

CHAPTER 609

CRIMINAL CODE OF 1963

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609.02 DEFINITIONS.

[For text of subs 1 to 4, see M.S.1986]

Subd. 4a. **Petty misdemeanor.** "Petty misdemeanor" means a petty offense which is prohibited by statute, which does not constitute a crime and for which a sentence of a fine of not more than \$200 may be imposed.

[For text of subs 5 to 11, see M.S.1986]

Subd. 12. **Harass.** As used in sections 609.605, subdivision 1, clause (13), 609.746, 609.79, and 609.795, "harass" means to interfere with another person so as to persecute or oppress that person.

Subd. 13. **Threaten.** As used in sections 609.605, subdivision 1, clause (13), 609.746, 609.79, and 609.795, "threaten" means to express a purpose or intent to injure the person, property, or rights of another by the commission of an unlawful act.

History: 1987 c 307 s 1,2; 1987 c 329 s 3

609.0331 INCREASED MAXIMUM PENALTIES FOR PETTY MISDEMEANORS.

Except as provided in this section, a law of this state that provides, on or after August 1, 1987, for a maximum penalty of \$100 for a petty misdemeanor is considered to provide for a maximum fine of \$200. However, a petty misdemeanor under section 152.15, subdivision 2, clause (5), or chapter 168 or 169 remains subject to a maximum fine of \$100, except that a violation of chapter 168 or 169 that was originally charged as a misdemeanor and is being treated as a petty misdemeanor under section 609.131 or the rules of criminal procedure is subject to a maximum fine of \$200.

History: 1987 c 329 s 4

609.0332 INCREASED MAXIMUM PENALTY FOR PETTY MISDEMEANOR ORDINANCE VIOLATIONS.

Subdivision 1. **Increased fine.** From August 1, 1987, if a state law or municipal charter sets a limit of \$100 or less on the fines that a statutory or home rule charter city, town, county, or other political subdivision may prescribe for an ordinance violation that is defined as a petty misdemeanor, that law or charter is considered to provide that the political subdivision has the power to prescribe a maximum fine of \$200 for the petty misdemeanor violation.

Subd. 2. **Exception.** Notwithstanding subdivision 1, no fine of more than \$100 may be imposed for a petty misdemeanor ordinance violation which conforms in substantial part to a petty misdemeanor provision contained in section 152.15, subdivision 2, clause (5), or chapter 168 or 169.

History: 1987 c 329 s 5

609.035 CRIME PUNISHABLE UNDER DIFFERENT PROVISIONS.

Except as provided in sections 609.251, 609.585, 609.21, subdivisions 3 and 4, 609.2691, and 609.856, if a person's conduct constitutes more than one offense under the laws of this state, the person may be punished for only one of the offenses and a conviction or acquittal of any one of them is a bar to prosecution for any other of them. All the offenses, if prosecuted, shall be included in one prosecution which shall be stated in separate counts.

History: 1987 c 111 s 1

609.101 SURCHARGE ON FINES, ASSESSMENTS; MINIMUM FINES.

Subdivision 1. **Surcharges and assessments.** When a court sentences a person convicted of a felony, gross misdemeanor, or misdemeanor, other than a petty misdemeanor such as 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 \$25 nor more than \$50. If the sentence for the felony, gross misdemeanor, or misdemeanor includes payment of a fine of any amount, including a fine of less than \$100, 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 not waive payment or authorize payment of the assessment or surcharge in installments unless it makes written findings on the record that the convicted person is indigent or that the assessment or surcharge would create undue hardship for the convicted person or that person's immediate family. If the court fails to waive or impose an assessment required by this section, the court administrator shall correct the record to show imposition of an assessment of \$25 if the sentence does not include payment of a fine, or if the sentence includes a fine, to show an imposition of a surcharge of ten percent of the fine.

Except for assessments and surcharges imposed on persons convicted of violations described in section 97A.065, subdivision 2, the court shall collect and forward to the commissioner of finance the total amount of the assessment or surcharge and the commissioner shall credit all money so forwarded to a crime victim and witness account, which is established as a special account in the state treasury.

Money credited to the crime victim and witness account may be appropriated for but is not limited to the following purposes:

- (1) use for crime victim reparations under sections 611A.51 to 611A.68;
- (2) use by the crime victim and witness advisory council established under section 611A.71; and
- (3) to supplement the federally funded activities of the crime victim ombudsman under section 611A.74.

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 commissioner of finance, indicating the part that was imposed for violations described in section 97A.065, subdivision 2, which must be credited to the game and fish fund.

Subd. 2. Minimum fines. Notwithstanding any other law:

(1) when a court sentences a person convicted of violating section 609.221, 609.267, or 609.342, it must impose a fine of not less than \$500 nor more than the maximum fine authorized by law;

(2) when a court sentences a person convicted of violating section 609.222, 609.223, 609.2671, 609.343, 609.344, or 609.345, it must impose a fine of not less than \$300 nor more than the maximum fine authorized by law; and

(3) when a court sentences a person convicted of violating section 609.2231, 609.224, or 609.2672, it must impose a fine of not less than \$100 nor more than the maximum fine authorized by law.

The court may not waive payment of the fine or authorize payment of it in installments unless the court makes written findings on the record that the convicted person is indigent or that the fine would create undue hardship for the convicted person or that person's immediate family.

The court shall collect the minimum fine mandated by this subdivision and forward 70 percent of it to a local victim assistance program that provides services locally in the county in which the crime was committed. The court shall forward the remaining 30 percent to the commissioner of finance to be credited to the crime victim and witness account established in subdivision 1. If more than one victim assistance program serves the county in which the crime was committed, the court may designate on a case-by-case basis which program will receive the fine proceeds, giving consideration to the nature of the crime committed, the types of victims served by the program, and the funding needs of the program. If no victim assistance program serves that county, the court shall forward 100 percent of the fine proceeds to the commissioner of finance to be credited to the crime victim and witness account. Fine proceeds received by a local victim assistance program must be used to provide direct services to crime victims. Fine proceeds credited to the crime victim and witness account may be appropriated to the crime victim and witness advisory council, and the council may use all or part of the proceeds for the purpose of providing grants to establish new victim assistance programs.

The minimum fine required by this subdivision is in addition to the surcharge or assessment required by subdivision 1 and is in addition to any term of imprisonment or restitution imposed or ordered by the court.

As used in this subdivision, "victim assistance program" means victim witness programs within county attorney offices or any of the following programs approved by the department of corrections: crime victim crisis centers, victim-witness programs, battered women shelters and nonshelter programs, and sexual assault programs.

History: 1987 c 244 s 1; 1987 c 404 s 189

609.115 PRESENTENCE INVESTIGATION.

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. 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, the court with the consent of the commissioner may commit the defendant to the custody of the commissioner 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, section 244.10, and the rules of criminal procedure.

[For text of subd 1a, see M.S.1986]

Subd. 1b. [Repealed, 1987 c 331 s 13]

Subd. 1c. [Repealed, 1987 c 331 s 13]

[For text of subds 2 to 7, see M.S.1986]

History: 1987 c 331 s 8

609.131 CERTIFICATION OF MISDEMEANOR AS PETTY MISDEMEANOR.

Subdivision 1. General rule. Except as provided in subdivision 2, an alleged misdemeanor violation must be treated as a petty misdemeanor if the prosecuting attorney believes that it is in the interest of justice that the defendant not be imprisoned if convicted and certifies that belief to the court at or before the time of arraignment or pretrial hearing, and the court approves of the certification motion. The defendant's consent to the certification is not required. When an offense is certified as a petty misdemeanor under this section, the defendant's eligibility for court-appointed counsel must be evaluated as though the offense were a misdemeanor.

