

CHAPTER 602—S.F.No. 2177

An act relating to crimes; providing for administrative impoundment of license plates of vehicles owned by repeat violators of laws relating to driving while intoxicated; providing for issuance of special plates; requiring peace officers to serve a notice of intent to impound when serving a notice of intent to revoke the violator's driver's license; providing for administrative and judicial review of impoundment orders; eliminating the alcohol problem screening for persons convicted of offenses associated with driving under the influence of alcohol or a controlled substance; modifying procedures for chemical use assessments, programs, and funding; changing the maximum rate for reimbursement of counties from the general fund for the assessments; expanding the crime of refusing to submit to an implied consent test; requiring notice of certain enhanced penalties; expanding the crime of aggravated driving while intoxicated; removing requirement that negligence be proven for conviction of criminal vehicular operation if driver's alcohol concentration was 0.10 or more; imposing penalties for criminal vehicular operation resulting in substantial bodily harm; prohibiting constructive possession of alcohol in a private motor vehicle; expanding the definition of possession; clarifying the elements of certain liquor law violations; changing provisions about aircraft operation while under the influence of alcohol or controlled substances; increasing penalties for certain controlled substance offenses; providing for transfer of certain convicted felons to prison pending completion of the presentence investigation; imposing penalties; appropriating money; amending Minnesota Statutes 1988, sections 168.041, subdivisions 3, 8, and 10; 169.121, by adding a subdivision; 169.122, subdivision 2; 169.124, subdivision 1; 169.126, subdivisions 1, 2, 6, and by adding a subdivision; 169.129; 260.151, subdivision 1; 340A.503, subdivisions 1 and 3; and 360.015, subdivisions 1 and 6; Minnesota Statutes 1989 Supplement, sections 152.021; 152.022; 152.023, subdivisions 1 and 2; 152.024, subdivision 1; 152.025, subdivision 2; 152.028, subdivision 2; 169.041, subdivision 4; 169.121, subdivisions 1a, 3, and 3b; 169.123, subdivision 5c; 169.126, subdivision 4; 260.193, subdivision 8; 340A.503, subdivision 2; 609.115, subdivision 1; and 609.21; proposing coding for new law in Minnesota Statutes, chapters 152; 168; and 360; repealing Minnesota Statutes 1988, sections 168.041, subdivision 3a; 169.124, subdivisions 2 and 3; 169.126, subdivisions 2, 3, and 4b; 360.075, subdivision 7; and 360.0751; Minnesota Statutes 1989 Supplement, sections 168.041, subdivision 4a; and 169.126, subdivision 4a.

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

 ARTICLE 1

PLATE IMPOUNDMENT BY ADMINISTRATIVE ACTION

Section 1. Minnesota Statutes 1988, section 168.041, subdivision 3, is amended to read:

Subd. 3. Except as otherwise provided in ~~subdivision 3a~~ section 168.042, if a person is convicted of an offense that makes mandatory the revocation of the person's driver's license, or is convicted of driving a motor vehicle without

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having a valid driver's license in force, the court may require the registration plates and registration certificate of any motor vehicle owned by the person or any motor vehicle registered in the person's name to be surrendered to the court.

Sec. 2. Minnesota Statutes 1989 Supplement, section 168.041, subdivision 4, is amended to read:

Subd. 4. If the court issues an impoundment order, the registration plates and certificates must be surrendered to the court either three days after the order is issued or on the date specified by the court, whichever date is later. The court shall forward surrendered registration certificates to the registrar of motor vehicles within seven days after their surrender. The court may destroy the surrendered registration plates. Except as provided in subdivision 1a, ~~4a~~, 5, 6, or 7, no new registration plates may be issued to the violator or owner until the driver's license of the violator has been reissued or reinstated. The court shall notify the commissioner of public safety within ten days after issuing an impoundment order.

Sec. 3. Minnesota Statutes 1988, section 168.041, subdivision 8, is amended to read:

Subd. 8. Nothing contained in this section or section 168.042 is intended to change or modify any provision of this chapter, with respect to the taxation of motor vehicles or the time within which motor vehicle taxes must be paid.

Sec. 4. Minnesota Statutes 1988, section 168.041, subdivision 10, is amended to read:

Subd. 10. "Rental motor vehicle" means a passenger vehicle, truck, motorcycle, or motorized bicycle:

(1) that is ~~involved in a violation under subdivision 3a~~, leased in the name of the violator, or leased jointly in the name of the violator and the violator's spouse; and

(2) that is one of a fleet of two or more vehicles rented for periods of 30 days or less.

Sec. 5. [168.042] ADMINISTRATIVE IMPOUNDMENT OF REGISTRATION PLATES FOR ALCOHOL-RELATED DRIVER'S LICENSE REVOCATIONS.

Subdivision 1. DEFINITIONS. (a) For purposes of this section, the following terms have the meanings given.

(b) "Violator" means a person who was driving, operating, or in physical control of the motor vehicle when the violation occurred.

(c) "Violation" means a violation of section 169.123 or an impaired driving conviction as defined in section 169.121, subdivision 3, that results in the revocation of a person's driver's license or driving privileges, and also includes an alcohol-related license revocation from another state.

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Subd. 2. VIOLATION AND ISSUANCE OF IMPOUNDMENT ORDER.

The commissioner shall issue a registration plate impoundment order when a person's driver's license or driving privileges are revoked for a third violation within five years or a fourth or subsequent violation within ten years. The order shall require the impoundment of the registration plates of the vehicle involved in the violation and all vehicles owned by, registered, or leased in the name of the violator, including vehicles registered jointly or leased in the name of the violator and another. An impoundment order shall not be issued for the registration plates of a rental vehicle as defined in section 168.041, subdivision 10, or a vehicle registered in another state.

Subd. 3. NOTICE OF IMPOUNDMENT. An impoundment order is effective when the commissioner or a peace officer acting on behalf of the commissioner notifies the violator or the registered owner of the vehicle of the intent to impound and order of impoundment. The notice must advise the violator of the duties and obligations set forth in subdivision 6 and of the right to obtain administrative and judicial review. The notice to the registered owner who is not the violator must include the procedure to obtain new registration plates under subdivision 8. If mailed, the notice and order of impoundment is deemed received three days after mailing to the last known address of the violator or the registered owner.

Subd. 4. PEACE OFFICER AS AGENT FOR NOTICE OF IMPOUNDMENT. (a) On behalf of the commissioner, a peace officer issuing a notice of intent to revoke and of revocation under section 169.123 shall also serve a notice of intent to impound and an order of impoundment if the violation is the third violation within five years or the fourth or subsequent violation within ten years. If the vehicle involved in the violation is accessible to the officer at the time the impoundment order is issued, the officer shall seize the registration plates subject to the impoundment order. The officer shall destroy all plates seized or impounded under this section. The officer shall send to the commissioner copies of the notice of intent to impound and the order of impoundment and a notice that registration plates impounded and seized under this section have been destroyed.

Subd. 5. TEMPORARY PERMIT. If the vehicle is registered to the violator, the officer shall issue a temporary vehicle permit that is valid for seven days when the officer issues the notices under subdivision 4. If the vehicle is registered in the name of another, the officer shall issue a temporary vehicle permit that is valid for 45 days when the notices are issued under subdivision 3. The permit must be in a form determined by the registrar and whenever practicable must be posted on the left side of the inside rear window of the vehicle. A permit is valid only for the vehicle for which it is issued.

Subd. 6. VEHICLES SUBJECT TO IMPOUNDMENT ORDERS. Within seven days after issuance of the impoundment notice, a person who receives a notice of impoundment and impoundment order shall surrender all registration

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plates subject to the impoundment order that were not seized by a peace officer under subdivision 4. Registration plates required to be surrendered under this subdivision must be surrendered to a Minnesota police department, sheriff, or the state patrol, along with a copy of the impoundment order. A law enforcement agency receiving registration plates under this subdivision shall destroy the plates and notify the commissioner that they have been destroyed. The notification to the commissioner shall also include a copy of the impoundment order.

Subd. 7. VEHICLE NOT OWNED BY THE VIOLATOR. A violator may file a sworn statement with the commissioner within seven days of the issuance of an impoundment order stating any material information relating to the impoundment order, including that the vehicle has been sold or destroyed and supplying the date, name, location, and address of the person or entity that purchased or destroyed the vehicle. The commissioner shall rescind the impoundment order if the violator shows that the impoundment order was not properly issued.

