

# 2021 Anoka County Attorney's Office Legislative Update

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# Legislative Update



# Traffic and Vehicle Laws





# DWI –

## 169A.20, subd. 1a, 1b, and 1c

- Motorboats, Snowmobiles, ATV's, Off-Highway Motorcycles, and Off-Road Vehicle provisions of 169A.20 are stricken
- “Motor vehicle” means every vehicle that is self-propelled, including motorboats and off-road vehicles
- Does not include a vehicle moved solely by human power



**CIVIL  
FORFEITURE**

# Vehicle Forfeiture

## 169A.63

- Increased offense thresholds
- No more forfeitures for “failures to appear”
- New procedure following assertion of “innocent owner” claim
- Stays of proceedings with enrollment in ignition interlock program and treatment

# Forfeiture

## 609.531

- Homestead exemption
- Retail value of controlled substance is ~~\$75~~ 100
- Money seized must be over \$1500, unless probable cause to believe money was used in exchange for drugs
- No “proximity” rule – probable cause to believe money represents proceeds

# Forfeiture cont'd

- New reporting requirements
  - Conviction?
  - Gross revenue from forfeiture
  - Total costs related to forfeiture
  - Net revenue
  - Manner in which money or proceeds from sale were expended
    - List of approved expenditure categories



# Corrections – Use of Force

## 243.52

- Use of force must not be applied maliciously or sadistically
- Cannot administer choke hold (blood or air), prone restraint, tying limbs together, or transport face down
- Exception: Unless deadly force is justified

# Corrections – Use of Force cont'd

- Deadly force may be used:
  - To protect from death or great bodily harm
    - Threat must be reasonable and articulable
    - Threat is reasonably likely to occur, and
    - Force used without unreasonable delay
  - To effect capture or prevent escape if there is a reasonable belief the person will cause death or great bodily harm unless immediately apprehended

# Corrections – Use of Force cont'd

- Duty to report by correctional officers
  - Use of force
  - Neglect
    - Physical and mental health
    - Food, clothing, access to health care
- No reprisal if reported

# Criminal Law





# Assault in the First Degree – 609.221, subds. 2 - 5

- Peace officer, prosecuting attorney, judge or correctional employee
- While engaged in the performance of duty imposed by law, policy or rule

# Assault in the First Degree – 609.221, subds. 2 - 5

- “Using or attempting to use deadly force” –  
subd. 2 – **remains unchanged**
  - 20 year statutory maximum
- **New** subdivision 3 – “Inflicts great bodily  
harm”
  - 25 year statutory maximum
- **New** subdivision 4 – “Inflicts great bodily  
harm with a dangerous weapon”
  - 30 year statutory maximum

# Assault in the First Degree – 609.221, subd. 5 – Mandatory Minimum Sentences

- “Using or attempting to use deadly force” –
  - 10 year mandatory minimum
- “Inflicts great bodily harm” –
  - 15 year mandatory minimum
- “Inflicts great bodily harm with a dangerous weapon”
  - 25 year mandatory minimum

# Assault in the First Degree – Mandatory Sentences

- Court cannot stay imposition or stay execution of the sentence
- Not eligible for parole or supervised release until the defendant has served the full term of imprisonment



# New Child Torture – 609.3775

- Person tortures a child
- “Torture” means the intentional infliction of extreme mental anguish or extreme psychological or physical abuse committed in an especially depraved manner
- 25 year felony

# Child Torture – 609.3775 – cont'd

- Proof victim suffered pain is not an element of the offense
- Expert testimony as to the existence of mental anguish, psychological abuse not required
- A child's special susceptibility to mental anguish or psychological abuse does not constitute an independent cause of the condition that exonerates the defendant



# Drive By Shooting - 609.66, subd. 1e

- While in or having just exited from motor vehicle, recklessly discharges a firearm at or toward
  - An unoccupied motor vehicle or building
  - An occupied motor vehicle or building, or
  - A person
- Shooting at an *unoccupied* vehicle or building is a three-year felony. *Occupied* vehicle or building or person is a ten-year felony.



