

**SENATE  
STATE OF MINNESOTA  
NINETIETH SESSION**

**S.F. No. 2748**

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DATE	D-PG	OFFICIAL STATUS
02/26/2018	6208	Introduction and first reading Referred to E-12 Policy
03/12/2018	6384a	Comm report: To pass as amended and re-refer to Judiciary and Public Safety Finance and Policy
03/19/2018	6572a	Comm report: To pass as amended and re-refer to E-12 Finance

1.1 A bill for an act

1.2 relating to education; expanding grounds for teacher license revocation, suspension,

1.3 or denial; expanding grounds for teacher discharge; expanding mandatory reporting;

1.4 amending Minnesota Statutes 2016, section 626.556, subdivision 10a; Minnesota

1.5 Statutes 2017 Supplement, sections 122A.187, by adding a subdivision; 122A.20,

1.6 subdivision 1; 122A.40, subdivision 13; 122A.41, subdivision 6; 123B.03,

1.7 subdivision 1; 609A.03, subdivision 7a; 626.556, subdivisions 2, 3, 10e.

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

1.9 Section 1. Minnesota Statutes 2017 Supplement, section 122A.187, is amended by adding

1.10 a subdivision to read:

1.11 Subd. 7. **Background check.** The Professional Educator Licensing and Standards Board

1.12 must request a criminal history background check from the superintendent of the Bureau

1.13 of Criminal Apprehension on a licensed teacher applying for a renewal license who has not

1.14 had a background check consistent with section 122A.18, subdivision 8, within the preceding

1.15 five years. The board may request payment from the teacher renewing their license in an

1.16 amount equal to the actual cost of the background check.

1.17 **EFFECTIVE DATE.** This section is effective July 1, 2018.

1.18 Sec. 2. Minnesota Statutes 2017 Supplement, section 122A.20, subdivision 1, is amended

1.19 to read:

1.20 Subdivision 1. **Grounds for revocation, suspension, or denial.** (a) The Professional

1.21 Educator Licensing and Standards Board or Board of School Administrators, whichever

1.22 has jurisdiction over a teacher's licensure, may, on the written complaint of the school board

1.23 employing a teacher, a teacher organization, or any other interested person, refuse to issue,

2.1 refuse to renew, suspend, or revoke a teacher's license to teach for any of the following  
2.2 causes:

2.3 (1) immoral character or conduct;

2.4 (2) failure, without justifiable cause, to teach for the term of the teacher's contract;

2.5 (3) gross inefficiency or willful neglect of duty;

2.6 (4) failure to meet licensure requirements; ~~or~~

2.7 (5) fraud or misrepresentation in obtaining a license; or

2.8 (6) intentional and inappropriate patting, touching, pinching, or other physical contact  
2.9 with a student that is unwelcome and sexually motivated.

2.10 The written complaint must specify the nature and character of the charges.

2.11 (b) The Professional Educator Licensing and Standards Board or Board of School  
2.12 Administrators, whichever has jurisdiction over a teacher's licensure, ~~shall~~ must refuse to  
2.13 issue, refuse to renew, or automatically revoke a teacher's license to teach without the right  
2.14 to a hearing upon receiving a certified copy of a conviction showing that the teacher has  
2.15 been convicted of:

2.16 (1) child abuse, as defined in section 609.185;

2.17 (2) sex trafficking in the first degree under section 609.322, subdivision 1;

2.18 (3) sex trafficking in the second degree under section 609.322, subdivision 1a;

2.19 (4) engaging in hiring, or agreeing to hire a minor to engage in prostitution under section  
2.20 609.324, subdivision 1, ~~sexual abuse;~~

2.21 (5) criminal sexual conduct under section 609.342, 609.343, 609.344, 609.345, or  
2.22 609.3451, subdivision 3, ~~or 617.23, subdivision 3;~~

2.23 (6) indecent exposure under section 617.23, subdivision 3;

2.24 (7) solicitation of children to engage in sexual conduct or communication of sexually  
2.25 explicit materials to children under section 609.352;

2.26 (8) interference with privacy under section 609.746 or stalking under section 609.749  
2.27 and the victim was a minor;

2.28 (9) using minors in a sexual performance under section 617.246;

2.29 (10) possessing pornographic works involving a minor under section 617.247; or

3.1 (11) any other offense not listed in this paragraph that requires the person to register as  
3.2 a predatory offender under section 243.166, or a crime under a similar law of another state  
3.3 or the United States.

3.4 The board ~~shall~~ must send notice of this licensing action to the district in which the teacher  
3.5 is currently employed.

3.6 (c) A person whose license to teach has been revoked, not issued, or not renewed under  
3.7 paragraph (b), may petition the board to reconsider the licensing action if the person's  
3.8 conviction ~~for child abuse or sexual abuse~~ is reversed by a final decision of the Court of  
3.9 Appeals or the Supreme Court or if the person has received a pardon for the offense. The  
3.10 petitioner ~~shall~~ must attach a certified copy of the appellate court's final decision or the  
3.11 pardon to the petition. Upon receiving the petition and its attachment, the board ~~shall~~ must  
3.12 schedule and hold a disciplinary hearing on the matter under section 214.10, subdivision 2,  
3.13 unless the petitioner waives the right to a hearing. If the board finds that, notwithstanding  
3.14 the reversal of the petitioner's criminal conviction or the issuance of a pardon, the petitioner  
3.15 is disqualified from teaching under paragraph (a), clause (1), the board ~~shall~~ must affirm  
3.16 its previous licensing action. If the board finds that the petitioner is not disqualified from  
3.17 teaching under paragraph (a), clause (1), it ~~shall~~ must reverse its previous licensing action.

