



Carolyn Bailey papers

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KEEPING POSTED

VOLUME 4

ISSUE 1

JUNE 1984

Legislative Wrap-Up

The 1984 Legislature effected several changes which have an impact on Minnesota law enforcement. This issue of KEEPING POSTED is designed to provide you with a guide to the new laws. Chapter numbers refer to chapters in the 1984 Minnesota Laws. The notations "SF" and "HF" refer to the assigned Senate File or House File number. The effective date of each entry appears to the right of its description.

Chapter and File Number	Subject	Effective Date
Ch.622,S.F. 1336	DWI: Driver may not consult with an attorney before deciding whether to take or refuse test. Upon refusal of testing, the driver's license is revoked for one year. Persons under 18 who are convicted of DWI will have their licenses revoked until they reach age 18.	8/31/84
Ch.454,S.F. 1622	Peace officer death benefits increased from \$50,000 to \$100,000.	immediately
Ch.495,S.F. 1771	Allows Minnesota law enforcement agencies to enter joint powers agreements with agencies in contiguous states if certain conditions are met.	8/1/84
Ch.460,S.F. 1973	Requires peace officers to get an interpreter immediately when arresting persons handicapped in communication (whether handicapped physically or because of an inability to speak or understand the English language).	8/1/84
Ch.430,S.F. 1642	Authorizes the use of the Intoxilyzer for breath tests in DWI cases.	immediately
Ch.510,S.F. 1579	Creates a state missing children program. Requires law enforcement agencies receiving missing children reports to take certain actions.	immediately
Ch.483,S.F. 1621	Theft of firearms or possession of stolen firearms is always a felony.	8/1/84
S.F. 1560	Subjects monies, precious metals, gems, negotiable instruments and other properties to forfeiture if exchanged for or associated with controlled substances in violation of state law.	8/1/84
S.F. 1561	Certain items, including motor vehicles, snowmobiles, airplanes, vessels, weapons used, containers and certain contraband property, used in the commission of criminal offenses, are subject to forfeiture. Acquisition and disposal procedures are described.	8/1/84
S.F. 1905	It is now a misdemeanor to falsely report a medical emergency or to interfere with emergency communications over a C.B. radio channel.	immediately

Chapter and File Number	Subject	Effective Date
Ch.433,S.F. 1398	Misdemeanor warrants may be served anytime if the person named is found on a public highway or street; otherwise between 8 a.m. and 10 p.m. any day. Gross misdemeanor warrants may be served any time, on any day.	8/1/84
S.F. 1365	Creates the crime of theft of telecommunications.	8/1/84
Ch.585,H.F. 322	Local units of government may no longer impose residency requirements on public employees, including police officers. Outside of the 7-county metropolitan area, a city or county may impose a reasonable area or response time residency requirement if there is a demonstrated, job related necessity.	immediately
Ch.589,S.F. 1354	Any modification of the sentencing guidelines which would result in reduced sentence or early release of any inmate must be approved by the legislature.	immediately
Ch.484,S.F. 1318	Prohibits persons from concealing, obtaining or retaining a child in violation of the parental, custodial or visitation rights of another.	8/1/84
Ch.573,H.F. 1386	Authorizes intervention by the juvenile court to protect children from abuse committed by family or household members.	8/1/84
Ch.496,H.F. 1722	Extends statute of limitations for certain sexual misconduct offenses from 3 to 7 years, if the victim was under 18.	8/1/84
H.F. 1707	Creates 13-person Charitable Gambling Control Board.	3/1/85
H.F. 2317	Provides for licensing, bonding and record-keeping in the operation of video games of chance.	immediately

The legislative information presented here is intended only to provide you with a guide to this year's legislative changes. If it appears that the changes will affect you or your duties, we recommend that you obtain more complete information about the bill.

If you wish to receive the complete text of one or more of these new laws, contact the Chief Clerk of the Legislature at 612/296-2314. Be certain to mention the Chapter Number and/or the File Number when making your request.

Computer Information

By now, most of you are aware that POST's Computerized record-keeping system for C.E. credit has changed dramatically. Because our semi-annual reports to you will not list course titles, it becomes imperative that peace officers and their departments maintain accurate, detailed records of courses completed.

If you sponsor a continuing education course, you are probably aware of the Board rule which requires you to submit the course roster within ten days of the close of the course. When you submit the roster:

- 1) Be sure to include the officer's license type: type 1 is a peace officer license, type 3 is a constable license.
- 2) Be sure to list the correct license number. If incorrect numbers are listed, the wrong officer may receive credit for the course.
- 3) List credit for peace officers and constables only. Part-time peace officers are not required to complete continuing education courses, and the POST Board does not computerize that data. But remember to include on the roster peace officers who are fully licensed but only work part-time.

Each department will receive the semi-annual printout of courses taken in July.

...UPDATE...UPDATE...UPDATE...UPDATE...

- The next meeting of the POST Board will be held on July 19 in POST's St. Paul offices. Meetings of the Training, Standards and Complaint committees will take place on July 18. . . .

- The Training Committee will hold the first in a series of special hearings on Continuing Education in its offices on June 21 at 1:30 p.m. The purpose of the hearings is to determine how the POST Board can most effectively promote and ensure the continuing professional competence of its licensees. The topic to be addressed at the June 21 meeting is "The Role of Mandatory Continuing Education". . .

- POST's Administrator's Manual is being updated and will be distributed to all chief law enforcement officers in August . . .

- The Manual for Part-time Peace Officers is also being revised. It will be available for purchase late in the summer through the Documents Division. Watch for further details in the August edition of Keeping POSTed . . .

- POST will administer the part-time peace officer examination as indicated below. Dates and times will be announced in later issues.

Marshall September
Hibbing October
Thief River Falls October

The POST Board also makes this examination available at its St. Paul address during regular office hours. Part-time peace officers must pre-register for the exam . . .

* * * * *

Reminder:

Renewal deadline is June 30 for officers H - M.

- Through a rule change expected to take effect on July 1, POST's licensing fees will increase. Peace officer and constable renewal fees will increase to \$15.00; part-time peace officer fees will be \$7.50. The rule change is primarily an inflationary adjustment. Renewal fees have not increased since they were originally set in 1979.

Licensing fees for new officers will follow the schedule below for the period July 1 - December 31.

A-G	\$10.00	(\$5.00 for part-time)
H-M	15.00	(7.50 for part-time)
N-Z	5.00	(2.50 for part-time)

- A 1983 statutory change requires every chief law enforcement officer to comply with the following mandates by October 1, 1984:

- 1) Develop policies and procedures for processing allegations of peace officer misconduct;
- 2) Implement those policies and procedures; and
- 3) Document to POST compliance with the first two requirements. Compliance forms will be distributed to chief law enforcement officers in August.

Failure to meet these requirements may result in disciplinary action by POST against the license of the chief law enforcement officer . . .

- In May of 1983, POST moved to its new offices. Your forms and records may still list the old address. Please make a note of the change:

POST Board
333 Sibley Street, Suite 495
St. Paul, Minnesota 55101 . . .

Questions on any of these items? Contact POST at 612/296-2620.

Radar Courses Set

The Minnesota State Patrol will offer basic and refresher radar courses in 1984 according to the following schedule.

Basic Course: July 17 or October 2 at the State Patrol Training Center. Contact Sergeant Dickson at 612/636-4990. Approval for 6 continuing education credits.

Refresher Course

<u>Location</u>	<u>Date</u>	<u>Contact</u>	<u>Dist. Capt.</u>
Rochester	9/10	Wiberg	507/285-2406
Detroit Lakes	9/10	Murray	218/847-1584
Marshall	9/11	Sletten	507/537-6277
Eagan	9/11	DiIoia	612/452-7034
Mankato	9/13	Kittridge	507/389-1171
Thief River Falls	9/13	Daniels	218/681-3741
St. Cloud	9/24	Church	612/255-2910
Duluth	9/24	Gunderson	218/732-4889
Brainerd	9/25	Nuesse	218/828-2403
Golden Valley	9/26	Foley	612/541-9122
Virginia	9/27	Geiger	218/744-5578

The Refresher course is approved for four continuing education credits. Interested parties must pre-register by phone.

KEEPING POSTED

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Standards and Training

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612/296-2620

Keeping Posted is published bi-monthly by the POST Board to provide Minnesota peace officers with a vehicle for information and comment. Please submit your article, commentary or news item at least 45 days prior to the publication date.

Next Publication Date:

August 15, 1984

MINNESOTA BOARD OF
PEACE OFFICER STANDARDS AND TRAINING
333 SIBLEY STREET (SUITE 495)
ST. PAUL, MINNESOTA 55101



LEAGCY 9040003

MN ASSOC/ WOMEN POLICE
ATTN: CAROLEN BAILEY
101 EAST 10TH STREET
ST. PAUL MN 000055101

PLEASE SHARE THIS NEWSLETTER WITH PERSONNEL IN YOUR ORGANIZATION.



UTILIZATION OF THE LAWS

1. Mandatory reporting laws. *Changes here.* *Reasonable cause to believe, not proven.*
Immunity Liability. *Privileged bet. prof. "does not apply!"*

Good faith "presumed"

Reporting sources. *Primary is victim, secondary is schools.*
Protecting reporter. *"Prohibit release of data that would identify a person who made a report or cooperated."*
"shall testify"

2. Police protective holds. Purpose for taking in to custody.
Risk prevalent unless previous intervention. *"Imminent danger to the child's life or health"*

3. Court Intervention.
a. Juvenile Court: to gain custody of child for protection.
Rules of evidence differ. Police reports still essential. *Majority of our cases have demonstrated that actual proof is not necessary + expressed fear by parent to court. I don't know how or why on discovery*

Civil or Juvenile

b. Family Court: Custody evaluations.
Reporting or discovery of sexual abuse may involve a more difficult assessment because of claims and motives of each parent to gain custody of the children. Such cases should involve the same thorough investigation.

Circuit increasingly

c. Criminal Court: Many experienced treatment professionals, *incl. those in our county,* feel that criminal prosecution is essential to assure treatment follow-up and feel it has a direct impact on the treatment results and effectiveness. ** The attitudes, resources of your own community contribute to which attorney cause of action to decide.*
Per Henry Giarretto, Director of Child Sexual Abuse Treatment Program at Santa Clara County, San Jose, California:

"In all cases the authority of the criminal justice system and the court process the offender must undergo seems absolutely necessary in order to satisfy what may be termed an expiatory factor in the treatment of the offender and his family."

Agreeing with him and stressing that responsibility must be emphasized, Dr. Roland Summit, U.C.L.A. Medical Center, states:



"Without any criminal indictment, there is no power to remove the father from the home or to illustrate to others that he, not the child, is responsible for the problems. The criminal court has the reassurance that justice can be decisive for the protection of the victim and of society, as well as indispensable to the rehabilitation of the offender."

#D Child Abuse Team Assumption

Barb Weller, Ramsey County Mental Health Center:

Criminal laws are frequently inappropriate, and it is often (over)

necessary to apply laws which are not intended for this specific purpose (Example: Use of Crim. Sexual Conduct vs. Incest).

*
Regardless of whether it may be Family, Juvenile or Criminal Court, it is quite ^{possible} ~~likely~~ that a court process may be involved to assure the protection of the sexually abused child. Because evidence is seldom privileged in child abuse matters, most professionals dealing with the problem, including medical and therapeutic personnel, will at various times be called upon to testify. For this reason, detailed records and reports should be maintained. It is essential to refresh your memory with very specific information, including quotes.

- Per Director
Coler's
expressed
need*
1. When receiving a subpoena, find out why you are subpoenaed and what it is that is wanted in the testimony.
 2. When testifying, unless you are qualified on the stand as an expert witness, you must avoid expressing opinions or conclusions.
 3. Answer only the question. Don't over-testify.
 4. Above all, don't get mad! You must be courteous to the defense or anyone who may be challenging you.
 5. Don't be afraid to occasionally say, "I don't know." Don't guess at answers. You may ask to refresh your memory with your report.
 6. Watch your body language on the stand. Juries draw conclusions in subtle ways. (Ex. arms crossed).
 7. Wear appropriate clothing. (Ex. officer when asked not to wear his uniform on a brutality defense, wore black leather, holster, etc.)
 8. Be aware of your demeanor outside the courtroom. Not only do juries have an opportunity to view this, but attorneys occasionally have "spies" in the external areas of the courtroom and may call matters, such as your comments, to your attention on the stand. (Ex. When I sat on the case file).
 9. Tell only the truth.

Per F. Lee Bailey: "The most important aspect of any case is what has taken place BEFORE the courtroom."

No case can be overly prepared. "If you fail to prepare, be prepared to fail."

the party making the report shall not by reason thereof be subpoenaed, examined, or forced to testify in court as a consequence of having made such a report.

History: 1935 c 165 s 2 (9950-23)

626.54 APPLICATION OF SECTIONS 626.52 TO 626.55.

The requirements of sections 626.52 to 626.55 shall not apply to a nurse employed in a hospital nor to a nurse regularly employed by a physician, surgeon, or other person practicing healing, where the employer has made a proper report in compliance therewith.

History: 1935 c 165 s 3 (9950-24)

626.55 PENALTY.

Any person who violates any provision of sections 626.52 to 626.55 is guilty of a gross misdemeanor.

History: 1935 c 165 s 4 (9950-25)

626.553 GUNSHOT WOUNDS; PEACE OFFICERS, DISCHARGING FIRE-ARMS; INVESTIGATIONS, REPORTS.

Subdivision 1. Upon receipt of the report required in sections 626.52 and 626.53, the sheriff or chief of police receiving the report shall determine the general cause of the wound, and if he determines that the wound was caused by an action connected with the occupation or sport of hunting or shooting he shall immediately conduct a detailed investigation into the facts surrounding the incident or occurrence which occasioned the injury or death reported. The investigating officer shall report the findings of his investigation to the commissioner of natural resources on forms provided by the commissioner for this purpose.

Subd. 2. Whenever a peace officer discharges a firearm in the course of duty, other than for training purposes or the killing of an animal that is sick, injured, or dangerous, notification shall be filed within 30 days of the incident by the officer's department head with the commissioner of public safety. The notification shall contain information concerning the reason for and circumstances surrounding discharge of the firearm. The commissioner of public safety shall file a report with the legislature by November 15 of each even-numbered year containing summary information concerning use of firearms by peace officers.

History: 1957 c 407 s 1; 1969 c 1129 art 10 s 2; 1977 c 455 s 89; 1983 c 293 s 108

626.554 [Repealed, 1975 c 221 s 2]

626.555 [Repealed, 1980 c 542 s 2]

626.556 REPORTING OF MALTREATMENT OF MINORS.

Subdivision 1. Public policy. The legislature hereby declares that the public policy of this state is to protect children whose health or welfare may be jeopardized through physical abuse, neglect or sexual abuse; to strengthen the family and make the home, school, and community safe for children by promoting responsible child care in all settings; and to provide, when necessary, a safe temporary or permanent home environment for physically or sexually abused children.

In addition, it is the policy of this state to require the reporting of suspected neglect, physical or sexual abuse of children in the home, school, and community settings; to provide for the voluntary reporting of abuse or neglect of children; to

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require the assessment and investigation of the reports; and to provide protective and counseling services in appropriate cases.

Subd. 2. **Definitions.** As used in this section, the following terms have the meanings given them unless the specific content indicates otherwise:

(a) "Sexual abuse" means the subjection by a person responsible for the child's care, or by a person in a position of authority, as defined in section 609.341, subdivision 10, to any act which constitutes a violation of sections 609.342, 609.343, 609.344, or 609.345, or sections 609.364 to 609.3644. Sexual abuse also includes any act which involves a minor which constitutes a violation of sections 609.321 to 609.324 or 617.246.

(b) "Person responsible for the child's care" means a parent, guardian, teacher, school administrator, or other lawful custodian of a child having either full-time or short-term care responsibilities including, but not limited to, day care, baby sitting whether paid or unpaid, counseling, teaching, and coaching.

(c) "Neglect" means failure by a person responsible for a child's care to supply a child with necessary food, clothing, shelter or medical care when reasonably able to do so or failure to protect a child from conditions or actions which imminently and seriously endanger the child's physical or mental health when reasonably able to do so. Nothing in this section shall be construed to (i) mean that a child is neglected solely because the child's parent, guardian or other person responsible for his care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child, or (ii) impose upon persons, not otherwise legally responsible for providing a child with necessary food, clothing, shelter or medical care, a duty to provide that care.

(d) "Physical abuse" means:

(i) Any physical injury inflicted by a person responsible for the child's care on a child other than by accidental means; or

(ii) Any physical injury that cannot reasonably be explained by the child's history of injuries.

(e) "Report" means any report received by the local welfare agency, police department or county sheriff pursuant to this section.

(f) "Facility" means a day care facility, residential facility, agency, hospital, sanatorium, or other facility or institution required to be licensed pursuant to sections 144.50 to 144.58, 241.021, or 245.781 to 245.812.

(g) "Operator" means an operator or agency as defined in section 245.782.

(h) "Commissioner" means the commissioner of human services.

(i) "Assessment" includes authority to interview the child, the person or persons responsible for the child's care, the alleged perpetrator, and any other person with knowledge of the abuse or neglect for the purpose of gathering the facts, assessing the risk to the child, and formulating a plan.

Subd. 3. **Persons mandated to report.** A professional or his delegate who is engaged in the practice of the healing arts, social services, hospital administration, psychological or psychiatric treatment, child care, education, or law enforcement who has knowledge of or reasonable cause to believe a child is being neglected or physically or sexually abused shall immediately report the information to the local welfare agency, police department or the county sheriff. The police department or the county sheriff, upon receiving a report, shall immediately notify the local welfare agency. The local welfare agency, upon receiving a report, shall immediately notify the local police department or the county sheriff. Nothing in this subdivision shall be construed to require more than one report from any institution, facility, school or agency.

Any person not required to report under the provisions of this subdivision may voluntarily report to the local welfare agency, police department or the county sheriff if he has knowledge of or reasonable cause to believe a child is being neglected or subjected to physical or sexual abuse. The police department or the county sheriff, upon receiving a report, shall immediately notify the local welfare agency.

A person mandated to report suspected physical or sexual child abuse or neglect occurring within a licensed facility shall report the information to the agency responsible for licensing the facility. A health or corrections agency receiving a report may request the local welfare agency to provide assistance pursuant to subdivisions 10, 10a, and 10b.

Any person who makes a report shall, upon request to the local welfare agency, receive a concise summary of the disposition of the report, unless release would be detrimental to the best interests of the child.

Subd. 3a. Report of deprivation of parental rights. A person mandated to report under subdivision 3, who knows or has reason to know of a violation of section 609.26, shall report the information to the local police department or the county sheriff. Receipt by a local welfare agency of a report or notification of a report of a violation of section 609.26 shall not be construed to invoke the duties of subdivisions 10, 10a, or 10b of this section.

Subd. 4. Immunity from liability. (a) Any person, including those voluntarily making reports and those required to make reports under subdivision 3, participating in good faith and exercising due care in the making of a report or assisting in an assessment pursuant to this section has immunity from any liability, civil or criminal, that otherwise might result by reason of his action.

(b) A supervisor or social worker employed by a local welfare agency, who in good faith exercises due care when complying with subdivisions 10 and 11 or any related rule or provision of law, shall have immunity from any civil liability that otherwise might result by reason of his action.

Any public or private school, facility as defined in subdivision 2, or the employee of any public or private school or facility who permits access by a local welfare agency or local law enforcement agency and assists in good faith in an investigation or assessment pursuant to subdivision 10 has immunity from any liability, civil or criminal, that otherwise might result by reason of that action.

This subdivision does not provide immunity to any person for failure to make a required report or for committing neglect, physical abuse, or sexual abuse of a child.

Subd. 4a. Retaliation prohibited. (a) An employer of any person required to make reports under subdivision 3 shall not retaliate against the person for reporting in good faith suspected abuse or neglect pursuant to this section, or against a child with respect to whom a report is made, because of the report.

(b) The employer of any person required to report under subdivision 3 who retaliates against the person because of a report of suspected abuse or neglect is liable to that person for actual damages and, in addition, a penalty up to \$1,000.

(c) There shall be a rebuttable presumption that any adverse action within 90 days of a report is retaliatory. For purposes of this paragraph, the term "adverse action" refers to action taken by an employer of a person required to report under subdivision 3 which is involved in a report against the person making the report or the child with respect to whom the report was made because of the report, and includes, but is not limited to:

(1) discharge, suspension, termination, or transfer from the facility, institution, school, or agency;

(2) discharge from or termination of employment;

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(3) demotion or reduction in remuneration for services; or

(4) restriction or prohibition of access to the facility, institution, school, agency, or persons affiliated with it.

Subd. 5. Falsified reports. Any person who willfully or recklessly makes a false report under the provisions of this section shall be liable in a civil suit for any actual damages suffered by the person or persons so reported and for any punitive damages set by the court or jury.

Subd. 6. Failure to report. Any person required by this section to report suspected physical or sexual child abuse or neglect who willfully fails to do so shall be guilty of a misdemeanor.

Subd. 7. Report. An oral report shall be made immediately by telephone or otherwise. An oral report made by a person required under subdivision 3 to report shall be followed as soon as possible by a report in writing to the appropriate police department, the county sheriff or local welfare agency. Any report shall be of sufficient content to identify the child, any person believed to be responsible for the abuse or neglect of the child if the person is known, the nature and extent of the abuse or neglect and the name and address of the reporter. Written reports received by a police department or the county sheriff shall be forwarded immediately to the local welfare agency. The police department or the county sheriff may keep copies of reports received by them. Copies of written reports received by a local welfare department shall be forwarded immediately to the local police department or the county sheriff.

A written copy of a report maintained by personnel of agencies, other than welfare or law enforcement agencies, which are subject to chapter 13 shall be confidential. An individual subject of the report may obtain access to the original report as provided by subdivision 11.

Subd. 8. Evidence not privileged. No evidence 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 privilege set forth in section 595.02, subdivision 1, paragraphs (a), (d), or (g).

