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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 1129

02/23/2015 Authored by Lohmer and Scott

The bill was read for the first time and referred to the Committee on Education Innovation Policy

1.1 A bill for an act
1.2 relating to child protection; making complaint or charge data on teachers who
1.3 resign or are terminated public; requiring the release of certain personnel data
1.4 on school employees to other schools; providing for certain definitions of
1.5 maltreatment of minors; amending Minnesota Statutes 2014, sections 13.43,
1.6 subdivisions 2, 16; 626.556, subdivision 2.

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

1.8 Section 1. Minnesota Statutes 2014, section 13.43, subdivision 2, is amended to read:

1.9 Subd. 2. **Public data.** (a) Except for employees described in subdivision 5 and
1.10 subject to the limitations described in subdivision 5a, the following personnel data on
1.11 current and former employees, volunteers, and independent contractors of a government
1.12 entity is public:

1.13 (1) name; employee identification number, which must not be the employee's Social
1.14 Security number; actual gross salary; salary range; terms and conditions of employment
1.15 relationship; contract fees; actual gross pension; the value and nature of employer paid
1.16 fringe benefits; and the basis for and the amount of any added remuneration, including
1.17 expense reimbursement, in addition to salary;

1.18 (2) job title and bargaining unit; job description; education and training background;
1.19 and previous work experience;

1.20 (3) date of first and last employment;

1.21 (4) the existence and status of any complaints or charges against the employee,
1.22 regardless of whether the complaint or charge resulted in a disciplinary action;

1.23 (5) the final disposition of any disciplinary action together with the specific reasons
1.24 for the action and data documenting the basis of the action, excluding data that would
1.25 identify confidential sources who are employees of the public body;

2.1 (6) the complete terms of any agreement settling any dispute arising out of an
2.2 employment relationship, including a buyout agreement as defined in section 123B.143,
2.3 subdivision 2, paragraph (a); except that the agreement must include specific reasons for
2.4 the agreement if it involves the payment of more than \$10,000 of public money;

2.5 (7) work location; a work telephone number; badge number; work-related continuing
2.6 education; and honors and awards received; and

2.7 (8) payroll time sheets or other comparable data that are only used to account for
2.8 employee's work time for payroll purposes, except to the extent that release of time sheet
2.9 data would reveal the employee's reasons for the use of sick or other medical leave
2.10 or other not public data.

2.11 (b) For purposes of this subdivision, a final disposition occurs when the government
2.12 entity makes its final decision about the disciplinary action, regardless of the possibility of
2.13 any later proceedings or court proceedings. Final disposition includes a resignation by an
2.14 individual when the resignation occurs after the final decision of the government entity,
2.15 or arbitrator. In the case of arbitration proceedings arising under collective bargaining
2.16 agreements, a final disposition occurs at the conclusion of the arbitration proceedings,
2.17 or upon the failure of the employee to elect arbitration within the time provided by the
2.18 collective bargaining agreement. A disciplinary action does not become public data if an
2.19 arbitrator sustains a grievance and reverses all aspects of any disciplinary action.

2.20 (c) The government entity may display a photograph of a current or former employee
2.21 to a prospective witness as part of the government entity's investigation of any complaint
2.22 or charge against the employee.

2.23 (d) A complainant has access to a statement provided by the complainant to a
2.24 government entity in connection with a complaint or charge against an employee.

2.25 (e) Notwithstanding paragraph (a), clause (5), and subject to paragraph (f), upon
2.26 completion of an investigation of a complaint or charge against a public official, or if a
2.27 public official resigns or is terminated from employment while the complaint or charge is
2.28 pending, all data relating to the complaint or charge are public, unless access to the data
2.29 would jeopardize an active investigation or reveal confidential sources. For purposes
2.30 of this paragraph, "public official" means:

2.31 (1) the head of a state agency and deputy and assistant state agency heads;

2.32 (2) members of boards or commissions required by law to be appointed by the
2.33 governor or other elective officers;

2.34 (3) executive or administrative heads of departments, bureaus, divisions, or
2.35 institutions within state government; and

2.36 (4) the following employees:

3.1 (i) the chief administrative officer, or the individual acting in an equivalent position,
3.2 in all political subdivisions;

3.3 (ii) individuals required to be identified by a political subdivision pursuant to section
3.4 471.701;

3.5 (iii) in a city with a population of more than 7,500 or a county with a population of
3.6 more than 5,000: managers; chiefs; heads or directors of departments, divisions, bureaus,
3.7 or boards; and any equivalent position; and

3.8 (iv) in a school district: business managers; human resource directors; athletic
3.9 directors whose duties include at least 50 percent of their time spent in administration,
3.10 personnel, supervision, and evaluation; chief financial officers; directors; individuals
3.11 defined as superintendents and principals under Minnesota Rules, part 3512.0100;
3.12 teachers; and in a charter school, individuals employed in comparable positions.

