

## CHAPTER 626

TRAINING; INVESTIGATION, APPREHENSION;  
REPORTS

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**626.11 ISSUANCE OF WARRANT.**

If the judge is satisfied of the existence of the grounds of the application, or that there is probable cause to believe their existence, the judge must issue a signed search warrant, naming the judge's judicial office, to a peace officer having jurisdiction in the area where the place to be searched is located, to an agent of the bureau of criminal apprehension, or to an agent of the division of alcohol and gambling enforcement who is a licensed peace officer as defined in section 626.84, subdivision 1, paragraph (c). The warrant shall direct the officer or agent to search the person or place named for the property or things specified, and to retain the property or things in the officer's or agent's custody subject to order of the court issuing the warrant.

*History:* 2001 c 78 s 2

**626.13 SERVICE; PERSONS MAKING.**

A search warrant may in all cases be served anywhere within the issuing judge's jurisdiction by any of the officers mentioned in its directions, but by no other person, except in aid of the officer on the officer's requiring it, the officer being present and acting in its execution. If the warrant is to be served by an agent of the bureau of criminal apprehension, an agent of the division of alcohol and gambling enforcement, a state patrol trooper, or a conservation officer, the agent, state patrol trooper, or conservation officer shall notify the chief of police of an organized full-time police department of the municipality or, if there is no such local chief of police, the sheriff or a deputy sheriff of the county in which service is to be made prior to execution.

*History:* 2001 c 78 s 3

**626.18 SEARCH WARRANTS RELATING TO ELECTRONIC COMMUNICATION SERVICES AND REMOTE COMPUTING SERVICES.**

Subdivision 1. **Definitions.** The definitions in this subdivision apply to this section.

(a) The terms "electronic communication services" and "remote computing services" shall be construed in accordance with United States Code, title 18, sections 2701 to 2711, as amended through March 1, 2001. This section does not apply to corporations that do not provide those services to the general public.

(b) An "adverse result" occurs when notification of the existence of a search warrant results in:

- (1) danger to the life or physical safety of an individual;
- (2) a flight from prosecution;

- (3) the destruction of or tampering with evidence;
- (4) the intimidation of potential witnesses; or
- (5) serious jeopardy to an investigation or undue delay of a trial.

(c) "Applicant" means a peace officer as defined in section 626.05, to whom a search warrant is issued pursuant to this chapter.

(d) "Minnesota corporation" refers to any corporation or other entity that is subject to section 5.25, excluding foreign corporations.

(e) A "foreign corporation" is considered to be doing business in Minnesota if it makes a contract or engages in a terms of service agreement with a resident of Minnesota to be performed in whole or in part by either party in Minnesota. The making of the contract or terms of service agreement is considered to be the agreement of the foreign corporation that any administrative subpoena or search warrant properly served on it has the same legal force and effect as if served personally on it within the state of Minnesota.

(f) "Properly served" means that a search warrant has been delivered by hand, or in a manner reasonably allowing for proof of delivery if delivered by United States mail, overnight delivery service, or facsimile to a person or entity listed in section 5.25 or covered by this statute.

Subd. 2. **Application.** (a) The following provisions shall apply to any search warrant issued under this chapter allowing a search for records that are in the actual or constructive possession of a foreign corporation that provides electronic communication services or remote computing services to the general public, where those records would reveal the identity of the customers using those services; data stored by, or on behalf of, the customer; the customer's usage of those services; the recipient or destination of communications sent to or from those customers; or the content of those communications.

(b) When properly served with a search warrant issued by the Minnesota court, a foreign corporation subject to this section shall provide to the applicant all records sought pursuant to that warrant within eight business days of receipt, including those records maintained or located outside this state.

(c) Where the applicant makes a showing and the judge finds that failure to produce records within less than eight business days would cause an adverse result, the warrant may require production of records within less than eight business days. A court may reasonably extend the time required for production of the records upon finding that the foreign corporation has shown good cause for that extension and that an extension of time would not cause an adverse result.

(d) A foreign corporation seeking to quash the warrant must seek relief from the court that issued the warrant within the time required for production of records under this section. The issuing court shall hear and decide that motion no later than eight court days after the motion is filed.

(e) The foreign corporation shall verify the authenticity of records that it produces by providing a written affidavit or statement to that effect.

Subd. 3. **Warrant of another state.** A Minnesota corporation that provides electronic communication services or remote computing services to the general public, when served with a warrant issued by another state to produce records that would reveal the identity of the customers using those services; data stored by, or on behalf of, the customer; the customer's usage of those services; the recipient or destination of communications sent to or from those customers; or the content of those communications, shall produce those records as if that warrant had been issued by a Minnesota court.

Subd. 4. **Immunity.** No cause of action shall lie against any foreign or Minnesota corporation subject to this section, its officers, employees, agents, or other specified persons for providing records, information, facilities, or assistance in accordance with the terms of a warrant issued pursuant to this chapter.

**History:** 2001 c 197 s 6.

**626.52 REPORTING OF SUSPICIOUS WOUNDS BY HEALTH PROFESSIONALS.**

*[For text of subs 1 to 3, see M.S.2000]*

Subd. 4. **Immunity from liability.** Any person reporting in good faith and exercising due care shall have immunity from any liability, civil or criminal, that otherwise might result by reason of the person's actions pursuant to this section or section 626.53. No cause of action may be brought against any person for not making a report pursuant to this section or section 626.53.

**History:** 1Sp2001 c 8 art 12 s 17

**626.55 PENALTY.**

*[For text of subd 1, see M.S.2000]*

Subd. 2. [Repealed, 1Sp2001 c 8 art 12 s 18]

**626.5551 ALTERNATIVE RESPONSE PROGRAMS FOR CHILD PROTECTION ASSESSMENTS OR INVESTIGATIONS.**

*[For text of subd 1, see M.S.2000]*

Subd. 2. **Use of alternative response or investigation.** (a) Upon receipt of a report under section 626.556, the local welfare agency in a county that has established an alternative response program under this section shall determine whether to conduct an investigation using the traditional investigative model under section 626.556 or to use an alternative response as appropriate to prevent or provide a remedy for child maltreatment.

(b) The local welfare agency may conduct an investigation of any report using the traditional investigative model under section 626.556. However, the local welfare agency must use the traditional investigative model under section 626.556 to investigate reports involving substantial child endangerment. For purposes of this subdivision, substantial child endangerment includes when a person responsible for a child's care, by act or omission, commits or attempts to commit an act against a child under their care that constitutes any of the following:

- (1) egregious harm as defined in section 260C.007, subdivision 14;
- (2) sexual abuse as defined in section 626.556, subdivision 2, paragraph (a);
- (3) abandonment under section 260C.301, subdivision 2;
- (4) neglect as defined in section 626.556, subdivision 2, paragraph (c), that substantially endangers the child's physical or mental health, including a growth delay, which may be referred to as failure to thrive, that has been diagnosed by a physician and is due to parental neglect;
- (5) murder in the first, second, or third degree under section 609.185; 609.19; or 609.195;
- (6) manslaughter in the first or second degree under section 609.20 or 609.205;
- (7) assault in the first, second, or third degree under section 609.221; 609.222; or 609.223;
- (8) solicitation, inducement, and promotion of prostitution under section 609.322;
- (9) criminal sexual conduct under sections 609.342 to 609.3451;
- (10) solicitation of children to engage in sexual conduct under section 609.352;
- (11) malicious punishment or neglect or endangerment of a child under section 609.377 or 609.378; or
- (12) use of minor in sexual performance under section 617.246.

(c) Nothing in this section gives a county any broader authority to intervene, assess, or investigate a family other than under section 626.556.

(d) In addition, in all cases the local welfare agency shall notify the appropriate law enforcement agency as provided in section 626.556, subdivision 3.

(e) The local welfare agency shall begin an immediate investigation under section 626.556 if at any time when it is using an alternative response it determines that an investigation is required under paragraph (b) or would otherwise be appropriate. The local welfare agency may use an alternative response to a report that was initially referred for an investigation if the agency determines that a complete investigation is not required. In determining that a complete investigation is not required, the local welfare agency must document the reason for terminating the investigation and consult with:

- (1) the local law enforcement agency, if the local law enforcement is involved, and notify the county attorney of the decision to terminate the investigation; or
- (2) the county attorney, if the local law enforcement is not involved.

*[For text of subs 3 to 5, see M.S.2000]*

**History:** 2001 c 178 art 1 s 44

## 626.556 REPORTING OF MALTREATMENT OF MINORS.

*[For text of subd 1, see M.S.2000]*

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

(a) "Sexual abuse" means the subjection of a child by a person responsible for the child's care, by a person who has a significant relationship to the child, as defined in section 609.341, or by a person in a position of authority, as defined in section 609.341, subdivision 10, to any act which constitutes a violation of section 609.342 (criminal sexual conduct in the first degree), 609.343 (criminal sexual conduct in the second degree), 609.344 (criminal sexual conduct in the third degree), 609.345 (criminal sexual conduct in the fourth degree), or 609.3451 (criminal sexual conduct in the fifth degree). Sexual abuse also includes any act which involves a minor which constitutes a violation of prostitution offenses under sections 609.321 to 609.324 or 617.246. Sexual abuse includes threatened sexual abuse.

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

(c) "Neglect" means:

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

(2) failure to protect a child from conditions or actions that seriously endanger the child's physical or mental health when reasonably able to do so;

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

(4) failure to ensure that the child is educated as defined in sections 120A.22 and 260C.163, subdivision 11, which does not include a parent's refusal to provide the parent's child with sympathomimetic medications, consistent with section 125A.09, subdivision 3;

(5) nothing in this section shall be construed to mean that a child is neglected solely because the child's parent, guardian, or other person responsible for 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 in lieu of medical care; except that a parent, guardian, or caretaker, or a person mandated to report pursuant to subdivision 3, has a duty to report if a lack of medical care may cause serious danger to the child's health. This section does not impose upon persons, not otherwise legally responsible for providing a child with necessary food, clothing, shelter, education, or medical care, a duty to provide that care;

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

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

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

(9) emotional harm from a pattern of behavior which contributes to impaired emotional functioning of the child which may be demonstrated by a substantial and observable effect in the child's behavior, emotional response, or cognition that is not within the normal range for the child's age and stage of development, with due regard to the child's culture.

