

## **2003 Criminal Justice Legislation**

The criminal justice provisions passed by the 2003 Legislature include new laws and/or changes to existing laws related to driving while impaired, permits to carry a firearm, restrictions on firearm possession by certain convicted offenders, predatory offender registration and other sex offender issues, law enforcement and prosecution authority, general crime, corrections, the judiciary, the state's public defense system, and other miscellaneous areas. The \$4.2 billion state budget deficit affected legislation in this area, leading to judicial fee increases; decreased funding for public safety, corrections, judiciary, sentencing guidelines, public defender and civil legal services functions; and heightened concerns about increasing prison populations. The rapidly increasing prison population led to close scrutiny of new criminal penalties and accompanying incarceration costs.

The table of contents identifies the general issue areas. For a more detailed list of the laws, see the index.

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*For more information about criminal justice issues, visit the criminal justice area of our web site, [www.house.mn./hrd/issinfo/crime.htm](http://www.house.mn./hrd/issinfo/crime.htm).*

*For additional information on fiscal decisions made by the 2003 Legislature, see [www.house.leg.state.mn.us/fiscal/files/03budsum.pdf](http://www.house.leg.state.mn.us/fiscal/files/03budsum.pdf) and [www.house.leg.state.mn.us/fiscal/files/0304cuts.pdf](http://www.house.leg.state.mn.us/fiscal/files/0304cuts.pdf) or contact Gary Karger, Judiciary Policy and Finance Fiscal Analyst, Minnesota House of Representatives Office of Fiscal Analysis, at 651-296-4181.*

## **DWI Provisions**

### **Other Approved Breath-Testing Instruments Authorized**

The legislature authorized use of “approved breath testing instruments” other than those administered through an infrared breath-testing instrument for determining alcohol concentration. Previously, the law referred only to an infrared breath-testing instrument. The law the legislation drops references to calibration and instead refers to a control analysis, which is defined as a procedure that yields a predictable alcohol concentration reading.

The law gives the Commissioner of Public Safety authority to adopt expedited rules on the commissioner’s approval of instruments for preliminary screening or chemical tests for DWI-related breath-testing equipment. Conforming changes also are made in the flying-while-impaired law and in the evidentiary standards to refer to “other approved breath-testing instrument.” Laws 2003, ch. 96; to be codified at Minn. Stat. §§ 169A.03, subd. 11; 169A.45, subd. 4; 169A.51, subd. 5; 169A.75; 360.0753, subd. 4; 634.16; Laws 2003, 1st spec. sess., ch. 2, art. 9, § 2; to be codified at Minn. Stat. § 169A.03, subd. 5a. (Law effective August 1, 2003.)

### **Deficient Breath Tests; Second Deficient Test Equals Refusal**

This law provides that, for purposes of revocation of an individual’s license for test failure or refusal, a breath test consisting of two separate, adequate breath samples within 0.02 percent alcohol concentration is acceptable. If the two separate, adequate breath samples differ by more than 0.02 percent alcohol concentration, the test is deficient. If a first breath test is deficient, it must be repeated. A second deficient breath test constitutes a refusal for the purpose of license revocation.

Prior to this law, there was no clear statutory standard for when a breath test was deemed deficient. DWI suspects would sometimes try to manipulate the test results by altering the manner in which they would provide breath samples for the test. As the test consists of two separate breath samples, with an intervening separate control test on a sample with a known alcohol concentration, an individual could try to alter the test by providing a deep, powerful breath on the first breath sample and a shallow, weak breath on the second sample, thereby increasing the likelihood the test will be deficient because the results will fall outside the 0.02 percent alcohol concentration. According to the Bureau of Criminal Apprehension (BCA), breath tests will only be that far apart when a DWI suspect is intentionally trying to manipulate the test results. Laws 2003, ch. 96; to be codified at Minn. Stat. §§ 169A.03, subd. 11; 169A.45, subd. 4; 169A.51, subd. 5; 169A.75; 360.0753, subd. 4; 634.16. (Law effective August 1, 2003.)

### **Staggered Sentencing Authorized and Defined**

“Staggered sentencing” is defined as an executed jail sentence that is ordered by the court to be served in three or more segments spaced one year apart, where the offender may bring a motion before the court for forgiveness of any segment after the first segment.

To receive forgiveness for a subsequent segment of incarceration, the offender must be regularly involved in a structured sobriety group and bring a motion requesting to have that segment of incarceration stayed. The motion must be brought before the same judge who initially pronounced the sentence. Before bringing the motion, an offender must participate for 30 days in remote electronic alcohol monitoring under the direction of the person's probation agent. The court must consider alcohol monitoring results and the recommendation of the person's probation officer. At that time, the court has discretion to stay the second or subsequent segment of remote electronic alcohol monitoring or incarceration previously ordered.

When the court stays a segment of incarceration previously ordered to be executed, that portion of the sentence is added to the total number of days the defendant must serve if there is a subsequent violation of any conditions of the stay.

Finally, the provision clarifies that staggered sentencing qualifies as a sentencing choice under the mandatory minimum penalty requirement for multiple repeat offenders who are given a non-prison sentence. Laws 2003, 1st spec. sess., ch. 2, art. 9, § 9; to be codified at Minn. Stat. § 169A.275, subd. 6. (Law effective August 1, 2003.)

### **Modification of Penalties for Refusal to Submit to a Chemical Test**

A person who commits a DWI test refusal crime with one "aggravating factor" present is guilty of second-degree DWI. Applicable aggravating factors are (1) having a child under age 16 in the car and (2) having a prior DWI offense in the last ten years.

A person who refuses to submit to a chemical test when a peace officer has probable cause to believe the person is impaired is guilty of third-degree DWI.

The test refusal crime is moved from fourth-degree DWI (the lowest level of DWI crime in Minnesota), since test refusal will always be third-degree or higher. Laws 2003, 1st spec. sess., ch. 2, art. 9, §§ 4 to 6; to be codified at Minn. Stat. §§ 169A.25, subd. 1; 169A.26, subd. 1; 169A.27, subd. 1. (Law effective August 1, 2003.)

### **Prohibition on Using Certain Revocation Violations to Enhance Penalty**

The DWI law includes an amended definition of "prior impaired driving-related loss of license" to exclude revocations stemming solely from prior violations of any of the following "zero-tolerance" laws: (1) underage driving after drinking ("youth zero-tolerance," § 169A.33); (2) the "no-alcohol" condition of a restricted driver's license ("B-card violation," § 171.09); and (3) alcohol purchasing or consumption by youth under age 21 (§ 340A.503).

Under previous law, these "zero-tolerance" violations could technically be interpreted to apply equally to a prior DWI violation for enhancing sanctions and penalties for a subsequent DWI violation. This provision clarifies the language and prevents them from being used for enhancement purposes. Laws 2003, 1st spec. sess., ch. 2, art. 9, § 1; to be codified at Minn. Stat. § 169A.03, subd. 21. (Law effective August 1, 2003.)

## **Longer Probationary Periods for Individuals Guilty of Criminal Vehicular Operation Resulting in Injury**

The stay for an imposed sentence to incarceration is lengthened from two years to six years following conviction for the crime of criminal vehicular injury involving great bodily harm, substantial bodily harm, injury to an unborn child (all felonies), or bodily harm (a gross misdemeanor). Under current law, the maximum stay (and, thus, the maximum period of probation) is six years for gross misdemeanor DWI crimes, but ranges from only two to five years for these other crimes involving criminal vehicular injury. [Most crimes involving criminal vehicular homicide or injury also involve impaired driving.] Laws 2003, 1st spec. sess., ch. 2, art. 9, § 18; to be codified at Minn. Stat. § 609.135, subd. 2. (Law effective August 1, 2003.)

## **DWI Maximum Bail Provisions Inapplicable in Felony Cases**

This provision clarifies that the maximum bail provisions applicable to misdemeanor and gross misdemeanor DWI do not apply in felony cases. Laws 2003, 1st spec. sess., ch. 2, art. 9, § 11; to be codified at Minn. Stat. § 169A.43, subd. 1. (Law effective August 1, 2003.)

## **Changes in Implied Consent Hearings**

This section repeals language that required implied consent hearings to be held at the earliest practicable date and no later than 60 days after the petition is filed. It also repeals language requiring the court to file its order within 14 days of the hearing. Laws 2003, 1st spec. sess., ch. 2, art. 9, § 13; to be codified at Minn. Stat. § 169A.53. (Law effective August 1, 2003.)

## **Restriction on Shorter License Revocation Periods**

The shortened period of license revocation for a first-time DWI violator, upon conviction, does not apply if the crime involved either of the following aggravating factors: (1) an alcohol concentration of .20 percent or more; or (2) child endangerment. Laws 2003, 1st spec. sess., ch. 2, art. 9, § 14; to be codified at Minn. Stat. § 169A.54, subd. 6. (Law effective August 1, 2003.)

## **Minimum Period of Plate Impoundment**

This provision simplifies the minimum period of plate impoundment to make it one year. Under previous law, the minimum was one year “and until the next scheduled renewal date.” Laws 2003, 1st spec. sess., ch. 2, art. 9, § 15; to be codified at Minn. Stat. § 169A.60, subd. 8. (Law effective August 1, 2003.)

## **Elimination of Inconsistencies Between Persons Subject to Custodial Arrest and Persons Subject to Conditional Release**

These provisions in the DWI law ensure that the law is consistent with regard to two targeted groups of impaired driving offenders. Under previous law, there were some inconsistencies

between persons subject to custodial arrest and persons subject to conditional release. Laws 2003, 1st spec. sess., ch. 2, art. 9, §§ 10 and 11; to be codified at Minn. Stat. §§ 169A.40, subd. 3; 169A.43, subd. 1. (Law effective August 1, 2003.)

### **Clarification of Legislative Intent: Lookback Period for Felony Crimes**

This provision clarifies that the legislature intended, through its 2000 recodification of the DWI laws, to count as aggravating factors all qualified prior impaired driving incidents occurring within the ten years preceding an incident for purposes of the criminal and civil sanctions found in chapter 169A. This is true whether the prior incident occurred before, during, or after 1996 or 1998. References to those laws in the recodified statutes exist simply as a tool to help the user of the law refer back to the most recent version of the statutes containing a particular version of the law. Laws 2003, 1st spec. sess., ch. 2, art. 9, § 20. (Law effective the day following final enactment.)

### **Aiding and Abetting in DWI Crime**

This provision corrects an oversight that occurred during the 2000 recodification of DWI law by bringing over to the new chapter aiding and abetting language from the pre-recodification chapter of DWI law (i.e., this language shift completes the 2000 recodification of DWI law). Laws 2003, 1st spec. sess., ch. 2, art. 9, § 17; to be codified at Minn. Stat. § 169A.78. (Law effective August 1, 2003.)

