

(3) "metropolitan mosquito control commission" means the commission created in section 473.702.

Presented to the governor April 3, 2002

Signed by the governor April 4, 2002, 12:58 p.m.

CHAPTER 313—S.F.No. 2569

An act relating to veterans homes; clarifying items to be considered means of support; amending Minnesota Statutes 2000, section 198.03, subdivision 1.

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

Section 1. Minnesota Statutes 2000, section 198.03, subdivision 1, is amended to read:

Subdivision 1. **DISCRETIONARY ADMISSION.** Any person otherwise eligible for admission to the Minnesota veterans homes, except that the person has means of support, may, at the discretion of the board, be admitted to one of the Minnesota veterans homes upon entering into and complying with the terms of a contract made by the person with the board, providing for reasonable compensation to be paid by such person to the state of Minnesota for care, support, and maintenance in the home. Any earnings derived by the person from participating in a work therapy program while the person is a resident of the home may not be considered a means of support. Refunds or Rebates of federal taxes and state sales taxes may not be considered a means of support.

Sec. 2. **EFFECTIVE DATE.**

Section 1 is effective for tax rebates paid after June 30, 2001.

Presented to the governor April 3, 2002

Signed by the governor April 4, 2002, 12:59 p.m.

CHAPTER 314—S.F.No. 2580

An act relating to crimes; providing that certain license revocation hearings do not give rise to an estoppel on any issues in criminal prosecutions; providing for jurisdiction over persons found to have caused a delinquent act or charged by a juvenile petition; making it child endangerment to permit a child to be present when a person possesses certain chemical substances used to manufacture controlled substances; prescribing penalties for persons who escape from electronic monitoring; excluding habitual truant from the definition of juvenile petty offender; providing that there is no right for appointment of counsel at public expense for habitual

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truant cases; amending Minnesota Statutes 2000, sections 169A.53, subdivision 3; 260B.193, subdivision 5; 260C.163, subdivision 3, as amended; 609.378, subdivision 1; 609.485, subdivisions 3, 4; 634.20; Minnesota Statutes 2001 Supplement, sections 260B.007, subdivision 16, as amended; 260C.141, subdivision 3, as amended.

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

Section 1. Minnesota Statutes 2000, section 169A.53, subdivision 3, is amended to read:

Subd. 3. **HEARING; ISSUES; ORDER; APPEAL.** (a) A judicial review hearing under this section must be before a district judge in any county in the judicial district where the alleged offense occurred. The hearing is to the court and may be conducted at the same time and in the same manner as hearings upon pretrial motions in the criminal prosecution under section 169A.20 (driving while impaired), if any. The hearing must be recorded. The commissioner shall appear and be represented by the attorney general or through the prosecuting authority for the jurisdiction involved. The hearing must be held at the earliest practicable date, and in any event no later than 60 days following the filing of the petition for review. The judicial district administrator shall establish procedures to ensure efficient compliance with this subdivision. To accomplish this, the administrator may, whenever possible, consolidate and transfer review hearings among the locations within the judicial district where terms of district court are held.

(b) The scope of the hearing is limited to the issues in clauses (1) to (10):

(1) Did the peace officer have probable cause to believe the person was driving, operating, or in physical control of a motor vehicle or commercial motor vehicle in violation of section 169A.20 (driving while impaired)?

(2) Was the person lawfully placed under arrest for violation of section 169A.20?

(3) Was the person involved in a motor vehicle accident or collision resulting in property damage, personal injury, or death?

(4) Did the person refuse to take a screening test provided for by section 169A.41 (preliminary screening test)?

(5) If the screening test was administered, did the test indicate an alcohol concentration of 0.10 or more?

(6) At the time of the request for the test, did the peace officer inform the person of the person's rights and the consequences of taking or refusing the test as required by section 169A.51, subdivision 2?

(7) Did the person refuse to permit the test?

(8) If a test was taken by a person driving, operating, or in physical control of a motor vehicle, did the test results indicate at the time of testing:

(i) an alcohol concentration of 0.10 or more; or

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(ii) the presence of a controlled substance listed in schedule I or II, other than marijuana or tetrahydrocannabinols?

