

## CHAPTER 617

### ABORTION; OBSCENITY; NUISANCE

	<b>ABORTION; CONCEALING BIRTH</b>		
617.20	DRUGS TO PRODUCE MISCARRIAGE.	617.294	EXHIBITION PROHIBITED.
617.201	INDECENT ARTICLES AND INFORMATION.	617.295	EXEMPTIONS.
617.202	SALE OF ARTICLES RELATING TO PREVENTION OF CONCEPTION OR DISEASE.	617.296	PENALTIES; INJUNCTIVE REMEDIES.
617.21	EVIDENCE.	617.297	EVIDENCE OF ADHERENCE TO MOTION PICTURE RATING SYSTEM.
617.22	CONCEALING BIRTH.	617.298	OBSCENE MOTION PICTURES AT DRIVE-IN THEATERS; DEFINITIONS.
	<b>OBSCENITY</b>	617.299	OBSCENE MOTION PICTURES; PROHIBITING EXHIBITION AT DRIVE-IN THEATERS.
617.23	INDECENT EXPOSURE; PENALTIES.		<b>NUISANCE</b>
617.241	OBSCENE MATERIALS AND PERFORMANCES; DISTRIBUTION AND EXHIBITION PROHIBITED; PENALTY.	617.80	DEFINITIONS.
617.242	ADULT ENTERTAINMENT ESTABLISHMENTS.	617.81	NUISANCE; ACTS CONSTITUTING; INJUNCTION; NOTICE.
617.243	INDECENT LITERATURE, DISTRIBUTION.	617.82	AGREED ABATEMENT PLANS; TEMPORARY ORDER.
617.245	CIVIL ACTION; USE OF MINOR IN SEXUAL PERFORMANCE.	617.83	INJUNCTION; ORDER OF ABATEMENT.
617.246	USE OF MINORS IN SEXUAL PERFORMANCE PROHIBITED.	617.84	MOVABLE PROPERTY.
617.247	POSSESSION OF PORNOGRAPHIC WORK INVOLVING MINORS.	617.85	NUISANCE; MOTION TO CANCEL LEASE.
617.26	MAILING AND CARRYING OBSCENE MATTER.	617.86	CONTEMPT.
617.27	SEARCH WARRANT; DESTRUCTION OF PROPERTY.	617.87	RELEASE OF PROPERTY.
617.28	CERTAIN MEDICAL ADVERTISEMENTS.	617.90	GRAFFITI DAMAGE ACTION.
617.29	EVIDENCE.	617.91	DEFINITIONS.
617.291	SEXUALLY EXPLICIT MATERIAL AND EXHIBITIONS; PURPOSE AND POLICY.	617.92	PUBLIC NUISANCE.
617.292	DEFINITIONS.	617.93	SUIT TO ABATE NUISANCE.
617.293	HARMFUL MATERIALS; DISSEMINATION AND DISPLAY TO MINORS PROHIBITED.	617.94	COURT ORDER.
		617.95	VIOLATION OF COURT ORDER; FINE AND CRIMINAL PENALTY.
		617.96	ATTORNEY FEES.
		617.97	USE OF PLACE; EVIDENCE.

**617.01** [Repealed, 1967 c 507 s 12]

**617.02** [Repealed, 1967 c 507 s 12]

**617.03** [Repealed, 1967 c 507 s 12]

**617.04** [Repealed, 1963 c 753 art 2 s 17]

**617.05** MS 1961 [Repealed, 1965 c 53 s 2]

**617.05** MS 1965 [Repealed, 1967 c 507 s 12]

**617.06** [Repealed, 1967 c 507 s 12]

**617.07** [Repealed, 1967 c 507 s 12]

**617.08** [Repealed, 1967 c 507 s 12]

**617.09** [Repealed, 1967 c 507 s 12]

**617.10** [Repealed, 1967 c 507 s 12]

**617.11** [Repealed, 1963 c 753 art 2 s 17]

**617.12** [Repealed, 1963 c 753 art 2 s 17]

**617.13** [Repealed, 1963 c 753 art 2 s 17]

**617.14** [Repealed, 1967 c 507 s 12]

**617.15** [Repealed, 1963 c 753 art 2 s 17]

**617.16** [Repealed, 1967 c 507 s 12]

**617.17** [Repealed, 1967 c 507 s 12]

#### **ABORTION; CONCEALING BIRTH**

**617.18** [Repealed, 1974 c 177 s 7]

**617.19** [Repealed, 1974 c 177 s 7]

#### **617.20 DRUGS TO PRODUCE MISCARRIAGE.**

Whoever shall manufacture, give, or sell an instrument, drug, or medicine, or any other substance, with intent that the same may be unlawfully used in producing the miscarriage of a woman, shall be guilty of a felony.

**History:** (10177) *RL s 4944*

#### **617.201 INDECENT ARTICLES AND INFORMATION.**

Every person who shall sell, lend, or give away, or in any manner exhibit, or offer to sell, lend, or give away, or have in possession with intent to sell, lend, give away, or advertise or offer for sale, loan, or distribution, any instrument or article, or any drug or medicine for causing unlawful abortion; or shall write or print, or cause to be written or printed, a card, circular, pamphlet, advertisement, or notice of any kind, or shall give oral information, stating when, where, how, or whom, or by what means such article or medicine can be obtained or who manufactures it, shall be guilty of a gross misdemeanor and punished by imprisonment in the county jail for not more than one year or by a fine of not more than \$3,000, or by both.

**History:** (10188) *RL s 4955; 1965 c 395 s 1; 1984 c 628 art 3 s 11; 1986 c 444*

#### **617.202 SALE OF ARTICLES RELATING TO PREVENTION OF CONCEPTION OR DISEASE.**

Instruments, articles, drugs or medicines for the prevention of conception or disease may be sold, offered for sale, distributed or dispensed only by persons or organizations recognized as dealing primarily with

health or welfare. Anyone convicted of violation of this section shall be guilty of a gross misdemeanor and punished by imprisonment not to exceed one year or by a fine of not more than \$3,000 or both.

**History:** *1965 c 395 s 2; 1984 c 628 art 3 s 11; 1965 c 395 s 2; 1984 c 628 art 3 s 11*

#### **617.21 EVIDENCE.**

In any prosecution for abortion or attempting abortion, no person shall be excused from testifying as a witness on the ground that the person's testimony would tend to criminate the person.

**History:** *(10178) RL s 4945; 1986 c 444*

#### **617.22 CONCEALING BIRTH.**

Every person who shall endeavor to conceal the birth of a child by any disposition of its dead body, whether the child died before or after its birth, shall be guilty of a misdemeanor. Every person who, having been convicted of endeavoring to conceal the stillbirth of any issue, or the death of any issue under the age of two years, shall, subsequent to that conviction, endeavor to conceal any subsequent birth or death, shall be punished by imprisonment for not more than five years.

**History:** *(10179) RL s 4946; 1917 c 231 s 1; 1979 c 102 s 13; 1983 c 7 s 16*

### **OBSCENITY**

#### **617.23 INDECENT EXPOSURE; PENALTIES.**

Subdivision 1. **Misdemeanor.** A person who commits any of the following acts in any public place, or in any place where others are present, is guilty of a misdemeanor:

- (1) willfully and lewdly exposes the person's body, or the private parts thereof;
- (2) procures another to expose private parts; or

(3) engages in any open or gross lewdness or lascivious behavior, or any public indecency other than behavior specified in this subdivision.