Subd. 2. Certain violations excepted. Subdivision 1 does not apply to a misdemeanor violation of section 169.121; 609.224; 609.226; 609.324, subdivision 3; 609.52; or 617.23, or an ordinance that conforms in substantial part to any of those sections. A violation described in this subdivision must be treated as a misdemeanor unless the defendant consents to the certification of the violation as a petty misdemeanor.

Subd. 3. Use of conviction for enhancement. Notwithstanding any other law, a conviction for a violation that was originally charged as a misdemeanor and was treated as a petty misdemeanor under subdivision 1 or the rules of criminal procedure may not be used as the basis for charging a subsequent violation as a gross misdemeanor rather than a misdemeanor.

History: 1987 c 329 s 6

609.135 STAY OF IMPOSITION OR EXECUTION OF SENTENCE.

[For text of subds 1 to 1b, see M.S.1986]

Subd. 2. (1) If the conviction is for a felony the stay shall be for not more than three years or the maximum period for which the sentence of imprisonment might have been imposed, whichever is longer.

(2) If the conviction is for a gross misdemeanor the stay shall be for not more than two years.

(3) If the conviction is for a misdemeanor under section 169.121, the stay shall be for not more than two years. The court shall provide for unsupervised probation for the second year of the stay unless the court finds that the defendant needs supervised probation for all or part of the second year.

(4) If the conviction is for a misdemeanor not specified in clause (3), the stay shall be for not more than one year.

(5) The defendant shall be discharged when the stay expires, unless the stay has been revoked or the defendant has already been discharged.

[For text of subds 3 to 6, see M.S.1986]

History: 1987 c 220 s 1

609.165 RESTORATION OF CIVIL RIGHTS; POSSESSION OF FIREARMS.

[For text of subd 1, see M.S.1986]

Subd. 1a. **Certain convicted felons ineligible to possess firearms.** The order of discharge must provide that a person who has been convicted of a crime of violence, as defined in section 624.712, subdivision 5, is not entitled to ship, transport, possess, or receive a firearm until ten years have elapsed since the person was restored to civil rights and during that time the person was not convicted of any other crime of violence. Any person who has received such a discharge and who thereafter has received a relief of disability under United States Code, title 18, section 925, shall not be subject to the restrictions of this subdivision.

[For text of subds 2 and 3, see M.S.1986]

History: 1987 c 276 s 1

609.168 EFFECT OF ORDER.

Except as otherwise provided in this section, where an order is entered by the court setting aside the conviction the person shall be deemed not to have been previously convicted. An order setting aside a conviction for a crime of violence, as defined in section 624.712, subdivision 5, must provide that the person is not entitled to ship, transport, possess, or receive a firearm until ten years have elapsed since the order was entered and during that time the person was not convicted of any other crime of violence. Any person who has received an order setting aside a conviction and who thereafter has received a relief of disability under United States Code, title 18, section 925, shall not be subject to the restrictions of this subdivision.

History: 1987 c 276 s 2

609.195 MURDER IN THE THIRD DEGREE.

(a) 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.

(b) Whoever, without intent to cause death, proximately causes the death of a human being by, directly or indirectly, unlawfully selling, giving away, bartering, delivering, exchanging, distributing, or administering a controlled substance classified in schedule I or II, is guilty of murder in the third degree and may be sentenced to imprisonment for not more than 25 years or to payment of a fine of not more than \$40,000, or both.

History: 1987 c 176 s 1

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 \$30,000, 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;

(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;

(3) intentionally causes the death of another person because the actor is coerced by threats made by someone other than the actor's coconspirator and which cause the actor reasonably to believe that the act performed by the actor is the only means of preventing imminent death to the actor or another; or

(4) proximately causes the death of another, without intent to cause death by, directly or indirectly, unlawfully selling, giving away, bartering, delivering, exchanging, distributing, or administering a controlled substance classified in schedule III, IV, or V.

History: 1987 c 176 s 2

609.2231 ASSAULT IN THE FOURTH DEGREE.

[For text of subs 1 and 2, see M.S.1986]

Subd. 3. **Correctional employees.** Whoever assaults an employee of a correctional facility as defined in section 241.021, subdivision 1, clause (5), while the employee is engaged in the performance of a duty imposed by law, policy or rule, and inflicts demonstrable bodily harm, is guilty of a gross misdemeanor and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

History: 1987 c 252 s 9

609.224 ASSAULT IN THE FIFTH DEGREE.

[For text of subd 1, see M.S.1986]

Subd. 2. **Gross misdemeanor.** (a) Whoever violates the provisions of subdivision 1 against the same victim within five years of a previous conviction under subdivision 1 or sections 609.221 to 609.2231 may be sentenced to imprisonment for not more than one year or to a payment of a fine of not more than \$3,000, or both.

(b) Whoever violates the provisions of subdivision 1 within two years of a previous conviction under subdivision 1 or sections 609.221 to 609.2231 may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

History: 1987 c 329 s 7

609.228 GREAT BODILY HARM CAUSED BY DISTRIBUTION OF DRUGS.

Whoever proximately causes great bodily harm by, directly or indirectly, unlawfully selling, giving away, bartering, delivering, exchanging, distributing, or administering a controlled substance classified in schedule I or II 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.

History: 1987 c 176 s 3

609.26 DEPRIVING ANOTHER OF CUSTODIAL OR PARENTAL RIGHTS.

[For text of subd 1, see M.S.1986]

Subd. 2. **Defenses.** No person violates subdivision 1 if the action:

(1) is taken to protect the child from physical or sexual assault or substantial emotional harm;

(2) is taken to protect the person taking the action from physical or sexual assault;

(3) is consented to by the parent, stepparent, or legal custodian seeking prosecution, but consent to custody or specific visitation is not consent to the action of failing to return or concealing a minor child; or

(4) is otherwise authorized by a court order issued prior to the violation of subdivision 1.

The defenses provided in this subdivision are in addition to and do not limit other defenses available under this chapter or chapter 611.

[For text of subds 3 and 4, see M.S.1986]

Subd. 5. Dismissal of charge. A felony charge brought under this section shall be dismissed if:

(a) the person voluntarily returns the child within 14 days after taking, detaining, or failing to return the child in violation of this section; or

(b)(1) the person taking the action and the child have not left the state of Minnesota; and (2) within a period of 14 days after taking the action, (i) a motion or proceeding under chapter 518, 518A, 518B, or 518C is commenced by the person taking the action, or (ii) the attorney representing the person taking the action has consented to service of process by the party whose rights are being deprived, for any motion or action pursuant to chapter 518, 518A, 518B, or 518C.

Clause (a) does not apply if the person returns the child as a result of being located by law enforcement authorities.

This subdivision does not prohibit the filing of felony charges or an offense report before the expiration of the 14 days.

Subd. 6. Penalty. Except as otherwise provided in subdivision 5, whoever violates this section may be sentenced to imprisonment for not more than two years or to payment of a fine of \$4,000, or both.

