

## CHAPTER 609

### CRIMINAL CODE

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#### 609.02 DEFINITIONS.

*[For text of subs 1 to 15, see M.S.2006]*

Subd. 16. **Qualified domestic violence–related offense.** “Qualified domestic violence–related offense” includes a violation of or an attempt to violate sections 518B.01, subdivision 14 (violation of domestic abuse order for protection); 518B.01, subdivision 22 (violation of domestic abuse no contact order); 609.185 (first–degree murder); 609.19 (second–degree murder); 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); 609.749 (harassment/stalking); and 609.78, subdivision 2 (interference with an emergency call); and similar laws of other states, the United States, the District of Columbia, tribal lands, and United States territories.

**History:** 2007 c 54 art 2 s 2

#### 609.035 CRIME PUNISHABLE UNDER DIFFERENT PROVISIONS.

Subdivision 1. **Conduct; multiple crimes; chargeable for one offense.** Except as provided in subdivisions 2, 3, 4, and 5, and in sections 609.251, 609.585, 609.21, subdivision 1b, 609.2691, 609.486, 609.494, and 609.856, if a person’s conduct constitutes more than one offense under the laws of this state, the person may be punished for only one of the offenses and a conviction or acquittal of any one of them is a bar to prosecution for any other of them. All the offenses, if prosecuted, shall be included in one prosecution which shall be stated in separate counts.

*[For text of subs 2 to 6, see M.S.2006]*

**History:** 2007 c 54 art 3 s 14

#### 609.115 PRESENTENCE INVESTIGATION.

*[For text of subs 1 to 2, see M.S.2006]*

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; 609.185; 609.3455; 609.385, subdivision 2; or Minnesota Statutes 2004, section 609.109, subdivision 3, and governed by section 244.05.

*[For text of subs 3 to 7, see M.S.2006]*

Subd. 8. **Chemical use assessment required.** (a) If a person is convicted of a felony, the probation officer shall determine in the report prepared under subdivision 1 whether or not alcohol or drug use was a contributing factor to the commission of the offense. If so, the report shall contain the results of a chemical use assessment conducted in accordance with this subdivision. The probation officer shall make an appointment for the defendant to undergo the chemical use assessment if so indicated.

(b) The chemical use assessment report must include a recommended level of care for the defendant in accordance with the criteria contained in rules adopted by the commissioner of human services under section 254A.03, subdivision 3. The assessment must be conducted by an assessor qualified under rules adopted by the commissioner of human services under section 254A.03, subdivision 3. An assessor providing a chemical use assessment may not have any direct or shared financial interest or referral relationship resulting in shared financial gain with a treatment provider, except as authorized under section 254A.19, subdivision 3. If an independent assessor is not available, the probation officer may use the services of an assessor authorized to perform assessments for the county social services agency under a variance granted under rules adopted by the commissioner of human services under section 254A.03, subdivision 3.

Subd. 9. **Compulsive gambling assessment required.** (a) If a person is convicted of theft under section 609.52, embezzlement of public funds under section 609.54, or forgery under section 609.625, 609.63, or 609.631, the probation officer shall determine in the report prepared under subdivision 1 whether or not compulsive gambling contributed to the commission of the offense. If so, the report shall contain the results of a compulsive gambling assessment conducted in accordance with this subdivision. The probation officer shall make an appointment for the offender to undergo the assessment if so indicated.

(b) The compulsive gambling assessment report must include a recommended level of treatment for the offender if the assessor concludes that the offender is in need of compulsive gambling treatment. The assessment must be conducted by an assessor qualified either under Minnesota Rules, part 9585.0040, subpart 1, item C, or qualifications determined to be equivalent by the commissioner, to perform these assessments or to provide compulsive gambling treatment. An assessor providing a compulsive gambling assessment may not have any direct or shared financial interest or referral relationship resulting in shared financial gain with a treatment provider. If an independent assessor is not available, the probation officer may use the services of an assessor with a financial interest or referral relationship as authorized under rules adopted by the commissioner of human services under section 245.98, subdivision 2a.