(d) "Physical abuse" means any physical injury, mental injury, or threatened injury, inflicted by a person responsible for the child's care on a child other than by accidental means, or any physical or mental injury that cannot reasonably be explained by the child's history of injuries, or any aversive or deprivation procedures, or regulated interventions, that have not been authorized under section 121A.67 or 245.825. Abuse does not include reasonable and moderate physical discipline of a child administered by a parent or legal guardian which does not result in an injury. Abuse does not include the use of reasonable force by a teacher, principal, or school employee as allowed by section 121A.582. Actions which are not reasonable and moderate include, but are not limited to, any of the following that are done in anger or without regard to the safety of the child:

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

(2) striking a child with a closed fist;

(3) shaking a child under age three;

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

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

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

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

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

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

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

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

(f) "Facility" means a licensed or unlicensed day care facility, residential facility, agency, hospital, sanitarium, or other facility or institution required to be licensed under sections 144.50 to 144.58, 241.021, or 245A.01 to 245A.16, or chapter 245B; or a school as defined in sections 120A.05, subdivisions 9, 11, and 13; and 124D.10; or a nonlicensed personal care provider organization as defined in sections 256B.04, subdivision 16, and 256B.0625, subdivision 19a.

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

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

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

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

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

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

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

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

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

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

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

**Subd. 3. Persons mandated to report.** (a) A person who knows or has reason to believe a child is being neglected or physically or sexually abused, as defined in subdivision 2, or has been neglected or physically or sexually abused within the preceding three years, shall immediately report the information to the local welfare agency, agency responsible for assessing or investigating the report, police department, or the county sheriff if the person is:

(1) a professional or professional's delegate who is engaged in the practice of the healing arts, social services, hospital administration, psychological or psychiatric treatment, child care, education, or law enforcement; or

(2) employed as a member of the clergy and received the information while engaged in ministerial duties, provided that a member of the clergy is not required by this subdivision to report information that is otherwise privileged under section 595.02, subdivision 1, paragraph (c).

The police department or the county sheriff, upon receiving a report, shall immediately notify the local welfare agency or agency responsible for assessing or investigating the report, orally and in writing. The local welfare agency, or agency responsible for assessing or investigating the report, upon receiving a report, shall immediately notify the local police department or the county sheriff orally and in

writing. The county sheriff and the head of every local welfare agency, agency responsible for assessing or investigating reports, and police department shall each designate a person within their agency, department, or office who is responsible for ensuring that the notification duties of this paragraph and paragraph (b) are carried out. Nothing in this subdivision shall be construed to require more than one report from any institution, facility, school, or agency.

(b) Any person may voluntarily report to the local welfare agency, agency responsible for assessing or investigating the report, police department, or the county sheriff if the person knows, has reason to believe, or suspects a child is being or has been neglected or subjected to physical or sexual abuse. The police department or the county sheriff, upon receiving a report, shall immediately notify the local welfare agency or agency responsible for assessing or investigating the report, orally and in writing. The local welfare agency or agency responsible for assessing or investigating the report, upon receiving a report, shall immediately notify the local police department or the county sheriff orally and in writing.

(c) A person mandated to report physical or sexual child abuse or neglect occurring within a licensed facility shall report the information to the agency responsible for licensing the facility under sections 144.50 to 144.58; 241.021; 245A.01 to 245A.16; or chapter 245B; or a nonlicensed personal care provider organization as defined in sections 256B.04, subdivision 16; and 256B.0625, subdivision 19. A health or corrections agency receiving a report may request the local welfare agency to provide assistance pursuant to subdivisions 10, 10a, and 10b. A board or other entity whose licensees perform work within a school facility, upon receiving a complaint of alleged maltreatment, shall provide information about the circumstances of the alleged maltreatment to the commissioner of children, families, and learning. Section 13.03, subdivision 4, applies to data received by the commissioner of children, families, and learning from a licensing entity.

(d) Any person mandated to report shall receive a summary of the disposition of any report made by that reporter, including whether the case has been opened for child protection or other services, or if a referral has been made to a community organization, unless release would be detrimental to the best interests of the child. Any person who is not mandated to report shall, upon request to the local welfare agency, receive a concise summary of the disposition of any report made by that reporter, unless release would be detrimental to the best interests of the child.

(e) For purposes of this subdivision, "immediately" means as soon as possible but in no event longer than 24 hours.

*[For text of subds 3a to 3c, see M.S.2000]*

**Subd. 4. Immunity from liability.** (a) The following persons are immune from any civil or criminal liability that otherwise might result from their actions, if they are acting in good faith:

(1) any person making a voluntary or mandated report under subdivision 3 or under section 626.5561 or assisting in an assessment under this section or under section 626.5561;

(2) any person with responsibility for performing duties under this section or supervisor employed by a local welfare agency, the commissioner of an agency responsible for operating or supervising a licensed or unlicensed day care facility, residential facility, agency, hospital, sanitarium, or other facility or institution required to be licensed under sections 144.50 to 144.58; 241.021; 245A.01 to 245A.16; or 245B, or a school as defined in sections 120A.05, subdivisions 9, 11, and 13; and 124D.10; or a nonlicensed personal care provider organization as defined in sections 256B.04, subdivision 16; and 256B.0625, subdivision 19a, complying with subdivision 10d; and

(3) any public or private school, facility as defined in subdivision 2, or the employee of any public or private school or facility who permits access by a local welfare agency, the department of children, families, and learning, or a local law

enforcement agency and assists in an investigation or assessment pursuant to subdivision 10 or under section 626.5561.

(b) A person who is a supervisor or person with responsibility for performing duties under this section employed by a local welfare agency, the commissioner of human services, or the commissioner of children, families, and learning complying with subdivisions 10 and 11 or section 626.5561 or any related rule or provision of law is immune from any civil or criminal liability that might otherwise result from the person's actions, if the person is (1) acting in good faith and exercising due care, or (2) acting in good faith and following the information collection procedures established under subdivision 10, paragraphs (h), (i), and (j).

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

(d) If a person who makes a voluntary or mandatory report under subdivision 3 prevails in a civil action from which the person has been granted immunity under this subdivision, the court may award the person attorney fees and costs.

*[For text of subs 4a to 6a, see M.S.2000]*

**Subd. 7. Report.** An oral report shall be made immediately by telephone or otherwise. An oral report made by a person required under subdivision 3 to report shall be followed within 72 hours, exclusive of weekends and holidays, by a report in writing to the appropriate police department, the county sheriff, the agency responsible for assessing or investigating the report, or the local welfare agency, unless the appropriate agency has informed the reporter that the oral information does not constitute a report under subdivision 10. Any report shall be of sufficient content to identify the child, any person believed to be responsible for the abuse or neglect of the child if the person is known, the nature and extent of the abuse or neglect and the name and address of the reporter. If requested, the local welfare agency or the agency responsible for assessing or investigating the report shall inform the reporter within ten days after the report is made, either orally or in writing, whether the report was accepted for assessment or investigation. Written reports received by a police department or the county sheriff shall be forwarded immediately to the local welfare agency or the agency responsible for assessing or investigating the report. The police department or the county sheriff may keep copies of reports received by them. Copies of written reports received by a local welfare department or the agency responsible for assessing or investigating the report shall be forwarded immediately to the local police department or the county sheriff.

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

*[For text of subs 8 and 9, see M.S.2000]*

**Subd. 10. Duties of local welfare agency and local law enforcement agency upon receipt of a report.** (a) If the report alleges neglect, physical abuse, or sexual abuse by a parent, guardian, or individual functioning within the family unit as a person responsible for the child's care, the local welfare agency shall immediately conduct an assessment including gathering information on the existence of substance abuse and offer protective social services for purposes of preventing further abuses, safeguarding and enhancing the welfare of the abused or neglected minor, and preserving family life whenever possible. If the report alleges a violation of a criminal statute involving sexual abuse, physical abuse, or neglect or endangerment, under section 609.378, the local law enforcement agency and local welfare agency shall coordinate the planning and execution of their respective investigation and assessment efforts to avoid a duplication of fact-finding efforts and multiple interviews. Each agency shall prepare a separate report of the results of its investigation. In cases of alleged child maltreatment resulting in death, the local agency may rely on the fact-finding efforts of a law enforcement investigation to make a determination of whether or not maltreatment occurred. When

necessary the local welfare agency shall seek authority to remove the child from the custody of a parent, guardian, or adult with whom the child is living. In performing any of these duties, the local welfare agency shall maintain appropriate records.

If the assessment indicates there is a potential for abuse of alcohol or other drugs by the parent, guardian, or person responsible for the child's care, the local welfare agency shall conduct a chemical use assessment pursuant to Minnesota Rules, part 9530.6615. The local welfare agency shall report the determination of the chemical use assessment, and the recommendations and referrals for alcohol and other drug treatment services to the state authority on alcohol and drug abuse.

(b) When a local agency receives a report or otherwise has information indicating that a child who is a client, as defined in section 245.91, has been the subject of physical abuse, sexual abuse, or neglect at an agency, facility, or program as defined in section 245.91, it shall, in addition to its other duties under this section, immediately inform the ombudsman established under sections 245.91 to 245.97. The commissioner of children, families, and learning shall inform the ombudsman established under sections 245.91 to 245.97 of reports regarding a child defined as a client in section 245.91 that maltreatment occurred at a school as defined in sections 120A.05, subdivisions 9, 11, and 13, and 124D.10.

(c) Authority of the local welfare agency responsible for assessing the child abuse or neglect report, the agency responsible for assessing or investigating the report, and of the local law enforcement agency for investigating the alleged abuse or neglect includes, but is not limited to, authority to interview, without parental consent, the alleged victim and any other minors who currently reside with or who have resided with the alleged offender. The interview may take place at school or at any facility or other place where the alleged victim or other minors might be found or the child may be transported to, and the interview conducted at a place appropriate for the interview of a child designated by the local welfare agency or law enforcement agency. The interview may take place outside the presence of the alleged offender or parent, legal custodian, guardian, or school official. Except as provided in this paragraph, the parent, legal custodian, or guardian shall be notified by the responsible local welfare or law enforcement agency no later than the conclusion of the investigation or assessment that this interview has occurred. Notwithstanding rule 49.02 of the Minnesota rules of procedure for juvenile courts, the juvenile court may, after hearing on an ex parte motion by the local welfare agency, order that, where reasonable cause exists, the agency withhold notification of this interview from the parent, legal custodian, or guardian. If the interview took place or is to take place on school property, the order shall specify that school officials may not disclose to the parent, legal custodian, or guardian the contents of the notification of intent to interview the child on school property, as provided under this paragraph, and any other related information regarding the interview that may be a part of the child's school record. A copy of the order shall be sent by the local welfare or law enforcement agency to the appropriate school official.

