

SENATE

STATE OF MINNESOTA

EIGHTY-EIGHTH SESSION

S.F. No. 2273

(SENATE AUTHORS: LATZ)

DATE	D-PG	OFFICIAL STATUS
03/04/2014	5958	Introduction and first reading Referred to Judiciary
03/12/2014	6113a 6156	Comm report: To pass as amended Second reading

A bill for an act relating to juvenile justice; addressing numerous issues relating to juveniles including detention, noncustodial supervision, risk assessments, continuances, diversion, life without release sentences, predatory offender registration, and expungement; appropriating money; amending Minnesota Statutes 2012, sections 243.166, subdivision 2; 244.05, subdivisions 4, 5; 260B.198, subdivisions 6, 7; 332.70, by adding a subdivision; 388.24, subdivision 1; 609.106, subdivision 2, by adding a subdivision; 609.3455, subdivision 2; Minnesota Statutes 2013 Supplement, section 243.166, subdivisions 1b, 6; proposing coding for new law in Minnesota Statutes, chapter 260B.

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

ARTICLE 1

JUVENILE DETENTION AND NONCUSTODIAL SUPERVISION; RISK ASSESSMENTS; CONSULTATIONS REQUIRED

Section 1. CONSULTATIONS ON CERTAIN ISSUES.

(a) Representatives of public safety officials, court officials, county attorneys, juvenile justice advocates, corrections officials, probation officials, and other interested parties shall meet and confer regarding issues related to risk assessment instruments and their use to determine juvenile detention and noncustodial supervision.

(b) The parties shall provide a written report of their recommendations by November 15, 2014, to the chairs of the house of representatives and senate committees having jurisdiction over criminal justice legislation.

EFFECTIVE DATE. This section is effective the day following final enactment.

2.1 **ARTICLE 2**

2.2 **CONTINUANCES AND DIVERSION**

2.3 Section 1. **[260B.1755] LAW ENFORCEMENT DIVERSION OF NONVIOLENT**
2.4 **JUVENILE OFFENDERS AUTHORIZED.**

2.5 (a) A peace officer may refer a child that the officer has the lawful authority to arrest
2.6 or has arrested to a diversion program that the law enforcement agency with jurisdiction
2.7 over the child deems appropriate.

2.8 (b) This section applies only to nonviolent offenses and does not apply to peace
2.9 officers acting pursuant to an order or warrant described in section 260B.175, subdivision
2.10 1, paragraph (a), or other court order to take a child into custody.

2.11 (c) A diversion program authorized by this section may defer prosecution of
2.12 juvenile offenders who agree to complete appropriate conditions. Upon completion of the
2.13 conditions, the charge shall be dismissed. Both petty offenders and delinquents may be
2.14 diverted.

2.15 Sec. 2. Minnesota Statutes 2012, section 260B.198, subdivision 7, is amended to read:

2.16 Subd. 7. **Continuance.** (a) When it is in the best interests of the child to do so and
2.17 not inimical to public safety and when the child has admitted the allegations contained in
2.18 the petition before the judge or referee, or when a hearing has been held as provided for in
2.19 section 260B.163 and the allegations contained in the petition have been duly proven but,
2.20 in either case, before a finding of delinquency has been entered, the court may continue
2.21 the case for a period not to exceed 90 ~~180~~ days on any one order. ~~Such a continuance may~~
2.22 ~~be extended for one additional successive period not to exceed 90 days and only after the~~
2.23 ~~court has reviewed the case and entered its order for an additional continuance without a~~
2.24 ~~finding of delinquency.~~ The continuance may be extended for one additional successive
2.25 period not to exceed 180 days, but only with the consent of the prosecutor and only after
2.26 the court has reviewed the case and entered its order for the additional continuance
2.27 without a finding of delinquency. During this a continuance the court may enter an order
2.28 in accordance with the provisions of subdivision 1, ~~clause (1) or (2)~~ except clause (4), or
2.29 enter an order to hold the child in detention for a period not to exceed 15 days on any one
2.30 order for the purpose of completing any consideration, or any investigation or examination
2.31 ordered in accordance with the provisions of section 260B.157.