(c) The commissioner of human services shall reimburse the assessor for each compulsive gambling assessment at a rate established by the commissioner. To the extent practicable, the commissioner shall standardize reimbursement rates for assessments. The commissioner shall reimburse the assessor after receiving written verification from the probation officer that the assessment was performed and found acceptable.

**History:** 2007 c 13 art 3 s 37; 2007 c 147 art 8 s 32; art 12 s 12

## 609.135 STAY OF IMPOSITION OR EXECUTION OF SENTENCE.

*[For text of subs 1 to 1c see M.S.2006]*

**Subd. 2. Stay of sentence maximum periods.** (a) If the conviction is for a felony other than section 609.21, subdivision 1a, paragraph (b) or (c), the stay shall be for not more than four years or the maximum period for which the sentence of imprisonment might have been imposed, whichever is longer.

(b) If the conviction is for a gross misdemeanor violation of section 169A.20 or 609.21, subdivision 1a, paragraph (d), or for a felony described in section 609.21, subdivision 1a, paragraph (b) or (c), the stay shall be for not more than six years. The court shall provide for unsupervised probation for the last year of the stay unless the court finds that the defendant needs supervised probation for all or part of the last year.

(c) If the conviction is for a gross misdemeanor not specified in paragraph (b), the stay shall be for not more than two years.

(d) If the conviction is for any misdemeanor under section 169A.20; 609.746, subdivision 1; 609.79; or 617.23; or for a misdemeanor under section 609.2242 or 609.224, subdivision 1, in which the victim of the crime was a family or household member as defined in section 518B.01, the stay shall be for not more than two years. The court shall provide for unsupervised probation for the second year of the stay unless the court finds that the defendant needs supervised probation for all or part of the second year.

(e) If the conviction is for a misdemeanor not specified in paragraph (d), the stay shall be for not more than one year.

(f) The defendant shall be discharged six months after the term of the stay expires, unless the stay has been revoked or extended under paragraph (g), or the defendant has already been discharged.

(g) Notwithstanding the maximum periods specified for stays of sentences under paragraphs (a) to (f), a court may extend a defendant's term of probation for up to one year if it finds, at a hearing conducted under subdivision 1a, that:

(1) the defendant has not paid court-ordered restitution or a fine in accordance with the payment schedule or structure; and

(2) the defendant is likely to not pay the restitution or fine the defendant owes before the term of probation expires.

This one-year extension of probation for failure to pay restitution or a fine may be extended by the court for up to one additional year if the court finds, at another hearing conducted under subdivision 1a, that the defendant still has not paid the court-ordered restitution or fine that the defendant owes.

(h) Notwithstanding the maximum periods specified for stays of sentences under paragraphs (a) to (f), a court may extend a defendant's term of probation for up to three years if it finds, at a hearing conducted under subdivision 1c, that:

(1) the defendant has failed to complete court-ordered treatment successfully; and

(2) the defendant is likely not to complete court-ordered treatment before the term of probation expires.

*[For text of subs 3 to 7, see M.S.2006]*

**Subd. 8. Fine and surcharge collection.** (a) A defendant's obligation to pay court-ordered fines, surcharges, court costs, restitution, and fees shall survive for a period of six years from the date of the expiration of the defendant's stayed sentence for the offense for which the fines, surcharges, court costs, restitution, and fees were imposed, or six years from the imposition or due date of the fines, surcharges, court costs, restitution, and fees, whichever is later. Nothing in this subdivision extends the period of a defendant's stay of sentence imposition or execution.

(b) The six-year period relating to a defendant's obligation to pay restitution under paragraph (a) does not limit the victim's right to collect restitution through other means such as a civil judgment.