Subd. 2. **Gross misdemeanor.** A person who commits any of the following acts is guilty of a gross misdemeanor:

- (1) the person violates subdivision 1 in the presence of a minor under the age of 16; or

(2) the person violates subdivision 1 after having been previously convicted of violating subdivision 1, sections 609.342 to 609.3451, or a statute from another state in conformity with any of those sections.

Subd. 3. **Felony.** A person is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if:

(1) the person violates subdivision 2, clause (1), after having been previously convicted of or adjudicated delinquent for violating subdivision 2, clause (1); section 609.3451, subdivision 1, clause (2); or a statute

from another state in conformity with subdivision 2, clause (1), or section 609.3451, subdivision 1, clause (2); or

(2) the person commits a violation of subdivision 1, clause (1), in the presence of another person while intentionally confining that person or otherwise intentionally restricting that person's freedom to move.

Subd. 4. **Breast-feeding.** It is not a violation of this section for a woman to breast-feed.

**History:** (10186) RL s 4953; 1931 c 321; 1986 c 444; 1994 c 636 art 2 s 54; 1995 c 226 art 2 s 31; 1996 c 408 art 3 s 37; 1998 c 367 art 3 s 14; 1998 c 369 s 2

**617.24** [Repealed, 1961 c 664 s 2]

**617.241 OBSCENE MATERIALS AND PERFORMANCES; DISTRIBUTION AND EXHIBITION PROHIBITED; PENALTY.**

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

(a) "Obscene" means that the work, taken as a whole, appeals to the prurient interest in sex and depicts or describes in a patently offensive manner sexual conduct and which, taken as a whole, does not have serious literary, artistic, political, or scientific value. In order to determine that a work is obscene, the trier of fact must find:

(1) that the average person, applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest in sex;

(2) that the work depicts sexual conduct specifically defined by paragraph (b) in a patently offensive manner; and

(3) that the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(b) "Sexual conduct" means any of the following:

(1) An act of sexual intercourse, normal or perverted, actual or simulated, including genital-genital, anal-genital, or oral-genital intercourse, whether between human beings or between a human being and an animal.

(2) Sadomasochistic abuse, meaning flagellation or torture by or upon a person who is nude or clad in undergarments or in a sexually revealing costume or the condition of being fettered, bound, or otherwise physically restricted on the part of one so clothed or who is nude.

(3) Masturbation, excretory functions, or lewd exhibitions of the genitals including any explicit, close-up representation of a human genital organ.

(4) Physical contact or simulated physical contact with the clothed or unclothed pubic areas or buttocks of a human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

(c) "Community" means the political subdivision from which persons properly qualified to serve as jurors in a criminal proceeding are chosen.

(d) "Work" means "material" or "performance."

(e) "Material" means a book, magazine, pamphlet, paper, writing, card, advertisement, circular, print, picture, photograph, motion picture film, videotape, script, image, instrument, statue, drawing, or other article.

(f) "Performance" means a play, motion picture, dance, or other exhibition performed before an audience.

Subd. 2. **Crime.** It is unlawful for a person, knowing or with reason to know its content and character, to:

(a) exhibit, sell, print, offer to sell, give away, circulate, publish, distribute or attempt to distribute any obscene material; or

(b) produce, present, participate in, or direct an obscene performance.

Subd. 3. **Penalty.** A person violating subdivision 2 is guilty of a gross misdemeanor and may be sentenced to imprisonment for not more than one year, or to payment of a fine of not more than \$3,000, or both.

Subd. 4. **Second or subsequent violations.** Whoever violates the provisions of subdivision 2 within five years of a previous conviction under that subdivision 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 \$10,000, or both.

**History:** 1961 c 664 s 1; 1982 c 604 s 1; 1983 c 204 s 9; 1984 c 628 art 3 s 11; 1988 c 406 s 1

#### **617.242 ADULT ENTERTAINMENT ESTABLISHMENTS.**

Subdivision 1. **Definitions.** For purposes of this section:

(1) "adult entertainment establishment" means a business that is open only to adults and that presents live performances that are distinguished or characterized by an emphasis on the depiction of sexual conduct or nudity;

(2) "sexual conduct" has the meaning given in section 617.241; and

(3) nudity has the meaning given in section 617.292, subdivision 3.

Subd. 2. **Notice to local government unit.** A person must not operate an adult entertainment establishment at a location where this type of establishment was not previously located unless, at least 60 days before submitting a permit application for operation of the establishment or, if a permit is not required, at least 60 days before beginning operation of the establishment, the person gives written notice by certified mail to the chief clerical officer of the statutory or home rule charter city in which it will be located of the date on which the person intends to begin operation of the establishment. If the adult entertainment establishment is proposed to be located outside the boundaries of a statutory or home rule charter city the notice must be given to the clerk of the town board and the county auditor of the county in which the establishment is proposed to be located. Upon receipt of the notice, the officer must acknowledge receipt of the notice by certified mail, return receipt requested, addressed to the person, and notify the governing body or town board of the receipt of the notice. The governing body or town board may conduct hearings on the proposed operation of the adult entertainment establishment and must give written notice by ordinary mail to the operator of the establishment of any hearings.

Subd. 3. **Zoning; adult entertainment establishments.** If an adult entertainment establishment is located within 50 miles of a statutory or home rule charter city or town, the governing body of the city or the town board is not required to provide by zoning or otherwise for a location within the city or town limits in which an adult entertainment establishment may be located. If an adult entertainment establishment is located within 50 miles of the boundaries of a county, the county board is not required to provide by zoning or otherwise for a location within the county limits in which an adult entertainment establishment may be located.

Subd. 4. **Proximity.** An adult entertainment establishment may not operate in the same building as, or within 1,500 feet from, another adult entertainment establishment; within 500 feet of residential property, regardless of how the property is zoned; or within 2,800 feet of a public or private elementary or secondary school or a church, synagogue, mosque, or other place of worship. Distances are measured between the closest property lines.

Subd. 5. **Hours and days of operation.** An adult entertainment establishment located in a statutory or home rule city, town, or county that does not regulate hours of operation may not be open for business before 10:00 a.m. or after 10:00 p.m. on Monday through Saturday and may not be open for business on a Sunday or legal holiday.

Subd. 6. **Restrictions on ownership or management by persons convicted of certain crimes.** A person who has been convicted of one of the following offenses may not operate or manage an adult business establishment for three years after discharge of the sentence for the offense, or a similar offense in another state or jurisdiction:

- (1) prostitution or sex trafficking under section 609.321; 609.322; 609.324; or 609.3242;
- (2) criminal sexual conduct under sections 609.342 to 609.3451;
- (3) solicitation of children under section 609.352;
- (4) indecent exposure under section 617.23;
- (5) distribution or exhibition of obscene materials and performances under section 617.241;
- (6) use of a minor in a sexual performance under section 617.246; or
- (7) possession of pornographic work involving minors under section 617.247.