[For text of subd 7, see M.S.1986]

History: 1987 c 246 s 1-3

609.321 PROSTITUTION; DEFINITIONS.

[For text of subds 1 to 11, see M.S.1986]

Subd. 12. A "public place" means a public street or sidewalk, a pedestrian skyway system as defined in section 469.125, subdivision 4, a hotel, motel, or other place of public accommodation, or a place licensed to sell intoxicating liquor, wine, nonintoxicating malt beverages, or food.

History: 1987 c 291 s 242

609.341 DEFINITIONS.

[For text of subds 1 to 6, see M.S.1986]

Subd. 7. "Mentally incapacitated" means that a person under the influence of alcohol, a narcotic, anesthetic, or any other substance, administered to that person without the person's agreement, lacks the judgment to give a reasoned consent to sexual contact or sexual penetration.

[For text of subds 8 to 10, see M.S.1986]

Subd. 11. (a) "Sexual contact," for the purposes of sections 609.343, subdivision 1, clauses (a) to (f), and 609.345, subdivision 1, clauses (a) to (e), and (h) to (j), includes any of the following acts committed without the complainant's consent, except in those cases where consent is not a defense, and committed with sexual or aggressive intent:

(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 by inducement if the complainant is under 13 years of age or mentally impaired, 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, the touching of the clothing covering the immediate area of the intimate parts.

(b) "Sexual contact," for the purposes of sections 609.343, subdivision 1, clauses (g) and (h), and 609.345, subdivision 1, clauses (f) and (g), includes any of the following acts committed with sexual or aggressive intent:

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

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

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

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

[For text of subds 12 and 13, see M.S.1986]

Subd. 14. "Coercion" means words or circumstances that cause the complainant reasonably to fear that the actor will inflict bodily harm upon, or hold in confinement, the complainant or another, or force the complainant to submit to sexual penetration or contact, but proof of coercion does not require proof of a specific act or threat.

[For text of subds 15 and 16, see M.S.1986]

Subd. 17. "Psychotherapist" means a physician, psychologist, nurse, chemical dependency counselor, social worker, clergy, marriage and family therapist, mental health service provider, or other person, whether or not licensed by the state, who performs or purports to perform psychotherapy.

[For text of subds 18 to 20, see M.S.1986]

History: 1987 c 198 s 1-3; 1987 c 347 art 1 s 22

609.344 CRIMINAL SEXUAL CONDUCT IN THE THIRD DEGREE.

Subdivision 1. **Crime defined.** A person who engages in sexual penetration with another person is guilty of criminal sexual conduct in the third degree 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 nor consent to the act by the complainant shall be a defense;

(b) the complainant is at least 13 but less than 16 years of age and the actor is more than 24 months older than the complainant. 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. If the actor in such a case is no more than 48 months but more than 24 months older than the complainant, the actor may be sentenced to imprisonment for not more than five years. Consent by the complainant is not a defense;

(c) the actor uses force or coercion to accomplish the penetration;

(d) the actor knows or has reason to know that the complainant is mentally impaired, mentally incapacitated, or physically helpless;

(e) the complainant is at least 16 but less than 18 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;

(f) the actor has a significant relationship to the complainant and the complainant was at least 16 but under 18 years of age at the time of the sexual penetration. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

(g) the actor has a significant relationship to the complainant, the complainant was at least 16 but under 18 years of age at the time of the sexual penetration, and:

- (i) the actor or an accomplice used force or coercion to accomplish the penetration;
 - (ii) 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;
 - (iii) 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;
 - (iv) the complainant suffered personal injury; or
 - (v) the sexual abuse involved multiple acts committed over an extended period of time.
- Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;
- (h) the actor is a psychotherapist and the complainant is a patient of the psychotherapist and the sexual penetration occurred during the psychotherapy session. Consent by the complainant is not a defense;
 - (i) the actor is a psychotherapist and the complainant is a patient or former patient of the psychotherapist and the patient or former patient is emotionally dependent upon the psychotherapist;
 - (j) the actor is a psychotherapist and the complainant is a patient or former patient and the sexual penetration occurred by means of therapeutic deception. Consent by the complainant is not a defense; or
 - (k) the actor accomplishes the sexual penetration by means of false representation that the penetration is for a bona fide medical purpose by a health care professional. Consent by the complainant is not a defense.

[For text of subds 2 and 3, see M.S.1986]

History: 1987 c 94 s 1

609.345 CRIMINAL SEXUAL CONDUCT IN THE FOURTH DEGREE.

Subdivision 1. Crime defined. A person who engages in sexual contact with another person is guilty of criminal sexual conduct in the fourth degree 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;
- (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;
- (c) the actor uses force or coercion to accomplish the sexual contact;
- (d) the actor knows or has reason to know that the complainant is mentally impaired, mentally incapacitated, or physically helpless;
- (e) the complainant is at least 16 but less than 18 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;
- (f) the actor has a significant relationship to the complainant and the complainant was at least 16 but under 18 years of age at the time of the sexual contact. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;
- (g) the actor has a significant relationship to the complainant, the complainant was at least 16 but under 18 years of age at the time of the sexual contact, and:

- (i) the actor or an accomplice used force or coercion to accomplish the contact;
- (ii) 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;
- (iii) 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;
- (iv) the complainant suffered personal injury; or
- (v) the sexual abuse involved multiple acts committed over an extended period of time.

Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

(h) the actor is a psychotherapist and the complainant is a patient of the psychotherapist and the sexual contact occurred during the psychotherapy session. Consent by the complainant is not a defense;

(i) the actor is a psychotherapist and the complainant is a patient or former patient of the psychotherapist and the patient or former patient is emotionally dependent upon the psychotherapist;

(j) the actor is a psychotherapist and the complainant is a patient or former patient and the sexual contact occurred by means of therapeutic deception. Consent by the complainant is not a defense; or

(k) the actor accomplishes the sexual contact by means of false representation that the contact is for a bona fide medical purpose by a health care professional. Consent by the complainant is not a defense.

[For text of subds 2 and 3, see M.S.1986]

History: 1987 c 94 s 2

609.346 SUBSEQUENT OFFENSES.

[For text of subd 1, see M.S.1986]

Subd. 2. Subsequent offense; penalty. If a person is convicted of a second or subsequent offense under sections 609.342 to 609.345 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. The court may stay the execution of the sentence imposed under this section only if it finds that a professional assessment indicates the offender is accepted by and can respond to treatment at a long-term inpatient program exclusively treating sex offenders and approved by the commissioner of corrections. If the court stays the execution of a sentence, it shall include the following as conditions of probation: (1) incarceration in a local jail or workhouse; and (2) a requirement that the offender successfully complete the treatment program and aftercare as directed by the court.

Subd. 3. Prior convictions under similar statutes. For the purposes of this section, an offense is considered a second or subsequent offense if conviction of the actor for the offense follows or coincides with a conviction of the actor under sections 609.342 to 609.345 or under any similar statute of the United States, or this or any other state.

History: 1987 c 224 s 1,2

609.347 EVIDENCE.

Subdivision 1. In a prosecution under sections 609.342 to 609.346, the testimony of a victim need not be corroborated.

Subd. 2. In a prosecution under sections 609.342 to 609.346, there is no need to show that the victim resisted the accused.

