

CHAPTER 609

CRIMINAL CODE

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609.02 DEFINITIONS.

[For text of subs 1 to 15, see M.S.2000]

Subd. 16. **Qualified domestic violence-related offense.** "Qualified domestic violence-related offense" includes the following offenses: sections 518B.01, subdivision 14 (violation of domestic abuse order for protection); 609.221 (first-degree assault); 609.222 (second-degree assault); 609.223 (third-degree assault); 609.2231 (fourth-degree assault); 609.224 (fifth-degree assault); 609.2242 (domestic assault); 609.342 (first-degree criminal sexual conduct); 609.343 (second-degree criminal sexual conduct); 609.344 (third-degree criminal sexual conduct); 609.345 (fourth-degree criminal sexual conduct); 609.377 (malicious punishment of a child); 609.713 (terroristic threats); 609.748, subdivision 6 (violation of harassment restraining order); and 609.749 (harassment/stalking); and similar laws of other states, the United States, the District of Columbia, tribal lands, and United States territories.

History: *1Sp2001 c 8 art 10 s 7*

609.035 CRIME PUNISHABLE UNDER DIFFERENT PROVISIONS.

[For text of subd 1, see M.S.2000]

Subd. 2. (a) When a person is being sentenced for a violation of a provision listed in paragraph (e), the court may sentence the person to a consecutive term of imprisonment for a violation of any other provision listed in paragraph (e), notwithstanding the fact that the offenses arose out of the same course of conduct, subject to the limitation on consecutive sentences contained in section 609.15, subdivision 2, and except as provided in paragraphs (b), (c), and (f) of this subdivision.

(b) When a person is being sentenced for a violation of section 171.09, 171.20, 171.24, or 171.30, the court may not impose a consecutive sentence for another violation of a provision in chapter 171.

(c) When a person is being sentenced for a violation of section 169.791 or 169.797, the court may not impose a consecutive sentence for another violation of a provision of sections 169.79 to 169.7995.

(d) This subdivision does not limit the authority of the court to impose consecutive sentences for crimes arising on different dates or to impose a consecutive sentence

when a person is being sentenced for a crime and is also in violation of the conditions of a stayed or otherwise deferred sentence under section 609.135.

(e) This subdivision applies to misdemeanor and gross misdemeanor violations of the following if the offender has two or more prior impaired driving convictions as defined in section 169A.03 within the past ten years:

- (1) section 169A.20, subdivision 1, driving while impaired;
- (2) section 169A.20, subdivision 2, test refusal;
- (3) section 169.791, failure to provide proof of insurance;
- (4) section 169.797, failure to provide vehicle insurance;
- (5) section 171.09, violation of condition of restricted license;
- (6) section 171.20, subdivision 2, operation after revocation, suspension, cancellation, or disqualification;
- (7) section 171.24, driving without valid license; and
- (8) section 171.30, violation of condition of limited license.

(f) When a court is sentencing an offender for a violation of section 169A.20 and a violation of an offense listed in paragraph (e), and the offender has five or more qualified prior impaired driving incidents, as defined in section 169A.03, within the past ten years, the court shall sentence the offender to serve consecutive sentences for the offenses, notwithstanding the fact that the offenses arose out of the same course of conduct.

[For text of subs 3 to 6, see M.S.2000]

History: 1Sp2001 c 8 art 12 s 16

609.066 AUTHORIZED USE OF DEADLY FORCE BY PEACE OFFICERS.

Subdivision 1. **Deadly force defined.** For the purposes of this section, "deadly force" means force which the actor uses with the purpose of causing, or which the actor should reasonably know creates a substantial risk of causing, death or great bodily harm. The intentional discharge of a firearm, other than a firearm loaded with less lethal munitions and used by a peace officer within the scope of official duties, in the direction of another person, or at a vehicle in which another person is believed to be, constitutes deadly force. "Less lethal munitions" means projectiles which are designed to stun, temporarily incapacitate, or cause temporary discomfort to a person. "Peace officer" has the meaning given in section 626.84, subdivision 1.

[For text of subs 2 and 3, see M.S.2000]

History: 2001 c 127 s 1

609.095 LIMITS OF SENTENCES.

(a) The legislature has the exclusive authority to define crimes and offenses and the range of the sentences or punishments for their violation. No other or different sentence or punishment shall be imposed for the commission of a crime than is authorized by this chapter or other applicable law.

(b) Except as provided in section 152.18 or 609.375, or upon agreement of the parties, a court may not refuse to adjudicate the guilt of a defendant who tenders a guilty plea in accordance with Minnesota Rules of Criminal Procedure, rule 15, or who has been found guilty by a court or jury following a trial.

(c) Paragraph (b) does not supersede Minnesota Rules of Criminal Procedure, rule 26.04.

History: 2001 c 158 s 6

609.101 SURCHARGE ON FINES, ASSESSMENTS; MINIMUM FINES.

Subd. 2. **Minimum fines.** Notwithstanding any other law, when a court sentences a person convicted of violating section 609.221, 609.222, 609.223, 609.2231, 609.224,

609.2242, 609.267, 609.2671, 609.2672, 609.342, 609.343, 609.344, or 609.345, it must impose a fine of not less than 30 percent of the maximum fine authorized by law nor more than the maximum fine authorized by law.