(d) When the local welfare, local law enforcement agency, or the agency responsible for assessing or investigating a report of maltreatment determines that an interview should take place on school property, written notification of intent to interview the child on school property must be received by school officials prior to the interview. The notification shall include the name of the child to be interviewed, the purpose of the interview, and a reference to the statutory authority to conduct an interview on school property. For interviews conducted by the local welfare agency, the notification shall be signed by the chair of the local social services agency or the chair's designee. The notification shall be private data on individuals subject to the provisions of this paragraph. School officials may not disclose to the parent, legal custodian, or guardian the contents of the notification or any other related information regarding the interview until notified in writing by the local welfare or law enforcement agency that the investigation or assessment has been concluded, unless a school employee or agent is alleged to have maltreated the child. Until that time, the local welfare or law enforcement agency or the agency responsible for assessing or investigating a report of

maltreatment shall be solely responsible for any disclosures regarding the nature of the assessment or investigation.

Except where the alleged offender is believed to be a school official or employee, the time and place, and manner of the interview on school premises shall be within the discretion of school officials, but the local welfare or law enforcement agency shall have the exclusive authority to determine who may attend the interview. The conditions as to time, place, and manner of the interview set by the school officials shall be reasonable and the interview shall be conducted not more than 24 hours after the receipt of the notification unless another time is considered necessary by agreement between the school officials and the local welfare or law enforcement agency. Where the school fails to comply with the provisions of this paragraph, the juvenile court may order the school to comply. Every effort must be made to reduce the disruption of the educational program of the child, other students, or school staff when an interview is conducted on school premises.

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

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

(g) The commissioner of human services, the ombudsman for mental health and mental retardation, the local welfare agencies responsible for investigating reports, the commissioner of children, families, and learning, and the local law enforcement agencies have the right to enter facilities as defined in subdivision 2 and to inspect and copy the facility's records, including medical records, as part of the investigation. Notwithstanding the provisions of chapter 13, they also have the right to inform the facility under investigation that they are conducting an investigation, to disclose to the facility the names of the individuals under investigation for abusing or neglecting a child, and to provide the facility with a copy of the report and the investigative findings.

(h) The local welfare agency or the agency responsible for assessing or investigating the report shall collect available and relevant information to ascertain whether maltreatment occurred and whether protective services are needed. Information collected includes, when relevant, information with regard to the person reporting the alleged maltreatment, including the nature of the reporter's relationship to the child and to the alleged offender, and the basis of the reporter's knowledge for the report; the child allegedly being maltreated; the alleged offender; the child's caretaker; and other collateral sources having relevant information related to the alleged maltreatment. The local welfare agency or the agency responsible for assessing or investigating the report may make a determination of no maltreatment early in an assessment, and close the case and retain immunity, if the collected information shows no basis for a full assessment or investigation.

Information relevant to the assessment or investigation must be asked for, and may include:

(1) the child's sex and age, prior reports of maltreatment, information relating to developmental functioning, credibility of the child's statement, and whether the information provided under this clause is consistent with other information collected during the course of the assessment or investigation;

(2) the alleged offender's age, a record check for prior reports of maltreatment, and criminal charges and convictions. The local welfare agency or the agency responsible for assessing or investigating the report must provide the alleged offender with an opportunity to make a statement. The alleged offender may submit supporting documentation relevant to the assessment or investigation;

(3) collateral source information regarding the alleged maltreatment and care of the child. Collateral information includes, when relevant: (i) a medical examination of the child; (ii) prior medical records relating to the alleged maltreatment or the care of the child maintained by any facility, clinic, or health care professional and an interview with the treating professionals; and (iii) interviews with the child's caretakers, including the child's parent, guardian, foster parent, child care provider, teachers, counselors, family members, relatives, and other persons who may have knowledge regarding the alleged maltreatment and the care of the child; and

(4) information on the existence of domestic abuse and violence in the home of the child, and substance abuse.

Nothing in this paragraph precludes the local welfare agency, the local law enforcement agency, or the agency responsible for assessing or investigating the report from collecting other relevant information necessary to conduct the assessment or investigation. Notwithstanding section 13.384 or 144.335, the local welfare agency has access to medical data and records for purposes of clause (3). Notwithstanding the data's classification in the possession of any other agency, data acquired by the local welfare agency or the agency responsible for assessing or investigating the report during the course of the assessment or investigation are private data on individuals and must be maintained in accordance with subdivision 11. Data of the commissioner of children, families, and learning collected or maintained during and for the purpose of an investigation of alleged maltreatment in a school are governed by this section, notwithstanding the data's classification as educational, licensing, or personnel data under chapter 13.

In conducting an assessment or investigation involving a school facility as defined in subdivision 2, paragraph (f), the commissioner of children, families, and learning shall collect investigative reports and data that are relevant to a report of maltreatment and are from local law enforcement and the school facility.

(i) In the initial stages of an assessment or investigation, the local welfare agency shall conduct a face-to-face observation of the child reported to be maltreated and a face-to-face interview of the alleged offender. The interview with the alleged offender may be postponed if it would jeopardize an active law enforcement investigation.

(j) The local welfare agency shall use a question and answer interviewing format with questioning as nondirective as possible to elicit spontaneous responses. The following interviewing methods and procedures must be used whenever possible when collecting information:

(1) audio recordings of all interviews with witnesses and collateral sources; and

(2) in cases of alleged sexual abuse, audio-video recordings of each interview with the alleged victim and child witnesses.

(k) In conducting an assessment or investigation involving a school facility as defined in subdivision 2, paragraph (f), the commissioner of children, families, and learning shall collect available and relevant information and use the procedures in paragraphs (h), (i), and (j), provided that the commissioner may also base the assessment or investigation on investigative reports and data received from the school facility and local law enforcement, to the extent those investigations satisfy the requirements of paragraphs (h), (i), and (j).

*[For text of subd 10a, see M.S.2000]*

**Subd. 10b. Duties of commissioner; neglect or abuse in facility.** (a) This section applies to the commissioners of human services, health, and children, families, and learning. The commissioner of the agency responsible for assessing or investigating the report shall immediately assess or investigate if the report alleges that:

(1) a child who is in the care of a facility as defined in subdivision 2 is neglected, physically abused, sexually abused, or is the victim of maltreatment in a facility by an individual in that facility, or has been so neglected or abused, or been the victim of maltreatment in a facility by an individual in that facility within the three years preceding the report; or

(2) a child was neglected, physically abused, sexually abused, or is the victim of maltreatment in a facility by an individual in a facility defined in subdivision 2, while in the care of that facility within the three years preceding the report.

The commissioner of the agency responsible for assessing or investigating the report shall arrange for the transmittal to the commissioner of reports received by local agencies and may delegate to a local welfare agency the duty to investigate reports. In conducting an investigation under this section, the commissioner has the powers and duties specified for local welfare agencies under this section. The commissioner of the agency responsible for assessing or investigating the report or local welfare agency may interview any children who are or have been in the care of a facility under investigation and their parents, guardians, or legal custodians.

(b) Prior to any interview, the commissioner of the agency responsible for assessing or investigating the report or local welfare agency shall notify the parent, guardian, or legal custodian of a child who will be interviewed in the manner provided for in subdivision 10d, paragraph (a). If reasonable efforts to reach the parent, guardian, or legal custodian of a child in an out-of-home placement have failed, the child may be interviewed if there is reason to believe the interview is necessary to protect the child or other children in the facility. The commissioner of the agency responsible for assessing or investigating the report or local agency must provide the information required in this subdivision to the parent, guardian, or legal custodian of a child interviewed without parental notification as soon as possible after the interview. When the investigation is completed, any parent, guardian, or legal custodian notified under this subdivision shall receive the written memorandum provided for in subdivision 10d, paragraph (c).

(c) In conducting investigations under this subdivision the commissioner or local welfare agency shall obtain access to information consistent with subdivision 10, paragraphs (h), (i), and (j). In conducting assessments or investigations under this subdivision, the commissioner of children, families, and learning shall obtain access to reports and investigative data that are relevant to a report of maltreatment and are in the possession of a school facility as defined in subdivision 2, paragraph (f), notwithstanding the classification of the data as educational or personnel data under chapter 13. This includes, but is not limited to, school investigative reports, information concerning the conduct of school personnel alleged to have committed maltreatment of students, information about witnesses, and any protective or corrective action taken by the school facility regarding the school personnel alleged to have committed maltreatment.

(d) The commissioner may request assistance from the local social services agency.

*[For text of subd 10c, see M.S.2000]*

**Subd. 10d. Notification of neglect or abuse in facility.** (a) When a report is received that alleges neglect, physical abuse, sexual abuse, or maltreatment of a child while in the care of a licensed or unlicensed day care facility, residential facility, agency, hospital, sanitarium, or other facility or institution required to be licensed according to sections 144.50 to 144.58; 241.021; or 245A.01 to 245A.16; or chapter 245B, or a school as defined in sections 120A.05, subdivisions 9, 11, and 13; and 124D.10; or a nonlicensed personal care provider organization as defined in section 256B.04, subdivision 16, and 256B.0625, subdivision 19a, the commissioner of the agency responsible for assessing or investigating the report or local welfare agency investigating the report shall provide the following information to the parent, guardian, or legal custodian of a child alleged to have been neglected, physically abused, sexually abused, or the victim of maltreatment of a child in the facility: the name of the facility; the fact that a report alleging neglect, physical abuse, sexual abuse, or maltreatment of a child in the facility

has been received; the nature of the alleged neglect, physical abuse, sexual abuse, or maltreatment of a child in the facility; that the agency is conducting an assessment or investigation; any protective or corrective measures being taken pending the outcome of the investigation; and that a written memorandum will be provided when the investigation is completed.

(b) The commissioner of the agency responsible for assessing or investigating the report or local welfare agency may also provide the information in paragraph (a) to the parent, guardian, or legal custodian of any other child in the facility if the investigative agency knows or has reason to believe the alleged neglect, physical abuse, sexual abuse, or maltreatment of a child in the facility has occurred. In determining whether to exercise this authority, the commissioner of the agency responsible for assessing or investigating the report or local welfare agency shall consider the seriousness of the alleged neglect, physical abuse, sexual abuse, or maltreatment of a child in the facility; the number of children allegedly neglected, physically abused, sexually abused, or victims of maltreatment of a child in the facility; the number of alleged perpetrators; and the length of the investigation. The facility shall be notified whenever this discretion is exercised.

