

LEXISNEXIS (TM) MINNESOTA ANNOTATED STATUTES

*** THIS DOCUMENT IS CURRENT THROUGH THE 2009 REGULAR SESSION ***
*** ANNOTATIONS ARE CURRENT THROUGH SEPTEMBER 8, 2009 ***

CRIMES, CRIMINALS
CHAPTER 609 CRIMINAL CODE
CRIMES AGAINST THE PERSON

GO TO MINNESOTA STATUTES ARCHIVE DIRECTORY

Minn. Stat. § 609.221 (2009)

609.221 ASSAULT IN THE FIRST DEGREE

Subdivision 1. Great bodily harm.

Whoever assaults another and inflicts great bodily harm may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than \$30,000, or both.

Subd. 2. Use of deadly force against peace officer or correctional employee.

(a) Whoever assaults a peace officer or correctional employee by using or attempting to use deadly force against the officer or employee while the officer or employee is engaged in the performance of a duty imposed by law, policy, or rule may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than \$30,000, or both.

(b) A person convicted of assaulting a peace officer or correctional employee as described in paragraph (a) shall be committed to the commissioner of corrections for not less than ten years, nor more than 20 years. A defendant convicted and sentenced as required by this paragraph is not eligible for probation, parole, discharge, work release, or supervised release, until that person has served the full term of imprisonment as provided by law, notwithstanding the provisions of sections 241.26, 242.19, 243.05, 244.04, 609.12, and 609.135. Notwithstanding section 609.135, the court may not stay the imposition or execution of this sentence.

(c) As used in this subdivision:

- (1) "correctional employee" means an employee of a public or private prison, jail, or workhouse;
- (2) "deadly force" has the meaning given in section 609.066, subdivision 1; and
- (3) "peace officer" has the meaning given in section 626.84, subdivision 1.

HISTORY: 1979 c 258 s 4; 1984 c 628 art 3 s 11; 1989 c 290 art 6 s 8; 1997 c 239 art 3 s 10

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Minn. Stat. § 609.222 (2009)

609.222 ASSAULT IN THE SECOND DEGREE

Subdivision 1. Dangerous weapon.

Whoever assaults another with a dangerous weapon may be sentenced to imprisonment for not more than seven years or to payment of a fine of not more than \$14,000, or both.

Subd. 2. Dangerous weapon; substantial bodily harm.

Whoever assaults another with a dangerous weapon and inflicts substantial bodily harm may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both.

HISTORY: 1979 c 258 s 5; 1984 c 628 art 3 s 11; 1985 c 53 s 1; 1989 c 290 art 6 s 9; 1992 c 571 art 4 s 7

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Minn. Stat. § 609.223 (2009)

609.223 ASSAULT IN THE THIRD DEGREE

Subdivision 1. Substantial bodily harm.

Whoever assaults another and inflicts substantial bodily harm may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

Subd. 2. Past pattern of child abuse.

Whoever assaults a minor may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if the perpetrator has engaged in a past pattern of child abuse against the minor. As used in this subdivision, "child abuse" has the meaning given it in section 609.185, clause (5).

Subd. 3. Felony; victim under four.

Whoever assaults a victim under the age of four, and causes bodily harm to the child's head, eyes, or neck, or otherwise causes multiple bruises to the body, is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

HISTORY: 1979 c 258 s 6; 1984 c 628 art 3 s 11; 1989 c 290 art 6 s 10; 1990 c 542 s 17; 1994 c 636 art 2 s 20

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Minn. Stat. § 609.224 (2009)

609.224 ASSAULT IN THE FIFTH DEGREE

Subdivision 1. Misdemeanor.

Whoever does any of the following commits an assault and is guilty of a misdemeanor:

- (1) commits an act with intent to cause fear in another of immediate bodily harm or death; or
- (2) intentionally inflicts or attempts to inflict bodily harm upon another.

Subd. 2. Gross misdemeanor.