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 section 357.021, subdivision 6, and is in addition to any sentence 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.

Subd. 3. Controlled substance offenses; minimum fines. (a) Notwithstanding any other law, when a court sentences a person convicted of a controlled substance crime under sections 152.021 to 152.025, it must impose a fine of not less than 30 percent of the maximum fine authorized by law nor more than the maximum fine authorized by law.

(b) The minimum fine required by this subdivision is in addition to the surcharge or assessment required by section 357.021, subdivision 6, and is in addition to any sentence of imprisonment or restitution imposed or ordered by the court.

(c) The court shall collect the fine mandated by this subdivision and forward 70 percent of it to a local drug abuse prevention program existing or being implemented in the county in which the crime was committed. The court shall forward the remaining 30 percent to the state treasurer to be credited to the general fund. If more than one drug abuse prevention 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 community in which the crime was committed, the funding needs of the program, the number of peace officers in each community certified to teach the program, and the number of children served by the program in each community. If no drug abuse prevention program serves communities in that county, the court shall forward 100 percent of the fine proceeds to the state treasurer to be credited to the general fund.

(d) The minimum fines required by this subdivision shall be collected as are other fines. Fine proceeds received by a local drug abuse prevention program must be used to support that program, and may be used for salaries of peace officers certified to teach the program. The drug abuse resistance education program must report receipt and use of money generated under this subdivision as prescribed by the drug abuse resistance education advisory council.

(e) As used in this subdivision, "drug abuse prevention program" and "program" include:

(1) the drug abuse resistance education program described in sections 299A.33 and 299A.331; and

(2) any similar drug abuse education and prevention program that includes the following components:

(A) instruction for students enrolled in kindergarten through grade six that is designed to teach students to recognize and resist pressures to experiment with controlled substances and alcohol;

(B) provisions for parental involvement;

(C) classroom instruction by uniformed law enforcement personnel;

(D) the use of positive student leaders to influence younger students not to use drugs; and

(E) an emphasis on activity-oriented techniques designed to encourage student-generated responses to problem-solving situations.

Subd. 4. Minimum fines; other crimes. Notwithstanding any other law:

(1) when a court sentences a person convicted of a felony that is not listed in subdivision 2 or 3, it must impose a fine of not less than 30 percent of the maximum fine authorized by law nor more than the maximum fine authorized by law; and

(2) when a court sentences a person convicted of a gross misdemeanor or misdemeanor that is not listed in subdivision 2, it must impose a fine of not less than 30 percent of the maximum fine authorized by law nor more than the maximum fine authorized by law, unless the fine is set at a lower amount on a uniform fine schedule established by the conference of chief judges in consultation with affected state and local agencies. This schedule shall be promulgated not later than January 1 of each year and shall become effective on August 1 of that year unless the legislature, by law, provides otherwise.

The minimum fine required by this subdivision is in addition to the surcharge or assessment required by section 357.021, subdivision 6; and is in addition to any sentence of imprisonment or restitution imposed or ordered by the court.

The court shall collect the fines mandated in this subdivision and, except for fines for traffic and motor vehicle violations governed by section 169.871 and section 299D.03 and fish and game violations governed by section 97A.065, forward 20 percent of the revenues to the state treasurer for deposit in the general fund.

Subd. 5. Waiver prohibited; reduction and installment payments. (a) The court may not waive payment of the minimum fine required by this section.

(b) If the defendant qualifies for the services of a public defender or the court finds on the record that the convicted person is indigent or that immediate payment of the fine would create undue hardship for the convicted person or that person's immediate family, the court may reduce the amount of the minimum fine to not less than \$50. Additionally, the court may permit the defendant to perform community work service in lieu of a fine.

(c) The court also may authorize payment of the fine in installments.

History: 2001 c 71 s 1-4

609.103 PAYMENT BY CREDIT CARD.

The court may permit the defendant to pay any fine, assessment, surcharge, attorney reimbursement obligation, or restitution obligation by credit card. The discount fees assessed by the credit card company shall be borne by the county, except that in a judicial district under section 480.181, subdivision 1, paragraph (b), the cost shall be borne by the state.

History: 2001 c 78 s 1

609.117 DNA ANALYSIS OF CERTAIN OFFENDERS REQUIRED.

Subdivision 1. Upon sentencing. The court shall order an offender to provide a biological specimen for the purpose of DNA analysis as defined in section 299C.155 when:

(1) the court sentences a person charged with violating or attempting to violate any of the following, and the person is convicted of that offense or of any offense arising out of the same set of circumstances:

- (i) murder under section 609.185, 609.19, or 609.195;
- (ii) manslaughter under section 609.20 or 609.205;
- (iii) assault under section 609.221, 609.222, or 609.223;
- (iv) robbery under section 609.24 or aggravated robbery under section 609.245;
- (v) kidnapping under section 609.25;
- (vi) false imprisonment under section 609.255;
- (vii) criminal sexual conduct under section 609.342, 609.343, 609.344, 609.345, or 609.3451, subdivision 3;
- (viii) incest under section 609.365;
- (ix) burglary under section 609.582, subdivision 1; or
- (x) indecent exposure under section 617.23, subdivision 3;
- (2) the court sentences a person as a patterned sex offender under section 609.108;

or

(3) the juvenile court adjudicates a person a delinquent child who is the subject of a delinquency petition for violating or attempting to violate any of the following, and the delinquency adjudication is based on a violation of one of those sections or of any offense arising out of the same set of circumstances:

