

CHAPTER 194—S.F.No. 1382

An act relating to crime prevention; repealing provisions and striking language related to the enhanced gross misdemeanor DWI crime; expanding the gross misdemeanor DWI crime, probationary period, and mandatory sentencing provisions; requiring mandatory consecutive sentences for certain DWI-related offenses; amending Minnesota Statutes 1998, sections 169.121, subdivisions 1c, 3, and 3d; 169.129, subdivision 1; 609.02, subdivision 2; 609.035, subdivision 2; 609.105, subdivisions 1 and 3; 609.135, subdivision 2; and 609.15, subdivision 2; repealing Minnesota Statutes 1998, sections 169.121, subdivision 3e; 169.129, subdivision 2; and 609.02, subdivision 2a.

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

Section 1. Minnesota Statutes 1998, section 169.121, subdivision 1c, is amended to read:

Subd. 1c. **CONDITIONAL RELEASE.** (a) Unless maximum bail is imposed under section 629.471, subdivision 2, a person charged with a crime listed in this paragraph may be released from detention only if the person agrees to abstain from alcohol and submit to a program of electronic alcohol monitoring involving at least daily measurements of the person's alcohol concentration pending resolution of the charge. This paragraph applies only when electronic alcohol monitoring equipment is available to the court and only when a person is charged with:

(1) a violation of subdivision 1 or 1a within five years of two prior impaired driving convictions, or within ten years of three or more prior impaired driving convictions;

(2) a second or subsequent violation of subdivision 1 or 1a, if the person is under the age of 19 years;

(3) a violation of subdivision 1 or 1a, while the person's driver's license or driving privileges have been canceled under section 171.04, subdivision 1, clause (9);

(4) a violation of subdivision 1, clause (f); or

(5) a violation of section 169.129.

~~If the defendant is convicted of the charged offense,~~ The court shall require partial or total reimbursement from the person for the cost of the electronic alcohol monitoring, to the extent the defendant is able to pay.

(b) Unless maximum bail is imposed under section 629.471, subdivision 2, a person charged with violating subdivision 1 or 1a within ten years of the first of three prior impaired driving convictions or within the person's lifetime after four or more prior impaired driving convictions may be released from detention only if the following conditions are imposed in addition to the condition imposed in paragraph (a), if applicable, and any other conditions of release ordered by the court:

(1) the impoundment of the registration plates of the vehicle used to commit the violation, unless already impounded;

(2) if the vehicle used to commit the violation was an off-road recreational vehicle or a motorboat, the impoundment of the off-road recreational vehicle or motorboat;

(3) a requirement that the alleged violator report weekly to a probation agent;

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(4) a requirement that the alleged violator abstain from consumption of alcohol and controlled substances and submit to random alcohol tests or urine analyses at least weekly; and

(5) a requirement that, if convicted, the alleged violator reimburse the court or county for the total cost of these services.

Sec. 2. Minnesota Statutes 1998, section 169.121, subdivision 3, is amended to read:

Subd. 3. **CRIMINAL PENALTIES.** (a) As used in this section:

(1) "Prior impaired driving conviction" means a prior conviction under:

(i) this section; Minnesota Statutes 1996, section 84.91, subdivision 1, paragraph (a), or 86B.331, subdivision 1, paragraph (a); section 169.1211; section 169.129; or section 360.0752;

(ii) section 609.21, subdivision 1, clauses (2) to (6); subdivision 2, clauses (2) to (6); subdivision 2a, clauses (2) to (6); subdivision 2b, clauses (2) to (6); subdivision 3, clauses (2) to (6); or subdivision 4, clauses (2) to (6); or

(iii) an ordinance from this state, or a statute or ordinance from another state, in conformity with any provision listed in item (i) or (ii).

A prior impaired driving conviction also includes a prior juvenile adjudication that would have been a prior impaired driving conviction if committed by an adult.

