

PART V

CRIMES, CRIMINALS
CHAPTER 609

CRIMINAL CODE OF 1963

GENERAL PRINCIPLES

- 609.01 Name and construction.
- 609.015 Scope and effect.
- 609.02 Definitions.
- 609.025 Jurisdiction of state.
- 609.03 Punishment when not otherwise fixed.
- 609.033 Increased maximum penalties for misdemeanors.
- 609.034 Increased maximum penalty for ordinance violations.
- 609.0341 Increased maximum fines for gross misdemeanors; felonies; other fines.
- 609.035 Crime punishable under different provisions.
- 609.04 Conviction of lesser offense.
- 609.045 Foreign conviction or acquittal.
- 609.05 Liability for crimes of another.
- 609.055 Liability of children.
- 609.06 Authorized use of force.
- 609.065 Justifiable taking of life.
- 609.066 Authorized use of deadly force by peace officers.
- 609.075 Intoxication as defense.
- 609.08 Duress.
- 609.085 Sending written communication.
- 609.09 Compelling testimony; immunity from prosecution.

SENTENCES

- 609.095 Limits of sentences.
- 609.10 Sentences available.
- 609.101 Surcharge on fines, assessments.
- 609.105 Sentence of imprisonment.
- 609.11 Minimum terms of imprisonment.
- 609.115 Presentence investigation.
- 609.12 Parole or discharge.
- 609.125 Sentence for misdemeanor or gross misdemeanor.
- 609.13 Convictions of felony or gross misdemeanor; when deemed misdemeanor or gross misdemeanor.
- 609.135 Stay of imposition or execution of sentence.
- 609.14 Revocation of stay.
- 609.145 Credit for prior imprisonment.
- 609.15 Multiple sentences.
- 609.165 Restoration of civil rights.
- 609.166 Convictions, setting aside in certain instances.
- 609.167 Procedure in entering order.
- 609.168 Effect of order.

ANTICIPATORY CRIMES

- 609.17 Attempts.
- 609.175 Conspiracy.

HOMICIDE AND SUICIDE

- 609.18 Definition.
- 609.185 Murder in the first degree.
- 609.19 Murder in the second degree.
- 609.195 Murder in the third degree.
- 609.20 Manslaughter in the first degree.
- 609.205 Manslaughter in the second degree.

- 609.21 Criminal vehicular operation.
- 609.215 Suicide.

CRIMES AGAINST THE PERSON

- 609.221 Assault in the first degree.
- 609.222 Assault in the second degree.
- 609.223 Assault in the third degree.
- 609.2231 Assault in the fourth degree.
- 609.224 Assault in the fifth degree.
- 609.23 Mistreatment of persons confined.
- 609.231 Mistreatment of residents or patients.
- 609.235 Use of drugs to injure or facilitate crime.
- 609.24 Simple robbery.
- 609.245 Aggravated robbery.
- 609.25 Kidnapping.
- 609.251 Double jeopardy; kidnapping.
- 609.255 False imprisonment.
- 609.26 Depriving another of custodial or parental rights.
- 609.265 Abduction.

CRIMES OF COMPULSION

- 609.27 Coercion.
- 609.275 Attempt to coerce.
- 609.28 Interfering with religious observance.

SEX CRIMES

- 609.293 Sodomy.
- 609.294 Bestiality.
- 609.31 Leaving the state to evade establishment of paternity.
- 609.321 Prostitution; definitions.
- 609.322 Solicitation, inducement and promotion of prostitution.
- 609.323 Receiving profit derived from prostitution.
- 609.324 Other prohibited acts.
- 609.325 Defenses.
- 609.326 Evidence.
- 609.33 Disorderly house or place of public resort.
- 609.34 Fornication.
- 609.341 Definitions.
- 609.342 Criminal sexual conduct in the first degree.
- 609.343 Criminal sexual conduct in the second degree.
- 609.344 Criminal sexual conduct in the third degree.
- 609.345 Criminal sexual conduct in the fourth degree.
- 609.346 Subsequent offenses.
- 609.347 Evidence.
- 609.3471 Records pertaining to victim identity confidential.
- 609.348 Medical purposes; exclusion.
- 609.349 Voluntary relationships.
- 609.35 Costs of medical examination.
- 609.351 Applicability to past and present prosecutions.

CRIMES AGAINST THE FAMILY

- 609.355 Bigamy.

- 609.36 Adultery.
- 609.364 Intrafamilial sexual abuse; definitions.
- 609.3641 Intrafamilial sexual abuse in the first degree.
- 609.3642 Intrafamilial sexual abuse in the second degree.
- 609.3643 Intrafamilial sexual abuse in the third degree.
- 609.3644 Intrafamilial sexual abuse in the fourth degree.
- 609.365 Incest.
- 609.37 Definition.
- 609.375 Non-support of spouse or child.
- 609.376 Definitions.
- 609.377 Malicious punishment of a child.
- 609.378 Neglect of a child.
- 609.379 Permitted actions.
- 609.38 Stayed sentence.

CRIMES AGAINST THE GOVERNMENT

- 609.385 Treason.
- 609.39 Misprision of treason.
- 609.395 State military forces; interfering with, obstructing, or other.
- 609.40 Flags.
- 609.405 Criminal syndicalism.
- 609.41 False tax statement.

CRIMES AFFECTING PUBLIC OFFICER OR EMPLOYEE

- 609.415 Definitions.
- 609.42 Bribery.
- 609.425 Corruptly influencing legislator.
- 609.43 Misconduct of public officer or employee.
- 609.435 Officer not filing security.
- 609.44 Public office; illegally assuming; non-surrender.
- 609.445 Failure to pay over state funds.
- 609.45 Public officer; unauthorized compensation.
- 609.455 Permitting false claims against government.
- 609.465 Presenting false claims to public officer or body.
- 609.466 Medical assistance fraud.
- 609.47 Interference with property in official custody.
- 609.475 Impersonating officer.

CRIMES AGAINST THE ADMINISTRATION OF JUSTICE

- 609.48 Perjury.
- 609.485 Escape from custody.
- 609.487 Fleeing a peace officer in a motor vehicle.
- 609.49 Release, failure to appear.
- 609.495 Aiding an offender to avoid arrest.
- 609.498 Tampering with a witness.
- 609.50 Obstructing legal process or arrest.
- 609.502 Interference with dead body or scene of death, penalty.
- 609.505 Falsely reporting crime.
- 609.51 Simulating legal process.
- 609.515 Misconduct of judicial or hearing officer.

THEFT AND RELATED CRIMES

- 609.52 Theft.
- 609.521 Possession of shoplifting gear.
- 609.523 Return of stolen property to owners.
- 609.525 Bringing stolen goods into state.
- 609.53 Receiving stolen property.
- 609.531 Forfeitures.
- 609.535 Issuance of dishonored checks.
- 609.54 Embezzlement of public funds.
- 609.541 Protection of library property.

- 609.545 Misusing credit card to secure services.
- 609.55 Unauthorized use of motor vehicle.
- 609.551 Rustling and livestock theft; penalties.

DAMAGE OR TRESPASS TO PROPERTY

- 609.556 Definitions.
- 609.561 Arson in the first degree.
- 609.562 Arson in the second degree.
- 609.563 Arson in the third degree.
- 609.576 Negligent fires.
- 609.581 Definitions.
- 609.582 Burglary.
- 609.583 Sentencing; first burglary of a dwelling.
- 609.585 Double jeopardy.
- 609.59 Possession of burglary tools.
- 609.595 Damage to property.
- 609.60 Dangerous trespasses and other acts.
- 609.605 Trespasses and other acts.
- 609.611 Defrauding insurer.
- 609.615 Defeating security on realty.
- 609.62 Defeating security on personality.
- 609.621 Proof of concealment of property by obligor of secured property.

FORGERY AND RELATED CRIMES

- 609.625 Aggravated forgery.
- 609.63 Forgery.
- 609.635 Obtaining signature by false pretense.
- 609.64 Recording, filing of forged instrument.
- 609.645 Fraudulent statements.
- 609.65 False certification by notary public.

CRIMES AGAINST PUBLIC SAFETY AND HEALTH

- 609.66 Dangerous weapons.
- 609.665 Spring guns.
- 609.67 Machine guns and short-barreled shot-guns.
- 609.675 Exposure of unused refrigerator or container to children.
- 609.68 Unlawful deposit of garbage, litter or like.
- 609.685 Sale of tobacco to children.
- 609.686 False fire alarms; tampering with or injuring a fire alarm system.

PUBLIC MISCONDUCT OR NUISANCE

- 609.687 Adulteration.
- 609.705 Unlawful assembly.
- 609.71 Riot.
- 609.713 Terroristic threats.
- 609.715 Presence at unlawful assembly.
- 609.72 Disorderly conduct.
- 609.725 Vagrancy.
- 609.735 Concealing identity.
- 609.74 Public nuisance.
- 609.745 Permitting public nuisance.
- 609.746 Interference with privacy.

GAMBLING

- 609.75 Gambling; definitions.
- 609.755 Acts of or relating to gambling.
- 609.76 Other acts relating to gambling.
- 609.761 Operations permitted.
- 609.762 Forfeiture of gambling devices, prizes and proceeds.

CRIMES AGAINST REPUTATION

- 609.765 Criminal defamation.
- 609.77 False information to news media.

CRIMES RELATING TO COMMUNICATIONS

- 609.774 Emergency communications; kidnappings.
- 609.775 Divulging telephone or telegraph message; non-delivery.
- 609.78 Emergency telephone calls and communications.

MINNESOTA STATUTES 1984

9819

CRIMINAL CODE OF 1963 609.02

609.785 Fraudulent long distance telephone calls.
609.79 Obscene or harassing telephone calls.
609.795 Opening sealed letter, telegram, or package.
609.80 Interfering with cable communications systems.

CRIMES RELATING TO A BUSINESS

609.805 Ticket scalping.
609.81 Misconduct of pawnbrokers.
609.815 Misconduct of junk or second-hand dealer.
609.82 Fraud in obtaining credit.

MISCELLANEOUS CRIMES
609.825 Bribery of participant or official in contest.
609.83 Falsely impersonating another.
609.85 Crimes against railroad employees and property; penalty.
609.855 Crimes against transit providers and operators.

CRIMES AGAINST COMMERCE

609.86 Commercial bribery.
609.87 Computer crime; definitions.
609.88 Computer damage.
609.89 Computer theft.

GENERAL PRINCIPLES

609.01 NAME AND CONSTRUCTION.

Subdivision 1. **Purposes.** This chapter may be cited as the Criminal Code of 1963. Its provisions shall be construed according to the fair import of its terms, to promote justice, and to effect its purposes which are declared to be:

(1) To protect the public safety and welfare by preventing the commission of crime through the deterring effect of the sentences authorized, the rehabilitation of those convicted, and their confinement when the public safety and interest requires; and

(2) To protect the individual against the misuse of the criminal law by fairly defining the acts and omissions prohibited, authorizing sentences reasonably related to the conduct and character of the convicted person, and prescribing fair and reasonable post-conviction procedures.

Subd. 2. [Repealed, 1983 c 216 art 1 s 76]

History: 1963 c 753 art 1 s 609.01

609.015 SCOPE AND EFFECT.

Subdivision 1. Common law crimes are abolished and no act or omission is a crime unless made so by this chapter or by other applicable statute, but this does not prevent the use of common law rules in the construction or interpretation of the provisions of this chapter or other statute. Crimes committed prior to the effective date of this chapter are not affected thereby.

Subd. 2. Unless expressly stated otherwise, or the context otherwise requires, the provisions of this chapter also apply to crimes created by statute other than in this chapter.

History: 1963 c 753 art 1 s 609.015

609.02 DEFINITIONS.

Subdivision 1. **Crime.** "Crime" means conduct which is prohibited by statute and for which the actor may be sentenced to imprisonment, with or without a fine.

Subd. 2. **Felony.** "Felony" means a crime for which a sentence of imprisonment for more than one year may be imposed.

Subd. 3. **Misdemeanor.** "Misdemeanor" means a crime for which a sentence of not more than 90 days or a fine of not more than \$700, or both, may be imposed.

Subd. 4. **Gross misdemeanor.** "Gross misdemeanor" means any crime which is not a felony or misdemeanor. The maximum fine which may be imposed for a gross misdemeanor is \$3,000.

Subd. 4a. **Petty misdemeanor.** "Petty misdemeanor" means a petty offense which is prohibited by statute, which does not constitute a crime and for which a sentence of a fine of not more than \$100 may be imposed.

MINNESOTA STATUTES 1984

609.02 CRIMINAL CODE OF 1963

9820

Subd. 5. **Conviction.** "Conviction" means any of the following accepted and recorded by the court:

- (1) A plea of guilty; or
- (2) A verdict of guilty by a jury or a finding of guilty by the court.

Subd. 6. **Dangerous weapon.** "Dangerous weapon" means any firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or great bodily harm, or any other device or instrumentality which, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm.

Subd. 7. **Bodily harm.** "Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.

Subd. 7a. **Substantial bodily harm.** "Substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member.

Subd. 8. **Great bodily harm.** "Great bodily harm" means bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.

Subd. 9. **Mental state.** (1) When criminal intent is an element of a crime in this chapter, such intent is indicated by the term "intentionally," the phrase "with intent to," the phrase "with intent that," or some form of the verbs "know" or "believe."

(2) "Know" requires only that the actor believes that the specified fact exists.

(3) "Intentionally" means that the actor either has a purpose to do the thing or cause the result specified or believes that his act, if successful, will cause that result. In addition, except as provided in clause (6), the actor must have knowledge of those facts which are necessary to make his conduct criminal and which are set forth after the word "intentionally."

(4) "With intent to" or "with intent that" means that the actor either has a purpose to do the thing or cause the result specified or believes that his act, if successful, will cause that result.

(5) Criminal intent does not require proof of knowledge of the existence or constitutionality of the statute under which he is prosecuted or the scope or meaning of the terms used in that statute.

(6) Criminal intent does not require proof of knowledge of the age of a minor even though age is a material element in the crime in question.

Subd. 10. **Assault.** "Assault" is:

(1) An act done with intent to cause fear in another of immediate bodily harm or death; or

(2) The intentional infliction of or attempt to inflict bodily harm upon another.

Subd. 11. **Second or subsequent violation or offense.** "Second or subsequent violation" or "second or subsequent offense" means that prior to the commission of the violation or offense, the actor has been adjudicated guilty of a specified similar violation or offense.

History: 1963 c 753 art 1 s 609.02; 1969 c 735 s 3; Ex1971 c 27 s 42,43; 1977 c 355 s 2; 1979 c 258 s 2,3; 1983 c 274 s 14; 1983 c 331 s 4,5

609.025 JURISDICTION OF STATE.

A person may be convicted and sentenced under the law of this state if:

- (1) He commits an offense in whole or in part within this state; or
 (2) Being without the state, he causes, aids or abets another to commit a crime within the state; or
 (3) Being without the state, he intentionally causes a result within the state prohibited by the criminal laws of this state.

It is not a defense that the defendant's conduct is also a criminal offense under the laws of another state or of the United States or of another country.

History: 1963 c 753 art 1 s 609.025; Ex1971 c 27 s 44

609.03 PUNISHMENT WHEN NOT OTHERWISE FIXED.

If a person is convicted of a crime for which no punishment is otherwise provided he may be sentenced as follows:

- (1) If the crime is a felony, to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both; or
 (2) If the crime is a gross misdemeanor, to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both; or
 (3) If the crime is a misdemeanor, to imprisonment for not more than 90 days or to payment of a fine of not more than \$700, or both; or
 (4) If the crime is other than a misdemeanor and a fine is imposed but the amount is not specified, to payment of a fine of not more than \$1,000, or to imprisonment for a specified term of not more than six months if the fine is not paid.

History: 1963 c 753 art 1 s 609.03; 1969 c 735 s 4; 1977 c 355 s 3; 1983 c 331 s 6

609.031 [Repealed, 1983 c 331 s 11]

609.032 [Repealed, 1983 c 331 s 11]

609.033 INCREASED MAXIMUM PENALTIES FOR MISDEMEANORS.

Any law of this state which provides for a maximum fine of \$500 as a penalty for a violation shall, on or after August 1, 1983, be deemed to provide for a maximum fine of \$700.

History: 1983 c 331 s 7

609.034 INCREASED MAXIMUM PENALTY FOR ORDINANCE VIOLATIONS.

Any law of this state or municipal charter which limits the power of any statutory or home rule charter city, town, county, or other political subdivision to prescribe a maximum fine of \$500 or less for an ordinance shall on or after August 1, 1983, be deemed to provide that the statutory or home rule charter city, town, county, or other political subdivision has the power to prescribe a maximum fine of \$700.

History: 1983 c 331 s 8

609.0341 INCREASED MAXIMUM FINES FOR GROSS MISDEMEANORS; FELONIES; OTHER FINES.

Subdivision 1. **Gross misdemeanors.** Any law of this state which provides for a maximum fine of \$1,000 or for a maximum term of imprisonment of one year or which is defined as a gross misdemeanor shall, on or after August 1, 1983, be

MINNESOTA STATUTES 1984

609.0341 CRIMINAL CODE OF 1963

9822

deemed to provide for a maximum fine of \$3,000 and for a maximum term of imprisonment of one year.

Subd. 2. **Felonies.** (a) Any law of this state which provides for a maximum fine of \$2,000 shall, on or after August 1, 1983, be deemed to provide for a maximum fine of \$4,000.

(b) Any law of this state which provides for a maximum fine of \$3,000 shall, on or after August 1, 1983, be deemed to provide for a maximum fine of \$5,000.

(c) Any law of this state which provides for a maximum fine of \$5,000 shall, on or after August 1, 1983, be deemed to provide for a maximum fine of \$10,000.

(d) Any law of this state which provides for a maximum fine of \$7,000 shall, on or after August 1, 1983, be deemed to provide for a maximum fine of \$14,000.

(e) Any law of this state which provides for a maximum fine of \$10,000 shall, on or after August 1, 1983, be deemed to provide for a maximum fine of \$20,000.

(f) Any law of this state which provides for a maximum fine of \$15,000 shall, on or after August 1, 1983, be deemed to provide for a maximum fine of \$30,000.

(g) Any law of this state which provides for a maximum fine of \$20,000 shall, on or after August 1, 1983, be deemed to provide for a maximum fine of \$35,000.

(h) Any law of this state which provides for a maximum fine of \$25,000 shall, on or after August 1, 1983, be deemed to provide for a maximum fine of \$40,000.

(i) Any law of this state which provides for a maximum fine of \$30,000 shall, on or after August 1, 1983, be deemed to provide for a maximum fine of \$45,000.

(j) Any law of this state which provides for a maximum fine of \$40,000 shall, on or after August 1, 1983, be deemed to provide for a maximum fine of \$50,000.

Subd. 3. [Repealed, 1984 c 628 art 3 s 10]

History: 1983 c 331 s 9

609.035 CRIME PUNISHABLE UNDER DIFFERENT PROVISIONS.

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

History: 1963 c 753 art 1 s 609.035; 1983 c 139 s 1

609.04 CONVICTION OF LESSER OFFENSE.

Subdivision 1. Upon prosecution for a crime, the actor may be convicted of either the crime charged or an included offense, but not both. An included offense may be any of the following:

- (1) A lesser degree of the same crime; or
- (2) An attempt to commit the crime charged; or
- (3) An attempt to commit a lesser degree of the same crime; or
- (4) A crime necessarily proved if the crime charged were proved; or
- (5) A petty misdemeanor necessarily proved if the misdemeanor charge were proved.

Subd. 2. A conviction or acquittal of a crime is a bar to further prosecution of any included offense, or other degree of the same crime.

History: 1963 c 753 art 1 s 609.04; Ex1971 c 27 s 45

609.045 FOREIGN CONVICTION OR ACQUITTAL.

If an act or omission in this state constitutes a crime under both the laws of this state and the laws of another jurisdiction, a conviction or acquittal of the crime in the other jurisdiction shall not bar prosecution for the crime in this state unless the elements of both law and fact are identical.

History: 1963 c 753 art 1 s 609.045; 1983 c 152 s 1

609.05 LIABILITY FOR CRIMES OF ANOTHER.

Subdivision 1. A person is criminally liable for a crime committed by another if he intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime.