(a) Whoever violates the provisions of subdivision 1 against the same victim within ten years of a previous qualified domestic violence-related offense conviction or adjudication of delinquency is guilty of a gross misdemeanor and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

(b) Whoever violates the provisions of subdivision 1 within three years of a previous qualified domestic violence-related offense conviction or adjudication of delinquency is guilty of a gross misdemeanor and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

(c) A caregiver, as defined in section 609.232, who is an individual and who violates the provisions of subdivision 1 against a vulnerable adult, as defined in section 609.232, is guilty of a gross misdemeanor and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

Subd. 3. Firearms.

(a) When a person is convicted of a violation of this section or section 609.221, 609.222, or 609.223, the court shall determine and make written findings on the record as to whether:

- (1) the defendant owns or possesses a firearm; and
- (2) the firearm was used in any way during the commission of the assault.

(b) Except as otherwise provided in section 609.2242, subdivision 3, paragraph (c), a person is not entitled to possess a pistol if the person has been convicted after August 1, 1992, of assault in the fifth degree if the offense was committed within three years of a previous conviction under sections 609.221 to 609.224, unless three years have elapsed from the date of conviction and, during that time, the person has not been convicted of any other violation of section 609.224. Property rights may not be abated but access may be restricted by the courts. A person who possesses a pistol in violation of this paragraph is guilty of a gross misdemeanor.

Subd. 4. Felony.

(a) Whoever violates the provisions of subdivision 1 against the same victim within ten years of the first of any combination of two or more previous qualified domestic violence-related offense convictions or adjudications of delinquency is guilty of a felony and may be sentenced to imprisonment for not more than five years or payment of a fine of not more than \$10,000, or both.

(b) Whoever violates the provisions of subdivision 1 within three years of the first of any combination of two or more previous qualified domestic violence-related offense convictions or adjudications of delinquency is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

HISTORY: 1979 c 258 s 7; 1983 c 169 s 2; 1985 c 159 s 1; 1987 c 329 s 7; 1992 c 537 s 1,2; 1992 c 571 art 6 s 13; 1993 c 326 art 2 s 11,12; 1Sp1993 c 5 s 2,3; 1994 c 636 art 3 s 10; 1995 c 229 art 2 s 1; 1995 c 259 art 3 s 13,14; 1996 c 408 art 3 s 21,22; 2000 c 437 s 6,7; 1Sp2001 c 8 art 10 s 8,9; 2006 c 260 art 1 s 16,17

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Minn. Stat. § 609.2242 (2009)

609.2242 DOMESTIC ASSAULT

Subdivision 1. Misdemeanor.

Whoever does any of the following against a family or household member as defined in section 518B.01, subdivision 2, commits an assault and is guilty of a misdemeanor:

- (1) commits an act with intent to cause fear in another of immediate bodily harm or death; or
- (2) intentionally inflicts or attempts to inflict bodily harm upon another.

Subd. 2. Gross misdemeanor.

Whoever violates subdivision 1 within ten years of a previous qualified domestic violence-related offense conviction or adjudication of delinquency against a family or household member as defined in section 518B.01, subdivision 2, is guilty of a gross misdemeanor and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

Subd. 3. Domestic assaults; firearms.

(a) When a person is convicted of a violation of this section or section 609.221, 609.222, 609.223, 609.224, or 609.2247, the court shall determine and make written findings on the record as to whether:

- (1) the assault was committed against a family or household member, as defined in section 518B.01, subdivision 2;
- (2) the defendant owns or possesses a firearm; and
- (3) the firearm was used in any way during the commission of the assault.

(b) If the court determines that the assault was of a family or household member, and that the offender owns or possesses a firearm and used it in any way during the commission of the assault, it shall order that the firearm be summarily forfeited under section 609.5316, subdivision 3.

