

CHAPTER 609

CRIMINAL CODE

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609.02 DEFINITIONS.

[For text of subs 1 to 15, see M.S.2004]

Subd. 16. **Qualified domestic violence-related offense.** "Qualified domestic violence-related offense" includes the following offenses: sections 518B.01, subdivision 14 (violation of domestic abuse order for protection); 609.221 (first-degree assault); 609.222 (second-degree assault); 609.223 (third-degree assault); 609.2231 (fourth-degree assault); 609.224 (fifth-degree assault); 609.2242 (domestic assault); 609.2247 (domestic assault by strangulation); 609.342 (first-degree criminal sexual conduct); 609.343 (second-degree criminal sexual conduct); 609.344 (third-degree criminal sexual conduct); 609.345 (fourth-degree criminal sexual conduct); 609.377 (malicious punishment of a child); 609.713 (terroristic threats); 609.748, subdivision 6 (violation of harassment restraining order); and 609.749 (harassment/stalking); and similar laws of other states, the United States, the District of Columbia, tribal lands, and United States territories.

History: 2005 c 136 art 17 s 8

609.101 SURCHARGE ON FINES, ASSESSMENTS; MINIMUM FINES.

[For text of subd 2, see M.S.2004]

Subd. 3. **Controlled substance offenses; minimum fines.** (a) Notwithstanding any other law, when a court sentences a person convicted of a controlled substance crime

under sections 152.021 to 152.025 and 152.0262, it must impose a fine of not less than 30 percent of the maximum fine authorized by law nor more than the maximum fine authorized by law.

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

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

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

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

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

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

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

(B) provisions for parental involvement;

(C) classroom instruction by uniformed law enforcement personnel;

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

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

[For text of subds 4 and 5, see M.S.2004]

History: 2005 c 136 art 7 s 21

609.106 HEINOUS CRIMES.

[For text of subd 1, see M.S.2004]

Subd. 2. **Life without release.** The court shall sentence a person to life imprisonment without possibility of release under the following circumstances:

(1) the person is convicted of first degree murder under section 609.185, paragraph (a), clause (1), (2), (4), or (7);

(2) the person is convicted of committing first degree murder in the course of a kidnapping under section 609.185, clause (3); or

(3) the person is convicted of first degree murder under section 609.185, clause (3), (5), or (6), and the court determines on the record at the time of sentencing that the person has one or more previous convictions for a heinous crime.

History: 2005 c 136 art 2 s 5; art 17 s 9

609.108 MANDATORY INCREASED SENTENCES FOR CERTAIN PATTERNED AND PREDATORY SEX OFFENDERS; NO PRIOR CONVICTION REQUIRED.

Subdivision 1. **Mandatory increased sentence.** A court shall commit a person to the commissioner of corrections for a period of time that is not less than double the presumptive sentence under the Sentencing Guidelines and not more than the statutory maximum, or if the statutory maximum is less than double the presumptive sentence, for a period of time that is equal to the statutory maximum, if:

(1) the court is imposing an executed sentence on a person convicted of committing or attempting to commit a violation of section 609.342, 609.343, 609.344, 609.345, or 609.3453;

(2) the factfinder determines that the offender is a danger to public safety; and

(3) the factfinder determines that the offender's criminal sexual behavior is so engrained that the risk of reoffending is great without intensive psychotherapeutic intervention or other long-term treatment or supervision extending beyond the presumptive term of imprisonment and supervised release.

Subd. 2. [Repealed, 2005 c 136 art 2 s 23]

Subd. 3. **Predatory crime.** As used in this section, "predatory crime" has the meaning given in section 609.341, subdivision 22.

Subd. 4. **Danger to public safety.** The factfinder shall base its determination that the offender is a danger to public safety on any of the following factors:

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

(2) the offender previously committed or attempted to commit a predatory crime or a violation of section 609.224 or 609.2242, including:

(i) an offense committed as a juvenile that would have been a predatory crime or a violation of section 609.224 or 609.2242 if committed by an adult; or

(ii) a violation or attempted violation of a similar law of any other state or the United States; or

(3) the offender planned or prepared for the crime prior to its commission.

[For text of subd 5, see M.S.2004]

Subd. 6. **Conditional release.** At the time of sentencing under subdivision 1, the court shall provide that after the offender has completed the sentence imposed, less any good time earned by an offender whose crime was committed before August 1, 1993, the commissioner of corrections shall place the offender on conditional release for the remainder of the statutory maximum period, or for ten years, whichever is longer. The terms of conditional release are governed by section 609.3455.

Subd. 7. **Commissioner of corrections.** The commissioner shall develop a plan to pay the cost of treatment of a person released under subdivision 6. The plan may include co-payments from offenders, third-party payers, local agencies, or other funding sources as they are identified. This section does not require the commissioner to accept or retain an offender in a treatment program.

History: 2005 c 136 art 2 s 6-9; art 3 s 21

609.109 PRESUMPTIVE AND MANDATORY SENTENCES FOR REPEAT SEX OFFENDERS.

[For text of subd 1, see M.S.2004]

Subd. 2. **Presumptive executed sentence.** Except as provided in subdivision 3 or 4, if a person is convicted under sections 609.342 to 609.3453, within 15 years of a

previous sex offense conviction, the court shall commit the defendant to the commissioner of corrections for not less than three years, nor more than the maximum sentence provided by law for the offense for which convicted, notwithstanding the provisions of sections 242.19, 243.05, 609.11, 609.12, and 609.135. The court may stay the execution of the sentence imposed under this subdivision only if it finds that a professional assessment indicates the offender is accepted by and can respond to treatment at a long-term inpatient program exclusively treating sex offenders and approved by the commissioner of corrections. If the court stays the execution of a sentence, it shall include the following as conditions of probation:

- (1) incarceration in a local jail or workhouse; and
- (2) a requirement that the offender successfully complete the treatment program and aftercare as directed by the court.

[For text of subd 3, see M.S.2004]

Subd. 4. Mandatory 30-year sentence. (a) The court shall commit a person to the commissioner of corrections for not less than 30 years, notwithstanding the statutory maximum sentence under section 609.343, if:

- (1) the person is convicted under section 609.342, subdivision 1, clause (c), (d), (e), or (f); or 609.343, subdivision 1, clause (c), (d), (e), or (f); and
- (2) the factfinder determines that:
 - (i) the crime involved an aggravating factor that would provide grounds for an upward departure under the Sentencing Guidelines other than the aggravating factor applicable to repeat criminal sexual conduct convictions; and
 - (ii) the person has a previous sex offense conviction under section 609.342, 609.343, or 609.344.

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

Subd. 5. Previous sex offense convictions. For the purposes of this section, a conviction is considered a previous sex offense conviction if the person was convicted of a sex offense before the commission of the present offense of conviction. A person has two previous sex offense convictions only if the person was convicted and sentenced for a sex offense committed after the person was earlier convicted and sentenced for a sex offense, both convictions preceded the commission of the present offense of conviction, and 15 years have not elapsed since the person was discharged from the sentence imposed for the second conviction. A "sex offense" is a violation of sections 609.342 to 609.3453 or any similar statute of the United States, this state, or any other state.

Subd. 6. Minimum departure for sex offenders. The court shall sentence a person to at least twice the presumptive sentence recommended by the Sentencing Guidelines if:

- (1) the person is convicted under section 609.342, subdivision 1, clause (c), (d), (e), or (f); 609.343, subdivision 1, clause (c), (d), (e), or (f); or 609.344, subdivision 1, clause (c) or (d); and
- (2) the factfinder determines that the crime involved an aggravating factor that would provide grounds for an upward departure under the Sentencing Guidelines.

Subd. 7. [Repealed, 2005 c 136 art 2 s 23]

History: 2005 c 136 art 4 s 3,4; art 16 s 9,10

NOTE: Subdivision 7 was also amended by Laws 2005, chapter 136, article 3, section 22, to read as follows:

"Subd. 7. **Conditional release of sex offenders.** (a) Notwithstanding the statutory maximum sentence otherwise applicable to the offense or any provision of the Sentencing Guidelines, when a court sentences a person to prison for a violation of section 609.342, 609.343, 609.344, or 609.345, the court shall provide that after the person has completed the sentence imposed, the commissioner of corrections shall place the person on conditional release. If the person was convicted for a violation of section 609.342, 609.343, 609.344, or 609.345, the person shall be placed on conditional release for five years, minus the time the person served on supervised release. If the person was convicted for a violation of one of those sections after a previous sex offense conviction as defined in subdivision 5, or sentenced under subdivision 6 to a mandatory departure, the person shall be placed on conditional release for ten years, minus the time the person served on supervised release.

(b) The conditions of release may include successful completion of treatment and aftercare in a program approved by the commissioner, satisfaction of the release conditions specified in section 244.05, subdivision 6, and any other conditions the commissioner considers appropriate. If the offender fails to meet any condition of release, the commissioner may revoke the offender's conditional release and order that the offender serve the remaining portion of the conditional release term in prison. The commissioner shall not dismiss the offender from supervision before the conditional release term expires.

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

(c) The commissioner shall develop a plan to pay the cost of treatment of a person released under this subdivision. The plan may include co-payments from offenders, third-party payers, local agencies, and other funding sources as they are identified. This section does not require the commissioner to accept or retain an offender in a treatment program."

609.1095 INCREASED SENTENCES FOR CERTAIN DANGEROUS AND REPEAT FELONY OFFENDERS.

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

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

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

(d) "Violent crime" means a violation of or an attempt or conspiracy to violate any of the following laws of this state or any similar laws of the United States or any other state: sections 152.137; 609.165; 609.185; 609.19; 609.195; 609.20; 609.205; 609.21; 609.221; 609.222; 609.223; 609.228; 609.235; 609.24; 609.245; 609.25; 609.255; 609.2661; 609.2662; 609.2663; 609.2664; 609.2665; 609.267; 609.2671; 609.268; 609.342; 609.343; 609.344; 609.345; 609.498, subdivision 1; 609.561; 609.562; 609.582, subdivision 1; 609.66, subdivision 1e; 609.687; and 609.855, subdivision 5; any provision of sections 609.229; 609.377; 609.378; 609.749; and 624.713 that is punishable by a felony penalty; or any provision of chapter 152 that is punishable by a maximum sentence of 15 years or more.

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

(1) the court determines on the record at the time of sentencing that the offender has two or more prior convictions for violent crimes; and

(2) the factfinder determines that the offender is a danger to public safety. The factfinder may base its determination that the offender is a danger to public safety on the following factors:

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

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

[For text of subd 3, see M.S.2004]

Subd. 4. **Increased sentence for offender who commits a sixth felony.** Whenever a person is convicted of a felony, and the judge is imposing an executed sentence based on a Sentencing Guidelines presumptive imprisonment sentence, the judge may impose an aggravated durational departure from the presumptive sentence up to the statutory maximum sentence if the factfinder determines that the offender has five or more prior felony convictions and that the present offense is a felony that was committed as part of a pattern of criminal conduct.

History: 2005 c 136 art 7 s 16; art 16 s 11,12

609.115 PRESENTENCE INVESTIGATION.

[For text of subs 1 to 2, see M.S.2004]

Subd. 2a. **Sentencing worksheet; sentencing guidelines commission.** If the defendant has been convicted of a felony, including a felony for which a mandatory life sentence is required by law, the court shall cause a sentencing worksheet as provided in subdivision 1 to be completed and forwarded to the Sentencing Guidelines Commission.

For the purpose of this section, "mandatory life sentence" means a sentence under section 609.106, subdivision 2; 609.109, subdivision 3; 609.185; 609.3455; or 609.385, subdivision 2, and governed by section 244.05.

[For text of subs 3 to 9, see M.S.2004]

History: 2005 c 136 art 14 s 14

609.117 DNA ANALYSIS OF CERTAIN OFFENDERS REQUIRED.

Subdivision 1. **Upon sentencing.** If an offender has not already done so, the court shall order an offender to provide a biological specimen for the purpose of DNA analysis as defined in section 299C.155 when:

(1) the court sentences a person charged with committing or attempting to commit a felony offense and the person is convicted of that offense or of any offense arising out of the same set of circumstances; or

(2) the juvenile court adjudicates a person a delinquent child who is petitioned for committing or attempting to commit a felony offense and is adjudicated delinquent for that offense or any offense arising out of the same set of circumstances.