Subd. 7. **Local regulation allowed.** If a county, town, or statutory or home rule charter city does not enact an ordinance or regulation governing adult entertainment establishments, this section applies in the county, town, or city. A county, town, or city may adopt an ordinance or regulation that is consistent with this section, that supersedes or is in whole or in part more restrictive than this section, or that provides that this section does not apply in the county, town, or city, and the county, town, or city ordinance applies. If a county, town, or city adopts an ordinance that only regulates a portion or facet of the operation of an adult entertainment establishment, this section applies to the remainder of the operation that is not regulated by the county, town, or city ordinance, unless the ordinance provides otherwise.

**History:** 2006 c 240 s 2; 2015 c 65 art 6 s 20

**NOTE:** The enforcement of this section by the city of Duluth was preliminarily enjoined in *Northshor Experience, Inc. v. City of Duluth*, 442 F.Supp.2d 713 (D.Minn. 2006).

**617.243 INDECENT LITERATURE, DISTRIBUTION.**

Subdivision 1. **Prohibited activity.** No person, copartnership or corporation shall, as a condition to a sale or delivery for resale of any paper, magazine, book, comic, periodical or publication, require that the purchaser or consignee receive for resale any other article, book, comic or other publication reasonably believed by the purchaser or consignee to be obscene as defined in section 617.241.

Subd. 2. **Penalty.** A violation of subdivision 1 is a gross misdemeanor.

**History:** 1957 c 323 s 1; 1983 c 204 s 10

**617.245 CIVIL ACTION; USE OF MINOR IN SEXUAL PERFORMANCE.**

Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section.

(b) "Minor" means any person who, at the time of use in a sexual performance, is under the age of 16.

(c) "Promote" means to produce, direct, publish, manufacture, issue, or advertise.

(d) "Sexual performance" means any play, dance, or other exhibition presented before an audience or for purposes of visual or mechanical reproduction which depicts sexual conduct as defined by paragraph (e).

(e) "Sexual conduct" means any of the following if the depiction involves a minor:

(1) an act of sexual intercourse, actual or simulated, including genital-genital, anal-genital, or oral-genital intercourse, whether between human beings or between a human being and an animal;

(2) sadomasochistic abuse, meaning flagellation, torture, or similar demeaning acts inflicted by or upon a minor who is nude, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so unclothed;

(3) masturbation or lewd exhibitions of the genitals; and

(4) physical contact or simulated physical contact with the unclothed pubic areas or buttocks of a human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

Subd. 2. **Cause of action.** A cause of action exists for injury caused by the use of a minor in a sexual performance. The cause of action exists against a person who promotes, employs, uses, or permits a minor to engage or assist others to engage in posing or modeling alone or with others in a sexual performance, if the person knows or has reason to know that the conduct intended is a sexual performance.

A person found liable for injuries under this section is liable to the minor for damages.

Neither consent to sexual performance by the minor or by the minor's parent, guardian, or custodian, or mistake as to the minor's age is a defense to the action.

Subd. 3. **Limitation period.** An action for damages under this section must be commenced within six years of the time the plaintiff knew or had reason to know injury was caused by plaintiff's use as a minor in a sexual performance. The knowledge of a parent, guardian, or custodian may not be imputed to the minor. This section does not affect the suspension of the statute of limitations during a period of disability under section 541.15.

**History:** 1992 c 571 art 12 s 1

**617.246 USE OF MINORS IN SEXUAL PERFORMANCE PROHIBITED.**

Subdivision 1. **Definitions.** (a) For the purpose of this section, the terms defined in this subdivision have the meanings given them.

(b) "Minor" means any person under the age of 18.

(c) "Promote" means to produce, direct, publish, manufacture, issue, or advertise.

(d) "Sexual performance" means any play, dance or other exhibition presented before an audience or for purposes of visual or mechanical reproduction that uses a minor to depict actual or simulated sexual conduct as defined by clause (e).

(e) "Sexual conduct" means any of the following:

(1) an act of sexual intercourse, normal or perverted, including genital-genital, anal-genital, or oral-genital intercourse, whether between human beings or between a human being and an animal;

(2) sadomasochistic abuse, meaning flagellation, torture, or similar demeaning acts inflicted by or upon a person who is nude or clad in undergarments or in a revealing costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed;

(3) masturbation;

(4) lewd exhibitions of the genitals; or

(5) physical contact with the clothed or unclothed pubic areas or buttocks of a human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

(f) "Pornographic work" means:

(1) an original or reproduction of a picture, film, photograph, negative, slide, videotape, videodisc, or drawing of a sexual performance involving a minor; or

(2) any visual depiction, including any photograph, film, video, picture, drawing, negative, slide, or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means that:

(i) uses a minor to depict actual or simulated sexual conduct;

(ii) has been created, adapted, or modified to appear that an identifiable minor is engaging in sexual conduct; or

(iii) is advertised, promoted, presented, described, or distributed in such a manner that conveys the impression that the material is or contains a visual depiction of a minor engaging in sexual conduct.

For the purposes of this paragraph, an identifiable minor is a person who was a minor at the time the depiction was created or altered, whose image is used to create the visual depiction.

Subd. 2. **Use of minor.** It is unlawful for a person to promote, employ, use or permit a minor to engage in or assist others to engage minors in posing or modeling alone or with others in any sexual performance



or pornographic work if the person knows or has reason to know that the conduct intended is a sexual performance or a pornographic work.

Any person who violates this subdivision is guilty of a felony and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000 for the first offense and \$40,000 for a second or subsequent offense, or both.

**Subd. 3. Operation or ownership of business.** A person who owns or operates a business in which a pornographic work, as defined in this section, is disseminated to an adult or a minor or is reproduced, and who knows the content and character of the pornographic work disseminated or reproduced, is guilty of a felony and may be sentenced to imprisonment for not more than ten years, or to payment of a fine of not more than \$20,000 for the first offense and \$40,000 for a second or subsequent offense, or both.

**Subd. 4. Dissemination.** A person who, knowing or with reason to know its content and character, disseminates for profit to an adult or a minor a pornographic work, as defined in this section, is guilty of a felony and may be sentenced to imprisonment for not more than ten years, or to payment of a fine of not more than \$20,000 for the first offense and \$40,000 for a second or subsequent offense, or both.

**Subd. 5. Consent; mistake.** Neither consent to sexual performance by a minor or the minor's parent, guardian, or custodian nor mistake as to the minor's age is a defense to a charge of violation of this section.

**Subd. 6. Affirmative defense.** It shall be an affirmative defense to a charge of violating this section that the sexual performance or pornographic work was produced using only persons who were 18 years or older.

**Subd. 7. Conditional release term.** Notwithstanding the statutory maximum sentence otherwise applicable to the offense or any provision of the sentencing guidelines, when a court commits a person to the custody of the commissioner of corrections for violating this section, the court shall provide that after the person has been released from prison, the commissioner shall place the person on conditional release for five years. If the person has previously been convicted of a violation of this section, section 609.342, 609.343, 609.344, 609.345, 609.3451, 609.3453, or 617.247, or any similar statute of the United States, this state, or any state, the commissioner shall place the person on conditional release for ten years. The terms of conditional release are governed by section 609.3455, subdivision 8.