## **Firearm Provisions**

### **“Shall Issue” Permit to Carry Law (“Conceal and Carry”)**

The 2003 Legislature established a “shall issue” policy for permits to carry a pistol in public. Essentially, this legislation reverses the presumption on the issuance of permits to carry a pistol. Under previous law, a person was required to demonstrate “an occupation or personal safety hazard” that required a permit. Issuance of a permit was discretionary and a permit could be limited in its scope. Under the 2003 law, a sheriff must issue a permit to a person unless the person is disqualified under specific, listed factors.

The law specifies that it shall be known by the short title “Minnesota Citizens’ Personal Protection Act of 2003,” makes certain legislative declarations regarding intent and construction, and provides that if one section is deemed invalid, the remaining sections are not invalid. Laws 2003, ch. 28, art. 2, § 27; to be codified at Minn. Stat. § 624.714, subd. 22. (Law effective May 28, 2003.)

### ***Criminal Penalty for Carrying in Public Without a Permit***

The key provision in Minnesota’s law relating to pistol permits is a criminal penalty. Under the law, a person (other than a law enforcement officer) may not carry a pistol in a public place without a permit to do so. A violation of this law is a gross misdemeanor, and second and

subsequent violations are felonies. Laws 2003, ch. 2, art. 2, § 4; to be codified at Minn. Stat. § 624.714, subd. 1a. (Law effective May 28, 2003.)

### ***Process for Obtaining a Permit***

A person seeking a permit must apply to the sheriff in the county where the person resides. Nonresidents may apply to any sheriff. A sheriff may contract with a police chief to process permit applications, but the sheriff remains the issuing authority and the police chief acts as the sheriff's agent.

Unless an exception exists in law for denying the permit, a sheriff must issue a permit if a person:

- has training in the safe use of a pistol,
- is at least 21 and a citizen or permanent resident of the United States,
- completes a permit application,
- is not otherwise prohibited from possessing a firearm under law, and
- is not listed in the criminal gang investigative data system.

A permit that is issued is a statewide permit. Laws 2003, ch. 28, art. 2, § 6; to be codified at Minn. Stat. § 624.714, subd. 2. (Law effective May 28, 2003.)

### ***Training Requirements***

An applicant must present evidence of training in the safe use of a pistol within one year of the date of an original or renewal application. Training may be demonstrated by (1) employment as a peace officer in Minnesota within the past year or (2) completion of a firearms safety or training course providing basic training in the safe use of a pistol and conducted by a certified instructor.

Basic training must include:

- instruction in the fundamentals of pistol use;
- successful completion of a shooting exercise; and
- legal instruction on pistol possession, carry, and use, including self-defense and restrictions on the use of deadly force.

A person qualifies as a certified instructor if the person has been certified as a firearms instructor within the last five years. The following organizations may certify instructors:

- the Bureau of Criminal Apprehension, training and development section,
- the Minnesota Association of Law Enforcement Firearms Instructors,
- the National Rifle Association,
- the American Association of Certified Firearms Instructors,
- the POST board or a similar agency of another state, and
- the DPS or a similar agency of another state.

A sheriff must accept the training described. A sheriff also may accept other satisfactory evidence of training in the safe use of a pistol. Laws 2003, ch. 28, art. 2, § 7; to be codified at Minn. Stat. § 624.714, subd. 2a. (Law effective May 28, 2003.)

### ***Permit Application Process***

An application for a permit must be on an official, standardized form governed by statute and must be submitted in person. Sheriffs are required to make new and renewal applications available, and the Department of Public Safety (DPS) is required to make forms available on the Internet.

The application may not request information beyond the information designated by statute. In addition to providing items such as name, date of birth, and other identifying information, an applicant must list all states of residence in the last ten years, authorize the release of civil commitment information, and state that, to the best of the applicant's knowledge, he or she is not prohibited from possessing a firearm. The application form must display a notice that a permit is void if the permit holder becomes prohibited from possessing a firearm and must list the applicable criminal offenses and civil categories that would prohibit a person from possessing a firearm.

To obtain a permit, an applicant must submit to the appropriate sheriff an applicant packet including:

- a signed and dated application form,
- documentary evidence of pistol training, and
- an accurate photocopy of a government-issued ID.

Applicants who would otherwise be ineligible for a permit due to a criminal conviction, but whose rights are restored by court order or pardon, must submit a copy of the relevant order with the application.

A list of those individuals ineligible for a permit to carry a pistol or firearm are listed in the section "Persons Ineligible for Permits to Carry Pistols or Firearms," beginning on page 16. The law contains a "grandfather clause," whereby permits to carry pistols prior to May 28, 2003, remain in effect and are valid under the terms of issuance until the date of expiration. However, a person with a permit issued prior to May 28, 2003, may apply for a permit under the new law if the person elects to do so.

The application fee for a permit must be the actual cost of processing the application or \$100, whichever is less. Sheriffs must provide a signed receipt when an application is filed. An applicant may not be asked or required to submit any information, fees, or documentation beyond that required by this section of law, except for evidence of alternative training if the person's training falls outside the statutory list of accepted types of training.



A person who provides false information in applying for a permit is guilty of a criminal offense only if the information is *material* information. Previously, the gross misdemeanor penalty applied to any false information. Laws 2003, ch. 28, art. 2, §§ 8, 15 and 33; to be codified at Minn. Stat. § 624.714, subds. 3 and 15. (Law effective May 28, 2003.)

### ***Investigation by Sheriff into Permit Holder's Background***

Sheriffs must conduct background checks on applicants by electronic means in state databases and the federal National Instant Check System for criminal records, histories, and warrant information. A sheriff also must make a reasonable effort to check other available, relevant databases. Sheriffs must update background checks yearly, and additional checks may be made at any time.

The sheriff also must notify the police chief, if any, of the municipality where the applicant resides, and the police chief may supply the sheriff with information relevant to permit issuance. Laws 2003, ch. 28, art. 2, § 9; to be codified at Minn. Stat. § 624.714, subd. 4. (Law effective May 28, 2003.)

### ***Granting and Denial of Permit; Suspension of Permit Process; Renewal of Permit***

A sheriff must act on a permit application within 30 days. A permit may be denied for failure to meet the requirements set forth in law, as well as if there is a substantial likelihood that the applicant is a danger to self or to the public if given a permit to carry a pistol. A denial must be made in writing and set forth a factual basis for the denial.

If the permit application is denied, the sheriff must inform the applicant of the right to submit, within 20 business days, any additional information challenging the denial. The sheriff must then consider this information and inform the applicant within 15 days of the sheriff's decision. The sheriff also must notify the person of the right to appeal the denial pursuant to Minnesota Statutes, section 624.714, subdivision 12.

If a sheriff fails to notify an applicant of the denial of a permit within 30 days, the denial constitutes the issuance of a permit.

Sheriffs must provide laminated permit cards to individuals issued a permit to carry. The sheriff also must notify DPS of the issuance of the permit so that DPS can include information on the permit holder in the state database. If a permit is suspended or revoked, the sheriff must notify DPS of this fact.

A permit issued under this law expires after five years. A permit may be renewed under the same criteria as that for an original permit, subject to the renewal procedures set forth in law. The renewal fee is the actual cost of processing the application or \$75, whichever is less. A renewal permit is effective on the day the prior permit expires.

A sheriff has authority to suspend the application process if charges are pending against the applicant for a conviction that would prohibit an applicant from possessing a firearm. Laws

2003, ch. 28, art. 2, §§ 10 and 11; to be codified at Minn. Stat. § 624.714, subsds. 6 and 7. (Law effective May 28, 2003.)

### ***Emergency Issuance of Permits***

A sheriff may issue an emergency permit to a person when the person's safety is at immediate risk. Issuance of a permit in this manner requires completion of an application and affidavit and does not require evidence of training. An emergency permit is valid for 30 days, may not be renewed, and may be revoked without a hearing. No fee may be charged. An emergency permit holder may seek a regular permit subject to the regular procedures. Laws 2003, ch. 28, art. 2, § 16; to be codified at Minn. Stat. § 624.714, subd. 11a. (Law effective May 28, 2003.)

### ***Permits from Other States***

DPS must establish and publish a list of states that have laws governing carry permits that are not substantially similar to Minnesota's by June 27, 2003, and make this list available on the Internet. The Department of Public Safety must execute reciprocity agreements with other states when necessary.

A person with a license or permit from a state not on the list may use it in Minnesota subject to Minnesota law. However, an out-of-state permit is not valid if the permit holder is, or becomes, prohibited from possessing a firearm. A sheriff may file a petition against an out-of-state permit holder under Minnesota Statutes, section 624.714, subdivision 12. Laws 2003, ch. 28, art. 2, § 21; to be codified at Minn. Stat. § 624.714, subd. 16. (Law effective May 28, 2003.)

### ***Immunity for Sheriffs and Certified Instructors***

The law provides immunity to sheriffs, sheriff's employees, and certified instructors for acts committed by permit holders, unless the sheriff, employee, or instructor had actual knowledge that an applicant was disqualified from possessing a pistol. Laws 2003, ch. 28, art. 2, § 24; to be codified at Minn. Stat. § 624.714, subd. 19. (Law effective May 28, 2003.)

### ***Form of Permit Cards; Change of Address; Loss and Destruction***

The law requires permit cards to be uniform and specifies the information that must be present on the cards. Each card must identify the issuing sheriff and include an expiration date. A permit card also must display a notice that a permit is void and the permit card must be returned if the permit holder becomes ineligible to possess a firearm.

A permit holder must notify the sheriff within 30 days of a change of address or loss or destruction of a permit card. The failure to notify the issuing sheriff is a petty misdemeanor with a fine not to exceed \$25 for the first offense. A firearm carried in violation of this provision is not subject to forfeiture.

A replacement permit card may be obtained upon change of address, loss, or destruction for a \$10 fee. The replacement process requires completion of a specialized application and a notarized statement if the card was lost or destroyed. Laws 2003, ch. 28, art. 2, §§ 11 and 12; to be codified at Minn. Stat. § 624.714, subs. 7 and 7a. (Law effective May 28, 2003.)

### ***Voiding, Revoking, and Suspending Permits***

Provisions for voiding of permits and revocation are similar to prior law. A permit is void and must be revoked if a permit holder becomes ineligible to possess a firearm. The permit holder is required to return the permit card.

If the permit holder is convicted of a disqualifying offense, the court must take possession of the permit card. Also, the issuing sheriff or the sheriff of the county of current residence may petition for the revocation of a permit if the sheriff believes the permit holder has demonstrated dangerousness to the public. If the sheriff's petition is denied, the sheriff must pay the permit holder's costs and attorney fees.