(c) When the commissioner of the agency responsible for assessing or investigating the report or local welfare agency has completed its investigation, every parent, guardian, or legal custodian previously notified of the investigation by the commissioner or local welfare agency shall be provided with the following information in a written memorandum: the name of the facility investigated; the nature of the alleged neglect, physical abuse, sexual abuse, or maltreatment of a child in the facility; the investigator's name; a summary of the investigation findings; a statement whether maltreatment was found; and the protective or corrective measures that are being or will be taken. The memorandum shall be written in a manner that protects the identity of the reporter and the child and shall not contain the name, or to the extent possible, reveal the identity of the alleged perpetrator or of those interviewed during the investigation. If maltreatment is determined to exist, the commissioner or local welfare agency shall also provide the written memorandum to the parent, guardian, or legal custodian of each child in the facility who had contact with the individual responsible for the maltreatment. When the facility is the responsible party for maltreatment, the commissioner or local welfare agency shall also provide the written memorandum to the parent, guardian, or legal custodian of each child who received services in the population of the facility where the maltreatment occurred. This notification must be provided to the parent, guardian, or legal custodian of each child receiving services from the time the maltreatment occurred until either the individual responsible for maltreatment is no longer in contact with a child or children in the facility or the conclusion of the investigation. In the case of maltreatment within a school facility, as defined in sections 120A.05, subdivisions 9, 11, and 13, and 124D.10, the commissioner of children, families, and learning need not provide notification to parents, guardians, or legal custodians of each child in the facility, but may provide notification to the parent, guardian, or legal custodian of any student alleged to have been maltreated or involved as a witness to alleged maltreatment.

Subd. 10e. **Determinations.** Upon the conclusion of every assessment or investigation it conducts, the local welfare agency shall make two determinations: first, whether maltreatment has occurred; and second, whether child protective services are needed. Upon the conclusion of an assessment or investigation by the commissioner of children, families, and learning, the commissioner shall determine whether maltreatment occurred and what corrective or protective action was taken by the school facility. If a determination is made that maltreatment has occurred, the commissioner shall report to the employer, the school board, and any appropriate licensing entity the determination that maltreatment occurred and what corrective or protective action was taken by the school facility. In all other cases, the commissioner shall inform the school board or employer that a report was received, the subject of the report, the date of the initial report, the category of maltreatment alleged as defined in paragraph (a), the fact that maltreatment was not determined, and a summary of the specific reasons for the

determination. When maltreatment is determined in an investigation involving a facility, the investigating agency shall also determine whether the facility or individual was responsible, or whether both the facility and the individual were responsible for the maltreatment using the mitigating factors in paragraph (d). Determinations under this subdivision must be made based on a preponderance of the evidence and are private data on individuals or nonpublic data as maintained by the commissioner of children, families, and learning.

(a) For the purposes of this subdivision, "maltreatment" means any of the following acts or omissions:

- (1) physical abuse as defined in subdivision 2, paragraph (d);
- (2) neglect as defined in subdivision 2, paragraph (c);
- (3) sexual abuse as defined in subdivision 2, paragraph (a);
- (4) mental injury as defined in subdivision 2, paragraph (k); or
- (5) maltreatment of a child in a facility as defined in subdivision 2, paragraph (f).

(b) For the purposes of this subdivision, a determination that child protective services are needed means that the local welfare agency has documented conditions during the assessment or investigation sufficient to cause a child protection worker, as defined in section 626.559, subdivision 1, to conclude that a child is at significant risk of maltreatment if protective intervention is not provided and that the individuals responsible for the child's care have not taken or are not likely to take actions to protect the child from maltreatment or risk of maltreatment.

(c) This subdivision does not mean that maltreatment has occurred solely because the child's parent, guardian, or other person 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, in lieu of medical care. However, if lack of medical care may result in serious danger to the child's health, the local welfare agency may ensure that necessary medical services are provided to the child.

(d) When determining whether the facility or individual is the responsible party for determined maltreatment in a facility, the investigating agency shall consider at least the following mitigating factors:

- (1) whether the actions of the facility or the individual caregivers were according to, and followed the terms of, an erroneous physician order, prescription, individual care plan, or directive; however, this is not a mitigating factor when the facility or caregiver was responsible for the issuance of the erroneous order, prescription, individual care plan, or directive or knew or should have known of the errors and took no reasonable measures to correct the defect before administering care;
- (2) comparative responsibility between the facility, other caregivers, and requirements placed upon an employee, including the facility's compliance with related regulatory standards and the adequacy of facility policies and procedures, facility training, an individual's participation in the training, the caregiver's supervision, and facility staffing levels and the scope of the individual employee's authority and discretion; and
- (3) whether the facility or individual followed professional standards in exercising professional judgment.

Individual counties may implement more detailed definitions or criteria that indicate which allegations to investigate, as long as a county's policies are consistent with the definitions in the statutes and rules and are approved by the county board. Each local welfare agency shall periodically inform mandated reporters under subdivision 3 who work in the county of the definitions of maltreatment in the statutes and rules and any additional definitions or criteria that have been approved by the county board.

**Subd. 10f. Notice of determinations.** Within ten working days of the conclusion of an assessment, the local welfare agency or agency responsible for assessing or investigating the report shall notify the parent or guardian of the child, the person determined to be maltreating the child, and if applicable, the director of the facility, of the

determination and a summary of the specific reasons for the determination. The notice must also include a certification that the information collection procedures under subdivision 10, paragraphs (h), (i), and (j), were followed and a notice of the right of a data subject to obtain access to other private data on the subject collected, created, or maintained under this section. In addition, the notice shall include the length of time that the records will be kept under subdivision 11c. The investigating agency shall notify the parent or guardian of the child who is the subject of the report, and any person or facility determined to have maltreated a child, of their appeal or review rights under this section or section 256.022.

*[For text of subds 10g and 10h, see M.S.2000]*

Subd. 10i. **Administrative reconsideration of final determination of maltreatment and disqualification based on serious or recurring maltreatment; review panel.** (a) Except as provided under paragraph (e), an individual or facility that the commissioner of human services, a local social service agency, or the commissioner of children, families, and learning determines has maltreated a child, an interested person acting on behalf of the child, regardless of the determination, who contests the investigating agency's final determination regarding maltreatment, may request the investigating agency to reconsider its final determination regarding maltreatment. The request for reconsideration must be submitted in writing to the investigating agency within 15 calendar days after receipt of notice of the final determination regarding maltreatment or, if the request is made by an interested person who is not entitled to notice, within 15 days after receipt of the notice by the parent or guardian of the child. Effective January 1, 2002, an individual who was determined to have maltreated a child under this section and who was disqualified on the basis of serious or recurring maltreatment under section 245A.04, subdivision 3d, may request reconsideration of the maltreatment determination and the disqualification. The request for reconsideration of the maltreatment determination and the disqualification must be submitted within 30 calendar days of the individual's receipt of the notice of disqualification under section 245A.04, subdivision 3a.

(b) Except as provided under paragraphs (e) and (f), if the investigating agency denies the request or fails to act upon the request within 15 calendar days after receiving the request for reconsideration, the person or facility entitled to a fair hearing under section 256.045 may submit to the commissioner of human services or the commissioner of children, families, and learning a written request for a hearing under that section. Section 256.045 also governs hearings requested to contest a final determination of the commissioner of children, families, and learning. For reports involving maltreatment of a child in a facility, an interested person acting on behalf of the child may request a review by the child maltreatment review panel under section 256.022 if the investigating agency denies the request or fails to act upon the request or if the interested person contests a reconsidered determination. The investigating agency shall notify persons who request reconsideration of their rights under this paragraph. The request must be submitted in writing to the review panel and a copy sent to the investigating agency within 30 calendar days of receipt of notice of a denial of a request for reconsideration or of a reconsidered determination. The request must specifically identify the aspects of the agency determination with which the person is dissatisfied.

(c) If, as a result of a reconsideration or review, the investigating agency changes the final determination of maltreatment, that agency shall notify the parties specified in subdivisions 10b, 10d, and 10f.

(d) Except as provided under paragraph (f), if an individual or facility contests the investigating agency's final determination regarding maltreatment by requesting a fair hearing under section 256.045, the commissioner of human services shall assure that the hearing is conducted and a decision is reached within 90 days of receipt of the request for a hearing. The time for action on the decision may be extended for as many days as the hearing is postponed or the record is held open for the benefit of either party.

(e) Effective January 1, 2002, if an individual was disqualified under section 245A.04, subdivision 3d, on the basis of a determination of maltreatment, which was serious or recurring, and the individual has requested reconsideration of the maltreatment determination under paragraph (a) and requested reconsideration of the disqualification under section 245A.04, subdivision 3b, reconsideration of the maltreatment determination and reconsideration of the disqualification shall be consolidated into a single reconsideration. If an individual disqualified on the basis of a determination of maltreatment, which was serious or recurring requests a fair hearing under paragraph (b), the scope of the fair hearing shall include the maltreatment determination and the disqualification.

(f) Effective January 1, 2002, if a maltreatment determination or a disqualification based on serious or recurring maltreatment is the basis for a denial of a license under section 245A.05 or a licensing sanction under section 245A.07, the license holder has the right to a contested case hearing under chapter 14 and Minnesota Rules, parts 1400.8510 to 1400.8612 and successor rules. As provided for under section 245A.08, subdivision 2a, the scope of the contested case hearing shall include the maltreatment determination, disqualification, and licensing sanction or denial of a license. In such cases, a fair hearing regarding the maltreatment determination shall not be conducted under paragraph (b). If the disqualified subject is an individual other than the license holder and upon whom a background study must be conducted under section 245A.04, subdivision 3, the hearings of all parties may be consolidated into a single contested case hearing upon consent of all parties and the administrative law judge.

(g) For purposes of this subdivision, "interested person acting on behalf of the child" means a parent or legal guardian; stepparent; grandparent; guardian ad litem; adult stepbrother, stepsister, or sibling; or adult aunt or uncle; unless the person has been determined to be the perpetrator of the maltreatment.

**Subd. 10j. Release of data to mandated reporters.** A local social services or child protection agency, or the agency responsible for assessing or investigating the report of maltreatment, may provide relevant private data on individuals obtained under this section to mandated reporters who have an ongoing responsibility for the health, education, or welfare of a child affected by the data, in the best interests of the child. Mandated reporters with ongoing responsibility for the health, education, or welfare of a child affected by the data include the child's teachers or other appropriate school personnel, foster parents, health care providers, respite care workers, therapists, social workers, child care providers, residential care staff, crisis nursery staff, probation officers, and court services personnel. Under this section, a mandated reporter need not have made the report to be considered a person with ongoing responsibility for the health, education, or welfare of a child affected by the data. Data provided under this section must be limited to data pertinent to the individual's responsibility for caring for the child.