Subd. 9. Mandatory reporting to a medical examiner or coroner. When a person required to report under the provisions of subdivision 3 has reasonable cause to believe a child has died as a result of neglect or physical or sexual abuse, he shall report that information to the appropriate medical examiner or coroner instead of the local welfare agency, police department or county sheriff. Medical examiners or coroners shall notify the local welfare agency or police department or county sheriff in instances in which they believe that the child has died as a result of neglect or physical or sexual abuse. The medical examiner or coroner shall complete an investigation as soon as feasible and report the findings to the police department or county sheriff and the local welfare agency.

Subd. 10. Duties of local welfare agency and local law enforcement agency upon receipt of a report. (a) If the report alleges neglect, physical abuse, or sexual abuse by a parent, guardian, or individual functioning within the family unit as a person responsible for the child's care, the local welfare agency shall immediately conduct an assessment and offer protective social services for purposes of preventing further abuses, safeguarding and enhancing the welfare of the abused or neglected minor, and preserving family life whenever possible. When necessary the local welfare agency shall seek authority to remove the child from the custody of his parent, guardian or adult with whom he is living. In performing any of these duties, the local welfare agency shall maintain appropriate records.

(b) Authority of the local welfare agency responsible for assessing the child abuse report and of the local law enforcement agency includes, but is not limited to, authority to interview, without parental consent, the alleged victim and any other minors who currently reside with or who have resided with the alleged perpetrator. The interview may take place at school or any facility or other place where the alleged victim or other minors might be found and may take place outside the presence of the perpetrator or parent, legal custodian, guardian, or school official. Except as provided in this clause, the parent, legal custodian, or guardian shall be notified, no later than the conclusion of the investigation or assessment, that this interview has occurred. Notwithstanding rule 49.02 of the Minnesota Rules of Procedure for Juvenile Courts, the juvenile court may, after hearing on an ex parte motion by the local welfare agency, order that, where reasonable cause exists, notification of this interview be withheld from the parent, legal custodian, or guardian.

(c) When the local welfare or local law enforcement agency determines that an interview should take place on school property, written notification must be received by school officials prior to the interview. The notification shall include the name of the child to be interviewed, the purpose of the interview, and a reference to the statutory authority to conduct an interview on school property. For interviews conducted by the local welfare agency, the notification shall be signed by the chairman of the county welfare board or his designee. The time and place, and manner of the interview on school premises shall be within the discretion of school officials, but the local welfare agency, or the local law enforcement agency shall have the exclusive authority to determine who may attend the interview. The conditions as to time, place, and manner of the interview set by the school officials shall be reasonable and the interview shall be conducted not more than 24 hours after the receipt of the notification unless another time is deemed necessary by agreement between the school officials and the local welfare agency or local law enforcement agency. Where the school fails to comply with the provisions of this section, the juvenile court may order the school to comply with this provision. School officials shall not disclose to the parent, legal custodian, guardian, or perpetrator that a request to interview the child has been made until after the investigation or assessment has been concluded. Every effort shall be made to reduce the disruption of the educational program of the child, other students, or school staff when an interview is conducted on school premises.

(d) Where the perpetrator or a person responsible for the care of the alleged victim or other minor prevents access to the victim or other minor by the local welfare agency, the juvenile court may order the parents, legal custodian, or guardian to produce the alleged victim or other minor for questioning by the local welfare agency or the local law enforcement agency outside the presence of the perpetrator or any person responsible for the child's care at reasonable places and times as specified by court order.

(e) Before making an order under paragraph (d), the court shall issue an order to show cause, either upon its own motion or upon a verified petition, specifying the basis for the requested interviews and fixing the time and place of the hearing. The order to show cause shall be served personally and shall be heard in the same manner as provided in other cases in the juvenile court. The court shall consider the need for appointment of a guardian ad litem to protect the best interests of the child. If a guardian ad litem is appointed, he shall be present at the hearing on the order to show cause.

(f) The commissioner, the local welfare agencies responsible for investigating reports, and the local law enforcement agencies have the right to enter facilities as defined in subdivision 2 and to inspect and copy the facility's records as part of the

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investigation. Notwithstanding the provisions of chapter 13, they also have the right to inform the facility under investigation that they are conducting an investigation, to disclose to the facility the names of the individuals under investigation for abusing or neglecting a child, and to provide the facility with a copy of the report and the investigative findings.

Subd. 10a. **Abuse outside the family unit.** If the report alleges neglect, physical abuse, or sexual abuse by a person responsible for the child's care functioning outside the family unit in a setting other than a facility as defined in subdivision 2, the local welfare agency shall immediately notify the appropriate law enforcement agency and shall offer appropriate social services for the purpose of safeguarding and enhancing the welfare of the abused or neglected minor.

Subd. 10b. **Duties of commissioner; neglect or abuse in a facility.** If the report alleges that a child in the care of a facility as defined in subdivision 2 is neglected, physically abused, or sexually abused by an individual in that facility, the commissioner shall immediately investigate. The commissioner shall arrange for the transmittal to him of reports received by local agencies and may delegate to a local welfare agency the duty to investigate reports. In conducting an investigation under this section, the commissioner has the powers and duties specified for local welfare agencies under this section.

Subd. 11. **Records.** All records maintained by a local welfare agency under this section, including any written reports filed under subdivision 7, shall be private data on individuals, except insofar as copies of reports are required by subdivision 7 to be sent to the local police department or the county sheriff. Report records maintained by any police department or the county sheriff shall be private data on individuals except the reports shall be made available to the investigating, petitioning, or prosecuting authority. The welfare board shall make available to the investigating, petitioning, or prosecuting authority any records which contain information relating to a specific incident of neglect or abuse which is under investigation, petition, or prosecution and information relating to any prior incidents of neglect or abuse involving any of the same persons. The records shall be collected and maintained in accordance with the provisions of chapter 13. An individual subject of a record shall have access to the record in accordance with those sections, except that the name of the reporter shall be confidential while the report is under assessment or investigation. After the assessment or investigation is completed, the name of the reporter shall be confidential but shall be accessible to the individual subject of the record upon court order.

Records maintained by local welfare agencies, the police department or county sheriff under this section shall be destroyed as described in clauses (a) to (c):

(a) If upon assessment or investigation a report is found to be unsubstantiated, notice of intent to destroy records of the report shall be mailed to the individual subject of the report. At the subject's request the records shall be maintained as private data. If no request from the subject is received within 30 days of mailing the notice of intent to destroy, the records shall be destroyed.

(b) All records relating to reports which, upon assessment or investigation, are found to be substantiated shall be destroyed seven years after the date of the final entry in the case record.

(c) All records of reports which, upon initial assessment or investigation, cannot be substantiated or disproved to the satisfaction of the local welfare agency, local police department or county sheriff may be kept for a period of one year. If the local welfare agency, local police department or county sheriff is unable to substantiate the report within that period, each agency unable to substantiate the report shall destroy its records relating to the report in the manner provided by clause (a).

Subd. 12. **Duties of facility operators.** Any operator, employee, or volunteer worker at any facility who intentionally neglects, physically abuses, or sexually abuses any child in the care of that facility may be charged with a violation of sections 609.255, 609.377, or 609.378. Any operator of a facility who knowingly permits conditions to exist which result in neglect, physical abuse, or sexual abuse of a child in the care of that facility may be charged with a violation of section 609.23 or section 609.378.

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Subd. 13. **Application of data practices act.** The classification of reports and records created or maintained for the purposes of this section shall be determined as provided by this section, notwithstanding any other classifications established by chapter 13.

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History: 1975 c 221 s 1; 1977 c 130 s 9; 1977 c 212 s 2,3; 1978 c 755 s 1-9; 1979 c 143 s 1; 1979 c 255 s 7; 1980 c 509 s 50,181; 1981 c 240 s 2; 1981 c 273 s 12; 1981 c 311 s 39; 1Sp1981 c 4 art 1 s 15; 1982 c 393 s 1,2; 1982 c 545 s 24; 1982 c 636 s 1-4; 1983 c 217 s 8; 1983 c 229 s 1,2; 1983 c 345 s 13-19; 1984 c 484 s 3; 1984 c 573 s 10; 1984 c 577 s 1-6; 1984 c 588 s 12; 1984 c 654 art 5 s 58; 1984 c 655 art 2 s 14 subd 1

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626.557 REPORTING OF MALTREATMENT OF VULNERABLE ADULTS.

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Subdivision 1. **Public policy.** The legislature declares that the public policy of this state is to protect adults who, because of physical or mental disability or dependency on institutional services, are particularly vulnerable to abuse or neglect; to provide safe institutional or residential services or living environments for vulnerable adults who have been abused or neglected; and to assist persons charged with the care of vulnerable adults to provide safe environments.

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In addition, it is the policy of this state to require the reporting of suspected abuse or neglect of vulnerable adults, to provide for the voluntary reporting of abuse or neglect of vulnerable adults, to require the investigation of the reports, and to provide protective and counseling services in appropriate cases.

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Subd. 2. **Definitions.** As used in this section, the following terms have the meanings given them unless the specific context indicates otherwise.

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(a) "Facility" means a hospital or other entity required to be licensed pursuant to sections 144.50 to 144.58; a nursing home required to be licensed to serve adults pursuant to section 144A.02; an agency, day care facility, or residential facility required to be licensed to serve adults pursuant to sections 245.781 to 245.812; a mental health program receiving funds pursuant to section 245.61; or a home health agency certified for participation in Titles XVIII or XIX of the Social Security Act, United States Code, title 42, sections 1395 et seq.

(b) "Vulnerable adult" means any person 18 years of age or older:

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(1) Who is a resident or inpatient of a facility;

(2) Who receives services at or from a facility required to be licensed to serve adults pursuant to sections 245.781 to 245.812, except a person receiving outpatient services for treatment of chemical dependency or mental illness;

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(3) Who receives services from a home health agency certified for participation under Titles XVIII or XIX of the Social Security Act, United States Code, title 42, sections 1395 et seq and 1396 et seq; or

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(4) Who, regardless of residence or type of service received, is unable or unlikely to report abuse or neglect without assistance because of impairment of mental or physical function or emotional status.

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(c) "Caretaker" means an individual or facility who has responsibility for the care of a vulnerable adult as a result of family relationship, or who has assumed

II. POLICE HOLDS

A. Law Enforcement

Minnesota Statute 260.165 authorizes and specifies the circumstances under which a peace officer can take custody of a child. The specifications include:

"Subdivision 1. No child may be taken into immediate custody except:

"(c) By a peace officer

"(2) When a child is found in surroundings or conditions which endanger the child's health or welfare or which such peace officer reasonably believes will endanger such child's health or welfare."

The County Attorney's Office has said that such police hold is good for 48-hours, not including holidays and weekends.

1. Procedures

a. If a police officer decides to take a child into custody because of concern for his health or welfare he completes the "statement of Law Enforcement Officer for Child Custody" (see enclosure). The child should be taken to SPRH for a medical examination.

b. If the child does not require hospitalization, the police department will be asked to transport the child to an emergency foster home ("receiving home").

NOTE: A copy of the custody statement should be given to the foster parents caring for the child in order to clarify for them the child's custody status (temporary suspension of parental custody).

c. Following the issuance of a Police Hold, the Welfare Department should be contacted immediately to assess what further action and service needs to be instituted for the child and family.

B. Medical Facilities

A physician may request that a child be placed under a Police Hold if the physician determines that child is "in clear and present danger" or "in surroundings or conditions which endanger the child's health or welfare or which will endanger such child's health or welfare".

1. Examples of situations which would meet these criteria include:

a. An abused child whose parent or guardian wishes to remove the child from the hospital before the child is medically ready or before a protection plan is agreed upon.

- b. An abandoned child who needs placement in an emergency foster home ("receiving home").

NOTE: All abandoned children brought to the Emergency Room before placement in a receiving home should have Police Holds placed on them.

2. Procedures:

- a. For patients in St. Paul-Ramsey Hospital, the staff physician calls the hospital deputy and recommends that the form "Statement of Law Enforcement Officer for Child Custody" be signed by the deputy. NOTE: The physician needs to give the deputy a clear statement of the danger to the child's health or welfare.
- b. Physicians at other hospitals are to call the St. Paul Police Department or appropriate police department personnel for their locality. SEE: List on page 2.
- c. For children brought to St. Paul-Ramsey Hospital to be placed in an emergency foster home, call the St. Paul Police Department dispatcher or station commander (291-1234) or Gerald Kissling, Carolen Bailey, or Tom Opheim, asking that a squad be dispatched to implement a Police Hold and transport the child to the receiving home.
NOTE AGAIN: When a child is placed under custody and taken to a receiving home, a copy of the custody statement should be given to the foster parents.
- d. Following the issuance of a Police Hold, if requested by a physician, the physician or his/her designated social worker should immediately contact the Welfare Department so they can assess what further action and services are needed.

- C. Welfare Department

The Welfare social workers need recourse to a Police Hold in a very limited number of situations. They would benefit from access to a Police Hold for situations arising late in the day for which an emergency petition is obviously needed, but can not be filed until the next day.

1. Procedures

- a. The social worker will route approval for requesting a Police Hold through the Program Manager.
- b. The Welfare staff will move to file an emergency petition promptly after securing the Police Hold.



WILLIAM B. RANDALL, COUNTY ATTORNEY • RAMSEY COUNTY, STATE OF MINNESOTA
1100 Commerce Building, 4th & Wabasha, St. Paul, Minnesota 55101 • 612-298-4421

MEMORANDUM

TO: GRETCHEN WALLEN
COORDINATOR OF RAMSEY COUNTY CHILD ABUSE TEAM

FROM: KATHLEEN GEARIN, ASSISTANT RAMSEY COUNTY ATTORNEY

DATE: MAY 6, 1976

RE: POLICE HOLDS IN CHILD ABUSE CASES

In your phone call of May 6, 1976 you asked me to find out whether or not a police hold included weekends and holidays. The police hold, under Minnesota Statutes 260.165, Subd. 1 (c)(2), which states that a child may be taken into immediate custody by a police officer "when a child is found in surroundings or conditions which endanger the child's health or welfare or which such police officer reasonably believes will endanger such child's health or welfare", lasts for 48 hours. The timing of the 48-hour period is determined by Minnesota Statutes 260.171, Subd. 2, which states:

"No child may be held longer than 48 hours, excluding Saturdays, Sundays, or holidays, after the taking into custody unless a petition has been filed and the judge or referee determines that the child shall remain in custody."

Therefore, Minnesota law clearly states that the 48-hour period does not include Saturdays, Sundays, or holidays.

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WHAT DO WE MEAN BY INCEST?

With the increasing media reports on sexual abuse in the last few years, many people are aware that this is a complex and confusing area. Some are also aware that incest is only one of various forms of sexual abuse; other forms are abuse by adults or older adolescents outside of the home, (known to the victim or strangers), juvenile prostitution, and the child as the subject of pornographic materials. Incest cannot be clearly separated from other forms of sexual abuse in terms of causes or consequences.

All forms of abuse have potential multi-generational effects. Victims are at risk for becoming offenders or forming relationships with potential offenders. Offenders were often victims in the past. There are however, offenders who were not victimized, and many victims who resolve their hurt and live healthy lives. Offenders sometimes abuse one child in the family, but it is common for an offender to abuse several children in the family. Sometimes the offender is abusing both children in the family and children in the community.

Clearly, it is misleading to suggest that there is one typical pattern of abuse, or that one can stereotype victims or offenders. In a similar way, it is somewhat misleading to present incest as being clearly distinct or different from other forms of sexual abuse. However, incest will be addressed exclusively in this report.

Because there is confusion in the general public about what acts or situations can be termed incestuous, it is important first to present a definition. Suzanne Sgroi, M.D., a nationally recognized expert on sexual abuse, offers one that is useful:

The exposing of a child to sexual stimulation, inappropriate to the child's age, development, and role in the family.

The legal definition of incest in the state of Minnesota is stated in the Intrafamilial Sexual Abuse Law. Here intrafamilial sexual abuse is defined as sexual penetration or contact with a child under the age of 18. Sexual contact is defined as:

"a wide range of acts, if acts can reasonably be construed as being for the purpose of satisfying the actor's sexual or aggressive impulses."

The offender may be related to the child by blood, marriage or adoption; may be a parent, guardian, or someone responsible for the child's care; or may be any adult who resides in the same household as the victim either regularly or intermittently. Consent is not an issue.

626.55 PENALTY.

Any person who violates any provision of sections 626.52 to 626.55 is guilty of a gross misdemeanor.

History: 1935 c 165 s 4 (9950-25)

626.553 GUNSHOT WOUNDS; PEACE OFFICERS, DISCHARGING FIREARMS; INVESTIGATIONS, REPORTS.

Subdivision 1. Upon receipt of the report required in sections 626.52 and 626.53, the sheriff or chief of police receiving the report shall determine the general cause of the wound, and if he determines that the wound was caused by an action connected with the occupation or sport of hunting or shooting he shall immediately conduct a detailed investigation into the facts surrounding the incident or occurrence which occasioned the injury or death reported. The investigating officer shall report the findings of his investigation to the commissioner of natural resources on forms provided by the commissioner for this purpose.

Subd. 2. Whenever a peace officer discharges a firearm in the course of duty, other than for training purposes, notification shall be filed within thirty days of the incident by the officer's department head with the commissioner of public safety. The notification shall contain information concerning the reason for and circumstances surrounding discharge of the firearm. The commissioner of public safety shall file a report with the legislature by November 15 of each even numbered year containing summary information concerning use of firearms by peace officers.

History: 1957 c 407 s 1; 1969 c 1129 art 10 s 2; 1977 c 455 s 89

626.554 [Repealed, 1975 c 221 s 2]

626.555 [Repealed, 1980 c 542 s 2]

626.556 REPORTING OF MALTREATMENT OF MINORS.

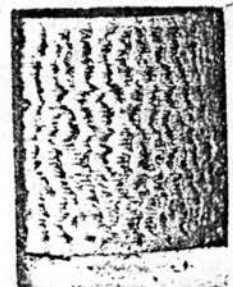
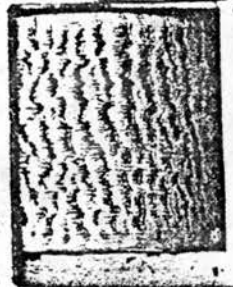
Subdivision 1. **Public policy.** The legislature hereby declares that the public policy of this state is to protect children whose health or welfare may be jeopardized through physical abuse, neglect or sexual abuse; to strengthen the family and make the home safe for children through improvement of parental and guardian capacity for responsible child care; and to provide a safe temporary or permanent home environment for physically or sexually abused children.

In addition, it is the policy of this state to require the reporting of suspected neglect, physical or sexual abuse of children; to provide for the voluntary reporting of abuse or neglect of children; to require the investigation of such reports; and to provide protective and counseling services in appropriate cases.

Subd. 2. **Definitions.** As used in this section, the following terms have the meanings given them unless the specific content indicates otherwise:

(a) "Sexual abuse" means the subjection by the child's parents, guardian, or person responsible for the child's care, to any act which constitutes a violation of sections 609.342, 609.343, 609.344, or 609.345. Sexual abuse also includes any act which involves a minor which constitutes a violation of sections 609.321 to 609.324 or 617.246.

(b) "Neglect" means failure by a parent, guardian or other person responsible for a child's care to supply a child with necessary food, clothing, shelter or medical care when reasonably able to do so or failure to protect a child from conditions or actions which imminently and seriously endanger the child's physical or mental health when reasonably able to do so. Nothing in this section shall be construed to mean that a child is neglected solely because the child's parent, guardian or other person responsible for his care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child.



(c) "Physical abuse" means:

(i) Any physical injury inflicted by a parent, guardian or other person responsible for the child's care on a child other than by accidental means; or

(ii) Any physical injury that cannot reasonably be explained by the history of injuries provided by a parent, guardian or other person responsible for the child's care.

(d) "Report" means any report received by the local welfare agency, police department or county sheriff pursuant to this section.

Subd. 3. Persons mandated to report. A professional or his delegate who is engaged in the practice of the healing arts, social services, hospital administration, psychological or psychiatric treatment, child care, education, or law enforcement who has knowledge of or reasonable cause to believe a child is being neglected or physically or sexually abused shall immediately report the information to the local welfare agency, police department or the county sheriff. The police department or the county sheriff, upon receiving a report, shall immediately notify the local welfare agency. The local welfare agency, upon receiving a report, shall immediately notify the local police department or the county sheriff. Nothing in this subdivision shall be construed to require more than one report from any institution, facility, school or agency.

Any person not required to report under the provisions of this subdivision may voluntarily report to the local welfare agency, police department or the county sheriff if he has knowledge of or reasonable cause to believe a child is being neglected or subjected to physical or sexual abuse. The police department or the county sheriff, upon receiving a report, shall immediately notify the local welfare agency.

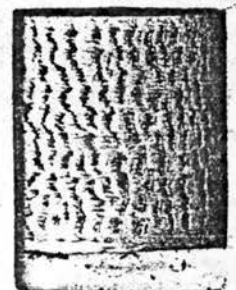
Subd. 4. Immunity from liability. Any person, including those voluntarily making reports and those required to make reports under subdivision 3, participating in good faith and exercising due care in the making of a report pursuant to this section shall have immunity from any liability, civil or criminal, that otherwise might result by reason of his action.

Subd. 5. Falsified reports. Any person who willfully or recklessly makes a false report under the provisions of this section shall be liable in a civil suit for any actual damages suffered by the person or persons so reported and for any punitive damages set by the court or jury.

Subd. 6. Failure to report. Any person required by this section to report suspected physical or sexual child abuse or neglect who willfully fails to do so shall be guilty of a misdemeanor.

Subd. 7. Report. An oral report shall be made immediately by telephone or otherwise. An oral report made by a person required under subdivision 3 to report shall be followed as soon as possible by a report in writing to the appropriate police department, the county sheriff or local welfare agency. Any report shall be of sufficient content to identify the child, the parent, guardian, or other person responsible for his care, the nature and extent of the child's injuries and the name and address of the reporter. Written reports received by a police department or the county sheriff shall be forwarded immediately to the local welfare agency. The police department or the county sheriff may keep copies of reports received by them. Copies of written reports received by a local welfare department shall be forwarded immediately to the local police department or the county sheriff.

