

Laws You MUST Know



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Laws You MUST Know



- A. Requirements to Obtain/Retain a Haz-Mat Endorsement
- B. CDL Disqualification Standards
- C. Dirty Dozen Laws: Ignore These at Your Own Peril





A. CDL Haz-Mat Endorsements

Restriction



- No State can issue or renew a hazardous materials endorsement for a CDL unless the State receives a “Determination of No Security Threat” from the Transportation Security Administration.

Background Checks



- Truck drivers applying for a new haz-mat endorsement, or renewing or transferring an existing endorsement, must provide fingerprints for an FBI criminal background check.
- If disqualified, drivers must surrender their haz-mat endorsement to the Department of Public Safety.
- Two levels of disqualifying offenses: temporarily disqualifying and permanently disqualifying.

Disqualifying Offenses: Temporary



- Felony-level conviction in the last 7 years, release from prison within the last 5 years, or an outstanding warrant or indictment for:
 - Assault with intent to murder
 - Kidnapping/hostage taking
 - Rape/aggravated sexual abuse
 - Extortion
 - Robbery
 - Arson
 - Bribery
 - Smuggling
 - Immigration violations
 - RICO violations
 - Distribution, possession with intent to distribute, or importation of a controlled substance
 - Dishonesty, fraud, or misrepresentation, including identity theft
 - Unlawful possession, use, sale, manufacture, purchase, distribution, receipt, transfer, etc. of firearms or other weapons
 - Conspiracy to commit any of these crimes.

Disqualifying Offenses: Permanent



- Permanent disqualification for conviction for:
 - Murder
 - Terrorism
 - Espionage
 - Sedition
 - Treason
 - Unlawful possession, use, sale, distribution, manufacture, purchase, etc. of an explosive or explosive device
 - RICO violations if underlying crime is permanently disqualifying
 - A crime involving a transportation security incident (i.e., incident involving a significant loss of life, environmental damage, etc.)
 - Felony improper transportation of a hazardous materials (does not include roadside infractions or placarding violations)
 - Conspiracy or attempt to commit any of the above crimes.

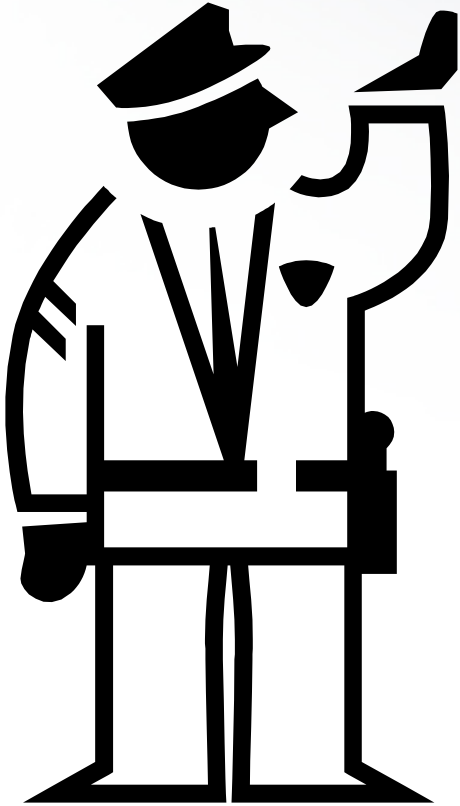
Appealing a Denial



- A driver who has been denied a haz-mat endorsement can appeal the decision on the grounds of mistaken identity or other information, such as a reversed conviction.
- Appeal process can take up to 120 days after the endorsement is denied.



Waiver Process



- If a driver has a disqualifying offense on his or her record, that driver can apply for a waiver.
- Must show that they are rehabilitated and no longer pose a security threat. Persons convicted of treason, sedition, espionage, or a crime of terrorism are not eligible for a waiver.

The Procedure



- Drivers who are renewing or transferring their endorsement should allow at least 60 days for processing.
- The cost will be \$94.00, payable by the driver (unless paid for by employer).
- The US Department of Transportation anticipates that there will be fingerprinting facilities available in the Twin Cities, Grand Rapids, Rochester, Duluth, Mankato, and St. Cloud.