Subd. 2. A person liable under subdivision 1 is also liable for any other crime committed in pursuance of the intended crime if reasonably foreseeable by him as a probable consequence of committing or attempting to commit the crime intended.

Subd. 3. A person who intentionally aids, advises, hires, counsels, or conspires with or otherwise procures another to commit a crime and thereafter abandons his purpose and makes a reasonable effort to prevent the commission of the crime prior to its commission is not liable if the crime is thereafter committed.

Subd. 4. A person liable under this section may be charged with and convicted of the crime although the person who directly committed it has not been convicted or has been convicted of some other degree of the crime or of some other crime based on the same act.

History: 1963 c 753 art 1 s 609.05

609.055 LIABILITY OF CHILDREN.

Children under the age of 14 years are incapable of committing crime. Children of the age of 14 years or over but under 18 years may be prosecuted for a criminal offense if the alleged violation is duly referred to the appropriate prosecuting authority in accordance with the provisions of chapter 260.

History: 1963 c 753 art 1 s 609.055

609.06 AUTHORIZED USE OF FORCE.

Reasonable force may be used upon or toward the person of another without his consent when the following circumstances exist or the actor reasonably believes them to exist:

- (1) When used by a public officer or one assisting him under his direction:
 - (a) In effecting a lawful arrest; or
 - (b) In the execution of legal process; or
 - (c) In enforcing an order of the court; or
 - (d) In executing any other duty imposed upon him by law; or
- (2) When used by a person not a public officer in arresting another in the cases and in the manner provided by law and delivering him to an officer competent to receive him into custody; or
- (3) When used by any person in resisting or aiding another to resist an offense against the person; or
- (4) When used by any person in lawful possession of real or personal property, or by another assisting him, in resisting a trespass upon or other unlawful interference with such property; or

MINNESOTA STATUTES 1984

609.06 CRIMINAL CODE OF 1963

9824

(5) When used by any person to prevent the escape, or to retake following the escape, of a person lawfully held on a charge or conviction of a crime; or

(6) When used by a parent, guardian, teacher or other lawful custodian of a child or pupil, in the exercise of lawful authority, to restrain or correct such child or pupil; or

(7) When used by a common carrier in expelling a passenger who refuses to obey a lawful requirement for the conduct of passengers and reasonable care is exercised with regard to his personal safety; or

(8) When used to restrain a mentally ill or mentally defective person from injuring himself or another or when used by one with authority to do so to compel compliance with reasonable requirements for his control, conduct or treatment; or

(9) When used by a public or private institution providing custody or treatment against one lawfully committed to it to compel compliance with reasonable requirements for his control, conduct or treatment.

History: 1963 c 753 art 1 s 609.06

609.065 JUSTIFIABLE TAKING OF LIFE.

The intentional taking of the life of another is not authorized by section 609.06, except when necessary in resisting or preventing an offense which the actor reasonably believes exposes him or another to great bodily harm or death, or preventing the commission of a felony in his place of abode.

History: 1963 c 753 art 1 s 609.065; 1978 c 736 s 1

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 in the direction of another person, or at a vehicle in which another person is believed to be, constitutes deadly force.

Subd. 2. **Use of deadly force.** Notwithstanding the provisions of section 609.06 or 609.065, the use of deadly force by a peace officer in the line of duty is justified only when necessary:

(1) To protect himself or another from apparent death or great bodily harm;

(2) To effect the arrest or capture, or prevent the escape, of a person whom the peace officer knows or has reasonable grounds to believe has committed or attempted to commit a felony involving the use or threatened use of deadly force; or

(3) To effect the arrest or capture, or prevent the escape, of a person whom the officer knows or has reasonable grounds to believe has committed or attempted to commit a felony if the officer reasonably believes that the person will cause death or great bodily harm if his apprehension is delayed.

Subd. 3. This section and sections 609.06, 609.065 and 629.33 may not be used as a defense in a civil action brought by an innocent third party.

History: 1978 c 736 s 2

609.075 INTOXICATION AS DEFENSE.

An act committed while in a state of voluntary intoxication is not less criminal by reason thereof, but when a particular intent or other state of mind is a necessary

MINNESOTA STATUTES 1984

9825

CRIMINAL CODE OF 1963 609.09

element to constitute a particular crime, the fact of intoxication may be taken into consideration in determining such intent or state of mind.

History: 1963 c 753 art 1 s 609.075

609.08 DURESS.

Except as provided in section 609.20, clause (3), when any crime is committed or participated in by two or more persons, any one of whom participates only under compulsion by another engaged therein, who by threats creates a reasonable apprehension in the mind of such participator that in case of refusal he is liable to instant death, such threats and apprehension constitute duress which will excuse such participator from criminal liability.

History: 1963 c 753 art 1 s 609.08

609.085 SENDING WRITTEN COMMUNICATION.

Subdivision 1. When the sending of a letter or other written communication is made an offense, the offense is complete upon deposit of the letter or communication in any official depository of mail or given to another for the purpose of delivery to the receiver.

Subd. 2. The offense is committed in both the county in which the letter is so deposited or given and the county in which it is received by the person for whom it is intended.

History: 1963 c 753 art 1 s 609.085

609.09 COMPELLING TESTIMONY; IMMUNITY FROM PROSECUTION.

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

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

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

History: 1963 c 753 art 1 s 609.09; 1969 c 661 s 1; 1981 c 293 s 1

SENTENCES

609.095 LIMITS OF SENTENCES.

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.

History: 1963 c 753 art 1 s 609.095

609.10 SENTENCES AVAILABLE.

Upon conviction of a felony and compliance with the other provisions of this chapter the court, if it imposes sentence, may sentence the defendant to the extent authorized by law as follows:

- (1) To life imprisonment; or
- (2) To imprisonment for a fixed term of years set by the court; or
- (3) To both imprisonment for a fixed term of years and payment of a fine; or
- (4) To payment of a fine without imprisonment or to imprisonment for a fixed term of years if the fine is not paid; or
- (5) To payment of court-ordered restitution in addition to either imprisonment or payment of a fine, or both.

History: 1963 c 753 art 1 s 609.10; 1978 c 723 art 1 s 13; 1984 c 610 s 1

609.101 SURCHARGE ON FINES, ASSESSMENTS.

When a court sentences a person convicted of a felony, gross misdemeanor, or misdemeanor, other than a traffic or parking violation, and if the sentence does not include payment of a fine, the court shall impose an assessment of not less than \$20 nor more than \$40. If the sentence includes payment of a fine, the court shall impose a surcharge on the fine of ten percent of the fine. This section applies whether or not the person is sentenced to imprisonment and when the sentence is suspended. The court may, upon a showing of indigency or undue hardship upon the convicted person or his immediate family, waive payment or authorize payment of the assessment or surcharge in installments.

The court shall collect and forward the amount of the assessment or surcharge to the state treasurer to be deposited in the general fund for the purposes of providing services, assistance, or reparations or a combination, to victims of crimes through programs established under sections 611A.21 to 611A.36, under chapter 256D, and chapter 299B. If the convicted person is sentenced to imprisonment, the chief executive officer of the correctional facility in which the convicted person is incarcerated may collect the assessment or surcharge from any earnings the inmate accrues for work performed in the correctional facility and forward the amount to the state treasurer. The state treasurer shall identify and report to the commissioner of finance all amounts deposited in the general fund under this section.

History: 1981 c 360 art 2 s 50; 1983 c 262 art 1 s 6

609.105 SENTENCE OF IMPRISONMENT.

Subdivision 1. A sentence to imprisonment for more than one year shall commit the defendant to the custody of the commissioner of corrections.

Subd. 2. The commissioner of corrections shall determine the place of confinement in a prison, reformatory, or other facility of the department of corrections established by law for the confinement of convicted persons and prescribe reasonable conditions, rules, and regulations for their employment, conduct, instruction, and discipline within or without the facility.

Subd. 3. A sentence to imprisonment for a period of one year or any lesser period shall be to a workhouse, work farm, county jail, or other place authorized by law.

History: 1963 c 753 art 1 s 609.105

609.11 MINIMUM TERMS OF IMPRISONMENT.

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

Subd. 2. [Repealed, 1978 c 723 art 2 s 5]

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

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

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

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

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

offense listed in subdivision 9, used a firearm or other dangerous weapon or had in possession a firearm.

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

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

History: 1963 c 753 art 1 s 609.11; 1969 c 743 s 1; 1971 c 845 s 15; 1974 c 32 s 1; 1975 c 378 s 8; 1977 c 130 s 2; 1978 c 723 art 2 s 2; 1979 c 258 s 1; 1981 c 227 s 1-7; 1983 c 274 s 15

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. 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.

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.

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

Subd. 1b. Additional contents. The presentence investigation report shall also include the following information relating to victims:

(a) a summary of the damages or harm and any other problems generated by the criminal occurrence;

(b) a concise statement of what disposition the victim deems appropriate for the defendant or juvenile court respondent, including reasons given, if any, by the victim in support of his opinion; and

(c) an attachment to the report, consisting of the victim's written objections, if any, to the proposed disposition if the victim provides the officer conducting the presentence investigation with this written material within a reasonable time prior to the disposition.

For the purposes of this section, "victim" has the meaning given to it in section 611A.01.

Subd. 1c. Notice to victim. The officer conducting the presentence or predispositional report shall make reasonable and good faith efforts to contact the victim of that crime and to provide that victim with the following information: (i) the charge or juvenile court petition to which the defendant has been convicted or pleaded guilty, or the juvenile respondent has admitted in court or has been found to have committed by the juvenile court, and of any plea agreement between the prosecution and the defense counsel; (ii) his right to request restitution pursuant to section 611A.04; (iii) the time and place of the sentencing or juvenile court disposition and his right to be present; and (iv) his right to object in writing to the court, prior to the time of sentencing or juvenile court disposition, to the proposed sentence or juvenile dispositional alternative, or to the terms of the proposed plea agreement. To assist the victim in making a recommendation under clause (iv), the officer shall provide the victim with information about the court's options for sentencing and other dispositions. Failure of the officer to comply with this subdivision does not give any rights or grounds for post-conviction or post-juvenile disposition relief to the defendant or juvenile court respondent, nor does it entitle a defendant or a juvenile court respondent to withdraw a plea of guilty.

Subd. 2. If the defendant has been convicted of a crime for which a mandatory sentence of life imprisonment is provided by law, the probation officer of the court, if there is one, otherwise the commissioner of corrections, shall forthwith make a post-sentence investigation and make a written report as provided by subdivision 1.

Subd. 3. All law enforcement agencies shall make available to the probation officer or the commissioner of corrections the criminal record and other relevant information relating to the defendant which they may have, when requested for the purposes of subdivisions 1 and 2.

Subd. 4. Any report made pursuant to subdivision 1 shall be, if written, provided to counsel for all parties before sentence. The written report shall not disclose confidential sources of information unless the court otherwise directs. On the request of the prosecuting attorney or the defendant's attorney a summary hearing in chambers shall be held on any matter brought in issue, but confidential sources of information shall not be disclosed unless the court otherwise directs. If the presentence report is given orally the defendant or his attorney shall be permitted to hear the report.

Subd. 5. If the defendant is sentenced to the commissioner of corrections, a copy of any report made pursuant to this section and not made by the commissioner shall accompany the commitment.

Subd. 6. Except as provided in subdivisions 4 and 5 or as otherwise directed by the court any report made pursuant to this section shall not be disclosed.

Subd. 7. If imposition of sentence is stayed by reason of an appeal taken or to be taken, the presentence investigation provided for in this section shall not be made until such stay has expired or has otherwise been terminated.

History: 1963 c 753 art 1 s 609.115; 1978 c 723 art 2 s 3; 1979 c 233 s 23,24; 1981 c 312 s 1,2; 1983 c 262 art 2 s 3-5

609.116 Subdivision 1. [Repealed, 1979 c 258 s 25]

Subd. 2. [Repealed, 1969 c 997 s 3; 1979 c 258 s 25]

609.12 PAROLE OR DISCHARGE.

Subdivision 1. A person sentenced to the commissioner of corrections for imprisonment for a period less than life may be paroled or discharged at any time without regard to length of the term of imprisonment which the sentence imposes when in the judgment of the commissioner of corrections, and under the conditions he imposes, the granting of parole or discharge would be most conducive to his rehabilitation and would be in the public interest.

Subd. 2. If a sentence of more than five years has been imposed on a defendant for a crime authorizing a sentence of not more than ten years, the commissioner of corrections shall grant him parole no later than the expiration of five years of imprisonment, less time granted for good behavior, unless the commissioner with or without hearing that his parole would not be conducive to his rehabilitation or would not be in the public interest.

Subd. 3. All sentences to the commissioner of corrections for the imprisonment of the defendant are subject to the laws relating to parole and the powers of the commissioner of corrections, except as modified in subdivisions 1 and 2, and to all other laws relating to persons in said institutions and their imprisonment.

History: 1963 c 753 art 1 s 609.12; 1973 c 654 s 15; 1975 c 271 s 6; 1983 c 274 s 18

609.125 SENTENCE FOR MISDEMEANOR OR GROSS MISDEMEANOR.

Upon conviction of a misdemeanor or gross misdemeanor the court, if sentence is imposed, may, to the extent authorized by law, sentence the defendant:

- (1) To imprisonment for a definite term; or
- (2) To payment of a fine, or to imprisonment for a specified term if the fine is not paid; or
- (3) To both imprisonment for a definite term and payment of a fine; or
- (4) To payment of court-ordered restitution in addition to either imprisonment or payment of a fine, or both.

History: 1963 c 753 art 1 s 609.125; 1971 c 25 s 91; 1984 c 610 s 2

609.13 CONVICTIONS OF FELONY OR GROSS MISDEMEANOR; WHEN DEEMED MISDEMEANOR OR GROSS MISDEMEANOR.

Subdivision 1. Notwithstanding a conviction is for a felony:

(1) The conviction is deemed to be for a misdemeanor or a gross misdemeanor if the sentence imposed is within the limits provided by law for a misdemeanor or gross misdemeanor as defined in section 609.02; or

(2) The conviction is deemed to be for a misdemeanor if the imposition of the sentence is stayed, the defendant is placed on probation, and he is thereafter discharged without sentence.

Subd. 2. Notwithstanding that a conviction is for a gross misdemeanor, the conviction is deemed to be for a misdemeanor if:

(1) The sentence imposed is within the limits provided by law for a misdemeanor or as defined in section 609.02; or

(2) If the imposition of the sentence is stayed, the defendant is placed on probation, and he is thereafter discharged without sentence.

History: 1963 c 753 art 1 s 609.13; 1971 c 937 s 21

609.135 STAY OF IMPOSITION OR EXECUTION OF SENTENCE.

Subdivision 1. Terms and conditions. Except when a sentence of life imprisonment is required by law, or when a mandatory minimum term of imprisonment is required by section 609.11, any court may stay imposition or execution of sentence and (a) may order noninstitutional sanctions without placing the defendant on probation, or (b) may place the defendant on probation with or without supervision and on the terms the court prescribes, including noninstitutional sanctions when practicable. The court may order the supervision to be under the probation officer of the court, or, if there is none and the conviction is for a felony or gross misdemeanor, by the commissioner of corrections, or in any case by some other suitable and consenting person. For purposes of this subdivision, subdivision 6, and section 609.14, the term "noninstitutional sanctions" includes but is not limited to restitution, community work service, and work in lieu of or to work off fines.

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

Subd. 2. (1) In case the conviction is for a felony such stay shall be for not more than the maximum period for which the sentence of imprisonment might have been imposed.

(2) In case the conviction is for a misdemeanor the stay shall not be for more than one year.

(3) In case the conviction is for a gross misdemeanor the stay shall not be for more than two years.

(4) At the expiration of such stay, unless the stay has been revoked or the defendant discharged prior thereto, the defendant shall be discharged.

Subd. 3. The court shall report to the commissioner of public safety any stay of imposition or execution granted in the case of a conviction for an offense in which a motor vehicle, as defined in section 169.01, subdivision 3, is used.

Subd. 4. The court may, as a condition of probation, require the defendant to serve up to one year incarceration in a county jail, a county regional jail, a county workfarm, county workhouse or other local correctional facility. The court may allow the defendant the work release privileges of section 631.425 during the period of incarceration.

Subd. 5. If a person is convicted of assaulting his spouse or other person with whom he resides, and the court stays imposition or execution of sentence and places the defendant on probation, the court may condition the stay upon the defendant's participation in counseling or other appropriate programs selected by the court.

Subd. 6. Preference for noninstitutional sanctions. A court staying imposition or execution of a sentence that does not include a term of incarceration as a condition of the stay shall order noninstitutional sanctions where practicable.

History: 1963 c 753 art 1 s 609.135; 1971 c 244 s 2; 1976 c 341 s 3; 1977 c 349 s 1; 1977 c 355 s 6; 1978 c 723 art 2 s 4; 1978 c 724 s 1; 1981 c 9 s 2; 1981 c 227 s 8; 1983 c 264 s 9; 1984 c 610 s 3,4

609.14 REVOCATION OF STAY.

Subdivision 1. Grounds. When it appears that the defendant has violated any of the conditions of his probation or noninstitutional sanction, or has otherwise been guilty of misconduct which warrants the imposing or execution of sentence, the

court may without notice revoke the stay thereof and probation and direct that the defendant be taken into immediate custody.

Subd. 2. The defendant shall thereupon be notified in writing and in such manner as the court directs of the grounds alleged to exist for revocation of the stay of imposition or execution of sentence. If such grounds are brought in issue by the defendant, a summary hearing shall be held thereon at which he is entitled to be heard and to be represented by counsel.

Subd. 3. **Sentence.** If any of such grounds are found to exist the court may:

(1) If imposition of sentence was previously stayed, again stay sentence or impose sentence and stay the execution thereof, and in either event place the defendant on probation or order noninstitutional sanctions pursuant to section 609.135, or impose sentence and order execution thereof; or

(2) If sentence was previously imposed and execution thereof stayed, continue such stay and place the defendant on probation or order noninstitutional sanctions in accordance with the provisions of section 609.135, or order execution of the sentence previously imposed.

Subd. 4. If none of such grounds are found to exist, the defendant shall be restored to his liberty under the previous order of the court.

History: 1963 c 753 art 1 s 609.14; 1984 c 610 s 5,6

609.145 CREDIT FOR PRIOR IMPRISONMENT.

Subdivision 1. When a person has been imprisoned pursuant to a conviction which is set aside and is thereafter convicted of a crime growing out of the same act or omission, the period of imprisonment to which he is sentenced is reduced by the period of the prior imprisonment and the time earned thereby in diminution of sentence.

Subd. 2. A sentence of imprisonment upon conviction of a felony is reduced by the period of confinement of the defendant following his conviction and before his commitment to the commissioner of corrections for execution of sentence unless the court otherwise directs.

History: 1963 c 753 art 1 s 609.145; 1978 c 723 art 1 s 14

609.15 MULTIPLE SENTENCES.

Subdivision 1. When separate sentences of imprisonment are imposed on a defendant for two or more crimes, whether charged in a single indictment or information or separately, or when a person who is under sentence of imprisonment in this state is being sentenced to imprisonment for another crime committed prior to or while subject to such former sentence, the court in the later sentences shall specify whether the sentences shall run concurrently or consecutively. If the court does not so specify, the sentences shall run concurrently.

Subd. 2. If the court specifies that the sentence shall run consecutively, the total of the terms of imprisonment imposed, other than a term of imprisonment for life, shall not exceed 40 years. If all of the sentences are for misdemeanors the total of the terms of imprisonment shall not exceed one year; if for gross misdemeanors the total of such terms shall not exceed three years.

History: 1963 c 753 art 1 s 609.15

609.155 [Repealed, 1978 c 723 art 1 s 19]

609.16 [Repealed, 1978 c 723 art 1 s 19]

609.165 RESTORATION OF CIVIL RIGHTS.

Subdivision 1. When a person has been deprived of his civil rights by reason of conviction of a crime and is thereafter discharged, such discharge shall restore him to all his civil rights and to full citizenship, with full right to vote and hold office, the same as if such conviction had not taken place, and the order of discharge shall so provide.

Subd. 2. The discharge may be:

(1) By order of the court following stay of sentence or stay of execution of sentence; or

(2) Upon expiration of sentence.