A prosecutor must determine whether a person charged with a disqualifying offense is a permit holder. If the defendant is a permit holder, the prosecutor must notify the sheriff of the charges and the final disposition of the case.

All permit revocations must be promptly reported to the issuing sheriff.

A court may suspend a permit as a condition of release pursuant to the same criteria as the surrender of firearms under Minnesota Statutes, section 629.715 if a permit holder is charged with a violent crime. The court must report a suspension to the issuing sheriff, unless the permit is an out-of-state permit, in which case the court must report the information to the DPS. Laws 2003, ch. 28, art. 2, §§ 13, 14, and 18; to be codified at Minn. Stat. § 624.714, subs. 8, 8a, and 12a. (Law effective May 28, 2003.)

### ***Hearings Upon Permit Denial or Revocation***

An applicant may appeal the denial or revocation of a permit. The sheriff is the respondent in such cases. The court must hold a hearing as soon as possible, but not later than 60 days from the filing of the petition for review. The record of the hearing must be sealed. If the appeal is successful, the court must award costs and attorney fees to the applicant.

The court must issue a permit unless the sheriff establishes by clear and convincing evidence that the applicant does not meet the basic statutory criteria (e.g., 21 years old, trained in the use of a pistol) or that there is a substantial likelihood that the applicant is a danger to self or the public if authorized to carry a pistol. The court must issue written findings and conclusions of law. The court may not consider incidents of alleged criminal misconduct that were not investigated and documented, and incidents for which the applicant was acquitted.

If a person was denied a permit for being in the BCA gang database, the person may appeal on the grounds of misidentification, improper inclusion, or by showing withdrawal from gang activities. Laws 2003, ch. 28, art. 2, § 17; to be codified at Minn. Stat. § 624.714, subd. 12. (Law effective May 28, 2003.)

### ***Civil Penalty for Failure to Display Permit***

Permit holders must have their permit card and other government-issued photo identification in possession at all times when carrying a pistol. Permit holders must show the card and other identification to a peace officer upon lawful demand. If a peace officer requests a permit holder to write a sample signature in the officer's presence to help verify the person's identity, the permit holder must do so.

A violation is a petty misdemeanor, and the fine for a first offense must not exceed \$25. A firearm is not subject to forfeiture for violating this provision. A citation must be dismissed if a person demonstrates that he or she had a valid permit at the time of the alleged violation. Laws 2003, ch. 28, art. 2, § 5; to be codified at Minn. Stat. § 624.714, subd. 1b. (Law effective May 28, 2003.)

### ***Posting Private Premises to Ban Guns; Trespass***

This provision establishes a petty misdemeanor offense with a fine of not more than \$25 for a first offense for failing to leave private property while possessing a firearm knowing that the operator of the establishment or its agent has made a reasonable request that firearms not be brought into the premises. Before a person may be found in violation of this offense, the person must be ordered to leave the premises. A firearm carried in violation of this law is not subject to forfeiture. This provision does not apply to on-duty police officers and security guards.

Under the law, a "reasonable request" means the requester has prominently posted a conspicuous sign at every entrance to the establishment containing the following language: "(INDICATE IDENTITY OF OPERATOR) BANS GUNS IN THESE PREMISES" and the requester or its agent personally informs the person of the posted request and demands compliance. Owners or operators of private property may not restrict the lawful possession of firearms in a parking area or facility.

The law also defines "prominently," "conspicuously," and "private establishment." The requirements for signs are specific as to their exact placement and typeface. A "private establishment" is a building, structure, or portion thereof that is owned, leased, controlled, or operated by a nongovernmental entity for a nongovernmental purpose.

The requirements of this section of law do not apply to private residences, and a possessor of a private residence may prohibit firearms in any lawful manner. A landlord, however, may not restrict the lawful possession of firearms by tenants or their guests.

This section overrides any policies relating to similar conduct in the trespass law. Laws 2003, ch. 28, art. 2, § 22; to be codified at Minn. Stat. § 624.714, subd. 17. (Law effective May 28, 2003.)

### ***State Preemption of Local Authority***

The law contains an exclusivity statement that it “sets forth the complete and exclusive criteria and procedures for the issuance of permits to carry and establishes their nature and scope. No sheriff, police chief, governmental unit, government official, government employee, or other person or body acting under color of law of governmental authority may change, modify, or supplement these criteria or procedures, or limit the exercise of a permit to carry.” Laws 2003, ch. 28, art. 2, § 28; to be codified at Minn. Stat. § 624.714, subd. 23. (Law effective May 28, 2003.)

### ***Possession on School Property Prohibited***

It is a misdemeanor for a person with a permit to carry a firearm on or about the person’s clothes or person on school property. An exception is made for permit holders while in a motor vehicle or while placing a firearm in, or retrieving it from, the trunk of a vehicle. A violation does not subject the firearm to forfeiture. The following changes also are made.

- Contrary to previous law, a person now must know the person is on school property to be guilty of the crime.
- The definition of school property is clarified and expanded, specifically including buildings under temporary school control, and the definition of carrying a firearm within a school bus also is clarified.
- Childcare centers are added to the definition, such that the same prohibitions applying to carrying a firearm in a school apply to childcare centers.
- A school district may not regulate firearms carried by nonstudents or nonemployees in a manner inconsistent with the amended statute.

Laws 2003, ch. 28, art. 2, §2; to be codified at Minn. Stat. § 609.66, subd. 1d. (Law effective May 28, 2003.)

### ***Employers and Public Colleges and Universities; Policies to Prohibit Possession***

This law clarifies that public and private employers may establish policies that restrict firearm possession by their employees. In addition a public college or university may establish a policy that restricts firearm possession by its students while on campus. Employers and public colleges, however, may not restrict the lawful possession of firearms in parking areas and facilities.

A private college, however, qualifies as a private establishment and can therefore restrict firearms in the same manner as any other private establishment. Laws 2003, ch. 28, art. 2, § 23; to be codified at Minn. Stat. § 624.714, subd. 18. (Law effective May 28, 2003.)

***Places Where Pistols or Firearms May Not Be Carried Even with a Permit to Carry or Where There Are Restrictions on the Permit to Carry***

Despite the general rule that permits to carry pistols are valid statewide, pistols or other firearms are restricted or not allowed in the following places:

- correctional facilities or state hospitals (Minn. Stat. § 243.55);
- county jails (Minn. Stat. § 641.165);
- courthouse complexes, unless the sheriff is notified (Minn. Stat. § 609.66);
- in a capitol area building, unless the Commissioner of Public Safety is notified (Minn. Stat. § 609.66) (“capitol area” is defined in Minn. Stat. § 15.50, subd. 2); and
- afield while hunting big game by archery, except bear (Minn. Stat. § 97B.211).

Additionally, firearms are not permitted in federal court facilities or other federal facilities (Title 18 U.S.C. § 930). This restriction is just one of many federal laws regulating firearms. Federal law must be consulted to ensure compliance with all applicable firearms laws.

***Prohibitions on Permit to Carry; Carrying While Under the Influence of Alcohol or a Controlled Substance (New Section 624.7142)***

The law prohibits carrying a pistol in public when under the influence of a controlled substance, a hazardous substance, alcohol, or a combination of these. A person may not carry a pistol when the person’s alcohol concentration (AC) is .04 percent or more.

The penalties that apply when a person carries a firearm with alcohol present in the person’s body vary depending on the person’s alcohol concentration. A violation for AC of .04 percent to .10 percent is a misdemeanor. The maximum penalty is not increased for subsequent violations. The authority to carry a pistol is suspended for 180 days. A violation for AC over .10 percent or for a controlled or hazardous substance is a misdemeanor. A second violation, however, is a gross misdemeanor. A conviction results in revocation of the authority to carry a pistol for one year. Both suspensions and revocations must be reported to the issuing sheriff and DPS.

An arrest for a violation may be made upon probable cause, without regard to whether it was committed in the officer’s presence. An officer with reason to believe a person has violated this section may require the person to provide a breath sample for an in-field screening test. The results may be used to determine whether an arrest should be made and further testing required. The results of the preliminary test have limited admissibility in court. Admission of evidence relating to a person’s AC is governed by section 169A.45 (in Minnesota’s DWI laws). Laws 2003, ch. 28, art. 2, § 29; to be codified at Minn. Stat. § 624.7142, subs. 1 to 7. (Law effective May 28, 2003.)

***Chemical Testing Based Upon Probable Cause That Person Is Under Influence of Alcohol or a Controlled Substance (New Section 624.7143)***

A person carrying a pistol in public must submit to a chemical test when an officer has probable cause to believe the person violated section 624.7143 and the person was arrested, the person

was involved in a firearms-related accident, the person refused a preliminary screening test, or the screening test indicated an AC of .04 percent or more.

If a person refuses to take a test, a court may impose a civil penalty of \$500 and may revoke the authority to carry a pistol in public for one year. The person must be given notice and an opportunity to be heard.

At the time a test is requested, a person must be informed that Minnesota law requires a person to take a test to determine if the person is under the influence of alcohol or a controlled substance; if the person refuses, the person is subject to a civil penalty of \$500 and prohibited from carrying a pistol for one year; and the person has the right to consult with an attorney, but the right is limited to the extent it cannot unreasonably delay administration of the test or the person will be deemed to have refused the test.

A blood or urine test may be required after a breath test if there is reason to believe the person is impaired by a controlled substance. Chemical tests are governed by section 169A.51, as long as not inconsistent with this law (in Minnesota's DWI laws). Laws 2003, ch. 28, art. 2, § 30; to be codified at Minn. Stat. § 624.7143. (Law effective May 28, 2003.)

### ***Monitoring of Permits***

The Department of Public Safety must report to the legislature annually on the number of permits applied for, issued, suspended, revoked, and denied, along with additional demographic information; the number of permits currently valid; the specific reasons for each suspension, revocation, and denial and the number of corrected actions; the number of revocations and the grounds for revocation; the number of convictions and types of crimes committed by individuals with permits in situations where a person used a permitted firearm in furtherance of the crime; data on the lawful and justifiable use by permit holders; and funds reported to the commissioner as part of the permit granting process.

Copies of this report must be available to the public for the cost of duplication. The provision clarifies that nothing in the law requires or allows the registration of firearms. Laws 2003, ch. 28, art. 2, § 25; to be codified at Minn. Stat. § 624.714, subd. 20. (Law effective May 28, 2003.)

### ***Data and Records***

Under the Government Data Practices Act, sheriffs must share certain data on permit holders with DPS. DPS must maintain a database of persons with valid carry permits and a separate database of persons who were denied permits or who had their permits revoked. This database must be operational by October 25, 2003.