The biological specimen or the results of the analysis shall be maintained by the Bureau of Criminal Apprehension as provided in section 299C.155.

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

(1) was initially charged with committing or attempting to commit a felony offense and was convicted of that offense or of any offense arising out of the same set of circumstances, or the person has a past felony conviction in this or any other state; or

(2) is serving a term of imprisonment in this state under a reciprocal agreement although convicted in another state of committing or attempting to commit a felony offense or of any offense arising out of the same set of circumstances if the person was initially charged with committing or attempting to commit a felony offense. The commissioner of corrections or local corrections authority shall forward the sample to the Bureau of Criminal Apprehension.

Subd. 3. **Offenders from other states.** When the state accepts an offender from another state under the interstate compact authorized by section 243.16, the acceptance is conditional on the offender providing a biological specimen for the purposes of DNA analysis as defined in section 299C.155, if the offender was initially charged with committing or attempting to commit a felony offense and was convicted of that offense or of any offense arising out of the same set of circumstances. The specimen must be provided under supervision of staff from the Department of Corrections or a Community Corrections Act county within 15 business days after the offender reports to the supervising agent. The cost of obtaining the biological specimen is the responsibility of the agency providing supervision.

History: 2005 c 136 art 12 s 9

609.119 [Repealed, 2005 c 136 art 12 s 12]

609.1351 PETITION FOR CIVIL COMMITMENT.

When a court sentences a person under section 609.108, 609.342, 609.343, 609.344, 609.345, or 609.3453, the court shall make a preliminary determination whether in the court's opinion a petition under section 253B.185 may be appropriate and include the determination as part of the sentencing order. If the court determines that a petition may be appropriate, the court shall forward its preliminary determination along with supporting documentation to the county attorney.

History: 2005 c 136 art 4 s 5

609.185 MURDER IN THE FIRST DEGREE.

(a) 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, a drive-by shooting, tampering with a witness in the first degree, escape from custody, or any felony violation of chapter 152 involving the unlawful sale of a controlled substance;

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

(5) causes the death of a minor while committing child abuse, when the perpetrator has engaged in a past pattern of child abuse upon a child and the death occurs under circumstances manifesting an extreme indifference to human life;

(6) causes the death of a human being while committing domestic abuse, when the perpetrator has engaged in a past pattern of domestic abuse upon the victim or upon another family or household member and the death occurs under circumstances manifesting an extreme indifference to human life; or

(7) causes the death of a human being while committing, conspiring to commit, or attempting to commit a felony crime to further terrorism and the death occurs under circumstances manifesting an extreme indifference to human life.

(b) For purposes of paragraph (a), clause (5), "child abuse" means an act committed against a minor victim that constitutes a violation of the following laws of this state or any similar laws of the United States or any other state: section 609.221; 609.222; 609.223; 609.224; 609.2242; 609.342; 609.343; 609.344; 609.345; 609.377; 609.378; or 609.713.

(c) For purposes of paragraph (a), clause (6), "domestic abuse" means an act that:

(1) constitutes a violation of section 609.221, 609.222, 609.223, 609.224, 609.2242, 609.342, 609.343, 609.344, 609.345, 609.713, or any similar laws of the United States or any other state; and

(2) is committed against the victim who is a family or household member as defined in section 518B.01, subdivision 2, paragraph (b).

(d) For purposes of paragraph (a), clause (7), "further terrorism" has the meaning given in section 609.714, subdivision 1.

History: 2005 c 136 art 17 s 10

609.2231 ASSAULT IN THE FOURTH DEGREE.

[For text of subs 1 to 3, see M.S.2004]

Subd. 3a. **Secure treatment facility personnel.** (a) As used in this subdivision, "secure treatment facility" has the meaning given in section 253B.02, subdivision 18a.

(b) Whoever, while committed under section 253B.185 or Minnesota Statutes 1992, section 526.10, commits either of the following acts against an employee or other individual who provides care or treatment at a secure treatment facility while the person is engaged in the performance of a duty imposed by law, policy, or rule is guilty of a felony and may be sentenced to imprisonment for not more than two years or to payment of a fine of not more than \$4,000, or both:

- (1) assaults the person and inflicts demonstrable bodily harm; or
- (2) intentionally throws or otherwise transfers bodily fluids or feces at or onto the person.

(c) The court shall commit a person convicted of violating paragraph (b) to the custody of the commissioner of corrections for not less than one year and one day. The court may not, on its own motion or the prosecutor's motion, sentence a person without regard to this paragraph. A person convicted and sentenced as required by this paragraph is not eligible for probation, parole, discharge, work release, or supervised release, until that person has served the full term of imprisonment as provided by law, notwithstanding the provisions of sections 241.26, 242.19, 243.05, 244.04, 609.12, and 609.135.

(d) Notwithstanding the statutory maximum sentence provided in paragraph (b), when a court sentences a person to the custody of the commissioner of corrections for a violation of paragraph (b), the court shall provide that after the person has completed the sentence imposed, the commissioner shall place the person on conditional release for five years. The terms of conditional release are governed by sections 244.05 and 609.109.

[For text of subs 4 to 7, see M.S.2004]

History: 2005 c 136 art 17 s 11

609.2242 DOMESTIC ASSAULT.

[For text of subs 1 and 2, see M.S.2004]

Subd. 3. Domestic assaults; firearms. (a) When a person is convicted of a violation of this section or section 609.221, 609.222, 609.223, 609.224, or 609.2247, the court shall determine and make written findings on the record as to whether:

- (1) the assault was committed against a family or household member, as defined in section 518B.01, subdivision 2;
- (2) the defendant owns or possesses a firearm; and
- (3) the firearm was used in any way during the commission of the assault.

(b) If the court determines that the assault was of a family or household member, and that the offender owns or possesses a firearm and used it in any way during the commission of the assault, it shall order that the firearm be summarily forfeited under section 609.5316, subdivision 3.

(c) When a person is convicted of assaulting a family or household member and is determined by the court to have used a firearm in any way during commission of the assault, the court may order that the person is prohibited from possessing any type of firearm for any period longer than three years or for the remainder of the person's life. A person who violates this paragraph is guilty of a gross misdemeanor. At the time of the conviction, the court shall inform the defendant whether and for how long the defendant is prohibited from possessing a firearm and that it is a gross misdemeanor to violate this paragraph. The failure of the court to provide this information to a defendant does not affect the applicability of the firearm possession prohibition or the gross misdemeanor penalty to that defendant.

(d) Except as otherwise provided in paragraph (c), when a person is convicted of a violation of this section or section 609.224 and the court determines that the victim was a family or household member, the court shall inform the defendant that the defendant is prohibited from possessing a pistol for three years from the date of conviction and that it is a gross misdemeanor offense to violate this prohibition. The failure of the

court to provide this information to a defendant does not affect the applicability of the pistol possession prohibition or the gross misdemeanor penalty to that defendant.

(e) Except as otherwise provided in paragraph (c), a person is not entitled to possess a pistol if the person has been convicted after August 1, 1992, of domestic assault under this section or assault in the fifth degree under section 609.224 and the assault victim was a family or household member as defined in section 518B.01, subdivision 2, unless three years have elapsed from the date of conviction and, during that time, the person has not been convicted of any other violation of this section or section 609.224. Property rights may not be abated but access may be restricted by the courts. A person who possesses a pistol in violation of this paragraph is guilty of a gross misdemeanor.

[For text of subd 4, see M.S.2004]

History: 2005 c 136 art 17 s 12

609.2247 DOMESTIC ASSAULT BY STRANGULATION.

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

(b) "Family or household members" has the meaning given in section 518B.01, subdivision 2.

(c) "Strangulation" means intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person.

Subd. 2. **Crime.** Unless a greater penalty is provided elsewhere, whoever assaults a family or household member by strangulation is guilty of a felony and may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than \$5,000, or both.

History: 2005 c 136 art 17 s 13

609.229 CRIME COMMITTED FOR BENEFIT OF A GANG.

[For text of subs 1 and 2, see M.S.2004]

Subd. 3. **Penalty.** (a) If the crime committed in violation of subdivision 2 is a felony, the statutory maximum for the crime is five years longer than the statutory maximum for the underlying crime. If the crime committed in violation of subdivision 2 is a felony, and the victim of the crime is a child under the age of 18 years, the statutory maximum for the crime is ten years longer than the statutory maximum for the underlying crime.

(b) If the crime committed in violation of subdivision 2 is a misdemeanor, the person is guilty of a gross misdemeanor.

(c) If the crime committed in violation of subdivision 2 is a gross misdemeanor, the person is guilty of a felony and may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than \$15,000, or both.

[For text of subd 4, see M.S.2004]

History: 2005 c 136 art 17 s 14

609.232 CRIMES AGAINST VULNERABLE ADULTS; DEFINITIONS.

[For text of subs 1 and 2, see M.S.2004]

Subd. 3. **Facility.** (a) "Facility" means a hospital or other entity required to be licensed under sections 144.50 to 144.58; a nursing home required to be licensed to serve adults under section 144A.02; a home care provider licensed or required to be licensed under section 144A.46; a residential or nonresidential facility required to be licensed to serve adults under sections 245A.01 to 245A.16; or a person or organization that exclusively offers, provides, or arranges for personal care assistant services under

the medical assistance program as authorized under sections 256B.04, subdivision 16, 256B.0625, subdivision 19a, 256B.0651, and 256B.0653 to 256B.0656.

(b) For home care providers and personal care attendants, the term “facility” refers to the provider or person or organization that exclusively offers, provides, or arranges for personal care services, and does not refer to the client’s home or other location at which services are rendered.

[For text of subs 4 to 10, see M.S.2004]

Subd. 11. Vulnerable adult. “Vulnerable adult” means any person 18 years of age or older who:

(1) is a resident inpatient of a facility;

(2) receives services at or from a facility required to be licensed to serve adults under sections 245A.01 to 245A.15, except that a person receiving outpatient services for treatment of chemical dependency or mental illness, or one who is committed as a sexual psychopathic personality or as a sexually dangerous person under chapter 253B, is not considered a vulnerable adult unless the person meets the requirements of clause (4);

(3) receives services from a home care provider required to be licensed under section 144A.46; or from a person or organization that exclusively offers, provides, or arranges for personal care assistant services under the medical assistance program as authorized under sections 256B.04, subdivision 16, 256B.0625, subdivision 19a, 256B.0651, and 256B.0653 to 256B.0656; or

(4) regardless of residence or whether any type of service is received, possesses a physical or mental infirmity or other physical, mental, or emotional dysfunction:

(i) that impairs the individual’s ability to provide adequately for the individual’s own care without assistance, including the provision of food, shelter, clothing, health care, or supervision; and

(ii) because of the dysfunction or infirmity and the need for assistance, the individual has an impaired ability to protect the individual from maltreatment.

SEXUAL AND LABOR TRAFFICKING CRIMES

609.281 DEFINITIONS.

Subdivision 1. Generally. As used in sections 609.281 to 609.284, the following terms have the meanings given.

Subd. 2. Blackmail. “Blackmail” means a threat to expose any fact or alleged fact tending to cause shame or to subject any person to hatred, contempt, or ridicule.

Subd. 3. Debt bondage. “Debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of the debtor’s personal services or those of a person under the debtor’s control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

Subd. 4. Forced labor or services. “Forced labor or services” means labor or services that are performed or provided by another person and are obtained or maintained through an actor’s:

(1) threat, either implicit or explicit, scheme, plan, or pattern, or other action intended to cause a person to believe that, if the person did not perform or provide the labor or services, that person or another person would suffer bodily harm or physical restraint;

(2) physically restraining or threatening to physically restrain a person;

(3) abuse or threatened abuse of the legal process;

(4) knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person; or

(5) use of blackmail.

Subd. 5. **Labor trafficking.** "Labor trafficking" means the recruitment, transportation, transfer, harboring, enticement, provision, obtaining, or receipt of a person by any means, whether a United States citizen or foreign national, for the purpose of:

- (1) debt bondage or forced labor or services;
- (2) slavery or practices similar to slavery; or
- (3) the removal of organs through the use of coercion or intimidation.

Subd. 6. **Labor trafficking victim.** "Labor trafficking victim" means a person subjected to the practices in subdivision 5.

History: 2005 c 136 art 17 s 15

609.282 LABOR TRAFFICKING.

Whoever knowingly engages in the labor trafficking of another is guilty of a crime 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. In a prosecution under this section the consent or age of the victim is not a defense.