(c) When a person is convicted of assaulting a family or household member and is determined by the court to have used a firearm in any way during commission of the assault, the court may order that the person is prohibited from possessing any type of firearm for any period longer than three years or for the remainder of the person's life. A person who violates this paragraph is guilty of a gross misdemeanor. At the time of the conviction, the court shall inform the defendant whether and for how long the defendant is prohibited from possessing a firearm and that it is a gross misdemeanor to violate this paragraph. The failure of the court to provide this information to a defendant does not affect the applicability of the firearm possession prohibition or the gross misdemeanor penalty to that defendant.

(d) Except as otherwise provided in paragraph (c), when a person is convicted of a violation of this section or section 609.224 and the court determines that the victim was a family or household member, the court shall inform the defendant that the defendant is prohibited from possessing a pistol for three years from the date of conviction and that it is a gross misdemeanor offense to violate this prohibition. The failure of the court to provide this information to a defendant does not affect the applicability of the pistol possession prohibition or the gross misdemeanor penalty to that defendant.

(e) Except as otherwise provided in paragraph (c), a person is not entitled to possess a pistol if the person has been convicted after August 1, 1992, of domestic assault under this section or assault in the fifth degree under section 609.224 and the assault victim was a family or household member as defined in section 518B.01, subdivision 2, unless three years have elapsed from the date of conviction and, during that time, the person has not been convicted of any other violation of this section or section 609.224. Property rights may not be abated but access may be restricted by the courts. A person who possesses a pistol in violation of this paragraph is guilty of a gross misdemeanor.

Subd. 4. Felony.

Whoever violates the provisions of this section or section 609.224, subdivision 1, within ten years of the first of any combination of two or more previous qualified domestic violence-related offense convictions or adjudications of delinquency is guilty of a felony and may be sentenced to imprisonment for not more than five years or payment of a fine of not more than \$10,000, or both.

HISTORY: 1995 c 259 art 3 s 15; 2000 c 437 s 8,9; 1Sp2001 c 8 art 10 s 10,11; 2005 c 136 art 17 s 12; 2006 c 260 art 1 s 18,19

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Minn. Stat. § 609.341 (2009)

609.341 DEFINITIONS

Subdivision 1. Scope.

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

Subd. 2. Actor.

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

Subd. 3. Force.

"Force" means the infliction, attempted infliction, or threatened infliction by the actor of bodily harm or commission or threat of any other crime by the actor against the complainant or another, which (a) causes the complainant to reasonably believe that the actor has the present ability to execute the threat and (b) if the actor does not have a significant relationship to the complainant, also causes the complainant to submit.

Subd. 4. Consent.

(a) "Consent" means words or overt actions by a person indicating a freely given present agreement to perform a particular sexual act with the actor. Consent does not mean the existence of a prior or current social relationship between the actor and the complainant or that the complainant failed to resist a particular sexual act.

(b) A person who is mentally incapacitated or physically helpless as defined by this section cannot consent to a sexual act.

(c) Corroboration of the victim's testimony is not required to show lack of consent.

Subd. 5. Intimate parts.

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

Subd. 6. Mentally impaired.

"Mentally impaired" means that a person, as a result of inadequately developed or impaired intelligence or a substantial psychiatric disorder of thought or mood, lacks the judgment to give a reasoned consent to sexual contact or to sexual penetration.

Subd. 7. Mentally incapacitated.

"Mentally incapacitated" means that a person under the influence of alcohol, a narcotic, anesthetic, or any other substance, administered to that person without the person's agreement, lacks the judgment to give a reasoned consent to sexual contact or sexual penetration.

Subd. 8. Personal injury.

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

Subd. 9. Physically helpless.

"Physically helpless" means that a person is (a) asleep or not conscious, (b) unable to withhold consent or to withdraw consent because of a physical condition, or (c) unable to communicate nonconsent and the condition is known or reasonably should have been known to the actor.

Subd. 10. Position of authority.

"Position of authority" includes but is not limited to any person who is a parent or 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. For the purposes of subdivision 11, "position of authority" includes a psychotherapist.

Subd. 11. Sexual contact.

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

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

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

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

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

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

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

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

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

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

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

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

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

Subd. 12. Sexual penetration.