A sheriff may not maintain permit application data not necessary to support an outstanding permit and must purge unnecessary information yearly. However, information on a permit holder whose permit was denied or revoked for cause may be kept for six years. Laws 2003, ch. 28, art. 2, §§ 1, 19, and 20; to be codified at Minn. Stat. §§ 13.871, subd. 9; 624.714, subds. 14 and 15. (Law effective May 28, 2003.)

### ***Persons Ineligible for a Permit<sup>1</sup>***

The people listed below are prohibited from possessing a pistol or firearm under state law as amended by the Minnesota Citizens' Personal Protection Act of 2003 and the amendments to expand restrictions on possession of firearms following a conviction for a crime (see page 18). Some exceptions may apply; statutory and case law must be consulted to determine eligibility in any specific case.

#### **General/Civil Status**

The following people are not eligible for a permit to carry a *pistol* in public:

- persons who have been committed as mentally ill, mentally retarded, or mentally ill and dangerous;
- persons who have been found incompetent to stand trial or not guilty by reason of mental illness;
- persons currently committed as chemically dependent;
- peace officers informally admitted to treatment facilities for chemical dependency;
- fugitives from justice;
- illegal aliens;
- persons dishonorably discharged from the armed forces; and
- persons who have renounced United States citizenship.

#### **Criminal History Status**

##### ***Crimes of Violence***

The law defines the following as crimes of violence. Persons convicted of *felony-level offenses* for these crimes (or an attempt to commit them) are ineligible for permits to carry a pistol (or to possess any firearm) for life unless those rights are specially restored. A conviction for a similar crime in another state also prohibits a person from eligibility for a permit to carry. The crimes that make a person ineligible for a permit to carry are:

- murder;
- manslaughter;
- aiding suicide or attempted suicide;
- first through fourth degree assault;
- crimes committed for the benefit of a gang;
- use of drugs to injure or to facilitate crime;
- simple or aggravated robbery;
- kidnapping;

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<sup>1</sup> Joe Cox, the legislative analyst in the Minnesota House of Representatives Research Department with primary responsibility for covering firearm issues, prepared the information included on pages 18 to 20 listing the persons ineligible to possess a firearm. This information also can be found in his act summary of chapter 28 of the 2003 session laws.



- false imprisonment;
- criminal sexual conduct in the first through fourth degrees;
- malicious punishment of a child;
- neglect or endangerment of a child;
- commission of a crime while wearing or possessing a bullet-resistant vest;
- firearm theft;
- motor vehicle unauthorized use;
- theft/looting;
- theft of a controlled substance, an explosive, or an incendiary device;
- first- or second-degree arson;
- burglary in the first through third degree;
- drive-by shooting;
- unlawfully owning, possessing, or operating a machine gun or short-barreled shotgun;
- riot;
- terroristic threats;
- harassment and stalking;
- shooting at a public transit vehicle or facility; and
- violations of the controlled substance laws.

### ***Other Felonies***

A person convicted of any other felony is ineligible for a permit to carry a pistol until the person's civil rights are restored. The time period may be longer for persons expressly prohibited from possessing a firearm as a condition of a pardon, expungement, or restoration of civil rights. Certain antitrust and other business practice violations are excluded.

### ***Specified Gross Misdemeanors***

A person convicted of the following gross misdemeanor crimes is not entitled to possess a firearm for three years from the date of conviction:

- crime committed for the benefit of a gang,
- assaults motivated by bias,
- false imprisonment,
- neglect or endangerment of a child,
- burglary in the fourth degree,
- setting a spring gun,
- riot, and
- harassment and stalking.

### ***Other Controlled Substance Crimes***

A person convicted of a misdemeanor or gross misdemeanor controlled substance crime, or hospitalized or committed for controlled substance abuse, is ineligible for a permit to carry a pistol unless the person obtains a doctor's certificate, or other satisfactory proof, that the person has not abused a controlled substance for two years.

### ***Domestic Violence and Harassment Crimes***

A person convicted of domestic assault, violation of an order for protection, stalking, or harassment may not possess a *pistol* for three years from the date of conviction. If the person used a firearm in committing the crime, the court may extend the restriction to *any* type of firearm for a period from three years to life. (Note: under federal law, a person in Minnesota convicted of misdemeanor domestic assault may not possess a firearm unless the conviction has been expunged or a pardon has been granted.)

### ***Assault Crimes Other Than Domestic Assault***

A person who is convicted of assault twice in three years may not possess a *pistol* for three years from the date of the second conviction.

### ***Person Charged with a Felony***

A person charged with a felony may not receive, ship, or transport a pistol or assault weapon.

### ***Other Miscellaneous Categories***

A firearm may not be possessed by a person:

- charged with a *crime of violence* and placed in a pretrial diversion program;
- who flees from the state to avoid prosecution or testifying; or
- who “is an unlawful user” of a controlled substance.

## **Restrictions on Possession of Firearms by Those Convicted of a Crime**

Under prior law, the restriction on possession of a firearm by a violent felon ended ten years after discharge from sentence. This law imposes a lifetime ban on firearm possession for persons who are convicted for felony-level crimes of violence. It also establishes a process by which a person can petition the court to restore firearm possession rights, modifies the definition of “crime of violence,” and makes other related changes.

### ***Modification of Definition of “Crime of Violence”***

This law modifies the definition of “crime of violence,” keeping only felonies within this definition. The gross misdemeanor and misdemeanor offenses previously in this definition have been removed from this definition. The gross misdemeanor offenses are moved to Minnesota Statutes, section 624.713, subdivision 1, paragraph (k). The misdemeanor offenses are eliminated entirely. Laws 2003, ch. 28, art. 3, § 7; to be codified at Minn. Stat. § 624.712, subd. 5. (Law effective August 1, 2003.)

### ***Persons Ineligible to Possess Certain Firearms***

There are five primary changes from current law. First, for persons who commit crimes of violence, the ten-year limit on firearm possession restrictions is removed, leaving instead a lifetime ban.

Second, the gross misdemeanor offenses that were removed from the crime of violence definition are reinserted as a separate provision. Persons who commit these gross misdemeanor offenses may not possess a firearm for three years from the date of conviction. A violation is a gross misdemeanor.

Third, two misdemeanor offenses are removed entirely and no longer result in a restriction on firearm possession.

Fourth, the law provides that the lifetime prohibition for crime of violence offenders applies to offenders discharged from sentence on or after August 1, 1993. The practical effect of this provision is that a person whose right to possess a firearm was restored *prior to* the effective date of this legislation will not have that right taken away. However, if a person's right to possess a firearm has *not yet* been restored, the possession ban will continue for life (or at least until the person has his or her rights specially restored). Laws 2003, ch. 28, art. 3, § 8; to be codified at Minn. Stat. § 624.713, subd. 1. (Law effective August 1, 2003, except that the lifetime ban on firearm possession for violent felons applies to offenders discharged from sentence on or after August 1, 1993.)

Fifth, the law establishes a process for a person who has committed a crime of violence and is prohibited by state law from possessing a firearm to petition a court to restore the right. The court may grant relief if the person shows good cause to do so and the person has been released from physical confinement. If a petition is denied, a person may not re-petition for three years, unless the court allows otherwise. Laws 2003, ch. 28, art. 3, § 5; to be codified at Minn. Stat. § 609.165, subd. 1d. (Law effective August 1, 2003.)

### ***Court Notice***

The court is required to notify an offender when the person is prohibited from possessing a pistol for life. Laws 2003, ch. 28, art. 3, § 10; to be codified at Minn. Stat. § 624.713, subd. 3. (Law effective August 1, 2003.)

### ***Penalties Modified***

The penalties for violating restrictions on firearm possession are modified to state that violations do not apply to persons whose rights are specially restored by either court order or under a certain federal provision. Laws 2003, ch. 28, art. 3, § 9; to be codified at Minn. Stat. § 624.713, subd. 2. (Law effective August 1, 2003.)

### ***Penalty to Ship, Transport, Possess, or Receive Firearm***

This provision specifies that it is a felony for a person convicted of a crime of violence to ship, transport, possess, or receive a firearm. No time limit applies. Under previous law, the prohibition ended ten years after discharge from sentence. A conviction under this section bars a conviction for the same conduct under section 624.713, subdivision 2, because constitutional provisions prohibiting double jeopardy would apply. This provision specifies that the penalty does not apply to a person whose rights are specially restored. Laws 2003, ch. 28, art. 3, § 4; to be codified at Minn. Stat. § 609.165, subd. 1b. (Law effective August 1, 2003.)

### ***Orders of Discharge***

The law changes provisions relating to orders of discharge from a criminal sentence to provide that orders of discharge for persons who committed crimes of violence must state that the person is not entitled to possess firearms for the remainder of the person's lifetime, unless the right is specially restored.

A similar change is made for juveniles adjudicated delinquent for, or extended jurisdiction juveniles convicted of, crimes of violence. The court must provide that such persons may not possess firearms for the remainder of the person's lifetime, unless the right is specially restored. Laws 2003, ch. 28, art. 3, §§ 1 to 3; to be codified at Minn. Stat. §§ 242.31, subd. 2a; 260B.245, subd. 1; 609.165, subd. 1a. (Law effective August 1, 2003.)

### ***Changes to Expungement Process***

Under current law, an expungement for a crime of violence still does not restore firearm possession rights. This law extends that policy to a lifetime ban for crimes of violence, unless rights are specially restored. Laws 2003, ch. 28, art. 3, § 6; to be codified at Minn. Stat. § 609A.03, subd. 5a. (Law effective August 1, 2003.)

### ***Change to Law Governing Board of Pardons***

This law makes a policy change relating to the board of pardons by removing the presumption that a person receiving a pardon for a crime of violence may nevertheless not possess firearms "unless the board expressly provides otherwise in writing by unanimous vote." Instead, the person must follow the process in this law to have those rights specially restored. Laws 2003, ch. 28, art. 3, § 11; to be codified at Minn. Stat. § 638.02, subd. 2. (Law effective August 1, 2003.)

## **Abuse/Criminal Sexual Conduct/Victim Provisions**

### **Predatory Offender Registration: Definitions of Primary and Secondary Residences**

The legislature amended the Predatory Offender Registration law to define the terms "primary residence" and "secondary residence." The law requires a predatory offender to register these

addresses under the law. Prior to the adoption of these definitions, prosecutors had difficulty prosecuting these cases because of the difficulty in demonstrating what constitutes a primary or secondary address.

Under the law, a primary residence means any place where the person resides longer than 14 days or that is deemed a primary residence by the person's corrections agent, if one is assigned to the person.