(2) "Prior license revocation" means a driver's license suspension, revocation, cancellation, denial, or disqualification under:

(i) this section or section 169.1211, 169.123, 171.04, 171.14, 171.16, 171.165, 171.17, or 171.18 because of an alcohol-related incident;

(ii) section 609.21, subdivision 1, clauses (2) to (6); subdivision 2, clauses (2) to (6); subdivision 2a, clauses (2) to (6); subdivision 2b, clauses (2) to (6); subdivision 3, clauses (2) to (6); or subdivision 4, clauses (2) to (6); or

(iii) an ordinance from this state, or a statute or ordinance from another state, in conformity with any provision listed in item (i) or (ii).

"Prior license revocation" also means the revocation of snowmobile or all-terrain vehicle operating privileges under section 84.911, or motorboat operating privileges under section 86B.335, for violations that occurred on or after August 1, 1995.

(b) A person who violates subdivision 1, clause (a), (b), (c), (d), (e), (g), or (h), or subdivision 1a, or an ordinance in conformity with any of them, is guilty of a misdemeanor.

(c) A person is guilty of a gross misdemeanor under any of the following circumstances:

(1) the person violates subdivision 1, clause (f);

(2) the person violates subdivision 1, clause (a), (b), (c), (d), (e), (g), or (h), or subdivision 1a;

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(i) within five years of a prior impaired driving conviction or a prior license revocation; or

(ii) within ten years of the first of two or more prior impaired driving convictions, two or more prior license revocations, or any combination of two or more prior impaired driving convictions and prior license revocations, based on separate incidents;

(3) the person violates section 169.26 while in violation of subdivision 1; or

(4) the person violates subdivision 1 or 1a while a child under the age of 16 is in the vehicle, if the child is more than 36 months younger than the violator.

A person convicted of a gross misdemeanor under this paragraph is subject to the mandatory penalties provided in subdivision 3d.

(d) A person is guilty of an enhanced gross misdemeanor under any of the following circumstances:

(1) the person violates subdivision 1, clause (f), or commits a violation described in paragraph (c), clause (3) or (4), within ten years of one or more prior impaired driving convictions or prior license revocations;

(2) the person violates subdivision 1, clause (a), (b), (c), (d), (e), (g), or (h), or subdivision 1a, within ten years of the first of two or more prior impaired driving convictions, two or more prior license revocations, or any combination of two or more prior impaired driving convictions and prior license revocations, based on separate incidents.

A person convicted of an enhanced gross misdemeanor under this paragraph may be sentenced to imprisonment in a local correctional facility for not more than two years or to payment of a fine of not more than \$3,000, or both. Additionally, the person is subject to the applicable mandatory penalties provided in subdivision 3e.

(e) The court shall notify a person convicted of violating subdivision 1 or 1a that the registration plates of the person's motor vehicle may be impounded under section 168.042 and the vehicle may be subject to forfeiture under section 169.1217 upon a subsequent conviction for violating this section, section 169.129, or section 171.24, or a subsequent license revocation under section 169.123. The notice must describe the conduct and the time periods within which the conduct must occur in order to result in plate impoundment or forfeiture. The failure of the court to provide this information does not affect the applicability of the plate impoundment or the forfeiture provision to that person.

(~~g~~) (e) The attorney in the jurisdiction in which the violation occurred who is responsible for prosecution of misdemeanor violations of this section shall also be responsible for prosecution of gross misdemeanor ~~and enhanced gross misdemeanor~~ violations of this section.

(~~g~~) (f) The court must impose consecutive sentences when it sentences a person for a violation of this section or section 169.129 arising out of separate behavioral incidents. The court also must impose a consecutive sentence when it sentences a person for a violation of this section or section 169.129 and the person, at the time of sentencing, is on probation for, or serving, an executed sentence for a violation of this section or section 169.129 and the prior sentence involved a separate behavioral incident. The court also may order that the sentence imposed for a violation of this section or section 169.129

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shall run consecutively to a previously imposed misdemeanor, gross misdemeanor or felony sentence for a violation other than this section or section 169.129.