"Sexual penetration" means any of the following acts committed without the complainant's consent, except in those cases where consent is not a defense, whether or not emission of semen occurs:

(1) sexual intercourse, cunnilingus, fellatio, or anal intercourse; or

(2) any intrusion however slight into the genital or anal openings:

(i) of the complainant's body by any part of the actor's body or any object used by the actor for this purpose;

(ii) of the complainant's body by any part of the body of the complainant, by any part of the body of another person, or by any object used by the complainant or another person for this purpose, when effected by a person in a position of authority, or by coercion, or by inducement if the child is under 13 years of age or mentally impaired; or

(iii) of the body of the actor or another person by any part of the body of the complainant or by any object used by the complainant for this purpose, when effected by a person in a position of authority, or by coercion, or by inducement if the child is under 13 years of age or mentally impaired.

Subd. 13. Complainant.

"Complainant" means a person alleged to have been subjected to criminal sexual conduct, but need not be the person who signs the complaint.

Subd. 14. Coercion.

"Coercion" means the use by the actor of words or circumstances that cause the complainant reasonably to fear that the actor will inflict bodily harm upon the complainant or another, or the use by the actor of confinement, or superior size or strength, against the complainant that causes the complainant to submit to sexual penetration or contact against the complainant's will. Proof of coercion does not require proof of a specific act or threat.

Subd. 15. Significant relationship.

"Significant relationship" means a situation in which the actor is:

- (1) the complainant's parent, stepparent, or guardian;
- (2) any of the following persons related to the complainant by blood, marriage, or adoption: brother, sister, stepbrother, stepsister, first cousin, aunt, uncle, nephew, niece, grandparent, great-grandparent, great-uncle, great-aunt; or
- (3) an adult who jointly resides intermittently or regularly in the same dwelling as the complainant and who is not the complainant's spouse.

Subd. 16. Patient.

"Patient" means a person who seeks or obtains psychotherapeutic services.

Subd. 17. Psychotherapist.

"Psychotherapist" means a person who is or purports to be a physician, psychologist, nurse, chemical dependency counselor, social worker, marriage and family therapist, licensed professional counselor, or other mental health service provider; or any other person, whether or not licensed by the state, who performs or purports to perform psychotherapy.

Subd. 18. Psychotherapy.

"Psychotherapy" means the professional treatment, assessment, or counseling of a mental or emotional illness, symptom, or condition.

Subd. 19. Emotionally dependent.

"Emotionally dependent" means that the nature of the former patient's emotional condition and the nature of the treatment provided by the psychotherapist are such that the psychotherapist knows or has reason to know that the former patient is unable to withhold consent to sexual contact or sexual penetration by the psychotherapist.

Subd. 20. Therapeutic deception.

"Therapeutic deception" means a representation by a psychotherapist that sexual contact or sexual penetration by the psychotherapist is consistent with or part of the patient's treatment.

Subd. 21. Special transportation.

"Special transportation service" means motor vehicle transportation provided on a regular basis by a public or private entity or person that is intended exclusively or primarily to serve individuals who are vulnerable adults or disabled. Special transportation service includes, but is not limited to, service provided by buses, vans, taxis, and volunteers driving private automobiles.

Subd. 22. Predatory crime.

"Predatory crime" means a felony violation of section 609.185 (first-degree murder), 609.19 (second-degree murder), 609.195 (third-degree murder), 609.20 (first-degree manslaughter), 609.205 (second-degree manslaughter), 609.221 (first-degree assault), 609.222 (second-degree assault), 609.223 (third-degree assault), 609.24 (simple robbery),

609.245 (aggravated robbery), 609.25 (kidnapping), 609.255 (false imprisonment), 609.498 (tampering with a witness), 609.561 (first-degree arson), or 609.582, subdivision 1 (first-degree burglary).

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Minn. Stat. § 609.342 (2009)

609.342 CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE

Subdivision 1. Crime defined.