A secondary residence means any place where the person regularly stays overnight when not staying at the person's primary residence and includes, but is not limited to:

- the person's parent's home if the person is a student and stays at the home at times when the person is not staying at school, including during summer months; and
- the home of someone with whom the person has a minor child in common where the child's custody is shared.

Laws 2003, ch. 116; to be codified at Minn. Stat. § 243.166, subd. 4a. (Law effective August 1, 2003.)

### **Predatory Offender Registration; Notice When an Offender Leaves an Address**

This change requires an offender to immediately notify law enforcement when the person's primary address no longer applies. Previously, offenders were required to give notice of a new address five days before they started living at a new address, but there was no provision in the law for offenders to let law enforcement know when they were leaving an address; therefore, offenders who did not know where they would be living (i.e., homeless offenders) were not reporting a change in primary address. Laws 2003, 1st spec. sess., ch. 2, art. 8, §§ 4 and 5; to be codified at Minn. Stat. § 243.166, subs. 3 and 4a. (Law effective July 1, 2003.)

### **County Responsibility for Costs of Medical Examination**

The law providing that counties are responsible for the costs of examining a victim of criminal sexual conduct is clarified to provide that the costs must be paid by the county in which the offense occurred, regardless of whether or not the victim reports the crime to law enforcement, and regardless of the existence or status of any investigation or prosecution. The provision also clarifies the costs that are covered and allows a county to seek insurance reimbursement from the victim's insurer only if authorized by the victim. The county must tell the victim that if this authorization is not given, the county is responsible for the costs of the examination and the victim is in no way liable for these costs or obligated to authorize the reimbursement. Laws 2003, ch. 116; to be codified at Minn. Stat. § 609.35. (Law effective August 1, 2003.)

## **Restrictions on Disclosure of Videotapes of Child Abuse Victims**

This law amends the Government Data Practices Act to clarify that the prohibition against obtaining a copy of the videotaped interview of a child victim of physical or sexual abuse does not prohibit a defendant's rights of access in the discovery process. The following conditions apply to such disclosure:

- no more than two copies of the tape or any portion of the tape may be made by the defendant's attorney, investigator, expert, or other representative or agent of the defendant;
- the tape may not be used for any purpose other than defense preparation;
- the tape may not be publicly exhibited except in judicial proceedings;
- the tape may be viewed only by the defendant, the defendant's attorney, and the attorney's employees, investigators, and experts;
- no transcript of the tape, nor the substance of any section of the tape, may be divulged to those not authorized to view the tape;
- no person may be granted access to the tape or transcription, unless the person first signs a written agreement acknowledging the existence of this law and the court's contempt power to enforce the law; and
- upon final disposition of the case, the tape and any transcripts must be returned to the prosecuting attorney.

Laws 2003, ch. 116; to be codified at Minn. Stat. §§ 13.821; 634.35. (Law effective August 1, 2003.)

## **Victim's Right to Submit Statement at Plea Agreement Hearing**

This law grants crime victims the right to attend plea agreement hearings and express orally or in writing any objections to the agreement. Prosecutors must inform victims of this right. Previously, crime victims had this right only at the sentencing stage, which denied them participation at the time a plea was entered. Laws 2003, ch. 116; to be codified at Minn. Stat. §§ 611A.03, subd. 1; 611A.031. (Law effective August 1, 2003.)

## **Anti-Terrorism Provisions**

### **Hazardous Materials Incident Response**

*Purpose and role of chemical assessment teams.* A chemical assessment team (CAT) is trained, equipped, and authorized to evaluate a hazardous materials incident and able to provide information on the best means of controlling a hazard after consideration of life safety concerns, environmental effects, exposure hazards, and various other factors. This law expands the requirements of these teams to (1) provide simple mitigation of damage from a hazmat incident when possible, and (2) make recommendations to the local incident manager regarding how to

control the incident. Previously, these teams were not required to make recommendations for controlling the hazard.

***Definition of Hazardous Materials.*** Under the law, the term “hazardous materials” is expanded to include (1) hazardous materials intentionally released, and (2) chemical and biological substances and toxic gasses. Hazardous materials are generally those substances or materials that, because of their chemical, physical, or biological nature, pose a potential risk to life, health, or property if they are released. The law already applies to hazardous substances that are accidentally released.

***Protection from Liability and Workers’ Compensation Coverage.*** The law also makes clear that the law addressing liability for regional hazardous materials teams applies to both chemical assessment teams and emergency response teams, making these individuals “employees of the state” when operating outside of their geographic jurisdiction. Also, the law makes a similar change to make clear that workers’ compensation for regional hazmat teams covers both chemical assessment teams and emergency response teams, considering these individuals employees of the Department of Public Safety when operating outside their geographic jurisdiction. Laws 2003, ch. 39; to be codified at Minn. Stat. § 299A.49, subds. 2 and 4; 299A.51, subds. 1 and 2. (Law effective August 1, 2003.)

## **General Crime Provisions**

### **Identity Theft**

The 2003 Legislature made several changes to identity theft law, including increased penalties, specific information on where crimes may be reported, venue changes, the ability of prosecutors to aggregate the value of illicitly obtained money or property to increase the penalty for the offense, and a requirement for the Sentencing Guidelines Commission to add the use of another’s identity to the list of aggravating factors that may be used in sentencing.

***Increased Penalty.*** This provision amends the identity theft statute by adding another level of offense for those who commit identity theft and, in the process, victimize eight or more parties or cause a combined loss of more than \$35,000. Violation of this provision is a 20-year felony and subjects the person to a fine of up to \$100,000, or both.

***Reporting a Crime.*** This provision permits a person who has learned or reasonably suspects that a person is a direct victim of identity theft to report the crime in the jurisdiction where the person lives, not just where the crime occurred. This change addresses the problem of law enforcement agencies refusing to accept reports of identity theft from residents within their jurisdiction when the offense occurred elsewhere. The law enforcement agency must prepare a police report of the matter and provide the complainant with a copy of the report. The agency may then begin an investigation of the facts or, if the suspected crime occurred in another jurisdiction, refer the report of identity theft to the appropriate agency without having to report the crime to the Commissioner of Public Safety for statistical purposes. By not having to report the crime within the jurisdiction, the cities in the jurisdiction can avoid inflated property crime statistics and the

resulting increase in property taxes for residents. This approach makes sense because the crime was not committed within the jurisdiction where it was reported.

**Venue.** The law authorizes prosecutors to file charges for identity theft in either the county where the offense occurred or the county of residence or place of business of the victim. This provision gives prosecutors greater flexibility in determining where to prosecute the offense.

**Aggregation of Offenses.** Prosecutors are allowed to aggregate the value of illicitly obtained money, property, or services through identity theft or the number of direct or indirect victims within any six-month period to increase the penalty of the offense. In such a case, a prosecutor may file charges in any county where one of the offenses occurred for all of the offenses aggregated under this provision.

**Aggravating Factor.** The Sentencing Guidelines Commission is required to amend the sentencing guidelines by adding the use of another's identity without authorization in the commission of a crime to the list of aggravating factors a court may consider in sentencing. The aggravating factor may not be used when the use of another's identity is an element of the offense. Laws 2003, ch. 106; to be codified at Minn. Stat. § 609.527, subds. 5, 6, and 7; Laws 2003, 1st spec. sess., ch. 2, art. 8, §§ 9 and 18; to be codified at Minn. Stat. § 609.527, subd. 3. (Law effective August 1, 2003.)

## **Mail Theft**

This law provides a three-year penalty for the crime of mail theft, when a person:

- intentionally and without claim of right does any of the following: removes mail from a mail depository; takes mail from a mail carrier; removes the contents of mail addressed to another; or takes mail or the contents of mail that has been left for collection on or near a mail depository;
- obtains custody of mail by intentionally deceiving a mail carrier, or other person who rightfully possesses or controls the mail, with a false representation known to be false and made with intent to deceive and which does deceive a mail carrier or other person who controls or possesses the mail; or
- receives, possesses, transfers, buys, or conceals mail obtained by any of the above acts, knowing or having reason to know the mail was obtained illegally.

A mail theft offense may be prosecuted either in the county where the offense occurred or in the county of residence or place of business of the direct or indirect victim of mail theft. The law defines both "mail" and "mail depository." Laws 2003, ch. 106; to be codified at Minn. Stat. § 609.529, subds. 1 to 4. (Law effective August 1, 2003.)

## **Arson Resulting in Bodily Harm**

This law amends the law pertaining to negligent fire resulting in injury or property damage to add a gross misdemeanor penalty when a person who is grossly negligent in causing a fire to burn or get out of control causes bodily harm to another. "Bodily harm" has the meaning given



in the criminal code: namely, “physical pain or injury, illness, or any impairment of physical condition.” The law already provided a five-year felony penalty for such conduct when it resulted in great bodily harm. Laws 2003, ch. 82; to be codified at Minn. Stat. § 609.576. (Law effective August 1, 2002.)

### **Enhanced Penalty for Assault on Community Crime Prevention Group Member**

This provision creates a new fourth-degree assault crime to include an assault that inflicts demonstrable bodily harm on a community crime prevention group member who is engaged in a neighborhood patrol, if the offender reasonably should have known that the victim is a community crime prevention group member engaged in a neighborhood patrol. This offense is subject to a gross misdemeanor penalty, instead of the misdemeanor penalty that would otherwise apply. The law defines “community crime prevention group” for the purposes of this law. Laws 2003, 1st spec. sess., ch. 2, art. 8, § 8; to be codified at Minn. Stat. § 609.2231, subd. 7. (Law effective the day following final enactment.)

### **Attempted Manufacture of Methamphetamine**

This law creates the crime of attempted manufacture of methamphetamine and provides a three-year felony penalty for the crime. An individual is guilty of this crime if the person possesses any chemical reagents or precursors with the intent to manufacture methamphetamine. The law defines chemical reagents and precursors.

If the conviction is for a “subsequent controlled substance conviction, the person may be sentenced to imprisonment for not more than four years or to payment of a fine of not more than \$5,000, or both.

The law also repeals a current law relating to the attempted manufacture of methamphetamine that makes possession of certain chemical reagents and precursors a misdemeanor. Laws 2003, 1st spec. sess., ch. 2, art. 8, §§ 2, 3, and 19; to be codified at Minn. Stat. §§ 152.021, subds. 2a and 3; 142. (Law effective August 1, 2003.)

### **Interference with Emergency Communications**

This law provides a three-year felony when a person, without prior authorization, broadcasts or transmits on, interferes with, blocks, or cross-patches another frequency onto any emergency frequency channel, knowing or having reason to know that the act creates a risk of obstructing, preventing, or misdirecting official emergency communications. Laws 2003, 1st spec. sess., ch. 2, art. 4, § 27; to be codified at Minn. Stat. § 609.776. (Law effective July 1, 2003.)