- (i) murder under section 609.185, 609.19, or 609.195;
- (ii) manslaughter under section 609.20 or 609.205;
- (iii) assault under section 609.221, 609.222, or 609.223;
- (iv) robbery under section 609.24 or aggravated robbery under section 609.245;
- (v) kidnapping under section 609.25;
- (vi) false imprisonment under section 609.255;
- (vii) criminal sexual conduct under section 609.342, 609.343, 609.344, 609.345, or 609.3451, subdivision 3;
- (viii) incest under section 609.365;
- (ix) burglary under section 609.582, subdivision 1; or
- (x) indecent exposure under section 617.23, subdivision 3.

The biological specimen or the results of the analysis shall be maintained by the bureau of criminal apprehension as provided in section 299C.155.

Subd. 2. Before release. The commissioner of corrections or local corrections authority shall order a person to provide a biological specimen for the purpose of DNA analysis before completion of the person's term of imprisonment when the person has not provided a biological specimen for the purpose of DNA analysis and the person:

(1) is currently serving a term of imprisonment for or has a past conviction for violating or attempting to violate any of the following or a similar law of another state or the United States or initially charged with violating one of the following sections or a similar law of another state or the United States and convicted of another offense arising out of the same set of circumstances:

- (i) murder under section 609.185, 609.19, or 609.195;
- (ii) manslaughter under section 609.20 or 609.205;
- (iii) assault under section 609.221, 609.222, or 609.223;
- (iv) robbery under section 609.24 or aggravated robbery under section 609.245;
- (v) kidnapping under section 609.25;
- (vi) false imprisonment under section 609.255;
- (vii) criminal sexual conduct under section 609.342, 609.343, 609.344, 609.345, or 609.3451, subdivision 3;
- (viii) incest under section 609.365;
- (ix) burglary under section 609.582, subdivision 1; or
- (x) indecent exposure under section 617.23, subdivision 3; or

(2) was sentenced as a patterned sex offender under section 609.108, and committed to the custody of the commissioner of corrections; or

(3) is serving a term of imprisonment in this state under a reciprocal agreement although convicted in another state of an offense described in this subdivision or a similar law of the United States or any other state. The commissioner of corrections or local corrections authority shall forward the sample to the bureau of criminal apprehension.

Subd. 3. **Offenders from other states.** When the state accepts an offender from another state under the interstate compact authorized by section 243.16, the acceptance is conditional on the offender providing a biological specimen for the purposes of DNA analysis as defined in section 299C.155, if the offender was convicted of an offense described in subdivision 1 or a similar law of the United States or any other state. The specimen must be provided under supervision of staff from the department of corrections or a community corrections act county within 15 business days after the offender reports to the supervising agent. The cost of obtaining the biological specimen is the responsibility of the agency providing supervision.

History: *1Sp2001 c 8 art 9 s 6*

609.118 FINGERPRINTING REQUIRED.

(a) When a person is convicted of a felony, gross misdemeanor, or targeted misdemeanor, as defined in section 299C.10, subdivision 1, or is adjudicated delinquent for a felony or gross misdemeanor, the court shall order the offender to immediately report to the law enforcement agency responsible for the collection of fingerprint and other identification data required under section 299C.10, regardless of the sentence imposed or executed.

(b) Paragraph (a) does not apply if the person is remanded to the custody of a law enforcement agency or if the identification data was collected prior to the conviction or adjudication for the offense.

(c) A person who fails to obey a court order under paragraph (a) is subject to probation revocation, contempt of court, or any other appropriate remedy.

(d) This section does not limit or restrict any other statutory requirements or local policies regarding the collection of identification data.

History: *1Sp2001 c 8 art 6 s 7*

609.224 ASSAULT IN THE FIFTH DEGREE.

[For text of subd 1, see M.S.2000]

Subd. 2. **Gross misdemeanor.** (a) Whoever violates the provisions of subdivision 1 against the same victim during the time period between a previous qualified domestic violence-related offense conviction or adjudication of delinquency and the end of the five years following discharge from sentence or disposition for that offense, is guilty of a gross misdemeanor and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

(b) Whoever violates the provisions of subdivision 1 within two years of a previous qualified domestic violence-related offense conviction or adjudication of delinquency is guilty of a gross misdemeanor and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

(c) A caregiver, as defined in section 609.232, who is an individual and who violates the provisions of subdivision 1 against a vulnerable adult, as defined in section 609.232, is guilty of a gross misdemeanor and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

[For text of subd 3, see M.S.2000]

Subd. 4. **Felony.** (a) Whoever violates the provisions of subdivision 1 against the same victim during the time period between the first of any combination of two or more previous qualified domestic violence-related offense convictions or adjudications

of delinquency and the end of the five years following discharge from sentence or disposition for that offense is guilty of a felony and may be sentenced to imprisonment for not more than five years or payment of a fine of not more than \$10,000, or both.