Subd. 3. In a prosecution under sections 609.342 to 609.346 or 609.365, evidence of the victim's previous sexual conduct shall not be admitted nor shall any reference to such conduct be made in the presence of the jury, except by court order under the procedure provided in subdivision 4. The evidence can be admitted only if the probative value of the evidence is not substantially outweighed by its inflammatory or prejudicial nature and only in the circumstances set out in paragraphs (a) and (b). For the evidence to be admissible under paragraph (a), subsection (i), the judge must find by a preponderance of the evidence that the facts set out in the accused's offer of proof are true. For the evidence to be admissible under paragraph (a), subsection (ii) or paragraph (b), the judge must find that the evidence is sufficient to support a finding that the facts set out in the accused's offer of proof are true, as provided under Rule 901 of the Rules of Evidence.

(a) When consent of the victim is a defense in the case, the following evidence is admissible:

(i) evidence of the victim's previous sexual conduct tending to establish a common scheme or plan of similar sexual conduct under circumstances similar to the case at issue. In order to find a common scheme or plan, the judge must find that the victim made prior allegations of sexual assault which were fabricated; and

(ii) evidence of the victim's previous sexual conduct with the accused.

(b) When the prosecution's case includes evidence of semen, pregnancy, or disease at the time of the incident or, in the case of pregnancy, between the time of the incident and trial, evidence of specific instances of the victim's previous sexual conduct is admissible solely to show the source of the semen, pregnancy, or disease.

Subd. 4. The accused may not offer evidence described in subdivision 3 except pursuant to the following procedure:

(a) A motion shall be made by the accused at least three business days prior to trial, unless later for good cause shown, setting out with particularity the offer of proof of the evidence that the accused intends to offer, relative to the previous sexual conduct of the victim;

(b) If the court deems the offer of proof sufficient, the court shall order a hearing out of the presence of the jury, if any, and in such hearing shall allow the accused to make a full presentation of the offer of proof;

(c) At the conclusion of the hearing, if the court finds that the evidence proposed to be offered by the accused regarding the previous sexual conduct of the victim is admissible under subdivision 3 and that its probative value is not substantially outweighed by its inflammatory or prejudicial nature, the court shall make an order stating the extent to which evidence is admissible. The accused may then offer evidence pursuant to the order of the court;

(d) If new information is discovered after the date of the hearing or during the course of trial, which may make evidence described in subdivision 3 admissible, the accused may make an offer of proof pursuant to clause (a) and the court shall order an in camera hearing to determine whether the proposed evidence is admissible by the standards herein.

Subd. 5. In a prosecution under sections 609.342 to 609.346, the court shall not instruct the jury to the effect that:

(a) It may be inferred that a victim who has previously consented to sexual intercourse with persons other than the accused would be therefore more likely to consent to sexual intercourse again; or

(b) The victim's previous or subsequent sexual conduct in and of itself may be considered in determining the credibility of the victim; or

(c) Criminal sexual conduct is a crime easily charged by a victim but very difficult to disprove by an accused because of the heinous nature of the crime; or

(d) The jury should scrutinize the testimony of the victim any more closely than it should scrutinize the testimony of any witness in any felony prosecution.

Subd. 6. (a) In a prosecution under sections 609.342 to 609.346 involving a psychotherapist and patient, evidence of the patient's personal or medical history is not admissible except when:

(1) the accused requests a hearing at least three business days prior to trial and makes an offer of proof of the relevancy of the history; and

(2) the court finds that the history is relevant and that the probative value of the history outweighs its prejudicial value.

(b) The court shall allow the admission only of specific information or examples of conduct of the victim that are determined by the court to be relevant. The court's order shall detail the information or conduct that is admissible and no other evidence of the history may be introduced.

(c) Violation of the terms of the order is grounds for mistrial but does not prevent the retrial of the accused.

Subd. 7. **Effect of statute on rules.** Rule 404, paragraph (c) of the Rules of Evidence is superseded to the extent of its conflict with this section.

History: 1987 c 114 s 1

609.3471 RECORDS PERTAINING TO VICTIM IDENTITY CONFIDENTIAL.

Notwithstanding any provision of law to the contrary, no data contained in records or reports relating to petitions, complaints, or indictments issued pursuant to section 609.342, clause (a), (b), (g), or (h); 609.343, clause (a), (b), (g), or (h); 609.344, clause (a), (b), (e), (f), or (g); or 609.345, clause (a), (b), (e), (f), or (g) which specifically identifies the victim shall be accessible to the public, except by order of the court. Nothing in this section authorizes denial of access to any other data contained in the records or reports, including the identity of the defendant.

History: 1987 c 331 s 9

609.405 [Repealed, 1987 c 10 s 1]

609.498 TAMPERING WITH A WITNESS.

Subdivision 1. **Tampering with a witness in the first degree.** Whoever does any of the following is guilty of tampering with a witness in the first degree and may be sentenced as provided in subdivision 1a:

(a) intentionally prevents or dissuades or intentionally attempts to prevent or dissuade by means of force or threats of injury to any person or property, a person who is or may become a witness from attending or testifying at any trial, proceeding, or inquiry authorized by law;

(b) by means of force or threats of injury to any person or property, intentionally coerces or attempts to coerce a person who is or may become a witness to testify falsely at any trial, proceeding, or inquiry authorized by law;

(c) intentionally threatens to cause injury to any person or property in retaliation against a person who was summoned as a witness at any trial, proceeding, or inquiry authorized by law, within a year following that trial, proceeding, or inquiry or within a year following the actor's release from incarceration, whichever is later;

(d) intentionally prevents or dissuades or attempts to prevent or dissuade, by means of force or threats of injury to any person or property, a person from providing information to law enforcement authorities concerning a crime;

(e) by means of force or threats of injury to any person or property, intentionally coerces or attempts to coerce a person to provide false information concerning a crime to law enforcement authorities; or

(f) intentionally threatens to cause injury to any person or property in retaliation against a person who has provided information to law enforcement authorities concerning a crime within a year of that person providing the information or within a year of the actor's release from incarceration, whichever is later.

[For text of subd 1a, see M.S.1986]

Subd. 2. Tampering with a witness in the second degree. Whoever does any of the following is guilty of tampering with a witness in the second degree and may be sentenced as provided in subdivision 3:

(a) intentionally prevents or dissuades or intentionally attempts to prevent or dissuade by means of any act described in section 609.27, subdivision 1, clause (3), (4), or (5), a person who is or may become a witness from attending or testifying at any trial, proceeding, or inquiry authorized by law;

(b) by means of any act described in section 609.27, subdivision 1, clause (3), (4), or (5), intentionally coerces or attempts to coerce a person who is or may become a witness to testify falsely at any trial, proceeding, or inquiry authorized by law;

(c) intentionally prevents or dissuades or attempts to prevent or dissuade by means of any act described in section 609.27, subdivision 1, clause (3), (4), or (5), a person from providing information to law enforcement authorities concerning a crime; or

(d) by means of any act described in section 609.27, subdivision 1, clause (3), (4), or (5), intentionally coerces or attempts to coerce a person to provide false information concerning a crime to law enforcement authorities.

[For text of subd 3, see M.S.1986]

History: 1987 c 194 s 1,2

609.506 PROHIBITING GIVING PEACE OFFICER FALSE NAME.

Whoever with intent to obstruct justice gives a false or fictitious name other than a nickname, or gives a false date of birth, or false or fraudulently altered identification card to a peace officer, as defined in section 626.84, subdivision 2, paragraph (c), when that officer makes inquiries incident to a lawful investigatory stop or lawful arrest, or inquiries incident to executing any other duty imposed by law, is guilty of a misdemeanor.