3.18 (d) The Professional Educator Licensing and Standards Board or Board of School  
3.19 Administrators, whichever has jurisdiction over a teacher's licensure, must refuse to issue,  
3.20 refuse to renew, or revoke a teacher's license to teach if the teacher has engaged in sexual  
3.21 penetration as defined in section 609.321, subdivision 11, with a student enrolled in a school  
3.22 where the teacher works or volunteers. The board may suspend a teacher's license pending  
3.23 an investigation into a report of conduct that would be grounds for revocation under this  
3.24 paragraph. Section 122A.188 does not apply to a decision by the board to refuse to issue,  
3.25 refuse to renew, or revoke a license under this paragraph. A person whose license has been  
3.26 revoked, not issued, or not renewed may appeal the decision by filing a written request with  
3.27 the Professional Educator Licensing and Standards Board or the Board of School  
3.28 Administrators, as appropriate, within 30 days of notice of the licensing action. The board  
3.29 must then initiate a contested case under the Administrative Procedure Act, sections 14.001  
3.30 to 14.69.

3.31 (e) The Professional Educator Licensing and Standards Board or Board of School  
3.32 Administrators, whichever has jurisdiction over a teacher's licensure, must review and may  
3.33 refuse to issue, refuse to renew, or revoke a teacher's license to teach upon receiving a  
3.34 certified copy of a conviction showing that the teacher has been convicted of:

- 4.1 (1) a qualified domestic violence-related offense as defined in section 609.02, subdivision  
 4.2 16;
- 4.3 (2) embezzlement of public funds under section 609.54; or
- 4.4 (3) a felony involving a minor as the victim.

4.5 If an offense included in clauses (1) to (3) is already included in paragraph (b), the provisions  
 4.6 of paragraph (b) apply to the conduct. Section 122A.188 does not apply to a decision by  
 4.7 the board to refuse to issue, refuse to renew, or revoke a license under this paragraph. A  
 4.8 person whose license has been revoked, not issued, or not renewed may appeal the decision  
 4.9 by filing a written request with the Professional Educator Licensing and Standards Board  
 4.10 or the Board of School Administrators, as appropriate, within 30 days of notice of the  
 4.11 licensing action. The board must then initiate a contested case under the Administrative  
 4.12 Procedure Act, sections 14.001 to 14.69.

4.13 (f) The Professional Educator Licensing and Standards Board may suspend a teacher's  
 4.14 license to teach during the board's disciplinary investigation of a report of teacher misconduct  
 4.15 if the teacher has been charged with a violation of a crime listed in paragraph (b). The  
 4.16 teacher's license is suspended until the licensing board completes their disciplinary  
 4.17 investigation and makes a determination whether or not disciplinary action is necessary.

4.18 ~~(d)~~ (g) For purposes of this subdivision, the Professional Educator Licensing and  
 4.19 Standards Board is delegated the authority to suspend or revoke coaching licenses.

4.20 **EFFECTIVE DATE.** This section is effective the day following final enactment.

4.21 Sec. 3. Minnesota Statutes 2017 Supplement, section 122A.40, subdivision 13, is amended  
 4.22 to read:

4.23 Subd. 13. **Immediate discharge.** (a) Except as otherwise provided in paragraph (b), a  
 4.24 board may discharge a continuing-contract teacher, effective immediately, upon any of the  
 4.25 following grounds:

4.26 (1) immoral conduct, insubordination, or conviction of a felony;

4.27 (2) conduct unbecoming a teacher which requires the immediate removal of the teacher  
 4.28 from classroom or other duties;

4.29 (3) failure without justifiable cause to teach without first securing the written release of  
 4.30 the school board;

4.31 (4) gross inefficiency which the teacher has failed to correct after reasonable written  
 4.32 notice;

5.1 (5) willful neglect of duty; or

5.2 (6) continuing physical or mental disability subsequent to a 12 months leave of absence  
5.3 and inability to qualify for reinstatement in accordance with subdivision 12.

5.4 For purposes of this paragraph, conduct unbecoming a teacher includes an unfair  
5.5 discriminatory practice described in section 363A.13.

5.6 Prior to discharging a teacher under this paragraph, the board must notify the teacher in  
5.7 writing and state its ground for the proposed discharge in reasonable detail. Within ten days  
5.8 after receipt of this notification the teacher may make a written request for a hearing before  
5.9 the board and it ~~shall~~ must be granted before final action is taken. The board may suspend  
5.10 a teacher with pay pending the conclusion of the hearing and determination of the issues  
5.11 raised in the hearing after charges have been filed which constitute ground for discharge.  
5.12 If a teacher has been charged with a felony and the underlying conduct that is the subject  
5.13 of the felony charge is a ground for a proposed immediate discharge, the suspension pending  
5.14 the conclusion of the hearing and determination of the issues may be without pay. If a  
5.15 hearing under this paragraph is held, the board must reimburse the teacher for any salary  
5.16 or compensation withheld if the final decision of the board or the arbitrator does not result  
5.17 in a penalty to or suspension, termination, or discharge of the teacher.

