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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. **491**

01/28/2019 Authored by Demuth, Bennett, Kunes-Podein, Moller, Robbins and others
The bill was read for the first time and referred to the Committee on Ways and Means
02/14/2019 Adoption of Report: Amended and re-referred to the Committee on Education Policy

1.1 A bill for an act
1.2 relating to criminal justice; establishing penalties for school employees, independent
1.3 contractors, and persons in positions of authority who have sexual relationships
1.4 with students; amending Minnesota Statutes 2018, sections 609.341, subdivision
1.5 10, by adding subdivisions; 609.344, subdivision 1; 609.345, subdivision 1.

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

1.7 Section 1. Minnesota Statutes 2018, section 609.341, subdivision 10, is amended to read:

1.8 Subd. 10. **Position of authority.** "Position of authority" includes but is not limited to
1.9 any person who is a parent or acting in the place of a parent and charged with any of a
1.10 parent's rights, duties or responsibilities to a child, or a person who is charged with any duty
1.11 or responsibility for the health, welfare, or supervision of a child, either independently or
1.12 through another, no matter how brief, at the time of the act. For the purposes of subdivision
1.13 11, "position of authority" includes a psychotherapist. For the purposes of sections 609.344,
1.14 subdivision 1, paragraph (e), clause (2), and 609.345, subdivision 1, paragraph (e), clause
1.15 (2), the term extends to a person having the described authority over a student in a secondary
1.16 school who is at least 16 but less than 21 years of age under the circumstances described in
1.17 those two clauses.

1.18 Sec. 2. Minnesota Statutes 2018, section 609.341, is amended by adding a subdivision to
1.19 read:

1.20 Subd. 24. **Secondary school.** For the purposes of sections 609.344 and 609.345,
1.21 "secondary school" means a public or nonpublic school, church or religious organization,
1.22 or home school where a student may legally fulfill the compulsory instruction requirements
1.23 of section 120A.22.

2.1 Sec. 3. Minnesota Statutes 2018, section 609.341, is amended by adding a subdivision to
2.2 read:

2.3 Subd. 25. **Independent contractor.** For the purposes of sections 609.344 and 609.345,
2.4 "independent contractor" means any person who contracts with or is a volunteer for a
2.5 secondary school or any person employed by a business which contracts with a secondary
2.6 school.

2.7 Sec. 4. Minnesota Statutes 2018, section 609.344, subdivision 1, is amended to read:

2.8 Subdivision 1. **Crime defined.** A person who engages in sexual penetration with another
2.9 person is guilty of criminal sexual conduct in the third degree if any of the following
2.10 circumstances exists:

2.11 (a) the complainant is under 13 years of age and the actor is no more than 36 months
2.12 older than the complainant. Neither mistake as to the complainant's age nor consent to the
2.13 act by the complainant shall be a defense;

2.14 (b) the complainant is at least 13 but less than 16 years of age and the actor is more than
2.15 24 months older than the complainant. In any such case if the actor is no more than 120
2.16 months older than the complainant, it shall be an affirmative defense, which must be proved
2.17 by a preponderance of the evidence, that the actor reasonably believes the complainant to
2.18 be 16 years of age or older. In all other cases, mistake as to the complainant's age shall not
2.19 be a defense. Consent by the complainant is not a defense;

2.20 (c) the actor uses force or coercion to accomplish the penetration;

2.21 (d) the actor knows or has reason to know that the complainant is mentally impaired,
2.22 mentally incapacitated, or physically helpless;

2.23 (e)(1) the complainant is at least 16 but less than 18 years of age and the actor is more
2.24 than 48 months older than the complainant and in a position of authority over the
2.25 complainant, or (2) the complainant is at least 16 years of age but less than 21 years of age
2.26 and a student in a secondary school who has not graduated and received a diploma and the
2.27 actor is an employee or independent contractor of the secondary school who is in a position
2.28 of authority over the complainant. Neither mistake as to the complainant's age nor consent
2.29 to the act by the complainant is a defense;