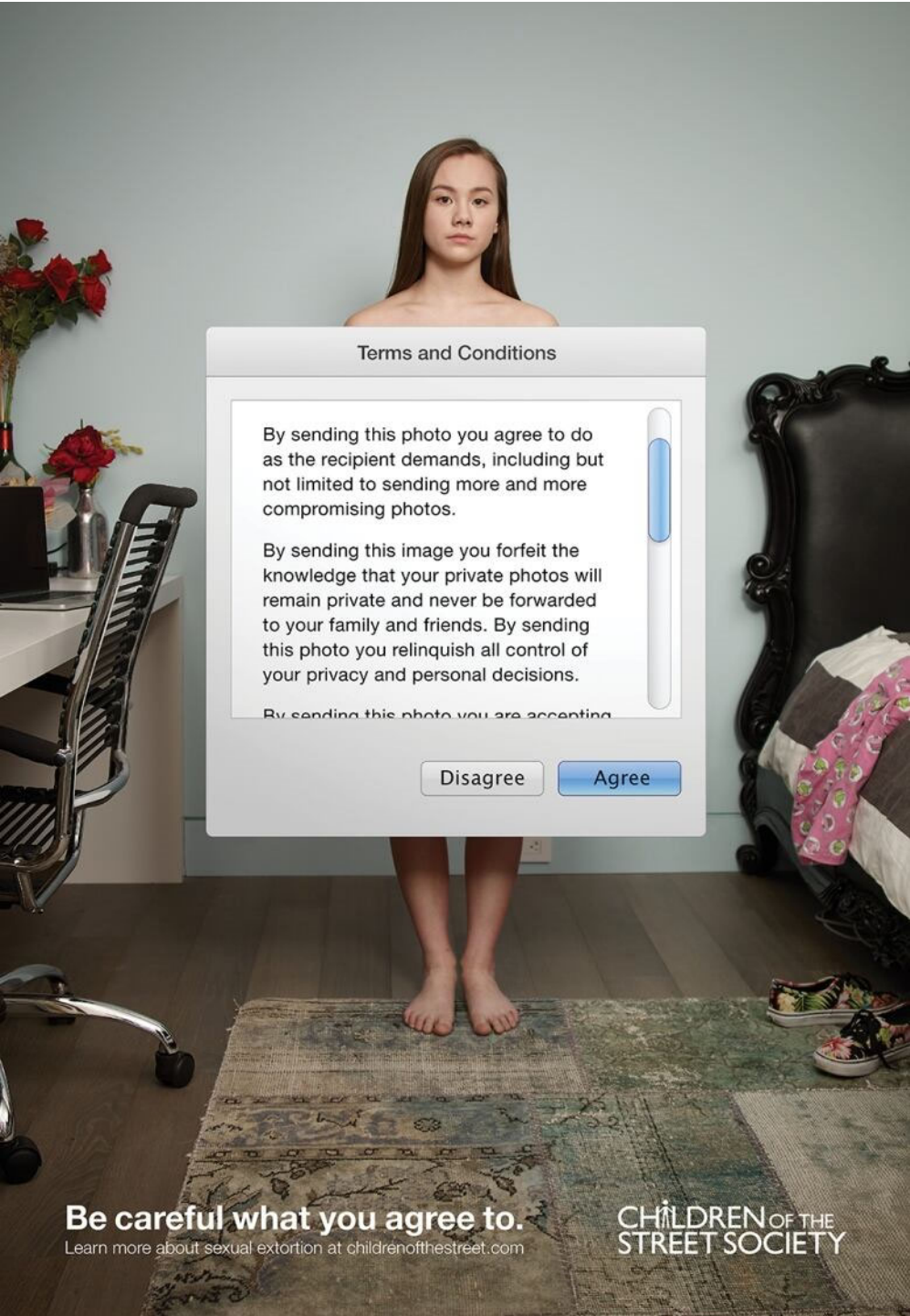
# Prostitution Patrons – 609.324, subd. 2

- Gross Misdemeanor: While acting as a patron ~~in a public place~~, engages in prostitution or offers to hire to engage in sexual penetration or contact with an individual 18 years of age or older
- New Felony: Prior conviction for violating this section or 609.322 (solicitation, inducement, or promotion of prostitution) within the preceding ten years



# Solicitation of a Child – 609.352, subd. 2 and 2a

- Solicitation and electronic solicitation of a child to engage in sexual conduct
- Felony penalty increased to 5 years



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**CHILDREN OF THE STREET SOCIETY**

# New Sexual Extortion – 609.3458

- A person who engages in sexual contact or sexual penetration with another person and compels the other person to submit to the contact or penetration by threats, either directly or indirectly
  - Threat to withhold or harm victim's trade, business, profession, position, employment, or calling
  - Threat to make a criminal charge, whether true or false

# New Sexual Extortion – 609.3458 – cont'd

- Threat to report immigration status
- Threat to disseminate private sexual images
- Threat to expose information that the actor knows the victim wishes to keep confidential
- Threat to withhold housing or cause victim to lose housing or cause disadvantage to victim's housing or increase in cost of victim's housing