Status of Legislation



- Bills implementing the new Haz-Mat changes have been introduced in both the Minnesota House (HF 2461) and Senate (SF 1089).
- House bill was vetoed by the Governor on May 19. Senate bill was passed by the Senate, and is being considered by the House.
- The State was required to have the program in place by the end of 2004, so the changes are likely to be enacted sometime this legislative session.

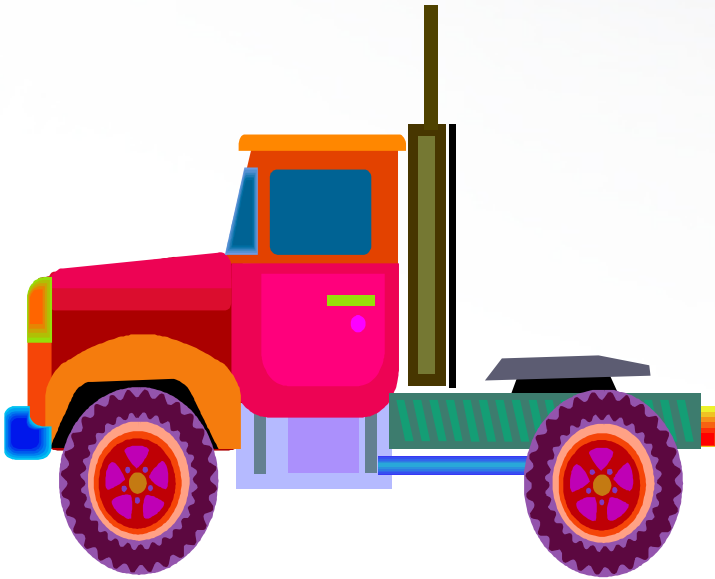


B. CDL Disqualification Standards

Changes to CDL Standards



- Instituted by the Federal Motor Carrier Safety Administration, new rules have significantly revised the CDL standards by:
 - Expanding the Definition of Serious Traffic Violations,
 - Prohibiting Conviction Masking, and
 - Disqualifying CDL holders for violations committed while driving a non-commercial motor vehicle



Harsher Disqualification Standards



- CDL holders must be disqualified if:
 - They are convicted of any traffic offense that cancels, revokes, or suspends their driver's license, even if that offense was committed while operating a non-CMV;
- or
- They are convicted of a drug or alcohol-related offense, such as a DWI, committed while operating a non-CMV.

Disqualifying Offenses



1. Alcohol or drug-related offenses,
2. Serious traffic offenses,
3. Railroad-highway grade crossing offenses, and
4. Violating out-of-service orders.



Effect of DWI Convictions on CDLs



- For 1st-Time DWIs:
 - Automatic **1 year disqualification** from operating a CMV, even if the DWI was committed using a non-CMV (i.e., your personal vehicle).
- For 2nd or More DWIs:
 - **Lifetime disqualification**, even if the DWIs were committed using a non-CMV.

What Is A Serious Traffic Offense?



- Excessive speeding (15 mph or more over the posted limit),
- Reckless driving,
- Improper or erratic lane changes,
- Following another vehicle too closely, and
- Any traffic law violation that leads to a fatal accident.

When Will a Serious Traffic Offense Disqualify You?



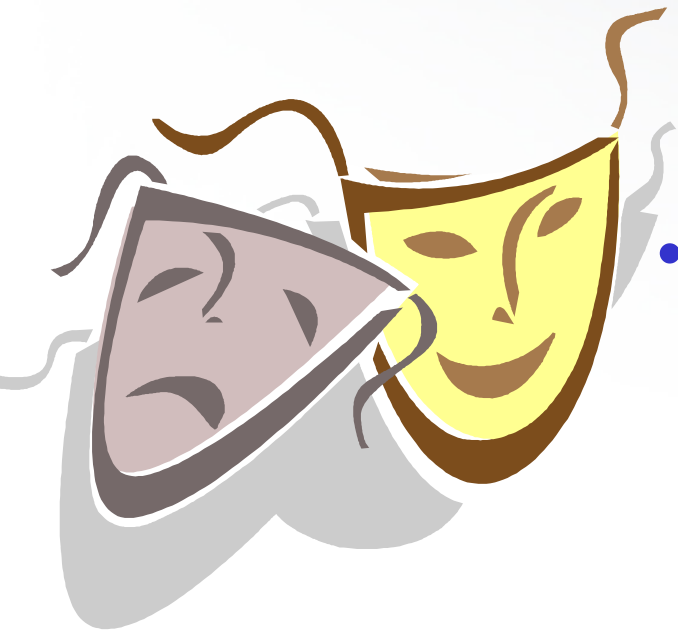
- Only when 2 or more convictions for any combination of serious traffic offenses committed in a non-CMV results in the revocation, cancellation, or suspension of your non-CMV license or driving privileges.
- In Minnesota, a driver's license won't automatically be withdrawn for 2 or more convictions unless there are aggravating circumstances, like a traffic accident, or you are a "habitual violator" (have 4+ violations in 1 year, or 5+ in 2 years).

