

15, 1998, on options for public and private financing of the construction of low- and moderate-income assisted living housing for senior citizens throughout the state.

Presented to the governor May 2, 1997

Signed by the governor May 6, 1997, 11:25 a.m.

CHAPTER 95—S.F.No. 574

An act relating to game and fish; permitting certain angling assistance without a license; amending Minnesota Statutes 1996, section 97A.441, by adding a subdivision.

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

Section 1. Minnesota Statutes 1996, section 97A.441, is amended by adding a subdivision to read:

Subd. 9. ANGLING ASSISTANCE TO DISABLED RESIDENTS. An individual who is providing angling assistance to a disabled resident licensed under subdivision 1, 4, or 5, is not required to possess a license to take fish by angling provided that no lines in addition to those permitted for an individual under section 97C.315 are in the water.

Presented to the governor May 2, 1997

Signed by the governor May 6, 1997, 11:32 a.m.

CHAPTER 96—H.F.No. 5

An act relating to crime; clarifying the elements of the harassment and stalking crime; increasing the penalties for a violation of a domestic abuse order for protection and a harassment restraining order; adding certain violations of the harassment and stalking law to the list of crimes for which mandatory minimum prison sentences must be imposed; expanding the definition of "pattern of harassing conduct"; clarifying that the application of the sentencing guidelines system is not a right that a defendant may waive; limiting a defendant's right to take an appeal regarding a sentence; requiring a study on the sentencing guidelines; amending Minnesota Statutes 1996, sections 244.09, subdivision 5; 244.11; 518B.01, subdivision 14; 609.11, subdivision 9; 609.748, subdivision 6; and 609.749, subdivisions 1, 2, 5, and by adding a subdivision.

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

Section 1. Minnesota Statutes 1996, section 244.09, subdivision 5, is amended to read:

Subd. 5. The commission shall, ~~on or before January 1, 1980,~~ promulgate sentencing guidelines for the district court. The guidelines shall be based on reasonable offense

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and offender characteristics. The guidelines promulgated by the commission shall be advisory to the district court and shall establish:

- (1) The circumstances under which imprisonment of an offender is proper; and
- (2) A presumptive, fixed sentence for offenders for whom imprisonment is proper, based on each appropriate combination of reasonable offense and offender characteristics. The guidelines may provide for an increase or decrease of up to 15 percent in the presumptive, fixed sentence.

The sentencing guidelines promulgated by the commission may also establish appropriate sanctions for offenders for whom imprisonment is not proper. Any guidelines promulgated by the commission establishing sanctions for offenders for whom imprisonment is not proper shall make specific reference to noninstitutional sanctions, including but not limited to the following: payment of fines, day fines, restitution, community work orders, work release programs in local facilities, community based residential and non-residential programs, incarceration in a local correctional facility, and probation and the conditions thereof.

Although the sentencing guidelines are advisory to the district court, the court shall follow the procedures of the guidelines when it pronounces sentence in a proceeding to which the guidelines apply by operation of statute. Sentencing pursuant to the sentencing guidelines is not a right that accrues to a person convicted of a felony; it is a procedure based on state public policy to maintain uniformity, proportionality, rationality, and predictability in sentencing.

In establishing and modifying the sentencing guidelines, the primary consideration of the commission shall be public safety. The commission shall also consider current sentencing and release practices; correctional resources, including but not limited to the capacities of local and state correctional facilities; and the long-term negative impact of the crime on the community.

The provisions of sections 14.001 to 14.69 do not apply to the promulgation of the sentencing guidelines, and the sentencing guidelines, including severity levels and criminal history scores, are not subject to review by the legislative commission to review administrative rules. However, on or before January 1, 1986, the commission shall adopt rules pursuant to sections 14.001 to 14.69 which establish procedures for the promulgation of the sentencing guidelines, including procedures for the promulgation of severity levels and criminal history scores, and these rules shall be subject to review by the legislative commission to review administrative rules.

Sec. 2. Minnesota Statutes 1996, section 244.11, is amended to read:

244.11 APPELLATE REVIEW OF SENTENCE.

Subdivision 1. GENERALLY. An appeal to the court of appeals may be taken by the defendant or the state from any sentence imposed or stayed by the district court according to the rules of criminal procedure for the district court of Minnesota. Except as otherwise provided in subdivision 3, a dismissal or a resolution of an appeal brought under this section shall not prejudice an appeal brought under any other section or rule.