Subd. 8. REISSUANCE OF REGISTRATION PLATES. (a) The commissioner shall rescind the impoundment order if a person subject to an impoundment order under this section, other than the violator, files with the commissioner an acceptable sworn statement that the person:

(1) is the registered owner of the vehicle from which the plates have been impounded under this section;

(2) is the current owner and possessor of the vehicle used in the violation;

(3) was not a passenger in the vehicle at the time of the violation; and

(4) knows that the violator may not drive, operate, or be in physical control of a vehicle without a valid driver's license;

(b) If the order is rescinded, the owner shall receive new registration plates at no cost, if the plates were seized and destroyed.

Subd. 9. ADMINISTRATIVE REVIEW. At any time during the effective period of an impoundment order, a person may request in writing a review of the impoundment order by the commissioner. On receiving a request, the commissioner or the commissioner's designee shall review the order, the evidence upon which the order was based, and any other material information brought to the attention of the commissioner, and determine whether sufficient cause exists to sustain the order. The commissioner shall report in writing the results of the review within 15 days of receiving the request. The review provided in this subdivision is not subject to the contested case provisions of the administrative procedure act in sections 14.01 to 14.70. As a result of this review, the commissioner may authorize the issuance at no cost of new registration plates to the registered owner of the vehicle if the registered owner's license or driving privileges were not revoked under section 169.123 or as a result of an impaired driving conviction as defined in section 169.121, subdivision 3.

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Review under this subdivision shall take place, if possible, at the same time as any administrative review of the person's license revocation under section 169.123, subdivision 5b.

Subd. 10. PETITION FOR JUDICIAL REVIEW. (a) Within 30 days following receipt of a notice and order of impoundment under this section, a person may petition the court for review. The petition must include the petitioner's date of birth, driver's license number, and date of the violation. The petition shall state with specificity the grounds upon which the petitioner seeks rescission of the order for impoundment. The petition may be combined with any petition filed under section 169.123, subdivision 5c.

(b) Except as otherwise provided in this section, the judicial review and hearing are governed by section 169.123, subdivisions 5c and 6, and shall take place at the same time as any judicial review of the person's license revocation under section 169.123. The filing of the petition shall not stay the impoundment order. The reviewing court may order a stay of the balance of the impoundment period if the hearing has not been conducted within 60 days after filing of the petition upon terms the court deems proper. The court shall order either that the impoundment be rescinded or sustained, and forward the order to the commissioner of public safety. The court shall file its order within 14 days following the hearing.

(c) In addition to the issues described in section 169.123, subdivision 5c, the scope of a hearing under this subdivision is limited to:

(1) whether the violator owns, is the registered owner of, possesses, or has access to the vehicle used in the violation; and

(2) whether a member of the violator's household has a valid driver's license, the violator or registered owner has a limited license issued under section 171.30, the registered owner is not the violator and the registered owner has a valid or limited driver's license, or a member of the registered owner's household has a valid driver's license.

(d) In a hearing under this subdivision, the following shall be admissible in evidence:

(1) certified copies of the violator's driving record; and

(2) certified copies of vehicle registration records bearing the violator's name.

Subd. 11. RESCISSION OF REVOCATION AND ISSUANCE OF NEW PLATES. If the driver's license revocation that is the basis for an impoundment order is rescinded, the registrar of motor vehicles shall issue new registration plates for the vehicle at no cost, when the registrar receives an application that includes a copy of the order rescinding the driver's license revocation.

Subd. 12. ISSUANCE OF SPECIAL REGISTRATION PLATES. A violator or registered owner may apply to the commissioner for new registration

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plates, which must bear a special series of numbers or letters so as to be readily identified by traffic law enforcement officers. The commissioner may authorize the issuance of special plates if:

- (1) a member of the violator's household has a valid driver's license;
- (2) the violator or registered owner has a limited license issued under section 171.30;
- (3) the registered owner is not the violator and the registered owner has a valid or limited driver's license; or
- (4) a member of the registered owner's household has a valid driver's license.

The commissioner may issue the special plates on payment of a \$25 fee for each vehicle for which special plates are requested.

Subd. 13. SALE OF VEHICLE SUBJECT TO IMPOUNDMENT ORDER. A registered owner may not sell a motor vehicle during the time its registration plates have been ordered impounded or during the time its registration plates bear a special series number, unless:

- (1) the sale is for a valid consideration;
- (2) the transferee does not reside in the same household as the registered owner; and
- (3) all elements of section 168A.10 are satisfied.

The registrar may then transfer the title to the new owner upon proper application and issue new registration plates.

Subd. 14. MISDEMEANOR OFFENSES. A person is guilty of a misdemeanor who:

- (1) fails to comply with an impoundment order under this section;
- (2) files a false statement under subdivision 5 or 6;
- (3) operates a motor vehicle on a street or highway when the vehicle is subject to an impoundment order issued under this section; or
- (4) fails to notify the commissioner of the impoundment order when requesting new plates.

Sec. 6. Minnesota Statutes 1989 Supplement, section 169.123, subdivision 5c, is amended to read:

Subd. 5c. **PETITION FOR JUDICIAL REVIEW.** Within 30 days following receipt of a notice and order of revocation or disqualification pursuant to

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this section, a person may petition the court for review, unless the person is entitled to review under section 171.166. The petition shall be filed with the district court administrator in the county where the alleged offense occurred, together with proof of service of a copy on the commissioner of public safety, and accompanied by the standard filing fee for civil actions. No responsive pleading shall be required of the commissioner of public safety, and no court fees shall be charged for the appearance of the commissioner of public safety in the matter.

The petition shall be captioned in the full name of the person making the petition as petitioner and the commissioner of public safety as respondent. The petition must include the petitioner's date of birth, driver's license number, and date of the offense; and a copy of the notice of revocation or disqualification. The petition shall state with specificity the grounds upon which the petitioner seeks rescission of the order of revocation, disqualification, or denial and state the facts underlying each claim asserted.

The filing of the petition shall not stay the revocation, disqualification, or denial. The reviewing court may order a stay of the balance of the revocation or disqualification if the hearing has not been conducted within 60 days after filing of the petition upon terms the court deems proper. Judicial reviews shall be conducted according to the rules of civil procedure.

Sec. 7. APPROPRIATION.

(a) \$10,000 is appropriated from the general fund to the commissioner of public safety for ongoing computer transaction expenses of the bureau of criminal apprehension in implementing this article.

(b) \$12,000 is appropriated from the trunk highway fund to the commissioner of public safety to reprogram the bureau of criminal apprehension computer to provide access to motor vehicle records by name.

(c) \$31,000 is appropriated from the highway user tax distribution fund to the commissioner of public safety for an additional position in the division of driver and vehicle services to administer the plate impoundment program.

(d) The complement of the department of public safety is increased by one position.

Sec. 8. REPEALER.

Minnesota Statutes 1988, section 168.041, subdivision 3a; and Minnesota Statutes 1989 Supplement, section 168.041, subdivision 4a, are repealed.

Sec. 9. EFFECTIVE DATE.

Sections 1 to 5 and 8 are effective January 1, 1991.

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ARTICLE 2

CHEMICAL USE ASSESSMENTS

Section 1. Minnesota Statutes 1989 Supplement, section 169.121, subdivision 3b, is amended to read:

Subd. 3b. **HABITUAL OFFENDERS; CHEMICAL USE ASSESSMENT.** If a person has been convicted under subdivision 1, section 169.129, an ordinance in conformity with either of them, or a statute or ordinance from another state in conformity with either of them, and if the person is then convicted of violating subdivision 1, section 169.129, or an ordinance in conformity with either of them (1) once within five years of the first conviction or (2) two or more times within ten years after the first conviction, the court must order the person to submit to the level of care recommended in the chemical use assessment required under section 169.126.

If a person is convicted under section 169.121, subdivision 1a, the court shall order the person to submit to the level of care recommended in the chemical use assessment report required under section 169.126.

Sec. 2. Minnesota Statutes 1988, section 169.124, subdivision 1, is amended to read:

Subdivision 1. **COUNTY BOARD.** The county board of every county shall establish an alcohol safety program designed to provide ~~alcohol problem screening and~~ chemical use ~~assessment~~ assessments of persons convicted of an offense enumerated in section 169.126, subdivision 1.