Practical Effects

- 2 or more convictions in a 3 year period for a serious traffic offense committed in a non-CMV results in a 60-120 day disqualification.
- A first alcohol- or drug-related DWI or refusal to test conviction results in a 1 year disqualification. A second alcohol or drug-related DWI or refusal to test conviction results in a lifetime disqualification.



Masking Prohibition

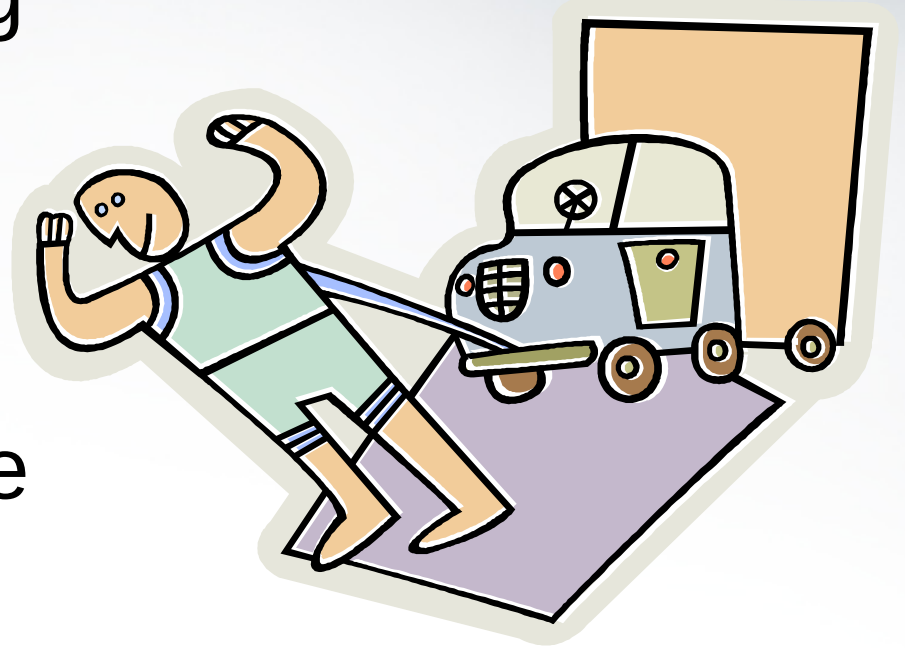


- States cannot mask violations that would normally appear of a CDL holder's driving record, and
- States cannot prevent a CDL driver's conviction for any type of traffic violation in any type of vehicle from appearing on the CDL holder's driving record.
- All traffic convictions must appear on a CDL holder's driving record.

Efforts of Minnesota DRIVE



- The Teamsters have succeeded in limiting the look-back period (the period for determining prior convictions). Minnesota will ignore violations committed before August 1, 2005.



When are the New Rules Effective?



- The Minnesota Legislature passed the new rules this session.
- They will be effective August 1, 2005.



Summary



- While it may not seem fair, CDL holders are being held to a high standard, both in their professional lives as truck drivers, and in their personal lives.
- CDL holders must reconcile themselves to the fact that their actions, in and out of a CMV, can severely impact their ability to hold a CDL.