Subd. 2. PROCEDURE. (a) When an appeal taken under this section is filed, the court administrator of the district court shall certify the transcript of the proceedings and

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any files or records relating to the defendant, the offense, and the sentence imposed or stayed, that the supreme court by rule or order may require.

(b) On an appeal pursuant to this section, the court may review the sentence imposed or stayed to determine whether the sentence is inconsistent with statutory requirements, unreasonable, inappropriate, excessive, unjustifiably disparate, or not warranted by the findings of fact issued by the district court. This review shall be in addition to all other powers of review presently existing. The court may dismiss or affirm the appeal, vacate or set aside the sentence imposed or stayed and direct entry of an appropriate sentence or order further proceedings to be had as the court may direct.

Subd. 3. LIMITATION ON DEFENDANT'S RIGHT TO SEEK SENTENCE MODIFICATION. (a) As used in this subdivision, "appeal" means:

- (1) an appeal of a sentence under Rule 28 of the Rules of Criminal Procedure; and
- (2) an appeal from a denial of a sentence modification motion brought under Rule 27.03, subdivision 9, of the Rules of Criminal Procedure.

(b) If a defendant agrees to a plea agreement and is given a stayed sentence, which is a dispositional departure from the presumptive sentence under the Minnesota sentencing guidelines, the defendant may appeal the sentence only if the appeal is taken:

- (1) within 90 days of the date sentence was pronounced; or
- (2) before the date of any act committed by the defendant resulting in revocation of the stay of sentence;

whichever occurs first.

(c) A defendant who is subject to paragraph (b) who has failed to appeal as provided in that paragraph may not file a petition for postconviction relief under chapter 590 regarding the sentence.

(d) Nothing in this subdivision shall be construed to:

- (1) alter the time period provided for the state to appeal a sentence under Rule 28 of the Rules of Criminal Procedure; or
- (2) affect the court's authority to correct errors under Rule 27.03, subdivision 8, of the Rules of Criminal Procedure.

Subd. 4. RELEASE PENDING APPEAL. This section shall not be construed to confer or enlarge any right of a defendant to be released pending an appeal.

Sec. 3. Minnesota Statutes 1996, section 518B.01, subdivision 14, is amended to read:

Subd. 14. VIOLATION OF AN ORDER FOR PROTECTION. (a) A person who violates an order for protection issued under this section is subject to the penalties provided in paragraphs (b) to (d).

(b) Except as otherwise provided in paragraphs (c) and (d), 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

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a misdemeanor conviction under this paragraph, 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 violation of an order for protection shall also constitute contempt of court and be subject to the penalties provided in chapter 588.

(c) A person is guilty of a gross misdemeanor who knowingly violates this paragraph subdivision during the time period between a previous conviction under this paragraph subdivision; sections 609.221 to 609.224; 609.2242; 609.713, subdivision 1 or 3; 609.748, subdivision 6; 609.749; or a similar law of another state; and the end of the five years following discharge from sentence for that conviction. Upon a gross misdemeanor conviction under this paragraph, 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.

(d) 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 knowingly violates this subdivision:

(1) during the time period between the first of two or more previous convictions under this section or sections 609.221 to 609.224; 609.2242; 609.713, subdivision 1 or 3; 609.748, subdivision 6; 609.749; or a similar law of another state; and the end of the five years following discharge from sentence for that conviction; or

(2) while possessing a dangerous weapon, as defined in section 609.02, subdivision 6.

Upon a felony conviction under this paragraph in which the court stays imposition or execution of sentence, the court shall impose at least a 30-day period of incarceration as a condition of probation. The court also shall order that the defendant 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 felony convictions.

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

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

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(d) (f) 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) (g) 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)~~ (b), (c), or (d).

~~(f)~~ (h) 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, except when the court determines a longer fixed period is appropriate.

~~(g)~~ (i) 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)~~ (e).

~~(h)~~ (j) When a person is convicted of violating an order for protection under this section and the court determines that the person used a firearm in any way during commission of the violation, the court may order that the person is prohibited from possessing any type of firearm for any period longer than three years or for the remainder of the person's life. A person who violates this paragraph is guilty of a gross misdemeanor. At the time of the conviction, the court shall inform the defendant whether and for how long the defendant is prohibited from possessing a firearm and that it is a gross misdemeanor to violate this paragraph. The failure of the court to provide this information to a defendant does not affect the applicability of the firearm possession prohibition or the gross misdemeanor penalty to that defendant.