Sec. 3. Minnesota Statutes 1988, section 169.126, subdivision 1, is amended to read:

Subdivision 1. **SCREENING REQUIREMENT WHEN CHEMICAL USE ASSESSMENT IS REQUIRED.** ~~An alcohol problem screening~~ A chemical use assessment shall be conducted and a ~~screening an~~ assessment report submitted to the court by the county agency administering the alcohol safety program when:

(a) The defendant is convicted of an offense described in section 169.121 or 169.129; or

(b) The defendant is arrested for committing an offense described in section 169.121 or 169.129 but is convicted of another offense arising out of the circumstances surrounding the arrest.

Sec. 4. Minnesota Statutes 1988, section 169.126, subdivision 2, is amended to read:

Subd. 2. **REPORT.** (a) The ~~screening~~ assessment report shall contain an

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evaluation of the convicted defendant concerning the defendant's prior traffic record, characteristics and history of alcohol and chemical use problems, and amenability to rehabilitation through the alcohol safety program. ~~The screening report shall include a recommendation as to a treatment or rehabilitation program for the defendant.~~ The screening report shall be classified as private data on individuals as defined in section 13.02, subdivision 12.

(b) The assessment report must include:

(1) a recommended level of care for the offender in accordance with the criteria contained in rules adopted by the commissioner of human services under section 254A.03, subdivision 3;

(2) recommendations for other appropriate remedial action or care, that may consist of educational programs, one-on-one counseling, a program or type of treatment that addresses mental health concerns, or a combination of them;
or

(3) a specific explanation why no level of care or action was recommended.

Sec. 5. Minnesota Statutes 1989 Supplement, section 169.126, subdivision 4, is amended to read:

Subd. 4. **CHEMICAL USE ASSESSMENT.** ~~(a) Except as otherwise provided in paragraph (d), when an alcohol problem screening shows that the defendant has an identifiable chemical use problem, the court shall require the defendant to undergo a comprehensive~~ A chemical use assessment required by this section must be conducted by an assessor ~~qualified under~~ appointed by the court. The assessor must meet the training and qualification requirements of rules adopted by the commissioner of human services under section 254A.03, subdivision 3. Notwithstanding section 13.82, the assessor shall have access to any police reports, laboratory test results, and other law enforcement data relating to the current offense or previous offenses that are necessary to complete the evaluation. An assessor providing ~~a chemical use an~~ an assessment for the court under this section may not have any direct or shared financial interest or referral relationship resulting in shared financial gain with a treatment provider. If an independent assessor is not available, the court may use the services of an assessor authorized to perform assessments for the county social services agency under a variance granted under rules adopted by the commissioner of human services under section 254A.03, subdivision 3. An appointment for the defendant to undergo the ~~chemical use~~ assessment shall be made by the court, a court services probation officer, or the court administrator as soon as possible but in no case more than one week after the defendant's court appearance. The ~~comprehensive chemical use~~ assessment must be completed no later than three weeks after the defendant's court appearance. If the assessment is not performed within this time limit, the county where the defendant is to be sentenced shall perform the assessment. The county of financial responsibility shall be determined under chapter 256G.

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(b) The chemical use assessment report must include a recommended level of care for the defendant in accordance with the criteria contained in rules adopted by the commissioner of human services under section 254A.03, subdivision 3.

(c) The state shall reimburse the county for the entire cost of each chemical use assessment and report at a rate established by the department of human services up to a maximum of \$100 in each case. The county may not be reimbursed for the cost of any chemical use assessment or report not completed within the time limit provided in this subdivision. Reimbursement to the county must be made from the general fund.

(d) If the preliminary alcohol problem screening is conducted by an assessor qualified under rules adopted by the commissioner of human services under section 254A.03, subdivision 3, consists of a comprehensive chemical use assessment of the defendant, and complies with the chemical use assessment requirements of paragraph (b), it is a chemical use assessment for the purposes of this section and the court may not require the defendant to undergo a second chemical use assessment under paragraph (a). The state shall reimburse counties for the cost of alcohol problem screenings that qualify as chemical use assessments under this paragraph in the manner provided in paragraph (c) in lieu of the reimbursement provisions of section 169.124, subdivision 3.

Sec. 6. Minnesota Statutes 1988, section 169.126, is amended by adding a subdivision to read:

Subd. 4c. REIMBURSEMENT. The commissioner of public safety shall reimburse the county for the cost of each assessment and report at a rate established by the commissioner. The county may not be reimbursed for the cost of any assessment or report not completed within the time limit provided in subdivision 4. Reimbursement to the county must be made from the general fund. The commissioner of public safety shall adopt rules under chapter 14 providing for the reimbursement of counties for assessments conducted under this section.

Sec. 7. Minnesota Statutes 1988, section 169.126, subdivision 6, is amended to read:

Subd. 6. **APPLICABILITY.** This section shall not apply to ~~persons a~~ person who ~~are is~~ is not residents ~~a~~ resident of the state of Minnesota at the time of the offense and at the time of the ~~alcohol problem screening~~ assessment.

Sec. 8. Minnesota Statutes 1988, section 260.151, subdivision 1, is amended to read:

Subdivision 1. Upon request of the court the county welfare board or probation officer shall investigate the personal and family history and environment of any minor coming within the jurisdiction of the court under section

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260.111 and shall report its findings to the court. The court may order any minor coming within its jurisdiction to be examined by a duly qualified physician, psychiatrist, or psychologist appointed by the court.

The court shall have a chemical use assessment conducted when a child is (1) found to be delinquent for violating a provision of chapter 152, or (2) alleged to be delinquent for violating a provision of chapter 152, if the child is being held in custody under a detention order. The assessor's qualifications and the assessment criteria shall comply with Minnesota Rules, parts 9530.6600 to 9530.6655. If funds under chapter 254B are to be used to pay for the recommended treatment, the assessment and placement must comply with all provisions of Minnesota Rules, parts 9530.6600 to 9530.6655, and parts 9530.7000 to 9530.7030. The commissioner of public safety shall reimburse the court for the cost of the chemical use assessment, up to a maximum of \$100.

With the consent of the commissioner of corrections and agreement of the county to pay the costs thereof, the court may, by order, place a minor coming within its jurisdiction in an institution maintained by the commissioner for the detention, diagnosis, custody and treatment of persons adjudicated to be delinquent, in order that the condition of the minor be given due consideration in the disposition of the case. Adoption investigations shall be conducted in accordance with the laws relating to adoptions. Any funds received under the provisions of this subdivision shall not cancel until the end of the fiscal year immediately following the fiscal year in which the funds were received. The funds are available for use by the commissioner of corrections during that period and are hereby appropriated annually to the commissioner of corrections as reimbursement of the costs of providing these services to the juvenile courts.

Sec. 9. Minnesota Statutes 1989 Supplement, section 260.193, subdivision 8, is amended to read:

Subd. 8. If the juvenile court finds that the child is a juvenile major highway or water traffic offender, it may make any one or more of the following dispositions of the case:

- (a) Reprimand the child and counsel with the child and the parents;
- (b) Continue the case for a reasonable period under such conditions governing the child's use and operation of any motor vehicles or boat as the court may set;
- (c) Require the child to attend a driver improvement school if one is available within the county;
- (d) Recommend to the department of public safety suspension of the child's driver's license as provided in section 171.16;
- (e) If the child is found to have committed two moving highway traffic

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violations or to have contributed to a highway accident involving death, injury, or physical damage in excess of \$100, the court may recommend to the commissioner of public safety or to the licensing authority of another state the cancellation of the child's license until the child reaches the age of 18 years, and the commissioner of public safety is hereby authorized to cancel the license without hearing. At any time before the termination of the period of cancellation, the court may, for good cause, recommend to the commissioner of public safety, or to the licensing authority of another state, that the child's license be returned, and the commissioner of public safety is authorized to return the license;

(f) Place the child under the supervision of a probation officer in the child's own home under conditions prescribed by the court including reasonable rules relating to operation and use of motor vehicles or boats directed to the correction of the child's driving habits;

(g) Require the child to pay a fine of up to \$700. The court shall order payment of the fine in accordance with a time payment schedule which shall not impose an undue financial hardship on the child;

(h) If the court finds that the child committed an offense described in section 169.121, the court shall order that ~~an alcohol problem screening a chemical use assessment~~ be conducted and a screening report submitted to the court in the manner prescribed in section 169.126. ~~Except as otherwise provided in section 169.126, subdivision 4, paragraph (d);~~ If the alcohol problem screening shows assessment concludes that the child has an identifiable chemical use problem, the court shall require the child to undergo a comprehensive chemical use assessment in accordance with section 169.126, subdivision 4. ~~If the chemical use assessment recommends~~ meets the level of care criteria for placement under rules adopted under section 254A.03, subdivision 3, the report must recommend a level of care for the child. The court may require that level of care in its disposition order. In addition, the court may require any child ordered to undergo a ~~chemical use an~~ assessment to pay a chemical dependency assessment charge of \$75. The court shall forward the assessment charge to the commissioner of finance to be credited to the general fund. The state shall reimburse counties for the total cost of the ~~chemical use~~ assessment in the manner provided in section 169.126, subdivision 4 4c.