Subd. 8. Evidence not privileged. No evidence regarding the child's injuries 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.



Legislative Review

The 1984 Legislature passed several pieces of legislation relating to the area of sexual assault. The following is a summary of those laws.

Chapter 588: Criminal Sexual Conduct. Authors: Senator Eric Petty, Representative Connie Levi. This legislation clarifies several issues related to sexual assault. The law:

- amends the definition of "sexual contact" to cover the situation in which a person induces a child under the age of 13 or a mentally defective person to sexually touch the perpetrator without coercion or use of a position of authority;
- redefines coercion to substitute "words or circumstances which cause the complainant to reasonably fear" bodily harm for the word "threat";
- ✓ • extends criminal sexual conduct in the third and fourth degree to cover 16 and 17 year olds abused by a person in a position of authority such as teaches, ministers, scout leaders, etc. This section applies to crimes committed after August 1984;
- adds intrafamilial sexual abuse and incest as offenses where the victim's prior sexual conduct is inadmissible as evidence except under very limited circumstances;
- eliminates language in the incest statute that precludes charging a first cousin by blood;
- simplifies the existing exception to the Child Competency Statute by allowing children under the age of 10 to describe or relate in language appropriate for a child of that age "any act of sexual contact or penetration performed on or with a child by another." This provision is no longer limited to criminal proceedings, and thus, a child victim would be allowed to testify in juvenile or family court proceedings.
- ✓ • allows that an out-of-court statement made by a child under age 10 describing sexual abuse be admissible into evidence if certain criteria are met. The criteria include notifying the adverse party in advance, having a pre-trial hearing to determine whether the hearsay is reliable, and a further requirement that either the child testifies in addition to the hearsay or if the child is unavailable (meaning general incompetency) that there is corroborative evidence of the crime.
- clarifies that the maltreatment of minors reporting act did intend to abrogate medical privilege in child abuse cases by stating that "no evidence regarding the child's injuries shall be excluded in any proceeding arising out of the alleged neglect or physical or sexual abuse on the grounds of either physician-patient or husband-wife privilege."
- ✓ • eliminates privilege for psychologists when it comes to testifying in any proceeding arising out of neglect or physical or sexual abuse of children similar to the provision currently in effect for physicians.
- clarifies that a mandatory minimum three year prison sentence upon conviction of a second sex offense applies to attempts as well as completed sex offenses.

Effective date: varies.

Chapter 573: Domestic Child Abuse Act. Authors: Representative Janet Clark, Senator Eric Petty.

- ✓ This legislation authorizes the juvenile court to issue an order for protection if there are reasonable grounds to believe that a child is in immediate or present danger of domestic child abuse committed by a family or household member. Family or household member means spouse, former spouses, parents and children, persons related by blood, persons who are residing together or who have resided together in the past or who have a child in common. It
- ✓ permits exclusion of the abusing party from the household and establishes procedures and standards for such cases including orders for support and treatment and arrest for violations. The law also:
 - prohibits public inspection of certain court records relating to the identity of criminal sexual conduct victims; and
 - expands the definition of sexual abuse in the maltreatment of minors reporting act to include subjection by a person in a position of authority.

Effective date: August 1, 1984 (and applies to acts of domestic child abuse committed on or after that date).

✓ **Chapter 496: Statute of Limitations.** Authors: Representative Ann Wynia, Senator Eric Petty.

This legislation extends the statute of limitations for criminal sexual conduct offenses from 3 to 7 years if the victim was under the age of 18 years.

Effective: August 1, 1984.

✓ **Chapter 631: Task Force on Sexual Exploitation by Therapists and Counselors.** Authors: Senator Donna Peterson, Representative Lee Greensfield.

This legislation mandated the Commissioner of Corrections to appoint an 18-member task force, broadly representative of the state, to study the problem of sexual exploitation by counselors and therapists. The task force shall:

- develop a statewide plan to educate clients, potential clients, counselors and therapists, their employers and training institutions, and the general public on the issues surrounding sexual exploitation by counselors and therapists;
- study the need for regulation of all professionals engaging in therapy and counseling and the need to improve rules and procedures of regulatory agencies in addressing complaints involving sexual exploitation by counselors and therapists;
- explore changes in the civil and criminal codes as they relate to sexual exploitation; and
- develop recommendations to the legislature by February 1, 1985.

Chapter 556: Evidence of Past Sexual Conduct. Authors: Senator Donna Peterson, Representative Lee Greenfield.

This legislation bars evidence of a patient's previous sexual conduct from being considered by licensing boards or the hearing examiner in proceedings for license suspension, revocation, or other disciplinary action for unprofessional conduct involving sexual contact with a patient or former patient.

Effective date: April 26, 1984 for proceedings commenced on or after that date.

Chapter 577: Reporting of Maltreatment of Minors. Authors: Representative Dominic Elioff, Senator Eric Petty.

This legislation clarifies the role of law enforcement and local welfare agencies by adding assessment of the case to their

Conference on Marital Rape — Sixty professionals attended the marital rape conference in Minneapolis on May 25. Participants included sexual assault center and battered women's program staff, attorneys, counselors and educators from around the state. A main goal of the conference was to begin building community networks to address the problem. Working groups met to discuss ethical considerations, legal and legislative issues, treatment approaches and research needed in the field. One outcome of the conference has been a support group for marital rape victims, co-sponsored by the Rape and Sexual Assault Center and the Domestic Abuse Project. For more information about this support group, call (612) 825-2400.

Project Abuse Educates Throughout the State — The response to WCCO's Project Abuse, a series of television programs focusing on child sexual abuse, was overwhelming. Seven hundred and fifty public and private schools participated in the project. WCCO TV estimates that nearly 425,000 school children watched the Illusion Theater's "Touch" or "No Easy Answers" programs. Both students and teachers reacted positively to the presentations. More than 500 churches also participated in Project Abuse by watching one of the TV presentations and organizing discussion groups.

The three prime time programs during Project Abuse, "The Betrayal," "For Adults Only," and the Town Meeting, were viewed by three-fourths of a million people.

Project Abuse also operated a 24-hour hotline for the two-week period. Nearly 1,500 people called the hotline, which was staffed by volunteers from the metro area sexual assault centers.

Preliminary information from throughout Minnesota indicates a substantial increase in sexual abuse cases reported as a result of Project Abuse. Thank you to WCCO-TV for presenting this innovative project!

Minnesota Migrant Council Entering Its Third Year — The MMC is entering its third year of providing services to sexual assault victims. The program maintains offices in six communities: Crookston, Moorhead, St. Cloud, Willmar, St. James, Blooming Prairie, and St. Paul. Each office has part-time staff who provide assistance to victims of battering and sexual assault in the Mexican-American/Chicano communities and the summer migrant communities all over the state. The program also sponsors cultural sensitivity for those working with these communities, maintains a resource and referral library on abuse issues, and has developed culturally appropriate material and materials in Spanish. MMC staff and volunteers attend advocate training sponsored by other sexual assault centers in addition to initial training provided by MMC.

Recent Research

Women Most Likely Victims of Family Violence from Associated Press

In a massive survey covering crimes from 1973 through 1981, the Justice Department reports:

- 4,108,000 instances of violence where offender was spouse, ex-spouse or other relative.
- 57% of all violent crimes committed between relatives were by spouses or ex-spouses.
- 91% of these were attacks on women by their husbands or ex-husbands.
- Relatives commit 7.2% of all violent crimes; 32.7% are by acquaintances; 58.2% by strangers.

This National Crime Survey is the best data available, still . . . one-third of all crimes are **not** reported.

Acquaintance Rape

from a summary article in *Sexuality Today*, 3/26/84

A study by Andrea Parrot, Ph.D., Cornell University, and Robin Lynk, B.S., of the University of Pennsylvania, stresses the importance of doing acquaintance rape research on college campuses. College populations appear to be at risk due to demographics, stereotypes, vulnerability, and social interactions. Frequently acquaintance rape will not be labeled as rape. According to the researchers, there are four steps involving coercion/force and violence associated with acquaintance rape: 1) violation of a woman's personal space; 2) woman does not appear sensitive to this intrusion, thus she does not sense potential danger and may be viewed as an "easy target"; 3) ending up in a secluded, vulnerable place; and 4) rape occurs.

The four most common types of strategies used by men, identified by the Cornell study, to attain victim compliance for undesired sexual behaviors are: lying, threat to end the relationship, force, and pressure by argument. Men also rated intercourse against a woman's wishes as significantly more justifiable when the woman initiated the date, the couple went to his apartment, and when the man paid for expenses.

Researchers found that young women seem to be the most vulnerable, especially if they have been victims of sexual assault in their teen years. Moreover, a current sexual relationship between the assailant and the victim seemed to be a significant factor influencing the likelihood of such an occurrence.

Preventive methods suggested by the researchers include: 1) an understanding of relationships; 2) awareness of self-perpetuating patterns of sexual assault; 3) providing alternatives to activities which require privacy; and 4) education on how to get out of a dangerous situation. For more information about the study, contact Andrea Parrot, Department of Human Service Studies, N 132 MVR, Cornell University, Ithaca, New York 14853, (607) 256-7770.

duties. The definition of assessment includes not only gathering the facts (investigation), but also assessing the risk to the child and formulating an ongoing plan to address the situation. The law extends the same immunity from civil or criminal liability previously given only to reporters to persons who participate in assessment. The juvenile court may order schools to comply with requests for interviews on school property and school officials shall not notify the parent that a request to interview a child has been made until after the investigation or assessment has been concluded. This law requires people (including employers) reporting abuse or neglect in licensed facilities to report directly to the licensing agency.

To obtain copies of this legislation, contact: MN State Documents Center, 117 University Avenue, St. Paul, MN 55155, (612) 297-3000. (\$2.93 — prepayment required.)

Legal Developments

State of Minnesota vs. William Odenbrett, III — MN Supreme Court, 5/25/84 CX83148, CI82149.

The Minnesota Supreme Court ruled in May of 1984 that the Child Abuse Reporting Act authorizes the staff of a private health care center to disclose the identity of an individual who admits to sexually abusing a child, and that disclosure is not a violation of the physician-patient medical privilege. The court said that information sheltered by the statutory medical privilege loses its privileged status to the extent that its disclosure is authorized by the Child Abuse Reporting Act. The court did not address the issue of whether there is a right of privacy in communications made in psychotherapy.

State vs. Danielski — MN Court of Appeals 4/24/84 C9-83-1856.

The Minnesota Court of Appeals in April of 1984 held that where the same parental authority that is used to accomplish criminal sexual acts against a child is used to keep the child silent, the statute of limitations does not begin to run until the child is no longer subject to that authority. In this case, a 17 year old told about the sexual abuse as soon as she moved from the family home, but it was more than three years since the last sexual abuse, and the case is now being prosecuted. This case is currently on review by the Minnesota Supreme Court.

State of Florida vs. William Rider — 5/7/84. 3d DCA Case No. 83-821.

In April, the Florida Third District Court of Appeals reversed an earlier court's ruling that the defendant could not be prosecuted for raping his wife. Since Florida has no law that specifically addresses rape of a spouse, the defendant claimed that "common law" exempted him from prosecution.

Judge Jorgenson, writing for the Court of Appeals, stated that "we cannot and will not adopt a common law presumption of consent to an act of violence." This is the first case in which a Court of Appeals has rejected the "common law" argument when the rape occurred while the husband and wife were still living together. The defendant intends to seek review in both the Florida Supreme Court and the United States Supreme Court. For more information about this case, contact Calvin L. Fox, Assistant Attorney General, Dept. of Legal Affairs, Office of the Attorney General, The Capitol, Tallahassee, Florida 32304.

Staten Island, New York

Family Court Judge Daniel Leddy has found that a mother is responsible for a child's emotional state and environment. While previous cases have focused on parental responsibility for child abuse or neglect, they have not addressed situations in which a child's emotional state has been damaged or ignored. Though allegations of sexual abuse were brought, the court determined that there was not enough evidence to prove these charges. However, the judge's ruling stated that "parents are responsible in the first instance for the welfare of their children. They are and must be held to be the first line of defense against injury and impairment." This ruling may redefine parental responsibility in sexual abuse cases. (Summary from *Sexuality Today*, April 30, 1984.)

Media Mix

PUBLICATIONS

Minimizing Abuses of the Imbalance of Power: A Capsule-Educator's Role in Preventing Harm to Children and Youth, MN Department of Education, 1984. A manual on child abuse, neglect and sexual abuse which includes reporting procedures and resources. For more information, contact Department of Education, (612) 296-6104.

Sexual Abuse Prevention: A Study for Teenagers, Marie M. Fortune, 1984. A coursebook for leaders of programs designed to teach adolescents about sexual abuse, specifically geared toward 12-18 year olds. \$3.95. Order from United Church Press, 132 West 31st, New York, NY 10001.

Marital Rape Exemption Packet, National Center on Women and Family Law, 1982. This packet, updated in Nov. 1983, includes information on state marital rape exemption statutes; citations that bar prosecution; myths and facts; specific cases and resources. \$6. Order from the National Center on Women and Family Law, 799 Broadway, Rm. 402, New York, NY 10003.

Preventing Sexual Abuse: Activities and Strategies For Those Working With Children and Adolescents, Carol A. Plumer, 1984. A book designed to help professionals teach children in grades K-6 and 7-12 to prevent sexual abuse. \$19.95 (plus \$1.75 for shipping and handling). Order from Learning Publications, Inc., c/o Book Marketing Services, P.O. Box 238, Dept. S-10, Oshtemo, MI 49077.

Rural Domestic Violence Intervention: A How-To-Guide for Crisis Intervention Services, 1983. Manual for service providers in rural communities who want to develop a crisis intervention project to serve victims of battering and sexual abuse. Free while supply lasts. Order from Crisis Intervention Service, 124 North Federal Ave., Mason City, IA 50401.

FILM

TOUCH, the highly acclaimed play by Illusion Theater Company, is now available as a film. Lindsay Wagner hosts this comprehensive child sexual abuse prevention program. Contact MTI Teleprograms, Inc., 108 Wilmot Road, Deerfield, IL 60015; Toll free: 800-323-5343.

CALENDAR

JULY

- 15-20 **Chemical Dependency and Family Intimacy**, Summer Institute, Program in Human Sexuality, U of MN at Wilder Forest Marine on St. Croix. Call (612) 376-7520 for more information.
- 19 **Men's Issues in Treatment and Beyond**, 1-4 p.m. Workshop sponsored by Perspectives. Call (612) 474-5443 for more information.
- 21-29 **Process Therapy**, Nine-Day Intensive Seminar with Nancy Van-Arsdall Jones and Alice Young at Lake Burntside, Ely, MN. Call (317) 253-5160 for more information.
- 26 **Creating Staff Ownership of Volunteer Programs**. Workshop sponsored by United Way, 404 South 8th Street, Minneapolis. Call (612) 340-7532 for more information.
- 31 **Sexuality and Aging: The Myth and the Reality**. Program sponsored by Planned Parenthood of MN, St. Paul. Call (612) 698-2401 for more information

AUGUST

- 3 **Juggling Roles in Volunteer Management**. Workshop sponsored by United Way, 404 South 8th Street, Mpls. Call (612) 340-7532 for more information.
- 5-17 **MN Indian Institute on Alcohol and Drug Studies** Third Annual Session. Univ. of MN, Mpls. campus. Call Moira Keane, (612) 373-3685, for more information.
- 6-10 **Summer Social Work Institute**, U of MN, Duluth, Session I. Courses include "Assessment of Family Relationships," "Mediation and Reconciliation in the Justice System," and "Lessons From Social Reformers in the Progressive Era." Call (218) 726-6142 for more information.
- 13-14 **Sexuality and Mentally Handicapped People**. Workshop sponsored by Planned Parenthood of MN, St. Paul. Call (612) 698-2401 for more information.
- 13-17 **Summer Social Work Institute**, U of MN, Duluth, Session II. Courses include "Strategies for Serving American Indian Families," "Facilitating Self-Help Networks," and "Intervention With Violent Spouses." Call (218) 726-6142 for more information.
- 15-18 **National Coalition Against Sexual Assault Sixth Annual Conference, Albuquerque, New Mexico**. This year's theme is "Spiralling Outward: Healing, Power

and Change." For more information: Albuquerque Rape Crisis Center, P.O. Box 27243, Albuquerque, New Mexico 87125; (505) 247-0707.

- 21 **Sexuality and Aging: The Myth and the Reality**. Workshop sponsored by Planned Parenthood of MN, St. Paul. Call (612) 698-2401 for more information.
- 22 **Food Issues for Clients**, workshop conducted by Anne McLaughlin from Sagaris, Inc., 2619 Garfield Ave. So., Mpls. Call (612) 872-8866.
- 23 **The Male Abuser — The Cycle of Violence**. Workshop sponsored by Perspectives. Call (612) 474-5443 for more information.
- 25 **Twin Cities Women for Take Back the Night**, sponsoring a day and night of workshops, rally and march in Loring Park, Mpls. For more information call (612) 824-5059.
- 29 **Co-Dependency**. Workshop conducted by Elizabeth Bohun, Sagaris, Inc., 2619 Garfield Ave. So., Mpls. Call (612) 872-8866 for more information.

SEPTEMBER

- 6 **Adolescents, Sexuality and Drugs**, 1-4 p.m. Workshop sponsored by Perspectives. Call (612) 474-5443.
- 13 **Sexual Addiction**, 1-4 p.m. workshop sponsored by Perspectives. Call (612) 474-5443.
- 20 **Dynamics of Family Sexual Abuse**, 1-4 p.m. workshop sponsored by Perspectives. Call (612) 474-5443.

Would You Believe . . .

A County Judge in Milwaukee, Wisconsin, told a rape victim to stop crying on the witness stand or he would dismiss the charges against the man accused of assaulting her. "I think the female response to crime, to any tough situation, is inappropriate in a courtroom," Circuit Judge Ralph G. Gorenstein stated. In response, Cindy Van Vreede, Milwaukee coordinator of the National Organization for Women, called for his removal. "He has no business being in the courts. He should be taken off the criminal courts," she said. (Summary from *Criminal Victims Digest*, May 1984.)

THE EXCHANGE

Minnesota Program for Victims
of Sexual Assault
430 Metro Square Building
St. Paul, MN 55101

Executive Editors: Peggy Specktor
Dottie Bellinger

Editor: Teresa Puff

Phone: (612) 296-7084

Carolyn Bailey
St. Paul Police Dept.
101 East 10th Street
St. Paul, MN 55101

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ADDRESS CORRECTION REQUESTED

Effective Aug. 1, 1983

MEMORANDUM

Re: Attached Changes in the Child Abuse Reporting Act,
N.S. 626.556

The changes were included in a bill that was passed at the end of the legislative session. I was unaware of its passage until yesterday. I made the mistake of looking for changes in indexes under "Welfare", "Children", "Abuse", etc. The beginning of this act deals with disability income loss benefits, unsafe operation of motorcycles, and failure to stop at the scene of certain accidents. I acknowledge my mistake in not looking under those titles for Child Abuse Act revisions.

The significant parts of this Act go into effect on August 1. In my opinion, the changes have the following effect:

1. They expand the category of what must be reported. Previously, physical abuse was defined so that it only meant abuse inflicted by a parent, guardian, or other person responsible for the child's care. The same with sexual abuse. There was no definition of a person responsible for the child's care. The new definition of that term makes it clear that those mandated to report must report abuse by teachers, baby sitters, coaches, etc. (See Subd. 2(b)). It also expands the definition of "facility". (Subd. 2(f)). This means that the Human Services Department Intake Unit will be receiving more abuse reports.
2. What to do about these new reports? The changes appear to divide the reports into 3 categories:
 - Subd. 10 - This Subdivision covers the abuse within the family. The duties of the Welfare Department remain the same. That is, to investigate and offer protective services to the child and his family.
 - Subd. 10(a) - The duties of the Human Services Department when the report involves abuse by a person responsible for the child's care but outside of the family and not in a facility, are to notify law enforcement agencies and offer appropriate social services for the

"purpose of safeguarding and enhancing the welfare of the abused or neglected minor". I think that Child Protection Intake offers these services to families at present. If not, they will have to set up some method of doing that. This category includes the schoolteacher, coach, baby-sitter-type of reports.

Subd. 10(b) - Neglect or abuse in a facility is covered in this Subdivision. The amendments make it the responsibility of the Commissioner of Public Welfare to immediately investigate allegations of neglect, physical abuse, or sexual abuse in a facility. It requires the Commissioner to arrange for transmittal of local agency reports. It does allow the Commissioner to delegate to a local welfare agency the duty to investigate reports. If the Commissioner of Public Welfare decides to delegate this duty (and I suspect that he will), this will expand the number of abuse investigations the Human Services Department must conduct.

3. Subd. 10(b) through (f) deal with access by Human Services Departments and the Commissioner of Public Welfare in order to investigate allegations of abuse. During the legislative session, there was a lot of debate at committee level regarding access to children within the school. I suggest that the Human Services Department develop a simple form for the Child Abuse Unit social workers to present to schools in order to fulfill the written requirements of (c). I have already been asked whether the worker could have a police officer go along with him to this interview. In my opinion, that is within the discretion of the social worker. If the schools give a narrow interpretation of this Act, and prohibit the presence of a police officer, we will have to deal with that issue in another way. I don't know what effect these provisions will have in actual practice. They may help the workers get access to children in schools that have not been cooperative in the past. They well may hinder workers in dealing with schools that have developed a good working relationship in the area of abuse.

KG:jh

1 to have occurred in a municipality or other subdivision of
2 government whose population according to the most recent federal
3 census is less than 2500 and whose governing body, or the town
4 board in the case of a town, has accepted this paragraph by
5 majority vote, and if the defendant is cited or arrested by a
6 member of the staff of the sheriff of Hennepin county or by a
7 member of the state patrol.

8 Paragraph (b) shall not apply to a municipality or other
9 subdivision of government whose population according to the most
10 recent federal decennial census is 2500 or more, regardless of
11 whether or not it has previously accepted the paragraph.

