

**Sec. 53. GILLETE CHILDREN'S HOSPITAL BOARD TRANSITION.**

Members of the Gillete children's hospital board on July 31, 1985, carry over as members of the board as restructured by this act and shall elect additional members other than designees.

**Sec. 54. REPEALER.**

Minnesota Statutes 1984, sections 3.29, subdivisions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11; 16C.01; 238.02, subdivision 4; 238.04; 238.05; 238.06; 238.09; 238.10; 238.11, subdivision 1; 238.12, subdivision 3; 238.13; 238.14; 238.16, subdivision 1; and 238.17, subdivisions 6, 7, and 8 are repealed.

**Sec. 55. EFFECTIVE DATE.**

Sections 3, 10 to 43, and 48 are effective July 1, 1985.

Approved May 31, 1985

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**CHAPTER 286 — H.F.No. 848**

*An act relating to children and families; providing judicial procedures to protect the welfare of alleged child abuse victims and their families; requiring juvenile and criminal courts to give docket priority to child abuse cases; providing for the examination of child witnesses; clarifying the admissibility of certain out-of-court statements; merging the crimes of "intrafamilial sexual abuse" and "criminal sexual conduct" and limiting the discretion of courts to stay sentences of familial sexual abuse defendants; requiring recordkeeping and tape recording guidelines with respect to interviews with child abuse victims; eliminating certain notice requirements; amending Minnesota Statutes 1984, sections 260.011, subdivision 2; 260.133, subdivision 2; 260.135, subdivision 1; 260.155, by adding a subdivision; 260.156; 260.171, subdivision 4; 260.172, subdivision 4, and by adding subdivisions; 260.191, subdivision 1, and by adding subdivisions; 595.02, subdivision 3; 609.341, by adding a subdivision; 609.342; 609.343; 609.344; 609.345; 626.556, subdivision 11, and by adding a subdivision; and 630.36; proposing coding for new law in Minnesota Statutes, chapters 626 and 631; repealing Minnesota Statutes 1984, sections 609.364 to 609.3644.*

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

Section 1. Minnesota Statutes 1984, section 260.011, subdivision 2, is amended to read:

Subd. 2. The purpose of the laws relating to juvenile courts is to secure for each child alleged or adjudicated neglected or dependent and under the jurisdiction of the court, the care and guidance, preferably in his own home, as will serve the spiritual, emotional, mental, and physical welfare of the child and the best interests of the state; to provide judicial procedures which protect the

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welfare of the child; to preserve and strengthen the child's family ties whenever possible, removing him from the custody of his parents only when his welfare or safety cannot be adequately safeguarded without removal; and, when the child is removed from his own family, to secure for him custody, care and discipline as nearly as possible equivalent to that which should have been given by his parents.

The purpose of the laws relating to children alleged or adjudicated to be delinquent is to promote the public safety and reduce juvenile delinquency by maintaining the integrity of the substantive law prohibiting certain behavior and by developing individual responsibility for lawful behavior. This purpose should be pursued through means that are fair and just, that recognize the unique characteristics and needs of children, and that give children access to opportunities for personal and social growth.

The laws relating to juvenile courts shall be liberally construed to carry out these purposes.

Sec. 2. Minnesota Statutes 1984, section 260.133, subdivision 2, is amended to read:

Subd. 2. **TEMPORARY ORDER.** If it appears from the notarized petition or by sworn affidavit that there are reasonable grounds to believe the child is in immediate and present danger of domestic child abuse, the court may grant an ex parte temporary order for protection, pending a full hearing. The court may grant relief as it deems proper, including an order:

- (1) restraining any party from committing acts of domestic child abuse; or
- (2) excluding the alleged abusing party from the dwelling which the family or household members share or from the residence of the child.

However, no order excluding the alleged abusing party from the dwelling may be issued unless the court finds that:

- (1) the order is in the best interests of the child or children remaining in the dwelling; and
- (2) a remaining adult family or household member is able to care adequately for the child or children in the absence of the excluded party; and
- (3) ~~the local welfare agency has developed a plan to provide appropriate social services to the remaining family or household members.~~

Before the temporary order is issued, the local welfare agency shall advise the court and the other parties who are present that appropriate social services will be provided to the family or household members during the effective period of the order.

