

# 2017 Legislative Update

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## 2017 LEGISLATIVE UPDATE

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## **I. GENERAL CRIMINAL PROVISIONS**

### **A. Minn. Stat. § 609.475 – Impersonating a Military Service Member, Veteran, or Public Official**

Amended from “a police or military officer or public official” to “an active or reserve component military service member, veteran, or public official” to wrongfully obtain money, property, or any other tangible benefit.

It is a misdemeanor.

### **B. Minn. Stat. § 609.4751 – Impersonating a Peace Officer**

Added to move misdemeanor peace officer impersonation with intent to mislead another into believing the impersonator is actually an officer.

Also adds a gross misdemeanor for anyone who impersonates an officer while

- (1) gaining access to a public building or government facility that is not open to the public;
- (2) without legal authority, directing or ordering another person to act or refrain from acting;
- (3) violating section 169.64, subd. 2, 3, or 4 (prohibited lights), or the siren provisions of 169.68 (prohibited sirens).
- (4) Operating a vehicle marked with the words “police, patrolman, sheriff, deputy, trooper, state patrol, conservation officer, agent, or marshal” or with any lettering, marking, or insignia, or colorable imitation thereof, such as stars, badges, or shields identifying the vehicle as a law enforcement vehicle.

Adds a felony violation for violating the section within five years of a previous violation with sentence of up to two years and \$4000.

### **C. Minn. Stat. § 609.595 – Damage to Property**

Added a first degree crime if the property damaged is a public safety motor vehicle, the defendant knew it was, and the damage to the vehicle caused a substantial interruption or impairment of public safety service or a reasonably foreseeable risk of bodily harm.

Added a third degree crime if the property damaged was a public safety motor vehicle and the defendant knew it.

Added definition for “public safety motor vehicle” to include law enforcement, fire, ambulances, and DNR vehicles.

Damage includes tampering and acts that obstruct or interfere with the vehicle’s use.

**D. Minn. Stat. § 609.605 – Trespass**

Added a misdemeanor for trespass on a school bus. A person who boards a school bus when the bus is on its route or otherwise in operation, or while it has pupils on it, and who refuses to leave the bus on demand of the operator, is guilty.

**E. Minn. Stat. § 609.748 – Harassment; Restraining Order**

Amended service provisions to change references from “sheriff” to “peace officer.”

Added short-form notification providing that in lieu of personal service, a peace officer may serve a person with a short-form notification. It must include the respondent’s name; date of birth, if known; the petitioner’s name; the names of other protected parties; the date and county in which the TRO or RO was filed; the court file number; the hearing date and time, if known; the conditions that apply to the respondent, either in checklist form or handwritten; and the name of the judge who signed the order.

The short-form notification must be in bold print in the following form:

“The restraining order is now enforceable. You must report to your nearest sheriff’s office or county court to obtain a copy of the restraining order. You are subject to arrest and may be charged with a misdemeanor, gross misdemeanor, or felony if you violate any of the terms of the restraining order or this short-form notification.”

Upon verification of the identity of the respondent and the existence of an unserved harassment order against the respondent, a law enforcement officer may detain the respondent for a reasonable time necessary to complete and serve the short-form notification.

When service is made, it may be proved by the affidavit of the officer making service.

Service may occur at any time, including Sundays and legal holidays.

The BCA is to provide the short-form to law enforcement agencies.

Effective 30 days following the publication of a notice on the BCA website that a computer system is available to send harassment restraining order data from the Minnesota Judicial Branch to law enforcement.

Added paragraph that in addition to peace officers, corrections officers, including but not limited to probation officers, court services officers, parole officers, and employees of jails or correctional facilities, may serve a temporary restraining order or restraining order.

TRO relief by court provisions were amended to provide that a request for a hearing must be made within 20 days of the date of completed service of the petition, rather than 45 days after the order is issued.

**F. Minn. Stat. § 624.714 – Carrying of Weapons Without Permit**

Amended to state that the owner or operator of a private establishment may not prohibit the lawful carry or possession of firearms by a peace officer within the private establishment or deny the officer access to the weapons, except when specifically authorized by statute. The owner or operator may require the display of official credentials issued by the agency that employs the peace officer prior to granting the officer entry into the private establishment.

Also amended paragraph related to security guards to state that the owner or operator of a private establishment may require the display of official credentials issued by the company, which must be licensed by the Private Detective and Protective Agent Services Board, that employs the security guard and the guard's permit card prior to granting the guard entrance into the private establishment.

**G. Minn. Stat. § 609.48 – Perjury**

Amended to provide that perjury by writing in court documents may be prosecuted in the county where the statement under penalty of perjury was signed or the county in which the statement was filed.

