

2017 Legislative Update

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GENERAL CRIMINAL PROVISIONS

Damage to property



Minn. Stat. § 609.595

Added a first degree crime if the property damaged is:

- 1) a public safety motor vehicle;
- 2) the defendant knew it was; and
- 3) the damage to the vehicle caused a substantial interruption or impairment of public safety service or a reasonably foreseeable risk of bodily harm.

Damage to property

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.



Harassment; Restraining Order

Minn. Stat. § 609.748

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

Harassment; Restraining Order

Added short form notification providing that in lieu of personal service, a peace officer may serve a person with short-form notification to include:

- 1) The respondent's name and date of birth, if known;
- 2) The petitioner's name and names of other protected parties



Harassment; Restraining Order

- 3) The date and county in with the TRO or RO was filed;
- 4) The court file number;
- 5) The hearing date and time, if known;
- 6) The conditions that apply to respondent; and
- 7) The name of the judge who signed the order.

Harassment; Restraining 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.”

Harassment; Restraining Order

Upon verification of the identify 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.

Service may be proved by the affidavit of the serving officer and may occur at any time, including Sundays and legal holidays.

Harassment; Restraining Order

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 systems is available to send harassment restraining order data from the Minnesota Judicial Branch to law enforcement.

In addition to peace officers, corrections officers, including but not limited to probation, court services, and parole officers, and employees of jails or correctional facilities, may serve a TRO or RO.

TRO court relief provisions amended to provide for request for hearing within 20 days of the date of service of the petition, rather than 45 days after the order is issued.

Impersonating a Military Service Member, Veteran or Public Official

Minn. Stat. § 609.475

Amended to make it a misdemeanor to impersonate “an active or reserve component military service member, veteran or public official” to wrongfully obtain money, property or any other tangible benefit.

Was “a police or military officer or public official”
– police moved to new section



Impersonating a Peace Officer

Minn. Stat. § 609.4751

Added a misdemeanor to impersonate a peace officer with the intention of misleading another into believing actually a peace officer.

Also adds a gross misdemeanor to impersonate a peace officer while:

- 1) gaining access to a public building or government facility that is not open to the public;
- 2) directing or ordering another person to act or refrain from acting, without legal authority;



Impersonating a Peace Officer

3) violating the prohibited lights and/or the prohibited sirens sections of §§ 169.64 and 169.68; or

14

4) operating a vehicle marked with the word "police," "patrolman," "sheriff," "deputy," "trooper," "state patrol," "conservation officer," "agent," or "marshal"; or with any lettering, marking, or insignia identifying the vehicle as a law enforcement vehicle.

Adds a felony for violating the section within five years of a previous violation – penalty up to 2 years and \$4000.



Trespass

Minn. Stat. § 609.605



Added a misdemeanor for trespass on a school bus.

Occurs if a person boards a school bus when the bus is on its route or otherwise in operation, or while it has pre-K through 12 pupils on it, and refuses to leave on demand of the bus operator.

Tattooing

Minn. Stat. § 146B.07

It is now a gross misdemeanor to tattoo an individual under the age of 18, regardless of parental or guardian consent.

Tattooing

Minn. Stat. § 146B.02

It is now a gross misdemeanor to tattoo in violation of the statutory regulations or to tattoo in an unlicensed location.

Teacher Fraud



Minn. Stat. § 122A.093

Added a gross misdemeanor crime for:

- 1) Claiming to be a licensed teacher without a valid license issued by the board; or
- 2) Employing fraud or deception in applying for or securing a teaching license.

Carrying of Weapons Without Permit

Minn. Stat. § 624.714

Amended to state that the owner or operator of a private establishment may not prohibit the lawful carrying 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.

Carrying of Weapons Without Permit

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 guards employer, which must be licensed by the Private Detective and Protective Agent Services Board, and the guard's permit card prior to granting the guard entrance into the private establishment.

Court Documents

Minn. Stat. § 356.116

Now, 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.

Signing of those documents constitutes “verification upon oath or affirmation” required under that section.

Perjury

Minn. Stat. § 609.48

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.

CONTROLLED SUBSTANCE RELATED PROVISIONS

Schedules of Controlled Substances

Minn. Stat. § 152.02

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.

Medical Cannabis Manufacturers

Minn. Stat. § 152.25

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:

- 1) violates any of the medical cannabis registration requirements;
- 2) 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;

Medical Cannabis Manufacturers

Minn. Stat. § 152.25

- 3) performs any act contrary to the welfare of a registered patient or registered designated caregiver; or
- 4) 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.

Health Care Practitioner Duties

Minn. Stat. § 152.28

Added a subdivision containing advertising restrictions related to medical cannabis providing that practitioner cannot:

- 1) include false or misleading statements about medical cannabis or the registry program;
- 2) use colloquial terms such as “pot,” “weed,” or “grass;”

Health Care Practitioner Duties

- 3) state or imply endorsed by the Department of Health or the registry program; or
- 4) 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.

Medical Cannabis Violations

Minn. Stat. § 152.25

Added civil 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.

TRAFFIC SAFETY AND RELATED PROVISIONS

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

Supreme Court found that blood and urine tests related to DWI arrests require a search warrant.

Our supreme court has held the same.