An ex parte temporary order for protection shall be effective for a fixed period not to exceed 14 days. Within five days of the issuance of the temporary

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order, the petitioner shall file a dependency and neglect petition with the court pursuant to section 260.131, and the court shall give docket priority to the petition.

The court may renew the temporary order for protection one time for a fixed period not to exceed 14 days if a dependency and neglect petition has been filed with the court and if the court determines, upon informal review of the case file, that the renewal is appropriate.

Sec. 3. Minnesota Statutes 1984, section 260.135, subdivision 1, is amended to read:

Subdivision 1. After a petition has been filed and unless the parties hereinafter named voluntarily appear, the court shall set a time for a hearing and shall issue a summons requiring the person who has custody or control of the child to appear with the child before the court at a time and place stated. The summons shall have a copy of the petition attached, and shall advise the parties of the right to counsel and of the consequences of failure to obey the summons. The court shall give docket priority to any dependency, neglect, neglected and in foster care, or delinquency petition that contains allegations of child abuse over any other case except those delinquency matters where a child is being held in a secure detention facility. As used in this subdivision, "child abuse" has the meaning given it in section 22, subdivision 2.

Sec. 4. Minnesota Statutes 1984, section 260.155, is amended by adding a subdivision to read:

Subd. 4a. EXAMINATION OF CHILD. In any dependency, neglect, or neglected and in foster care proceeding the court may, on its own motion or the motion of any party, take the testimony of a child witness informally when it is in the child's best interests to do so. Informal procedures that may be used by the court include taking the testimony of a child witness outside the courtroom. The court may also require counsel for any party to the proceeding to submit questions to the court before the child's testimony is taken, and to submit additional questions to the court for the witness after questioning has been completed. The court may excuse the presence of the child's parent, guardian, or custodian from the room where the child is questioned in accordance with subdivision 5.

Sec. 5. Minnesota Statutes 1984, section 260.156, is amended to read:

**260.156 CERTAIN OUT-OF-COURT STATEMENTS ADMISSIBLE.**

An out-of-court statement made by a child under the age of ten years alleging, explaining, denying, or describing any act of sexual contact or penetration performed with or on the child or any act of physical abuse or neglect of the child by another, not otherwise admissible by statute or rule of evidence, is

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admissible in evidence in any dependency or neglect proceeding or any proceeding for termination of parental rights if:

(a) The court finds that the time, content, and circumstances of the statement and the reliability of the person to whom the statement is made provide sufficient indicia of reliability; and

(b) The proponent of the statement notifies other parties of his intention to offer the statement and the particulars of the statement sufficiently in advance of the proceeding at which he intends to offer the statement into evidence, to provide the parties with a fair opportunity to meet the statement.

Sec. 6. Minnesota Statutes 1984, section 260.171, subdivision 4, is amended to read:

Subd. 4. If the person who has taken the child into custody determines that the child should be placed in a secure detention facility or a shelter care facility, he shall advise the child and as soon as is possible, the child's parent, guardian, or custodian:

(a) of the reasons why the child has been taken into custody and why he is being placed in a secure detention facility or a shelter care facility; and

(b) of the location of the secure detention facility or shelter care facility. If there is reason to believe that disclosure of the location of the shelter care facility would place the child's health and welfare in immediate endangerment, disclosure of the location of the shelter care facility shall not be made; and

(c) that the child's parent, guardian, or custodian and attorney or guardian ad litem may make an initial visit to the secure detention facility or shelter care facility at any time. Subsequent visits by a parent, guardian, or custodian may be made on a reasonable basis during visiting hours and by the child's attorney or guardian ad litem at reasonable hours; and

(d) that the child may telephone his parents and an attorney or guardian ad litem from the secure detention facility or shelter care facility immediately after being admitted to the facility and thereafter on a reasonable basis to be determined by the director of the facility; and

(e) that the child may not be detained for acts as defined in section 260.015, subdivision 5 at a secure detention facility or shelter care facility longer than 36 hours, excluding Saturdays, Sundays and holidays, unless a petition has been filed within that time and the court orders the child's continued detention, pursuant to section 260.172; and