Subd. 3. This section does not apply to a forfeiture of and disqualification for public office as provided in section 609.42, subdivision 2.

History: 1963 c 753 art 1 s 609.165; 1973 c 654 s 15; 1975 c 271 s 6; 1978 c 723 art 1 s 15

609.166 CONVICTIONS, SETTING ASIDE IN CERTAIN INSTANCES.

Any person who is convicted of or pleads guilty to a felony, gross misdemeanor or misdemeanor may move the convicting court for the entry of an order setting aside the conviction where:

(a) the offense was committed before he was 21 years of age;

(b) five years have lapsed since the person has served the sentence imposed upon him or has been discharged from probation, and during the five year period the person has not been convicted of a felony or gross misdemeanor; and

(c) the offense is not one for which a sentence of life imprisonment may be imposed.

History: 1971 c 779 s 1; 1974 c 331 s 1

609.167 PROCEDURE IN ENTERING ORDER.

Subdivision 1. A copy of the motion and supporting affidavits shall be served upon the office of the prosecuting attorney who prosecuted the offense 30 days prior to hearing on the motion.

Subd. 2. At hearing on the motion the court may require the filing of such further affidavits and the taking of such evidence as it deems necessary and proper.

Subd. 3. Where the court determines that the circumstances and behavior of the person from the date of his conviction warrant setting aside the conviction, it may enter such an order.

History: 1971 c 779 s 2

609.168 EFFECT OF ORDER.

Where an order is entered by the court setting aside the conviction the person shall be deemed not to have been previously convicted.

History: 1971 c 779 s 3

ANTICIPATORY CRIMES**609.17 ATTEMPTS.**

Subdivision 1. Whoever, with intent to commit a crime, does an act which is a substantial step toward, and more than preparation for, the commission of the crime

is guilty of an attempt to commit that crime, and may be punished as provided in subdivision 4.

Subd. 2. An act may be an attempt notwithstanding the circumstances under which it was performed or the means employed to commit the crime intended or the act itself were such that the commission of the crime was not possible, unless such impossibility would have been clearly evident to a person of normal understanding.

Subd. 3. It is a defense to a charge of attempt that the crime was not committed because the accused desisted voluntarily and in good faith and abandoned his intention to commit the crime.

Subd. 4. Whoever attempts to commit a crime may be sentenced as follows:

(1) If the maximum sentence provided for the crime is life imprisonment, to not more than 20 years; or

(2) For any other attempt, to not more than one-half of the maximum imprisonment or fine or both provided for the crime attempted, but such maximum in any case shall not be less than imprisonment for 90 days or a fine of \$100.

History: 1963 c 753 art 1 s 609.17

609.175 CONSPIRACY.

Subdivision 1. **To cause arrest or prosecution.** Whoever conspires with another to cause a third person to be arrested or prosecuted on a criminal charge knowing the charge to be false is guilty of a misdemeanor.

Subd. 2. **To commit crime.** Whoever conspires with another to commit a crime and in furtherance of the conspiracy one or more of the parties does some overt act in furtherance of such conspiracy may be sentenced as follows:

(1) If the crime intended is a misdemeanor, by a sentence to imprisonment for not more than 90 days or to payment of a fine of not more than \$300, or both; or

(2) If the crime intended is murder in the first degree or treason, to imprisonment for not more than 20 years; or

(3) If the crime intended is any other felony or a gross misdemeanor, to imprisonment or to payment of a fine of not more than one-half the imprisonment or fine provided for that felony or gross misdemeanor or both.

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 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.

History: 1963 c 753 art 1 s 609.175; 1971 c 23 s 37,38; 1975 c 279 s 1

HOMICIDE AND SUICIDE

609.18 DEFINITION.

For the purposes of sections 609.185 and 609.19, "premeditation" means to consider, plan or prepare for, or determine to commit, the act referred to prior to its commission.

History: 1963 c 753 art 1 s 609.18

609.185 MURDER IN THE FIRST DEGREE.

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

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

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

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

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

History: 1963 c 753 art 1 s 609.185; 1975 c 374 s 1; 1981 c 227 s 9

609.19 MURDER IN THE SECOND DEGREE.

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

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

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

History: 1963 c 753 art 1 s 609.19; 1981 c 227 s 10

609.195 MURDER IN THE THIRD DEGREE.

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

History: 1963 c 753 art 1 s 609.195; 1977 c 130 s 3; 1981 c 227 s 11

609.20 MANSLAUGHTER IN THE FIRST DEGREE.

Whoever does any of the following is guilty of manslaughter in the first degree and may be sentenced to imprisonment for not more than 15 years or to payment of a fine of not more than \$30,000, or both:

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

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

(3) Intentionally causes the death of another person because the actor is coerced by threats made by someone other than his co-conspirator and which cause him

reasonably to believe that his act is the only means of preventing imminent death to himself or another.

History: 1963 c. 753 art 1 s 609.20; 1981 c 227 s 12; 1984 c 628 art 3 s 3

609.205 MANSLAUGHTER IN THE SECOND DEGREE.

Whoever 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 seven years or to payment of a fine of not more than \$14,000, or both:

(1) By his culpable negligence whereby he 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 him 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 him to have vicious propensities, to go at large, or negligently failing to keep it properly confined, and the victim was not at fault.

History: 1963 c 753 art 1 s 609.205; 1984 c 628 art 3 s 11

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 five years or to payment of a fine of not more than \$10,000, 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 three years or the payment of a fine of not more than \$5,000, or both.

History: 1963 c 753 art 1 s 609.21; 1983 c 12 s 1; 1984 c 622 s 24,25; 1984 c 628 art 3 s 4,11

609.215 SUICIDE.

Subdivision 1. **Aiding suicide.** Whoever intentionally advises, encourages, or assists another in taking his own life 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.

Subd. 2. **Aiding attempted suicide.** Whoever intentionally advises, encourages, or assists another who attempts but fails to take his own life 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: 1963 c 753 art 1 s 609.215; 1984 c 628 art 3 s 11

CRIMES AGAINST THE PERSON

609.22 [Repealed, 1979 c 258 s 25]

609.221 ASSAULT IN THE FIRST DEGREE.

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

History: 1979 c 258 s 4; 1984 c 628 art 3 s 11

609.222 ASSAULT IN THE SECOND DEGREE.

Whoever assaults another with a dangerous weapon but without inflicting great 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: 1979 c 258 s 5; 1984 c 628 art 3 s 11

609.223 ASSAULT IN THE THIRD DEGREE.

Whoever assaults another and inflicts substantial bodily harm 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: 1979 c 258 s 6; 1984 c 628 art 3 s 11

609.2231 ASSAULT IN THE FOURTH DEGREE.

Whoever assaults a peace officer when that officer is effecting a lawful arrest or executing any other duty imposed upon him by law and inflicts demonstrable bodily harm 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: 1983 c 169 s 1; 1984 c 628 art 3 s 11

609.224 ASSAULT IN THE FIFTH DEGREE.

Whoever does any of the following commits an assault and is guilty of a misdemeanor:

(1) Does an act with intent to cause fear in another of immediate bodily harm or death; or

(2) Intentionally inflicts or attempts to inflict bodily harm upon another.

History: 1979 c 258 s 7; 1983 c 169 s 2

609.225 [Repealed, 1979 c 258 s 25]

609.23 MISTREATMENT OF PERSONS CONFINED.

Whoever, being in charge of or employed in any institution, whether public or private, intentionally abuses or ill-treats any person confined therein who is mentally or physically disabled or who is involuntarily confined therein by order of court or

other duly constituted authority 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: 1963 c 753 art 1 s 609.23; 1984 c 628 art 3 s 11

609.231 MISTREATMENT OF RESIDENTS OR PATIENTS.

Whoever, being in charge of or employed in any facility required to be licensed under the provisions of sections 144.50 to 144.58, or 144A.02, intentionally abuses, ill-treats, or culpably neglects any patient or resident therein to his physical detriment 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: 1973 c 688 s 9; 1976 c 173 s 60; 1984 c 628 art 3 s 11

609.235 USE OF DRUGS TO INJURE OR FACILITATE CRIME.

Whoever administers to another or causes another to take any poisonous, stupefying, overpowering, narcotic or anesthetic substance with intent thereby to injure or to facilitate the commission of a crime 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: 1963 c 753 art 1 s 609.235; 1984 c 628 art 3 s 11

609.24 SIMPLE ROBBERY.

Whoever, knowing he is not entitled thereto, takes personal property from the person or in the presence of another and uses or threatens the imminent use of force against any person to overcome his resistance or powers of resistance to, or to compel acquiescence in, the taking or carrying away of the property is guilty of robbery 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.

History: 1963 c 753 art 1 s 609.24; 1984 c 628 art 3 s 11

609.245 AGGRAVATED ROBBERY.

Whoever, while committing a robbery, is armed with a dangerous weapon or inflicts bodily harm upon another is guilty of aggravated robbery and may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than \$35,000, or both.

History: 1963 c 753 art 1 s 609.245; 1984 c 628 art 3 s 11

609.25 KIDNAPPING.

Subdivision 1. **Acts constituting.** Whoever, for any of the following purposes, confines or removes from one place to another, any person without his consent or, if he is under the age of 16 years, without the consent of his parents or other legal custodian, is guilty of kidnapping and may be sentenced as provided in subdivision 2:

- (1) To hold for ransom or reward for release, or as shield or hostage; or
- (2) To facilitate commission of any felony or flight thereafter; or
- (3) To commit great bodily harm or to terrorize the victim or another; or
- (4) To hold in involuntary servitude.

Subd. 2. **Sentence.** Whoever violates subdivision 1 may be sentenced as follows:

(1) If the victim is released in a safe place without great bodily harm, to imprisonment for not more than 20 years or to payment of a fine of not more than \$35,000, or both; or

(2) If the victim is not released in a safe place or if the victim suffers great bodily harm during the course of the kidnapping to imprisonment for not more than 40 years or to payment of a fine of not more than \$50,000, or both.

History: 1963 c 753 art 1 s 609.25; 1979 c 258 s 8; 1984 c 628 art 3 s 11

609.251 DOUBLE JEOPARDY; KIDNAPPING.

A prosecution for or conviction of the crime of kidnapping is not a bar to conviction of any other crime committed during the time of the kidnapping.

History: 1983 c 139 s 2

609.255 FALSE IMPRISONMENT.

Subdivision 1. **Definition.** As used in this section, the following term has the meaning given it unless specific content indicates otherwise.

“Caretaker” means an individual who has responsibility for the care of a child as a result of a family relationship, or who has assumed responsibility for all or a portion of the care of a child.

Subd. 2. **Intentional restraint.** Whoever, knowing he has no lawful authority to do so, intentionally confines or restrains a child not his own under the age of 18 years without his parent’s or legal custodian’s consent, or any other person without his consent, is guilty of false imprisonment and may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than \$5,000, or both.

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 and which results in substantial emotional harm, 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 three years or to payment of not more than \$5,000, or both.

History: 1963 c 753 art 1 s 609.255; 1983 c 217 s 2; 1984 c 628 art 3 s 11

609.26 DEPRIVING ANOTHER OF CUSTODIAL OR PARENTAL RIGHTS.

Subdivision 1. 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 or other person having the right to visitation or custody, where the action manifests an intent substantially to deprive that parent or other person of his 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 or other person having the right to visitation or custody under a court order, where

MINNESOTA STATUTES 1984

609.26 CRIMINAL CODE OF 1963

9840

the action manifests an intent substantially to deprive that parent or other person having the right to visitation or custody of his rights to visitation or custody; or

(4) takes, obtains, retains, or fails to return a minor child from or to a parent or other person having the right to visitation or custody 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 or other person having the right to visitation or custody of his rights to visitation or custody.

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

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

(2) is consented to by the parent, stepparent, or legal custodian seeking prosecution; or

(3) is otherwise authorized by a court order.

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

Subd. 3. **Venue.** A person who violates this section may be prosecuted and tried either in the county in which the child was taken, concealed, or detained or in the county of lawful residence of the child.

Subd. 4. **Return of child; costs.** A child who has been concealed, obtained, or retained in violation of this section shall be returned to the person having lawful custody of the child or shall be taken into custody pursuant to section 260.165, subdivision 1, paragraph (c), clause (2). In addition to any sentence imposed, the court may assess any expense incurred in returning the child against any person convicted of violating this section. The court may direct the appropriate county welfare agency to provide counseling services to a child who has been returned pursuant to this subdivision.

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

(a) the person voluntarily returns the child within 14 days after he takes, detains, or fails to return the child in violation of this section; or

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

Subd. 6. **Penalty.** Except as otherwise provided in subdivision 5, whoever violates this section may be sentenced to imprisonment for not more than one year and one day or to payment of a fine of \$3,000, or both.

Subd. 7. **Reporting of deprivation of parental rights.** Any violation of this section shall be reported pursuant to section 626.556, subdivision 3a.

History: 1963 c 753 art 1 s 609.26; 1967 c 570 s 1; 1979 c 263 s 1; 1984 c 484 s 2; 1984 c 654 art 5 s 58

609.265 ABDUCTION.

Whoever, for the purpose of marriage, takes a person under the age of 18 years, without the consent of the parents, guardian or other person having legal custody of

such person is guilty of abduction and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

History: 1963 c 753 art 1 s 609.265; 1984 c 628 art 3 s 11

CRIMES OF COMPULSION

609.27 COERCION.

Subdivision 1. **Acts constituting.** Whoever orally or in writing makes any of the following threats and thereby causes another against his will to do any act or forbear doing a lawful act is guilty of coercion and may be sentenced as provided in subdivision 2:

(1) A threat to unlawfully inflict bodily harm upon, or hold in confinement, the person threatened or another, when robbery or attempt to rob is not committed thereby; or

(2) A threat to unlawfully inflict damage to the property of the person threatened or another; or

(3) A threat to unlawfully injure a trade, business, profession, or calling; or

(4) A threat to expose a secret or deformity, publish a defamatory statement, or otherwise to expose any person to disgrace or ridicule; or

(5) A threat to make or cause to be made a criminal charge, whether true or false; provided, that a warning of the consequences of a future violation of law given in good faith by a peace officer or prosecuting attorney to any person shall not be deemed a threat for the purposes of this section.

Subd. 2. **Sentence.** Whoever violates subdivision 1 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 neither the pecuniary gain received by the violator nor the loss suffered by the person threatened or another as a result of the threat exceeds \$300, or the benefits received or harm sustained are not susceptible of pecuniary measurement; or

(2) To imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if such pecuniary gain or loss is more than \$300 but less than \$2,500; or

(3) To imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both, if such pecuniary gain or loss is \$2,500, or more.

History: 1963 c 753 art 1 s 609.27; 1971 c 23 s 40; 1977 c 355 s 7; 1983 c 359 s 87; 1984 c 628 art 3 s 11

609.275 ATTEMPT TO COERCE.

Whoever makes a threat within the meaning of section 609.27, subdivision 1, clauses (1) to (5), but fails to cause the intended act or forbearance, commits an attempt to coerce and may be punished as provided in section 609.17.

History: 1963 c 753 art 1 s 609.275

609.28 INTERFERING WITH RELIGIOUS OBSERVANCE.

Whoever, by threats or violence, intentionally prevents another person from performing any lawful act enjoined upon or recommended to him by the religion which he professes is guilty of a misdemeanor.

History: 1963 c 753 art 1 s 609.28; 1971 c 23 s 41

SEX CRIMES

609.29 [Repealed, 1975 c 374 s 13]

609.291 [Repealed, 1975 c 374 s 13]

609.292 [Repealed, 1975 c 374 s 13]

609.293 SODOMY.

Subdivision 1. **Definition.** "Sodomy" means carnally knowing any person by the anus or by or with the mouth.

Subd. 2. [Repealed, 1977 c 130 s 10]

Subd. 3. [Repealed, 1977 c 130 s 10]

Subd. 4. [Repealed, 1977 c 130 s 10]

Subd. 5. **Consensual acts.** Whoever, in cases not coming within the provisions of sections 609.342 or 609.344, voluntarily engages in or submits to an act of sodomy with 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: 1967 c 507 s 4; 1977 c 130 s 4; 1984 c 628 art 3 s 11

609.294 BESTIALITY.

Whoever carnally knows a dead body or an animal or bird is guilty of bestiality, which is a misdemeanor. If knowingly done in the presence of another he 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: 1967 c 507 s 5; 1971 c 23 s 42; 1984 c 628 art 3 s 11

609.295 [Repealed, 1975 c 374 s 13]

609.296 [Repealed, 1975 c 374 s 13]

609.31 LEAVING THE STATE TO EVADE ESTABLISHMENT OF PATERNITY.

Whoever with intent to evade proceedings to establish his paternity leaves the state knowing that a woman with whom he has had sexual intercourse is pregnant or has given birth within the previous 60 days to a living child 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.

History: 1967 c 507 s 8; 1984 c 628 art 3 s 11

609.32 [Repealed, 1979 c 255 s 9]

609.321 PROSTITUTION; DEFINITIONS.

Subdivision 1. For the purposes of sections 609.321 to 609.324, the following terms have the meanings given.

Subd. 2. "Business of prostitution" means any arrangement between or organization of two or more persons, acting other than as prostitutes or patrons, who commit acts punishable under sections 609.321 to 609.324.

Subd. 3. "Force" includes, but is not limited to, assault, as defined in this chapter, and coercion, as defined in section 609.27.

Subd. 4. "Patron" means an individual who hires or offers or agrees to hire another individual to engage in sexual penetration or sexual contact.

Subd. 5. "Place of prostitution" means a house or other place where prostitution is practiced.

Subd. 6. "Position of authority" means the circumstances under which an individual is charged, no matter how briefly, whether by delegation or otherwise, with rights, duties or responsibilities for the health, welfare or supervision of another individual.

Subd. 7. "Promotes the prostitution of an individual" means any of the following wherein the person knowingly:

- (1) Solicits or procures patrons for a prostitute; or
- (2) Provides, leases or otherwise permits premises or facilities owned or controlled by him to aid the prostitution of an individual; or
- (3) Owns, manages, supervises, controls, keeps or operates, either alone or with others, a place of prostitution to aid the prostitution of an individual; or
- (4) Owns, manages, supervises, controls, operates, institutes, aids or facilitates, either alone or with others, a business of prostitution to aid the prostitution of an individual; or
- (5) Admits a patron to a place of prostitution to aid the prostitution of an individual; or
- (6) Transports an individual from one point within this state to another point either within or without this state, or brings an individual into this state to aid the prostitution of the individual.

Subd. 8. "Prostitute" means an individual who engages in prostitution.

Subd. 9. "Prostitution" means engaging or offering or agreeing to engage for hire in sexual penetration or sexual contact.

Subd. 10. "Sexual contact" means any of the following acts, if the acts can reasonably be construed as being for the purpose of satisfying the actor's sexual impulses:

- (i) The intentional touching by an individual of a prostitute's intimate parts; or
- (ii) The intentional touching by a prostitute of another individual's intimate parts.

Subd. 11. "Sexual penetration" means any of the following acts, if for the purpose of satisfying sexual impulses: sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion however slight into the genital or anal openings of an individual's body by any part of another individual's body or any object used for the purpose of satisfying sexual impulses. Emission of semen is not necessary.

Subd. 12. A "public place" means a public street or sidewalk, a pedestrian skyway system as defined in section 472A.02, subdivision 6, a hotel, motel, or other place of public accommodation, or a place licensed to sell intoxicating liquor, wine, non-intoxicating malt beverages, or food.

History: 1979 c 255 s 1

609.322 SOLICITATION, INDUCEMENT AND PROMOTION OF PROSTITUTION.

Subdivision 1. Whoever, while acting other than as a prostitute or patron, intentionally does any of the following 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) Solicits or induces an individual under the age of 16 years to practice prostitution; or
 - (2) Solicits or induces an individual to practice prostitution by means of force;
- or

(3) Uses a position of authority to solicit or induce an individual to practice prostitution; or

(4) Promotes the prostitution of an individual in the following circumstances:

(a) The individual is under the age of 16 years; or

(b) The actor knows that the individual has been induced or solicited to practice prostitution by means of force; or

(c) The actor knows that a position of authority has been used to induce or solicit the individual to practice prostitution.