5.18 (b) A board must discharge a continuing-contract teacher, effective immediately, upon  
5.19 receipt of notice under section 122A.20, subdivision 1, paragraph (b), that the teacher's  
5.20 license has been revoked due to a conviction for:

5.21 (1) child abuse, as defined in section 609.185;

5.22 (2) sex trafficking in the first degree under section 609.322, subdivision 1;

5.23 (3) sex trafficking in the second degree under section 609.322, subdivision 1a;

5.24 (4) engaging in hiring or agreeing to hire a minor to engage in prostitution under section  
5.25 609.324, subdivision 1;

5.26 (5) criminal sexual abuse conduct under section 609.342, 609.343, 609.344, 609.345,  
5.27 609.3451, subdivision 3, ~~or 617.23, subdivision 3~~;

5.28 (6) indecent exposure under section 617.23, subdivision 3;

5.29 (7) solicitation of children to engage in sexual conduct or communication of sexually  
5.30 explicit materials to children under section 609.352;

5.31 (8) interference with privacy under section 609.746 or stalking under section 609.749  
5.32 and the victim was a minor;

6.1 (9) using minors in a sexual performance under section 617.246;

6.2 (10) possessing pornographic works involving a minor under section 617.247; ~~or~~

6.3 (11) any other offense not listed in this paragraph that requires the person to register as  
6.4 a predatory offender under section 243.166, or a crime under a similar law of another state  
6.5 or the United States; or

6.6 (12) any other offense not listed in this paragraph that requires notice of a licensing  
6.7 action to the district in accordance with section 122A.20, subdivision 1, paragraph (d).

6.8 (c) When a teacher is discharged under paragraph (b) or when the commissioner makes  
6.9 a final determination of child maltreatment involving a teacher under section 626.556,  
6.10 subdivision 11, the school principal or other person having administrative control of the  
6.11 school must include in the teacher's employment record the information contained in the  
6.12 record of the disciplinary action or the final maltreatment determination, consistent with  
6.13 the definition of public data under section 13.41, subdivision 5, and must provide the  
6.14 Professional Educator Licensing and Standards Board and the licensing division at the  
6.15 department with the necessary and relevant information to enable the Professional Educator  
6.16 Licensing and Standards Board and the department's licensing division to fulfill their statutory  
6.17 and administrative duties related to issuing, renewing, suspending, or revoking a teacher's  
6.18 license. Information received by the Professional Educator Licensing and Standards Board  
6.19 or the licensing division at the department under this paragraph is governed by section 13.41  
6.20 or other applicable law governing data of the receiving entity. In addition to the background  
6.21 check required under section 123B.03, a school board or other school hiring authority must  
6.22 contact the Professional Educator Licensing and Standards Board and the department to  
6.23 determine whether the teacher's license has been suspended or revoked, consistent with the  
6.24 discharge and final maltreatment determinations identified in this paragraph. Unless restricted  
6.25 by federal or state data practices law or by the terms of a collective bargaining agreement,  
6.26 the responsible authority for a school district must disseminate to another school district  
6.27 private personnel data on a current or former teacher employee or contractor of the district,  
6.28 including the results of background investigations, if the requesting school district seeks  
6.29 the information because the subject of the data has applied for employment with the  
6.30 requesting school district.

6.31 **EFFECTIVE DATE.** This section is effective for the 2018-2019 school year and later.

7.1 Sec. 4. Minnesota Statutes 2017 Supplement, section 122A.41, subdivision 6, is amended  
7.2 to read:

7.3 Subd. 6. **Grounds for discharge or demotion.** (a) Except as otherwise provided in  
7.4 paragraph (b), causes for the discharge or demotion of a teacher either during or after the  
7.5 probationary period must be:

7.6 (1) immoral character, conduct unbecoming a teacher, or insubordination;

7.7 (2) failure without justifiable cause to teach without first securing the written release of  
7.8 the school board having the care, management, or control of the school in which the teacher  
7.9 is employed;

7.10 (3) inefficiency in teaching or in the management of a school, consistent with subdivision  
7.11 5, paragraph (b);

7.12 (4) affliction with a communicable disease must be considered as cause for removal or  
7.13 suspension while the teacher is suffering from such disability; or

7.14 (5) discontinuance of position or lack of pupils.

7.15 For purposes of this paragraph, conduct unbecoming a teacher includes an unfair  
7.16 discriminatory practice described in section 363A.13.

7.17 (b) A probationary or continuing-contract teacher must be discharged immediately upon  
7.18 receipt of notice under section 122A.20, subdivision 1, paragraph (b), that the teacher's  
7.19 license has been revoked due to a conviction for:

7.20 (1) child abuse, as defined in section 609.185;

7.21 (2) sex trafficking in the first degree under section 609.322, subdivision 1;

7.22 (3) sex trafficking in the second degree under section 609.322, subdivision 1a;

7.23 (4) engaging in hiring or agreeing to hire a minor to engage in prostitution under section  
7.24 609.324, subdivision 1;

7.25 (5) criminal sexual abuse conduct under section 609.342, 609.343, 609.344, 609.345,  
7.26 609.3451, subdivision 3, or 617.23, subdivision 3;

7.27 (6) indecent exposure under section 617.23, subdivision 3;

7.28 (7) solicitation of children to engage in sexual conduct or communication of sexually  
7.29 explicit materials to children under section 609.352;

7.30 (8) interference with privacy under section 609.746 or stalking under section 609.749  
7.31 and the victim was a minor;

8.1 (9) using minors in a sexual performance under section 617.246;

8.2 (10) possessing pornographic works involving a minor under section 617.247; ~~or~~

8.3 (11) any other offense not listed in this paragraph that requires the person to register as  
8.4 a predatory offender under section 243.166, or a crime under a similar law of another state  
8.5 or the United States; or

8.6 (12) any other offense not listed in this paragraph that requires notice of a licensing  
8.7 action to the district in accordance with section 122A.20, subdivision 1, paragraph (d).