(f) that the child may not be detained pursuant to section 260.165, subdivision 1, clause (a) or (c)(2), at a shelter care facility longer than 72 hours, excluding Saturdays, Sundays and holidays, unless a petition has been filed within

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that time and the court orders the child's continued detention, pursuant to section 260.172; and

(g) of the date, time, and place of the detention hearing; and

(h) that the child and the child's parent, guardian, or custodian have the right to be present and to be represented by counsel at the detention hearing, and that if they cannot afford counsel, counsel will be appointed at public expense for the child, if it is a delinquency matter, or for any party, if it is a dependency, neglect, neglected and in foster care, or termination of parental rights matter.

Sec. 7. Minnesota Statutes 1984, section 260.172, is amended by adding a subdivision to read:

Subd. 2a. PARENTAL VISITATION. If a child has been taken into custody under section 260.135, subdivision 5, or 260.165, subdivision 1, clause (c)(2), and the court determines that the child should continue in detention, the court shall include in its order reasonable rules for supervised or unsupervised parental visitation of the child in the shelter care facility unless it finds that visitation would endanger the child's physical or emotional well-being.

Sec. 8. Minnesota Statutes 1984, section 260.172, is amended by adding a subdivision to read:

Subd. 2b. MENTAL HEALTH TREATMENT. (a) Except as provided in paragraph (b), a child who is held in detention because he or she is alleged to be a victim of child abuse as defined in section 22, subdivision 2, may not be given mental health treatment specifically for the effects of the alleged abuse until the court finds that there is probable cause to believe the abuse has occurred.

(b) A child described in paragraph (a) may be given mental health treatment prior to a probable cause finding of child abuse if the treatment is either agreed to by the child's parent or guardian in writing, or ordered by the court according to the standard contained in section 260.191, subdivision 1.

Sec. 9. Minnesota Statutes 1984, section 260.172, subdivision 4, is amended to read:

Subd. 4. If a child held in detention under a court order issued under subdivision 2 has not been released prior to expiration of the order, the court or referee shall informally review the child's case file to determine, under the standards provided by subdivision 1, whether detention should be continued. If detention is continued thereafter, informal reviews such as these shall be held within every eight days, excluding Saturdays, Sundays and holidays, of the child's detention.

A hearing, rather than an informal review of the child's case file, shall be held at the request of any one of the parties notified pursuant to subdivision 3, if

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that party notifies the court that he wishes to present to the court new evidence concerning whether the child should be continued in detention.

In addition, if a child was taken into detention under section 260.135, subdivision 5, or 260.165, subdivision 1, clause (c)(2), and is held in detention under a court order issued under subdivision 2, the court shall schedule and hold an adjudicatory hearing on the petition within 60 days of the detention hearing upon the request of any party to the proceeding unless good cause is shown by a party to the proceeding why the hearing should not be held within that time period.

Sec. 10. Minnesota Statutes 1984, section 260.191, subdivision 1, is amended to read:

Subdivision 1. **DISPOSITIONS.** If the court finds that the child is neglected, dependent, or neglected and in foster care, it shall enter an order making any of the following dispositions of the case:

(a) Place the child under the protective supervision of the county welfare board or child placing agency in his own home under conditions prescribed by the court directed to the correction of the neglect or dependency of the child;

(b) Transfer legal custody to one of the following:

(1) a child placing agency; or

(2) the county welfare board.

In placing a child whose custody has been transferred under this paragraph, the agency and board shall follow the order of preference stated in section 260.181, subdivision 3;

(c) If the child is in need of special treatment and care for his physical or mental health, the court may order the child's parent, guardian, or custodian to provide it. If the parent, guardian, or custodian fails to provide this treatment or care, the court may order it provided. If the court's order for mental health treatment is based on a diagnosis made by a treatment professional, the court may order that the diagnosing professional not provide the treatment to the child if it finds that such an order is in the child's best interests.