History: 2005 c 136 art 17 s 16

609.283 UNLAWFUL CONDUCT WITH RESPECT TO DOCUMENTS IN FURTHERANCE OF LABOR OR SEX TRAFFICKING.

Unless the person's conduct constitutes a violation of section 609.282, a person who knowingly destroys, conceals, removes, confiscates, or possesses any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person:

- (1) in the course of a violation of section 609.282 or 609.322;
- (2) with intent to violate section 609.282 or 609.322; or
- (3) to prevent or restrict or to attempt to prevent or restrict, without lawful authority, a person's liberty to move or travel, in order to maintain the labor or services of that person, when the person is or has been a victim of a violation of section 609.282 or 609.322;

is guilty of a crime 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. In a prosecution under this section the consent or age of the victim is not a defense.

History: 2005 c 136 art 17 s 17

609.284 LABOR OR SEX TRAFFICKING CRIMES; DEFENSES; CIVIL LIABILITY; CORPORATE LIABILITY.

Subdivision 1. **Consent or age of victim not a defense.** In an action under this section the consent or age of the victim is not a defense.

Subd. 2. **Civil liability.** A labor trafficking victim may bring a cause of action against a person who violates section 609.282 or 609.283. The court may award damages, including punitive damages, reasonable attorney fees, and other litigation costs reasonably incurred by the victim. This remedy is in addition to potential criminal liability.

Subd. 3. **Corporate liability.** If a corporation or other business enterprise is convicted of violating section 609.282, 609.283, or 609.322, in addition to the criminal penalties described in those sections and other remedies provided elsewhere in law, the court may, when appropriate:

- (1) order its dissolution or reorganization;
- (2) order the suspension or revocation of any license, permit, or prior approval granted to it by a state agency; or

(3) order the surrender of its charter if it is organized under Minnesota law or the revocation of its certificate to conduct business in Minnesota if it is not organized under Minnesota law.

History: 2005 c 136 art 17 s 18

609.321 PROSTITUTION; DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 609.321 to 609.325, the following terms have the meanings given.

[For text of subs 2 to 5, see M.S.2004]

Subd. 7. **Promotes the prostitution of an individual.** "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 the person 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;

(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; or

(7) engages in the sex trafficking of an individual.

Subd. 7a. **Sex trafficking.** "Sex trafficking" means receiving, recruiting, enticing, harboring, providing, or obtaining by any means an individual to aid in the prostitution of the individual.

Subd. 7b. **Sex trafficking victim.** "Sex trafficking victim" means a person subjected to the practices in subdivision 7a.

[For text of subs 8 to 11, see M.S.2004]

Subd. 12. **Public place.** A "public place" means a public street or sidewalk, a pedestrian skyway system as defined in section 469.125, subdivision 4, a hotel, motel, or other place of public accommodation, a place licensed to sell intoxicating liquor, wine, nonintoxicating malt beverages, or food, or a motor vehicle located on a public street, alley, or parking lot ordinarily used by or available to the public though not used as a matter of right and a driveway connecting such a parking lot with a street or highway.

History: 2005 c 136 art 17 s 19-23

609.3243 LOITERING WITH INTENT TO PARTICIPATE IN PROSTITUTION.

A person who loiters in a public place with intent to participate in prostitution is guilty of a misdemeanor.

History: 2005 c 136 art 17 s 24

609.325 DEFENSES.

[For text of subs 1 to 3, see M.S.2004]

Subd. 4. **Affirmative defense.** It is an affirmative defense to a charge under section 609.324 if the defendant proves by a preponderance of the evidence that the defendant is a labor trafficking victim, as defined in section 609.281, or a sex trafficking victim, as defined in section 609.321, and that the defendant committed the act only under compulsion by another who by explicit or implicit threats created a reasonable

apprehension in the mind of the defendant that if the defendant did not commit the act, the person would inflict bodily harm upon the defendant.

History: 2005 c 136 art 17 s 25

609.341 DEFINITIONS.

[For text of subs 1 to 13, see M.S.2004]

Subd. 14. **Coercion.** "Coercion" means the use by the actor of words or circumstances that cause the complainant reasonably to fear that the actor will inflict bodily harm upon the complainant or another, or the use by the actor of confinement, or superior size or strength, against the complainant that causes the complainant to submit to sexual penetration or contact against the complainant's will. Proof of coercion does not require proof of a specific act or threat.

[For text of subs 15 to 21, see M.S.2004]

Subd. 22. **Predatory crime.** "Predatory crime" means a felony violation of section 609.185 (first-degree murder), 609.19 (second-degree murder), 609.195 (third-degree murder), 609.20 (first-degree manslaughter), 609.205 (second-degree manslaughter), 609.221 (first-degree assault), 609.222 (second-degree assault), 609.223 (third-degree assault), 609.24 (simple robbery), 609.245 (aggravated robbery), 609.25 (kidnapping), 609.255 (false imprisonment), 609.498 (tampering with a witness), 609.561 (first-degree arson), or 609.582, subdivision 1 (first-degree burglary).

History: 2005 c 136 art 2 s 10,11

609.342 CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE.

[For text of subd 1, see M.S.2004]

Subd. 2. **Penalty.** (a) Except as otherwise provided in section 609.109 or 609.3455, a person convicted under subdivision 1 may be sentenced to imprisonment for not more than 30 years or to a payment of a fine of not more than \$40,000, or both.

(b) Unless a longer mandatory minimum sentence is otherwise required by law or the Sentencing Guidelines provide for a longer presumptive executed sentence, the court shall presume that an executed sentence of 144 months must be imposed on an offender convicted of violating this section. Sentencing a person in a manner other than that described in this paragraph is a departure from the Sentencing Guidelines.

(c) A person convicted under this section is also subject to conditional release under section 609.3455.

Subd. 3. **Stay.** Except when imprisonment is required under section 609.109 or 609.3455, if a person is convicted under subdivision 1, clause (g), the court may stay imposition or execution of the sentence if it finds that:

(a) a stay is in the best interest of the complainant or the family unit; and

(b) a professional assessment indicates that the offender has been accepted by and can respond to a treatment program.

If the court stays imposition or execution of sentence, it shall include the following as conditions of probation:

(1) incarceration in a local jail or workhouse;

(2) a requirement that the offender complete a treatment program; and

(3) a requirement that the offender have no unsupervised contact with the complainant until the offender has successfully completed the treatment program unless approved by the treatment program and the supervising correctional agent.

History: 2005 c 136 art 2 s 12,13

609.343 CRIMINAL SEXUAL CONDUCT IN THE SECOND DEGREE.

[For text of subd 1, see M.S.2004]

Subd. 2. **Penalty.** (a) Except as otherwise provided in section 609.109 or 609.3455, a person convicted under subdivision 1 may be sentenced to imprisonment for not more than 25 years or to a payment of a fine of not more than \$35,000, or both.

(b) Unless a longer mandatory minimum sentence is otherwise required by law or the Sentencing Guidelines provide for a longer presumptive executed sentence, the court shall presume that an executed sentence of 90 months must be imposed on an offender convicted of violating subdivision 1, clause (c), (d), (e), (f), or (h). Sentencing a person in a manner other than that described in this paragraph is a departure from the Sentencing Guidelines.

(c) A person convicted under this section is also subject to conditional release under section 609.3455.

Subd. 3. **Stay.** Except when imprisonment is required under section 609.109 or 609.3455, if a person is convicted under subdivision 1, clause (g), the court may stay imposition or execution of the sentence if it finds that:

(a) a stay is in the best interest of the complainant or the family unit; and

(b) a professional assessment indicates that the offender has been accepted by and can respond to a treatment program.

If the court stays imposition or execution of sentence, it shall include the following as conditions of probation:

(1) incarceration in a local jail or workhouse;

(2) a requirement that the offender complete a treatment program; and

(3) a requirement that the offender have no unsupervised contact with the complainant until the offender has successfully completed the treatment program unless approved by the treatment program and the supervising correctional agent.

History: 2005 c 136 art 2 s 14,15

609.344 CRIMINAL SEXUAL CONDUCT IN THE THIRD DEGREE.

[For text of subd 1, see M.S.2004]

Subd. 2. **Penalty.** Except as otherwise provided in section 609.3455, a person convicted under subdivision 1 may be sentenced to imprisonment for not more than 15 years or to a payment of a fine of not more than \$30,000, or both. A person convicted under this section is also subject to conditional release under section 609.3455.

Subd. 3. **Stay.** Except when imprisonment is required under section 609.109 or 609.3455, if a person is convicted under subdivision 1, clause (f), the court may stay imposition or execution of the sentence if it finds that:

(a) a stay is in the best interest of the complainant or the family unit; and

(b) a professional assessment indicates that the offender has been accepted by and can respond to a treatment program.

If the court stays imposition or execution of sentence, it shall include the following as conditions of probation:

(1) incarceration in a local jail or workhouse;

(2) a requirement that the offender complete a treatment program; and

(3) a requirement that the offender have no unsupervised contact with the complainant until the offender has successfully completed the treatment program unless approved by the treatment program and the supervising correctional agent.

History: 2005 c 136 art 2 s 16,17

609.345 CRIMINAL SEXUAL CONDUCT IN THE FOURTH DEGREE.

[For text of subd 1, see M.S.2004]

Subd. 2. **Penalty.** Except as otherwise provided in section 609.3455, a person convicted under subdivision 1 may be sentenced to imprisonment for not more than ten years or to a payment of a fine of not more than \$20,000, or both. A person convicted under this section is also subject to conditional release under section 609.3455.

Subd. 3. **Stay.** Except when imprisonment is required under section 609.109 or 609.3455, if a person is convicted under subdivision 1, clause (f), the court may stay imposition or execution of the sentence if it finds that:

- (a) a stay is in the best interest of the complainant or the family unit; and
- (b) a professional assessment indicates that the offender has been accepted by and can respond to a treatment program.

If the court stays imposition or execution of sentence, it shall include the following as conditions of probation:

- (1) incarceration in a local jail or workhouse;
- (2) a requirement that the offender complete a treatment program; and
- (3) a requirement that the offender have no unsupervised contact with the complainant until the offender has successfully completed the treatment program unless approved by the treatment program and the supervising correctional agent.

History: 2005 c 136 art 2 s 18,19

609.3452 [Renumbered 609.3457]**609.3453 CRIMINAL SEXUAL PREDATORY CONDUCT.**

Subdivision 1. **Crime defined.** A person is guilty of criminal sexual predatory conduct if the person commits a predatory crime that was motivated by the offender's sexual impulses or was part of a predatory pattern of behavior that had criminal sexual conduct as its goal.

Subd. 2. **Penalty.** (a) Except as provided in section 609.3455, the statutory maximum sentence for a violation of subdivision 1 is: (1) 25 percent longer than for the underlying predatory crime; or (2) 50 percent longer than for the underlying predatory crime, if the violation is committed by a person with a previous sex offense conviction, as defined in section 609.3455, subdivision 1.

(b) In addition to the sentence imposed under paragraph (a), the person may also be sentenced to the payment of a fine of not more than \$20,000.

(c) A person convicted under this section is also subject to conditional release under section 609.3455.

History: 2005 c 136 art 2 s 20

609.3455 DANGEROUS SEX OFFENDERS; LIFE SENTENCES; CONDITIONAL RELEASE.

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

(b) "Conviction" includes a conviction as an extended jurisdiction juvenile under section 260B.130 for a violation of, or an attempt to violate, section 609.342, 609.343, 609.344, or 609.3453, if the adult sentence has been executed.

(c) "Extreme inhumane conditions" mean situations where, either before or after the sexual penetration or sexual contact, the offender knowingly causes or permits the complainant to be placed in a situation likely to cause the complainant severe ongoing mental, emotional, or psychological harm, or causes the complainant's death.

(d) A "heinous element" includes:

- (1) the offender tortured the complainant;
- (2) the offender intentionally inflicted great bodily harm upon the complainant;

(3) the offender intentionally mutilated the complainant;

(4) the offender exposed the complainant to extreme inhumane conditions;

(5) the offender 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 weapon or article to cause the complainant to submit;

(6) the offense involved sexual penetration or sexual contact with more than one victim;

(7) the offense involved more than one perpetrator engaging in sexual penetration or sexual contact with the complainant; or

(8) the offender, without the complainant's consent, removed the complainant from one place to another and did not release the complainant in a safe place.