**History:** 1977 c 371 s 1; 1982 c 604 s 2; 1983 c 204 s 11; 1984 c 628 art 3 s 7-9; 1986 c 444; 1999 c 217 s 1-5; 2006 c 260 art 1 s 38; 2013 c 96 s 6

## **617.247 POSSESSION OF PORNOGRAPHIC WORK INVOLVING MINORS.**

**Subdivision 1. Policy; purpose.** It is the policy of the legislature in enacting this section to protect minors from the physical and psychological damage caused by their being used in pornographic work depicting sexual conduct which involves minors. It is therefore the intent of the legislature to penalize possession of pornographic work depicting sexual conduct which involve minors or appears to involve minors in order to protect the identity of minors who are victimized by involvement in the pornographic work, and to protect minors from future involvement in pornographic work depicting sexual conduct.

**Subd. 2. Definitions.** For purposes of this section, the following terms have the meanings given them:

- (a) "Pornographic work" has the meaning given to it in section 617.246.
- (b) "Sexual conduct" has the meaning given to it in section 617.246.

Subd. 3. **Dissemination prohibited.** (a) A person who disseminates pornographic work to an adult or a minor, knowing or with reason to know its content and character, is guilty of a felony and may be sentenced to imprisonment for not more than seven years and a fine of not more than \$10,000 for a first offense and for not more than 15 years and a fine of not more than \$20,000 for a second or subsequent offense.

(b) A person who violates paragraph (a) is guilty of a felony and may be sentenced to imprisonment for not more than 15 years if the violation occurs when the person is a registered predatory offender under section 243.166.

Subd. 4. **Possession prohibited.** (a) A person who possesses a pornographic work or a computer disk or computer or other electronic, magnetic, or optical storage system or a storage system of any other type, containing a pornographic work, knowing or with reason to know its content and character, is guilty of a felony and may be sentenced to imprisonment for not more than five years and a fine of not more than \$5,000 for a first offense and for not more than ten years and a fine of not more than \$10,000 for a second or subsequent offense.

(b) A person who violates paragraph (a) is guilty of a felony and may be sentenced to imprisonment for not more than ten years if the violation occurs when the person is a registered predatory offender under section 243.166.

Subd. 5. **Exception.** This section does not apply to the performance of official duties by peace officers, court personnel, or attorneys, nor to licensed physicians, psychologists, or social workers or persons acting at the direction of a licensed physician, psychologist, or social worker in the course of a bona fide treatment or professional education program.

Subd. 6. **Consent.** Consent to sexual performance by a minor or the minor's parent, guardian, or custodian is not a defense to a charge of violation of this section.

Subd. 7. **Second offense.** If a person is convicted of a second or subsequent violation of this section within 15 years of the prior conviction, the court shall order a mental examination of the person. The examiner shall report to the court whether treatment of the person is necessary.

Subd. 8. **Affirmative defense.** It shall be an affirmative defense to a charge of violating this section that the pornographic work was produced using only persons who were 18 years or older.

*[See Note.]*

Subd. 9. **Conditional release term.** Notwithstanding the statutory maximum sentence otherwise applicable to the offense or any provision of the sentencing guidelines, when a court commits a person to the custody of the commissioner of corrections for violating this section, the court shall provide that after the person has been released from prison, the commissioner shall place the person on conditional release for five years. If the person has previously been convicted of a violation of this section, section 609.342, 609.343, 609.344, 609.345, 609.3451, 609.3453, or 617.246, or any similar statute of the United States, this state, or any state, the commissioner shall place the person on conditional release for ten years. The terms of conditional release are governed by section 609.3455, subdivision 8.

**History:** 1982 c 604 s 3; 1983 c 204 s 12; 1986 c 444; 1999 c 217 s 6-10; 2001 c 197 s 4,5; 1Sp2001 c 8 art 8 s 28; 2006 c 260 art 1 s 39; 2013 c 96 s 7

**NOTE:** Subdivision 8 was found unconstitutional in *State v. Cannady*, 727 N.W.2d 403 (Minn. 2007).

**617.25 MS 2006** [Renumbered 617.201]

**617.251** MS 2006 [Renumbered 617.202]

**617.26 MAILING AND CARRYING OBSCENE MATTER.**

Every person who shall deposit or cause to be deposited in any post office in the state, or place in charge of any express company or other common carrier or person for transportation, any of the articles or things specified in section 617.201 or 617.241, or any circular, book, pamphlet, advertisement or notice relating thereto, with the intent of having the same conveyed by mail, express, or in any other manner; or who shall knowingly or willfully receive the same with intent to carry or convey it, or shall knowingly carry or convey the same by express, or in any other manner except by United States mail, shall be guilty of a misdemeanor. The provisions of this section and section 617.201 shall not be construed to apply to an article or instrument used by physicians lawfully practicing, or by their direction or prescription, for the cure or prevention of disease.

**History:** (10189) *RL s 4956; 1965 c 51 s 85*

**617.27 SEARCH WARRANT; DESTRUCTION OF PROPERTY.**

A district court, upon complaint under oath that any person has in possession or under control any of the obscene books, papers, or other matter specified in sections 617.241 to 617.26, shall issue a warrant directed to the sheriff of the county, directing the sheriff to search for, seize, and take possession of the obscene matter. Upon conviction of the person in whose possession the obscene matter was found, the judge shall cause it to be destroyed, and the fact to be entered upon the records of the court.

**History:** (10190) *RL s 4957; 1965 c 51 s 86; 1983 c 359 s 92; 1986 c 444; 1998 c 254 art 2 s 66; 2005 c 10 art 2 s 4*

**617.28 CERTAIN MEDICAL ADVERTISEMENTS.**

Subdivision 1. **Placing advertisement; penalty.** Any person who shall advertise, in the person's own name or in the name of another person, firm or pretended firm, association, corporation or pretended corporation, in any newspaper, pamphlet, circular, or other written or printed paper, or the owner, publisher, or manager of any newspaper or periodical who shall permit to be inserted or published in any newspaper or periodical owned or controlled by the owner, publisher, or manager, the treatment or curing of venereal diseases, the restoration of "lost virility" or "lost vitality," or shall advertise in any manner that the person is a specialist in diseases of the sexual organs, or diseases caused by sexual weakness, self-abuse, or excessive sexual indulgence, or in any disease of like causes, or who shall advertise in any manner any medicine, drug compound, appliance or any means whatever whereby it is claimed that sexual diseases of men and women may be cured or relieved, or miscarriage or abortion produced, shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than \$50 nor more than \$3,000 or by imprisonment in the county jail for not more than six months.

Subd. 2. **Publication; penalty.** Any person publishing, distributing, or causing to be distributed or circulated, any of the advertising matter hereinabove prohibited, shall be guilty of a misdemeanor and punished as prescribed in subdivision 1.

**History:** (10191, 10192) *1909 c 162 s 1,2; 1984 c 628 art 3 s 11; 1986 c 444*

**NOTE:** This section as it applies to the advertisement and publication of information regarding the inducement of miscarriages or abortions was found unconstitutional in *Meadowbrook Women's Clinic, P.A. v. State of Minnesota*, 557 F.Supp. 1172 (D.Minn. 1983).