A person who engages in sexual penetration with another person, or in sexual contact with a person under 13 years of age as defined in section 609.341, subdivision 11, paragraph (c), is guilty of criminal sexual conduct in the first degree 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;

(b) the complainant is at least 13 years of age 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. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

(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;

(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;

(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 impaired, mentally incapacitated, or physically helpless;

(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;

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

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

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

(ii) the complainant suffered personal injury; or

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

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

Subd. 2. Penalty.

(a) Except as otherwise provided in section 609.3455; or *Minnesota Statutes 2004, section 609.109*, a person convicted under subdivision 1 may be sentenced to imprisonment for not more than 30 years or to a payment of a fine of not more than \$40,000, or both.

(b) Unless a longer mandatory minimum sentence is otherwise required by law or the Sentencing Guidelines provide for a longer presumptive executed sentence, the court shall presume that an executed sentence of 144 months must be imposed on an offender convicted of violating this section. Sentencing a person in a manner other than that described in this paragraph is a departure from the Sentencing Guidelines.

(c) A person convicted under this section is also subject to conditional release under section 609.3455.

Subd. 3. Stay.

Except when imprisonment is required under section 609.3455; or *Minnesota Statutes 2004, section 609.109*, if a person is convicted under subdivision 1, clause (g), the court may stay imposition or execution of the sentence if it finds that:

(a) a stay is in the best interest of the complainant or the family unit; and

(b) a professional assessment indicates that the offender has been accepted by and can respond to a treatment program.

If the court stays imposition or execution of sentence, it shall include the following as conditions of probation:

(1) incarceration in a local jail or workhouse;

(2) a requirement that the offender complete a treatment program; and

(3) a requirement that the offender have no unsupervised contact with the complainant until the offender has successfully completed the treatment program unless approved by the treatment program and the supervising correctional agent.

HISTORY: 1975 c 374 s 3; 1981 c 51 s 2; 1983 c 204 s 1; 1984 c 628 art 3 s 11; 1985 c 24 s 5; 1985 c 286 s 15; 1986 c 444; 1989 c 290 art 4 s 12; 1992 c 571 art 1 s 14; 1994 c 636 art 2 s 34; 1995 c 186 s 99; 1998 c 367 art 3 s 7; art 6 s 15; 2000 c 311 art 4 s 2; 2000 c 437 s 10; 2005 c 136 art 2 s 12,13; 2007 c 13 art 3 s 37

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Minn. Stat. § 609.343 (2009)

609.343 CRIMINAL SEXUAL CONDUCT IN THE SECOND DEGREE

Subdivision 1. Crime defined.

A person who engages in sexual contact with another person is guilty of criminal sexual conduct in the second degree 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. In a prosecution under this clause, the state is not required to prove that the sexual contact was coerced;

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

(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;

(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;

(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 impaired, mentally incapacitated, or physically helpless;

(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;

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

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

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

(ii) the complainant suffered personal injury; or

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

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

Subd. 2. Penalty.

(a) Except as otherwise provided in section 609.3455; or *Minnesota Statutes 2004, section 609.109*, a person convicted under subdivision 1 may be sentenced to imprisonment for not more than 25 years or to a payment of a fine of not more than \$35,000, or both.

(b) Unless a longer mandatory minimum sentence is otherwise required by law or the Sentencing Guidelines provide for a longer presumptive executed sentence, the court shall presume that an executed sentence of 90 months must be imposed on an offender convicted of violating subdivision 1, clause (c), (d), (e), (f), or (h). Sentencing a person in a manner other than that described in this paragraph is a departure from the Sentencing Guidelines.

(c) A person convicted under this section is also subject to conditional release under section 609.3455.

Subd. 3. Stay.

Except when imprisonment is required under section 609.3455; or *Minnesota Statutes 2004, section 609.109*, if a person is convicted under subdivision 1, clause (g), the court may stay imposition or execution of the sentence if it finds that:

(a) a stay is in the best interest of the complainant or the family unit; and

(b) a professional assessment indicates that the offender has been accepted by and can respond to a treatment program.