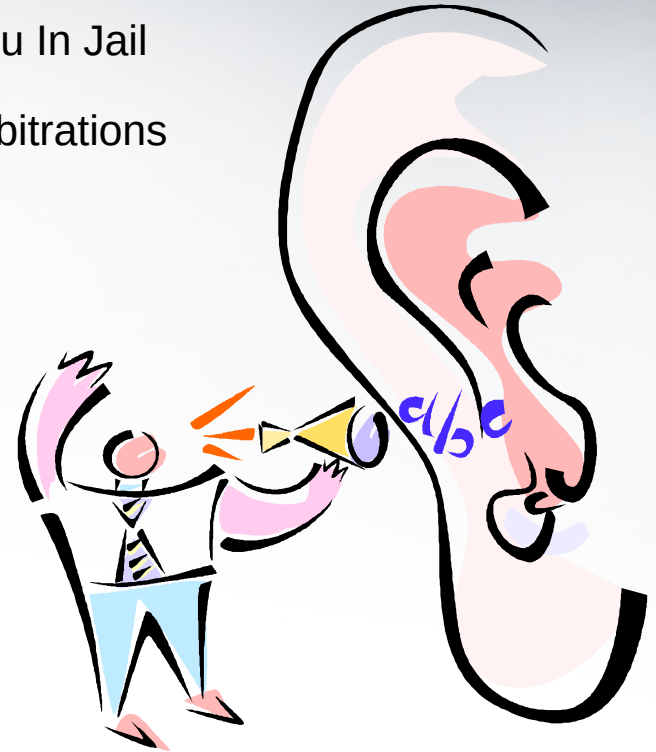
C. Dirty Dozen Laws



12 Laws You MUST Know



1. Union Organizing – You Can't Use License Plate Nos. to Get Owner's Names & Addresses
2. Employer Drug Tests – They Can't Be Used to Put You In Jail
3. Unemployment Decisions – They Can't Be Used in Arbitrations
4. Picket Line Stop Statute
5. Stalking Laws & Union Strikes
6. Concealing Your Identity in Public
7. Business Agents & Employer Gifts
8. LM-30 Rules & Lying to the F.B.I. (DON'T DO IT!)
9. Terrorism Laws Affecting Union Strikes
10. Fleeing a Police Officer
11. Spitting on a Police Officer: The New Assault
12. Firearms Disqualifications





1. Union Organizing: Don't Use License Plate Nos. to Get Owner's Names & Addresses



Motor Vehicle Records



- 18 U.S.C. 2722:
 - It shall be unlawful for any person knowingly to obtain or disclose personal information from a motor vehicle record.
 - Exception for use in connection with any civil, criminal, administrative, or arbitral proceeding, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a Federal, State, or local court.
- Might be a stretch to argue all organizing efforts fall into the above exception.



2. Permissible Uses of Employer Drug & Alcohol Tests



Test Disclosures



- A lab may only disclose to the employer the presence or absence of drugs or alcohol in a sample tested.
- Test results and other information acquired in the testing process are, with respect to private sector employees and job applicants, confidential information, and, with respect to public sector employees and applicants, private data on individuals, and may not be disclosed without the written consent of the employee or applicant tested.
- A positive test result may be: (1) used in an arbitration, administrative hearing, or judicial proceeding, provided the information is relevant; (2) disclosed to a federal agency as required under federal law, or in accordance with a federal government contract; and (3) disclosed to a substance abuse treatment facility for the purpose of evaluation or treatment of the employee.
- Positive test results may not be used as evidence in a criminal action against the employee or applicant tested.





3. Unemployment Hearings & Arbitrations



Unemployment Hearings & Arbitrations



- Minn. Stat. § 268.105, subd. 5a.
- Factual findings, decisions, and orders issued by unemployment law judges are inadmissible as evidence in any separate action (including labor arbitrations), regardless of whether the action involves the same or related parties or involves the same facts.