**617.29 EVIDENCE.**

The production of any advertisement or advertising matter published or distributed contrary to the provisions of this section and section 617.28 shall be of itself prima facie evidence of the guilt of the person advertising to cure any such disease hereinabove mentioned, or of the publishers who publish any matter such as is herein prohibited.

**History:** (10193) 1909 c 162 s 3

**617.291 SEXUALLY EXPLICIT MATERIAL AND EXHIBITIONS; PURPOSE AND POLICY.**

Subdivision 1. **Finding.** The legislature finds that sexually explicit materials and exhibitions presented before an audience are harmful to minors.

Subd. 2. **Best interest.** It is in the best interest of the health, welfare, and safety of the citizens of this state, and especially of minors within the state, that commercial dissemination, and dissemination without monetary consideration in a place of public accommodation, of sexually explicit written, photographic, printed, sound or published materials, and of plays, dances, or other exhibitions presented before an audience, that are deemed harmful to minors, be restricted to persons over the age of 17 years; or, if available to minors under the age of 18 years, that the availability of the materials be restricted to sources within established and recognized schools, churches, museums, medical clinics and physicians, hospitals, public libraries, or government sponsored organizations.

**History:** 1969 c 1071 s 1; 1987 c 215 s 1

**617.292 DEFINITIONS.**

Subdivision 1. **Scope.** As used in sections 617.291 to 617.297, the terms defined in this section have the meanings given them.

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

Subd. 3. **Nudity.** "Nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.

Subd. 4. **Sexual conduct.** "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person's unclothed genitals, pubic area, buttocks or, if such a person be a female, her breast.

Subd. 5. **Sexual excitement.** "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

Subd. 6. **Sadomasochistic abuse.** "Sadomasochistic abuse" means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

Subd. 7. **Harmful to minors.** "Harmful to minors" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it:

(1) predominantly appeals to the prurient, shameful or morbid interest of minors;

(2) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and

(3) is utterly without redeeming social importance for minors.

Subd. 8. **Knowingly.** "Knowingly" means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry or both:

(1) the character and content of any material which is reasonably susceptible of examination by the defendant; and

(2) the age of the minor, provided however that an honest mistake shall constitute an excuse from liability hereunder if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor.

**History:** 1969 c 1071 s 2

### **617.293 HARMFUL MATERIALS; DISSEMINATION AND DISPLAY TO MINORS PROHIBITED.**

Subdivision 1. **Dissemination.** It is unlawful for any person knowingly to sell or loan for monetary consideration to a minor:

(a) any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct, or sadomasochistic abuse and which is harmful to minors, or

(b) any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in clause (a), or which contains explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse which, taken as a whole, is harmful to minors.

Subd. 2. **Display.** (a) It is unlawful for any person commercially and knowingly to exhibit or display any material which is harmful to minors in its content in any place of public accommodation where minors are or may be present and where minors are able to view the material unless each item is kept in a sealed wrapper at all times.

(b) It is unlawful for any person commercially and knowingly to exhibit or display any material the cover or packaging of which, standing alone, is harmful to minors in any place of public accommodation where minors are or may be present or allowed to be present and where minors are able to view the material unless each item is blocked from view by an opaque cover. The opaque cover requirement is satisfied if those portions of the cover or packaging containing the material harmful to minors are blocked from view by an opaque cover.

(c) The provisions of this subdivision do not apply to the exhibition or display of materials harmful to minors under circumstances where minors are not present or are not able to view the material or the material's cover or packaging. A person may comply with the requirements of this paragraph by (1) physically segregating the material in a manner that physically prohibits access to and view of the material by minors, (2) prominently posting at the entrance to the restricted area: "Adults only--you must be 18 to enter," and (3) enforcing the restriction.

**History:** 1969 c 1071 s 3; 1971 c 25 s 95; 1988 c 452 s 1

**617.294 EXHIBITION PROHIBITED.**

It is unlawful for any person knowingly to exhibit for a monetary consideration to a minor or knowingly to sell to a minor an admission ticket or pass or knowingly to admit a minor, whether or not for a monetary consideration, to a place of public accommodation where there is exhibited a motion picture, show or other presentation or a play, dance, or other exhibition presented before an audience which, in whole or in part, depicts nudity, sexual conduct, or sadomasochistic abuse and which is harmful to minors.

**History:** 1969 c 1071 s 4; 1987 c 215 s 2

**617.295 EXEMPTIONS.**

The following are exempt from criminal or other action hereunder:

(1) recognized and established schools, churches, museums, medical clinics and physicians, hospitals, public libraries, governmental agencies or quasi governmental sponsored organizations, and persons acting in their capacity as employees or agents of such organization. For the purpose of this section "recognized and established" shall mean an organization or agency having a full time faculty and diversified curriculum in the case of a school; a church affiliated with a national or regional denomination; a licensed physician or psychiatrist or clinic of licensed physicians or psychiatrists; and in all other exempt organizations shall refer only to income tax exempted organizations which are supported in whole or in part by tax funds or which receive at least one-third of their support from publicly donated funds;

(2) individuals in a parental relationship with the minor; and

(3) motion picture machine operators, stagehands, or other theatre employees such as cashiers, doorkeepers, ushers, and concession employees, if such person or persons have no financial interest in the entertainment presented other than the salary or wage, or in any theatre or place where such employee has no financial interest when the employee's services are obtained solely for salary or wage; provided, that such employee is under the direct supervision of a theatre manager who is a resident of this state and who is not exempt from action under sections 617.291 to 617.297.

**History:** 1969 c 1071 s 5; 1986 c 444

**617.296 PENALTIES; INJUNCTIVE REMEDIES.**

Subdivision 1. **Gross misdemeanor.** Except as otherwise provided in subdivision 1a, a violation of any provision of sections 617.291 to 617.297 is a gross misdemeanor.

Subd. 1a. **Penalty for display of harmful materials.** A violation of section 617.293, subdivision 2, is a misdemeanor.

Subd. 2. **Temporary restraining order or temporary injunction.** Whenever any county attorney, or the attorney general of this state, has reasonable cause to believe that any person within this state is violating sections 617.291 to 617.297, the prosecuting attorney may by verified petition seek a temporary restraining order or temporary injunction in the district court in the county in which the alleged violation occurred. No temporary restraining order or preliminary injunction shall be issued without a prior show cause notice of hearing to the respondents named in the petition, and an opportunity for the respondents to be heard. Personal service of the show cause order and of the petition made as in civil actions on the named respondents, or upon any of their employees or agents found within the state, shall constitute sufficient notice. Such show

cause order for hearing may be returnable on the third day from the date of service as to a respondent who is present in this state, and on the fifth day as to a person not a resident or not found within this state.

**History:** 1969 c 1071 s 6; 1986 c 444; 1988 c 452 s 2,3

#### **617.297 EVIDENCE OF ADHERENCE TO MOTION PICTURE RATING SYSTEM.**

In any proceeding or prosecution involving the exhibitor or owner of any motion picture theatre, evidence of compliance or noncompliance with and adherence to a rating system recognized in the motion picture industry is admissible.

**History:** 1969 c 1071 s 7

#### **617.298 OBSCENE MOTION PICTURES AT DRIVE-IN THEATERS; DEFINITIONS.**

Subdivision 1. **Definitions.** For the purposes of this section and section 617.299, the terms defined in this section have the meanings given them.

