

Sec. 7. Minnesota Statutes 1998, section 617.247, subdivision 2, is amended to read:

Subd. 2. **DEFINITIONS.** For purposes of this section, the following terms have the meanings given them:

(a) "Photographic representation" means an original or reproduction of a film, videotape, videodisc, photograph, negative, or slide "Pornographic work" has the meaning given to it in section 617.246.

(b) "Sexual conduct" has the meaning given to it in section 617.246.

Sec. 8. Minnesota Statutes 1998, section 617.247, subdivision 3, is amended to read:

Subd. 3. **DISSEMINATION PROHIBITED.** A person who disseminates a photographic representation of sexual conduct which involves a minor pornographic work to an adult or a minor, knowing or with reason to know its content and character and that an actual minor is an actor or photographic subject in it, is guilty of a gross misdemeanor felony and may be sentenced to imprisonment for not more than five years and a fine of not more than \$10,000 for a first offense and for not more than ten years and a fine of not more than \$20,000 for a second or subsequent offense.

Sec. 9. Minnesota Statutes 1998, section 617.247, subdivision 4, is amended to read:

Subd. 4. **POSSESSION PROHIBITED.** A person who has in possession possesses a photographic representation of sexual conduct which involves a minor pornographic work or a computer disk or computer or other electronic, magnetic, or optical storage system or a storage system of any other type, containing a pornographic work, knowing or with reason to know its content and character and that an actual minor is an actor or photographic subject in it, is guilty of a gross misdemeanor felony and may be sentenced to imprisonment for not more than three years and a fine of not more than \$5,000 for a first offense and for not more than five years and a fine of not more than \$10,000 for a second or subsequent offense.

Sec. 10. Minnesota Statutes 1998, section 617.247, is amended by adding a subdivision to read:

Subd. 8. **AFFIRMATIVE DEFENSE.** It shall be an affirmative defense to a charge of violating this section that the pornographic work was produced using only persons who were 18 years or older.

Sec. 11. **EFFECTIVE DATE.**

Sections 1 to 10 are effective August 1, 1999, and apply to crimes committed on or after that date.

Presented to the governor May 21, 1999

Signed by the governor May 24, 1999, 9:46 a.m.

## CHAPTER 218—S.F.No. 441

*An act relating to crime prevention; modifying the criminal penalties for certain crimes to provide more uniformity; creating a pretrial diversion program for writers of dishonored checks;*

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*amending Minnesota Statutes 1998, sections 332.50, subdivision 2; 609.52, subdivision 3; 609.535, subdivision 2a; 609.631, subdivision 4; and 609.821, subdivision 3; proposing coding for new law in Minnesota Statutes, chapter 628.*

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

Section 1. Minnesota Statutes 1998, section 332.50, subdivision 2, is amended to read:

Subd. 2. **ACTS CONSTITUTING.** Whoever issues any check that is dishonored is liable for the following penalties:

(a) A service charge of up to \$20, or actual costs of collection not to exceed \$30, may be imposed immediately on any dishonored check, regardless of mailing a notice of dishonor, if notice of the service charge was conspicuously displayed on the premises when the check was issued. If a law enforcement agency obtains payment of a dishonored check, a service charge not to exceed \$25 may be imposed if the service charge is retained by the law enforcement agency for its expenses. Only one service charge may be imposed under this paragraph for each dishonored check.

(b) If the amount of the dishonored check is not paid within 30 days after the payee or holder has mailed notice of dishonor pursuant to section 609.535 and a description of the penalties contained in this subdivision, whoever issued the dishonored check is liable to the payee or holder of the check for:

(1) the amount of the check, the service charge as provided in paragraph (a), plus a civil penalty of up to \$100 or the value of the check, whichever is greater. The civil penalty may not be imposed until 30 days following the mailing of the notice of dishonor. A payee or holder of the check may make a written demand for payment of the civil liability by sending a copy of this section and a description of the liability contained in this section to the issuer's last known address. Notice as provided in paragraph (a) must also include notification that additional civil penalties will be imposed for dishonored checks for non-payment after 30 days;

(2) interest at the rate payable on judgments pursuant to section 549.09 on the face amount of the check from the date of dishonor; and

(3) reasonable attorney fees if the aggregate amount of dishonored checks issued by the issuer to all payees within a six-month period is over \$1,250.

(c) This subdivision prevails over any provision of law limiting, prohibiting, or otherwise regulating service charges authorized by this subdivision, but does not nullify charges for dishonored checks, which do not exceed the charges in paragraph (a) or terms or conditions for imposing the charges which have been agreed to by the parties in an express contract.

(d) A sight draft may not be used as a means of collecting the civil penalties provided in this section without prior consent of the issuer.

