

This Document can be made available
in alternative formats upon request

State of Minnesota
HOUSE OF REPRESENTATIVES
NINETIETH SESSION

H. F. No. 3169

03/01/2018 Authored by Schomacker, Poston and Kresha
The bill was read for the first time and referred to the Committee on Health and Human Services Reform
03/14/2018 Adoption of Report: Re-referred to the Committee on Civil Law and Data Practices Policy
03/26/2018 Adoption of Report: Amended and re-referred to the Committee on Health and Human Services Finance

1.1 A bill for an act
1.2 relating to human services; modifying background study requirements for minors
1.3 living in a licensed foster care home; amending Minnesota Statutes 2016, section
1.4 245C.05, by adding a subdivision; Minnesota Statutes 2017 Supplement, sections
1.5 245C.04, subdivision 1; 245C.05, subdivision 5.

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

1.7 Section 1. Minnesota Statutes 2017 Supplement, section 245C.04, subdivision 1, is amended
1.8 to read:

1.9 Subdivision 1. **Licensed programs; other child care programs.** (a) The commissioner
1.10 shall conduct a background study of an individual required to be studied under section
1.11 245C.03, subdivision 1, at least upon application for initial license for all license types.

1.12 (b) The commissioner shall conduct a background study of an individual required to be
1.13 studied under section 245C.03, subdivision 1, including a child care staff person as defined
1.14 in section 245C.02, subdivision 6a, in a family child care program, licensed child care center,
1.15 certified license-exempt child care center, or legal nonlicensed child care provider, on a
1.16 schedule determined by the commissioner. The background study must include submission
1.17 of fingerprints for a national criminal history record check and a review of the information
1.18 under section 245C.08. A background study for a child care program must be repeated
1.19 within five years from the most recent study conducted under this paragraph.

1.20 (c) At reapplication for a family child care license:

1.21 (1) for a background study affiliated with a licensed family child care center or legal
1.22 nonlicensed child care provider, the individual shall provide information required under

2.1 section 245C.05, subdivision 1, paragraphs (a), (b), and (d), to the county agency, and be
2.2 fingerprinted and photographed under section 245C.05, subdivision 5;

2.3 (2) the county agency shall verify the information received under clause (1) and forward
2.4 the information to the commissioner to complete the background study; and

2.5 (3) the background study conducted by the commissioner under this paragraph must
2.6 include a review of the information required under section 245C.08.

2.7 (d) The commissioner is not required to conduct a study of an individual at the time of
2.8 reapplication for a license if the individual's background study was completed by the
2.9 commissioner of human services and the following conditions are met:

2.10 (1) a study of the individual was conducted either at the time of initial licensure or when
2.11 the individual became affiliated with the license holder;

2.12 (2) the individual has been continuously affiliated with the license holder since the last
2.13 study was conducted; and

2.14 (3) the last study of the individual was conducted on or after October 1, 1995.

2.15 (e) The commissioner of human services shall conduct a background study of an
2.16 individual specified under section 245C.03, subdivision 1, paragraph (a), clauses (2) to (6),
2.17 who is newly affiliated with a child foster care license holder:

2.18 (1) the county or private agency shall collect and forward to the commissioner the
2.19 information required under section 245C.05, subdivisions 1 and 5, except as provided in
2.20 section 245C.05, subdivision 5a, when the child foster care applicant or license holder
2.21 resides in the home where child foster care services are provided;

2.22 (2) the child foster care license holder or applicant shall collect and forward to the
2.23 commissioner the information required under section 245C.05, subdivisions 1 and 5, when
2.24 the applicant or license holder does not reside in the home where child foster care services
2.25 are provided; and

2.26 (3) the background study conducted by the commissioner of human services under this
2.27 paragraph must include a review of the information required under section 245C.08,
2.28 subdivisions 1, 3, and 4.

2.29 (f) The commissioner shall conduct a background study of an individual specified under
2.30 section 245C.03, subdivision 1, paragraph (a), clauses (2) to (6), who is newly affiliated
2.31 with an adult foster care or family adult day services and with a family child care license
2.32 holder or a legal nonlicensed child care provider authorized under chapter 119B: (1) the

3.1 county shall collect and forward to the commissioner the information required under section
3.2 245C.05, subdivision 1, paragraphs (a) and (b), and subdivision 5, paragraphs (a), (b), and
3.3 (d), for background studies conducted by the commissioner for all family adult day services,
3.4 for adult foster care when the adult foster care license holder resides in the adult foster care
3.5 residence, and for family child care and legal nonlicensed child care authorized under chapter
3.6 119B; (2) the license holder shall collect and forward to the commissioner the information
3.7 required under section 245C.05, subdivisions 1, paragraphs (a) and (b); and 5, paragraphs
3.8 (a) and (b), for background studies conducted by the commissioner for adult foster care
3.9 when the license holder does not reside in the adult foster care residence; and (3) the
3.10 background study conducted by the commissioner under this paragraph must include a
3.11 review of the information required under section 245C.08, subdivision 1, paragraph (a),
3.12 and subdivisions 3 and 4.

