

person aggrieved by the violation of the conditions thereof. The referee has the power to take acknowledgments and administer oaths.

Sec. 7. REPEALER.

Minnesota Statutes 1980, Sections 484.67; and 484.70, Subdivisions 2, 3, 4 and 5; are repealed.

Approved May 28, 1981

CHAPTER 273 — H.F.No. 586

An act relating to crimes; authorizing courts to order certain persons to participate in counseling in domestic abuse cases; creating the crime of intrafamilial sexual abuse; prescribing penalties; amending Minnesota Statutes 1980, Sections 15.1695, Subdivision 1; 518B.01, Subdivision 6; 595.02; 609.346; 609.348; 609.35; 626.556, Subdivision 2; and 629.341, Subdivision 1; proposing new law coded in Minnesota Statutes, Chapter 609.

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

Section 1. Minnesota Statutes 1980, Section 15.1695, Subdivision 1, is amended to read:

Subdivision 1. When collected, created, or maintained by law enforcement agencies including municipal police departments, county sheriff departments, the bureau of criminal apprehension, the Minnesota state patrol, the peace officers standards and training board, or public prosecutors or defenders:

(a) Data on participants in crime prevention programs including lists of property with identification numbers or evaluations or recommendations related to structural security against unauthorized entry is private; and

(b) Data contained on incident complaint reports, variously called logs or dockets, comprising a chronological record of events, shall be public; provided that data on individuals which could reasonably be used to determine the identity of an undercover agent, informant, or victim of criminal sexual conduct or intrafamilial sexual abuse shall be private data on individuals; provided further that any other data classified by law as private or confidential contained in incident complaint reports shall remain private or confidential data.

Sec. 2. Minnesota Statutes 1980, Section 518B.01, Subdivision 6, is amended to read:

Subd. 6. **RELIEF BY THE COURT.** Upon notice and hearing, the court may provide relief as follows:

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

- (a) Restrain any party from committing acts of domestic abuse;
- (b) Exclude the abusing party from the dwelling which the parties share or from the residence of the petitioner;
- (c) On the same basis as is provided in chapter 518, award temporary custody or establish temporary visitation with regard to minor children of the parties;
- (d) On the same basis as is provided in chapter 518, establish temporary support for minor children or a spouse;
- (e) Provide counseling or other social services for the parties, if married, or if there are minor children;
- (f) Order the abusing party to participate in treatment or counseling services;
- (g) Order, in its discretion, other relief as it deems necessary for the protection of a family or household member, including orders or directives to the sheriff or constable, as provided by this section.

Any relief granted by the order for protection shall be for a fixed period not to exceed one year.

Sec. 3. Minnesota Statutes 1980, Section 595.02, is amended to read:
595.02 COMPETENCY OF WITNESSES.

Every person of sufficient understanding, including a party, may testify in any action or proceeding, civil or criminal, in court or before any person who has authority to receive evidence, except as follows:

(1) A husband cannot be examined for or against his wife without her consent, nor a wife for or against her husband without his consent, nor can either, during the marriage or afterwards, without the consent of the other, be examined as to any communication made by one to the other during the marriage. This exception does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other or against a child of either, nor to a criminal action or proceeding in which one is charged with homicide or an attempt to commit homicide and the date of the marriage of the defendant is subsequent to the date of the offense, nor to an action or proceeding for non-support, neglect, dependency, or termination of parental rights;

(2) An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him or his advice given thereon in the course of professional duty; nor can any employee of ~~such~~ the attorney be examined as to ~~such~~ the communication or advice, without the client's consent;

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(3) A clergyman or other minister of any religion shall not, without the consent of the party making the confession, be allowed to disclose a confession made to him in his professional character, in the course of discipline enjoined by the rules or practice of the religious body to which he belongs; nor shall a clergyman or other minister of any religion be examined as to any communication made to him by any person seeking religious or spiritual advice, aid, or comfort or his advice given thereon in the course of his professional character, without the consent of ~~such~~ the person;

