

## CHAPTER 609

### CRIMINAL CODE OF 1963

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#### 609.02 DEFINITIONS.

*[For text of subds 1 to 11, see M.S.1988]*

Subd. 12. **Harass.** As used in sections 609.605, subdivision 1, clause (7), 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 (7), 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:** 1989 c 5 s 1,2

### **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 the general fund.

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 portion of the 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 general fund. 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 general fund. Fine proceeds received by a local victim assistance program must be used to provide direct services to crime victims.

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: crime victim crisis centers, victim-witness programs, battered women shelters and nonshelter programs, and sexual assault programs.

**History:** 1989 c 264 s 2; 1989 c 335 art 4 s 99

## **609.11 MINIMUM TERMS OF IMPRISONMENT.**

*[For text of subds 1 to 6, see M.S.1988]*

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

*[For text of subd 8, see M.S.1988]*

**Subd. 9. Applicable offenses.** The crimes for which mandatory minimum sentences shall be served before eligibility for probation, parole, or supervised release as provided in this section are: murder in the first, second, or third degree; assault in the first, second, or third degree; burglary; kidnapping; false imprisonment; manslaughter in the first or second degree; aggravated robbery; simple robbery; criminal sexual conduct under the circumstances described in sections 609.342, subdivision 1, clauses (a) to (f); 609.343, subdivision 1, clauses (a) to (f); and 609.344, subdivision 1, clauses (a) to (e) and (h) to (j); escape from custody; arson in the first, second, or third degree; a felony violation of chapter 152; or any attempt to commit any of these offenses.

**History:** 1989 c 290 art 3 s 27,28

## **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. At the request of the prosecutor in a gross misdemeanor case, the court shall order that a presentence investigation and report be prepared. When the crime is a felony violation of chapter 152 involving the sale or distribution of a controlled substance, the report shall include a description of any adverse social or economic effects the offense has had on persons who reside in the neighborhood where the offense was committed.

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

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

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

Pending the presentence investigation and report, 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 subds 1a to 7, see M.S.1988]*

**History:** 1989 c 117 s 1

### **609.135 STAY OF IMPOSITION OR EXECUTION OF SENTENCE.**

*[For text of subd 1, see M.S.1988]*

**Subd. 1a. Failure to pay restitution.** If the court orders payment of restitution as a condition of probation and if the defendant fails to pay the restitution in accordance with the payment schedule or structure established by the court or the probation officer, the defendant's probation officer may, on the officer's own motion or at the request of the victim, ask the court to hold a hearing to determine whether or not the conditions of probation should be changed or probation should be revoked. The defendant's probation officer shall ask for the hearing if the restitution ordered has not been paid prior to 60 days before the term of probation expires. The court shall schedule and hold this hearing and take appropriate action before the defendant's term of probation expires.

*[For text of subds 2 to 6, see M.S.1988]*

**Subd. 7. Demand of execution of sentence.** An offender may not demand execution of sentence in lieu of a stay of imposition or execution of sentence if the offender will serve less than nine months at the state institution. This subdivision does not apply to an offender who will be serving the sentence consecutively or concurrently with a previously imposed executed felony sentence.

**History:** 1989 c 21 s 3; 1989 c 253 s 1

### **609.1351 PETITION FOR CIVIL COMMITMENT.**

When a court sentences a person under section 609.1352, 609.342, 609.343, 609.344, or 609.345, the court shall make a preliminary determination whether in the court's opinion a petition under section 526.10 may be appropriate. If the court determines that a petition may be appropriate, the court shall forward its preliminary determination along with supporting documentation to the county attorney. If the person is subsequently committed under section 526.10, the person shall serve the sentence in a facility designated by the commissioner of corrections. After the person has served the sentence the person shall be transferred to a facility designated by the commissioner of human services.

**History:** 1989 c 290 art 4 s 9

**609.1352 PATTERNED SEX OFFENDERS; SPECIAL SENTENCING PROVISION.**

Subdivision 1. **Sentencing authority.** A court may sentence a person to a term of imprisonment of not less than double the presumptive sentence under the sentencing guidelines and not more than the statutory maximum, or if the statutory maximum is less than double the presumptive sentence, to a term of imprisonment equal to the statutory maximum, if:

(1) the court is imposing an executed sentence, based on a sentencing guidelines presumptive imprisonment sentence or a dispositional departure for aggravating circumstances or a mandatory minimum sentence, on a person convicted of committing or attempting to commit a violation of section 609.342, 609.343, 609.344, or 609.345, or on a person convicted of committing or attempting to commit any other crime listed in subdivision 2 if it reasonably appears to the court that the crime was motivated by the offender's sexual impulses or was part of a predatory pattern of behavior that had criminal sexual conduct as its goal;

(2) the court finds that the offender is a danger to public safety; and

(3) the court finds that the offender needs long-term treatment or supervision beyond the presumptive term of imprisonment and supervised release. The finding must be based on a professional assessment by an examiner experienced in evaluating sex offenders that concludes that the offender is a patterned sex offender. The assessment must contain the facts upon which the conclusion is based, with reference to the offense history of the offender or the severity of the current offense, the social history of the offender, and the results of an examination of the offender's mental status. The conclusion may not be based on testing alone. A patterned sex offender is one whose criminal sexual behavior is so engrained that the risk of reoffending is great without intensive psychotherapeutic intervention or other long-term controls.

Subd. 2. **Predatory crime.** A predatory crime is a felony violation of section 609.185, 609.19, 609.195, 609.20, 609.205, 609.221, 609.222, 609.223, 609.24, 609.245, 609.25, 609.255, 609.342, 609.343, 609.344, 609.345, 609.365, 609.498, 609.561, or 609.582, subdivision 1.

Subd. 3. **Danger to public safety.** The court shall base its finding that the offender is a danger to public safety on either of the following factors:

(1) the crime involved an aggravating factor that would justify a durational departure from the presumptive sentence under the sentencing guidelines; or

(2) the offender previously committed or attempted to commit a predatory crime or a violation of section 609.224, including an offense committed as a juvenile that would have been a predatory crime or a violation of section 609.224 if committed by an adult.

Subd. 4. **Departure from guidelines.** A sentence imposed under subdivision 1 is a departure from the sentencing guidelines.

Subd. 5. **Conditional release.** At the time of sentencing under subdivision 1, the court may provide that after the offender has completed one-half of the full pronounced sentence imposed, without regard to good time, the commissioner of corrections may place the offender on conditional release for the remainder of the statutory maximum period or for ten years, whichever is longer, if the commissioner finds that:

(1) the offender is amenable to treatment and has made sufficient progress in a sex offender treatment program available in prison to be released to a sex offender treatment program operated by the department of human services or a community sex offender treatment and reentry program; and

(2) the offender has been accepted in a program approved by the commissioner that provides treatment, aftercare, and phased reentry into the community.

The conditions of release must include successful completion of treatment and aftercare in a program approved by the commissioner and any other conditions the commissioner considers appropriate. Before the offender is released, the commissioner shall notify the sentencing court, the prosecutor in the jurisdiction where the offender

was sentenced and the victim of the offender's crime, where available, of the terms of the offender's conditional release. Release may be revoked and the stayed sentence executed in its entirety less good time if the offender fails to meet any condition of release. The commissioner shall not dismiss the offender from supervision before the sentence expires.

Conditional release granted under this subdivision is governed by provisions relating to supervised release, except as otherwise provided in this subdivision, section 244.04, subdivision 1, or 244.05.

**Subd. 6. Commissioner of corrections.** The commissioner shall pay the cost of treatment of a person released under subdivision 5. This section does not require the commissioner to accept or retain an offender in a treatment program.

**History:** 1989 c 290 art 4 s 10

### **609.152 INCREASED SENTENCES FOR CERTAIN DANGEROUS AND CAREER OFFENDERS.**

**Subdivision 1. Definitions.** (a) As used in this section, the following terms have the meanings given.

(b) "Conviction" means any of the following accepted and recorded by the court: a plea of guilty, a verdict of guilty by a jury, or a finding of guilty by the court. The term includes a conviction by any court in Minnesota or another jurisdiction.

(c) "Prior conviction" means a conviction that occurred before the offender committed the next felony resulting in a conviction and before the offense for which the offender is being sentenced under this section.

(d) "Violent crime" means a violation of or an attempt or conspiracy to violate any of the following laws of this state or any similar laws of the United States or any other state: section 609.185; 609.19; 609.195; 609.20; 609.205; 609.21; 609.221; 609.222; 609.223; 609.228; 609.235; 609.24; 609.245; 609.25; 609.255; 609.2661; 609.2662; 609.2663; 609.2664; 609.2665; 609.267; 609.2671; 609.268; 609.342; 609.343; 609.344; 609.345; 609.498, subdivision 1; 609.561; 609.562; 609.582, subdivision 1; 609.687; or any provision of chapter 152 that is punishable by a maximum term of imprisonment of 15 years or more.

**Subd. 2. Increased sentences; dangerous offenders.** Whenever a person is convicted of a violent crime, and the judge is imposing an executed sentence based on a sentencing guidelines presumptive imprisonment sentence, the judge may impose an aggravated durational departure from the presumptive imprisonment sentence up to the statutory maximum sentence if the offender was at least 18 years old at the time the felony was committed, and:

(1) the offender has two or more prior convictions for violent crimes; and  
(2) the court finds that the offender is a danger to public safety and specifies on the record the basis for the finding, which may include:

(i) the offender's past criminal behavior, such as the offender's high frequency rate of criminal activity or juvenile adjudications, or long involvement in criminal activity including juvenile adjudications; or

(ii) the fact that the present offense of conviction involved an aggravating factor that would justify a durational departure under the sentencing guidelines.

**Subd. 3. Increased sentences; career offenders.** Whenever a person is convicted of a felony, and the judge is imposing an executed sentence based on a sentencing guidelines presumptive imprisonment sentence, the judge may impose an aggravated durational departure from the presumptive sentence up to the statutory maximum sentence if the judge finds and specifies on the record that the offender has more than four prior felony convictions and that the present offense is a felony that was committed as part of a pattern of criminal conduct from which a substantial portion of the offender's income was derived.

**History:** 1989 c 290 art 2 s 9

**NOTE:** This section, as added by Laws 1989, chapter 290, article 2, section 9, is effective August 1, 1990, and applies

to crimes committed on or after that date. See Laws 1989, chapter 290, article 2, section 18, as amended by Laws 1989, chapter 356, section 52.

### **609.184 HEINOUS CRIMES.**

Subdivision 1. **Terms.** (a) A "heinous crime" is a violation of section 609.185, 609.19, 609.195, or a violation of section 609.342 or 609.343, if the offense was committed with force or violence.

(b) "Previous conviction" means a conviction in Minnesota of a heinous crime or a conviction elsewhere for conduct that would have been a heinous crime under this chapter if committed in Minnesota. The term includes any conviction that occurred before the commission of the present offense of conviction, but does not include a conviction if 15 years have elapsed since the person was discharged from the sentence imposed for the offense.

Subd. 2. **Life without release.** The court shall sentence a person to life imprisonment without possibility of release when the person is convicted of first degree murder under section 609.185 and the person has one or more previous convictions for a heinous crime.

