

# MINNESOTA STATUTES 1975 SUPPLEMENT

## CRIMINAL CODE OF 1963 609.175

provided in sections 576.14 and 576.15.

The provisions of sections 576.04 to 576.16 shall not be construed as exclusive, but as providing additional and cumulative remedies.

[1975 c 347 s 143]

### CHAPTER 593. JURIES, JURORS

Sec.  
593.18 Repealed.

**593.18** [Repealed, 1975 c 318 s 2]

### CHAPTER 609. CRIMINAL CODE OF 1963

Sec. 609.11	Minimum terms of imprisonment.	Sec. 609.345	Criminal sexual conduct in the fourth degree. [New]
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#### **609.11** Minimum terms of imprisonment.

Subdivision 1. All commitments to the commissioner of corrections for imprisonment of the defendant are without minimum terms except when sentence is to life imprisonment as required by law and except that any commitment following the defendant's first conviction of an offense wherein he had in his possession a firearm or used a dangerous weapon at the time of the offense shall be for a term of not less than one year plus one day, nor more than the maximum sentence provided by law for the offense for which convicted, and except that any commitment following defendant's second or subsequent conviction of an offense wherein he had in his possession a firearm or used a dangerous weapon at the time of the offense shall be for a term not less than three years, nor more than the maximum sentence provided by law for the offense for which convicted, and such person shall not be eligible for parole until he shall have served the full minimum sentence herein provided, notwithstanding the provisions of sections 242.19, 243.05, 609.12 and 609.135. The offenses for which mandatory minimum sentences shall be served as herein provided are: aggravated assault, burglary, kidnapping, manslaughter, murder in the second or third degree, rape, robbery, sodomy, escape while under charge or conviction of a felony, or discharge of an explosive or incendiary device.

[1975 c 378 s 8]

[For text of subd 2, see M.S.1974]

#### **609.175** Conspiracy.

[For text of subds 1 and 2, see M.S.1974]

**Subd. 3. Application of section jurisdiction.** This section applies if:

- (1) The defendant in this state conspires with another outside of this state; or
- (2) The defendant outside of this state conspires with another in this state; or
- (3) The defendant outside of this state conspires with another outside of this

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state and an overt act in furtherance of the conspiracy is committed within this state by either of them; or

(4) The defendant in this state conspires with another in this state.

[1975 c 279 s 1]

## 609.185 Murder in the first degree.

Whoever does either 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 such person or of another; or

(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 such person or another.

[1975 c 374 s 1]

**609.29** [Repealed, 1975 c 374 s 13]

**609.291** [Repealed, 1975 c 374 s 13]

**609.292** [Repealed, 1975 c 374 s 13]

**609.295** [Repealed, 1975 c 374 s 13]

**609.296** [Repealed, 1975 c 374 s 13]

## 609.341 Definitions.

Subdivision 1. For the purposes of sections 609.341 to 609.351, the terms in this section have the meanings given them.

Subd. 2. "Actor" means a person accused of criminal sexual conduct.

Subd. 3. "Force" means commission or threat by the actor of an assault, as defined in section 609.22, or commission or threat of any other crime by the actor against the complainant or another, which causes the complainant to reasonably believe that the actor has the present ability to execute the threat, and also causes the complainant to submit.

Subd. 4. "Consent" means a voluntary uncoerced manifestation of a present agreement to perform a particular sexual act.

Subd. 5. "Intimate parts" includes the primary genital area, groin, inner thigh, buttocks, or breast of a human being.

Subd. 6. "Mentally defective" means that a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of appraising the nature of his conduct.

Subd. 7. "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his conduct due to the influence of alcohol, a narcotic, anesthetic, or any other substance administered to that person without his agreement, or due to any other act committed upon that person without his agreement.

Subd. 8. "Personal injury" means bodily harm as defined in section 609.02, subdivision 7, or severe mental anguish or pregnancy.

Subd. 9. "Physically helpless" means that a person is unconscious, asleep, or for any other reason is physically unable to communicate unwillingness to act and the condition is known or reasonably should have been known to the actor.

Subd. 10. "Position of authority" includes but is not limited to any person acting in the place of a parent and charged with any of a parent's rights, duties or responsibilities to a child, or a person who is charged with any duty or responsibility for the health, welfare, or supervision of a child, either independently or through another, no matter how brief, at the time of the act.

Subd. 11. "Sexual contact" includes any of the following acts committed without the complainant's consent, if the acts can reasonably be construed as being for the purpose of satisfying the actor's sexual or aggressive impulses, except in

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those cases where consent is not a defense:

- (i) The intentional touching by the actor of the complainant's intimate parts, or
- (ii) The coerced touching by the complainant of the actor's, the complainant's, or another's intimate parts, or
- (iii) The coerced touching by another of the complainant's intimate parts, or
- (iv) In any of the cases above, of the clothing covering the immediate area of the intimate parts.