# New Sexual Extortion – 609.3458 – cont'd

- Contact penalty: 10-year felony
- Penetration penalty: 15-year felony
- Offenders subject to conditional release with commitment to the Commissioner of Corrections
- Cannot be attempted penetration or contact

# Use of Minor In a Sexual Performance – 617.246

- 15-year felony for violation involving minor under the age of ~~13~~ 14 years
- Increased age threshold includes use of a minor in performance, operation or ownership of a business disseminating pornographic work, and dissemination of pornographic work

# Possession of Pornographic Works - 617.247

- Age threshold increased from ~~13~~ to 14 years of age

# Crim Sex Conduct in the First Degree – 609.342, subd. 1 and 1a

- Former statute now divided into “Adult Victim” – subd. 1 and “Victim Under the Age of 18” – subd. 1a
- Penetration for adult victims – subd. 1
- Penetration for victim under the age of 18 and sexual contact under the age of 14 – subd. 1a
- Victim age threshold for some cases increased to ~~13~~ 14 years of age

## Crim Sex First – cont'd

- Where victim is at least 14 years of age but less than 16 years of age, age differential reduced from 48 months older than the victim to 36 months older than the victim when actor was in a position of authority

# Crim Sex Conduct in the Second Degree – 609.343, subd. 1 and 1a

- Divided into “Adult Victim” – subd. 1 and “Victim Under the Age of 18” – subd. 1a
- Sexual contact
- Victim threshold for some cases increased to ~~13~~ 14 years of age

## Crim Sex Second – cont'd

- Where victim is at least 14 years of age but less than 16 years of age, age differential reduced from 48 months older than the victim to 36 months older than the victim when actor was in a position of authority

# Crim Sex Conduct in the Third Degree – 609.344, subd. 1 and 1a

- Divided into “Adult Victim” – subd. 1 and “Victim Under the Age of 18” – subd. 1a
- Sexual penetration
- Victim age threshold increased to ~~13~~ 14 years of age
- “Mistake of age” defense **reduced** from 120 months older to 60 months older

# Crim Sex Conduct in the Fourth Degree – 609.345, subd. 1 and 1a

- Divided into “Adult Victim” – subd. 1 and “Victim Under the Age of 18” – subd. 1a
- Sexual contact
- Victim age threshold increased to ~~13~~ 14 years of age
- “Mistake of age” defense reduced from 120 months older to 60 months older

# “Prohibited Occupational Relationship” – 609.341, subd. 24

- New perpetrator category
- Applies to Crim Sex Third and Crim Sex Fourth offenses
- Specific occupations under specific circumstances

# “Prohibited Occupational Relationship” – cont’d

- Victim was enrolled in secondary school
  - Actor was licensed educator employed to provided services for the school, or
  - Actor was 18 or older and at least 48 months older than the victim and was employed to provide services for the school, or
  - Actor was 18 years of age or older and at least 48 months older than the victim and was a licensed educator

# Crim Sex Conduct in the Fifth Degree – 609.3451

- New felony offense: Nonconsensual sexual *penetration*
- Two-year felony
- No other elements necessary other than penetration and no consent
- Sexual *contact* and lewd exhibition remain the same as gross misdemeanors

# Crim Sex Conduct in the Fifth Degree – cont'd

- Enhancement to 7-year felony
  - Prior Fifth Degree (Penetration) within 10 years, or
  - Prior Fifth Degree (Contact) and a designated Crim Sex-related offense within 10 years, or
  - The first of two or more previous Fifth Degree (Contact) convictions within 10 years
- Non-enhanced offense is not subject to predatory offender registration

# Other Definition Changes

- “Significant Relationship” 609.341, subd. 15 - has been expanded to include *an adult who is or was involved in a significant sexual or romantic relationship with the parent of the victim*
- “Force” 609.341, subd. 3 - now includes “infliction by the actor of bodily harm” and strikes the “significant relationship” language

# Other Definition Changes

- “Mentally Incapacitated” 609.341, subd. 7 - definition expanded to add “a person is under the influence of any substance or substances to a degree that renders them incapable of consenting or incapable of appreciating, understanding, or controlling the person’s conduct”
- Added to “administered to the person without the person’s agreement”

# Voluntary Intoxication Defense

**New** 609.3469

- Clarification by the legislature
- For any crim sex offense where the complainant is “mentally incapacitated” while under the influence of any substance, the defense of voluntary intoxication under 609.075 may be available
- Defense must fit 609.075 and related case law

