

CHAPTER 609

CRIMINAL CODE OF 1963

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609.09 COMPELLING TESTIMONY; IMMUNITY FROM PROSECUTION.

Subdivision 1. In any criminal proceeding, including a grand jury proceeding, paternity proceeding, or proceeding in juvenile court, if it appears a person may be entitled to refuse to answer a question or produce evidence of any other kind on the ground that he may be incriminated thereby, and if the prosecuting attorney, in writing, requests the chief judge of the district or a judge of the court in which the proceeding is pending to order that person to answer the question or produce the evidence, the judge, after notice to the witness and hearing, shall so order if he finds that to do so would not be contrary to the public interest and would not be likely to expose the witness to prosecution in another state or in the federal courts.

After complying, and if, but for this section, he would have been privileged to withhold the answer given or the evidence produced by him, no testimony or other information compelled under the order, or any information directly or indirectly derived from such testimony or other information may be used against the witness in any criminal case, but he may be prosecuted or subjected to penalty or forfeiture for any perjury, false swearing or contempt committed in answering, or in failing to answer, or in producing, or failing to produce, evidence in accordance with the order.

Subd. 2. In every case not provided for in subdivision 1 and in which it is provided by law that a witness shall not be excused from giving testimony tending to criminate himself, no person shall be excused from testifying or producing any papers or documents on the ground that his testimony may tend to criminate him or subject him to a penalty or forfeiture; but no testimony or other information directly or indirectly derived from such testimony or other information may be used against the witness in any criminal case, except for perjury committed in such testimony.

History: 1981 c 293 s 1

609.101 SURCHARGE ON FINES, ASSESSMENTS.

When a court sentences a person convicted of a felony, gross misdemeanor, or misdemeanor, other than a traffic or parking violation, and if the sentence does not include payment of a fine, the court shall impose an assessment of not less than \$20 nor more than \$40. If the sentence includes payment of a fine, the court

shall impose a surcharge on the fine of ten percent of the fine. This section applies whether or not the person is sentenced to imprisonment and when the sentence is suspended. The court may, upon a showing of indigency or undue hardship upon the convicted person or his immediate family, waive payment or authorize payment of the assessment or surcharge in installments.

The court shall collect and forward the amount of the assessment or surcharge to the state treasurer to be deposited in the general fund for the purposes of providing services, assistance, or reparations or a combination, to victims of crimes through programs established under sections 241.51 to 241.66, under chapter 256D, and chapter 299B. If the convicted person is sentenced to imprisonment, the chief executive officer of the correctional facility in which the convicted person is incarcerated may collect the assessment or surcharge from any earnings the inmate accrues for work performed in the correctional facility and forward the amount to the state treasurer. The state treasurer shall identify and report to the commissioner of finance all amounts deposited in the general fund under this section.

History: 1981 c 360 art 2 s 50

609.11 MINIMUM TERMS OF IMPRISONMENT.

Subdivision 1. **Commitments without minimums.** All commitments to the commissioner of corrections for imprisonment of the defendant are without minimum terms except when the sentence is to life imprisonment as required by law and except as otherwise provided in this chapter.

Subd. 3. [Repealed, 1981 c 227 s 13]

Subd. 4. **Dangerous weapon.** Any defendant convicted of an offense listed in subdivision 9 in which the defendant or an accomplice, at the time of the offense, used, whether by brandishing, displaying, threatening with, or otherwise employing, a dangerous weapon other than a firearm, or had in possession a firearm, shall be committed to the commissioner of corrections for a mandatory minimum term of imprisonment of not less than one year plus one day, nor more than the maximum sentence provided by law. Any defendant convicted of a second or subsequent offense in which the defendant or an accomplice, at the time of the offense, used a dangerous weapon other than a firearm, or had in possession a firearm, shall be committed to the commissioner of corrections for a mandatory minimum term of imprisonment of not less than three years nor more than the maximum sentence provided by law.

Subd. 5. **Firearm.** Any defendant convicted of an offense listed in subdivision 9 in which the defendant or an accomplice, at the time of the offense, used, whether by brandishing, displaying, threatening with, or otherwise employing, a firearm, shall be committed to the commissioner of corrections for a mandatory minimum term of imprisonment of not less than three years, nor more than the maximum sentence provided by law. Any defendant convicted of a second or subsequent offense in which the defendant or an accomplice, at the time of the offense, used a firearm shall be committed to the commissioner of corrections for a mandatory minimum term of imprisonment of not less than five years, nor more than the maximum sentence provided by law.

Subd. 6. **No early release.** Any defendant convicted and sentenced as required by this section shall not be eligible for probation, parole, discharge, or supervised release until that person shall have served the full mandatory minimum term of imprisonment as provided by law, notwithstanding the provisions of sections 242.19, 243.05, 244.04, 609.12 and 609.135.

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Subd. 7. **Prosecutor shall establish.** Whenever reasonable grounds exist to believe that the defendant or an accomplice used a firearm or other dangerous weapon or had in possession a firearm, at the time of commission of an offense listed in subdivision 9, the prosecutor shall, at the time of trial or at the plea of guilty, present all evidence tending to establish that fact unless it is otherwise admitted on the record. The question of whether the defendant or an accomplice, at the time of commission of an offense listed in subdivision 9, used a firearm or other dangerous weapon or had in possession a firearm shall be determined by the court at the time of a verdict or finding of guilt at trial or the entry of a plea of guilty based upon the record of the trial or the plea of guilty. The court shall determine at the time of sentencing whether the defendant has been convicted of a second or subsequent offense in which the defendant or an accomplice, at the time of commission of an offense listed in subdivision 9, used a firearm or other dangerous weapon or had in possession a firearm.

