

Minnesota Sentencing Guidelines Commission

Theft Statute: New Crime and Technical Modifications February 21, 2013

The following two issues relate to the theft statute, Minn. Stat. § [609.52](#). They are presented to the Commission for action and require modifications to the Sentencing Guidelines and Commentary.

1. Theft of Motor Fuel from Retailer

Description: A new theft offense, theft of motor fuel from a retailer under Minn. Stat. § 609.52, subd. 2(a)(18), went into effect August 1, 2012. It is a crime if a person “intentionally, and without claim of right, takes motor fuel from a retailer without the retailer's consent and with intent to deprive the retailer permanently of possession of the fuel by driving a motor vehicle from the premises of the retailer without having paid for the fuel dispensed into the vehicle.”

The penalties for the offense are found in subdivision 3 of the theft statute. It is a misdemeanor if the value is \$500 or less; a gross misdemeanor if the value is more than \$500 but not more than \$1,000; and a felony if the value is over \$1,000.

Effective Date: August 1, 2012.	References: Chapter 173, Sec. 6.
Est. Bed Impact: A Fiscal Note was not requested from MSGC.	Racial Disparity Impact: No impact expected.

Guidelines Considerations: The Commission sets out its policy for ranking theft offenses in the Theft Offense List, Guidelines § 7. Severity levels are based on the monetary value of the conviction offense, as describe below:

- **Severity Level 2.** When the monetary value of the theft is \$5,000 or less, the penalty statute is Minn. Stat. § 609.52, subdivision 3(3)(a).
- **Severity Level 3.** When the monetary value of the theft is over \$5,000, the penalty statute is Minn. Stat. § 609.52, subdivision 3(2).

MSGC Staff Recommendation: Rank the offense, theft of motor fuel from a retailer, according to the monetary values set forth in § 7.

Proposed Modifications:

5.A. OFFENSE SEVERITY REFERENCE TABLE

SEVERITY LEVEL	OFFENSE	STATUTE
3	Theft Crimes – Over \$5,000	<i>See section 7: Theft Offense List</i>
2	Theft Crimes - \$5,000, or Less	<i>See section 7: Theft Offense List</i>

5.B. SEVERITY LEVEL BY STATUTORY CITATION

Statute Number	Offense Title	Severity Level
<u>609.52 subd. 2(a)(18)</u>	<u>Theft of Motor Fuel from Retailer (Over \$5,000)</u>	<u>3</u>
<u>609.52 subd. 2(a)(18)</u>	<u>Theft of Motor Fuel from Retailer (\$5,000 or Less)</u>	<u>2</u>

2. Theft Recodified

Issue: To accommodate the new theft of motor fuel from retailer offense, the theft statute was recodified to include paragraph (a) after subdivision 2. This was done to accommodate a new paragraph (b), which relates to how it is proven that theft of motor fuel from a retailer occurred. The change was made editorially by the Revisor of Statutes, effective October 23, 2012.

Staff Recommendation: Correct references in the affected sections of the Guidelines (sections 2 and 5), by adding (a) after subdivision 2. For example:

Pre 10/23/2012: Minn. Stat. § 609.52, subd. 2(1) thru 2(18)
 On/After 10/23/2012: Minn. Stat. § 609 .52, subd. 2(a)(1) thru 2(a)(18)

Proposed Modifications:

2.A.05. For Theft of a Motor Vehicle..., Minn. Stat. § 609.52, subd. 2(a)(1), ...

2.B.703. When the offense severity level is determined.... Minn. Stat. § 609.52.2(a)(1)....

5.A. OFFENSE SEVERITY REFERENCE TABLE

SEVERITY LEVEL	OFFENSE	STATUTE
6	Theft Over \$35,000	609.52, subd. 2(a)(3),(4), (15), & (16) with 609.52, subd. 3(1)
4	Theft of Motor Vehicle	609.52, subd. 2(a)(1)
3	Motor Vehicle Use Without Consent	609.52, subd. 2(a)(17)
3	Theft of Trade Secret	609.52, subd. 2(a)(8)

5.B. SEVERITY LEVEL BY STATUTORY CITATION

Statute Number	Offense Title	Severity Level
609.52 subd. 2(a)(1)	Theft (Over \$5,000)	3
609.52 subd. 2(a)(1)	Theft (\$5,000 or Less)	2
609.52 subd. 2(a)(1)	Theft of a Motor Vehicle	4**
609.52 subd. 2(a)(2)	Taking Pledged Property (Over \$5,000)	3
609.52 subd. 2(a)(2)	Taking Pledged Property (\$5,000 or Less)	2
609.52 subd. 2(a)(3) with subd. 3(1)	Theft by Check/False Representation (Over \$35,000)	6