8.8 (c) When a teacher is discharged under paragraph (b) or when the commissioner makes  
8.9 a final determination of child maltreatment involving a teacher under section 626.556,  
8.10 subdivision 11, the school principal or other person having administrative control of the  
8.11 school must include in the teacher's employment record the information contained in the  
8.12 record of the disciplinary action or the final maltreatment determination, consistent with  
8.13 the definition of public data under section 13.41, subdivision 5, and must provide the  
8.14 Professional Educator Licensing and Standards Board and the licensing division at the  
8.15 department with the necessary and relevant information to enable the Professional Educator  
8.16 Licensing and Standards Board and the department's licensing division to fulfill their statutory  
8.17 and administrative duties related to issuing, renewing, suspending, or revoking a teacher's  
8.18 license. Information received by the Professional Educator Licensing and Standards Board  
8.19 or the licensing division at the department under this paragraph is governed by section 13.41  
8.20 or other applicable law governing data of the receiving entity. In addition to the background  
8.21 check required under section 123B.03, a school board or other school hiring authority must  
8.22 contact the Professional Educator Licensing and Standards Board and the department to  
8.23 determine whether the teacher's license has been suspended or revoked, consistent with the  
8.24 discharge and final maltreatment determinations identified in this paragraph. Unless restricted  
8.25 by federal or state data practices law or by the terms of a collective bargaining agreement,  
8.26 the responsible authority for a school district must disseminate to another school district  
8.27 private personnel data on a current or former teacher employee or contractor of the district,  
8.28 including the results of background investigations, if the requesting school district seeks  
8.29 the information because the subject of the data has applied for employment with the  
8.30 requesting school district.

8.31 **EFFECTIVE DATE.** This section is effective for the 2018-2019 school year and later.



9.1 Sec. 5. Minnesota Statutes 2017 Supplement, section 123B.03, subdivision 1, is amended  
9.2 to read:

9.3 Subdivision 1. **Background check required.** (a) A school hiring authority ~~shall~~ must  
9.4 request a criminal history background check from the superintendent of the Bureau of  
9.5 Criminal Apprehension on all individuals who are offered employment in a school and on  
9.6 all individuals, except enrolled student volunteers, who are offered the opportunity to provide  
9.7 athletic coaching services or other extracurricular academic coaching services to a school,  
9.8 regardless of whether any compensation is paid. In order for an individual to be eligible for  
9.9 employment or to provide the services, the individual must provide an executed criminal  
9.10 history consent form and a money order or check payable to either the Bureau of Criminal  
9.11 Apprehension or the school hiring authority, at the discretion of the school hiring authority,  
9.12 in an amount equal to the actual cost to the Bureau of Criminal Apprehension and the school  
9.13 district of conducting the criminal history background check. A school hiring authority  
9.14 deciding to receive payment may, at its discretion, accept payment in the form of a negotiable  
9.15 instrument other than a money order or check and shall pay the superintendent of the Bureau  
9.16 of Criminal Apprehension directly to conduct the background check. The superintendent  
9.17 of the Bureau of Criminal Apprehension shall conduct the background check by retrieving  
9.18 criminal history data as defined in section 13.87. A school hiring authority, at its discretion,  
9.19 may decide not to request a criminal history background check on an individual who holds  
9.20 an initial entrance license issued by the Professional Educator Licensing and Standards  
9.21 Board or the commissioner of education within the 12 months preceding an offer of  
9.22 employment.

9.23 (b) A school hiring authority may use the results of a criminal background check  
9.24 conducted at the request of another school hiring authority if:

9.25 (1) the results of the criminal background check are on file with the other school hiring  
9.26 authority or otherwise accessible;

9.27 (2) the other school hiring authority conducted a criminal background check within the  
9.28 previous 12 months;

9.29 (3) the individual who is the subject of the criminal background check executes a written  
9.30 consent form giving a school hiring authority access to the results of the check; and

9.31 (4) there is no reason to believe that the individual has committed an act subsequent to  
9.32 the check that would disqualify the individual for employment.

9.33 (c) A school hiring authority may, at its discretion, request a criminal history background  
9.34 check from the superintendent of the Bureau of Criminal Apprehension on any individual

10.1 who seeks to enter a school or its grounds for the purpose of serving as a school volunteer  
10.2 or working as an independent contractor or student employee. In order for an individual to  
10.3 enter a school or its grounds under this paragraph when the school hiring authority decides  
10.4 to request a criminal history background check on the individual, the individual first must  
10.5 provide an executed criminal history consent form and a money order, check, or other  
10.6 negotiable instrument payable to the school district in an amount equal to the actual cost to  
10.7 the Bureau of Criminal Apprehension and the school district of conducting the criminal  
10.8 history background check. Notwithstanding section 299C.62, subdivision 1, the cost of the  
10.9 criminal history background check under this paragraph is the responsibility of the individual  
10.10 unless a school hiring authority decides to pay the costs of conducting a background check  
10.11 under this paragraph. If the school hiring authority pays the costs, the individual who is the  
10.12 subject of the background check need not pay for it.