Subd. 2. **Obscene.** "Obscene" has the meaning given to it in section 617.241.

Subd. 3. **Nudity.** "Nudity" means the showing of the human male or female genitals, pubic areas, or buttocks with less than a fully opaque covering, or the showing of an uncovered, or less than opaquely covered, female breast below a point immediately above the top of the nipple, or the breast with the nipple and immediately adjacent area only covered.

Subd. 4. [Repealed, 1983 c 204 s 14]

**History:** 1979 c 290 s 1; 1983 c 204 s 13

#### **617.299 OBSCENE MOTION PICTURES; PROHIBITING EXHIBITION AT DRIVE-IN THEATERS.**

Subdivision 1. **Misdemeanor.** Subject to the exemptions of section 617.295, a person who exhibits an obscene motion picture at a drive-in theatre is guilty of a misdemeanor.

Subd. 2. **Penalty enhancement.** Whoever violates the provisions of subdivision 1 within two years of a previous conviction shall be sentenced to imprisonment for not less than 20 days nor more than one year and to payment of a fine of not more than \$3,000.

**History:** 1979 c 290 s 2; 1984 c 628 art 3 s 11

**617.30** [Repealed, 1967 c 507 s 12]

**617.31** [Repealed, 1963 c 753 art 2 s 17]

**617.32** [Repealed, 1967 c 507 s 12]

**617.325** [Repealed, 1967 c 507 s 12]

**617.33** [Repealed, 1987 c 283 s 9]

**617.34** [Repealed, 1987 c 283 s 9]

**617.35** [Repealed, 1987 c 283 s 9]

**617.36** [Repealed, 1987 c 283 s 9]

**617.37** [Repealed, 1987 c 283 s 9]

**617.38** [Repealed, 1987 c 283 s 9]

**617.39** [Repealed, 1987 c 283 s 9]

**617.40** [Repealed, 1987 c 283 s 9]

**617.41** [Repealed, 1987 c 283 s 9]

**617.42** [Renumbered 624.42]

**617.43** [Renumbered 624.43]

**617.44** [Renumbered 624.44]

**617.45** [Renumbered 624.45]

**617.46** [Renumbered 624.46]

**617.47** [Renumbered 624.47]

**617.48** [Renumbered 624.48]

**617.49** [Renumbered 624.49]

**617.50** [Renumbered 624.50]

**617.51** [Renumbered 624.51]

**617.52** [Renumbered 624.52]

**617.53** [Renumbered 624.53]

**617.54** [Renumbered 624.54]

**617.55** [Repealed, 1963 c 753 art 2 s 17]

**617.56** [Repealed, 1963 c 753 art 2 s 17]

**617.57** [Repealed, 1963 c 753 art 2 s 17]

**617.58** [Repealed, 1963 c 753 art 2 s 17]

**617.59** [Repealed, 1963 c 753 art 2 s 17]

**617.60** [Repealed, 1963 c 753 art 2 s 17]

**617.61** [Repealed, 1963 c 753 art 2 s 17]



**617.62** [Repealed, 1963 c 753 art 2 s 17]

**617.63** [Repealed, 1963 c 753 art 2 s 17]

**617.64** [Repealed, 1963 c 753 art 2 s 17]

**617.65** [Repealed, 1963 c 753 art 2 s 17]

**617.66** [Repealed, 1963 c 753 art 2 s 17]

**617.67** [Repealed, 1963 c 753 art 2 s 17]

**617.68** [Repealed, 1963 c 753 art 2 s 17]

**617.69** [Renumbered 624.701]

**617.70** [Renumbered 624.702]

**617.71** [Renumbered 624.703]

**617.715** [Renumbered 126.19]

**617.72** [Repealed, 1963 c 753 art 2 s 17]

**617.73** [Repealed, 1963 c 753 art 2 s 17]

**617.74** [Repealed, 1963 c 753 art 2 s 17]

**617.75** [Repealed, 1963 c 753 art 2 s 17]

## NUISANCE

### **617.80 DEFINITIONS.**

Subdivision 1. **Generally.** The definitions in this section apply to sections 617.80 to 617.87.

Subd. 2. **Building.** "Building" means a structure suitable for human shelter, a commercial structure that is maintained for business activities that involve human occupation, any portion of the structure, or the land surrounding the structure. If the building is a multiunit dwelling, a hotel or motel, or a commercial or office building, the term "building," for purposes of sections 617.80 to 617.87, means only the portion of the building within or outside the structure in which a nuisance is maintained or permitted, such as a dwelling unit, room, suite of rooms, office, common area, storage area, garage, or parking area.

Subd. 3. **Movable property.** "Movable property" means furniture and fixtures.

Subd. 4. **Prostitution; prostitution-related activity.** "Prostitution" or "prostitution-related activity" means conduct that would violate sections 609.321 to 609.324.

Subd. 5. **Gambling; gambling-related activity.** "Gambling" or "gambling-related activity" means conduct that would violate sections 609.75 to 609.762.

Subd. 6. [Repealed, 1997 c 100 s 5]

Subd. 7. **Owner.** "Owner," for purposes of sections 617.80 to 617.87, means a person having legal title to the premises, a mortgagee or vendee in possession, a trustee in bankruptcy, a receiver, or any other person having legal ownership or control of the premises.

Subd. 7a. **Occupant.** "Occupant" means a person who occupies or resides in a building or rental unit with the permission of the owner or a tenant or lessee.

Subd. 8. **Interested party.** "Interested party," for purposes of sections 617.80 to 617.87, means any known lessee or tenant of a building or affected portion of a building; any known agent of an owner, lessee, or tenant; or any other person who maintains or permits a nuisance and is known to the city attorney, county attorney, or attorney general.

Subd. 9. **Prosecuting attorney.** "Prosecuting attorney" means the attorney general, county attorney, city attorney, or attorney serving the jurisdiction where the nuisance is located.

**History:** 1987 c 283 s 1; 1991 c 193 s 5; 1995 c 244 s 26-30; 2009 c 123 s 15,16

#### **617.81 NUISANCE; ACTS CONSTITUTING; INJUNCTION; NOTICE.**

Subdivision 1. **Injunction.** In order to obtain a temporary injunction under section 617.82 or a permanent injunction or order of abatement under section 617.83, the provisions of sections 617.80 to 617.87 must be followed.

Subd. 2. **Acts constituting a nuisance.** (a) For purposes of sections 617.80 to 617.87, a public nuisance exists (1) upon proof of one or more separate behavioral incidents described in item (i), (v), (viii), or (ix), or (2) upon proof of two or more separate behavioral incidents described in item (ii), (iii), (iv), (vi), (vii), or (x), committed within the previous 12 months within the building:

(i) prostitution or prostitution-related activity committed within the building;

(ii) gambling or gambling-related activity committed within the building;

(iii) maintaining a public nuisance in violation of section 609.74, clause (1) or (3);

(iv) permitting a public nuisance in violation of section 609.745;

(v) unlawful sale, possession, storage, delivery, giving, manufacture, cultivation, or use of controlled substances committed within the building;

(vi) unlicensed sales of alcoholic beverages committed within the building in violation of section 340A.401;

(vii) unlawful sales or gifts of alcoholic beverages by an unlicensed person committed within the building in violation of section 340A.503, subdivision 2, clause (1);

(viii) unlawful sales or gifts of alcoholic beverages committed within the building in violation of section 340A.401 or 340A.503, subdivision 2, clause (1), if multiple violations occur during the same behavioral incident when the building is not occupied by the owner or a tenant, lessee, or occupant;

(ix) unlawful use or possession of a dangerous weapon as defined in section 609.02, subdivision 6, committed within the building; or

(x) violation by a commercial enterprise of local or state business licensing regulations, ordinances, or statutes prohibiting the maintenance of a public nuisance as defined in section 609.74 or the control of a public nuisance as defined in section 609.745.