Subd. 8. **Motion by prosecutor.** Prior to the time of sentencing, the prosecutor may file a motion to have the defendant sentenced without regard to the mandatory minimum terms of imprisonment established by this section. The motion shall be accompanied by a statement on the record of the reasons for it. When presented with the motion and if it finds substantial mitigating factors exist, the court shall sentence the defendant without regard to the mandatory minimum terms of imprisonment established by this section.

Subd. 9. **Applicable offenses.** The crimes for which mandatory minimum sentences shall be served before eligibility for probation, parole, or supervised release as provided in this section are: murder in the first, second, or third degree; assault in the first, second, or third degree; burglary; kidnapping; false imprisonment; manslaughter in the first or second degree; aggravated robbery; simple robbery; criminal sexual conduct in the first, second, or third degree; escape from custody; arson in the first, second, or third degree; or any attempt to commit any of these offenses.

History: 1981 c 227 s 1-7

609.115 PRESENTENCE INVESTIGATION.

Subdivision 1. When a defendant has been convicted of a misdemeanor, gross misdemeanor, or felony the court may, 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 thereby to others and to the community. If the court so 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. If a presentence investigation is ordered by the court, the worksheet shall be submitted as part of the presentence investigation report. If a presentence investigation is not ordered by the court, the worksheet shall nonetheless be submitted.

The investigation shall be made by a probation officer of the court, if there is one, otherwise by the commissioner of corrections.

Pending the presentence investigation and report, the court with the consent of the commissioner may commit the defendant to the custody of the commission-

er of corrections who 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, Minnesota Statutes, Section 244.10, upon its effective date, and Rule 27 of the rules of criminal procedure.

Subd. 1a. **Contents of worksheet.** The supreme court shall promulgate rules uniformly applicable to all district courts for the form and contents of sentencing worksheets. These rules shall be promulgated by and effective on January 2, 1982.

[For text of subs 2 to 7, see M.S.1980]

~~History: 1981 c. 312 s. 1, 2~~

609.135 STAY OF IMPOSITION OR EXECUTION OF SENTENCE.

Subdivision 1. Except when a sentence of life imprisonment is required by law, or when a mandatory minimum term of imprisonment is required by section 609.11, any court may stay imposition or execution of sentence and place the defendant on probation with or without supervision and on the terms the court prescribes, including restitution when practicable. The court may order the supervision to be under the probation officer of the court, or, if there is none and the conviction is for a felony, by the commissioner of corrections, or in any case by some other suitable and consenting person.

A court may not stay the revocation of the driver's license of a person convicted of violating the provisions of section 169.121.

[For text of subs 2 to 5, see M.S.1980]

~~History: 1981 c 9 s 2; 1981 c. 227-s-8~~

609.185 MURDER IN THE FIRST DEGREE.

Whoever does any of the following is guilty of murder in the first degree and shall be sentenced to imprisonment for life:

(1) Causes the death of a human being with premeditation and with intent to effect the death of the person or of another;

(2) Causes the death of a human being while committing or attempting to commit criminal sexual conduct in the first or second degree with force or violence, either upon or affecting the person or another;

(3) Causes the death of a human being with intent to effect the death of the person or another, while committing or attempting to commit burglary, aggravated robbery, kidnapping, arson in the first or second degree, tampering with a witness in the first degree, or escape from custody; or

(4) Causes the death of a peace officer or a guard employed at a Minnesota state correctional facility, with intent to effect the death of that person or another, while the peace officer or guard is engaged in the performance of his official duties.

History: 1981 c 227 s 9

609.19 MURDER IN THE SECOND DEGREE.

Whoever does either of the following is guilty of murder in the second degree and may be sentenced to imprisonment for not more than 40 years:

(1) Causes the death of a human being with intent to effect the death of that person or another, but without premeditation, or

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(2) Causes the death of a human being, without intent to effect the death of any person, while committing or attempting to commit a felony offense other than criminal sexual conduct in the first or second degree with force or violence.

History: 1981 c 227 s 10

609.195 MURDER IN THE THIRD DEGREE.

Whoever, without intent to effect the death of any person, causes the death of another by perpetrating an act eminently dangerous to others and evincing a depraved mind, without regard for human life, is guilty of murder in the third degree and may be sentenced to imprisonment for not more than 25 years.

History: 1981 c 227 s 11

609.20 MANSLAUGHTER IN THE FIRST DEGREE.

Whoever does any of the following is guilty of manslaughter in the first degree and may be sentenced to imprisonment for not more than 15 years or to payment of a fine of not more than \$15,000, or both:

(1) Intentionally causes the death of another person in the heat of passion provoked by such words or acts of another as would provoke a person of ordinary self-control under like circumstances; or

(2) Causes the death of another in committing or attempting to commit a misdemeanor or gross misdemeanor offense with such force and violence that death of or great bodily harm to any person was reasonably foreseeable, and murder in the first or second degree was not committed thereby; or

(3) Intentionally causes the death of another person because the actor is coerced by threats made by someone other than his co-conspirator and which cause him reasonably to believe that his act is the only means of preventing imminent death to himself or another.