2.30 (f) the actor has a significant relationship to the complainant and the complainant was
2.31 at least 16 but under 18 years of age at the time of the sexual penetration. Neither mistake
2.32 as to the complainant's age nor consent to the act by the complainant is a defense;

3.1 (g) the actor has a significant relationship to the complainant, the complainant was at
3.2 least 16 but under 18 years of age at the time of the sexual penetration, and:

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

3.4 (ii) the complainant suffered personal injury; or

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

3.6 Neither mistake as to the complainant's age nor consent to the act by the complainant is
3.7 a defense;

3.8 (h) the actor is a psychotherapist and the complainant is a patient of the psychotherapist
3.9 and the sexual penetration occurred:

3.10 (i) during the psychotherapy session; or

3.11 (ii) outside the psychotherapy session if an ongoing psychotherapist-patient relationship
3.12 exists.

3.13 Consent by the complainant is not a defense;

3.14 (i) the actor is a psychotherapist and the complainant is a former patient of the
3.15 psychotherapist and the former patient is emotionally dependent upon the psychotherapist;

3.16 (j) the actor is a psychotherapist and the complainant is a patient or former patient and
3.17 the sexual penetration occurred by means of therapeutic deception. Consent by the
3.18 complainant is not a defense;

3.19 (k) the actor accomplishes the sexual penetration by means of deception or false
3.20 representation that the penetration is for a bona fide medical purpose. Consent by the
3.21 complainant is not a defense;

3.22 (l) the actor is or purports to be a member of the clergy, the complainant is not married
3.23 to the actor, and:

3.24 (i) the sexual penetration occurred during the course of a meeting in which the
3.25 complainant sought or received religious or spiritual advice, aid, or comfort from the actor
3.26 in private; or

3.27 (ii) the sexual penetration occurred during a period of time in which the complainant
3.28 was meeting on an ongoing basis with the actor to seek or receive religious or spiritual
3.29 advice, aid, or comfort in private. Consent by the complainant is not a defense;

3.30 (m) the actor is an employee, independent contractor, or volunteer of a state, county,
3.31 city, or privately operated adult or juvenile correctional system, or secure treatment facility,

4.1 or treatment facility providing services to clients civilly committed as mentally ill and
4.2 dangerous, sexually dangerous persons, or sexual psychopathic personalities, including, but
4.3 not limited to, jails, prisons, detention centers, or work release facilities, and the complainant
4.4 is a resident of a facility or under supervision of the correctional system. Consent by the
4.5 complainant is not a defense;

4.6 (n) the actor provides or is an agent of an entity that provides special transportation
4.7 service, the complainant used the special transportation service, and the sexual penetration
4.8 occurred during or immediately before or after the actor transported the complainant. Consent
4.9 by the complainant is not a defense; or

4.10 (o) the actor performs massage or other bodywork for hire, the complainant was a user
4.11 of one of those services, and nonconsensual sexual penetration occurred during or
4.12 immediately before or after the actor performed or was hired to perform one of those services
4.13 for the complainant.

4.14 Sec. 5. Minnesota Statutes 2018, section 609.345, subdivision 1, is amended to read:

4.15 Subdivision 1. **Crime defined.** A person who engages in sexual contact with another
4.16 person is guilty of criminal sexual conduct in the fourth degree if any of the following
4.17 circumstances exists:

4.18 (a) the complainant is under 13 years of age and the actor is no more than 36 months
4.19 older than the complainant. Neither mistake as to the complainant's age or consent to the
4.20 act by the complainant is a defense. In a prosecution under this clause, the state is not
4.21 required to prove that the sexual contact was coerced;

4.22 (b) the complainant is at least 13 but less than 16 years of age and the actor is more than
4.23 48 months older than the complainant or in a position of authority over the complainant.
4.24 Consent by the complainant to the act is not a defense. In any such case, if the actor is no
4.25 more than 120 months older than the complainant, it shall be an affirmative defense which
4.26 must be proved by a preponderance of the evidence that the actor reasonably believes the
4.27 complainant to be 16 years of age or older. In all other cases, mistake as to the complainant's
4.28 age shall not be a defense;