*[For text of subd 10k, see M.S.2000]*

**Subd. 11. Records.** (a) Except as provided in paragraph (b) or (d) and subdivisions 10b, 10d, 10g, and 11b, all records concerning individuals maintained by a local welfare agency or agency responsible for assessing or investigating the report under this section, including any written reports filed under subdivision 7, shall be private data on individuals, except insofar as copies of reports are required by subdivision 7 to be sent to the local police department or the county sheriff. All records concerning determinations of maltreatment by a facility are nonpublic data as maintained by the department of children, families, and learning, except insofar as copies of reports are required by subdivision 7 to be sent to the local police department or the county sheriff. Reports maintained by any police department or the county sheriff shall be private data on individuals except the reports shall be made available to the investigating, petitioning, or prosecuting authority, including county medical examiners or county coroners. Section 13.82, subdivisions 7, 8, and 9, apply to law enforcement data other than the reports. The local social services agency or agency responsible for assessing or investigating the report shall make available to the investigating, petitioning, or

prosecuting authority, including county medical examiners or county coroners or their professional delegates, any records which contain information relating to a specific incident of neglect or abuse which is under investigation, petition, or prosecution and information relating to any prior incidents of neglect or abuse involving any of the same persons. The records shall be collected and maintained in accordance with the provisions of chapter 13. In conducting investigations and assessments pursuant to this section, the notice required by section 13.04, subdivision 2, need not be provided to a minor under the age of ten who is the alleged victim of abuse or neglect. An individual subject of a record shall have access to the record in accordance with those sections, except that the name of the reporter shall be confidential while the report is under assessment or investigation except as otherwise permitted by this subdivision. Any person conducting an investigation or assessment under this section who intentionally discloses the identity of a reporter prior to the completion of the investigation or assessment is guilty of a misdemeanor. After the assessment or investigation is completed, the name of the reporter shall be confidential. The subject of the report may compel disclosure of the name of the reporter only with the consent of the reporter or upon a written finding by the court that the report was false and that there is evidence that the report was made in bad faith. This subdivision does not alter disclosure responsibilities or obligations under the rules of criminal procedure.

(b) Upon request of the legislative auditor, data on individuals maintained under this section must be released to the legislative auditor in order for the auditor to fulfill the auditor's duties under section 3.971. The auditor shall maintain the data in accordance with chapter 13.

(c) The commissioner of children, families, and learning must be provided with all requested data that are relevant to a report of maltreatment and are in possession of a school facility as defined in subdivision 2, paragraph (f), when the data is requested pursuant to an assessment or investigation of a maltreatment report of a student in a school. If the commissioner of children, families, and learning makes a determination of maltreatment involving an individual performing work within a school facility who is licensed by a board or other agency, the commissioner shall provide necessary and relevant information to the licensing entity to enable the entity to fulfill its statutory duties. Notwithstanding section 13.03, subdivision 4, data received by a licensing entity under this paragraph are governed by section 13.41 or other applicable law governing data of the receiving entity, except that this section applies to the classification of and access to data on the reporter of the maltreatment.

(d) The investigating agency shall exchange not public data with the child maltreatment review panel under section 256.022 if the data are pertinent and necessary for a review requested under section 256.022. Upon completion of the review, the not public data received by the review panel must be returned to the investigating agency.

*[For text of subs 11a to 11d, see M.S.2000]*

**Subd. 12. Duties of facility operators.** Any operator, employee, or volunteer worker at any facility who intentionally neglects, physically abuses, or sexually abuses any child in the care of that facility may be charged with a violation of section 609.255, 609.377, or 609.378. Any operator of a facility who knowingly permits conditions to exist which result in neglect, physical abuse, sexual abuse, or maltreatment of a child in a facility while in the care of that facility may be charged with a violation of section 609.378. The facility operator shall inform all mandated reporters employed by or otherwise associated with the facility of the duties required of mandated reporters and shall inform all mandatory reporters of the prohibition against retaliation for reports made in good faith under this section.

*[For text of subs 14 and 15, see M.S.2000]*

**History:** 2001 c 7 s 88; 2001 c 136 s 1; 2001 c 178 art 1 s 40,44; art 2 s 7-17; 1Sp2001 c 6 art 3 s 16; 1Sp2001 c 9 art 11 s 6-12; art 14 s 29

626.5565 [Repealed, 2001 c 178 art 1 s 43]

**626.557 REPORTING OF MALTRTMENT OF VULNERABLE ADULTS.**

*[For text of subd 1, see M.S.2000]*

Subd. 3. **Timing of report.** (a) A mandated reporter who has reason to believe that a vulnerable adult is being or has been maltreated, or who has knowledge that a vulnerable adult has sustained a physical injury which is not reasonably explained shall immediately report the information to the common entry point. If an individual is a vulnerable adult solely because the individual is admitted to a facility, a mandated reporter is not required to report suspected maltreatment of the individual that occurred prior to admission, unless:

(1) the individual was admitted to the facility from another facility and the reporter has reason to believe the vulnerable adult was maltreated in the previous facility; or

(2) the reporter knows or has reason to believe that the individual is a vulnerable adult as defined in section 626.5572, subdivision 21, clause (4).

(b) A person not required to report under the provisions of this section may voluntarily report as described above.

(c) Nothing in this section requires a report of known or suspected maltreatment, if the reporter knows or has reason to know that a report has been made to the common entry point.

(d) Nothing in this section shall preclude a reporter from also reporting to a law enforcement agency.

(e) A mandated reporter who knows or has reason to believe that an error under section 626.5572, subdivision 17, paragraph (c), clause (5), occurred must make a report under this subdivision. If the reporter or a facility, at any time believes that an investigation by a lead agency will determine or should determine that the reported error was not neglect according to the criteria under section 626.5572, subdivision 17, paragraph (c), clause (5), the reporter or facility may provide to the common entry point or directly to the lead agency information explaining how the event meets the criteria under section 626.5572, subdivision 17, paragraph (c), clause (5). The lead agency shall consider this information when making an initial disposition of the report under subdivision 9c.

*[For text of subds 3a to 9c, see M.S.2000]*

Subd. 9d. **Administrative reconsideration of final disposition of maltreatment and disqualification based on serious or recurring maltreatment; review panel.** (a) Except as provided under paragraph (e), any individual or facility which a lead agency determines has maltreated a vulnerable adult, or the vulnerable adult or an interested person acting on behalf of the vulnerable adult, regardless of the lead agency's determination, who contests the lead agency's final disposition of an allegation of maltreatment, may request the lead agency to reconsider its final disposition. The request for reconsideration must be submitted in writing to the lead agency within 15 calendar days after receipt of notice of final disposition or, if the request is made by an interested person who is not entitled to notice, within 15 days after receipt of the notice by the vulnerable adult or the vulnerable adult's legal guardian. An individual who was determined to have maltreated a vulnerable adult under this section and who was disqualified on the basis of serious or recurring maltreatment under section 245A.04, subdivision 3d, may request reconsideration of the maltreatment determination and the disqualification. The request for reconsideration of the maltreatment determination and the disqualification must be submitted within 30 calendar days of the individual's receipt of the notice of disqualification under section 245A.04, subdivision 3a.

(b) Except as provided under paragraphs (e) and (f), if the lead agency denies the request or fails to act upon the request within 15 calendar days after receiving the request for reconsideration, the person or facility entitled to a fair hearing under

section 256.045, may submit to the commissioner of human services a written request for a hearing under that statute. The vulnerable adult, or an interested person acting on behalf of the vulnerable adult, may request a review by the vulnerable adult maltreatment review panel under section 256.021 if the lead agency denies the request or fails to act upon the request, or if the vulnerable adult or interested person contests a reconsidered disposition. The lead agency shall notify persons who request reconsideration of their rights under this paragraph. The request must be submitted in writing to the review panel and a copy sent to the lead agency within 30 calendar days of receipt of notice of a denial of a request for reconsideration or of a reconsidered disposition. The request must specifically identify the aspects of the agency determination with which the person is dissatisfied.

(c) If, as a result of a reconsideration or review, the lead agency changes the final disposition, it shall notify the parties specified in subdivision 9c, paragraph (d).

(d) For purposes of this subdivision, "interested person acting on behalf of the vulnerable adult" means a person designated in writing by the vulnerable adult to act on behalf of the vulnerable adult, or a legal guardian or conservator or other legal representative, a proxy or health care agent appointed under chapter 145B or 145C, or an individual who is related to the vulnerable adult, as defined in section 245A.02, subdivision 13.

(e) If an individual was disqualified under section 245A.04, subdivision 3d, on the basis of a determination of maltreatment, which was serious or recurring, and the individual has requested reconsideration of the maltreatment determination under paragraph (a) and reconsideration of the disqualification under section 245A.04, subdivision 3b, reconsideration of the maltreatment determination and requested reconsideration of the disqualification shall be consolidated into a single reconsideration. If an individual who was disqualified on the basis of serious or recurring maltreatment requests a fair hearing under paragraph (b), the scope of the fair hearing shall include the maltreatment determination and the disqualification.

(f) If a maltreatment determination or a disqualification based on serious or recurring maltreatment is the basis for a denial of a license under section 245A.05 or a licensing sanction under section 245A.07, the license holder has the right to a contested case hearing under chapter 14 and Minnesota Rules, parts 1400.8510 to 1400.8612 and successor rules. As provided for under section 245A.08, the scope of the contested case hearing shall include the maltreatment determination, disqualification, and licensing sanction or denial of a license. In such cases, a fair hearing shall not be conducted under paragraph (b). If the disqualified subject is an individual other than the license holder and upon whom a background study must be conducted under section 245A.04, subdivision 3, the hearings of all parties may be consolidated into a single contested case hearing upon consent of all parties and the administrative law judge.

(g) Until August 1, 2002, an individual or facility that was determined by the commissioner of human services or the commissioner of health to be responsible for neglect under section 626.5572, subdivision 17, after October 1, 1995, and before August 1, 2001, that believes that the finding of neglect does not meet an amended definition of neglect may request a reconsideration of the determination of neglect. The commissioner of human services or the commissioner of health shall mail a notice to the last known address of individuals who are eligible to seek this reconsideration. The request for reconsideration must state how the established findings no longer meet the elements of the definition of neglect. The commissioner shall review the request for reconsideration and make a determination within 15 calendar days. The commissioner's decision on this reconsideration is the final agency action.

(1) For purposes of compliance with the data destruction schedule under subdivision 12b, paragraph (d), when a finding of substantiated maltreatment has been changed as a result of a reconsideration under this paragraph, the date of the original finding of a substantiated maltreatment must be used to calculate the destruction date.

