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State of Minnesota  
**HOUSE OF REPRESENTATIVES**

EIGHTY-EIGHTH SESSION

**H. F. No. 545**

02/13/2013 Authored by McNamar and Nornes

The bill was read for the first time and referred to the Committee on Early Childhood and Youth Development Policy

1.1 A bill for an act  
1.2 relating to public safety; establishing Emily's law; lowering the age of extended  
1.3 jurisdiction juvenile prosecution for violent offenses; amending Minnesota  
1.4 Statutes 2012, sections 242.44; 260B.007, by adding a subdivision; 260B.130;  
1.5 260B.141, subdivision 4; 260B.193, subdivision 5; 260B.198, subdivision 6;  
1.6 260B.199; 260B.201, subdivision 2; 609.055.

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

1.8 Section 1. Minnesota Statutes 2012, section 242.44, is amended to read:

1.9 **242.44 PUPILS.**

1.10 The commissioner of corrections, so far as the accommodations of the correctional  
1.11 facilities and other means at the commissioner's disposal will permit, may receive juvenile  
1.12 delinquents and juvenile offenders serving a juvenile disposition under section 260B.130;  
1.13 ~~subdivision 4~~. The commissioner's housing of these individuals must be consistent with  
1.14 federal and state law, including established admissions criteria for Minnesota Correctional  
1.15 Facility-Red Wing. The commissioner may place these youths at employment, may  
1.16 provide education suitable to their years and capacity, and may place them in suitable  
1.17 homes. Under rules prescribed by the commissioner, when deemed best for these youths,  
1.18 persons committed to the commissioner's care and custody by a juvenile court may be  
1.19 paroled or discharged from the facility by the commissioner. All pupils in the facility shall  
1.20 be clothed, instructed, and maintained by the commissioner of corrections.

1.21 **EFFECTIVE DATE.** This section is effective August 1, 2013.

1.22 Sec. 2. Minnesota Statutes 2012, section 260B.007, is amended by adding a  
1.23 subdivision to read:

Subd. 21. **Violent juvenile offense.** "Violent juvenile offense" means any of the following offenses that would be a felony if committed by an adult: sections 609.185 (murder in the first degree); 609.19 (murder in the second degree); 609.195 (murder in the third degree); 609.20 (manslaughter in the first degree); 609.205 (manslaughter in the second degree); 609.342, subdivision 1, paragraph (c), (d), (e), (f), or (h) (criminal sexual conduct in the first degree; involving injury, force, or weapons); 609.343, subdivision 1, paragraph (c), (d), (e), (f), or (h) (criminal sexual conduct in the second degree; involving injury, force, or weapons); 609.344, subdivision 1, paragraph (c) or (g) (criminal sexual conduct in the third degree; involving force or injury); 609.345, subdivision 1, paragraph (c) or (g) (criminal sexual conduct in the fourth degree; involving force or injury); and 609.377 (malicious punishment of a child).

**EFFECTIVE DATE.** This section is effective August 1, 2013, and applies to offenses committed on or after that date.

Sec. 3. Minnesota Statutes 2012, section 260B.130, is amended to read:

**260B.130 EXTENDED JURISDICTION JUVENILE PROSECUTIONS.**

Subdivision 1. **Designation; child age 14 to 17 years.** A proceeding involving a child alleged to have committed a felony offense is an extended jurisdiction juvenile prosecution if:

(1) the child was 14 to 17 years old at the time of the alleged offense, a certification hearing was held, and the court designated the proceeding an extended jurisdiction juvenile prosecution;

(2) the child was 16 or 17 years old at the time of the alleged offense; the child is alleged to have committed an offense for which the Sentencing Guidelines and applicable statutes presume a commitment to prison or to have committed any felony in which the child allegedly used a firearm; and the prosecutor designated in the delinquency petition that the proceeding is an extended jurisdiction juvenile prosecution; or

(3) the child was 14 to 17 years old at the time of the alleged offense, the prosecutor requested that the proceeding be designated an extended jurisdiction juvenile prosecution, a hearing was held on the issue of designation, and the court designated the proceeding an extended jurisdiction juvenile prosecution.