**History:** 2007 c 54 art 3 s 14; art 5 s 17

**609.21 CRIMINAL VEHICULAR HOMICIDE AND INJURY.**

Subdivision 1. **Criminal vehicular homicide or operation; crime described.** A person is guilty of criminal vehicular homicide or operation and may be sentenced as provided in subdivision 1a, if the person causes injury to or the death of another as a result of operating a motor vehicle:

- (1) in a grossly negligent manner;
- (2) in a negligent manner while under the influence of:
  - (i) alcohol;
  - (ii) a controlled substance; or
  - (iii) any combination of those elements;
- (3) while having an alcohol concentration of 0.08 or more;
- (4) while having an alcohol concentration of 0.08 or more, as measured within two hours of the time of driving;
- (5) in a negligent manner while knowingly under the influence of a hazardous substance;
- (6) in a negligent manner while any amount of a controlled substance listed in schedule I or II, or its metabolite, other than marijuana or tetrahydrocannabinols, is present in the person's body;
- (7) where the driver who causes the accident leaves the scene of the accident in violation of section 169.09, subdivision 1 or 6; or
- (8) where the driver had actual knowledge that a peace officer had previously issued a citation or warning that the motor vehicle was defectively maintained, the driver had actual knowledge that remedial action was not taken, the driver had reason to know that the defect created a present danger to others, and the injury or death was caused by the defective maintenance.

Subd. 1a. **Criminal penalties.** (a) A person who violates subdivision 1 and causes the death of a human being not constituting murder or manslaughter or the death of an unborn child may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both.

(b) A person who violates subdivision 1 and causes great bodily harm to another not constituting attempted murder or assault or great bodily harm to an unborn child who is subsequently born alive may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

(c) A person who violates subdivision 1 and causes substantial bodily harm to another may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than \$10,000, or both.

(d) A person who violates subdivision 1 and causes bodily harm to another may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

Subd. 1b. **Conviction not bar to punishment for other crimes.** A prosecution for or a conviction of a crime under this section relating to causing death or injury to an unborn child is not a bar to conviction of or punishment for any other crime committed by the defendant as part of the same conduct.

Subd. 2. [Repealed, 2007 c 54 art 3 s 15]

Subd. 2a. [Repealed, 2007 c 54 art 3 s 15]

Subd. 2b. [Repealed, 2007 c 54 art 3 s 15]

Subd. 3. [Repealed, 2007 c 54 art 3 s 15]

Subd. 4. [Repealed, 2007 c 54 art 3 s 15]

Subd. 4a. **Affirmative defense.** It shall be an affirmative defense to a charge under subdivision 1, clause (6), that the defendant used the controlled substance according to the terms of a prescription issued for the defendant in accordance with sections 152.11 and 152.12.

Subd. 5. **Definitions.** For purposes of this section, the terms defined in this subdivision have the meanings given them.

(a) "Motor vehicle" has the meaning given in section 609.52, subdivision 1, and includes attached trailers.

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

(c) "Hazardous substance" means any chemical or chemical compound that is listed as a hazardous substance in rules adopted under chapter 182.

**History:** 2007 c 54 art 3 s 7-11

### 609.2231 ASSAULT IN THE FOURTH DEGREE.

*[For text of subs 1 to 3, see M.S.2006]*

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 609.3455, subdivision 6, 7, or 8; and Minnesota Statutes 2004, section 609.109.

*[For text of subs 4 to 7, see M.S.2006]*

**History:** 2007 c 13 art 3 s 37

### 609.266 DEFINITIONS.

The definitions in this subdivision apply to sections 609.21, subdivision 1a, paragraphs (a) and (b), and 609.2661 to 609.2691:

(a) "Unborn child" means the unborn offspring of a human being conceived, but not yet born.

(b) "Whoever" does not include the pregnant woman.

**History:** 2007 c 54 art 3 s 14

### 609.341 DEFINITIONS.

*[For text of subs 1 to 10, see M.S.2006]*

Subd. 11. **Sexual contact.** (a) "Sexual contact," for the purposes of sections 609.343, subdivision 1, clauses (a) to (f), and 609.345, subdivision 1, clauses (a) to (e), and (h) to (o),

includes any of the following acts committed without the complainant's consent, except in those cases where consent is not a defense, and committed with sexual or aggressive intent:

- (i) the intentional touching by the actor of the complainant's intimate parts, or
- (ii) the touching by the complainant of the actor's, the complainant's, or another's intimate parts effected by a person in a position of authority, or by coercion, or by inducement if the complainant is under 13 years of age or mentally impaired, or
- (iii) the touching by another of the complainant's intimate parts effected by coercion or by a person in a position of authority, or
- (iv) in any of the cases above, the touching of the clothing covering the immediate area of the intimate parts.