~~(h)~~ (g) When the court stays the sentence of a person convicted under this section, the length of the stay is governed by section 609.135, subdivision 2.

~~(i)~~ (h) The court may impose consecutive sentences for offenses arising out of a single course of conduct as permitted in section 609.035, subdivision 2.

(i) The court shall impose consecutive sentences for a violation of this section or section 169.129 and an offense listed in section 609.035, subdivision 2, paragraph (f), arising out of the same course of conduct, as required by section 609.035, subdivision 2, paragraph (g).

~~(j)~~ When an attorney responsible for prosecuting gross misdemeanors ~~or enhanced gross misdemeanors~~ under this section requests criminal history information relating to prior impaired driving convictions from a court, the court must furnish the information without charge.

(k) A violation of subdivision 1a may be prosecuted either in the jurisdiction where the arresting officer observed the defendant driving, operating, or in control of the motor vehicle or in the jurisdiction where the refusal occurred.

Sec. 3. Minnesota Statutes 1998, section 169.121, subdivision 3d, is amended to read:

Subd. 3d. **GROSS MISDEMEANOR; MANDATORY PENALTIES.** (a) The mandatory penalties in this subdivision apply to persons convicted of a gross misdemeanor under subdivision 3, paragraph (c), or section 169.129.

(b) A person who is convicted of a gross misdemeanor under subdivision 3, paragraph (c), or is convicted of a gross misdemeanor violation of section 169.129 within five years of a prior impaired driving conviction or prior license revocation, must be sentenced to a minimum of 30 days imprisonment, at least 48 hours of which must be served consecutively, or to eight hours of community work service for each day less than 30 days that the person is ordered to serve in jail. Notwithstanding section 609.135, the above sentence must be executed, unless the court departs from the mandatory minimum sentence under paragraph ~~(e)~~ (f) or ~~(d)~~ (g).

(c) A person who is convicted of a gross misdemeanor under subdivision 3, paragraph (c), or is convicted of a gross misdemeanor violation of section 169.129 within ten years of two prior impaired driving convictions, two prior license revocations, or a combination of the two based on separate instances, must be sentenced to either:

(1) a minimum of 90 days incarceration, at least 30 days of which must be served consecutively in a local correctional facility; or

(2) a program of intensive supervision of the type described in section 169.1265 that requires the person to consecutively serve at least six days in a local correctional facility.

The court may order that the person serve not more than 60 days of the minimum penalty under clause (1) on home detention or in an intensive probation program described in section 169.1265. Notwithstanding section 609.135, the penalties in this paragraph must be imposed and executed.

(d) A person who is convicted of a gross misdemeanor under subdivision 3, paragraph (c), or is convicted of a gross misdemeanor violation of section 169.129 within ten

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years of three prior impaired driving convictions, three prior license revocations, or a combination of the two based on separate instances, must be sentenced to either:

(1) a minimum of 180 days of incarceration, at least 30 days of which must be served consecutively in a local correctional facility; or

(2) a program of intensive supervision of the type described in section 169.1265 that requires the person to consecutively serve at least six days in a local correctional facility.

The court may order that the person serve not more than 150 days of the minimum penalty under clause (1) on home detention or in an intensive probation program described in section 169.1265. Notwithstanding section 609.135, the penalties in this paragraph must be imposed and executed.

(e) A person who is convicted of a gross misdemeanor under subdivision 3, paragraph (c), or is convicted of a gross misdemeanor violation of section 169.129 within 15 years of four prior impaired driving convictions, four prior license revocations, or a combination of the two based on separate instances; or anytime after five or more prior impaired driving convictions, five or more prior license revocations, or a combination of the two based on separate instances, must be sentenced to either:

(1) a minimum of one year of incarceration, at least 60 days of which must be served consecutively in a local correctional facility; or

(2) a program of intensive supervision of the type described in section 169.1265 that requires the person to consecutively serve at least six days in a local correctional facility.