(b) If the building contains more than one rental unit, two or more behavioral incidents must consist of conduct:

(1) anywhere in the building by the same tenant, lessee, occupant, or persons acting in conjunction with or under the control of the same tenant, lessee, or occupant;

(2) by any persons within the same rental unit while occupied by the same tenant, lessee, or occupant, or within two or more rental units while occupied by the same tenant, lessee, or occupant; or

(3) by the owner of the building or persons acting in conjunction with or under the control of the owner.

(c) Proof of a nuisance exists if each of the elements of the conduct constituting the nuisance is established by clear and convincing evidence.

Subd. 2a. [Repealed, 1995 c 244 s 42]

Subd. 3. [Repealed, 1995 c 244 s 42]

Subd. 4. **Notice.** (a) If a prosecuting attorney has reason to believe that a nuisance is maintained or permitted in the jurisdiction the prosecuting attorney serves, and intends to seek abatement of the nuisance, the prosecuting attorney shall provide the written notice described in paragraph (b), by personal service or certified mail, return receipt requested, to all owners and interested parties known to the prosecuting attorney.

(b) The written notice must:

(1) state that a nuisance as defined in subdivision 2 is maintained or permitted in the building and must specify the kind or kinds of nuisance being maintained or permitted;

(2) summarize the evidence that a nuisance is maintained or permitted in the building, including the date or dates on which nuisance-related activity or activities are alleged to have occurred;

(3) inform the recipient that failure to abate the conduct constituting the nuisance or to otherwise resolve the matter with the prosecuting attorney within 30 days of service of the notice may result in the filing of a complaint for relief in district court that could, among other remedies, result in enjoining the use of the building for any purpose for one year or, in the case of a tenant, lessee, or occupant, could result in cancellation of the lease; and

(4) inform the owner of the options available under section 617.85.

**History:** 1987 c 283 s 2; 1989 c 112 s 1; 1991 c 193 s 6-8; 1995 c 244 s 31,32; 1996 c 322 s 1; 1997 c 100 s 1; 1997 c 122 s 1; 2005 c 136 art 7 s 17; 2008 c 218 s 1; 2009 c 123 s 17,18

#### **617.82 AGREED ABATEMENT PLANS; TEMPORARY ORDER.**

(a) If the recipient of a notice under section 617.81, subdivision 4, either abates the conduct constituting the nuisance or enters into an agreed abatement plan within 30 days of service of the notice and complies

with the agreement within the stipulated time period, the prosecuting attorney may not file a nuisance action on the specified property regarding the nuisance activity described in the notice.

(b) If the recipient fails to comply with the agreed abatement plan, the prosecuting attorney may initiate a complaint for relief in the district court consistent with paragraph (c).

(c) Whenever a prosecuting attorney has cause to believe that a nuisance described in section 617.81, subdivision 2, exists within the jurisdiction the attorney serves, the prosecuting attorney may by verified petition seek a temporary injunction in district court in the county in which the alleged public nuisance exists, provided that at least 30 days have expired since service of the notice required under section 617.81, subdivision 4. No temporary injunction may be issued without a prior show cause notice of hearing to the respondents named in the petition and an opportunity for the respondents to be heard. Upon proof of a nuisance described in section 617.81, subdivision 2, the court shall issue a temporary injunction. Any temporary injunction issued must describe the conduct to be enjoined.

**History:** 1987 c 283 s 3; 1995 c 244 s 33; 1997 c 100 s 2; 1997 c 239 art 12 s 9

### **617.83 INJUNCTION; ORDER OF ABATEMENT.**

Upon proof of a nuisance described in section 617.81, subdivision 2, the court shall issue a permanent injunction and enter an order of abatement, except as otherwise provided by section 617.85. The permanent injunction must describe the conduct permanently enjoined. The order of abatement must direct the closing of the building or a portion of it for one year, except as otherwise provided in section 617.84 or 617.85, unless sooner released pursuant to section 617.87. Before an abatement order is enforced against a building or portion of it, the owner must be served with the abatement order and a notice of the right to file a motion under section 617.85 in the same manner that a summons is served under the Rules of Civil Procedure. A copy of the abatement order shall also be posted in a conspicuous place on the building or affected portion.

**History:** 1987 c 283 s 4; 1997 c 100 s 3

### **617.84 MOVABLE PROPERTY.**

The order of abatement may direct the removal of movable property used in conducting or maintaining the nuisance and direct the sale of property belonging to a respondent who was notified or appeared. The sale shall be conducted pursuant to the provisions of chapter 550 on the sale of property on execution. A person appointed by the court as receiver of the building may use a building or portion of it which is the subject of an abatement order in a manner approved by the court. Costs of the sale on execution, moving and storage fees, and any receivership must be paid out of the receipts from the sale of the movable property or any rents collected during the receivership. The balance from the sale of movable property must be paid to the owner of the property. The balance from any rents collected during any receivership shall be paid to the treasury of the unit of government which brought the abatement action.

**History:** 1987 c 283 s 5

### **617.85 NUISANCE; MOTION TO CANCEL LEASE.**

Where notice is provided under section 617.81, subdivision 4, that an abatement of a nuisance is sought and the circumstances that are the basis for the requested abatement involved the acts of a commercial or residential tenant or lessee of part or all of a building, the owner of the building that is subject to the abatement proceeding may file before the court that has jurisdiction over the abatement proceeding a motion to cancel

the lease or otherwise secure restitution of the premises from the tenant or lessee who has maintained or conducted the nuisance. The owner may assign to the prosecuting attorney the right to file this motion. In addition to the grounds provided in chapter 566, the maintaining or conducting of a nuisance as defined in section 617.81, subdivision 2, by a tenant or lessee, is an additional ground authorized by law for seeking the cancellation of a lease or the restitution of the premises. Service of motion brought under this section must be served in a manner that is sufficient under the Rules of Civil Procedure and chapter 566.

It is no defense to a motion under this section by the owner or the prosecuting attorney that the lease or other agreement controlling the tenancy or leasehold does not provide for eviction or cancellation of the lease upon the ground provided in this section.

Upon a finding by the court that the tenant or lessee has maintained or conducted a nuisance in any portion of the building, the court shall order cancellation of the lease or tenancy and grant restitution of the premises to the owner. The court must not order abatement of the premises if the court:

(1) cancels a lease or tenancy and grants restitution of that portion of the premises to the owner; and

(2) further finds that the act or acts constituting the nuisance as defined in section 617.81, subdivision 2, were committed by the tenant or lessee whose lease or tenancy has been canceled pursuant to this section and the tenant or lessee was not committing the act or acts in conjunction with or under the control of the owner.