Subd. 1a. **Designation; child age 13 years.** A proceeding involving a child alleged to have committed a violent juvenile offense is an extended jurisdiction juvenile prosecution if the child was 13 years old at the time of the alleged offense, the prosecutor requested that the proceeding be designated an extended jurisdiction juvenile prosecution,

a hearing was held on the issue of designation, and the court designated the proceeding an extended jurisdiction juvenile prosecution.

Subd. 2. **Hearing on prosecutor's request.** When a prosecutor requests that a proceeding be designated an extended jurisdiction juvenile prosecution, the court shall hold a hearing under section 260B.163 to consider the request. The hearing must be held within 30 days of the filing of the request for designation, unless good cause is shown by the prosecution or the child as to why the hearing should not be held within this period in which case the hearing shall be held within 90 days of the filing of the request. If the prosecutor shows by clear and convincing evidence that designating the proceeding an extended jurisdiction juvenile prosecution serves public safety, the court shall grant the request for designation. In determining whether public safety is served, the court shall consider the factors specified in section 260B.125, subdivision 4. The court shall decide whether to designate the proceeding an extended jurisdiction juvenile prosecution within 15 days after the designation hearing is completed, unless additional time is needed, in which case the court may extend the period up to another 15 days.

Subd. 3. **Proceedings.** A child who is the subject of an extended jurisdiction juvenile prosecution has the right to a trial by jury and to the effective assistance of counsel, as described in section 260B.163, subdivision 4.

Subd. 4. **Disposition; child age 14 to 17 years.** (a) If an extended jurisdiction juvenile prosecution designated under subdivision 1 results in a guilty plea or finding of guilt, the court shall:

(1) impose one or more juvenile dispositions under section 260B.198; and

(2) impose an adult criminal sentence, the execution of which shall be stayed on the condition that the offender not violate the provisions of the disposition order and not commit a new offense.

(b) If a child prosecuted as an extended jurisdiction juvenile after designation by the prosecutor in the delinquency petition is convicted of an offense after trial that is not an offense described in subdivision 1, clause (2), the court shall adjudicate the child delinquent and order a disposition under section 260B.198. If the extended jurisdiction juvenile proceeding results in a guilty plea for an offense not described in subdivision 1, clause (2), the court may impose a disposition under paragraph (a) if the child consents.

Subd. 4a. **Disposition; child age 13 years.** If an extended jurisdiction juvenile prosecution designated under subdivision 1a results in a guilty plea or finding of guilt, the court shall:

(1) impose one or more juvenile dispositions under section 260B.198; and

4.1           (2) impose an adult criminal sentence, the execution of which shall be stayed on  
4.2           the condition that the offender not violate the provisions of the disposition order and not  
4.3           commit a new offense. In imposing an adult criminal sentence, the court may not order  
4.4           that the child be committed to the custody of the commissioner of corrections in a state  
4.5           correctional facility for adults.

4.6           Subd. 5. **Execution of adult sentence.** (a) When it appears that a person convicted  
4.7           as an extended jurisdiction juvenile has violated the conditions of the stayed sentence,  
4.8           or is alleged to have committed a new offense, the court may, without notice, revoke the  
4.9           stay and probation and direct that the offender be taken into immediate custody. The court  
4.10          shall notify the offender in writing of the reasons alleged to exist for revocation of the  
4.11          stay of execution of the adult sentence. If the offender challenges the reasons, the court  
4.12          shall hold a summary hearing on the issue at which the offender is entitled to be heard and  
4.13          represented by counsel.