(4) A licensed physician or surgeon, dentist, or chiropractor shall not, *without the consent of his patient*, be allowed to disclose any information or any opinion based thereon which he acquired in attending the patient in a professional capacity, and which was necessary to enable him to act in that capacity; after the decease of ~~such~~ the patient, in an action to recover insurance benefits, where the insurance has been in existence two years or more, the beneficiaries shall be deemed to be the personal representatives of ~~such~~ the deceased person for the purpose of waiving ~~the~~ this privilege ~~hereinbefore created~~, and no oral or written waiver of the privilege ~~hereinbefore created~~ shall have any binding force or effect ~~except that the same be when made upon~~ the trial or examination where the evidence is offered or received;

(5) A public officer shall not be allowed to disclose communications made to him in official confidence when the public interest would suffer by the disclosure;

(6) Persons of unsound mind; persons intoxicated at the time of their production for examination, and children under ten years of age, who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly, are not competent witnesses. This exception does not apply to a child under ten years of age, in a criminal proceeding for intrafamilial sexual abuse as defined in section 7, subdivision 10, or in a criminal proceeding under sections 609.342 clause (a), 609.343 clause (a), 609.344 clause (a), or 609.345 clause (a), who is able to describe or relate in language appropriate for a child of that age the events or facts respecting which the child is examined;

(7) A registered nurse, psychologist or consulting psychologist shall not, without the consent of his client, be allowed to disclose any information or opinion based thereon which he acquired in attending the client in a professional capacity, and which was necessary to enable him to act in that capacity.

Sec. 4. Minnesota Statutes 1980, Section 609.346, is amended to read:

609.346 SUBSEQUENT OFFENSES.

Subdivision 1. If a person is convicted of a second or subsequent offense under sections 609.342 to ~~609.346~~ 609.345 or sections 7 to 11 within 15 years of the prior conviction, the court shall commit the defendant to the

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commissioner of corrections for imprisonment for a term of not less than three years, nor more than the maximum sentence provided by law for the offense for which convicted, notwithstanding the provisions of sections 242.19, 243.05, 609.11, 609.12 and 609.135.

Subd. 2. For the purposes of this section, an offense is considered a second or subsequent offense if, prior to conviction of the second or subsequent offense, the actor has been at any time convicted under sections 609.342 to 609.346 or sections 7 to 11 or under any similar statute of the United States, or this or any other state.

Sec. 5. Minnesota Statutes 1980, Section 609.348, is amended to read:
609.348 **MEDICAL PURPOSES; EXCLUSION.**

Laws 1975, Chapter 374, and sections 7 to 11 shall not apply to sexual penetration or sexual contact when done for a bona fide medical purpose.

Sec. 6. Minnesota Statutes 1980, Section 609.35, is amended to read:
609.35 **COSTS OF MEDICAL EXAMINATION.**

No costs incurred by a county, city, or private hospital or other emergency medical facility or by a private physician for the examination of a complainant of criminal sexual conduct or intrafamilial sexual abuse, as defined in section 7, subdivision 10, when the examination is performed for the purpose of gathering evidence for possible prosecution, shall be charged directly or indirectly to the complainant. The reasonable costs of ~~such~~ the examination shall be paid by the county in which the alleged offense was committed. Nothing in this section shall be construed to limit the duties, responsibilities, or liabilities of any insurer, whether public or private.

Sec. 7. ~~[609.364]~~ **DEFINITIONS.**

Subdivision 1. SCOPE. For the purposes of sections 3 and 7 to 11, the terms in this section have the meanings given them.

Subd. 2. ACTOR. "Actor" means an adult accused of intrafamilial sexual abuse.

Subd. 3. CHILD. "Child" means a person under age 16.

Subd. 4. COERCION. "Coercion" means a threat to unlawfully inflict bodily harm upon, or hold in confinement, the person threatened or another.