### **Aggregation of Prostitution Cases**

*Aggregation of Offenses.* This provision specifies that acts by the defendant constituting solicitation, inducement, or promotion of prostitution that occur within any six-month time

period may be aggregated and charged accordingly. In situations where the same person in two or more counties commits two or more offenses, the accused may be prosecuted for all of the offenses aggregated in any county in which one of the offenses was committed. Laws 2003, 1st spec. sess., ch. 2, art. 10, § 1; to be codified at Minn. Stat. § 609.322, subd. 1c(1). (Law effective July 1, 2003.)

***Study and Report on Prostitution Cases.*** Two related provisions require (1) the collection of information and a study on prostitution cases, and (2) a report on use of money derived from penalty assessments for prostitution crimes. The first provision requires the Hennepin and Ramsey County sheriffs and attorneys and Minneapolis and St. Paul chiefs of police and city attorneys to oversee collection of information on the investigation and prosecution of prostitution crimes committed within the jurisdiction of each individual office. The report must identify where prostitution crimes are committed; the number of calls and complaints made to law enforcement about alleged prostitution crimes; the number of arrests made; the number of citations, tab charges, and complaints issued; the types or charges filed in each case; and the disposition of each case. The law enforcement agencies participating in this study must provide a report to the legislature including a summary of this information by December 15, 2003. Laws 2003, 1st spec. sess., ch. 2, art. 10, § 3. (Law effective the day following final enactment.)

***Report on Penalty Assessments.*** The second report requires the Commissioner of Public Safety to report to the legislature on the amount of money appropriated to the agency since the beginning of fiscal year 1998 and how that money was used. The legislation also requests the Supreme Court to report on the use of money collected from penalty assessments in prostitution cases since the beginning of fiscal year 1998. Laws 2003, 1st spec. sess., ch. 2, art. 10, § 4. (Law effective the day following final enactment.)

## **Decriminalization of Littering and Unlawful Smoking Crimes**

These two provisions reduce the penalties for littering and for smoking in a building, area, or common carrier from misdemeanors to petty misdemeanors. Laws 2003, 1st spec. sess., ch. 2, art. 8, §§ 12 and 13; to be codified at Minn. Stat. §§ 609.68; 609.681. (Law effective August 1, 2003.)

## **Collection of DNA Samples for Future Testing**

In 2001, the legislature began mandating the collection of biological specimens for future DNA testing from all felons. A separate law requires collection of biological specimens for DNA testing from certain categories of felons (primarily predatory offenders). The legislature provided that this collection would continue until June 30, 2003, only, because of fiscal constraints. This law extends the collection of specimens for future DNA sampling for two years, until June 30, 2005. Laws 2003, 1st spec. sess., ch. 2, art. 4, § 24; to be codified at Minn. Stat. § 609.119. (Law effective July 1, 2003.)

## **Juvenile Law Provisions**

The 2003 Legislature made several changes in the juvenile law area, primarily to ease the burden juvenile cases impose on judicial and county resources. Consistent with this goal, the changes include:

- providing that juvenile delinquency and traffic offense cases shall be venued only in the county of offense and not the county of residence;
- allowing a court to transfer a juvenile delinquency, traffic, or petty offender case after hearing and a finding or admission of guilt to the county of residence for disposition if the court determines such a transfer is in the interests of justice; and
- eliminating mandatory appointment of guardians ad litem in truancy and runaway cases.

Laws 2003, 1st spec. sess., ch. 2, art. 7, §§ 1 to 4; to be codified at Minn. Stat. §§ 260B.105, subs. 1 and 2; 260B.143, subd. 1; 260C.163, subd. 5. (Laws effective August 1, 2003.)

## **Probation Provisions**

### **Sanctions Conference Procedure; Technical Probation Violations**

This law creates a sanctions conference procedure for handling technical violations of probation in county probation officer counties. Under this procedure, a probation officer who learns that a person on probation has committed a technical violation of probation can request the offender to meet with the officer, at which time the offender can elect to participate in the sanctions conference or decline participation, in which case the matter is referred to the district court for a hearing on the violation. The sanctions conference process aims to address violations in a timelier manner than the courts can usually address them.

Prior to obtaining the offender's decision to participate in the conference, the probation officer must provide the offender with a form explaining the offender's rights and options. The probation officer also must inform the offender of the sanctions that may be imposed and that the officer will not recommend revocation of probation to the district court, as long as the offender completes any sanctions that are imposed in the sanctions conference. If the offender elects to participate in the sanctions conference, the offender must admit, or agree not to contest, the violation and waive the right to a hearing and the accompanying protections. The offender must stipulate, in writing, that the offender has received a copy of the form outlining the offender's rights and options and declare in writing whether the offender elects to participate in the sanctions conference or to proceed with a judicial hearing. The sanctions a probation officer may impose are limited, and the court is required to confirm the probation officer's imposition of sanctions.

***Sanctions Conference: Defined.*** A sanctions conference is a voluntary conference at which the probation officer, offender, and, if appropriate, other interested parties meet to discuss the offender's technical violation of probation. The chief executive officer of a local corrections agency, with the approval of the district court, must develop procedures for the sanctions conference and a sanctions conference form. This form explains the offender's rights and options and notifies the offender of the types of sanctions that may be imposed as part of the sanctions conference; that the sanctions supplement any existing conditions of release; that participation in the sanctions conference requires completion of all sanctions imposed; and that failure to complete the sanctions could result in additional sanctions or the commencement of revocation proceedings.

***Probation Violation Sanction: Defined.*** A probation violation sanction includes, but is not limited to, electronic monitoring, intensive probation, sentencing to service, reporting to a day reporting center, chemical dependency or mental health treatment or counseling, community work service, remote electronic alcohol monitoring, random drug testing, and participation in an educational or restorative justice program. A probation violation sanction does not include any type of custodial sanction.

***Technical Violation of Probation: Defined.*** A technical violation of probation is any violation of a court order of probation, except an allegation of a subsequent criminal act, which is alleged in a formal complaint, citation, or petition.

***Process.*** A probation officer who has reason to believe an offender has committed a technical violation of probation begins the sanctions conference process by notifying the offender in writing of the officer's belief the offender has committed a technical probation violation. The notice must state the specific nature of the technical violation; note that a sanctions conference has been scheduled; and specify the date, time, and location of the conference. The notice also must state that, if the offender fails to appear at the conference, the probation agency may apprehend and detain the offender and ask the court to commence revocation proceedings. To ensure quick consequences for violations, the law requires the sanctions conference to take place within seven days of mailing of the notice to the offender, to the extent feasible.

***Notice to Offender.*** If an offender elects to participate in the sanctions conference, the probation officer must notify the offender (1) of the probation violation sanction the officer is recommending, and (2) that the sanction becomes effective upon confirmation by the district court. The probation officer must submit documentation relating to the sanction to the district court. The sanction becomes effective when confirmed by the judge. The order of the court is proof of confirmation. When the court approves the sanction, the probation agent must notify the offender and prosecuting authority of this fact. If the sanction is not approved, the sanction does not go into effect, but a probation officer may ask the court to commence revocation proceedings.

***Appeal by Offender.*** An offender may appeal the judge's confirmation of the probation violation sanction in the same manner available for challenging an order stemming from a proceeding to revoke probation.

***Process if Offender Elects Not to Participate in Sanctions Conference.*** If the offender elects not to participate in the sanctions conference, the probation officer may ask the court to initiate revocation proceedings or refer the matter to the appropriate prosecuting authority to commence revocation proceedings. The probation officer also may take steps to apprehend and detain the offender, as provided by law. Laws 2003, 1st spec. sess., ch. 2, art. 6, §§ 1 to 8; to be codified at Minn. Stat. §§ 244.196, subds. 1 to 5; 244.197, subds. 1 to 3; 244.198, subds. 1 to 4; 244.199; 609.135, subd. 1. (Law effective August 1, 2003.)

## **Law Enforcement and Prosecution Provisions**

### **Obtaining a Search Warrant Outside Officer's Primary Jurisdiction**

This provision allows an officer to apply for a search warrant in any jurisdiction. Previously, a peace officer who sought a warrant to search a location outside the officer's primary jurisdiction had to enlist the aid of an officer from that jurisdiction to apply for the warrant. The law also allows a peace officer to serve and execute a warrant anywhere in the issuing judge's jurisdiction. The officer, however, must provide notice of service and execution of the warrant to the chief of police, or if there is no chief of police, to the sheriff or deputy sheriff of the county in which service is to be made. This notice must occur before service and execution of the warrant. Laws 2003, ch. 86; to be codified at Minn. Stat. §§ 626.11; 626.13. (Law effective August 1, 2003.)

### **Use of Silencers Allowed**

Under current law, firearm silencers are illegal in Minnesota, and there is no exception for law enforcement officers. This provision permits licensed peace officers to use silencers for tactical emergency response operations, as defined by the law. If used, a police chief or sheriff must establish and enforce a written policy regarding silencer use. Laws 2003, 1st spec. sess., ch. 2, art. 8, §§ 10 and 11; to be codified at Minn. Stat. § 609.66, subds. 1a and 1h. (Law effective August 1, 2003.)

### **Enhanced Community Policing Pilot Project**

This provision establishes the Minnesota Alternative Policing Strategies (MAPS) program as a pilot project for the purpose of enhancing community policing in Minnesota. The Commissioner of Public Safety is required to make grants to up to six law enforcement agencies, two urban, two suburban, and two rural, based upon applications submitted by the agencies explaining how they will use the grants.

For a program to be eligible for a grant, it must be located in an area with a high crime rate and gang, drug, or prostitution activity. The agency also must provide a detailed plan for increasing community awareness about law enforcement activities, agree to use a portion of the funding to hire additional peace officers, agree to assign designated officers for at least one year to work exclusively in the area where the enhanced community policing efforts will take place, and agree to implement a system where the designated peace officers will be responsible for as many 911

calls in their area as reasonably possible and relieved from answering 911 calls in other areas absent extremely urgent circumstances.

An agency receiving funding under the Community-Oriented Policing (COPS) program is eligible to compete for a MAPS grant. In addition, the Commissioner of Public Safety must assist agencies applying for COPS grants, including, but not limited to, seeking a waiver of the local match requirement. Agencies receiving grants must provide written reports to the Commissioner of Public Safety, who in turn must report to the legislature. Laws 2003, 1st spec. sess., ch. 2, art. 4, § 29. (Law effective July 1, 2003.)