3.13 (g) Applicants for licensure, license holders, and other entities as provided in this chapter
3.14 must submit completed background study requests to the commissioner using the electronic
3.15 system known as NETStudy before individuals specified in section 245C.03, subdivision
3.16 1, begin positions allowing direct contact in any licensed program.

3.17 (h) For an individual who is not on the entity's active roster, the entity must initiate a
3.18 new background study through NETStudy when:

3.19 (1) an individual returns to a position requiring a background study following an absence
3.20 of 120 or more consecutive days; or

3.21 (2) a program that discontinued providing licensed direct contact services for 120 or
3.22 more consecutive days begins to provide direct contact licensed services again.

3.23 The license holder shall maintain a copy of the notification provided to the commissioner
3.24 under this paragraph in the program's files. If the individual's disqualification was previously
3.25 set aside for the license holder's program and the new background study results in no new
3.26 information that indicates the individual may pose a risk of harm to persons receiving
3.27 services from the license holder, the previous set-aside shall remain in effect.

3.28 (i) For purposes of this section, a physician licensed under chapter 147 is considered to
3.29 be continuously affiliated upon the license holder's receipt from the commissioner of health
3.30 or human services of the physician's background study results.

3.31 (j) For purposes of family child care, a substitute caregiver must receive repeat
3.32 background studies at the time of each license renewal.

4.1 (k) A repeat background study at the time of license renewal is not required if the family
4.2 child care substitute caregiver's background study was completed by the commissioner on
4.3 or after October 1, 2017, and the substitute caregiver is on the license holder's active roster
4.4 in NETStudy 2.0.

4.5 (l) Before and after school programs authorized under chapter 119B, are exempt from
4.6 the background study requirements under section 123B.03, for an employee for whom a
4.7 background study under this chapter has been completed.

4.8 Sec. 2. Minnesota Statutes 2017 Supplement, section 245C.05, subdivision 5, is amended
4.9 to read:

4.10 Subd. 5. **Fingerprints and photograph.** (a) Before the implementation of NETStudy
4.11 2.0, except as provided in paragraph (c), for any background study completed under this
4.12 chapter, when the commissioner has reasonable cause to believe that further pertinent
4.13 information may exist on the subject of the background study, the subject shall provide the
4.14 commissioner with a set of classifiable fingerprints obtained from an authorized agency.

4.15 (b) Before the implementation of NETStudy 2.0, for purposes of requiring fingerprints,
4.16 the commissioner has reasonable cause when, but not limited to, the:

4.17 (1) information from the Bureau of Criminal Apprehension indicates that the subject is
4.18 a multistate offender;

4.19 (2) information from the Bureau of Criminal Apprehension indicates that multistate
4.20 offender status is undetermined; or

4.21 (3) commissioner has received a report from the subject or a third party indicating that
4.22 the subject has a criminal history in a jurisdiction other than Minnesota.

4.23 (c) Notwithstanding paragraph (d), for background studies conducted by the commissioner
4.24 for child foster care, adoptions, or a transfer of permanent legal and physical custody of a
4.25 child, the subject of the background study, who is 18 years of age or older, shall provide
4.26 the commissioner with a set of classifiable fingerprints obtained from an authorized agency
4.27 for a national criminal history record check.

4.28 (d) For background studies initiated on or after the implementation of NETStudy 2.0,
4.29 except as provided in subdivision 5a, every subject of a background study must provide the
4.30 commissioner with a set of the background study subject's classifiable fingerprints and
4.31 photograph. The photograph and fingerprints must be recorded at the same time by the
4.32 commissioner's authorized fingerprint collection vendor and sent to the commissioner
4.33 through the commissioner's secure data system described in section 245C.32, subdivision

5.1 1a, paragraph (b). The fingerprints shall not be retained by the Department of Public Safety,
5.2 Bureau of Criminal Apprehension, or the commissioner, but will be retained by the Federal
5.3 Bureau of Investigation. The commissioner's authorized fingerprint collection vendor shall,
5.4 for purposes of verifying the identity of the background study subject, be able to view the
5.5 identifying information entered into NETStudy 2.0 by the entity that initiated the background
5.6 study, but shall not retain the subject's fingerprints, photograph, or information from
5.7 NETStudy 2.0. The authorized fingerprint collection vendor shall retain no more than the
5.8 name and date and time the subject's fingerprints were recorded and sent, only as necessary
5.9 for auditing and billing activities.

5.10 (e) When specifically required by law, fingerprints collected under this section must be
5.11 submitted for a national criminal history record check.

5.12 Sec. 3. Minnesota Statutes 2016, section 245C.05, is amended by adding a subdivision to
5.13 read:

5.14 Subd. 5a. **Background study requirements for minors living in a licensed foster care**
5.15 **home.** (a) A background study completed under this chapter for a licensed foster care home
5.16 on a subject who is required to be studied under section 245C.03, subdivision 1, and is 17
5.17 years of age or younger shall be completed by the commissioner. The subject shall submit
5.18 to the commissioner the information required under subdivision 1, paragraph (a).

5.19 (b) A subject who is 17 years of age or younger is required to submit fingerprints and a
5.20 photograph if the commissioner has reasonable cause to require a national criminal history
5.21 record check.