12 Sec. 13. Minnesota Statutes 1982, section 626.556,
13 subdivision 1, is amended to read:

14 Subdivision 1. [PUBLIC POLICY.] The legislature hereby
15 declares that the public policy of this state is to protect
16 children whose health or welfare may be jeopardized through
17 physical abuse, neglect or sexual abuse; to strengthen the
18 family and make the home, school, and community safe for
19 children through improvement of parental and guardian capacity
20 for promoting responsible child care in all settings; and to
21 provide, when necessary, a safe temporary or permanent home
22 environment for physically or sexually abused children.

effective Aug 1

23 In addition, it is the policy of this state to require the
24 reporting of suspected neglect, physical or sexual abuse of
25 children in the home, school, and community settings; to provide
26 for the voluntary reporting of abuse or neglect of children; to
27 require the investigation of such the reports; and to provide
28 protective and counseling services in appropriate cases.

29 Sec. 14. Minnesota Statutes 1982, section 626.556,
30 subdivision 2, is amended to read:

31 Subd. 2. [DEFINITIONS.] As used in this section, the
32 following terms have the meanings given them unless the specific
33 content indicates otherwise:

34 (a) "Sexual abuse" means the subjection by the child's
35 parent, guardian, or a person responsible for the child's care,
36 to any act which constitutes a violation of sections 609.342,

1 609.343, 609.344, or 609.345, or sections 609.364 to 609.3644.
 2 Sexual abuse also includes any act which involves a minor which
 3 constitutes a violation of sections 609.321 to 609.324 or
 4 617.246.

5 (b) "Person responsible for the child's care" means a
 6 parent, guardian, teacher, school administrator, or other lawful
 7 custodian of a child having either full-time or short-term care
 8 responsibilities including, but not limited to, day care, baby
 9 sitting, counseling, teaching, and coaching.

10 ~~(b)~~ (c) "Neglect" means failure by a ~~parent, guardian or~~
 11 ~~other~~ person responsible for a child's care to supply a child
 12 with necessary food, clothing, shelter or medical care when
 13 reasonably able to do so or failure to protect a child from
 14 conditions or actions which imminently and seriously endanger
 15 the child's physical or mental health when reasonably able to do
 16 so. Nothing in this section shall be construed to (i) mean that
 17 a child is neglected solely because the child's parent, guardian
 18 or other person responsible for his care in good faith selects
 19 and depends upon spiritual means or prayer for treatment or care
 20 of disease or remedial care of the child, or (ii) impose upon
 21 persons, not otherwise legally responsible for providing a child
 22 with necessary food, clothing, shelter or medical care, a duty
 23 to provide that care.

24 ~~(e)~~ (d) "Physical abuse" means:

25 (i) Any physical injury inflicted by a ~~parent, guardian or~~
 26 ~~other~~ person responsible for the child's care on a child other
 27 than by accidental means; or

28 (ii) Any physical injury that cannot reasonably be
 29 explained by the child's history of injuries ~~provided by a~~
 30 ~~parent, guardian or other person responsible for the child's~~
 31 ~~care.~~

32 ~~(d)~~ (e) "Report" means any report received by the local
 33 welfare agency, police department or county sheriff pursuant to
 34 this section.

35 ~~(e)~~ (f) "Facility" means a day care facility or a,
 36 residential facility as defined in ~~sections 245-282,~~ agency,

1 hospital, sanatorium, or other facility or institution required
 2 to be licensed pursuant to sections 144.50 to 144.58, 241.021,
 3 or 245.781 to 245.812.

4 ~~(f)~~ (g) "Operator" means an operator or agency as defined
 5 in section 245.782.

6 ~~(f)~~ (h) "Operator" means an operator or agency as defined
 7 in section 245.782.

8 (i) "Commissioner" means the commissioner of public welfare.
 9 Sec. 15. Minnesota Statutes 1982, section 626.556,
 10 subdivision 4, is amended to read:

11 Subd. 4. [IMMUNITY FROM LIABILITY.] Any person, including
 12 those voluntarily making reports and those required to make
 13 reports under subdivision 3, participating in good faith and
 14 exercising due care in the making of a report pursuant to this
 15 section shall have has immunity from any liability, civil or
 16 criminal, that otherwise might result by reason of his action.

17 Any public or private school, facility as defined in
 18 subdivision 2, or the employee of any public or private school
 19 or facility who permits access by a local welfare agency and
 20 assists in good faith in an investigation pursuant to
 21 subdivision 10 has immunity from any liability, civil or
 22 criminal, that otherwise might result by reason of that action.

23 This subdivision does not provide immunity to any person
 24 for failure to make a required report or for committing neglect,
 25 physical abuse, or sexual abuse of a child.

26 Sec. 16. Minnesota Statutes 1982, section 626.556,
 27 subdivision 7, is amended to read:

28 Subd. 7. [REPORT.] An oral report shall be made
 29 immediately by telephone or otherwise. An oral report made by a
 30 person required under subdivision 3 to report shall be followed
 31 as soon as possible by a report in writing to the appropriate
 32 police department, the county sheriff or local welfare agency.
 33 Any report shall be of sufficient content to identify the child,
 34 the parent, guardian, or other any person believed to be
 35 responsible for his care the abuse or neglect of the child if
 36 the person is known, the nature and extent of the child's

1 ~~alleges~~ abuse or neglect and the name and address of the
 2 reporter. Written reports received by a police department or
 3 the county sheriff shall be forwarded immediately to the local
 4 welfare agency. The police department or the county sheriff may
 5 keep copies of reports received by them. Copies of written
 6 reports received by a local welfare department shall be
 7 forwarded immediately to the local police department or the
 8 county sheriff.

9 A written copy of a report maintained by personnel of
 10 agencies, other than welfare or law enforcement agencies, which
 11 are subject to chapter 13 shall be confidential. An individual
 12 subject of the report may obtain access to the original report
 13 as provided by subdivision 11.

14 Sec. 17. Minnesota Statutes 1982, section 626.556,
 15 subdivision 10, is amended to read:

16 Subd. 10. [DUTIES OF LOCAL WELFARE AGENCY UPON RECEIPT OF
 17 A REPORT.] (a) If the report alleges neglect, physical abuse, or
 18 sexual abuse by a parent, guardian, or individual functioning
 19 within the family unit as a person responsible for the child's
 20 care, the local welfare agency shall immediately investigate and
 21 offer protective social services for purposes of preventing
 22 further abuses, safeguarding and enhancing the welfare of the
 23 abused or neglected minor, and preserving family life whenever
 24 possible. When necessary the local welfare agency shall seek
 25 authority to remove the child from the custody of his parent,
 26 guardian or adult with whom he is living. In performing any of
 27 these duties, the local welfare agency shall maintain
 28 appropriate records.

29 (b) Authority of the local welfare agency responsible for
 30 investigating the child abuse report includes, but is not
 31 limited to, authority to interview, without parental consent,
 32 the alleged victim and any other minors who currently reside
 33 with or who have resided with the alleged perpetrator. The
 34 interview may take place at school or any facility or other
 35 place where the alleged victim or other minors might be found
 36 and may take place outside the presence of the perpetrator or

1 parent, legal custodian, or guardian. Except as provided in
2 this clause, the parent, legal custodian, or guardian shall be
3 notified, no later than the conclusion of the investigation,
4 that this interview has occurred. Notwithstanding rule 49.02 of
5 the Minnesota Rules of Procedure for Juvenile Courts, the
6 juvenile court may, after hearing on an ex parte motion by the
7 local welfare agency, order that, where reasonable cause exists,
8 notification of this interview be withheld from the parent,
9 legal custodian, or guardian.

10 (c) When the local welfare agency determines that an
11 interview should take place on school property, written
12 notification must be received by school officials prior to the
13 interview. The notification shall include the name of the child
14 to be interviewed, the purpose of the interview, and a reference
15 to the statutory authority to conduct an interview on school
16 property. The notification shall be signed by the chairman of
17 the county welfare board or his designee. The time, place, and
18 manner of the interview on school premises shall be within the
19 discretion of school officials. The conditions as to time,
20 place, and manner of the interview set by the school officials
21 shall be reasonable and the interview shall be conducted not
22 more than 24 hours after the receipt of the notification unless
23 another time is deemed necessary by agreement between the school
24 officials and the local welfare agency. School officials shall
25 not disclose to the parent, legal custodian, guardian, or
26 perpetrator that a request to interview the child has been made
27 until after the abuse investigation has been concluded. Every
28 effort shall be made to reduce the disruption of the educational
29 program of the child, other students, or school staff when an
30 interview is conducted on school premises.

31 (d) Where the perpetrator or a person responsible for the
32 care of the alleged victim or other minor prevents access to the
33 victim or other minor by the local welfare agency, the juvenile
34 court may order the parents, legal custodian, or guardian to
35 produce the alleged victim or other minor for questioning by the
36 local welfare agency outside the presence of the perpetrator or

1 any person responsible for the child's care at reasonable places
 2 and times as specified by court order.

3 (e) Before making an order under paragraph (d), the court
 4 shall issue an order to show cause, either upon its own motion
 5 or upon a verified petition, specifying the basis for the
 6 requested interviews and fixing the time and place of the
 7 hearing. The order to show cause shall be served personally and
 8 shall be heard in the same manner as provided in other cases in
 9 the juvenile court. The court shall consider the need for
 10 appointment of a guardian ad litem to protect the best interests
 11 of the child. If a guardian ad litem is appointed, he shall be
 12 present at the hearing on the order to show cause.

13 (f) The commissioner and the local welfare agencies
 14 responsible for investigating reports have the right to enter
 15 facilities as defined in subdivision 2 and to inspect and copy
 16 the facility's records as part of the investigation.
 17 Notwithstanding the provisions of chapter 13, they also have the
 18 right to inform the facility under investigation that they are
 19 conducting an investigation, to disclose to the facility the
 20 names of the individuals under investigation for abusing or
 21 neglecting a child, and to provide the facility with a copy of
 22 the report and the investigative findings.

23 Sec. 18. Minnesota Statutes 1982, section 626.556, is
 24 amended by adding a subdivision to read:

25 Subd. 10a. [ABUSE OUTSIDE THE FAMILY UNIT.] If the report
 26 alleges neglect, physical abuse, or sexual abuse by a person
 27 responsible for the child's care functioning outside the family
 28 unit in a setting other than a facility as defined in
 29 subdivision 2, the local welfare agency shall immediately notify
 30 the appropriate law enforcement agency and shall offer
 31 appropriate social services for the purpose of safeguarding and
 32 enhancing the welfare of the abused or neglected minor.

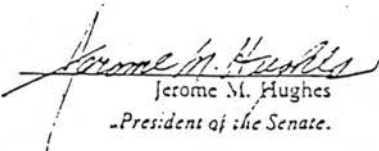
33 Sec. 19. Minnesota Statutes 1982, section 626.556, is
 34 amended by adding a subdivision to read:


35 Subd. 10b. [DUTIES OF COMMISSIONER; NEGLECT OR ABUSE IN A
 36 FACILITY.] If the report alleges that a child in the care of a

1 facility as defined in subdivision 2 is neglected, physically
2 abused, or sexually abused by an individual in that facility,
3 the commissioner shall immediately investigate. The
4 commissioner shall arrange for the transmittal to him of reports
5 received by local agencies and may delegate to a local welfare
6 agency the duty to investigate reports. In conducting an
7 investigation under this section, the commissioner has the
8 powers and duties specified for local welfare agencies under
9 this section.


10 Sec. 20. [EFFECTIVE DATE.]

11 Section 1 is effective upon final enactment. Sections 9 to
12 12 are effective January 1, 1984. Sections 2 to 8 are effective
13 August 1, 1983, and apply to violations committed on or after
14 that date. The remaining sections of this act are effective
15 August 1, 1983.

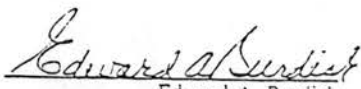

Jerome M. Hughes
President of the Senate.


Harry A. Sieben, Jr.
Speaker of the House of Representatives.

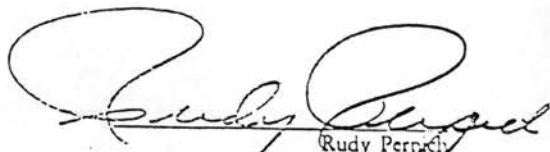
Passed the Senate this 23rd day of May in the year of Our Lord one thousand
nine hundred and eighty-three.


Patrick E. Flahaven
Secretary of the Senate.

Passed the House of Representatives this 23rd day of May in the year of Our Lord
one thousand nine hundred and eighty-three.


Edward A. Burdick
Chief Clerk, House of Representatives.

Approved
6/14/83


Rudy Perpich
Governor of the State of Minnesota.

Filed 6/15/83


Joan Anderson Growe
Secretary of State.

records pertaining to delinquent adjudications until the person reaches the age of 23 years and shall release the records on an individual to a requesting adult court for purposes of sentencing. The juvenile court shall provide, upon the request of any other juvenile court, copies of the records concerning adjudications involving the particular child. The court shall also keep an index in which files pertaining to juvenile matters shall be indexed under the name of the juvenile. After the name of each file shall be shown the file number and, if ordered by the court, the book and page of the register in which the documents pertaining to such file are listed. The court shall also keep a register properly indexed in which shall be listed under the name of the juvenile all documents filed pertaining thereto and in the order filed. The list shall show the name of the document and the date of filing thereof. The juvenile court legal records shall be deposited in files and shall include the petition, summons, notice, findings, orders, decrees, judgments, and motions and such other matters as the court deems necessary and proper. The legal records maintained in this file shall be open at all reasonable times to the inspection of any minor to whom the records relate, and to his parent and guardian.

Subd. 2. Except as provided in this subdivision and in subdivision 1, none of the records of the juvenile court, including legal records, shall be open to public inspection or their contents disclosed except by order of the court. The records of juvenile probation officers and county home schools are records of the court for the purposes of this subdivision. This subdivision does not apply to proceedings under sections 260.255 and 260.261. The court shall maintain the confidentiality of adoption files and records in accordance with the provisions of laws relating to adoptions. In juvenile court proceedings any report or social history furnished to the court shall be open to inspection by the attorneys of record a reasonable time before it is used in connection with any proceeding before the court.

Subd. 3. Peace officers' records of children shall be kept separate from records of persons 18 years of age or older and shall not be open to public inspection or their contents disclosed to the public except by order of the juvenile court. No photographs of a child taken into custody for any purpose may be taken without the consent of the juvenile court. Any person violating any of the provisions of this subdivision shall be guilty of a misdemeanor.

History: 1959 c 685 s 23; 1961 c 576 s 11; 1963 c 516 s 7; 1967 c 75 s 1; 1980 c 580 s 16

DETENTION

260.165 TAKING CHILD INTO CUSTODY.

Subdivision 1. No child may be taken into immediate custody except:

(a) With an order issued by the court in accordance with the provisions of section 260.135, subdivision 5, or by a warrant issued in accordance with the provisions of section 260.145; or

(b) In accordance with the laws relating to arrests; or

(c) By a peace officer

(1) when a child has run away from his parent, guardian, or custodian, or when the peace officer reasonably believes such child has run away from his parent, guardian, or custodian; or

(2) when a child is found in surroundings or conditions which endanger the child's health or welfare or which such peace officer reasonably believes will endanger such child's health or welfare; or

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(d) By a peace officer or probation or parole officer when it is reasonably believed that the child has violated the terms of his probation, parole, or other field supervision.

Subd. 2. The taking of a child into custody under the provisions of this section shall not be considered an arrest.

History: 1959 c 685 s 24; 1963 c 516 s 8

260.17 [Repealed, 1959 c 685 s 53]

260.171 RELEASE OR DETENTION.

Subdivision 1. If a child is taken into custody as provided in section 260.165, the parent, guardian, or custodian of the child shall be notified as soon as possible. Unless there is reason to believe that the child would endanger himself or others, not return for a court hearing, not remain in the care or control of the person to whose lawful custody he is released, or that the child's health or welfare would be immediately endangered, the child shall be released to the custody of his parent, guardian, custodian, or other suitable person. That person shall promise to bring the child to the court, if necessary, at the time the court may direct. If the person taking the child into custody believes it desirable he may request the parent, guardian, custodian, or other person designated by the court to sign a written promise to bring the child to court as provided above. The intentional violation of such a promise, whether given orally or in writing, shall be punishable as contempt of court.

The court may require the parent, guardian, custodian or other person to whom the child is released, to post any reasonable bail or bond required by the court which shall be forfeited to the court if the child does not appear as directed. The court may also release the child on his own promise to appear in juvenile court.

Subd. 2. If the child is not released as provided in subdivision 1, the person taking the child into custody shall notify the court as soon as possible of the detention of the child and the reasons for detention. Except a child taken into custody pursuant to section 260.165, subdivision 1, clause (a) or (c)(2), no child may be detained in a secure detention facility or a shelter care facility longer than 24 hours, excluding Saturdays, Sundays and holidays, unless an order for detention, specifying the reason for detention, is signed by the judge or referee. No child may be detained in a secure detention facility or shelter care facility longer than 36 hours, excluding Saturdays, Sundays or holidays, after being taken into custody for a delinquent act as defined in section 260.015, subdivision 5, unless a petition has been filed and the judge or referee determines pursuant to section 260.172 that the child shall remain in detention.

No child taken into custody pursuant to section 260.165, subdivision 1, clause (a) or (c)(2) may be held in a shelter care facility longer than 72 hours, excluding Saturdays, Sundays and holidays, unless a petition has been filed and the judge or referee determines pursuant to section 260.172 that the child shall remain in custody.

If a child described in section 260.173, subdivision 4, is to be detained in a jail beyond 48 hours, the judge or referee, in accordance with rules and procedures established by the commissioner of corrections, shall notify the commissioner of the place of the detention and the reasons therefor. The commissioner shall thereupon assist the court in the relocation of the child in an appropriate secure detention facility or approved jail within the county or elsewhere in the state, or in determining suitable alternatives. The commissioner shall direct that a child detained in a jail be detained after eight days from and including the date of the original detention order in an approved secure detention facility with the approval of the administrative

AN ACT

Effective May, 1981:

1. Court may order the abuser to participate in treatment or counseling.
 2. "Familial relationship" = parent, step-parent or guardian; nearer of kin than first cousin, incl. adoption or by marriage; an adult who resides intermittently in the same dwelling.
 "Intimate parts" = genital area, groin, inner thigh, buttocks or breast.
 "Minor" = under age 18. "Penetration" = any intrusion however slight of the body or an object.
 3. 1st - 4th degrees.
 4. Child under 10 yrs. is considered a competent witness if able to describe or relate in language appropriate for age the events or facts related.
- 1 relating to crimes; authorizing courts to order
 2 certain persons to participate in counseling in
 3 domestic abuse cases; creating the crime of
 4 intrafamilial sexual abuse; prescribing penalties;
 5 amending Minnesota Statutes 1980, Sections 15.1695,
 6 Subdivision 1; 518B.01, Subdivision 6; 595.02;
 7 609.346; 609.348; 609.35; 626.556, Subdivision 2; and
 8 629.341, Subdivision 1; proposing new law coded in
 9 Minnesota Statutes, Chapter 609.

11

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

13 Section 1. Minnesota Statutes 1980, Section 15.1695,

14 Subdivision 1, is amended to read:

15 Subdivision 1. When collected, created, or maintained by
 16 law enforcement agencies including municipal police departments,
 17 county sheriff departments, the bureau of criminal apprehension,
 18 the Minnesota state patrol, the peace officers standards and
 19 training board, or public prosecutors or defenders:

20 (a) Data on participants in crime prevention programs
 21 including lists of property with identification numbers or
 22 evaluations or recommendations related to structural security
 23 against unauthorized entry is private; and

24 (b) Data contained on incident complaint reports, variously
 25 called logs or dockets, comprising a chronological record of
 26 events, shall be public; provided that data on individuals which
 27 could reasonably be used to determine the identity of an
 28 undercover agent, informant, or victim of criminal sexual

conduct or intrafamilial sexual abuse shall be private data on
individuals; provided further that any other data classified by
law as private or confidential contained in incident complaint
reports shall remain private or confidential data.

Sec. 2. Minnesota Statutes 1980, Section 518B.01,
Subdivision 6, is amended to read:

Subd. 6. [RELIEF BY THE COURT.] Upon notice and hearing,
the court may provide relief as follows:

- (a) Restrain any party from committing acts of domestic abuse;
- (b) Exclude the abusing party from the dwelling which the parties share or from the residence of the petitioner;
- (c) On the same basis as is provided in chapter 518, award temporary custody or establish temporary visitation with regard to minor children of the parties;
- (d) On the same basis as is provided in chapter 518, establish temporary support for minor children or a spouse;
- (e) Provide counseling or other social services for the parties, if married, or if there are minor children;
- (f) Order the abusing party to participate in treatment or counseling services;
- (g) Order, in its discretion, other relief as it deems necessary for the protection of a family or household member, including orders or directives to the sheriff or constable, as provided by this section.

Any relief granted by the order for protection shall be for a fixed period not to exceed one year.

Sec. 3. Minnesota Statutes 1980, Section 595.02, is amended to read:

595.02 [COMPETENCY OF WITNESSES.]