** See *Comment 2.A.05* for commentary on motor vehicle offense severity levels.

Statute Number	Offense Title	Severity Level
609.52 subd. 2(a)(3)(i)	Theft by Check (\$5,001 - \$35,000)	3
609.52 subd. 2(a)(3)(i)	Theft by Check (\$5,000 or Less)	2
609.52 subd. 2(a)(3)(ii-v)	Theft by False Representation (\$5,001-\$35,000)	3
609.52 subd. 2(a)(3)(ii-v)	Theft by False Representation (\$5,000 or Less)	2
609.52 subd. 2(a)(4) with subd. 3(1)	Theft by Trick (Over \$35,000)	6
609.52 subd. 2(a)(4)	Theft by Trick (\$5,001-\$35,000)	3
609.52 subd. 2(a)(4)	Theft by Trick (\$5,000 or Less)	2
609.52 subd. 2(a)(5)	Temporary Theft (Over \$5,000)	3
609.52 subd. 2(a)(5)	Temporary Theft (\$5,000 or Less)	2
609.52 subd. 2(a)(6)	Refusing to Return Lost Property (Over \$5,000)	3
609.52 subd. 2(a)(6)	Refusing to Return Lost Property (\$5,000 or Less)	2
609.52 subd. 2(a)(7)	Theft from Coin Operated Machine (Over \$5,000)	3
609.52 subd. 2(a)(7)	Theft from Coin Operated Machine (\$5,000 or Less)	2
609.52 subd. 2(a)(8)	Theft of Trade Secret	3
609.52 subd. 2(a)(9)	Theft of Leased Property (Over \$5,000)	3
609.52 subd. 2(a)(9)	Theft of Leased Property (\$5,000 or Less)	2
609.52 subd. 2(a)(10)&(11)	Altering Serial Number (Over \$5,000)	3
609.52 subd. 2(a)(10)&(11)	Altering Serial Number (\$5,000 or Less)	2
609.52 subd. 2(a)(12)	Theft of Cable TV Services (Over \$5,000)	3

Statute Number	Offense Title	Severity Level
609.52 subd. 2(a)(12)	Theft of Cable TV Services (\$5,000 or Less)	2
609.52 subd. 2(a)(12)	Theft of Services (Over \$5,000)	3
609.52 subd. 2(a)(13)	Theft of Services (\$5,000 or Less)	2
609.52 subd. 2(a)(14)	Theft of Telecommunication Services (Over \$5,000)	3
609.52 subd. 2(a)(14)	Theft of Telecommunication Services (\$5,000 or Less)	2
609.52 subd. 2(a)(15)(16) with subd. 3(1)	Diversion of Corporate Property (Over \$35,000)	6
609.52 subd. 2(a)(15)(16)	Diversion of Corporate Property (\$5,001 - \$35,000)	3
609.52 subd. 2(a)(15)(16)	Diversion of Corporate Property (\$5,000, or Less)	2
609.52 subd. 2(a)(17) *	Motor Vehicle Use Without Consent	3**

7. Theft Offense List

Statute Number	Offense Title
609.52 subd. 2(a)(1)	Theft
609.52 subd. 2(a)(2)	Taking Pledged Property
609.52 subd. 2(a)(3)(i)	Theft By Check
609.52 subd. 2(a)(3) (ii), (iii), (iv), & (v)	Theft By False Representation

* Includes offenses sentenced according to Minn. Stat. § 609.52, subd. 3(3)(d).

** See *Comment 2.A.05* for commentary on motor vehicle offense severity levels.

Statute Number	Offense Title
609.52 subd. 2(a)(4)	Theft by Trick
609.52 subd. 2(a)(5)	Temporary Theft
609.52 subd. 2(a)(6)	Refusing to Return Lost Property
609.52 subd. 2(a)(7)	Theft from Coin Operated Machines
609.52 subd. 2(a)(9)	Theft of Leased Property
609.52 subd. 2(a)(10) & (11)	Altering Serial Number
609.52 subd. 2(a)(12)	Theft of Cable TV Services
609.52 subd. 2(a)(13)	Theft of Services
609.52 subd. 2(a)(14)	Theft of Telecommunications Services
609.52 subd. 2(a)(15) & (16)	Diversion of Corporate Property