Sec. 10. REPEALER.

Minnesota Statutes 1988, sections 169.124, subdivisions 2 and 3; and 169.126, subdivisions 2, 3, and 4b; and Minnesota Statutes 1989 Supplement, section 169.126, subdivision 4a, are repealed.

Sec. 11. APPROPRIATION.

\$50,000 is appropriated from the general fund to the commissioner of public safety for chemical use assessments required under section 260.151, subdivision 1. The commissioner of public safety shall use the funds to reimburse juvenile courts for the cost of the assessments as provided in section 260.151, subdivision 1.

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ARTICLE 3

EXPANDED DWI SANCTIONS FOR REPEAT OFFENDERS

Section 1. Minnesota Statutes 1989 Supplement, section 169.121, subdivision 1a, is amended to read:

Subd. 1a. **REFUSAL TO SUBMIT TO TESTING; CRIME.** It is a crime for any person to refuse to submit to a chemical test of the person's blood, breath, or urine under section 169.123 if the person's driver's license has been suspended, revoked, canceled, or denied once within the past five years, or two or more times within the past ten years, under any of the following: this section; or section 169.123; section 171.04, 171.14, 171.16, 171.17, or 171.18 because of an alcohol-related incident; section 609.21, subdivision 1, clause (2) or (3); 609.21, subdivision 2, clause (2) or (3); 609.21, subdivision 3, clause (2) or (3); or 609.21, subdivision 4, clause (2) or (3).

Sec. 2. Minnesota Statutes 1988, section 169.121, is amended by adding a subdivision to read:

Subd. 3c. NOTICE OF ENHANCED PENALTIES. When a court sentences a person for a misdemeanor violation of this section, it shall inform the defendant of the statutory provisions that provide for enhancement of criminal penalties for repeat violators. The failure of a court to provide this information to a defendant does not affect the future applicability of these enhanced penalties to that defendant.

Sec. 3. Minnesota Statutes 1988, section 169.129, is amended to read:

169.129 AGGRAVATED VIOLATIONS; PENALTY.

Any person is guilty of a gross misdemeanor who drives, operates, or is in physical control of a motor vehicle, the operation of which requires a driver's license, within this state or upon the ice of any boundary water of this state in violation of section 169.121 or an ordinance in conformity with it before the person's driver's license or driver's privilege has been reinstated following its cancellation, suspension ~~or~~ revocation ~~(1) because the person drove, operated, or was in physical control of a motor vehicle while under the influence of alcohol or a controlled substance or while the person had an alcohol concentration of 0.10 or more or (2) because the person refused to take a test which determines the presence of alcohol or a controlled substance when requested to do so by a proper authority; is guilty of a gross misdemeanor, or denial under any of the following: section 169.121 or 169.123; section 171.04, 171.14, 171.16, 171.17, or 171.18 because of an alcohol-related incident; section 609.21, subdivision 1, clause (2) or (3); 609.21, subdivision 2, clause (2) or (3); 609.21, subdivision 3, clause (2) or (3); or 609.21, subdivision 4, clause (2) or (3). Jurisdiction over prosecutions under this section is in the county court.~~

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Sec. 4. EFFECTIVE DATE.

Sections 1 to 3 are effective August 1, 1990, and apply to violations occurring on or after that date.

ARTICLE 4

CRIMINAL VEHICULAR HOMICIDE

Section 1. Minnesota Statutes 1989 Supplement, section 609.21, is amended to read:

609.21 CRIMINAL VEHICULAR ~~OPERATION~~ HOMICIDE AND INJURY.

Subdivision 1. **RESULTING IN DEATH CRIMINAL VEHICULAR HOMICIDE.** Whoever causes the death of a human being not constituting murder or manslaughter as a result of operating a motor vehicle as defined in section 169.01, subdivision 2, or an aircraft or watercraft,

(1) in a grossly negligent manner;

(2) in a negligent manner while under the influence of alcohol, a controlled substance, or any combination of those elements; ~~or~~

(3) ~~in a negligent manner~~ while having an alcohol concentration of 0.10 or more; or

(4) while having an alcohol concentration of 0.10 or more, as measured within two hours of the time of driving,

is guilty of criminal vehicular ~~operation~~ homicide resulting in death and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both.

Subd. 2. **RESULTING IN INJURY GREAT BODILY HARM.** Whoever causes great bodily harm to another, ~~as defined in section 609.02, subdivision 8,~~ not constituting attempted murder or assault, as a result of operating a motor vehicle defined in section 169.01, subdivision 2, or an aircraft or watercraft,

(1) in a grossly negligent manner;

(2) in a negligent manner while under the influence of alcohol, a controlled substance, or any combination of those elements; ~~or~~

(3) ~~in a negligent manner~~ while having an alcohol concentration of 0.10 or more; or

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(4) while having an alcohol concentration of 0.10 or more, as measured within two hours of the time of driving,

is guilty of criminal vehicular operation resulting in ~~injury~~ great bodily harm and may be sentenced to imprisonment for not more than five years or ~~the~~ to payment of a fine of not more than \$10,000, or both.

Subd. 2a. RESULTING IN SUBSTANTIAL BODILY HARM. Whoever causes substantial bodily harm to another, as a result of operating a motor vehicle,

(1) in a grossly negligent manner;

(2) in a negligent manner while under the influence of alcohol, a controlled substance, or any combination of those elements;

(3) while having an alcohol concentration of 0.10 or more; or

(4) while having an alcohol concentration of 0.10 or more, as measured within two hours of the time of driving,

is guilty of criminal vehicular operation resulting in substantial bodily harm and may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than \$10,000, or both.

Subd. 3. RESULTING IN DEATH TO AN UNBORN CHILD. Whoever causes the death of an unborn child as a result of operating a motor vehicle defined in section 169.01, subdivision 2, or an aircraft or watercraft,

(1) in a grossly negligent manner;

(2) in a negligent manner while under the influence of alcohol, a controlled substance, or any combination of those elements; or

(3) in a negligent manner while having an alcohol concentration of 0.10 or more; or

(4) while having an alcohol concentration of 0.10 or more, as measured within two hours of the time of driving,

is guilty of criminal vehicular operation resulting in death to an unborn child and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both. A prosecution for or conviction of a crime under this subdivision is not a bar to conviction of or punishment for any other crime committed by the defendant as part of the same conduct.

Subd. 4. RESULTING IN INJURY TO UNBORN CHILD. Whoever causes great bodily harm, as defined in section 609.02, subdivision 8, to an unborn child who is subsequently born alive, as a result of operating a motor vehicle defined in section 169.01, subdivision 2, or an aircraft or watercraft,

New language is indicated by underline, deletions by ~~strikeout~~.

- (1) in a grossly negligent manner;
- (2) in a negligent manner while under the influence of alcohol, a controlled substance, or any combination of those elements; or
- (3) ~~in a negligent manner~~ while having an alcohol concentration of 0.10 or more; or
- (4) while having an alcohol concentration of 0.10 or more, as measured within two hours of the time of driving,

is guilty of criminal vehicular operation resulting in injury to an unborn child and 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. A prosecution for or conviction of a crime under this subdivision is not a bar to conviction of or punishment for any other crime committed by the defendant as part of the same conduct.

Subd. 5. DEFINITION. For purposes of this section, "motor vehicle" has the meaning given in section 609.52, subdivision 1.

Sec. 2. EFFECTIVE DATE.

Section 1 is effective August 1, 1990, and applies to crimes committed on or after that date.