2.32 (b) A prosecutor may appeal a continuance ordered in contravention of this
2.33 subdivision. This subdivision does not extend the court's jurisdiction under section
2.34 260B.193 and does not apply to an extended jurisdiction juvenile proceeding.

EFFECTIVE DATE. This section is effective August 1, 2014, and applies to offenses committed on or after that date.

Sec. 3. Minnesota Statutes 2012, section 388.24, subdivision 1, is amended to read:

Subdivision 1. **Definition.** As used in this section:

(1) a child under the jurisdiction of the juvenile court is an "offender" if:

(i) the child is petitioned for, or probable cause exists to petition or take the child into custody for, a felony, gross misdemeanor, ~~or~~ misdemeanor, petty misdemeanor, juvenile petty, or juvenile traffic offense, other than an offense against the person, but has not yet entered a plea in the proceedings;

(ii) the child has not previously been adjudicated in Minnesota or any other state for any offense against the person; and

(iii) the child has not previously been petitioned for an offense in Minnesota and then had the petition dismissed as part of a diversion program, including a program that existed before July 1, 1995; and

(2) "pretrial diversion" means the decision of a prosecutor to refer an offender to a diversion program on condition that the delinquency petition against the offender will be dismissed or the petition will not be filed after a specified period of time if the offender successfully completes the program.

ARTICLE 3

EXPUNGEMENT

Section 1. 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),~~ (a) The court may expunge the adjudication of all records relating to the arrest and delinquency proceedings at any time ~~that it deems advisable~~ if the court determines that expungement of the record would yield a benefit to the subject of the record that outweighs the detriment to the public and public safety in sealing the record and the burden on the court and public agencies or jurisdictions in issuing, enforcing, and monitoring the order.

(b) In making a determination under this subdivision, the court shall consider:

(1) the age, education, experience, and background, including mental and emotional development, of the subject of the record at the time of commission of the offense;

(2) the circumstances and nature and severity of the offense, including any aggravating or mitigating factors in the commission of the offense;

- 4.1 (3) victim and community impact, including age and vulnerability of the victim;
4.2 (4) the level of participation of the subject of the record in the planning and carrying
4.3 out of the offense, including familial or peer influence in the commission of the offense;
4.4 (5) the juvenile delinquency and criminal history of the subject of the record;
4.5 (6) the programming history of the subject of the record, including child welfare,
4.6 school and community-based, and probation interventions, and the subject's willingness to
4.7 participate meaningfully in programming, probation, or both;
4.8 (7) any other aggravating or mitigating circumstance bearing on the culpability or
4.9 potential for rehabilitation of the subject of the record; and
4.10 (8) the benefit that expungement would yield to the subject of the record in pursuing
4.11 education, employment, housing, or other necessities.
4.12 (c) Notwithstanding paragraph (a), a record that is expunged under this subdivision
4.13 may be opened or exchanged between criminal justice agencies in the same manner as a
4.14 criminal record under section 609A.03, subdivision 7, paragraph (b).
4.15 (d) Section 609A.03, subdivision 9, applies to an appeal of an order under this
4.16 subdivision.

4.17 Sec. 2. Minnesota Statutes 2012, section 332.70, is amended by adding a subdivision
4.18 to read:

4.19 Subd. 3a. **Deletion of expunged records.** If a business screening service knows that
4.20 a criminal record has been sealed, expunged, or is the subject of a pardon, the screening
4.21 service shall promptly delete the record.

4.22 ARTICLE 4

4.23 JUVENILE LIFE SENTENCES

4.24 Section 1. Minnesota Statutes 2012, section 244.05, subdivision 4, is amended to read:

4.25 Subd. 4. **Minimum imprisonment, life sentence.** (a) An inmate serving a
4.26 mandatory life sentence under section 609.106, subdivision 2, or 609.3455, subdivision 2,
4.27 paragraph (a), must not be given supervised release under this section.

4.28 (b) Except as provided in paragraph (f), an inmate serving a mandatory life sentence
4.29 under section 609.185, clause (3), (5), or (6); or Minnesota Statutes 2004, section 609.109,
4.30 subdivision 3, must not be given supervised release under this section without having
4.31 served a minimum term of 30 years.