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:

- (1) A husband cannot be examined for or against his wife without her consent, nor a wife for or against her husband

1 without his consent, nor can either, during the marriage or
2 afterwards, without the consent of the other, be examined as to
3 any communication made by one to the other during the marriage.
4 This exception does not apply to a civil action or proceeding by
5 one against the other, nor to a criminal action or proceeding
6 for a crime committed by one against the other or against a
7 child of either, nor to a criminal action or proceeding in which
8 one is charged with homicide or an attempt to commit homicide
9 and the date of the marriage of the defendant is subsequent to
10 the date of the offense, nor to an action or proceeding for
11 non-support, neglect, dependency, or termination of parental
12 rights;

13 (2) An attorney cannot, without the consent of his client,
14 be examined as to any communication made by the client to him or
15 his advice given thereon in the course of professional duty; nor
16 can any employee of ~~such~~ the attorney be examined as to ~~such~~ the
17 communication or advice, without the client's consent;

18 (3) A clergyman or other minister of any religion shall
19 not, without the consent of the party making the confession, be
20 allowed to disclose a confession made to him in his professional
21 character, in the course of discipline enjoined by the rules or
22 practice of the religious body to which he belongs; nor shall a
23 clergyman or other minister of any religion be examined as to
24 any communication made to him by any person seeking religious or
25 spiritual advice, aid, or comfort or his advice given thereon in
26 the course of his professional character, without the consent of
27 ~~such~~ the person;

28 (4) A licensed physician or surgeon, dentist, or
29 chiropractor shall not, without the consent of his patient, be
30 allowed to disclose any information or any opinion based thereon
31 which he acquired in attending the patient in a professional
32 capacity, and which was necessary to enable him to act in that
33 capacity; after the decease of ~~such~~ the patient, in an action to
34 recover insurance benefits, where the insurance has been in
35 existence two years or more, the beneficiaries shall be deemed
36 to be the personal representatives of ~~such~~ the deceased person

1 for the purpose of waiving the this privilege hereinbefore
2 created, and no oral or written waiver of the privilege
3 hereinbefore created shall have any binding force or effect
4 except that the same be when made upon the trial or examination
5 where the evidence is offered or received;

6 (5) A public officer shall not be allowed to disclose
7 communications made to him in official confidence when the
8 public interest would suffer by the disclosure;

9 (6) Persons of unsound mind; persons intoxicated at the
10 time of their production for examination, and children under ten
11 years of age, who appear incapable of receiving just impressions
12 of the facts respecting which they are examined, or of relating
13 them truly, are not competent witnesses. This exception does
14 not apply to a child under ten years of age, in a criminal
15 proceeding for intrafamilial sexual abuse as defined in section
16 7, subdivision 10, or in a criminal proceeding under sections
17 609.342 clause (a), 609.343 clause (a), 609.344 clause (a), or
18 609.345 clause (a), who is able to describe or relate in
19 language appropriate for a child of that age the events or facts
20 respecting which the child is examined;

21 (7) A registered nurse, psychologist or consulting
22 psychologist shall not, without the consent of his client, be
23 allowed to disclose any information or opinion based thereon
24 which he acquired in attending the client in a professional
25 capacity, and which was necessary to enable him to act in that
26 capacity.

27 Sec. 4. Minnesota Statutes 1980, Section 609.346, is
28 amended to read:

29 609.346 [SUBSEQUENT OFFENSES.]

30 Subdivision 1. If a person is convicted of a second or
31 subsequent offense under sections 609.342 to 609.346 609.345 or
32 sections 7 to 11 within 15 years of the prior conviction, the
33 court shall commit the defendant to the commissioner of
34 corrections for imprisonment for a term of not less than three
35 years, nor more than the maximum sentence provided by law for
36 the offense for which convicted, notwithstanding the provisions

1 of sections 242.19, 243.05, 609.11, 609.12 and 609.135.

2 Subd. 2. For the purposes of this section, an offense is
3 considered a second or subsequent offense if, prior to
4 conviction of the second or subsequent offense, the actor has
5 been at any time convicted under sections 609.342 to 609.346 or
6 sections 7 to 11 or under any similar statute of the United
7 States, or this or any other state.

8 Sec. 5. Minnesota Statutes 1980, Section 609.348, is
9 amended to read:

10 609.348 [MEDICAL PURPOSES; EXCLUSION.]

11 Laws 1975, Chapter 374, and sections 7 to 11 shall not
12 apply to sexual penetration or sexual contact when done for a
13 bona fide medical purpose.

14 Sec. 6. Minnesota Statutes 1980, Section 609.35, is
15 amended to read:

16 609.35 [COSTS OF MEDICAL EXAMINATION.]

17 No costs incurred by a county, city, or private hospital or
18 other emergency medical facility or by a private physician for
19 the examination of a complainant of criminal sexual conduct or
20 intrafamilial sexual abuse, as defined in section 7, subdivision
21 10, when the examination is performed for the purpose of
22 gathering evidence for possible prosecution, shall be charged
23 directly or indirectly to the complainant. The reasonable costs
24 of such the examination shall be paid by the county in which the
25 alleged offense was committed. Nothing in this section shall be
26 construed to limit the duties, responsibilities, or liabilities
27 of any insurer, whether public or private.

28 Sec. 7. [609.364] [DEFINITIONS.]

29 Subdivision 1. [SCOPE.] For the purposes of sections 3 and
30 7 to 11, the terms in this section have the meanings given them.

31 Subd. 2. [ACTOR.] "Actor" means an adult accused of
32 intrafamilial sexual abuse.

33 Subd. 3. [CHILD.] "Child" means a person under age 16.

34 Subd. 4. [COERCION.] "Coercion" means a threat to
35 unlawfully inflict bodily harm upon, or hold in confinement, as
36 person threatened or another.

1 Subd. 5. [COMPLAINANT.] "Complainant" means a child or
2 minor alleging to have been subjected to intrafamilial sexual
3 abuse, but need not be the person who signs the complaint.

4 Subd. 6. [CONSENT.] "Consent" means a voluntary uncoerced
5 manifestation of a present agreement to perform a particular
6 sexual act.

7 Subd. 7. [FORCE.] "Force" means the infliction, attempted
8 infliction, or threatened infliction by the actor of bodily harm
9 or commission or threat of any other crime by the actor against
10 the complainant or another, which causes the complainant to
11 reasonably believe that the actor has the present ability to
12 execute the threat.

13 Subd. 8. [INTIMATE PARTS.] "Intimate parts" includes the
14 primary genital area, groin, inner thigh, buttocks, or breast of
15 a human being.

16 Subd. 9. [FAMILIAL RELATIONSHIP.] "Familial relationship"
17 means a situation in which the actor is:

18 (a) The complainant's parent, stepparent, or guardian;

19 (b) Nearer of kin to the complainant than first cousin,
20 computed by rules of the civil law, whether of the half or the
21 whole blood;

22 (c) Any of the following persons related to the complainant
23 by marriage or adoption: brother, sister, stepbrother,
24 stepsister, first cousin, aunt, uncle, nephew, niece,
25 grandparent, great-grandparent, great-uncle, great-aunt; (or)

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

29 Subd. 10. [INTRAFAMILIAL SEXUAL ABUSE.] "Intrafamilial
30 sexual abuse" means sexual contact or sexual penetration, or
31 both, of a child or minor when the actor has a familial
32 relationship to the complainant. Neither mistake as to the
33 complainant's age nor consent to the act by the complainant is a
34 defense.

35 Subd. 11. [MINOR.] "Minor" means a person under age 18 but
36 age 16 or over.

1 Subd. 12. [PERSONAL INJURY.] "Personal injury" means
 2 bodily harm as defined in section 609.02, subdivision 7, or
 3 severe mental anguish, or pregnancy.

4 Subd. 13. [SEXUAL CONTACT.] "Sexual contact" includes any
 5 of the following acts, if the acts can reasonably be construed
 6 as being for the purpose of satisfying the actor's sexual or
 7 aggressive impulses:

8 (a) The intentional touching by the actor of the
 9 complainant's intimate parts;

10 (b) The touching by the complainant of the actor's, the
 11 complainant's, or another's intimate parts;

12 (c) The touching by another of the complainant's intimate
 13 parts; or

14 (d) In any of the cases listed above, touching of the
 15 clothing covering the immediate area of the intimate parts.

16 Subd. 14. [SEXUAL PENETRATION.] "Sexual penetration" means
 17 sexual intercourse, cunnilingus, fellatio, anal intercourse, or
 18 any intrusion however slight into the genital or anal openings
 19 of the complainant's body of any part of the actor's body or any
 20 object used by the actor for this purpose. Emission of semen is
 21 not necessary.

22 Sec. 8. [609.3641] [INTRAFAMILIAL SEXUAL ABUSE IN THE
 23 FIRST DEGREE.]

24 Subdivision 1. [CRIME DEFINED.] A person is guilty of
 25 intrafamilial sexual abuse in the first degree if:

26 (1) He has a familial relationship to and engages in sexual
 27 penetration with a child; or

28 (2) He has a familial relationship to and engages in sexual
 29 penetration with a child and:

30 (a) the actor or an accomplice used force or coercion to
 31 accomplish the penetration;

32 (b) the actor or an accomplice was armed with a dangerous
 33 weapon or any article used or fashioned in a manner to lead the
 34 complainant to reasonably believe it could be a dangerous weapon
 35 and used or threatened to use the dangerous weapon;

36 (c) circumstances existed at the time of the act to cause

1 the complainant to have a reasonable fear of imminent great
2 bodily harm to the complainant or another;

3 (d) the complainant suffered personal injury; or

4 (e) the intrafamilial sexual abuse involved multiple acts
5 committed over an extended period of time.

6 Subd. 2. [PENALTY.] A person convicted under subdivision
7 1, clause (1), may be sentenced to imprisonment for not more
8 than 20 years. Except when imprisonment is required by section
9 609.346, the court may stay imposition or execution of sentence
10 if it finds that a stay is in the best interest of the
11 complainant or the family unit. A person convicted under
12 subdivision 1, clause (2), may be sentenced to imprisonment for
13 not more than 20 years.

14 Sec. 9. [609.3642] [INTRAFAMILIAL SEXUAL ABUSE IN THE
15 SECOND DEGREE.]

16 Subdivision 1. [CRIME DEFINED.] A person is guilty of
17 intrafamilial sexual abuse in the second degree if:

18 (1) He has a familial relationship to and engages in sexual
19 contact with a child; or

20 (2) He has a familial relationship to and engages in sexual
21 contact with a child and:

22 (a) the actor or an accomplice used force or coercion to
23 accomplish the contact;

24 (b) the actor or an accomplice was armed with a dangerous
25 weapon or any article used or fashioned in a manner to lead the
26 complainant to reasonably believe it to be a dangerous weapon
27 and used or threatened to use the dangerous weapon;

28 (c) circumstances existed at the time of the act to cause
29 the complainant to have a reasonable fear of imminent great
30 bodily harm to the complainant or another;

31 (d) the complainant suffered personal injury; or

32 (e) the intrafamilial sexual abuse involved multiple acts
33 committed over an extended period of time.

34 Subd. 2. [PENALTY.] A person convicted under subdivision
35 1, clause (1), may be sentenced to imprisonment for not more
36 than 15 years. Except when imprisonment is required by section

1 609.346, the court may stay imposition or execution of the
 2 sentence if it finds that a stay is in the best interest of the
 3 complainant or the family unit. A person convicted under
 4 subdivision 1, clause (2), may be sentenced to imprisonment for
 5 not more than 15 years.

6 Sec. 10. [609.3643] [INTRAFAMILIAL SEXUAL ABUSE IN THE
 7 THIRD DEGREE.]

8 Subdivision 1. [CRIME DEFINED.] A person is guilty of
 9 intrafamilial sexual abuse in the third degree if:

10 (1) He has a familial relationship to and engages in sexual
 11 penetration with a minor; or

12 (2) He has a familial relationship to and engages in sexual
 13 penetration with a minor and:

14 (a) the actor or an accomplice used force or coercion to
 15 accomplish the penetration;

16 (b) the actor or accomplice was armed with a dangerous
 17 weapon or any article used or fashioned in a manner to lead the
 18 complainant to reasonably believe it could be a dangerous weapon
 19 and used or threatened to use the dangerous weapon;

20 (c) circumstances existed at the time of the act to cause
 21 the complainant to have a reasonable fear of imminent great
 22 bodily harm to the complainant or another;

23 (d) the complainant suffered personal injury; or

24 (e) the intrafamilial sexual abuse involved multiple acts
 25 committed over an extended period of time.

26 Subd. 2. [PENALTY.] A person convicted under subdivision
 27 1, clause (1), may be sentenced to imprisonment for not more
 28 than ten years. Except when imprisonment is required by section
 29 609.346, the court may stay imposition or execution of the
 30 sentence if it finds that a stay is in the best interest of the
 31 complainant or the family unit. A person convicted under
 32 subdivision 1, clause (2), may be sentenced to imprisonment for
 33 not more than ten years.

34 Sec. 11. [609.3644] [INTRAFAMILIAL SEXUAL ABUSE IN THE
 35 FOURTH DEGREE.]

36 Subdivision 1. [CRIME DEFINED.] A person is guilty of

1 intrafamilial sexual abuse in the fourth degree if:
2 (1) He has a familial relationship to and engages in sexual
3 contact with a minor; or
4 (2) He has a familial relationship to and engages in sexual
5 contact with a minor and:
6 (a) the actor or an accomplice used force or coercion to
7 accomplish the contact;
8 (b) the actor or accomplice was armed with a dangerous
9 weapon or any article used or fashioned in a manner to lead the
10 complainant to reasonably believe it could be a dangerous weapon
11 and used or threatened to use the dangerous weapon;
12 (c) circumstances existed at the time of the act to cause
13 the complainant to have a reasonable fear of imminent great
14 bodily harm to the complainant or another;
15 (d) the complainant suffered personal injury; or
16 (e) the intrafamilial sexual abuse involved multiple acts
17 committed over an extended period of time.

18 Subd. 2. [PENALTY.] A person convicted under subdivision
19 1, clause (1), may be sentenced to imprisonment for not more
20 than five years. Except when imprisonment is required by
21 section 609.346, the court may stay imposition or execution of
22 the sentence if it finds that a stay is in the best interest of
23 the complainant or the family unit. A person convicted under
24 subdivision 1, clause (2), may be sentenced to imprisonment for
25 not more than five years.

26 Sec. 12. Minnesota Statutes 1980, Section 626.556,
27 Subdivision 2, is amended to read:

28 Subd. 2. [DEFINITIONS.] As used in this section, the
29 following terms have the meanings given them unless the specific
30 content indicates otherwise:

31 (a) "Sexual abuse" means the subjection by the child's
32 parents, guardian, or person responsible for the child's care,
33 to any act which constitutes a violation of sections 609.342,
34 609.343, 609.344, or 609.345, or sections 7 to 11. Sexual abuse
35 also includes any act which involves a minor which constitutes a
36 violation of sections 609.321 to 609.324 or 617.246.

1 (b) "Neglect" means failure by a parent, guardian or other
2 person responsible for a child's care to supply a child with
3 necessary food, clothing, shelter or medical care when
4 reasonably able to do so or failure to protect a child from
5 conditions or actions which imminently and seriously endanger
6 the child's physical or mental health when reasonably able to do
7 so. Nothing in this section shall be construed to mean that a
8 child is neglected solely because the child's parent, guardian
9 or other person responsible for his care in good faith selects
10 and depends upon spiritual means or prayer for treatment or care
11 of disease or remedial care of the child.

12 (c) "Physical abuse" means:

13 (i) Any physical injury inflicted by a parent, guardian or
14 other person responsible for the child's care on a child other
15 than by accidental means; or

16 (ii) Any physical injury that cannot reasonably be
17 explained by the history of injuries provided by a parent,
18 guardian or other person responsible for the child's care.

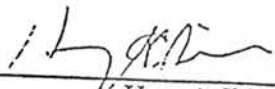
19 (d) "Report" means any report received by the local welfare
20 agency, police department or county sheriff pursuant to this
21 section.

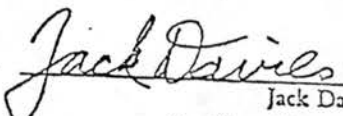
22 Sec. 13. Minnesota Statutes 1980, Section 629.341,
23 Subdivision 1, is amended to read:

24 Subdivision 1. Notwithstanding the provisions of section
25 629.34 or any other law or rule to the contrary, a peace officer
26 may arrest without a warrant a person ~~(1)~~ anywhere, including at
27 his place of residence, or ~~(2)~~ when the person is threatening to
28 return to his place of residence, if the peace officer has
29 probable cause to believe the person within the preceding four
30 hours has assaulted his spouse or other person with whom he
31 resides, although the assault did not take place in the presence
32 of the peace officer. A peace officer may not arrest a person
33 pursuant to this section without first observing recent physical
34 injury to, or impairment of physical condition of the alleged
35 victim.

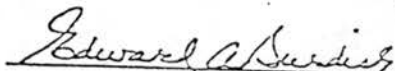
36 Sec. 14. [EFFECTIVE DATE.]

1 Sections 1 to 13 are effective the day following final
2 enactment and apply to any act which occurs on or after that
3 date.

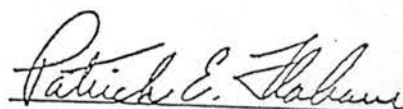

Harry A. Sieben, Jr.
Speaker of the House of Representatives.


Jack Davies
President of the Senate.

Passed the House of Representatives this 15th day of May in the year of Our Lord
one thousand nine hundred and eighty-one.



Edward A. Burdick
Chief Clerk, House of Representatives.

Passed the Senate this 15th day of May in the year of Our Lord one thousand
nine hundred and eighty-one.


Patrick E. Flahaven
Secretary of the Senate.

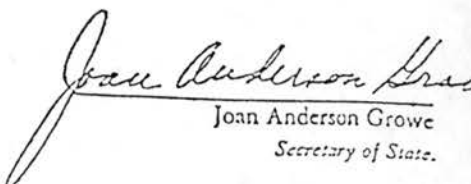
Approved

5-28-81


Albert H. Quie
Governor of the State of Minnesota.

Filed

5-28-81


Joan Anderson Grove
Secretary of State.

TRAINING BULLETIN



DEPARTMENT OF POLICE

ST. PAUL, MINNESOTA

84-6

September 19, 1984

MANUAL CHANGE

This bulletin is to introduce a Department Manual change dealing with domestics and domestic assaults. This change comes about for two reasons. First, State Statute has been changed to allow police officers to arrest on probable cause for misdemeanor assaults in cases of domestic assaults. Second, studies in Duluth, San Francisco and other cities have shown that mediation and referral have not been effective in dealing with this problem. Those same studies have shown that in cases where arrests have been made, the rate of recidivism, repeat calls, and acts of violence have been dramatically reduced. Therefore, effective October 1, 1984, the Department Manual, Section 438.15, is amended as follows:

438.15, No. 51, will be changed to read, "Officers should arrest when one of the parties wishes to sign a Citizen's Arrest or if probable cause exists than an assault has been committed during the past four hours (see also No. 59).

No. 52 will read, "An arrest shall be made if you are assaulted or an assault is committed in your presence."

No. 53 will be stricken.

No. 55, "B", the first line, will be changed to read, "An officer shall arrest for willful violation of any court order."

No. 58, "B", will read, "At any domestic, in which an assault has been committed, a domestic abuse report will be filled out (whether or not the suspect is present), and in cases of a serious nature (Felonious Assault), a C.A.P. report will also be filled out."

No. 58, "D", will be deleted.

In addition, No. 59 will be added reading, "This Department's policy of arrest for domestic assault is that an officer should arrest when one of the following occurs:

1. When visible signs of injury or impairment exists.
2. When a dangerous weapon is involved.
3. When the officer believes that the violence will continue.

4. When the officer has a knowledge of prior violent behavior.
5. When an order for protection has been violated.
6. When an assault is alleged and supported by other evidence.
7. When a victim is in fear of immediate bodily harm.

H.F. 1279

Section 1 (Contributing to Neglect or Delinquency, M.S. 260.315).
A 1982 amendment to the Juvenile Code separated "delinquency" from "status offenses". No change was made in the Contributing Statute to allow for this distinction, and as a result a large number of misdemeanor offenses against adults previously prosecutable were now inadvertently unprosecutable. Section 1 simply remedies that error by making clear that contributing to the delinquency of a minor also includes contributing to a child's status as a status offender. With this change we will again be able to charge the adult who, for example, harbors a runaway (often in repeated and flagrant violation of the parents' wishes, including situations where more is involved than mere harboring but is unprovable because the juvenile refuses to implicate the harborer) and providing alcohol to minors.

Section 2 (Statements of Child Sex Victims Under Age 10, M.S. 595.02). This amendment simplifies the existing exception to the Child Competency Statute by stating that the child will be allowed to describe or relate in language appropriate for a child of that age "any act of sexual contact or penetration performed on or with a child by another". This eliminates the technical citation of Intrafamilial and Criminal Sexual Conduct Statutes and also the limitation to criminal proceedings. Thus, a child sex victim would be allowed to testify in, for example, Juvenile Court or Family Court proceedings.

The second change to this statute is more substantial. It specifies that the ~~hearsay of a child under age 10 is admissible into evidence if certain criteria are met.~~ ^{describing sexual abuse} The criteria are clearly enunciated to be in keeping with present rules of evidence and case law to protect the defendant's right of confrontation. These include notifying the adverse party in advance, having a pre-trial hearing to determine whether the hearsay is necessary and reliable, and a further requirement that either the child testifies in addition to the hearsay or that if the child is unavailable (meaning generally incompetency) that there is corroborative evidence of the crime.

By limiting this hearsay exception to children under the age of 10, we are affording additional protection in child sexual abuse cases to the children who need it most. These are the children who may be least likely 4 to 6 months after the initial police report to recall the details of the offense, and their hearsay statements to others at or near the time of the offense or the initial report are likely to be more vivid, detailed, and spontaneous than what is likely in the formal and often frightening setting of a courtroom. These hearsay statements are crucial to helping the jury understand what happened to the child. The indicia^{of} reliability which go to a pre-trial determination of whether the statement is admissible will also be useful to the jury in evaluating the credibility of the allegations. Our statutes require that a person may not be convicted of a crime based on his confession alone. Thus, in a case where the child

was so young that he or she was incompetent to testify although the child at least at some earlier time had been able to tell someone else what had happened, the case would be unprosecutable even if the defendant confessed under present law. With this change that child's earlier statement along with its indicia of reliability would in connection with a confession (i.e., corroboration of the offense) be sufficient to convict. Thus, the statute goes a long way to protect the youngest and most vulnerable victims of sexual abuse and to see to it that perpetrators of crimes against these vulnerable victims are prosecuted. The younger the child, the greater the need for this protection; it's also worth noting that the younger the child the less likely the possibility of fabrication. In fact, the proposed statute applies to children under the age of 10 in part because these are the victims least likely to fabricate.

Most people would agree if they heard the kinds of circumstances in which this type of hearsay arises, that it is extremely reliable and would be horrified to find it may not be admissible and cases based on it not prosecutable. Here is an actual case example from the State of Washington which fortunately was prosecutable under the new Washington statute.