History: 1981 c 227 s 12

609.341 DEFINITIONS.

[For text of subs 1 to 10, see M.S.1980]

Subd. 11. "Sexual contact" includes any of the following acts committed without the complainant's consent, if the acts can reasonably be construed as being for the purpose of satisfying the actor's sexual or aggressive impulses, except in those cases where consent is not a defense:

(i) The intentional touching by the actor of the complainant's intimate parts, or

(ii) The touching by the complainant of the actor's, the complainant's, or another's intimate parts effected by coercion or the use of a position of authority, or

(iii) The touching by another of the complainant's intimate parts effected by coercion or the use of a position of authority, or

(iv) In any of the cases above, of the clothing covering the immediate area of the intimate parts.

[For text of subs 12 to 14, see M.S.1980]

History: 1981 c 51 s 1

609.342 CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE.

A person is guilty of criminal sexual conduct in the first degree and may be sentenced to imprisonment for not more than 20 years, if he engages in sexual penetration with another person and if any of the following circumstances exists:

(a) The complainant is under 13 years of age and the actor is more than 36 months older than the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense; or

(b) The complainant is at least 13 but less than 16 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant, and uses this authority to cause the complainant to submit. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense; or

(c) Circumstances existing at the time of the act cause the complainant to have a reasonable fear of imminent great bodily harm to the complainant or another; or

(d) The actor is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it to be a dangerous weapon and uses or threatens to use the weapon or article to cause the complainant to submit; or

(e) The actor causes personal injury to the complainant, and either of the following circumstances exist:

(i) The actor uses force or coercion to accomplish sexual penetration; or

(ii) The actor knows or has reason to know that the complainant is mentally defective, mentally incapacitated, or physically helpless; or

(f) The actor is aided or abetted by one or more accomplices within the meaning of section 609.05, and either of the following circumstances exists:

(i) An accomplice uses force or coercion to cause the complainant to submit; or

(ii) An accomplice is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant reasonably to believe it to be a dangerous weapon and uses or threatens to use the weapon or article to cause the complainant to submit.

History: 1981 c 51 s 2

609.343 CRIMINAL SEXUAL CONDUCT IN THE SECOND DEGREE.

A person is guilty of criminal sexual conduct in the second degree and may be sentenced to imprisonment for not more than 15 years if he engages in sexual contact with another person and if any of the following circumstances exists:

(a) The complainant is under 13 years of age and the actor is more than 36 months older than the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense. In a prosecution under this clause, the state is not required to prove that the sexual contact was coerced; or

(b) The complainant is at least 13 but less than 16 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant, and uses this authority to cause the complainant to submit. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense; or

(c) Circumstances existing at the time of the act cause the complainant to have a reasonable fear of imminent great bodily harm to the complainant or another; or

(d) The actor is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it to be a dangerous weapon and uses or threatens to use the dangerous weapon to cause the complainant to submit; or

(e) The actor causes personal injury to the complainant, and either of the following circumstances exist:

(i) The actor uses force or coercion to accomplish the sexual contact; or

(ii) The actor knows or has reason to know that the complainant is mentally defective, mentally incapacitated, or physically helpless; or

(f) The actor is aided or abetted by one or more accomplices within the meaning of section 609.05, and either of the following circumstances exists:

(i) An accomplice uses force or coercion to cause the complainant to submit; or

(ii) An accomplice is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it to be a dangerous weapon and uses or threatens to use the weapon or article to cause the complainant to submit.

History: 1981 c 51 s 3

609.345 CRIMINAL SEXUAL CONDUCT IN THE FOURTH DEGREE.

A person is guilty of criminal sexual conduct in the fourth degree and may be sentenced to imprisonment for not more than five years, if he engages in sexual contact with another person and if any of the following circumstances exists:

(a) The complainant is under 13 years of age and the actor is no more than 36 months older than the complainant. Neither mistake as to the complainant's age or consent to the act by the complainant is a defense. In a prosecution under this clause, the state is not required to prove that the sexual contact was coerced; or

(b) The complainant is at least 13 but less than 16 years of age and the actor is more than 48 months older than the complainant or in a position of authority over the complainant and uses this authority to cause the complainant to submit. In any such case, it shall be an affirmative defense which must be proved by a preponderance of the evidence that the actor believes the complainant to be 16 years of age or older; or

(c) The actor uses force or coercion to accomplish the sexual contact; or

(d) The actor knows or has reason to know that the complainant is mentally defective, mentally incapacitated, or physically helpless.

History: 1981 c 51 s 4

609.346 SUBSEQUENT OFFENSES.

Subdivision 1. If a person is convicted of a second or subsequent offense under sections 609.342 to 609.345 or sections 609.364 to 609.3644 within 15 years of the prior conviction, the court shall commit the defendant to the commissioner of corrections for imprisonment for a term of not less than three years, nor more than the maximum sentence provided by law for the offense for which convicted, notwithstanding the provisions of sections 242.19, 243.05, 609.11, 609.12 and 609.135.

Subd. 2. For the purposes of this section, an offense is considered a second or subsequent offense if, prior to conviction of the second or subsequent offense, the actor has been at any time convicted under sections 609.342 to 609.346 or sections 609.364 to 609.3644 or under any similar statute of the United States, or this or any other state.

History: 1981 c 273 s 4

609.348 MEDICAL PURPOSES; EXCLUSION.

Laws 1975, Chapter 374, and sections 609.364 to 609.3644 shall not apply to sexual penetration or sexual contact when done for a bona fide medical purpose.