The court may order that the person serve the remainder of the minimum penalty under clause (1) on intensive probation using an electronic monitoring system or, if such a system is unavailable, on home detention. Notwithstanding section 609.135, the penalties in this paragraph must be imposed and executed.

(f) Prior to sentencing, the prosecutor may file a motion to have the a defendant described in paragraph (b) sentenced without regard to the mandatory minimum sentence established by this subdivision that paragraph. The motion must be accompanied by a statement on the record of the reasons for it. When presented with the prosecutor's motion and if it finds that substantial mitigating factors exist, the court shall sentence the defendant without regard to the mandatory minimum sentence established by this subdivision paragraph (b).

(d) (g) The court may, on its own motion, sentence the a defendant described in paragraph (b) without regard to the mandatory minimum sentence established by this subdivision that paragraph if it finds that substantial mitigating factors exist and if its sentencing departure is accompanied by a statement on the record of the reasons for it. The court also may sentence the defendant without regard to the mandatory minimum sentence established by this subdivision paragraph (b) if the defendant is sentenced to probation and ordered to participate in a program established under section 169.1265.

(e) (h) When any portion of the sentence required by this subdivision paragraph (b) is not executed, the court should impose a sentence that is proportional to the extent of the offender's prior criminal and moving traffic violation record. Any sentence required under this subdivision paragraph (b) must include a mandatory sentence that is not subject

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to suspension or a stay of imposition or execution, and that includes incarceration for not less than 48 consecutive hours or at least 80 hours of community work service.

Sec. 4. Minnesota Statutes 1998, section 169.129, subdivision 1, is amended to read:

Subdivision 1. **CRIME.** It is a ~~crime~~ gross misdemeanor for any person to drive, operate, or be in physical control of a motor vehicle, the operation of which requires a driver's license, within this state or upon the ice of any boundary water of this state in violation of section 169.121 or an ordinance in conformity with it before the person's driver's license or driving privilege has been reinstated following its cancellation, suspension, revocation, disqualification, or denial under any of the following:

(1) section 169.121, 169.1211, or 169.123;

(2) section 171.04, 171.14, 171.16, 171.17, or 171.18 because of an alcohol-related incident;

(3) section 609.21, subdivision 1, clauses (2) to (6); subdivision 2, clauses (2) to (6); subdivision 2a, clauses (2) to (6); subdivision 2b, clauses (2) to (6); subdivision 3, clauses (2) to (6); or subdivision 4, clauses (2) to (6).

Sec. 5. Minnesota Statutes 1998, section 609.02, subdivision 2, is amended to read:

Subd. 2. **FELONY.** "Felony" means a crime, ~~other than an enhanced gross misdemeanor,~~ for which a sentence of imprisonment for more than one year may be imposed.

Sec. 6. Minnesota Statutes 1998, section 609.035, subdivision 2, is amended to read:

Subd. 2. (a) When a person is being sentenced for a violation of a provision listed in paragraph (f), the court may sentence the person to a consecutive term of imprisonment for a violation of any other provision listed in paragraph (f), notwithstanding the fact that the offenses arose out of the same course of conduct, subject to the limitation on consecutive sentences contained in section 609.15, subdivision 2, and except as provided in paragraphs (b), (c), ~~and~~ (d), and (g) of this subdivision.

(b) When a person is being sentenced for a violation of section 169.129 the court may not impose a consecutive sentence for a violation of a provision of section 169.121, subdivision 1, or for a violation of a provision of section 171.20, 171.24, or 171.30.

(c) When a person is being sentenced for a violation of section 171.20, 171.24, or 171.30, the court may not impose a consecutive sentence for another violation of a provision in chapter 171.