4. Picket Line Stop Statute



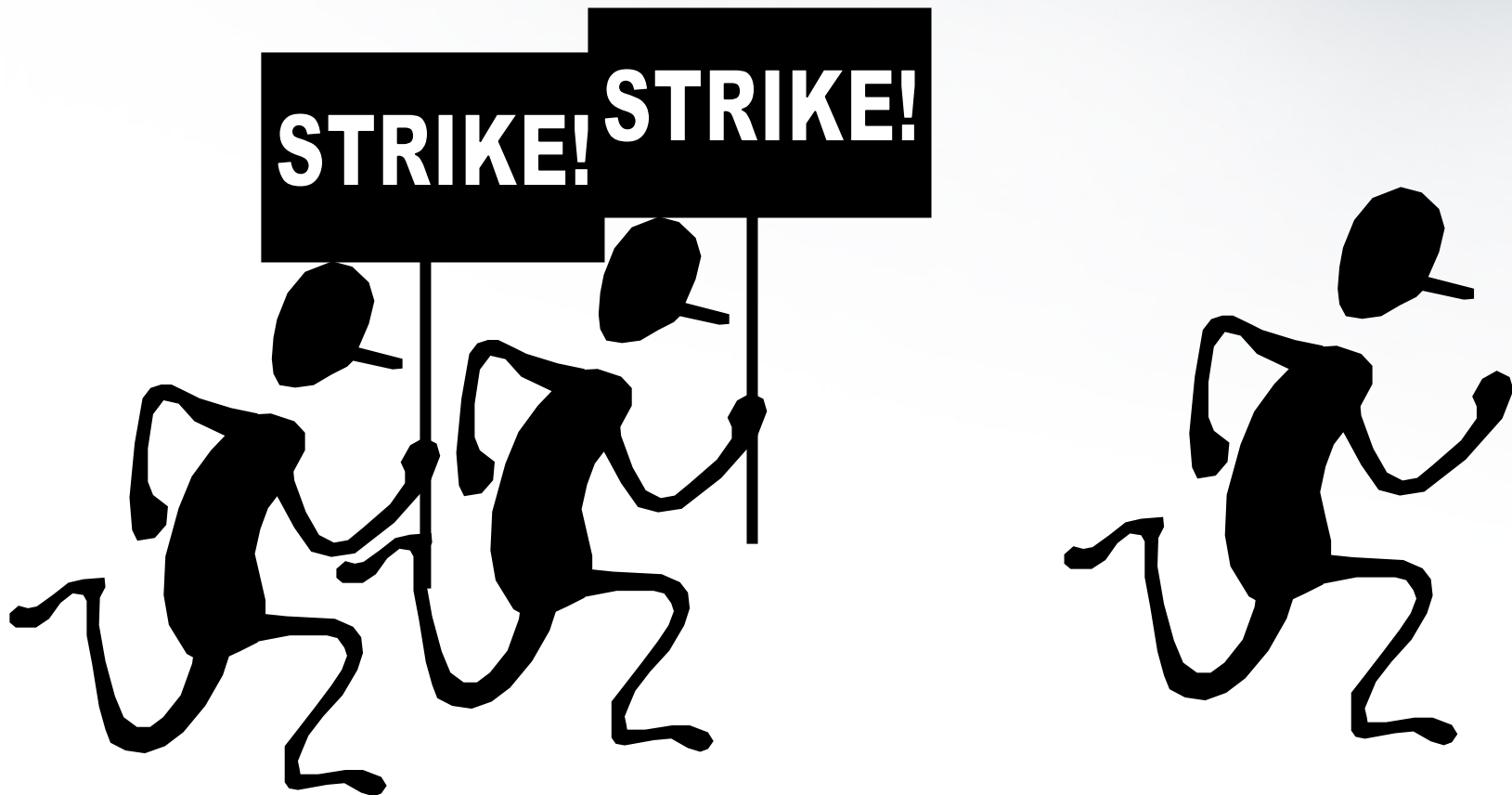
Picket Line Stop Statute



- Minnesota Statute § 179.121.
- Any person who operates a motor vehicle which is entering or leaving a place of business or employment where there is a clear notice that a labor dispute is in progress, and who fails to bring the vehicle to a full stop at the entrance to or exit from that place, or who fails to exercise caution in entering or leaving that place, is guilty of a misdemeanor.



5. Stalking Laws & Union Strikes



Harassment/Stalking



- Minn. Stat. §609.749.
- It is a gross misdemeanor to engage in intentional conduct that the actor knows or has reason to know would cause the victim to feel frightened, threatened, oppressed, persecuted, or intimidated; and that actually causes this reaction on the part of the victim.
- Includes following or pursuing the victim.
- Exception for union strikes and ambulatory picketing.