Subd. 12. "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion however slight into the genital or anal openings of the complainant's body of any part of the actor's body or any object used by the actor for this purpose, where the act is committed without the complainant's consent, except in those cases where consent is not a defense. Emission of semen is not necessary.

Subd. 13. "Complainant" means a person alleging to have been subjected to criminal sexual conduct.

[1975 c 374 s 2]

### **609.342 Criminal sexual conduct in the first degree.**

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

- (a) The complainant is under 13 years of age and the actor is more than 36 months older than the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense; or
- (b) The complainant is at least 13 but less than 16 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant, and uses this authority to coerce the complainant to submit. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense; or
- (c) Circumstances existing at the time of the act cause the complainant to have a reasonable fear of imminent great bodily harm to the complainant or another; or
- (d) The actor is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it to be a dangerous weapon and uses or threatens to use the weapon or article to cause the complainant to submit; or
- (e) The actor causes personal injury to the complainant, and either of the following circumstances exist:
  - (i) The actor uses force or coercion to accomplish sexual penetration; or
  - (ii) The actor knows or has reason to know that the complainant is mentally defective, mentally incapacitated, or physically helpless; or
- (f) The actor is aided or abetted by one or more accomplices within the meaning of section 609.05, and either of the following circumstances exists:
  - (i) An accomplice uses force or coercion to cause the complainant to submit; or
  - (ii) An accomplice is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant reasonably to believe it to be a dangerous weapon and uses or threatens to use the weapon or article to cause the complainant to submit.

[1975 c 374 s 3]

### **609.343 Criminal sexual conduct in the second degree.**

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

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

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

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

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

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

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

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

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

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

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

[1975 c 374 s 4]

## 609.344 Criminal sexual conduct in the third degree.

A person is guilty of criminal sexual conduct in the third degree and may be sentenced to imprisonment for not more than ten years, if he engages in sexual penetration with another person and 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; or

(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 and not in a position of authority over 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, he may be sentenced to imprisonment for not more than five years. Consent by the complainant is not a defense; or

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

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

[1975 c 374 s 5]

## 609.345 Criminal sexual conduct in the fourth degree.

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

(a) The complainant is under 13 years of age and the actor is no less 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; or

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

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

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

[1975 c 374 s 6]

### **609.346 Subsequent offenses.**

Subdivision 1. If a person is convicted of a second or subsequent offense under sections 609.342 to 609.346 within 15 years of the prior conviction, the court shall commit the defendant to the commissioner of corrections for imprisonment for a term of not less than three years, nor more than the maximum sentence provided by law for the offense for which convicted; provided, however, that the court may invoke the provisions of section 609.135, if a specific condition of the probationary term under section 609.135 includes the successful completion of a treatment program for anti-social sexual behavior, and such person shall not be eligible for parole from imprisonment until he shall either have served the full minimum sentence herein provided, or until he shall have successfully completed a treatment program for anti-social sexual behavior as herein provided notwithstanding the provisions of sections 242.19, 243.05, 609.11, 609.12 and 609.135.

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

[1975 c 374 s 7]

### **609.347 Evidence.**

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

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

Subd. 3. In a prosecution under sections 609.342 to 609.346, evidence of the complainant's previous sexual conduct shall not be admitted nor shall any reference to such conduct be made in the presence of the jury, except by court order under the procedure provided in subdivision 4, and only to the extent that the court finds that any of the following proposed evidence is material to the fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value:

(a) When consent or fabrication by the complainant is the defense in the case, evidence of such conduct tending to establish a common scheme or plan of similar sexual conduct under circumstances similar to the case at issue on the part of the complainant, relevant and material to the issue of consent or fabrication. Evidence of such conduct engaged in more than one year prior to the date of alleged offense is inadmissible;

(b) Evidence of specific instances of sexual activity showing the source of semen, pregnancy, or disease at the time of the incident or, in the case of pregnancy, between the time of the incident and trial;

(c) Evidence of the complainant's past sexual conduct with the defendant;

(d) For purposes of impeachment, when such evidence is offered to rebut specific testimony of the complainant.