(b) "Sexual contact," for the purposes of sections 609.343, subdivision 1, clauses (g) and (h), and 609.345, subdivision 1, clauses (f) and (g), includes any of the following acts committed with sexual or aggressive intent:

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

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

*[For text of subds 12 to 22, see M.S.2006]*

**History:** 2007 c 54 art 2 s 3

### 609.342 CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE.

*[For text of subd 1, see M.S.2006]*

Subd. 2. **Penalty.** (a) Except as otherwise provided in section 609.3455; or Minnesota Statutes 2004, section 609.109, 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 609.3455; or Minnesota Statutes 2004, section 609.109, 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:** 2007 c 13 art 3 s 37

### 609.343 CRIMINAL SEXUAL CONDUCT IN THE SECOND DEGREE.

*[For text of subd 1, see M.S.2006]*

Subd. 2. **Penalty.** (a) Except as otherwise provided in section 609.3455; or Minnesota Statutes 2004, section 609.109, 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 609.3455; or Minnesota Statutes 2004, section 609.109, 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:** 2007 c 13 art 3 s 37

### 609.344 CRIMINAL SEXUAL CONDUCT IN THE THIRD DEGREE.

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

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

(b) the complainant is at least 13 but less than 16 years of age and the actor is more than 24 months older than the complainant. In any such case if the actor is no more than 120 months older than the complainant, it shall be an affirmative defense, which must be proved by a preponderance of the evidence, that the actor reasonably believes the complainant to be 16 years of age or older. In all other cases, mistake as to the complainant's age shall not be a defense. If the actor in such a case is no more than 48 months but more than 24 months older than the complainant, the actor may be sentenced to imprisonment for not more than five years. Consent by the complainant is not a defense;

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

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

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

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

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

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

(ii) the complainant suffered personal injury; or

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

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

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

(i) during the psychotherapy session; or

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

Consent by the complainant is not a defense;

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

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

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

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

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

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

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

(n) the actor provides or is an agent of an entity that provides special transportation service, the complainant used the special transportation service, and the sexual penetration occurred during or immediately before or after the actor transported the complainant. Consent by the complainant is not a defense; or

(o) the actor performs massage or other bodywork for hire, the complainant was a user of one of those services, and nonconsensual sexual penetration occurred during or immediately before or after the actor performed or was hired to perform one of those services for the complainant.

*[For text of subd 2, see M.S.2006]*



Subd. 3. **Stay.** Except when imprisonment is required under section 609.3455; or Minnesota Statutes 2004, section 609.109; 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:** 2007 c 13 art 3 s 37; 2007 c 54 art 2 s 4

### **609.345 CRIMINAL SEXUAL CONDUCT IN THE FOURTH DEGREE.**

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

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

(b) the complainant is at least 13 but less than 16 years of age and the actor is more than 48 months older than the complainant or in a position of authority over the complainant. Consent by the complainant to the act is not a defense. In any such case, if the actor is no more than 120 months older than the complainant, it shall be an affirmative defense which must be proved by a preponderance of the evidence that the actor reasonably believes the complainant to be 16 years of age or older. In all other cases, mistake as to the complainant's age shall not be a defense;

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

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

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

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

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

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

(ii) the complainant suffered personal injury; or

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

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

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

(i) during the psychotherapy session; or

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

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

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

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

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

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

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

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

(n) the actor provides or is an agent of an entity that provides special transportation service, the complainant used the special transportation service, the complainant is not married to the actor, and the sexual contact occurred during or immediately before or after the actor transported the complainant. Consent by the complainant is not a defense; or

(o) the actor performs massage or other bodywork for hire, the complainant was a user of one of those services, and nonconsensual sexual contact occurred during or immediately before or after the actor performed or was hired to perform one of those services for the complainant.

