This Document can be made available
in alternative formats upon request

State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FOURTH SESSION

H. F. No. 2594

03/20/2025 Authored by Pinto and Rarick
The bill was read for the first time and referred to the Committee on Public Safety Finance and Policy

A bill for an act

relating to public safety; clarifying that the protections related to interviews of child abuse victims apply to all recordings; proposing changes to terms used in statutes that punish creation, distribution, and possession of sexually explicit materials involving children; making conforming changes; amending Minnesota Statutes 2024, sections 13.03, subdivision 6; 13.821; 144.296; 246B.04, subdivision 2; 609.527, subdivision 3; 611A.90; 617.246; 617.247; 634.35.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2024, section 13.03, subdivision 6, is amended to read:

Subd. 6. **Discoverability of not public data.** If a government entity opposes discovery of government data or release of data pursuant to court order on the grounds that the data are classified as not public, the party that seeks access to the data may bring before the appropriate presiding judicial officer, arbitrator, or administrative law judge an action to compel discovery or an action in the nature of an action to compel discovery.

The presiding officer shall first decide whether the data are discoverable or releasable pursuant to the rules of evidence and of criminal, civil, or administrative procedure appropriate to the action.

If the data are discoverable the presiding officer shall decide whether the benefit to the party seeking access to the data outweighs any harm to the confidentiality interests of the entity maintaining the data, or of any person who has provided the data or who is the subject of the data, or to the privacy interest of an individual identified in the data. In making the decision, the presiding officer shall consider whether notice to the subject of the data is warranted and, if warranted, what type of notice must be given. The presiding officer may fashion and issue any protective orders necessary to assure proper handling of the data by

the parties. If the data are a ~~videotape~~ recording of a child victim or alleged victim alleging, explaining, denying, or describing an act of physical or sexual abuse, the presiding officer shall consider the provisions of section 611A.90, subdivision 2, paragraph (b). If the data are data subject to the protections under chapter 5B or section 13.045, the presiding officer shall consider the provisions of section 5B.11.

Sec. 2. Minnesota Statutes 2024, section 13.821, is amended to read:

13.821 ~~VIDEOTAPES~~ RECORDINGS OF CHILD ABUSE VICTIMS.

(a) Notwithstanding section 13.04, subdivision 3, an individual subject of data may not obtain a copy of a ~~videotape~~ recording in which a child victim or alleged victim is alleging, explaining, denying, or describing an act of physical or sexual abuse without a court order under section 13.03, subdivision 6, or 611A.90. The definitions of physical abuse and sexual abuse in section 260E.03, apply to this section, except that abuse is not limited to acts by a person responsible for the child's care or in a significant relationship with the child or position of authority.

(b) This section does not limit other rights of access to data by an individual under section 13.04, subdivision 3, other than the right to obtain a copy of the ~~videotape~~ recording, nor prohibit rights of access pursuant to discovery in a court proceeding.

Sec. 3. Minnesota Statutes 2024, section 144.296, is amended to read:

144.296 COPIES OF ~~VIDEOTAPES~~ RECORDINGS.

A provider may not release a copy of a ~~videotape~~ recording of a child victim or alleged victim of physical or sexual abuse without a court order under section 13.03, subdivision 6, or as provided in section 611A.90. This section does not limit the right of a patient to view or listen to the ~~videotape~~ recording.

Sec. 4. Minnesota Statutes 2024, section 246B.04, subdivision 2, is amended to read:

Subd. 2. **Ban on obscene material or pornographic work.** The executive board shall prohibit persons civilly committed as sexual psychopathic personalities or sexually dangerous persons under chapter 253D from having or receiving material that is obscene as defined under section 617.241, subdivision 1, material that depicts sexual conduct as defined under section 617.241, subdivision 1, or ~~pornographic work~~ child sexual abuse material as defined under section 617.246, subdivision 1, while receiving services in any secure treatment facilities operated by the Minnesota Sex Offender Program or any other facilities operated by the executive board.