**History:** 1989 c 290 art 2 s 10

### **609.185 MURDER IN THE FIRST DEGREE.**

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

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

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

(3) causes the death of a human being with intent to effect the death of the person or another, while committing or attempting to commit burglary, aggravated robbery, kidnapping, arson in the first or second degree, tampering with a witness in the first degree, escape from custody, or any felony violation of chapter 152 involving the unlawful sale of a controlled substance;

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

(5) causes the death of a minor under circumstances other than those described in clause (1) or (2) while committing or attempting to commit child abuse, when the perpetrator has engaged in a past pattern of child abuse upon the child and the death occurs under circumstances manifesting an extreme indifference to human life.

For purposes of clause (5), "child abuse" means an act committed against a minor victim that constitutes a violation of section 609.221, 609.222, 609.223, 609.224, 609.342, 609.343, 609.344, 609.345, 609.377, or 609.378.

**History:** 1989 c 290 art 2 s 11

### **609.196 MANDATORY PENALTY FOR CERTAIN MURDERERS.**

When a person is convicted of violating section 609.19 or 609.195, the court shall sentence the person to the statutory maximum term of imprisonment for the offense if the person was previously convicted of a heinous crime as defined in section 609.184 and 15 years have not elapsed since the person was discharged from the sentence imposed for that conviction. The court may not stay the imposition or execution of the sentence, notwithstanding section 609.135.

**History:** 1989 c 290 art 2 s 12

**609.205 MANSLAUGHTER IN THE SECOND DEGREE.**

A person who causes the death of another by any of the following means is guilty of manslaughter in the second degree 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) by the person's culpable negligence whereby the person creates an unreasonable risk, and consciously takes chances of causing death or great bodily harm to another; or

(2) by shooting another with a firearm or other dangerous weapon as a result of negligently believing the other to be a deer or other animal; or

(3) by setting a spring gun, pit fall, deadfall, snare, or other like dangerous weapon or device; or

(4) by negligently or intentionally permitting any animal, known by the person to have vicious propensities or to have caused great or substantial bodily harm in the past, to run uncontrolled off the owner's premises, or negligently failing to keep it properly confined.

If proven by a preponderance of the evidence, it shall be an affirmative defense to criminal liability under clause (4) that the victim provoked the animal to cause the victim's death.

**History:** 1989 c 290 art 6 s 5

**609.21 CRIMINAL VEHICULAR OPERATION.**

**Subdivision 1. Resulting in death.** Whoever causes the death of a human being not constituting murder or manslaughter as a result of operating a vehicle as defined in section 169.01, subdivision 2, or an aircraft or watercraft,

(1) in a grossly negligent manner;

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

(3) in a negligent manner while having an alcohol concentration of 0.10 or more, is guilty of criminal vehicular operation resulting in death and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both.

**Subd. 2. Resulting in injury.** Whoever causes great bodily harm to another, as defined in section 609.02, subdivision 8, not constituting attempted murder or assault as a result of operating a vehicle defined in section 169.01, subdivision 2, or an aircraft or watercraft,

(1) in a grossly negligent manner;

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

(3) in a negligent manner while having an alcohol concentration of 0.10 or more, is guilty of criminal vehicular operation resulting in injury and may be sentenced to imprisonment for not more than five years or the payment of a fine of not more than \$10,000, or both.

**Subd. 3. Resulting in death to an unborn child.** Whoever causes the death of an unborn child as a result of operating a vehicle defined in section 169.01, subdivision 2, or an aircraft or watercraft,

(1) in a grossly negligent manner;

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

(3) in a negligent manner while having an alcohol concentration of 0.10 or more, is guilty of criminal vehicular operation resulting in death to an unborn child and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both. A prosecution for or conviction of a crime under this subdivision is not a bar to conviction of or punishment for any other crime committed by the defendant as part of the same conduct.



Subd. 4. **Resulting in injury to unborn child.** Whoever causes great bodily harm, as defined in section 609.02, subdivision 8, to an unborn child who is subsequently born alive, as a result of operating a vehicle defined in section 169.01, subdivision 2, or an aircraft or watercraft,

(1) in a grossly negligent manner;

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

(3) in a negligent manner while having an alcohol concentration of 0.10 or more, is guilty of criminal vehicular operation resulting in injury to an unborn child and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both. A prosecution for or conviction of a crime under this subdivision is not a bar to conviction of or punishment for any other crime committed by the defendant as part of the same conduct.

**History:** 1989 c 290 art 6 s 6,7; art 10 s 7

#### **609.221 ASSAULT IN THE FIRST DEGREE.**

Whoever assaults another and inflicts great bodily harm may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than \$30,000, or both.

**History:** 1989 c 290 art 6 s 8

#### **609.222 ASSAULT IN THE SECOND DEGREE.**

Whoever assaults another with a dangerous weapon may be sentenced to imprisonment for not more than seven years or to payment of a fine of not more than \$14,000, or both.

**History:** 1989 c 290 art 6 s 9

#### **609.223 ASSAULT IN THE THIRD DEGREE.**

Whoever assaults another and inflicts substantial bodily harm 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.

**History:** 1989 c 290 art 6 s 10

#### **609.2231 ASSAULT IN THE FOURTH DEGREE.**

Subdivision 1. **Peace officers.** Whoever assaults a peace officer licensed under section 626.845, subdivision 1, when that officer is effecting a lawful arrest or executing any other duty imposed by law and inflicts demonstrable bodily harm 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, or both.

*[For text of subs 2 and 3, see M.S.1988]*

Subd. 4. **Assaults motivated by bias.** (a) Whoever assaults another because of the victim's or another's actual or perceived race, color, religion, sex, sexual orientation, disability as defined in section 363.01, age, or national origin 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.

(b) Whoever violates the provisions of paragraph (a) within five years of a previous conviction under paragraph (a) is guilty of a felony and may be sentenced to imprisonment for not more than one year and a day or to payment of a fine of not more than \$3,000, or both.

**History:** 1989 c 261 s 1; 1989 c 290 art 6 s 11

**609.226 HARM CAUSED BY A DOG.**

Subdivision 1. **Great or substantial bodily harm.** A person who causes great or substantial bodily harm to another by negligently or intentionally permitting any dog to run uncontrolled off the owner's premises, or negligently failing to keep it properly confined is guilty of a misdemeanor. A person who is convicted of a second or subsequent violation of this section involving the same dog is guilty of a gross misdemeanor.

*[For text of subds 2 and 3, see M.S.1988]*

**History:** 1989 c 37 s 13

**609.255 FALSE IMPRISONMENT.**

*[For text of subds 1 and 2, see M.S.1988]*

Subd. 3. **Unreasonable restraint of children.** A parent, legal guardian, or caretaker who intentionally subjects a child under the age of 18 years to unreasonable physical confinement or restraint by means including but not limited to, tying, locking, caging, or chaining for a prolonged period of time and in a cruel manner which is excessive under the circumstances, is guilty of unreasonable restraint of a child 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. If the confinement or restraint results in substantial bodily harm, that person may be sentenced to imprisonment for not more than five years or to payment of not more than \$10,000, or both.

**History:** 1989 c 290 art 6 s 12

**609.26 DEPRIVING ANOTHER OF CUSTODIAL OR PARENTAL RIGHTS.**

Subdivision 1. **Prohibited acts.** Whoever intentionally does any of the following acts may be charged with a felony and, upon conviction, may be sentenced as provided in subdivision 6:

(1) conceals a minor child from the child's parent where the action manifests an intent substantially to deprive that parent of parental rights or conceals a minor child from another person having the right to visitation or custody where the action manifests an intent to substantially deprive that person of rights to visitation or custody;

(2) takes, obtains, retains, or fails to return a minor child in violation of a court order which has transferred legal custody under chapter 260 to the commissioner of human services, a child placing agency, or the county welfare board;

(3) takes, obtains, retains, or fails to return a minor child from or to the parent in violation of a court order, where the action manifests an intent substantially to deprive that parent of rights to visitation or custody;

(4) takes, obtains, retains, or fails to return a minor child from or to a parent after commencement of an action relating to child visitation or custody but prior to the issuance of an order determining custody or visitation rights, where the action manifests an intent substantially to deprive that parent of parental rights; or

(5) retains a child in this state with the knowledge that the child was removed from another state in violation of any of the above provisions.

*[For text of subds 2 to 5, see M.S.1988]*

Subd. 6. **Penalty.** Except as otherwise provided in subdivision 5, whoever violates this section may be sentenced as follows:

(1) to imprisonment for not more than two years or to payment of a fine of not more than \$4,000, or both; or

(2) to imprisonment for not more than four years or to payment of a fine of not more than \$8,000, or both, if the court finds that:

(i) the defendant committed the violation while possessing a dangerous weapon or caused substantial bodily harm to effect the taking;

(ii) the defendant abused or neglected the child during the concealment, detention, or removal of the child;

(iii) the defendant inflicted or threatened to inflict physical harm on a parent or lawful custodian of the child or on the child with intent to cause the parent or lawful custodian to discontinue criminal prosecution;

(iv) the defendant demanded payment in exchange for return of the child or demanded to be relieved of the financial or legal obligation to support the child in exchange for return of the child; or

(v) the defendant has previously been convicted under this section or a similar statute of another jurisdiction.

*[For text of subd 7, see M.S.1988]*

**History:** 1989 c 290 art 7 s 3,4

#### **609.2665 MANSLAUGHTER OF AN UNBORN CHILD IN THE SECOND DEGREE.**

A person who causes the death of an unborn child by any of the following means is guilty of manslaughter of an unborn child in the second degree 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) by the actor's culpable negligence whereby the actor creates an unreasonable risk and consciously takes chances of causing death or great bodily harm to an unborn child or a person;

(2) by shooting the mother of the unborn child with a firearm or other dangerous weapon as a result of negligently believing her to be a deer or other animal;

(3) by setting a spring gun, pit fall, deadfall, snare, or other like dangerous weapon or device; or

(4) by negligently or intentionally permitting any animal, known by the person to have vicious propensities or to have caused great or substantial bodily harm in the past, to run uncontrolled off the owner's premises, or negligently failing to keep it properly confined.

If proven by a preponderance of the evidence, it shall be an affirmative defense to criminal liability under clause (4) that the mother of the unborn child provoked the animal to cause the unborn child's death.

**History:** 1989 c 290 art 6 s 13

#### **609.267 ASSAULT OF AN UNBORN CHILD IN THE FIRST DEGREE.**

Whoever assaults a pregnant woman and inflicts great bodily harm on an unborn child who is subsequently born alive 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.

**History:** 1989 c 290 art 6 s 14

#### **609.2671 ASSAULT OF AN UNBORN CHILD IN THE SECOND DEGREE.**

Whoever assaults a pregnant woman and inflicts substantial bodily harm on an unborn child who is subsequently born alive 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.

As used in this section, "substantial bodily harm" includes the birth of the unborn child prior to 37 weeks gestation if the child weighs 2,500 grams or less at the time of birth. "Substantial bodily harm" does not include the inducement of the unborn child's birth when done for bona fide medical purposes.