*[For text of subd 2, see M.S.2006]*

Subd. 3. **Stay.** Except when imprisonment is required under section 609.3455; or Minnesota Statutes 2004, section 609.109, if a person is convicted under subdivision 1, clause (t), 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:** 2007 c 13 art 3 s 37; 2007 c 54 art 2 s 5

### **609.3455 DANGEROUS SEX OFFENDERS; LIFE SENTENCES; CONDITIONAL RELEASE.**

*[For text of subds 1 to 8, see M.S.2006]*

Subd. 9. **Applicability.** The provisions of this section do not affect the applicability of Minnesota Statutes 2004, section 609.108, to crimes committed before August 1, 2005, or the validity of sentences imposed under Minnesota Statutes 2004, section 609.108.

**History:** 2007 c 54 art 2 s 6

**609.3457 SEX OFFENDER ASSESSMENT.**

*[For text of subs 1 and 1a, see M.S.2006]*

Subd. 2. **Access to data.** Notwithstanding sections 13.384, 13.85, 144.291 to 144.298, 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 sections 144.291 to 144.298;
- (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.

*[For text of subs 3 and 4, see M.S.2006]*

**History:** 2007 c 147 art 10 s 15.

**609.347 EVIDENCE IN CRIMINAL SEXUAL CONDUCT CASES.**

Subdivision 1. **Victim testimony; corroboration unnecessary.** In a prosecution under sections 609.342 to 609.3451; 609.3453; or Minnesota Statutes 2004, section 609.109, the testimony of a victim need not be corroborated.

Subd. 2. **Showing of resistance unnecessary.** In a prosecution under sections 609.342 to 609.3451; 609.3453; or Minnesota Statutes 2004, section 609.109, there is no need to show that the victim resisted the accused.

Subd. 3. **Previous sexual conduct.** In a prosecution under sections 609.342 to 609.3451, 609.3453; 609.365; or Minnesota Statutes 2004, section 609.109, 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.

*[For text of subd 4, see M.S.2006]*

Subd. 5. **Prohibiting instructing jury on certain points.** In a prosecution under sections 609.342 to 609.3451; 609.3453; or Minnesota Statutes 2004, section 609.109, 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. Psychotherapy evidence.** (a) In a prosecution under sections 609.342 to 609.3451; 609.3453; or Minnesota Statutes 2004, section 609.109, 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.

*[For text of subd 7, see M.S.2006]*

**History:** 2007 c 13 art 3 s 37

#### **609.348 MEDICAL PURPOSES; EXCLUSION.**

Sections 609.342 to 609.3451; 609.3453; and Minnesota Statutes 2004, section 609.109, do not apply to sexual penetration or sexual contact when done for a bona fide medical purpose.

**History:** 2007 c 13 art 3 s 37

#### **609.352 SOLICITATION OF CHILDREN TO ENGAGE IN SEXUAL CONDUCT; COMMUNICATION OF SEXUALLY EXPLICIT MATERIALS TO CHILDREN.**

**Subdivision 1. Definitions.** As used in this section:

(a) "child" means a person 15 years of age or younger;

(b) "sexual conduct" means sexual contact of the individual's primary genital area, sexual penetration as defined in section 609.341, or sexual performance as defined in section 617.246; and

(c) "solicit" means commanding, entreating, or attempting to persuade a specific person in person, by telephone, by letter, or by computerized or other electronic means.

**Subd. 2. Prohibited act.** A person 18 years of age or older who solicits a child or someone the person reasonably believes is a child to engage in sexual conduct with intent to engage in sexual conduct is guilty of a felony and may be sentenced as provided in subdivision 4.

**Subd. 2a. Internet or computer solicitation of children.** A person 18 years of age or older who uses the Internet or a computer, computer program, computer network, or computer system to commit any of the following acts, with the intent to arouse the sexual desire of any person, is guilty of a felony and may be sentenced as provided in subdivision 4:

(1) soliciting a child or someone the person reasonably believes is a child to engage in sexual conduct;

(2) engaging in communication relating to or describing sexual conduct with a child or someone the person reasonably believes is a child; or

(3) distributing any material, language, or communication, including a photographic or video image, that relates to or describes sexual conduct to a child or someone the person reasonably believes is a child.

Subd. 2b. **Jurisdiction.** A person may be convicted of an offense under subdivision 2a if the transmission that constitutes the offense either originates within this state or is received within this state.

Subd. 3. **Defenses.** (a) Mistake as to age is not a defense to a prosecution under this section.

