

(d) establish other reasonable requirements to further the purposes of this section.

Sec. 5. **EFFECTIVE DATE.**

Sections 1 to 4 are effective the date after final enactment.

Approved May 20, 1983

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**CHAPTER 204 — H.F.No. 114**

*An act relating to crimes; prohibiting promotion of minors to engage in sexual performance; defining terms; prohibiting dissemination and possession of works depicting minors in sexual performance; providing penalties; amending Minnesota Statutes 1982, sections 609.342; 609.343; 609.344; 609.345; 609.3641, subdivision 2; 609.3642, subdivision 2; 609.3643, subdivision 2; 609.3644, subdivision 2; 617.241; 617.243; 617.246; 617.247; and 617.298; repealing Minnesota Statutes 1982, section 617.298, subdivision 4.*

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

Section 1. Minnesota Statutes 1982, section 609.342, is amended to read:

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

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 \$20,000, 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

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

(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.

Sec. 2. Minnesota Statutes 1982, section 609.343, is amended to read:

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

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 \$15,000, 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

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

(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.

Sec. 3. Minnesota Statutes 1982, 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 \$10,000, 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.

Sec. 4. Minnesota Statutes 1982, 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

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

fine of not more than \$5,000, 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 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.

Sec. 5. Minnesota Statutes 1982, section 609.3641, subdivision 2, is amended to read:

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

Sec. 6. Minnesota Statutes 1982, section 609.3642, subdivision 2, is amended to read:

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

Sec. 7. Minnesota Statutes 1982, section 609.3643, subdivision 2, is amended to read:

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

Subd. 2. **PENALTY.** A person convicted under subdivision 1, clause (1), 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. 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 or to payment of a fine of not more than \$10,000, or both.

Sec. 8. Minnesota Statutes 1982, section 609.3644, subdivision 2, is amended to read:

Subd. 2. **PENALTY.** A person convicted under subdivision 1, clause (1), 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. 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 or to payment of a fine of not more than \$5,000, or both.

Sec. 9. Minnesota Statutes 1982, section 617.241, is amended to read:

**617.241 OBSCENE MATERIALS; DISTRIBUTION PROHIBITED; PENALTY.**

Subdivision 1. DEFINITIONS. For purposes of this section, the following terms have the meanings given them:

(a) "Obscene" means that the work, taken as a whole, appeals to the prurient interest in sex of the average person, which portrays patently offensive sexual conduct and which, taken as a whole, does not have serious literary, artistic, political, or scientific value. In order to determine that a work is obscene, the trier of fact must find:

(i) that the average person, applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest in sex of the average person;

(ii) that the work depicts patently offensive sexual conduct specifically defined by clause (b); and

(iii) that the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(b) "Patently offensive sexual conduct" includes any of the following depicted sexual conduct:

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

(i) An act of sexual intercourse, normal or perverted, actual or simulated, including genital-genital, anal-genital, or oral-genital intercourse, whether between human beings or between a human being and an animal.

(ii) Sadomasochistic abuse, meaning flagellation or torture 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 restricted on the part of one so clothed.

(iii) Masturbation or lewd exhibitions of the genitals including any explicit, close-up representation of a human genital organ.

(iv) Physical contact or simulated 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.

(c) "Community" means the political subdivision from which persons properly qualified to serve as jurors in a civil proceeding are chosen.

**Subd. 2. CRIME.** It is unlawful for any person knowingly to exhibit, sell, print, offer to sell, give away, circulate, publish, distribute, or attempt to distribute any obscene book, magazine, pamphlet, paper, writing, card, advertisement, circular, print, picture, photograph, motion picture film, play, image, instrument, statue, drawing, or other article which is obscene. "Obscene" for the purpose of this section, is defined as follows: ~~Whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interests.~~

**Subd. 3. PENALTY.** Any person violating any provision of this section shall be fined up to \$5,000 for the first offense and up to \$10,000 for the second or a subsequent offense.

Sec. 10. Minnesota Statutes 1982, section 617.243, is amended to read:

**617.243 INDECENT LITERATURE, DISTRIBUTION.**

**Subdivision 1. PROHIBITED ACTIVITY.** ~~Any~~ No person, copartnership or corporation shall ~~not~~, as a condition to a sale or delivery for resale of any paper, magazine, book, comic, periodical or publication, require that the purchaser or consignee receive for resale any other article, book, comic or other publication reasonably believed by the purchaser or consignee to be obscene as defined in section 617.241.