**History:** 1989 c 20 s 1

**609.323 RECEIVING PROFIT DERIVED FROM PROSTITUTION.**

Subdivision 1. Whoever, while acting other than as a prostitute or patron, intentionally receives profit, knowing or having reason to know that it is derived from the prostitution, or the promotion of the prostitution, of an individual under the age of 13 years, 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.

*[For text of subds 1a to 4, see M.S.1988]*

**History:** 1989 c 290 art 6 s 15

**609.33 DISORDERLY HOUSE.**

*[For text of subds 1 to 3, see M.S.1988]*

Subd. 4. **Evidence.** Evidence of unlawful sales of intoxicating liquor or nonintoxicating malt liquor, of unlawful possession or sale of controlled substances, of prostitution or acts relating to prostitution, or of gambling or acts relating to gambling, is prima facie evidence of the existence of a disorderly house. Evidence of sales of intoxicating liquor or nonintoxicating malt liquor between the hours of 1:00 a.m. and 8:00 a.m., while a person is within a disorderly house, is prima facie evidence that the person knew it to be a disorderly house.

*[For text of subd 5, see M.S.1988]*

**History:** 1989 c 77 s 1

**609.341 DEFINITIONS.**

*[For text of subds 1 to 10, see M.S.1988]*

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 (k), 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 to 20, see M.S.1988]*

**History:** 1989 c 290 art 4 s 11

**609.342 CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE.***[For text of subd 1, see M.S.1988]*

Subd. 2. **Penalty.** A person convicted under subdivision 1 may be sentenced to imprisonment for not more than 25 years or to a payment of a fine of not more than \$40,000, or both.

*[For text of subd 3, see M.S.1988]***History:** 1989 c 290 art 4 s 12**609.343 CRIMINAL SEXUAL CONDUCT IN THE SECOND DEGREE.***[For text of subd 1, see M.S.1988]*

Subd. 2. **Penalty.** A person convicted under subdivision 1 may be sentenced to imprisonment for not more than 20 years or to a payment of a fine of not more than \$35,000, or both.

*[For text of subd 3, see M.S.1988]***History:** 1989 c 290 art 4 s 13**609.344 CRIMINAL SEXUAL CONDUCT IN THE THIRD DEGREE.***[For text of subd 1, see M.S.1988]*

Subd. 2. **Penalty.** A person convicted under subdivision 1 may be sentenced to imprisonment for not more than 15 years or to a payment of a fine of not more than \$30,000, or both.

*[For text of subd 3, see M.S.1988]***History:** 1989 c 290 art 4 s 14**609.345 CRIMINAL SEXUAL CONDUCT IN THE FOURTH DEGREE.***[For text of subd 1, see M.S.1988]*

Subd. 2. **Penalty.** A person convicted under subdivision 1 may be sentenced to imprisonment for not more than ten years or to a payment of a fine of not more than \$20,000, or both.

*[For text of subd 3, see M.S.1988]***History:** 1989 c 290 art 4 s 15**609.346 SUBSEQUENT OFFENSES.***[For text of subd 1, see M.S.1988]*

Subd. 2. **Subsequent sex offense; penalty.** Except as provided in subdivision 2a, if a person is convicted under sections 609.342 to 609.345, within 15 years of a previous sex offense 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 subdivision 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. 2a. Maximum sentence imposed.** (a) The court shall sentence a person to a term of imprisonment of 37 years, notwithstanding the statutory maximum sentences under sections 609.342 and 609.343 if:

(1) the person is convicted under section 609.342 or 609.343; and

(2) the person has two previous sex offense convictions under section 609.342, 609.343, or 609.344.

(b) Notwithstanding sections 609.342, subdivision 3; and 609.343, subdivision 3; and subdivision 2, the court may not stay imposition of the sentence required by this subdivision.

**Subd. 3. Previous sex offense convictions.** For the purposes of this section, a conviction is considered a previous sex offense conviction if the person was convicted of a sex offense, before the commission of the present offense of conviction. A person has two previous sex offense convictions only if the person was convicted and sentenced for a sex offense committed after the person was earlier convicted and sentenced for a sex offense, both convictions preceded the commission of the present offense of conviction, and 15 years have not elapsed since the person was discharged from the sentence imposed for the second conviction. A "sex offense" is a violation of sections 609.342 to 609.345 or any similar statute of the United States, or this or any other state.

**History:** 1989 c 290 art 2 s 13-15

#### **609.3461 DNA ANALYSIS OF SEX OFFENDERS REQUIRED.**

When a court sentences a person convicted of violating or attempting to violate section 609.342, 609.343, 609.344, or 609.345, or the juvenile court adjudicates a person a delinquent child for violating or attempting to violate section 609.342, 609.343, 609.344, or 609.345, it shall order the person to provide a biological specimen for the purpose of DNA analysis as defined in section 299C.155. The biological specimen or the results of the analysis shall be maintained by the bureau of criminal apprehension as provided in section 299C.155. If a person convicted of violating or attempting to violate section 609.342, 609.343, 609.344, or 609.345, and committed to the custody of the commissioner of corrections for a term of imprisonment has not provided a biological specimen for the purpose of DNA analysis, the commissioner of corrections or local corrections authority shall order the person to provide a biological specimen for the purpose of DNA analysis before completion of the person's term of imprisonment. The commissioner of corrections or local corrections authority shall forward the sample to the bureau of criminal apprehension.

**History:** 1989 c 290 art 4 s 16

#### **609.377 MALICIOUS PUNISHMENT OF A CHILD.**

A parent, legal guardian, or caretaker who, by an intentional act or a series of intentional acts with respect to a child, evidences unreasonable force or cruel discipline that is excessive under the circumstances is guilty of malicious punishment of a child 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. If the punishment results in substantial bodily harm, that person 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.

**History:** 1989 c 290 art 6 s 16

#### **609.378 NEGLECT OR ENDANGERMENT OF A CHILD.**

**Subdivision 1. Persons guilty of neglect or endangerment.** The following people are guilty of neglect or endangerment of a child 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.

(a) **Neglect.** (1) A parent, legal guardian, or caretaker who willfully deprives a child of necessary food, clothing, shelter, health care, or supervision appropriate to the child's age, when the parent, guardian, or caretaker is reasonably able to make the necessary provisions and the deprivation substantially harms the child's physical or

emotional health is guilty of neglect of a child. If a parent, guardian, or caretaker responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child, this treatment or care is "health care," for purposes of this clause.

(2) A parent, legal guardian, or caretaker who knowingly permits the continuing physical or sexual abuse of a child is guilty of neglect of a child.

(b) **Endangerment.** A parent, legal guardian, or caretaker who endangers the child's person or health by intentionally causing or permitting a child to be placed in a situation likely to substantially harm the child's physical or mental health or cause the child's death is guilty of child endangerment. This paragraph does not prevent a parent, legal guardian, or caretaker from causing or permitting a child to engage in activities that are appropriate to the child's age, stage of development, and experience, or from selecting health care as defined in subdivision 1, paragraph (a).

Subd. 2. **Defenses.** It is a defense to a prosecution under subdivision 1, paragraph (a), clause (2), or paragraph (b), that at the time of the neglect or endangerment there was a reasonable apprehension in the mind of the defendant that acting to stop or prevent the neglect or endangerment would result in substantial bodily harm to the defendant or the child in retaliation.

**History:** 1989 c 282 art 2 s 199

#### **609.396 UNAUTHORIZED PRESENCE AT CAMP RIPLEY.**

Subdivision 1. **Misdemeanor.** A person is guilty of a misdemeanor if the person intentionally and without authorization of the adjutant general enters or is present on the Camp Ripley military reservation.

Subd. 2. **Felony.** A person is guilty of a felony and may be sentenced to not more than five years imprisonment or to payment of a fine of not more than \$10,000, or both, if:

(1) the person intentionally enters or is present in an area at the Camp Ripley military reservation that is posted by order of the adjutant general as restricted for weapon firing or other hazardous military activity; and

(2) the person knows that doing so creates a risk of death, bodily harm, or serious property damage.

**History:** 1989 c 5 s 3; 1989 c 290 art 7 s 12

#### **609.445 FAILURE TO PAY OVER STATE FUNDS.**

Whoever receives money on behalf of or for the account of the state or any of its agencies or subdivisions and intentionally refuses or omits to pay the same to the state or its agency or subdivision entitled thereto, or to an officer or agent authorized to receive the same, 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.

**History:** 1989 c 290 art 6 s 17

#### **609.48 PERJURY.**

*[For text of subds 1 to 3, see M.S.1988]*

Subd. 4. **Sentence.** Whoever violates this section may be sentenced as follows:

(1) If the false statement was made upon the trial of a felony charge, or upon an application for an explosives license or use permit, to imprisonment for not more than seven years or to payment of a fine of not more than \$14,000, or both; or

(2) In all other cases, to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

**History:** 1989 c 290 art 6 s 18

#### **609.487 FLEEING A PEACE OFFICER IN A MOTOR VEHICLE.**

*[For text of subds 1 to 3, see M.S.1988]*

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

(a) If the course of fleeing results in death, to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both; or

(b) If the course of fleeing results in great bodily harm, to imprisonment for not more than seven years or to payment of a fine of not more than \$14,000, or both; or

(c) If the course of fleeing results in substantial bodily harm, to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

**History:** 1989 c 290 art 6 s 19

#### **609.49 RELEASE, FAILURE TO APPEAR.**

**Subdivision 1. Felony offenders.** A person charged with or convicted of a felony and released from custody, with or without bail or recognizance, on condition that the releasee personally appear when required with respect to the charge or conviction, who intentionally fails to appear when required after having been notified that a failure to appear for a court appearance is a criminal offense, is guilty of a crime for failure to appear 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.

**Subd. 2. Gross misdemeanor and misdemeanor offenders.** A person charged with a gross misdemeanor or misdemeanor who intentionally fails to appear in court for trial on the charge after having been notified that a failure to appear for a court appearance is a criminal offense, is guilty of a misdemeanor.

**Subd. 3. Affirmative defense.** If proven by a preponderance of the evidence, it is an affirmative defense to a violation of subdivision 1 or 2 that the person's failure to appear in court as required was due to circumstances beyond the person's control.

**Subd. 4. Prosecution.** A violation of this section is prosecuted by the prosecuting authority who was responsible for prosecuting the offense in connection with which the person failed to appear in court.

**History:** 1989 c 333 s 4

#### **609.491 FAILURE TO APPEAR; PETTY MISDEMEANOR.**

**Subdivision 1. Considered guilty plea.** If a person fails to appear in court on a charge that is a petty misdemeanor, the failure to appear is considered a plea of guilty and waiver of the right to trial, unless the person appears in court within ten days and shows that the person's failure to appear was due to circumstances beyond the person's control.

**Subd. 2. Notice.** A complaint charging a person with a petty misdemeanor must include a conspicuous notice of the provisions of subdivision 1.

**History:** 1989 c 333 s 5

#### **609.496 CONCEALING CRIMINAL PROCEEDS.**

**Subdivision 1. Crime.** A person is guilty of a felony and may be sentenced under subdivision 2 if the person:

(1) conducts a transaction involving a monetary instrument or instruments with a value exceeding \$5,000; and

(2) knows or has reason to know that the monetary instrument or instruments represent the proceeds of, or are derived from the proceeds of, the commission of a felony under this chapter or chapter 152 or an offense in another jurisdiction that would be a felony under this chapter or chapter 152 if committed in Minnesota.