**II. CONTROLLED SUBSTANCE RELATED PROVISIONS**

**A. Minn. Stat. § 152.02 – Schedules of Controlled Substances**

Added nine new synthetic drugs to schedule I including two Opiates, three Hallucinogens, three stimulants, and a synthetic cannabinoid.

The Board of Pharmacy indicated the substances could be abused, are potentially addictive, and have no approved medical uses.

**B. Minn. Stat. § 152.25 – Medical Cannabis Manufacturers**

Amended to address revocations, non-renewals, and transfer denials of manufacturer registrations. Provides for chapter 14 contested cases after manufacturer notified in writing of the action.

Also added temporary suspension proceedings for up to 90 days if a manufacturer violates any of the medical cannabis registration requirements; permits, aids, or abets the commission of any violation of state law at the manufacturer's location for cultivation, harvesting, manufacturing, packaging, and processing or at any site for distribution of medical cannabis; performs any act contrary to the welfare of a registered patient or registered designated caregiver; or obtains, or attempts to obtain, a registration by fraudulent means or misrepresentation.

Added language for notice to patients of revocation or non-renewal of a manufacturer registration that may affect the ability of the patient to obtain medical cannabis from the manufacturer subject to the enforcement action.

**C. Minn. Stat. § 152.28 – Health Care Practitioner Duties**

Added a subdivision containing advertising restrictions related to medical cannabis.

Cannot include false or misleading statements about medical cannabis or the registry program; use colloquial terms such as pot, weed, or grass; state or imply endorsed by the Department of Health or the registry program; include images of cannabis in its plant or leaf form or of cannabis-smoking paraphernalia; or contain medical symbols that could be confused with symbols of established medical associations or groups.

Violators prohibited from certifying that patients have a qualifying medical condition for purposes of patient participation in the registry program.

**D. Minn. Stat. § 152.33 – Medical Cannabis Violations**

Added penalties for intentionally transferring medical cannabis to a person other than allowed by law and in doing so transporting or directing the transport of medical cannabis outside the state of Minnesota.

**III. TRAFFIC SAFETY AND RELATED PROVISIONS**

**A. Minn. Stat. § 169A.51 – Chemical Tests for Intoxication**

Implied Consent Advisory amended to Breath Test Advisory.

Also, blood or urine test search warrant requirements added. Blood or urine tests may only be conducted pursuant to a search warrant or a judicially recognized exception to the search warrant requirement.

Added that a blood or urine test may be required pursuant to a search warrant even after a breath test has been administered if the person is unconscious or incapacitated to the point that the peace officer providing a breath test advisory, administering a breath test, or serving the search warrant has a good-faith belief that the person is mentally or physically unable to comprehend the breath test advisory or otherwise voluntarily submit to chemical tests.

Alternative test limitations do not apply to unconscious person.

Due to *Birchfield v. North Dakota*, 136 S.Ct. 2160 (2016).

**B. Minn. Stat. § 171.177 – Revocation; Pursuant to Search Warrant**

New statute providing for advisory and procedures for blood or urine tests pursuant to search warrants.

At the time a blood or urine test is directed pursuant to search warrant, the person must be informed that refusal to submit to a blood or urine test is a crime.



The peace officer who directs the test shall direct a blood or urine test as provided in the warrant. If the warrant authorizes either, the officer may direct whether the test is of blood or urine. If the person objects to the test, the officer shall offer the person an alternative test of either blood or urine. Action may be taken against a person who refuses to take one of the tests if the alternative test was offered.

As with breath tests, after executing a search warrant for the collection of a blood or urine sample based upon probable DWI, the peace officer shall certify to the commissioner of public safety when a person refuses to comply or if a person submits to the test and the test results indicate:

- (1) An alcohol concentration of .08 or more;
- (2) An alcohol concentration of .04 or more, if the person was driving, operating, or in physical control of a commercial motor vehicle at the time of the violation; or
- (3) The presence of a controlled substance listed in Schedule I or II or its metabolite, other than marijuana or tetrahydrocannabinols.

Upon certification that a person has been driving, operating, or in physical control of a motor vehicle while impaired and that the person has refused to comply with the search warrant, the commissioner shall revoke the license, permit, or nonresident operating privilege for the terms under the statute.

Upon certification that the person failed the test given pursuant to search warrant, the commissioner shall revoke the license, permit, or nonresident operating privilege for the terms under the statute.

If the test is by a laboratory operated by the BCA, the BCA may directly certify the test results to public safety and the peace officer shall certify that there existed probable cause to believe the person had been driving while impaired and had submitted a test. Upon receipt of both certifications, the commissioner shall undertake license actions.

The other provisions are similar to section 169A.52 for other test refusal or failure.