10.13 (d) In addition to the initial background check required for all individuals offered  
10.14 employment in accordance with paragraph (a), a school hiring authority must request a new  
10.15 criminal history background check from the superintendent of the Bureau of Criminal  
10.16 Apprehension on all employees every three years. Notwithstanding any law to the contrary,  
10.17 in order for an individual to be eligible for continued employment, an individual must  
10.18 provide an executed criminal history consent form and a money order or check payable to  
10.19 either the Bureau of Criminal Apprehension or the school hiring authority, at the discretion  
10.20 of the school hiring authority, in an amount equal to the actual cost to the Bureau of Criminal  
10.21 Apprehension and the school district of conducting the criminal history background check.  
10.22 A school hiring authority deciding to receive payment may, at its discretion, accept payment  
10.23 in the form of a negotiable instrument other than a money order or check and shall pay the  
10.24 superintendent of the Bureau of Criminal Apprehension directly to conduct the background  
10.25 check. A school hiring authority, at its discretion, may decide not to request a criminal  
10.26 history background check on an employee who provides the hiring authority with a copy  
10.27 of the results of a criminal history background check conducted within the previous 36  
10.28 months. A school hiring authority may, at its discretion, decide to pay the costs of conducting  
10.29 a background check under this paragraph.

10.30 ~~(d)~~ (e) For all nonstate residents who are offered employment in a school, a school hiring  
10.31 authority shall request a criminal history background check on such individuals from the  
10.32 superintendent of the Bureau of Criminal Apprehension and from the government agency  
10.33 performing the same function in the resident state or, if no government entity performs the  
10.34 same function in the resident state, from the Federal Bureau of Investigation. Such individuals  
10.35 must provide an executed criminal history consent form and a money order, check, or other

11.1 negotiable instrument payable to the school hiring authority in an amount equal to the actual  
11.2 cost to the government agencies and the school district of conducting the criminal history  
11.3 background check. Notwithstanding section 299C.62, subdivision 1, the cost of the criminal  
11.4 history background check under this paragraph is the responsibility of the individual.

11.5 ~~(e)~~ (f) At the beginning of each school year or when a student enrolls, a school hiring  
11.6 authority must notify parents and guardians about the school hiring authority's policy  
11.7 requiring a criminal history background check on employees and other individuals who  
11.8 provide services to the school, and identify those positions subject to a background check  
11.9 and the extent of the hiring authority's discretion in requiring a background check. The  
11.10 school hiring authority may include the notice in the student handbook, a school policy  
11.11 guide, or other similar communication. Nothing in this paragraph affects a school hiring  
11.12 authority's ability to request a criminal history background check on an individual under  
11.13 paragraph (c).

11.14 Sec. 6. Minnesota Statutes 2017 Supplement, section 609A.03, subdivision 7a, is amended  
11.15 to read:

11.16 Subd. 7a. **Limitations of order effective January 1, 2015, and later.** (a) Upon issuance  
11.17 of an expungement order related to a charge supported by probable cause, the DNA samples  
11.18 and DNA records held by the Bureau of Criminal Apprehension and collected under authority  
11.19 other than section 299C.105 shall not be sealed, returned to the subject of the record, or  
11.20 destroyed.

11.21 (b) Notwithstanding the issuance of an expungement order:

11.22 (1) except as provided in clause (2), an expunged record may be opened, used, or  
11.23 exchanged between criminal justice agencies without a court order for the purposes of  
11.24 initiating, furthering, or completing a criminal investigation or prosecution or for sentencing  
11.25 purposes or providing probation or other correctional services;

11.26 (2) when a criminal justice agency seeks access to a record that was sealed under section  
11.27 609A.02, subdivision 3, paragraph (a), clause (1), after an acquittal or a court order dismissing  
11.28 for lack of probable cause, for purposes of a criminal investigation, prosecution, or  
11.29 sentencing, the requesting agency must obtain an ex parte court order after stating a  
11.30 good-faith basis to believe that opening the record may lead to relevant information;

11.31 (3) an expunged record of a conviction may be opened for purposes of evaluating a  
11.32 prospective employee in a criminal justice agency without a court order;

12.1 (4) an expunged record of a conviction may be opened for purposes of a background  
12.2 study under section 245C.08 unless the commissioner had been properly served with notice  
12.3 of the petition for expungement and the court order for expungement is directed specifically  
12.4 to the commissioner of human services;

12.5 (5) an expunged record of a conviction may be opened for purposes of a background  
12.6 check required under section 122A.18, subdivision 8, unless the court order for expungement  
12.7 is directed specifically to the Professional Educator Licensing and Standards Board or the  
12.8 licensing division of the Department of Education; and

12.9 (6) the court may order an expunged record opened upon request by the victim of the  
12.10 underlying offense if the court determines that the record is substantially related to a matter  
12.11 for which the victim is before the court.

12.12 (c) An agency or jurisdiction subject to an expungement order shall maintain the record  
12.13 in a manner that provides access to the record by a criminal justice agency under paragraph  
12.14 (b), clause (1) or (2), but notifies the recipient that the record has been sealed. The Bureau  
12.15 of Criminal Apprehension shall notify the commissioner of human services, and the  
12.16 Professional Educator Licensing and Standards Board, ~~or the licensing division of the~~  
12.17 ~~Department of Education~~ of the existence of a sealed record and of the right to obtain access  
12.18 under paragraph (b), clause (4) or (5). Upon request, the agency or jurisdiction subject to  
12.19 the expungement order shall provide access to the record to the commissioner of human  
12.20 services, the Professional Educator Licensing and Standards Board, or the licensing division  
12.21 of the Department of Education under paragraph (b), clause (4) or (5).

12.22 (d) An expunged record that is opened or exchanged under this subdivision remains  
12.23 subject to the expungement order in the hands of the person receiving the record.