**Subd. 2. Penalty.** A person convicted under subdivision 1 may be sentenced to



imprisonment for not more than ten years, or to payment of a fine of not more than \$100,000, or both.

**Subd. 3. Monetary instrument.** For purposes of this section, "monetary instrument" means United States currency and coin; the currency and coin of a foreign country; a bank check, cashier's check, traveler's check, money order, stock, investment security, or negotiable instrument in bearer form or otherwise in the form by which title to the instrument passes upon delivery; gold, silver, or platinum bullion or coins; and diamonds, emeralds, rubies, or sapphires.

**Subd. 4. Payment of reasonable attorney fees.** Subdivision 1 does not preclude the payment or receipt of reasonable attorney fees.

**History:** 1989 c 286 s 3

#### **609.497 ENGAGING IN A BUSINESS OF CONCEALING CRIMINAL PROCEEDS.**

**Subdivision 1. Crime.** A person is guilty of a felony and may be sentenced under subdivision 2 if the person knowingly initiates, organizes, plans, finances, directs, manages, supervises, or otherwise engages in a business that has as a primary or secondary purpose concealing money or property that was gained as a direct result of the commission of a felony under this chapter or chapter 152, or of an offense committed in another jurisdiction that would be a felony under this chapter or chapter 152 if committed in Minnesota.

**Subd. 2. Penalty.** A person convicted under subdivision 1 may be sentenced to imprisonment for not more than 20 years, or to payment of a fine of not more than \$1,000,000, or both.

**History:** 1989 c 286 s 4

#### **609.4971 WARNING SUBJECT OF INVESTIGATION.**

Whoever, having knowledge that a subpoena has been issued under sections 8.16 and 388.23, and with intent to obstruct, impede, or prevent the investigation for which the subpoena was issued, gives notice or attempts to give notice of the issuance of the subpoena or the production of the documents to a person, 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.

**History:** 1989 c 336 art 2 s 4

#### **609.4975 WARNING SUBJECT OF SURVEILLANCE OR SEARCH.**

**Subdivision 1. Electronic communication.** Whoever, having knowledge that an investigative or law enforcement officer has been authorized or has applied for authorization under sections 626A.01 to 626A.23 to intercept a wire, oral, or electronic communication, and with intent to obstruct, impede, or prevent interception, gives notice or attempts to give notice of the possible interception to a person, 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.

**Subd. 2. Pen register.** Whoever, having knowledge that an investigative or law enforcement officer has been authorized or has applied for authorization under sections 626A.01 to 626A.23 to install and use a pen register or a trap and trace device, and with intent to obstruct, impede, or prevent the purposes for which the installation and use is being made, gives notice or attempts to give notice of the installation or use to any person, 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.

**Subd. 3. Search warrant.** Whoever, having knowledge that a peace officer has been issued or has applied for the issuance of a search warrant, and with intent to obstruct, impede, or prevent the search, gives notice or attempts to give notice of the search or search warrant to any person, 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.

**History:** 1989 c 336 art 2 s 3

**609.50 OBSTRUCTING LEGAL PROCESS, ARREST, OR FIREFIGHTING.**

Subdivision 1. **Crime.** Whoever intentionally does any of the following may be sentenced as provided in subdivision 2:

(1) obstructs, hinders, or prevents the lawful execution of any legal process, civil or criminal, or apprehension of another on a charge or conviction of a criminal offense;

(2) obstructs, resists, or interferes with a peace officer while the officer is engaged in the performance of official duties;

(3) interferes with or obstructs the prevention or extinguishing of a fire, or disobeys the lawful order of a firefighter present at the fire; or

(4) by force or threat of force endeavors to obstruct any employee of the department of revenue while the employee is lawfully engaged in the performance of official duties for the purpose of deterring or interfering with the performance of those duties.

Subd. 2. **Penalty.** A person convicted of violating subdivision 1 may be sentenced as follows:

(1) if the act was committed with knowledge that it created a risk of death, substantial bodily harm, or serious property damage, to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both;

(2) if the act was accompanied by force or violence or the threat thereof, to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both; or

(3) in other cases to imprisonment for not more than 90 days or to payment of a fine of not more than \$700, or both.

**History:** 1989 c 5 s 4

**609.506 PROHIBITING GIVING PEACE OFFICER FALSE NAME.**

Subdivision 1. **Misdemeanor.** Whoever with intent to obstruct justice gives a 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 1, 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.

*[For text of subd 2, see M.S.1988]*

**History:** 1989 c 209 art 1 s 45

**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 co-owner or has a lien, pledge, bailment, or lease or other subordinate interest, and property of a partnership of which the actor is a member, unless the actor and the victim are husband and wife. It does not include property in which the actor asserts in good faith a claim as a collection fee or commission out of property or funds recovered, or by virtue of a lien, setoff, 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.

(10) "Motor vehicle" means a self-propelled device for moving persons or property or pulling implements from one place to another, whether the device is operated on land, rails, water, or in the air.

**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;

(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; or

(17) intentionally takes or drives a motor vehicle without the consent of the owner or an authorized agent of the owner.

**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 an article representing a trade secret, an explosive or incendiary device, or a controlled substance listed in schedule I or II pursuant to section 152.02 with the exception of marijuana; or

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

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

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

(c) the value of the property or services stolen is more than \$200 but not more than \$500 and the person has been convicted within the preceding five years for an offense under this section, section 256.98; 268.18, subdivision 3; 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

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

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

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

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

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

(v) the property is a firearm; or

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

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

(5) 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 subdivision 2, clauses (1), (2), (3), (4), and (13), the value of the money or property or services received by the defendant in violation of any one or more of the above provisions within any six-month period may be aggregated and the defendant charged accordingly in applying the provisions of this subdivision; provided that when two or more offenses are committed by the same person in two or more counties, the accused may be prosecuted in any county in which one of the offenses was committed for all of the offenses aggregated under this paragraph.

**History:** 1989 c 290 art 7 s 5

#### **609.526 PRECIOUS METAL DEALERS; RECEIVING STOLEN PROPERTY.**

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.

Any person convicted of violating this section a second or subsequent time within a period of one year may be sentenced as provided in clause (1).

**History:** 1989 c 290 art 7 s 6

#### **609.53 RECEIVING STOLEN PROPERTY.**

**Subdivision 1. Penalty.** Except as otherwise provided in section 609.526, 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 in accordance with the provisions of section 609.52, subdivision 3.

Subd. 1a. [Repealed, 1989 c 290 art 7 s 14]

Subd. 3. [Repealed, 1989 c 290 art 7 s 14]

Subd. 3a. [Repealed, 1989 c 290 art 7 s 14]

Subd. 4. **Civil action; treble damages.** Any person who has been injured by a violation of subdivision 1 or section 609.526 may bring an action for three times the amount of actual damages sustained by the plaintiff or \$1,500, whichever is greater, and the costs of suit and reasonable attorney's fees.

*[For text of subd 5, see M.S.1988]*

**History:** 1989 c 290 art 7 s 7,8

## **609.531 FORFEITURES.**

Subdivision 1. **Definitions.** For the purpose of sections 609.531 to 609.5317, the following terms have the meanings given them.

(a) "Conveyance device" means a device used for transportation and includes, but is not limited to, a motor vehicle, trailer, snowmobile, airplane, and vessel and any equipment attached to it. The term "conveyance device" does not include property which is, in fact, itself stolen or taken in violation of the law.

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

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

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

(e) "Appropriate agency" means the bureau of criminal apprehension, the Minnesota state patrol, a county sheriff's department, the suburban Hennepin regional park district park rangers, or a city or airport police department.

(f) "Designated offense" includes:

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

(2) For all other purposes: a felony violation of, or a felony-level 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; 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; 609.525; 609.53; 609.54; 609.551; 609.561; 609.562; 609.563; 609.582; 609.59; 609.595; 609.631; 609.671, subdivisions 3, 4, and 5; 609.687; 609.821; 609.825; 609.86; 609.88; 609.89; 617.246; or a gross misdemeanor or felony violation of section 609.891.

(g) "Controlled substance" has the meaning given in section 152.01, subdivision 4.

Subd. 1a. **Construction.** Sections 609.531 to 609.5317 must be liberally construed to carry out the following remedial purposes:

(1) to enforce the law;

(2) to deter crime;

(3) to reduce the economic incentive to engage in criminal enterprise;

(4) to increase the pecuniary loss resulting from the detection of criminal activity; and

(5) to forfeit property unlawfully used or acquired and divert the property to law enforcement purposes.

Subd. 4. **Seizure.** Property subject to forfeiture under sections 609.531 to 609.5317 may be seized by the appropriate agency upon process issued by any court having jurisdiction over the property. Property may be seized without process if:

(1) the seizure is incident to a lawful arrest or a lawful search;

(2) the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding under this chapter; or

(3) the appropriate agency has probable cause to believe that the delay occasioned by the necessity to obtain process would result in the removal or destruction of the property and that:

- (i) the property was used or is intended to be used in commission of a felony; or
- (ii) the property is dangerous to health or safety.

If property is seized without process under clause (3), subclause (i), the county attorney must institute a forfeiture action under section 609.5313 as soon as is reasonably possible.

**Subd. 5. Right to possession vests immediately; custody of seized property.** All right, title, and interest in property subject to forfeiture under sections 609.531 to 609.5317 vests in the appropriate agency upon commission of the act or omission giving rise to the forfeiture. Any property seized under sections 609.531 to 609.5316 is not subject to replevin, but is deemed to be in the custody of the appropriate agency subject to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When property is so seized, the appropriate agency may:

- (1) place the property under seal;
- (2) remove the property to a place designated by it;
- (3) in the case of controlled substances, require the state board of pharmacy to take custody of the property and remove it to an appropriate location for disposition in accordance with law; and
- (4) take other steps reasonable and necessary to secure the property and prevent waste.

**Subd. 5a. Bond by owner for possession.** If the owner of property that has been seized under sections 609.531 to 609.5317 seeks possession of the property before the forfeiture action is determined, the owner may, subject to the approval of the appropriate agency, give security or post bond payable to the appropriate agency in an amount equal to the retail value of the seized property. On posting the security or bond, the seized property must be returned to the owner and the forfeiture action shall proceed against the security as if it were the seized property. This subdivision does not apply to contraband property.

**Subd. 6a. Forfeiture a civil procedure; conviction results in presumption.** (a) An action for forfeiture is a civil in rem action and is independent of any criminal prosecution, except as provided in this subdivision. The appropriate agency handling the forfeiture has the benefit of the evidentiary presumption of section 609.5314, subdivision 1, but otherwise bears the burden of proving the act or omission giving rise to the forfeiture by clear and convincing evidence, except that in cases arising under section 609.5312, the designated offense may only be established by a felony level criminal conviction.

