

SENATE
STATE OF MINNESOTA
NINETIETH SESSION

S.F. No. 2683

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DATE	D-PG	OFFICIAL STATUS
02/26/2018	6197	Introduction and first reading
		Referred to Human Services Reform Finance and Policy
03/05/2018		Comm report: To pass as amended and re-refer to Judiciary and Public Safety Finance and Policy

1.1 A bill for an act

1.2 relating to human services; modifying background study provisions; amending

1.3 Minnesota Statutes 2016, sections 245C.02, subdivisions 4a, 15, by adding

1.4 subdivisions; 245C.05, by adding a subdivision; 245C.051; Minnesota Statutes

1.5 2017 Supplement, sections 245C.02, subdivision 6a; 245C.03, subdivision 1;

1.6 245C.05, subdivision 5; 245C.08, subdivision 1; 245C.15, subdivision 1.

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

1.8 Section 1. Minnesota Statutes 2016, section 245C.02, subdivision 4a, is amended to read:

1.9 Subd. 4a. **Authorized fingerprint collection vendor.** "Authorized fingerprint collection

1.10 vendor" means a qualified organization under a written contract with the commissioner to

1.11 provide services in accordance with section 245C.05, subdivision 5, paragraph ~~(a)~~ (b).

1.12 Sec. 2. Minnesota Statutes 2017 Supplement, section 245C.02, subdivision 6a, is amended

1.13 to read:

1.14 Subd. 6a. **Child care ~~staff person~~ background study subject.** "Child care ~~staff person~~

1.15 background study subject" means an individual ~~other than an individual who is related to~~

1.16 ~~all children for whom child care services are provided~~ who is required to have a background

1.17 study under section 245C.03, subdivision 1, and is affiliated with a licensed child care

1.18 center, certified license exempt child care center, licensed family child care program, or

1.19 legal nonlicensed child care provider authorized under chapter 119B, and:

- 1.20 (1) who is employed by a child care provider for compensation; or
- 1.21 (2) whose activities involve the ~~care or~~ supervision of a child for a child care provider
- 1.22 ~~or unsupervised access to a child who is cared for or supervised by a child care provider;~~
- 1.23 ~~or.~~

2.1 ~~(3) an individual 13 years of age or older residing in a licensed family child care home~~
 2.2 ~~or legal nonlicensed child care program.~~

2.3 Sec. 3. Minnesota Statutes 2016, section 245C.02, is amended by adding a subdivision to
 2.4 read:

2.5 Subd. 13c. **National criminal history record check.** (a) "National criminal history
 2.6 record check" means a check of records maintained by the Federal Bureau of Investigation
 2.7 through submission of fingerprints through the Minnesota Bureau of Criminal Apprehension
 2.8 to the Federal Bureau of Investigation, when specifically required by law.

2.9 (b) For the purposes of this chapter, "national crime information database," "national
 2.10 criminal records repository," "criminal history with the Federal Bureau of Investigation,"
 2.11 and "national criminal record check" refer to a national criminal history record check as
 2.12 defined in this subdivision.

2.13 Sec. 4. Minnesota Statutes 2016, section 245C.02, subdivision 15, is amended to read:

2.14 Subd. 15. **Reasonable cause.** "Reasonable cause" means information or circumstances
 2.15 exist ~~which~~ that provide the commissioner with articulable suspicion that further pertinent
 2.16 information may exist concerning a subject. The commissioner has reasonable cause to
 2.17 require a background study when, but not limited to, the commissioner has received a report
 2.18 from the subject, the license holder, or a third party indicating that the subject has a history
 2.19 that would disqualify the individual or that may pose a risk to the health or safety of persons
 2.20 receiving services.