Sections regarding administrative and judicial review of the license revocation decision were also added that are similar to section 169A.53.

Additional issues for scope of judicial review hearings are included related to whether a licensed peace officer applied for a search warrant in accordance with the requirements of 626.04 to 626.18 and whether a neutral magistrate reviewed the application for a search warrant and determined there was probable cause the person was driving while impaired. Also, was the search warrant and the process by which it was obtained valid?

### **C. Minn. Stat. § 169A.03 – Driving While Impaired - Definitions**

Added revocation pursuant to search warrant under § 171.177 in definition of “prior impaired driving-related loss of license.”

**D. Minn. Stat. § 169A.20 – Driving While Impaired**

Amended refusal to submit to chemical test crime to include refusal if the person's blood or urine testing was required by a search warrant.

**E. Minn. Stat. § 169A.53 – Administrative and Judicial Review of License Revocation**

Amended to increase the time to petition the court for review from 30 to 60 days following receipt of a notice and order of revocation.

Added to scope of revocation hearing the issue of whether the person proved the defense of controlled substance use in accordance with a prescription.

Added affirmative defense to the presence of a Schedule I or II controlled substance that the person used the controlled substance according to the terms of a prescription issued to the person unless the court finds by a preponderance of the evidence that the use of the controlled substance impaired the person's ability to operate a motor vehicle.

**F. Minn. Stat. § 169A.54 – DWI Convictions, Adjudications; Administrative Penalties**

Added revocation of license pursuant to test refusal after a search warrant under § 171.177 to mandatory revocation provisions.

**G. Minn. Stat. § 169A.60 – Administrative Impoundment of Plates**

Amended to increase the time to petition the court for review from 30 to 60 days following receipt of a notice and order of impoundment.

**H. Minn. Stat. § 624.7143 – Firearms Chemical Testing**

Amended to reflect mandatory testing only for breath tests and to include search warrant requirements for blood and urine tests.

If warrant authorizes blood or urine, the officer may direct whether blood or urine. If the person objects to the test, the officer shall offer the person the alternative of either blood or urine. Action under the section may be taken only if the alternative test was offered.

**I. Minn. Stat. § 97B.066 – Hunting While Under the Influence**

Amended to reflect mandatory testing only for breath tests and to include search warrant requirements for blood and urine tests.

If warrant authorizes blood or urine, the officer may direct whether blood or urine. If the person objects to the test, the officer shall offer the person the alternative of either blood or urine. Action under the section may be taken only if the alternative test was offered.

For hearings added provision for challenging failure to obtain a search warrant and whether the warrant was valid.

**J. Minn. Stat. § 360.0753 – Airports and Aeronautics Chemical Testing**

Amended to reflect mandatory testing only for breath tests and to include search warrant requirements for blood and urine tests.

If warrant authorizes blood or urine, the officer may direct whether blood or urine. If the person objects to the test, the officer shall offer the person the alternative of either blood or urine. Action under the section may be taken only if the alternative test was offered.

For hearings added provision for challenging failure to obtain a search warrant and whether the warrant was valid.

**K. Minn. Stat. § 169.011 – Traffic Regulations Definitions**

Added a definition for “all-electric vehicle.” Solely able to be powered by an electric motor drawing current from rechargeable storage batteries, fuel cells, or other portable sources of electrical current. Excludes plug-in hybrid vehicles.

Amended definition of “neighborhood electric vehicle” to include “three or” four wheels.

**L. Minn. Stat. § 169.18 – Driving Rules**

Amended driving left of center to provide that a motor vehicle may be driven to the left side of the roadway to safely overtake a bicycle under appropriate circumstances.

Amended to allow school busses to stop in bicycle lanes.

**M. Minn. Stat. § 169.224 – Neighborhood and Medium-Speed Electric Vehicles**

Amended to provide a person may operate a three-wheeled neighborhood electric vehicle without a two-wheeled vehicle endorsement, provided the person has a valid driver’s license.

**N. Minn. Stat. § 171.306 – Ignition Interlock Device Program**

Added definition of “location tracking capabilities.” The ability of an electronic or wireless device to identify and transmit its geographic location through the operation of the device.

Also, commissioner may not establish standards that, directly or indirectly, require devices to use or enable location tracking capabilities without a court order.

And, commissioner shall not permit location tracking capabilities on any ignition interlock device except when ordered by the court.

Manufacturer must include a notice in the contract to participant regarding any location tracking capabilities of the device.

**O. Minn. Stat. § 169A.63 – Limitations on Vehicle Forfeiture**

Amended to provide that a motor vehicle is not subject to forfeiture if any of its owners who petition the court can demonstrate by clear and convincing evidence that the petitioning owner did not know it would be used or operated in an unlawful way.

