

**SENATE
STATE OF MINNESOTA
NINETIETH SESSION**

S.F. No. 2699

(SENATE AUTHORS: LIMMER)

DATE	D-PG	OFFICIAL STATUS
02/26/2018	6199	Introduction and first reading Referred to Judiciary and Public Safety Finance and Policy Comm report: To pass as amended and re-refer to Finance
03/08/2018		

1.1 A bill for an act

1.2 relating to public safety; increasing penalties for child pornography offenses;

1.3 requiring reports on court-imposed stays of sentence or adjudication for sex

1.4 offenses; restricting the grounds that permit reunification of parents and children

1.5 after the parent sexually abuses a child; amending Minnesota Statutes 2016, sections

1.6 260.012; 617.246, subdivisions 2, 3, 4, 7; 617.247, subdivisions 3, 4, 9; proposing

1.7 coding for new law in Minnesota Statutes, chapter 609.

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

1.9 Section 1. Minnesota Statutes 2016, section 260.012, is amended to read:

1.10 **260.012 DUTY TO ENSURE PLACEMENT PREVENTION AND FAMILY**

1.11 **REUNIFICATION; REASONABLE EFFORTS.**

1.12 (a) Once a child alleged to be in need of protection or services is under the court's

1.13 jurisdiction, the court shall ensure that reasonable efforts, including culturally appropriate

1.14 services, by the social services agency are made to prevent placement or to eliminate the

1.15 need for removal and to reunite the child with the child's family at the earliest possible time

1.16 and the court must ensure that the responsible social services agency makes reasonable

1.17 efforts to finalize an alternative permanent plan for the child as provided in paragraph (e)

1.18 In determining reasonable efforts to be made with respect to a child and in making those

1.19 reasonable efforts, the child's best interests, health, and safety must be of paramount concern

1.20 Reasonable efforts to prevent placement and for rehabilitation and reunification are always

1.21 required except upon a determination by the court that a petition has been filed stating a

1.22 *prima facie* case that:

1.23 (1) the parent has subjected a child to egregious harm as defined in section 260C.007,
1.24 subdivision 14:

2.1 (2) the parental rights of the parent to another child have been terminated involuntarily;

2.2 (3) the child is an abandoned infant under section 260C.301, subdivision 2, paragraph
2.3 (a), clause (2);

2.4 (4) the parent's custodial rights to another child have been involuntarily transferred to a
2.5 relative under Minnesota Statutes 2010, section 260C.201, subdivision 11, paragraph (d),
2.6 clause (1), section 260C.515, subdivision 4, or a similar law of another jurisdiction;

2.7 (5) the parent has committed sexual abuse as defined in section 626.556, subdivision 2,
2.8 against the child or another child of the parent;

2.9 (6) the parent has committed an offense that requires registration as a predatory offender
2.10 under section 243.166, subdivision 1b, paragraph (a) or (b); or

2.11 (7) the provision of services or further services for the purpose of reunification is futile
2.12 and therefore unreasonable under the circumstances.

2.13 (b) When the court makes one of the *prima facie* determinations under paragraph (a),
2.14 either permanency pleadings under section 260C.505, or a termination of parental rights
2.15 petition under sections 260C.141 and 260C.301 must be filed. A permanency hearing under
2.16 sections 260C.503 to 260C.521 must be held within 30 days of this determination.

2.17 (c) In the case of an Indian child, in proceedings under sections 260B.178, 260C.178,
2.18 260C.201, 260C.202, 260C.204, 260C.301, or 260C.503 to 260C.521, the juvenile court
2.19 must make findings and conclusions consistent with the Indian Child Welfare Act of 1978,
2.20 United States Code, title 25, section 1901 et seq., as to the provision of active efforts. In
2.21 cases governed by the Indian Child Welfare Act of 1978, United States Code, title 25, section
2.22 1901, the responsible social services agency must provide active efforts as required under
2.23 United States Code, title 25, section 1911(d).

2.24 (d) "Reasonable efforts to prevent placement" means:

2.25 (1) the agency has made reasonable efforts to prevent the placement of the child in foster
2.26 care by working with the family to develop and implement a safety plan; or

2.27 (2) given the particular circumstances of the child and family at the time of the child's
2.28 removal, there are no services or efforts available which could allow the child to safely
2.29 remain in the home.