Sec. 11. Minnesota Statutes 1984, section 260.191, is amended by adding a subdivision to read:

Subd. 1d. PARENTAL VISITATION. If the court orders that the child be placed outside of the child's home or present residence, it shall set reasonable rules for supervised or unsupervised parental visitation that contribute to the objectives of the court order and the maintenance of the familial relationship. No parent may be denied visitation unless the court finds at the disposition hearing that the visitation would act to prevent the achievement of the order's objectives or that it would endanger the child's physical or emotional well-being.

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Sec. 12. Minnesota Statutes 1984, section 260.191, is amended by adding a subdivision to read:

Subd. 2a. SERVICE OF ORDER. Any person who provides services to a child under a disposition order, or who is subject to the conditions of a disposition order shall be served with a copy of the order in the manner provided in the rules for juvenile courts.

Sec. 13. Minnesota Statutes 1984, section 595.02, subdivision 3, is amended to read:

**Subd. 3. CERTAIN OUT-OF-COURT STATEMENTS ADMISSIBLE.** An out-of-court statement made by a child under the age of ten years alleging, explaining, denying, or describing any act of sexual contact or penetration performed with or on the child or any act of physical abuse of the child by another, not otherwise admissible by statute or rule of evidence, is admissible in evidence if:

(a) the court or person authorized to receive evidence finds, in a hearing conducted outside of the presence of the jury, that the time, content, and circumstances of the statement and the reliability of the person to whom the statement is made provide sufficient indicia of reliability; and

(b) the child either:

(i) testifies at the proceedings; or

(ii) is unavailable as a witness and there is corroborative evidence of the act; and

(c) the proponent of the statement notifies the adverse party of his intention to offer the statement and the particulars of the statement sufficiently in advance of the proceeding at which he intends to offer the statement into evidence to provide the adverse party with a fair opportunity to prepare to meet the statement.

Sec. 14. Minnesota Statutes 1984, section 609.341, is amended by adding a subdivision to read:

Subd. 15. SIGNIFICANT RELATIONSHIP. "Significant relationship" means a situation in which the actor is:

(1) the complainant's parent, stepparent, or guardian;

(2) any of the following persons related to the complainant by blood, marriage, or adoption: brother, sister, stepbrother, stepsister, first cousin, aunt, uncle, nephew, niece, grandparent, great-grandparent, great-uncle, great-aunt; or

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(3) an adult who jointly resides intermittently or regularly in the same dwelling as the complainant and who is not the complainant's spouse.

Sec. 15. Minnesota Statutes 1984, section 609.342, is amended to read:

609.342 **CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE.**

Subdivision 1. CRIME DEFINED. A person is guilty of criminal sexual conduct in the first degree ~~and may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than \$35,000, or both, if he~~ engages in sexual penetration with another person and if any of the following circumstances exists:

(a) The complainant is under 13 years of age and the actor is more than 36 months older than the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense; ~~or~~

(b) The complainant is at least 13 but less than 16 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant, and uses this authority to cause the complainant to submit. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense; ~~or~~

(c) Circumstances existing at the time of the act cause the complainant to have a reasonable fear of imminent great bodily harm to the complainant or another; ~~or~~

(d) The actor is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it to be a dangerous weapon and uses or threatens to use the weapon or article to cause the complainant to submit; ~~or~~

(e) The actor causes personal injury to the complainant, and either of the following circumstances exist:

(i) The actor uses force or coercion to accomplish sexual penetration; ~~or~~

(ii) The actor knows or has reason to know that the complainant is mentally defective, mentally incapacitated, or physically helpless; ~~or~~

(f) The actor is aided or abetted by one or more accomplices within the meaning of section 609.05, and either of the following circumstances exists:

(i) An accomplice uses force or coercion to cause the complainant to submit; ~~or~~

(ii) An accomplice is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant reasonably to believe it to be a dangerous weapon and uses or threatens to use the weapon or article to cause the complainant to submit;

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(g) The actor has a significant relationship to the complainant and the complainant was under 16 years of age at the time of the sexual penetration. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense; or

(h) The actor has a significant relationship to the complainant, the complainant was under 16 years of age at the time of the sexual penetration, and:

(i) the actor or an accomplice used force or coercion to accomplish the penetration;

(ii) the actor or an accomplice was armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it could be a dangerous weapon and used or threatened to use the dangerous weapon;

(iii) circumstances existed at the time of the act to cause the complainant to have a reasonable fear of imminent great bodily harm to the complainant or another;

(iv) the complainant suffered personal injury; or

(v) the sexual abuse involved multiple acts committed over an extended period of time.

Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense.

Subd. 2. PENALTY. A person convicted under subdivision 1 may be sentenced to imprisonment for not more than 20 years or to a payment of a fine of not more than \$35,000, or both.

Subd. 3. STAY. Except when imprisonment is required under section 609.346, if a person is convicted under subdivision 1, clause (g), the court may stay imposition or execution of the sentence if it finds that:

(a) a stay is in the best interest of the complainant or the family unit; and

(b) a professional assessment indicates that the offender has been accepted by and can respond to a treatment program.

If the court stays imposition or execution of sentence, it shall include the following as conditions of probation:

(1) incarceration in a local jail or workhouse; and

(2) a requirement that the offender complete a treatment program.

Sec. 16. Minnesota Statutes 1984, section 609.343, is amended to read:

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**609.343 CRIMINAL SEXUAL CONDUCT IN THE SECOND DEGREE.**

**Subdivision 1. CRIME DEFINED.** A person is guilty of criminal sexual conduct in the second degree and ~~may be sentenced to imprisonment for not more than 15 years or to payment of a fine of not more than \$30,000, or both, if~~ he engages in sexual contact with another person and if any of the following circumstances exists:

(a) The complainant is under 13 years of age and the actor is more than 36 months older than the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense. In a prosecution under this clause, the state is not required to prove that the sexual contact was coerced; ~~or~~

(b) The complainant is at least 13 but less than 16 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant, and uses this authority to cause the complainant to submit. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense; ~~or~~

(c) Circumstances existing at the time of the act cause the complainant to have a reasonable fear of imminent great bodily harm to the complainant or another; ~~or~~

(d) The actor is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it to be a dangerous weapon and uses or threatens to use the dangerous weapon to cause the complainant to submit; ~~or~~

(e) The actor causes personal injury to the complainant, and either of the following circumstances exist:

(i) The actor uses force or coercion to accomplish the sexual contact; ~~or~~

(ii) The actor knows or has reason to know that the complainant is mentally defective, mentally incapacitated, or physically helpless; ~~or~~

(f) The actor is aided or abetted by one or more accomplices within the meaning of section 609.05, and either of the following circumstances exists:

(i) An accomplice uses force or coercion to cause the complainant to submit; ~~or~~

(ii) An accomplice is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it to be a dangerous weapon and uses or threatens to use the weapon or article to cause the complainant to submit;

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(g) The actor has a significant relationship to the complainant and the complainant was under 16 years of age at the time of the sexual contact. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense; or

(h) The actor has a significant relationship to the complainant, the complainant was under 16 years of age at the time of the sexual contact, and:

(i) the actor or an accomplice used force or coercion to accomplish the contact;

(ii) the actor or an accomplice was armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it could be a dangerous weapon and used or threatened to use the dangerous weapon;

(iii) circumstances existed at the time of the act to cause the complainant to have a reasonable fear of imminent great bodily harm to the complainant or another;

(iv) the complainant suffered personal injury; or

(v) the sexual abuse involved multiple acts committed over an extended period of time.

Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense.

Subd. 2. PENALTY. A person convicted under subdivision 1 may be sentenced to imprisonment for not more than 15 years or to a payment of a fine of not more than \$30,000, or both.

Subd. 3. STAY. Except when imprisonment is required under section 609.346, if a person is convicted under subdivision 1, clause (g), the court may stay imposition or execution of the sentence if it finds that:

(a) a stay is in the best interest of the complainant or the family unit; and

(b) a professional assessment indicates that the offender has been accepted by and can respond to a treatment program.

If the court stays imposition or execution of sentence, it shall include the following as conditions of probation:

(1) incarceration in a local jail or workhouse; and

(2) a requirement that the offender complete a treatment program.