(e) "Mutilation" means the intentional infliction of physical abuse designed to cause serious permanent disfigurement or permanent or protracted loss or impairment of the functions of any bodily member or organ, where the offender relishes the infliction of the abuse, evidencing debasement or perversion.

(f) A conviction is considered a "previous sex offense conviction" if the offender was convicted and sentenced for a sex offense before the commission of the present offense.

(g) A conviction is considered a "prior sex offense conviction" if the offender was convicted of committing a sex offense before the offender has been convicted of the present offense, regardless of whether the offender was convicted for the first offense before the commission of the present offense, and the convictions involved separate behavioral incidents.

(h) "Sex offense" means any violation of, or attempt to violate, section 609.342, 609.343, 609.344, 609.345, 609.3451, 609.3453, or any similar statute of the United States, this state, or any other state.

(i) "Torture" means the intentional infliction of extreme mental anguish, or extreme psychological or physical abuse, when committed in an especially depraved manner.

(j) An offender has "two previous sex offense convictions" only if the offender was convicted and sentenced for a sex offense committed after the offender was earlier convicted and sentenced for a sex offense and both convictions preceded the commission of the present offense of conviction.

Subd. 2. Mandatory life sentence without release for particularly egregious first-time and repeat offenders. (a) Notwithstanding the statutory maximum penalty otherwise applicable to the offense, the court shall sentence a person convicted under section 609.342, subdivision 1, paragraph (c), (d), (e), (f), or (h); or 609.343, subdivision 1, paragraph (c), (d), (e), (f), or (h), to life without the possibility of release if:

(1) the factfinder determines that two or more heinous elements exist; or

(2) the person has a previous sex offense conviction for a violation of section 609.342, 609.343, or 609.344, and the fact finder determines that a heinous element exists for the present offense.

(b) A factfinder may not consider a heinous element if it is an element of the underlying specified violation of section 609.342 or 609.343. In addition, when determining whether two or more heinous elements exist, the factfinder may not use the same underlying facts to support a determination that more than one element exists.

Subd. 3. Mandatory life sentence for egregious first-time offenders. (a) Notwithstanding the statutory maximum penalty otherwise applicable to the offense, the court shall sentence a person to imprisonment for life if the person is convicted under section 609.342, subdivision 1, paragraph (c), (d), (e), (f), or (h), or 609.343, subdivision 1, paragraph (c), (d), (e), (f), or (h); and the factfinder determines that a heinous element exists.

(b) The factfinder may not consider a heinous element if it is an element of the underlying specified violation of section 609.342 or 609.343.

Subd. 4. Mandatory life sentence; repeat offenders. (a) Notwithstanding the statutory maximum penalty otherwise applicable to the offense, the court shall sentence a person to imprisonment for life if the person is convicted of violating section 609.342, 609.343, 609.344, 609.345, or 609.3453 and:

(1) the person has two previous sex offense convictions;

(2) the person has a previous sex offense conviction and:

(i) the present offense involved an aggravating factor that would provide grounds for an upward durational departure under the sentencing guidelines other than the aggravating factor applicable to repeat criminal sexual conduct convictions;

(ii) the person received an upward durational departure from the sentencing guidelines for the previous sex offense conviction; or

(iii) the person was sentenced under section 609.108 for the previous sex offense conviction; or

(3) the person has two prior sex offense convictions, the prior convictions and present offense involved at least three separate victims, and:

(i) the present offense involved an aggravating factor that would provide grounds for an upward durational departure under the sentencing guidelines other than the aggravating factor applicable to repeat criminal sexual conduct convictions;

(ii) the person received an upward durational departure from the sentencing guidelines for one of the prior sex offense convictions; or

(iii) the person was sentenced under section 609.108 for one of the prior sex offense convictions.

(b) Notwithstanding paragraph (a), a court may not sentence a person to imprisonment for life for a violation of section 609.345, unless the person's previous or prior sex offense convictions that are being used as the basis for the sentence are for violations of section 609.342, 609.343, 609.344, or 609.3453, or any similar statute of the United States, this state, or any other state.

Subd. 5. Life sentences; minimum term of imprisonment. At the time of sentencing under subdivision 3 or 4, the court shall specify a minimum term of imprisonment, based on the sentencing guidelines or any applicable mandatory minimum sentence, that must be served before the offender may be considered for supervised release.

Subd. 6. Mandatory ten-year conditional release term. Notwithstanding the statutory maximum sentence otherwise applicable to the offense and unless a longer conditional release term is required in subdivision 7, when a court commits an offender to the custody of the commissioner of corrections for a violation of section 609.342, 609.343, 609.344, 609.345, or 609.3453, the court shall provide that, after the offender has completed the sentence imposed, the commissioner shall place the offender on conditional release for ten years, minus the time the offender served on supervised release.

Subd. 7. Mandatory lifetime conditional release term. (a) When a court sentences an offender under subdivision 3 or 4, the court shall provide that, if the offender is released from prison, the commissioner of corrections shall place the offender on conditional release for the remainder of the offender's life.

(b) Notwithstanding the statutory maximum sentence otherwise applicable to the offense, when the court commits an offender to the custody of the commissioner of corrections for a violation of section 609.342, 609.343, 609.344, 609.345, or 609.3453, and the offender has a previous or prior sex offense conviction, the court shall provide that, after the offender has completed the sentence imposed, the commissioner shall place the offender on conditional release for the remainder of the offender's life.

(c) Notwithstanding paragraph (b), an offender may not be placed on lifetime conditional release for a violation of section 609.345, unless the offender's previous or prior sex offense conviction is for a violation of section 609.342, 609.343, 609.344, or 609.3453, or any similar statute of the United States, this state, or any other state.

Subd. 8. **Terms of conditional release; applicable to all sex offenders.** (a) The provisions of this subdivision relating to conditional release apply to all sex offenders sentenced to prison for a violation of section 609.342, 609.343, 609.344, 609.345, or 609.3453. Except as provided in this subdivision, conditional release of sex offenders is governed by provisions relating to supervised release. The commissioner of corrections may not dismiss an offender on conditional release from supervision until the offender's conditional release term expires.

(b) The conditions of release may include successful completion of treatment and aftercare in a program approved by the commissioner, satisfaction of the release conditions specified in section 244.05, subdivision 6, and any other conditions the commissioner considers appropriate. Before the offender is placed on conditional release, the commissioner shall notify the sentencing court and the prosecutor in the jurisdiction where the offender was sentenced of the terms of the offender's conditional release. The commissioner also shall make reasonable efforts to notify the victim of the offender's crime of the terms of the offender's conditional release. If the offender fails to meet any condition of release, the commissioner may revoke the offender's conditional release and order that the offender serve all or a part of the remaining portion of the conditional release term in prison.

History: 2005 c 136 art 2 s 21

609.3456 USE OF POLYGRAPHS FOR SEX OFFENDERS ON PROBATION OR CONDITIONAL RELEASE.

(a) A court may order as an intermediate sanction under section 609.135 and the commissioner of corrections may order as a condition of release under section 244.05 or 609.3455 that an offender under supervision for a sex offense submit to polygraphic examinations to ensure compliance with the terms of probation or conditions of release.

(b) The court or commissioner may order the offender to pay all or a portion of the costs of the examinations. The fee may be waived if the offender is indigent or if payment would result in an economic hardship to the offender's immediate family.

History: 2005 c 136 art 3 s 24

609.3457 SEX OFFENDER ASSESSMENT.

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

Subd. 1a. **Repeat offenders; mandatory assessment.** When a person is convicted of a felony-level sex offense, and the person has previously been convicted of a sex offense regardless of the penalty level, the court shall order a sex offender assessment to be completed by the Minnesota security hospital. The assessment must contain the facts upon which the assessment conclusion is based, with reference to the offense history of the offender or the severity of the current offense, the social history of the offender, and the results of an examination of the offender's mental status unless the offender refuses to be examined. The assessment conclusion may not be based on testing alone. Upon completion, the assessment must be forwarded to the court and the commissioner of corrections. The court shall consider the assessment when sentencing the offender and, if applicable, when making the preliminary determination regarding the appropriateness of a civil commitment petition under section 609.1351.

Subd. 2. **Access to data.** Notwithstanding section 13.384, 13.85, 144.335, 260B.171, 260C.171, or 626.556, the assessor has access to the following private or confidential data on the person if access is relevant and necessary for the assessment:

- (1) medical data under section 13.384;

- (2) corrections and detention data under section 13.85;
- (3) health records under section 144.335;
- (4) juvenile court records under sections 260B.171 and 260C.171; and
- (5) local welfare agency records under section 626.556.

Data disclosed under this section may be used only for purposes of the assessment and may not be further disclosed to any other person, except as authorized by law.

Subd. 3. Treatment order. If the assessment indicates that the offender is in need of and amenable to sex offender treatment, the court shall include in the sentence a requirement that the offender undergo treatment, unless the court sentences the offender to prison.

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

History: 1992 c 571 art 1 s 20; 1999 c 139 art 4 s 2; 1999 c 227 s 22; 2001 c 210 s 24-26; 2004 c 228 art 1 s 66; 2005 c 136 art 4 s 11

609.347 EVIDENCE IN CRIMINAL SEXUAL CONDUCT CASES.

Subdivision 1. In a prosecution under sections 609.109, 609.342 to 609.3451, or 609.3453, the testimony of a victim need not be corroborated.

Subd. 2. In a prosecution under sections 609.109, 609.342 to 609.3451, or 609.3453, there is no need to show that the victim resisted the accused.

Subd. 3. In a prosecution under sections 609.109, 609.342 to 609.3451, 609.3453, or 609.365, evidence of the victim's previous sexual conduct shall not be admitted nor shall any reference to such conduct be made in the presence of the jury, except by court order under the procedure provided in subdivision 4. The evidence can be admitted only if the probative value of the evidence is not substantially outweighed by its inflammatory or prejudicial nature and only in the circumstances set out in paragraphs (a) and (b). For the evidence to be admissible under paragraph (a), subsection (i), the judge must find by a preponderance of the evidence that the facts set out in the accused's offer of proof are true. For the evidence to be admissible under paragraph (a), subsection (ii) or paragraph (b), the judge must find that the evidence is sufficient to support a finding that the facts set out in the accused's offer of proof are true, as provided under Rule 901 of the Rules of Evidence.

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

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

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

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

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

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

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

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

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

Subd. 5. In a prosecution under sections 609.109, 609.342 to 609.3451, or 609.3453, the court shall not instruct the jury to the effect that:

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

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

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

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

Subd. 6. (a) In a prosecution under sections 609.109, 609.342 to 609.3451, or 609.3453, involving a psychotherapist and patient, evidence of the patient's personal or medical history is not admissible except when:

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

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

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

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

Subd. 7. **Effect of statute on rules.** Rule 412 of the Rules of Evidence is superseded to the extent of its conflict with this section.

History: 2005 c 136 art 4 s 6

609.3471 RECORDS PERTAINING TO VICTIM IDENTITY CONFIDENTIAL.

Notwithstanding any provision of law to the contrary, no data contained in records or reports relating to petitions, complaints, or indictments issued pursuant to section 609.342, 609.343, 609.344, 609.345, or 609.3453, which specifically identifies a victim who is a minor shall be accessible to the public, except by order of the court. Nothing in this section authorizes denial of access to any other data contained in the records or reports, including the identity of the defendant.

History: 2005 c 136 art 4 s 7

609.348 MEDICAL PURPOSES; EXCLUSION.

Sections 609.109, 609.342 to 609.3451, and 609.3453 do not apply to sexual penetration or sexual contact when done for a bona fide medical purpose.

History: 2005 c 136 art 4 s 8

609.353 JURISDICTION.

A violation or attempted violation of section 609.342, 609.343, 609.344, 609.345, 609.3451, 609.3453, or 609.352 may be prosecuted in any jurisdiction in which the violation originates or terminates.

History: 2005 c 136 art 4 s 9

609.378 NEGLECT OR ENDANGERMENT OF A CHILD.

Subdivision 1. Persons guilty of neglect or endangerment. (a) **Neglect.** (1) A parent, legal guardian, or caretaker who willfully deprives a child of necessary food, clothing, shelter, health care, or supervision appropriate to the child's age, when the parent, guardian, or caretaker is reasonably able to make the necessary provisions and the deprivation harms or is likely to substantially harm the child's physical, mental, or emotional health 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. If the deprivation results in substantial harm to the child's physical, mental, or emotional health, the person may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both. If a parent, guardian, or caretaker responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child, this treatment or care is "health care," for purposes of this clause.