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

(a) A motion shall be made by the defendant prior to trial, unless later for good cause shown, stating to the court and prosecutor that the defendant has an

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offer of proof of the relevancy of the evidence of the sexual conduct of the complainant which is proposed to be presented;

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

(c) At the conclusion of the hearing, if the court finds that the evidence proposed to be offered by the defendant regarding the sexual conduct of the complainant is relevant and material to the fact of consent, and is not so prejudicial as to be inadmissible, the court shall make an order stating the extent to which evidence is admissible under subdivision 3 and prescribing the nature of questions to be permitted at trial. The defendant may then offer evidence pursuant to the order of the court;

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

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

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

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

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

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

[1975 c 374 s 8]

## 609.348 Medical purposes; exclusion.

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

[1975 c 374 s 9]

## 609.349 Voluntary relationships.

A person does not commit criminal sexual conduct under Laws 1975, Chapter 374 if the actor and complainant were adults cohabiting in an ongoing voluntary sexual relationship at the time of the alleged offense, or if the complainant is the actor's legal spouse, unless the couple is living apart and one of them has filed for separate maintenance or dissolution of the marriage. Nothing in this section shall be construed to prohibit or restrain the prosecution for any other offense committed by any person against his legal spouse.

[1975 c 374 s 10]

## 609.35 Costs of medical examination.

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

[1975 c 374 s 11]

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### 609.351 Applicability to past and present prosecutions.

Except for section 609.347, crimes committed prior to August 1, 1975, are not affected by its provisions.

[1975 c 374 s 12]

### 609.52 Theft.

[For text of subd 1, see M.S.1974]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[1975 c 244 s 1]

[For text of subd 3, see M.S.1974]

### 609.521 Possession of shoplifting gear.

Whoever has in his possession any device, gear, or instrument specially designed to assist in shoplifting 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 \$3,000, or both.

[1975 c 314 s 1]

### 609.551 Rusting and livestock theft; penalties.

Subdivision 1. Whoever intentionally and without claim of right shoots, kills, takes, uses, transfers, conceals or retains possession of live cattle, swine or sheep or the carcasses thereof belonging to another without his consent and with the intent to permanently deprive the owner thereof may be sentenced as follows:

(a) If the value of the animals which are shot, killed, taken, used, transferred, concealed or retained exceeds \$2,500, the defendant may be sentenced to imprisonment for not more than ten years, and may be fined up to \$10,000;

(b) If the value of the animals which are shot, killed, taken, used, transferred, concealed or retained exceeds \$100 but is less than \$2,500, the defendant may be



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sentenced to imprisonment for not more than five years, and may be fined up to \$5,000;

(c) If the value of the animals which are shot, killed, taken, used, transferred, concealed, or retained is \$100 or less, the defendant may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than \$300 or both.

Subd. 2. Whoever knowingly buys, sells, transports or otherwise handles cattle, swine or sheep illegally acquired under subdivision 1 or knowingly aids or abets another in the violation of subdivision 1 shall be sentenced as in subdivision 1, clauses (a), (b), and (c).

Subd. 3. In any prosecution under this section the value of the animals which are shot, killed, taken, used, transferred, concealed, or retained within any six month period may be aggregated and the defendant charged accordingly in applying the provisions of this section.

Subd. 4. Any person who has been injured by violation of this section may bring an action for three times the amount of actual damages sustained by the plaintiff, costs of suit and reasonable attorneys' fees.

[1975 c 314 s 2]

### 609.805 Ticket scalping.

[For text of subs 1 and 2, see M.S.1974]

**Subd. 3. Exception.** The provisions of subdivisions 1 and 2 shall not prohibit charging a fee for services rendered in connection with the sale of a ticket to an event if the fee is permitted pursuant to a contract between the ticket seller and the promoter of an event.

[1975 c 427 s 1]

## CHAPTER 624. CRIMES, OTHER PROVISIONS

Sec.		Sec.	
624.66	Endurance contests.	624.715	Exemptions; antiques and ornaments.
624.711	Declaration of policy. [New]		[New]
624.712	Definitions. [New]	624.716	Saturday night specials prohibited; penalty. [New]
624.713	Certain persons not to have pistols; penalty. [New]	624.717	Local regulation. [New]
624.714	Carrying of weapons without permit; penalties. [New]		

### 624.66 Endurance contests.

**Subdivision 1. Marathons prohibited.** It shall be unlawful for any person, firm, or corporation to advertise, operate, maintain, attend, promote, or aid in the advertising, operating, maintaining, or promoting of any mental or physical endurance contest exhibition, performance, or show in the nature of a "marathon," "walkathon," "skatathon," or any other such endurance contest of a like or similar character or nature, whether under that or other names, whether or not an admission is charged, for a period longer than 24 hours unless a rest period for contestants of at least five hours begins each subsequent 24 hour period.

[1975 c 250 s 1]

[For text of subs 2 and 3, see M.S.1974]

### 624.711 Declaration of policy.

It is not the intent of the legislature to regulate shotguns, rifles and other longguns of the type commonly used for hunting and not defined as pistols, or to place costs of administration upon those citizens who wish to possess or carry pistols lawfully, or to confiscate or otherwise restrict the use of pistols by law-abiding citizens.