ARTICLE 5

OTHER ALCOHOL-RELATED OFFENSES

Section 1. Minnesota Statutes 1988, section 169.122, subdivision 2, is amended to read:

Subd. 2. No person shall have in possession ~~on the person~~ while in a private motor vehicle upon a public highway, any bottle or receptacle containing intoxicating liquor or nonintoxicating malt liquor which has been opened, or the seal broken, or the contents of which have been partially removed. For purposes of this section, "possession" means either that the person had actual possession of the bottle or receptacle or that the person consciously exercised dominion and control over the bottle or receptacle. This subdivision does not apply to a bottle or receptacle that is in the trunk of the vehicle if it is equipped with a trunk, or that is in another area of the vehicle not normally occupied by the driver and passengers if the vehicle is not equipped with a trunk.

Sec. 2. Minnesota Statutes 1988, section 340A.503, subdivision 1, is amended to read:

New language is indicated by underline, deletions by ~~strikeout~~.

Subdivision 1. **CONSUMPTION.** It is unlawful for any:

(1) retail intoxicating liquor or nonintoxicating liquor licensee or bottle club permit holder under section 340A.414, to permit any person under the age of 21 years to consume alcoholic beverages on the licensed premises; or

(2) person under the age of 21 years to consume any alcoholic beverages ~~unless in the household of the person's parent or guardian and with the consent of the parent or guardian.~~ If proven by a preponderance of the evidence, it is an affirmative defense to a violation of this clause that the defendant consumed the alcoholic beverage in the household of the defendant's parent or guardian and with the consent of the parent or guardian.

Sec. 3. Minnesota Statutes 1989 Supplement, section 340A.503, subdivision 2, is amended to read:

Subd. 2. **PURCHASING.** It is unlawful for any person:

(1) to sell, barter, furnish, or give alcoholic beverages to a person under 21 years of age; ~~except that a parent or guardian of a person under the age of 21 years may give or furnish alcoholic beverages to that person solely for consumption in the household of the parent or guardian;~~

(2) under the age of 21 years to purchase or attempt to purchase any alcoholic beverage; or

(3) to induce a person under the age of 21 years to purchase or procure any alcoholic beverage, or to lend or knowingly permit the use of the person's driver's license, permit, Minnesota identification card, or other form of identification by a person under the age of 21 years for the purpose of purchasing or attempting to purchase an alcoholic beverage.

If proven by a preponderance of the evidence, it shall be an affirmative defense to a violation of clause (1) that the defendant is the parent or guardian of the person under 21 years of age and that the defendant gave or furnished the alcoholic beverage to that person solely for consumption in the defendant's household.

Sec. 4. Minnesota Statutes 1988, section 340A.503, subdivision 3, is amended to read:

Subd. 3. **POSSESSION.** It is unlawful for a person under the age of 21 years to possess any alcoholic beverage with the intent to consume it at a place other than the household of the person's parent or guardian. Possession at a place other than the household of the parent or guardian ~~is prima facie evidence~~ creates a rebuttable presumption of intent to consume it at a place other than the household of the parent or guardian. This presumption may be rebutted by a preponderance of the evidence.

New language is indicated by underline, deletions by ~~strikeout~~.

Sec. 5. **EFFECTIVE DATE.**

Sections 1 to 4 are effective August 1, 1990, and apply to violations occurring on or after that date.

ARTICLE 6

AIRCRAFT OPERATION WHILE INTOXICATED PROVISIONS

Section 1. Minnesota Statutes 1989 Supplement, section 169.121, subdivision 3, is amended to read:

Subd. 3. **CRIMINAL PENALTIES.** (a) A person who violates subdivision 1 or an ordinance in conformity with it is guilty of a misdemeanor.

(b) A person is guilty of a gross misdemeanor who violates subdivision 1 or an ordinance in conformity with it within five years of a prior impaired driving conviction, or within ten years of the first of two or more prior impaired driving convictions.

For purposes of this paragraph, a prior impaired driving conviction is a prior conviction under this section, section 84.91, subdivision 1, paragraph (a), 169.129, 361.12, subdivision 1, paragraph (a), 609.21, subdivision 1, clause (2) or (3), 609.21, subdivision 2, clause (2) or (3), 609.21, subdivision 3, clause (2) or (3), 609.21, subdivision 4, clause (2) or (3), section 4, or an ordinance from this state, or a statute or ordinance from another state in conformity with any of them. A prior impaired driving conviction also includes a prior juvenile adjudication that would have been a prior impaired driving conviction if committed by an adult.

(c) A person who violates subdivision 1a is guilty of a gross misdemeanor.

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

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

Sec. 2. Minnesota Statutes 1988, section 360.075, subdivision 1, is amended to read:

Subdivision 1. **MISDEMEANOR.** Every person who:

(1) Operates an aircraft either on or over land or water in this state without the consent of the owner of such aircraft; or

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~~(2) Operates, or attempts to operate, any aircraft in this state while under the influence of intoxicating liquor or of any narcotic or other habit-forming drug; or~~

~~(3) Knowingly permits any individual who may be under the influence of intoxicating liquor or of any narcotic or other habit-forming drug to operate any aircraft owned by or in the custody or control of such person; or~~

~~(4) Operates aircraft while in the possession of any federal license, certificate, or permit or any certificate of registration issued by the transportation department of this state, or displays, or causes or permits to be displayed, such federal license, certificate, or permit or such state certificate of registration, knowing either to have been canceled, revoked, suspended, or altered; or~~

~~(5) (3) Lends to, or knowingly permits the use of by, one not entitled thereto of any federal airman's or aircraft license, certificate, or permit, or any state airman's or aircraft certificate of registration issued to that person; or~~

~~(6) (4) Displays or represents as the person's own any federal airman's or aircraft license, certificate, or permit or any state airman's or aircraft certificate of registration not issued to that person; or~~

~~(7) (5) Tamper with, climbs upon or into, makes use of, or navigates any aircraft without the knowledge or consent of the owner or person having control thereof, whether while the same is in motion or at rest, or hurls stones or any other missiles at aircraft, or the occupants thereof, or otherwise damages or interferes with the same, or places upon any portion of any airport any object, obstruction, or other device tending to injure aircraft or parts thereof; or~~

~~(8) (6) Uses a false or fictitious name, gives a false or fictitious address, knowingly makes any false statement or report, or knowingly conceals a material fact, or otherwise commits a fraud in any application or form required under the provisions of sections 360.011 to 360.076, or by any rules or orders of the commissioner; or~~

~~(9) (7) Operates any aircraft in such a manner as to indicate either a willful or a wanton disregard for the safety of persons or property; or~~

~~(10) (8) Carries on or over land or water in this state in an aircraft other than a public aircraft any explosive substance except as permitted by the Federal Explosives Act, being the Act of October 6, 1917, as amended by Public Law Number 775, 77th Congress, approved November 24, 1942; or~~

~~(11) (9) Discharges a gun, pistol, or other weapon in or from any aircraft in this state except as the hunting of certain wild animals from aircraft may be permitted by other laws of this state, or unless the person is the pilot or officer in command of the aircraft or a peace officer or a member of the military or naval forces of the United States, engaged in the performance of duty; or~~

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~~(12)~~ (10) Carries in any aircraft, other than a public aircraft, any shotgun, rifle, pistol, or small arms ammunition except in the manner in which such articles may be lawfully carried in motor vehicles in this state, or is a person excepted from the provisions of clause ~~(11)~~ (9); or

~~(13)~~ (11) Engages in acrobatic or stunt flying without being equipped with a parachute and without providing any other occupants of the aircraft with parachutes and requiring that they be worn; or

~~(14)~~ (12) While in flying over a thickly inhabited area or over a public gathering in this state, engages in trick or acrobatic flying or in any acrobatic feat; or

~~(15)~~ (13) Except while in landing or taking off, flies at such low levels as to endanger persons on the surface beneath, or engages in advertising through the playing of music or transcribed or oral announcements, or makes any noise with any siren, horn, whistle, or other audible device which is not necessary for the normal operation of the aircraft, except that sound amplifying devices may be used in aircraft when operated by or under the authority of any agency of the state or federal government for the purpose of giving warning or instructions to persons on the ground; or

~~(16)~~ (14) Drops any object, except loose water, loose fuel, or loose sand ballast, without the prior written consent of the commissioner of transportation and the prior written consent of the municipality or property owner where objects may land; drops objects from an aircraft that endanger person or property on the ground, or drops leaflets for any purpose whatsoever; or

~~(17)~~ (15) While in flight in an aircraft, whether as a pilot, passenger, or otherwise, endangers, kills or attempts to kill any birds or animals or uses any aircraft for the purpose of concentrating, driving, rallying, or stirring up migratory waterfowl, except as may be permitted by other laws of this state shall be guilty of a misdemeanor.