(2) A parent, legal guardian, or caretaker who knowingly permits the continuing physical or sexual abuse of a child is guilty of neglect of a child and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

(b) **Endangerment.** A parent, legal guardian, or caretaker who endangers the child's person or health by:

(1) intentionally or recklessly causing or permitting a child to be placed in a situation likely to substantially harm the child's physical, mental, or emotional health or cause the child's death; or

(2) knowingly causing or permitting the child to be present where any person is selling, manufacturing, possessing immediate precursors or chemical substances with intent to manufacture, or possessing a controlled substance, as defined in section 152.01, subdivision 4, in violation of section 152.021, 152.022, 152.023, 152.024, or 152.0262; is guilty of child endangerment 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 endangerment results in substantial harm to the child's physical, mental, or emotional health, the person may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

This paragraph does not prevent a parent, legal guardian, or caretaker from causing or permitting a child to engage in activities that are appropriate to the child's age, stage of development, and experience, or from selecting health care as defined in subdivision 1, paragraph (a).

(c) **Endangerment by firearm access.** A person who intentionally or recklessly causes a child under 14 years of age to be placed in a situation likely to substantially harm the child's physical health or cause the child's death as a result of the child's access to a loaded firearm is guilty of child endangerment 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 endangerment results in substantial harm to the child's physical health, the person may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

[For text of subd 2, see M.S.2004]

History: 2005 c 136 art 7 s 21

609.485 ESCAPE FROM CUSTODY.

[For text of subd 1, see M.S.2004]

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

(1) escapes while held pursuant to a lawful arrest, in lawful custody on a charge or conviction of a crime, or while held in lawful custody on an allegation or adjudication of a delinquent act;

(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 usable in making such escape, with intent that it shall be so used;

(3) having another in lawful custody on a charge or conviction of a crime, intentionally permits the other to escape;

(4) escapes while in a facility designated under section 253B.18, subdivision 1, pursuant to a court commitment order after a finding of not guilty by reason of mental illness or mental deficiency of a crime against the person, as defined in section 253B.02, subdivision 4a. Notwithstanding section 609.17, no person may be charged with or convicted of an attempt to commit a violation of this clause;

(5) escapes while in a facility designated under section 253B.18, subdivision 1, pursuant to a court commitment order under section 253B.185 or Minnesota Statutes 1992, section 526.10; or

(6) escapes while on pass status or provisional discharge according to section 253B.18.

For purposes of clause (1), "escapes while held in lawful custody" includes absconding from electronic monitoring or absconding after removing an electronic monitoring device from the person's body.

[For text of subds 3 and 3a, see M.S.2004]

Subd. 4. **Sentence.** (a) Except as otherwise provided in subdivision 3a, whoever violates this section may be sentenced as follows:

(1) if the person who escapes is in lawful custody for a felony, to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both;

(2) if the person who escapes is in lawful custody after a finding of not guilty by reason of mental illness or mental deficiency of a crime against the person, as defined in section 253B.02, subdivision 4a, or pursuant to a court commitment order under section 253B.185 or Minnesota Statutes 1992, section 526.10, to imprisonment for not more than one year and one day or to payment of a fine of not more than \$3,000, or both;

(3) if the person who escapes is in lawful custody for a gross misdemeanor or misdemeanor, or if the person who escapes is in lawful custody on an allegation or adjudication of a delinquent act, to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both; or

(4) if the person who escapes is under civil commitment under sections 253B.18 and 253B.185, to imprisonment for not more than one year and one day or to payment of a fine of not more than \$3,000, or both.

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

(c) 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 the person escaped.

(d) Notwithstanding paragraph (c), if a person who was committed to the commissioner of corrections under section 260B.198 escapes from the custody of the commissioner while 18 years of age, the person's sentence under this section shall

commence on the person's 19th birthday or on the person's date of discharge by the commissioner of corrections, whichever occurs first. However, if the person described in this clause is convicted under this section after becoming 19 years old and after having been discharged by the commissioner, the person's sentence shall commence upon imposition by the sentencing court.

(e) Notwithstanding paragraph (c), if a person who is in lawful custody on an allegation or adjudication of a delinquent act while 18 years of age escapes from a local juvenile correctional facility, the person's sentence under this section begins on the person's 19th birthday or on the person's date of discharge from the jurisdiction of the juvenile court, whichever occurs first. However, if the person described in this paragraph is convicted after becoming 19 years old and after discharge from the jurisdiction of the juvenile court, the person's sentence begins upon imposition by the sentencing court.

(f) Notwithstanding paragraph (a), any person who escapes or absconds from electronic monitoring or removes an electric monitoring device from the person's body is guilty of a crime and shall be sentenced to imprisonment for not more than one year or to a payment of a fine of not more than \$3,000, or both. A person in lawful custody for a violation of section 609.185, 609.19, 609.195, 609.20, 609.205, 609.21, 609.221, 609.222, 609.223, 609.2231, 609.342, 609.343, 609.344, 609.345, or 609.3451 who escapes or absconds from electronic monitoring or removes an electronic monitoring device while under sentence may be sentenced to imprisonment for not more than five years or to a payment of a fine of not more than \$10,000, or both.

History: 2005 c 136 art 17 s 26,27

609.487 FLEEING A PEACE OFFICER IN A MOTOR VEHICLE.

[For text of subs 1 to 5, see M.S.2004]

Subd. 6. **Fleeing, other than vehicle.** Whoever, for the purpose of avoiding arrest, detention, or investigation, or in order to conceal or destroy potential evidence related to the commission of a crime, attempts to evade or elude a peace officer, who is acting in the lawful discharge of an official duty, by means of running, hiding, or by any other means except fleeing in a motor vehicle, is guilty of a misdemeanor.

History: 2005 c 136 art 17 s 28

609.50 OBSTRUCTING LEGAL PROCESS, ARREST, OR FIREFIGHTING.

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

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

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

(3) interferes with or obstructs a firefighter while the firefighter is engaged in the performance of official duties;

(4) interferes with or obstructs a member of an ambulance service personnel crew, as defined in section 144E.001, subdivision 3a, who is providing, or attempting to provide, emergency care; or

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

[For text of subd 2, see M.S.2004]

History: 2005 c 136 art 17 s 29

609.505 FALSELY REPORTING CRIME.

Subdivision 1. **False reporting.** Whoever informs a law enforcement officer that a crime has been committed or otherwise provides information to an on-duty peace officer, knowing that the person is a peace officer, regarding the conduct of others, knowing that it is false and intending that the officer shall act in reliance upon it, is guilty of a misdemeanor. A person who is convicted a second or subsequent time under this section is guilty of a gross misdemeanor.

Subd. 2. **Reporting police misconduct.** (a) Whoever informs, or causes information to be communicated to, a peace officer, whose responsibilities include investigating or reporting police misconduct, that a peace officer, as defined in section 626.84, subdivision 1, paragraph (c), has committed an act of police misconduct, knowing that the information is false, is guilty of a crime and may be sentenced as follows:

(1) up to the maximum provided for a misdemeanor if the false information does not allege a criminal act; or

(2) up to the maximum provided for a gross misdemeanor if the false information alleges a criminal act.

(b) The court shall order any person convicted of a violation of this subdivision to make full restitution of all reasonable expenses incurred in the investigation of the false allegation unless the court makes a specific written finding that restitution would be inappropriate under the circumstances. A restitution award may not exceed \$3,000.

History: 2005 c 136 art 17 s 30

609.52 THEFT.

[For text of subd 1, see M.S.2004]

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

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

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

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

(i) the issuance of a check, draft, or order for the payment of money, except a forged check as defined in section 609.631, or the delivery of property knowing that the actor is not entitled to draw upon the drawee therefor or to order the payment or delivery thereof; or

(ii) 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

(iii) 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

(iv) the preparation or filing of a claim for reimbursement for providing treatment or supplies required to be furnished to an employee under section 176.135 which intentionally and falsely states the costs of or actual treatment or supplies provided; or

(v) the preparation or filing of a claim for reimbursement for providing treatment or supplies required to be furnished to an employee under section 176.135 for

treatment or supplies that the provider knew were medically unnecessary, inappropriate, or excessive; 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:

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

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

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

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

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

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

(9) leases or rents personal property under a written instrument and who:

(i) 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

(ii) sells, conveys, or encumbers the property or any part thereof without the written consent of the lessor, without informing the person to whom the lessee sells, conveys, or encumbers that the same is subject to such lease or rental contract with intent to deprive the lessor of possession thereof; or

(iii) does not return the property to the lessor at the end of the lease or rental term, plus agreed upon extensions, with intent to wrongfully deprive the lessor of possession of the property; or

(iv) returns the property to the lessor at the end of the lease or rental term, plus agreed upon extensions, but does not pay the lease or rental charges agreed upon in the written instrument, with intent to wrongfully deprive the lessor of the agreed upon charges.

For the purposes of items (iii) and (iv), the value of the property must be at least \$100. Evidence that a lessee used a false, fictitious, or not current name, address, or place of employment in obtaining the property or fails or refuses to return the property or pay the rental contract charges 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 knowing or having reason to know that the permanent serial number, permanent distinguishing number or manufacturer's identification number has been removed or altered; or

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

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

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

(13) except as provided in paragraphs (12) and (14), obtains the services of another with the intention of receiving those services without making the agreed or reasonably expected payment of money or other consideration; or

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

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

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

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

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

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

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

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

(17) takes or drives a motor vehicle without the consent of the owner or an authorized agent of the owner, knowing or having reason to know that the owner or an authorized agent of the owner did not give consent.

[For text of subs 3 and 4, see M.S.2004]

History: 2005 c 136 art 17 s 31

609.527 IDENTITY THEFT.

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

(b) "Direct victim" means any person or entity described in section 611A.01, paragraph (b), whose identity has been transferred, used, or possessed in violation of this section.

(c) "False pretense" means any false, fictitious, misleading, or fraudulent information or pretense or pretext depicting or including or deceptively similar to the name,

logo, Web site address, e-mail address, postal address, telephone number, or any other identifying information of a for-profit or not-for-profit business or organization or of a government agency, to which the user has no legitimate claim of right.

(d) "Identity" means any name, number, or data transmission that may be used, alone or in conjunction with any other information, to identify a specific individual or entity, including any of the following:

(1) a name, Social Security number, date of birth, official government-issued driver's license or identification number, government passport number, or employer or taxpayer identification number;

(2) unique electronic identification number, address, account number, or routing code; or

(3) telecommunication identification information or access device.

(e) "Indirect victim" means any person or entity described in section 611A.01, paragraph (b), other than a direct victim.

(f) "Loss" means value obtained, as defined in section 609.52, subdivision 1, clause (3), and expenses incurred by a direct or indirect victim as a result of a violation of this section.

(g) "Unlawful activity" means:

(1) any felony violation of the laws of this state or any felony violation of a similar law of another state or the United States; and

(2) any nonfelony violation of the laws of this state involving theft, theft by swindle, forgery, fraud, or giving false information to a public official, or any nonfelony violation of a similar law of another state or the United States.

[For text of subd 2, see M.S.2004]

Subd. 3. Penalties. A person who violates subdivision 2 may be sentenced as follows:

(1) if the offense involves a single direct victim and the total, combined loss to the direct victim and any indirect victims is \$250 or less, the person may be sentenced as provided in section 609.52, subdivision 3, clause (5);

(2) if the offense involves a single direct victim and the total, combined loss to the direct victim and any indirect victims is more than \$250 but not more than \$500, the person may be sentenced as provided in section 609.52, subdivision 3, clause (4);

(3) if the offense involves two or three direct victims or the total, combined loss to the direct and indirect victims is more than \$500 but not more than \$2,500, the person may be sentenced as provided in section 609.52, subdivision 3, clause (3);

(4) if the offense involves more than three but not more than seven direct victims, or if the total combined loss to the direct and indirect victims is more than \$2,500, the person may be sentenced as provided in section 609.52, subdivision 3, clause (2); and

(5) if the offense involves eight or more direct victims; or if the total, combined loss to the direct and indirect victims is more than \$35,000; or if the offense is related to possession or distribution of pornographic work in violation of section 617.246 or 617.247; the person may be sentenced as provided in section 609.52, subdivision 3, clause (1).