(2) For purposes of any background studies under section 245A.04, when a determination of substantiated maltreatment has been changed as a result of a

reconsideration under this paragraph, any prior disqualification of the individual under section 245A.04 that was based on this determination of maltreatment shall be rescinded, and for future background studies under section 245A.04 the commissioner must not use the previous determination of substantiated maltreatment as a basis for disqualification or as a basis for referring the individual's maltreatment history to a health-related licensing board under section 245A.04, subdivision 3d, paragraph (b).

*[For text of subs. 9e and 10, see M.S.2000]*

**Subd. 12b. Data management.** (a) **County data.** In performing any of the duties of this section as a lead agency, the county social service agency shall maintain appropriate records. Data collected by the county social service agency under this section are welfare data under section 13.46. Notwithstanding section 13.46, subdivision 1, paragraph (a), data under this paragraph that are inactive investigative data on an individual who is a vendor of services are private data on individuals, as defined in section 13.02. The identity of the reporter may only be disclosed as provided in paragraph (c).

Data maintained by the common entry point are confidential data on individuals or protected nonpublic data as defined in section 13.02. Notwithstanding section 138.163, the common entry point shall destroy data three calendar years after date of receipt.

(b) **Lead agency data.** The commissioners of health and human services shall prepare an investigation memorandum for each report alleging maltreatment investigated under this section. During an investigation by the commissioner of health or the commissioner of human services, data collected under this section are confidential data on individuals or protected nonpublic data as defined in section 13.02. Upon completion of the investigation, the data are classified as provided in clauses (1) to (3) and paragraph (c).

(1) The investigation memorandum must contain the following data, which are public:

- (i) the name of the facility investigated;
- (ii) a statement of the nature of the alleged maltreatment;
- (iii) pertinent information obtained from medical or other records reviewed;
- (iv) the identity of the investigator;
- (v) a summary of the investigation's findings;
- (vi) statement of whether the report was found to be substantiated, inconclusive, false, or that no determination will be made;
- (vii) a statement of any action taken by the facility;
- (viii) a statement of any action taken by the lead agency; and
- (ix) when a lead agency's determination has substantiated maltreatment, a statement of whether an individual, individuals, or a facility were responsible for the substantiated maltreatment, if known.

The investigation memorandum must be written in a manner which protects the identity of the reporter and of the vulnerable adult and may not contain the names or, to the extent possible, data on individuals or private data listed in clause (2).

(2) Data on individuals collected and maintained in the investigation memorandum are private data, including:

- (i) the name of the vulnerable adult;
- (ii) the identity of the individual alleged to be the perpetrator;
- (iii) the identity of the individual substantiated as the perpetrator; and
- (iv) the identity of all individuals interviewed as part of the investigation.

(3) Other data on individuals maintained as part of an investigation under this section are private data on individuals upon completion of the investigation.

(c) **Identity of reporter.** The subject of the report may compel disclosure of the name of the reporter only with the consent of the reporter or upon a written finding by

a court that the report was false and there is evidence that the report was made in bad faith. This subdivision does not alter disclosure responsibilities or obligations under the rules of criminal procedure, except that where the identity of the reporter is relevant to a criminal prosecution, the district court shall do an in-camera review prior to determining whether to order disclosure of the identity of the reporter.

(d) **Destruction of data.** Notwithstanding section 138.163, data maintained under this section by the commissioners of health and human services must be destroyed under the following schedule:

- (1) data from reports determined to be false, two years after the finding was made;
- (2) data from reports determined to be inconclusive, four years after the finding was made;
- (3) data from reports determined to be substantiated, seven years after the finding was made; and
- (4) data from reports which were not investigated by a lead agency and for which there is no final disposition, two years from the date of the report.

(e) **Summary of reports.** The commissioners of health and human services shall each annually report to the legislature and the governor on the number and type of reports of alleged maltreatment involving licensed facilities reported under this section, the number of those requiring investigation under this section, and the resolution of those investigations. The report shall identify:

- (1) whether and where backlogs of cases result in a failure to conform with statutory time frames;
- (2) where adequate coverage requires additional appropriations and staffing; and
- (3) any other trends that affect the safety of vulnerable adults.

(f) **Record retention policy.** Each lead agency must have a record retention policy.

(g) **Exchange of information.** Lead agencies, prosecuting authorities, and law enforcement agencies may exchange not public data, as defined in section 13.02, if the agency or authority requesting the data determines that the data are pertinent and necessary to the requesting agency in initiating, furthering, or completing an investigation under this section. Data collected under this section must be made available to prosecuting authorities and law enforcement officials, local county agencies, and licensing agencies investigating the alleged maltreatment under this section. The lead agency shall exchange not public data with the vulnerable adult maltreatment review panel established in section 256.021 if the data are pertinent and necessary for a review requested under that section. Upon completion of the review, not public data received by the review panel must be returned to the lead agency.

(h) **Completion time.** Each lead agency shall keep records of the length of time it takes to complete its investigations.

(i) **Notification of other affected parties.** A lead agency may notify other affected parties and their authorized representative if the agency has reason to believe maltreatment has occurred and determines the information will safeguard the well-being of the affected parties or dispel widespread rumor or unrest in the affected facility.

(j) **Federal requirements.** Under any notification provision of this section, where federal law specifically prohibits the disclosure of patient identifying information, a lead agency may not provide any notice unless the vulnerable adult has consented to disclosure in a manner which conforms to federal requirements.

*[For text of subs 14 to 18, see M.S.2000]*

**History:** 1Sp2001 c 9 art 5 s 31; art 14 s 30,31

**626.5572 DEFINITIONS.**

*[For text of subds 1 to 16, see M.S.2000]*

Subd. 17. **Neglect.** "Neglect" means:

(a) The failure or omission by a caregiver to supply a vulnerable adult with care or services, including but not limited to, food, clothing, shelter, health care, or supervision which is:

(1) reasonable and necessary to obtain or maintain the vulnerable adult's physical or mental health or safety, considering the physical and mental capacity or dysfunction of the vulnerable adult; and

(2) which is not the result of an accident or therapeutic conduct.

(b) The absence or likelihood of absence of care or services, including but not limited to, food, clothing, shelter, health care, or supervision necessary to maintain the physical and mental health of the vulnerable adult which a reasonable person would deem essential to obtain or maintain the vulnerable adult's health, safety, or comfort considering the physical or mental capacity or dysfunction of the vulnerable adult.

(c) For purposes of this section, a vulnerable adult is not neglected for the sole reason that:

(1) the vulnerable adult or a person with authority to make health care decisions for the vulnerable adult under sections 144.651, 144A.44, chapter 145B, 145C, or 252A, or section 253B.03, or 525.539 to 525.6199, refuses consent or withdraws consent, consistent with that authority and within the boundary of reasonable medical practice, to any therapeutic conduct, including any care, service, or procedure to diagnose, maintain, or treat the physical or mental condition of the vulnerable adult, or, where permitted under law, to provide nutrition and hydration parenterally or through intubation; this paragraph does not enlarge or diminish rights otherwise held under law by:

(i) a vulnerable adult or a person acting on behalf of a vulnerable adult, including an involved family member, to consent to or refuse consent for therapeutic conduct; or

(ii) a caregiver to offer or provide or refuse to offer or provide therapeutic conduct; or

(2) the vulnerable adult, a person with authority to make health care decisions for the vulnerable adult, or a caregiver in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the vulnerable adult in lieu of medical care, provided that this is consistent with the prior practice or belief of the vulnerable adult or with the expressed intentions of the vulnerable adult;

(3) the vulnerable adult, who is not impaired in judgment or capacity by mental or emotional dysfunction or undue influence, engages in sexual contact with:

(i) a person including a facility staff person when a consensual sexual personal relationship existed prior to the caregiving relationship; or

(ii) a personal care attendant, regardless of whether the consensual sexual personal relationship existed prior to the caregiving relationship; or

(4) an individual makes an error in the provision of therapeutic conduct to a vulnerable adult which does not result in injury or harm which reasonably requires medical or mental health care; or

(5) an individual makes an error in the provision of therapeutic conduct to a vulnerable adult that results in injury or harm, which reasonably requires the care of a physician, and:

(i) the necessary care is provided in a timely fashion as dictated by the condition of the vulnerable adult;

(ii) if after receiving care, the health status of the vulnerable adult can be reasonably expected, as determined by the attending physician, to be restored to the vulnerable adult's preexisting condition;

(iii) the error is not part of a pattern of errors by the individual;

(iv) if in a facility, the error is immediately reported as required under section 626.557, and recorded internally in the facility;

(v) if in a facility, the facility identifies and takes corrective action and implements measures designed to reduce the risk of further occurrence of this error and similar errors; and

(vi) if in a facility, the actions required under items (iv) and (v) are sufficiently documented for review and evaluation by the facility and any applicable licensing, certification, and ombudsman agency.

(d) Nothing in this definition requires a caregiver, if regulated, to provide services in excess of those required by the caregiver's license, certification, registration, or other regulation.

(e) If the findings of an investigation by a lead agency result in a determination of substantiated maltreatment for the sole reason that the actions required of a facility under paragraph (c), clause (5), item (iv), (v), or (vi), were not taken, then the facility is subject to a correction order. An individual will not be found to have neglected or maltreated the vulnerable adult based solely on the facility's not having taken the actions required under paragraph (c), clause (5), item (iv), (v), or (vi). This must not alter the lead agency's determination of mitigating factors under section 626.557, subdivision 9c, paragraph (c).

*[For text of subds 18 to 21, see M.S.2000]*

**History:** 1Sp2001 c 9 art 14 s 32

#### **626.559 SPECIALIZED TRAINING AND EDUCATION REQUIRED.**

*[For text of subds 1 and 1a, see M.S.2000]*

**Subd. 2. Joint training.** The commissioners of human services and public safety shall cooperate in the development of a joint program for training child abuse services professionals in the appropriate techniques for child abuse assessment and investigation. The program shall include but need not be limited to the following areas:

(1) the public policy goals of the state as set forth in section 260C.001 and the role of the assessment or investigation in meeting these goals;

(2) the special duties of child protection workers and law enforcement officers under section 626.556;

(3) the appropriate methods for directing and managing affiliated professionals who may be utilized in providing protective services and strengthening family ties;

(4) the appropriate methods for interviewing alleged victims of child abuse and other minors in the course of performing an assessment or an investigation;

(5) the dynamics of child abuse and neglect within family systems and the appropriate methods for interviewing parents in the course of the assessment or investigation, including training in recognizing cases in which one of the parents is a victim of domestic abuse and in need of special legal or medical services;

(6) the legal, evidentiary considerations that may be relevant to the conduct of an assessment or an investigation;

(7) the circumstances under which it is appropriate to remove the alleged abuser or the alleged victim from the home;

(8) the protective social services that are available to protect alleged victims from further abuse, to prevent child abuse and domestic abuse, and to preserve the family unit, and training in the preparation of case plans to coordinate services for the alleged child abuse victim with services for any parents who are victims of domestic abuse;

(9) the methods by which child protection workers and law enforcement workers cooperate in conducting assessments and investigations in order to avoid duplication of efforts; and

(10) appropriate methods for interviewing alleged victims of child abuse and conducting investigations in cases where the alleged victim is developmentally, physically, or mentally disabled.