(e) The issuer of a dishonored check is not liable for the penalties described in paragraph (b) if a pretrial diversion program under section 628.69 has been established in the jurisdiction where the dishonored check was issued, the issuer was accepted into the program, and the issuer successfully completes the program.

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Sec. 2. Minnesota Statutes 1998, section 609.52, subdivision 3, is amended to read:

Subd. 3. **SENTENCE.** Whoever commits theft may be sentenced as follows:

(1) to imprisonment for not more than 20 years or to payment of a fine of not more than \$100,000, or both, if the property is a firearm, or the value of the property or services stolen is more than \$35,000 and the conviction is for a violation of subdivision 2, clause (3), (4), (15), or (16); or

(2) to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both, if the value of the property or services stolen exceeds \$2,500, or if the property stolen was an article representing a trade secret, an explosive or incendiary device, or a controlled substance listed in schedule I or II pursuant to section 152.02 with the exception of marijuana; or

(3) to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if:

(a) the value of the property or services stolen is more than \$500 but not more than \$2,500; or

(b) the property stolen was a controlled substance listed in schedule III, IV, or V pursuant to section 152.02; or

(c) the value of the property or services stolen is more than ~~\$200~~ \$250 but not more than \$500 and the person has been convicted within the preceding five years for an offense under this section, section 256.98; 268.182; 609.24; 609.245; 609.53; 609.582, subdivision 1, 2, or 3; 609.625; 609.63; 609.631; or 609.821, or a statute from another state, the United States, or a foreign jurisdiction, in conformity with any of those sections, and the person received a felony or gross misdemeanor sentence for the offense, or a sentence that was stayed under section 609.135 if the offense to which a plea was entered would allow imposition of a felony or gross misdemeanor sentence; or

(d) the value of the property or services stolen is not more than \$500, and any of the following circumstances exist:

(i) the property is taken from the person of another or from a corpse, or grave or coffin containing a corpse; or

(ii) the property is a record of a court or officer, or a writing, instrument or record kept, filed or deposited according to law with or in the keeping of any public officer or office; or

(iii) the property is taken from a burning, abandoned, or vacant building or upon its removal therefrom, or from an area of destruction caused by civil disaster, riot, bombing, or the proximity of battle; or

(iv) the property consists of public funds belonging to the state or to any political subdivision or agency thereof; or

(v) the property stolen is a motor vehicle; or

(4) to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both, if the value of the property or services stolen is more than ~~\$200~~ \$250 but not more than \$500; or

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(5) in all other cases where the value of the property or services stolen is ~~\$200~~ \$250 or less, to imprisonment for not more than 90 days or to payment of a fine of not more than \$700, or both, provided, however, in any prosecution under subdivision 2, clauses (1), (2), (3), (4), and (13), the value of the money or property or services received by the defendant in violation of any one or more of the above provisions within any six-month period may be aggregated and the defendant charged accordingly in applying the provisions of this subdivision; provided that when two or more offenses are committed by the same person in two or more counties, the accused may be prosecuted in any county in which one of the offenses was committed for all of the offenses aggregated under this paragraph.

Sec. 3. Minnesota Statutes 1998, section 609.535, subdivision 2a, is amended to read:

Subd. 2a. **PENALTIES.** (a) A person who is convicted of issuing a dishonored check under subdivision 2 may be sentenced as follows:

(1) to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if the value of the dishonored check, or checks aggregated under paragraph (b), is more than \$500;

(2) to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both, if the value of the dishonored check, or checks aggregated under paragraph (b), is more than \$250 but not more than \$500; or

~~(2)~~ (3) to imprisonment for not more than 90 days or to payment of a fine of not more than \$700, or both, if the value of the dishonored check, or checks aggregated under paragraph (b), is not more than \$250.

(b) In a prosecution under this subdivision, the value of dishonored checks issued by the defendant in violation of this subdivision within any six-month period may be aggregated and the defendant charged accordingly in applying this section. When two or more offenses are committed by the same person in two or more counties, the accused may be prosecuted in any county in which one of the dishonored checks was issued for all of the offenses aggregated under this paragraph.