(b) The fact that an undercover operative or law enforcement officer was involved in the detection or investigation of an offense under this section does not constitute a defense to a prosecution under this section.

Subd. 4. **Penalty.** A person convicted under subdivision 2 or 2a 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:** 2007 c 54 art 2 s 7

## 609.52 THEFT.

*[For text of subs 1 and 2, see M.S.2006]*

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

(1) to imprisonment for not more than 20 years or to payment of a fine of not more than \$100,000, or both, if the property is a firearm, or the value of the property or services stolen is more than \$35,000 and the conviction is for a violation of subdivision 2, clause (3), (4), (15), or (16); or

(2) to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both, if the value of the property or services stolen exceeds \$5,000, or if the property stolen was an article representing a trade secret, an explosive or incendiary device, or a controlled substance listed in schedule I or II pursuant to section 152.02 with the exception of marijuana; or

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

(a) the value of the property or services stolen is more than \$1,000 but not more than \$5,000; or

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

(c) the value of the property or services stolen is more than \$500 but not more than \$1,000 and the person has been convicted within the preceding five years for an offense under this section, section 256.98; 268.182; 609.24; 609.245; 609.53; 609.582, subdivision 1, 2, or 3; 609.625; 609.63; 609.631; or 609.821, or a statute from another state, the United States, or a foreign jurisdiction, in conformity with any of those sections, and the person received a felony or gross misdemeanor sentence for the offense, or a sentence that was stayed under section 609.135 if the offense to which a plea was entered would allow imposition of a felony or gross misdemeanor sentence; or

(d) the value of the property or services stolen is not more than \$1,000, and any of the following circumstances exist:

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

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

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

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

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

(4) to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both, if the value of the property or services stolen is more than \$500 but not more than \$1,000; or

(5) in all other cases where the value of the property or services stolen is \$500 or less, to imprisonment for not more than 90 days or to payment of a fine of not more than \$1,000, or both, provided, however, in any prosecution under subdivision 2, clauses (1), (2), (3), (4), and (13), the value of the money or property or services received by the defendant in violation of any one or more of the above provisions within any six-month period may be aggregated and the defendant charged accordingly in applying the provisions of this subdivision; provided that when two or more offenses are committed by the same person in two or more counties, the accused may be prosecuted in any county in which one of the offenses was committed for all of the offenses aggregated under this paragraph.

**Subd. 3a. Enhanced penalty.** If a violation of this section creates a reasonably foreseeable risk of bodily harm to another, the penalties described in subdivision 3 are enhanced as follows:

(1) if the penalty is a misdemeanor or 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 \$5,000, or both; and

(2) if the penalty is a felony, the statutory maximum sentence for the offense is 50 percent longer than for the underlying crime.

*[For text of subd 4, see M.S.2006]*

**History:** 2007 c 54 art 2 s 8,9

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

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

(1) "precious metal dealer" has the meaning given in section 325F.731, subdivision 2; and

(2) "scrap metal dealer" has the meaning given in section 325E.21, subdivision 1.

**Subd. 2. Crime described.** Any precious metal dealer or scrap metal dealer or any person employed by a dealer, who receives, possesses, transfers, buys, or conceals any stolen property or property obtained by robbery, knowing or having reason to know the property was stolen or obtained by robbery, may be sentenced as follows:

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

(2) if the value of the property received, bought, or concealed is less than \$1,000 but more than \$500, to imprisonment for not more than three years or to payment of a fine of not more than \$25,000, or both;

(3) if the value of the property received, bought, or concealed is \$500 or less, to imprisonment for not more than 90 days or to payment of a fine of not more than \$1,000, or both.

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

**History:** 2007 c 54 art 2 s 10

## **609.581 DEFINITIONS.**

*[For text of subs 1 to 4, see M.S.2006]*

Subd. 5. **Government building.** "Government building" means a building that is owned, leased, controlled, or operated by a governmental entity for a governmental purpose.

Subd. 6. **Religious establishment.** "Religious establishment" means a building used for worship services by a religious organization and clearly identified as such by a posted sign or other means.

Subd. 7. **School building.** "School building" means a public or private preschool, elementary school, middle school, secondary school, or postsecondary school building.