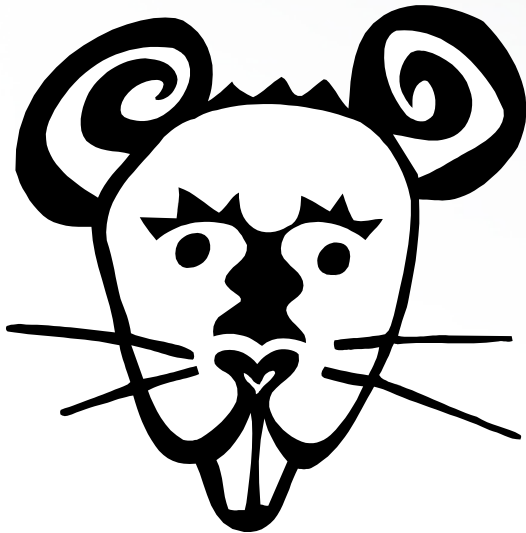
6. Concealing Your Identity In Public



Concealing Identity in Public



- Minn. Stat. § 609.735
- A person whose identity is concealed by the person in a public place by means of a robe, mask, or other disguise, unless based on religious beliefs, or incidental to amusement, entertainment, protection from weather, or medical treatment, is guilty of a misdemeanor.





7. Union Officers & Employer Gifts



Officers & Employer Gifts



- 29 C.F.R. § 458.33:
 - No officer or agent of a labor organization shall, directly or indirectly through his spouse, minor child, or otherwise (1) have or acquire any pecuniary or personal interest which would conflict with his fiduciary obligation to such labor organization, or (2) engage in any business or financial transaction which conflicts with his fiduciary obligation.
 - Prohibited actions include:
 - ❖ buying from, selling, or leasing directly or indirectly to, or otherwise dealing with the labor organization, its affiliates, subsidiaries, or trusts in which the labor organization is interested, or having an interest in a business any part of which consists of such dealings, except bona fide investments of the kind exempted from reporting.



8. LM-30 Rules & Lying to the FBI



LM-30 Rules & Lying to the FBI



- LM-30 Rules

- Union officers or employees (except employees performing exclusively clerical or custodial services) must file a LM-30 if they, their spouses, or minor children:
 - ❖ Have any of the following interests related to an employer whose employees their union represents or is actively seeking to represent:
 - hold any interest in, or have any income or benefit from, such an employer (except wages or other benefits received as bona fide employees);
 - have a part in any transaction involving interests in, or loans to or from, such an employer;
 - have any business transaction or arrangement with such an employer; or
 - have any interest in, or income or benefit from, any business consisting in substantial part of buying from, selling or leasing to, or otherwise dealing with, such an employer;
 - ❖ Have received any money or other thing of value from an employer or a person who acts as a labor relations consultant for an employer; or
- Have any interest in, or income or benefit from, a business which deals with their union or any trusts in which their union is interested.
- Reports are not required on bona fide investments in securities traded on a national securities exchange, in shares of a investment company, in securities of a public utility holding company, or on any income from such investments.

The Penalties for Lying



- 29 U.S.C. § 439:
 - Any person who makes a false statement or representation of a material fact, knowing it to be false, or who knowingly fails to disclose a material fact, in any document, report, or other information required under the provisions of this subchapter shall be fined not more than \$10,000 or imprisoned for not more than one year, or both.

- 18 U.S.C. § 1001:
 - Whoever knowingly and willfully
 - ❖ (1) falsifies, conceals, or covers up a material fact;
 - ❖ (2) makes any materially false, fictitious, or fraudulent statement or representation; or
 - ❖ (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;shall be fined under this title or imprisoned not more than 5 years, or both.



9. Anti-Terrorism Laws & Union Strikes



Definitions of Critical Public Service Facility, Utility, and Pipeline



- Critical Public Service Facility:

Railroad yards and stations, bus stations, airports, and other mass transit facilities; oil refineries; storage areas or facilities for hazardous materials, substances, or wastes; and bridges.