History: 1981 c 273 s 5

609.35 COSTS OF MEDICAL EXAMINATION.

No costs incurred by a county, city, or private hospital or other emergency medical facility or by a private physician for the examination of a complainant of criminal sexual conduct or intrafamilial sexual abuse, as defined in section 609.364, subdivision 10, when the examination is performed for the purpose of gathering evidence for possible prosecution, shall be charged directly or indirectly to the complainant. The reasonable costs of the examination shall be paid by the county in which the alleged offense was committed. Nothing in this section shall be construed to limit the duties, responsibilities, or liabilities of any insurer, whether public or private.

History: 1981 c 273 s 6

609.364 INTRAFAMILIAL SEXUAL ABUSE; DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 595.02 and 609.364 to 609.3644, the terms in this section have the meanings given them.

Subd. 2. **Actor.** "Actor" means an adult accused of intrafamilial sexual abuse.

Subd. 3. **Child.** "Child" means a person under age 16.

Subd. 4. **Coercion.** "Coercion" means a threat to unlawfully inflict bodily harm upon, or hold in confinement, the person threatened or another.

Subd. 5. **Complainant.** "Complainant" means a child or minor alleging to have been subjected to intrafamilial sexual abuse, but need not be the person who signs the complaint.

Subd. 6. **Consent.** "Consent" means a voluntary uncoerced manifestation of a present agreement to perform a particular sexual act.

Subd. 7. **Force.** "Force" means the infliction, attempted infliction, or threatened infliction by the actor of bodily harm or commission or threat of any other crime by the actor against the complainant or another, which causes the complainant to reasonably believe that the actor has the present ability to execute the threat.

Subd. 8. **Intimate parts.** "Intimate parts" includes the primary genital area, groin, inner thigh, buttocks, or breast of a human being.

Subd. 9. **Familial relationship.** "Familial relationship" means a situation in which the actor is:

- (a) The complainant's parent, stepparent, or guardian;
- (b) Nearer of kin to the complainant than first cousin, computed by rules of the civil law, whether of the half or the whole blood;

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(c) Any of the following persons related to the complainant by marriage or adoption: brother, sister, stepbrother, stepsister, first cousin, aunt, uncle, nephew, niece, grandparent, great-grandparent, great-uncle, great-aunt; or

(d) An adult who jointly resides intermittently or regularly in the same dwelling as the complainant and who is not the complainant's spouse.

Subd. 10. **Intrafamilial sexual abuse.** "Intrafamilial sexual abuse" means sexual contact or sexual penetration, or both, of a child or minor when the actor has a familial relationship to the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense.

Subd. 11. **Minor.** "Minor" means a person under age 18 but age 16 or over.

Subd. 12. **Personal injury.** "Personal injury" means bodily harm as defined in section 609.02, subdivision 7, or severe mental anguish, or pregnancy.

Subd. 13. **Sexual contact.** "Sexual contact" includes any of the following acts, if the acts can reasonably be construed as being for the purpose of satisfying the actor's sexual or aggressive impulses:

(a) The intentional touching by the actor of the complainant's intimate parts;

(b) The touching by the complainant of the actor's, the complainant's, or another's intimate parts;

(c) The touching by another of the complainant's intimate parts; or

(d) In any of the cases listed above, touching of the clothing covering the immediate area of the intimate parts.

Subd. 14. **Sexual penetration.** "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion however slight into the genital or anal openings of the complainant's body of any part of the actor's body or any object used by the actor for this purpose. Emission of semen is not necessary.

History: 1981 c 273 s 7

609.3641 INTRAFAMILIAL SEXUAL ABUSE IN THE FIRST DEGREE.

Subdivision 1. **Crime defined.** A person is guilty of intrafamilial sexual abuse in the first degree if:

(1) He has a familial relationship to and engages in sexual penetration with a child; or

(2) He has a familial relationship to and engages in sexual penetration with a child and:

(a) the actor or an accomplice used force or coercion to accomplish the penetration;

(b) the actor or an accomplice was armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it could be a dangerous weapon and used or threatened to use the dangerous weapon;

(c) circumstances existed at the time of the act to cause the complainant to have a reasonable fear of imminent great bodily harm to the complainant or another;

(d) the complainant suffered personal injury; or

(e) the intrafamilial sexual abuse involved multiple acts committed over an extended period of time.

Subd. 2. **Penalty.** A person convicted under subdivision 1, clause (1), may be sentenced to imprisonment for not more than 20 years. Except when imprisonment is required by section 609.346, the court may stay imposition or execution of sentence if it finds that a stay is in the best interest of the complainant or the family unit. A person convicted under subdivision 1, clause (2), may be sentenced to imprisonment for not more than 20 years.

History: 1981 c 273 s 8

609.3642 INTRAFAMILIAL SEXUAL ABUSE IN THE SECOND DEGREE.

Subdivision 1. **Crime defined.** A person is guilty of intrafamilial sexual abuse in the second degree if:

(1) He has a familial relationship to and engages in sexual contact with a child; or

(2) He has a familial relationship to and engages in sexual contact with a child and:

(a) the actor or an accomplice used force or coercion to accomplish the contact;

(b) the actor or an accomplice was armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it to be a dangerous weapon and used or threatened to use the dangerous weapon;

(c) circumstances existed at the time of the act to cause the complainant to have a reasonable fear of imminent great bodily harm to the complainant or another;

(d) the complainant suffered personal injury; or

(e) the intrafamilial sexual abuse involved multiple acts committed over an extended period of time.