2.21 Sec. 5. Minnesota Statutes 2016, section 245C.02, is amended by adding a subdivision to
 2.22 read:

2.23 Subd. 15a. **Reasonable cause to require a national criminal history record check.**
 2.24 "Reasonable cause to require a national criminal history record check" means information
 2.25 or circumstances exist that provide the commissioner with articulable suspicion that further
 2.26 pertinent information may exist concerning a background study subject that merits conducting
 2.27 a national criminal history record check on that subject. The commissioner has reasonable
 2.28 cause to require a national criminal history record check when:

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

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

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

3.3 Sec. 6. Minnesota Statutes 2017 Supplement, section 245C.03, subdivision 1, is amended
3.4 to read:

3.5 Subdivision 1. **Licensed programs.** (a) The commissioner shall conduct a background
3.6 study on:

3.7 (1) the person or persons applying for a license;

3.8 (2) an individual age 13 and over living in the household where the licensed program
3.9 will be provided who is not receiving licensed services from the program;

3.10 (3) current or prospective employees or contractors of the applicant who will have direct
3.11 contact with persons served by the facility, agency, or program;

3.12 (4) volunteers or student volunteers who will have direct contact with persons served
3.13 by the program to provide program services if the contact is not under the continuous, direct
3.14 supervision by an individual listed in clause (1) or (3);

3.15 (5) an individual age ten to 12 living in the household where the licensed services will
3.16 be provided when the commissioner has reasonable cause as defined in section 245C.02,
3.17 subdivision 15;

3.18 (6) an individual who, without providing direct contact services at a licensed program,
3.19 may have unsupervised access to children or vulnerable adults receiving services from a
3.20 program, when the commissioner has reasonable cause as defined in section 245C.02,
3.21 subdivision 15;

3.22 (7) all controlling individuals as defined in section 245A.02, subdivision 5a; and

3.23 (8) child care ~~staff persons~~ background study subjects as defined in section 245C.02,
3.24 subdivision 6a.

3.25 (b) Paragraph (a), clauses (2), (5), and (6), apply to legal nonlicensed child care and
3.26 certified license-exempt child care programs.

3.27 (c) For child foster care when the license holder resides in the home where foster care
3.28 services are provided, a short-term substitute caregiver providing direct contact services for
3.29 a child for less than 72 hours of continuous care is not required to receive a background
3.30 study under this chapter.

4.1 Sec. 7. Minnesota Statutes 2017 Supplement, section 245C.05, subdivision 5, is amended
4.2 to read:

4.3 Subd. 5. **Fingerprints and photograph.** ~~(a) Before the implementation of NETStudy~~
4.4 ~~2.0, except as provided in paragraph (c), for any background study completed under this~~
4.5 ~~chapter, when the commissioner has reasonable cause to believe that further pertinent~~
4.6 ~~information may exist on the subject of the background study, the subject shall provide the~~
4.7 ~~commissioner with a set of classifiable fingerprints obtained from an authorized agency.~~

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

4.10 ~~(1) information from the Bureau of Criminal Apprehension indicates that the subject is~~
4.11 ~~a multistate offender;~~

4.12 ~~(2) information from the Bureau of Criminal Apprehension indicates that multistate~~
4.13 ~~offender status is undetermined; or~~

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

4.16 ~~(e) (a)~~ Notwithstanding paragraph ~~(d) (b)~~, for background studies conducted by the
4.17 commissioner for child foster care, adoptions, or a transfer of permanent legal and physical
4.18 custody of a child, the subject of the background study, who is 18 years of age or older,
4.19 shall provide the commissioner with a set of classifiable fingerprints obtained from an
4.20 authorized agency for a national criminal history record check.

4.21 ~~(d) (b)~~ For background studies initiated on or after the implementation of NETStudy
4.22 2.0, except as provided under subdivision 5a, every subject of a background study must
4.23 provide the commissioner with a set of the background study subject's classifiable fingerprints
4.24 and photograph. The photograph and fingerprints must be recorded at the same time by the
4.25 commissioner's authorized fingerprint collection vendor and sent to the commissioner
4.26 through the commissioner's secure data system described in section 245C.32, subdivision
4.27 1a, paragraph (b).

4.28 (c) The fingerprints shall be submitted by the commissioner to the Bureau of Criminal
4.29 Apprehension and, when specifically required by law, submitted to the Federal Bureau of
4.30 Investigation for a national criminal history record check.

4.31 (d) The fingerprints must not be retained by the Department of Public Safety, Bureau
4.32 of Criminal Apprehension, or the commissioner, but will be retained by. The Federal Bureau
4.33 of Investigation will only retain fingerprints of subjects with a criminal history.