- Pipeline:

An above-ground pipeline and any equipment, facility, or building located in this state that is used to transport natural or synthetic gas, crude petroleum or petroleum fuels or oils or their derivatives, or hazardous liquids to or within a distribution, refining, manufacturing, or storage facility that is located inside or outside of this state.

- Utility:

Any organization defined by law as a utility; any telecommunications carrier or telephone company; any local utility or enterprise formed for the purpose of providing electrical or gas heating and power, telephone, water, sewage, wastewater, or other related utility service, which is owned, controlled, or regulated by a governmental unit.

Damage to Property of Critical Public Service Facilities, Utilities, and Pipelines



- Minnesota Statute § 609.594

- It is a felony to:

Cause damage to the physical property of a critical public service facility, utility, or pipeline with the intent to significantly disrupt the operation of or the provision of services by the facility, utility, or pipeline and without the consent of one authorized to give consent.



Trespass on Critical Public Service Facility, Utility, or Pipeline



- Minnesota Statute § 609.6055.
- It is a gross misdemeanor offense if a person enters or is found upon property containing a CPSF, utility, or pipeline, without claim of right or consent if:
 - 1) The person refuses to depart from the property upon demand;
 - 2) Within the past 6 months the person was told to leave the property and not return; OR
 - 3) The property is posted with no-trespassing signs pursuant to statute.
- For purposes of this section, a CPSF also includes non-public portions of bridges, but does not include railroad tracks extending beyond the facility. A pipeline does not include service lines. A utility does not include the property above buried service lines, or below suspended service lines.



10. Fleeing A Police Officer



Fleeing a Police Officer



- Whoever by means of a motor vehicle flees or attempts to flee a peace officer, and the perpetrator knows or should reasonably know the same to be a peace officer, is guilty of a felony.
- Whoever attempts to evade or elude, by running, hiding, or any other means, a peace officer to avoid arrest, detention, investigation, or to conceal or destroy potential evidence related to a crime, is guilty of a misdemeanor.



11. Spitting On A Police Officer: The New Assault



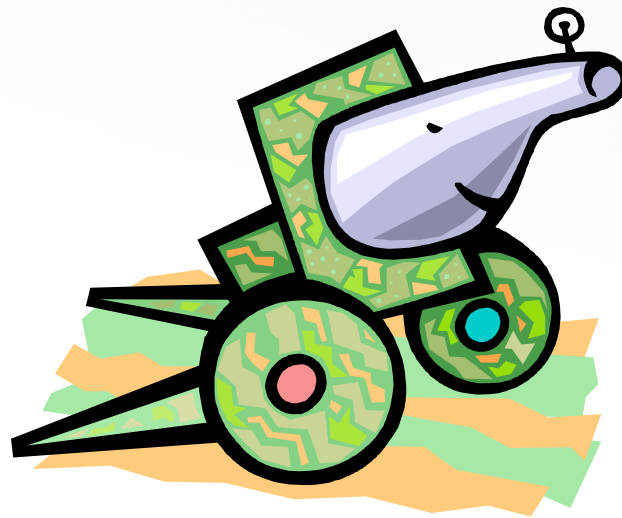
Assault on a Police Officer



- Minn. Stat. 609.2231
- Gross Misdemeanor to physically assault a police officer.
- Felony to inflict demonstrable bodily harm upon a police officer, or to intentionally throw or otherwise transfer bodily fluids at or onto an officer.
- No Spitting Allowed!



12. Firearms Disqualifications



Firearms Disqualification: State Law



- Persons convicted of domestic assault, violation of an order for protection, or harassment/stalking, may be prohibited from possession of a pistol for three years from the date of conviction.
- A person convicted of an offense involving the use of a firearm may, at the discretion of the court, be ordered not to possess a firearm for three years up to life.

Firearms Disqualification: Federal Law



- Federal law prohibits any person subject to an order for protection from possessing a firearm.
- It also prohibits anyone who has been convicted of a misdemeanor crime of domestic assault from possessing a firearm.



Firearms Forfeiture



- If the offender owns or possesses a firearm, and used the firearm in any way in commission of domestic assault, violation of an order for protection, or harassment/ stalking, the firearm is subject to forfeiture to the state.