(9) If a test was taken by a person driving, operating, or in physical control of a commercial motor vehicle, did the test results indicate an alcohol concentration of 0.04 or more at the time of testing?

(10) Was the testing method used valid and reliable and were the test results accurately evaluated?

(c) It is an affirmative defense for the petitioner to prove that, at the time of the refusal, the petitioner's refusal to permit the test was based upon reasonable grounds.

(d) Certified or otherwise authenticated copies of laboratory or medical personnel reports, records, documents, licenses, and certificates are admissible as substantive evidence.

(e) The court shall order that the revocation or disqualification be either rescinded or sustained and forward the order to the commissioner. The court shall file its order within 14 days following the hearing. If the revocation or disqualification is sustained, the court shall also forward the person's driver's license or permit to the commissioner for further action by the commissioner if the license or permit is not already in the commissioner's possession.

(f) Any party aggrieved by the decision of the reviewing court may appeal the decision as provided in the rules of appellate procedure.

(g) The civil hearing under this section shall not give rise to an estoppel on any issues arising from the same set of circumstances in any criminal prosecution.

Sec. 2. Minnesota Statutes 2001 Supplement, section 260B.007, subdivision 16, as amended by Laws 2002, chapter 220, article 6, section 10, is amended to read:

Subd. 16. JUVENILE PETTY OFFENDER; JUVENILE PETTY OFFENSE.

(a) "Juvenile petty offense" includes a juvenile alcohol offense, a juvenile controlled substance offense, a violation of section 609.685, or a violation of a local ordinance, which by its terms prohibits conduct by a child under the age of 18 years which would be lawful conduct if committed by an adult. "Juvenile petty offense" also includes a habitual truant, as defined in section 260C.007, subdivision 19, unless a petition brought under chapter 260C states that an out-of-home placement is sought for the child.

(b) Except as otherwise provided in paragraph (c), "juvenile petty offense" also includes an offense that would be a misdemeanor if committed by an adult.

(c) "Juvenile petty offense" does not include any of the following:

(1) a misdemeanor-level violation of section 518B.01, 588.20, 609.224, 609.2242, 609.324, 609.563, 609.576, 609.66, 609.746, 609.748, 609.79, or 617.23;

(2) a major traffic offense or an adult court traffic offense, as described in section 260B.225;

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(3) a misdemeanor-level offense committed by a child whom the juvenile court previously has found to have committed a misdemeanor, gross misdemeanor, or felony offense; or

(4) a misdemeanor-level offense committed by a child whom the juvenile court has found to have committed a misdemeanor-level juvenile petty offense on two or more prior occasions, unless the county attorney designates the child on the petition as a juvenile petty offender notwithstanding this prior record. As used in this clause, "misdemeanor-level juvenile petty offense" includes a misdemeanor-level offense that would have been a juvenile petty offense if it had been committed on or after July 1, 1995.

(d) A child who commits a juvenile petty offense is a "juvenile petty offender."

Sec. 3. Minnesota Statutes 2001 Supplement, section 260C.141, subdivision 3, as amended by Laws 2002, chapter 220, article 6, section 11, is amended to read:

Subd. 3. CHILD IN NEED OF PROTECTION OR SERVICES; HABITUAL TRUANT. (a) If there is a school attendance review board or county attorney mediation program operating in the child's school district, a petition alleging that a child is in need of protection or services as a habitual truant under section 260C.007, subdivision 6, clause (14), may not be filed until the applicable procedures under section 260A.06 or 260A.07 have been followed.

(b) A petition alleging that a child is in need of protection or services as a habitual truant under section 260C.007, subdivision 6, clause (14), must give notice that the petitioner is seeking an out-of-home placement of the child. If the petition does not state that an out-of-home placement is sought for the child, the matter must proceed as a juvenile petty offense action under chapter 260B.