5.1 (e) The commissioner's authorized fingerprint collection vendor shall, for purposes of
5.2 verifying the identity of the background study subject, be able to view the identifying
5.3 information entered into NETStudy 2.0 by the entity that initiated the background study,
5.4 but shall not retain the subject's fingerprints, photograph, or information from NETStudy
5.5 2.0. The authorized fingerprint collection vendor shall retain no more than the name and
5.6 date and time the subject's fingerprints were recorded and sent, only as necessary for auditing
5.7 and billing activities.

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

5.10 (f) For any background study conducted under this chapter, the subject shall provide the
5.11 commissioner with a set of classifiable fingerprints when the commissioner has reasonable
5.12 cause to require a national criminal history record check as defined in section 245C.02,
5.13 subdivision 15a.

5.14 Sec. 8. Minnesota Statutes 2016, section 245C.05, is amended by adding a subdivision to
5.15 read:

5.16 Subd. 5a. **Background study requirements for minors.** (a) A background study
5.17 completed under this chapter on a subject who is required to be studied under section
5.18 245C.03, subdivision 1, and is 17 years of age or younger shall be completed by the
5.19 commissioner for:

5.20 (1) a legal nonlicensed child care provider authorized under chapter 119B;

5.21 (2) a licensed family child care program; or

5.22 (3) a licensed foster care home.

5.23 (b) The subject shall submit to the commissioner only the information under subdivision
5.24 1, paragraph (a).

5.25 (c) A subject who is 17 years of age or younger is required to submit fingerprints and a
5.26 photograph if:

5.27 (1) the commissioner has reasonable cause to require a national criminal history record
5.28 check defined in section 245C.02, subdivision 15a; or

5.29 (2) under paragraph (a), clauses (1) and (2), the subject is employed by the provider or
5.30 supervises children served by the program.

6.1 Sec. 9. Minnesota Statutes 2016, section 245C.051, is amended to read:

6.2 **245C.051 DESTRUCTION OF BACKGROUND STUDY SUBJECT**
6.3 **INFORMATION.**

6.4 (a) A background study subject may request in writing to the commissioner that
6.5 information used to complete the individual's study in NETStudy 2.0 be destroyed if the
6.6 individual:

6.7 (1) has not been affiliated with any entity for the previous two years; and

6.8 (2) has no current disqualifying characteristic.

6.9 (b) After receiving the request and verifying the information in paragraph (a), the
6.10 commissioner shall destroy the information used to complete the subject's background study
6.11 and shall keep a record of the subject's name and a notation of the date that the information
6.12 was destroyed.

6.13 (c) When a previously studied individual has not been on the master roster for two years,
6.14 the commissioner shall destroy the photographic image of the individual obtained under
6.15 section 245C.05, subdivision 5, paragraph ~~(d)~~ (b).

6.16 (d) Any data collected on an individual under this chapter that is maintained by the
6.17 commissioner that has not been destroyed according to paragraph (b) or (c) shall be destroyed
6.18 when two years have elapsed from the individual's actual death that is reported to the
6.19 commissioner or when 90 years have elapsed since the individual's birth except when readily
6.20 available data indicate that the individual is still living.

6.21 Sec. 10. Minnesota Statutes 2017 Supplement, section 245C.08, subdivision 1, is amended
6.22 to read:

6.23 Subdivision 1. **Background studies conducted by Department of Human Services.**

6.24 (a) For a background study conducted by the Department of Human Services, the
6.25 commissioner shall review:

6.26 (1) information related to names of substantiated perpetrators of maltreatment of
6.27 vulnerable adults that has been received by the commissioner as required under section
6.28 626.557, subdivision 9c, paragraph (j);

6.29 (2) the commissioner's records relating to the maltreatment of minors in licensed
6.30 programs, and from findings of maltreatment of minors as indicated through the social
6.31 service information system;

7.1 (3) information from juvenile courts as required in subdivision 4 for individuals listed
7.2 in section 245C.03, subdivision 1, paragraph (a), when there is reasonable cause;