Sec. 5. Minnesota Statutes 2024, section 609.527, subdivision 3, is amended to read:

Subd. 3. **Penalties.** A person who violates subdivision 2 may be sentenced as follows:

(1) if the offense involves a single direct victim and the total, combined loss to the direct victim and any indirect victims is $250 or less, the person may be sentenced as provided in section 609.52, subdivision 3, clause (5);

(2) if the offense involves a single direct victim and the total, combined loss to the direct victim and any indirect victims is more than $250 but not more than $500, the person may be sentenced as provided in section 609.52, subdivision 3, clause (4);

(3) if the offense involves two or three direct victims or the total, combined loss to the direct and indirect victims is more than $500 but not more than $2,500, the person may be sentenced as provided in section 609.52, subdivision 3, clause (3);

(4) if the offense involves more than three but not more than seven direct victims, or if the total combined loss to the direct and indirect victims is more than $2,500, the person may be sentenced as provided in section 609.52, subdivision 3, clause (2);

(5) if the offense involves eight or more direct victims, or if the total, combined loss to the direct and indirect victims is more than $35,000, the person may be sentenced as provided in section 609.52, subdivision 3, clause (1); and

(6) if the offense is related to possession or distribution of ~~pornographic work~~ child sexual abuse material in violation of section 617.246 or 617.247, the person may be sentenced as provided in section 609.52, subdivision 3, clause (1).

Sec. 6. Minnesota Statutes 2024, section 611A.90, is amended to read:

611A.90 RELEASE OF ~~VIDEOTAPES~~ RECORDINGS OF CHILD ABUSE VICTIMS.

Subdivision 1. **Definition.** For purposes of this section, "physical abuse" and "sexual abuse" have the meanings given in section 260E.03, except that abuse is not limited to acts by a person responsible for the child's care or in a significant relationship with the child or position of authority.

Subd. 2. **Court order required.** (a) A custodian of a ~~videotape~~ recording of a child victim or alleged victim alleging, explaining, denying, or describing an act of physical or sexual abuse as part of an investigation or evaluation of the abuse may not release a copy of the ~~videotape~~ recording without a court order, notwithstanding that the subject has

consented to the release of the ~~videotape~~ recording or that the release is authorized under law.

(b) The court order may govern the purposes for which the ~~videotape~~ recording may be used, reproduction, release to other persons, retention and return of copies, and other requirements reasonably necessary for protection of the privacy and best interests of the child.

Subd. 3. **Petition.** An individual subject of data, as defined in section 13.02, or a patient, as defined in sections 144.291 to 144.298, who is seeking a copy of a ~~videotape~~ recording governed by this section may petition the district court in the county where the alleged abuse took place or where the custodian of the ~~videotape~~ recording resides for an order releasing a copy of the ~~videotape~~ recording under subdivision 2. Nothing in this section establishes a right to obtain access to a ~~videotape~~ recording by any other person nor limits a right of a person to obtain access if access is otherwise authorized by law or pursuant to discovery in a court proceeding.

Sec. 7. Minnesota Statutes 2024, section 617.246, is amended to read:

617.246 USE OF MINORS IN SEXUAL PERFORMANCE PROHIBITED.

Subdivision 1. **Definitions.** (a) For the purpose of this section, the terms defined in this subdivision have the meanings given ~~them~~.

(b) "Minor" means any person under the age of 18.

(c) "Promote" means to produce, direct, publish, manufacture, issue, or advertise.

(d) "Sexual performance" means any play, dance or other exhibition presented before an audience or for purposes of visual or mechanical reproduction that uses a minor to depict actual or simulated sexual conduct as defined by ~~clause~~ paragraph (e).

(e) "Sexual conduct" means any of the following:

(1) an act of sexual intercourse, normal or perverted, including genital-genital, anal-genital, or oral-genital intercourse, whether between human beings or between a human being and an animal;

(2) sadomasochistic abuse, meaning flagellation, torture, or similar demeaning acts inflicted by or upon a person who is nude or clad in undergarments or in a revealing costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed;

(3) masturbation;

(4) lewd exhibitions of the genitals; or

(5) physical contact with the clothed or unclothed pubic areas or buttocks of a human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

(f) ~~"Pornographic work"~~ "Child sexual abuse material" means:

(1) an original or reproduction of a picture, film, photograph, negative, slide, videotape, videodisc, or drawing of a sexual performance involving a minor; or

(2) any visual depiction, including any photograph, film, video, picture, drawing, negative, slide, or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means that:

(i) uses a minor to depict actual or simulated sexual conduct;

(ii) has been created, adapted, or modified to appear that an identifiable minor is engaging in sexual conduct; or

(iii) is advertised, promoted, presented, described, or distributed in such a manner that conveys the impression that the material is or contains a visual depiction of a minor engaging in sexual conduct.

For the purposes of this paragraph, an identifiable minor is a person who was a minor at the time the depiction was created or altered, whose image is used to create the visual depiction.

(g) "Material" has the meaning given in section 617.241, subdivision 1, paragraph (e).