Sec. 3. Minnesota Statutes 1988, section 360.075, subdivision 6, is amended to read:

Subd. 6. **ADDITIONAL PENALTIES, CERTAIN VIOLATIONS.** For any violation of subdivisions 1 and 5, section 4, or of any rule issued pursuant to section 360.015, in addition to the penalties provided in this section or section 4, or as a condition to the suspension of a sentence which may be imposed pursuant thereto, the court in its discretion may prohibit the violator from operating an aircraft within the state for such period as it may determine, but not to exceed one year. Violation of the duly imposed prohibition of the court may be punished as a contempt of court. Upon a plea of guilty or conviction under said sections, in any case involving an airman, the court shall issue an order prohibiting the airman from exercising, in the state of Minnesota, the privileges granted to the airman by federal certificate for a period, in the discre-

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tion of the court, not to exceed one year, and shall notify the commissioner of any action involving a violation under this section or section 4 by mailing a report to the commissioner showing the name and address of the violator, the offense charged, the time and place of violation, the plea, the finding of the court or jury, and the penalty imposed.

Sec. 4. [360.0752] AIRCRAFT OPERATORS UNDER THE INFLUENCE OF ALCOHOL OR CONTROLLED SUBSTANCES.

Subdivision 1. DEFINITION. As used in this section and section 5, "operate" includes the acts of all crew members with responsibility to operate the aircraft.

Subd. 2. CRIME. It is a crime for any person to operate or attempt to operate an aircraft on or over land or water within this state or over any boundary water of this state:

(a) when the person is under the influence of alcohol;

(b) when the person is under the influence of a controlled substance, as defined in section 152.01, subdivision 4;

(c) when the person is under the influence of a combination of any two or more of the elements named in clauses (a), (b), and (f);

(d) when the person's alcohol concentration is 0.04 or more;

(e) when the person's alcohol concentration as measured within two hours of the time of operation or attempted operation is 0.04 or more;

(f) when the person is knowingly under the influence of any chemical compound or combination of chemical compounds that is listed as a hazardous substance in rules adopted under section 182.655 and that affects the nervous system, brain, or muscles of the person so as to substantially impair the person's ability to operate the aircraft; or

(g) within eight hours of having consumed any alcoholic beverage or used any controlled substance.

Subd. 3. ALLOWING OPERATION. It is a crime for any person to knowingly permit any individual who is in violation of subdivision 2 to operate any aircraft owned by or in the custody or control of the person.

Subd. 4. ARREST. A peace officer may lawfully arrest a person for violation of subdivision 2 without a warrant upon probable cause, without regard to whether the violation was committed in the officer's presence. The express grant of arrest powers in this subdivision does not limit the arrest powers of peace officers pursuant to sections 626.65 to 626.70 or section 629.40 in cases of arrests for violation of subdivision 2 or any other provision of law.

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Subd. 5. EVIDENCE. Upon the trial of any prosecution arising out of acts alleged to have been committed by any person arrested for operating or attempting to operate an aircraft in violation of subdivision 2, the court may admit evidence of the amount of alcohol or a controlled substance in the person's blood, breath, or urine as shown by an analysis of those items.

Evidence of the refusal to take a test is admissible into evidence in a prosecution under this section.

If proven by a preponderance of the evidence, it shall be an affirmative defense to a violation of subdivision 2, clause (e), that the defendant consumed a sufficient quantity of alcohol after the time of the violation and before the administration of the evidentiary test to cause the defendant's alcohol concentration to exceed 0.04; provided, that this evidence may not be admitted unless notice is given to the prosecution prior to the omnibus or pretrial hearing in the matter.

The foregoing provisions do not limit the introduction of any other competent evidence bearing upon the question whether or not the person violated this section, including tests obtained more than two hours after the alleged violation and results obtained from partial tests on an infrared breath-testing instrument. A result from a partial test is the measurement obtained by analyzing one adequate breath sample, as defined in section 5, subdivision 4, paragraph (b).

Subd. 6. CRIMINAL PENALTIES. (a) A person who violates subdivision 2, clause (g); or 3, is guilty of a misdemeanor.

(b) A person who violates subdivision 2, clauses (a) to (f), is guilty of a gross misdemeanor.

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

Subd. 7. PRELIMINARY SCREENING TEST. When a peace officer has reason to believe that a person may be violating or has violated subdivision 2, the officer may require the person to provide a sample of the person's breath for a preliminary screening test using a device approved by the commissioner of public safety or the commissioner of transportation for this purpose. The results of this preliminary screening test shall be used for the purpose of deciding whether to require the tests authorized in section 5, but shall not be used in any court action except to prove that a test was properly required of a person pursuant to section 5. Following the screening test, additional tests may be required of the person pursuant to the provisions of section 5.

A person who refuses to furnish a sample of the person's breath is subject to the provisions of section 5 unless, in compliance with section 5, the person submits to a blood, breath, or urine test to determine the presence of alcohol or a controlled substance.

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Sec. 5. [360.0753] TESTING PROCEDURES.

Subdivision 1. PEACE OFFICER DEFINED. For purposes of this section, the term "peace officer" means an employee of a political subdivision or state law enforcement agency who is licensed by the Minnesota board of peace officers standards and training, who is charged with the prevention and detection of crime and the enforcement of the general criminal laws of the state, and who has full power of arrest, and shall also include the Minnesota state patrol and metropolitan airports commission peace officers, but does not include employees of the department of natural resources.

Subd. 2. IMPLIED CONSENT; CONDITIONS; ELECTION AS TO TYPE OF TEST. (a) Any person who operates or attempts to operate an aircraft in or over this state or over any boundary water of this state consents, subject to the provisions of this section and section 4, to a chemical test of that person's blood, breath, or urine for the purpose of determining the presence of alcohol or a controlled substance. The test shall be administered at the direction of a peace officer. The test may be required of a person when an officer has probable cause to believe the person was operating or attempting to operate an aircraft in violation of section 4 and one of the following conditions exists:

(1) the person has been lawfully placed under arrest for violation of section 4;

(2) the person has been involved in an aircraft accident or collision resulting in property damage, personal injury, or death;

(3) the person has refused to take the screening test provided for by section 4;

(4) the screening test was administered and recorded an alcohol concentration of 0.04 or more; or

(5) the officer had probable cause to believe that the person was operating or attempting to operate an aircraft with any amount of alcohol present in the person's body.

(b) At the time a test is requested, the person shall be informed:

(1) that Minnesota law requires the person to take a test to determine the presence of alcohol or to determine if the person is under the influence of alcohol or a controlled substance;

(2) that if testing is refused, the person will be disqualified from operating an aircraft for a minimum period of one year;

(3) that if a test is taken and the results indicate an alcohol concentration of 0.04 or more or that the person is under the influence of a controlled substance, the person will be subject to criminal penalties and the person may be prohibited from operating an aircraft in this state for up to one year;

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(4) that after submitting to testing, the person has the right to consult with an attorney and to have additional tests made by someone of the person's own choosing; and

(5) that if the person refuses to take a test, the refusal will be offered into evidence against the person at trial.

(c) The peace officer who requires a test pursuant to this subdivision may direct whether the test shall be of blood, breath, or urine. Action may be taken against a person who refuses to take a blood test only if an alternative test was offered, and action may be taken against a person who refuses to take a urine test only if an alternative test was offered.

Subd. 3. REQUIREMENT OF URINE OR BLOOD TEST. Notwithstanding subdivision 2, if there is probable cause to believe there is impairment by a controlled substance that is not subject to testing by a breath test, a urine or blood test may be required even after a breath test has been administered. Action may be taken against a person who refuses to take a blood test under this subdivision only if a urine test was offered, and action may be taken against a person who refuses to take a urine test only if a blood test was offered.

Subd. 4. BREATH TEST USING AN INFRARED BREATH-TESTING INSTRUMENT. (a) In the case of a breath test administered using an infrared breath-testing instrument, the test shall consist of analyses in the following sequence: one adequate breath sample analysis, one calibration standard analysis, and a second, adequate breath sample analysis.

(b) In the case of a test administered using an infrared breath-testing instrument, a sample is adequate if the instrument analyzes the sample and does not indicate the sample is deficient.