Subd. 2. **Penalty.** A person convicted under subdivision 1, clause (1), may be sentenced to imprisonment for not more than 15 years. Except when imprisonment is required by section 609.346, the court may stay imposition or execution of the sentence if it finds that a stay is in the best interest of the complainant or the family unit. A person convicted under subdivision 1, clause (2), may be sentenced to imprisonment for not more than 15 years.

History: 1981 c 273 s 9

609.3643 INTRAFAMILIAL SEXUAL ABUSE IN THE THIRD DEGREE.

Subdivision 1. **Crime defined.** A person is guilty of intrafamilial sexual abuse in the third degree if:

(1) He has a familial relationship to and engages in sexual penetration with a minor; or

(2) He has a familial relationship to and engages in sexual penetration with a minor and:

(a) the actor or an accomplice used force or coercion to accomplish the penetration;

(b) the actor or accomplice was armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it could be a dangerous weapon and used or threatened to use the dangerous weapon;

(c) circumstances existed at the time of the act to cause the complainant to have a reasonable fear of imminent great bodily harm to the complainant or another;

(d) the complainant suffered personal injury; or

(e) the intrafamilial sexual abuse involved multiple acts committed over an extended period of time.

Subd. 2. **Penalty.** A person convicted under subdivision 1, clause (1), may be sentenced to imprisonment for not more than ten years. Except when imprisonment is required by section 609.346, the court may stay imposition or execution of the sentence if it finds that a stay is in the best interest of the complainant or the family unit. A person convicted under subdivision 1, clause (2), may be sentenced to imprisonment for not more than ten years.

History: 1981 c 273 s 10.

609.3644 INTRAFAMILIAL SEXUAL ABUSE IN THE FOURTH DEGREE.

Subdivision 1. **Crime defined.** A person is guilty of intrafamilial sexual abuse in the fourth degree if:

(1) He has a familial relationship to and engages in sexual contact with a minor; or

(2) He has a familial relationship to and engages in sexual contact with a minor and:

(a) the actor or an accomplice used force or coercion to accomplish the contact;

(b) the actor or accomplice was armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it could be a dangerous weapon and used or threatened to use the dangerous weapon;

(c) circumstances existed at the time of the act to cause the complainant to have a reasonable fear of imminent great bodily harm to the complainant or another;

(d) the complainant suffered personal injury; or

(e) the intrafamilial sexual abuse involved multiple acts committed over an extended period of time.

Subd. 2. **Penalty.** A person convicted under subdivision 1, clause (1), may be sentenced to imprisonment for not more than five years. Except when imprisonment is required by section 609.346, the court may stay imposition or execution of the sentence if it finds that a stay is in the best interest of the complainant or the family unit. A person convicted under subdivision 1, clause (2), may be sentenced to imprisonment for not more than five years.

History: 1981 c 273 s 11

609.375 NON-SUPPORT OF SPOUSE OR CHILD.

Subdivision 1. Whoever is legally obligated to provide care and support to a spouse who is in necessitous circumstances, or child, whether or not its custody has been granted to another, and knowingly omits and fails without lawful excuse to do so is guilty of non-support of the spouse or child, as the case may be, and upon conviction thereof may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than \$300.

Subd. 2. If the knowing omission and failure without lawful excuse to provide care and support to a spouse, a minor child, or a pregnant wife continues for a period in excess of 90 days the person is guilty of a felony and may be sentenced to imprisonment for not more than five years.

Subd. 3. Upon conviction, the court may provide by order for the care and support of the child or spouse for a period not to exceed five years, require bond or other security to the state to secure performance thereof, and suspend sentence or execution thereof, conditioned upon compliance with the order.

Subd. 4. If, upon order to show cause duly made, the court finds that an order made pursuant to subdivision 3 has been violated, the suspension may be revoked and sentence imposed or executed, and the obligors of the bond or security shall become liable pursuant to the terms thereof, and, with leave of the court, the spouse, or child, or any public agency which furnished care or support to the spouse or child while the order for care and support was in force, may recover thereon.

History: 1981 c 31 s 19

609.487 FLEEING A PEACE OFFICER IN A MOTOR VEHICLE.

Subdivision 1. **Flee; definition.** For purposes of this section, the term "flee" means to increase speed, extinguish motor vehicle headlights or taillights, or to use other means with intent to attempt to elude a peace officer following a signal given by any peace officer to the driver of a motor vehicle.

Subd. 2. **Peace officer; definition.** For purposes of this section, "peace officer" means an employee of a political subdivision or state law enforcement agency who is licensed by the Minnesota board of peace officer standards and training, charged with the prevention and detection of crime and the enforcement of the general criminal laws of the state and who has the full power of arrest, and shall also include the Minnesota highway patrol.

Subd. 3. **Fleeing an officer.** Whoever by means of a motor vehicle flees or attempts to flee a peace officer who is acting in the lawful discharge of an official duty, and the perpetrator knows or should reasonably know the same to be a peace officer, may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$1,000, or both.

Subd. 4. **Fleeing an officer; death; bodily injury.** Whoever flees or attempts to flee by means of a motor vehicle a peace officer who is acting in the lawful discharge of an official duty, and the perpetrator knows or should reasonably know the same to be a peace officer, and who in the course of fleeing causes the death of a human being not constituting murder or manslaughter or any bodily injury to any person other than himself may be sentenced to imprisonment as follows:

(a) If the course of fleeing results in death, to imprisonment for ten years or to payment of a fine of not more than \$10,000, or both; or

(b) If the course of fleeing results in great bodily harm, to imprisonment for five years or to payment of a fine of not more than \$5,000, or both; or

(c) If the course of fleeing results in substantial bodily harm, to imprisonment for three years or to payment of a fine of not more than \$3,000, or both.