(b) A court may not issue an order of forfeiture under section 609.5311 while the alleged owner of the property is in custody and related criminal proceedings are pending against the alleged owner. For forfeiture of a motor vehicle, the alleged owner is the registered owner according to records of the department of public safety. For real property, the alleged owner is the owner of record. For other property, the alleged owner is the person notified by the prosecuting authority in filing the forfeiture action.

**History:** 1989 c 95 s 1; 1989 c 290 art 3 s 29; 1989 c 305 s 4

## **609.5311 FORFEITURE OF PROPERTY ASSOCIATED WITH CONTROLLED SUBSTANCES.**

*[For text of subd 1, see M.S.1988]*

**Subd. 2. Associated property.** All property, real and personal, that has been used, or is intended for use, or has in any way facilitated, in whole or in part, the manufacturing, compounding, processing, delivering, importing, cultivating, exporting, transporting, or exchanging of contraband or a controlled substance that has not been lawfully manufactured, distributed, dispensed, and acquired is subject to forfeiture under this section, except as provided in subdivision 3.

**Subd. 3. Limitations on forfeiture of certain property associated with controlled**



**substances.** (a) A conveyance device is subject to forfeiture under this section only if the retail value of the controlled substance is \$25 or more and the conveyance device is associated with a felony-level controlled substance crime.

(b) Real property is subject to forfeiture under this section only if the retail value of the controlled substance or contraband is \$1,000 or more.

(c) Property used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section only if the owner of the property is a consenting party to, or is privy to, the use or intended use of the property as described in subdivision 2.

(d) Property is subject to forfeiture under this section only if its owner was privy to the use or intended use described in subdivision 2, or the unlawful use or intended use of the property otherwise occurred with the owner's knowledge or consent.

(e) Forfeiture under this section of a conveyance device or real property encumbered by a bona fide security interest is subject to the interest of the secured party unless the secured party had knowledge of or consented to the act or omission upon which the forfeiture is based. A person claiming a security interest bears the burden of establishing that interest by clear and convincing evidence.

(f) Notwithstanding paragraphs (d) and (e), property is not subject to forfeiture based solely on the owner's or secured party's knowledge of the unlawful use or intended use of the property if the owner or secured party took reasonable steps to terminate use of the property by the offender.

*[For text of subd 4, see M.S.1988]*

**History:** 1989 c 290 art 3 s 30; 1989 c 305 s 5,6

#### **609.5314 ADMINISTRATIVE FORFEITURE OF CERTAIN PROPERTY SEIZED IN CONNECTION WITH A CONTROLLED SUBSTANCES SEIZURE.**

**Subdivision 1. Property subject to administrative forfeiture; presumption.** (a) The following are presumed to be subject to administrative forfeiture under this section:

- (1) all money, precious metals, and precious stones found in proximity to:
    - (i) controlled substances;
    - (ii) forfeitable drug manufacturing or distributing equipment or devices; or
    - (iii) forfeitable records of manufacture or distribution of controlled substances;
- and

(2) all conveyance devices containing controlled substances with a retail value of \$100 or more if possession or sale of the controlled substance would be a felony under chapter 152.

(b) A claimant of the property bears the burden to rebut this presumption.

*[For text of subds 2 and 3, see M.S.1988]*

**History:** 1989 c 290 art 3 s 31

#### **609.5315 DISPOSITION OF FORFEITED PROPERTY.**

**Subdivision 1. Disposition.** If the court finds under section 609.5313 or 609.5314 that the property is subject to forfeiture, it shall order the appropriate agency to:

- (1) sell property that is not required to be destroyed by law and is not harmful to the public and distribute the proceeds under subdivision 5;
- (2) take custody of the property and remove it for disposition in accordance with law;
- (3) forward the property to the federal drug enforcement administration;
- (4) disburse money as provided under subdivision 5; or
- (5) keep property other than money for official use by the agency and the prosecuting agency.

*[For text of subds 2 to 4, see M.S.1988]*

**Subd. 5. Distribution of money.** Seventy percent of the money or proceeds from the sale of forfeited property, after payment of seizure, storage, forfeiture, and sale expenses, and satisfaction of valid liens against the property, must be forwarded to the appropriate agency for deposit to the general fund, and 20 percent must be forwarded to the county attorney or other prosecuting agency that handled the forfeiture for deposit as a supplement to its operating fund or similar fund for prosecutorial purposes. The remaining ten percent of the money or proceeds must be forwarded within 60 days after resolution of the forfeiture to the state treasury and credited to the general fund. Any local police relief association organized under chapter 423, which received or was entitled to receive the proceeds of any sale made under this section before the effective date of Laws 1988, chapter 665, sections 1 to 17, shall continue to receive and retain the proceeds of these sales.

**History:** 1989 c 290 art 3 s 32; 1989 c 335 art 4 s 100

### **609.5317 REAL PROPERTY; SEIZURES.**

**Subdivision 1. Rental property.** (a) When contraband or a controlled substance manufactured, distributed, or acquired in violation of chapter 152 is seized on residential rental property incident to a lawful search or arrest, the county attorney shall give the notice required by this subdivision to (1) the landlord of the property or the fee owner identified in the records of the county assessor, and (2) the agent authorized by the owner to accept service pursuant to section 504.22. The notice is not required during an ongoing investigation. The notice shall state what has been seized and specify the applicable duties and penalties under this subdivision. The notice shall state that the landlord who chooses to assign the right to bring an unlawful detainer action retains all rights and duties, including removal of a tenant's personal property following issuance of the writ of restitution and delivery of the writ to the sheriff for execution. The notice shall also state that the landlord may contact the county attorney if threatened by the tenant. Notice shall be sent by certified letter, return receipt requested, within 30 days of the seizure. If receipt is not returned, notice shall be given in the manner provided by law for service of summons in a civil action.

(b) Within 15 days after notice of the first occurrence, the landlord shall bring, or assign to the county attorney of the county in which the real property is located, the right to bring an unlawful detainer action against the tenant. The assignment must be in writing on a form prepared by the county attorney. Should the landlord choose to assign the right to bring an unlawful detainer action, the assignment shall be limited to those rights and duties up to and including delivery of the writ of restitution to the sheriff for execution.

(c) Upon notice of a second occurrence involving the same tenant, the property is subject to forfeiture under sections 609.531, 609.5311, 609.5313, and 609.5315, unless an unlawful detainer action has been commenced as provided in paragraph (b) or the right to bring an unlawful detainer action was assigned to the county attorney as provided in paragraph (b). If the right has been assigned and not previously exercised, or if the county attorney requests an assignment and the landlord makes an assignment, the county attorney may bring an unlawful detainer action rather than an action for forfeiture.

**Subd. 2. Additional remedies.** Nothing in subdivision 1 prevents the county attorney from proceeding under section 609.5311 whenever that section applies.

**Subd. 3. Defenses.** It is a defense against a proceeding under subdivision 1, paragraph (b), that the tenant had no knowledge or reason to know of the presence of the contraband or controlled substance or could not prevent its being brought onto the property.

It is a defense against a proceeding under subdivision 1, paragraph (c), that the landlord made every reasonable attempt to evict a tenant or to assign the county attorney the right to bring an unlawful detainer action against the tenant, or that the landlord did not receive notice of the seizure.

Subd. 4. **Limitations.** This section shall not apply if the retail value of the contraband or controlled substance is less than the amount specified in section 609.5311, subdivision 3, paragraph (b).

**History:** 1989 c 305 s 7

#### **609.546 MOTOR VEHICLE TAMPERING.**

A person is guilty of a misdemeanor who intentionally:

- (1) rides in or on a motor vehicle knowing that the vehicle was taken and is being driven by another without the owner's permission; or
- (2) tampers with or enters into or on a motor vehicle without the owner's permission.

**History:** 1989 c 290 art 7 s 9

#### **609.55 [Repealed, 1989 c 290 art 7 s 14]**

#### **609.552 UNAUTHORIZED RELEASE OF ANIMALS.**

A person who intentionally and without permission releases an animal lawfully confined for science, research, commerce, or education is guilty of a misdemeanor. A second or subsequent offense by the same person is a gross misdemeanor.

**History:** 1989 c 55 s 2

#### **609.576 NEGLIGENCE FIRES; DANGEROUS SMOKING.**

Subdivision 1. **Negligent fire resulting in injury or property damage.** Whoever is culpably negligent in causing a fire to burn or get out of control thereby causing damage or injury to another, and as a result thereof:

(a) a human being is injured and great bodily harm incurred, is guilty of a crime and may be sentenced to imprisonment of not more than five years or to a fine of not more than \$10,000, or both; or

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

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

(2) to imprisonment for not more than one year, or to a fine of \$3,000 or both, if the value of the property damaged is at least \$300 but is less than \$10,000;

(3) to imprisonment for not less than 90 days nor more than three years, or to a fine of not more than \$5,000, or both, if the value of the property damaged is \$10,000 or more.

Subd. 2. **Dangerous smoking.** A person is guilty of a misdemeanor if the person smokes in the presence of explosives or inflammable materials. If a person violates this subdivision and knows that doing so creates a risk of death or bodily harm or serious property damage, the person is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

**History:** 1989 c 5 s 8; 1989 c 290 art 6 s 20

#### **609.595 DAMAGE TO PROPERTY.**

*[For text of subd 1, see M.S.1988]*

Subd. 1a. **Criminal damage to property in the second degree.** (a) Whoever intentionally causes damage described in subdivision 2, paragraph (a), because of the property owner's or another's actual or perceived race, color, religion, sex, sexual orientation, disability as defined in section 363.01, age, or national origin is guilty of a felony and may be sentenced to imprisonment for not more than one year and a day or to payment of a fine of not more than \$3,000, or both.

(b) In any prosecution under paragraph (a), the value of property damaged by the defendant in violation of that paragraph 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. 2. Criminal damage to property in the third degree.** (a) Except as otherwise provided in subdivision 1a, 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) Whoever intentionally causes damage to another person's physical property without the other person's consent because of the property owner's or another's actual or perceived race, color, religion, sex, sexual orientation, disability as defined in section 363.01, age, or national origin 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 not more than \$250.

(c) In any prosecution under paragraph (a), the value of property damaged by the defendant in violation of that paragraph 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 fourth degree.** Whoever intentionally causes damage described in subdivision 2 under any other circumstances is guilty of a misdemeanor.

**History:** 1989 c 261 s 2-4

**609.60** [Repealed, 1989 c 5 s 18]

### **609.605 TRESPASS.**

**Subdivision 1. Misdemeanor.** (a) The following terms have the meanings given them for purposes of this section.

(i) "Premises" means real property and any appurtenant building or structure.

(ii) "Dwelling" means the building or part of a building used by an individual as a place of residence on either a full-time or a part-time basis. A dwelling may be part of a multidwelling or multipurpose building, or a manufactured home as defined in section 168.011, subdivision 8.

(b) A person is guilty of a misdemeanor if the person intentionally:

(1) permits domestic animals or fowls under the actor's control to go on the land of another within a city;

(2) interferes unlawfully with a 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;

(3) trespasses on the premises of another and, without claim of right, refuses to depart from the premises on demand of the lawful possessor;

(4) 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;

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

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

(7) 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 is without claim of right to the property or consent of one with authority to consent.