4.29 (c) the actor uses force or coercion to accomplish the sexual contact;

4.30 (d) the actor knows or has reason to know that the complainant is mentally impaired,
4.31 mentally incapacitated, or physically helpless;

4.32 (e)(1) the complainant is at least 16 but less than 18 years of age and the actor is more
4.33 than 48 months older than the complainant and in a position of authority over the

5.1 complainant, or (2) the complainant is at least 16 years of age but less than 21 years of age
5.2 and a student in a secondary school who has not graduated and received a diploma and the
5.3 actor is an employee or independent contractor of the secondary school who is in a position
5.4 of authority over the complainant. Neither mistake as to the complainant's age nor consent
5.5 to the act by the complainant is a defense;

5.6 (f) the actor has a significant relationship to the complainant and the complainant was
5.7 at least 16 but under 18 years of age at the time of the sexual contact. Neither mistake as to
5.8 the complainant's age nor consent to the act by the complainant is a defense;

5.9 (g) the actor has a significant relationship to the complainant, the complainant was at
5.10 least 16 but under 18 years of age at the time of the sexual contact, and:

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

5.12 (ii) the complainant suffered personal injury; or

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

5.14 Neither mistake as to the complainant's age nor consent to the act by the complainant is
5.15 a defense;

5.16 (h) the actor is a psychotherapist and the complainant is a patient of the psychotherapist
5.17 and the sexual contact occurred:

5.18 (i) during the psychotherapy session; or

5.19 (ii) outside the psychotherapy session if an ongoing psychotherapist-patient relationship
5.20 exists. Consent by the complainant is not a defense;

5.21 (i) the actor is a psychotherapist and the complainant is a former patient of the
5.22 psychotherapist and the former patient is emotionally dependent upon the psychotherapist;

5.23 (j) the actor is a psychotherapist and the complainant is a patient or former patient and
5.24 the sexual contact occurred by means of therapeutic deception. Consent by the complainant
5.25 is not a defense;

5.26 (k) the actor accomplishes the sexual contact by means of deception or false representation
5.27 that the contact is for a bona fide medical purpose. Consent by the complainant is not a
5.28 defense;

5.29 (l) the actor is or purports to be a member of the clergy, the complainant is not married
5.30 to the actor, and:

6.1 (i) the sexual contact occurred during the course of a meeting in which the complainant
6.2 sought or received religious or spiritual advice, aid, or comfort from the actor in private; or

6.3 (ii) the sexual contact occurred during a period of time in which the complainant was
6.4 meeting on an ongoing basis with the actor to seek or receive religious or spiritual advice,
6.5 aid, or comfort in private. Consent by the complainant is not a defense;

6.6 (m) the actor is an employee, independent contractor, or volunteer of a state, county,
6.7 city, or privately operated adult or juvenile correctional system, or secure treatment facility,
6.8 or treatment facility providing services to clients civilly committed as mentally ill and
6.9 dangerous, sexually dangerous persons, or sexual psychopathic personalities, including, but
6.10 not limited to, jails, prisons, detention centers, or work release facilities, and the complainant
6.11 is a resident of a facility or under supervision of the correctional system. Consent by the
6.12 complainant is not a defense;

6.13 (n) the actor provides or is an agent of an entity that provides special transportation
6.14 service, the complainant used the special transportation service, the complainant is not
6.15 married to the actor, and the sexual contact occurred during or immediately before or after
6.16 the actor transported the complainant. Consent by the complainant is not a defense; or

6.17 (o) the actor performs massage or other bodywork for hire, the complainant was a user
6.18 of one of those services, and nonconsensual sexual contact occurred during or immediately
6.19 before or after the actor performed or was hired to perform one of those services for the
6.20 complainant.

6.21 **Sec. 6. EFFECTIVE DATE.**

6.22 Sections 1 to 5 are effective August 1, 2019, and apply to crimes committed on or after
6.23 that date.