If the court stays imposition or execution of sentence, it shall include the following as conditions of probation:

(1) incarceration in a local jail or workhouse;

(2) a requirement that the offender complete a treatment program; and

(3) a requirement that the offender have no unsupervised contact with the complainant until the offender has successfully completed the treatment program unless approved by the treatment program and the supervising correctional agent.

HISTORY: 1975 c 374 s 4; 1979 c 258 s 12; 1981 c 51 s 3; 1983 c 204 s 2; 1984 c 628 art 3 s 11; 1985 c 24 s 6; 1985 c 286 s 16; 1986 c 444; 1989 c 290 art 4 s 13; 1992 c 571 art 1 s 15; 1998 c 367 art 3 s 8; art 6 s 15; 2000 c 437 s 11; 2002 c 381 s 2; 2005 c 136 art 2 s 14,15; 2007 c 13 art 3 s 37

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Minn. Stat. § 609.344 (2009)

609.344 CRIMINAL SEXUAL CONDUCT IN THE THIRD DEGREE

Subdivision 1. Crime defined.

A person who engages in sexual penetration with another person is guilty of criminal sexual conduct in the third degree if any of the following circumstances exists:

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

(b) the complainant is at least 13 but less than 16 years of age and the actor is more than 24 months older than the complainant. In any such case if the actor is no more than 120 months older than the complainant, 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. In all other cases, mistake as to the complainant's age shall not be a defense. If the actor in such a case is no more than 48 months but more than 24 months older than the complainant, the actor may be sentenced to imprisonment for not more than five years. Consent by the complainant is not a defense;

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

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

(e) the complainant is at least 16 but less than 18 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

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

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

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

(ii) the complainant suffered personal injury; or

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

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

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

(i) during the psychotherapy session; or

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

Consent by the complainant is not a defense;

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

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

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

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

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

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

(m) the actor is an employee, independent contractor, or volunteer of a state, county, city, or privately operated adult or juvenile correctional system, including, but not limited to, jails, prisons, detention centers, or work release facilities, and the complainant is a resident of a facility or under supervision of the correctional system. Consent by the complainant is not a defense;

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

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

Subd. 2. Penalty.

Except as otherwise provided in section 609.3455, a person convicted under subdivision 1 may be sentenced to imprisonment for not more than 15 years or to a payment of a fine of not more than \$30,000, or both. A person convicted under this section is also subject to conditional release under section 609.3455.

Subd. 3. Stay.

Except when imprisonment is required under section 609.3455; or *Minnesota Statutes 2004, section 609.109*, if a person is convicted under subdivision 1, clause (f), the court may stay imposition or execution of the sentence if it finds that:

(a) a stay is in the best interest of the complainant or the family unit; and

(b) a professional assessment indicates that the offender has been accepted by and can respond to a treatment program.

If the court stays imposition or execution of sentence, it shall include the following as conditions of probation:

(1) incarceration in a local jail or workhouse;

(2) a requirement that the offender complete a treatment program; and

(3) a requirement that the offender have no unsupervised contact with the complainant until the offender has successfully completed the treatment program unless approved by the treatment program and the supervising correctional agent.

HISTORY: 1975 c 374 s 5; 1979 c 258 s 13; 1983 c 204 s 3; 1984 c 588 s 7; 1984 c 628 art 3 s 11; 1985 c 24 s 7; 1985 c 286 s 17; 1985 c 297 s 6; 1986 c 351 s 8; 1986 c 444; 1Sp1986 c 3 art 1 s 80; 1987 c 94 s 1; 1989 c 290 art 4 s 14; 1992 c 571 art 1 s 16,17; 1993 c 326 art 4 s 20; 1994 c 636 art 2 s 35; 1998 c 367 art 3 s 9; art 6 s 15; 2000 c 437 s 12; 2001 c 210 s 22; 2002 c 381 s 3; 2005 c 136 art 2 s 16,17; 2007 c 13 art 3 s 37; 2007 c 54 art 2 s 4

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Minn. Stat. § 609.345 (2009)

609.345 CRIMINAL SEXUAL CONDUCT IN THE FOURTH DEGREE

Subdivision 1. Crime defined.