(d) When a person is being sentenced for a violation of section 169.791 or 169.797, the court may not impose a consecutive sentence for another violation of a provision of sections 169.79 to 169.795.

(e) This subdivision does not limit the authority of the court to impose consecutive sentences for crimes arising on different dates or to impose a consecutive sentence when a person is being sentenced for a crime and is also in violation of the conditions of a stayed or otherwise deferred sentence under section 609.135.

(f) This subdivision applies to misdemeanor and gross misdemeanor violations of the following if the offender has two or more prior impaired driving convictions as defined in section 169.121, subdivision 3:

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- (1) section 169.121, subdivision 1, driving while intoxicated;
- (2) section 169.121, subdivision 1a, testing refusal;
- (3) section 169.129, aggravated driving while intoxicated;
- (4) section 169.791, failure to provide proof of insurance;
- (5) section 169.797, failure to provide vehicle insurance;
- (6) section 171.20, subdivision 2, operation after revocation, suspension, cancellation, or disqualification;
- (7) section 171.24, driving without valid license;
- (8) section 171.30, violation of condition of limited license; and
- (9) section 609.487, fleeing a peace officer.

(g) When a court is sentencing an offender for a violation of section 169.121 or 169.129 and a violation of an offense listed in paragraph (f), and the offender has five or more prior impaired driving convictions, five or more prior license revocations, or a combination of the two based on separate instances, within the person's lifetime, the court shall sentence the offender to serve consecutive sentences for the offenses, notwithstanding the fact that the offenses arose out of the same course of conduct.

Sec. 7. Minnesota Statutes 1998, section 609.105, subdivision 1, is amended to read:

Subdivision 1. ~~Except as otherwise provided in subdivision 3,~~ A sentence to imprisonment for more than one year shall commit the defendant to the custody of the commissioner of corrections.

Sec. 8. Minnesota Statutes 1998, section 609.105, subdivision 3, is amended to read:

Subd. 3. A sentence to imprisonment for an ~~enhanced gross misdemeanor~~ or for a period of one year or any lesser period shall be to a workhouse, work farm, county jail, or other place authorized by law.

Sec. 9. Minnesota Statutes 1998, section 609.135, subdivision 2, is amended to read:

Subd. 2. **STAY OF SENTENCE MAXIMUM PERIODS.** (a) If the conviction is for a felony the stay shall be for not more than four years or the maximum period for which the sentence of imprisonment might have been imposed, whichever is longer.

~~(b) If the conviction is for an enhanced gross misdemeanor violation of section 169.121 or 169.129, the stay shall be for not more than six years. The court shall provide for unsupervised probation for the last year of the stay unless the court finds that the defendant needs supervised probation for all or part of the last year.~~

~~(c)~~ (e) If the conviction is for a gross misdemeanor violation of section 169.121 or 169.129, the stay shall be for not more than ~~four~~ six years. The court shall provide for unsupervised probation for the last year of the stay unless the court finds that the defendant needs supervised probation for all or part of the last year.

~~(d)~~ (c) If the conviction is for a gross misdemeanor not specified in paragraph ~~(e)~~ (b), the stay shall be for not more than two years.

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(e) (d) If the conviction is for any misdemeanor under section 169.121; 609.746, subdivision 1; 609.79; or 617.23; or for a misdemeanor under section 609.2242 or 609.224, subdivision 1, in which the victim of the crime was a family or household member as defined in section 518B.01, the stay shall be for not more than two years. The court shall provide for unsupervised probation for the second year of the stay unless the court finds that the defendant needs supervised probation for all or part of the second year.

(f) (e) If the conviction is for a misdemeanor not specified in paragraph (e) (d), the stay shall be for not more than one year.

(g) (f) The defendant shall be discharged six months after the term of the stay expires, unless the stay has been revoked or extended under paragraph (h) (g), or the defendant has already been discharged.