3.13 (f) Data relating to a complaint or charge against an employee identified under
3.14 paragraph (e), clause (4), are public only if:

3.15 (1) the complaint or charge results in disciplinary action or the employee resigns or
3.16 is terminated from employment while the complaint or charge is pending; or

3.17 (2) potential legal claims arising out of the conduct that is the subject of the
3.18 complaint or charge are released as part of a settlement agreement.

3.19 This paragraph and paragraph (e) do not authorize the release of data that are made
3.20 not public under other law.

3.21 Sec. 2. Minnesota Statutes 2014, section 13.43, subdivision 16, is amended to read:

3.22 Subd. 16. **School district or charter school disclosure of violence or inappropriate**
3.23 **sexual contact.** The superintendent of a school district or the superintendent's designee,
3.24 or a person having administrative control of a charter school, must release to a requesting
3.25 school district or charter school private personnel data on a current or former employee
3.26 related to acts of violence toward or conduct or sexual contact with a student, if:

3.27 (1) an investigation conducted by or on behalf of the school district or law
3.28 enforcement affirmed the allegations in writing prior to release and the investigation
3.29 resulted in the resignation of the subject of the data; or

3.30 (2) the employee resigned while a complaint or charge involving the allegations
3.31 was pending, the allegations involved acts of conduct prohibited under section 609.746,
3.32 617.246, or 617.247, or sexual contact with a student, and the employer informed the
3.33 employee in writing, before the employee resigned, that if the employee resigns while
3.34 the complaint or charge is still pending, the employer must release private personnel data
3.35 about the employee's alleged conduct or sexual contact with a student to a school district

4.1 or charter school requesting the data after the employee applies for employment with that
4.2 school district or charter school and the data remain classified as provided in chapter 13.

4.3 Data that are released under this subdivision must not include data on the student.

4.4 Sec. 3. Minnesota Statutes 2014, section 626.556, subdivision 2, is amended to read:

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

4.7 (a) "Family assessment" means a comprehensive assessment of child safety, risk
4.8 of subsequent child maltreatment, and family strengths and needs that is applied to a
4.9 child maltreatment report that does not allege substantial child endangerment. Family
4.10 assessment does not include a determination as to whether child maltreatment occurred
4.11 but does determine the need for services to address the safety of family members and the
4.12 risk of subsequent maltreatment.

4.13 (b) "Investigation" means fact gathering related to the current safety of a child
4.14 and the risk of subsequent maltreatment that determines whether child maltreatment
4.15 occurred and whether child protective services are needed. An investigation must be used
4.16 when reports involve substantial child endangerment, and for reports of maltreatment in
4.17 facilities required to be licensed under chapter 245A or 245D; under sections 144.50 to
4.18 144.58 and 241.021; in a school as defined in sections 120A.05, subdivisions 9, 11, and
4.19 13, and 124D.10; or in a nonlicensed personal care provider association as defined in
4.20 section 256B.0625, subdivision 19a.

4.21 (c) "Substantial child endangerment" means a person responsible for a child's care,
4.22 and in the case of sexual abuse includes a person who has a significant relationship to the
4.23 child as defined in section 609.341, or a person in a position of authority as defined in
4.24 section 609.341, who by act or omission commits or attempts to commit an act against a
4.25 child under their care that constitutes any of the following:

4.26 (1) egregious harm as defined in section 260C.007, subdivision 14;

4.27 (2) sexual abuse as defined in paragraph (d);

4.28 (3) abandonment under section 260C.301, subdivision 2;

4.29 (4) neglect as defined in paragraph (f), clause (2), that substantially endangers the
4.30 child's physical or mental health, including a growth delay, which may be referred to as
4.31 failure to thrive, that has been diagnosed by a physician and is due to parental neglect;