2.30 (e) "Reasonable efforts to finalize a permanent plan for the child" means due diligence
2.31 by the responsible social services agency to:

2.32 (1) reunify the child with the parent or guardian from whom the child was removed;

3.1 (2) assess a noncustodial parent's ability to provide day-to-day care for the child and,
3.2 where appropriate, provide services necessary to enable the noncustodial parent to safely
3.3 provide the care, as required by section 260C.219;

3.4 (3) conduct a relative search to identify and provide notice to adult relatives as required
3.5 under section 260C.221;

3.6 (4) place siblings removed from their home in the same home for foster care or adoption,
3.7 or transfer permanent legal and physical custody to a relative. Visitation between siblings
3.8 who are not in the same foster care, adoption, or custodial placement or facility shall be
3.9 consistent with section 260C.212, subdivision 2; and

3.10 (5) when the child cannot return to the parent or guardian from whom the child was
3.11 removed, to plan for and finalize a safe and legally permanent alternative home for the child,
3.12 and considers permanent alternative homes for the child inside or outside of the state,
3.13 preferably through adoption or transfer of permanent legal and physical custody of the child.

3.14 (f) Reasonable efforts are made upon the exercise of due diligence by the responsible
3.15 social services agency to use culturally appropriate and available services to meet the needs
3.16 of the child and the child's family. Services may include those provided by the responsible
3.17 social services agency and other culturally appropriate services available in the community.
3.18 At each stage of the proceedings where the court is required to review the appropriateness
3.19 of the responsible social services agency's reasonable efforts as described in paragraphs (a),
3.20 (d), and (e), the social services agency has the burden of demonstrating that:

3.21 (1) it has made reasonable efforts to prevent placement of the child in foster care;

3.22 (2) it has made reasonable efforts to eliminate the need for removal of the child from
3.23 the child's home and to reunify the child with the child's family at the earliest possible time;

3.24 (3) it has made reasonable efforts to finalize an alternative permanent home for the child,
3.25 and considers permanent alternative homes for the child inside or outside of the state; or

3.26 (4) reasonable efforts to prevent placement and to reunify the child with the parent or
3.27 guardian are not required. The agency may meet this burden by stating facts in a sworn
3.28 petition filed under section 260C.141, by filing an affidavit summarizing the agency's
3.29 reasonable efforts or facts the agency believes demonstrate there is no need for reasonable
3.30 efforts to reunify the parent and child, or through testimony or a certified report required
3.31 under juvenile court rules.

3.32 (g) Once the court determines that reasonable efforts for reunification are not required
3.33 because the court has made one of the *prima facie* determinations under paragraph (a), the

4.1 court may only require reasonable efforts for reunification after a hearing according to
4.2 section 260C.163, where the court finds there is not clear and convincing evidence of the
4.3 facts upon which the court based its *prima facie* determination. In this case when there is
4.4 clear and convincing evidence that the child is in need of protection or services, the court
4.5 may find the child in need of protection or services and order any of the dispositions available
4.6 under section 260C.201, subdivision 1. Reunification of a child with a parent is not required
4.7 if the parent has been convicted of:

- 4.8 (1) a violation of, or an attempt or conspiracy to commit a violation of, sections 609.185
4.9 to 609.20; 609.222, subdivision 2; or 609.223 in regard to another child of the parent;
- 4.10 (2) a violation of section 609.222, subdivision 2; or 609.223, in regard to the child;
- 4.11 (3) a violation of, or an attempt or conspiracy to commit a violation of, United States
4.12 Code, title 18, section 1111(a) or 1112(a), in regard to another child of the parent;
- 4.13 (4) committing sexual abuse as defined in section 626.556, subdivision 2, against the
4.14 child or another child of the parent; or
- 4.15 (5) an offense that requires registration as a predatory offender under section 243.166,
4.16 subdivision 1b, paragraph (a) or (b).

4.17 Reunification is also not required when a parent receives a stay of adjudication pursuant to
4.18 section 609.095, paragraph (b), for an offense that constitutes sexual abuse under clause
4.19 (4).