Subd. 2. **Use of minor.** (a) It is unlawful for a person to promote, employ, use or permit a minor to engage in or assist others to engage minors in posing or modeling alone or with others in any sexual performance or ~~pornographic work~~ child sexual abuse material if the person knows or has reason to know that the conduct intended is a sexual performance or ~~a pornographic work~~ child sexual abuse material.

Any person who violates this paragraph is guilty of a felony and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than $20,000, or both.

(b) A person who violates paragraph (a) is guilty of a felony and may be sentenced to imprisonment for not more than 15 years or to payment of a fine of not more than $40,000, or both, if:

(1) the person has a prior conviction or delinquency adjudication for violating this section or section 617.247;

(2) the violation occurs when the person is a registered predatory offender under section 243.166; or

(3) the violation involved a minor under the age of 14 years.

Subd. 3. **Operation or ownership of business.** (a) A person who owns or operates a business in which ~~a pornographic work~~ child sexual abuse material, as defined in this section, is disseminated to an adult or a minor or is reproduced, and who knows the content and character of the ~~pornographic work~~ child sexual abuse material disseminated or reproduced, is guilty of a felony and may be sentenced to imprisonment for not more than ten years, or to payment of a fine of not more than $20,000, or both.

(b) A person who violates paragraph (a) is guilty of a felony and may be sentenced to imprisonment for not more than 15 years or to payment of a fine of not more than $40,000, or both, if:

(1) the person has a prior conviction or delinquency adjudication for violating this section or section 617.247;

(2) the violation occurs when the person is a registered predatory offender under section 243.166; or

(3) the violation involved a minor under the age of 14 years.

Subd. 4. **Dissemination.** (a) A person who, knowing or with reason to know its content and character, disseminates for profit to an adult or a minor ~~a pornographic work~~ child sexual abuse material, as defined in this section, is guilty of a felony and may be sentenced to imprisonment for not more than ten years, or to payment of a fine of not more than $20,000, or both.

(b) A person who violates paragraph (a) is guilty of a felony and may be sentenced to imprisonment for not more than 15 years or to payment of a fine of not more than $40,000, or both, if:

(1) the person has a prior conviction or delinquency adjudication for violating this section or section 617.247;

(2) the violation occurs when the person is a registered predatory offender under section 243.166; or

(3) the violation involved a minor under the age of 14 years.

Subd. 5. **Consent; mistake.** Neither consent to sexual performance by a minor or the minor's parent, guardian, or custodian nor mistake as to the minor's age is a defense to a charge of violation of this section.

Subd. 6. **Affirmative defense.** It shall be an affirmative defense to a charge of violating this section that the sexual performance or ~~pornographic work~~ child sexual abuse material was produced using only persons who were 18 years or older.

Subd. 7. **Conditional release term.** Notwithstanding the statutory maximum sentence otherwise applicable to the offense or any provision of the sentencing guidelines, when a court commits a person to the custody of the commissioner of corrections for violating this section, the court shall provide that after the person has been released from prison, the commissioner shall place the person on conditional release for five years. If the person has previously been convicted of a violation of this section, section 609.342, 609.343, 609.344, 609.345, 609.3451, 609.3453, or 617.247, or any similar statute of the United States, this state, or any state, the commissioner shall place the person on conditional release for 15 years. The terms of conditional release are governed by section 609.3455, subdivision 8.

Sec. 8. Minnesota Statutes 2024, section 617.247, is amended to read:

617.247 POSSESSION OF ~~PORNOGRAPHIC WORK INVOLVING MINORS~~ CHILD SEXUAL ABUSE IMAGES.

Subdivision 1. **Policy; purpose.** It is the policy of the legislature in enacting this section to protect minors from the physical and psychological damage caused by their being used in ~~pornographic work~~ child sexual abuse material depicting sexual conduct which involves minors. It is therefore the intent of the legislature to penalize possession of ~~pornographic work~~ child sexual abuse material depicting sexual conduct which involve minors or appears to involve minors in order to protect the identity of minors who are victimized by involvement in the ~~pornographic work~~ child sexual abuse material, and to protect minors from future involvement in ~~pornographic work~~ child sexual abuse material depicting sexual conduct.

Subd. 2. **Definitions.** For purposes of this section, the following terms have the meanings given ~~them~~:

(a) ~~"Pornographic work"~~ "Child sexual abuse material" has the meaning given ~~to it~~ in section 617.246.

(b) "Sexual conduct" has the meaning given ~~to it~~ in section 617.246.

Subd. 3. **Dissemination prohibited.** (a) A person who disseminates ~~pornographic work~~ child sexual abuse material to an adult or a minor, knowing or with reason to know its

content and character, is guilty of a felony and may be sentenced to imprisonment for not more than seven years or to payment of a fine of not more than $10,000, or both.