Sec. 17. Minnesota Statutes 1984, section 609.344, is amended to read:

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## 609.344 CRIMINAL SEXUAL CONDUCT IN THE THIRD DEGREE.

**Subdivision 1. CRIME DEFINED.** A person is guilty of criminal sexual conduct in the third degree 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, if he engages in sexual penetration with another person and any of the following circumstances exists:

(a) The complainant is under 13 years of age and the actor is no more than 36 months older than the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant shall be a defense; ~~or~~

(b) The complainant is at least 13 but less than 16 years of age and the actor is more than 24 months older than the complainant. In any such case it shall be an affirmative defense, which must be proved by a preponderance of the evidence, that the actor believes the complainant to be 16 years of age or older. If the actor in such a case is no more than 48 months but more than 24 months older than the complainant, he may be sentenced to imprisonment for not more than five years. Consent by the complainant is not a defense; ~~or~~

(c) The actor uses force or coercion to accomplish the penetration; ~~or~~

(d) The actor knows or has reason to know that the complainant is mentally defective, mentally incapacitated, or physically helpless; ~~or~~

(e) The complainant is at least 16 but less than 18 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant, and uses this authority to cause the complainant to submit. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

(f) The actor has a significant relationship to the complainant and the complainant was at least 16 but under 18 years of age at the time of the sexual penetration. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense; or

(g) The actor has a significant relationship to the complainant, the complainant was at least 16 but under 18 years of age at the time of the sexual penetration, and:

(i) the actor or an accomplice used force or coercion to accomplish the penetration;

(ii) the actor or an accomplice was armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it could be a dangerous weapon and used or threatened to use the dangerous weapon;

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(iii) circumstances existed at the time of the act to cause the complainant to have a reasonable fear of imminent great bodily harm to the complainant or another;

(iv) the complainant suffered personal injury; or

(v) the sexual abuse involved multiple acts committed over an extended period of time.

Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense.

Subd. 2. PENALTY. A person convicted under subdivision 1 may be sentenced to imprisonment for not more than ten years or to a payment of a fine of not more than \$20,000, or both.

Subd. 3. STAY. Except when imprisonment is required under section 609.346, if a person is convicted under subdivision 1, clause (f), the court may stay imposition or execution of the sentence if it finds that:

(a) a stay is in the best interest of the complainant or the family unit; and

(b) a professional assessment indicates that the offender has been accepted by and can respond to a treatment program.

If the court stays imposition or execution of sentence, it shall include the following as conditions of probation:

(1) incarceration in a local jail or workhouse; and

(2) a requirement that the offender complete a treatment program.

Sec. 18. Minnesota Statutes 1984, section 609.345, is amended to read:

**609.345 CRIMINAL SEXUAL CONDUCT IN THE FOURTH DEGREE.**

Subdivision 1. CRIME DEFINED. A person is guilty of criminal sexual conduct in the fourth degree ~~and may be sentenced to imprisonment for not more than five years, or to payment of a fine of not more than \$10,000, or both,~~ if he engages in sexual contact with another person and if any of the following circumstances exists:

(a) The complainant is under 13 years of age and the actor is no more than 36 months older than the complainant. Neither mistake as to the complainant's age or consent to the act by the complainant is a defense. In a prosecution under this clause, the state is not required to prove that the sexual contact was coerced; or

(b) The complainant is at least 13 but less than 16 years of age and the actor is more than 48 months older than the complainant or in a position of

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authority over the complainant and uses this authority to cause the complainant to submit. In any such case, it shall be an affirmative defense which must be proved by a preponderance of the evidence that the actor believes the complainant to be 16 years of age or older; ~~or~~

(c) ~~The actor uses force or coercion to accomplish the sexual contact; ~~or~~~~

(d) ~~The actor knows or has reason to know that the complainant is mentally defective, mentally incapacitated, or physically helpless; ~~or~~~~

(e) ~~The complainant is at least 16 but less than 18 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant, and uses this authority to cause the complainant to submit. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;~~

(f) The actor has a significant relationship to the complainant and the complainant was at least 16 but under 18 years of age at the time of the sexual contact. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense; or

(g) The actor has a significant relationship to the complainant, the complainant was at least 16 but under 18 years of age at the time of the sexual contact, and:

(i) the actor or an accomplice used force or coercion to accomplish the contact;

(ii) the actor or an accomplice was armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it could be a dangerous weapon and used or threatened to use the dangerous weapon;

(iii) circumstances existed at the time of the act to cause the complainant to have a reasonable fear of imminent great bodily harm to the complainant or another;

(iv) the complainant suffered personal injury; or

(v) the sexual abuse involved multiple acts committed over an extended period of time.

Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense.

Subd. 2. PENALTY. A person convicted under subdivision 1 may be sentenced to imprisonment for not more than five years or to a payment of a fine of not more than \$10,000, or both.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

Subd. 3. STAY. Except when imprisonment is required under section 609.346, if a person is convicted under subdivision 1, clause (f), the court may stay imposition or execution of the sentence if it finds that:

- (a) a stay is in the best interest of the complainant or the family unit; and
- (b) a professional assessment indicates that the offender has been accepted by and can respond to a treatment program.

If the court stays imposition or execution of sentence, it shall include the following as conditions of probation:

- (1) incarceration in a local jail or workhouse; and
- (2) a requirement that the offender complete a treatment program.

Sec. 19. Minnesota Statutes 1984, section 626.556, subdivision 11, is amended to read:

Subd. 11. **RECORDS.** All records maintained by a local welfare agency under this section, including any written reports filed under subdivision 7, shall be private data on individuals, except insofar as copies of reports are required by subdivision 7 to be sent to the local police department or the county sheriff. Report records maintained by any police department or the county sheriff shall be private data on individuals except the reports shall be made available to the investigating, petitioning, or prosecuting authority. The welfare board shall make available to the investigating, petitioning, or prosecuting authority any records which contain information relating to a specific incident of neglect or abuse which is under investigation, petition, or prosecution and information relating to any prior incidents of neglect or abuse involving any of the same persons. The records shall be collected and maintained in accordance with the provisions of chapter 13. In conducting investigations and assessments pursuant to this section, the notice required by section 13.04, subdivision 2, need not be provided to a minor under the age of 10 who is the alleged victim of abuse or neglect. An individual subject of a record shall have access to the record in accordance with those sections, except that the name of the reporter shall be confidential while the report is under assessment or investigation. After the assessment or investigation is completed, the name of the reporter shall be confidential but shall be accessible to the individual subject of the record upon court order.

Records maintained by local welfare agencies, the police department or county sheriff under this section shall be destroyed as described in clauses (a) to (c):

(a) If upon assessment or investigation a report is found to be unsubstantiated, notice of intent to destroy records of the report shall be mailed to the individual subject of the report. At the subject's request the records shall be

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maintained as private data. If no request from the subject is received within 30 days of mailing the notice of intent to destroy, the records shall be destroyed.

(b) All records relating to reports which, upon assessment or investigation, are found to be substantiated shall be destroyed seven years after the date of the final entry in the case record.

(c) All records of reports which, upon initial assessment or investigation, cannot be substantiated or disproved to the satisfaction of the local welfare agency, local police department or county sheriff may be kept for a period of one year. If the local welfare agency, local police department or county sheriff is unable to substantiate the report within that period, each agency unable to substantiate the report shall destroy its records relating to the report in the manner provided by clause (a).

Sec. 20. Minnesota Statutes 1984, section 626.556, is amended by adding a subdivision to read:

Subd. 11a. DISCLOSURE OF INFORMATION NOT REQUIRED IN CERTAIN CASES. When interviewing a minor under subdivision 10, an individual does not include the parent or guardian of the minor for purposes of section 13.04, subdivision 2, when the parent or guardian is the alleged perpetrator of the abuse or neglect.

Sec. 21. [626.561] INTERVIEWS WITH CHILD ABUSE VICTIMS.

Subdivision 1. POLICY. It is the policy of this state to encourage adequate and accurate documentation of the number and content of interviews conducted with alleged child abuse victims during the course of a child abuse assessment, criminal investigation, or prosecution, and to discourage interviews that are unnecessary, duplicative, or otherwise not in the best interests of the child.