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~~(j)~~ (k) Except as otherwise provided in paragraph ~~(h)~~ (j), when a person is convicted of violating an order for protection under this section, the court shall inform the defendant that the defendant is prohibited from possessing a pistol for three years from the date of conviction and that it is a gross misdemeanor offense to violate this prohibition. The failure of the court to provide this information to a defendant does not affect the applicability of the pistol possession prohibition or the gross misdemeanor penalty to that defendant.

~~(j)~~ (l) Except as otherwise provided in paragraph ~~(h)~~ (j), a person is not entitled to possess a pistol if the person has been convicted after August 1, 1996, of violating an order for protection under this section, unless three years have elapsed from the date of conviction and, during that time, the person has not been convicted of any other violation of this section. Property rights may not be abated but access may be restricted by the courts. A person who possesses a pistol in violation of this paragraph is guilty of a gross misdemeanor.

~~(k)~~ (m) If the court determines that a person convicted of violating an order for protection under this section owns or possesses a firearm and used it in any way during the commission of the violation, it shall order that the firearm be summarily forfeited under section 609.5316, subdivision 3.

Sec. 4. Minnesota Statutes 1996, section 609.11, subdivision 9, is amended to read:

Subd. 9. **APPLICABLE OFFENSES.** The crimes for which mandatory minimum sentences shall be served as provided in this section are: murder in the first, second, or third degree; assault in the first, second, or third degree; burglary; kidnapping; false imprisonment; manslaughter in the first or second degree; aggravated robbery; simple robbery; criminal sexual conduct under the circumstances described in sections 609.342, subdivision 1, clauses (a) to (f); 609.343, subdivision 1, clauses (a) to (f); and 609.344, subdivision 1, clauses (a) to (e) and (h) to (j); escape from custody; arson in the first, second, or third degree; drive-by shooting under section 609.66, subdivision 1e; harassment and stalking under section 609.749, subdivision 3, clause (3); possession or other unlawful use of a firearm in violation of section 609.165, subdivision 1b, or 624.713, subdivision 1, clause (b), a felony violation of chapter 152; or any attempt to commit any of these offenses.

Sec. 5. Minnesota Statutes 1996, section 609.748, subdivision 6, is amended to read:

Subd. 6. **VIOLETION OF RESTRAINING ORDER.** (a) A person who violates a restraining order issued under this section is subject to the penalties provided in paragraphs (b) to (d).

(b) Except as otherwise provided in paragraphs (c) and (d), when a temporary restraining order or a restraining order is granted under this section and the respondent knows of the order, violation of the order is a misdemeanor.

(c) A person is guilty of a gross misdemeanor who knowingly violates the order during the time period between a previous conviction under this subdivision; sections 609.221 to 609.224; 609.2242; 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.

(d) 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 knowingly violates the order:

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(1) during the time period between the first of two or more previous convictions under this subdivision or sections 518B.01, subdivision 14; 609.221 to 609.224; 609.2242; 609.713, subdivision 1 or 3; 609.749; and the end of the five years following discharge from sentence for that conviction;

(2) because of the victim's or another's actual or perceived race, color, religion, sex, sexual orientation, disability as defined in section 363.01, age, or national origin;

(3) by falsely impersonating another;

(4) while possessing a dangerous weapon;

(5) with an intent to influence or otherwise tamper with a juror or a judicial proceeding or with intent to retaliate against a judicial officer, as defined in section 609.415, or a prosecutor, defense attorney, or officer of the court, because of that person's performance of official duties in connection with a judicial proceeding; or

(6) against a victim under the age of 18, if the respondent is more than 36 months older than the victim.

~~(b)~~ (e) 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.

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

~~(d)~~ (g) 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)~~ (b), (c), or (d).

Sec. 6. Minnesota Statutes 1996, section 609.749, subdivision 1, is amended to read:

Subdivision 1. **DEFINITION.** As used in this section, "harass" means to engage in intentional conduct ~~in a manner that~~ which:

(1) the actor knows or has reason to know would cause a reasonable person the victim under the circumstances to feel frightened, threatened, oppressed, persecuted, or intimidated; and

(2) causes this reaction on the part of the victim.