Subd. 5. COMPLAINANT. "Complainant" means a child or minor alleging to have been subjected to intrafamilial sexual abuse, but need not be the person who signs the complaint.

Subd. 6. CONSENT. "Consent" means a voluntary uncoerced manifestation of a present agreement to perform a particular sexual act.

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Subd. 7. FORCE. “Force” means the infliction, attempted infliction, or threatened infliction by the actor of bodily harm or commission or threat of any other crime by the actor against the complainant or another, which causes the complainant to reasonably believe that the actor has the present ability to execute the threat.

Subd. 8. INTIMATE PARTS. “Intimate parts” includes the primary genital area, groin, inner thigh, buttocks, or breast of a human being.

Subd. 9. FAMILIAL RELATIONSHIP. “Familial relationship” means a situation in which the actor is:

(a) The complainant’s parent, stepparent, or guardian;

(b) Nearer of kin to the complainant than first cousin, computed by rules of the civil law, whether of the half or the whole blood;

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

(d) An adult who jointly resides intermittently or regularly in the same dwelling as the complainant and who is not the complainant’s spouse.

Subd. 10. INTRAFAMILIAL SEXUAL ABUSE. “Intrafamilial sexual abuse” means sexual contact or sexual penetration, or both, of a child or minor when the actor has a familial relationship to the complainant. Neither mistake as to the complainant’s age nor consent to the act by the complainant is a defense.

Subd. 11. MINOR. “Minor” means a person under age 18 but age 16 or over.

Subd. 12. PERSONAL INJURY. “Personal injury” means bodily harm as defined in section 609.02, subdivision 7, or severe mental anguish, or pregnancy.

Subd. 13. SEXUAL CONTACT. “Sexual contact” includes any of the following acts, if the acts can reasonably be construed as being for the purpose of satisfying the actor’s sexual or aggressive impulses:

(a) The intentional touching by the actor of the complainant’s intimate parts;

(b) The touching by the complainant of the actor’s, the complainant’s, or another’s intimate parts;

(c) The touching by another of the complainant’s intimate parts; or

(d) In any of the cases listed above, touching of the clothing covering the immediate area of the intimate parts.

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Subd. 14. SEXUAL PENETRATION. “Sexual penetration” means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion however slight into the genital or anal openings of the complainant’s body of any part of the actor’s body or any object used by the actor for this purpose. Emission of semen is not necessary.

Sec. 8. [609.3641] INTRAFAMILIAL SEXUAL ABUSE IN THE FIRST DEGREE.

Subdivision 1. CRIME DEFINED. A person is guilty of intrafamilial sexual abuse in the first degree if:

(1) He has a familial relationship to and engages in sexual penetration with a child; or

(2) He has a familial relationship to and engages in sexual penetration with a child and:

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

(b) 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;

(c) 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;

(d) the complainant suffered personal injury; or

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

Subd. 2. PENALTY. A person convicted under subdivision 1, clause (1), may be sentenced to imprisonment for not more than 20 years. Except when imprisonment is required by section 609.346, the court may stay imposition or execution of sentence if it finds that a stay is in the best interest of the complainant or the family unit. A person convicted under subdivision 1, clause (2), may be sentenced to imprisonment for not more than 20 years.

Sec. 9. [609.3642] INTRAFAMILIAL SEXUAL ABUSE IN THE SECOND DEGREE.

Subdivision 1. CRIME DEFINED. A person is guilty of intrafamilial sexual abuse in the second degree if:

(1) He has a familial relationship to and engages in sexual contact with a child; or

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(2) He has a familial relationship to and engages in sexual contact with a child and:

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

(b) 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 to be a dangerous weapon and used or threatened to use the dangerous weapon;

(c) 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;

(d) the complainant suffered personal injury; or

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

Subd. 2. PENALTY. A person convicted under subdivision 1, clause (1), may be sentenced to imprisonment for not more than 15 years. Except when imprisonment is required by section 609.346, the court may stay imposition or execution of the sentence if it finds that a stay is in the best interest of the complainant or the family unit. A person convicted under subdivision 1, clause (2), may be sentenced to imprisonment for not more than 15 years.