4.32 (c) An inmate serving a mandatory life sentence under section 609.385 must not
4.33 be given supervised release under this section without having served a minimum term of
4.34 imprisonment of 17 years.

(d) An inmate serving a mandatory life sentence under section 609.3455, subdivision 3 or 4, must not be given supervised release under this section without having served the minimum term of imprisonment specified by the court in its sentence.

(e) An inmate serving a mandatory life sentence under section 609.106, subdivision 3, or 609.3455, subdivision 2, paragraph (c), must not be given supervised release under this section without having served a minimum term of imprisonment of 20 years.

(f) An inmate serving a mandatory life sentence for a crime described in paragraph (b) who was under 18 years of age at the time of the commission of the offense requiring the life sentence, and who was certified under section 260B.125 or designated an extended jurisdiction juvenile under section 260B.130, must not be given supervised release under this section without having served a minimum term of imprisonment of 20 years.

Sec. 2. Minnesota Statutes 2012, section 244.05, subdivision 5, is amended to read:

Subd. 5. **Supervised release, life sentence.** (a) The commissioner of corrections may, under rules promulgated by the commissioner, give supervised release to an inmate serving a mandatory life sentence under section 609.185, clause (3), (5), or (6); 609.106, subdivision 3; 609.3455, subdivision 2, paragraph (c), 3₂ or 4; 609.385; or Minnesota Statutes 2004, section 609.109, subdivision 3, after the inmate has served the minimum term of imprisonment specified in subdivision 4.

(b) The commissioner shall require the preparation of a community investigation report and shall consider the findings of the report when making a supervised release decision under this subdivision. The report shall reflect the sentiment of the various elements of the community toward the inmate, both at the time of the offense and at the present time. The report shall include the views of the sentencing judge, the prosecutor, any law enforcement personnel who may have been involved in the case, and any successors to these individuals who may have information relevant to the supervised release decision. The report shall also include the views of the victim and the victim's family unless the victim or the victim's family chooses not to participate.

(c) The commissioner shall make reasonable efforts to notify the victim, in advance, of the time and place of the inmate's supervised release review hearing. The victim has a right to submit an oral or written statement at the review hearing. The statement may summarize the harm suffered by the victim as a result of the crime and give the victim's recommendation on whether the inmate should be given supervised release at this time. The commissioner must consider the victim's statement when making the supervised release decision.

(d) When considering whether to give supervised release to an inmate serving a life sentence under section 609.3455, subdivision 3 or 4, the commissioner shall consider, at a minimum, the following: the risk the inmate poses to the community if released, the inmate's progress in treatment, the inmate's behavior while incarcerated, psychological or other diagnostic evaluations of the inmate, the inmate's criminal history, and any other relevant conduct of the inmate while incarcerated or before incarceration. The commissioner may not give supervised release to the inmate unless:

(1) while in prison:

(i) the inmate has successfully completed appropriate sex offender treatment;

(ii) the inmate has been assessed for chemical dependency needs and, if appropriate, has successfully completed chemical dependency treatment; and

(iii) the inmate has been assessed for mental health needs and, if appropriate, has successfully completed mental health treatment; and

(2) a comprehensive individual release plan is in place for the inmate that ensures that, after release, the inmate will have suitable housing and receive appropriate aftercare and community-based treatment. The comprehensive plan also must include a postprison employment or education plan for the inmate.

(e) As used in this subdivision, "victim" means the individual who suffered harm as a result of the inmate's crime or, if the individual is deceased, the deceased's surviving spouse or next of kin.

Sec. 3. Minnesota Statutes 2012, section 609.106, subdivision 2, is amended to read:

Subd. 2. **Life without release.** Except as provided in subdivision 3, the court shall sentence a person to life imprisonment without possibility of release under the following circumstances:

(1) the person is convicted of first-degree murder under section 609.185, paragraph (a), clause (1), (2), (4), or (7);

(2) the person is convicted of committing first-degree murder in the course of a kidnapping under section 609.185, clause (3); or

(3) the person is convicted of first-degree murder under section 609.185, clause (3), (5), or (6), and the court determines on the record at the time of sentencing that the person has one or more previous convictions for a heinous crime.