Subd. 2. Whoever, while acting other than as a prostitute or patron, intentionally does any of the following 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:

(1) Solicits or induces an individual at least 16 but less than 18 years of age to practice prostitution; or

(2) Solicits or induces an individual to practice prostitution by means of trick, fraud, or deceit; or

(3) Being in a position of authority, consents to an individual being taken or detained for the purposes of prostitution; or

(4) Promotes the prostitution of an individual in the following circumstances:

(a) The individual is at least 16 but less than 18 years of age; or

(b) The actor knows that the individual has been induced or solicited to practice prostitution by means of trick, fraud or deceit; or

(c) The actor knows that an individual in a position of authority has consented to the individual being taken or detained for the purpose of prostitution.

Subd. 3. Whoever, while acting other than as a prostitute or patron, intentionally 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 \$5,000, or both:

(1) Solicits or induces an individual 18 years of age or above to practice prostitution; or

(2) Promotes the prostitution of an individual 18 years of age or older.

History: 1979 c 255 s 2; 1984 c 628 art 3 s 11

609.323 RECEIVING PROFIT DERIVED FROM PROSTITUTION.

Subdivision 1. Whoever, not related by blood, adoption, or marriage to the prostitute, while acting other than as a prostitute or patron, intentionally receives profit, knowing it to be derived from the prostitution, or the promotion of the prostitution, of an individual in circumstances described in section 609.322, subdivision 1, clause (4), 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. Whoever, not related by blood, adoption, or marriage to the prostitute, while acting other than as a prostitute or patron, intentionally receives profit, knowing it to be derived from the prostitution, or the promotion of the prostitution, of an individual in circumstances described in section 609.322, subdivision 2, clause (4) may be sentenced to not more than three years imprisonment or to payment of a fine of not more than \$5,000, or both.

Subd. 3. Whoever, not related by blood, adoption, or marriage to the prostitute, while acting other than as a prostitute or patron, intentionally receives profit, knowing it to be derived from the prostitution, or the promotion of the prostitution of an individual 18 years of age or above 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. 4. This section does not apply to the sale of goods or services to a prostitute in the ordinary course of a lawful business.

History: 1979 c 255 s 3; 1984 c 628 art 3 s 11

609.324 OTHER PROHIBITED ACTS.

Subdivision 1. Whoever intentionally does any of the following 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:

- (1) Engages in prostitution with an individual under the age of 18 years; or
- (2) Hires or offers or agrees to hire an individual under the age of 18 years to engage in sexual penetration or sexual contact.

Subd. 2. Whoever solicits or accepts a solicitation to engage for hire in sexual penetration or sexual contact while in a public place 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. 3. Whoever intentionally does any of the following may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than \$700, or both:

- (1) Engages in prostitution with an individual 18 years of age or above; or
- (2) Hires or offers or agrees to hire an individual 18 years of age or above to engage in sexual penetration or sexual contact.

Whoever violates the provisions of this subdivision within two years of a previous conviction 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: 1979 c 255 s 4; 1984 c 628 art 3 s 11

609.325 DEFENSES.

Subdivision 1. It shall be no defense to a prosecution under section 609.322 that an individual solicited or induced to practice prostitution or whose prostitution was promoted, did not actually engage in prostitution.

Subd. 2. Consent or mistake as to age shall be no defense to prosecutions under section 609.322 or 609.323.

Subd. 3. It shall be no defense to actions under section 609.322 that the individual solicited or induced to practice prostitution, or whose prostitution was promoted, had engaged in prostitution prior to that solicitation, inducement, or promotion.

History: 1979 c 255 s 5

609.326 EVIDENCE.

The marital privilege provided for in section 595.02 shall not apply in any proceeding under section 609.322 or 609.323.

History: 1979 c 255 s 6

609.33 DISORDERLY HOUSE OR PLACE OF PUBLIC RESORT.

Whoever does either 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) Keeps a disorderly house, or place of public resort, whereby the peace, comfort or decency of a neighborhood is habitually disturbed; or

(2) Being the owner or in control of any premises, intentionally permits them to be so used.

History: 1967 c 507 s 10; 1984 c 628 art 3 s 11

609.34 FORNICATION.

When any man and single woman have sexual intercourse with each other, each is guilty of fornication, which is a misdemeanor.

History: 1967 c 507 s 11; 1971 c 23 s 43

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 the infliction, attempted infliction, or threatened infliction by the actor of bodily harm or commission or threat of any other crime by the actor against the complainant or another, which causes the complainant to reasonably believe that the actor has the present ability to execute the threat, 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 (a) asleep or not conscious, (b) unable to withhold consent or to withdraw because of a physical condition, or (c) unable to communicate nonconsent 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 who is a parent or 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, for the purpose of satisfying the actor's sexual or aggressive impulses, except in those cases where consent is not a defense:

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

(ii) The touching by the complainant of the actor's, the complainant's, or another's intimate parts effected by coercion or the use of a position of authority, or by inducement if the complainant is under 13 years of age or mentally defective, or

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

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

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 alleged to have been subjected to criminal sexual conduct, but need not be the person who signs the complaint.

Subd. 14. "Coercion" means words or circumstances that cause the complainant reasonably to fear that the actor will inflict bodily harm upon, or hold in confinement, the complainant or another.

History: 1975 c 374 s 2; 1977 c 130 s 8; 1979 c 258 s 9-11; 1981 c 51 s 1 1982 c 385 s 1; 1982 c 469 s 9; 1984 c 525 s 3; 1984 c 588 s 5,6]

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 or to payment of a fine of not more than \$35,000, or both, if he engages in sexual penetration with another person and if any of the following circumstances exists:

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

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

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

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

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

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

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

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

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

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

History: 1975 c 374 s 3; 1981 c 51 s 2; 1983 c 204 s 1; 1984 c 628 art 3 s 11

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 or to payment of a fine of not more than \$30,000, or both, if he engages in sexual contact with another person and if any of the following circumstances exists:

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

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

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

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

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

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

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

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

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

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

History: 1975 c 374 s 4; 1979 c 258 s 12; 1981 c 51 s 3; 1983 c 204 s 2; 1984 c 628 art 3 s 11

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, or to payment of a fine of not more than \$20,000, or both, 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. 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; or
- (e) The complainant is at least 16 but less than 18 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant, and uses this authority to cause the complainant to submit. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense.

History: 1975 c 374 s 5; 1979 c 258 s 13; 1983 c 204 s 3; 1984 c 588 s 7; 1984 c 628 art 3 s 11

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, or to payment of a fine of not more than \$10,000, or both, if he engages in sexual contact with another person and if any of the following circumstances exists:

- (a) The complainant is under 13 years of age and the actor is no more than 36 months older than the complainant. Neither mistake as to the complainant's age or consent to the act by the complainant is a defense. In a prosecution under this clause, the state is not required to prove that the sexual contact was coerced; or
- (b) The complainant is at least 13 but less than 16 years of age and the actor is more than 48 months older than the complainant or in a position of authority over the complainant and uses this authority to cause the complainant to submit. In any such case, it shall be an affirmative defense which must be proved by a preponderance of the evidence that the actor believes the complainant to be 16 years of age or older; or
- (c) The actor uses force or coercion to accomplish the sexual contact; or
- (d) The actor knows or has reason to know that the complainant is mentally defective, mentally incapacitated, or physically helpless; or
- (e) The complainant is at least 16 but less than 18 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant, and uses this authority to cause the complainant to submit. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense.

History: 1975 c 374 s 6; 1976 c 124 s 9; 1979 c 258 s 14; 1981 c 51 s 4; 1983 c 204 s 4; 1984 c 588 s 8; 1984 c 628 art 3 s 11

609.346 SUBSEQUENT OFFENSES.

Subdivision 1. **Definition; conviction of offense.** For purposes of this section, the term "offense" means a completed offense or an attempt to commit an offense.

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 609.345 or sections 609.364 to 609.3644 or under any similar statute of the United States, or this or any other state.

Subd. 3. **Prior convictions under similar statutes.** 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

MINNESOTA STATUTES 1984

609.346 CRIMINAL CODE OF 1963

9850

sections 609.342 to 609.345 or sections 609.364 to 609.3644 or under any similar statute of the United States, or this or any other state.

History: 1975 c 374 s 7; 1978 c 723 art 1 s 16; 1981 c 273 s 4; 1984 c 588 s 9; 1984 c 655 art 1 s 77

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 or 609.3641 to 609.365, 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 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.

History: 1975 c 374 s 8; 1984 c 588 s 10

609.3471 RECORDS PERTAINING TO VICTIM IDENTITY CONFIDENTIAL.

Notwithstanding any provision of law to the contrary, none of the records or reports relating to complaints or indictments issued pursuant to sections 609.342, clause (a) or (b); 609.343, clause (a) or (b); 609.344, clause (a) or (b); 609.345, clause (a) or (b); or 609.3641 to 609.3644, pertaining to the identity of the victim shall be open to public inspection, except by order of the court.

History: 1984 c 573 s 9

609.348 MEDICAL PURPOSES; EXCLUSION.

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

History: 1975 c 374 s 9; 1981 c 273 s 5

609.349 VOLUNTARY RELATIONSHIPS.

A person does not commit criminal sexual conduct under sections 609.342, clauses (a) and (b), 609.343, clauses (a) and (b), 609.344, clauses (a), (b) and (d), and 609.345, clauses (a), (b) and (d), 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 legal separation 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.

History: 1975 c 374 s 10; 1978 c 772 s 62; 1980 c 544 s 2

609.35 COSTS OF MEDICAL EXAMINATION.

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

to limit the duties, responsibilities, or liabilities of any insurer, whether public or private.

History: 1975 c 374 s 11; 1981 c 273 s 6

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.

History: 1975 c 374 s 12

CRIMES AGAINST THE FAMILY

609.355 BIGAMY.

Subdivision 1. **Definition.** In this section "cohabit" means to live together under the representation or appearance of being married.

Subd. 2. **Acts constituting.** Whoever does any of the following is guilty of bigamy 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:

(1) Contracts a marriage in this state with knowledge that his prior marriage is not dissolved; or

(2) Contracts a marriage in this state with knowledge that the prior marriage of the person he marries is not dissolved; or

(3) Cohabits in this state with a person whom he married outside this state with knowledge that his own prior marriage has not been dissolved or with knowledge that the prior marriage of the person he married had not been dissolved.

History: 1963 c 753 art 1 s 609.355; 1984 c 628 art 3 s 11

609.36 ADULTERY.

Subdivision 1. **Acts constituting.** When a married woman has sexual intercourse with a man other than her husband, whether married or not, both are guilty of adultery 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. **Limitations.** No prosecution shall be commenced under this section except on complaint of the husband or the wife, except when such husband or wife is insane, nor after one year from the commission of the offense.

Subd. 3. **Defense.** It is a defense to violation of this section if the marital status of the woman was not known to the defendant at the time of the act of adultery.

History: 1963 c 753 art 1 s 609.36; 1984 c 628 art 3 s 11

609.364 INTRAFAMILIAL SEXUAL ABUSE; DEFINITIONS.

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

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

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

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

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

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

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

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

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

(a) The complainant's parent, stepparent, or guardian;

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

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

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

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

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

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

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

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

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

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

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

History: 1981 c 273 s 7; 1984 c 588 s 11

609.3641 INTRAFAMILIAL SEXUAL ABUSE IN THE FIRST DEGREE.

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

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

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

MINNESOTA STATUTES 1984

609.3641 CRIMINAL CODE OF 1963

9854

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

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

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

(d) the complainant suffered personal injury; or

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

Subd. 2. Penalty. A person convicted under subdivision 1, clause (1), may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than \$35,000, or both. Except when imprisonment is required by section 609.346, the court may stay imposition or execution of sentence if it finds that a stay is in the best interest of the complainant or the family unit. A person convicted under subdivision 1, clause (2), may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than \$35,000, or both.

History: 1981 c 273 s 8; 1983 c 204 s 5; 1984 c 628 art 3 s 11

609.3642 INTRAFAMILIAL SEXUAL ABUSE IN THE SECOND DEGREE.

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

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

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

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

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

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

(d) the complainant suffered personal injury; or

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

Subd. 2. Penalty. A person convicted under subdivision 1, clause (1), may be sentenced to imprisonment for not more than 15 years or to payment of a fine of not more than \$30,000, or both. Except when imprisonment is required by section 609.346, the court may stay imposition or execution of the sentence if it finds that a stay is in the best interest of the complainant or the family unit. A person convicted under subdivision 1, clause (2), may be sentenced to imprisonment for not more than 15 years or to payment of a fine of not more than \$30,000, or both.

History: 1981 c 273 s 9; 1983 c 204 s 6; 1984 c 628 art 3 s 11

609.3643 INTRAFAMILIAL SEXUAL ABUSE IN THE THIRD DEGREE.

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

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

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

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

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

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

(d) the complainant suffered personal injury; or

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

Subd. 2. **Penalty.** A person convicted under subdivision 1, clause (1), may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both. Except when imprisonment is required by section 609.346, the court may stay imposition or execution of the sentence if it finds that a stay is in the best interest of the complainant or the family unit. A person convicted under subdivision 1, clause (2), may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both.

History: 1981 c 273 s 10; 1983 c 204 s 7; 1984 c 628 art 3 s 11

609.364 INTRAFAMILIAL SEXUAL ABUSE IN THE FOURTH DEGREE.

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

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

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

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

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

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

(d) the complainant suffered personal injury; or

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

Subd. 2. **Penalty.** A person convicted under subdivision 1, clause (1), may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both. Except when imprisonment is required by section 609.346, the court may stay imposition or execution of the sentence if it finds that a stay is in the best interest of the complainant or the family unit. A person convicted under subdivision 1, clause (2), may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

History: 1981 c 273 s 11; 1983 c 204 s 8; 1984 c 628 art 3 s 11

609.365 INCEST.

Whoever has sexual intercourse with another nearer of kin to him than first cousin, computed by rules of the civil law, whether of the half or the whole blood,

with knowledge of the relationship, is guilty of incest and may be sentenced to imprisonment for not more than ten years.

History: 1963 c 753 art 1 s 609.365

609.37 DEFINITION.

As used in section 609.375, "child" means a child under the age of 16 years who is in necessitous circumstances and includes a child born to a mother who was not married to the child's father when the child was conceived nor when the child was born if the child's paternity has been duly established.

History: 1963 c 753 art 1 s 609.37; 1965 c 41 s 3; 1983 c 7 s 15; 1983 c 243 s 5 subd 13

609.375 NON-SUPPORT OF SPOUSE OR CHILD.

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

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

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

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

History: 1963 c 753 art 1 s 609.375; 1971 c 23 s 44; 1971 c 507 s 1; 1976 c 2 s 151; 1981 c 31 s 19

609.376 DEFINITIONS.

Subdivision 1. **Terms defined.** For the purposes of sections 609.255 and 609.376 to 609.38, the following terms have the meanings given unless specific content indicates otherwise.

Subd. 2. **Child.** "Child" means any person under the age of 18 years.

Subd. 3. **Caretaker.** "Caretaker" means an individual who has responsibility for the care of a child as a result of a family relationship or who has assumed responsibility for all or a portion of the care of a child.

Subd. 4. **Complainant.** "Complainant" means a person alleged to have been a victim of a violation of sections 609.255, subdivision 3, 609.377, or 609.378, but need not be the person who signs the complaint.

History: 1983 c 217 s 3

609.377 MALICIOUS PUNISHMENT OF A CHILD.

A parent, legal guardian, or caretaker who, by an intentional act or a series of intentional acts, evidences unreasonable force or cruelty which causes substantial emotional harm to a child 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 3 years or to payment of not more than \$5,000, or both.

History: 1983 c 217 s 4; 1984 c 628 art 3 s 11

609.378 NEGLECT OF A CHILD.

(a) 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 which deprivation substantially harms the child's physical or emotional health, or (b) a parent, legal guardian, or foster parent who knowingly permits the continuing physical or sexual abuse of a child is guilty of neglect 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. It is a defense to a prosecution under clause (b) that at the time of the neglect there was a reasonable apprehension in the mind of the defendant that acting to stop or prevent the neglect would result in substantial bodily harm to the defendant or the child in retaliation.

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 shall constitute "health care" as used in clause (a) of this section.

History: 1983 c 217 s 5; 1984 c 628 art 3 s 11

609.379 PERMITTED ACTIONS.

Subdivision 1. **Reasonable force.** Reasonable force may be used upon or toward the person of a child without the child's consent when the following circumstance exists or the actor reasonably believes it to exist:

When used by a parent, legal guardian, teacher, or other caretaker of a child or pupil, in the exercise of lawful authority, to restrain or correct the child or pupil.

Subd. 2. **Applicability.** This section applies to sections 260.315, 609.255, 609.376, 609.377, 609.378, and 626.556, subdivision 12.

History: 1983 c 217 s 6

609.38 STAYED SENTENCE.

For any violation of sections 609.255, subdivision 3, 609.377, or 609.378 for which the sentencing guidelines establish a presumptive executed sentence, the court may stay imposition or execution of the sentence if it finds that a stay is in the best interest of the complainant or the family unit and that the defendant is willing to participate in any necessary or appropriate treatment. In determining an appropriate sentence when there is a family relationship between the complainant and the defendant, the court shall be guided by the policy of preserving and strengthening the family unit whenever possible.

History: 1983 c 217 s 7

CRIMES AGAINST THE GOVERNMENT

609.385 TREASON.

Subdivision 1. **Definition.** "Levying war" includes an act of war or an insurrection of several persons with intent to prevent, by force and intimidation, the execution of a statute of the state, or to force its repeal. It does not include either a conspiracy to commit an act of war or a single instance of resistance for a private purpose to the execution of a law.

Subd. 2. **Acts constituting.** Any person owing allegiance to this state who does either of the following is guilty of treason against this state and shall be sentenced to life imprisonment:

- (1) Levies war against this state; or
- (2) Adheres to the enemies of this state, giving them aid and comfort.

Subd. 3. **Testimony required.** No person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on his confession in open court.

History: 1963 c 753 art 1 s 609.385

609.39 MISPRISION OF TREASON.

Whoever, owing allegiance to this state and having knowledge of the commission of treason against this state, does not, as soon as may be, disclose and make it known to the governor or a judge of the supreme court, court of appeals, or district court, is guilty of misprision of treason against this state 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: 1963 c 753 art 1 s 609.39; 1983 c 247 s 208; 1984 c 628 art 3 s 11

609.395 STATE MILITARY FORCES; INTERFERING WITH, OBSTRUCTING, OR OTHER.

Whoever, when the United States is at war, does either of the following may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than \$35,000, or both:

- (1) Intentionally makes or conveys false reports or statements with intent to interfere with the operation or success of the military or naval forces of this state; or
- (2) Intentionally causes or incites insubordination, disloyalty, mutiny, or refusal of duty in the military or naval forces of this state, or obstructs the recruiting or enlistment service of this state.

History: 1963 c 753 art 1 s 609.395; 1984 c 628 art 3 s 11

609.40 FLAGS.

Subdivision 1. **Definition.** In this section "flag" means anything which is or purports to be the Stars and Stripes, the United States shield, the United States coat of arms, the Minnesota state flag, or a copy, picture, or representation of any of them.

Subd. 2. **Acts prohibited.** Whoever does any of the following is guilty of a misdemeanor:

- (1) Intentionally and publicly mutilates, defiles, or casts contempt upon the flag; or
- (2) Places on or attaches to the flag any word, mark, design, or advertisement not properly a part of such flag or exposes to public view a flag so altered; or

(3) Manufactures or exposes to public view an article of merchandise or a wrapper or receptacle for merchandise upon which the flag is depicted; or

(4) Uses the flag for commercial advertising purposes.

Subd. 3. **Exceptions.** This section does not apply to flags depicted on written or printed documents or periodicals or on stationery, ornaments, pictures, or jewelry, provided there are not unauthorized words or designs on such flags and provided the flag is not connected with any advertisement.

History: 1963 c 753 art 1 s 609.40; 1971 c 23 s 45

609.405 CRIMINAL SYNDICALISM.

Subdivision 1. **Definition.** "Criminal syndicalism" is the doctrine which advocates crime, malicious damage or injury to the property of an employer, violence, or other unlawful methods of terrorism as a means of accomplishing industrial or political ends.

