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State of Minnesota  
HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH  
SESSION

HOUSE FILE No. **1392**

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

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

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

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

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

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

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

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

1.21 (v) the intentional touching by the actor of the complainant's body or the clothing  
1.22 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.