**IV. CRIMINAL RELATED STATUTES**

**A. Minn. Stat. § 609.6057 – Geographic Restriction**

Added to provide for pretrial orders and probationary conditions that include “geographic restriction” limiting a defendant or juvenile offender from entering a designated property or geographic area.

The court may issue upon a finding that its issuance will serve the interests of protecting public safety or property considering the following factors:

- (1) Whether a defendant’s presence in the area creates a risk to public safety or property;
- (2) A defendant’s criminal history;
- (3) The likelihood of future criminal activity within the restricted area; and
- (4) Any other factors deemed relevant by the court.

A court may grant any exceptions that it deems necessary to avoid the imposition of significant hardship upon a defendant but should also consider the impact of the exception on the interests of protecting public safety or property.

If a person knows of the restriction and intentionally enters or remains in the restricted area, the person is guilty of a misdemeanor.

Independent of any condition of pretrial release or probation imposed on the defendant.

It may be issued in addition to a similar restriction imposed as a condition of pretrial release or probation.

It shall be issued in a proceeding separate from but that may be held immediately following, a proceeding in which any pretrial release or sentencing issues are decided.

The court shall notify the defendant of the area subject to a geographic restriction and that violation of the geographic restriction order is a crime.

A court shall cancel a pretrial geographic restriction order at the final disposition of the underlying criminal case.

A court shall cancel a postconviction geographic restriction order when an offender completes a period of probationary supervision or is committed to the commissioner of corrections.

A court may cancel a postconviction geographic restriction order at any time during which an offender is under probationary supervision.

**B. Minn. Stat. § 626.8469 – Training in Crisis Response, Conflict Management, and Cultural Diversity**

Beginning July 1, 2018, requires law enforcement training in crisis intervention and mental illness crises; conflict management and mediation; and recognizing and valuing community diversity and cultural differences to include implicit bias training.

At least 16 continuing education credits within an officer's three-year licensing cycle.

**C. Minn. Stat. § 609.14 – Revocation of Stay**

Amended to require a probation agent to present the court with local options to address and correct probation violations, including, but not limited to inpatient CD treatment when the defendant at a summary hearing is:

A nonviolent controlled substance offender; subject to supervised probation; appearing based on a technical violation; and admitting or found to have violated probation conditions.

**D. Minn. Stat. § 243.05 – Revocation of Conditional Release**

Amended to require that prior to revoking a nonviolent controlled substance offender's parole or probation based on a technical violation, when the offender does not pose a risk to the public and is amenable to continued supervision in the community, a parole or probation agent identify community options to address and correct the violation, including but not limited to, inpatient CD treatment.

If an agent determines that community options are appropriate, the agent shall seek to restructure the terms of release to incorporate those options and, if the offender is on probation and agrees to the restructure, forward a report to the court about the restructure.

The recommended restructuring of probation becomes effective when confirmed by a judge.

If a nonviolent controlled substance offender's parole or probation is revoked, the offender's agent must first attempt to place the offender in a local jail.

**E. Minn. Stat. § 244.05 – Supervised Release Term**

Amended to require that prior to revoking a nonviolent controlled substance offender's supervised release based on a technical violation, when the offender does not pose a risk to the

public and is amenable to continued supervision in the community, the DOC identify community options to address and correct the violation, including but not limited to, inpatient CD treatment.

If the DOC determines that community options are appropriate, it shall seek to restructure the terms of release to incorporate those options.

If a nonviolent controlled substance offender's supervised release is revoked, the offender's agent must first attempt to place the offender in a local jail.

#### **F. Alternatives to Incarceration Pilot Program Fund**

Agencies providing supervision to offenders on probation, parole, or supervised release are eligible for grants to facilitate access to community options including, but not limited to, inpatient CD treatment for nonviolent controlled substance offenders to address and correct behavior that is, or is likely to result in, a technical violation of the conditions of release.

The DOC is to establish criteria for selecting grant recipients and is to report to the legislature by January 15, 2019, the grant award information.

#### **G. Minn. Stat. § 634.36 – Evidence of Videotapes, Audiotapes, or Other Recordings.**

Amended to include videotape, audiotape, or electronic or digital recording from recording equipment “on the officer's person” and not just in a law enforcement vehicle as evidence that shall not be excluded on the ground that a written transcript was not prepared and available prior to trial.

#### **H. Minn. Stat. § 356.116 – Court Documents**

Amended to provide that in addition to documents filed with the court, documents presented to a judge or judicial officer in support of a request for a court order, warrant, or other relief, are not required to be notarized and that signing those documents constitutes “verification upon oath or affirmation” required under that section.