Subd. 2. **Acts prohibited.** Whoever does any of the following may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$5,000, or both:

(1) Orally or by means of writing advocates or promotes the doctrine of criminal syndicalism; or

(2) Intentionally organizes or becomes a member of any assembly, group, or organization which he knows is advocating or promoting the doctrine of criminal syndicalism; or

(3) For or on behalf of another person, distributes, sells, publishes, or publicly displays any writing, which is intended by that person to be used to, and which does, advocate or promote the doctrine of criminal syndicalism.

Subd. 3. **Permitting assemblage for.** Whoever, being the owner or in possession or control of any premises intentionally permits any assemblage of persons to use such premises for the purpose of advocating or promoting the doctrine of criminal syndicalism 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: 1963 c 753 art 1 s 609.405; 1984 c 628 art 3 s 11

609.41 FALSE TAX STATEMENT.

Whoever, in making any statement, oral or written, which is required or authorized by law to be made as a basis of imposing, reducing, or abating any tax or assessment, intentionally makes any statement as to any material matter which he knows is false may be sentenced, unless otherwise provided by law, to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

History: 1963 c 753 art 1 s 609.41; 1984 c 628 art 3 s 11

CRIMES AFFECTING PUBLIC OFFICER OR EMPLOYEE

609.415 DEFINITIONS.

Subdivision 1. **Definitions.** As used in sections 609.415 to 609.465, and 609.515,

(1) "Public officer" means:

(a) an executive or administrative officer of the state or of a county, municipality or other subdivision or agency of the state;

MINNESOTA STATUTES 1984

609.415 CRIMINAL CODE OF 1963

9860

(b) a member of the legislature or of a governing board of a county, municipality, or other subdivision of the state, or other governmental instrumentality within the state;

(c) a judicial officer;

(d) a hearing officer;

(e) a law enforcement officer; or

(f) any other person exercising the functions of a public officer.

(2) "Public employee" means a person employed by or acting for the state or a county, municipality, or other subdivision or governmental instrumentality of the state for the purpose of exercising their respective powers and performing their respective duties, and who is not a "public officer."

(3) "Judicial officer" means a judge, court commissioner, referee, or any other person appointed by a judge or court to hear or determine a cause or controversy.

(4) "Hearing officer" means any person authorized by law or private agreement to hear or determine a cause or controversy who is not a judicial officer.

Subd. 2. A person who has been elected, appointed, or otherwise designated as a public officer or public employee is deemed such officer or employee although he has not yet qualified therefor or entered upon the duties thereof.

History: 1963 c 753 art 1 s 609.415; 1983 c 359 s 88

609.42 BRIBERY.

Subdivision 1. **Acts constituting.** Whoever does any of the following is guilty of bribery 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) Offers, gives, or promises to give, directly or indirectly, to any public officer or employee any benefit, reward or consideration to which he is not legally entitled with intent thereby to influence such officer or employee with respect to the performance of his powers or duties as such officer or employee; or

(2) Being a public officer or employee, requests, receives or agrees to receive, directly or indirectly, any such benefit, reward or consideration upon the understanding that he will be so influenced; or

(3) Offers, gives, or promises to give, directly or indirectly any such benefit, reward, or consideration to a witness or one who is about to become a witness in a proceeding before a judicial or hearing officer, with intent that his testimony be influenced thereby, or that he will absent himself from the proceeding; or

(4) Is, or is about to become such witness and requests, receives, or agrees to receive, directly or indirectly, any such benefit, reward, or consideration upon the understanding that his testimony will be so influenced, or that he will absent himself from the proceeding; or

(5) Accepts directly or indirectly a benefit, reward or consideration upon an agreement or understanding, express or implied, that he will refrain from giving information that may lead to the prosecution of a crime or purported crime or that he will abstain from, discontinue, or delay prosecution therefor, except in a case where a compromise is allowed by law.

Subd. 2. **Forfeiture of office.** Any public officer who is convicted of violating or attempting to violate subdivision 1 shall forfeit his office and be forever disqualified from holding public office under the state.

History: 1963 c 753 art 1 s 609.42; 1976 c 178 s 2; 1984 c 628 art 3 s 11

609.425 CORRUPTLY INFLUENCING LEGISLATOR.

Whoever by menace, deception, concealment of facts, or other corrupt means, attempts to influence the vote or other performance of duty of any member of the legislature or person elected thereto 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: 1963 c 753 art 1 s 609.425; 1984 c 628 art 3 s 11

609.43 MISCONDUCT OF PUBLIC OFFICER OR EMPLOYEE.

A public officer or employee who does any of the following, for which no other sentence is specifically provided by law, 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) Intentionally fails or refuses to perform a known mandatory, nondiscretionary, ministerial duty of his office or employment within the time or in the manner required by law; or

(2) In his capacity as such officer or employee, does an act which he knows is in excess of his lawful authority or which he knows he is forbidden by law to do in his official capacity; or

(3) Under pretense or color of official authority intentionally and unlawfully injures another in his person, property, or rights; or

(4) In his capacity as such officer or employee, makes a return, certificate, official report, or other like document which to his knowledge is false in any material respect.

History: 1963 c 753 art 1 s 609.43; 1984 c 628 art 3 s 11

609.435 OFFICER NOT FILING SECURITY.

Whoever intentionally performs the functions of a public officer without having executed and duly filed the required security is guilty of a misdemeanor.

History: 1963 c 753 art 1 s 609.435; 1971 c 23 s 46

609.44 PUBLIC OFFICE; ILLEGALLY ASSUMING; NON-SURRENDER.

Whoever intentionally and without lawful right thereto, exercises a function of a public office or, having held such office and his right thereto having ceased, refuses to surrender the office or its seal, books, papers, or other incidents to his successor or other authority entitled thereto 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: 1963 c 753 art 1 s 609.44; 1984 c 628 art 3 s 11

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 three years or to payment of a fine of not more than \$5,000, or both.

History: 1963 c 753 art 1 s 609.445; 1984 c 628 art 3 s 11

609.45 PUBLIC OFFICER; UNAUTHORIZED COMPENSATION.

Whoever is a public officer or public employee and under color of his office or employment intentionally asks, receives or agrees to receive a fee or other compensa-

MINNESOTA STATUTES 1984

609.45 CRIMINAL CODE OF 1963

9862

tion in excess of that allowed by law or where no such fee or compensation is allowed, is guilty of a misdemeanor.

History: 1963 c 753 art 1 s 609.45; 1971 c 23 s 47

609.455 PERMITTING FALSE CLAIMS AGAINST GOVERNMENT.

A public officer or employee who audits, allows, or pays any claim or demand made upon the state or subdivision thereof or other governmental instrumentality within the state which he knows is false or fraudulent in whole or in part, 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: 1963 c 753 art 1 s 609.455; 1984 c 628 art 3 s 11

609.46 [Repealed, 1983 c 359 s 151]

609.465 PRESENTING FALSE CLAIMS TO PUBLIC OFFICER OR BODY.

Whoever, with intent to defraud, presents a claim or demand, which to his knowledge is false in whole or in part, for audit, allowance or payment to a public officer or body authorized to make such audit, allowance or payment is guilty of an attempt to commit theft of public funds and may be sentenced accordingly.

History: 1963 c 753 art 1 s 609.465

609.466 MEDICAL ASSISTANCE FRAUD.

Any person who, with the intent to defraud, presents a claim for reimbursement, a cost report or a rate application, relating to the payment of medical assistance funds pursuant to chapter 256B, to the state agency, which is false in whole or in part, is guilty of an attempt to commit theft of public funds and may be sentenced accordingly.

History: 1976 c 188 s 5

609.47 INTERFERENCE WITH PROPERTY IN OFFICIAL CUSTODY.

Whoever intentionally takes, damages, or destroys any personal property held in custody by an officer or other person under process of law 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: 1963 c 753 art 1 s 609.47; 1984 c 628 art 3 s 11

609.475 IMPERSONATING OFFICER.

Whoever falsely impersonates a police or military officer or public official with intent to mislead another into believing that he is actually such officer or official is guilty of a misdemeanor.

History: 1963 c 753 art 1 s 609.475; 1971 c 23 s 49

CRIMES AGAINST THE ADMINISTRATION OF JUSTICE

609.48 PERJURY.

Subdivision 1. **Acts constituting.** Whoever makes a false material statement which he does not believe to be true in any of the following cases is guilty of perjury and may be sentenced as provided in subdivision 4:

(1) In or for an action, hearing or proceeding of any kind in which the statement is required or authorized by law to be made under oath or affirmation; or

(2) In any writing which is required or authorized by law to be under oath or affirmation; or

(3) In any other case in which the penalties for perjury are imposed by law and no specific sentence is otherwise provided.

Subd. 2. **Defenses not available.** It is not a defense to a violation of this section that:

(1) The oath or affirmation was taken or administered in an irregular manner; or

(2) The declarant was not competent to give the statement; or

(3) The declarant did not know that his statement was material or believed it to be immaterial; or

(4) The statement was not used or, if used, did not affect the proceeding for which it was made; or

(5) The statement was inadmissible under the law of evidence.

Subd. 3. **Inconsistent statements.** When the declarant has made two inconsistent statements under such circumstances that one or the other must be false and not believed by him when made, it shall be sufficient for conviction under this section to charge and the jury to find that, without determining which, one or the other of such statements was false and not believed by the declarant. The period of limitations for prosecution under this subdivision runs from the first such statement.

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 five years or to payment of a fine of not more than \$10,000, or both; or

(2) In all other cases, to imprisonment for not more than three years or to payment of a fine of not more than \$5,000, or both.

History: 1963 c 753 art 1 s 609.48; 1971 c 845 s 16; 1984 c 628 art 3 s 11

609.485 ESCAPE FROM CUSTODY.

Subdivision 1. **Definition.** "Escape" includes departure without lawful authority and failure to return to custody following temporary leave granted for a specific purpose or limited period.

Subd. 2. **Acts prohibited.** Whoever does any of the following may be sentenced as provided in subdivision 4:

(1) Escapes while held in lawful custody on a charge or conviction of a crime; or

(2) Transfers to another, who is in lawful custody on a charge or conviction of a crime, or introduces into an institution in which the latter is confined, anything useable in making such escape, with intent that it shall be so used; or

(3) Having another in his lawful custody on a charge or conviction of a crime, intentionally permits him to escape.

Subd. 3. **Exceptions.** This section does not apply to a person who is free on bail or who is on parole or probation, or subject to a stayed sentence or stayed execution of sentence, unless he (1) has been taken into actual custody upon revocation of the parole, probation, or stay of the sentence or execution of sentence, or (2) is in custody in a county jail or workhouse as a condition of a stayed sentence.

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

(1) If the person who escapes is in lawful custody on a charge or conviction of a felony, to imprisonment for not more than five years or to payment of a fine of not more than \$5,000, or both.

(2) If such charge or conviction is for a gross misdemeanor, to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

(3) If such charge or conviction is for a misdemeanor, to imprisonment for not more than 90 days or to payment of a fine of not more than \$700, or both.

(4) If the escape was effected by violence or threat of violence against a person, the sentence may be increased to not more than twice those permitted in clauses (1), (2), and (3).

(5) Unless a concurrent term is specified by the court, a sentence under this section shall be consecutive to any sentence previously imposed or which may be imposed for any crime or offense for which the person was in custody when he escaped.

History: 1963 c 753 art 1 s 609.485; 1969 c 248 s 1; 1971 c 23 s 50; 1982 c 557 s 10; 1984 c 628 art 3 s 11

NOTE: See section 629.362.

609.487 FLEEING A PEACE OFFICER IN A MOTOR VEHICLE.

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

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

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

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

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

(c) If the course of fleeing results in substantial bodily harm, to imprisonment for not more than three years or to payment of a fine of not more than \$5,000, or both.

History: 1981 c 37 s 2; 1981 c 312 s 4; 1984 c 445 s 2,3; 1984 c 628 art 3 s 11; 1984 c 655 art 1 s 78

609.49 RELEASE, FAILURE TO APPEAR.

Whoever, being charged with or convicted of a felony and held in lawful custody therefor, is released from custody, with or without bail or recognizance, on condition that he personally appear when required with respect to such charge or conviction, and intentionally fails, without lawful excuse, to so appear when required or surrender himself within three days thereafter, 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: 1963 c 753 art 1 s 609.49; 1984 c 628 art 3 s 11

609.495 AIDING AN OFFENDER TO AVOID ARREST.

Subdivision 1. Whoever harbors, conceals or aids another known by him to have committed a felony 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.

Subd. 2. This section does not apply if the actor at the time of harboring, concealing, or aiding is related to the offender as husband, wife, parent, or child.

History: 1963 c 753 art 1 s 609.495; 1984 c 628 art 3 s 11

609.498 TAMPERING WITH A WITNESS.

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

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

(b) intentionally threatens to cause injury to person, family, or property in retaliation against a person who was summoned as a witness at any trial, proceeding, or inquiry authorized by law, within a year following that trial, proceeding, or inquiry;

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

(d) intentionally threatens to cause injury to person, family, or property in retaliation against a person who has provided information to law enforcement authorities concerning a crime within a year of that person providing the information.

Subd. 1a. **Penalty.** Whoever violates subdivision 1 may be sentenced to imprisonment for not more than five years or to payment of a fine not to exceed \$10,000.

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

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

(b) intentionally prevents or dissuades or attempts to prevent or dissuade by means of any act described in section 609.27, subdivision 1, clause (3), (4), or (5), a

MINNESOTA STATUTES 1984

609.498 CRIMINAL CODE OF 1963

9866

person from providing information to law enforcement authorities concerning a crime.

Subd. 3. **Sentence.** Whoever violates subdivision 2 may be sentenced to imprisonment for not more than one year or to payment of a fine not to exceed \$3,000.

History: 1976 c 178 s 1; 1983 c 262 art 2 s 6; 1984 c 628 art 3 s 11

609.50 OBSTRUCTING LEGAL PROCESS OR ARREST.

Whoever intentionally 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 or interferes with a peace officer while the officer is engaged in the performance of his official duties may be sentenced as follows:

(1) 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

(2) 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: 1963 c 753 art 1 s 609.50; 1969 c 1013 s 1; 1971 c 23 s 51; 1984 c 628 art 3 s 11

609.502 INTERFERENCE WITH DEAD BODY OR SCENE OF DEATH, PENALTY.

Whoever interferes with the body or scene of death with intent to mislead the coroner or conceal evidence is guilty of a gross misdemeanor.

History: 1976 c 257 s 2

609.505 FALSELY REPORTING CRIME.

Whoever informs a law enforcement officer that a crime has been committed, knowing that it is false and intending that the officer shall act in reliance upon it, is guilty of a misdemeanor.

History: 1963 c 753 art 1 s 609.505; 1971 c 23 s 52

609.51 SIMULATING LEGAL PROCESS.

Subdivision 1. **Acts prohibited.** Whoever does any of the following is guilty of a misdemeanor:

(1) Sends or delivers to another any document which simulates a summons, complaint, or court process with intent thereby to induce payment of a claim; or

(2) Prints, distributes, or offers for sale any such document knowing or intending that it shall be so used.

Subd. 2. **Exceptions.** This section does not prohibit the printing, distribution or sale of blank forms of legal documents for use in judicial proceedings.

History: 1963 c 753 art 1 s 609.51; 1971 c 23 s 53

609.515 MISCONDUCT OF JUDICIAL OR HEARING OFFICER.

Whoever does any of the following, when the act is not in violation of section 609.42, is guilty of a misdemeanor:

(1) Being a judicial or hearing officer, does either of the following:

(a) Agrees with or promises another to determine a cause or controversy or issue pending or to be brought before him for or against any party; or

(b) Intentionally obtains or receives and uses information relating thereto contrary to the regular course of the proceeding.

(2) Induces a judicial or hearing officer to act contrary to the provisions of this section.

History: 1963 c 753 art 1 s 609.515; 1971 c 23 s 54

THEFT AND RELATED CRIMES

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 he has suffered by reason of losing an advantage over those who do not know of or use the trade secret. For a theft committed within the meaning of subdivision 2, clause (5), (a) and (b), if the property has been restored to the owner, "value" means the value of the use of the property or the damage which it sustained, whichever is greater, while the owner was deprived of its possession, but not exceeding the value otherwise provided herein.

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

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

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

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

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

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

(8) "Property of another" includes property in which the actor is co-owner or has a lien, pledge, bailment, or lease or other subordinate interest, and property of a partnership of which the actor is a member, unless the actor and the victim are husband and wife. It does not include property in which the actor asserts in good

faith a claim as a collection fee or commission out of property or funds recovered, or by virtue of a lien, set-off, or counterclaim.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(13) Except as provided in 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:

MINNESOTA STATUTES 1984

(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.

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

(1) To imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both, if the value of the property or services stolen exceeds \$2,500, or if the property stolen was a controlled substance listed in schedule 1 or 2 pursuant to section 152.02 with the exception of marijuana; or

(2) To imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if the value of the property or services stolen is more than \$250 but not more than \$2,500, or if the property stolen was a controlled substance listed in schedule 3, 4, or 5 pursuant to section 152.02; or

(3) To imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, notwithstanding the value of the property or services stolen is not more than \$250, if any of the following circumstances exist:

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

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

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

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

(e) The property is a firearm; or

(4) To imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both, if the property stolen is an article representing a trade secret; or if the property stolen is an explosive or an incendiary device; or

(5) In all other cases where the value of the property or services stolen is \$250 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 clause (1), clause (2), clause (3), clause (4), and clause (13) of subdivision 2 the value of the money or property received by the defendant in violation of any one or more of the above provisions within any six month period may be aggregated and the defendant charged accordingly in applying the provisions of this subdivision; provided that when two or more offenses are committed by the same person in two or more counties, the accused may be prosecuted in any county in which one of the offenses was committed for all of the offenses aggregated under this paragraph.

History: 1963 c 753 art 1 s 609.52; 1967 c 178 s 1; Ex1967 c 15 s 1-3; 1971 c 23 s 55; 1971 c 25 s 92; 1971 c 697 s 1; 1971 c 717 s 1; 1971 c 796 s 1; 1971 c 845 s 14; 1975 c 244 s 1; 1976 c 112 s 1; 1976 c 188 s 6; 1977 c 396 s 1; 1978 c 674 s 60; 1979 c 258 s 15; 1981 c 120 s 1; 1981 c 299 s 1; 1983 c 238 s 1; 1983 c 331 s 10; 1984 c 419 s 1; 1984 c 466 s 1; 1984 c 483 s 1; 1984 c 628 art 3 s 5

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 \$5,000, or both.

History: 1975 c 314 s 1; 1984 c 628 art 3 s 11

609.523 RETURN OF STOLEN PROPERTY TO OWNERS.

Subdivision 1. **Photographic record.** Photographs of property, as defined in section 609.52, subdivision 1, over which a person is alleged to have exerted unauthorized control or to have otherwise obtained unlawfully, are competent evidence if the photographs are admissible into evidence under all rules of law governing the admissibility of photographs into evidence. The photographic record, when satisfactorily identified, is as admissible in evidence as the property itself.

Subd. 2. **Record of property.** The photographs may bear a written description of the property alleged to have been wrongfully taken, the name of the owner of the property taken, the name of the accused, the name of the arresting law enforcement officer, the date of the photograph, and the signature of the photographer.

Subd. 3. **Return of property.** A law enforcement agency which is holding property over which a person is alleged to have exerted unauthorized control or to have otherwise obtained unlawfully may return that property to its owner if:

- (a) The appropriately identified photographs are filed and retained by the law enforcement agency;
- (b) Satisfactory proof of ownership of the property is shown by the owner;
- (c) A declaration of ownership is signed under penalty of perjury; and
- (d) A receipt for the property is obtained from the owner upon delivery by the law enforcement agency.

Subd. 4. If the recovered property has a value in excess of \$150, then the owner shall retain possession for at least 14 days to allow the defense attorney to examine the property.

History: 1982 c 539 s 1

609.525 BRINGING STOLEN GOODS INTO STATE.

Subdivision 1. Whoever brings property into the state which he has stolen outside the state, or received outside of the state knowing it to have been stolen, may be sentenced in accordance with the provisions of section 609.52, subdivision 3. He may be charged, indicted, and tried in any county, but not more than one county, into or through which he has brought such property.

