

damages. The amount of damages claimed by plaintiff, and not the penalty named in the bond, determines the jurisdiction of the court in which the action is brought.

Subd. 5. SERVICE ON DEPARTED LICENSEE. When a licensee has departed from the state with intent to defraud creditors or to avoid service of summons in an action brought under this act, service shall be made upon the surety as prescribed in the rules of civil procedure. A copy of the summons shall be mailed to the licensee at the last known post office address of his residence and also at the place where the business of the entertainment agency was conducted as shown by the records of the department. Service is complete as to the licensee, after mailing, at the expiration of the time prescribed by the rules of civil procedure for service of summons in the particular court in which suit is brought.

**Sec. 19. [184A.19] ARBITRATION PURSUANT TO CONTRACT CLAUSE.**

A provision in a contract providing for the decision by arbitration of a controversy under the contract or as to its existence, validity, construction, performance, nonperformance, breach, operation, continuance, or termination, shall be valid if the provision is contained in a contract between an entertainment agency and a person for whom the agency under the contract undertakes to endeavor to secure employment.

**Sec. 20. [184A.20] PENALTY.**

A person, agent, or officer of an agent, who violates any provision of this act is guilty of a misdemeanor, punishable by a fine of not less than \$25 nor more than \$250 or imprisonment for a period of not more than 60 days, or both.

A person, firm, or corporation who shall split, divide, or share, directly or indirectly, a fee, charge, or compensation received from an employee with an employer, or person in any way connected with the business, shall be punished by a fine of not less than \$500, and not more than \$1,000, or, on failure to pay the fine, by imprisonment for a period not to exceed one year, or both, at the discretion of the court.

Approved April 26, 1984

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**CHAPTER 588 — H.F.No. 1279**

*An act relating to crimes; clarifying the crime of contributing to the delinquency of a minor; providing for the admissibility of certain statements as evidence; expanding the definitions of sexual contact and coercion; increasing the age limit of minor victims protected under criminal sexual conduct offenses; clarifying certain terms; amending Minnesota Statutes 1982, sections 147.01, subdivision 4; 595.02; 609.341, subdivisions 11 and 14; 609.346; 609.347, subdivision 3; 609.364, subdivision 9; 626.556, subdivision 8; Minnesota Statutes 1983 Supplement, sections 260.315; 609.344; and 609.345; proposing new law coded in Minnesota Statutes, chapter 260.*

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 1982, section 147.01, subdivision 4, is amended to read:

Subd. 4. **DISCLOSURE.** All communications or information received by or disclosed to the board relating to any person or matter subject to its regulatory jurisdiction, and all records of any action or proceedings thereon, except only a final decision of the board, which shall state the specific reason therefor shall be confidential and privileged within the meaning of section 595.02, ~~clause 5~~ subdivision 1, paragraph (e), and shall not be public records within the meaning of section 15.17, subdivision 4; provided that upon application of a party in a proceeding before the board pursuant to section 147.021, the board shall produce and permit the inspection and copying, by or on behalf of the moving party, of any designated documents or papers relevant to the proceedings, in accordance with the provisions of rule 34, Minnesota rules of civil procedure.

Sec. 2. **[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 by another, not otherwise admissible by statute or rule of evidence, is 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. 3. Minnesota Statutes 1983 Supplement, section 260.315, is amended to read:

**260.315 CONTRIBUTING TO NEGLECT OR DELINQUENCY.**

Any person who by act, word or omission encourages, causes or contributes to the neglect or delinquency of a child, or to a child's status as a habitual truant, runaway, juvenile petty offender, juvenile alcohol offender, or juvenile controlled substance offender, is guilty of a misdemeanor.

Sec. 4. Minnesota Statutes 1982, section 595.02, is amended to read:

**595.02 TESTIMONY OF WITNESSES.**

**Subdivision 1. COMPETENCY OF WITNESSES.**

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

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 provided in this subdivision:

(1) (a) 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) (b) 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 the attorney be examined as to the communication or advice, without the client's consent;

(3) (c) 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 the person;

(4) (d) 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 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 the deceased person for the purpose of waiving this privilege, and no oral or written waiver of the privilege shall have any binding force or effect except when made upon the trial or examination where the evidence is offered or received;

(5) (e) 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) (f) Persons of unsound mind, persons intoxicated at the time of their production for examination, and children under ten years of age, who appear

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incapable of receiving just impressions of the if any of them lack capacity to remember or to relate truthfully 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 609.364, 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 describing any act of sexual contact or penetration performed on or with the child by another may use language appropriate for a child of that age the events or facts respecting which the child is examined;

(7) (g) 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;