(b) Whoever violates the provisions of subdivision 1 within three years of the first of any combination of two or more previous qualified domestic violence-related offense convictions or adjudications of delinquency 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: *1Sp2001 c 8 art 10 s 8,9*

609.2242 DOMESTIC ASSAULT.

[For text of subd 1, see M.S.2000]

Subd. 2. **Gross misdemeanor.** Whoever violates subdivision 1 during the time period between a previous qualified domestic violence-related offense conviction or adjudication of delinquency against a family or household member as defined in section 518B.01, subdivision 2, and the end of the five years following discharge from sentence or disposition for that offense is guilty of a gross misdemeanor and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

[For text of subd 3, see M.S.2000]

Subd. 4. **Felony.** Whoever violates the provisions of this section or section 609.224, subdivision 1, against the same victim during the time period between the first of any combination of two or more previous qualified domestic violence-related offense convictions or adjudications of delinquency and the end of the five years following discharge from sentence or disposition for that offense is guilty of a felony and may be sentenced to imprisonment for not more than five years or payment of a fine of not more than \$10,000, or both.

History: *1Sp2001 c 8 art 10 s 10,11*

609.2244 PRESENTENCE DOMESTIC ABUSE INVESTIGATIONS.

[For text of subd 1, see M.S.2000]

Subd. 2. **Report.** (a) The department of corrections shall establish minimum standards for the report, including the circumstances of the offense, impact on the victim, the defendant's prior record, characteristics and history of alcohol and chemical use problems, and amenability to domestic abuse programs. The report is classified as private data on individuals as defined in section 13.02, subdivision 12. Victim impact statements are confidential.

(b) The report must include:

(1) a recommendation on any limitations on contact with the victim and other measures to ensure the victim's safety;

(2) a recommendation for the defendant to enter and successfully complete domestic abuse programming and any aftercare found necessary by the investigation, including a specific recommendation for the defendant to complete a domestic abuse counseling program or domestic abuse educational program under section 518B.02;

(3) a recommendation for chemical dependency evaluation and treatment as determined by the evaluation whenever alcohol or drugs were found to be a contributing factor to the offense;

(4) recommendations for other appropriate remedial action or care or a specific explanation why no level of care or action is recommended; and

(5) consequences for failure to abide by conditions set up by the court.

[For text of subd 3, see M.S.2000]

Subd. 4. [Repealed, 1Sp2001 c 8 art 10 s 20]

History: 1Sp2001 c 8 art 10 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 parenting time or custody where the action manifests an intent to substantially deprive that person of rights to parenting time 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, 260B, or 260C to the commissioner of human services, a child-placing agency, or the local social services agency;

(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 parenting time 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 parenting time or custody but prior to the issuance of an order determining custody or parenting time rights, where the action manifests an intent substantially to deprive that parent of parental rights;

(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;

(6) refuses to return a minor child to a parent or lawful custodian and is at least 18 years old and more than 24 months older than the child;

(7) causes or contributes to a child being a habitual truant as defined in section 260C.007, subdivision 19, and is at least 18 years old and more than 24 months older than the child;

(8) causes or contributes to a child being a runaway as defined in section 260C.007, subdivision 28, and is at least 18 years old and more than 24 months older than the child; or

(9) is at least 18 years old and resides with a minor under the age of 16 without the consent of the minor's parent or lawful custodian.

[For text of subs 2 to 7, see M.S.2000]

History: 2001 c 178 art 1 s 44

609.341 DEFINITIONS.

[For text of subs 1 to 10, see M.S.2000]

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 (m), 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 a person in a position of authority, or by coercion, 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 by a person in 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.

(c) "Sexual contact with a person under 13" means the intentional touching of the complainant's bare genitals or anal opening by the actor's bare genitals or anal opening with sexual or aggressive intent or the touching by the complainant's bare genitals or anal opening of the actor's or another's bare genitals or anal opening with sexual or aggressive intent.

[For text of subs 12 to 20, see M.S.2000]

History: 2001 c 210 s 21

609.344 CRIMINAL SEXUAL CONDUCT IN THE THIRD DEGREE.

Subdivision 1. **Crime defined.** A person who engages in sexual penetration with another person is guilty of criminal sexual conduct in the third degree if any of the following circumstances exists:

(a) the complainant is under 13 years of age and the actor is no more than 36 months older than the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant shall be a defense;

(b) the complainant is at least 13 but less than 16 years of age and the actor is more than 24 months older than the complainant. In any such case it shall be an affirmative defense, which must be proved by a preponderance of the evidence, that the actor believes the complainant to be 16 years of age or older. If the actor in such a case is no more than 48 months but more than 24 months older than the complainant, the actor may be sentenced to imprisonment for not more than five years. Consent by the complainant is not a defense;

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

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

(e) the complainant is at least 16 but less than 18 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

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

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

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

(ii) the complainant suffered personal injury; or

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

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

(h) the actor is a psychotherapist and the complainant is a patient of the psychotherapist and the sexual penetration occurred:

(i) during the psychotherapy session; or

(ii) outside the psychotherapy session if an ongoing psychotherapist-patient relationship exists.