Subd. 2. Property is stolen within the meaning of this section if the act by which the owner was deprived of his property was a criminal offense under the laws of the state in which the act was committed and would constitute a theft under this chapter if the act had been committed in this state.

History: 1963 c 753 art 1 s 609.525

609.53 RECEIVING STOLEN PROPERTY.

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

MINNESOTA STATUTES 1984

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

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

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

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

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

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

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

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

Subd. 2. [Repealed, 1982 c 613 s 7]

Subd. 2a. [Repealed, 1982 c 613 s 7]

Subd. 3. Subsequent offense. Any person convicted of a second or subsequent violation under subdivision 1, clause (1) or (2) within a period of five years from the date of the prior conviction may be fined up to twice the amount authorized by law. Any person convicted of a second or subsequent violation under subdivision 1, clause (3) within a period of two years from the date of the prior conviction may be sentenced as provided in subdivision 1, clause (2).

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

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

Subd. 5. In this section, "value" has the meaning defined in section 609.52, subdivision 1, clause (3).

History: 1963 c 753 art 1 s 609.53; 1973 c 669 s 1; 1979 c 232 s 1,2; 1981 c 333 s 14-17; 1982 c 613 s 1-4; 1984 c 483 s 2; 1984 c 628 art 3 s 11

609.531 FORFEITURES.

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

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

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

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

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

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

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

(g) "Designated offense" includes:

(1) For weapons used: any violation of chapter 609;

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

Subd. 2. Forfeitures of conveyance devices; primary containers; weapons used, and contraband property. Conveyance devices, primary containers, and weapons associated with the commission or utilized in the commission of a designated offense, and all contraband property shall be subject to forfeiture with the following limitations:

(a) No conveyance device or primary container used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless the owner or other person in charge of the conveyance or container is a consenting party or privy to commission of a designated offense.

(b) No conveyance device, primary container, or weapon used is subject to forfeiture under this section unless the owner of it is privy to a violation of a designated offense or unless the use of the conveyance device, primary container, or weapon in a violation occurred with his knowledge or consent.

(c) A forfeiture of a conveyance device, primary container, or weapon used encumbered by a bona fide security interest is subject to the interest of the secured party unless he had knowledge of or consented to the act or omission upon which the forfeiture is based.

Subd. 3. Seizure with process. Any conveyance device, primary container, weapon used, or contraband property subject to forfeiture under this section may be seized by the appropriate agency upon process issued by any court having jurisdiction over the property.

Subd. 4. Seizure without process. Seizure without process of a weapon used or of contraband property may be made if:

(a) the seizure is incident to an arrest or a search under a search warrant;

(b) the weapon subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding;

(c) the appropriate agency has probable cause to believe:

MINNESOTA STATUTES 1984

609.531 CRIMINAL CODE OF 1963

9874

(1) that the weapon was used or is intended to be used in commission of a designated offense; and

(2) that the delay occasioned by the necessity to obtain process would result in the removal, destruction, illegal use, or intended illegal use of the weapon; or

(d) the property is contraband property.

Subd. 5. Not subject to replevin. Any conveyance device, primary container, weapon used, or contraband property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the appropriate agency subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When any conveyance device, primary container, weapon used, or contraband property is seized under this section, the appropriate agency may:

(a) place the conveyance device, primary container, weapon used, or contraband property under seal; or

(b) remove the conveyance device, primary container, weapon used, or contraband property to a place designated by it.

Subd. 6. Forfeiture procedures. Any conveyance device, primary container, weapon used, or contraband property shall be forfeited according to the following procedure:

(a) a separate complaint shall be filed against the conveyance device, primary container, weapon used, or contraband property describing it, and either specifying that it is contraband property, or charging its use in the specified violation, and specifying the time and place of its unlawful use;

(b) if the person charged with a designated offense is not convicted of an offense, the court shall dismiss the complaint against the conveyance device, primary container, or weapon used pursuant to subdivisions 2 to 5 and order the property returned to the persons legally entitled to it;

(c) if after conviction of a felony offense the court finds that the conveyance device, primary container or weapon was used in commission of a designated offense, it may order that the conveyance device, primary container or weapon be sold, used, converted, or disposed of by the appropriate agency in the following manner:

(1) if the lawful ownership of the conveyance device, primary container, or weapon used can be determined and it is found the owner was not privy to violation of a designated offense, the conveyance device, primary container, or weapon used will be returned forthwith; or

(2) if the lawful ownership of the conveyance device, primary container, or weapon used cannot be determined or if the lawful owner can be determined and it is found the owner was privy to violation of a designated offense, the appropriate agency or prosecuting agency handling the forfeiture may:

(i) retain the conveyance device, primary container, weapon used, or contraband property for official use; or

(ii) the conveyance device, primary container, or weapon used may be sold in accordance with law. One-third of the proceeds from the sale, after payment of seizure, storage, sale expenses, and satisfaction of valid liens against the property, shall be forwarded to the prosecuting agency that handled the forfeiture proceedings for deposit in its operating fund, or similar fund; one-third of the proceeds shall be forwarded to the commissioner of public safety for disbursement pursuant to section 299C.065, and one-third of the proceeds shall be retained by the appropriate agency and deposited in its operating fund;

(d) if the property is deemed to be contraband, the property shall be destroyed or used by the appropriate agency for law enforcement purposes.

History: 1984 c 625 s 1

609.535 ISSUANCE OF DISHONORED CHECKS.

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

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

(b) "Credit" means an arrangement or understanding with the drawee for the payment of a check.

Subd. 2. Acts constituting. Whoever issues a check which, at the time of issuance, he intends shall not be paid, is guilty of a misdemeanor. In addition, restitution may be ordered by the court.

Subd. 3. Proof of intent. Any of the following is evidence sufficient to sustain a finding that the person at the time he issued the check intended it should not be paid:

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

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

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

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

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

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

Subd. 4. Proof of lack of funds or credit. If the check has been protested, the notice of protest is admissible as proof of presentation, nonpayment, and protest, and is evidence sufficient to sustain a finding that there was a lack of funds or credit with the drawee.

Subd. 5. Exceptions. This section does not apply to a postdated check or to a check given for a past consideration, except a payroll check or a check issued to a fund for employee benefits.

Subd. 6. Release of account information to law enforcement authorities. A drawee shall release the information specified below to any state, county, or local law enforcement or prosecuting authority which certifies in writing that it is investigating or prosecuting a complaint against the drawer under this section or section 609.52, subdivision 2, clause (3)(a), and that 15 days have elapsed since the

MINNESOTA STATUTES 1984

609.535 CRIMINAL CODE OF 1963

9876

mailing of the notice of dishonor required by subdivisions 3 and 8. This subdivision applies to the following information relating to the drawer's account:

- (1) Documents relating to the opening of the account by the drawer;
- (2) Notices regarding nonsufficient funds, overdrafts, and the dishonor of any check drawn on the account within a period of six months of the date of request;
- (3) Periodic statements mailed to the drawer by the drawee for the periods immediately prior to, during, and subsequent to the issuance of any check which is the subject of the investigation or prosecution; or
- (4) The last known home and business addresses and telephone numbers of the drawer.

The drawee shall release all of the information described in clauses (1) to (4) that it possesses within ten days after receipt of a request conforming to all of the provisions of this subdivision. The drawee may impose a reasonable fee for the cost for furnishing this information to law enforcement or prosecuting authorities, not to exceed 15 cents per page.

A drawee is not liable in a criminal or civil proceeding for releasing information in accordance with this subdivision.

Subd. 7. Release of account information to payee or holder. A drawee shall release the information specified in clauses (1) and (2) to the payee or holder of a check that has been dishonored who makes a written request for this information and states in writing that the check has been dishonored and that 30 days have elapsed since the mailing of the notice described in subdivision 8 and who accompanies this request with a copy of the dishonored check and a copy of the notice of dishonor.

The requesting payee or holder shall notify the drawee immediately to cancel this request if payment is made before the drawee has released this information.

This subdivision applies to the following information relating to the drawer's account:

- (1) Whether at the time the check was issued or presented for payment the drawer had sufficient funds or credit with the drawee, and whether at that time the account was open, closed, or restricted for any reason and the date it was closed or restricted; and
- (2) The last known home address and telephone number of the drawer. The drawee may not release the address or telephone number of the place of employment of the drawer unless the drawer is a business entity or the place of employment is the home.

The drawee shall release all of the information described in clauses (1) and (2) that it possesses within ten days after receipt of a request conforming to all of the provisions of this subdivision. The drawee may require the person requesting the information to pay the reasonable costs, not to exceed 15 cents per page, of reproducing and mailing the requested information.

A drawee is not liable in a criminal or civil proceeding for releasing information in accordance with this subdivision.

Subd. 8. Notice. The provisions of subdivisions 6 and 7 are not applicable unless the notice to the maker or drawer required by subdivision 3 states that if the check is not paid in full within five business days after mailing of the notice, the drawee will be authorized to release information relating to the account to the payee or holder of the check and may also release this information to law enforcement or prosecuting authorities.

History: 1963 c 753 art 1 s 609.535; 1967 c 466 s 1; 1971 c 23 s 56; 1974 c 106 s 1,2; 1981 c 202 s 1; 1981 c 247 s 1-3; 1983 c 225 s 10; 1984 c 436 s 34

609.54 EMBEZZLEMENT OF PUBLIC FUNDS.

Whoever does an act which constitutes embezzlement under the provisions of Minnesota Constitution, Article XI, Section 13 may be sentenced as follows:

(1) If the value of the funds so embezzled is \$2,500, or less, to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both; or

(2) If such value is more than \$2,500, to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both.

History: 1963 c 753 art 1 s 609.54; 1976 c 2 s 172; 1984 c 628 art 3 s 11

609.541 PROTECTION OF LIBRARY PROPERTY.

Subdivision 1. **Damage to library materials.** A person who intentionally, and without permission from library personnel damages any books, maps, pictures, manuscripts, films, or other property of any public library or library belonging to the state or to any political subdivision is guilty of a petty misdemeanor.

Subd. 2. **Removal of library property.** A person who intentionally, and without permission from library personnel removes any books, maps, pictures, manuscripts, films, or other property of any public library or library belonging to the state or to any political subdivision is guilty of a misdemeanor.

Subd. 3. **Detention of library materials.** A person who detains a book, periodical, pamphlet, film, or other property belonging to any public library, or to a library belonging to the state or any political subdivision, for more than 60 days after notice in writing to return it, given after the expiration of the library's stated loan period for the material, is guilty of a petty misdemeanor. The written notice shall be sent by mail to the last known address of the person detaining the material. The notice shall state the type of material borrowed, the title of the material, the author's name, the library from which the material was borrowed, and the date by which the material was to have been returned to the library. The notice shall include a statement indicating that if the material is not returned within 60 days after the written notice the borrower will be in violation of this section.

Subd. 4. **Responsibility for prosecution for regional libraries.** For regional libraries the county attorney for the county in which the offense occurred shall prosecute violations of subdivisions 1 to 3.

History: 1983 c 280 s 3

609.545 MISUSING CREDIT CARD TO SECURE SERVICES.

Whoever obtains the services of another by the intentional unauthorized use of a credit card issued or purporting to be issued by an organization for use as identification in purchasing services is guilty of a misdemeanor.

History: 1963 c 753 art 1 s 609.545; 1971 c 23 s 57

609.55 UNAUTHORIZED USE OF MOTOR VEHICLE.

Subdivision 1. **Definition.** For the purposes of this section, "motor vehicle" means any self-propelled device for moving persons or property or pulling implements from one place to another, whether such device is operated on land, rails, water, or in the air.

Subd. 2. **Acts constituting.** Whoever intentionally takes or drives a motor vehicle without the consent of the owner or his authorized agent may be sentenced

MINNESOTA STATUTES 1984

609.55 CRIMINAL CODE OF 1963

9878

to imprisonment for not more than three years or to payment of a fine of not more than \$5,000, or both.

History: 1963 c 753 art 1 s 609.55; 1969 c 241 s 1; 1984 c 628 art 3 s 11

609.551 RUSTLING 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 \$20,000;

(b) If the value of the animals which are shot, killed, taken, used, transferred, concealed or retained exceeds \$300 but is less than \$2,500, the defendant may be sentenced to imprisonment for not more than five years, and may be fined up to \$10,000;

(c) If the value of the animals which are shot, killed, taken, used, transferred, concealed, or retained is \$300 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 attorney's fees.

History: 1975 c 314 s 2; 1977 c 355 s 8; 1984 c 628 art 3 s 11

DAMAGE OR TRESPASS TO PROPERTY

609.555 [Repealed; 1976 c 124 s 10]

609.556 DEFINITIONS.

Subdivision 1. For the purposes of sections 609.556 to 609.576 and 609.611, the terms defined in this section have the meanings given them.

Subd. 2. "Property of another" means a building or other property, whether real or personal, in which a person other than the accused has an interest which the accused has no authority to defeat or impair even though the accused may also have an interest in the building or property.

Subd. 3. "Building" in addition to its ordinary meaning includes any tent, watercraft, structure or vehicle that is customarily used for overnight lodging of a person or persons. If a building consists of two or more units separately secured or occupied, each unit shall be deemed a separate building.

History: 1976 c 124 s 3; 1977 c 347 s 63

609.56 [Repealed, 1976 c 124 s 10]

609.561 ARSON IN THE FIRST DEGREE.

Subdivision 1. Whoever unlawfully by means of fire or explosives, intentionally destroys or damages any building that is used as a dwelling at the time the act is committed, whether the inhabitant is present therein at the time of the act or not, or any building appurtenant to or connected with a dwelling whether the property of himself or of another, commits arson in the first degree and may be sentenced to imprisonment for not more than 20 years or to a fine of not more than \$20,000, or both.

Subd. 2. Whoever unlawfully by means of fire or explosives, intentionally destroys or damages any building not included in subdivision 1, whether the property of himself or another commits arson in the first degree and may be sentenced to imprisonment for not more than 20 years or to a fine of not more than \$35,000, or both if:

(a) Another person who is not a participant in the crime is present in the building at the time and the defendant knows that; or

(b) The circumstances are such as to render the presence of such a person therein a reasonable possibility.

History: 1976 c 124 s 4; 1984 c 628 art 3 s 11

609.562 ARSON IN THE SECOND DEGREE.

Whoever unlawfully by means of fire or explosives, intentionally destroys or damages any building not covered by section 609.561, or any other real or personal property valued at more than \$2,500, whether the property of himself or another, may be sentenced to imprisonment for not more than ten years or to a fine of not more than \$20,000 or both.

History: 1976 c 124 s 5; 1979 c 258 s 16; 1984 c 628 art 3 s 11

609.563 ARSON IN THE THIRD DEGREE.

Subdivision 1. Whoever unlawfully by means of fire or explosives, intentionally destroys or damages any real or personal property belonging to another may be sentenced to imprisonment for not more than five years or to a fine of \$10,000 or both, if:

(a) The property intended by the accused to be damaged or destroyed had a value of more than \$300 but less than \$2,500; or

(b) Property of the value of \$300 or more was unintentionally damaged or destroyed but such damage or destruction could reasonably have been foreseen; or

(c) The property specified in clauses (a) and (b) in the aggregate had a value of \$300 or more.

Subd. 2. In all other cases whoever intentionally by means of fire or explosives sets fire to or burns or causes to be burned any real or personal property of value belonging to another may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than \$700.

History: 1976 c 124 s 6; 1977 c 355 s 9; 1979 c 258 s 17; 1984 c 628 art 3 s 11

609.565 [Repealed, 1976 c 124 s 10]

609.57 [Repealed, 1976 c 124 s 10]

609.575 [Repealed, 1976 c 124 s 10]

609.576 NEGLIGENT FIRES.

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

(a) A human being is injured and great bodily harm incurred, is guilty of a crime and may be sentenced to imprisonment of not more than three years or to a fine of not more than \$5,000, or both; or

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

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

(2) To imprisonment for not more than one year, or to a fine of \$3,000 or both, if the value of the property damaged is at least \$300 and under \$2,500;

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

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

History: 1976 c 124 s 7; 1977 c 355 s 10; 1981 c 107 s 1; 1984 c 628 art 3 s 11

609.58 [Repealed, 1983 c 321 s 4]

609.581 DEFINITIONS.

Subdivision 1. **Terms defined.** For purpose of sections 609.582 and 609.583 the terms defined in this section have the meanings given them.

Subd. 2. **Building.** "Building" means a structure suitable for affording shelter for human beings including any appurtenant or connected structure.

Subd. 3. **Dwelling.** "Dwelling" means a building used as a permanent or temporary residence.

Subd. 4. **Enters a building without consent.** "Enters a building without consent" means:

(a) to enter a building without the consent of the person in lawful possession;

(b) to enter a building by using artifice, trick, or misrepresentation to obtain consent to enter from the person in lawful possession; or

(c) to remain within a building without the consent of the person in lawful possession.

Whoever enters a building while open to the general public does so with consent except when consent was expressly withdrawn before entry.

History: 1983 c 321 s 1

609.582 BURGLARY.

Subdivision 1. **Burglary in the first degree.** Whoever enters a building without consent and with intent to commit a crime commits burglary in the first degree and may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than \$35,000, or both, if:

(a) the building is a dwelling and another person not an accomplice is present in it;

(b) the burglar possesses a dangerous weapon or explosive when entering or at any time while in the building; or

(c) the burglar assaults a person within the building.

Subd. 2. **Burglary in the second degree.** Whoever enters a building without consent and with intent to commit a crime commits burglary 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, if:

(a) the building is a dwelling;

(b) the portion of the building entered contains a banking business or other business of receiving securities or other valuable papers for deposit or safekeeping and the entry is with force or threat of force;

(c) the portion of the building entered contains a pharmacy or other lawful business or practice in which controlled substances are routinely held or stored, and the entry is forcible; or

(d) when entering or while in the building, the burglar possesses a tool to gain access to money or property.

Subd. 3. **Burglary in the third degree.** Whoever enters a building without consent and with intent to steal or commit any felony or gross misdemeanor commits burglary in the third degree 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.

Subd. 4. **Burglary in the fourth degree.** Whoever enters a building without consent and with intent to commit a misdemeanor other than to steal commits burglary in the fourth degree and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

History: 1983 c 321 s 2; 1984 c 628 art 3 s 6

609.583 SENTENCING; FIRST BURGLARY OF A DWELLING.

In determining an appropriate disposition for a first offense of burglary of a dwelling, the court shall presume that a stay of execution with a 90-day period of incarceration as a condition of probation shall be imposed unless the defendant's criminal history score determined according to the sentencing guidelines indicates a presumptive executed sentence, in which case the presumptive executed sentence shall be imposed unless the court departs from the sentencing guidelines pursuant to section 244.10. A stay of imposition of sentence may be granted only if accompanied by a statement on the record of the reasons for it. The presumptive period of incarceration may be waived in whole or in part by the court if the defendant provides restitution or performs community work service.

History: 1983 c 321 s 3; 1984 c 497 s 1

609.585 DOUBLE JEOPARDY.

A prosecution for or conviction of the crime of burglary is not a bar to conviction of any other crime committed on entering or while in the building entered.

History: 1963 c 753 art 1 s 609.585

609.59 POSSESSION OF BURGLARY TOOLS.

Whoever has in his possession any device, explosive, or other instrumentality with intent to use or permit the use of the same to commit burglary 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: 1963 c 753 art 1 s 609.59; 1984 c 628 art 3 s 11

609.595 DAMAGE TO PROPERTY.

Subdivision 1. **Aggravated criminal damage to property.** Whoever intentionally causes damage to physical property of another without the latter's consent may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if:

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

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

(3) The damage reduces the value of the property by more than \$300 measured by the cost of repair and replacement.

In any prosecution under clause (3), the value of any property damaged by the defendant in violation of that clause within any six month period may be aggregated and the defendant charged accordingly in applying the provisions of this section; provided that when two or more offenses are committed by the same person in two or more counties, the accused may be prosecuted in any county in which one of the offenses was committed for all of the offenses aggregated under this paragraph.

Subd. 2. **Criminal damage to property.** Whoever intentionally so causes such damage under any other circumstances is guilty of a misdemeanor.