[For text of subs 3 and 5, see M.S.2000]

**History:** 1Sp2001 c 9 art 11 s 13

**626.77 PEACE OFFICERS FROM ADJOINING STATES; FEDERAL LAW ENFORCEMENT OFFICERS.**

Subdivision 1. **Arrest authority.** A peace officer of a state adjoining Minnesota and a federal law enforcement officer have the same authority to arrest and hold an individual in custody as has any peace officer of this state if all of the following circumstances are present:

(1) the officer is on duty and is acting on a request for assistance by a peace officer of this state;

(2) while in this state, the officer acts under the direction of the peace officer to whom the officer is rendering assistance;

(3) while in this state, the officer acts in accordance with the rules and regulations of the officer's own appointive or elective authority; and

(4) upon effecting an arrest, the officer surrenders custody of the arrested individual to a peace officer of this state without unnecessary delay.

Subd. 2. **Tort liability; indemnification.** A peace officer from an adjoining state or a federal law enforcement officer who responds to a request for assistance and who acts in accordance with subdivision 1 is serving in the regular line of duty as fully as though the service was within the officer's jurisdiction. For the purposes of section 3.736 and chapter 466, the officer is deemed to be an employee of the elective or appointive agency of the peace officer requesting assistance.

Subd. 3. **Definition.** As used in this section, "federal law enforcement officer" means an officer or employee whether employed inside or outside the state of the Federal Bureau of Investigation, the Drug Enforcement Administration, the United States Marshal Service, the Secret Service, the Bureau of Alcohol, Tobacco, and Firearms, or the Immigration and Naturalization Service, who is responsible for the prevention or detection of crimes or for the enforcement of the United States Code and who is authorized to arrest, with or without a warrant, any individual for a violation of the United States Code.

**History:** 2001 c 16 s 1

**626.8432 REVOCATION; SUSPENSION; DENIAL.**

Subdivision 1. **Grounds for revocation, suspension, or denial.** (a) The board may refuse to issue, refuse to renew, refuse to reinstate, suspend, revoke eligibility for licensure, or revoke a peace officer or part-time peace officer license for any of the following causes:

(1) fraud or misrepresentation in obtaining a license;

(2) failure to meet licensure requirements; or

(3) a violation of the standards of conduct set forth in Minnesota Rules, chapter 6700.

(b) Unless otherwise provided by the board, a revocation or suspension applies to each license, renewal, or reinstatement privilege held by the individual at the time final action is taken by the board. A person whose license or renewal privilege has been suspended or revoked shall be ineligible to be issued any other license by the board during the pendency of the suspension or revocation.

Subd. 2. **Discovery of disqualifying conviction after licensure.** The board may suspend or revoke a peace officer or part-time peace officer license when the licensee has been convicted of a crime recognized by the board as a crime that would disqualify the licensee from participating in a professional peace officer education course, taking the peace officer licensing examination or the part-time peace officer licensing examination, or maintaining eligibility for licensure under Minnesota Rules, chapter 6700. The authority to suspend or revoke a license shall include all individuals who have been

granted a license when a disqualifying conviction that would have precluded eligibility for licensure is discovered after licensure.

**History:** 2001 c 135 s 1

**626.8441 RESPONDING TO CALLS INVOLVING EMOTIONAL CRISES AND MENTAL ILLNESS; MODEL PROGRAM PILOT PROJECTS.**

Subdivision 1. **Model policing program.** The commissioner of public safety, in consultation with the community mental health peace officer advisory board named under subdivision 2, may award grants to (1) develop models of community policing that are responsive to the unique needs of the law enforcement and mental health systems in Minnesota, and (2) promote these models throughout the state. Grants may be awarded to either existing or new projects. The commissioner may approve the implementation of community policing pilot projects in metropolitan and rural areas. In order to receive funding, a pilot project must focus on the following:

- (1) responding in a knowledgeable and sensitive way to persons exhibiting symptoms of mental illness, to persons having drug-related reactions, and to others who may be in an emotional or mental crisis;
- (2) significantly reducing the risk of harm to the individuals who are the subjects of such calls, to the officers responding to the calls, and to the general public;
- (3) identifying and implementing a continuum of intervention strategies that will prevent escalation, produce de-escalation, and minimize the use of force; and
- (4) creating partnerships with community resources that result in positive resolution, reduction, and prevention of potentially harmful incidents.

Subd. 2. **Community mental health peace officer advisory board.** A community mental health peace officer advisory board must be appointed by the commissioner of public safety and must consist of the following members:

- (1) two licensed peace officers;
- (2) two representatives from the association of chiefs of police;
- (3) two representatives from the Minnesota state sheriff's association;
- (4) a representative from the mental health consumer survivor network;
- (5) a representative from the mental health association of Minnesota;
- (6) a representative from the alliance for the mentally ill;
- (7) a representative from a county social services agency or human services board as defined in section 256E.03;
- (8) a community mental health provider;
- (9) a mental health professional;
- (10) a law enforcement educator with experience training peace officers to respond to mental illness calls; and
- (11) other members deemed appropriate by the commissioner.

In making appointments to the board, the commissioner must take into consideration metropolitan and rural interests. The board must advise the commissioner on the model policing programs and on related areas of concern to persons with mental illnesses, peace officers, and the public. No per diem may be paid to members of the board. The board expires June 30, 2003.

**History:** 1Sp2001 c 8 art 5 s 15

**626.8471 AVOIDING RACIAL PROFILING; POLICIES AND LEARNING OBJECTIVES REQUIRED.**

Subdivision 1. **Purpose.** The legislature finds that the reality or public perception of racial profiling alienates people from police, hinders community policing efforts, and causes law enforcement to lose credibility and trust among the people law enforcement is sworn to protect and serve. No stop initiated by a peace officer should be made without a legitimate reason; race, ethnicity, or national origin alone should never provide a sufficient reason. Law enforcement policies and training programs must

emphasize the need to respect the balance between the rights of all persons to be free from unreasonable governmental intrusions and law enforcement's need to enforce the law.

Subd. 2. **Definition.** "Racial profiling" means any action initiated by law enforcement that relies upon the race, ethnicity, or national origin of an individual rather than:

- (1) the behavior of that individual; or
- (2) information that leads law enforcement to a particular individual who has been identified as being engaged in or having been engaged in criminal activity.

Racial profiling includes use of racial or ethnic stereotypes as factors in selecting whom to stop and search. Racial profiling does not include law enforcement's use of race or ethnicity to determine whether a person matches a specific description of a particular subject.

Subd. 3. **Statewide model policy.** (a) The board of peace officer standards and training shall consult with the Minnesota chiefs of police association, the Minnesota sheriffs association, the racial profiling advisory committee, and the Minnesota police and peace officers association in developing an antiracial profiling model policy governing the conduct of peace officers engaged in stops of citizens. This policy shall define racial profiling and identify conduct that violates the law. The policy must also include a duty to give the officer's name or badge number and identify the officer's department during routine traffic stops.

(b) The board shall adopt a model policy and distribute the model policy to all chief law enforcement officers by August 1, 2001.

Subd. 4. **Agency policies required.** (a) By November 1, 2001, the chief law enforcement officer of every state and local law enforcement agency must establish and enforce a written antiracial profiling policy governing the conduct of peace officers engaged in stops of citizens. The chief law enforcement officer shall ensure that each peace officer receives a copy of the agency's antiracial profiling policy. The chief law enforcement officer also must ensure that each peace officer is aware of the policy's purpose and the conduct prohibited by it.

(b) The policy must, at a minimum, comply with the requirements of the model policy adopted by the board under subdivision 3.

(c) Every state and local law enforcement agency must certify to the board that it has adopted a written policy in compliance with the board's model policy.

(d) The board shall assist the chief law enforcement officer of each state and local law enforcement agency in developing and implementing antiracial profiling policies under this subdivision.

Subd. 5. **Preservice training learning objectives; requirements.** (a) By August 1, 2001, the board shall prepare learning objectives for preservice training to instruct peace officers in avoiding racial profiling when making stops of citizens. These learning objectives shall be included in the required curriculum of professional peace officer education programs.

(b) An individual is not eligible to take the peace officer licensing examination or the part-time peace officer licensing examination on or after June 1, 2002, unless:

- (1) the individual has received the training described in paragraph (a); and
- (2) the individual has completed a psychological evaluation demonstrating that the individual is not likely to engage in racial profiling.

Subd. 6. **In-service training learning objectives.** By August 1, 2001, the board shall prepare learning objectives for in-service training to instruct peace officers in avoiding racial profiling when making stops of citizens. The board shall evaluate and monitor in-service training courses to ensure they satisfy the learning objectives.

Subd. 7. **Chief law enforcement officers and supervisors; requirements.** The executive director of the board of peace officer standards and training shall prepare training materials to provide chief law enforcement officers and other peace officers with supervisory authority with information on how to detect and respond to racial profiling by peace officers under their command. The training materials must address

both the agency's antiracial profiling policy and procedural components aimed at eliminating racial profiling in stops of citizens. The materials must include information on federal and state constitutional and statutory laws prohibiting discrimination by law enforcement. The procedural information must describe conduct that is unlawful or inappropriate and present guidelines for reinforcing techniques that are lawful and appropriate. The procedural information shall discuss appropriate search and seizure and interviewing techniques.

**Subd. 8. Post board; compliance reviews authorized.** The board has authority to inspect state and local agency policies to ensure compliance with subdivision 4. The board may conduct this inspection based upon a complaint it receives about a particular agency or through a random selection process.

**History:** *1Sp2001 c 8 art 7 s 3*

#### **626.8515 CERTAIN BACCALAUREATE DEGREE HOLDERS ELIGIBLE TO TAKE LICENSING EXAMINATION.**

A person with a baccalaureate degree from an accredited college or university who has successfully completed a board-certified practical skills oriented basic training course is eligible to take the peace officer licensing examination.

**History:** *1Sp2001 c 8 art 7 s 4*

#### **626.8517 ELIGIBILITY FOR RECIPROCITY EXAMINATION BASED ON RELEVANT MILITARY EXPERIENCE.**

(a) For purposes of this section, "relevant military experience" means five years of active duty military police service.