**History:** 1987 c 283 s 6; 1995 c 244 s 34; 1997 c 100 s 4; 1997 c 239 art 12 s 10; 2005 c 136 art 7 s 18

#### **617.86 CONTEMPT.**

Whoever violates a temporary injunction, permanent injunction, or abatement order granted under sections 617.80 to 617.87 may be adjudged in contempt of court.

**History:** 1987 c 283 s 7

#### **617.87 RELEASE OF PROPERTY.**

If, after an order of abatement has been entered, the owner appears and pays the costs of the action and files a bond in an amount determined by the court, but not to exceed \$50,000, conditioned that the owner will immediately abate the nuisance for a period of one year, the court may, if satisfied of the owner's good faith, order the release of the building or portion of it which is subject to the order of abatement. If the premises are released, for each day during the term of the bond that the owner knowingly permits any part of the premises to be used for any activity which was the basis of the abatement order, the owner shall forfeit \$1,000 under the bond. Forfeiture under the bond does not relieve the owner from prosecution for contempt. Release of the property pursuant to this section does not release it from an injunction issued under section 617.83 or any other judgment, penalty, lien, or liability to which it may be subject by law.

**History:** 1987 c 283 s 8

**617.88** [Repealed, 1996 c 453 s 3]

**617.89** [Repealed, 1996 c 453 s 3]

#### **617.90 GRAFFITI DAMAGE ACTION.**

Subdivision 1. **Definition.** For purposes of this section, "graffiti" means unauthorized markings of paint, dye, or other similar substance that have been placed on real or personal property such as buildings, fences,

transportation equipment, or other structures, or the unauthorized etching or scratching of the surfaces of such real or personal property, any of which markings, scratchings, or etchings are visible from premises open to the public.

Subd. 2. **Cause of action.** An action for damage to property caused by graffiti may be brought by the owner of public or private property on which graffiti has been placed. Damages may be recovered for three times the cost of restoring the property, or the court may order a defendant to perform the work of restoring the property. Damages may be recovered from an individual who placed graffiti on public or private real or personal property or from the parent of a minor individual. The liability of the parent is limited to the amount specified in section 540.18. The court may award attorney fees and costs to a prevailing plaintiff.

**History:** 2004 c 149 s 1

### 617.91 DEFINITIONS.

Subdivision 1. **General.** The definitions in this section apply to sections 617.91 to 617.97.

Subd. 2. **Continuously or regularly.** "Continuously or regularly" means at least three separate incidents or occurrences in a period of not more than 12 months.

Subd. 3. **Criminal gang.** "Criminal gang" has the meaning given in section 609.229.

Subd. 4. **Gang activity.** "Gang activity" means the commission of one or more of the offenses listed in section 609.11, subdivision 9; criminal damage to property in the first or second degree under section 609.595, subdivision 1 or 1a; trespass under section 609.605; disorderly conduct under section 609.72; or unlawful possession of a firearm by a minor under section 624.713, subdivision 1, clause (1).

Subd. 5. **Place.** "Place" means:

(1) a structure suitable for human shelter, a commercial structure that is maintained for business activities, a portion of the structure, or the land surrounding the structure that is under the control of the person who owns or is responsible for maintaining the structure. If the place is a multiunit dwelling, a hotel or motel, or a commercial or office building, "place" means only the portion of the place in which a public nuisance is maintained or permitted, including a dwelling unit, room, suite of rooms, office, common area, storage area, garage, parking area, or the land surrounding the place that is under the control of the person who owns or is responsible for maintaining the structure; or

(2) a parcel of land that does not include a structure and is under the control of the person who owns or is responsible for maintaining the land.

**History:** 2007 c 150 s 1; 2012 c 200 s 1

### 617.92 PUBLIC NUISANCE.

Subdivision 1. **Gang activities.** A criminal gang that continuously or regularly engages in gang activities is a public nuisance.

Subd. 2. **Use of place.** The continuous or regular use of a place by a lessee or tenant to engage in or allow gang activity by a criminal gang that is knowingly permitted by the owner or a person who is responsible for maintaining the place on behalf of the owner is a public nuisance.

**History:** 2007 c 150 s 2

**617.93 SUIT TO ABATE NUISANCE.**

(a) A county or city attorney or the attorney general may sue to enjoin a public nuisance under sections 617.91 to 617.97.

(b) A person who continuously or regularly engages in gang activity as a member of a criminal gang may be made a defendant in a suit.

(c) If the public nuisance involves the use of a place as provided in section 617.92, subdivision 2, the owner or a person who is responsible for maintaining the place on behalf of the owner may be made a defendant in the suit pursuant to the procedures applicable to owners under sections 617.81 to 617.87.

**History:** 2007 c 150 s 3

**617.94 COURT ORDER.**

(a) If the court finds, by a preponderance of the evidence, that a criminal gang constitutes a public nuisance, the court may enter a temporary or permanent order:

(1) enjoining a defendant in the suit from engaging in the gang activities; and

(2) imposing other reasonable requirements to prevent the defendant from engaging in future gang activities.

(b) "Reasonable requirement" as specified in paragraph (a), clause (2), means an injunctive limitation on gang behavior and social interaction that reduces the opportunity for gang activity. The court in imposing reasonable requirements must balance state interests in public safety against constitutional freedoms.

(c) If the court finds, by a preponderance of the evidence, that a place is continuously or regularly used in a manner that constitutes a public nuisance, the court may include in its order reasonable requirements to prevent the use of the place for gang activity. This may include cancellation of any applicable lease pursuant to the procedures in section 617.85 that may involve any tenant or lessee who has maintained or conducted the public nuisance, or other reasonable requirements established in the order.

**History:** 2007 c 150 s 4

**617.95 VIOLATION OF COURT ORDER; FINE AND CRIMINAL PENALTY.**

Subdivision 1. **Fine for civil contempt.** A person who violates a temporary or permanent injunctive order issued under section 617.94 is subject to a fine for civil contempt of not less than \$1,000 nor more than \$10,000.

Subd. 2. **Criminal penalty.** A person who knowingly violates a temporary or permanent injunctive order issued under section 617.94 is guilty of a misdemeanor.

**History:** 2007 c 150 s 5

**617.96 ATTORNEY FEES.**

In an action brought under sections 617.91 to 617.97, the court may award a prevailing party reasonable attorney fees and costs.

**History:** 2007 c 150 s 6

**617.97 USE OF PLACE; EVIDENCE.**

(a) In an action brought under sections 617.91 to 617.97, proof that gang activity by a member of a criminal gang is continuously or regularly committed at a place or proof that a place is continuously or regularly used for engaging in gang activity by a member of a criminal gang is prima facie evidence that the person who owns or is responsible for maintaining the place knowingly permitted the act.

(b) Paragraph (a) does not apply if the person who owns or is responsible for maintaining the place proves, by a preponderance of the evidence, that the person has made reasonable efforts to prevent the occurrence of the gang activity, which may include cancellation of or an attempt to cancel the lease.

**History:** 2007 c 150 s 7