4.20 (h) The juvenile court, in proceedings under sections 260B.178, 260C.178, 260C.201,
4.21 260C.202, 260C.204, 260C.301, or 260C.503 to 260C.521, shall make findings and
4.22 conclusions as to the provision of reasonable efforts. When determining whether reasonable
4.23 efforts have been made, the court shall consider whether services to the child and family
4.24 were:

- 4.25 (1) relevant to the safety and protection of the child;
- 4.26 (2) adequate to meet the needs of the child and family;
- 4.27 (3) culturally appropriate;
- 4.28 (4) available and accessible;
- 4.29 (5) consistent and timely; and
- 4.30 (6) realistic under the circumstances.

5.1 In the alternative, the court may determine that provision of services or further services
5.2 for the purpose of rehabilitation is futile and therefore unreasonable under the circumstances
5.3 or that reasonable efforts are not required as provided in paragraph (a).

5.4 (i) This section does not prevent out-of-home placement for treatment of a child with a
5.5 mental disability when it is determined to be medically necessary as a result of the child's
5.6 diagnostic assessment or individual treatment plan indicates that appropriate and necessary
5.7 treatment cannot be effectively provided outside of a residential or inpatient treatment
5.8 program and the level or intensity of supervision and treatment cannot be effectively and
5.9 safely provided in the child's home or community and it is determined that a residential
5.10 treatment setting is the least restrictive setting that is appropriate to the needs of the child.

5.11 (j) If continuation of reasonable efforts to prevent placement or reunify the child with
5.12 the parent or guardian from whom the child was removed is determined by the court to be
5.13 inconsistent with the permanent plan for the child or upon the court making one of the prima
5.14 facie determinations under paragraph (a), reasonable efforts must be made to place the child
5.15 in a timely manner in a safe and permanent home and to complete whatever steps are
5.16 necessary to legally finalize the permanent placement of the child.

5.17 (k) Reasonable efforts to place a child for adoption or in another permanent placement
5.18 may be made concurrently with reasonable efforts to prevent placement or to reunify the
5.19 child with the parent or guardian from whom the child was removed. When the responsible
5.20 social services agency decides to concurrently make reasonable efforts for both reunification
5.21 and permanent placement away from the parent under paragraph (a), the agency shall disclose
5.22 its decision and both plans for concurrent reasonable efforts to all parties and the court.
5.23 When the agency discloses its decision to proceed on both plans for reunification and
5.24 permanent placement away from the parent, the court's review of the agency's reasonable
5.25 efforts shall include the agency's efforts under both plans.

5.26 Sec. 2. **[609.3454] STAYS OF SENTENCE OR ADJUDICATION; REPORTS**
5.27 **REQUIRED.**

5.28 (a) By January 31 of each year, each county attorney whose office has prosecuted an
5.29 offense in the preceding calendar year for which a court has imposed a stay of imposition
5.30 or execution of sentence under section 609.342, subdivision 3; 609.343, subdivision 3;
5.31 609.344, subdivision 3; or 609.345, subdivision 3, or a stay of adjudication of guilt for a
5.32 violation of section 243.166; 609.342; 609.343; 609.344; 609.345; 609.3451, subdivision
5.33 3; or 609.3453, shall report to the Minnesota County Attorneys Association the following
5.34 information on each offense for which a stay was imposed:

6.1 (1) general information about the case, including a brief description of the facts and any
6.2 relevant information specific to the case's prosecution;

6.3 (2) whether the prosecutor objected to or supported the court's decision to impose a stay
6.4 and the reasons for that position;

6.5 (3) what conditions of probation were imposed by the court on the offender; and

6.6 (4) any other information the county attorney deems appropriate.

6.7 (b) By March 1 of each year, the Minnesota County Attorneys Association shall forward
6.8 to the chairs and ranking minority members of the senate and house of representatives
6.9 committees having jurisdiction over criminal justice policy a combined report that includes
6.10 the reports of each county attorney under paragraph (a).

6.11 (c) Reports under this section must not identify individuals who are offenders, victims,
6.12 or witnesses to an offense.