Sec. 10. [609.3643] INTRAFAMILIAL SEXUAL ABUSE IN THE THIRD DEGREE.

Subdivision 1. CRIME DEFINED. A person is guilty of intrafamilial sexual abuse in the third degree if:

(1) He has a familial relationship to and engages in sexual penetration with a minor; or

(2) He has a familial relationship to and engages in sexual penetration with a minor and:

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

(b) the actor or 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;

(c) 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;

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(d) the complainant suffered personal injury; or

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

Subd. 2. PENALTY. A person convicted under subdivision 1, clause (1), may be sentenced to imprisonment for not more than ten years. Except when imprisonment is required by section 609.346, the court may stay imposition or execution of the sentence if it finds that a stay is in the best interest of the complainant or the family unit. A person convicted under subdivision 1, clause (2), may be sentenced to imprisonment for not more than ten years.

Sec. 11. [609.3644] INTRAFAMILIAL SEXUAL ABUSE IN THE FOURTH DEGREE.

Subdivision 1. CRIME DEFINED. A person is guilty of intrafamilial sexual abuse in the fourth degree if:

(1) He has a familial relationship to and engages in sexual contact with a minor; or

(2) He has a familial relationship to and engages in sexual contact with a minor and:

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

(b) the actor or 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;

(c) 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;

(d) the complainant suffered personal injury; or

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

Subd. 2. PENALTY. A person convicted under subdivision 1, clause (1), may be sentenced to imprisonment for not more than five years. Except when imprisonment is required by section 609.346, the court may stay imposition or execution of the sentence if it finds that a stay is in the best interest of the complainant or the family unit. A person convicted under subdivision 1, clause (2), may be sentenced to imprisonment for not more than five years.

Sec. 12. Minnesota Statutes 1980, Section 626.556, Subdivision 2, is amended to read:

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Subd. 2. **DEFINITIONS.** As used in this section, the following terms have the meanings given them unless the specific content indicates otherwise:

(a) "Sexual abuse" means the subjection by the child's parents, guardian, or person responsible for the child's care, to any act which constitutes a violation of sections 609.342, 609.343, 609.344, or 609.345, or sections 7 to 11. Sexual abuse also includes any act which involves a minor which constitutes a violation of sections 609.321 to 609.324 or 617.246.

(b) "Neglect" means failure by a parent, guardian or other person responsible for a child's care to supply a child with necessary food, clothing, shelter or medical care when reasonably able to do so or failure to protect a child from conditions or actions which imminently and seriously endanger the child's physical or mental health when reasonably able to do so. Nothing in this section shall be construed to mean that a child is neglected solely because the child's parent, guardian or other person responsible for his care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child.

(c) "Physical abuse" means:

(i) Any physical injury inflicted by a parent, guardian or other person responsible for the child's care on a child other than by accidental means; or

(ii) Any physical injury that cannot reasonably be explained by the history of injuries provided by a parent, guardian or other person responsible for the child's care.

(d) "Report" means any report received by the local welfare agency, police department or county sheriff pursuant to this section.

Sec. 13. Minnesota Statutes 1980, Section 629.341, Subdivision 1, is amended to read:

Subdivision 1. Notwithstanding the provisions of section 629.34 or any other law or rule to the contrary, a peace officer may arrest without a warrant a person ~~(1) anywhere, including at his place of residence; or (2) when the person is threatening to return to his place of residence,~~ if the peace officer has probable cause to believe the person within the preceding four hours has assaulted his spouse or other person with whom he resides, although the assault did not take place in the presence of the peace officer. A peace officer may not arrest a person pursuant to this section without first observing recent physical injury to, or impairment of physical condition of the alleged victim.

Sec. 14. **EFFECTIVE DATE.**

Sections 1 to 13 are effective the day following final enactment and apply to any act which occurs on or after that date.

Approved May 28, 1981

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