Consent by the complainant is not a defense;

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

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

(k) the actor accomplishes the sexual penetration by means of deception or false representation that the penetration is for a bona fide medical purpose. Consent by the complainant is not a defense;

(l) the actor is or purports to be a member of the clergy, the complainant is not married to the actor, and:

(i) the sexual penetration occurred during the course of a meeting in which the complainant sought or received religious or spiritual advice, aid, or comfort from the actor in private; or

(ii) the sexual penetration occurred during a period of time in which the complainant was meeting on an ongoing basis with the actor to seek or receive religious or spiritual advice, aid, or comfort in private. Consent by the complainant is not a defense; or

(m) the actor is an employee, independent contractor, or volunteer of a state, county, city, or privately operated adult or juvenile correctional system, including, but not limited to, jails, prisons, detention centers, or work release facilities, and the complainant is a resident of a facility or under supervision of the correctional system. Consent by the complainant is not a defense.

[For text of subs 2 and 3, see M.S.2000]

History: 2001 c 210 s 22

609.345 CRIMINAL SEXUAL CONDUCT IN THE FOURTH DEGREE.

Subdivision 1. **Crime defined.** A person who engages in sexual contact with another person is guilty of criminal sexual conduct in the fourth degree if any of the following circumstances exists:

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

(b) the complainant is at least 13 but less than 16 years of age and the actor is more than 48 months older than the complainant or in a position of authority over the complainant. Consent by the complainant to the act is not a defense. In any such case, it shall be an affirmative defense which must be proved by a preponderance of the evidence that the actor believes the complainant to be 16 years of age or older;

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

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

(e) the complainant is at least 16 but less than 18 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

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

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

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

(ii) the complainant suffered personal injury; or

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

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

(h) the actor is a psychotherapist and the complainant is a patient of the psychotherapist and the sexual contact occurred:

(i) during the psychotherapy session; or

(ii) outside the psychotherapy session if an ongoing psychotherapist-patient relationship exists. Consent by the complainant is not a defense;

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

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

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

(l) the actor is or purports to be a member of the clergy, the complainant is not married to the actor, and:

(i) the sexual contact occurred during the course of a meeting in which the complainant sought or received religious or spiritual advice, aid, or comfort from the actor in private; or

(ii) the sexual contact occurred during a period of time in which the complainant was meeting on an ongoing basis with the actor to seek or receive religious or spiritual advice, aid, or comfort in private. Consent by the complainant is not a defense; or

(m) the actor is an employee, independent contractor, or volunteer of a state, county, city, or privately operated adult or juvenile correctional system, including, but not limited to, jails, prisons, detention centers, or work release facilities, and the complainant is a resident of a facility or under supervision of the correctional system. Consent by the complainant is not a defense.

[For text of subds 2 and 3, see M.S.2000]

History: 2001 c 210 s 23

609.3452 SEX OFFENDER ASSESSMENT.

Subdivision 1. **Assessment required.** When a person is convicted of a sex offense, the court shall order an independent professional assessment of the offender's need for sex offender treatment. The court may waive the assessment if: (1) the sentencing guidelines provide a presumptive prison sentence for the offender, or (2) an adequate assessment was conducted prior to the conviction. An assessor providing an assessment for the court must be experienced in the evaluation and treatment of sex offenders.

Subd. 1a. **Repeat offenders; mandatory assessment.** When a person is convicted of a felony-level sex offense, and the person has previously been convicted of a sex offense regardless of the penalty level, the court shall order a sex offender assessment to be completed by the Minnesota security hospital. The assessment must contain the facts

upon which the assessment 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 unless the offender refuses to be examined. The assessment conclusion may not be based on testing alone. Upon completion, the assessment must be forwarded to the court and the commissioner of corrections. The court shall consider the assessment when sentencing the offender and, if applicable, when making the preliminary determination regarding the appropriateness of a civil commitment petition under section 609.1351.

[For text of subs 2 and 3, see M.S.2000]

Subd. 4. Definition. As used in this section, "sex offense" means a violation of section 609.342; 609.343; 609.344; 609.345; 609.3451; 609.746, subdivision 1; 609.79; or 617.23; or another offense arising out of a charge based on one or more of those sections.

History: 2001 c 210 s 24-26

609.375 NONSUPPORT OF SPOUSE OR CHILD.

Subdivision 1. Crime defined. Whoever is legally obligated to provide care and support to a spouse or child, whether or not the child's custody has been granted to another, and knowingly omits and fails to do so is guilty of a misdemeanor, and upon conviction may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than \$700, or both.

Subd. 2. Gross misdemeanor violation. A person who violates subdivision 1 is guilty of a gross misdemeanor and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both, if:

(1) the violation continues for a period in excess of 90 days but not more than 180 days; or

(2) the person is in arrears in court-ordered child support or maintenance payments, or both, in an amount equal to or greater than six times but less than nine times the person's total monthly support and maintenance payments.