History: 1981 c 312 s 4

609.52 THEFT.

Subdivision 1. **Definitions.** In this section:

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(1) "Property" means all forms of tangible property, whether real or personal, without limitation including documents of value, electricity, gas, water, corpses, domestic animals, dogs, pets, fowl, and heat supplied by pipe, or conduit by municipalities or public utility companies and articles, as defined in clause (4), representing trade secrets, which articles shall be deemed for the purposes of Extra Session Laws 1967, Chapter 15 to include any trade secret represented by the article.

(2) "Movable property" is property whose physical location can be changed, including without limitation things growing on, affixed to or found in land.

(3) "Value" means the retail market value at the time of the theft, or if the retail market value cannot be ascertained, the cost of replacement of the property within a reasonable time after the theft, or in the case of a theft or the making of a copy of an article representing a trade secret, where the retail market value or replacement cost cannot be ascertained, any reasonable value representing the damage to the owner which he has suffered by reason of losing an advantage over those who do not know of or use the trade secret. For a theft committed within the meaning of subdivision 2, clause (5), (a) and (b), if the property has been restored to the owner, "value" means the value of the use of the property or the damage which it sustained, whichever is greater, while the owner was deprived of its possession, but not exceeding the value otherwise provided herein.

(4) "Article" means any object, material, device or substance, including any writing, record, recording, drawing, sample specimen, prototype, model, photograph, micro-organism, blueprint or map, or any copy of any of the foregoing.

(5) "Representing" means describing, depicting, containing, constituting, reflecting or recording.

(6) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and

(ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(7) "Copy" means any facsimile, replica, photograph or other reproduction of an article, and any note, drawing or sketch made of or from an article while in the presence of the article.

(8) "Property of another" includes property in which the actor is co-owner or has a lien, pledge, bailment, or lease or other subordinate interest, and property of a partnership of which the actor is a member, unless the actor and the victim are husband and wife. It does not include property in which the actor asserts in good faith a claim as a collection fee or commission out of property or funds recovered, or by virtue of a lien, set-off, or counterclaim.

(9) "Services" include but are not limited to labor, professional services, transportation services, electronic computer services, the supplying of hotel accommodations, restaurant services, entertainment services, advertising services, telecommunication services, and the supplying of equipment for use.

Subd. 2. Acts constituting theft. Whoever does any of the following commits theft and may be sentenced as provided in subdivision 3:

(1) Intentionally and without claim of right takes, uses, transfers, conceals or retains possession of movable property of another without his consent and with intent to deprive the owner permanently of possession of the property; or

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(2) Having a legal interest in movable property, intentionally and without consent, takes the property out of the possession of a pledgee or other person having a superior right of possession, with intent thereby to deprive the pledgee or other person permanently of the possession of the property; or

(3) Obtains for himself or another the possession, custody or title to property of or performance of services by a third person by intentionally deceiving him with a false representation which is known to be false, made with intent to defraud, and which does defraud the person to whom it is made. "False representation" includes without limitation:

(a) The issuance of a check, draft, or order for the payment of money or the delivery of property knowing that he is not entitled to draw upon the drawee therefor or to order the payment or delivery thereof; or

(b) A promise made with intent not to perform. Failure to perform is not evidence of intent not to perform unless corroborated by other substantial evidence; or

(c) The unauthorized use of a credit card, credit plate, charge plate, or other identification device issued by an organization to a person for use in purchasing goods or services on credit; or

(d) The preparation or filing of a claim for reimbursement, a rate application, or a cost report used to establish a rate or claim for payment for medical care provided to a recipient of medical assistance under chapter 256B, which intentionally and falsely states the costs of or actual services provided by a vendor of medical care; or

(4) By swindling, whether by artifice, trick, device, or any other means, obtains property or services from another person; or

(5) Intentionally commits any of the acts listed in this subdivision but with intent to exercise temporary control only and;

(a) The control exercised manifests an indifference to the rights of the owner or the restoration of the property to him; or

(b) He pledges or otherwise attempts to subject the property to an adverse claim; or

(c) He intends to restore the property only on condition that the owner pay a reward or buy back or make other compensation; or

(6) Finds lost property and, knowing or having reasonable means of ascertaining the true owner, appropriates it to his own use or to that of another not entitled thereto without first having made reasonable effort to find the owner and offer and surrender the property to him; or

(7) Intentionally obtains property or services, offered upon the deposit of a sum of money or tokens in a coin or token operated machine or other receptacle, without making the required deposit or otherwise obtaining the consent of the owner; or

(8) Intentionally and without claim of right converts any article representing a trade secret, knowing it to be such, to his own use or that of another person or makes a copy of an article representing a trade secret, knowing it to be such, and intentionally and without claim of right converts the same to his own use or that of another person. It shall be a complete defense to any prosecution under this clause for the defendant to show that information comprising the trade secret was rightfully known or available to him from a source other than the owner of the trade secret; or

(9) Leases or rents personal property under a written instrument and who with intent to place the property beyond the control of the lessor conceals or aids or abets the concealment of the property or any part thereof, or any lessee of the property who sells, conveys or encumbers the property or any part thereof without the written consent of the lessor, without informing the person to whom he sells, conveys, or encumbers that the same is subject to such lease and with intent to deprive the lessor of possession thereof. Evidence that a lessee used a false or fictitious name or address in obtaining the property or fails or refuses to return the property to lessor within five days after written demand for the return has been served personally in the manner provided for service of process of a civil action or sent by certified mail to the last known address of the lessee, whichever shall occur later, shall be evidence of intent to violate this clause. Service by certified mail shall be deemed to be complete upon deposit in the United States mail of such demand, postpaid and addressed to the person at the address for the person set forth in the lease or rental agreement, or, in the absence of the address, to the person's last known place of residence; or