4.14          (b) If a person described in paragraph (a) is taken into custody, the person may be  
4.15          detained in a secure juvenile detention facility. If there is no secure juvenile detention  
4.16          facility or existing acceptable detention alternative available for juveniles within the  
4.17          county, the child may be detained up to 24 hours, excluding Saturdays, Sundays, and  
4.18          holidays, or for up to six hours in a standard metropolitan statistical area, in a jail, lockup,  
4.19          or other facility used for the confinement of adults who have been charged with or  
4.20          convicted of a crime. In this instance, the person must be confined in quarters separate  
4.21          from any adult confined in the facility that allow for complete sight and sound separation  
4.22          for all activities during the period of the detention, and the adult facility must be approved  
4.23          for the detention of juveniles by the commissioner of corrections.

4.24          If the person is 18 years of age or older and is to be detained prior to the revocation  
4.25          hearing, the person may be detained in a local adult correctional facility without the need  
4.26          for sight and sound separation.

4.27          (c) After the hearing, if the court finds that reasons exist to revoke the stay of  
4.28          execution of sentence, the court shall treat the offender as an adult and order any of the  
4.29          adult sanctions authorized by section 609.14, subdivision 3, except that no credit shall  
4.30          be given for time served in juvenile facility custody prior to a summary hearing. If the  
4.31          offender was convicted of an offense described in subdivision 1, clause (2), and the court  
4.32          finds that reasons exist to revoke the stay, the court must order execution of the previously  
4.33          imposed sentence unless the court makes written findings regarding the mitigating factors  
4.34          that justify continuing the stay.

(d) Upon revocation, the offender's extended jurisdiction status is terminated and juvenile court jurisdiction is terminated. The ongoing jurisdiction for any adult sanction, other than commitment to the commissioner of corrections, is with the adult court.

Subd. 6. **Inapplicability to certain offenders.** This section does not apply to a child excluded from the definition of delinquent child under section 260B.007, subdivision 6, paragraph (b).

**EFFECTIVE DATE.** This section is effective August 1, 2013, and applies to offenses committed on or after that date.

Sec. 4. Minnesota Statutes 2012, section 260B.141, subdivision 4, is amended to read:

Subd. 4. **Delinquency petition; extended jurisdiction juvenile.** When a prosecutor files a delinquency petition alleging that a child committed a felony offense for which there is a presumptive commitment to prison according to the Sentencing Guidelines and applicable statutes or in which the child used a firearm, after reaching the age of 16 years, the prosecutor shall indicate in the petition whether the prosecutor designates the proceeding an extended jurisdiction juvenile prosecution. When a prosecutor files a delinquency petition alleging that a child aged 13 years committed a violent juvenile offense or a child aged 14 to 17 years committed a felony offense, the prosecutor may request that the court designate the proceeding an extended jurisdiction juvenile prosecution.

**EFFECTIVE DATE.** This section is effective August 1, 2013, and applies to offenses committed on or after that date.

Sec. 5. Minnesota Statutes 2012, 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 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.

**EFFECTIVE DATE.** This section is effective August 1, 2013, and applies to offenses committed on or after that date.

Sec. 6. Minnesota Statutes 2012, section 260B.198, subdivision 6, is amended to read:

Subd. 6. **Expungement.** Except when legal custody is transferred under the provisions of subdivision 1, clause (4), or a child is adjudicated delinquent for committing a violent juvenile offense, the court may expunge the adjudication of delinquency at any time that it deems advisable.