Subd. 4. Restitution; items provided to victim. (a) A direct or indirect victim of an identity theft crime shall be considered a victim for all purposes, including any rights that accrue under chapter 611A and rights to court-ordered restitution.

(b) The court shall order a person convicted of violating subdivision 2 to pay restitution of not less than \$1,000 to each direct victim of the offense.

(c) Upon the written request of a direct victim or the prosecutor setting forth with specificity the facts and circumstances of the offense in a proposed order, the court shall provide to the victim, without cost, a certified copy of the complaint filed in the matter, the judgment of conviction, and an order setting forth the facts and circumstances of the offense.

[For text of subd 5, see M.S.2004]

Subd. 5a. Crime of electronic use of false pretense to obtain identity. (a) A person who, with intent to obtain the identity of another, uses a false pretense in an e-mail to another person or in a Web page, electronic communication, advertisement, or any other communication on the Internet, is guilty of a crime.

(b) Whoever commits such offense 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.

(c) In a prosecution under this subdivision, it is not a defense that:

(1) the person committing the offense did not obtain the identity of another;

(2) the person committing the offense did not use the identity; or

(3) the offense did not result in financial loss or any other loss to any person.

Subd. 6. Venue. Notwithstanding anything to the contrary in section 627.01, an offense committed under subdivision 2 or 5a may be prosecuted in:

(1) the county where the offense occurred;

(2) the county of residence or place of business of the direct victim or indirect victim; or

(3) in the case of a violation of subdivision 5a, the county of residence of the person whose identity was obtained or sought.

[For text of subd 7, see M.S.2004]

History: 2005 c 136 art 17 s 32-36

609.531 FORFEITURES.

Subdivision 1. Definitions. For the purpose of sections 609.531 to 609.5318, the following terms have the meanings given them.

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

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

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

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

(e) "Appropriate agency" means the Bureau of Criminal Apprehension, the Minnesota Division of Driver and Vehicle Services, the Minnesota State Patrol, a county sheriff's department, the Three Rivers Park District park rangers, the Department of Natural Resources Division of Enforcement, the University of Minnesota Police Department, the Department of Corrections' Fugitive Apprehension Unit, or a city or airport police department.

(f) "Designated offense" includes:

(1) for weapons used: any violation of this chapter, chapter 152, or chapter 624;

(2) for driver's license or identification card transactions: any violation of section 171.22; and

(3) for all other purposes: a felony violation of, or a felony-level attempt or conspiracy to violate, section 325E.17; 325E.18; 609.185; 609.19; 609.195; 609.21; 609.221; 609.222; 609.223; 609.2231; 609.24; 609.245; 609.25; 609.255; 609.282; 609.283; 609.322; 609.342, subdivision 1, clauses (a) to (f); 609.343, subdivision 1, clauses (a) to (f); 609.344, subdivision 1, clauses (a) to (e), and (h) to (j); 609.345, subdivision 1, clauses (a) to (e), and (h) to (j); 609.352; 609.42; 609.425; 609.466; 609.485; 609.487; 609.52; 609.525; 609.527; 609.528; 609.53; 609.54; 609.551; 609.561; 609.562; 609.563; 609.582; 609.59; 609.595; 609.631; 609.66, subdivision 1e; 609.671, subdivisions 3, 4, 5, 8, and 12; 609.687; 609.821; 609.825; 609.86; 609.88; 609.89; 609.893; 609.895; 617.246;

617.247; or a gross misdemeanor or felony violation of section 609.891 or 624.7181; or any violation of section 609.324.

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

[For text of subs 1a to 6a, see M.S.2004]

History: 2005 c 82 s 12; 2005 c 136 art 13 s 8; art 17 s 37

609.5311 FORFEITURE OF PROPERTY ASSOCIATED WITH CONTROLLED SUBSTANCES.

[For text of subd 1, see M.S.2004]

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

(b) The Department of Corrections' Fugitive Apprehension Unit shall not seize real property for the purposes of forfeiture under paragraph (a).

Subd. 3. **Limitations on forfeiture of certain property associated with controlled substances.** (a) A conveyance device is subject to forfeiture under this section only if the retail value of the controlled substance is \$25 or more and the conveyance device is associated with a felony-level controlled substance crime.

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

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

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

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

(f) Forfeiture under this section of real property is subject to the interests of a good faith purchaser for value unless the purchaser had knowledge of or consented to the act or omission upon which the forfeiture is based.

(g) Notwithstanding paragraphs (d), (e), and (f), property is not subject to forfeiture based solely on the owner's or secured party's knowledge of the unlawful use or intended use of the property if: (1) the owner or secured party took reasonable steps to terminate use of the property by the offender; or (2) the property is real property owned by the parent of the offender, unless the parent actively participated in, or knowingly acquiesced to, a violation of chapter 152, or the real property constitutes proceeds derived from or traceable to a use described in subdivision 2.

(h) The Department of Correction's Fugitive Apprehension Unit shall not seize a conveyance device or real property, for the purposes of forfeiture under paragraphs (a) to (g).

[For text of subd 4, see M.S.2004]

History: 2005 c 136 art 13 s 9,10

609.5312 FORFEITURE OF PROPERTY ASSOCIATED WITH DESIGNATED OFFENSES.

Subdivision 1. **Property subject to forfeiture.** (a) All personal property is subject to forfeiture if it was used or intended for use to commit or facilitate the commission of a designated offense. All money and other property, real and personal, that represent proceeds of a designated offense, and all contraband property, are subject to forfeiture, except as provided in this section.

(b) The Department of Corrections' Fugitive Apprehension Unit shall not seize real property for the purposes of forfeiture under paragraph (a).

Subd. 1a. **Computers and related property subject to forfeiture.** (a) As used in this subdivision, "property" has the meaning given in section 609.87, subdivision 6.

(b) When a computer or a component part of a computer is used or intended for use to commit or facilitate the commission of a designated offense, the computer and all software, data, and other property contained in the computer are subject to forfeiture unless prohibited by the Privacy Protection Act, United States Code, title 42, sections 2000aa to 2000aa-12, or other state or federal law.

(c) Regardless of whether a forfeiture action is initiated following the lawful seizure of a computer and related property, if the appropriate agency returns hardware, software, data, or other property to the owner, the agency may charge the owner for the cost of separating contraband from the computer or other property returned, including salary and contract costs. The agency may not charge these costs to an owner of a computer or related property who was not privy to the act or omission upon which the seizure was based, or who did not have knowledge of or consent to the act or omission, if the owner:

(1) requests from the agency copies of specified legitimate data files and provides sufficient storage media; or

(2) requests the return of a computer or other property less data storage devices on which contraband resides.

[For text of subd 2, see M.S.2004]

Subd. 3. **Vehicle forfeiture for prostitution offenses.** (a) A motor vehicle is subject to forfeiture under this subdivision if it was used to commit or facilitate, or used during the commission of, a violation of section 609.324 or a violation of a local ordinance substantially similar to section 609.324. A motor vehicle is subject to forfeiture under this subdivision only if the offense is established by proof of a criminal conviction for the offense. Except as otherwise provided in this subdivision, a forfeiture under this subdivision is governed by sections 609.531, 609.5312, and 609.5313.

(b) When a motor vehicle subject to forfeiture under this subdivision is seized in advance of a judicial forfeiture order, a hearing before a judge or referee must be held within 96 hours of the seizure. Notice of the hearing must be given to the registered owner within 48 hours of the seizure. The prosecuting authority shall certify to the court, at or in advance of the hearing, that it has filed or intends to file charges against the alleged violator for violating section 609.324 or a local ordinance substantially similar to section 609.324. After conducting the hearing, the court shall order that the motor vehicle be returned to the owner if:

(1) the prosecutor has failed to make the certification required by paragraph (b);

(2) the owner of the motor vehicle has demonstrated to the court's satisfaction that the owner has a defense to the forfeiture, including but not limited to the defenses contained in subdivision 2; or

(3) the court determines that seizure of the vehicle creates or would create an undue hardship for members of the owner's family.

(c) If the defendant is acquitted or prostitution charges against the defendant are dismissed, neither the owner nor the defendant is responsible for paying any costs associated with the seizure or storage of the vehicle.

(d) A vehicle leased or rented under section 168.27, subdivision 4, for a period of 180 days or less is not subject to forfeiture under this subdivision.

(e) For purposes of this subdivision, seizure occurs either:

(1) at the date at which personal service of process upon the registered owner is made; or

(2) at the date when the registered owner has been notified by certified mail at the address listed in the Minnesota Department of Public Safety computerized motor vehicle registration records.

(f) The Department of Corrections' Fugitive Apprehension Unit shall not participate in paragraphs (a) to (e).

Subd. 4. Vehicle forfeiture for fleeing a peace officer. (a) A motor vehicle is subject to forfeiture under this subdivision if it was used to commit a violation of section 609.487 and endanger life or property. A motor vehicle is subject to forfeiture under this subdivision only if the offense is established by proof of a criminal conviction for the offense. Except as otherwise provided in this subdivision, a forfeiture under this subdivision is governed by sections 609.531, 609.5312, 609.5313, and 609.5315, subdivision 6.

(b) When a motor vehicle subject to forfeiture under this subdivision is seized in advance of a judicial forfeiture order, a hearing before a judge or referee must be held within 96 hours of the seizure. Notice of the hearing must be given to the registered owner within 48 hours of the seizure. The prosecuting authority shall certify to the court, at or in advance of the hearing, that it has filed or intends to file charges against the alleged violator for violating section 609.487. After conducting the hearing, the court shall order that the motor vehicle be returned to the owner if:

(1) the prosecutor has failed to make the certification required by this paragraph;

(2) the owner of the motor vehicle has demonstrated to the court's satisfaction that the owner has a defense to the forfeiture, including but not limited to the defenses contained in subdivision 2; or

(3) the court determines that seizure of the vehicle creates or would create an undue hardship for members of the owner's family.

(c) If the defendant is acquitted or the charges against the defendant are dismissed, neither the owner nor the defendant is responsible for paying any costs associated with the seizure or storage of the vehicle.

(d) A vehicle leased or rented under section 168.27, subdivision 4, for a period of 180 days or less is not subject to forfeiture under this subdivision.

(e) A motor vehicle that is an off-road recreational vehicle as defined in section 169A.03, subdivision 16, or a motorboat as defined in section 169A.03, subdivision 13, is not subject to paragraph (b).

(f) For purposes of this subdivision, seizure occurs either:

(1) at the date at which personal service of process upon the registered owner is made; or

(2) at the date when the registered owner has been notified by certified mail at the address listed in the Minnesota Department of Public Safety computerized motor vehicle registration records.

(g) The Department of Corrections' Fugitive Apprehension Unit shall not seize a motor vehicle for the purposes of forfeiture under paragraphs (a) to (f).

History: 2005 c 136 art 13 s 11-13; art 17 s 38

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

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

(1) all money, precious metals, and precious stones found in proximity to:

(i) controlled substances;

- (ii) forfeitable drug manufacturing or distributing equipment or devices; or
- (iii) forfeitable records of manufacture or distribution of controlled substances;
- (2) all conveyance devices containing controlled substances with a retail value of \$100 or more if possession or sale of the controlled substance would be a felony under chapter 152; and
- (3) all firearms, ammunition, and firearm accessories found:
 - (i) in a conveyance device used or intended for use to commit or facilitate the commission of a felony offense involving a controlled substance;
 - (ii) on or in proximity to a person from whom a felony amount of controlled substance is seized; or
 - (iii) on the premises where a controlled substance is seized and in proximity to the controlled substance, if possession or sale of the controlled substance would be a felony under chapter 152.
- (4) The Department of Corrections' Fugitive Apprehension Unit shall not seize items listed in clauses (2) and (3) for the purposes of forfeiture.
- (b) A claimant of the property bears the burden to rebut this presumption.