Sec. 4. Minnesota Statutes 2000, section 260C.163, subdivision 3, as amended by Laws 2002, chapter 220, article 6, section 12, is amended to read:

Subd. 3. APPOINTMENT OF COUNSEL. (a) The child, parent, guardian or custodian has the right to effective assistance of counsel in connection with a proceeding in juvenile court.

(b) Except in proceedings where the sole basis for the petition is habitual truancy, if they the child, parent, guardian, or custodian desires counsel but is unable to employ it, the court shall appoint counsel to represent the child who is ten years of age or older or the parents or guardian in any case in which it feels that such an appointment is appropriate.

(c) In any proceeding where the sole basis for the petition is habitual truancy, the child, parent, guardian, and custodian do not have the right to appointment of a public defender or other counsel at public expense. However, before any out-of-home placement, including foster care or inpatient treatment, can be ordered, the court must appoint a public defender or other counsel at public expense in accordance with paragraph (b).

(d) Counsel for the child shall not also act as the child's guardian ad litem.

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(d) (e) In any proceeding where the subject of a petition for a child in need of protection or services is not represented by an attorney, the court shall determine the child's preferences regarding the proceedings, if the child is of suitable age to express a preference.

(e) A child, parent, guardian, or custodian is not entitled to counsel at public expense in a case involving a child alleged to be in need of protection or services as a habitual truant under section 260C.007, subdivision 6, clause (14), unless the petition states that an out-of-home placement is sought for the child.

Sec. 5. Minnesota Statutes 2000, section 260B.193, subdivision 5, is amended to read:

Subd. 5. **TERMINATION OF JURISDICTION.** (a) The court may dismiss the petition or otherwise terminate its jurisdiction on its own motion or on the motion or petition of any interested party at any time. Unless terminated by the court, and except as otherwise provided in this subdivision, the jurisdiction of the court shall continue until the individual becomes 19 years of age if the court determines it is in the best interest of the individual to do so.

(b) The jurisdiction of the court over an extended jurisdiction juvenile, with respect to the offense for which the individual was convicted as an extended jurisdiction juvenile, extends until the offender becomes 21 years of age, unless the court terminates jurisdiction before that date.

(c) The juvenile court has jurisdiction to designate the proceeding an extended jurisdiction juvenile prosecution, to hold a certification hearing, or to conduct a trial, receive a plea, or impose a disposition under section 260B.130, subdivision 4, if:

(1) an adult is alleged to have committed an offense before the adult's 18th birthday; and

(2) a petition is filed under section 260B.141 before expiration of the time for filing under section 628.26 and before the adult's 21st birthday.

The juvenile court lacks jurisdiction under this paragraph if the adult demonstrates that the delay was purposefully caused by the state in order to gain an unfair advantage.

(d) The district court has original and exclusive jurisdiction over a proceeding:

(1) that involves an adult who is alleged to have committed an offense before the adult's 18th birthday; and

(2) in which a criminal complaint is filed before expiration of the time for filing under section 628.26 and after the adult's 21st birthday.

The juvenile court retains jurisdiction if the adult demonstrates that the delay in filing a criminal complaint was purposefully caused by the state in order to gain an unfair advantage.

(e) The juvenile court has jurisdiction over a person who has been adjudicated delinquent, has been found to have committed a delinquent act, or has been charged by

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juvenile petition until the person's 21st birthday if the person fails to appear at any juvenile court hearing or fails to appear at or absconds from any placement under a juvenile court order. The juvenile court has jurisdiction over a convicted extended jurisdiction juvenile who fails to appear at any juvenile court hearing or fails to appear at or absconds from any placement under section 260B.130, subdivision 4. The juvenile court lacks jurisdiction under this paragraph if the adult demonstrates that the delay was purposefully caused by the state in order to gain an unfair advantage.