(c) For purposes of this section, when a test is administered using an infrared breath-testing instrument, failure of a person to provide two separate, adequate breath samples in the proper sequence constitutes a refusal.

Subd. 5. CONSENT OF PERSON INCAPABLE OF REFUSAL NOT WITHDRAWN. A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is deemed not to have withdrawn the consent provided by subdivision 2 and the test may be given.

Subd. 6. MANNER OF MAKING TEST; ADDITIONAL TESTS. Only a physician, medical technician, physician's trained mobile intensive care paramedic, registered nurse, medical technologist, or laboratory assistant acting at the request of a peace officer may withdraw blood for the purpose of determining the presence of alcohol or controlled substance. This limitation does not apply to the taking of a breath or urine sample. The person tested has the right to have someone of the person's own choosing administer a chemical test or tests in addition to any administered at the direction of a peace officer; provided, that the additional test sample on behalf of the person is obtained at the

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place where the person is in custody, after the test administered at the direction of a peace officer, and at no expense to the state. The failure or inability to obtain an additional test or tests by a person shall not preclude the admission in evidence of the test taken at the direction of a peace officer unless the additional test was prevented or denied by the peace officer. The physician, medical technician, physician's trained mobile intensive care paramedic, medical technologist, laboratory assistant, or registered nurse drawing blood at the request of a peace officer for the purpose of determining alcohol concentration shall in no manner be liable in any civil or criminal action except for negligence in drawing the blood. The person administering a breath test shall be fully trained in the administration of breath tests pursuant to training given by the commissioner of public safety or the commissioner of transportation.

Subd. 7. REFUSAL TO PERMIT TEST; CEASE AND DESIST ORDER.

If a person under arrest refuses to permit chemical testing, none shall be given, but the commissioner of transportation, upon the receipt of a certificate of the peace officer that the officer had reasonable and probable grounds to believe the arrested person had been operating or attempting to operate an aircraft in violation of section 4 and that the person had refused to permit the test, shall issue a cease and desist order prohibiting the operation of an aircraft for a period of one year.

Subd. 8. NOTICE OF CEASE AND DESIST ORDER; REQUEST FOR HEARING. No cease and desist order under subdivision 7 shall be made until the commissioner notifies the person by certified mail of intention to issue a cease and desist order and allows the person a 20-day period after the date of receiving the notice to request of the commissioner, in writing, a hearing as herein provided. If no request is filed within the 20-day period, the commissioner may then issue a cease and desist order. However, if a request for hearing is filed, no cease and desist order shall be made until final judicial determination resulting in an adverse decision to the person.

Subd. 9. HEARING. The hearing shall be before a district court in the county where the arrest occurred, unless there is agreement that the hearing may be held in some other county. The hearing shall be recorded and proceed as in a criminal matter, without the right of trial by jury, and its scope shall cover the issues of whether the peace officer had reasonable and probable grounds to believe the person was operating or attempting to operate an aircraft in violation of section 4; whether the person was lawfully placed under arrest; whether the person refused to permit the test, and if the person refused whether the person had reasonable grounds for refusing to permit the test; and whether at the time of request for the test the peace officer informed the person that the right to fly might be denied if the person refused to permit the test and of the right to have additional tests made by someone of the person's own choosing. The court shall order either that the denial be rescinded or sustained and refer the order to the commissioner of transportation for further action.

New language is indicated by underline, deletions by ~~strikeout~~.

Subd. 10. NOTICE OF ACTION TO OTHER STATES. When it has been finally determined that a nonresident's privilege to operate an aircraft in this state has been denied, the commissioner shall give information in writing of the action taken to the appropriate federal authorities and any state in which the nonresident operates an aircraft or has a license to operate an aircraft.

Sec. 6. **REPEALER.**

Minnesota Statutes 1988, sections 360.075, subdivision 7; and 360.0751, are repealed.

ARTICLE 7

CONTROLLED SUBSTANCES OFFENSES

Section 1. Minnesota Statutes 1989 Supplement, section 152.021, is amended to read:

152.021 **CONTROLLED SUBSTANCE CRIME IN THE FIRST DEGREE.**

Subdivision 1. **SALE CRIMES.** A person is guilty of controlled substance crime in the first degree if:

(1) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures ~~containing ten grams or more of a total weight of ten grams or more containing~~ cocaine base;

(2) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of 50 grams or more containing a narcotic drug;

(3) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of 50 grams or more containing methamphetamine, amphetamine, phencyclidine, or hallucinogen or, if the controlled substance is packaged in dosage units, equaling 200 or more dosage units; or

(4) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of ~~100~~ 50 kilograms or more containing marijuana or Tetrahydrocannabinols.

Subd. 2. **POSSESSION CRIMES.** A person is guilty of a controlled substance crime in the first degree if:

(1) the person unlawfully possesses one or more mixtures ~~containing 25 grams or more of a total weight of 25 grams or more containing~~ cocaine base;

New language is indicated by underline, deletions by ~~strikeout~~.

(2) the person unlawfully possesses one or more mixtures of a total weight of 500 grams or more containing a narcotic drug;

(3) the person unlawfully possesses one or more mixtures of a total weight of 500 grams or more containing methamphetamine, amphetamine, phencyclidine, or hallucinogen or, if the controlled substance is packaged in dosage units, equaling 500 or more dosage units; or

(4) the person unlawfully possesses one or more mixtures of a total weight of 100 kilograms or more containing marijuana or Tetrahydrocannabinols.

Subd. 3. **PENALTY.** (a) A person convicted under subdivision 1 or 2 may be sentenced to imprisonment for not more than 30 years or to payment of a fine of not more than \$1,000,000, or both.

(b) If the conviction is a subsequent controlled substance conviction, a person convicted under subdivision 1 or 2 shall be sentenced to imprisonment for not less than four years nor more than 40 years or to payment of a fine of not more than \$1,000,000, or both.

(c) In a prosecution under subdivision 1 involving sales by the same person in two or more counties within a 90-day period, the person may be prosecuted for all of the sales in any county in which one of the sales occurred.

Sec. 2. Minnesota Statutes 1989 Supplement, section 152.022, is amended to read:

152.022 CONTROLLED SUBSTANCE CRIME IN THE SECOND DEGREE.

Subdivision 1. **SALE CRIMES.** A person is guilty of controlled substance crime in the second degree if:

(1) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures ~~containing three grams or more of a total weight or three grams or more containing~~ cocaine base;

(2) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of ten grams or more containing a narcotic drug;

(3) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of ten grams or more containing methamphetamine, amphetamine, phencyclidine, or hallucinogen or, if the controlled substance is packaged in dosage units, equaling 50 or more dosage units;

(4) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of ~~\$0~~ 25 kilograms or more containing marijuana or Tetrahydrocannabinols; ~~or~~

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(5) the person unlawfully sells any amount of a schedule I or II narcotic drug; ~~and:~~

(i) ~~the person unlawfully sells the substance to a person under the age of 18, or conspires with or employs a person under the age of 18 to unlawfully sell the substance; or~~

(ii) ~~the sale occurred in a school zone or a park zone.~~

(6) the person unlawfully sells any amount of a schedule I or II narcotic drug in a school zone or a park zone.

Subd. 2. **POSSESSION CRIMES.** A person is guilty of controlled substance crime in the second degree if:

(1) the person unlawfully possesses one or more mixtures ~~containing six grams or more of~~ a total weight of six grams or more containing cocaine base;

(2) the person unlawfully possesses one or more mixtures of a total weight of 50 grams or more containing a narcotic drug;

(3) the person unlawfully possesses one or more mixtures of a total weight of 50 grams or more containing methamphetamine, amphetamine, phencyclidine, or hallucinogen or, if the controlled substance is packaged in dosage units, equaling 100 or more dosage units; or

(4) the person unlawfully possesses one or more mixtures of a total weight of 50 kilograms or more containing marijuana or Tetrahydrocannabinols.

Subd. 3. **PENALTY.** (a) A person convicted under subdivision 1 or 2 may be sentenced to imprisonment for not more than 25 years or to payment of a fine of not more than \$500,000, or both.

(b) If the conviction is a subsequent controlled substance conviction, a person convicted under subdivision 1 or 2 shall be sentenced to imprisonment for not less than three years nor more than 40 years or to payment of a fine of not more than \$500,000, or both.