(8) (h) An interpreter for a person handicapped in communication shall not, without the consent of the person, be allowed to disclose any communication if the communication would, if the interpreter were not present, be privileged. For purposes of this section, a "person handicapped in communication" means a person who, because of a hearing, speech or other communication disorder, or because of the inability to speak or comprehend the English language, is unable to understand the proceedings in which he is required to participate. The presence of an interpreter as an aid to communication does not destroy an otherwise existing privilege;

(9) (i) A parent or his minor child may not be examined as to any communication made in confidence by the minor to his parent. A communication is confidential if made out of the presence of persons not members of the child's immediate family living in the same household. This exception may be waived by express consent to disclosure by a parent entitled to claim the privilege or by the child who made the communication, or by failure of the child or parent to object when the contents of a communication are demanded. This exception does not apply to a civil action or proceeding by one spouse against the other or by a parent or child against the other, nor to a proceeding to commit either the child or parent to whom the communication was made or to place the person or property or either under the control of another because of his alleged mental or physical condition, nor to a criminal action or proceeding in which the parent is charged with a crime committed against the person or property of the communicating child, the parent's spouse, or a child of either the parent or the parent's spouse, or in which a child is charged with a crime or act of delinquency committed against the person or property of a parent or a child of a parent, nor to an action or proceeding for termination of parental rights, nor any other action or proceeding on a petition alleging child abuse, child neglect, abandonment or nonsupport by a parent;

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(10) (j) Sexual assault counselors may not be compelled to testify about any opinion or information received from or about the victim without the consent of the victim. However, a counselor may be compelled to identify or disclose information in investigations or proceedings related to neglect or termination of parental rights if the court determines good cause exists. In determining whether to compel disclosure, the court shall weigh the public interest and need for disclosure against the effect on the victim, the treatment relationship, and the treatment services if disclosure occurs. Nothing in this clause exempts sexual assault counselors from compliance with the provisions of sections 626.556 and 626.557.

“Sexual assault counselor” for the purpose of this section means a person who has undergone at least 40 hours of crisis counseling training and works under the direction of a supervisor in a crisis center, whose primary purpose is to render advice, counseling or assistance to victims of sexual assault.

Subd. 2. **EXCEPTIONS.** (a) The exception provided by paragraphs (d) and (g) of subdivision 1 shall not apply to any testimony, records, or other evidence relating to the abuse or neglect of a minor in any proceeding under chapter 260 or any proceeding under section 245.801, to revoke a day care or foster care license, arising out of the neglect or physical or sexual abuse of a minor, as defined in section 626.556, subdivision 2.

(b) The exception provided by paragraphs (d) and (g) of subdivision 1 shall not apply to criminal proceedings arising out of the neglect or physical or sexual abuse of a minor, as defined in section 626.556, subdivision 2, if the court finds that:

(1) there is a reasonable likelihood that the records in question will disclose material information or evidence of substantial value in connection with the investigation or prosecution; and

(2) there is no other practicable way of obtaining the information or evidence. This clause shall not be construed to prohibit disclosure of the patient record when it supports the otherwise uncorroborated statements of any material fact by a minor alleged to have been abused or neglected by the patient; and

(3) the actual or potential injury to the patient-health professional relationship in the treatment program affected, and the actual or potential harm to the ability of the program to attract and retain patients, is outweighed by the public interest in authorizing the disclosure sought.

No records may be disclosed under this paragraph other than the records of the specific patient suspected of the neglect or abuse of a minor. Disclosure and dissemination of any information from a patient record shall be limited under the terms of the order to assure that no information will be disclosed unnecessarily and that dissemination will be no wider than necessary for purposes of the investigation or prosecution.

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**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 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. 5. Minnesota Statutes 1982, section 609.341, subdivision 11, is amended to read:

Subd. 11. "Sexual contact" includes any of the following acts committed without the complainant's consent, if the acts can reasonably be construed as being for the purpose of satisfying the actor's sexual or aggressive impulses, except in those cases where consent is not a defense:

(i) The intentional touching by the actor of the complainant's intimate parts, or

(ii) The touching by the complainant of the actor's, the complainant's, or another's intimate parts effected by coercion or the use of a position of authority, or by inducement if the complainant is under 13 years of age or mentally defective, or

(iii) The touching by another of the complainant's intimate parts effected by coercion or the use of a position of authority, or

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

Sec. 6. Minnesota Statutes 1982, section 609.341, subdivision 14, is amended to read:

Subd. 14. "Coercion" means ~~a threat to unlawfully~~ words or circumstances that cause the complainant reasonably to fear that the actor will inflict

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bodily harm upon, or hold in confinement, the ~~person threatened~~ complainant or another.

Sec. 7. Minnesota Statutes 1983 Supplement, 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; 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.