**Subd. 2. PENALTY.** ~~The~~ A violation of the ~~provisions~~ of subdivision 1 is a gross misdemeanor.

Sec. 11. Minnesota Statutes 1982, section 617.246, is amended to read:

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

617.246 **PROHIBITING PROMOTION USE OF MINORS TO EN-  
GAGE IN OBSCENE WORKS SEXUAL PERFORMANCE PROHIBITED.**

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

(b) "Minor" means any person who has not attained his or her 18th birthday 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 which depicts ~~patently offensive~~ sexual conduct as defined by clause (f) (e).

(e) "~~An obscene work~~" is a picture, a film, photograph, negative, slide, drawing or similar visual representation depicting a minor, which taken as a whole appeals to pedophiles or to the prurient interest in sex of the average person, which portrays ~~patently offensive~~ sexual conduct and which, taken as a whole, does not have serious literary, artistic, political or scientific value. In determining whether or not a work is an obscene work the trier of the fact must find: (i) that the average person, applying contemporary community standards would find that the work, taken as a whole appeals to pedophiles or to the prurient interest in sex of the average person; and (ii) that the work depicts ~~patently offensive~~ sexual conduct specifically defined by clause (f); and (iii) that the work, taken as a whole, lacks serious literary, artistic, political or scientific value.

(f) "~~Patently offensive Sexual conduct~~" includes means any of the following depicted sexual conduct if the depiction involves a minor:

(i) An act of sexual intercourse, normal or perverted, actual or simulated, including genital-genital, anal-genital, or oral-genital intercourse, whether between human beings or between a human being and an animal.

(ii) Sadomasochistic abuse, meaning flagellation or, 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.

(iii) Masturbation or lewd exhibitions of the genitals including any explicit, close up representation of a human genital organ.

(iv) Physical contact or simulated 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.

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

(f) "Work" means an original or reproduction of a picture, film, photograph, negative, slide, videotape, videodisc, or drawing.

Subd. 2. **USE OF MINOR.** It is unlawful for a person to promote, employ, use or permit a minor to engage in or assist others to engage in posing or modeling alone or with others in any sexual performance ~~for purposes of preparing an obscene work if the person knows or has reason to know that the~~ conduct intended is a sexual performance.

~~A violation of this subdivision is a felony. Any person who violates this subdivision 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 for the first offense and \$10,000 for a second or subsequent offense, or both.~~

Subd. 3. **OPERATION OR OWNERSHIP OF BUSINESS.** A person who owns or operates a business in which ~~an obscene~~ a work depicting a minor in a sexual performance, as defined in this section, is disseminated, and who knows the content and character of the ~~obscene~~ work disseminated, 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 for the first offense and \$10,000 for a second or subsequent offense, or both.

Subd. 4. **DISSEMINATION.** A person who, knowing or with reason to know its content and character, disseminates for profit ~~an obscene~~ a work depicting a minor in sexual performance, as defined in this section, 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 for the first offense and \$10,000 for a second or subsequent offense, or both.

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

Sec. 12. Minnesota Statutes 1982, section 617.247, is amended to read:

**617.247 POSSESSION OF OBSCENE PICTORIAL REPRESENTATIONS OF MINORS.**

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 ~~obscene~~ photographic representations of sexual conduct which involves minors. It is therefore the intent of the legislature to penalize possession of ~~obscene~~ photographic representations of sexual conduct which involve minors in order to protect the identity of minors who are victimized by involvement in ~~obscene~~ the photographic representations, and to protect minors from future involvement in ~~obscene~~ photographic representations of sexual conduct.

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



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

(a) "Photographic representation" means an original or reproduction of a film, videotape, videodisc, photograph, negative, or slide.

(b) "Obscene" means that the work, taken as a whole, appeals to pedophiles or to the prurient interest in sex of the average person, which portrays patently offensive sexual conduct and which, taken as a whole, does not have serious literary, artistic, political, or scientific value. In order to determine that a work is obscene, the trier of fact must find: (i) that the average person, applying contemporary community standards would find that the work, taken as a whole, appeals to pedophiles or to the prurient interest in sex of the average person; and (ii) that the work depicts patently offensive sexual conduct specifically defined by clause (c); and (iii) that the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(c) "Patently offensive Sexual conduct" includes any of has the following depicted sexual conduct if the depiction involves a minor:

(i) An act of sexual intercourse, normal or perverted, actual or simulated, including genital-genital, anal-genital, or oral-genital intercourse, whether between human beings or between a human being and an animal meaning given to it in section 617.246.