4.32 (5) murder in the first, second, or third degree under section 609.185, 609.19, or
4.33 609.195;

4.34 (6) manslaughter in the first or second degree under section 609.20 or 609.205;

5.1 (7) assault in the first, second, or third degree under section 609.221, 609.222, or
5.2 609.223;

5.3 (8) solicitation, inducement, and promotion of prostitution under section 609.322;

5.4 (9) criminal sexual conduct under sections 609.342 to 609.3451;

5.5 (10) solicitation of children to engage in sexual conduct under section 609.352;

5.6 (11) malicious punishment or neglect or endangerment of a child under section
5.7 609.377 or 609.378;

5.8 (12) use of a minor in sexual performance under section 617.246; or

5.9 (13) parental behavior, status, or condition which mandates that the county attorney
5.10 file a termination of parental rights petition under section 260C.503, subdivision 2.

5.11 (d) "Sexual abuse" means the subjection of a child by a person responsible for the
5.12 child's care, by a person who has a significant relationship to the child, as defined in
5.13 section 609.341, or by a person in a position of authority, as defined in section 609.341,
5.14 subdivision 10, to any act which constitutes a violation of section 609.342 (criminal sexual
5.15 conduct in the first degree), 609.343 (criminal sexual conduct in the second degree),
5.16 609.344 (criminal sexual conduct in the third degree), 609.345 (criminal sexual conduct
5.17 in the fourth degree), or 609.3451 (criminal sexual conduct in the fifth degree). Sexual
5.18 abuse also includes any act which involves a minor which constitutes a violation of
5.19 prostitution offenses under sections 609.321 to 609.324 or 617.246. Sexual abuse includes
5.20 the possession or dissemination of pornographic work involving a minor under section
5.21 617.247 or the possession or dissemination of images of a minor's genitals or a female
5.22 minor's breasts by a person functioning outside the family unit. Sexual abuse includes
5.23 threatened sexual abuse which includes the status of a parent or household member
5.24 who has committed a violation which requires registration as an offender under section
5.25 243.166, subdivision 1b, paragraph (a) or (b), or required registration under section
5.26 243.166, subdivision 1b, paragraph (a) or (b).

5.27 (e) "Person responsible for the child's care" means (1) an individual functioning
5.28 within the family unit and having responsibilities for the care of the child such as a
5.29 parent, guardian, or other person having similar care responsibilities, or (2) an individual
5.30 functioning outside the family unit and having responsibilities for the care of the child
5.31 such as a teacher, school administrator, other school employees or agents, or other lawful
5.32 custodian of a child having either full-time or short-term care responsibilities including,
5.33 but not limited to, day care, babysitting whether paid or unpaid, counseling, teaching,
5.34 and coaching.

5.35 (f) "Neglect" means the commission or omission of any of the acts specified under
5.36 clauses (1) to (9), other than by accidental means:

6.1 (1) failure by a person responsible for a child's care to supply a child with necessary
6.2 food, clothing, shelter, health, medical, or other care required for the child's physical or
6.3 mental health when reasonably able to do so;

6.4 (2) failure to protect a child from conditions or actions that seriously endanger the
6.5 child's physical or mental health when reasonably able to do so, including a growth delay,
6.6 which may be referred to as a failure to thrive, that has been diagnosed by a physician and
6.7 is due to parental neglect;

6.8 (3) failure to provide for necessary supervision or child care arrangements
6.9 appropriate for a child after considering factors as the child's age, mental ability, physical
6.10 condition, length of absence, or environment, when the child is unable to care for the
6.11 child's own basic needs or safety, or the basic needs or safety of another child in their care;

6.12 (4) failure to ensure that the child is educated as defined in sections 120A.22 and
6.13 260C.163, subdivision 11, which does not include a parent's refusal to provide the parent's
6.14 child with sympathomimetic medications, consistent with section 125A.091, subdivision 5;

6.15 (5) nothing in this section shall be construed to mean that a child is neglected solely
6.16 because the child's parent, guardian, or other person responsible for the child's care in
6.17 good faith selects and depends upon spiritual means or prayer for treatment or care of
6.18 disease or remedial care of the child in lieu of medical care; except that a parent, guardian,
6.19 or caretaker, or a person mandated to report pursuant to subdivision 3, has a duty to report
6.20 if a lack of medical care may cause serious danger to the child's health. This section does
6.21 not impose upon persons, not otherwise legally responsible for providing a child with
6.22 necessary food, clothing, shelter, education, or medical care, a duty to provide that care;

