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# HOUSE FILE NO. 1392

## *FIRST COMMITTEE ENGROSSMENT*

March 5, 2009

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The bill was read for the first time and referred to the Committee on Public Safety Policy and Oversight

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*Referred by Chair to Crime Victims/Criminal Records Division.*

March 18, 2009

*Returned to the Committee on Public Safety Policy and Oversight as Amended.*

1.1 A bill for an act  
1.2 relating to crimes; providing for an omnibus sexual conduct technical review bill;  
1.3 amending Minnesota Statutes 2008, sections 609.341, subdivision 11; 609.342,  
1.4 subdivision 1; 609.343, subdivision 1; 609.3455, by adding a subdivision;  
1.5 628.26.

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

1.7 Section 1. Minnesota Statutes 2008, section 609.341, subdivision 11, is amended to  
1.8 read:

1.9 Subd. 11. **Sexual contact.** (a) "Sexual contact," for the purposes of sections  
1.10 609.343, subdivision 1, clauses (a) to (f), and 609.345, subdivision 1, clauses (a) to (e),  
1.11 and (h) to (o), includes any of the following acts committed without the complainant's  
1.12 consent, except in those cases where consent is not a defense, and committed with sexual  
1.13 or aggressive intent:

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

1.15 (ii) the touching by the complainant of the actor's, the complainant's, or another's  
1.16 intimate parts effected by a person in a position of authority, or by coercion, or by  
1.17 inducement if the complainant is under 13 years of age or mentally impaired, or

1.18 (iii) the touching by another of the complainant's intimate parts effected by coercion  
1.19 or by a person in a position of authority, or

1.20 (iv) in any of the cases above, the touching of the clothing covering the immediate  
1.21 area of the intimate parts, or

1.22 (v) the intentional touching by the actor of the complainant's body or the clothing  
1.23 covering the complainant's body with seminal fluid or sperm.

2.1 (b) "Sexual contact," for the purposes of sections 609.343, subdivision 1, clauses (g)  
2.2 and (h), and 609.345, subdivision 1, clauses (f) and (g), includes any of the following acts  
2.3 committed with sexual or aggressive intent:

2.4 (i) the intentional touching by the actor of the complainant's intimate parts;

2.5 (ii) the touching by the complainant of the actor's, the complainant's, or another's  
2.6 intimate parts;

2.7 (iii) the touching by another of the complainant's intimate parts; ~~or~~

2.8 (iv) in any of the cases listed above, touching of the clothing covering the immediate  
2.9 area of the intimate parts; or

2.10 (v) the intentional touching by the actor of the complainant's body or the clothing  
2.11 covering the complainant's body with seminal fluid or sperm.

2.12 (c) "Sexual contact with a person under 13" means the intentional touching of the  
2.13 complainant's bare genitals or anal opening by the actor's bare genitals or anal opening  
2.14 with sexual or aggressive intent or the touching by the complainant's bare genitals or anal  
2.15 opening of the actor's or another's bare genitals or anal opening with sexual or aggressive  
2.16 intent.

2.17 **EFFECTIVE DATE.** This section is effective August 1, 2009, and applies to crimes  
2.18 committed on or after that date.

2.19 Sec. 2. Minnesota Statutes 2008, section 609.342, subdivision 1, is amended to read:

2.20 Subdivision 1. **Crime defined.** A person who engages in sexual penetration with  
2.21 another person, or in sexual contact with a person under 13 years of age as defined in  
2.22 section 609.341, subdivision 11, paragraph (c), is guilty of criminal sexual conduct in the  
2.23 first degree if any of the following circumstances exists:

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

2.27 (b) the complainant is at least 13 years of age but less than 16 years of age and the  
2.28 actor is more than 48 months older than the complainant and in a position of authority  
2.29 over the complainant. Neither mistake as to the complainant's age nor consent to the act  
2.30 by the complainant is a defense;

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

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

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

3.3 (i) the actor uses force or coercion to accomplish sexual penetration; or

3.4 (ii) the actor knows or has reason to know that the complainant is mentally impaired,  
3.5 mentally incapacitated, or physically helpless;

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

3.8 (i) the actor or an accomplice uses force or coercion to cause the complainant to  
3.9 submit; or

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

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

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

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

3.19 (ii) the complainant suffered personal injury; or

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

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

3.24 **EFFECTIVE DATE.** This section is effective August 1, 2009, and applies to crimes  
3.25 committed on or after that date.

3.26 Sec. 3. Minnesota Statutes 2008, section 609.343, subdivision 1, is amended to read:

3.27 Subdivision 1. **Crime defined.** A person who engages in sexual contact with  
3.28 another person is guilty of criminal sexual conduct in the second degree if any of the  
3.29 following circumstances exists:

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

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

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

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

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

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

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

4.11 (ii) the actor knows or has reason to know that the complainant is mentally impaired,  
4.12 mentally incapacitated, or physically helpless;

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

4.15 (i) the actor or an accomplice uses force or coercion to cause the complainant to  
4.16 submit; or

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

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

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

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

4.26 (ii) the complainant suffered personal injury; or

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

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

4.31 **EFFECTIVE DATE.** This section is effective August 1, 2009, and applies to crimes  
4.32 committed on or after that date.