A person who engages in sexual contact with another person is guilty of criminal sexual conduct in the fourth degree if any of the following circumstances exists:

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

(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. Consent by the complainant to the act is not a defense. In any such case, if the actor is no more than 120 months older than the complainant, 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. In all other cases, mistake as to the complainant's age shall not be a defense;

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

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

(e) the complainant is at least 16 but less than 18 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

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

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

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

(ii) the complainant suffered personal injury; or

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

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

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

(i) during the psychotherapy session; or

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

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

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

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

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

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

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

(m) the actor is an employee, independent contractor, or volunteer of a state, county, city, or privately operated adult or juvenile correctional system, including, but not limited to, jails, prisons, detention centers, or work release facilities, and the complainant is a resident of a facility or under supervision of the correctional system. Consent by the complainant is not a defense;

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

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

Subd. 2. Penalty.

Except as otherwise provided in section 609.3455, a person convicted under subdivision 1 may be sentenced to imprisonment for not more than ten years or to a payment of a fine of not more than \$20,000, or both. A person convicted under this section is also subject to conditional release under section 609.3455.

Subd. 3. Stay.

Except when imprisonment is required under section 609.3455; or *Minnesota Statutes 2004, section 609.109*, if a person is convicted under subdivision 1, clause (f), the court may stay imposition or execution of the sentence if it finds that:

(a) a stay is in the best interest of the complainant or the family unit; and

(b) a professional assessment indicates that the offender has been accepted by and can respond to a treatment program.

If the court stays imposition or execution of sentence, it shall include the following as conditions of probation:

(1) incarceration in a local jail or workhouse;

(2) a requirement that the offender complete a treatment program; and

(3) a requirement that the offender have no unsupervised contact with the complainant until the offender has successfully completed the treatment program unless approved by the treatment program and the supervising correctional agent.

HISTORY: 1975 c 374 s 6; 1976 c 124 s 9; 1979 c 258 s 14; 1981 c 51 s 4; 1983 c 204 s 4; 1984 c 588 s 8; 1984 c 628 art 3 s 11; 1985 c 24 s 8; 1985 c 286 s 18; 1985 c 297 s 7; 1986 c 351 s 9; 1986 c 444; 1Sp1986 c 3 art 1 s 81; 1987 c 94 s 2; 1989 c 290 art 4 s 15; 1992 c 571 art 1 s 18,19; 1993 c 326 art 4 s 21; 1994 c 636 art 2 s 36; 1998 c 367 art 3 s 10; art 6 s 15; 2000 c 437 s 13; 2001 c 210 s 23; 2002 c 381 s 4; 2005 c 136 art 2 s 18,19; 2007 c 13 art 3 s 37; 2007 c 54 art 2 s 5

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Minn. Stat. § 609.376 (2009)

609.376 DEFINITIONS

Subdivision 1. Terms defined.

For the purposes of sections 609.255 and 609.376 to 609.38, the following terms have the meanings given unless specific content indicates otherwise.

Subd. 2. Child.

"Child" means any person under the age of 18 years.

Subd. 3. Caretaker.

"Caretaker" means an individual who has responsibility for the care of a child as a result of a family relationship or who has assumed responsibility for all or a portion of the care of a child.

Subd. 4. Complainant.

"Complainant" means a person alleged to have been a victim of a violation of section 609.255, subdivision 3, 609.377, or 609.378, but need not be the person who signs the complaint.

HISTORY: 1983 c 217 s 3

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Minn. Stat. § 609.377 (2009)

609.377 MALICIOUS PUNISHMENT OF CHILD

Subdivision 1. Malicious punishment.