(b) A person who violates paragraph (a) is guilty of a felony and may be sentenced to imprisonment for not more than 15 years or to payment of a fine of not more than $20,000, or both, if:

(1) the person has a prior conviction or delinquency adjudication for violating this section or section 617.246;

(2) the violation occurs when the person is a registered predatory offender under section 243.166; or

(3) the violation involved a minor under the age of 14 years.

Subd. 4. **Possession prohibited.** (a) A person who possesses ~~a pornographic work~~ child sexual abuse material or a computer disk or computer or other electronic, magnetic, or optical storage system or a storage system of any other type, containing ~~a pornographic work~~ child sexual abuse material, knowing or with reason to know its content and character, is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than $5,000, or both.

(b) A person who violates paragraph (a) is guilty of a felony and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than $10,000, or both, if:

(1) the person has a prior conviction or delinquency adjudication for violating this section or section 617.246;

(2) the violation occurs when the person is a registered predatory offender under section 243.166; or

(3) the violation involved a minor under the age of 14 years.

Subd. 5. **Exception.** This section does not apply to the performance of official duties by peace officers, court personnel, or attorneys, nor to licensed physicians, psychologists, or social workers or persons acting at the direction of a licensed physician, psychologist, or social worker in the course of a bona fide treatment or professional education program.

Subd. 6. **Consent.** Consent to sexual performance by a minor or the minor's parent, guardian, or custodian is not a defense to a charge of violation of this section.

Subd. 7. **Second offense.** If a person is convicted of a second or subsequent violation of this section within 15 years of the prior conviction, the court shall order a mental

examination of the person. The examiner shall report to the court whether treatment of the person is necessary.

Subd. 8. **Affirmative defense.** It shall be an affirmative defense to a charge of violating this section that the ~~pornographic work~~ child sexual abuse material was produced using only persons who were 18 years or older.

Subd. 9. **Conditional release term.** Notwithstanding the statutory maximum sentence otherwise applicable to the offense or any provision of the sentencing guidelines, when a court commits a person to the custody of the commissioner of corrections for violating this section, the court shall provide that after the person has been released from prison, the commissioner shall place the person on conditional release for five years. If the person has previously been convicted of a violation of this section, section 609.342, 609.343, 609.344, 609.345, 609.3451, 609.3453, or 617.246, or any similar statute of the United States, this state, or any state, the commissioner shall place the person on conditional release for 15 years. The terms of conditional release are governed by section 609.3455, subdivision 8.

Sec. 9. Minnesota Statutes 2024, section 634.35, is amended to read:

634.35 ~~VIDEOTAPES~~ RECORDINGS OF CHILD VICTIMS; CONDITIONS OF DISCLOSURE.

(a) If a ~~videotaped~~ recorded interview of a child victim of physical or sexual abuse is disclosed by a prosecuting attorney to a defendant or the defendant's attorney, the following applies:

(1) no more than two copies of the ~~tape~~ recording or any portion of the ~~tape~~ recording may be made by the defendant or the defendant's attorney, investigator, expert, or any other representative or agent of the defendant;

(2) the ~~tapes~~ recordings may not be used for any purpose other than to prepare for the defense in the criminal action against the defendant;

(3) the ~~tapes~~ recordings may not be publicly exhibited, shown, displayed, used for educational, research, or demonstrative purposes, or used in any other fashion, except in judicial proceedings in the criminal action against the defendant;

(4) the ~~tapes~~ recordings may be viewed only by the defendant, the defendant's attorney, and the attorney's employees, investigators, and experts;

(5) no transcript of the ~~tapes~~ recordings, nor the substance of any portion of the ~~tapes~~ recordings, may be divulged to any person not authorized to view or listen to the ~~tapes~~ recordings;

(6) no person may be granted access to the ~~tapes~~ recordings, any transcription of the ~~tapes~~ recordings, or the substance of any portion of the ~~tapes~~ recordings unless the person has first signed a written agreement that the person is aware of this statute and acknowledges that the person is subject to the court's contempt powers for any violation of it; and

(7) upon final disposition of the criminal case against the defendant, the ~~tapes~~ recordings and any transcripts of the ~~tapes~~ recordings must be returned to the prosecuting attorney.

(b) The court may hold a person who violates this section in contempt.

Sec. 10. **REVISOR INSTRUCTION.**

The revisor of statutes shall update headnote cross-references in Minnesota Statutes and Minnesota Rules to reflect the changes made in this act.