History: 1987 c 127 s 1

609.52 THEFT.

Subdivision 1. Definitions. In this section:

(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 the owner 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 coowner 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 the other's consent and with intent to deprive the owner permanently of possession of the property; or

(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 the actor or another the possession, custody or title to property of or performance of services by a third person by intentionally deceiving the third person 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, except a forged check as defined in section 609.631, or the delivery of property knowing that the actor 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 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 the owner; or

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

(c) the actor 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 the finder's 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 the owner; 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 the actor's 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 the actor's 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 the defendant 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 the lessee 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 rerecording of program material transmitted on the cable communications system by a subscriber for fair use as defined by Public Law Number 94-553, section 107; or

(13) except as provided in paragraphs (12) and (14), 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; or

(14) intentionally deprives another of a lawful charge for telecommunications service by:

(i) making, using, or attempting to make or use an unauthorized connection whether physical, electrical, by wire, microwave, radio or other means to a component of a local telecommunication system as provided in chapter 237; or

(ii) attaching an unauthorized device to a cable, wire, microwave, radio, or other component of a local telecommunication system as provided in chapter 237.

The existence of an unauthorized connection is *prima facie* evidence that the occupier of the premises:

(i) made or was aware of the connection; and

(ii) was aware that the connection was unauthorized; or

(15) with intent to defraud, diverts corporate property other than in accordance with general business purposes or for purposes other than those specified in the corporation's articles of incorporation; or

(16) with intent to defraud, authorizes or causes a corporation to make a distribution in violation of section 302A.551, or any other state law in conformity with it.

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 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 a controlled substance listed in schedule 1 or 2 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 3, 4, or 5 pursuant to section 152.02; or

(c) the value of the property or services stolen is more than \$200 but not more than \$500 and the person has been convicted within the preceding five years for an offense under this section, section 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 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

(4) to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, notwithstanding the value of the property or services stolen is not more than \$200, 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 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 consists of public funds belonging to the state or to any political subdivision or agency thereof; or

(e) the property is a firearm; or

(f) the property stolen was a motor vehicle as defined in section 609.55; or

(5) to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, 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

(6) 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 but not more than \$500; or

(7) in all other cases where the value of the property or services stolen is \$200 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 clauses (1), (2), (3), (4), and (13) of subdivision 2 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.

History: 1987 c 254 s 9; 1987 c 329 s 8-10

609.53 RECEIVING STOLEN PROPERTY.

Subdivision 1. **Penalty.** Any person who receives, possesses, transfers, buys or conceals any stolen property or property obtained by robbery, knowing or having reason to know the property was stolen or obtained by robbery, may be sentenced as follows:

(1) if the value of the property is \$1,000 or more, to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both;

(2) if the value of the property is less than \$1,000, but more than \$300, to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both;

(3) if the value of the property is \$300 or less, to imprisonment for not more than 90 days or to payment of a fine of not more than \$700, or both;

(4) notwithstanding the value of the property, if the property is a firearm, to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

Subd. 1a. **Penalty.** 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 or having reason to know the property was stolen or obtained by robbery, may be sentenced as follows:

(1) if the value of the property received, bought or concealed is \$1,000 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 \$1,000 but more than \$300, to imprisonment for not more than five years or to payment of a fine of not more than \$40,000, or both;

(3) if the value of the property received, bought, or concealed is \$300 or less, to imprisonment for not more than 90 days or to payment of a fine of not more than \$700, or both.

[For text of subs 3 to 5, see M.S.1986]

History: 1987 c 384 art 1 s 46,47

609.531. FORFEITURES.

Subdivision 1. **Definitions.** For the purpose of this section, the following terms have the meanings given them.

(a) "Conveyance device" means a device used for transportation in connection with a designated offense and includes, but is not limited to, motor vehicles, trailers, snowmobiles, airplanes, and vessels. The term "conveyance device" does not include property which is, in fact, itself stolen or taken in violation of the law.

(b) "Primary container" means a fundamental receptacle other than a conveyance device used to store or transport property.

(c) "Weapon used" means weapons used in the furtherance of a crime and defined as a dangerous weapon under section 609.02, subdivision 6.

(d) "Property" means property as defined in section 609.52, subdivision 1, clause (1).

(e) "Contraband property" means property which is illegal to possess under Minnesota law.

(f) "Appropriate agency" means either the bureau of criminal apprehension, Minnesota state patrol, county sheriffs and their deputies, or city police departments.

(g) "Designated offense" includes:

(1) For weapons used: any violation of this chapter;

(2) For all other purposes: violation of, or an attempt or conspiracy to violate, section 609.185; 609.19; 609.195; 609.21; 609.221; 609.222; 609.223; 609.2231; 609.24; 609.245; 609.25; 609.255; 609.322, subdivision 1 or 2; 609.342, subdivision 1, clauses (a) to (f); 609.343, subdivision 1, clauses (a) to (f); 609.344, subdivision 1, clauses (a) to (e), and (h) to (j); 609.345, subdivision 1, clauses (a) to (e), and (h) to (j); 609.42; 609.425; 609.466; 609.485; 609.487; 609.52; 609.521; 609.525; 609.53; 609.54; 609.551; 609.561; 609.562; 609.563; 609.582; 609.59; 609.595; section 609.671, subdivisions 3, 4, and 5; 609.687; 609.825; 609.86; 609.88; 609.89; or 617.246, when the violation constitutes a felony.

(h) "Communications device or component" means a device or system used to facilitate in any manner the creation, storage, dissemination, or transmission of data in connection with a designated offense and includes computers and computer-related components as defined in section 609.87 and any other device or system that by means of electric, electronic or magnetic impulses may be used to facilitate in any manner the creation, storage, dissemination, or transmission of data.

[For text of subds 2 to 6, see M.S.1986]

History: 1987 c 267 s 2

609.532 ATTACHMENT OF DEPOSITED FUNDS.

Subdivision 1. **Attachment.** Upon application by the prosecuting authority, a court may issue an attachment order directing a financial institution to freeze some or all of the funds or assets deposited with or held by the financial institution by or on behalf of an account holder charged with the commission of a felony.

Subd. 2. **Application.** The application of the prosecuting authority required by this section must contain:

(1) a copy of a criminal complaint issued by a court of competent jurisdiction that alleges the commission of a felony by the account holder;

(2) a statement of the actual financial loss caused by the account holder in the commission of the alleged felony, if not already stated in the complaint; and

(3) identification of the account holder's name and financial institution account number.

Subd. 3. **Issuance of a court order.** If the court finds that (1) there is probable cause that the account holder was involved in the commission of a felony; (2) the accounts of the account holder are specifically identified; (3) there was a loss of \$10,000 or more as a result of the commission of the alleged felony; and (4) it is necessary to freeze the account holder's funds or assets to ensure eventual restitution to victims of the alleged offense, the court may order the financial institution to freeze all or part of the account

holder's deposited funds or assets so that the funds or assets may not be withdrawn or disposed of until further order of the court.

Subd. 4. Duty of financial institutions. Upon receipt of the order authorized by this section, a financial institution must not permit any funds or assets that were frozen by the order to be withdrawn or disposed of until further order of the court.

Subd. 5. Release of funds. (a) The account holder may, upon notice and motion, have a hearing to contest the freezing of funds or assets and to seek the release of all or part of them.

