

Sec. 4. EFFECTIVE DATE.

Sections 1 and 2 are effective the day following their final enactment.

Approved March 18, 1982

CHAPTER 469 — S.F.No. 1589

An act relating to crimes; amending the definitions of shelter care facility and secure detention facility; extending the time limit for detaining children who may be dependent or neglected children; clarifying the definition of physically helpless victims of criminal sexual conduct; amending Minnesota Statutes 1980, Sections 260.015, Subdivisions 16 and 17; 260.171, Subdivisions 2, 4, 5, and 6, and by adding a subdivision; 260.172, Subdivision 1; 609.341, Subdivision 9; repealing Minnesota Statutes 1980, Section 260.015, Subdivision 15.

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

Section 1. Minnesota Statutes 1980, Section 260.015, Subdivision 16, is amended to read:

Subd. 16. "Secure detention facility" means a physically restricting ~~detention~~ facility, including but not limited to a jail, a hospital, a state institution, a residential treatment center, or a detention home used for the temporary care of a child pending court action.

Sec. 2. Minnesota Statutes 1980, Section 260.015, Subdivision 17, is amended to read:

Subd. 17. "Shelter care facility" means a physically unrestricting facility, such as but not limited to, a hospital, a group home or a licensed facility for foster care, excluding a detention home used for the temporary care of a child pending court action.

Sec. 3. Minnesota Statutes 1980, Section 260.171, Subdivision 2, is amended to read:

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, after the taking into custody unless an order for detention, specifying the reason for detention, is signed by the judge or referee. No child may be held detained in a secure detention facility or shelter care facility longer than 36 hours, excluding Saturdays, Sundays or holidays, after the taking being taken into custody for a

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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 juvenile secure detention facility with the approval of the administrative authority of the facility. If the court refers the matter to the prosecuting authority pursuant to section 260.125, notice to the commissioner shall not be required.

Sec. 4. Minnesota Statutes 1980, Section 260.171, Subdivision 4, is amended to read:

Subd. 4. If the person who has taken the child into custody determines that the child should be placed in a secure detention facility or a shelter care facility, he shall advise the child and as soon as is possible, the child's parent, guardian, or custodian:

(a) of the reasons why the child has been taken into custody and why he is being placed in a secure detention facility or a shelter care facility; and

(b) of the location of the secure detention facility or shelter care facility. If there is reason to believe that disclosure of the location of the shelter care facility would place the child's health and welfare in immediate endangerment, disclosure of the location of the shelter care facility shall not be made; and

(c) that the child's parent, guardian, or custodian and attorney or guardian ad litem may make an initial visit to the secure detention facility or shelter care facility at any time. Subsequent visits by a parent, guardian, or custodian may be made on a reasonable basis during visiting hours and by the child's attorney or guardian ad litem at reasonable hours; and

(d) that the child may telephone his parents and an attorney or guardian ad litem from the secure detention facility or shelter care facility immediately after being admitted to the ~~detention~~ facility and thereafter on a reasonable basis to be determined by the director of the facility; and

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(e) that the child may not be held detained for acts as defined in section 260.015, subdivision 5 at ~~the~~ a secure detention facility or shelter care facility longer than 36 hours, excluding Saturdays, Sundays and holidays, unless a petition has been filed within that time and the court orders the child's continued detention, pursuant to section 260.172; and

(f) that the child may not be detained pursuant to section 260.165, subdivision 1, clause (a) or (c)(2), at a shelter care facility longer than 72 hours, excluding Saturdays, Sundays and holidays, unless a petition has been filed within that time and the court orders the child's continued detention, pursuant to section 260.172.

Sec. 5. Minnesota Statutes 1980, Section 260.171, Subdivision 5, is amended to read:

Subd. 5. If a child is to be detained, ~~the in a secure detention facility where or shelter care facility,~~ the child is to be placed ~~shall promptly provide for transportation of the child to the facility or secure~~ shall be promptly transported to the facility in a manner approved by the facility or by securing a written transportation order from the court authorizing transportation by the sheriff or other qualified person. The person who has determined that the child should be detained shall deliver to the court and the supervisor of the secure detention facility or shelter care facility where the child is placed, a signed report, setting forth:

- (a) the time the child was taken into custody; and
- (b) the time the child was delivered for transportation to the secure detention facility or shelter care facility; and
- (c) the reasons why the child was taken into custody; and
- (d) the reasons why the child has been placed in detention; and
- (e) a statement that the child and his parent have received the notification required by subdivision 4 or the reasons why they have not been so notified; and
- (f) any instructions required by section 6.