Subd. 2a. Felony violation. A person who violates subdivision 1 is guilty of a felony and upon conviction may be sentenced to imprisonment for not more than two years or to payment of a fine of not more than \$5,000, or both, if:

(1) the violation continues for a period in excess of 180 days; or

(2) the person is in arrears in court-ordered child support or maintenance payments, or both, in an amount equal to or greater than nine times the person's total monthly support and maintenance payments.

Subd. 2b. Attempt to obtain contempt order as prerequisite to prosecution. A person may not be charged with violating this section unless there has been an attempt to obtain a court order holding the person in contempt for failing to pay support or maintenance under chapter 518. This requirement is satisfied by a showing that reasonable attempts have been made at service of the order.

[For text of subs 5 and 7, see M.S.2000]

Subd. 8. Defense. It is an affirmative defense to criminal liability under this section if the defendant proves by a preponderance of the evidence that the omission and failure to provide care and support were with lawful excuse.

History: 2001 c 158 s 7-11

609.3751 DISCHARGE AND DISMISSAL.

Subdivision 1. Applicability. A person is eligible for a discharge and dismissal under this section, if the person:

(1) has not been previously convicted of a felony under the laws of this state or elsewhere;

(2) has not been previously convicted of a violation of section 609.375 or of a similar offense in this state or elsewhere;

(3) has not previously participated in or completed a diversion program relating to a charge of violating section 609.375; and

(4) has not previously been placed on probation without a judgment of guilty for violation of section 609.375.

Subd. 2. Procedure. For a person eligible under subdivision 1 who is charged with violating section 609.375, the court may after trial or upon a plea of guilty, without entering a judgment of guilty and with the consent of the person, defer further proceedings and place the person on probation upon such reasonable conditions as it may require and for a period not to exceed the maximum sentence provided for the violation. At a minimum, the conditions must require the defendant to:

(1) provide the public authority responsible for child support enforcement with an affidavit attesting to the defendant's present address, occupation, employer, current income, assets, and account information, as defined in section 13B.06; and

(2) execute a written payment agreement regarding both current support and arrearages that is approved by the court.

In determining whether to approve a payment agreement under clause (2), the court shall apply the provisions of chapter 518 consistent with the obligor's ability to pay.

Subd. 3. Violation. Upon violation of a condition of the probation, including a failure to comply with the written payment agreement approved by the court under subdivision 2, clause (2), the court may enter an adjudication of guilt and proceed as otherwise provided in law.

Subd. 4. Early dismissal. The court may, in its discretion, dismiss the proceedings against the person and discharge the person from probation before the expiration of the maximum period prescribed for the person's probation but may do so only if the full amount of any arrearages has been brought current.

Subd. 5. Dismissal; record. (a) For purposes of this subdivision, "not public" has the meaning given in section 13.02, subdivision 8a.

(b) If during the period of probation the person does not violate any of the conditions of the probation, then upon expiration of the period the court shall discharge the person and dismiss the proceedings against that person. Discharge and dismissal under this subdivision shall be without court adjudication of guilt, but a not public record of it shall be retained by the bureau of criminal apprehension for the purpose of use by the courts in determining the merits of subsequent proceedings against the person. The not public record may also be opened only upon court order for purposes of a criminal investigation, prosecution, or sentencing. Upon request by law enforcement, prosecution, or corrections authorities, the bureau shall notify the requesting party of the existence of the not public record and the right to seek a court order to open it pursuant to this section. The court shall forward a record of any discharge and dismissal under this section to the bureau which shall make and maintain the not public record of it as provided under this section. The discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime or for any other purpose.

History: 2001 c 158 s 12

609.487 FLEEING A PEACE OFFICER IN A MOTOR VEHICLE.

[For text of subs 1 to 3, see M.S.2000]

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 40 years or to payment of a fine of not more than \$80,000, 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.

[For text of subd 5, see M.S.2000]

History: 1Sp2001 c 8 art 8 s 23

609.495 AIDING AN OFFENDER.

Subdivision 1. (a) Whoever harbors, conceals, aids, or assists by word or acts another whom the actor knows or has reason to know has committed a crime under the laws of this or another state or of the United States with intent that such offender shall avoid or escape from arrest, trial, conviction, or punishment, may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than \$5,000, or both if the crime committed or attempted by the other person is a felony.

(b) Whoever knowingly harbors, conceals, or aids a person who is on probation, parole, or supervised release because of a felony level conviction and for whom an arrest and detention order has been issued, with intent that the person evade or escape being taken into custody under the order, may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than \$5,000, or both. As used in this paragraph, "arrest and detention order" means a written order to take and detain a probationer, parolee, or supervised releasee that is issued under section 243.05, subdivision 1; 244.19, subdivision 4; or 401.02, subdivision 4.

Subd. 3. Whoever intentionally aids another person whom the actor knows or has reason to know has committed a criminal act, by destroying or concealing evidence of that crime, providing false or misleading information about that crime, receiving the proceeds of that crime, or otherwise obstructing the investigation or prosecution of that crime is an accomplice after the fact and may be sentenced to not more than one-half of the statutory maximum sentence of imprisonment or to payment of a fine of not more than one-half of the maximum fine that could be imposed on the principal offender for the crime of violence. For purposes of this subdivision, "criminal act" means an act that is a crime listed in section 609.11, subdivision 9, under the laws of this or another state, or of the United States, and also includes an act that would be a criminal act if committed by an adult.