Sec. 4. Minnesota Statutes 2012, section 609.106, is amended by adding a subdivision to read:

7.1 **Subd. 3. Offender under age 18; life imprisonment with possibility of release.** If
7.2 the defendant was under 18 years of age at the time of the commission of an offense that
7.3 would require a life without release sentence under subdivision 2, and the child has been
7.4 certified under section 260B.125 or designated an extended jurisdiction juvenile under
7.5 section 260B.130, the court shall sentence the defendant to imprisonment for life.

7.6 Sec. 5. Minnesota Statutes 2012, section 609.3455, subdivision 2, is amended to read:

7.7 **Subd. 2. Mandatory life sentence without release; egregious first-time and**
7.8 **repeat offenders.** (a) Except as provided in paragraph (c), notwithstanding the statutory
7.9 maximum penalty otherwise applicable to the offense, the court shall sentence a person
7.10 convicted under section 609.342, subdivision 1, paragraph (c), (d), (e), (f), or (h); or
7.11 609.343, subdivision 1, paragraph (c), (d), (e), (f), or (h), to life without the possibility of
7.12 release if:

7.13 (1) the fact finder determines that two or more heinous elements exist; or

7.14 (2) the person has a previous sex offense conviction for a violation of section
7.15 609.342, 609.343, or 609.344, and the fact finder determines that a heinous element exists
7.16 for the present offense.

7.17 (b) A fact finder may not consider a heinous element if it is an element of the
7.18 underlying specified violation of section 609.342 or 609.343. In addition, when
7.19 determining whether two or more heinous elements exist, the fact finder may not use the
7.20 same underlying facts to support a determination that more than one element exists.

7.21 (c) If the defendant was under 18 years of age at the time of the commission of an
7.22 offense that would require a life without release sentence under paragraph (a), and the child
7.23 has been certified under section 260B.125 or designated an extended jurisdiction juvenile
7.24 under section 260B.130, the court shall sentence the defendant to imprisonment for life.

7.25 Sec. 6. **EFFECTIVE DATE; RETROACTIVITY.**

7.26 Sections 1 to 5 are effective the day following final enactment and apply to offenders
7.27 sentenced on or after that date, and also retroactively to offenders sentenced to life without
7.28 release sentenced before that date.

7.29 **ARTICLE 5**

7.30 **PREDATORY OFFENDER REGISTRATION**

7.31 Section 1. Minnesota Statutes 2013 Supplement, section 243.166, subdivision 1b,
7.32 is amended to read:

8.1 Subd. 1b. **Registration required.** (a) A person shall register under this section if
8.2 the person is an adult or a child certified under section 260B.125 and:

8.3 (1) the person was charged with ~~or petitioned for~~ a felony violation of or attempt to
8.4 violate, or aiding, abetting, or conspiracy to commit, any of the following, and convicted
8.5 of ~~or adjudicated delinquent for~~ that offense or another offense arising out of the same
8.6 set of circumstances:

8.7 (i) murder under section 609.185, paragraph (a), clause (2);

8.8 (ii) kidnapping under section 609.25;

8.9 (iii) criminal sexual conduct under section 609.342; 609.343; 609.344; 609.345;
8.10 609.3451, subdivision 3; or 609.3453; or

8.11 (iv) indecent exposure under section 617.23, subdivision 3;

8.12 (2) the person was charged with ~~or petitioned for~~ a violation of, or attempt to
8.13 violate, or aiding, abetting, or conspiring to commit criminal abuse in violation of section
8.14 609.2325, subdivision 1, paragraph (b), false imprisonment in violation of section
8.15 609.255, subdivision 2; soliciting a minor to engage in prostitution in violation of section
8.16 609.322 or 609.324; soliciting a minor to engage in sexual conduct in violation of
8.17 section 609.352; using a minor in a sexual performance in violation of section 617.246;
8.18 or possessing pornographic work involving a minor in violation of section 617.247, and
8.19 convicted of ~~or adjudicated delinquent for~~ that offense or another offense arising out
8.20 of the same set of circumstances;

8.21 (3) the person was sentenced as a patterned sex offender under section 609.3455,
8.22 subdivision 3a; or

8.23 (4) the person was convicted of or adjudicated delinquent for, including pursuant
8.24 to a court martial, violating a law of the United States, including the Uniform Code of
8.25 Military Justice, similar to the offenses described in clause (1), (2), or (3).