(h) (g) Notwithstanding the maximum periods specified for stays of sentences under paragraphs (a) to (g) (f), a court may extend a defendant's term of probation for up to one year if it finds, at a hearing conducted under subdivision 1a, that:

- (1) the defendant has not paid court-ordered restitution or a fine in accordance with the payment schedule or structure; and
- (2) the defendant is likely to not pay the restitution or fine the defendant owes before the term of probation expires.

This one-year extension of probation for failure to pay restitution or a fine may be extended by the court for up to one additional year if the court finds, at another hearing conducted under subdivision 1a, that the defendant still has not paid the court-ordered restitution or fine that the defendant owes.

(i) (h) Notwithstanding the maximum periods specified for stays of sentences under paragraphs (a) to (g) (f), a court may extend a defendant's term of probation for up to three years if it finds, at a hearing conducted under subdivision 1c, that:

- (1) the defendant has failed to complete court-ordered treatment successfully; and
- (2) the defendant is likely not to complete court-ordered treatment before the term of probation expires.

Sec. 10. Minnesota Statutes 1998, section 609.15, subdivision 2, is amended to read:

Subd. 2. **LIMIT ON SENTENCES; MISDEMEANOR AND GROSS MISDEMEANOR.** If the court specifies that the sentence shall run consecutively and all of the sentences are for misdemeanors, the total of the sentences shall not exceed one year. If the sentences are for a gross misdemeanor or enhanced gross misdemeanor and one or more misdemeanors, the total of the sentences shall not exceed two years. If all of the sentences are for gross misdemeanors and enhanced gross misdemeanors, the total of the sentences shall not exceed four years.

Sec. 11. **REPEALER.**

Minnesota Statutes 1998, sections 169.121, subdivision 3e; 169.129, subdivision 2; and 609.02, subdivision 2a, are repealed.

Sec. 12. **EFFECTIVE DATE.**

Sections 1 to 11 are effective the day following final enactment and apply to crimes committed on or after that date. However, violations occurring before that date which are

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listed in Minnesota Statutes, section 169.121, subdivision 3, paragraph (a), are considered prior impaired driving convictions or prior license revocations for purposes of this act.

Presented to the governor May 20, 1999

Signed by the governor May 24, 1999, 9:35 a.m.

CHAPTER 195—S.F.No. 746

An act relating to local government; permitting Grand Rapids Township to hold its general election in November; permitting the city of Grand Rapids to increase the membership of its public utilities commission to five members.

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

Section 1. **GRAND RAPIDS TOWNSHIP; NOVEMBER GENERAL ELECTION.**

Grand Rapids Township may designate the first Tuesday after the first Monday in November of either the even-numbered or the odd-numbered year as the date of the town general election. The ordinance or resolution changing the date of the town general election must include a plan to shorten or lengthen the terms of office to provide for an orderly transition to the November election schedule. The ordinance or resolution changing the date of the town general election may be proposed by the town board or by a resolution of the electors adopted at the annual meeting and is effective upon an affirmative vote of the electors at the next town general election. Town supervisors elected at a November election shall serve three-year terms and shall serve until a successor is elected and qualified.

Sec. 2. **CITY OF GRAND RAPIDS PUBLIC UTILITIES COMMISSION; MEMBERSHIP.**

Notwithstanding Minnesota Statutes, section 412.341, the city of Grand Rapids may by ordinance increase the Grand Rapids public utilities commission membership to five members. The ordinance increasing the commission membership must provide for the initial terms of the additional members so that no more than two positions on the commission are open for appointment in any year.

Sec. 3. **LOCAL APPROVAL NOT REQUIRED.**

This act is effective without local approval as provided in Minnesota Statutes, section 645.023.

Presented to the governor May 20, 1999

Became law without the governor's signature May 25, 1999

CHAPTER 196—S.F.No. 23

An act relating to family law; repealing the administrative process for support orders; establishing a child support magistrate system; authorizing child support and visitation review hearings;

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