In August when Shauna was 2 years old she and her mother moved into defendant's home. Defendant began baby-sitting Shauna. The following summer (1981) Shauna began complaining to her mother that her vaginal area and bottom were irritated and sore. Shauna also said that defendant put his penis there. In October 1981 mom took Shauna to the doctor because of these complaints. No medical reason for these complaints was discovered. On two occasions when mom was kissing Shauna, Shauna put her tongue in her mother's mouth. Mom asked Shauna why she did this and Shauna replied, "That's how (defendant) does it". Mom told Shauna to tell defendant she did not like that. Shauna replied that she did not like defendant's "pee-pee". When asked why, Shauna responded, "He made me suck on it." On November 4 Shauna told a social worker while playing that, "(Defendant) put his tongue in my mouth" and "He put his finger in my bottom". On November 5 defendant was arrested and admitted he had placed his finger in Shauna's vagina and had her suck his penis on numerous occasions, the last being in July or August of 1981.

Shauna was incompetent to testify and the case would have been unprosecutable without the hearsay being admitted.

Present Minnesota rules of evidence and case law would probably not allow prosecution of this case in Minnesota.

Even older children who do testify but are still under the age of 10 may, when on the witness stand, be unable to recall sufficient detail to substantiate all the elements of all the offenses charged. Even when they do recall, it is important for a jury to hear the vividness with which those details were described earlier on. Present case law and rules of evidence in Minnesota could be construed to allow this kind of hearsay at the present time; however, a statute dealing specifically with this situation will make this evidence far more uniformly admitted. It has the advantage of placing clearly and precisely in one place a statement of policy and law which otherwise has to be derived and argued from several different sources.

Moreover, the prosecutor frequently doesn't know until the case comes to trial if the child will or won't be able to testify and to what extent the child is able to testify. Therefore, it is far more likely that a case will be charged in the first instance if our proposed statute becomes law, as it will also be far more likely that a case will not go down the tubes if in the middle of trial it becomes apparent that a child can't testify.

Section 3 (Definition Section to Criminal Sexual Conduct, Minn. Stat. 609.341). The definition of "sexual contact" is amended to cover the situation in which a person induces a child under the age of 13 (or a mentally defective person) to sexually touch the perpetrator. Right now it is a crime for an actor to touch a child ^{under 13} sexually without the requirement of force, coercion, or position of authority. However, a loophole in the current definition would still require coercion or position of authority if the actor induced a child to touch him sexually. This would close that loophole.

Section 4 (Definition Section of Criminal Sexual Conduct Statute, Minn. Stat. 609.341). "Coercion" is redefined to substitute ~~"words or circumstances which cause the complainant to reasonably fear"~~ bodily harm for the words "threat". The problem has been that some juries have construed the word "threat" to mean a literal, actual verbal threat. Frequently when coercion is used, no word is spoken at all, although the circumstances would reasonably cause anyone to fear harm. Example: Pinning a victim to the ground while committing a sexual act would cause the victim to fear harm if she resisted even though o word was spoken.

Section 5 and Section 6 (Criminal Sexual Conduct in the First and Second Degree, Minn. Stat. 609.342 and 343). A frequent unchargeable sexual offense is the abuse of a position of authority over a 16- or 17-year-old child. Right now, persons

may only be charged with Criminal Sexual Conduct for abuse of position of authority if they are more than 48 months older than the victim and the victim is between 13 and 16. Many vulnerable victims are in the 16- and 17-year-old age group. These children may be victims of teachers, counsellors, police officers, probation officers, etc. Right now, unless force or coercion is used with children of these ages, no sexual crime is chargeable. By extending criminal sexual conduct offenses to cover 16- and 17-year-old juveniles abused by a person in position of authority, we would be going a long way to making that statute more parallel to the more recent Intrafamilial Sexual Abuse Statute which does allow for adults who abuse 16- and 17-year-olds within a family relationship to be charged. In the last year I was involved in an investigation of a staff member at the Woodview Detention Center, a secure juvenile detention facility. A staff member there cynically and deliberately picked out girls who had reached their 16th birthday to engage in sexual contact. These girls were disturbed, in trouble, eager for attention, and involuntarily in the detention center. The staff member correctly guessed that most of these girls would never tell and if they did, no one would believe them. The only thing we could charge in this case was Mistreatment of Confined Persons, a gross misdemeanor, which did not do justice to what had happened there. Every year we have to turn down instances involving teachers, priests, Boy Scout leaders, etc., persons who are in positions of authority who have deliberately picked 16- and 17-year-olds for sexual contact and have misused their position of authority but have not used force or coercion.

Section 7 (Subsequent Criminal Sexual Conduct Offenses, M.S. 609.346). Current law provides for a mandatory minimum 3-year prison sentence upon conviction of a second sex offense. However, the current law does not specify that this mandatory minimum applies if either the past or the current offense is an attempt as opposed to a completed offense. This change would simply make this statute consistent with the 609.11 statute for mandatory minimum prison sentences for use of a dangerous weapon in crimes by making it clear that it applies to attempts as well as completed offenses.

Section 8 (Criminal Sexual Conduct Evidence, M.S. 609.347). The amendment here would simply add Intrafamilial Sexual Abuse and incest to the present reference to Criminal Sexual Conduct offenses to make clear that prosecutions under any of these statutes could allow evidence of the complainant's prior sexual experience only under extremely limited and controlled circumstances. I had a case in the past year in which a father was charged with Intrafamilial Sexual Abuse of his daughter and sought to introduce his daughter's prior sexual experience. The Judge ruled that the present evidence section did not apply to Intrafamilial Sexual Abuse and was going to allow the evidence about the daughter's prior sexual experience.

Section 9 (Intrafamilial Sexual Abuse Definitions, Minn. Stat. 609.364). The "familial relationship" definition is simplified to eliminate the archaic language of the old Incest Statute and to eliminate the loophole which precluded charging a first cousin by blood. I became aware of this loophole when I had a blood first cousin perpetrator this year who could not be charged under this statute.

Section 10 (Evidence Not Privileged Section of the Maltreatment of Minors Reporting Act, Minn. Stat. 626.556). Present law eliminates physician-patient and husband-wife privilege when it comes to testifying in any proceeding arising out of neglect or physical or sexual abuse of children. The privilege currently is not abrogated for psychologists. Yet, psychologists as well as physicians, psychiatrists and other helping professionals, must all report abuse. The anomalous result is that while a psychiatrist must report and testify, a psychologist must only report. There is no legitimate policy reason to extend a greater privilege to a psychologist than to a psychiatrist when the overriding interest is protection of children from abuse. Another amendment to this section would simply expand the language which now says evidence "regarding the child's injuries" to make clear that we are talking about evidence relating to neglect or abuse of a child or any prior instances of neglect or abuse involving any of the same persons accused of the neglect or abuse. The present language could be narrowly construed to mean only physical injuries. Yet doctors and psychologists frequently have knowledge of neglect or abuse that does not involve actual visible physical injury. At the present time, we have had frequent instances, particularly in termination of parental rights cases and neglect cases in Juvenile Court, where a psychologist for one or the other parent will have a privilege asserted and will not be able to testify even though that psychologist may have the most revealing and compelling evidence related to the litigation. The court is thereby prevented from knowing all relevant evidence to making a proper decision in these important cases.

November 30, 1983

Jeanne L. Schleh
Assistant Ramsey County Attorney

CREATING THE CRIME OF INTRAFAMILIAL SEXUAL ABUSE --

CHAPTER 273: EFFECTIVE NOW (ALL OFFENSES COMMITTED MAY 29, 1981 OR THEREAFTER)

CHANGES MADE:

Generally, sexual abuse by an adult against a child in a family setting is specifically criminalized by this law. Although there is over-lap with some sections of the present, sexual assault and incest laws, important changes include:

1. The "sociological" family, for example, a live-in, adult boyfriend and the "legal" family, for example the step-father, are not distinguished from the biological family. Therefore, all sexual contact or sexual penetration, between an adult and a minor, in a family setting is a felony. The severity of the felony depends upon the age of the victim and upon whether there has been sexual penetration or sexual contact.
2. In a family setting, the AGE OF CONSENT has been raised to 18. This means that, even if the 16-17 year-old "minor" consents to a sexual act with an adult, a crime has been committed.
3. If the victim is 13-15 years old, there is no longer a need to show the misuse of a "position of authority", only a family relationship.
4. Children under 10 will no longer be required to meet the standard "competency" requirements to testify in court regarding intrafamilial sexual abuse (or criminal sexual conduct).
5. Sentencing provisions provide some discretion to the court in sentencing the intrafamilial sex offender.

REASONS FOR NEW LAW:

This Bill is a strong legislative statement that intrafamilial sex is a crime.

A PROTECTIVE SERVICES caseworker, Kathy Steinberger, 28, has been convicted on a criminal negligence charge in an unusual case that challenges the child abuse treatment policies of the Pueblo, Colo., County Department

REGIONAL REPORT:

COLORADO CASEWORKER CONVICTED

OF NEGLIGENCE IN CLIENT'S DEATH

of Social Services, which are similar to those of many other agencies. A county judge on May 30 found Steinberger guilty of second degree official misconduct for knowingly failing to safeguard the life of a 7-year-old girl, who died allegedly as the result of abuse at the hands of her stepfather.

Protective Services supervisor Adolph Baruman was indicted along with Steinberger and is scheduled to go on trial September 7. Assistant County prosecutor Charles Malouff brought charges against the two following the girl's death by asphyxiation on January 9, 1977. He claims the child was used as a "guinea pig" in protective services treatment of the family.

According to the court case, the child had been abused in 1976 and was removed from the home for two months while her stepfather and mother received rehabilitative treatment. Soon after her return home, on November 30, 1976, the child was reported by her school as having been abused again. Steinberger and Baruman called in the mother to their office and arranged for the child, who had a behavior problem, to see a psychologist. They did not visit the home or talk to the stepfather or the girl. Baruman says the child saw the psychologist three times before she died.

Malouff says he called the agency's actions into question because it appeared the defendants were "worried more about keeping the family together than the safety of the child." He said the stepfather had a history of abusing the girl for two years prior to her death, that he had abused his youngsters by a previous marriage, and that it was unrealistic to believe he had been "cured" during a two-month treatment program. In returning the child home, Malouff said, "I think they used the kid as a guinea pig" to determine the efficacy of the stepfather's treatment. Moreover, the prosecutor says in his opinion the reason Steinberger didn't visit the home following the re-abuse report was that she was afraid of the stepfather. "I don't blame her, he's a violent man, but if she was afraid to go herself, she should have called the police or the district attorney's office for help to assure the child's safety. The trial showed the child could be in great danger and there was not a sufficient investigation as required by state law." The defense countered that Steinberger did not visit the home because she didn't want to overly intensify the situation between the parent and child. An underlying issue in the case, Baruman said, is the district attorney's "punitive attitude" toward abusing parents. "They don't go along with social services treatment programs and want us to gather criminal evidence." Steinberger is seeking a new trial. The misconduct charge carries a penalty of up to six months in jail plus a fine. The stepfather has been convicted of a felony in the girl's death and the mother is awaiting trial.

Several district attorneys around the state have called Malouff about the case. He said they have received inquiries from protective services workers wondering if they would be subject to charges in similar circumstances. Malouff believes the case may set a legal precedent for changing social services treatment procedures for abused children.

THE SUPREME COURT ON June 19 refused to hear an appeal of a white Georgia couple seeking to adopt a racially-mixed 3-year-old boy they had raised since infancy. The ruling in effect sustains a 5th U.S. Circuit Court of Appeals decision last November which held that Mr. and Mrs. Robert G. Drummond were "not equipped to rear" the boy and that the Fulton County Department of Family and Children's Services had acted properly in taking a position that consideration of race was a legitimate factor in finding him "the best possible home." The case bolsters the campaign of Native American groups who have been fighting the placement of Indian children in non-Indian homes. But it could retard a current HEW campaign to find more adoptive homes for hard-to-place black youngsters.

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Schleret v. State, _____ N.W.2d _____ (Minn. No. 93 (1980),
filed November 6, 1981) deals with the battered child syndrome,
a field in which Minnesota has, since State v. Loss, 295 Minn. 271
204 N.W.2d 404 (1973), been a leader. The case of injury or
death of a child can be proved circumstantially where 1) one,
person has sole access to the child; 2) the child's injuries

appear to be caused in some way other than that the controlling person has reported; and 3) the injuries are inconsistent with accidental causation. Sensitivity to the possibility of battering should be the rule every time an officer has any suspicions about injuries to a child.

MINNESOTA SENTENCING GUIDELINES

Inmates of Minnesota's Correctional Institutions sentenced prior to the implementation of the Guidelines in May 1, 1980, have been petitioning for re-sentencing under Laws, 1981, Chapter 366. Altogether more than a hundred convicted in Ramsey County have now applied for relief. The petitioner may ask that his sentence be amended to apply the guidelines retroactively; however, relief is given only when the original sentencing court "specifically" finds that early release from prison "does not present a danger to the public and is not incompatible with the welfare of society." The State can moreover point to aggravating circumstances in the crime of conviction that point to an upward departure from the presumptive guideline sentence.

609.24 SIMPLE ROBBERY. Whoever, knowing he is not entitled thereto, takes personal property from the person or in the presence of another and uses or threatens the imminent use of force against any person to overcome his resistance or powers of resistance to, or to compel acquiescence in, the taking or carrying away of the property is guilty of robbery 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.

[1963 c 753 art 1 s 609.24]

609.245 AGGRAVATED ROBBERY. Whoever, while committing a robbery, is armed with a dangerous weapon or inflicts bodily harm upon another is guilty of aggravated robbery 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.

[1963 c 753 art 1 s 609.245]

609.25 KIDNAPPING. Subdivision 1. Acts constituting. Whoever, for any of the following purposes, confines or removes from one place to another, any person without his consent or, if he is under the age of 16 years, without the consent of his parents or other legal custodian, is guilty of kidnapping and may be sentenced as provided in subdivision 2:

- (1) To hold for ransom or reward for release, or as shield or hostage; or
- (2) To facilitate commission of any felony or flight thereafter; or
- (3) To commit great bodily harm or to terrorize the victim or another; or
- (4) To hold in involuntary servitude.

Subd. 2. Sentence. Whoever violates subdivision 1 may be sentenced as follows:

- (1) If the victim is released in a safe place without great bodily harm, to imprisonment for not more than 20 years or to payment of a fine of not more than \$20,000, or both; or
- (2) Otherwise to imprisonment for not more than 40 years or to payment of a fine of not more than \$40,000, or both.

[1963 c 753 art 1 s 609.25]

609.255 FALSE IMPRISONMENT. Whoever, knowing he has no lawful authority to do so, intentionally confines or restrains a child not his own under the age of 18 years without his parent's or legal custodian's consent, or any other person without his consent, is guilty of false imprisonment and may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than \$3,000, or both.

[1963 c 753 art 1 s 609.255]

609.26 DETAINING OWN CHILD. Whoever intentionally detains his own child under the age of 18 years outside the state of Minnesota, with intent to deny another's rights under an existing court order may be sentenced to imprisonment for not more than two years or to payment of a fine of not more than \$2,000, or both.

[1963 c 753 art 1 s 609.26; 1967 c 570 s 1]

609.265 ABDUCTION. Whoever, for the purpose of marriage, takes a person under the age of 18 years, without the consent of the parents, guardians or other person having legal custody of such person is guilty of abduction and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$1,000, or both.

[1963 c 753 art 1 s 609.265]

CRIMES OF COMPULSION

609.27 COERCION. Subdivision 1. Acts constituting. Whoever orally or in writing makes any of the following threats and thereby causes another against his will to do any act or forbear doing a lawful act is guilty of coercion and may be sentenced as provided in subdivision 2:

- (1) A threat to unlawfully inflict bodily harm upon, or hold in confinement, the person threatened or another, when robbery or attempt to rob is not committed thereby; or
- (2) A threat to unlawfully inflict damage to the property of the person threatened or another; or

- (3) A threat to unlawfully injure a trade, business, profession or calling; or
 (4) A threat to expose a secret or deformity, publish a defamatory statement or otherwise to expose any person to disgrace or ridicule; or
 (5) A threat to make or cause to be made a criminal charge, whether true or false; provided, that a warning of the consequences of a future violation of law given in good faith by a magistrate, peace officer, or prosecuting attorney to any person shall not be deemed a threat for the purposes of this section.

Subd. 2. **Sentence.** Whoever violates subdivision 1 may be sentenced as follows:

(1) To imprisonment for not more than 90 days or to payment of a fine of not more than \$300, or both if neither the pecuniary gain received by the violator nor the loss suffered by the person threatened or another as a result of the threat exceeds \$100, or the benefits received or harm sustained are not susceptible of pecuniary measurement; or

(2) To imprisonment for not more than five years or to payment of a fine of not more than \$5,000, or both, if such pecuniary gain or loss is more than \$100 but less than \$2,500; or

(3) To imprisonment for not more than ten years or to payment of a fine of not more than \$10,000, or both, if such pecuniary gain or loss is \$2,500, or more.
 [1963 c 753 art 1 s 609.27; 1971 c 23 s 40]

609.275 ATTEMPT TO COERCE. Whoever makes a threat within the meaning of section 609.27, subdivision 1, clauses (1) to (5), but fails to cause the intended act or forbearance, commits an attempt to coerce and may be punished as provided in section 609.17.

[1963 c 753 art 1 s 609.275]

609.28 INTERFERING WITH RELIGIOUS OBSERVANCE. Whoever, by threats or violence, intentionally prevents another person from performing any lawful act enjoined upon or recommended to him by the religion which he professes is guilty of a misdemeanor.

[1963 c 753 art 1 s 609.28; 1971 c 23 s 41]

SEX CRIMES

609.293 SODOMY. Subdivision 1. **Definition.** "Sodomy" means carnally knowing any person by the anus or by or with the mouth.

Subd. 2. **Aggravated sodomy.** Whoever under any of the following circumstances commits an act of sodomy upon another or causes him to participate in any act of sodomy, without the other's consent, commits aggravated sodomy and may be sentenced to imprisonment for not more than 30 years:

- (1) The victim's resistance is overcome by force; or
 (2) The victim's resistance is prevented by reasonable fear of immediate and great bodily harm to the victim or another; or
 (3) The victim is unconscious, physically powerless to resist, or incapable of giving consent through mental illness or defect and the condition is known or reasonably should have been known to the actor.

Subd. 3. **Sodomy.** Whoever commits an act of sodomy upon another or causes him to participate in an act of sodomy, with the other's consent obtained under any of the following circumstances may be sentenced to imprisonment for not more than ten years:

- (1) He misleads the victim as to the nature of this act being committed; or
 (2) The victim's will to resist is destroyed by drug or intoxicant and the condition is known or reasonably should have been known to the actor.

Subd. 4. **Sodomy upon or with child.** Whoever commits an act of sodomy upon or with any child under the age of 18 years, not his spouse, whether or not the act is also a violation of subdivision 2 or 3 and notwithstanding the consent of the child, may be sentenced as follows:

- (1) If the child is under the age of ten years, to imprisonment for not more than 30 years; or
 (2) If the child is ten years of age but under the age of 14 years, to imprisonment for not more than 20 years; or

CRIMINAL CODE OF 1963

(3) If the child is over the age of 14 years, to imprisonment for not more than 10 years.

Subd. 5. **Consensual acts.** Whoever, in cases not coming within the provisions of subdivisions 2 and 3, voluntarily engages in or submits to an act of sodomy with another may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$1,000, or both.

[1967 c 507 s 4]

609.294 **BESTIALITY.** Whoever carnally knows a dead body or an animal or bird is guilty of bestiality, which is a misdemeanor. If knowingly done in the presence of another he may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$1,000 or both.

[1967 c 507 s 5; 1971 c 23 s 42]

609.31 **LEAVING THE STATE TO EVADE ESTABLISHMENT OF PATERNITY.** Whoever with intent to evade proceedings to establish his paternity leaves the state knowing that a woman with whom he has had sexual intercourse is pregnant or has given birth within the previous 60 days to a living child may be sentenced to imprisonment for not more than two years or to payment of a fine of not more than \$2,000, or both.

[1967 c 507 s 8]

609.32 **PROSTITUTION.** Subdivision 1. **Definitions.** (1) "Prostitution" means engaging or offering or agreeing to engage for hire in sexual intercourse, as defined in section 609.29, or sodomy as defined in section 609.293, subdivision 1.

(2) A "place of prostitution" is a house or other place where prostitution is practiced or from which prostitution is promoted.

Subd. 2. **Acts Prohibited.** Whoever intentionally does any of the following 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:

- (1) Solicits or induces another under the age of 18 years to practice prostitution;
- or
- (2) Being a parent, guardian, or other custodian of the person of a child under the age of 18 years consents to his being taken or detained for the purposes of prostitution.

Subd. 3. **Other acts prohibited.** Whoever intentionally does any of the following 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:

- (1) Keeps a place of prostitution; or
- (2) Leases or otherwise permits premises owned by him or under his control to be used as a place of prostitution; or
- (3) Solicits or induces another over the age of 18 years to practice prostitution;
- or
- (4) Solicits another under the age of 18 years to have sexual intercourse or to commit sodomy with a prostitute or admits him to a place of prostitution; or
- (5) Engages as a prostitute in an act of sexual intercourse or sodomy with another under the age of 18 years; or
- (6) Transports a prostitute from one place of prostitution within the state to another such place within or without the state, or brings a prostitute into the state, for the purpose of prostitution.

Subd. 4. **Further Acts Prohibited.** Whoever intentionally does any of the following may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$1,000, or both:

- (1) Engages in prostitution; or
- (2) Is supported in whole or in part by the earnings of a prostitute; or
- (3) Solicits for a prostitute, directs, takes, or transports another to a prostitute or place of prostitution, or brings a prostitute to him, for the purpose of sexual intercourse or sodomy with a prostitute; or
- (4) Hires or offers or agrees to hire another person to engage in sexual intercourse or sodomy.