(10) Alters, removes or obliterates numbers or symbols placed on movable property for purpose of identification by the owner or person who has legal custody or right to possession thereof with the intent to prevent identification, if the person who alters, removes or obliterates the numbers or symbols is not the owner and does not have the permission of the owner to make the alteration, removal or obliteration; or

(11) With the intent to prevent the identification of property involved, so as to deprive the rightful owner of possession thereof, alters or removes any permanent serial number, permanent distinguishing number or manufacturer's identification number on personal property or possesses, sells or buys any personal property with knowledge that the permanent serial number, permanent distinguishing number or manufacturer's identification number has been removed or altered; or

(12) Intentionally deprives another of a lawful charge for cable television service by

(i) making or using or attempting to make or use an unauthorized external connection outside the individual dwelling unit whether physical, electrical, acoustical, inductive or other connection, or by

(ii) attaching any unauthorized device to any cable, wire, microwave, or other component of a licensed cable communications system as defined in chapter 238. Nothing herein shall be construed to prohibit the electronic video re-recording of program material transmitted on the cable communications system by a subscriber for fair use as defined by Public Law 94-553, Section 107; or

(13) Except as provided in paragraph (12), obtains the services of another with the intention of receiving those services without making the agreed or reasonably expected payment of money or other consideration.

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

(1) To imprisonment for not more than ten years or to payment of a fine of not more than \$10,000, or both, if the value of the property or services stolen exceeds \$2,500; or

(2) To imprisonment for not more than five years or to payment of a fine of not more than \$5,000, or both, if the value of the property or services stolen is more than \$150 but not more than \$2,500; or

(3) To imprisonment for not more than five years or to payment of a fine of not more than \$5,000, or both, notwithstanding the value of the property or services stolen is not more than \$150, if any of the following circumstances exist:

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

(b) The property taken 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

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

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

(4) To imprisonment for not more than ten years or to payment of a fine of not more than \$10,000, or both, if the property stolen is an article representing a trade secret; or if the property stolen is an explosive or an incendiary device; or

(5) In all other cases where the value of the property or services stolen is \$150 or less, to imprisonment for not more than 90 days or to payment of a fine of not more than \$500, or both, provided, however, in any prosecution under clause (1), clause (2), clause (3)(a), (b) and (c), clause (4), and clause (13) of subdivision 2 the value of the money or property 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.

History: 1981 c 120 s 1; 1981 c 299 s 1

609.53 RECEIVING STOLEN PROPERTY.

[For text of subd 1, see M.S.1980]

Subd. 1a. Any precious metal dealer as defined in section 325F.731, subdivision 2, or any person employed by a precious metal dealer as defined in section 325F.731, subdivision 2, who receives, possesses, transfers, buys or conceals any stolen property or property obtained by robbery, knowing the same to be stolen or obtained by robbery, may be sentenced as follows:

(1) If the value of the property received, bought or concealed is \$150 or more, to imprisonment for not more than ten years or to payment of a fine of not more than \$50,000, or both;

(2) If the value of the property received, bought or concealed is less than \$150, to imprisonment for not more than three years or to payment of a fine of not more than \$25,000, or both.

[For text of subd 2, see M.S.1980]

Subd. 2a. Any precious metal dealer as defined in section 325F.731, subdivision 2, or any person employed by a precious metal dealer as defined in section 325F.731, subdivision 2, who receives, possesses, transfers, buys or conceals any stolen property or property obtained by robbery, having reason to believe the same to be stolen or obtained by robbery, may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than \$25,000, or both.

[For text of subd 3, see M.S.1980]

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Subd. 3a. Any precious metal dealer as defined in section 325F.731, subdivision 2, or any person employed by a precious metal dealer as defined in section 325F.731, subdivision 2, convicted of a second or subsequent violation under subdivision 2a within a period of one year may be sentenced as provided in subdivision 1a, clause (1).

Subd. 4. Any person who has been injured by a violation of subdivisions 1 or 1a, 2a, or 3a may bring an action for three times the amount of actual damages, sustained by the plaintiff or \$1,500, whichever is greater, the costs of suit and reasonable attorney's fees.

[For text of subd 5, see M.S.1980]

History: 1981 c 333 s 14-17

609.535 ISSUANCE OF WORTHLESS CHECK.

[For text of subds 1 and 2, see M.S.1980]

Subd. 3. **Proof of intent.** Any of the following is evidence sufficient to sustain a finding that the person at the time he issued the check or other order for the payment of money, intended it should not be paid:

(1) Proof that, at the time of issuance, he did not have an account with the drawee; or

(2) Proof that, at the time of issuance, he did not have sufficient funds or credit with the drawee and that he failed to pay the check or other order within five business days after mailing of notice of nonpayment or dishonor as provided in this subdivision; or

(3) Proof that, when presentment was made within a reasonable time, the issuer did not have sufficient funds or credit with the drawee and that he failed to pay the check or other order within five business days after mailing of notice of nonpayment or dishonor as provided in this subdivision.