Subd. 2. DEFINITIONS. As used in this section:

(a) "child abuse" means physical or sexual abuse as defined in section 626.556, subdivision 2;

(b) "government employee" means an employee of a state or local agency, and any person acting as an agent of a state or local agency;

(c) "interview" means a statement of an alleged child abuse victim which is given or made to a government employee during the course of a child abuse assessment, criminal investigation, or prosecution; and

(d) "record" means an audio or videotape recording of an interview, or a written record of an interview.

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**Subd. 3. RECORD REQUIRED.** Whenever an interview is conducted, the interviewer must make a record of the interview. The record must contain the following information:

- (1) the date, time, place, and duration of the interview;
- (2) the identity of the persons present at the interview; and
- (3) if the record is in writing, a summary of the information obtained during the interview.

The records shall be maintained by the interviewer in accordance with applicable provisions of section 626.556, subdivision 11 and chapter 13.

**Subd. 4. GUIDELINES ON TAPE RECORDING OF INTERVIEWS.** Every county attorney's office shall be responsible for developing written guidelines on the tape recording of interviews by government employees who conduct child abuse assessments, criminal investigations, or prosecutions. The guidelines are public data as defined in section 13.02, subdivision 14.

Sec. 22. Minnesota Statutes 1984, section 630.36, is amended to read:

**630.36 ISSUES, HOW DISPOSED OF.**

**Subdivision 1. ORDER.** The issues on the calendar shall be disposed of in the following order, unless, upon the application of either party, for good cause, the court directs an indictment or complaint to be tried out of its order:

- (1) Indictments or complaints for felony, where the defendant is in custody;
- (2) Indictments or complaints for misdemeanor, where the defendant is in custody;
- (3) Indictments or complaints alleging child abuse, as defined in subdivision 2, where the defendant is on bail;
- (4) Indictments or complaints for felony, where the defendant is on bail; and
- (4) (5) Indictments or complaints for misdemeanor, where the defendant is on bail.

After his plea, the defendant shall be entitled to at least four days to prepare for his trial, if he requires it.

**Subd. 2. CHILD ABUSE DEFINED,** As used in subdivision 1, "child abuse" means any act which involves a minor victim and which constitutes a violation of section 609.221, 609.222, 609.223, 609.2231, 609.255, 609.321, 609.322, 609.323, 609.324, 609.342, 609.343, 609.344, 609.345, 609.377, 609.378,

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or 617.246, or section 609.224 if the minor victim is a family or household member of the defendant.

**Sec. 23. [631.046] AUTHORIZING PRESENCE OF PARENT FOR MINOR PROSECUTING WITNESS.**

Notwithstanding any other law, a prosecuting witness under 18 years of age in a case involving child abuse as defined in section 22, subdivision 2, may choose to have in attendance a parent, guardian, or other supportive person, whether or not a witness, at the omnibus hearing or at the trial, during testimony of the prosecuting witness. If the person so chosen is also a prosecuting witness, the prosecution shall present on noticed motion, evidence that the person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness. Upon that showing the court shall grant the request unless information presented by the defendant or noticed by the court establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony.

**Sec. 24. REPEALER.**

Minnesota Statutes 1984, sections 609.364, 609.3641, 609.3642, 609.3643, and 609.3644, are repealed.

Approved May 31, 1985

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**CHAPTER 287 — H.F.No. 1458**

*An act relating to claims against the state; providing for payment of various claims; appropriating money.*

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

**Section 1. CLAIMS; APPROPRIATIONS; GENERAL FUND.**

Subdivision 1. The sums set forth in this section are appropriated from the general fund to the persons named in this section in full and final payment of claims against the state. This appropriation is available until June 30, 1986.

Subd. 2. John R. DeRuyter, Rural Route, Renville, Minnesota 56284 for costs, disbursements, and attorneys fees incurred in successfully contesting his dismissal from employment at Willmar State Hospital.....\$12,929.

Subd. 3. Aman Esmailzadeh, No. 101027, Minnesota Correctional Facility, Box 55, Stillwater, Minnesota 55082, for personal property lost when he was

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