7.3 (4) information from the Bureau of Criminal Apprehension, including information
7.4 regarding a background study subject's registration in Minnesota as a predatory offender
7.5 under section 243.166;

7.6 (5) except as provided in clause (6), information received as a result of submission of
7.7 fingerprints for a national criminal history record check, as defined in section 245C.02,
7.8 subdivision 13c, when the commissioner has reasonable cause for a national criminal history
7.9 record check as defined under section ~~245C.05, subdivision 5~~ 245C.02, subdivision 15a, or
7.10 as required under section 144.057, subdivision 1, clause (2); and

7.11 (6) for a background study related to a child foster care application for licensure, a
7.12 transfer of permanent legal and physical custody of a child under sections 260C.503 to
7.13 260C.515, or adoptions, and for a background study required for family child care, certified
7.14 license-exempt child care, child care centers, and legal nonlicensed child care authorized
7.15 under chapter 119B, the commissioner shall also review:

7.16 (i) information from the child abuse and neglect registry for any state in which the
7.17 background study subject has resided for the past five years; and

7.18 (ii) when the background study subject is 18 years of age or older, information received
7.19 following submission of fingerprints for a national criminal history record check; and

7.20 ~~(7) for a background study required for family child care, certified license-exempt child~~
7.21 ~~care centers, licensed child care centers, and legal nonlicensed child care authorized under~~
7.22 ~~chapter 119B, the background study shall also include a name and date-of-birth search of~~
7.23 ~~the National Sex Offender Public Web site.~~

7.24 (b) Notwithstanding expungement by a court, the commissioner may consider information
7.25 obtained under paragraph (a), clauses (3) and (4), unless the commissioner received notice
7.26 of the petition for expungement and the court order for expungement is directed specifically
7.27 to the commissioner.

7.28 (c) The commissioner shall also review criminal case information received according
7.29 to section 245C.04, subdivision 4a, from the Minnesota court information system that relates
7.30 to individuals who have already been studied under this chapter and who remain affiliated
7.31 with the agency that initiated the background study.

7.32 (d) When the commissioner has reasonable cause to believe that the identity of a
7.33 background study subject is uncertain, the commissioner may require the subject to provide

8.1 a set of classifiable fingerprints for purposes of completing a fingerprint-based record check
8.2 with the Bureau of Criminal Apprehension. Fingerprints collected under this paragraph
8.3 shall not be saved by the commissioner after they have been used to verify the identity of
8.4 the background study subject against the particular criminal record in question.

8.5 (e) The commissioner may inform the entity that initiated a background study under
8.6 NETStudy 2.0 of the status of processing of the subject's fingerprints.

8.7 Sec. 11. Minnesota Statutes 2017 Supplement, section 245C.15, subdivision 1, is amended
8.8 to read:

8.9 Subdivision 1. **Permanent disqualification.** (a) An individual is disqualified under
8.10 section 245C.14 if: (1) regardless of how much time has passed since the discharge of the
8.11 sentence imposed, if any, for the offense; and (2) unless otherwise specified, regardless of
8.12 the level of the offense, the individual has committed any of the following offenses: sections
8.13 243.166 (violation of predatory offender registration law); 609.185 (murder in the first
8.14 degree); 609.19 (murder in the second degree); 609.195 (murder in the third degree); 609.20
8.15 (manslaughter in the first degree); 609.205 (manslaughter in the second degree); a felony
8.16 offense under 609.221 or 609.222 (assault in the first or second degree); a felony offense
8.17 under sections 609.2242 and 609.2243 (domestic assault), spousal abuse, child abuse or
8.18 neglect, or a crime against children; 609.2247 (domestic assault by strangulation); 609.228
8.19 (great bodily harm caused by distribution of drugs); 609.245 (aggravated robbery); 609.25
8.20 (kidnapping); 609.2661 (murder of an unborn child in the first degree); 609.2662 (murder
8.21 of an unborn child in the second degree); 609.2663 (murder of an unborn child in the third
8.22 degree); 609.322 (solicitation, inducement, and promotion of prostitution); 609.324,
8.23 subdivision 1 (other prohibited acts); 609.342 (criminal sexual conduct in the first degree);
8.24 609.343 (criminal sexual conduct in the second degree); 609.344 (criminal sexual conduct
8.25 in the third degree); 609.345 (criminal sexual conduct in the fourth degree); 609.3451
8.26 (criminal sexual conduct in the fifth degree); 609.3453 (criminal sexual predatory conduct);
8.27 609.352 (solicitation of children to engage in sexual conduct); 609.365 (incest); a felony
8.28 offense under 609.377 (malicious punishment of a child); a felony offense under 609.378
8.29 (neglect or endangerment of a child); 609.561 (arson in the first degree); 609.66, subdivision
8.30 1e (drive-by shooting); 609.749, subdivision 3, 4, or 5 (felony-level stalking); 609.855,
8.31 subdivision 5 (shooting at or in a public transit vehicle or facility); 617.23, subdivision 2,
8.32 clause (1), or subdivision 3, clause (1) (indecent exposure involving a minor); 617.246 (use
8.33 of minors in sexual performance prohibited); 617.247 (possession of pictorial representations
8.34 of minors); or, for a child care ~~staff person~~ background study subject, conviction of a crime
8.35 that would make the individual ineligible for employment under United States Code, title