(c) In a prosecution under subdivision 1 involving sales by the same person in two or more counties within a 90-day period, the person may be prosecuted for all of the sales in any county in which one of the sales occurred.

Sec. 3. Minnesota Statutes 1989 Supplement, section 152.023, subdivision 1, is amended to read:

Subdivision 1. **SALE CRIMES.** A person is guilty of controlled substance crime in the third degree if:

(1) the person unlawfully sells one or more mixtures containing a narcotic drug;

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(2) the person unlawfully sells one or more mixtures containing phencyclidine or hallucinogen, it is packaged in dosage units, and equals ten or more dosage units;

(3) the person unlawfully sells one or more mixtures containing a controlled substance classified in schedule I, II, or III, except a schedule I or II narcotic drug, ~~marijuana or Tetrahydrocannabinols~~; to a person under the age of 18; or

(4) the person conspires with or employs a person under the age of 18 to unlawfully sell one or more mixtures containing a controlled substance listed in schedule I, II, or III, except a schedule I or II narcotic drug; ~~marijuana or Tetrahydrocannabinols~~; or

(5) the person unlawfully sells one or more mixtures of a total weight of five kilograms or more containing marijuana or Tetrahydrocannabinols.

Sec. 4. Minnesota Statutes 1989 Supplement, section 152.023, subdivision 2, is amended to read:

Subd. 2. **POSSESSION CRIMES.** A person is guilty of controlled substance crime in the third degree if:

(1) the person unlawfully possesses one or more mixtures ~~containing three grams or more of a total weight of three grams or more containing~~ cocaine base;

(2) the person unlawfully possesses one or more mixtures of a total weight of ten grams or more containing a narcotic drug;

(3) the person unlawfully possesses one or more mixtures containing a narcotic drug with the intent to sell it;

(4) the person unlawfully possesses one or more mixtures containing a narcotic drug, it is packaged in dosage units, and equals 50 or more dosage units; or

(5) the person unlawfully possesses any amount of a schedule I or II narcotic drug in a school zone or a park zone; or

(6) the person unlawfully possesses one or more mixtures of a total weight of ten kilograms or more containing marijuana or Tetrahydrocannabinols.

Sec. 5. Minnesota Statutes 1989 Supplement, section 152.024, subdivision 1, is amended to read:

Subdivision 1. **SALE CRIMES.** A person is guilty of controlled substance crime in the fourth degree if:

(1) the person unlawfully sells one or more mixtures containing a controlled substance classified in schedule I, II, or III, except marijuana or Tetrahydrocannabinols;

New language is indicated by underline, deletions by ~~strikeout~~.

(2) ~~the person unlawfully sells one or more mixtures containing marijuana or Tetrahydrocannabinols to a person under the age of 18;~~

(3) ~~the person conspires with or employs a person under the age of 18 to unlawfully sell one or more mixtures containing marijuana or Tetrahydrocannabinols;~~

(4) the person unlawfully sells one or more mixtures containing a controlled substance classified in schedule IV or V to a person under the age of 18; or

(5) (3) the person conspires with or employs a person under the age of 18 to unlawfully sell a controlled substance classified in schedule IV or V.

Sec. 6. Minnesota Statutes 1989 Supplement, section 152.025, subdivision 2, is amended to read:

Subd. 2. **POSSESSION AND OTHER CRIMES.** A person is guilty of controlled substance crime in the fifth degree if:

(1) the person unlawfully possesses one or more mixtures containing a controlled substance classified in schedule I, II, III, or IV, except a small amount of marijuana; or

(2) the person unlawfully possesses one or more mixtures containing marijuana or Tetrahydrocannabinols with the intent to sell it, except a small amount of marijuana for no remuneration; or

(3) the person procures, attempts to procure, possesses, or has control over a controlled substance by any of the following means:

(i) fraud, deceit, misrepresentation, or subterfuge;

(ii) using a false name or giving false credit; or

(iii) falsely assuming the title of, or falsely representing any person to be, a manufacturer, wholesaler, pharmacist, physician, doctor of osteopathy licensed to practice medicine, dentist, podiatrist, veterinarian, or other authorized person for the purpose of obtaining a controlled substance.

Sec. 7. [152.0261] **IMPORTING CONTROLLED SUBSTANCES ACROSS STATE BORDERS.**

Subdivision 1. FELONY. A person who crosses a state or international border into Minnesota while in possession of an amount of a controlled substance that constitutes a first degree controlled substance crime under section 152.021, subdivision 2, is guilty of importing controlled substances and may be sentenced as provided in subdivision 3.

Subd. 2. JURISDICTION. A violation of subdivision 1 may be charged, indicted, and tried in any county, but not more than one county, into or through which the actor has brought the controlled substance.

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Subd. 3. PENALTY. A person convicted of violating this section is guilty of a felony and may be sentenced to imprisonment for not more than 35 years or to payment of a fine of not more than \$1,250,000, or both.

Sec. 8. Minnesota Statutes 1989 Supplement, section 152.028, subdivision 2, is amended to read:

Subd. 2. **PASSENGER AUTOMOBILES.** The presence of a controlled substance in a passenger automobile permits the factfinder to infer knowing possession of the controlled substance by the driver or person in control of the automobile when the controlled substance was in the automobile. This inference may only be made if the defendant is charged with violating section 152.021, 152.022, ~~or 152.023,~~ or section 7. The inference does not apply:

(1) to a duly licensed operator of an automobile who is at the time operating it for hire in the lawful and proper pursuit of the operator's trade;

(2) to any person in the automobile if one of them legally possesses a controlled substance; or

(3) when the controlled substance is concealed on the person of one of the occupants.

Sec. 9. **EFFECTIVE DATE.**

Sections 1 to 8 are effective August 1, 1990, and apply to crimes committed on or after that date.

ARTICLE 8

PRESENTENCE INVESTIGATIONS

Section 1. Minnesota Statutes 1989 Supplement, section 609.115, subdivision 1, is amended to read:

Subdivision 1. **PRESENTENCE INVESTIGATION.** When a defendant has been convicted of a misdemeanor or gross misdemeanor, the court may, and when the defendant has been convicted of a felony, the court shall, before sentence is imposed, cause a presentence investigation and written report to be made to the court concerning the defendant's individual characteristics, circumstances, needs, potentialities, criminal record and social history, the circumstances of the offense and the harm caused by it to others and to the community. At the request of the prosecutor in a gross misdemeanor case, the court shall order that a presentence investigation and report be prepared. When the crime is a felony violation of chapter 152 involving the sale or distribution of a controlled substance, the report shall include a description of any adverse social

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or economic effects the offense has had on persons who reside in the neighborhood where the offense was committed.

The report shall also include the information relating to crime victims required under section 611A.037, subdivision 1. If the court directs, the report shall include an estimate of the prospects of the defendant's rehabilitation and recommendations as to the sentence which should be imposed. In misdemeanor cases the report may be oral.

When a defendant has been convicted of a felony, and before sentencing, the court shall cause a sentencing worksheet to be completed to facilitate the application of the Minnesota sentencing guidelines. The worksheet shall be submitted as part of the presentence investigation report.

The investigation shall be made by a probation officer of the court, if there is one, otherwise by the commissioner of corrections. The officer conducting the presentence or predispositional investigation shall make reasonable and good faith efforts to contact the victim of that crime and to provide that victim with the information required under section 611A.037, subdivision 2.

Pending the presentence investigation and report, When a person is convicted of a felony for which the sentencing guidelines presume that the defendant will be committed to the commissioner of corrections under an executed sentence and no motion for a sentencing departure has been made by counsel, the court with the consent of the commissioner may commit the defendant to the custody of the commissioner of corrections ~~who~~ pending completion of the presentence investigation and report. When a defendant is convicted of a felony for which the sentencing guidelines do not presume that the defendant will be committed to the commissioner of corrections, or for which the sentencing guidelines presume commitment to the commissioner but counsel has moved for a sentencing departure, the court may commit the defendant to the commissioner with the consent of the commissioner, pending completion of the presentence investigation and report. The commissioner shall return the defendant to the court when the court so orders.

Presentence investigations shall be conducted and summary hearings held upon reports and upon the sentence to be imposed upon the defendant in accordance with this section, section 244.10, and the rules of criminal procedure.

Presented to the governor April 28, 1990

Signed by the governor May 3, 1990, 10:46 a.m.

New language is indicated by underline, deletions by ~~strikeout~~.