(b) The account holder is entitled to an order releasing the freeze by showing:

(1) that the account holder has posted a bond or other adequate surety, guaranteeing that, upon conviction, adequate funds or assets will be available to pay complete restitution to victims of the alleged offense;

(2) that there is no probable cause to believe that the account holder was involved in the alleged offense;

(3) that the amount of funds or assets frozen is more than is necessary to pay complete restitution to all victims of the alleged offense;

(4) that a joint account holder who is not involved in the alleged criminal activity has deposited all or part of the funds or assets; or

(5) that the funds or assets should be returned in the interests of justice.

(c) It is not grounds for the release of funds or assets that the particular accounts frozen do not contain funds or assets that were proceeds from or used in the commission of the alleged offense.

Subd 6. Disposition of funds. (a) If the account holder is convicted of a felony or a lesser offense, the funds or assets may be used to pay complete restitution to victims of the offense. The court may order the financial institution to remit all or part of the frozen funds or assets to the court.

(b) If the account holder is acquitted or the charges are dismissed, the court must issue an order releasing the freeze on the funds or assets.

Subd. 7. Time limit. The freeze permitted by this section expires 24 months after the date of the court's initial attachment order unless the time limit is extended by the court in writing upon a showing of good cause by the prosecution.

Subd. 8. Notice. Within ten days after a court issues an attachment order under this section, the prosecutor shall send a copy of the order to the account holder's last known address or to the account holder's attorney, if known.

History: 1987 c 217 s 1

609.595 DAMAGE TO PROPERTY.

Subdivision 1. Criminal damage to property in the first degree. Whoever intentionally causes damage to physical property of another without the latter's consent 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, if:

(1) the damage to the property caused a reasonably foreseeable risk of bodily harm; or

(2) The property damaged belongs to a public utility or a common carrier and the damage impairs the service to the public rendered by them; or

(3) the damage reduces the value of the property by more than \$500 measured by the cost of repair and replacement; or

(4) the damage reduces the value of the property by more than \$250 measured by the cost of repair and replacement and the defendant has been convicted within the preceding three years of an offense under this subdivision or subdivision 2.

In any prosecution under clause (3), the value of any property damaged by the defendant in violation of that clause within any six-month period may be aggregated and the defendant charged accordingly in applying the provisions of this section;

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.

Subd. 2. Criminal damage to property in the second degree. (a) Whoever intentionally causes damage to another person's physical property without the other person's consent may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both, if the damage reduces the value of the property by more than \$250 but not more than \$500 as measured by the cost of repair and replacement.

(b) In any prosecution under paragraph (a), the value of property damaged by the defendant in violation of that clause 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 offenses was committed for all of the offenses aggregated under this paragraph.

Subd. 3. Criminal damage to property in the third degree. Whoever intentionally causes damage described in subdivision 2 under any other circumstances is guilty of a misdemeanor.

History: 1987 c 329 s 11

609.596 KILLING OR HARMING A POLICE DOG.

Subdivision 1. Felony. Whoever intentionally and without justification causes the death of a police dog when the dog is involved in law enforcement investigation or apprehension, or the dog is in the custody of or under the control of a peace officer, as defined in section 626.84, subdivision 1, paragraph (c), is guilty of a felony and may be sentenced to imprisonment for not more than two years or to payment of a fine of not more than \$4,000.

Subd. 2. Gross misdemeanor. Whoever intentionally and without justification causes substantial or great bodily harm to a police dog when the dog is involved in law enforcement investigation or apprehension, or the dog is in the custody of or under the control of a peace officer, is guilty of a gross misdemeanor.

History: 1987 c 167 s 1

609.605 TRESPASSES AND OTHER ACTS.

Subdivision 1. Misdemeanor. Whoever intentionally does any of the following is guilty of a misdemeanor:

(1) smokes in a building, area, or common carrier in which "no smoking" notices have been prominently posted, or when requested not to by the operator of the common carrier; or

(2) trespasses or permits animals under the actor's control to trespass upon a railroad track; or

(3) permits domestic animals or fowls under the actor's control to go upon the lands of another within a city; or

(4) interferes unlawfully with any monument, sign, or pointer erected or marked to designate a point of a boundary, line or a political subdivision, or of a tract of land; or

(5) trespasses upon the premises of another and, without claim of right, refuses to depart therefrom on demand of the lawful possessor thereof; or

(6) occupies or enters the dwelling of another, without claim of right or consent of the owner or the consent of one who has the right to give consent, except in an emergency situation. As used in this clause, "dwelling" means the building or part of the building used by an individual as a place of residence on either a full-time or a part-time basis. The dwelling may be part of a multidwelling or multipurpose building, or a manufactured home as defined in section 168.011, subdivision 8; or

(7) enters the premises of another with intent to take or injure any fruit, fruit trees, or vegetables growing thereon without the permission of the owner or occupant; or

(8) refuses the request of the operator of a public conveyance to either pay the required fare or leave the conveyance; or

(9) takes any animal on a public conveyance without the consent of the operator; or

(10) without the permission of the owner, tampers with or gets into or upon a motor vehicle as defined in section 609.55, subdivision 1, or rides in or upon such motor vehicle knowing it was taken and is being driven by another without the permission of the owner; or

(11) enters or is found upon the premises of a public or private cemetery without authorization during hours the cemetery is posted as closed to the public; or

(12) without authorization of the adjutant general enters or is present upon the Camp Ripley military reservation; or

(13) returns to the property of another with the intent to harass, abuse, or threaten another, after being told to leave the property and not to return, if the actor has no claim of right to the property and no consent of one with authority to consent.

[For text of subd 2, see M.S.1986]

History: 1987 c 307 s 3

609.611 DEFRAUDING INSURER.

Whoever with intent to injure or defraud an insurer, damages, removes, or conceals any property real or personal, whether the actor's own or that of another, which is at the time insured by any person, firm, or corporation against loss or damage;

(a) May be sentenced to imprisonment for not more than three years or to payment of fine of not more than \$5,000, or both if the value insured for is less than \$20,000; or

(b) May be sentenced to imprisonment for not more than five years or to payment of fine of not more than \$10,000, or both if the value insured for is \$20,000 or greater;

(c) Proof that the actor recovered or attempted to recover on a policy of insurance by reason of the fire is relevant but not essential to establish the actor's intent to defraud the insurer.

History: 1987 c 217 s 2

609.625 AGGRAVATED FORGERY.

Subdivision 1. **Making or altering writing or object.** Whoever, with intent to defraud, falsely makes or alters a writing or object of any of the following kinds so that it purports to have been made by another or by the maker or alterer under an assumed or fictitious name, or at another time, or with different provisions, or by authority of one who did not give such authority, is guilty of aggravated forgery 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:

(1) a writing or object whereby, when genuine, legal rights, privileges, or obligations are created, terminated, transferred, or evidenced, or any writing normally relied upon as evidence of debt or property rights, other than a check as defined in section 609.631 or a financial transaction card as defined in section 609.821; or

(2) an official seal or the seal of a corporation; or

(3) a public record or an official authentication or certification of a copy thereof; or

(4) an official return or certificate entitled to be received as evidence of its contents; or

(5) a court order, judgment, decree, or process; or

- (6) the records or accounts of a public body, office, or officer; or
- (7) the records or accounts of a bank or person, with whom funds of the state or any of its agencies or subdivisions are deposited or entrusted, relating to such funds.

Subd. 2. Means for false reproduction. Whoever, with intent to defraud, makes, engraves, possesses or transfers a plate or instrument for the false reproduction of a writing or object mentioned in subdivision 1, a check as defined in section 609.631, or a financial transaction card as defined in section 609.821, may be sentenced as provided in subdivision 1.