8.26 (b) A person also shall register under this section if the person is an adult or a child
8.27 certified under section 260B.125 and:

8.28 (1) the person was convicted of ~~or adjudicated delinquent~~ in another state for an
8.29 offense that would be a violation of a law described in paragraph (a) if committed in
8.30 this state;

8.31 (2) the person enters this state to reside, work, or attend school, or enters this state
8.32 and remains for 14 days or longer; and

8.33 (3) ten years have not elapsed since the person was released from confinement
8.34 or, if the person was not confined, since the person was convicted of ~~or adjudicated~~
8.35 ~~delinquent for~~ the offense that triggers registration, unless the person is subject to a longer

9.1 registration period under the laws of another state in which the person has been convicted
9.2 or adjudicated, or is subject to lifetime registration.

9.3 If a person described in this paragraph is subject to a longer registration period
9.4 in another state or is subject to lifetime registration, the person shall register for that
9.5 time period regardless of when the person was released from confinement, convicted, or
9.6 adjudicated delinquent.

9.7 (c) A person also shall register under this section if the person is an adult or a child
9.8 certified under section 260B.125 and was committed pursuant to a court commitment order
9.9 under chapter 253D or Minnesota Statutes 1992, section 526.10, or a similar law of another
9.10 state or the United States, regardless of whether the person was convicted of any offense.

9.11 (d) A person also shall register under this section if the person is an adult or a child
9.12 certified under section 260B.125 and:

9.13 (1) the person was charged with ~~or petitioned for~~ a felony violation or attempt to
9.14 violate any of the offenses listed in paragraph (a), clause (1), or a similar law of another
9.15 state or the United States, or the person was charged with ~~or petitioned for~~ a violation of
9.16 any of the offenses listed in paragraph (a), clause (2), or a similar law of another state or
9.17 the United States;

9.18 (2) the person was found not guilty by reason of mental illness or mental deficiency
9.19 after a trial for that offense, or found guilty but mentally ill after a trial for that offense, in
9.20 states with a guilty but mentally ill verdict; and

9.21 (3) the person was committed pursuant to a court commitment order under section
9.22 253B.18 or a similar law of another state or the United States.

9.23 (e) A child who is not certified under section 260B.125 shall register under this
9.24 section if:

9.25 (1) the child was 14 years of age or older when the child committed any of the
9.26 offenses under paragraph (a) or a similar law of another state or the United States;

9.27 (2) the child was adjudicated delinquent or convicted as an extended jurisdiction
9.28 juvenile of any of the offenses requiring registration under this subdivision;

9.29 (3) the court, in its discretion and upon motion of the prosecuting attorney, finds that
9.30 the circumstances of the offense require the child to register; and

9.31 (4) the court considers the following factors when determining whether the child
9.32 should register:

9.33 (i) the degree to which the child used force, threat, or intimidation in committing
9.34 the offense;

9.35 (ii) impact on the victim;

9.36 (iii) age and maturity of the child;

10.1 (iv) the difference in age of the victim and child;
10.2 (v) the child's history of delinquency; and
10.3 (vi) any other aggravating or mitigating factor that the court determines relevant
10.4 to the particular case which may include any or all of the following: compliance on
10.5 probation, progress in treatment, and risk assessments and evaluations.

10.6 The prosecuting attorney may file a motion for registration at any time during
10.7 which the juvenile is within the jurisdiction of the court for the offense that is the basis
10.8 for the motion.