### **Follow-Up Notice to a Community Crime Prevention Group**

Law enforcement agencies of cities of the first class must make reasonable efforts to disclose certain investigative case information to the designated leader of a community crime prevention group that has reported criminal activity to law enforcement. The term “community crime prevention group” is defined by law to mean a community group focused on community safety and crime prevention that meets regularly for the purpose of discussing community safety and patrolling community neighborhoods for criminal activity, has been designated by a local law enforcement agency as such a group, and interacts regularly with police regarding community safety issues. The information to be disclosed includes information on the final outcome of the investigation into the criminal activity, including the decision to arrest or not arrest the person, and whether the matter was referred to a prosecuting authority.

If a community crime prevention group requests notice of the outcome of its report of criminal activity to law enforcement, law enforcement must notify the prosecuting authority of the group’s request for notice. The prosecuting authority must disclose to the group the final outcome of a criminal proceeding that resulted from an arrest based on a community crime prevention group report.

A community crime prevention group that would like written or Internet notice from law enforcement or a prosecuting authority must request law enforcement or the prosecuting authority where the specific alleged criminal conduct occurred to provide notice to the community crime prevention group leader. The request for notice must provide information on how to contact the leader and the preferred method of communication. Laws 2003, 1st spec. sess., ch. 2, art. 8, § 17; to be codified at Minn. Stat. § 611A.0392. (Law effective July 1, 2003.)

### **Financial Crimes Task Force**

***Statewide, Permanent Task Force.*** A Financial Crimes Investigation Task Force was established temporarily in 2001 to investigate consumer identity theft cases and reported financial crimes from individuals and businesses, with a focus on certain identified statewide crimes. When enacted, the task force was to expire on June 30, 2003. This law makes the task force permanent. This law names the task force the “Minnesota Financial Crimes Task Force” and provides that the task force be a single, centralized entity. Prior to this change, the potential existed that multiple, independent, cross-jurisdictional task forces could be formed.

***Scope of Task Force.*** The scope of the task force is extended to include investigation of various types of fraud and organizations, in addition to individuals.

***Participation of Federal Agencies.*** The law permits federal law enforcement agencies and federal prosecutors' offices to join the task force, in addition to the state agencies and offices that are part of the task force. A federal law enforcement agency that joins the task force must sign a memorandum of understanding, just as local agencies do. Although federal agencies may participate in the task force, they may not participate in selecting the commander of the task force or receive funding for agents' salaries, benefits, or overtime.

***Memorandum of Understanding.*** A memorandum of understanding must address matters related to command structure; equipment, office space, and transportation; necessary administrative support; membership; transfer of task force members; dispute resolution among participating agencies; and matters related to workers' compensation and other liability. A new requirement exists that the memo also address issues related to disposition of assets and debts if the task force is disbanded.

***Commander of Task Force.*** Under changes to the law, the commander of the task force must consult with agencies participating in the task force when making tactical decisions and report annually to the Commissioner of Public Safety (as opposed to the Bureau of Criminal Apprehension).

***Advisory Committee.*** The law creates an advisory committee, including the commander, a county attorney from the metro area, a county attorney from greater Minnesota, and the three chiefs of police or sheriffs from the local law enforcement agencies that have the longest continuous participation in the task force. The members must appoint a chair (other than the commander) and select a fiscal agent. The committee is required to adopt procedures as necessary, as well as to oversee and select a fiscal agent qualified to handle financial accounting of task force funding.

***Funding Issues.*** The law permits the commander to establish a budget and present it to the advisory committee for approval. The provision governing grants for reimbursement of time and resources is expanded to refer not just to prosecutors, but also peace officers, investigators, and detectives, as well as administrative staff of law enforcement. Also, the law reduces from 25 percent to 20 percent the amount of the match in nonstate funds or in-kind contributions an agency must provide to receive reimbursement. The law contains an extensive list of "in-kind contributions" that may be used as matching funds and clarifies that the task force may accept grants or contributions from any federal source or legal or business entity. It also specifies how task force funds may be used and requires the Commissioner of Public Safety to transfer all funds to the task force from financial contributions and grants designated to the task force for its purposes.

***Regional Offices.*** The law permits the commander to establish seven regional offices of the task force to investigate financial crimes throughout the state and the regional areas, to the extent funding permits. Regional offices must originally be established based upon the current state judicial districts, with one office covering the first, second, fourth, and tenth judicial districts (essentially the Twin Cities metro area plus some other close, though mostly rural, counties).

Regional offices must be composed of participating agencies from each geographical area. The participating agencies may, in consultation with the commander, select a supervisor to direct the office. The advisory committee may modify the geographical boundary of a regional office. Laws 2003, ch. 36; to be codified at Minn. Stat. § 299A.68. (Law effective July 1, 2003.)

### **Benefits for Public Safety Officers and Survivors**

A death benefit for a public safety officer killed in the line of duty who has no surviving spouse or dependents must be paid to the officer's estate. (Law effective retroactive to July 1, 2002.) The law also provides that money in the public safety officer's benefit account does not revert to the general fund until all claims for reimbursement submitted in that fiscal year are paid or denied. The reimbursement paid may be prorated based on the number of eligible peace officers, firefighters, and qualifying dependents, if funds are inadequate. Laws 2003, 1st spec. sess., ch. 2, art. 4, §§ 2 to 4; to be codified at Minn. Stat. §§ 299A.42; 299A.44, subd. 1; 299A.465, subd. 4. (Law effective the day following final enactment.)

### **Creation of BCA Internet Web Site**

The BCA is required to establish and maintain an Internet web site containing public criminal history data by July 1, 2004. This provision extends for two years (until August 1, 2005), the BCA's authority to charge a fee for Internet access to public criminal history data. Laws 2003, 1st spec. sess., ch. 2, art. 4, § 1; to be codified at Minn. Stat. § 13.87, subd. 3.

### **Reporting of Crime Statistics**

New law requires the BCA to use a nationally recognized system or standard for collecting crime data to the extent possible. Also, local agencies must use a nationally recognized system for reporting crime statistics to the BCA to the extent possible. These requirements are aimed at eliminating Minnesota Offense Codes (MOC). Laws 2003, 1st spec. sess., ch. 2, art. 4, §§ 5 and 6; to be codified at Minn. Stat. §§ 299C.05; 299C.06. (Law effective August 1, 2003.)

### **Connection to Criminal Justice Data Network**

DPS shall impose a \$35 monthly fee for Internet or dial-up access to the criminal justice data network. The fee is \$15 for a criminal justice agency accessing the network via the Internet. Laws 2003, 1st spec. sess., ch. 2, art. 4, § 9; to be codified at Minn. Stat. § 299C.48. (Law effective July 1, 2003.)

### **Chain of Custody Documentation; No Need for Witness Testimony**

This law authorizes admissibility of documentation of the verified chain of custody of a specimen while under the control of certain laboratories. This law means that scientists will not be required to appear in court to testify in order to admit certain evidence. The laboratories included are those operated by the BCA or authorized by the bureau to conduct an analysis or examination, or in any laboratory of the Federal Bureau of Investigation, the Federal Postal



Inspection Service, the Federal Bureau of Alcohol, Tobacco and Firearms, or the Federal Drug Enforcement Administration. Laws 2003, ch. 29; to be codified at Minn. Stat. § 634.15, subd. 1. (Law effective August 1, 2003.)

### **Authorized Use of Radio Equipment Capable of Receiving Police Emergency Transmission**

This law adds political subdivisions to the list of entities to which the BCA may grant a permit to use radio equipment capable of receiving a police emergency frequency transmission. Under the law, the permit extends not only to the person designated in writing as the permit holder, but also to a person who is designated in writing as an authorized representative of the political subdivision, provided the use occurs while in the course and scope of the duties of employment. As a result, each individual representative of a political subdivision does not need to obtain a separate permit.

Under current law, anyone requesting a permit must show good cause to use radio equipment capable of receiving a police emergency frequency, as a necessity, in the lawful pursuit of a business, trade, or occupation. Criminal penalties exist for possessing such equipment without a permit. Laws 2003, ch. 121; to be codified at Minn. Stat. § 299C.37, subds. 1 and 3. (Law effective August 1, 2003.)

### **Part-Time Peace Officers; State Fair**

In recent years, the Minnesota Legislature has aimed to restrict the number of part-time peace officers in the state and established strict guidelines for issuance of part-time peace officer licenses. This year, the legislature created an exception to that law to allow the state fair police department to employ up to 15 licensed part-time peace officers. Laws 2003, ch. 23; to be codified at Minn. Stat. § 626.8468, subd. 1. (Law effective April 29, 2003.)

### **Vehicle Forfeiture in Cases Involving Prostitution or Fleeing a Police Officer**

These provisions clarify that paperwork for forfeiture of a vehicle in a case involving prostitution or fleeing a peace officer may be served later and still effectuate a forfeiture. For the purpose of these forfeiture provisions, the law provides that a “seizure” occurs (1) on the date at which personal service of process upon the registered owner is made, or (2) on the date when the registered owner has been notified by certified mail at the address listed in the DPS computerized motor vehicle registration records. Laws 2003, 1st spec. sess., ch. 2, art. 4, §§ 25 and 26; to be codified at Minn. Stat. § 609.5312, subds. 3 and 4. (Law effective August 1, 2003.)

### **Property Manager Background Checks**

This provision clarifies the superintendent of the BCA’s obligation to provide information on whether a property manager has ever been convicted of a background check crime when based upon a search of the Minnesota computerized criminal history system. Under the law, the superintendent must provide a description of any such crime, the date and jurisdiction of the

conviction, and the date of discharge of sentence. Laws 2003; to be codified at Minn. Stat. § 299C.68, subd. 5. (Law effective the day after final enactment.)

See also page 22 for a discussion of provisions related to chemical assessment teams.

## **Corrections Provisions**

### **Abolishment of Office of Ombudsman for Corrections**

The 2003 Legislature abolished the office of the Ombudsman for Corrections, a neutral entity formed to investigate complaints within correctional facilities. In the past several years, the legislature has been steadily decreasing funding for this office. The law provides a procedure for the transfer of data held by the ombudsman. Laws 2003, 1st spec. sess., ch.2, art. 5, §§ 1, 3, 17, and 18; to be codified at Minn. Stat. §§15A.0815, subd. 3; 243.48, subd. 1. (Law effective July 1, 2003.)

### **Multiple Occupancy Cells in State Correctional Facilities**

Correctional institutions classified by the Commissioner of Corrections as Custody Level 5 (on a scale of 1 to 6; 5 is the highest close custody level) must permit multiple occupancy, if doing so does not exceed the limits of facility infrastructure and programming space. Correctional institutions at Levels 1 to 4 already must permit multiply occupancy, except in segregation units, to the greatest extent possible. Laws 2003, 1st spec. sess., ch. 2, art. 5, § 4; to be codified at Minn. Stat. § 243.53, subd. 1. (Law effective July 1, 2003.)