**EFFECTIVE DATE.** This section is effective August 1, 2013.

Sec. 7. Minnesota Statutes 2012, section 260B.199, is amended to read:

**260B.199 PLACEMENT OF JUVENILE OFFENDERS AT MINNESOTA  
CORRECTIONAL FACILITY-RED WING.**

Subdivision 1. **Admissions criteria.** The admissions criteria for the Minnesota Correctional Facility-Red Wing shall include a requirement that the county of referral must have considered all appropriate local or regional placements and have exhausted potential in-state placements in the geographic region. The court must state on the record that this effort was made and placements rejected before ordering a placement or commitment to the Minnesota Correctional Facility-Red Wing. Before a court orders a disposition under section 260B.198 or 260B.130, ~~subdivision 4~~, for a child, the court shall determine whether the child meets the established admissions criteria for the Minnesota Correctional Facility-Red Wing. If the child meets the admissions criteria, the court shall place the child at the facility and may not place the child in an out-of-state facility, unless the court makes a finding on the record that the safety of the child or the safety of the community can be best met by placement in an out-of-state facility or that the out-of-state facility is located closer to the child's home.

**EFFECTIVE DATE.** This section is effective August 1, 2013, and applies to offenses committed on or after that date.

Sec. 8. Minnesota Statutes 2012, section 260B.201, subdivision 2, is amended to read:

Subd. 2. **When commitment required.** (a) A court having jurisdiction over a child shall commit the child to the custody of the commissioner of corrections or place the child at the Minnesota Correctional Facility-Red Wing if the child:

(1) was previously adjudicated delinquent or convicted as an extended jurisdiction juvenile for an offense for which registration under section 243.166 was required;

(2) was placed on probation for the offense and ordered to complete a sex offender or chemical dependency treatment program; and

(3) subsequently failed or refused to successfully complete the program.

(b) If the child was initially convicted as an extended jurisdiction juvenile, the court may execute the child's adult sentence under section 260B.130, ~~subdivision 4~~. Notwithstanding paragraph (c), if the court does not do this, it shall comply with paragraph (a).

(c) A court may place a child in an out-of-state facility if the court makes a finding on the record that the safety of the child or the safety of the community can be best met

8.1 by placement in an out-of-state facility or that the out-of-state facility is located closer  
8.2 to the child's home.

8.3 **EFFECTIVE DATE.** This section is effective August 1, 2013, and applies to  
8.4 offenses committed on or after that date.

8.5 Sec. 9. Minnesota Statutes 2012, section 609.055, is amended to read:

8.6 **609.055 CAPABILITY OF CHILDREN TO COMMIT CRIME.**

8.7 Subdivision 1. **General rule.** Children under the age of ~~14~~ 13 years are incapable of  
8.8 committing crime.

8.9 Subd. 2. **Adult prosecution.** (a) Except as otherwise provided in ~~paragraph~~  
8.10 paragraphs (b); and (c):

8.11 (1) children of the age of 14 years or over but under 18 years may be prosecuted for  
8.12 a felony offense if the alleged violation is duly certified for prosecution under the laws and  
8.13 court procedures controlling adult criminal violations or may be designated an extended  
8.14 jurisdiction juvenile in accordance with the provisions of chapter 260B; and

8.15 (2) children of the age of 13 years may be designated as an extended jurisdiction  
8.16 juvenile in accordance with the provisions of chapter 260B for a violent juvenile offense,  
8.17 as defined in section 260B.007, subdivision 21.

8.18 (b) A child who is 16 years of age or older but under 18 years of age is capable of  
8.19 committing a crime and may be prosecuted for a felony if:

8.20 (1) the child has been previously certified on a felony charge pursuant to a hearing  
8.21 under section 260B.125, subdivision 2, or pursuant to the waiver of the right to such a  
8.22 hearing, or prosecuted pursuant to this subdivision; and

8.23 (2) the child was convicted of the felony offense or offenses for which the child was  
8.24 prosecuted or of a lesser included felony offense.

8.25 ~~(b)~~ (c) A child who is alleged to have committed murder in the first degree after  
8.26 becoming 16 years of age is capable of committing a crime and may be prosecuted for  
8.27 the felony. This paragraph does not apply to a child alleged to have committed attempted  
8.28 murder in the first degree after becoming 16 years of age.

8.29 **EFFECTIVE DATE.** This section is effective August 1, 2013, and applies to  
8.30 offenses committed on or after that date.