10.9 Sec. 2. Minnesota Statutes 2012, section 243.166, subdivision 2, is amended to read:

10.10 Subd. 2. **Notice.** When a person who is required to register under subdivision 1b,
10.11 ~~paragraph~~ paragraphs (a) and (e), is sentenced or becomes subject to a juvenile court
10.12 disposition order, the court shall tell the person of the duty to register under this section
10.13 and that, if the person fails to comply with the registration requirements, information
10.14 about the offender may be made available to the public through electronic, computerized,
10.15 or other accessible means. The court may not modify the person's duty to register in the
10.16 pronounced sentence or disposition order. The court shall require the person to read and
10.17 sign a form stating that the duty of the person to register under this section has been
10.18 explained. The court shall forward the signed sex offender registration form, the complaint,
10.19 and sentencing documents to the bureau. If a person required to register under subdivision
10.20 1b, paragraph (a) or (e), was not notified by the court of the registration requirement at the
10.21 time of sentencing or disposition, the assigned corrections agent shall notify the person
10.22 of the requirements of this section. When a person who is required to register under
10.23 subdivision 1b, paragraph (c) or (d), is released from commitment, the treatment facility
10.24 shall notify the person of the requirements of this section. The treatment facility shall also
10.25 obtain the registration information required under this section and forward it to the bureau.

10.26 Sec. 3. Minnesota Statutes 2013 Supplement, section 243.166, subdivision 6, is
10.27 amended to read:

10.28 Subd. 6. **Registration period.** (a) Notwithstanding the provisions of section
10.29 609.165, subdivision 1, and except as provided in paragraphs (b), (c), and (d), a person
10.30 required to register under this section shall continue to comply with this section until ten
10.31 years have elapsed since the person initially registered in connection with the offense, or
10.32 until the probation, supervised release, or conditional release period expires, whichever
10.33 occurs later. For a person required to register under this section who is committed under

section 253B.18 or chapter 253D, the ten-year registration period does not include the period of commitment.

(b) If a person required to register under this section fails to provide the person's primary address as required by subdivision 3, paragraph (b), fails to comply with the requirements of subdivision 3a, fails to provide information as required by subdivision 4a, or fails to return the verification form referenced in subdivision 4 within ten days, the commissioner of public safety may require the person to continue to register for an additional period of five years. This five-year period is added to the end of the offender's registration period.

(c) If a person required to register under this section is subsequently incarcerated following a conviction for a new offense or following a revocation of probation, supervised release, or conditional release for any offense, the person shall continue to register until ten years have elapsed since the person was last released from incarceration or until the person's probation, supervised release, or conditional release period expires, whichever occurs later.

(d) A person shall continue to comply with this section for the life of that person:

(1) if the person is convicted of ~~or adjudicated delinquent~~ for any offense for which registration is required under subdivision 1b, or convicted of or adjudicated delinquent for any offense from another state or any federal offense similar to the offenses described in subdivision 1b, and the person has a prior conviction or adjudication for an offense for which registration was or would have been required under subdivision 1b, or an offense from another state or a federal offense similar to an offense described in subdivision 1b;

(2) if the person is required to register based upon a conviction ~~or delinquency adjudication~~ for an offense under section 609.185, paragraph (a), clause (2), or convicted of or adjudicated delinquent for a similar statute from another state or the United States;

(3) if the person is required to register based upon a conviction for an offense under section 609.342, subdivision 1, paragraph (a), (c), (d), (e), (f), or (h); 609.343, subdivision 1, paragraph (a), (c), (d), (e), (f), or (h); 609.344, subdivision 1, paragraph (a), (c), or (g); or 609.345, subdivision 1, paragraph (a), (c), or (g); or convicted of or adjudicated delinquent for a statute from another state or the United States similar to the offenses described in this clause; or

(4) if the person is required to register under subdivision 1b, paragraph (c), following commitment pursuant to a court commitment under chapter 253D or a similar law of another state or the United States.

(e) A person described in subdivision 1b, paragraph (b), who is required to register under the laws of a state in which the person has been previously convicted or adjudicated

- 12.1 delinquent, shall register under this section for the time period required by the state of
- 12.2 conviction or adjudication unless a longer time period is required elsewhere in this section.

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