9.1 42, section 9858f, except for a felony drug conviction, regardless of whether a period of
 9.2 disqualification under subdivisions 2 to 4, would apply if the individual were not a child
 9.3 care ~~staff person~~ background study subject.

9.4 (b) An individual's aiding and abetting, attempt, or conspiracy to commit any of the
 9.5 offenses listed in paragraph (a), as each of these offenses is defined in Minnesota Statutes,
 9.6 permanently disqualifies the individual under section 245C.14.

9.7 (c) An individual's offense in any other state or country, where the elements of the offense
 9.8 are substantially similar to any of the offenses listed in paragraph (a), permanently disqualifies
 9.9 the individual under section 245C.14.

9.10 (d) When a disqualification is based on a judicial determination other than a conviction,
 9.11 the disqualification period begins from the date of the court order. When a disqualification
 9.12 is based on an admission, the disqualification period begins from the date of an admission
 9.13 in court. When a disqualification is based on an Alford Plea, the disqualification period
 9.14 begins from the date the Alford Plea is entered in court. When a disqualification is based
 9.15 on a preponderance of evidence of a disqualifying act, the disqualification date begins from
 9.16 the date of the dismissal, the date of discharge of the sentence imposed for a conviction for
 9.17 a disqualifying crime of similar elements, or the date of the incident, whichever occurs last.

9.18 (e) If the individual studied commits one of the offenses listed in paragraph (a) that is
 9.19 specified as a felony-level only offense, but the sentence or level of offense is a gross
 9.20 misdemeanor or misdemeanor, the individual is disqualified, but the disqualification
 9.21 look-back period for the offense is the period applicable to gross misdemeanor or
 9.22 misdemeanor offenses.

9.23 (f) A child care ~~staff person~~ background study subject shall be disqualified ~~as long as if~~
 9.24 the individual is registered, or required to be registered, on a state sex offender registry ~~or~~
 9.25 ~~repository or the National Sex Offender Registry~~.

9.26 **Sec. 12. DIRECTION TO COMMISSIONER; FINGERPRINT DATA**
 9.27 **NOTIFICATION.**

9.28 The commissioner of human services shall notify all background study subjects under
 9.29 Minnesota Statutes, chapter 245C, that the Department of Human Services, Department of
 9.30 Public Safety, and the Bureau of Criminal Apprehension do not retain fingerprint data after
 9.31 a background study is completed, and that the Federal Bureau of Investigation only retains
 9.32 the fingerprints of subjects who have a criminal history.

10.1 **EFFECTIVE DATE.** This section is effective for background studies completed on or
10.2 after October 1, 2018.

10.3 Sec. 13. **REVISOR'S INSTRUCTION.**

10.4 The revisor of statutes shall change the term "child care staff person" and similar terms
10.5 to "child care background study subject" wherever the terms appear in Minnesota Statutes,
10.6 chapter 245C. The revisor shall also make grammatical changes related to the changes in
10.7 terms.