Subd. 3. Uttering or possessing. Whoever, with intent to defraud, utters or possesses with intent to utter any forged writing or object mentioned in subdivision 1, not including a check as defined in section 609.631 or a financial transaction card as defined in section 609.821, knowing it to have been so forged, may be sentenced as provided in subdivision 1.

History: 1987 c 329 s 12

609.631 CHECK FORGERY; OFFERING A FORGED CHECK.

Subdivision 1. Definitions. (a) The definitions in this subdivision apply to this section.

(b) "Check" means a check, draft, order of withdrawal, or similar negotiable or nonnegotiable instrument.

(c) "Property" and "services" have the meanings given in section 609.52.

Subd. 2. Check forgery; elements. A person who, with intent to defraud, falsely makes or alters a check so that it purports to have been made by another or by the maker under an assumed or fictitious name, or at another time, or with different provisions, or by the authority of one who did not give authority, is guilty of check forgery and may be sentenced as provided in subdivision 4.

Subd. 3. Offering a forged check; elements. A person who, with intent to defraud, offers, or possesses with intent to offer, a forged check, whether or not it is accepted, is guilty of offering a forged check and may be sentenced as provided in subdivision 4.

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 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;

(2) 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 forged check or checks are used to obtain or in an attempt to obtain, property or services of more than \$200 but not more than \$2,500, or the aggregate face amount of the forged check or checks is more than \$200 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, or have an aggregate face value of no more than \$200, 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

(3) to imprisonment for not more than one year or to 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, or the aggregate face amount of the forged check or checks is no more than \$200.

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.

History: 1987 c 329 s 13

609.67 MACHINE GUNS AND SHORT-BARRELED SHOTGUNS.

[For text of subds 1 and 2, see M.S.1986]

Subd. 3. **Uses permitted.** The following persons may own or possess a machine gun or short-barreled shotgun provided the provisions of subdivision 4 are complied with:

- (1) law enforcement officers for use in the course of their duties;
- (2) chief executive officers of correctional facilities and other personnel thereof authorized by them and persons in charge of other institutions for the retention of persons convicted or accused of crime, for use in the course of their duties;
- (3) persons possessing machine guns or short-barreled shotguns which, although designed as weapons, have been determined by the superintendent of the bureau of criminal apprehension or the superintendent's delegate by reason of the date of manufacture, value, design or other characteristics to be primarily collector's items, relics, museum pieces or objects of curiosity, ornaments or keepsakes, and are not likely to be used as weapons;
- (4) manufacturers of ammunition who possess and use machine guns for the sole purpose of testing ammunition manufactured for sale to law enforcement agencies and correctional facilities; and
- (5) dealers and manufacturers who are federally licensed to buy and sell, or manufacture machine guns or short-barreled shotguns and who either use the machine guns or short-barreled shotguns in peace officer training under courses approved by the board of peace officer standards and training, or are engaged in the sale of machine guns or short-barreled shotguns to Minnesota law enforcement agencies and will use the machine gun or short-barreled shotgun for law enforcement sales demonstrations.

Subd. 4. **Report required.** (a) A person owning or possessing a machine gun or short-barreled shotgun as authorized by subdivision 3, clause (1), (2), (3), or (4) shall, within ten days after acquiring such ownership or possession, file a written report with the bureau of criminal apprehension, showing the person's name and address; the person's official title and position, if any; a description of the machine gun or short-barreled shotgun sufficient to enable identification thereof; the purpose for which it is owned or possessed; and such further information as the bureau may reasonably require.

(b) A dealer or manufacturer owning or having a machine gun or short-barreled shotgun as authorized by subdivision 3, clause (5) shall, by the tenth day of each month, file a written report with the bureau of criminal apprehension showing the name and address of the dealer or manufacturer and the serial number of each machine gun or short-barreled shotgun acquired or manufactured during the previous month.

[For text of subds 5 and 6, see M.S.1986]

History: 1987 c 93 s 1,2

609.671 HAZARDOUS WASTE; CRIMINAL PENALTIES.

Subdivision 1. **Definitions.** The definitions in this subdivision apply to this section.

- (a) "Agency" means the pollution control agency.

(b) "Deliver" or "delivery" means the transfer of possession of hazardous waste, with or without consideration.

(c) "Dispose" or "disposal" has the meaning given it in section 115A.03, subdivision 9.

(d) "Hazardous waste" means any waste identified as hazardous under the authority of section 116.07, subdivision 4, except for those wastes exempted under Minnesota Rules, part 7045.0120, wastes generated under Minnesota Rules, part 7045.0213 or 7045.0304, and household appliances.

(e) "Permit" means a permit issued by the pollution control agency or interim status for a treatment, storage, or disposal facility for hazardous waste that qualifies under the agency rules.

Subd. 2. Proof of knowing state of mind. (a) Knowledge possessed by a person other than the defendant but not by the defendant may not be attributed to the defendant. In proving a defendant's actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield the defendant from relevant information.

(b) Proof of a defendant's reason to know may not consist solely of the fact that the defendant held a certain job or position of management responsibility. If evidence of the defendant's job or position is offered, it must be corroborated by evidence of defendant's reason to know. Corroborating evidence must include evidence that the defendant had information regarding the offense for which the defendant is charged, that the information pertained to hazardous waste management practices directly under the defendant's control or within the defendant's supervisory responsibilities, and that the information would cause a reasonable and prudent person in the defendant's position to learn the actual facts.

Subd. 3. Felony penalty for knowing endangerment. (a) A person is guilty of a felony if the person:

(1) knowingly, or with reason to know, transports, treats, stores, or disposes of hazardous waste in violation of subdivision 4 or 5; and

(2) at the time of the violation knowingly places, or has reason to know that the person's conduct places, another person in imminent danger of death, great bodily harm, or substantial bodily harm.

(b) A person convicted under this subdivision may be sentenced to imprisonment for not more than ten years, or to pay a fine of not more than \$100,000, or both, except that a defendant that is an organization may be sentenced to pay a fine of not more than \$1,000,000.

Subd. 4. Felony penalty for unlawful disposal. A person who knowingly, or with reason to know, disposes of hazardous waste or arranges for the disposal of hazardous waste at a location other than one authorized by the pollution control agency or the United States Environmental Protection Agency, or in violation of any material term or condition of a hazardous waste facility permit, is guilty of a felony and may be sentenced to imprisonment for not more than five years or to pay a fine of not more than \$50,000, or both.

Subd. 5. Felony penalty for unlawful treatment, storage, transportation, or delivery; false statements. (a) A person is guilty of a felony who knowingly, or with reason to know, does any of the following:

(1) delivers hazardous waste to any person other than a person who is authorized to receive the waste under rules adopted under section 116.07, subdivision 4, or under United States Code, title 42, sections 9601 to 9675;

(2) treats or stores hazardous waste without a permit if a permit is required, or in violation of a material term or condition of a permit held by the person, unless:

(i) the person notifies the agency prior to the time a permit would be required that the person will be treating or storing waste without a permit; or

(ii) for a violation of a material term or condition of a permit, the person immedi-

ately notifies the agency issuing the permit of the circumstances of the violation as soon as the person becomes aware of the violation;

(3) transports hazardous waste to any location other than a facility that is authorized to receive, treat, store, or dispose of the hazardous waste under rules adopted under section 116.07, subdivision 4, or under United States Code, title 42, sections 9601 to 9675;

(4) transports hazardous waste without a manifest as required by the rules under sections 116.07, subdivision 4, and 221.172;

(5) transports hazardous waste without a license required for the transportation of hazardous waste by chapter 221;

(6) makes a false material statement or representation, or a material omission, in an application for a permit or license required by chapter 116 or 221 to treat, transport, store, or dispose of hazardous waste; or

(7) makes a false material statement or representation, or a material omission, in or on a label, manifest, record, report, or other document filed, maintained, or used for the purpose of compliance with chapter 116 or 221 in connection with the generation, transportation, disposal, treatment, or storage of hazardous waste.