4.33 Sec. 4. Minnesota Statutes 2008, section 609.3455, is amended by adding a subdivision  
4.34 to read:

5.1 Subd. 10. Presumptive executed sentence for repeat sex offenders. Except as  
5.2 provided in subdivision 2, 3, 3a, or 4, if a person is convicted under sections 609.342 to  
5.3 609.345 or 609.3453 within 15 years of a previous sex offense conviction, the court shall  
5.4 commit the defendant to the commissioner of corrections for not less than three years, nor  
5.5 more than the maximum sentence provided by law for the offense for which convicted,  
5.6 notwithstanding the provisions of sections 242.19, 243.05, 609.11, 609.12, and 609.135.  
5.7 The court may stay the execution of the sentence imposed under this subdivision only  
5.8 if it finds that a professional assessment indicates the offender is accepted by and can  
5.9 respond to treatment at a long-term inpatient program exclusively treating sex offenders  
5.10 and approved by the commissioner of corrections. If the court stays the execution of a  
5.11 sentence, it shall include the following as conditions of probation:

5.12 (1) incarceration in a local jail or workhouse; and  
5.13 (2) a requirement that the offender successfully complete the treatment program and  
5.14 aftercare as directed by the court.

5.15 **EFFECTIVE DATE.** This section is effective August 1, 2009, and applies to all  
5.16 crimes committed on or after that date.

5.17 Sec. 5. Minnesota Statutes 2008, section 628.26, is amended to read:

5.18 **628.26 LIMITATIONS.**

5.19 (a) Indictments or complaints for any crime resulting in the death of the victim may  
5.20 be found or made at any time after the death of the person killed.

5.21 (b) Indictments or complaints for a violation of section 609.25 may be found or  
5.22 made at any time after the commission of the offense.

5.23 (c) Indictments or complaints for violation of section 609.282 may be found or made  
5.24 at any time after the commission of the offense if the victim was under the age of 18 at  
5.25 the time of the offense.

5.26 (d) Indictments or complaints for violation of section 609.282 where the victim  
5.27 was 18 years of age or older at the time of the offense, or 609.42, subdivision 1, clause  
5.28 (1) or (2), shall be found or made and filed in the proper court within six years after  
5.29 the commission of the offense.

5.30 (e) Indictments or complaints for violation of sections 609.342 to 609.345 if the  
5.31 victim was under the age of 18 years at the time the offense was committed, shall be found  
5.32 or made and filed in the proper court within the later of nine years after the commission of  
5.33 the offense or, ~~if the victim failed to report the offense within this limitation period, within~~  
5.34 three years after the offense was reported to law enforcement authorities.

6.1 (f) Notwithstanding the limitations in paragraph (e), indictments or complaints for  
6.2 violation of sections 609.342 to 609.344 may be found or made and filed in the proper  
6.3 court at any time after commission of the offense, if physical evidence is collected and  
6.4 preserved that is capable of being tested for its DNA characteristics. If this evidence is not  
6.5 collected and preserved and the victim was 18 years old or older at the time of the offense,  
6.6 the prosecution must be commenced within nine years after the commission of the offense.

6.7 (g) Indictments or complaints for violation of sections 609.466 and 609.52,  
6.8 subdivision 2, clause (3), item (iii), shall be found or made and filed in the proper court  
6.9 within six years after the commission of the offense.

6.10 (h) Indictments or complaints for violation of section 609.52, subdivision 2, clause  
6.11 (3), items (i) and (ii), (4), (15), or (16), 609.631, or 609.821, where the value of the  
6.12 property or services stolen is more than \$35,000, shall be found or made and filed in the  
6.13 proper court within five years after the commission of the offense.

6.14 (i) Except for violations relating to false material statements, representations or  
6.15 omissions, indictments or complaints for violations of section 609.671 shall be found or  
6.16 made and filed in the proper court within five years after the commission of the offense.

6.17 (j) Indictments or complaints for violation of sections 609.561 to 609.563, shall  
6.18 be found or made and filed in the proper court within five years after the commission  
6.19 of the offense.

6.20 (k) In all other cases, indictments or complaints shall be found or made and filed in  
6.21 the proper court within three years after the commission of the offense.

6.22 (l) The limitations periods contained in this section shall exclude any period of time  
6.23 during which the defendant was not an inhabitant of or usually resident within this state.

6.24 (m) The limitations periods contained in this section for an offense shall not include  
6.25 any period during which the alleged offender participated under a written agreement in a  
6.26 pretrial diversion program relating to that offense.

6.27 (n) The limitations periods contained in this section shall not include any period  
6.28 of time during which physical evidence relating to the offense was undergoing DNA  
6.29 analysis, as defined in section 299C.155, unless the defendant demonstrates that the  
6.30 prosecuting or law enforcement agency purposefully delayed the DNA analysis process in  
6.31 order to gain an unfair advantage.

6.32 **EFFECTIVE DATE.** This section is effective August 1, 2009, and applies to crimes  
6.33 committed on or after that date, and to crimes committed before that date if the limitations  
6.34 period for the crime did not expire before August 1, 2009.