**Subd. 2. Gross misdemeanor.** Whoever trespasses upon the grounds of a facility providing emergency shelter services for battered women, as defined under section 611A.31, subdivision 3, or of a facility providing transitional housing for battered women and their children, without claim of right or consent of one who has right to give consent, and refuses to depart from the grounds of the facility on demand of one who has right to give consent, is guilty of a gross misdemeanor.

**Subd. 3. Trespasses motivated by bias.** Whoever commits an act described in subdivision 1, clause (13), because of the property owner's or another's actual or perceived race, color, religion, sex, sexual orientation, disability as defined in section 363.01, age, or national origin 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:** 1989 c 5 s 9; 1989 c 261 s 5

## **609.62 DEFEATING SECURITY ON PERSONALTY.**

*[For text of subd 1, see M.S.1988]*

**Subd. 2. Acts constituting.** Whoever, with intent to defraud, does any of the following may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than \$6,000, or both:

(1) conceals, removes, or transfers any personal property in which the actor knows that another has a security interest; or

(2) being an obligor and knowing the location of the property refuses to disclose the same to an obligee entitled to possession thereof.

**History:** 1989 c 290 art 6 s 21

## **609.631 CHECK FORGERY; OFFERING A FORGED CHECK.**

*[For text of subd 1, see M.S.1988]*

**Subd. 2. Check forgery; elements.** A person is guilty of check forgery and may be sentenced under subdivision 4 if the person, with intent to defraud, does any of the following:

(1) 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; or

(2) falsely endorses or alters a check so that it purports to have been endorsed by another.

*[For text of subds 3 and 4, see M.S.1988]*

**History:** 1989 c 290 art 7 s 10

## **609.651 STATE LOTTERY FRAUD.**

**Subdivision 1. Felony.** A person is guilty of a felony and may be sentenced under subdivision 4 if the person does any of the following with intent to defraud the state lottery:

(1) alters or counterfeits a state lottery ticket;

(2) knowingly presents an altered or counterfeited state lottery ticket for payment;

(3) knowingly transfers an altered or counterfeited state lottery ticket to another person; or

(4) otherwise claims a lottery prize by means of fraud, deceit, or misrepresentation.

**Subd. 2. Computer access.** A person is guilty of a felony and may be sentenced under subdivision 4 if the person:

(1) obtains access to a computer data base maintained by the director without the specific authorization of the director;

(2) obtains access to a computer data base maintained by a person under contract with the director to maintain the data base without the specific authorization of the director and the person maintaining the data base.

**Subd. 3. False statements.** A person is guilty of a felony and may be sentenced under subdivision 4 if the person:

(1) makes a materially false or misleading statement, or a material omission, in a record required to be submitted under chapter 349A; or

(2) makes a materially false or misleading statement, or a material omission, in information submitted to the director of the state lottery in a lottery retailer's application or a document related to a bid.

**Subd. 4. Penalty.** (a) A person who violates subdivision 1 or 2 may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$50,000, or both.

(b) A person who violates subdivision 1 or 2 and defrauds the state lottery of \$35,000 or more may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than \$100,000, or both.

(c) A person who violates subdivision 3 may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than \$25,000, or both.

**History:** 1989 c 334 art 3 s 16; 1989 c 356 s 36

## **609.671 ENVIRONMENT; CRIMINAL PENALTIES.**

*[For text of subs 1 to 9, see M.S.1988]*

**Subd. 10. Failure to report a release of a hazardous substance or an extremely hazardous substance.** (a) A person is, upon conviction, subject to a fine of up to \$25,000 or imprisonment for up to two years, or both, who:

(1) is required to report the release of a hazardous substance under United States Code, title 42, section 9603, or the release of an extremely hazardous substance under United States Code, title 42, section 11004;

(2) knows or has reason to know that a hazardous substance or an extremely hazardous substance has been released; and

(3) fails to provide immediate notification of the release of a reportable quantity of a hazardous substance or an extremely hazardous substance to the state emergency response center, or a firefighting or law enforcement organization.

(b) For a second or subsequent conviction under this subdivision, the violator is subject to a fine of up to \$50,000 or imprisonment for not more than five years, or both.

(c) For purposes of this subdivision, a "hazardous substance" means a substance on the list established under United States Code, title 42, section 9602.

(d) For purposes of this subdivision, an "extremely hazardous substance" means a substance on the list established under United States Code, title 42, section 11002.

(e) For purposes of this subdivision, a "reportable quantity" means a quantity that must be reported under United States Code, title 42, section 9602 or 11002.

**Subd. 11. Infectious waste.** A person who knowingly, or with reason to know, disposes of or arranges for the disposal of infectious waste as defined in section 116.76 at a location or in a manner that is prohibited by section 116.78 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 \$10,000, or both. A person convicted a second or subsequent time under this subdivision 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 \$25,000, or both.

**History:** 1989 c 315 s 11; 1989 c 337 s 12

**609.681 UNLAWFUL SMOKING.**

A person is guilty of a misdemeanor if the person intentionally 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.

**History:** 1989 c 5 s 10

**609.685 SALE OF TOBACCO TO CHILDREN.**

*[For text of subd 1, see M.S.1988]*

Subd. 1a. **Gross misdemeanor.** (a) Whoever sells tobacco to a person under the age of 18 years is guilty of a gross misdemeanor.

(b) It is an affirmative defense to a charge under this subdivision if the defendant proves by a preponderance of the evidence that the defendant reasonably and in good faith relied on proof of age as described in section 340A.503, subdivision 6.

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

*[For text of subds 3 and 4, see M.S.1988]*

**History:** 1989 c 290 art 3 s 33,34

**609.746 INTERFERENCE WITH PRIVACY.**

*[For text of subds 1 and 2, see M.S.1988]*

Subd. 3. **Intrusion on privacy; aggravated violation.** Whoever commits an act described in subdivision 2 because of the victim's or another's actual or perceived race, color, religion, sex, sexual orientation, disability as defined in section 363.01, age, or national origin, 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:** 1989 c 261 s 6

**609.75 GAMBLING; DEFINITIONS.**

*[For text of subds 1 and 2, see M.S.1988]*

Subd. 3. **What are not bets.** The following are not bets:

(1) A contract to insure, indemnify, guarantee or otherwise compensate another for a harm or loss sustained, even though the loss depends upon chance.

(2) A contract for the purchase or sale at a future date of securities or other commodities.

(3) Offers of purses, prizes or premiums to the actual contestants in any bona fide contest for the determination of skill, speed, strength, endurance, or quality or to the bona fide owners of animals or other property entered in such a contest.

(4) The game of bingo when conducted in compliance with sections 349.11 to 349.23.

(5) A private social bet not part of or incidental to organized, commercialized, or systematic gambling.

(6) The operation of equipment or the conduct of a raffle under sections 349.11 to 349.22, by an organization licensed by the gambling control board or an organization exempt from licensing under section 349.214.

(7) Pari-mutuel betting on horse racing when the betting is conducted under chapter 240.

(8) The purchase and sale of state lottery tickets under chapter 349A.

*[For text of subds 4 to 7, see M.S.1988]*

**History:** 1989 c 334 art 6 s 8

**609.76 OTHER ACTS RELATING TO GAMBLING.**

Subdivision 1. **Gross misdemeanors.** Whoever does any of the following may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both:

- (1) maintains or operates a gambling place or operates a bucket shop;
- (2) intentionally participates in the income of a gambling place or bucket shop;
- (3) conducts a lottery, or, with intent to conduct a lottery, possesses facilities for doing so;
- (4) sets up for use for the purpose of gambling, or collects the proceeds of, any gambling device or bucket shop;
- (5) with intent that it shall be so used, manufactures, sells or offers for sale, in whole or any part thereof, any gambling device including those defined in section 349.30, subdivision 2, and any facility for conducting a lottery, except as provided by section 349.40;
- (6) receives, records, or forwards bets or offers to bet or, with intent to receive, record, or forward bets or offers to bet, possesses facilities to do so; or
- (7) pays any compensation for game credits earned on or otherwise rewards players of video games of chance as defined under section 349.50, subdivision 8.

*[For text of subd 2, see M.S.1988]*

**History:** 1989 c 334 art 6 s 9

**609.761 OPERATIONS PERMITTED.**

Subdivision 1. **Lawful gambling.** Notwithstanding sections 609.755 and 609.76, an organization may conduct lawful gambling as defined in section 349.12, if authorized under chapter 349, and a person may manufacture, sell, or offer for sale a gambling device to an organization authorized under chapter 349 to conduct lawful gambling, and pari-mutuel betting on horse racing may be conducted under chapter 240.

Subd. 2. **State lottery.** Sections 609.755 and 609.76 do not prohibit the operation of the state lottery or the sale, possession, or purchase of tickets for the state lottery under chapter 349A.

**History:** 1989 c 334 art 6 s 10

**609.79 OBSCENE OR HARASSING TELEPHONE CALLS.**

*[For text of subd 1, see M.S.1988]*

Subd. 1a. **Obscene or harassing telephone calls; aggravated violations.** (a) Whoever commits an act described in subdivision 1 because of the victim's or another's actual or perceived race, color, religion, sex, sexual orientation, disability as defined in section 363.01, age, or national origin 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.

(b) Whoever commits an act described in subdivision 1 by falsely impersonating another with intent to harass, abuse, or threaten that person or another, 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.

*[For text of subd 2, see M.S.1988]*

**History:** 1989 c 261 s 7

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

Subdivision 1. **Misdemeanors.** 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.

**Subd. 2. Gross misdemeanors.** (a) Whoever commits an act described in subdivision 1, clause (3), because of the victim's or another's actual or perceived race, color, religion, sex, sexual orientation, disability as defined in section 363.01, age, or national origin 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.

(b) Whoever commits an act described in subdivision 1, clause (3), by falsely impersonating another with intent to harass, abuse, or threaten that person or another, 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:** 1989 c 261 s 8

#### **609.85 CRIMES AGAINST RAILROAD EMPLOYEES AND PROPERTY; PENALTY.**

**Subdivision 1. Intent to cause derailment.** Whoever throws or deposits any type of debris, waste material, or other obstruction on any railroad track or whoever causes damage or causes another person to damage, tamper, change or destroy any railroad track, switch, bridge, trestle, tunnel, signal or moving equipment used in providing rail services, with intention to cause injury, accident or derailment, is guilty of a felony.

**Subd. 2. Foreseeable risk.** Whoever intentionally throws or deposits any type of debris, waste material, or other obstruction on any railroad track or whoever intentionally causes damage or causes another person to damage, tamper, change or destroy any railroad track, switch, bridge, trestle, tunnel, signal or moving equipment used in providing rail services, which creates a reasonably foreseeable risk of any injury, accident or derailment, is guilty of a gross misdemeanor.

**Subd. 3. Shooting at train.** Whoever intentionally shoots a firearm at any portion of a railroad train, car, caboose, engine or moving equipment so as to endanger the safety of another is guilty of a gross misdemeanor.

**Subd. 4. Throwing objects at train.** Whoever intentionally throws, shoots or propels any stone, brick or other missile at any railroad train, car, caboose, engine or moving equipment, so as to endanger the safety of another is guilty of a gross misdemeanor.