[1967 c 507 s 9] (Approved April 11, 1974 Session Laws, Chapter 507, Sec. 1 and 2)

609.33 DISORDERLY HOUSE OR PLACE OF PUBLIC RESORT. Whoever does either of the following may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$1,000, or both:

- (1) Keeps a disorderly house, or place of public resort, whereby the peace, comfort or decency of a neighborhood is habitually disturbed; or
- (2) Being the owner or in control of any premises, intentionally permits them to be so used.

[1967 c 507 s 10]

609.34 FORNICATION. When any man and single woman have sexual intercourse with each other, each is guilty of fornication, which is a misdemeanor.

[1967 c 507 s 11; 1971 c 23 s 43]

609.341 DEFINITIONS. Subdivision 1. For the purposes of sections 609.341 to 609.351, the terms in this section have the meanings given them.

Subd. 2. "Actor" means a person accused of criminal sexual conduct.

Subd. 3. "Force" means commission or threat by the actor of an assault, as defined in section 609.22, or commission or threat of any other crime by the actor against the complainant or another, which causes the complainant to reasonably believe that the actor has the present ability to execute the threat, and also causes the complainant to submit.

Subd. 4. "Consent" means a voluntary uncoerced manifestation of a present agreement to perform a particular sexual act.

Subd. 5. "Intimate parts" includes the primary genital area, groin, inner thigh, buttocks, or breast of a human being.

Subd. 6. "Mentally defective" means that a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of appraising the nature of his conduct.

Subd. 7. "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his conduct due to the influence of alcohol, a narcotic, anesthetic, or any other substance administered to that person without his agreement, or due to any other act committed upon that person without his agreement.

Subd. 8. "Personal injury" means bodily harm as defined in section 609.02, subdivision 7, or severe mental anguish or pregnancy.

Subd. 9. "Physically helpless" means that a person is unconscious, asleep, or for any other reason is physically unable to communicate unwillingness to act and the condition is known or reasonably should have been known to the actor.

Subd. 10. "Position of authority" includes but is not limited to any person acting in the place of a parent and charged with any of a parent's rights, duties or responsibilities to a child, or a person who is charged with any duty or responsibility for the health, welfare, or supervision of a child, either independently or through another, no matter how brief, at the time of the act.

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 coerced touching by the complainant of the actor's, the complainant's, or another's intimate parts, or
- (iii) The coerced touching by another of the complainant's intimate parts,
- or
- (iv) In any of the cases above, of the clothing covering the immediate area of the intimate parts.

Subd. 12. "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion however slight into the genital or anal openings of the complainant's body of any part of the actor's body or any object used by the actor for this purpose, where the act is committed without the complainant's consent, except in those cases where consent is not a defense. Emission of semen is not necessary.

Subd. 13. "Complainant" means a person alleging to have been subjected to criminal sexual conduct.

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, 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 coerce 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

(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.

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 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; 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 coerce 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

(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.

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, 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 is 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 and not in a position of authority over 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.

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, 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 less 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; 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 coerce 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 reasonably 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. 7. Minnesota Statutes 1974, Chapter 609, is amended by adding a section to read:

609.346 SUBSEQUENT OFFENSES. Subdivision 1. If a person is convicted of a second or subsequent offense under sections 609.342 to 609.346 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; provided, however, that the court may invoke the provisions of section 609.135, if a specific condition of the probationary term under section 609.135 includes the successful completion of a treatment program for anti-social sexual behavior, and such person shall not be eligible for parole from imprisonment until he shall either

609.33 DISORDERLY HOUSE OR PLACE OF PUBLIC RESORT. Whoever does either of the following may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$1,000, or both:

- (1) Keeps a disorderly house, or place of public resort, whereby the peace, comfort or decency of a neighborhood is habitually disturbed; or
- (2) Being the owner or in control of any premises, intentionally permits them to be so used.

[1967 c 507 s 10]

609.34 FORNICATION. When any man and single woman have sexual intercourse with each other, each is guilty of fornication, which is a misdemeanor.

[1967 c 507 s 11; 1971 c 23 s 43]

609.341 DEFINITIONS. Subdivision 1. For the purposes of sections 609.341 to 609.351, the terms in this section have the meanings given them.

Subd. 2. "Actor" means a person accused of criminal sexual conduct.

Subd. 3. "Force" means commission or threat by the actor of an assault, as defined in section 609.22, or commission or threat of any other crime by the actor against the complainant or another, which causes the complainant to reasonably believe that the actor has the present ability to execute the threat, and also causes the complainant to submit.

Subd. 4. "Consent" means a voluntary uncoerced manifestation of a present agreement to perform a particular sexual act.

Subd. 5. "Intimate parts" includes the primary genital area, groin, inner thigh, buttocks, or breast of a human being.

Subd. 6. "Mentally defective" means that a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of appraising the nature of his conduct.

Subd. 7. "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his conduct due to the influence of alcohol, a narcotic, anesthetic, or any other substance administered to that person without his agreement, or due to any other act committed upon that person without his agreement.

Subd. 8. "Personal injury" means bodily harm as defined in section 609.02, subdivision 7, or severe mental anguish or pregnancy.

Subd. 9. "Physically helpless" means that a person is unconscious, asleep, or for any other reason is physically unable to communicate unwillingness to act and the condition is known or reasonably should have been known to the actor.

Subd. 10. "Position of authority" includes but is not limited to any person acting in the place of a parent and charged with any of a parent's rights, duties or responsibilities to a child, or a person who is charged with any duty or responsibility for the health, welfare, or supervision of a child, either independently or through another, no matter how brief, at the time of the act.

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 coerced touching by the complainant of the actor's, the complainant's, or another's intimate parts, or
- (iii) The coerced touching by another of the complainant's intimate parts, or
- (iv) In any of the cases above, of the clothing covering the immediate area of the intimate parts.

Subd. 12. "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion however slight into the genital or anal openings of the complainant's body of any part of the actor's body or any object used by the actor for this purpose, where the act is committed without the complainant's consent, except in those cases where consent is not a defense. Emission of semen is not necessary.

AN ACT

S.F.No. 1291
CHAPTER No.
212

1
2 relating to children; ~~establishing additional~~
3 ~~venue for cases involving maltreatment of minors;~~
4 providing for the reporting of maltreatment of
5 minors; amending Minnesota Statutes 1976, Section
6 626.556, Subdivisions 2 and 11; and Chapter 627,
7 by adding a section.

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA: :

10 Section 1. Minnesota Statutes 1976, Chapter 627, is
11 amended by adding a section to read:

12 [627.15] [CHILD ABUSE.] A criminal action arising out
13 of an incident of alleged child abuse may be prosecuted
14 either in the county where the alleged abuse occurred or the
15 county where the child is found.

16 Sec. 2. Minnesota Statutes 1976, Section 626.556,
17 Subdivision 2, is amended to read:

18 Subd. 2. [DEFINITIONS.] As used in this section, the
19 following terms have the meanings given them unless the
20 specific content indicates otherwise:

21 (a) "Sexual abuse" means the subjection by the child's
22 parents, guardian, or person responsible for the child's
23 care, to any act which constitutes a violation of sections

1 609.291, 609.292, 609.293, 609.295, or 609.296.

2 (b) "Neglected child" shall have the meanings defined
3 in section 260.015, subdivision 10. Nothing in this section
4 shall be construed to mean that a child is neglected solely
5 because the child's parent, guardian or other person
6 responsible for his care in good faith selects and depends
7 upon spiritual means or prayer for treatment or care of
8 disease or remedial care of the child.

9 (c) "Physical abuse" means:

10 (i) Any physical injury inflicted by a parent, guardian
11 or other person responsible for the child's care on a child
12 other than by accidental means; or

13 (ii) Any physical injury or health defect that cannot
14 reasonably be explained by ~~the history of injuries provided~~
15 ~~by the~~ a parent, guardian or other person responsible for
16 the child's care.

17 (d) "Report" means any report received by the local
18 welfare agency pursuant to this section.

19 Sec. 3. Minnesota Statutes 1976, Section 626.556,
20 Subdivision 11, is amended to read:

21 Subd. 11. [RECORDS.] All records maintained by a local
22 welfare agency under this section, including any written
23 reports filed under subdivision 7, shall be private. The
24 records shall be collected and maintained in accordance with
25 the provisions of sections 15.162 to 15.168, and an
26 individual subject of a record shall have access to the
27 record in accordance with those sections, except that the
28 name of the reporter shall be disclosed only (a) by the
29 local welfare agency if the report is found to be
30 unsubstantiated or (b) by the local welfare agency upon
31 court order if the report is found to be substantiated.

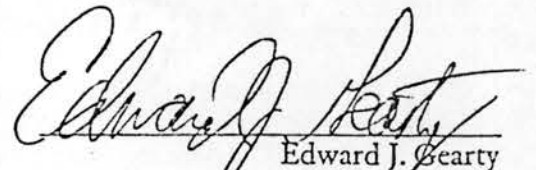
32 Records maintained by local welfare agencies under this

1 section must be destroyed as follows;

2 (a) All records relating to reports which, upon
3 investigation, are found to be ~~unsubstantiated~~ false shall
4 be destroyed immediately;

5 (b) All records relating to reports which, upon
6 investigation, are found to be substantiated shall be
7 destroyed seven years after the date of the final entry in
8 the case record; and

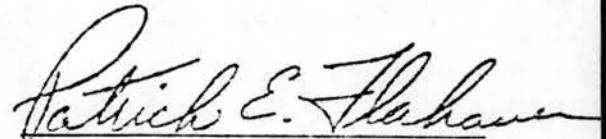
9 (c) All records of reports which, upon initial
10 investigation, cannot be substantiated or disproved to the
11 satisfaction of the local welfare agency may be kept for a
12 period of one year. If neither the local welfare agency nor
13 local police department ~~is-unable~~ is able to substantiate the
14 report within that period, all records relating to the
15 report shall be destroyed immediately.


Edward J. Gearty
President of the Senate.


Martin O. Sabo
Speaker of the House of Representatives.

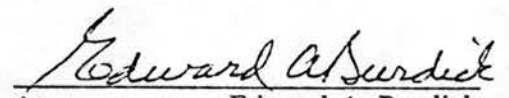
Passed the Senate this 12th day of May
hundred and seventy -seven

in the year of Our Lord one thousand nine

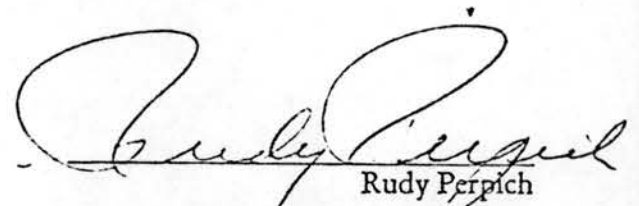

Patrick E. Flahaven
Secretary of the Senate.

Passed the House of Representatives this 11th day of May
thousand nine hundred and seventy -seven

in the year of Our Lord one


Edward A. Burdick
Chief Clerk, House of Representatives.

Approved *May 20, 1977*


Rudy Perpich
Governor of the State of Minnesota.

Filed *May 20, 1977*

Joan Anderson Growe
Secretary of State.

VICTIMS' RIGHTS

H.F. No. 218
CHAPTER No.

AN ACT

262

20 Subdivision 1. [PLEA AGREEMENTS; NOTIFICATION OF VICTIM.]

21 Prior to the entry of the factual basis for a plea pursuant to a

22 plea agreement recommendation, a prosecuting attorney shall make

23 a reasonable and good faith effort to inform the victim of:

24 (a) The contents of the plea agreement recommendation; and

25 (b) His right to be present at the sentencing hearing and

26 to express in writing any objection he has to the agreement or

27 to the proposed disposition.

3 Sec. 4. [611A.04] [VICTIM'S RIGHT TO REQUEST RESTITUTION.]

9 Subdivision 1. [REQUEST; DECISION.] A victim of a crime

10 has the right to request that restitution be considered as part

11 of the disposition of a criminal charge or juvenile delinquency

12 proceeding against the offender. The request for restitution

13 shall be made by the victim in writing in affidavit form,

14 describing the items or elements of loss and itemizing the total

15 dollar amounts of restitution claimed, and the reasons

16 justifying these amounts, if the request is for monetary or

17 property restitution. In order to be considered by the court,

18 the request must be received by the clerk of the appropriate

19 court at least three business days before the sentencing or

20 dispositional hearing.

H.F. No. 218

1 The commissioner of corrections or other custodial

2 authority shall make a good faith effort to notify the victim

3 that the offender is to be released from imprisonment or

4 incarceration, other than for work release, prior to the release

5 if the victim has mailed to the commissioner of corrections or

6 to the head of the facility in which the offender is confined a

7 written request for this notice. The commissioner or other

Subd. 13. "Complainant" means a person alleging to have been subjected to criminal sexual conduct.

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, 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 coerce 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

(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.

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 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; 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 coerce 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

(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.

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, 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 is 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 and not in a position of authority over 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.

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, 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 less 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; 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 coerce 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 reasonably 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. 7. Minnesota Statutes 1974, Chapter 609, is amended by adding a section to read:

609.346 SUBSEQUENT OFFENSES. Subdivision 1. If a person is convicted of a second or subsequent offense under sections 609.342 to 609.346 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; provided, however, that the court may invoke the provisions of section 609.135, if a specific condition of the probationary term under section 609.135 includes the successful completion of a treatment program for anti-social sexual behavior, and such person shall not be eligible for parole from imprisonment until he shall either

*felonies
misdemeanors*

609.347

CRIMINAL CODE OF 1963

have served the full minimum sentence herein provided, or until he shall have successfully completed a treatment program for anti-social sexual behavior as herein provided notwithstanding the provisions of sections 242.19, 243.05, 609.11, 609.12 and 609.135.

Subd. 2. 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 under any similar statute of the United States, or this or any other state.

609.347 EVIDENCE. Subdivision 1. In a prosecution under sections 609.342 to 609.346, the testimony of a complainant need not be corroborated.

Subd. 2. In a prosecution under sections 609.342 to 609.346, there is no need to show that the complainant resisted the actor.

Subd. 3. In a prosecution under sections 609.342 to 609.346, 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 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.

Subd. 4. The defendant may not offer evidence described in subdivision 3 except pursuant to the following procedure:

(a) A motion shall be made by the defendant prior to trial, unless later for good cause shown, stating to the court and prosecutor that the defendant has an offer of proof of the relevancy of the evidence of the sexual conduct of the complainant which is proposed to be presented;

(b) If the court finds that the offer of proof is sufficient, the court shall order a hearing out of the presence of the jury, if any, and in such hearing shall allow the defendant to make a full presentation of his offer of proof;

(c) At the conclusion of the hearing, if the court finds that the evidence proposed to be offered by the defendant regarding the sexual conduct of the complainant is relevant and material to the fact of consent, and is not so prejudicial as to be inadmissible under subdivision 3 and prescribing the nature of questions to be permitted at trial. The defendant may then offer evidence pursuant to the order of the court;

(d) If new information is discovered after the date of the hearing or during the course of trial, which may make evidence described in subdivision 3 admissible, the defendant shall make the disclosures under clause (a) of this subdivision and the court shall order an in camera hearing to determine whether the proposed evidence is admissible by the standards herein.

Subd. 5. In a prosecution under sections 609.342 to 609.346, the court shall not instruct the jury to the effect that:

(a) It may be inferred that a complainant who has previously consented to sexual intercourse with persons other than the defendant would be therefore more likely to consent to sexual intercourse again; or

(b) The complainant's previous or subsequent sexual conduct in and of itself may be considered in determining the credibility of the complainant; or

(c) Criminal sexual conduct is a crime easily charged by a complainant but very difficult to disprove by a defendant because of the heinous nature of the crime; or

(d) The jury should scrutinize the testimony of the complainant any more closely than it should scrutinize the testimony of any witness in any felony prosecution.

609.348 Laws 1975, Chapter 374 shall not apply to sexual penetration or sexual contact when done for a bona fide medical purpose.

609.349 A person does not commit criminal sexual conduct under Laws 1975, Chapter 374 if the actor and complainant were adults cohabiting in an ongoing voluntary sexual relationship at the time of the alleged offense, or if the complainant is the actor's legal spouse, unless the couple is living apart and one of them has filed for separate maintenance or dissolution of the marriage. Nothing in this section shall be construed to prohibit or restrain the prosecution for any other offense committed by any person against his legal spouse.

609.35 COSTS OF MEDICAL EXAMINATION. No costs incurred by a county, city, or private hospital or other emergency medical facility or by a private physician for the examination of a complainant of criminal sexual conduct, when the examination is performed for the purpose of gathering evidence for possible prosecution, shall be charged directly or indirectly to the complainant. The reasonable costs of such examination shall be paid by the county in which the alleged offense was committed. Nothing in this section shall be construed to limit the duties, responsibilities, or liabilities of any insurer, whether public or private.

609.351 APPLICABILITY TO PAST AND PRESENT PROSECUTIONS. Except for section 609.347, crimes committed prior to August 1, 1975, are not affected by its provisions.

Sec. 13. Minnesota Statutes 1974, Sections 609.29; 609.291; 609.292; 609.295; and 609.296 are repealed.

(Approved June 5, 1975)

CRIMES AGAINST THE FAMILY

609.355 BIGAMY. Subdivision 1. **Definition.** In this section "cohabit" means to live together under the representation or appearance of being married.

Subd. 2. **Acts constituting.** Whoever does any of the following is guilty of bigamy 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:

- (1) Contracts a marriage in this state with knowledge that his prior marriage is not dissolved; or
- (2) Contracts a marriage in this state with knowledge that the prior marriage of the person he marries is not dissolved; or
- (3) Cohabits in this state with a person whom he married outside this state with knowledge that his own prior marriage has not been dissolved or with knowledge that the prior marriage of the person he married had not been dissolved.

[1963 c 753 art 1 s 609.355]

609.36 ADULTERY. Subdivision 1. **Acts constituting.** When a married woman has sexual intercourse with a man other than her husband, whether married or not, both are guilty of adultery and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$1,000, or both.

Subd. 2. **Limitations.** No prosecution shall be commenced under this section except on complaint of the husband or the wife, except when such husband or wife is insane, nor after one year from the commission of the offense.

Subd. 3. **Defense.** It is a defense to violation of this section if the marital status of the woman was not known to the defendant at the time of the act of adultery.

[1963 c 753 art 1 s 609.36]

609.365 INCEST. Whoever has sexual intercourse with another nearer of kin to him than first cousin, computed by rules of the civil law, whether of the half or the whole blood, with knowledge of the relationship, is guilty of incest and may be sentenced to imprisonment for not more than ten years.

[1963 c 753 art 1 s 609.365]

REPORTING OF SUSPECTED CHILD ABUSE

In accordance with Minnesota Statute number 626.555 (Reporting of Maltreatment of Minors), child abuse shall pertain to both physical and sexual abuse of children by the child's parent, guardian, or person responsible for the child's care. The following form is recommended:

PLEASE FORWARD THIS REPORT TO THE LOCAL COUNTY WELFARE DEPARTMENT AND A COPY TO THE LOCAL SHERIFF OR POLICE DEPARTMENT.

Sgt. Carolen Bailey
St. Paul Police Department
101 East 10th Street
St. Paul, Minnesota 55101
292-3650

Mr. Richard Hess
Child Protection Intake
Ramsey County Welfare Department
160 East Kellogg Boulevard
St. Paul, Minnesota 55101
298-5655

I. IDENTIFYING INFORMATION

Name: _____ (Alias, if any) _____

Birthdate: _____

Parent's Name: _____

Address: _____

Home Telephone Number: _____

Time and Place of Evaluation: _____

II. PHYSICAL FINDINGS

Description of injury - include severity. Estimate when the injury occurred, if possible. This may be essential to the subsequent investigation.

III. HISTORY (A very careful history should be documented in the exact words of the historian)

Historian (relationship to child)
How and when the injury occurred
Past significant history of unexplained or repeated injury (abuse)

IV. CONSULTATIVE REPORTS

Photographs
X-rays
Blood Tests

V. SUMMARY

Include any statement or conclusion the physician can make regarding the etiology of the injury. Are there significant discrepancies in the history as compared to the physical findings? Please consider the seriousness of the injury - life threatening? Include the physicians recommendations. What are the risks if the child is returned home?

Physician's Signature

Office Address: _____

Phone: _____

REPORTING PROCEDURES:

LAW ENFORCEMENT

Sgt. Carolen Bailey
St. Paul Police Department
101 East 10th Street
St. Paul, Minnesota 55101
291-3650
(Will refer to appropriate law
enforcement agency if outside
of St. Paul.)

RAMSEY COUNTY WELFARE DEPARTMENT

Child Protection Intake - 198-5655
(Unit of 6 caseqorkers available
8:00 - 4:30 and will refer to appro-
priate county if outside of Ramsey.)

CONSULTATION AVAILABLE TO COMMUNITY PROFESSIONALS:

Dr. Carolyn Levitt
Children's Hospital
311 Pleasant Avenue
St. Paul, Minnesota 55101
227-6521 ext 300

Dr. Carolyn McKay
or
Dr. Homer Venters
St Paul Ramsey Medical Center
640 Jackson Street
St. Paul, Minnesota 55101
221-3456

Gretchen S. Shafer
Coordinator, Ramsey County Child Abuse Team
Ramsey County Mental Health Department
150 East Kellogg Boulevard
Ninth Floor - Suite 920
St. Paul, Minnesota 55101
298-4618

WEEKENDS AND HOLIDAYS:

St. Paul Ramsey Medical Center and Children's Hospital have resource staff
available for consultation and procedures in management of suspected child
abuse cases.

/bh

Summary of Child Abuse Reporting
Requirements and Application
to School District
Employee's Responsibilities

Mandatory Reporting:

- 1) Any school employee who receives information about suspected child abuse and/or neglect and has reasonable cause to believe that a child is being neglected or subjected to physical or sexual abuse, must report that information to the Ramsey County Human Services as mandated in public law # 626.556 subd. 3.

If the school employee who is reporting has concerns or questions he/she is encouraged to confer with that school building's principal and child abuse team prior to reporting.

The school principal is to be informed of any report of child abuse and/or neglect.

- 2) Any school employee, who observes another school employee abusing a child or learns of child physical or sexual abuse by another school employee, must report that information to the Ramsey County Human Services as mandated in public law # 626.556 subd. 3.