(b) A person convicted under this subdivision may be sentenced to imprisonment for not more than three years, or to pay a fine of not more than \$25,000, or both. A person convicted for a second or subsequent offense may be sentenced to imprisonment for not more than five years, or to pay a fine of not more than \$50,000, or both.

Subd. 6. Negligent violation as gross misdemeanor. A person who commits any of the acts set forth in subdivision 4 or 5 as a result of the person's gross negligence is guilty of a gross misdemeanor and may be sentenced to imprisonment for not more than one year, or to pay a fine of not more than \$15,000, or both.

Subd. 7. Aggregation. When two or more offenses in violation of subdivision 4 are committed by the same person in two or more counties within a two-year period, the offenses may be aggregated and the accused may be prosecuted in any county in which one of the offenses was committed.

History: 1987 c 267 s 3

609.687 ADULTERATION.

[For text of subds 1 to 3, see M.S.1986]

Subd. 4. Charging discretion. Criminal proceedings may be instituted under this section, notwithstanding the provisions of section 24.141, 29.24, 31.02, 31.601, 34.01, 151.34, 340A.508, subdivision 2, or other law proscribing adulteration of substances intended for use by persons.

History: 1987 c 384 art 2 s 110

609.746 INTERFERENCE WITH PRIVACY.

Subdivision 1. Surreptitious intrusion. A person who enters upon another's property and surreptitiously gazes, stares, or peeps in the window of a house or place of dwelling of another with intent to intrude upon or interfere with the privacy of a member of the household is guilty of a misdemeanor.

Subd. 2. Intrusion on privacy. A person who, with the intent to harass, abuse, or threaten another, repeatedly follows or pursues another, after being told not to do so by the person being followed or pursued, is guilty of a misdemeanor.

History: 1987 c 307 s 4

609.79 OBSCENE OR HARASSING TELEPHONE CALLS.

Subdivision 1. Whoever,

(1) By means of a telephone,

(a) Makes any comment, request, suggestion or proposal which is obscene, lewd, or lascivious,

(b) Repeatedly makes telephone calls, whether or not conversation ensues, with intent to abuse, threaten, or harass,

(c) Makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number, or

(2) Having control of a telephone, knowingly permits it to be used for any purpose prohibited by this section, shall be guilty of a misdemeanor.

[For text of subd 2, see M.S.1986]

History: 1987 c 307 s 5

609.795 LETTER, TELEGRAM, OR PACKAGE; OPENING; HARASSMENT.

Whoever does any of the following is guilty of a misdemeanor:

(1) knowing that the actor does not have the consent of either the sender or the addressee, intentionally opens any sealed letter, telegram, or package addressed to another; or

(2) knowing that a sealed letter, telegram, or package has been opened without the consent of either the sender or addressee, intentionally publishes any of the contents thereof; or

(3) with the intent to harass, abuse, or threaten, repeatedly uses the mails or delivers letters, telegrams, or packages.

History: 1987 c 307 s 6

609.821 FINANCIAL TRANSACTION CARD FRAUD.

Subdivision 1. **Definitions.** For the purposes of this section, the following terms have the meanings given them:

(a) "Financial transaction card" means any instrument or device, whether known as a credit card, credit plate, charge plate, courtesy card, bank services card, banking card, check guarantee card, debit card, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining credit, money, goods, services, or anything else of value, and includes the account or identification number or symbol of a financial transaction card.

(b) "Cardholder" means a person in whose name a card is issued.

(c) "Issuer" means a person or firm, or a duly authorized agent, that issues a financial transaction card.

(d) "Property" includes money, goods, services, or anything else of value.

Subd. 2. **Violations; penalties.** A person who does any of the following commits financial transaction card fraud:

(1) without the consent of the cardholder, and knowing that the cardholder has not given consent, uses or attempts to use a card to obtain the property of another;

(2) uses or attempts to use a card knowing it to be forged, false, fictitious, or obtained in violation of clause (6);

(3) sells or transfers a card knowing that the cardholder and issuer have not authorized the person to whom the card is sold or transferred to use the card, or that the card is forged, false, fictitious, or was obtained in violation of clause (6);

(4) without a legitimate business purpose, and without the consent of the cardholders, receives or possesses, with intent to use, or with intent to sell or transfer in violation of clause (3), two or more cards issued in the name of another, or two or more cards knowing the cards to be forged, false, fictitious, or obtained in violation of clause (6);

(5) being authorized by an issuer to furnish money, goods, services, or anything else of value, knowingly and with an intent to defraud the issuer or the cardholder:

(i) furnishes money, goods, services, or anything else of value upon presentation of a financial transaction card knowing it to be forged, expired, or revoked, or knowing that it is presented by a person without authority to use the card; or

(ii) represents in writing to the issuer that the person has furnished money, goods, services, or anything else of value which has not in fact been furnished;

(6) upon applying for a financial transaction card to an issuer:

(i) knowingly gives a false name or occupation; or

(ii) knowingly and substantially overvalues assets or substantially undervalues indebtedness for the purpose of inducing the issuer to issue a financial transaction card; or

(7) with intent to defraud, falsely notifies the issuer or any other person of a theft, loss, disappearance, or nonreceipt of a financial transaction card; or

(8) without the consent of the cardholder and knowing that the cardholder has not given consent, falsely alters, makes, or signs any written document pertaining to a card transaction to obtain or attempt to obtain the property of another.

Subd. 3. Sentence. A person who commits financial transaction card fraud may be sentenced as follows:

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

(i) 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

(ii) 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 but not more than \$2,500, or the aggregate amount of the transactions under this subdivision was more than \$200 but not 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 not more than \$200, or the aggregate amount of the transactions under this subdivision was not more than \$200, and the person has previously 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 609.631, 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

(iv) 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, or the aggregate amount of the transactions under this subdivision was not more than \$200; and

(v) in any prosecution under clauses (i) to (iv), 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 clause (3) or (4) of subdivision 2, 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 clause (6) or (7) of subdivision 2:

(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).

History: 1987 c 329 s 14-16

609.856 USE OF POLICE RADIOS DURING COMMISSION OF CRIME; PENALTIES.

Subdivision 1. Acts constituting. Whoever has in possession or uses a radio or device capable of receiving or transmitting a police radio signal, message, or transmission of information used for law enforcement purposes, while in the commission of a felony or violation of section 609.487 or the attempt to commit a felony or violation of section 609.487, is guilty of a felony and may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than \$5,000, or both. A prosecution for or conviction of the crime of use or possession of a police radio is not a bar to conviction for any other crime committed while possessing or using the police radio.

Subd. 2. Forfeiture. A radio or device defined in subdivision 1 that is used in the commission of a felony or violation of section 609.487 or attempt to commit a felony or violation of section 609.487 is contraband property and subject to the forfeiture provisions of section 609.531.

History: 1987 c 111 s 2