**Subd. 5. Placing obstruction on track.** Whoever places an obstruction on a railroad track is guilty of a misdemeanor.

**Subd. 6. Allowing animals on track.** Whoever intentionally permits animals under the person's control to trespass on a railroad track is guilty of a misdemeanor.

**History:** 1989 c 5 s 11

#### **609.851 FALSE TRAFFIC SIGNAL.**

**Subdivision 1. Misdemeanor.** A person is guilty of a misdemeanor if the person exhibits a false light or signal or interferes with a light, signal, or sign controlling or guiding traffic on a highway, railroad track, navigable waters, or in the air.

**Subd. 2. Felony.** A person who violates subdivision 1 and knows that doing so creates a risk of death or bodily harm or serious property damage is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

**History:** 1989 c 5 s 12

**609.855 CRIMES AGAINST TRANSIT PROVIDERS AND OPERATORS.**

Subdivision 1. **Unlawfully obtaining services.** Whoever intentionally obtains or attempts to obtain service from a provider of regular route transit as defined in section 174.22, subdivision 8, or from a public conveyance, without making the required fare deposit or otherwise obtaining the consent of the transit operator or other authorized transit representative is guilty of unlawfully obtaining services and may be sentenced as provided in subdivision 4.

*[For text of subd 2, see M.S.1988]*

Subd. 3. **Prohibited activities.** Whoever, while riding in a vehicle providing regular route transit service:

(1) operates a radio, television, tape player, electronic musical instrument, or other electronic device, other than a watch, which amplifies music, unless the sound emanates only from earphones or headphones and except that vehicle operators may operate electronic equipment for official business;

(2) smokes or carries lighted smoking paraphernalia;

(3) consumes food or beverages, except when authorized by the operator or other official of the transit system;

(4) throws or deposits litter;

(5) carries or is in control of an animal without the operator's consent; or

(6) acts in any other manner which disturbs the peace and quiet of another person; is guilty of disruptive behavior and may be sentenced as provided in subdivision 4.

*[For text of subd 4, see M.S.1988]*

**History:** 1989 c 5 s 13,14

**609.86 COMMERCIAL BRIBERY.**

*[For text of subds 1 and 2, see M.S.1988]*

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

(1) to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if the value of the benefit, consideration, compensation or reward is greater than \$500;

(2) in all other cases where the value of the benefit, consideration, compensation or reward is \$500 or less, to imprisonment for not more than 90 days or to payment of a fine of not more than \$700; provided, however, in any prosecution of the value of the benefit, consideration, compensation or reward received by the defendant 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, or all of the offenses aggregated under this clause.

**History:** 1989 c 290 art 6 s 22

**609.87 COMPUTER CRIME; DEFINITIONS.**

Subdivision 1. **Applicability.** For purposes of sections 609.87 to 609.89, and section 609.891, the terms defined in this section have the meanings given them.

*[For text of subds 2 to 10, see M.S.1988]*

Subd. 11. **Computer security system.** "Computer security system" means a software program or computer device that:

(1) is intended to protect the confidentiality and secrecy of data and information stored in or accessible through the computer system; and

(2) displays a conspicuous warning to a user that the user is entering a secure system or requires a person seeking access to knowingly respond by use of an authorized code to the program or device in order to gain access.

**Subd. 12. Destructive computer program.** "Destructive computer program" means a computer program that performs a destructive function or produces a destructive product. A program performs a destructive function if it degrades performance of the affected computer, associated peripherals or a computer program; disables the computer, associated peripherals or a computer program; or destroys or alters computer programs or data. A program produces a destructive product if it produces unauthorized data, including data that make computer memory space unavailable; results in the unauthorized alteration of data or computer programs; or produces a destructive computer program, including a self-replicating computer program.

**History:** 1989 c 95 s 2,3; 1989 c 159 s 1

## **609.88 COMPUTER DAMAGE.**

**Subdivision 1. Acts.** Whoever does any of the following is guilty of computer damage and may be sentenced as provided in subdivision 2:

(a) Intentionally and without authorization damages or destroys any computer, computer system, computer network, computer software, or any other property specifically defined in section 609.87, subdivision 6;

(b) Intentionally and without authorization and with intent to injure or defraud alters any computer, computer system, computer network, computer software, or any other property specifically defined in section 609.87, subdivision 6; or

(c) Distributes a destructive computer program, without authorization and with intent to damage or destroy any computer, computer system, computer network, computer software, or any other property specifically defined in section 609.87, subdivision 6.

*[For text of subd 2, see M.S.1988]*

**History:** 1989 c 159 s 2

## **609.891 UNAUTHORIZED COMPUTER ACCESS.**

**Subdivision 1. Crime.** A person is guilty of unauthorized computer access if the person intentionally and without authority attempts to or does penetrate a computer security system.

**Subd. 2. Felony.** (a) A person who violates subdivision 1 in a manner that creates a grave risk of causing the death of a person is guilty of a felony and may be sentenced to a term of imprisonment of not more than ten years or to payment of a fine of not more than \$20,000, or both.

(b) A person who is convicted of a second or subsequent gross misdemeanor violation of subdivision 1 is guilty of a felony and may be sentenced under paragraph (a).

**Subd. 3. Gross misdemeanor.** (a) A person who violates subdivision 1 in a manner that creates a risk to public health and safety is guilty of a gross misdemeanor and may be sentenced to imprisonment for a term of not more than one year or to payment of a fine of not more than \$3,000, or both.

(b) A person who violates subdivision 1 in a manner that compromises the security of data that are protected under section 609.52, subdivision 2, clause (8), or are not public data as defined in section 13.02, subdivision 8a, is guilty of a gross misdemeanor and may be sentenced under paragraph (a).

(c) A person who is convicted of a second or subsequent misdemeanor violation of subdivision 1 within five years is guilty of a gross misdemeanor and may be sentenced under paragraph (a).

Subd. 4. **Misdemeanor.** A person who violates subdivision 1 is guilty of a misdemeanor and may be sentenced to imprisonment for a term of not more than 90 days or to payment of a fine of not more than \$700, or both.

**History:** 1989 c 95 s 4

### 609.901 CONSTRUCTION OF RACKETEERING PROVISIONS.

Sections 609.902 to 609.912 shall be liberally construed to achieve their remedial purposes of curtailing racketeering activity and controlled substance crime and lessening their economic and political power in Minnesota.

**History:** 1989 c 286 s 5

### 609.902 DEFINITIONS.

Subdivision 1. **Definitions.** As used in sections 609.901 to 609.912, the following terms have the meanings given them.

Subd. 2. **Criminal proceeding.** "Criminal proceeding" means a criminal proceeding begun under section 609.903.

Subd. 3. **Enterprise.** "Enterprise" means a sole proprietorship, partnership, corporation, trust, or other legal entity, or a union, governmental entity, association, or group of persons, associated in fact although not a legal entity, and includes illicit as well as legitimate enterprises.

Subd. 4. **Criminal act.** "Criminal act" means conduct constituting, or a conspiracy or attempt to commit, a felony violation of chapter 152, or a felony violation of section 297D.09; 299F.79; 299F.80; 299F.811; 299F.815; 299F.82; 609.185; 609.19; 609.195; 609.20; 609.205; 609.221; 609.222; 609.223; 609.2231; 609.228; 609.235; 609.245; 609.25; 609.27; 609.322; 609.323; 609.342; 609.343; 609.344; 609.345; 609.42; 609.48; 609.485; 609.495; 609.496; 609.497; 609.498; 609.52, subdivision 3, clause (3)(b), or clause (4)(e) or (f); 609.53; 609.561; 609.562; 609.582, subdivision 1 or 2; 609.67; 609.687; 609.713; 609.86; 624.713; or 624.74.

Subd. 5. **Participation in a pattern of criminal activity.** A person "participates in a pattern of criminal activity" when the person is a principal with respect to conduct constituting at least three of the criminal acts included in the pattern and two of the acts constitute felonies other than conspiracy.

Subd. 6. **Pattern of criminal activity.** "Pattern of criminal activity" means conduct constituting three or more criminal acts that:

- (1) were committed within ten years of the commencement of the criminal proceeding;
- (2) are neither isolated incidents, nor so closely related and connected in point of time or circumstance of commission as to constitute a single criminal offense; and
- (3) were either: (i) related to one another through a common scheme or plan or a shared criminal purpose or (ii) committed, solicited, requested, importuned, or intentionally aided by persons acting with the mental culpability required for the commission of the criminal acts and associated with or in an enterprise involved in those activities.

Subd. 7. **Personal property.** "Personal property" includes personal property, an interest in personal property, or a right, including a bank account, debt, corporate stock, patent, or copyright. Personal property and a beneficial interest in personal property are deemed to be located where the trustee is, the personal property is, or the instrument evidencing the right is.

Subd. 8. **Principal.** "Principal" means a person who personally engages in conduct constituting a violation or who is criminally liable under section 609.05 for the conduct of another constituting a violation.

Subd. 9. **Prosecuting authority.** "Prosecuting authority" means the office of a county attorney or office of the attorney general.

Subd. 10. **Real property.** "Real property" means any real property or an interest

in real property, including a lease of, or mortgage on, real property. A beneficial interest in real property is deemed to be located where the real property is located.

**History:** 1989 c 286 s 6

### **609.903 RACKETEERING.**

**Subdivision 1. Crime.** A person is guilty of racketeering if the person:

(1) is employed by or associated with an enterprise and intentionally conducts or participates in the affairs of the enterprise by participating in a pattern of criminal activity;

(2) acquires or maintains an interest in or control of an enterprise, or an interest in real property, by participating in a pattern of criminal activity; or

(3) participates in a pattern of criminal activity and knowingly invests any proceeds derived from that conduct, or any proceeds derived from the investment or use of those proceeds, in an enterprise or in real property.

**Subd. 2. Permitted activities.** For purposes of this section, it is not unlawful to:

(1) purchase securities on the open market with intent to make an investment, and without the intent of controlling or participating in the control of the issuer, or of assisting another to do so, if the securities of the issuer held by the purchaser, the members of the purchaser's immediate family, and the purchaser's accomplices in a pattern of criminal activity do not amount in the aggregate to five percent of the outstanding securities of any one class and do not confer, either in the law or in fact, the power to elect one or more directors of the issuer;

(2) make a deposit in an account maintained in a savings and loan association, or a deposit in any other financial institution, that creates an ownership interest in that association or institution; or

(3) purchase nonvoting shares in a limited partnership, with intent to make an investment, and without the intent of controlling or participating in the control of the partnership.

**History:** 1989 c 286 s 7

### **609.904 CRIMINAL PENALTIES.**

**Subdivision 1. Penalty.** A person convicted of violating section 609.903 may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than \$1,000,000, or both.