(ii) Sadomasochistic abuse, meaning flagellation or torture 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 restricted on the part of one so clothed.

(iii) Masturbation or lewd exhibitions of the genitals including any explicit, close-up representation of a human genital organ.

(iv) Physical contact or simulated 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.

Subd. 3. **DISSEMINATION PROHIBITED.** A person who disseminates an obscene a photographic representation of sexual conduct which involves a minor, knowing or with reason to know its content and character and that an actual minor is an actor or photographic subject in it, is guilty of a gross misdemeanor.

Subd. 4. **POSSESSION PROHIBITED.** A person who has in possession an obscene a photographic representation of sexual conduct which involves a minor, knowing or with reason to know its content and character and that an

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

actual minor is an actor or photographic subject in it, is guilty of a gross misdemeanor.

Subd. 5. **EXCEPTION.** This section does not apply to law enforcement officers, court personnel, licensed physicians and psychologists, and attorneys in the performance of their official duties 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 his 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.

Sec. 13. Minnesota Statutes 1982, section 617.298, is amended to read:

**617.298 OBSCENE MOTION PICTURES AT DRIVE-IN THEATRES; DEFINITIONS.**

Subdivision 1. **DEFINITIONS.** For the purposes of this section and section 617.299, the terms defined in this section have the meanings given them.

Subd. 2. **OBSCENE.** A motion picture is "Obscene" if:

(a) Considered as a whole, by an average person applying contemporary community standards, it is found to appeal predominantly to the prurient interest, that is, a shameful or morbid interest in nudity, sex or excretion; and

(b) Taken as a whole, it lacks serious literary, artistic, political, or scientific value; and

(c) It depicts or describes in a patently offensive way sexual conduct.

For the purpose of this subdivision, "community" means the political subdivision from which persons properly qualified to serve as jurors in a civil proceeding are chosen has the meaning given to it in section 617.241.

Subd. 3. **NUDITY.** "Nudity" means the showing of the human male or female genitals, pubic areas, or buttocks with less than a fully opaque covering, or the showing of an uncovered, or less than opaquely covered, female breast below a point immediately above the top of the nipple (, or the breast with the nipple and immediately adjacent area only covered).

Subd. 4. **"Sexual conduct"** means any of the following depicted sexual conduct:

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

(a) Sadomasochistic abuse, meaning flagellation or torture by or upon a person who is nude, or clad in undergarments, a mask or bizarre costume, or the condition of being bound, fettered, or otherwise physically restrained on the part of one who is so clothed as an act of sexual stimulation or gratification;

(b) Human defecation or urination;

(c) The condition of human male or female genitals, or the breasts of the female when in a state of sexual stimulation, or the sensual experience of humans in engaging in or witnessing sexual conduct or nudity; or

(d) Human masturbation, sexual intercourse or sodomy, actual or simulated, or any touching of the genitals, pubic areas or buttocks of a human being, whether alone or between members of the same or opposite sex or between humans or animals in an act of apparent sexual stimulation or gratification.

Sec. 14. **REPEALER.**

Minnesota Statutes 1982, section 617.298, subdivision 4, is repealed.

Sec. 15. **EFFECTIVE DATE.**

The provisions of this act are effective the day after final enactment, and apply to crimes committed on or after that date.

Approved May 20, 1983

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**CHAPTER 205 — H.F.No. 290**

*An act relating to health maintenance organizations; authorizing a local governmental unit to operate as a health maintenance organization; requiring the establishment of an advisory body to the organization; requiring a report to the legislature; amending Minnesota Statutes 1982, sections 62D.02, subdivision 4, and by adding a subdivision; 62D.03, subdivisions 1 and 4; 62D.05, subdivision 1; and 62D.06, subdivision 1.*

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

Section 1. Minnesota Statutes 1982, section 62D.02, subdivision 4, is amended to read:

Subd. 4. "Health maintenance organization" means a nonprofit corporation organized under chapter 317, or a local governmental unit as defined in subdivision 11, controlled and operated as provided in sections 62D.01 to 62D.29, which provides, either directly or through arrangements with providers or other persons, comprehensive health maintenance services, or arranges for the provision of such these services, to enrollees on the basis of a fixed prepaid sum without regard to the frequency or extent of services furnished to any particular enrollee.

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