to be restrained knows of the order, violation of the order for protection is a misdemeanor. Upon conviction, the defendant must be sentenced to a minimum of three days imprisonment and must be ordered to participate in counseling or other appropriate programs selected by the court. If the court stays imposition or execution of the jail sentence and the defendant refuses or fails to comply with the court's treatment order, the court must impose and execute the stayed jail sentence. A person is guilty of a gross misdemeanor who violates this paragraph within five years after being discharged from sentence for during the time period between a previous conviction under this paragraph or within five years after being discharged from sentence for a previous conviction under a similar law of another state; is guilty of a gross misdemeanor and the end of the five years following discharge from sentence for that conviction. Upon conviction, the defendant must be sentenced to a minimum of ten days imprisonment and must be ordered to participate in counseling or other appropriate programs selected by the court. Notwithstanding section 609.135, the court must impose and execute the minimum sentence provided in this paragraph for gross misdemeanor convictions.

(b) A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order granted pursuant to this section restraining the person or excluding the person from the residence or the petitioner's place of employment, even if the violation of the order did not take place in the presence of the peace officer, if the existence of the order can be verified by the officer. The person shall be held in custody for at least 36 hours, excluding the day of arrest, Sundays, and holidays, unless the person is released earlier by a judge or judicial officer. A peace officer acting in good faith and exercising due care in making an arrest pursuant

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to this paragraph is immune from civil liability that might result from the officer's actions.

(c) A violation of an order for protection shall also constitute contempt of court and be subject to the penalties therefor.

(d) If the court finds that the respondent has violated an order for protection and that there is reason to believe that the respondent will commit a further violation of the provisions of the order restraining the respondent from committing acts of domestic abuse or excluding the respondent from the petitioner's residence, the court may require the respondent to acknowledge an obligation to comply with the order on the record. The court may require a bond sufficient to deter the respondent from committing further violations of the order for protection, considering the financial resources of the respondent, and not to exceed \$10,000. If the respondent refuses to comply with an order to acknowledge the obligation or post a bond under this paragraph, the court shall commit the respondent to the county jail during the term of the order for protection or until the respondent complies with the order under this paragraph. The warrant must state the cause of commitment, with the sum and time for which any bond is required. If an order is issued under this paragraph, the court may order the costs of the contempt action, or any part of them, to be paid by the respondent. An order under this paragraph is appealable.

(e) Upon the filing of an affidavit by the petitioner, any peace officer, or an interested party designated by the court, alleging that the respondent has violated any order for protection granted pursuant to this section, the court may issue an order to the respondent, requiring the respondent to appear and show cause within 14 days why the respondent should not be found in contempt of court and punished therefor. The hearing may be held by the court in any county in which the petitioner or respondent temporarily or permanently resides at the time of the alleged violation. The court also shall refer the violation of the order for protection to the appropriate prosecuting authority for possible prosecution under paragraph (a).

(f) If it is alleged that the respondent has violated an order for protection issued under subdivision 6 and the court finds that the order has expired between the time of the alleged violation and the court's hearing on the violation, the court may grant a new order for protection under subdivision 6 based solely on the respondent's alleged violation of the prior order, to be effective until the hearing on the alleged violation of the prior order. If the court finds that the respondent has violated the prior order, the relief granted in the new order for protection shall be extended for a fixed period, not to exceed one year.

(g) The admittance into petitioner's dwelling of an abusing party excluded from the dwelling under an order for protection is not a violation by the petitioner of the order for protection.

A peace officer is not liable under section 609.43, clause (1), for a failure to perform a duty required by paragraph (b).

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Sec. 2. Minnesota Statutes 1992, section 609.224, subdivision 2, as amended by Laws 1993, chapter 326, article 2, section 11, is amended to read:

Subd. 2. **GROSS MISDEMEANOR.** (a) Whoever violates the provisions of subdivision 1 against the same victim ~~within five years after being discharged from sentence~~ for during the time period between a previous conviction under this section, sections 609.221 to 609.2231, 609.342 to 609.345, or 609.713, or any similar law of another state, and the end of the five years following discharge from sentence for that conviction, is guilty of a gross misdemeanor and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both. Whoever violates the provisions of subdivision 1 against a family or household member as defined in section 518B.01, subdivision 2, ~~within five years after being discharged from sentence~~ for during the time period between a previous conviction under this section or sections 609.221 to 609.2231, 609.342 to 609.345, or 609.713 against a family or household member, and the end of the five years following discharge from sentence for that conviction is guilty of a gross misdemeanor and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

(b) Whoever violates the provisions of subdivision 1 within two years of a previous conviction under this section or sections 609.221 to 609.2231 or 609.713 is guilty of a gross misdemeanor and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

Sec. 3. Minnesota Statutes 1992, section 609.224, subdivision 4, as added by Laws 1993, chapter 326, article 2, section 12, is amended to read:

Subd. 4. **FELONY.** (a) Whoever violates the provisions of subdivision 1 against the same victim ~~within five years after being discharged from sentence for during the time period between~~ the first of two or more previous convictions under this section or sections 609.221 to 609.2231, 609.342 to 609.345, or 609.713, and the end of the five years following discharge from sentence for that conviction is guilty of a felony and may be sentenced to imprisonment for not more than five years or payment of a fine of not more than \$10,000, or both.

(b) Whoever violates the provisions of subdivision 1 within three years of the first of two or more previous convictions under this section or sections 609.221 to 609.2231 or 609.713 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.

Sec. 4. Minnesota Statutes 1992, section 609.748, subdivision 6, as amended by Laws 1993, chapter 326, article 2, section 19, is amended to read:

Subd. 6. **VIOLATION OF RESTRAINING ORDER.** (a) When a temporary restraining order or a restraining order is granted under this section and the

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respondent knows of the order, violation of the order is a misdemeanor. A person is guilty of a gross misdemeanor who knowingly violates the order ~~within five years after being discharged from sentence for~~ during the time period between a previous conviction under this subdivision; sections 609.221 to 609.224; 518B.01, subdivision 14; 609.713, subdivisions 1 or 3; or 609.749; and the end of the five years following discharge from sentence for that conviction.

(b) A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order issued under subdivision 4 or 5 if the existence of the order can be verified by the officer.

(c) A violation of a temporary restraining order or restraining order shall also constitute contempt of court.

(d) Upon the filing of an affidavit by the petitioner, any peace officer, or an interested party designated by the court, alleging that the respondent has violated an order issued under subdivision 4 or 5, the court may issue an order to the respondent requiring the respondent to appear within 14 days and show cause why the respondent should not be held in contempt of court. The court also shall refer the violation of the order to the appropriate prosecuting authority for possible prosecution under paragraph (a).

Sec. 5. Laws 1993, chapter 326, article 2, section 22, subdivision 4, is amended to read:

Subd. 4. **SECOND OR SUBSEQUENT VIOLATIONS; FELONY.** A person is guilty of a felony who violates any provision of subdivision 2 ~~within ten years after being discharged from sentence for~~ during the time period between a previous conviction under this section; sections 609.221 to 609.224; 518B.01, subdivision 14; 609.748, subdivision 6; or 609.713, subdivision 1; or 3; or 4; ~~or 4;~~ and the end of the ten years following discharge from sentence for that conviction.

Sec. 6. **EFFECTIVE DATE.**

Sections 1 to 5 are effective the day following final enactment and apply to crimes committed on or after that date.

Presented to the governor May 27, 1993

Signed by the governor May 27, 1993, 4:23 p.m.

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