### **Multiple Occupancy Cells in County and Regional Jails**

Sheriffs are allowed to permit multiple occupancy if construction of the county jail permits it, but must continue to maintain strict separation of prisoners, as needed for security, safety, health, and welfare concerns. Regional jail boards also may, by resolution, authorize multiple occupancy if construction of the jail permits, as long as the superintendent maintains strict separation of prisoners, as needed for security, safety, health, and welfare concerns. Laws 2003, 1st spec. sess., ch. 2, art. 5, §§ 12 and 13; to be codified at Minn. Stat. §§ 641.14; 641.263, subd. 5. (Law effective July 1, 2003.)

### **Inmate Meals**

This provision requires the Commissioner of Corrections to make three meals available Monday through Friday, excluding holidays, and at least two meals available on Saturdays, Sundays, and holidays. This provision applies only where inmates in a state correctional facility are not otherwise absent from the facility for work or other purposes. Laws 2003, 1st spec. sess., ch. 2, art. 5, § 5; to be codified at Minn. Stat. § 243.557. (Law effective July 1, 2003.)

## **Imprisonment in Felony Cases; Remaining Term of Imprisonment**

This provision requires a defendant with 180 or fewer days on the defendant's remaining term of imprisonment to serve the remaining term of imprisonment at a workhouse, work farm, county jail, or other place authorized by law. Previously, the offender would have been committed to the Commissioner of Corrections for such an offense. An offender must still be committed to the Commissioner of Corrections' custody when the warrant of commitment has a remaining term of imprisonment for more than 180 days.

The law defines "remaining term of imprisonment" depending on when the crime was committed, as follows:

- for inmates whose crimes were committed before August 1, 1993, the remaining term of imprisonment is the time for which an inmate is committed to the custody of the Commissioner of Corrections minus earned good time and jail credit, if any; and
- for inmates whose crimes were committed on or after August 1, 1993, the remaining term of imprisonment is the period of time equal to two-thirds of the inmate's executed sentence, minus jail credit, if any.

Laws 2003, 1st spec. sess., ch. 2, art. 5, §§ 7 to 9; to be codified at Minn. Stat. § 609.105, subs. 1, 1a, and 1b. (Law effective July 1, 2003.)

## **Credit for Prior Imprisonment**

When an offender is to be committed to the Commissioner of Corrections, the offender's probation officer must provide the court, prior to the sentencing hearing, the amount of time the person has in credit for prior imprisonment. The court must pronounce credit for prior imprisonment at the time of sentencing. Laws 2003, 1st spec. sess., ch. 2, art. 5, § 11; to be codified at Minn. Stat. § 609.145, subd. 3. (Law effective July 1, 2003.)

## **Alternative Living Programs for Offenders with Serious and Persistent Mental Illness**

This provision authorizes courts to require offenders with a serious and persistent mental illness to successfully complete an appropriate supervised alternative living program having a mental health treatment component as a condition of probation. This provision applies when a court is considering committing to the custody of the Commissioner of Corrections an offender who would have a remaining term of imprisonment after adjusting for jail credit of more than one year.

The Commissioner of Corrections must cooperate with nonprofit entities to establish supervised alternative living programs for offenders with serious and persistent mental illness. Each program must accommodate between eight and 13 offenders and must have a residential component and include mental health treatment and counseling, living and employment skills development, and support to help offenders find employment. Program directors are required to

report program violations to the offender's correctional agent. An evaluation of the program is due by January 15, 2006, from the Commissioners of Human Services and Corrections.

The Commissioner of Human Services is required to approve additional Rule 36 licenses in order to accommodate alternative living programs for certain offenders with mental illness if the provider meets applicable licensing standards for additional Rule 36 programs and the programs are necessary to meet the demand for alternative living programs. The Minnesota Housing Finance Agency is allowed to give applicants for licensure of these Rule 36 programs special consideration and priority in order to secure home loans for the Rule 36 programs.

Counties must contract with eligible providers willing to provide mental health case management services for offenders with serious and persistent mental illness. To be eligible, the provider must be willing to provide mental health case management services and have a minimum of at least one contact with the client per week. Laws 2003, 1st spec. sess., ch. 2, art. 5, §§ 6, 10 and 14 to 16; to be codified at Minn. Stat. §§ 256B.0596; 609.1055. (Law effective July 1, 2003.)

### **Autopsies of Inmates**

This law specifies that a Department of Corrections' independent, contracted, board-certified forensic pathologist must issue the death certificates for all deaths that occur within Department of Corrections facilities. Laws 2003, ch. 27; to be codified at Minn. Stat. § 390.23. (Law effective August 1, 2003.)

## **Judiciary Provisions**

### **Civil Harassment Restraining Orders**

This provision specifies that a judge does not have to hold a hearing on a civil law harassment petition unless one of the parties requests a hearing. Currently a hearing is guaranteed to the petitioner, but the petitioner will now need to request one. The law no longer requires the court to hear a petition within 14 days of receipt. Parties, however, must request a hearing within 45 days of filing or receipt of the petition.

At least five-day advance service notice must be given to the petitioner and respondent of any hearing. If service cannot be completed in this time period, the court may set a new hearing date. Laws 2003, 1st spec. sess., ch. 2, art. 8, §§ 14 to 16; to be codified at Minn. Stat. § 609.748, subs. 3 to 5. (Law effective July 1, 2003.)

### **Fee Increases**

The 2003 Legislature increased and set new fees for many judicial functions, as set forth below:

- civil filing fee for all parties increased from \$135 to \$235;
- fee for issuing a subpoena increased from \$3 to \$12;

- fee for issuing an execution and filing or other order of the court increased from \$10 to \$40;
- fee for issuing a transcript of a judgment or for filing and docketing such a transcript from another court increased from \$7.50 to \$30;
- fee for filing trusteeship accounts increased from \$10 to \$40;
- fee for deposit of a will increased from \$5 to \$20;
- fee for recording a notary commission increased from \$25 to \$100;
- tax court small claims filing fee increased from \$25 to \$150, and nonsmall claims will carry a \$235 filing fee;
- new fee of \$55 established for filing a motion or response to a motion in civil, family (excluding child support cases), and guardianship cases;
- fee for filing conciliation court cases increased from \$25 or \$35 to flat fee of \$50 for conciliation court actions; and
- fee for filing an appeal is increased from \$250 to \$500.

Laws 2003, 1st spec. sess., ch. 2, art. 2, §§ 1 to 4; to be codified at Minn. Stat. §§ 271.06, subd. 4; 357.021, subd. 2; 357.022; 357.08. (Law effective July 1, 2003.)

## **Surcharge Increases**

This provision changes the surcharge from \$35 to \$60 on every person convicted of any felony, gross misdemeanor, misdemeanor, or petty misdemeanor offense and creates a \$3 surcharge on parking violations. Laws 2003, 1st spec. sess., ch. 2, art. 8, § 6; to be codified at Minn. Stat. § 357.021, subd. 6. (Law effective July 1, 2003.)

## **Uniform Fine Schedule**

The legislature changed the timing of when the uniform fine schedule must be promulgated. Under the law, the schedule must be promulgated no later than September 1 of each year, with the schedule effective January 1 of the following year. This schedule, often referred to as the “payables list,” contains the set fee for various traffic and other violations. Laws 2003, 1st spec. sess., ch. 2, art. 2, § 6; to be codified at Minn. Stat. § 609.101, subd. 4. (Law effective July 1, 2003.)

## **Public Defense Provisions**

### **Financial Inquiry for Public Defender Services**

This provision sets forth specific standards for how a judicial district shall screen requests for district public defender representation. The standards set forth in statute include two of the three standards set forth in the eligibility standards in the Minnesota Rules of Criminal Procedure. Under the standards, a person is deemed financially unable to obtain counsel if:

- the person, or any dependent of the person who resides in the same household as the person, receives means-tested governmental benefits; or

- the person, through any combination of liquid assets and current income, would be unable to pay the reasonable costs charged by private counsel in that judicial district for a defense of the same matter.

A court may not appoint a district public defender to a person who is financially able to retain private counsel but refuses to do so. The court also may not appoint the district public defender as advisory counsel in a case.

Under the law, the court must undertake a financial eligibility inquiry prior to appointing a public defender, when at all possible, and the inquiry may be combined with the pre-release investigation provided for in the Minnesota Rules of Criminal Procedure. The court has the sole duty to conduct the inquiry, and the public defender may not be involved in this inquiry. The list of assets and transactions of the defendant that the court should examine in a financial inquiry include liquid real estate assets, including the person's homestead; assets that can be readily converted to cash or used to secure a debt; fraudulent asset transfers; and the value of all asset transfers that occur after the date of the alleged offense. A person who fails to provide the information necessary for a financial inquiry is deemed ineligible for public defender representation. Laws 2003, 1st spec. sess., ch. 2, art. 3, §§ 4 and 7; to be codified at Minn. Stat. §§ 611.17, subd. 1; 611.26, subd. 6. (Law effective July 1, 2003.)

### **Increased Co-Payment for Public Defender Services**

**Co-Payment.** A person eligible for public defender services must pay a co-payment upon appointment of the public defender. The previous flat fee co-payment of \$28 is eliminated and the co-payment the person must pay is \$200 in a felony case, \$100 in a gross misdemeanor case, and \$50 in a misdemeanor case. The law also provides that parents must pay a \$100 co-payment if their child is subject to a juvenile proceeding. A parent must pay a \$200 co-payment in a proceeding involving a child in need of protection or services (CHIPS). Laws 2003, 1st spec. sess., ch. 2, art. 3, § 4; to be codified at Minn. Stat. § 611.17, subd. 1. (Law effective July 1, 2003.)

**Revenue Recapture.** The legislature also included an unpaid co-payment for public defender services in the definition of "debt" under the Revenue Recapture Act (RRA). This amendment means the government may use the RRA to recapture the co-payment if the defendant does not transfer funds in a timely manner to the court administrator. Laws 2003, 1st spec. sess., ch. 2, art. 3, § 1; to be codified at Minn. Stat. § 270A.03, subd. 5. (Law effective July 1, 2003.)

### **Restrictions on Appellate Public Defender Representation**

This provision allows the state public defender to deny a person public defender representation in a post-conviction remedy case when the person has pleaded guilty, received a presumptive sentence or downward departure in sentence, and the state public defender has determined the case to be nonmeritorious. Laws 2003, 1st spec. sess., ch. 2, art. 3, §§ 2 and 3; to be codified at Minn. Stat. §§ 590.05; 611.14; 611.18; 611.25, subd. 1. (Law effective July 1, 2003.)

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