# Statute of Limitations

## 628.26(e)

- Statute of limitations eliminated for:
  - Sex Trafficking
  - Criminal Sexual Conduct In the First Degree
  - Criminal Sexual Conduct in the Second Degree
  - Criminal Sexual Conduct in the Third Degree
  - Criminal Sexual Conduct in the Fourth Degree
- “at any time after the commission of the offense”



# New Dissemination of Personal Information of Law Enforcement

## 609.5151

- Knowingly make publicly available personal information about a law enforcement official or an official's family or household member if:
  - The dissemination poses imminent and serious threat to safety, and
  - The person making the information public knows or reasonably knows of the imminent and serious threat

# Dissemination – cont'd

- “Personal information” includes home address, directions to home, or photographs of home
- **Misdemeanor** to make public
- **Gross misdemeanor** if official or family member suffers great bodily harm or death
- **Gross misdemeanor** for second or subsequent violation



# Immunity From Prosecution

COURT HEARING

\_\_\_\_\_ , to the Sheriff of \_\_\_\_\_ COUNTY  
\_\_\_\_\_ No. \_\_\_\_\_ County  
led to notify \_\_\_\_\_  
ing in the case of \_\_\_\_\_ under \_\_\_\_\_  
, 20 \_\_\_\_\_ Court \_\_\_\_\_

# New Aid To Sexual Assault Victims 604A.06

- A person acting in good faith who reports a sexual assault victim is in need of assistance cannot be charged with
  - Fifth Degree Controlled Substance offense or possession of drug paraphernalia, or
  - Underage possession or consumption of alcohol, if under 21 years of age

# Aid To Sexual Assault Victims cont'd

- Evidence of the offense was obtained as a result of person seeking assistance for sexual assault victim
- Assistance need was immediate
- First to seek assistance
- Remains at the scene and provides contact information
- May be granted to one or two persons acting in concert

# Aid To Sexual Assault Victims cont'd

- Victim of the sexual who is in need of assistance cannot be charged with the same alcohol or drug offenses

# Aid To Sexual Assault Victims cont'd

- Evidence obtained as a result of request for assistance cannot be used as a basis to revoke **probation, pre-trial release, furlough, or supervised release**
- The act of assistance may be used as a **mitigating factor** in a criminal prosecution for which immunity is not provided



# New Jailhouse Witnesses

## 634.045

- “Jailhouse witness” obtains information in a criminal case *while incarcerated* and offers or provides testimony concerning statements made by another
- “Benefit” means plea bargain, bail modification, sentence reduction, monetary award or amelioration of current or future conditions of incarceration

# Jailhouse Witnesses Report

- Each county attorney shall report to the Commissioner of Public Safety
  - Name of jailhouse witness and district court file number
  - Substance of the testimony, whether presented at trial or not
  - The agreement to provide testimony and the benefit offered

# Jailhouse Witnesses – Defense

- County attorney shall disclose to the defense
  - Complete criminal history of jailhouse witness
  - The cooperation agreement
  - Any recantations made by jailhouse witness
  - Any statements made by jailhouse witness implicating any other person for the charged crime
  - History of prior cooperation

# Jailhouse Witnesses – Defense

- County attorney may file a certificate that **disclosing the information** would subject the jailhouse witness or other persons to physical harm or coercion
- Court may require disclosure to defense counsel, but limit disclosure to the defendant in such a way that does not interfere with defendant's right to participate in his defense

# Jailhouse Witnesses – Victim

- County attorney must disclose to the victim any cooperation agreements with a jailhouse witness
- Nature of statements made, including recantations
- Witness' testimonial history or offers to testify
- May file certificate with court to limit disclosure – physical harm or coercion

# Jailhouse Witnesses – Victim cont'd

- County attorney must make a reasonable effort to contact victim of jailhouse witness of the terms of the deal
- Contact by telephone and then by mail
- Contact attempt made before jailhouse witness is released from custody
- Victim advised of protection options (OFP, HRO) available without fee

# New Confidential Informants

## 626.8476

- By January 1, 2022, POST board shall create a model policy for recruitment, control, and use of *confidential informants*
- Avoid arrest or prosecution or mitigate punishment
- Controlled buys, information, or provide intelligence

# Confidential Informants cont'd

- Policy shall include:
  - Command-level review of use
  - No controlled buys by persons under the age of 18 without parent approval
  - Emergency contact informant for informant
  - Exclusion for use if involved in treatment or has prior drug overdose within a year
  - Training of confidential informant
  - Mental health of informant considerations