Sec. 8. Minnesota Statutes 1983 Supplement, 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 \$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

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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; 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.

Sec. 9. Minnesota Statutes 1982, section 609.346, is amended to read:

**609.346 SUBSEQUENT OFFENSES.**

Subdivision 1. **DEFINITION; CONVICTION OF OFFENSE.** For purposes of this section, the term "offense" means a completed offense or an attempt to commit an offense.

**Subd. 2. SUBSEQUENT OFFENSE; PENALTY.** If a person is convicted of a second or subsequent offense under sections 609.342 to 609.345 or sections 609.364 to 609.3644 within 15 years of the prior conviction, the court shall commit the defendant to the 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 3. PRIOR CONVICTIONS UNDER SIMILAR STATUTES.** 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 609.364 to 609.3644 or under any similar statute of the United States, or this or any other state.

Sec. 10. Minnesota Statutes 1982, section 609.347, subdivision 3, is amended to read:

Subd. 3. In a prosecution under sections 609.342 to 609.346 or 609.3641 to 609.365, evidence of the complainant's previous sexual conduct shall not be admitted nor shall any reference to such conduct be made in the presence of the

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jury, except by court order under the procedure provided in subdivision 4, and only to the extent that the court finds that any of the following proposed evidence is material to the fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value:

(a) When consent or fabrication by the complainant is the defense in the case, evidence of such conduct tending to establish a common scheme or plan of similar sexual conduct under circumstances similar to the case at issue on the part of the complainant, relevant and material to the issue of consent or fabrication. Evidence of such conduct engaged in more than one year prior to the date of alleged offense is inadmissible;

(b) Evidence of specific instances of sexual activity showing the source of semen, pregnancy, or disease at the time of the incident or, in the case of pregnancy, between the time of the incident and trial;

(c) Evidence of the complainant's past sexual conduct with the defendant;

(d) For purposes of impeachment, when such evidence is offered to rebut specific testimony of the complainant.

Sec. 11. Minnesota Statutes 1982, section 609.364, subdivision 9, is amended to read:

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 blood, marriage, or adoption: brother, sister, stepbrother, stepsister, first cousin, aunt, uncle, nephew, niece, grandparent, great-grandparent, great-uncle, great-aunt; or

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

Sec. 12. Minnesota Statutes 1982, section 626.556, subdivision 8, is amended to read:

Subd. 8. **EVIDENCE NOT PRIVILEGED.** No evidence ~~regarding the child's injuries relating to the neglect or abuse of a child or to any prior incidents of neglect or abuse involving any of the same persons accused of neglect or abuse~~ shall be excluded in any proceeding arising out of the alleged neglect or physical or sexual abuse on the grounds of ~~either a physician-patient or husband-wife~~ privilege set forth in section 595.02, subdivision 1, paragraphs (a), (d), or (g).

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

**Sec. 13. EFFECTIVE DATE.**

Sections 3, 7, and 8 are effective August 1, 1984, and apply to crimes committed on or after that date. Sections 2, 4, and 12 are effective the day following final enactment.

Approved April 26, 1984

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**CHAPTER 589 — H.F.No. 1382**

*An act relating to crimes; clarifying the definition of "inmate" and "term of imprisonment"; providing for the manner of modifying sentencing guidelines and resentencing affected inmates; amending Minnesota Statutes 1982, section 244.01, subdivisions 2 and 8; 244.09, subdivision 5, and by adding subdivisions; and Minnesota Statutes 1983 Supplement, section 244.09, subdivision 11.*

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

Section 1. Minnesota Statutes 1982, section 244.01, subdivision 2, is amended to read:

Subd. 2. "Inmate" means any person who is convicted of a felony, is committed to the custody of the commissioner of corrections and is confined in a state correctional facility or released from a state correctional facility pursuant to sections 244.05, section 244.065, and or 244.07.

Sec. 2. Minnesota Statutes 1982, section 244.01, subdivision 8, is amended to read:

Subd. 8. "Term of imprisonment" is a the period of time equal to the period of time to which the an inmate is committed to the custody of the commissioner of corrections following a conviction for a felony minus earned good time.

Sec. 3. Minnesota Statutes 1982, section 244.09, subdivision 5, is amended to read:

Subd. 5. The commission shall, on or before January 1, 1980, promulgate sentencing guidelines for the district court. The guidelines shall be based on reasonable offense and offender characteristics. The guidelines promulgated by the commission shall be advisory to the district court and shall establish:

- (1) The circumstances under which imprisonment of an offender is proper; and
- (2) A presumptive, fixed sentence for offenders for whom imprisonment is proper, based on each appropriate combination of reasonable offense and offender

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