

The commissioner may adopt rules to establish a preference program whereby businesses owned and operated by socially and economically disadvantaged persons would be allowed a five percent preference in the bid amount on selected state procurements or a preference program whereby businesses owned and operated by socially and economically disadvantaged persons would be awarded any state procurement if the business could meet the low bid amount for that procurement. Each of the preference programs is applicable to no more than 1.5 percent of the value of anticipated total state procurements of goods and services, including construction. Each preference program established by the commissioner expires on June 30, 1986, and the commissioner shall report to the legislature on the progress of the program by January 1, 1986.

Sec. 8. Minnesota Statutes 1984, section 645.445, subdivision 5, is amended to read:

Subd. 5. "Socially or economically disadvantaged person" means a person who has been deprived of the opportunity to develop and maintain a competitive position in the economy because of social or economic conditions. This disadvantage may arise from cultural, social or economic circumstances, or background, physical location if the person resides or is employed in an area designated a labor surplus area by the United States department of labor, or other similar cause. It includes racial minorities, women, or persons who have suffered a substantial physical disability. For purposes of sections 16B.19 to 16B.22, the definition of "socially or economically disadvantaged person" includes sheltered workshops and work activity programs.

Sec. 9. PREFERENCE PROGRAM STUDY.

The commissioner shall prepare a report that examines the short-term and long-term effects of the preference bidding process on each category of businesses owned and operated by economically or socially disadvantaged persons. This report shall be submitted to the governor and the legislature by February 15, 1986.

Approved June 4, 1985

CHAPTER 297 — H.F.No. 1227

An act relating to crimes; providing that a psychotherapist who engages in sexual contact or penetration with a patient under certain circumstances is guilty of criminal sexual conduct; limiting admissibility of a patient's personal or medical history; amending Minnesota Statutes 1984, sections 609.341, by adding subdivisions; 609.344; 609.345; and 609.347, by adding a subdivision.

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

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

Section 1. Minnesota Statutes 1984, section 609.341, is amended by adding a subdivision to read:

Subd. 16. "Patient" means a person who seeks or obtains psychotherapeutic services.

Sec. 2. Minnesota Statutes 1984, section 609.341, is amended by adding a subdivision to read:

Subd. 17. "Psychotherapist" means a physician, psychologist, nurse, chemical dependency counselor, social worker, clergy, or other person, whether or not licensed by the state, who performs or purports to perform psychotherapy.

Sec. 3. Minnesota Statutes 1984, section 609.341, is amended by adding a subdivision to read:

Subd. 18. "Psychotherapy" means the professional treatment, assessment, or counseling of a mental or emotional illness, symptom, or condition.

Sec. 4. Minnesota Statutes 1984, section 609.341, is amended by adding a subdivision to read:

Subd. 19. "Emotionally dependent" means that the nature of the patient's or former patient's emotional condition and the nature of the treatment provided by the psychotherapist are such that the psychotherapist knows or has reason to know that the patient or former patient is unable to withhold consent to sexual contact or sexual penetration by the psychotherapist.

Sec. 5. Minnesota Statutes 1984, section 609.341, is amended by adding a subdivision to read:

Subd. 20. "Therapeutic deception" means a representation by a psychotherapist that sexual contact or sexual penetration by the psychotherapist is consistent with or part of the patient's treatment.

Sec. 6. Minnesota Statutes 1984, section 609.344, is amended to read:

609.344 CRIMINAL SEXUAL CONDUCT IN THE THIRD DEGREE.

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

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(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 is a psychotherapist and the complainant is a patient of the psychotherapist and the sexual penetration occurred during the psychotherapy session. Consent by the complainant is not a defense;

(g) The actor is a psychotherapist and the complainant is a patient or former patient of the psychotherapist and the patient or former patient is emotionally dependent upon the psychotherapist; or

(h) The actor is a psychotherapist and the complainant is a patient or former patient and the sexual penetration occurred by means of therapeutic deception. Consent by the complainant is not a defense.