# Sign and Release Warrants

## New 629.415

- Effective July 1, 2021
- New summons procedure under Rule 3 of the Rules of Criminal Procedure
- If mailed summons is returned as undeliverable, court file shall reflect that summons was not delivered

# Sign and Release Warrants cont'd

- Effective January 1, 2024
- The court shall issue a “sign and release” warrant if:
  - The court issued a summons
  - The summons was returned as undeliverable
  - The defendant failed to appear
  - The defendant had not previously failed to appear

# Sign and Release Warrants - cont'd

- Applies to misdemeanors and gross misdemeanors only
- Certain “targeted” misdemeanors and gross misdemeanors excluded
  - DWI
  - Assault 4, Assault 5, Domestic, Interference 911 Call
  - VOP, DANCO, Harassment or Stalking
  - 5<sup>Th</sup> Degree Crim Sex

# Sign and Release Warrants - cont'd

- Sign and release warrant does not
  - Authorize arrest
  - Require posting of bail
  - Require compliance with conditions

# Sign and Release Warrants - cont'd

- The court may issue a warrant that requires bail or conditions if the prosecutor shows by a preponderance of the evidence that bail is necessary
  - For the safety of the victim
  - The defendant poses a risk to the public, or
  - The defendant otherwise poses a danger to self or others

# Sign and Release Warrants - cont'd

- Law enforcement:
  - Officer shall inform the subject of a “sign and release” warrant of the missed court date and provide a new notice that includes a time to appear
  - Notice in writing
    - File or warrant number
    - Defendant may be asked, but not required to sign

# Sign and Release Warrants - cont'd

- Defendant shall be released at the scene
- Inactivate the warrant
- Update court record of new date and time for appearance and any new contact information
- The existence of a “sign and release” warrant does not prohibit a peace officer from arresting a defendant for any other lawful reason

# Sign and Release Warrants - cont'd

- By January 1, 2024, the sheriff of every county, working with the district court administrator of the county, must have in place a procedure to facilitate “sign and release” warrants
- Procedure must include the ability to:
  - Inactivate warrants
  - Set court dates and times
  - Submit defendant contact information



# No-Knock Search Warrants

## 626.14

- Applies to any warrant requesting waiver of “knock and announce” provision
- For some provisions of the law are statutory manifestations of existing case law requirements
- Statutory violation *could* result in suppression of evidence

# No-Knock Warrants - cont'd

- Warrant must include:
  - Why a “no-knock” is being requested
  - What investigative activities have taken place to support a no-knock
  - Whether the warrant can be effectively executed during daylight hours
- Review by chief law enforcement officer or supervisor
- Cannot be issued for “personal use” drug offenses

# No-Knock Warrants Report

- A report must be filed with Department of Public Safety
  - Number of no-knocks requested
  - Number issued by court
  - Number executed
  - Injuries and fatalities suffered, both police and civilian
  - Must be included in a report within 3 months of execution of the warrant



# New Veterans Restorative Justice Act – 609.1056

- Current or past member of the military
- Suffering from service-related PTSD, substance abuse, traumatic brain injury, or mental health condition
- Deferred prosecution with discharge and dismissal
- Any misdemeanor or gross misdemeanor offense or any felony level 7 or lower

# Restorative Justice – cont'd

- All other felony offenses, except those requiring predatory offender registration, court may depart from the Minnesota Sentencing Guidelines if
  - Defendant suffered from applicable condition
  - Condition was caused by service
  - Offense was committed as a result of condition

# Restorative Justice – cont'd

- Participants must enroll in treatment programming as directed by the statute
- Statute allows for creation of pre-trial diversion program for veterans
- Participants may be supervised by Veterans Affairs probation agents and specialists



# Surcharges

## 357.021, subd. 6

- \$75 surcharge may be reduced or waived due to indigency or undue hardship
- The court may permit Community Work Service in lieu of payment





# New Use of Restraints on Juveniles 260B.008

- Effective April 15, 2022
- Restraints may not be used on a child appearing in court unless use of restraints is necessary
  - To prevent physical harm to child or another,  
or
  - Prevent the child from fleeing
- No less restrictive alternatives (presence of bailiffs or court personnel) are available

# Use of Restraints on Juveniles

## cont'd

- Juvenile's prior disruptive history or behavior in custody are factors that may be considered by the court in making a restraint determination

# New Alternative to Arrest For Juveniles – 260B.1755

- Peace officer may defer issuing a citation or a notice to appear in juvenile court to a child committing a petty offense or a delinquent act
- Referral may be made to a restorative justice, or other appropriate program
- No citation or juvenile court notice issued to children successfully completing the program

# Questions?



**Thank you**