Subd. 8. **Historic property.** "Historic property" means any property identified as a historic site or historic place by sections 138.661 to 138.664 and clearly identified as such by a posted sign or other means.

**History:** 2007 c 54 art 2 s 11-14

## 609.582 BURGLARY.

*[For text of subs 1 and 1a, see M.S.2006]*

Subd. 2. **Burglary in the second degree.** (a) Whoever enters a building without consent and with intent to commit a crime, or enters a building without consent and commits a crime while in the building, either directly or as an accomplice, commits burglary in the second degree and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both, if:

(1) the building is a dwelling;

(2) the portion of the building entered contains a banking business or other business of receiving securities or other valuable papers for deposit or safekeeping and the entry is with force or threat of force;

(3) the portion of the building entered contains a pharmacy or other lawful business or practice in which controlled substances are routinely held or stored, and the entry is forcible; or

(4) when entering or while in the building, the burglar possesses a tool to gain access to money or property.

(b) Whoever enters a government building, religious establishment, historic property, or school building without consent and with intent to commit a crime under section 609.52 or 609.595, or enters a government building, religious establishment, historic property, or school building without consent and commits a crime under section 609.52 or 609.595 while in the building, either directly or as an accomplice, commits burglary in the second degree and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both.

*[For text of subs 3 and 4, see M.S.2006]*

**History:** 2007 c 54 art 2 s 15

## 609.593 DAMAGE OR THEFT TO ENERGY TRANSMISSION OR TELECOMMUNICATIONS EQUIPMENT.

Subdivision 1. **Crime.** Whoever intentionally and without consent from one authorized to give consent causes any damage or takes, removes, severs, or breaks:

(1) any line erected or maintained for the purpose of transmitting electricity for light, heat, or power, or any insulator or cross-arm, appurtenance or apparatus connected to the line, or any wire, cable, or current of the line;

(2) any pipe or main or hazardous liquid pipeline erected, operated, or maintained for the purpose of transporting, conveying, or distributing gas or other hazardous liquids for light, heat, power, or any other purpose, or any part of the pipe, main, or pipeline, or any valve, meter, holder, compressor, machinery, appurtenance, equipment, or apparatus connected with any main or pipeline; or

(3) any machinery, equipment, or fixtures used in receiving, initiating, amplifying, processing, transmitting, retransmitting, recording, switching, or monitoring telecommunications services, such as computers, transformers, amplifiers, routers, repeaters, multiplexers, and other items performing comparable functions; and machinery, equipment, and fixtures used in the transportation of telecommunications services, radio transmitters and receivers, satellite equipment, microwave equipment, and other transporting media including wire, cable, fiber, poles, and conduit;

is guilty of a crime and may be sentenced as provided in subdivision 2.

Subd. 2. **Penalty.** Whoever violates subdivision 1 is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

**History:** 2007 c 54 art 2 s 16

### 609.595 DAMAGE TO PROPERTY.

Subdivision 1. **Criminal damage to property in the first degree.** Whoever intentionally causes damage to physical property of another without the latter's consent may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if:

- (1) the damage to the property caused a reasonably foreseeable risk of bodily harm; or
- (2) the property damaged belongs to a common carrier and the damage impairs the service to the public rendered by the carrier; or
- (3) the damage reduces the value of the property by more than \$1,000 measured by the cost of repair and replacement; or
- (4) the damage reduces the value of the property by more than \$500 measured by the cost of repair and replacement and the defendant has been convicted within the preceding three years of an offense under this subdivision or subdivision 2.

In any prosecution under clause (3), the value of any property damaged by the defendant in violation of that clause within any six-month period may be aggregated and the defendant charged accordingly in applying the provisions of this section; provided that when two or more offenses are committed by the same person in two or more counties, the accused may be prosecuted in any county in which one of the offenses was committed for all of the offenses aggregated under this paragraph.

*[For text of subd 1a, see M.S.2006]*

Subd. 2. **Criminal damage to property in the third degree.** (a) Except as otherwise provided in subdivision 1a, whoever intentionally causes damage to another person's physical property without the other person's consent may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both, if the damage reduces the value of the property by more than \$500 but not more than \$1,000 as measured by the cost of repair and replacement.