[For text of subs 2 and 3, see M.S.2004]

History: 2005 c 136 art 13 s 14

609.5315 DISPOSITION OF FORFEITED PROPERTY.

Subdivision 1. **Disposition.** (a) Subject to paragraph (b), if the court finds under section 609.5313, 609.5314, or 609.5318 that the property is subject to forfeiture, it shall order the appropriate agency to do one of the following:

(1) unless a different disposition is provided under clause (3) or (4), either destroy firearms, ammunition, and firearm accessories that the agency decides not to use for law enforcement purposes under clause (8), or sell them to federally licensed firearms dealers, as defined in section 624.7161, subdivision 1, and distribute the proceeds under subdivision 5 or 5b;

(2) sell property that is not required to be destroyed by law and is not harmful to the public and distribute the proceeds under subdivision 5 or 5b;

(3) sell antique firearms, as defined in section 624.712, subdivision 3, to the public and distribute the proceeds under subdivision 5 or 5b;

(4) destroy or use for law enforcement purposes semiautomatic military-style assault weapons, as defined in section 624.712, subdivision 7;

(5) take custody of the property and remove it for disposition in accordance with law;

(6) forward the property to the federal drug enforcement administration;

(7) disburse money as provided under subdivision 5 or 5b; or

(8) keep property other than money for official use by the agency and the prosecuting agency.

(b) Notwithstanding paragraph (a), the Hennepin or Ramsey county sheriff may not sell firearms, ammunition, or firearms accessories if the policy is disapproved by the applicable county board.

[For text of subs 2 to 5a, see M.S.2004]

Subd. 5b. **Disposition of certain forfeited proceeds; trafficking of persons; report required.** (a) For forfeitures resulting from violations of section 609.282, 609.283, or 609.322, the money or proceeds from the sale of forfeited property, after payment of seizure, storage, forfeiture, and sale expenses, and satisfaction of valid liens against the property, must be distributed as follows:

(1) 40 percent of the proceeds must be forwarded to the appropriate agency for deposit as a supplement to the agency's operating fund or similar fund for use in law enforcement;

(2) 20 percent of the proceeds must be forwarded to the county attorney or other prosecuting agency that handled the forfeiture for deposit as a supplement to its operating fund or similar fund for prosecutorial purposes; and

(3) the remaining 40 percent of the proceeds must be forwarded to the commissioner of public safety and are appropriated to the commissioner for distribution to crime victims services organizations that provide services to victims of trafficking offenses.

(b) By February 15 of each year, the commissioner of public safety shall report to the chairs and ranking minority members of the senate and house committees or divisions having jurisdiction over criminal justice funding on the money collected under paragraph (a), clause (3). The report must indicate the following relating to the preceding calendar year:

- (1) the amount of money appropriated to the commissioner;
- (2) how the money was distributed by the commissioner; and
- (3) what the organizations that received the money did with it.

[For text of subs 6 and 7, see M.S.2004]

History: 2005 c 136 art 17 s 39,40

609.5317 REAL PROPERTY; SEIZURES.

Subdivision 1. **Rental property.** (a) When contraband or a controlled substance manufactured, distributed, or acquired in violation of chapter 152 is seized on residential rental property incident to a lawful search or arrest, the county attorney shall give the notice required by this subdivision to (1) the landlord of the property or the fee owner identified in the records of the county assessor; and (2) the agent authorized by the owner to accept service pursuant to section 504B.181. The notice is not required during an ongoing investigation. The notice shall state what has been seized and specify the applicable duties and penalties under this subdivision. The notice shall state that the landlord who chooses to assign the right to bring an eviction action retains all rights and duties, including removal of a tenant's personal property following issuance of the writ of restitution and delivery of the writ to the sheriff for execution. The notice shall also state that the landlord may contact the county attorney if threatened by the tenant. Notice shall be sent by certified letter, return receipt requested, within 30 days of the seizure. If receipt is not returned, notice shall be given in the manner provided by law for service of summons in a civil action.

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

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

(d) The Department of Corrections' Fugitive Apprehension Unit shall not seize real property for the purposes of forfeiture as described in paragraphs (a) to (c).

[For text of subs 2 to 4, see M.S.2004]

History: 2005 c 136 art 13 s 15

609.5318 FORFEITURE OF VEHICLES USED IN DRIVE-BY SHOOTINGS.

Subdivision 1. **Motor vehicles subject to forfeiture.** (a) A motor vehicle is subject to forfeiture under this section if the prosecutor establishes by clear and convincing evidence that the vehicle was used in a violation of section 609.66, subdivision 1e. The prosecutor need not establish that any individual was convicted of the violation, but a conviction of the owner for a violation of section 609.66, subdivision 1e, creates a presumption that the vehicle was used in the violation.

(b) The Department of Corrections' Fugitive Apprehension Unit shall not seize a motor vehicle for the purposes of forfeiture under paragraph (a).

[For text of subds 2 to 5, see M.S.2004]

History: 2005 c 136 art 13 s 16

609.605 TRESPASS.

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

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

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

(iii) "Construction site" means the site of the construction, alteration, painting, or repair of a building or structure.

(iv) "Owner or lawful possessor," as used in paragraph (b), clause (9), means the person on whose behalf a building or dwelling is being constructed, altered, painted, or repaired and the general contractor or subcontractor engaged in that work.

(v) "Posted," as used:

(A) in clause (9), means the placement of a sign at least 11 inches square in a conspicuous place on the exterior of the building that is under construction, alteration, or repair, and additional signs in at least two conspicuous places for each ten acres being protected. The sign must carry an appropriate notice and the name of the person giving the notice, followed by the word "owner" if the person giving the notice is the holder of legal title to the land on which the construction site is located or by the word "occupant" if the person giving the notice is not the holder of legal title but is a lawful occupant of the land; and

(B) in clause (10), means the placement of signs that:

(I) state "no trespassing" or similar terms;

(II) display letters at least two inches high;

(III) state that Minnesota law prohibits trespassing on the property; and

(IV) are posted in a conspicuous place and at intervals of 500 feet or less.

(vi) "Business licensee," as used in paragraph (b), clause (9), includes a representative of a building trades labor or management organization.

(vii) "Building" has the meaning given in section 609.581, subdivision 2.

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

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

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

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

(4) occupies or enters the dwelling or locked or posted building of another, without claim of right or consent of the owner or the consent of one who has the right to give consent, except in an emergency situation;

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

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

(7) returns to the property of another with the intent to abuse, disturb, or cause distress in or threaten another, after being told to leave the property and not to return, if the actor is without claim of right to the property or consent of one with authority to consent;

(8) returns to the property of another within one year after being told to leave the property and not to return, if the actor is without claim of right to the property or consent of one with authority to consent;

(9) enters the locked or posted construction site of another without the consent of the owner or lawful possessor, unless the person is a business licensee; or

(10) enters the locked or posted aggregate mining site of another without the consent of the owner or lawful possessor, unless the person is a business licensee.

[For text of subd 2, see M.S.2004]

Subd. 4. Trespasses on school property. (a) It is a misdemeanor for a person to enter or be found in a public or nonpublic elementary, middle, or secondary school building unless the person:

(1) is an enrolled student in, a parent or guardian of an enrolled student in, or an employee of the school or school district;

(2) has permission or an invitation from a school official to be in the building;

(3) is attending a school event, class, or meeting to which the person, the public, or a student's family is invited; or

(4) has reported the person's presence in the school building in the manner required for visitors to the school.

(b) It is a misdemeanor for a person to be on the roof of a public or nonpublic elementary, middle, or secondary school building unless the person has permission from a school official to be on the roof of the building.

(c) It is a gross misdemeanor for a group of three or more persons to enter or be found in a public or nonpublic elementary, middle, or secondary school building unless one of the persons:

(1) is an enrolled student in, a parent or guardian of an enrolled student in, or an employee of the school or school district;

(2) has permission or an invitation from a school official to be in the building;

(3) is attending a school event, class, or meeting to which the person, the public, or a student's family is invited; or

(4) has reported the person's presence in the school building in the manner required for visitors to the school.

(d) It is a misdemeanor for a person to enter or be found on school property within one year after being told by the school principal or the principal's designee to leave the property and not to return, unless the principal or the principal's designee has given the person permission to return to the property. As used in this paragraph, "school property" has the meaning given in section 152.01, subdivision 14a, clauses (1) and (3).

(e) A school principal or a school employee designated by the school principal to maintain order on school property, who has reasonable cause to believe that a person is violating this subdivision may detain the person in a reasonable manner for a reasonable period of time pending the arrival of a peace officer. A school principal or designated school employee is not civilly or criminally liable for any action authorized under this paragraph if the person's action is based on reasonable cause.

(f) A peace officer may arrest a person without a warrant if the officer has probable cause to believe the person violated this subdivision within the preceding four hours. The arrest may be made even though the violation did not occur in the peace officer's presence.

[For text of subd 5, see M.S.2004]

History: 2005 c 136 art 17 s 41,42

609.66 DANGEROUS WEAPONS.

[For text of subds 1 to 1c, see M.S.2004]

Subd. 1d. **Possession on school property; penalty.** (a) Except as provided under paragraphs (c) and (e), whoever possesses, stores, or keeps a dangerous weapon or uses or brandishes a replica firearm or a BB gun while knowingly on school property is guilty of a felony and may be sentenced to imprisonment for not more than two years or to payment of a fine of not more than \$5,000, or both.

(b) Whoever possesses, stores, or keeps a replica firearm or a BB gun on school property is guilty of a gross misdemeanor.

(c) Notwithstanding paragraph (a) or (b), it is a misdemeanor for a person authorized to carry a firearm under the provisions of a permit or otherwise to carry a firearm on or about the person's clothes or person in a location the person knows is school property. Notwithstanding section 609.531, a firearm carried in violation of this paragraph is not subject to forfeiture.

(d) As used in this subdivision:

(1) "BB gun" means a device that fires or ejects a shot measuring .18 of an inch or less in diameter;

(2) "dangerous weapon" has the meaning given it in section 609.02, subdivision 6;

(3) "replica firearm" has the meaning given it in section 609.713; and

(4) "school property" means:

(i) a public or private elementary, middle, or secondary school building and its improved grounds, whether leased or owned by the school;

(ii) a child care center licensed under chapter 245A during the period children are present and participating in a child care program;

(iii) the area within a school bus when that bus is being used by a school to transport one or more elementary, middle, or secondary school students to and from school-related activities, including curricular, cocurricular, noncurricular, extracurricular, and supplementary activities; and

(iv) that portion of a building or facility under the temporary, exclusive control of a public or private school, a school district, or an association of such entities where conspicuous signs are prominently posted at each entrance that give actual notice to persons of the school-related use.

(e) This subdivision does not apply to:

(1) active licensed peace officers;

(2) military personnel or students participating in military training, who are on-duty, performing official duties;

(3) persons authorized to carry a pistol under section 624.714 while in a motor vehicle or outside of a motor vehicle to directly place a firearm in, or retrieve it from, the trunk or rear area of the vehicle;

(4) persons who keep or store in a motor vehicle pistols in accordance with section 624.714 or 624.715 or other firearms in accordance with section 97B.045;

(5) firearm safety or marksmanship courses or activities conducted on school property;

(6) possession of dangerous weapons, BB guns, or replica firearms by a ceremonial color guard;

(7) a gun or knife show held on school property;

(8) possession of dangerous weapons, BB guns, or replica firearms with written permission of the principal or other person having general control and supervision of the school or the director of a child care center; or

(9) persons who are on unimproved property owned or leased by a child care center, school, or school district unless the person knows that a student is currently present on the land for a school-related activity.

(f) Notwithstanding section 471.634, a school district or other entity composed exclusively of school districts may not regulate firearms, ammunition, or their respective components, when possessed or carried by nonstudents or nonemployees, in a manner that is inconsistent with this subdivision.

[For text of subs 1e to 1g, see M.S.2004]

Subd. 1h. Silencers; authorized for law enforcement and wildlife control purposes.

(a) Notwithstanding subdivision 1a, paragraph (a), clause (1), licensed peace officers may use devices designed to silence or muffle the discharge of a firearm for tactical emergency response operations. Tactical emergency response operations include execution of high risk search and arrest warrants, incidents of terrorism, hostage rescue, and any other tactical deployments involving high risk circumstances. The chief law enforcement officer of a law enforcement agency that has the need to use silencing devices must establish and enforce a written policy governing the use of the devices.

(b) Notwithstanding subdivision 1a, paragraph (a), clause (1), until July 1, 2011, an enforcement officer, as defined in section 97A.015, subdivision 18, a wildlife area manager, an employee designated under section 84.0835, or a person acting under contract with the commissioner of natural resources, at specific times and locations that are authorized by the commissioner of natural resources may use devices designed to silence or muffle the discharge of a firearm for wildlife control operations that require stealth. If the commissioner determines that the use of silencing devices is necessary under this paragraph, the commissioner must:

(1) establish and enforce a written policy governing the use, possession, and transportation of the devices;

(2) limit the number of the silencing devices maintained by the Department of Natural Resources to no more than ten; and

(3) keep direct custody and control of the devices when the devices are not specifically authorized for use.