**Subd. 2. Fine.** In lieu of the fine authorized by subdivision 1, a person convicted of violating section 609.903, who received economic gain from the act or caused economic loss or personal injury during the act, may be sentenced to pay a fine calculated under this subdivision. The maximum fine is three times the gross value gained or three times the gross loss caused, whichever is greater, plus court costs and the costs of investigation and prosecution reasonably incurred, less the value of any property forfeited under section 609.905. The district court shall hold a hearing to determine the amount of the fine authorized by this subdivision. In imposing a fine, the court shall consider the seriousness of the conduct, whether the amount of the fine is disproportionate to the conduct in which the person engaged, its impact on victims and any legitimate enterprise involved in that conduct, as well as the economic circumstances of the convicted person, including the effect of the imposition of the fine on the person's immediate family. For purposes of this subdivision, loss does not include pain and suffering.

**Subd. 3. Injunctive relief.** After the entry of a judgment that includes a fine or an order of criminal forfeiture under section 609.905, the district court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take other action, including the appointment of a receiver, that the court deems proper to protect the interests of the prosecuting authority in collecting the money or forfeiture or an innocent party.

Subd. 4. **Disposition of fine proceeds.** The court shall apply fines collected under this section to the costs and expenses of investigation and prosecution, including costs of resources and personnel incurred in investigation and prosecution and the balance, if any, as provided under section 574.34.

Subd. 5. **Restitution.** In a settlement discussion or before the imposition of a sentence under this section, the prosecuting authority shall vigorously advocate full and complete restitution to an aggrieved person. Before the acceptance of a plea or after a verdict but before the imposition of a sentence under this section, the district court must ensure that full and complete restitution has been duly effected or that a satisfactory explanation of why it is impractical has been made to the court.

**History:** 1989 c 286 s 8

## **609.905 CRIMINAL FORFEITURE.**

Subdivision 1. **Forfeiture.** When a person is convicted of violating section 609.903, the court may order the person to forfeit to the prosecuting authority any real or personal property subject to forfeiture under this section. Property subject to forfeiture is real and personal property that was used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of section 609.903. A court may not order the forfeiture of property that has been used to pay reasonable attorney fees in connection with a criminal proceeding under section 609.903. The term includes property constituting an interest in or means of control or influence over the enterprise involved in the violation of section 609.902 and any property constituting proceeds derived from the violation of section 609.902, including:

(1) a position, office, appointment, tenure, commission, or employment contract that was acquired or maintained in violation of section 609.903 or through which the person conducted or participated in the conduct of the affairs of an enterprise in violation of section 609.903 or that afforded the person a source of influence or control over the affairs of an enterprise that the person exercised in violation of section 609.903;

(2) any compensation, right, or benefit derived from a position, office, appointment, tenure, commission, or employment contract described in this section that accrued to the person during the period of conduct in violation of section 609.903;

(3) any interest in, security of, claim against, or property or contractual right affording the person a source of influence or control over the affairs of an enterprise that the person exercised in violation of section 609.903; and

(4) any amount payable or paid under any contract for goods or services that was awarded or performed in violation of section 609.903.

Subd. 2. **Other property of defendant.** The district court may order criminal forfeiture of any other property of the defendant up to the value of the property that is unreachable if any property subject to criminal forfeiture under subdivision 1:

(1) cannot be located;

(2) has been sold to a bona fide purchaser for value;

(3) has been placed beyond the jurisdiction of the court;

(4) has been substantially diminished in value by the conduct of the defendant;

(5) has been commingled with other property that cannot be divided without difficulty or undue injury to innocent persons; or

(6) is otherwise unreachable without undue injury to an innocent person.

**History:** 1989 c 286 s 9

## **609.907 PRESERVATION OF PROPERTY SUBJECT TO FORFEITURE.**

Subdivision 1. **Temporary restraining order.** (a) When an indictment or complaint is filed under section 609.903, the district court may take any of the following actions if the prosecuting authority shows by a preponderance of the evidence that the action is necessary to preserve the reachability of property subject to criminal forfeiture:

- (1) enter a restraining order or injunction;
- (2) require the execution of a satisfactory performance bond; or
- (3) take any other reasonable action, including the appointment of a receiver.

(b) Before granting the remedies provided by this subdivision, the court shall hold a hearing, after notice to all affected persons, giving them a reasonable opportunity to respond. At the hearing, the rules of evidence do not apply.

**Subd. 2. Preindictment order.** (a) If no indictment or complaint has been filed, the district court may take actions provided in subdivision 1 if the prosecuting authority makes the showing required by subdivision 1 and also shows that:

(1) there is probable cause to believe that the property with respect to which the order is sought would, in the event of a conviction, be subject to criminal forfeiture under section 609.904; and

(2) the requested order would not result in substantial and irreparable harm or injury to the party against whom the order is to be entered, or to other affected persons, that outweighs the need to preserve the reachability of the property.

(b) An order entered under this subdivision is effective for a maximum of 90 days unless:

(1) extended by the district court for good cause; or

(2) terminated by the filing of an indictment or complaint alleging that the property is subject to forfeiture.

**Subd. 3. Restraining order without notice.** (a) On application by the prosecuting authority, the district court may grant, without notice to any party, a temporary restraining order to preserve the reachability of property subject to criminal forfeiture under section 609.905 if:

(1) an indictment or complaint alleging that property is subject to criminal forfeiture has been filed or the district court determines that there is probable cause to believe that property with respect to which the order is sought would, in the event of a conviction, be subject to criminal forfeiture under section 609.905;

(2) the property is in the possession or control of the party against whom the order is to be entered; and

(3) the district court makes a specific finding in writing that the property can be concealed, disposed of, or placed beyond the jurisdiction of the court before any party may be heard in opposition.

(b) A temporary restraining order granted without notice to any party under this subdivision expires within the time fixed by the court, not to exceed ten days. The court may extend the order for good cause shown, or if the party against whom it is entered consents to an extension. After a temporary restraining order is granted under this subdivision, a hearing concerning the entry of an order under this section shall be held at the earliest practicable time and before the temporary order expires.

**History:** 1989 c 286 s 10

## **609.908 DISPOSITION OF FORFEITURE PROCEEDS.**

**Subdivision 1. Disposition alternatives.** After making due provisions for the rights of innocent persons, the prosecuting authority shall, as soon as feasible, dispose of all property ordered forfeited under section 609.905 by:

- (1) public sale;
- (2) transfer to a state governmental agency for official use;
- (3) sale or transfer to an innocent person; or
- (4) destruction, if the property is not needed for evidence in a pending criminal or civil proceeding.

**Subd. 2. No reversion to defendant.** An interest in personal or real property not exercisable by or transferable for value by the prosecuting authority expires and does not revert to the defendant. Forfeited property may not be purchased by the defendant,

relative of the defendant, or any person acting in concert with the defendant or on the defendant's behalf.

**Subd. 3. Sale proceeds.** The proceeds of a sale or other disposition of forfeited property under this section whether by final judgment, settlement, or otherwise, must be applied as follows:

(1) to the fees and costs of the forfeiture and sale including expenses of seizure, maintenance, and custody of the property pending its disposition, advertising, and court costs;

(2) to all costs and expenses of investigation and prosecution including costs of resources and personnel incurred in investigation and prosecution; and

(3) the balance to the appropriate agencies under section 609.5315, subdivision 5.

**History:** 1989 c 286 s 11

### **609.909 ADDITIONAL RELIEF AVAILABLE.**

With respect to property ordered forfeited, fine imposed, or civil penalty imposed in a criminal proceeding under section 609.903 or civil proceeding under section 609.911, the district court may, on petition of the prosecuting authority or any other person within 60 days of a final order:

(1) authorize the compromise of claims;

(2) award compensation to persons providing information that results in a forfeiture under section 609.905;

(3) grant petitions for mitigation or remission of forfeiture or fines;

(4) restore forfeited property or imposed fines to victims of a violation of section 609.903; and

(5) take any other action to protect the rights of innocent persons that is in the interest of justice and is consistent with the purposes of sections 609.901 to 609.912.

**History:** 1989 c 286 s 12

### **609.910 RELATION TO OTHER SANCTIONS.**

**Subdivision 1. Remedy not exclusive.** Except as provided in this section, a criminal penalty, forfeiture, or fine imposed under section 609.903, 609.904, 609.905, or 609.911 does not preclude the application of any other criminal penalty or civil remedy for the separate criminal acts. A prosecuting authority may not file a civil action under section 609.911 if any prosecuting authority has filed a previous criminal proceeding under section 609.903 against the same person based on the same criminal conduct and the charges were dismissed after jeopardy attached or the person acquitted.

**Subd. 2. Restitution.** A restitution payment to a victim under section 609.904 does not limit the liability for damages in a civil action or proceeding for an amount greater than the restitution payment.

**History:** 1989 c 286 s 13

### **609.911 CIVIL REMEDIES.**

**Subdivision 1. Relief available.** The prosecuting authority may institute civil proceedings in district court against a person seeking relief from conduct constituting a violation of section 609.903 or to prevent or restrain future violations. If the prosecuting authority proves the alleged violation by a preponderance of the evidence, and the court has made due provision for the rights of innocent persons, the court may:

(1) order a defendant to divest an interest in an enterprise or in real property;

(2) impose reasonable restrictions on the future activities or investments of a defendant, including prohibiting a defendant from engaging in the same type of endeavor as the enterprise in which the defendant was engaged in violation of section 609.903;



(3) order the dissolution or reorganization of an enterprise;

(4) order the suspension or revocation of a license, permit, or prior approval granted to an enterprise by a state agency; or

(5) order the surrender of the charter of a corporation organized under Minnesota law, dissolution of an enterprise, or the revocation of a certificate authorizing a foreign corporation to conduct business in Minnesota, if the court finds that:

(i) the board of directors or a managerial agent acting on behalf of the corporation, in conducting the affairs of the corporation, authorized or engaged in conduct prohibited by section 609.903; and

(ii) the public interest in preventing future criminal conduct requires the action.

**Subd. 2. Injunctive relief.** In a proceeding under this section, the court may grant injunctive relief.

**Subd. 3. Civil penalty.** The prosecuting authority may institute proceedings against an enterprise or an individual to recover a civil penalty. The penalty may be imposed in the discretion of the district court for conduct constituting a violation of section 609.903. The civil penalty may not exceed \$1,000,000 less a fine imposed under section 609.903. Penalties collected under this section must be applied to the costs and expenses of investigation and prosecution, including costs of resources and personnel incurred in investigation and prosecution, and the balance, if any, to the state general fund.

**Subd. 4. Attorney fees.** If the district court issues an injunction, or grants other relief under this section, or the prosecuting authority otherwise substantially prevails, the prosecuting authority shall also recover reasonable attorney fees in the trial and appellate courts and costs of investigation and litigation reasonably incurred.

**Subd. 5. Personal jurisdiction.** Personal service of process in a proceeding under this section may be made on any person outside of Minnesota if the person was a principal in any conduct constituting a violation of section 609.903 in this state. The person is deemed to have submitted to the jurisdiction of the courts of this state for the purposes of this section.

**History:** 1989 c 286 s 14

## **609.912 NOTICE TO OTHER PROSECUTING AUTHORITIES.**

When a county attorney begins an investigation involving sections 609.901 to 609.911, the county attorney shall notify the attorney general. When the attorney general begins an investigation involving sections 609.901 to 609.911, the attorney general shall notify the county attorney of each county in which a substantial part of the investigation is likely to be conducted.

**History:** 1989 c 286 s 15