Sec. 4. Minnesota Statutes 1998, section 609.631, subdivision 4, is amended to read:

Subd. 4. **SENTENCING.** A person who is convicted under subdivision 2 or 3 may be sentenced as follows:

(1) to imprisonment for not more than 20 years or to payment of a fine of not more than \$100,000, or both, if the forged check or checks are used to obtain or in an attempt to obtain, property or services of more than \$35,000 or the aggregate amount of the forged check or checks is more than \$35,000;

(2) to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both, if the forged check or checks are used to obtain or in an attempt to obtain, property or services of more than \$2,500 or the aggregate amount of the forged check or checks is more than \$2,500;

(3) to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if:

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(a) the forged check or checks are used to obtain or in an attempt to obtain, property or services of more than ~~\$200~~ \$250 but not more than \$2,500, or the aggregate face amount of the forged check or checks is more than ~~\$200~~ \$250 but not more than \$2,500; or

(b) the forged check or checks are used to obtain or in an attempt to obtain, property or services of no more than ~~\$200~~ \$250, or have an aggregate face value of no more than ~~\$200~~ \$250, and the person has been convicted within the preceding five years for an offense under this section, section 609.24; 609.245; 609.52; 609.53; 609.582, subdivision 1, 2, or 3; 609.625; 609.63; or 609.821, or a statute from another state in conformity with any of those sections, and the person received a felony or gross misdemeanor sentence for the offense, or a sentence that was stayed under section 609.135 if the offense to which a plea was entered would allow imposition of a felony or gross misdemeanor sentence; and

(4) to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both, if the forged check or checks are used to obtain or in an attempt to obtain, property or services of no more than ~~\$200~~ \$250, or the aggregate face amount of the forged check or checks is no more than ~~\$200~~ \$250.

In any prosecution under this subdivision, the value of the checks forged or offered by the defendant in violation of this subdivision within any six-month period may be aggregated and the defendant charged accordingly in applying the provisions of this section. When two or more offenses are committed by the same person in two or more counties, the accused may be prosecuted in any county in which one of the checks was forged or offered for all of the offenses aggregated under this paragraph.

Sec. 5. Minnesota Statutes 1998, section 609.821, subdivision 3, is amended to read:

Subd. 3. **SENTENCE.** (a) A person who commits financial transaction card fraud may be sentenced as follows:

(1) for a violation of subdivision 2, clause (1), (2), (5), or (8):

(i) to imprisonment for not more than 20 years or to payment of a fine of not more than \$100,000, or both, if the value of the property the person obtained or attempted to obtain was more than \$35,000, or the aggregate amount of the transactions under this subdivision was more than \$35,000; or

(ii) to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both, if the value of the property the person obtained or attempted to obtain was more than \$2,500, or the aggregate amount of the transactions under this subdivision was more than \$2,500; or

(iii) to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if the value of the property the person obtained or attempted to obtain was more than ~~\$200~~ \$250 but not more than \$2,500, or the aggregate amount of the transactions under this subdivision was more than ~~\$200~~ \$250 but not more than \$2,500; or

(iv) to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if the value of the property the person obtained or attempted to obtain was not more than ~~\$200~~ \$250, or the aggregate amount of the transactions under this subdivision was not more than ~~\$200~~ \$250, and the person has previously been con-

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victed within the preceding five years for an offense under this section, section 609.24; 609.245; 609.52; 609.53; 609.582, subdivision 1, 2, or 3; 609.625; 609.63; or 609.631, or a statute from another state in conformity with any of those sections, and the person received a felony or gross misdemeanor sentence for the offense, or a sentence that was stayed under section 609.135 if the offense to which a plea was entered would allow imposition of a felony or gross misdemeanor sentence; or

(v) to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both, if the value of the property the person obtained or attempted to obtain was not more than ~~\$200~~ \$250, or the aggregate amount of the transactions under this subdivision was not more than ~~\$200~~ \$250; and

~~(vi) in any prosecution under clauses (i) to (v), the value of the transactions made or attempted within any six-month period may be aggregated and the defendant charged accordingly in applying the provisions of this section. When two or more offenses are committed by the same person in two or more counties, the accused may be prosecuted in any county in which one of the card transactions occurred for all of the transactions aggregated under this paragraph;~~

(2) for a violation of subdivision 2, clause (3) or (4), to imprisonment for not more than three years or to payment of a fine of not more than \$5,000, or both; or

(3) for a violation of subdivision 2, clause (6) or (7):

(i) if no property, other than a financial transaction card, has been obtained by the defendant by means of the false statement or false report, to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both; or

(ii) if property, other than a financial transaction card, is so obtained, in the manner provided in clause (1).

(b) In any prosecution under paragraph (a), clause (1), the value of the transactions made or attempted within any six-month period may be aggregated and the defendant charged accordingly in applying the provisions of this section. When two or more offenses are committed by the same person in two or more counties, the accused may be prosecuted in any county in which one of the card transactions occurred for all of the transactions aggregated under this paragraph.