Sec. 7. Minnesota Statutes 1984, section 609.345, is amended to read:

609.345 CRIMINAL SEXUAL CONDUCT IN THE FOURTH DEGREE.

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 authority over the complainant and uses this authority to cause the complainant

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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 is a psychotherapist and the complainant is a patient of the psychotherapist and the sexual contact occurred during the psychotherapy session. Consent by the complainant is not a defense;

(g) The actor is a psychotherapist and the complainant is a patient or former patient of the psychotherapist and the patient or former patient is emotionally dependent upon the psychotherapist; or

(h) The actor is a psychotherapist and the complainant is a patient or former patient and the sexual contact occurred by means of therapeutic deception. Consent by the complainant is not a defense.

Sec. 8. Minnesota Statutes 1984, section 609.347, is amended by adding a subdivision to read:

Subd. 6. (a) In a prosecution under sections 609.342 to 609.346 involving a psychotherapist and patient, evidence of the patient's personal or medical history is not admissible except when:

(1) the defendant requests a hearing prior to trial and makes an offer of proof of the relevancy of the history; and

(2) the court finds that the history is relevant and that the probative value of the history outweighs its prejudicial value.

(b) The court shall allow the admission only of specific information or examples of conduct of the complainant that are determined by the court to be relevant. The court's order shall detail the information or conduct that is admissible and no other evidence of the history may be introduced.

(c) Violation of the terms of the order is grounds for mistrial but does not prevent the retrial of the defendant.

Sec. 9. **EFFECTIVE DATE.**

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Sections 1 to 8 are effective August 1, 1985, and apply to crimes committed on or after that date.

Approved June 4, 1985

CHAPTER 298 — H.F.No. 1589

An act relating to collection and dissemination of data; classifying government data as confidential, private, nonpublic, protected nonpublic, and public; clarifying issues relating to classifications of data, access to data, the effect of death of individuals on classifications, and classifications of inactive investigative data; refining provisions of the data practices act; authorizing a court to order the release of certain information; amending Minnesota Statutes 1984, sections 13.03, subdivision 3, and by adding subdivisions; 13.08, subdivision 1, and by adding a subdivision; 13.09; 13.32, subdivision 1, and by adding a subdivision; 13.39, by adding a subdivision; 13.43, subdivision 4; 13.46, subdivisions 1, 2, 3, 7, and 10; 13.65, subdivision 1; 13.71; 13.72, by adding subdivisions; 13.82, subdivisions 1 and 5, and by adding subdivisions; 13.83, by adding a subdivision; 13.84, subdivisions 1 and 6; 144.335, subdivision 2; and 254A.09; repealing Minnesota Statutes 1984, sections 13.73 and 13.81; proposing coding for new law in Minnesota Statutes, chapters 13 and 144.

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

Section 1. Minnesota Statutes 1984, section 13.03, subdivision 3, is amended to read:

Subd. 3. **REQUEST FOR ACCESS TO DATA.** Upon request to a responsible authority or designee, a person shall be permitted to inspect and copy public government data at reasonable times and places, and ~~if the person requests, he, upon request,~~ shall be informed of the data's meaning. The responsible authority may not require the requesting person to pay a fee to inspect data. The responsible authority or designee shall provide copies of public government data upon request. The responsible authority may require the requesting person to pay the actual costs of searching for and retrieving government data and for making, certifying and compiling the copies of the data but may not charge for separating public from not public data. If the responsible authority or designee is not able to provide copies at the time a request is made ~~he, copies shall supply copies be supplied~~ as soon as reasonably possible.

When a request under this subdivision involves any person's receipt of copies of public government data that has commercial value and is an entire formula, pattern, compilation, program, device, method, technique, process, data base, or system developed with a significant expenditure of public funds by the agency, the responsible authority may charge a reasonable fee for the information in addition to the costs of making, certifying, and compiling the copies. Any fee charged must be clearly demonstrated by the agency to relate to the actual

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