History: 1963 c 753 art 1 s 609.595; 1971 c 23 s 60; 1977 c 355 s 11; 1979 c 258 s 18; 1984 c 421 s 1; 1984 c 628 art 3 s 11

609.60 DANGEROUS TRESPASSES AND OTHER ACTS.

Whoever intentionally does any of the following is guilty of a misdemeanor; except, if to his knowledge a risk of death or bodily harm or serious property damage is thereby created, he 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:

(1) Smokes in the presence of explosives or inflammable materials; or

(2) Interferes with or obstructs the prevention or extinguishing of any fire, or disobeys the lawful orders of a law enforcement officer or firefighter present at the fire; or

(3) Shows a false light or signal or interferes with any light, signal, or sign controlling or guiding traffic upon a highway, railway track, navigable waters, or in the air; or

(4) Places an obstruction upon a railroad track; or

(5) Exposes another or his property to an obnoxious or harmful gas, fluid or substance, with intent to injure, molest, or coerce; or

(6) Without authorization of the adjutant general enters or is present upon the Camp Ripley military reservation in an area posted by order of the adjutant general as restricted for weapon firing or other hazardous military activity.

History: 1963 c 753 art 1 s 609.60; 1971 c 23 s 61; 1977 c 429 s 63; 1982 c 408 s 1; 1984 c 628 art 3 s 11

609.605 TRESPASSES AND OTHER ACTS.

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

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

(2) Trespasses or permits animals under his control to trespass upon a railroad track; or

MINNESOTA STATUTES 1984

9883

CRIMINAL CODE OF 1963 609.615

(3) Permits domestic animals or fowls under his control to go upon the lands of another within a city; or

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

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

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

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

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

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

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

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

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

History: 1963 c 753 art 1 s 609.605; 1971 c 23 s 62; 1973 c 123 art 5 s 7; 1976 c 251 s 1; 1978 c 512 s 1; 1981 c 365 s 9; 1982 c 408 s 2

609.61 [Repealed, 1976 c 124 s 10]

609.611 DEFRAUDING INSURER.

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

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

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

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

History: 1976 c 124 s 8; 1984 c 628 art 3 s 11

609.615 DEFEATING SECURITY ON REALTY.

Whoever removes or damages real property which is subject to a mortgage, mechanic's lien, or contract for deed, with intent to impair the value of the security, without the consent of the security holder, may be sentenced as follows:

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

(2) If the value of the property is impaired by more than \$300, to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

History: 1963 c 753 art 1 s 609.615; 1971 c 23 s 63; 1977 c 355 s 12; 1984 c 628 art 3 s 11

609.62 DEFEATING SECURITY ON PERSONALTY.

Subdivision 1. Definition. In this section "security interest" means an interest in property which secures payment or other performance of an obligation.

Subd. 2. Acts constituting. Whoever, with intent to defraud, does any of the following 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:

(1) Conceals, removes, or transfers any personal property in which he 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: 1963 c 753 art 1 s 609.62; 1984 c 628 art 3 s 11

609.621 PROOF OF CONCEALMENT OF PROPERTY BY OBLIGOR OF SECURED PROPERTY.

Subdivision 1. When in any prosecution under section 609.62, it appears that there is a default in the payment of the debts secured and it further appears that the obligor has failed or refused to reveal the location of the security, this shall be considered sufficient evidence to sustain a finding that the obligor has removed, concealed, or disposed of the property.

Subd. 2. In any prosecution under section 609.62, it is a sufficient allegation and description of the security and the property secured to state generally that such property was duly mortgaged or sold under a conditional sales contract, or as the case may be, giving the date thereof and the names of the obligor and obligee.

History: 1963 c 753 art 2 s 15

FORGERY AND RELATED CRIMES

609.625 AGGRAVATED FORGERY.

Subdivision 1. Making or altering writing or object. Whoever, with intent to defraud, falsely makes or alters a writing or object of any of the following kinds so that it purports to have been made by another or by himself under an assumed or fictitious name, or at another time, or with different provisions, or by authority of one who did not give such authority, is guilty of aggravated forgery and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both:

(1) A writing or object whereby, when genuine, legal rights, privileges, or obligations are created, terminated, transferred, or evidenced, or any writing normally relied upon as evidence of debt or property rights; or

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

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

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

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

(6) The records or accounts of a public body, office, or officer; or

(7) The records or accounts of a bank or person, with whom funds of the state or any of its agencies or subdivisions are deposited or entrusted, relating to such funds.

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

Subd. 3. Uttering or possessing. Whoever, with intent to defraud, utters or possesses with intent to utter any forged writing or object mentioned in subdivision 1, knowing it to have been so forged, may be sentenced as provided in subdivision 1.

History: 1963 c 753 art 1 s 609.625; 1984 c 628 art 3 s 11

609.63 FORGERY.

Subdivision 1. Whoever, with intent to injure or defraud, does any of the following is guilty of forgery and may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than \$5,000, or both:

(1) Uses a false writing, knowing it to be false, for the purpose of identification or recommendation; or

(2) Without consent, places, or possesses with intent to place, upon any merchandise an identifying label or stamp which is or purports to be that of another craftsman, tradesman, packer, or manufacturer, or disposes or possesses with intent to dispose of any merchandise so labeled or stamped; or

(3) Falsely makes or alters a membership card purporting to be that of a fraternal, business, professional, or other association, or of any labor union, or possesses any such card knowing it to have been thus falsely made or altered; or

(4) Falsely makes or alters a writing, or possesses a falsely made or altered writing, evidencing a right to transportation on a common carrier; or

(5) Destroys, mutilates, or by alteration, false entry or omission, falsifies any record, account, or other document relating to a private business; or

(6) Without authority of law, destroys, mutilates, or by alteration, false entry, or omission, falsifies any record, account, or other document relating to a person, corporation, or business, or filed in the office of, or deposited with, any public office or officer; or

(7) Destroys a writing or object to prevent it from being produced at a trial, hearing, or other proceeding authorized by law.

Subd. 2. Whoever, with knowledge that it is forged, offers in evidence in any trial, hearing or other proceedings authorized by law, as genuine, any forged writing or object may be sentenced as follows:

(1) If the writing or object is offered in evidence in the trial of a felony charge, to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both; or

(2) In all other cases, to imprisonment for not more than three years or to payment of a fine of not more than \$5,000, or both.

History: 1963 c 753 art 1 s 609.63; 1984 c 628 art 3 s 11

MINNESOTA STATUTES 1984

609.635 CRIMINAL CODE OF 1963

9886

609.635 OBTAINING SIGNATURE BY FALSE PRETENSE.

Whoever, by false pretense, obtains the signature of another to a writing which is a subject of forgery under section 609.625, subdivision 1, may be punished as therein provided.

History: 1963 c 753 art 1 s 609.635

609.64 RECORDING, FILING OF FORGED INSTRUMENT.

Whoever intentionally presents for filing, registering, or recording, or files, registers, or records a false or forged instrument relating to or affecting real or personal property in a public office entitled to file, register, or record such instrument when genuine 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: 1963 c 753 art 1 s 609.64; 1984 c 628 art 3 s 11

609.645 FRAUDULENT STATEMENTS.

Whoever, with intent to injure or 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 \$5,000, or both:

(1) Circulates or publishes a false statement, oral or written, relating to a corporation, association, or individual, intending thereby to give a false apparent value to securities issued or to be issued by, or to the property of, such corporation, association, or individual; or

(2) Makes a false ship's or airplane's manifest, invoice, register, or protest.

History: 1963 c 753 art 1 s 609.645; 1984 c 628 art 3 s 11

609.65 FALSE CERTIFICATION BY NOTARY PUBLIC.

Whoever, when acting or purporting to act as a notary public or other public officer, certifies falsely that an instrument has been acknowledged or that any other act was performed by a party appearing before him or that as such notary public or other public officer he performed any other official act may be sentenced as follows:

(1) If he so certifies with intent to injure or defraud, to imprisonment for not more than three years or to payment of a fine of not more than \$5,000, or both; or

(2) In any other case, to imprisonment for not more than 90 days or to payment of a fine of not more than \$700, or both.

History: 1963 c 753 art 1 s 609.65; 1971 c 23 s 64; 1984 c 628 art 3 s 11

609.655 [Repealed, 1976 c 112 s 2]

CRIMES AGAINST PUBLIC SAFETY AND HEALTH

609.66 DANGEROUS WEAPONS.

Subdivision 1. **Acts prohibited.** Whoever does any of the following is guilty of a misdemeanor:

(1) recklessly handles or uses a gun or other dangerous weapon or explosive so as to endanger the safety of another; or

(2) intentionally points a gun of any kind, capable of injuring or killing a human being and whether loaded or unloaded, at or toward another; or

(3) manufactures or sells for any unlawful purpose any weapon known as a slung-shot or sand club; or

(4) manufactures, transfers, or possesses metal knuckles or a switch blade knife opening automatically; or

(5) possesses any other dangerous article or substance for the purpose of being used unlawfully as a weapon against another; or

(6) sells or has in his possession any device designed to silence or muffle the discharge of a firearm; or

(7) without the parent's or guardian's consent, furnishes a child under 14 years of age, or as a parent or guardian permits the child to handle or use, outside of the parent's or guardian's presence, a firearm or airgun of any kind, or any ammunition or explosive; or

(8) in any municipality of this state, furnishes a minor under 18 years of age with a firearm, airgun, ammunition, or explosive without the written consent of his parent or guardian or of the police department of the municipality.

Subd. 2. **Exceptions.** Nothing in this section prohibits the possession of the articles mentioned by museums or collectors of art or for other lawful purposes of public exhibition.

History: 1963 c 753 art 1 s 609.66; 1971 c 23 s 66; 1983 c 359 s 89

609.665 SPRING GUNS.

Whoever sets a spring gun, pitfall, deadfall, snare, or other like dangerous weapon or device, may be sentenced to imprisonment for not more than six months or to payment of a fine of not more than \$700, or both.

History: 1963 c 753 art 1 s 609.665; 1984 c 628 art 3 s 11

609.67 MACHINE GUNS AND SHORT-BARRELED SHOTGUNS.

Subdivision 1. **Definition.** (a) "Machine gun" means any firearm designed to discharge, or capable of discharging automatically more than once by a single function of the trigger.

(b) "Shotgun" means a weapon designed, redesigned, made or remade which is intended to be fired from the shoulder and uses the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

(c) "Short-barreled shotgun" means a shotgun having one or more barrels less than 18 inches in length and any weapon made from a shotgun if such weapon as modified has an overall length less than 26 inches.

Subd. 2. **Acts prohibited.** Except as otherwise provided herein, whoever owns, possesses, or operates a machine gun or a short-barreled shotgun 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. **Uses permitted.** The following persons may own or possess a machine gun or short-barreled shotgun provided the provisions of subdivision 4 are complied with:

(1) Law enforcement officers for use in the course of their duties;

(2) Chief executive officers of correctional facilities and other personnel thereof authorized by them and persons in charge of other institutions for the retention of persons convicted or accused of crime, for use in the course of their duties; and

(3) Persons possessing machine guns or short-barreled shotguns which, although designed as weapons, have been determined by the superintendent of the bureau of

criminal apprehension or his delegate by reason of the date of manufacture, value, design or other characteristics to be primarily collector's items, relics, museum pieces or objects of curiosity, ornaments or keepsakes, and are not likely to be used as weapons.

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

Subd. 5. Exceptions. This section does not apply to members of the armed services of either the United States or the state of Minnesota for use in the course of their duties.

Subd. 6. Preemption. Laws 1977, Chapter 255, supersedes all local ordinances, rules and regulations.

History: 1963 c 753 art 1 s 609.67; 1977 c 255 s 1,2; 1979 c 102 s 13; 1984 c 628 art 3 s 11

609.675 EXPOSURE OF UNUSED REFRIGERATOR OR CONTAINER TO CHILDREN.

Whoever, being the owner or in possession or control, permits an unused refrigerator or other container, sufficiently large to retain any child and with doors which fasten automatically when closed, to be exposed and accessible to children, without removing the doors, lids, hinges, or latches, is guilty of a misdemeanor.

History: 1963 c 753 art 1 s 609.675; 1971 c 23 s 67

609.68 UNLAWFUL DEPOSIT OF GARBAGE, LITTER OR LIKE.

Whoever unlawfully deposits garbage, rubbish, offal, or the body of a dead animal, or other litter in or upon any public highway, public waters or the ice thereon, public lands, or, without the consent of the owner, private lands or water or ice thereon, is guilty of a misdemeanor.

History: 1963 c 753 art 1 s 609.68; 1971 c 23 s 68

609.685 SALE OF TOBACCO TO CHILDREN.

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

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

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

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

History: 1963 c 753 art 1 s 609.685; 1981 c 218 s 1,2

609.686 FALSE FIRE ALARMS; TAMPERING WITH OR INJURING A FIRE ALARM SYSTEM.

Whoever intentionally gives a false alarm of fire, or unlawfully tampers or interferes with any station or signal box of any fire alarm system or any auxiliary fire

appliance, or unlawfully breaks, injures, defaces, or removes any such box or station, or unlawfully breaks, injures, destroys, or disturbs any of the wires, poles, or other supports and appliances connected with or forming a part of any fire alarm system or any auxiliary fire appliance is guilty of a misdemeanor.

History: 1971 c 77 s 1

PUBLIC MISCONDUCT OR NUISANCE

609.687 ADULTERATION.

Subdivision 1. **Definition.** "Adulteration" is the intentional adding of any substance, which has the capacity to cause death, bodily harm or illness by ingestion, injection, inhalation or absorption, to a substance having a customary or reasonably foreseeable human use.

Subd. 2. **Acts constituting.** (a) Whoever, knowing or having reason to know that the adulteration will cause death, bodily harm or illness, adulterates any substance with the intent to cause death, bodily harm or illness is guilty of a crime and may be sentenced as provided in subdivision 3; or

(b) Whoever, knowing or having reason to know that a substance has been adulterated as defined in subdivision 1, distributes, disseminates, gives, sells, or otherwise transfers an adulterated substance with the intent to cause death, bodily harm or illness is guilty of a crime and may be sentenced as provided in subdivision 3.

Subd. 3. **Sentence.** Whoever violates subdivision 2 may be sentenced as follows:

(1) If the adulteration causes death, to imprisonment for not more than 40 years.

(2) If the adulteration causes any illness, pain, or other bodily harm, to imprisonment for not more than five years.

Subd. 4. **Charging discretion.** Criminal proceedings may be instituted under this section, notwithstanding the provisions of sections 24.141, 24.28, 29.24, 31.02, 31.405, 31.601, 34.01, 151.34, 340.142, or other law proscribing adulteration of substances intended for use by persons.

History: 1983 c 8 s 1

609.705 UNLAWFUL ASSEMBLY.

When three or more persons assemble, each participant is guilty of unlawful assembly, which is a misdemeanor, if the assembly is:

(1) With intent to commit any unlawful act by force; or

(2) With intent to carry out any purpose in such manner as will disturb or threaten the public peace; or

(3) Without unlawful purpose, but the participants so conduct themselves in a disorderly manner as to disturb or threaten the public peace.

History: 1963 c 753 art 1 s 609.705; 1971 c 23 s 69

609.71 RIOT.

When three or more persons assembled disturb the public peace by an intentional act or threat of unlawful force or violence to person or property, each participant therein is guilty of riot and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$1,000, or both, or, if the offender, or to his knowledge any other participant, is armed with a dangerous weapon or is

disguised, to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

History: 1963 c 753 art 1 s 609.71; 1984 c 628 art 3 s 11

609.713 TERRORISTIC THREATS.

Subdivision 1. Whoever threatens to commit any crime of violence with purpose to terrorize another or to cause evacuation of a building, place of assembly or facility of public transportation or otherwise to cause serious public inconvenience, or in a reckless disregard of the risk of causing such terror or inconvenience may be sentenced to imprisonment for not more than five years.

Subd. 2. Whoever communicates to another with purpose to terrorize another or in reckless disregard of the risk of causing such terror, that explosives or an explosive device or any incendiary device is present at a named place or location, whether or not the same is in fact present, may be sentenced to imprisonment for not more than three years.

History: 1971 c 845 s 19

609.715 PRESENCE AT UNLAWFUL ASSEMBLY.

Whoever without lawful purpose is present at the place of an unlawful assembly and refuses to leave when so directed by a law enforcement officer is guilty of a misdemeanor.

History: 1963 c 753 art 1 s 609.715; 1971 c 23 s 70

609.72 DISORDERLY CONDUCT.

Subdivision 1. Whoever does any of the following in a public or private place, knowing, or having reasonable grounds to know that it will, or will tend to, alarm, anger or disturb others or provoke an assault or breach of the peace, is guilty of disorderly conduct, which is a misdemeanor:

- (1) Engages in brawling or fighting; or
- (2) Disturbs an assembly or meeting, not unlawful in its character; or
- (3) Engages in offensive, obscene, or abusive language or in boisterous and noisy conduct tending reasonably to arouse alarm, anger, or resentment in others.

Subd. 2. [Repealed, 1969 c 226 s 1]

History: 1963 c 753 art 1 s 609.72; 1967 c 242 s 1; 1971 c 23 s 71

609.725 VAGRANCY.

Any of the following are vagrants and are guilty of a misdemeanor:

- (1) A person, with ability to work, who is without lawful means of support, does not seek employment, and is not under 18 years of age; or
- (2) A person found in or loitering near any structure, vehicle, or private grounds who is there without the consent of the owner and is unable to account for his presence; or
- (3) A prostitute who loiters on the streets or in a public place or in a place open to the public with intent to solicit for immoral purposes; or
- (4) A person who derives his support in whole or in part from begging or as a fortune teller or similar impostor.

History: 1963 c 753 art 1 s 609.725; 1971 c 23 s 72

609.735 CONCEALING IDENTITY.

Whoever conceals his identity in a public place by means of a robe, mask, or other disguise, unless incidental to amusement or entertainment, is guilty of a misdemeanor.

History: 1963 c 753 art 1 s 609.735; 1971 c 23 s 73

609.74 PUBLIC NUISANCE.

Whoever by his act or failure to perform a legal duty intentionally does any of the following is guilty of maintaining a public nuisance, which is a misdemeanor:

(1) Maintains or permits a condition which unreasonably annoys, injures or endangers the safety, health, morals, comfort, or repose of any considerable number of members of the public; or

(2) Interferes with, obstructs, or renders dangerous for passage, any public highway or right-of-way, or waters used by the public; or

(3) Is guilty of any other act or omission declared by law to be a public nuisance and for which no sentence is specifically provided.

History: 1963 c 753 art 1 s 609.74; 1971 c 23 s 74

609.745 PERMITTING PUBLIC NUISANCE.

Whoever permits real property under his control to be used to maintain a public nuisance or lets the same knowing it will be so used is guilty of a misdemeanor.

History: 1963 c 753 art 1 s 609.745; 1971 c 23 s 75

609.746 INTERFERENCE WITH PRIVACY.

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

History: 1979 c 258 s 19

GAMBLING**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.

(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;

MINNESOTA STATUTES 1984

(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.

Subd. 2. Bet. A bet is a bargain whereby the parties mutually agree to a gain or loss by one to the other of specified money, property or benefit dependent upon chance although the chance is accompanied by some element of skill.

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 charitable gambling control board.

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

Subd. 4. Gambling device. A gambling device is a contrivance which for a consideration affords the player an opportunity to obtain something of value, other than free plays, automatically from the machine or otherwise, the award of which is determined principally by chance.

Subd. 5. Gambling place. A gambling place is a location or structure, stationary or movable, or any part thereof, wherein, as one of its uses, betting is permitted or promoted, a lottery is conducted or assisted or a gambling device is operated.

Subd. 6. Bucket shop. A bucket shop is a place wherein the operator is engaged in making bets in the form of purchases or sales on public exchanges of securities, commodities or other personal property for future delivery to be settled at prices dependent on the chance of those prevailing at the public exchanges without a bona fide purchase or sale being in fact made on a board of trade or exchange.

Subd. 7. Sports bookmaking. Sports bookmaking is the activity of intentionally receiving, recording or forwarding in any one day more than five bets or offers to bet totaling more than \$1,500 on the outcome of an organized sporting event.