History: 1Sp2001 c 8 art 8 s 24,25

609.521 POSSESSION OF SHOPLIFTING GEAR.

(a) As used in this section, an "electronic article surveillance system" means any electronic device or devices that are designed to detect the unauthorized removal of marked merchandise from a store.

(b) Whoever has in possession any device, gear, or instrument designed to assist in shoplifting or defeating an electronic article surveillance system with intent to use the same to shoplift and thereby commit theft may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than \$5,000, or both.

History: 1Sp2001 c 8 art 8 s 26

609.576 NEGLIGENT FIRES; DANGEROUS SMOKING.

Subdivision 1. **Negligent fire resulting in injury or property damage.** Whoever is grossly 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 payment of 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 payment of a fine of \$3,000, or both, if the value of the property damaged is at least \$300 but is less than \$2,500;

(3) to imprisonment for not more than three years, or to payment of a fine of not more than \$5,000, or both, if the value of the property damaged is \$2,500 or more.

[For text of subd. 2, see M.S.2000]

History: 2001 c 155 s 1

609.596 KILLING OR HARMING A PUBLIC SAFETY DOG.

[For text of subs 1 and 2, see M.S.2000]

Subd. 3. Definitions. As used in this section:

(1) "arson dog" means a dog that has been certified as an arson dog by a state fire or police agency or by an independent testing laboratory;

(2) "correctional facility" has the meaning given in section 241.021, subdivision 1, clause (5);

(3) "peace officer" has the meaning given in section 626.84, subdivision 1, paragraph (c); and

(4) "search and rescue dog" means a dog that is trained to locate lost or missing persons, victims of natural or other disasters, and human bodies.

History: 2001 c 7 s 87

609.652 FRAUDULENT DRIVERS' LICENSES AND IDENTIFICATION CARDS; PENALTY.

Subdivision 1. Definitions. For purposes of this section:

(1) "driver's license or identification card" means a driver's license or identification card issued by the driver and vehicle services division of the department of public safety or receipts issued by its authorized agents or those of any state as defined in section 171.01 that issues licenses recognized in this state for the operation of a motor vehicle or that issues identification cards recognized in this state for the purpose of indicating a person's legal name and age;

(2) "fraudulent driver's license or identification card" means a document purporting to be a driver's license or identification card, but that is not authentic; and

(3) "sell" means to sell, barter, deliver, exchange, distribute, or dispose of to another.

Subd. 2. Criminal acts. (a) A person who does any of the following for consideration and with intent to manufacture, sell, issue, publish, or pass more than one fraudulent driver's license or identification card or to cause or permit any of the items listed in clauses (1) to (5) to be used in forging or making more than one false or counterfeit driver's license or identification card is guilty of a crime:

(1) has in control, custody, or possession any plate, block, press, stone, digital image, computer software program, encoding equipment, computer optical scanning equipment, or digital photo printer, or other implement, or any part of such an item, designed to assist in making a fraudulent driver's license or identification card;

(2) engraves, makes, or amends, or begins to engrave, make, or amend, any plate, block, press, stone, or other implement for the purpose of producing a fraudulent driver's license or identification card;

(3) uses a photocopier, digital camera, photographic image, or computer software to generate a fraudulent driver's license or identification card;

(4) has in control, custody, or possession or makes or provides paper or other material adapted and designed for the making of a fraudulent driver's license or identification card; or

(5) prints, photographs, or in any manner makes or executes an engraved photograph, print, or impression purporting to be a driver's license or identification card.

(b) Notwithstanding section 171.22, a person who manufacturers or possesses more than one fraudulent driver's license or identification card with intent to sell is guilty of a crime.

Subd. 3. **Penalties.** A person who commits any act described in subdivision 2 is guilty of a gross misdemeanor. A person convicted of a second or subsequent offense of this subdivision 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: *1Sp2001 c 8 art 8 s 27*

609.687 ADULTERATION.

[For text of subs 1 to 3, see M.S.2000]

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

History: *1Sp2001 c 2 s 148*

609.748 HARASSMENT; RESTRAINING ORDER.

[For text of subs 1 to 5, see M.S.2000]

Subd. 6. **Violation of restraining order.** (a) A person who violates a restraining order issued under this section is subject to the penalties provided in paragraphs (b) to (d).

(b) Except as otherwise provided in paragraphs (c) and (d), when a temporary restraining order or a restraining order is granted under this section and the respondent knows of the order, violation of the order is a misdemeanor.

(c) A person is guilty of a gross misdemeanor who knowingly violates the order during the time period between a previous qualified domestic violence-related offense conviction and the end of the five years following discharge from sentence for that offense.

(d) A 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, if the person knowingly violates the order:

(1) during the time period between the first of two or more previous qualified domestic violence-related offense convictions and the end of the five years following discharge from sentence for that offense;

(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;

(3) by falsely impersonating another;

(4) while possessing a dangerous weapon;

(5) with an intent to influence or otherwise tamper with a juror or a judicial proceeding or with intent to retaliate against a judicial officer, as defined in section 609.415, or a prosecutor, defense attorney, or officer of the court, because of that person's performance of official duties in connection with a judicial proceeding; or

(6) against a victim under the age of 18, if the respondent is more than 36 months older than the victim.