[For text of subd 2, see M.S.2004]

History: 2005 c 83 s 1,2; 2005 c 102 s 2

609.725 [Repealed, 2005 c 136 art 17 s 53]

609.746 INTERFERENCE WITH PRIVACY.

Subdivision 1. Surreptitious intrusion; observation device. (a) A person is guilty of a gross misdemeanor who:

(1) enters upon another's property;

(2) surreptitiously gazes, stares, or peeps in the window or any other aperture of a house or place of dwelling of another; and

(3) does so with intent to intrude upon or interfere with the privacy of a member of the household.

(b) A person is guilty of a gross misdemeanor who:

(1) enters upon another's property;

(2) surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events through the window or any other aperture of a house or place of dwelling of another; and

(3) does so with intent to intrude upon or interfere with the privacy of a member of the household.

(c) A person is guilty of a gross misdemeanor who:

(1) surreptitiously gazes, stares, or peeps in the window or other aperture of a sleeping room in a hotel, as defined in section 327.70, subdivision 3, a tanning booth, or other place where a reasonable person would have an expectation of privacy and has exposed or is likely to expose their intimate parts, as defined in section 609.341, subdivision 5, or the clothing covering the immediate area of the intimate parts; and

(2) does so with intent to intrude upon or interfere with the privacy of the occupant.

(d) A person is guilty of a gross misdemeanor who:

(1) surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events through the window or other aperture of a sleeping room in a hotel, as defined in section 327.70, subdivision 3, a tanning booth, or other place where a reasonable person would have an expectation of privacy and has exposed or is likely to expose their intimate parts, as defined in section 609.341, subdivision 5, or the clothing covering the immediate area of the intimate parts; and

(2) does so with intent to intrude upon or interfere with the privacy of the occupant.

(e) A person is guilty of a felony and may be sentenced to imprisonment for not more than two years or to payment of a fine of not more than \$5,000, or both, if the person:

(1) violates this subdivision after a previous conviction under this subdivision or section 609.749; or

(2) violates this subdivision against a minor under the age of 18, knowing or having reason to know that the minor is present.

(f) Paragraphs (b) and (d) do not apply to law enforcement officers or corrections investigators, or to those acting under their direction, while engaged in the performance of their lawful duties. Paragraphs (c) and (d) do not apply to conduct in: (1) a medical facility; or (2) a commercial establishment if the owner of the establishment has posted conspicuous signs warning that the premises are under surveillance by the owner or the owner's employees.

History: 2005 c 136 art 17 s 43

609.748 HARASSMENT; RESTRAINING ORDER.

[For text of subd 1, see M.S.2004]

Subd. 2. Restraining order; jurisdiction. A person who is a victim of harassment may seek a restraining order from the district court in the manner provided in this section. The parent, guardian, or stepparent of a minor who is a victim of harassment may seek a restraining order from the district court on behalf of the minor.

[For text of subd 3, see M.S.2004]

Subd. 3a. Filing fee; cost of service. The filing fees for a restraining order under this section are waived for the petitioner if the petition alleges acts that would constitute a violation of section 609.749, subdivision 2 or 3, or sections 609.342 to 609.3451. The court administrator and the sheriff of any county in this state shall perform their duties relating to service of process without charge to the petitioner. The court shall direct payment of the reasonable costs of service of process if served by a private process server when the sheriff is unavailable or if service is made by publication. The court may direct a respondent to pay to the court administrator the petitioner's filing fees and reasonable costs of service of process if the court determines that the respondent has the ability to pay the petitioner's fees and costs.

[For text of subs 4 to 9, see M.S.2004]

Subd. 10. Prohibition against employer retaliation. (a) An employer shall not discharge, discipline, threaten, otherwise discriminate against, or penalize an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment, because the employee took reasonable time off from work to obtain or attempt to obtain relief under this section. Except in cases of imminent danger to the health or safety of the employee or the employee's child, or unless impracticable, an employee who is absent from the workplace shall give 48 hours' advance notice to the employer. Upon request of the employer, the employee shall provide verification that supports the employee's reason for being absent from the workplace. All information related to the employee's leave pursuant to this section shall be kept confidential by the employer.

(b) An employer who violates paragraph (a) is guilty of a misdemeanor and may be punished for contempt of court. In addition, the court shall order the employer to pay back wages and offer job reinstatement to any employee discharged from employment in violation of paragraph (a).

(c) In addition to any remedies otherwise provided by law, an employee injured by a violation of paragraph (a) may bring a civil action for recovery of damages, together with costs and disbursements, including reasonable attorneys fees, and may receive such injunctive and other equitable relief, including reinstatement, as determined by the court.

History: 2005 c 136 art 8 s 21; 2005 c 136 art 17 s 44-45

609.749 HARASSMENT; STALKING; PENALTIES.

[For text of subs 1 and 1a, see M.S.2004]

Subd. 2. Harassment and stalking crimes. (a) A person who harasses another by committing any of the following acts is guilty of a gross misdemeanor:

(1) directly or indirectly manifests a purpose or intent to injure the person, property, or rights of another by the commission of an unlawful act;

(2) stalks, follows, monitors, or pursues another, whether in person or through technological or other means;

(3) returns to the property of another if the actor is without claim of right to the property or consent of one with authority to consent;

(4) repeatedly makes telephone calls, or induces a victim to make telephone calls to the actor, whether or not conversation ensues;

(5) makes or causes the telephone of another repeatedly or continuously to ring;

(6) repeatedly mails or delivers or causes the delivery by any means, including electronically, of letters, telegrams, messages, packages, or other objects; or

(7) knowingly makes false allegations against a peace officer concerning the officer's performance of official duties with intent to influence or tamper with the officer's performance of official duties.

(b) The conduct described in paragraph (a), clauses (4) and (5), may be prosecuted at the place where any call is either made or received or, additionally in the case of wireless or electronic communication, where the actor or victim resides. The conduct described in paragraph (a), clause (2), may be prosecuted where the actor or victim resides. The conduct described in paragraph (a), clause (6), may be prosecuted where any letter, telegram, message, package, or other object is either sent or received or, additionally in the case of wireless or electronic communication, where the actor or victim resides.

(c) A peace officer may not make a warrantless, custodial arrest of any person for a violation of paragraph (a), clause (7).

[For text of subs 3 to 8, see M.S.2004]

History: 2005 c 136 art 17 s 46

609.75 GAMBLING; DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

(d) The distribution of property, or other reward or benefit by an employer to persons selected by chance from among participants, all of whom:

(1) have made a contribution through a payroll or pension deduction campaign to a registered combined charitable organization, within the meaning of section 309.501; or

(2) have paid other consideration to the employer entirely for the benefit of such a registered combined charitable organization, as a precondition to the chance of being selected, is not a lottery if:

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

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

[For text of subds 2 to 7, see M.S.2004]

Subd. 8. **Video game of chance.** A video game of chance is a game or device that simulates one or more games commonly referred to as poker, blackjack, craps, hi-lo, roulette, or other common gambling forms, though not offering any type of pecuniary award or gain to players. The term also includes any video game having one or more of the following characteristics:

(1) it is primarily a game of chance, and has no substantial elements of skill involved;

(2) it awards game credits or replays and contains a meter or device that records unplayed credits or replays. A video game that simulates horse racing that does not involve a prize payout is not a video game of chance.

[For text of subds 9 to 13, see M.S.2004]

History: 2005 c 166 art 1 s 37; art 3 s 1

609.761 OPERATIONS PERMITTED.

[For text of subds 1 and 2, see M.S.2004]

Subd. 3. **Social skill game.** Sections 609.755 and 609.76 do not prohibit tournaments or contests that satisfy all of the following requirements:

(1) the tournament or contest consists of the card games of chance commonly known as cribbage, skat, sheephead, bridge, euchre, pinochle, gin, 500, smear, Texas hold'em, or whist;

(2) the tournament or contest does not provide any direct financial benefit to the promoter or organizer;

(3) the value of all prizes awarded for each tournament or contest does not exceed \$200; and

(4) for a tournament or contest involving Texas hold'em:

(i) no person under 18 years of age may participate;

(ii) the payment of an entry fee or other consideration for participating is prohibited;

(iii) the value of all prizes awarded to an individual winner of a tournament or contest at a single location may not exceed \$200 each day; and

(iv) the organizer or promoter must ensure that reasonable accommodations are made for players with disabilities. Accommodations to the table and the cards shall include the announcement of the cards visible to the entire table and the use of Braille cards for players who are blind.

[For text of subds 4 and 5, see M.S.2004]

History: 2005 c 166 art 4 s 1

609.763 LAWFUL GAMBLING FRAUD.

[For text of subds 1 and 2, see M.S.2004]

Subd. 3. **Aggregation; jurisdiction.** In a prosecution under this section, the dollar amounts involved in violation of subdivision 1 within any 12-month period may be aggregated and the defendant charged accordingly. When two or more offenses are committed by the same person in two or more counties, the defendant may be prosecuted in any county in which one of the offenses was committed for all of the offenses aggregated under this subdivision.

History: 2005 c 136 art 17 s 47

609.79 OBSCENE OR HARASSING TELEPHONE CALLS.

[For text of subd 1, see M.S.2004]

Subd. 2. **Venue.** The offense may be prosecuted either at the place where the call is made or where it is received or, additionally in the case of wireless or electronic communication, where the sender or receiver resides.

History: 2005 c 136 art 17 s 48

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

[For text of subd 1, see M.S.2004]

Subd. 3. **Venue.** The offense may be prosecuted either at the place where the letter, telegram, or package is sent or received or, alternatively in the case of wireless electronic communication, where the sender or receiver resides.

History: 2005 c 136 art 17 s 49

609.849 RAILROAD THAT OBSTRUCTS TREATMENT OF AN INJURED WORKER.

(a) It shall be unlawful for a railroad or person employed by a railroad to intentionally:

(1) deny, delay, or interfere with medical treatment or first aid treatment to an employee of a railroad who has been injured during employment; or

(2) discipline, harass, or intimidate an employee to discourage the employee from receiving medical attention or threaten to discipline an employee who has been injured during employment for requesting medical treatment or first aid treatment.

(b) Nothing in this section shall deny a railroad company or railroad employee from making a reasonable inquiry of an injured employee about the circumstance of an injury in order to gather information necessary to identify a safety hazard.

(c) It is not a violation under this section for a railroad company or railroad employee to enforce safety regulations.

(d) A railroad or a person convicted of a violation of paragraph (a), clause (1) or (2), is guilty of a misdemeanor and may be fined not more than \$1,000 but is not subject to an incarcerative sanction.

History: 2005 c 136 art 17 s 50; 1Sp2005 c 1 art 4 s 116

609.896 CRIMINAL USE OF REAL PROPERTY.

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

(a) "Audiovisual recording function" means the capability of a device to record or transmit a motion picture or any part of a motion picture by means of any technology now known or later developed.

(b) "Convicted" includes a conviction for a similar offense under the law of another state or the federal government.

(c) "Motion picture theater" means a movie theater, screening room, or other venue when used primarily for the exhibition of a motion picture.

Subd. 2. **Crime.** (a) Any person in a motion picture theater while a motion picture is being exhibited who knowingly operates an audiovisual recording function of a device without the consent of the owner or lessee of the motion picture theater is guilty of criminal use of real property.

(b) If a person is convicted of a first offense, it is a misdemeanor.

(c) If a person is convicted of a second offense, it is a gross misdemeanor.

(d) If a person is convicted of a third or subsequent offense, it is a felony and the person 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.

Subd. 3. **Detaining suspects.** An owner or lessee of a motion picture theater is a merchant for purposes of section 629.366.

Subd. 4. **Exception.** This section does not prevent any lawfully authorized investigative, law enforcement protective, or intelligence-gathering employee or agent of the state or federal government from operating any audiovisual recording device in a motion picture theater where a motion picture is being exhibited, as part of lawfully authorized investigative, law enforcement protective, or intelligence gathering activities.

Subd. 5. **Not preclude alternative prosecution.** Nothing in this section prevents prosecution under any other provision of law.

History: 2005 c 136 art 17 s 51