6.13 Sec. 3. Minnesota Statutes 2016, section 617.246, subdivision 2, is amended to read:

6.14 Subd. 2. **Use of minor.** (a) It is unlawful for a person to promote, employ, use or permit
6.15 a minor to engage in or assist others to engage minors in posing or modeling alone or with
6.16 others in any sexual performance or pornographic work if the person knows or has reason
6.17 to know that the conduct intended is a sexual performance or a pornographic work.

6.18 Any person who violates this subdivision paragraph is guilty of a felony and may be
6.19 sentenced to imprisonment for not more than ten years or to payment of a fine of not more
6.20 than \$20,000 for the first offense and \$40,000 for a second or subsequent offense, or both.

6.21 (b) A person who violates paragraph (a) is guilty of a felony and may be sentenced to
6.22 imprisonment for not more than 15 years or to payment of a fine of not more than \$40,000,
6.23 or both, if:

6.24 (1) the person has a prior conviction or delinquency adjudication for violating this section
6.25 or section 617.247;

6.26 (2) the violation occurs when the person is a registered predatory offender under section
6.27 243.166; or

6.28 (3) the violation involved a minor under the age of 13 years.

6.29 **EFFECTIVE DATE.** This section is effective August 1, 2018, and applies to crimes
6.30 committed on or after that date.

7.1 Sec. 4. Minnesota Statutes 2016, section 617.246, subdivision 3, is amended to read:

7.2 Subd. 3. **Operation or ownership of business.** (a) A person who owns or operates a
7.3 business in which a pornographic work, as defined in this section, is disseminated to an
7.4 adult or a minor or is reproduced, and who knows the content and character of the
7.5 pornographic work disseminated or reproduced, is guilty of a felony and may be sentenced
7.6 to imprisonment for not more than ten years, or to payment of a fine of not more than
7.7 \$20,000 ~~for the first offense and \$40,000 for a second or subsequent offense~~, or both.

7.8 (b) A person who violates paragraph (a) is guilty of a felony and may be sentenced to
7.9 imprisonment for not more than 15 years or to payment of a fine of not more than \$40,000,
7.10 or both, if:

7.11 (1) the person has a prior conviction or delinquency adjudication for violating this section
7.12 or section 617.247;

7.13 (2) the violation occurs when the person is a registered predatory offender under section
7.14 243.166; or

7.15 (3) the violation involved a minor under the age of 13 years.

7.16 **EFFECTIVE DATE.** This section is effective August 1, 2018, and applies to crimes
7.17 committed on or after that date.

7.18 Sec. 5. Minnesota Statutes 2016, section 617.246, subdivision 4, is amended to read:

7.19 Subd. 4. **Dissemination.** (a) A person who, knowing or with reason to know its content
7.20 and character, disseminates for profit to an adult or a minor a pornographic work, as defined
7.21 in this section, is guilty of a felony and may be sentenced to imprisonment for not more
7.22 than ten years, or to payment of a fine of not more than \$20,000 ~~for the first offense and~~
7.23 ~~\$40,000 for a second or subsequent offense~~, or both.

7.24 (b) A person who violates paragraph (a) is guilty of a felony and may be sentenced to
7.25 imprisonment for not more than 15 years or to payment of a fine of not more than \$40,000,
7.26 or both, if:

7.27 (1) the person has a prior conviction or delinquency adjudication for violating this section
7.28 or section 617.247;

7.29 (2) the violation occurs when the person is a registered predatory offender under section
7.30 243.166; or

7.31 (3) the violation involved a minor under the age of 13 years.

8.1 **EFFECTIVE DATE.** This section is effective August 1, 2018, and applies to crimes
8.2 committed on or after that date.

8.3 Sec. 6. Minnesota Statutes 2016, section 617.246, subdivision 7, is amended to read:

8.4 Subd. 7. **Conditional release term.** Notwithstanding the statutory maximum sentence
8.5 otherwise applicable to the offense or any provision of the sentencing guidelines, when a
8.6 court commits a person to the custody of the commissioner of corrections for violating this
8.7 section, the court shall provide that after the person has been released from prison, the
8.8 commissioner shall place the person on conditional release for five years. If the person has
8.9 previously been convicted of a violation of this section, section 609.342, 609.343, 609.344,
8.10 609.345, 609.3451, 609.3453, or 617.247, or any similar statute of the United States, this
8.11 state, or any state, the commissioner shall place the person on conditional release for ~~ten~~
8.12 15 years. The terms of conditional release are governed by section 609.3455, subdivision
8.13 8.