If the school employee who is reporting has concerns or questions he/she is encouraged to confer with that school building's principal and child abuse team prior to reporting.

The school principal is to be informed of any report of child abuse and/or neglect.

- 3) The school employee or school administrator is prohibited by public law from informing the parent that a report of suspected abuse or neglect had been made to the Ramsey County Human Services.

Report: Direct quote from public law # 626.556

- 1) Subd. 5 "Falsified reports. Any person who willfully or recklessly makes a false report under the provisions of this section shall be liable in a civil suit for any actual damages suffered by the person or persons so reported and for any punitive damages set by the court or jury."
- 2) Subd. 6 "Failure to report. Any person required by this section to report suspected physical or sexual child abuse or neglect who willfully fails to do so shall be guilty of a misdemeanor."
- 3) Subd. 7 "Report. An oral report shall be made immediately by telephone or otherwise. An oral report made by a person required under subdivision 3 to report shall be followed as soon as possible by a report in writing to the appropriate police department, the county sheriff or local welfare agency. Any report shall be of sufficient content to identify the child, any person believed to be responsible for the abuse or neglect of the child if the person is known, the nature and extent of the abuse or neglect and the name and address

of the reporter. Written reports received by a police department or the county sheriff shall be forwarded immediately to the local welfare agency."

Investigation: Direct quote from public law # 626.556.

- 1) Subd. 10 (c) "When the local welfare or local law enforcement agency determines that an interview should take place on school property, written notification must be received by school officials prior to the interview. The notification shall include the name of the child to be interviewed, the purpose of the interview, and a reference to the statutory authority to conduct an interview on school property. For interviews conducted by the local welfare agency, the notification shall be signed by the chairman of the county welfare board or his designee. The time- and place, and manner of the interview on school premises shall be within the discretion of school officials, but the local welfare agency, or the local law enforcement agency shall have the exclusive authority to determine who may attend the interview. The conditions as to time, place, and manner of the interview set by the school officials shall be reasonable and the interview shall be conducted not more than 24 hours after the receipt of the notification unless another time is deemed necessary by agreement between the school officials and the local welfare agency or local law enforcement agency. Where the school fails to comply with the provisions of this section, the juvenile court may order the school to comply with this provision."

Immunity From Liability: Direct quote from public law # 626.556.

- 1) Subd. 4 (a) "Any person, including those voluntarily making reports and those required to make reports under subdivision 3, participating in good faith and exercising due care in the making of a report or assisting in an assessment pursuant to this section has immunity from any liability, civil or criminal, that otherwise might result by reason of his action.

Subd. 4 (b) "This subdivision does not provide immunity to any person for failure to make a required report or for committing neglect, physical abuse, or sexual abuse of a child."

Retaliation Prohibited: Direct quote from public law # 626.556.

- 1) Subd. 4a (a) "An employer of any person required to make reports under subdivision 3 shall not retaliate against the person for reporting in good faith suspected abuse or neglect pursuant to this section, or against a child with respect to whom a report is made, because of the report."

INDICATORS THAT A CHILD/ADOLESCENT MAY HAVE EXPERIENCED SEXUAL ABUSE

1. Depression
2. Withdrawal - e.g. child with few friends
3. Isolation from peers
4. Drug/alcohol abuse
5. Chronic runaway
6. Increase in physical complaints - e.g. headaches, miscellaneous illnesses
* stomach aches, hysterical seizures
7. Attention-getting behavior - inappropriate acting out
8. Suicide attempts
9. Physical abuse - self-inflicted or inflicted by parents
10. Poor self-image - reflected in choice of clothing, overall appearance, cleanliness
11. Truancy - i.e. skipping school/classes
12. Drop in academic performance
13. Limited participation in organized social activities
14. Overly seductive behavior - Lolita Syndrome
15. Bi-sexual/homosexual experimentation
16. Repeated rape victim
17. Prostitution
18. Promiscuous sexual behavior
19. Heavy child care responsibilities
20. Heavy household responsibilities - e.g. regular responsibility for laundry, meal preparation
21. Overly restricted social activities
- * 22. Role reversals
- * 23. Parents who were sexually abused and/or raped
- * 24. Art, poems, stories
- * 25. Elective mutism

Behavioral Signs Among Young Children

1. Excessive masturbation
2. Encopresis (fecal soiling)
3. Severe nightmares
4. Regression in developmental milestones
5. Explicit knowledge of sexual acts
6. Clinging/whining to a particular parent (non-abusive parent)
7. Open sexual behavior after age 5-7

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* Added by presenters.

Characteristics of Incest Victims

- 1) Frequently has maternal as well as wifely role; this stems from mother having emotional problems and not able to maintain her role within the family; she has duties such as cleaning house, raising younger children, and being sexual with Father.
- 2) Pseudo maturity; disconnected personality. When victim talks about Incest she will seem pretty stable and disconnected from emotions, or to the other extreme... overly emotional and unable to talk; this stems from victim separating herself while Incest is occurring; not wanting to see it as real.
- 3) Frustrated dependency needs: coming out in the form of drug addiction, feelings of helplessness, longing for a mother: someone whom she can talk to, someone who'll protect her; longing for a father, someone who will not be sexual with her or even want to touch her physically or even be attracted to her.
- 4) Underlying great immaturity and lack of ego development with fearfulness of the world beyond the family.
- 5) Extremely poor self-concept, particularly as a female. Belief that women are destined to be self-denying. Feelings of being used as a feeling, see's herself as having nothing but sex to offer, and also men as only wanting that.
- 6) Rage and fear of father; this sometimes is blocked by fantasy image father plays with her and others.... watching his behavior while disconnected from actual performance of Incest. When rage and fear of father is expressed, at first it is directed at incidents other than Incest. These feelings are projected and transferred onto other men. She has genuine belief that all men who are attracted to her are going to take her to bed; feels she has no control over this.
- 7) Depression; longing to die... a lot of shame. This is acted out with drug addiction, physical abuse to self or acceptance of abuse from others (mostly men). Does not take care of self (health). Or goes to the other extreme, wanting to be sick so someone will take care of her.
- 8) Confusion about sex; some genuine beliefs that all fathers are sexual with their daughters. She sees sex mainly as a physical act. Relates to people sexually; gets needs met this way, seduces men into bed so that she won't feel alone, sees it as just having another physical body next to hers. Mother makes sex out to be ugly; a duty in which she doesn't really want to partake. She sees her father as a little boy; not mature at all, especially during actual acts of incest. This is transferred onto other men. She is disgusted about actual information on sex; disgust towards own body and towards male body.
- 9) It is easy for an incest victim to get into prostitution as she is so angry at men. She usually feels no guilt or shame about this; although she will pick up on "society" shaming her. She feels this appropriate to meet all men's needs: fear of punishment if she refuses.
- 10) Dresses as non-sexual person: non-womanly. Does not see difference between being a sexual person and being seductive. Feels very shameful at showing her body. (Fear of men being sexual with her).

Minnesota Child Abuse and Neglect Reporting Law
(as amended through 8/1/84)

626.556 REPORTING OF MALTREATMENT OF MINORS.

Subdivision 1. [PUBLIC POLICY.] The legislature hereby declares that the public policy of this state is to protect children whose health or welfare may be jeopardized through physical abuse, neglect or sexual abuse; to strengthen the family and make the home, school, and community safe for children by promoting responsible child care in all settings; and to provide, when necessary, a safe temporary or permanent home environment for physically or sexually abused children.

In addition, it is the policy of this state to require the reporting of suspected neglect, physical or sexual abuse of children in the home, school, and community settings; to provide for the voluntary reporting of abuse or neglect of children; to require the assessment and investigation of the reports; and to provide protective and counseling services in appropriate cases.

Subd. 2. [DEFINITIONS.] As used in this section, the following terms have the meanings given them unless the specific content indicates otherwise:

(a) "Sexual abuse" means the subjection by a person responsible for the child's care, or by a person in a position of authority, as defined in section 609.341, subdivision 10, to any act which constitutes a violation of sections 609.342, 609.343, 609.344, or 609.345, or sections 609.364 to 609.3644. Sexual abuse also includes any act which involves a minor which constitutes a violation of sections 609.321 to 609.324 or 617.246.

(b) "Person responsible for the child's care" means a parent, guardian, teacher, school administrator, or other lawful custodian of a child having either full-time or short-term care responsibilities including, but not limited to, day care, baby sitting whether paid or unpaid, counseling, teaching, and coaching.

(c) "Neglect" means failure by a person responsible for a child's care to supply a child with necessary food, clothing, shelter or medical care when reasonably able to do so or failure to protect a child from conditions or actions which imminently and seriously endanger the child's physical or mental health when reasonably able to do so. Nothing in this section shall be construed to (i) mean that a child is neglected solely because the child's parent, guardian or other person responsible for his care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child, or (ii) impose upon persons, not otherwise legally responsible for providing a child with necessary food, clothing, shelter or medical care, a duty to provide that care.

(d) "Physical abuse" means:

(i) Any physical injury inflicted by a person responsible for the child's care on a child other than by accidental means; or

(ii) Any physical injury that cannot reasonably be explained by the child's history of injuries.

(e) "Report" means any report received by the local welfare agency, police department or county sheriff pursuant to this section.

(f) "Facility" means a day care facility, residential facility, agency, hospital, sanatorium, or other facility or institution required to be licensed pursuant to sections 144.50 to 144.58, 241.021, or 245.781 to 245.812.

(g) "Operator" means an operator or agency as defined in section 245.782.

(h) "Commissioner" means the commissioner of public welfare.

(i) "Assessment" includes authority to interview the child, the person or persons responsible for the child's care, the alleged perpetrator, and any other person with knowledge of the abuse or neglect for the purpose of gathering the facts, assessing the risk to the child, and formulating a plan.

Subd. 3. [PERSONS MANDATED TO REPORT.] A professional or his delegate who is engaged in the practice of the healing arts, social services, hospital administration, psychological or psychiatric treatment, child care, education, or law enforcement who has knowledge of or reasonable cause to believe a child is being neglected or physically or sexually abused shall immediately report the information to the local welfare agency, police department or the county sheriff. The police department or the county sheriff, upon receiving a report, shall immediately notify the local welfare agency. The local welfare agency, upon receiving a report, shall immediately notify the local police department or the county sheriff. Nothing in this subdivision shall be construed to require more than one report from any institution, facility, school or agency.

Any person not required to report under the provisions of this subdivision may voluntarily report to the local welfare agency, police department or the county sheriff if he has knowledge of or reasonable cause to believe a child is being neglected or subjected to physical or sexual abuse. The police department or the county sheriff, upon receiving a report, shall immediately notify the local welfare agency.

A person mandated to report suspected physical or sexual child abuse or neglect occurring within a licensed facility shall report the information to the agency responsible for licensing the facility. A health or corrections agency receiving a report may request the local welfare agency to provide assistance pursuant to subdivisions 10, 10a, and 10b.

Any person who makes a report shall, upon request to the local welfare agency, receive a concise summary of the disposition of the report, unless release would be detrimental to the best interests of the child.

Subd. 3a. [REPORT OF DEPRIVATION OF PARENTAL RIGHTS.] A person mandated to report under subdivision 3, who knows or has reason to know of a violation of section 609.26, shall report the information to the local police department or the county sheriff. Receipt by a local welfare agency of a report or notification of a report of a violation of section 609.26 shall not be construed to invoke the duties of subdivisions 10, 10a, or 10b of this section.

Subd. 4. [IMMUNITY FROM LIABILITY.] (a) Any person, including those voluntarily making reports and those required to make reports under subdivision 3, participating in good faith and exercising due care in the making of a report or assisting in an assessment pursuant to this section has immunity from any liability, civil or criminal, that otherwise might result by reason of his action.

(b) A supervisor or social worker employed by a local welfare agency, who in good faith exercises due care when complying with subdivisions 10 and 11 or any related rule or provision of law, shall have immunity from any civil liability that otherwise might result by reason of his action.

Any public or private school, facility as defined in subdivision 2, or the employee of any public or private school or facility who permits access by a local welfare agency or local law enforcement agency and assists in good faith in an investigation or assessment pursuant to subdivision 10 has immunity from any liability, civil or criminal, that otherwise might result by reason of that action.

This subdivision does not provide immunity to any person for failure to make a required report or for committing neglect, physical abuse, or sexual abuse of a child.

Subd. 4a. **Retaliation prohibited.** (a) An employer of any person required to make reports under subdivision 3 shall not retaliate against the person for reporting in good faith suspected abuse or neglect pursuant to this section, or against a child with respect to whom a report is made, because of the report.

(b) The employer of any person required to report under subdivision 3 who retaliates against the person because of a report of suspected abuse or neglect is liable to that person for actual damages and, in addition, a penalty up to \$1,000.

(c) There shall be a rebuttable presumption that any adverse action within 90 days of a report is retaliatory. For purposes of this paragraph, the term "adverse action" refers to action taken by an employer of a person required to report under subdivision 3 which is involved in a report against the person making the report or the child with respect to whom the report was made because of the report, and includes, but is not limited to:

- (1) discharge, suspension, termination, or transfer from the facility, institution, school, or agency;
- (2) discharge from or termination of employment;
- (3) demotion or reduction in remuneration for services; or
- (4) restriction or prohibition of access to the facility, institution, school, agency, or persons affiliated with it.

Subd. 5. **Falsified reports.** Any person who willfully or recklessly makes a false report under the provisions of this section shall be liable in a civil suit for any actual damages suffered by the person or persons so reported and for any punitive damages set by the court or jury.

Subd. 6. **Failure to report.** Any person required by this section to report suspected physical or sexual child abuse or neglect who willfully fails to do so shall be guilty of a misdemeanor.

Subd. 7. **Report.** An oral report shall be made immediately by telephone or otherwise. An oral report made by a person required under subdivision 3 to report shall be followed as soon as possible by a report in writing to the appropriate police department, the county sheriff or local welfare agency. Any report shall be of sufficient content to identify the child, any person believed to be responsible for the abuse or neglect of the child if the person is known, the nature and extent of the abuse or neglect and the name and address of the reporter. Written reports received by a police department or the county sheriff shall be forwarded immediately to the local welfare agency. The police department or the county sheriff may keep copies of reports received by them. Copies of written reports received by a local welfare department shall be forwarded immediately to the local police department or the county sheriff.

A written copy of a report maintained by personnel of agencies, other than welfare or law enforcement agencies, which are subject to chapter 13 shall be confidential. An individual subject of the report may obtain access to the original report as provided by subdivision 11.

Subd. 8. **Evidence not privileged.** No evidence regarding the child's injuries 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.

Subd. 9. **Mandatory reporting to a medical examiner or coroner.** When a person required to report under the provisions of subdivision 3 has reasonable cause to believe a child has died as a result of neglect or physical or sexual abuse, he shall report that information to the appropriate medical examiner or coroner instead of the local welfare agency, police department or county sheriff. Medical examiners or coroners shall notify the local welfare agency or police department or county sheriff in instances in which they believe that the child has died as a result of neglect or physical or sexual abuse. The medical examiner or coroner shall complete an investigation as soon as feasible and report the findings to the police department or county sheriff and the local welfare agency.

Subd. 10. [DUTIES OF LOCAL WELFARE AGENCY AND LOCAL LAW ENFORCEMENT AGENCY UPON RECEIPT OF A REPORT.] (a) If the report alleges neglect, physical abuse, or sexual abuse by a parent, guardian, or individual functioning within the family unit as a person responsible for the child's care, the local welfare agency shall immediately investigate conduct an assessment and offer protective social services for purposes of preventing further abuses, safeguarding and enhancing the welfare of the abused or neglected minor, and preserving family life whenever possible. When necessary the local welfare agency shall seek authority to remove the child from the custody of his parent, guardian or adult with whom he is living. In performing any of these duties, the local welfare agency shall maintain appropriate records.

(b) Authority of the local welfare agency responsible for investigating assessing the child abuse report and of the local law enforcement agency includes, but is not limited to, authority to interview, without parental consent, the alleged victim and any other minors who currently reside with or who have resided with the alleged perpetrator. The interview may take place at school or any facility or other place where the alleged victim or other minors might be found and may take place outside the presence of the perpetrator or parent, legal custodian, or guardian, or school official. Except as provided

in this clause, the parent, legal custodian, or guardian shall be notified, no later than the conclusion of the investigation or assessment, that this interview has occurred.

Notwithstanding rule 49.02 of the Minnesota Rules of Procedure for Juvenile Courts, the juvenile court may, after hearing on an ex parte motion by the local welfare agency, order that, where reasonable cause exists, notification of this interview be withheld from the parent, legal custodian, or guardian.

(c) When the local welfare or local law enforcement agency determines that an interview should take place on school property, written notification must be received by school officials prior to the interview. The notification shall include the name of the child to be interviewed, the purpose of the interview, and a reference to the statutory authority to conduct an interview on school property. For interviews conducted by the local welfare agency, the notification shall be signed by the chairman of the county welfare board or his designee. The time, place, and manner of the interview on school premises shall be within the discretion of school officials, but the local welfare agency, or the local law enforcement agency shall have the exclusive authority to determine who may attend the interview. The conditions as to time, place, and manner of the interview set by the school officials shall be reasonable and the interview shall be conducted not more than 24 hours after the receipt of the notification unless another time is deemed necessary by agreement between the school officials and the local welfare

agency or local law enforcement agency. Where the school fails

to comply with the provisions of this section, the juvenile

court may order the school to comply with this provision.

School officials shall not disclose to the parent, legal
custodian, guardian, or perpetrator that a request to interview
the child has been made until after the abuse investigation or
assessment has been concluded. Every effort shall be made to

reduce the disruption of the educational program of the child,
other students, or school staff when an interview is conducted
on school premises.

(d) Where the perpetrator or a person responsible for the
care of the alleged victim or other minor prevents access to the
victim or other minor by the local welfare agency, the juvenile
court may order the parents, legal custodian, or guardian to
produce the alleged victim or other minor for questioning by the
local welfare agency or the local law enforcement agency outside

the presence of the perpetrator or any person responsible for
the child's care at reasonable places and times as specified by
court order.

(e) Before making an order under paragraph (d), the court
shall issue an order to show cause, either upon its own motion
or upon a verified petition, specifying the basis for the
requested interviews and fixing the time and place of the
hearing. The order to show cause shall be served personally and
shall be heard in the same manner as provided in other cases in
the juvenile court. The court shall consider the need for
appointment of a guardian ad litem to protect the best interests
of the child. If a guardian ad litem is appointed, he shall be
present at the hearing on the order to show cause.

(f) The commissioner and, the local welfare agencies
responsible for investigating reports, and the local law

enforcement agencies have the right to enter facilities as

defined in subdivision 2 and to inspect and copy the facility's
records as part of the investigation. Notwithstanding the
provisions of chapter 13, they also have the right to inform the
facility under investigation that they are conducting an
investigation, to disclose to the facility the names of the
individuals under investigation for abusing or neglecting a
child, and to provide the facility with a copy of the report and
the investigative findings.

Subd. 10a. Abuse outside the family unit. If the report alleges neglect, physical abuse, or sexual abuse by a person responsible for the child's care functioning outside the family unit in a setting other than a facility as defined in subdivision 2, the local welfare agency shall immediately notify the appropriate law enforcement agency and shall offer appropriate social services for the purpose of safeguarding and enhancing the welfare of the abused or neglected minor.

Subd. 10b. Duties of commissioner; neglect or abuse in a facility. If the report alleges that a child in the care of a facility as defined in subdivision 2 is neglected, physically abused, or sexually abused by an individual in that facility, the commissioner shall immediately investigate. The commissioner shall arrange for the transmittal to him of reports received by local agencies and may delegate to a local welfare agency the duty to investigate reports. In conducting an investigation under this section, the commissioner has the powers and duties specified for local welfare agencies under this section.

Subd. 11. [RECORDS.] All records maintained by a local welfare agency under this section, including any written reports filed under subdivision 7, shall be private data on individuals, except insofar as copies of reports are required by subdivision 7 to be sent to the local police department or the county sheriff. Report records maintained by any police department or the county sheriff shall be private data on individuals except the reports shall be made available to the investigating, petitioning, or prosecuting authority. The welfare board shall make available to the investigating, petitioning, or prosecuting authority any records which contain information relating to a specific incident of neglect or abuse which is under investigation, petition, or prosecution and information relating to any prior incidents of neglect or abuse involving any of the same persons. The records shall be collected and maintained in accordance with the provisions of chapter 13. An individual subject of a record shall have access to the record in accordance with those sections, except that the name of the reporter shall be confidential while the report is under assessment or investigation. After the assessment or investigation is completed, the name of the reporter shall be confidential but shall be accessible to the individual subject of the record upon court order.

Records maintained by local welfare agencies, the police department or county sheriff under this section shall be destroyed as described in clauses (a) to (c):

(a) If upon assessment or investigation a report is found

to be unsubstantiated, notice of intent to destroy records of
the report shall be mailed to the individual subject of the
report. At the subject's request the records shall be
maintained as private data. If no request from the subject is
received within 30 days of mailing the notice of intent to
destroy, the records shall be destroyed.

(b) All records relating to reports which, upon assessment

or investigation, are found to be substantiated shall be
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destroyed seven years after the date of the final entry in the
case record.

(c) All records of reports which, upon initial assessment

or investigation, cannot be substantiated or disproved to the
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satisfaction of the local welfare agency, local police
department or county sheriff may be kept for a period of one
year. If the local welfare agency, local police department or
county sheriff is unable to substantiate the report within that
period, each agency unable to substantiate the report shall
destroy its records relating to the report in the manner
provided by clause (a).

Subd. 12. Duties of facility operators. Any operator, employee, or volunteer worker at any facility who intentionally neglects, physically abuses, or sexually abuses any child in the care of that facility may be charged with a violation of sections 609.255, 609.377, or 609.378. Any operator of a facility who knowingly permits conditions to exist which result in neglect, physical abuse, or sexual abuse of a child in the care of that facility may be charged with a violation of section 609.23 or section 609.378.

Subd. 13. Application of data practices act. The classification of reports and records created or maintained for the purposes of this section shall be determined as provided by this section, notwithstanding any other classifications established by chapter 13.