Sec. 7. Minnesota Statutes 1996, section 609.749, is amended by adding a subdivision to read:

Subd. 1a. **NO PROOF OF SPECIFIC INTENT REQUIRED.** In a prosecution under this section, the state is not required to prove that the actor intended to cause the victim to feel frightened, threatened, oppressed, persecuted, or intimidated, or except as otherwise provided in subdivision 3, clause (4), that the actor intended to cause any other result.

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Sec. 8. Minnesota Statutes 1996, section 609.749, subdivision 2, is amended to read:

Subd. 2. **HARASSMENT AND STALKING CRIMES.** (a) A person who harasses another by committing any of the following acts is guilty of a gross misdemeanor:

- (1) directly or indirectly manifests a purpose or intent to injure the person, property, or rights of another by the commission of an unlawful act;
- (2) stalks, follows, or pursues another;
- (3) returns to the property of another if the actor is without claim of right to the property or consent of one with authority to consent;
- (4) repeatedly makes telephone calls, or induces a victim to make telephone calls to the actor, whether or not conversation ensues;
- (5) makes or causes the telephone of another repeatedly or continuously to ring;
- (6) repeatedly uses the mail mails or delivers or causes the delivery of letters, telegrams, messages, packages, or other objects; or
- (7) engages in any other harassing conduct that interferes with another person or intrudes on the person's privacy or liberty.

(b) The conduct described in paragraph (a), clauses (4) and (5), may be prosecuted either at the place where the any call is either made or where it is received. The conduct described in paragraph (a), clause (6), may be prosecuted either where the mail is deposited or where it is any letter, telegram, message, package, or other object is either sent or received.

Sec. 9. Minnesota Statutes 1996, section 609.749, subdivision 5, is amended to read:

Subd. 5. **PATTERN OF HARASSING CONDUCT.** (a) A person who engages in a pattern of harassing conduct with respect to a single victim or one or more members of a single household ~~in a manner that which the actor knows or has reason to know would cause a reasonable person the victim under the circumstances to feel terrorized or to fear bodily harm and that which does cause this reaction on the part of the victim, is guilty of a felony and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both.~~

(b) For purposes of this subdivision, a "pattern of harassing conduct" means two or more acts within a five-year period that violate the provisions of any of the following:

- (1) this section;
- (2) section 609.713;
- (3) section 609.224;
- (4) section 609.2242;
- (5) section 518B.01, subdivision 14;
- (6) section 609.748, subdivision 6;
- (7) section 609.605, subdivision 1, paragraph (b), clauses (3), (4), and (7);

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- (8) section 609.79;
- (9) section 609.795;
- (10) section 609.582; or
- (11) section 609.595; or
- (12) section 609.765.

(c) When acts constituting a violation of this subdivision are committed in two or more counties, the accused may be prosecuted in any county in which one of the acts was committed for all acts constituting the pattern.

Sec. 10. EFFECT ON RULES OF CRIMINAL PROCEDURE.

Rules 27 and 28 of the Rules of Criminal Procedure are superseded to the extent they conflict with Minnesota Statutes, section 244.09, subdivision 5, or 244.11.

Sec. 11. AMENDMENT TO SENTENCING GUIDELINES.

(a) Except as provided in paragraph (b), the sentencing guidelines commission may not amend the sentencing guidelines by adding a plea agreement to the list of factors that should not be used as a reason for departure from the presumptive sentence under the guidelines.

(b) The commission shall study the advisability of allowing a plea agreement to be used as a reason for a departure from a presumptive sentence. By December 15, 1997, the commission shall report its findings and recommendations to the chairs of the senate and house committees and divisions having jurisdiction over criminal justice policy and funding. If the commission determines that it would be advisable to modify the guidelines regarding the use of plea agreements for departures, the commission shall submit its proposed modification to the legislature before January 1 of the year the commission wishes to make the change. The modification shall be effective only if the legislature, by law, approves the modification.

Sec. 12. EFFECTIVE DATES.

Sections 1, 6 to 9, and 11 are effective the day following final enactment and apply to crimes committed on or after that date. Sections 2 to 5 and 10 are effective August 1, 1997, and apply to crimes committed on or after that date.

Presented to the governor May 2, 1997

Signed by the governor May 6, 1997, 11:07 a.m.

CHAPTER 97—S.F.No. 512

An act relating to employment; making technical and administrative changes in the department of employee relations; modifying provisions governing state employment; modifying terms of certain pilot projects; requiring a study and report; amending Minnesota Statutes 1996, sections

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