8.14 **EFFECTIVE DATE.** This section is effective August 1, 2018, and applies to crimes
8.15 committed on or after that date.

8.16 Sec. 7. Minnesota Statutes 2016, section 617.247, subdivision 3, is amended to read:

8.17 Subd. 3. **Dissemination prohibited.** (a) A person who disseminates pornographic work
8.18 to an adult or a minor, knowing or with reason to know its content and character, is guilty
8.19 of a felony and may be sentenced to imprisonment for not more than seven years ~~and or to~~
8.20 ~~payment of a fine of not more than \$10,000 for a first offense and for not more than 15~~
8.21 ~~years and a fine of not more than \$20,000 for a second or subsequent offense, or both.~~

8.22 (b) A person who violates paragraph (a) is guilty of a felony and may be sentenced to
8.23 imprisonment for not more than 15 years ~~or to payment of a fine of not more than \$20,000,~~
8.24 ~~or both, if:~~

8.25 (1) ~~the person has a prior conviction or delinquency adjudication for violating this section~~
8.26 ~~or section 617.246;~~

8.27 (2) ~~the violation occurs when the person is a registered predatory offender under section~~
8.28 ~~243.166; or~~

8.29 (3) ~~the violation involved a minor under the age of 13 years.~~

8.30 **EFFECTIVE DATE.** This section is effective August 1, 2018, and applies to crimes
8.31 committed on or after that date.

9.1 Sec. 8. Minnesota Statutes 2016, section 617.247, subdivision 4, is amended to read:

9.2 Subd. 4. **Possession prohibited.** (a) A person who possesses a pornographic work or a
9.3 computer disk or computer or other electronic, magnetic, or optical storage system or a
9.4 storage system of any other type, containing a pornographic work, knowing or with reason
9.5 to know its content and character, is guilty of a felony and may be sentenced to imprisonment
9.6 for not more than five years ~~and or to payment of a fine of not more than \$5,000 for a first
9.7 offense and for not more than ten years and a fine of not more than \$10,000 for a second
9.8 or subsequent offense, or both.~~

9.9 (b) A person who violates paragraph (a) is guilty of a felony and may be sentenced to
9.10 imprisonment for not more than ten years ~~or to payment of a fine of not more than \$10,000,
9.11 or both, if:~~

9.12 (1) the person has a prior conviction or delinquency adjudication for violating this section
9.13 or section 617.246;

9.14 (2) the violation occurs when the person is a registered predatory offender under section
9.15 243.166; or

9.16 (3) the violation involved a minor under the age of 13 years.

9.17 **EFFECTIVE DATE.** This section is effective August 1, 2018, and applies to crimes
9.18 committed on or after that date.

9.19 Sec. 9. Minnesota Statutes 2016, section 617.247, subdivision 9, is amended to read:

9.20 Subd. 9. **Conditional release term.** Notwithstanding the statutory maximum sentence
9.21 otherwise applicable to the offense or any provision of the sentencing guidelines, when a
9.22 court commits a person to the custody of the commissioner of corrections for violating this
9.23 section, the court shall provide that after the person has been released from prison, the
9.24 commissioner shall place the person on conditional release for five years. If the person has
9.25 previously been convicted of a violation of this section, section 609.342, 609.343, 609.344,
9.26 609.345, 609.3451, 609.3453, or 617.246, or any similar statute of the United States, this
9.27 state, or any state, the commissioner shall place the person on conditional release for ~~ten~~
9.28 15 years. The terms of conditional release are governed by section 609.3455, subdivision
9.29 8.

9.30 **EFFECTIVE DATE.** This section is effective August 1, 2018, and applies to crimes
9.31 committed on or after that date.

10.1 Sec. 10. **SENTENCING GUIDELINES MODIFICATION.**

10.2 The Sentencing Guidelines Commission shall comprehensively review and consider
10.3 modifying how the Sentencing Guidelines and the sex offender grid address the crimes
10.4 described in Minnesota Statutes, sections 617.246 and 617.247, as compared to similar
10.5 crimes, including other sex offenses and other offenses with similar maximum penalties.