History: 1963 c 753 art 1 s 609.75; 1971 c 947 s 1; 1976 c 2 s 152; 1976 c 239 s 126; 1976 c 261 s 14; 1978 c 507 s 4,5; 1981 c 126 s 3; 1983 c 214 s 34-36; 1983 c 216 art 2 s 17 subd 3; 1984 c 502 art 12 s 22

609.755 ACTS OF OR RELATING TO GAMBLING.

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

- (1) Makes a bet; or
- (2) Sells or transfers a chance to participate in a lottery; or
- (3) Disseminates information about a lottery with intent to encourage participation therein; or
- (4) Permits a structure or location owned or occupied by him or under his control to be used as a gambling place.

History: 1963 c 753 art 1 s 609.755; 1971 c 23 s 76

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; or

(6) Receives, records, or forwards bets or offers to bet or, with intent to receive, record, or forward bets or offers to bet, possesses facilities to do so.

Subd. 2. **Felony gambling.** Whoever engages in sports bookmaking is guilty of a felony.

History: 1963 c 753 art 1 s 609.76; 1981 c 126 s 4; 1983 c 214 s 37; 1984 c 628 art 3 s 11

609.761 OPERATIONS PERMITTED.

Notwithstanding sections 609.755 and 609.76, an organization may conduct lawful gambling as defined in section 349.12, if licensed by the charitable gambling control board and conducted under sections 349.11 to 349.22, and a person may manufacture, sell or offer for sale a gambling device to the organization, and pari-mutuel betting on horse racing may be conducted under chapter 240.

History: 1978 c 507 s 6; 1983 c 214 s 38; 1984 c 502 art 12 s 23

609.762 FORFEITURE OF GAMBLING DEVICES, PRIZES AND PROCEEDS.

Subdivision 1. **Forfeiture.** The following are subject to forfeiture:

(a) Devices used or intended for use, including those defined in section 349.30, subdivision 2, as a gambling device, except as authorized in sections 349.11 to 349.23 and 349.40;

(b) All moneys, materials, and other property used or intended for use as payment to participate in gambling or a prize or receipt for gambling;

(c) Books, records, and research products and materials, including formulas, microfilm, tapes, and data used or intended for use in gambling; and

(d) Property used or intended to be used to illegally influence the outcome of a horse race.

Subd. 2. **Seizure.** Property subject to forfeiture under subdivision 1 may be seized by any law enforcement agency upon process issued by any court having jurisdiction over the property. Seizure without process may be made if:

(a) the seizure is incident to an arrest or a search under a search warrant;

(b) 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; or

(c) the law enforcement agency has probable cause to believe that the property was used or is intended to be used in a gambling violation and the delay occasioned by the necessity to obtain process would result in the removal, loss, or destruction of the property.

Subd. 3. **Not subject to replevin.** Property taken or detained under subdivision 2 is not subject to a replevin action, but is considered to be in the custody of the law enforcement agency subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings.

Subd. 4. **Procedures.** Property must be forfeited after a conviction for a gambling violation according to the following procedure:

(a) a separate complaint must be filed against the property describing it, charging its use in the specified violation, and specifying the time and place of its unlawful use;

(b) if the person charged with a gambling offense is acquitted, the court shall dismiss the complaint and order the property returned to the persons legally entitled to it; and

(c) if after conviction the court finds the property, or any part of it, was used in violation as specified in the complaint, it shall order that the property be sold or retained by the law enforcement agency for official use. Proceeds from the sale of forfeited property may be retained for official use and shared equally between the law enforcement agency investigating the offense involved in the forfeiture and the prosecuting agency that prosecuted the offense involved in the forfeiture and handled the forfeiture proceedings.

Subd. 5. **Exception.** Property may not be seized or forfeited under this section if the owner shows to the satisfaction of the court that he had no notice or knowledge or reason to believe that the property was used or intended to be used in violation of this section.

History: 1983 c 214 s 39

CRIMES AGAINST REPUTATION

609.765 CRIMINAL DEFAMATION.

Subdivision 1. **Definition.** Defamatory matter is anything which exposes a person or a group, class or association to hatred, contempt, ridicule, degradation or disgrace in society, or injury to his or its business or occupation.

Subd. 2. **Acts constituting.** Whoever with knowledge of its defamatory character orally, in writing or by any other means, communicates any defamatory matter to a third person without the consent of the person defamed is guilty of criminal defamation 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. 3. **Justification.** Violation of subdivision 2 is justified if:

(1) The defamatory matter is true and is communicated with good motives and for justifiable ends; or

- (2) The communication is absolutely privileged; or
- (3) The communication consists of fair comment made in good faith with respect to persons participating in matters of public concern; or
- (4) The communication consists of a fair and true report or a fair summary of any judicial, legislative or other public or official proceedings; or
- (5) The communication is between persons each having an interest or duty with respect to the subject matter of the communication and is made with intent to further such interest or duty.

Subd. 4. **Testimony required.** No person shall be convicted on the basis of an oral communication of defamatory matter except upon the testimony of at least two other persons that they heard and understood the oral statement as defamatory or upon a plea of guilty.

History: 1963 c 753 art 1 s 609.765; 1984 c 628 art 3 s 11

NOTE: See section 588.20.

609.77 FALSE INFORMATION TO NEWS MEDIA.

Whoever, with intent that it be published or disseminated and that it defame another person, communicates to any newspaper, magazine or other news media, any statement, knowing it to be false, is guilty of a misdemeanor.

History: 1963 c 753 art 1 s 609.77; 1971 c 23 s 77

CRIMES RELATING TO COMMUNICATIONS

609.774 EMERGENCY COMMUNICATIONS; KIDNAPPINGS.

Subdivision 1. **Definitions.** For the purposes of this section, "supervising peace officer" means a person licensed pursuant to chapter 626, who has probable cause to believe that a person is being unlawfully confined, and who has lawful jurisdiction in the geographical area where the violation is believed to be occurring.

Subd. 2. **Authority.** A supervising peace officer may order a telephone company to cut, reroute, or divert telephone lines for the purpose of establishing and controlling communications with a violator.

Subd. 3. **Designation.** Each telephone company shall designate an employee to serve as a security official and to provide assistance as required by the supervising peace officer to carry out the purposes of this section.

Subd. 4. **Unauthorized communication prohibited.** Whoever initiates telephone communications with a violator with knowledge of an order issued pursuant to subdivision 2 and without prior police authorization, is guilty of a misdemeanor.

Subd. 5. **Defense.** Good faith reliance by telephone employees on an order issued pursuant to subdivision 2 shall constitute a complete defense to any legal action brought for an interruption of telephone communications occurring by reason of this section.

History: 1979 c 63 s 1; 1979 c 289 s 2

609.775 DIVULGING TELEPHONE OR TELEGRAPH MESSAGE; NON-DELIVERY.

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

- (1) Being entrusted as an employee of a telephone or telegraph company with the transmission or delivery of a telephonic or telegraphic message, intentionally or through culpable negligence discloses the contents or meaning thereof to a person other than the intended receiver; or

(2) Knowing he is not the intended receiver, obtains such disclosure from such employee; or

(3) Being such employee, intentionally or negligently fails duly to deliver such message.

History: 1963 c 753 art 1 s 609.775; 1971 c 23 s 78

609.78 EMERGENCY TELEPHONE CALLS AND COMMUNICATIONS.

Whoever does the following is guilty of a misdemeanor:

(1) Refuses to relinquish immediately a coin-operated telephone or a telephone line consisting of two or more stations when informed that the line is needed to make an emergency call for medical or ambulance service or for assistance from a police or fire department or for other service needed in an emergency to avoid serious harm to person or property, and an emergency exists;

(2) Secures a relinquishment of a coin-operated telephone or a telephone line consisting of two or more stations by falsely stating that the line is needed for an emergency;

(3) Publishes telephone directories to be used for telephones or telephone lines and the directories do not contain a copy of this section;

(4) Makes an emergency call for medical or ambulance service, knowing that no medical emergency exists; or

(5) Interrupts, disrupts, impedes, or otherwise interferes with the transmission of a citizen's band radio channel communication the purpose of which is to inform or inquire about a medical emergency or an emergency in which property is or is reasonably believed to be in imminent danger of damage or destruction.

History: 1963 c 753 art 1 s 609.78; 1971 c 23 s 79; 1983 c 140 s 1; 1984 c 630 s 1

609.785 FRAUDULENT LONG DISTANCE TELEPHONE CALLS.

Subdivision 1. Whoever obtains long distance telephone service by intentionally charging the cost thereof to a false or non-existent telephone or credit card number or to the telephone or credit card number of another without his authority may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than \$700, or both, when the value of the telephone service obtained is not more than \$300; and by 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 telephone service obtained in a single transaction, or in separate transactions within any six month period, is more than \$300.

Subd. 2. Whoever wilfully makes, assembles or possesses any electronic, mechanical or other device having reason to know that it is intended to be used and that its design renders it primarily useful to avoid payment of lawful charges for long distance telecommunications services, in whole or in part, or whoever sells, gives, or otherwise transfers to another, such a device, or offers or advertises such a device for sale, or advertises or offers, for a monetary consideration, plans or component parts for the purpose of making or assembling such a device, having reason to know it is intended to be used unlawfully, or whoever, by use of such a device, obtains or attempts to obtain long distance telecommunications services, 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: 1963 c 753 art 1 s 609.785; 1969 c 175 s 1; 1971 c 23 s 80; 1977 c 14 s 1; 1977 c 355 s 13; 1984 c 628 art 3 s 11

609.79 OBSCENE OR HARASSING TELEPHONE CALLS.

Subdivision 1. Whoever,

(1) By means of a telephone,

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

(b) Makes a telephone call, whether or not conversation ensues, without disclosing his identity and with intent to annoy, abuse, threaten, or harass any person at the called number,

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

(2) Knowingly permits any telephone under his control to be used for any purpose prohibited by this section, shall be guilty of a misdemeanor.

Subd. 2. The offense may be prosecuted either at the place where the call is made or where it is received.

History: 1963 c 753 art 1 s 609.79; 1969 c 174 s 1

609.795 OPENING SEALED LETTER, TELEGRAM, OR PACKAGE.

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

(1) Knowing that he 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.

History: 1963 c 753 art 1 s 609.795; 1971 c 23 s 81

609.80 INTERFERING WITH CABLE COMMUNICATIONS SYSTEMS.

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

(1) intentionally and with the purpose of making or aiding in an unauthorized connection as defined in section 609.52, subdivision 2, clause (12) to a licensed cable communications system as defined in chapter 238 sells, rents, lends, offers or advertises for sale, rental or use, any instrument, apparatus, equipment, device or plan, specification or instruction for making an unauthorized connection; or

(2) intentionally tampers with, removes or injures any cable, wire, or other component of a licensed cable communications system as defined in chapter 238; or

(3) intentionally and without claim of right interrupts a service of a licensed cable communications system as defined in chapter 238.

History: 1977 c 396 s 2

CRIMES RELATING TO A BUSINESS**609.805 TICKET SCALPING.**

Subdivision 1. **Definition.** "Event" means a theater performance or show, circus, athletic contest or other entertainment or amusement to which the general public is admitted.

Subd. 2. **Acts constituting.** Whoever intentionally does any of the following is guilty of a misdemeanor:

(1) Issues or sells tickets to an event without printing thereon in a conspicuous place the price of the ticket and the seat number, if any; or

MINNESOTA STATUTES 1984

609.805 CRIMINAL CODE OF 1963

9898

(2) Charges for admission to an event a price greater than that advertised or stated on tickets issued for the event; or

(3) Sells or offers to sell a ticket to an event at a price greater than that charged at the place of admission or printed on the ticket; or

(4) Having received a ticket to an event under conditions restricting its transfer, sells it in violation of such conditions; or

(5) Being in control of premises on or in which an event is conducted, permits the sale or exhibition for sale on or in such premises of a ticket to the event at a price greater than printed thereon.

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.

History: 1963 c 753 art 1 s 609.805; 1971 c 23 s 82; 1975 c 427 s 1

609.81 MISCONDUCT OF PAWNBROKERS.

Whoever in his business as a pawnbroker does any of the following is guilty of a misdemeanor:

(1) Lends money on a pledge at a rate of interest above that allowed by law; or

(2) Has stolen goods in his possession and refuses to permit a law enforcement officer to examine them during usual business hours; or

(3) Sells pledged goods before the time to redeem has expired; or

(4) Having sold pledged goods, refuses to disclose to the pledgor the name of the purchaser or the price for which sold; or

(5) Makes a loan on a pledge to a person under lawful age, without the written consent of his parent or guardian.

History: 1963 c 753 art 1 s 609.81; 1971 c 23 s 83

609.815 MISCONDUCT OF JUNK OR SECOND-HAND DEALER.

Whoever is a junk dealer or second-hand dealer and does any of the following is guilty of a misdemeanor:

(1) Has stolen goods in his possession and refuses to permit a law enforcement officer to examine them during usual business hours; or

(2) Purchases property from a person under lawful age, without the written consent of his parent or guardian.

History: 1963 c 753 art 1 s 609.815; 1971 c 23 s 84

609.82 FRAUD IN OBTAINING CREDIT.

Whoever, with intent to defraud, obtains credit for himself or another from a bank, trust company, savings or building and loan association, or credit union, by means of a present or past false representation as to his or another's financial ability may be sentenced as follows:

(1) If no money or property is obtained by the defendant by means of such credit, to imprisonment for not more than 90 days or to payment of a fine of not more than \$300, or both; or

(2) If money or property is so obtained, the value thereof shall be determined as provided in section 609.52, subdivision 1, clause (3) and he may be sentenced as provided in section 609.52, subdivision 3.

History: 1963 c 753 art 1 s 609.82; 1971 c 23 s 85

MISCELLANEOUS CRIMES

609.825 BRIBERY OF PARTICIPANT OR OFFICIAL IN CONTEST.

Subdivision 1. **Definition.** As used in this section, "official" means one who umpires, referees, judges, officiates or is otherwise designated to render decisions concerning the conduct or outcome of any contest included herein.

Subd. 2. **Acts prohibited.** Whoever does any of the following 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:

(1) Offers, gives, or agrees to give, directly or indirectly, any benefit, reward or consideration to a participant, manager, director, or other official, or to one who intends to become such participant or official, in any sporting event, race or other contest of any kind whatsoever with intent thereby to influence such participant not to use his best effort to win or enable his team to win or to attain a maximum score or margin of victory, or to influence such official in his decisions with respect to such contest; or

(2) Requests, receives, or agrees to receive, directly or indirectly, any benefit, reward or consideration upon the understanding that he will be so influenced as such participant or official.

Subd. 3. **Duty to report.** Whoever is offered or promised such benefit, reward or consideration upon the understanding that he will be so influenced as such participant or official and fails promptly to report the same to his employer, manager, coach, or director, or to a county attorney may be punished by imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

History: 1963 c 753 art 1 s 609.825; 1984 c 628 art 3 s 11

609.83 FALSELY IMPERSONATING ANOTHER.

Whoever does either of the following 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:

(1) Assumes to enter into a marriage relationship with another by falsely impersonating a third person; or

(2) By falsely impersonating another with intent to defraud him or a third person, appears, participates, or executes an instrument to be used in a judicial proceeding.

History: 1963 c 753 art 1 s 609.83; 1984 c 628 art 3 s 11

609.85 CRIMES AGAINST RAILROAD EMPLOYEES AND PROPERTY; PENALTY.

(1) Whoever throws or deposits any type of debris or waste material 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.

(2) Whoever intentionally throws or deposits any type of debris or waste material 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.

MINNESOTA STATUTES 1984

609.85 CRIMINAL CODE OF 1963

9900

(3) 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.

(4) 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.

History: 1977 c 179 s 1

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, 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.

Subd. 2. **Unlawful interference with transit operator.** Whoever intentionally commits an act that unreasonably interferes with or obstructs the operation of a transit vehicle is guilty of unlawful interference and may be sentenced as provided in subdivision 4.

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; or

(5) 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.

Subd. 4. **Penalty.** Whoever violates subdivision 1, 2, or 3 may be sentenced as follows:

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

(b) To the penalty imposed in section 169.89, subdivision 2, if the violation was not accompanied by force or violence or a communication of a threat of force or violence.

History: 1983 c 189 s 1; 1984 c 628 art 3 s 11; 1984 c 654 art 3 s 139,140

CRIMES AGAINST COMMERCE

609.86 COMMERCIAL BRIBERY.

Subdivision 1. **Definition.** "Corruptly" means that the actor intends the action to injure or defraud:

(1) His employer or principal; or

(2) The employer or principal of the person to whom he offers, gives or agrees to give the bribe or from whom he requests, receives or agrees to receive the bribe.

Subd. 2. **Acts constituting.** Whoever does any of the following, when not consistent with usually accepted business practices, is guilty of commercial bribery and may be sentenced as provided in subdivision 3:

(1) Corruptly offers, gives, or agrees to give, directly or indirectly, any benefit, consideration, compensation, or reward to any employee, agent or fiduciary of a person with the intent to influence the person's performance of his duties as an employee, agent, or fiduciary in relation to his employer's or principal's business; or

(2) Being an employee, agent or fiduciary of a person, corruptly requests, receives or agrees to receive, directly or indirectly, from another person any benefit, consideration, compensation, or reward with the understanding or agreement that he shall be influenced in the performance of his duties as an employee, agent, or fiduciary in relation to his employer's or principal's business.

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

(1) 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 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: 1982 c 442 s 1; 1984 c 628 art 3 s 11

609.87 COMPUTER CRIME; DEFINITIONS.

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

Subd. 2. **Access.** "Access" means to instruct, communicate with, store data in, or retrieve data from a computer, computer system, or computer network.

Subd. 3. **Computer.** "Computer" means an electronic device which performs logical, arithmetic and memory functions by the manipulations of signals, including but not limited to electronic or magnetic impulses.

Subd. 4. **Computer system.** "Computer system" means related, connected or unconnected, computers and peripheral equipment.

Subd. 5. **Computer network.** "Computer network" means the interconnection of a communication system with a computer through a remote terminal, or with two or more interconnected computers or computer systems.

Subd. 6. **Property.** "Property" includes, but is not limited to, electronically processed or produced data and information contained in a computer or computer software in either machine or human readable form.

Subd. 7. **Services.** "Services" includes but is not limited to, computer time, data processing, and storage functions.

Subd. 8. **Computer program.** "Computer program" means an instruction or statement or a series of instructions or statements, in a form acceptable to a

computer, which directs the functioning of a computer system in a manner designed to provide appropriate products from the computer.

Subd. 9. **Computer software.** "Computer software" means a computer program or procedures, or associated documentation concerned with the operation of a computer.

Subd. 10. **Loss.** "Loss" means the greatest of the following:

- (a) the retail market value of the property or services involved;
- (b) the reasonable repair or replacement cost, whichever is less; or
- (c) the reasonable value of the damage created by the unavailability or lack of utility of the property or services involved until repair or replacement can be effected.

History: 1982 c 534 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; or

(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.

Subd. 2. **Penalty.** Whoever commits computer damage may be sentenced as follows:

(a) To imprisonment for not more than ten years or to payment of a fine of not more than \$50,000, or both, if the damage, destruction or alteration results in a loss in excess of \$2,500, to the owner, his agent, or lessee;

(b) To imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if the damage, destruction or alteration results in a loss of more than \$500, but not more than \$2,500 to the owner, his agent or lessee; or

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

History: 1982 c 534 s 2; 1984 c 628 art 3 s 11

609.89 COMPUTER THEFT.

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

(a) Intentionally and without authorization or claim of right accesses or causes to be accessed any computer, computer system, computer network or any part thereof for the purpose of obtaining services or property; or

(b) Intentionally and without claim of right, and with intent to permanently deprive the owner of possession, takes, transfers, conceals or retains possession of any computer, computer system, or any computer software or data contained in a computer, computer system, or computer network.

Subd. 2. **Penalty.** Anyone who commits computer theft may be sentenced as follows:

(a) To imprisonment for not more than ten years or to payment of a fine of not more than \$50,000, or both, if the loss to the owner, his agent, or lessee is in excess of \$2,500; or

MINNESOTA STATUTES 1984

9903

CRIMINAL CODE OF 1963 609.89

(b) To imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if the loss to the owner, his agent, or lessee is more than \$500 but not more than \$2,500; or

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

History: 1982 c 534 s 3; 1984 c 628 art 3 s 11