12.24 (e) A criminal justice agency that receives an expunged record under paragraph (b),  
12.25 clause (1) or (2), must maintain and store the record in a manner that restricts the use of the  
12.26 record to the investigation, prosecution, or sentencing for which it was obtained.

12.27 (f) For purposes of this section, a "criminal justice agency" means a court or government  
12.28 agency that performs the administration of criminal justice under statutory authority.

12.29 (g) This subdivision applies to expungement orders subject to its limitations and effective  
12.30 on or after January 1, 2015.

13.1 Sec. 7. Minnesota Statutes 2017 Supplement, section 626.556, subdivision 2, is amended  
13.2 to read:

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

13.5 (a) "Accidental" means a sudden, not reasonably foreseeable, and unexpected occurrence  
13.6 or event which:

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

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

13.11 (b) "Commissioner" means the commissioner of human services.

13.12 (c) "Facility" means:

13.13 (1) a licensed or unlicensed day care facility, certified license-exempt child care center,  
13.14 residential facility, agency, hospital, sanitarium, or other facility or institution required to  
13.15 be licensed under sections 144.50 to 144.58, 241.021, or 245A.01 to 245A.16, or chapter  
13.16 144H, 245D, or 245H;

13.17 (2) a school as defined in section 120A.05, subdivisions 9, 11, and 13; and chapter 124E;  
13.18 or

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

13.21 (d) "Family assessment" means a comprehensive assessment of child safety, risk of  
13.22 subsequent child maltreatment, and family strengths and needs that is applied to a child  
13.23 maltreatment report that does not allege sexual abuse or substantial child endangerment.  
13.24 Family assessment does not include a determination as to whether child maltreatment  
13.25 occurred but does determine the need for services to address the safety of family members  
13.26 and the risk of subsequent maltreatment.

13.27 (e) "Investigation" means fact gathering related to the current safety of a child and the  
13.28 risk of subsequent maltreatment that determines whether child maltreatment occurred and  
13.29 whether child protective services are needed. An investigation must be used when reports  
13.30 involve sexual abuse or substantial child endangerment, and for reports of maltreatment in  
13.31 facilities required to be licensed or certified under chapter 245A, 245D, or 245H; under  
13.32 sections 144.50 to 144.58 and 241.021; in a school as defined in section 120A.05,

14.1 subdivisions 9, 11, and 13, and chapter 124E; or in a nonlicensed personal care provider  
14.2 association as defined in section 256B.0625, subdivision 19a.

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

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

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

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

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

14.20 (4) failure to ensure that the child is educated as defined in sections 120A.22 and  
14.21 260C.163, subdivision 11, which does not include a parent's refusal to provide the parent's  
14.22 child with sympathomimetic medications, consistent with section 125A.091, subdivision  
14.23 5;

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

14.32 (6) prenatal exposure to a controlled substance, as defined in section 253B.02, subdivision  
14.33 2, used by the mother for a nonmedical purpose, as evidenced by withdrawal symptoms in

15.1 the child at birth, results of a toxicology test performed on the mother at delivery or the  
15.2 child at birth, medical effects or developmental delays during the child's first year of life  
15.3 that medically indicate prenatal exposure to a controlled substance, or the presence of a  
15.4 fetal alcohol spectrum disorder;

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

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

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

15.13 (h) "Nonmaltreatment mistake" means:

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

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

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

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

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

15.26 This definition only applies to child care centers licensed under Minnesota Rules, chapter  
15.27 9503. If clauses (1) to (5) apply, rather than making a determination of substantiated  
15.28 maltreatment by the individual, the commissioner of human services shall determine that a  
15.29 nonmaltreatment mistake was made by the individual.

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

15.31 (j) "Person responsible for the child's care" means (1) an individual functioning within  
15.32 the family unit and having responsibilities for the care of the child such as a parent, guardian,

16.1 or other person having similar care responsibilities, or (2) an individual functioning outside  
16.2 the family unit and having responsibilities for the care of the child such as a teacher, school  
16.3 administrator, other school employees or agents, or other lawful custodian of a child having  
16.4 either full-time or short-term care responsibilities including, but not limited to, day care,  
16.5 babysitting whether paid or unpaid, counseling, teaching, and coaching.

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

16.11 Abuse does not include reasonable and moderate physical discipline of a child  
16.12 administered by a parent or legal guardian which does not result in an injury. Abuse does  
16.13 not include the use of reasonable force by a teacher, principal, or school employee as allowed  
16.14 by section 121A.582. Actions which are not reasonable and moderate include, but are not  
16.15 limited to, any of the following:

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

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

16.18 (3) shaking a child under age three;

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

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

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

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

16.24 (8) striking a child who is at least age one but under age four on the face or head, which  
16.25 results in an injury;

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



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

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

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

17.8 (m) "Report" means any communication received by the local welfare agency, police  
 17.9 department, county sheriff, or agency responsible for child protection pursuant to this section  
 17.10 that describes neglect or physical or sexual abuse of a child and contains sufficient content  
 17.11 to identify the child and any person believed to be responsible for the neglect or abuse, if  
 17.12 known.

17.13 (n) "Sexual abuse" means the subjection of a child by a person responsible for the child's  
 17.14 care, by a person who has a significant relationship to the child, as defined in section 609.341,  
 17.15 or by a person in a position of authority, as defined in section 609.341, subdivision 10, to  
 17.16 any act which constitutes a violation of section 609.342 (criminal sexual conduct in the first  
 17.17 degree), 609.343 (criminal sexual conduct in the second degree), 609.344 (criminal sexual  
 17.18 conduct in the third degree), 609.345 (criminal sexual conduct in the fourth degree), ~~or~~  
 17.19 609.3451 (criminal sexual conduct in the fifth degree), or 609.352 (solicitation of children  
 17.20 to engage in sexual conduct; communication of sexually explicit materials to children).