Sec. 6. Minnesota Statutes 2000, section 609.378, subdivision 1, is amended to read:

Subdivision 1. **PERSONS GUILTY OF NEGLECT OR ENDANGERMENT.**

(a) **NEGLECT.** (1) A parent, legal guardian, or caretaker who willfully deprives a child of necessary food, clothing, shelter, health care, or supervision appropriate to the child's age, when the parent, guardian, or caretaker is reasonably able to make the necessary provisions and the deprivation harms or is likely to substantially harm the child's physical, mental, or emotional health is guilty of neglect of a child 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. If the deprivation results in substantial harm to the child's physical, mental, or emotional health, the person 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 a parent, guardian, or caretaker responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child, this treatment or care is "health care," for purposes of this clause.

(2) A parent, legal guardian, or caretaker who knowingly permits the continuing physical or sexual abuse of a child is guilty of neglect of a child 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) **ENDANGERMENT.** A parent, legal guardian, or caretaker who endangers the child's person or health by:

(1) intentionally or recklessly causing or permitting a child to be placed in a situation likely to substantially harm the child's physical, mental, or emotional health or cause the child's death; or

(2) knowingly causing or permitting the child to be present where any person is selling, manufacturing, possessing immediate precursors or chemical substances with intent to manufacture, or possessing a controlled substance, as defined in section 152.01, subdivision 4, in violation of section 152.021, 152.022, 152.023, or 152.024; is guilty of child endangerment 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.

If the endangerment results in substantial harm to the child's physical, mental, or emotional health, the person 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.

This paragraph does not prevent a parent, legal guardian, or caretaker from causing or permitting a child to engage in activities that are appropriate to the child's

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age, stage of development, and experience, or from selecting health care as defined in subdivision 1, paragraph (a).

(c) **ENDANGERMENT BY FIREARM ACCESS.** A person who intentionally or recklessly causes a child under 14 years of age to be placed in a situation likely to substantially harm the child's physical health or cause the child's death as a result of the child's access to a loaded firearm is guilty of child endangerment 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.

If the endangerment results in substantial harm to the child's physical health, the person 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. 7. Minnesota Statutes 2000, section 609.485, subdivision 3, is amended to read:

Subd. 3. **EXCEPTIONS.** This section does not apply to a person who is free on bail or who is on parole or probation, or subject to a stayed sentence or stayed execution of sentence, unless the person (1) has been taken into actual custody upon revocation of the parole, probation, or stay of the sentence or execution of sentence, or (2) is in custody in a county jail or workhouse as a condition of a stayed sentence, or (3) is subject to electronic monitoring as a condition of parole, probation, or supervised release.

Sec. 8. Minnesota Statutes 2000, section 609.485, subdivision 4, is amended to read:

Subd. 4. **SENTENCE.** (a) Except as otherwise provided in subdivision 3a, whoever violates this section may be sentenced as follows:

(1) if the person who escapes is in lawful custody for a felony, to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both;

(2) if the person who escapes is in lawful custody after a finding of not guilty by reason of mental illness or mental deficiency of a crime against the person, as defined in section 253B.02, subdivision 4a, or pursuant to a court commitment order under section 253B.185 or Minnesota Statutes 1992, section 526.10, to imprisonment for not more than one year and one day or to payment of a fine of not more than \$3,000, or both; or

(3) if the person who escapes is in lawful custody for a gross misdemeanor or misdemeanor, or if the person who escapes is in lawful custody on an allegation or adjudication of a delinquent act, to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

(b) If the escape was a violation of subdivision 2, clause (1), (2), or (3), and was effected by violence or threat of violence against a person, the sentence may be increased to not more than twice those permitted in paragraph (a), clauses (1) and (3).

(c) Unless a concurrent term is specified by the court, a sentence under this section shall be consecutive to any sentence previously imposed or which may be imposed for

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any crime or offense for which the person was in custody when the person escaped.

(d) Notwithstanding paragraph (c), if a person who was committed to the commissioner of corrections under section 260B.198 escapes from the custody of the commissioner while 18 years of age, the person's sentence under this section shall commence on the person's 19th birthday or on the person's date of discharge by the commissioner of corrections, whichever occurs first. However, if the person described in this clause is convicted under this section after becoming 19 years old and after having been discharged by the commissioner, the person's sentence shall commence upon imposition by the sentencing court.