Sec. 6. Minnesota Statutes 1980, Section 260.171, is amended by adding a subdivision to read:

Subd. 5a. **SHELTER CARE; NOTICE TO PARENT.** When a child is to be placed in a shelter care facility the person taking the child into custody or the court shall determine whether or not there is reason to believe that disclosure of the shelter care facility's location to the child's parent, guardian, or custodian would immediately endanger the health and welfare of the child. If there is reason to believe that the child's health and welfare would be immediately endangered, disclosure of the location shall not be made. This determination shall be included in the report required by subdivision 5, along with instructions to the shelter care facility to notify or withhold notification.

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Sec. 7. Minnesota Statutes 1980, Section 260.171, Subdivision 6, is amended to read:

Subd. 6. (a) When a child has been delivered to a secure detention facility, the supervisor of the facility shall deliver to the court a signed report acknowledging receipt of the child stating the time of the child's arrival. The supervisor of the facility shall ascertain from the report of the person who has taken the child into custody whether the child and his parent, guardian, or custodian have received the notification required by subdivision 4. If the child or his parent, guardian or custodian, or both, have not been so notified, the supervisor of the facility shall immediately make the notification, and shall include in his report to the court a statement that notification has been received or the reasons why it has not.

(b) When a child has been delivered to a shelter care facility, the supervisor of the facility shall deliver to the court a signed report acknowledging receipt of the child stating the time of the child's arrival. The supervisor of the facility shall ascertain from the report of the person who has taken the child into custody whether the child's parent, guardian or custodian has been notified of the placement of the child at the shelter care facility and its location, and the supervisor shall follow any instructions concerning notification contained in that report.

Sec. 8. Minnesota Statutes 1980, Section 260.172, Subdivision 1, is amended to read:

Subdivision 1. Except a child taken into custody pursuant to section 260.165, subdivision 1, clause (a) or (c)(2), a hearing shall be held within 36 hours of a child's being taken into custody, excluding Saturdays, Sundays and holidays, a hearing shall be held to determine whether the child should continue in detention. Within 72 hours of a child being taken into custody pursuant to section 260.165, subdivision 1, clause (a) or (c)(2), excluding Saturdays, Sundays and holidays, a hearing shall be held to determine whether the child should continue in custody. 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.

Sec. 9. Minnesota Statutes 1980, Section 609.341, Subdivision 9, is amended to read:

Subd. 9. "Physically helpless" means that a person is unconscious, asleep, or for any other reason is physically unable to communicate unwillingness to act (a) asleep or not conscious, (b) unable to withhold consent or to withdraw 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.

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Sec. 10. REPEALER.

Minnesota Statutes 1980, Section 260.015, Subdivision 15, is repealed.

Sec. 11. EFFECTIVE DATE.

This act is effective the day following final enactment and applies to all crimes occurring on or after its effective date.

Approved March 18, 1982

CHAPTER 470 — S.F.No. 1888

An act relating to education; requiring welfare and correctional institutions to submit an educational policy to the commissioner of education; proposing new law coded in Minnesota Statutes, Chapter 121.

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

Section 1. LEGISLATIVE INTENT.

The legislature finds that a process for curriculum and staffing evaluation is needed to ensure quality and continued improvement of the educational programs provided to students placed in the state's welfare and correctional institutions.

Sec. 2. [121.166] INSTITUTIONAL POLICY.

Before July 1 of each year, each welfare and correctional institution which offers an elementary, secondary or vocational educational program shall develop a written policy for its educational program for the next school year. The institutional policy shall specify the educational goals for the institution; instructional plans for implementing these goals; estimated number and grade level of students; number of licensed educational staff; areas of licensure; student to staff ratios; number of supervisory personnel; proposed educational budget; procedures for evaluation of the program; and any other information deemed necessary by the commissioner of education for the evaluation of the educational institutions. The institutions shall submit the policy to the commissioner of education who will review the policy to determine whether the program and personnel employed in the program are adequate to meet the institution's obligation to provide instruction and services in compliance with the state board's rules and standards. If necessary, the commissioner shall make recommendations to the institution for changes in its educational program.

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