(b) A person who has relevant military experience and who has been honorably discharged from the military is eligible to take the reciprocity examination.

**History:** *1Sp2001 c 8 art 7 s 5*

#### **626.94 CONSERVATION LAW ENFORCEMENT AUTHORITY.**

**Subdivision 1. Definition.** As used in this section, "Indian conservation enforcement authority" means:

(1) a federally recognized Indian tribe, as defined in United States Code, title 25, section 450b, subsection (e), located within Minnesota, provided that the tribe has the authority to adopt and enforce game, fish, and natural resources codes governing the conduct of its members within the geographic boundaries of a reservation or in the 1854 or 1837 ceded territories; or

(2) an Indian conservation agency having the authority to adopt or enforce game, fish, and natural resources codes and regulations governing the conduct of Indians in the 1854 or 1837 ceded territories.

**Subd. 2. Indian conservation enforcement authority requirements.** Upon agreement by the commissioner of natural resources, an Indian conservation enforcement authority may exercise authority under subdivision 3 if it satisfies the following minimum requirements:

(1) the Indian conservation enforcement authority agrees to be subject to liability for its torts and those of its officers, employees, and agents acting within the scope of their employment or duties arising out of the conservation enforcement powers conferred by this section to the same extent as a municipality under chapter 466 and the Indian conservation enforcement authority further agrees, notwithstanding section 16C.05, subdivision 7, to waive its sovereign immunity for purposes of claims arising out of the liability;

(2) the Indian conservation enforcement authority files with the board of peace officer standards and training a bond or certificate of insurance for liability coverage

with the maximum single occurrence amounts set forth in section 466.04 and an annual cap for all occurrences within a year of three times the single occurrence amounts;

(3) the Indian conservation enforcement authority files with the board of peace officer standards and training a certificate of insurance for liability of its conservation law enforcement officers, employees, and agents for lawsuits under the United States Constitution;

(4) the Indian conservation enforcement authority agrees to be subject to section 13.82 and any other laws of the state relating to data practices of law enforcement agencies;

(5) the Indian conservation enforcement authority enters into a written cooperative agreement with the commissioner of natural resources under section 471.59 to define and regulate the provision of conservation law enforcement services under this section and to provide conservation officers employed by the department of natural resources with authority described in the cooperative agreement to enforce Indian codes and regulations on lands agreed upon within the reservation or ceded territory; and

(6) the Indian conservation enforcement authority appoints a licensed peace officer to serve as a chief law enforcement officer with authority to appoint and supervise the authority's conservation officers under this section.

When entering into an agreement under clause (5), the Indian conservation enforcement authority is considered a "governmental unit" as defined under section 471.59, subdivision 1. Nothing in this section shall be construed to invalidate or limit the terms of any valid agreement approved by a federal court order.

**Subd. 3. Jurisdiction.** If the requirements of subdivision 2 are met:

(1) the Indian conservation enforcement authority's chief law enforcement officer may appoint peace officers, as defined in section 626.84, subdivision 1, paragraph (c), to serve as conservation officers having the same powers as conservation officers employed by the department of natural resources. The exercise of these powers is limited to the geographical boundaries of the reservation or ceded territory; and

(2) the jurisdiction of conservation officers appointed under this subdivision is concurrent with the jurisdiction of conservation officers employed by the department of natural resources to enforce the state's game and fish, natural resource, and recreational laws within the geographical boundaries of the reservation or ceded territory.

**Subd. 4. Effect on federal law.** Nothing in this section shall be construed to restrict the Indian conservation enforcement authority's authority under federal law.

**Subd. 5. Construction.** This section is limited to conservation enforcement authority only. Nothing in this section shall affect any other jurisdictional relationship or dispute or current agreement.

**History:** *1Sp2001 c 2 s 149*

## **626.951 RACIAL PROFILING STUDY; REPORT REQUIRED.**

**Subdivision 1. Racial profiling study.** (a) The commissioner of public safety shall oversee a statewide study on traffic stops of citizens to determine whether racial profiling exists. Law enforcement agencies that decide to participate in the study shall follow the procedures set forth by this section. Agencies that receive state money for the installation of video cameras in police vehicles shall participate in the study.

(b) The data that must be collected as part of this study include:

- (1) the location of the stop;
- (2) the date and time of the stop;
- (3) the age, race/ethnicity, and gender of the driver;
- (4) the traffic violation or reason that led to the stop;

- (5) the disposition of the stop, arrest, citation, warning, or no action;
  - (6) whether a search was conducted of the driver, passengers, or vehicle;
  - (7) if a search was conducted, the authority for the search;
  - (8) if a search was conducted, whether any contraband was discovered or seized and the nature of the contraband;
  - (9) whether the officer knew the race/ethnicity of the driver before the stop; and
  - (10) the law enforcement agency's code.
- (c) The time period of the study shall be 12 months, beginning on January 1, 2002, and ending December 31, 2002.

(d) The elements listed in paragraph (b) are the minimum that a law enforcement agency participating in the study must collect. Nothing in this section prohibits an agency from voluntarily collecting additional data elements. If an agency collects additional data elements, the data are classified as provided in subdivision 7.

**Subd. 2. Submission of data to commissioner.** On a frequency determined by the commissioner of public safety, each chief law enforcement officer of a law enforcement agency participating in the study shall submit to the commissioner the data described in subdivision 1 for each traffic stop conducted by the agency's law enforcement officers.

**Subd. 3. Method of data collection.** A chief law enforcement officer may collect and submit the data described in this section electronically, if the method of doing so is compatible with the department of public safety's computer system, or on paper forms supplied by the commissioner of public safety.

**Subd. 4. Outside expert.** The commissioners of administration and public safety shall retain a sufficiently experienced and independent organization or individual to:

- (1) design and oversee the data collection process described in this section;
- (2) develop baseline measures to analyze the data collected;
- (3) develop and implement a data compliance auditing process that ensures the accuracy of data collected through, among other things, periodic spot checks; and
- (4) analyze the data collected.

**Subd. 5. Other duties of commissioner.** The commissioner of public safety shall:

- (1) ensure that data forwarded to the commissioner under this section is entered into a central database in a timely manner;
- (2) cooperate with the outside expert to facilitate the ability of the expert to fulfill its duties under this section, including allowing the expert sufficient access to the compiled data; and
- (3) develop and distribute to law enforcement agencies participating in the study a paper form to collect the data.

**Subd. 6. Report required.** The outside expert shall analyze the data collected to determine the degree to which, if at all, racial profiling occurs in traffic stops made by law enforcement agencies participating in the study within the state. By December 1, 2003, the expert shall report the results of the analysis to the chairs of the senate and house committees having jurisdiction over criminal justice policy.

**Subd. 7. Data.** If law enforcement agencies collect data for purposes of traffic stops, the data collected, including video data, are private data on individuals or nonpublic data as defined in section 13.02. This subdivision does not affect the classification of the same data collected for other law enforcement purposes.

**History:** *1Sp2001 c 8 art 7 s 6*

#### **626.9513 RACIAL PROFILING ADVISORY COMMITTEE.**

**Subdivision 1. Committee established; members.** (a) The racial profiling advisory committee consists of the following individuals or their designees:

- (1) the executive director of the Minnesota chiefs of police association;
- (2) the executive director of the Minnesota police and peace officers association;
- (3) the executive director of the Minnesota sheriffs association;

- (4) a chief of police, selected by the Minnesota chiefs of police association;
- (5) a member of the Minnesota police and peace officers association, selected by the association;
- (6) the executive director of the council on Asian-Pacific Minnesotans;
- (7) the executive director of the council on Black Minnesotans;
- (8) the executive director of the council on Indian affairs;
- (9) the executive director of the council on Chicano-Latino people affairs;
- (10) the executive director of an Urban League chapter, selected by agreement of the executive directors of the Urban League chapters within the state;
- (11) the president of a National Association for the Advancement of Colored People branch, selected by agreement of the presidents of the National Association for the Advancement of Colored People branches within the state;
- (12) one person appointed by the commissioner of public safety; and
- (13) one person appointed by the Black Ministers Alliance.

Subd. 2. **Duties.** The racial profiling advisory committee must:

- (1) advise the board of peace officer standards and training on the development of the statewide antiracial profiling model policy under section 626.8471, subdivision 3;
- (2) advise the board of peace officer standards and training on racial profiling training objectives, materials, and implementation;
- (3) advise the attorney general on the racial profiling public awareness campaign; and
- (4) advise the peace officer standards and training board on any other policies relating to racial profiling based on the review of summary data on racial profiling complaints.

Subd. 3. **Committee action.** Committee action, including any action recommended must be approved by a two-thirds majority of the whole committee.

Subd. 4. **Expiration.** The racial profiling advisory committee expires on June 30, 2003.

**History:** *1Sp2001 c 8 art 7 s 7*

#### **626.9514 TOLL-FREE TELEPHONE NUMBER.**

The attorney general shall operate and maintain a toll-free telephone number for complaints dealing with racial profiling. The attorney general must act as a clearing-house for racial profiling complaints and must forward complaints to the peace officer standards and training board.

**History:** *1Sp2001 c 8 art 7 s 8*

#### **626.9517 GRANT PROGRAM FOR INSTALLATION OF VIDEO CAMERAS IN POLICE VEHICLES.**

Subdivision 1. **Grants; cameras described.** The commissioner of public safety shall make grants to law enforcement agencies participating in the racial profiling study described in section 626.951 for the purchase, installation, and maintenance of video cameras on police vehicles designed to record traffic stops. A video camera installed pursuant to a grant under this section must:

- (1) be automatically activated during every traffic stop;
- (2) contain an audio feature; and
- (3) be designed and installed so as to record the stop in its entirety.

Cameras may not be equipped with manual shut-off switches and must be activated for the entirety of a traffic stop.

Subd. 2. **Storage of video.** Notwithstanding section 138.163 or 138.17, chief law enforcement officers of agencies receiving grants under this section for video cameras in police vehicles shall ensure that the videotape or disk from the camera be stored for a minimum of 60 days after use. If the chief law enforcement officer has not been

instructed by the board or the attorney general to maintain the tape or disk beyond that period, the chief law enforcement officer may reuse it. Tapes and disks must be stored and maintained under this subdivision in an accessible manner. The tapes and disks must be clearly labeled and ordered.

Subd. 3. **Availability of videotape.** A chief law enforcement officer shall provide a copy of a videotape or disk that recorded a traffic stop to the driver of the stopped vehicle upon the driver's request and at the driver's expense if the tape or disk has not yet been reused.

**History:** *1Sp2001 c 8 art 7 s 9*