(e) Notwithstanding paragraph (c), if a person who is in lawful custody on an allegation or adjudication of a delinquent act while 18 years of age escapes from a local juvenile correctional facility, the person's sentence under this section begins on the person's 19th birthday or on the person's date of discharge from the jurisdiction of the juvenile court, whichever occurs first. However, if the person described in this paragraph is convicted after becoming 19 years old and after discharge from the jurisdiction of the juvenile court, the person's sentence begins upon imposition by the sentencing court.

(f) Notwithstanding paragraph (a), any person who escapes or absconds from electronic monitoring or removes an electric monitoring device from the person's body is guilty of a crime and shall be sentenced to imprisonment for not more than one year or to a payment of a fine of not more than \$3,000, or both. A person in lawful custody for a violation of sections 609.185, 609.19, 609.195, 609.20, 609.205, 609.21, 609.221, 609.222, 609.223, 609.2231, 609.342, 609.343, 609.344, 609.345, or 609.3451 who escapes or absconds from electronic monitoring or removes an electronic monitoring device while under sentence may be sentenced to imprisonment for not more than five years or to a payment of a fine of not more than \$10,000, or both.

Sec. 9. Minnesota Statutes 2000, section 634.20, is amended to read:

634.20 EVIDENCE OF PRIOR CONDUCT.

Evidence of similar prior conduct by the accused against the victim of domestic abuse, or against other family or household members, is admissible unless the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. "Similar prior conduct" includes, but is not limited to, evidence of domestic abuse, violation of an order for protection under section 518B.01; violation of a harassment restraining order under section 609.748; or violation of section 609.749 or 609.79, subdivision 1. "Domestic abuse" and "family or household members" have the meanings given under section 518B.01, subdivision 2.

Sec. 10. EFFECTIVE DATE.

Sections 1 and 5 to 8 are effective August 1, 2002, and apply to crimes committed on or after that date. Sections 2 to 4 are effective July 1, 2002, except that the amendments to section 260C.163, subdivision 3, paragraphs (b) and (c) are not

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effective in the fourth judicial district until July 1, 2003.

Presented to the governor April 3, 2002

Signed by the governor April 4, 2002, 12:57 p.m.

CHAPTER 315—S.F.No. 2881

An act relating to housing; specifying certain discretionary municipal subdivision authority; providing for housing fiscal impact notes; amending Minnesota Statutes 2000, section 462.358, by adding a subdivision; proposing coding for new law in Minnesota Statutes, chapter 462.

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

Section 1. Minnesota Statutes 2000, section 462.358, is amended by adding a subdivision to read:

Subd. 11. **AFFORDABLE HOUSING.** For the purposes of this subdivision, a "development application" means subdivision, planned unit development, site plan, or other similar type action. If a municipality, in approving a development application that provides all or a portion of the units for persons and families of low and moderate income, so proposes, the applicant may request that provisions authorized by clauses (1) to (4) will apply to housing for persons of low and moderate income, subject to agreement between the municipality and the applicant:

(1) establishing sales prices or rents for housing affordable to low- and moderate-income households;

(2) establishing maximum income limits for initial and subsequent purchasers or renters of the affordable units;

(3) establishing means, including, but not limited to, equity sharing, or similar activities, to maintain the long-term affordability of the affordable units; and

(4) establishing a land trust agreement to maintain the long-term affordability of the affordable units.

Clauses (1) to (3) shall not apply for more than 20 years from the date of initial occupancy except where public financing or subsidy requires longer terms.

Sec. 2. [462.3612] HOUSING FISCAL IMPACT NOTES.

Subdivision 1. **DEFINITION.** "Housing fiscal impact" means increased or decreased costs that a housing development would incur as a result of an official control adopted or amended by a municipality after August 1, 2002, that adds to or changes the regulation of the location, height, width, bulk, type of foundation, number of stories, size of buildings and other structures, percentage of the lot occupied, size of yards and other open spaces, density and distribution of population, uses of buildings, or design of residential housing in a municipality that has adopted the State Building

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