Chemical Tests for Intoxication

Minn. Stat. § 169A.51

Amended “Implied Consent Advisory” to “Breath Test Advisory.”

Added that blood or urine tests may only be conducted pursuant to a search warrant or a judicially recognized exception to the search warrant requirement.

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 officer has a good-faith belief that the person is mentally or physically unable to comprehend the breath test advisory or voluntarily submit to chemical tests.

Alternative test limitations do not apply to an unconscious person.

Revocation; Pursuant to Search Warrant

Minn. Stat. § 171.177

New statute providing for advisory and procedures for blood and 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.

Revocation; Pursuant to Search Warrant

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.

Revocation; Pursuant to Search Warrant

Minn. Stat. § 171.177

As with breath tests, after executing a search warrant for the collection of a blood or urine sample, 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.

Revocation; Pursuant to Search Warrant

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

Revocation; Pursuant to Search Warrant

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.

Revocation; Pursuant to Search Warrant

The other provisions are similar to §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 § 169A.53.

Revocation; Pursuant to Search Warrant

Additional issues for scope of judicial review hearings:

- 1) Whether a licensed peace officer applied for a search warrant in accordance with the requirements of §§ 626.04 to 626.18
- 2) Whether a neutral magistrate reviewed the application for a search warrant and determined there was probable cause the person was driving while impaired.
- 3) Was the search warrant and the process by which it was obtained valid?

Driving While Impaired – Definitions

Minn. Stat. § 169A.03

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

Driving While Impaired

Minn. Stat. § 169A.20

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.

Administrative and Judicial Review of License Revocation

Minn. Stat. § 169A.53

A person now has 60 days (instead of 30) to file a petition for judicial review with the court following receipt of a notice and order of revocation.

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.

Scope of hearing now includes whether a person proved the defense of controlled substance use in accordance with a prescription.

DWI Convictions, Adjudications; Administrative Penalties

Minn. Stat. § 169A.54

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

Administrative Impoundment of Plates

Minn. Stat. § 169A.60

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

Firearms Chemical Testing

Minn. Stat. § 624.7143

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.

Hunting While Under the Influence

Minn. Stat. § 97B.066

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, can challenge failure to obtain warrant or whether warrant was valid.

Airports and Aeronautics

Chemical Testing

Minn. Stat. § 360.0753

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, can challenge failure to obtain warrant or whether warrant was valid.



Traffic Regulations Definitions

Minn. Stat. § 169.011

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.

Driving Rules

Minn. Stat. § 169.18

A motor vehicle may now be driven to the left side of the roadway to safely pass a bicycle under appropriate circumstances.

School busses can now stop in bicycle lanes.

Neighborhood and Medium-Speed Electric Vehicles

Minn. Stat. § 169.224

A person may now operate a three-wheeled neighborhood electric vehicle without a two-wheeled vehicle endorsement, provided the person has a valid driver's license.

Ignition Interlock Device Program

Minn. Stat. § 171.306

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.

The 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.

Limitations on Vehicle Forfeiture

Minn. Stat. § 169A.63

A motor vehicle is now 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.

Limitations on Vehicle Forfeiture

If the offender is a family or household member of any of the owners who petition the court and has three or more prior impaired driving convictions, the petitioning owner is presumed to know of any vehicle use by the offender that is contrary to law.

CRIMINAL RELATED STATUTES

Geographic Restriction

Minn. Stat. § 609.6057



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.

Geographic Restriction

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.

Geographic Restriction

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

It may be issued in addition to a similar restriction 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.

Geographic Restriction

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.

Training in Crisis Response, Conflict Management, and Cultural Diversity

Minn. Stat. § 626.8469

Beginning July 1, 2018, law enforcement must be provided with training in the following areas: crisis intervention and mental illness crises; conflict management and mediation; and recognizing and valuing community diversity and cultural differences to include implicit bias training.

Officers will need at least 16 continuing education credits within their three-year licensing cycle.

Revocation of Stay

Minn. Stat. § 609.14

A probation agent is now required 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:

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

Revocation of Conditional Release

Minn. Stat. § 243.05

Now, prior to revoking a nonviolent controlled substance offender's parole or probation based on a technical violation, a parole or probation agent must identify community options to address and correct the violation, including but not limited to, inpatient CD treatment.

Revocation of Conditional Release

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.

Supervised Release Term

Minn. Stat. § 244.05

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 must now 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.

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.

Evidence of Videotapes, Audiotapes, or Other Recordings

Minn. Stat. § 634.36

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.

McKenna's Law

Minn. Stat. § 260C.163

CHIPS appointment of counsel provisions amended to provide public defender or other counsel at public expense where child is 10 or older.

Social services is required to inform the child of that right within 14 days of filing of a petition or at the emergency removal hearing and to notify the court whether the child desires counsel.

McKenna's Law

Social services is also required to inform a child who turns 10 while the subject of a CHIPS petition.

Also adds provisions for the court to inform such children of the right to appointed counsel and ask whether the child desires counsel.

McKenna's Law

Waiver of any right must be in writing after informed of the right to counsel and consulting with an appointed attorney.

A parent, other legally responsible person, or the child's guardian ad litem is not permitted to waive the right to counsel.

Courthouse Security

Passed additional funding for courthouse security.

THE END

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