A parent, legal guardian, or caretaker who, by an intentional act or a series of intentional acts with respect to a child, evidences unreasonable force or cruel discipline that is excessive under the circumstances is guilty of malicious punishment of a child and may be sentenced as provided in subdivisions 2 to 6.

Subd. 2. Gross misdemeanor.

If the punishment results in less than substantial bodily harm, the person may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

Subd. 3. Enhancement to a felony.

Whoever violates the provisions of subdivision 2 during the time period between a previous conviction or adjudication for delinquency under this section or sections 609.221 to 609.2231, 609.224, 609.2242, 609.342 to 609.345, or 609.713, and the end of five years following discharge from sentence or disposition for that conviction or adjudication may be sentenced to imprisonment for not more than five years or a fine of \$10,000, or both.

Subd. 4. Felony; child under age four.

If the punishment is to a child under the age of four and causes bodily harm to the head, eyes, neck, or otherwise causes multiple bruises to the body, the person may be sentenced to imprisonment for not more than five years or a fine of \$10,000, or both.

Subd. 5. Felony; substantial bodily harm.

If the punishment results in substantial bodily harm, the person may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

Subd. 6. Felony; great bodily harm.

If the punishment results in great bodily harm, the person may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both.

HISTORY: 1983 c 217 s 4; 1984 c 628 art 3 s 11; 1988 c 655 s 2; 1989 c 290 art 6 s 16; 1990 c 542 s 18; 1994 c 636 art 2 s 37; 2000 c 437 s 14

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Minn. Stat. § 609.378 (2009)

609.378 NEGLECT OR ENDANGERMENT OF CHILD

Subdivision 1. Persons guilty of neglect or endangerment.

(a)(1) A parent, legal guardian, or caretaker who willfully deprives a child of necessary food, clothing, shelter, health care, or supervision appropriate to the child's age, when the parent, guardian, or caretaker is reasonably able to make the necessary provisions and the deprivation harms or is likely to substantially harm the child's physical, mental, or emotional health is guilty of neglect of a child and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both. If the deprivation results in substantial harm to the child's physical, mental, or emotional health, the person may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both. If a parent, guardian, or caretaker responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child, this treatment or care is "health care," for purposes of this clause.

(2) A parent, legal guardian, or caretaker who knowingly permits the continuing physical or sexual abuse of a child is guilty of neglect of a child and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

(b) A parent, legal guardian, or caretaker who endangers the child's person or health by:

(1) intentionally or recklessly causing or permitting a child to be placed in a situation likely to substantially harm the child's physical, mental, or emotional health or cause the child's death; or

(2) knowingly causing or permitting the child to be present where any person is selling, manufacturing, possessing immediate precursors or chemical substances with intent to manufacture, or possessing a controlled substance, as defined in section 152.01, subdivision 4, in violation of section 152.021, 152.022, 152.023, 152.024, or 152.0262; is guilty of child endangerment and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

If the endangerment results in substantial harm to the child's physical, mental, or emotional health, the person may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

This paragraph does not prevent a parent, legal guardian, or caretaker from causing or permitting a child to engage in activities that are appropriate to the child's age, stage of development, and experience, or from selecting health care as defined in subdivision 1, paragraph (a).

(c) A person who intentionally or recklessly causes a child under 14 years of age to be placed in a situation likely to substantially harm the child's physical health or cause the child's death as a result of the child's access to a loaded firearm is guilty of child endangerment and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

If the endangerment results in substantial harm to the child's physical health, the person may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

Subd. 2. Defenses.

It is a defense to a prosecution under subdivision 1, paragraph (a), clause (2), or paragraph (b), that at the time of the neglect or endangerment there was a reasonable apprehension in the mind of the defendant that acting to stop or prevent the neglect or endangerment would result in substantial bodily harm to the defendant or the child in retaliation.

HISTORY: 1983 c 217 s 5; 1984 c 628 art 3 s 11; 1989 c 282 art 2 s 199; 1992 c 571 art 4 s 11; 1993 c 326 art 4 s 22; 2002 c 314 s 6; 2005 c 136 art 7 s 21