6.23 (6) prenatal exposure to a controlled substance, as defined in section 253B.02,
6.24 subdivision 2, used by the mother for a nonmedical purpose, as evidenced by withdrawal
6.25 symptoms in the child at birth, results of a toxicology test performed on the mother at
6.26 delivery or the child at birth, medical effects or developmental delays during the child's
6.27 first year of life that medically indicate prenatal exposure to a controlled substance, or the
6.28 presence of a fetal alcohol spectrum disorder;

6.29 (7) "medical neglect" as defined in section 260C.007, subdivision 6, clause (5);

6.30 (8) chronic and severe use of alcohol or a controlled substance by a parent or
6.31 person responsible for the care of the child that adversely affects the child's basic needs
6.32 and safety; or

6.33 (9) emotional harm from a pattern of behavior which contributes to impaired
6.34 emotional functioning of the child which may be demonstrated by a substantial and
6.35 observable effect in the child's behavior, emotional response, or cognition that is not

7.1 within the normal range for the child's age and stage of development, with due regard to
7.2 the child's culture.

7.3 (g) "Physical abuse" means any physical injury, mental injury, or threatened injury,
7.4 inflicted by a person responsible for the child's care on a child other than by accidental
7.5 means, or any physical or mental injury that cannot reasonably be explained by the child's
7.6 history of injuries, or any aversive or deprivation procedures, or regulated interventions,
7.7 that have not been authorized under section 125A.0942 or 245.825.

7.8 Abuse does not include reasonable and moderate physical discipline of a child
7.9 administered by a parent or legal guardian which does not result in an injury. Abuse does
7.10 not include the use of reasonable force by a teacher, principal, or school employee as
7.11 allowed by section 121A.582. Actions which are not reasonable and moderate include,
7.12 but are not limited to, any of the following that are done in anger or without regard to the
7.13 safety of the child:

7.14 (1) throwing, kicking, burning, biting, or cutting a child;

7.15 (2) striking a child with a closed fist;

7.16 (3) shaking a child under age three;

7.17 (4) striking or other actions which result in any nonaccidental injury to a child
7.18 under 18 months of age;

7.19 (5) unreasonable interference with a child's breathing;

7.20 (6) threatening a child with a weapon, as defined in section 609.02, subdivision 6;

7.21 (7) striking a child under age one on the face or head;

7.22 (8) purposely giving a child poison, alcohol, or dangerous, harmful, or controlled
7.23 substances which were not prescribed for the child by a practitioner, in order to control or
7.24 punish the child; or other substances that substantially affect the child's behavior, motor
7.25 coordination, or judgment or that results in sickness or internal injury, or subjects the
7.26 child to medical procedures that would be unnecessary if the child were not exposed
7.27 to the substances;

7.28 (9) unreasonable physical confinement or restraint not permitted under section
7.29 609.379, including but not limited to tying, caging, or chaining; or

7.30 (10) in a school facility or school zone, an act by a person responsible for the child's
7.31 care that is a violation under section 121A.58.

7.32 (h) "Report" means any report received by the local welfare agency, police
7.33 department, county sheriff, or agency responsible for assessing or investigating
7.34 maltreatment pursuant to this section.

7.35 (i) "Facility" means:

8.1 (1) a licensed or unlicensed day care facility, residential facility, agency, hospital,
8.2 sanitarium, or other facility or institution required to be licensed under sections 144.50 to
8.3 144.58, 241.021, or 245A.01 to 245A.16, or chapter 245D;

8.4 (2) a school as defined in sections 120A.05, subdivisions 9, 11, and 13; and
8.5 124D.10; or

8.6 (3) a nonlicensed personal care provider organization as defined in section
8.7 256B.0625, subdivision 19a.

8.8 (j) "Operator" means an operator or agency as defined in section 245A.02.

8.9 (k) "Commissioner" means the commissioner of human services.

8.10 (l) "Practice of social services," for the purposes of subdivision 3, includes but is
8.11 not limited to employee assistance counseling and the provision of guardian ad litem and
8.12 parenting time expeditor services.