(e) A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order issued under subdivision 4 or 5 if the existence of the order can be verified by the officer.

(f) A violation of a temporary restraining order or restraining order shall also constitute contempt of court.

(g) Upon the filing of an affidavit by the petitioner, any peace officer, or an interested party designated by the court, alleging that the respondent has violated an order issued under subdivision 4 or 5, the court may issue an order to the respondent requiring the respondent to appear within 14 days and show cause why the respondent should not be held in contempt of court. The court also shall refer the violation of the order to the appropriate prosecuting authority for possible prosecution under paragraph (b), (c), or (d).

[For text of subd 7, see M.S.2000]

Subd. 8. Notice. An order granted under this section must contain a conspicuous notice to the respondent:

(1) of the specific conduct that will constitute a violation of the order;

(2) that violation of an order is either (i) a misdemeanor punishable by imprisonment for up to 90 days or a fine of up to \$700, or both, (ii) a gross misdemeanor punishable by imprisonment for up to one year or a fine of up to \$3,000, or both, or (iii) a felony punishable by imprisonment for up to five years or a fine of up to \$10,000, or both; and

(3) that a peace officer must arrest without warrant and take into custody a person if the peace officer has probable cause to believe the person has violated a restraining order.

[For text of subd 9, see M.S.2000]

History: *1Sp2001 c 8 art 10 s 13,14*

609.749 HARASSMENT; STALKING; PENALTIES.

[For text of subds 1 to 3, see M.S.2000]

Subd. 4. Second or subsequent violations; felony. A person is guilty of a felony who violates any provision of subdivision 2 during the time period between a previous qualified domestic violence-related offense conviction or adjudication of delinquency and the end of the ten years following discharge from sentence or disposition for that offense.

Subd. 5. Pattern of harassing conduct. (a) A person who engages in a pattern of harassing conduct with respect to a single victim or one or more members of a single household which the actor knows or has reason to know would cause the victim under the circumstances to feel terrorized or to fear bodily harm and which does cause this reaction on the part of the victim, is guilty of a felony 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.

(b) For purposes of this subdivision, a "pattern of harassing conduct" means two or more acts within a five-year period that violate the provisions of any of the following or a similar law of another state, the United States, the District of Columbia, tribal lands, or United States territories:

(1) this section;

(2) section 609.713;

(3) section 609.224;

(4) section 609.2242;

(5) section 518B.01, subdivision 14;

(6) section 609.748, subdivision 6;

(7) section 609.605, subdivision 1, paragraph (b), clauses (3), (4), and (7);

- (8) section 609.79;
- (9) section 609.795;
- (10) section 609.582;
- (11) section 609.595; or
- (12) section 609.765.

(c) When acts constituting a violation of this subdivision are committed in two or more counties, the accused may be prosecuted in any county in which one of the acts was committed for all acts constituting the pattern.

[For text of subs 6 to 8, see M.S.2000]

History: 1Sp2001 c 8 art 10 s 15,16

609.75 GAMBLING; DEFINITIONS.

Subdivision 1. **Lottery.** (a) A lottery is a plan which provides for the distribution of money, property or other reward or benefit to persons selected by chance from among participants some or all of whom have given a consideration for the chance of being selected. A participant's payment for use of a 900 telephone number or another means of communication that results in payment to the sponsor of the plan constitutes consideration under this paragraph.

(b) An in-package chance promotion is not a lottery if all of the following are met:

(1) participation is available, free and without purchase of the package, from the retailer or by mail or toll-free telephone request to the sponsor for entry or for a game piece;

(2) the label of the promotional package and any related advertising clearly states any method of participation and the scheduled termination date of the promotion;

(3) the sponsor on request provides a retailer with a supply of entry forms or game pieces adequate to permit free participation in the promotion by the retailer's customers;

(4) the sponsor does not misrepresent a participant's chances of winning any prize;

(5) the sponsor randomly distributes all game pieces and maintains records of random distribution for at least one year after the termination date of the promotion;

(6) all prizes are randomly awarded if game pieces are not used in the promotion; and

(7) the sponsor provides on request of a state agency a record of the names and addresses of all winners of prizes valued at \$100 or more, if the request is made within one year after the termination date of the promotion.

(c) Except as provided by section 349.40, acts in this state in furtherance of a lottery conducted outside of this state are included notwithstanding its validity where conducted.

(d) The distribution of property, or other reward or benefit by an employer to persons selected by chance from among participants who have made a contribution through a payroll or pension deduction campaign to a registered combined charitable organization, within the meaning of section 309.501, as a precondition to the chance of being selected, is not a lottery if:

(1) all of the persons eligible to be selected are employed by or retirees of the employer; and

(2) the cost of the property or other reward or benefit distributed and all costs associated with the distribution are borne by the employer.

[For text of subs 2 to 13, see M.S.2000]

History: 1Sp2001 c 5 art 20 s 18