17.21 Sexual abuse also includes any act which involves a minor which constitutes a violation of  
 17.22 prostitution offenses under sections 609.321 to 609.324 or 617.246. Effective May 29, 2017,  
 17.23 sexual abuse includes all reports of known or suspected child sex trafficking involving a  
 17.24 child who is identified as a victim of sex trafficking. Sexual abuse includes child sex  
 17.25 trafficking as defined in section 609.321, subdivisions 7a and 7b. Sexual abuse includes  
 17.26 threatened sexual abuse which includes the status of a parent or household member who  
 17.27 has committed a violation which requires registration as an offender under section 243.166,  
 17.28 subdivision 1b, paragraph (a) or (b), or required registration under section 243.166,  
 17.29 subdivision 1b, paragraph (a) or (b).

17.30 (o) "Substantial child endangerment" means a person responsible for a child's care, by  
 17.31 act or omission, commits or attempts to commit an act against a child under their care that  
 17.32 constitutes any of the following:

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

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

- 18.1 (3) neglect as defined in paragraph (g), clause (2), that substantially endangers the child's  
18.2 physical or mental health, including a growth delay, which may be referred to as failure to  
18.3 thrive, that has been diagnosed by a physician and is due to parental neglect;
- 18.4 (4) murder in the first, second, or third degree under section 609.185, 609.19, or 609.195;
- 18.5 (5) manslaughter in the first or second degree under section 609.20 or 609.205;
- 18.6 (6) assault in the first, second, or third degree under section 609.221, 609.222, or 609.223;
- 18.7 (7) solicitation, inducement, and promotion of prostitution under section 609.322;
- 18.8 (8) criminal sexual conduct under sections 609.342 to 609.3451;
- 18.9 (9) solicitation of children to engage in sexual conduct under section 609.352;
- 18.10 (10) malicious punishment or neglect or endangerment of a child under section 609.377  
18.11 or 609.378;
- 18.12 (11) use of a minor in sexual performance under section 617.246; or
- 18.13 (12) parental behavior, status, or condition which mandates that the county attorney file  
18.14 a termination of parental rights petition under section 260C.503, subdivision 2.
- 18.15 (p) "Threatened injury" means a statement, overt act, condition, or status that represents  
18.16 a substantial risk of physical or sexual abuse or mental injury. Threatened injury includes,  
18.17 but is not limited to, exposing a child to a person responsible for the child's care, as defined  
18.18 in paragraph (j), clause (1), who has:
- 18.19 (1) subjected a child to, or failed to protect a child from, an overt act or condition that  
18.20 constitutes egregious harm, as defined in section 260C.007, subdivision 14, or a similar law  
18.21 of another jurisdiction;
- 18.22 (2) been found to be palpably unfit under section 260C.301, subdivision 1, paragraph  
18.23 (b), clause (4), or a similar law of another jurisdiction;
- 18.24 (3) committed an act that has resulted in an involuntary termination of parental rights  
18.25 under section 260C.301, or a similar law of another jurisdiction; or
- 18.26 (4) committed an act that has resulted in the involuntary transfer of permanent legal and  
18.27 physical custody of a child to a relative under Minnesota Statutes 2010, section 260C.201,  
18.28 subdivision 11, paragraph (d), clause (1), section 260C.515, subdivision 4, or a similar law  
18.29 of another jurisdiction.

19.1 A child is the subject of a report of threatened injury when the responsible social services  
19.2 agency receives birth match data under paragraph (q) from the Department of Human  
19.3 Services.

19.4 (q) Upon receiving data under section 144.225, subdivision 2b, contained in a birth  
19.5 record or recognition of parentage identifying a child who is subject to threatened injury  
19.6 under paragraph (p), the Department of Human Services shall send the data to the responsible  
19.7 social services agency. The data is known as "birth match" data. Unless the responsible  
19.8 social services agency has already begun an investigation or assessment of the report due  
19.9 to the birth of the child or execution of the recognition of parentage and the parent's previous  
19.10 history with child protection, the agency shall accept the birth match data as a report under  
19.11 this section. The agency may use either a family assessment or investigation to determine  
19.12 whether the child is safe. All of the provisions of this section apply. If the child is determined  
19.13 to be safe, the agency shall consult with the county attorney to determine the appropriateness  
19.14 of filing a petition alleging the child is in need of protection or services under section  
19.15 260C.007, subdivision 6, clause (16), in order to deliver needed services. If the child is  
19.16 determined not to be safe, the agency and the county attorney shall take appropriate action  
19.17 as required under section 260C.503, subdivision 2.

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

19.22 Sec. 8. Minnesota Statutes 2017 Supplement, section 626.556, subdivision 3, is amended  
19.23 to read:

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

19.30 (1) a professional or professional's delegate who is engaged in the practice of the healing  
19.31 arts, social services, hospital administration, psychological or psychiatric treatment, child  
19.32 care, education, correctional supervision, probation and correctional services, or law  
19.33 enforcement; ~~or~~

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

20.5 (3) a member of the Professional Educator Licensing and Standards Board or the Board  
20.6 of School Administrators.