Notice of nonpayment or dishonor shall be sent by the payee or holder of the check to the maker or drawer by certified mail, return receipt requested, or by regular mail, supported by an affidavit of service by mailing, to the address printed on the check. Refusal by the maker or drawer of the check to accept certified mail notice or failure to claim certified or regular mail notice shall not constitute a defense that notice was not received.

The notice may state that unless the check is paid in full within five business days after mailing of the notice of non-payment or dishonor, the payee or holder of the check or other order for the payment of money will or may refer the matter to proper authorities for prosecution under this section.

An affidavit of service by mailing shall be retained by the payee or holder of the check.

[For text of subds 4 and 5, see M.S.1980]

Subd. 6. **Release of account information to law enforcement authorities.** A drawee shall not be liable in a civil or criminal proceeding for releasing the information specified below to any state, county, or local law enforcement or prosecuting authority which first certifies in writing that it is investigating or prosecuting a complaint against the drawer under this section or section 609.52, subdivision 2, clause (3)(a), and that 15 days have elapsed since the mailing of the notice required by subdivision 3. This subdivision applies to the following information relating to the drawer's account:

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- (1) Documents relating to the opening of the account by the drawer;
- (2) Correspondence between the drawer and the drawee relating to the status of the account;
- (3) Periodic statements mailed to the drawer by the drawee for the periods immediately prior to, during, and subsequent to the issuance of any check or other order for the payment of money which is the subject of the investigation or prosecution; or
- (4) The last known home and business addresses and telephone numbers of the drawer.

Subd. 7. Release of account information to payee or holder. If there is a written request to a drawee from a payee or holder of a check or other order for the payment of money that has been dishonored other than by a stop payment order, which request is accompanied by a copy of the dishonored check or other order for payment of money, the drawee is not liable in a civil or criminal proceeding for releasing to the payee or holder any of the following information relating to the drawer's account:

- (1) Whether at the time the check or other order for payment of money was issued or presented for payment the drawer had sufficient funds or credit with the drawee, and whether at that time the account was open, closed or restricted for any reason and the date it was closed or restricted; and
- (2) The last known home and business addresses and telephone numbers of the drawer.

Subd. 8. Notice. The provisions of subdivisions 6 and 7 are not applicable unless the notice to the maker or drawer required by subdivision 3 states that if the check or other order for the payment of money is not paid in full within five business days after mailing of the notice, the drawee may release information relating to the account to the payee or holder of the check or other order for the payment of money.

History: 1981 c 202 s 1; 1981 c 247 s 1-3

609.576 NEGLIGENT FIRES.

Whoever is culpably negligent in causing a fire to burn or get out of control thereby causing damage or injury to another, and as a result thereof:

(a) A human being is injured and great bodily harm incurred, is guilty of a crime and may be sentenced to imprisonment of not more than three years or to a fine of not more than \$3,000, or both; or

(b) Property of another is injured, thereby, is guilty of a crime and may be sentenced as follows:

(1) To imprisonment for not more than 90 days or to payment of a fine of not more than \$750, or both, if the value of the property damage is under \$300;

(2) To imprisonment for not more than one year, or to a fine of \$1,000 or both, if the value of the property damaged is at least \$300 and under \$2,500;

(3) To imprisonment for not less than 90 days nor more than one year, or to a fine of \$1,000, or both, if the value of the property damaged is at least \$2,500 and under \$10,000;

(4) To imprisonment for not less than 90 days nor more than three years or to a fine of \$3,000 or both, if value of property damaged is at least \$10,000.

History: 1981 c 107 s 1

609.685 SALE OF TOBACCO TO CHILDREN.

Subdivision 1. **Definition.** For the purposes of this section, "tobacco related devices" means cigarette papers or pipes for smoking.

Subd. 2. **Crime.** Whoever furnishes tobacco or tobacco related devices to a person under the age of 18 years is guilty of a misdemeanor.

Subd. 3. **Petty misdemeanor.** Whoever uses tobacco or tobacco related devices and is under the age of 18 years is guilty of a petty misdemeanor.

Subd. 4. **Effect on local ordinances.** Nothing in subdivisions 1 to 3 shall supersede or preclude the continuation or adoption of any local ordinance which provides for more stringent regulation of the subject matter in subdivisions 1 to 3.

History: 1981 c 218 s 1,2

609.75 GAMBLING; DEFINITIONS.

Subdivision 1. **Lottery.** A lottery is a plan which provides for the distribution of money, property or other reward or benefit to persons selected by chance from among participants some or all of whom have given a consideration for the chance of being selected. Except as provided by section 349.40, acts in this state in furtherance of a lottery conducted outside of this state are included notwithstanding its validity where conducted.

[For text of subds 2 to 6, see M.S.1980]

History: 1981 c 126 s 3

609.76 OTHER ACTS RELATING TO GAMBLING.

Whoever does any of the following may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$1,000, or both:

- (1) Maintains or operates a gambling place or operates a bucket shop; or
- (2) Intentionally participates in the income of a gambling place or bucket shop; or
- (3) Conducts a lottery, or, with intent to conduct a lottery, possesses facilities for doing so; or
- (4) Sets up for use for the purpose of gambling, or collects the proceeds of, any gambling device or bucket shop; or
- (5) With intent that it shall be so used, manufactures, sells or offers for sale, in whole or any part thereof, any gambling device including those defined in section 349.30, subdivision 2, and any facility for conducting a lottery, except as provided by section 349.40; or
- (6) Receives, records, or forwards bets or offers to bet or, with intent to receive, record, or forward bets or offers to bet, possesses facilities to do so.

History: 1981 c 126 s 4