8.13 (m) "Mental injury" means an injury to the psychological capacity or emotional
8.14 stability of a child as evidenced by an observable or substantial impairment in the child's
8.15 ability to function within a normal range of performance and behavior with due regard to
8.16 the child's culture.

8.17 (n) "Threatened injury" means a statement, overt act, condition, or status that
8.18 represents a substantial risk of physical or sexual abuse or mental injury. Threatened
8.19 injury includes, but is not limited to, exposing a child to a person responsible for the
8.20 child's care, as defined in paragraph (e), clause (1), who has:

8.21 (1) subjected a child to, or failed to protect a child from, an overt act or condition
8.22 that constitutes egregious harm, as defined in section 260C.007, subdivision 14, or a
8.23 similar law of another jurisdiction;

8.24 (2) been found to be palpably unfit under section 260C.301, subdivision 1, paragraph
8.25 (b), clause (4), or a similar law of another jurisdiction;

8.26 (3) committed an act that has resulted in an involuntary termination of parental rights
8.27 under section 260C.301, or a similar law of another jurisdiction; or

8.28 (4) committed an act that has resulted in the involuntary transfer of permanent
8.29 legal and physical custody of a child to a relative under Minnesota Statutes 2010, section
8.30 260C.201, subdivision 11, paragraph (d), clause (1), section 260C.515, subdivision 4, or a
8.31 similar law of another jurisdiction.

8.32 A child is the subject of a report of threatened injury when the responsible social
8.33 services agency receives birth match data under paragraph (o) from the Department of
8.34 Human Services.

8.35 (o) Upon receiving data under section 144.225, subdivision 2b, contained in a
8.36 birth record or recognition of parentage identifying a child who is subject to threatened

9.1 injury under paragraph (n), the Department of Human Services shall send the data to the
9.2 responsible social services agency. The data is known as "birth match" data. Unless the
9.3 responsible social services agency has already begun an investigation or assessment of the
9.4 report due to the birth of the child or execution of the recognition of parentage and the
9.5 parent's previous history with child protection, the agency shall accept the birth match
9.6 data as a report under this section. The agency may use either a family assessment or
9.7 investigation to determine whether the child is safe. All of the provisions of this section
9.8 apply. If the child is determined to be safe, the agency shall consult with the county
9.9 attorney to determine the appropriateness of filing a petition alleging the child is in need
9.10 of protection or services under section 260C.007, subdivision 6, clause (16), in order to
9.11 deliver needed services. If the child is determined not to be safe, the agency and the county
9.12 attorney shall take appropriate action as required under section 260C.503, subdivision 2.

9.13 (p) Persons who conduct assessments or investigations under this section shall take
9.14 into account accepted child-rearing practices of the culture in which a child participates
9.15 and accepted teacher discipline practices, which are not injurious to the child's health,
9.16 welfare, and safety.

9.17 (q) "Accidental" means a sudden, not reasonably foreseeable, and unexpected
9.18 occurrence or event which:

9.19 (1) is not likely to occur and could not have been prevented by exercise of due
9.20 care; and

9.21 (2) if occurring while a child is receiving services from a facility, happens when the
9.22 facility and the employee or person providing services in the facility are in compliance
9.23 with the laws and rules relevant to the occurrence or event.

9.24 (r) "Nonmaltreatment mistake" means:

9.25 (1) at the time of the incident, the individual was performing duties identified in the
9.26 center's child care program plan required under Minnesota Rules, part 9503.0045;

9.27 (2) the individual has not been determined responsible for a similar incident that
9.28 resulted in a finding of maltreatment for at least seven years;

9.29 (3) the individual has not been determined to have committed a similar
9.30 nonmaltreatment mistake under this paragraph for at least four years;

9.31 (4) any injury to a child resulting from the incident, if treated, is treated only with
9.32 remedies that are available over the counter, whether ordered by a medical professional or
9.33 not; and

9.34 (5) except for the period when the incident occurred, the facility and the individual
9.35 providing services were both in compliance with all licensing requirements relevant to the
9.36 incident.

10.1 This definition only applies to child care centers licensed under Minnesota
10.2 Rules, chapter 9503. If clauses (1) to (5) apply, rather than making a determination of
10.3 substantiated maltreatment by the individual, the commissioner of human services shall
10.4 determine that a nonmaltreatment mistake was made by the individual.