(b) Whoever intentionally causes damage to another person's physical property without the other person's consent because of the property owner's or another's actual or perceived race, color, religion, sex, sexual orientation, disability as defined in section 363A.03, age, or national origin may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both, if the damage reduces the value of the property by not more than \$500.

(c) In any prosecution under paragraph (a), the value of property damaged by the defendant in violation of that paragraph within any six-month period may be aggregated and the defendant charged accordingly in applying this section. When two or more offenses are committed by the same person in two or more counties, the accused may be prosecuted in any county in which one of the offenses was committed for all of the offenses aggregated under this paragraph.



*[For text of subd 3, see M.S.2006]*

**History:** 2007 c 54 art 2 s 17,18

**609.749 HARASSMENT; STALKING; PENALTIES.**

*[For text of subs 1 to 5, see M.S.2006]*

Subd. 6. **Mental health assessment and treatment.** (a) When a person is convicted of a felony offense under this section, or another felony offense arising out of a charge based on this section, the court shall order an independent professional mental health assessment of the offender's need for mental health treatment. The court may waive the assessment if an adequate assessment was conducted prior to the conviction.

(b) Notwithstanding sections 13.384, 13.85, 144.291 to 144.298, 260B.171, or 260C.171, 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) welfare data under section 13.46;
- (3) corrections and detention data under section 13.85;
- (4) health records under sections 144.291 to 144.298; and
- (5) juvenile court records under sections 260B.171 and 260C.171.

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.

(c) If the assessment indicates that the offender is in need of and amenable to mental health treatment, the court shall include in the sentence a requirement that the offender undergo treatment.

(d) The court shall order the offender to pay the costs of assessment under this subdivision unless the offender is indigent under section 563.01.

*[For text of subs 7 and 8, see M.S.2006]*

**History:** 2007 c 147 art 10 s 15

**609.805** [Repealed, 2007 c 47 s 1; 2007 c 54 art 2 s 19]

**609.822 RESIDENTIAL MORTGAGE FRAUD.**

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

(b) "Mortgage lending process" means the process through which a person seeks or obtains a residential mortgage loan including, but not limited to, solicitation, application, or origination, negotiation of terms, third-party provider services, underwriting, signing and closing, and funding of the loan. Documents involved in the mortgage lending process include, but are not limited to, uniform residential loan applications or other loan applications; appraisal reports; HUD-1 settlement statements; supporting personal documentation for loan applications such as W-2 forms, verifications of income and employment, bank statements, tax returns, and payroll stubs; and any required disclosures.

(c) "Residential mortgage loan" has the meaning given in section 58.02, subdivision 18.

Subd. 2. **Residential mortgage fraud prohibited.** Whoever does any of the following commits residential mortgage fraud and may be sentenced as provided in subdivision 3:

(1) knowingly makes or causes to be made any deliberate and material misstatement, misrepresentation, or omission during the mortgage lending process with the intention that it be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process;

(2) knowingly uses or facilitates the use of any deliberate and material misstatement, misrepresentation, or omission, knowing the same to contain a material misstatement, mis-

representation, or omission, during the mortgage lending process with the intention that it be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process; or

(3) conspires to violate clause (1) or (2).

An offense of residential mortgage fraud must not be predicated solely upon information lawfully disclosed under federal disclosure laws, regulations, and interpretations related to the mortgage lending process.

**Subd. 3. Sentence.** Whoever violates this section shall be sentenced as provided in section 609.52, subdivision 3, based on the aggregate economic loss suffered by any person as a result of the violation. However, the maximum sentence of imprisonment for the offense may not exceed two years. A person convicted of a violation of this section shall be ordered to pay restitution to persons aggrieved by the violation. Restitution shall be ordered in addition to a fine or imprisonment but not in lieu of a fine or imprisonment.

**Subd. 4. Vulnerable victim.** If the person who violates subdivision 2 knew or had reason to know that the victim was vulnerable due to age, infirmity, or reduced physical or mental capacity, the court may order an aggravated departure under the sentencing guidelines.

**History:** 2007 c 74 s 7