#### **Sec. 6. [628.69] PRETRIAL DIVERSION PROGRAM FOR WRITERS OF DISHONORED CHECKS.**

##### Subdivision 1. DEFINITIONS. As used in this section:

(1) a person is an "offender" if the person is charged with, or probable cause exists to arrest or charge the person with, a violation of section 609.535, but the person has not yet entered a plea in the proceedings;

(2) "pretrial diversion" means the decision of a prosecutor to refer an offender to a diversion program on condition that the criminal charges against the offender will be dismissed after a specified period of time, or the case will not be charged, if the offender successfully completes the program; and

(3) "prosecutor" means a city or county attorney.

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Subd. 2. ESTABLISHMENT OF PROGRAM. A prosecutor may establish a pretrial diversion program for offenders. The program may be conducted by the prosecutor or by a private entity under contract with the prosecutor.

Subd. 3. DIVERSION OF OFFENDER. In determining whether to accept an offender for pretrial diversion, the prosecutor shall consider:

- (1) the value of the dishonored check or checks;
- (2) whether the offender has a criminal record or has previously been diverted under this section or any other diversion program;
- (3) the number of dishonored check grievances against the offender previously received by the prosecutor;
- (4) whether there are other dishonored check grievances currently pending against the offender;
- (5) the strength of the evidence, if any, of intent to defraud the victim; and
- (6) the wishes of the victim regarding placement in the program.

Subd. 4. PROGRAM COMPONENTS. (a) At a minimum, the pretrial diversion program must require offenders to:

- (1) successfully complete an appropriate educational class or classes at their own expense which includes information on writing checks and managing money;
  - (2) make full restitution to the victim of the offense; and
  - (3) pay appropriate penalties under section 332.50, subdivision 2, paragraph (a).
- (b) If the prosecutor determines that requiring an offender to pay for the educational class described in paragraph (a), clause (1), would result in an economic hardship to the offender or the offender's family, the prosecutor may waive the requirement.

Subd. 5. NO CIVIL LIABILITY. A victim of an offender who successfully completes a pretrial diversion program under this section may not recover the penalties described in section 332.50, subdivision 2, paragraph (b), if the penalties relate to the offense resulting in completion of the diversion program.

Subd. 6. REPORTING OF DATA TO CRIMINAL JUSTICE INFORMATION SYSTEM (CJIS). Every county attorney who has established a pretrial diversion program under this section shall report the following information to the bureau of criminal apprehension:

- (1) the name and date of birth of each diversion program participant, and any other identifying information the superintendent considers necessary;
- (2) the date on which the individual began to participate in the diversion program;
- (3) the date on which the individual is expected to complete the diversion program;
- (4) the date on which the individual successfully completed the diversion program, where applicable; and
- (5) the date on which the individual was removed from the diversion program for failure to successfully complete the individual's goals, where applicable.

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The superintendent shall cause the information described in this subdivision to be entered into and maintained in the criminal history file of the Minnesota criminal justice information system.

Subd. 7. REPORTS. By January 15 of each odd-numbered year, each prosecutor shall report to the supreme court and the chairs of the senate and house committees having jurisdiction over criminal justice policy on the operation of any pretrial diversion program established under this section. The report must include a description of the program, the number of offenders participating in the program, the number and characteristics of the offenders who successfully complete the program, the number and characteristics of the offenders who fail to complete the program, and an evaluation of the program's effect on the operation of the criminal justice system within the prosecutor's jurisdiction.

**Sec. 7. EFFECTIVE DATE.**

Sections 1 and 6 are effective August 1, 1999. Sections 2 to 5 are effective August 1, 1999, and apply to crimes committed on or after that date.

Presented to the governor May 21, 1999

Signed by the governor May 24, 1999, 9:46 a.m.

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**CHAPTER 219—S.F.No. 346**

*An act relating to child custody; expanding provisions for relative ex parte temporary custody; amending Minnesota Statutes 1998, section 518.158, subdivisions 1 and 2.*

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

Section 1. Minnesota Statutes 1998, section 518.158, subdivision 1, is amended to read:

Subdivision 1. **FACTORS.** (a) It is presumed to be in the best interests of the child for the court to grant temporary custody to a relative under subdivision 2 if a minor child has resided with the relative for a period of 12 months or more and the following circumstances exist without good cause:

(1) the parent has had no contact with the child on a regular basis and no demonstrated, consistent participation in the child's well-being for six months; or

(2) the parent, during the time the child resided with the relative, has refused or neglected to comply with the duties imposed upon the parent by the parent and child relationship, including but not limited to providing the child necessary food, clothing, shelter, health care, education, and other care and control necessary for the child's physical, mental, or emotional health and development.

(b) It is also presumed to be in the best interests of the child for the court to grant temporary custody to a relative under subdivision 2 if the relative has permanent custody of a sibling of the child and:

(1) the child is currently residing with the relative and a factor in paragraph (a), clause (1) or (2), is present, regardless of duration; or

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