20.7 (b) Any person may voluntarily report to the local welfare agency, agency responsible  
20.8 for assessing or investigating the report, police department, county sheriff, tribal social  
20.9 services agency, or tribal police department if the person knows, has reason to believe, or  
20.10 suspects a child is being or has been neglected or subjected to physical or sexual abuse.

20.11 (c) A person mandated to report physical or sexual child abuse or neglect occurring  
20.12 within a licensed facility shall report the information to the agency responsible for licensing  
20.13 or certifying the facility under sections 144.50 to 144.58; 241.021; 245A.01 to 245A.16;  
20.14 or chapter 144H, 245D, or 245H; or a nonlicensed personal care provider organization as  
20.15 defined in section 256B.0625, subdivision 19a. A health or corrections agency receiving a  
20.16 report may request the local welfare agency to provide assistance pursuant to subdivisions  
20.17 10, 10a, and 10b. A board or other entity whose licensees perform work within a school  
20.18 facility, upon receiving a complaint of alleged maltreatment, shall provide information about  
20.19 the circumstances of the alleged maltreatment to the commissioner of education. Section  
20.20 13.03, subdivision 4, applies to data received by the commissioner of education from a  
20.21 licensing entity.

20.22 (d) Notification requirements under subdivision 10 apply to all reports received under  
20.23 this section.

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

20.26 **EFFECTIVE DATE.** This section is effective the day following final enactment.

20.27 Sec. 9. Minnesota Statutes 2016, section 626.556, subdivision 10a, is amended to read:

20.28 Subd. 10a. **Law enforcement agency responsibility for investigation; welfare agency**  
20.29 **reliance on law enforcement fact-finding; welfare agency offer of services.** (a) If the  
20.30 report alleges neglect, physical abuse, or sexual abuse by a person who is not a parent,  
20.31 guardian, sibling, person responsible for the child's care functioning within the family unit,  
20.32 or a person who lives in the child's household and who has a significant relationship to the  
20.33 child, in a setting other than a facility as defined in subdivision 2, the local welfare agency

21.1 shall immediately notify the appropriate law enforcement agency, which shall conduct an  
21.2 investigation of the alleged abuse or neglect if a violation of a criminal statute is alleged.

21.3 (b) The local agency may rely on the fact-finding efforts of the law enforcement  
21.4 investigation conducted under this subdivision to make a determination whether or not  
21.5 threatened injury or other maltreatment has occurred under subdivision 2 if an alleged  
21.6 offender has minor children or lives with minors.

21.7 (c) If a child is the victim of an alleged crime under paragraph (a), the law enforcement  
21.8 agency shall immediately notify the local welfare agency, which shall offer appropriate  
21.9 social services for the purpose of safeguarding and enhancing the welfare of the abused or  
21.10 neglected minor.

21.11 (d) The law enforcement agency must report to the Professional Educator Licensing and  
21.12 Standards Board an investigation under paragraph (a), involving a person licensed by the  
21.13 board.

21.14 Sec. 10. Minnesota Statutes 2017 Supplement, section 626.556, subdivision 10e, is amended  
21.15 to read:

21.16 Subd. 10e. **Determinations.** (a) The local welfare agency shall conclude the family  
21.17 assessment or the investigation within 45 days of the receipt of a report. The conclusion of  
21.18 the assessment or investigation may be extended to permit the completion of a criminal  
21.19 investigation or the receipt of expert information requested within 45 days of the receipt of  
21.20 the report.

21.21 (b) After conducting a family assessment, the local welfare agency shall determine  
21.22 whether services are needed to address the safety of the child and other family members  
21.23 and the risk of subsequent maltreatment.

21.24 (c) After conducting an investigation, the local welfare agency shall make two  
21.25 determinations: first, whether maltreatment has occurred; and second, whether child  
21.26 protective services are needed. No determination of maltreatment shall be made when the  
21.27 alleged perpetrator is a child under the age of ten.

21.28 (d) If the commissioner of education conducts an assessment or investigation, the  
21.29 commissioner shall determine whether maltreatment occurred and what corrective or  
21.30 protective action was taken by the school facility. If a determination is made that  
21.31 maltreatment has occurred, the commissioner shall report to the employer, the school board,  
21.32 and any appropriate licensing entity the determination that maltreatment occurred and what  
21.33 corrective or protective action was taken by the school facility. In all other cases, the

22.1 commissioner shall inform the school board or employer and any appropriate licensing  
22.2 entity that a report was received, the subject of the report, the date of the initial report, the  
22.3 category of maltreatment alleged as defined in paragraph (f), the fact that maltreatment was  
22.4 not determined, and a summary of the specific reasons for the determination.

22.5 (e) When maltreatment is determined in an investigation involving a facility, the  
22.6 investigating agency shall also determine whether the facility or individual was responsible,  
22.7 or whether both the facility and the individual were responsible for the maltreatment using  
22.8 the mitigating factors in paragraph (i). Determinations under this subdivision must be made  
22.9 based on a preponderance of the evidence and are private data on individuals or nonpublic  
22.10 data as maintained by the commissioner of education.

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

22.13 (1) physical abuse as defined in subdivision 2, paragraph (k);

22.14 (2) neglect as defined in subdivision 2, paragraph (g);

22.15 (3) sexual abuse as defined in subdivision 2, paragraph (n);

22.16 (4) mental injury as defined in subdivision 2, paragraph (f); or

22.17 (5) maltreatment of a child in a facility as defined in subdivision 2, paragraph (c).

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

22.25 (h) This subdivision does not mean that maltreatment has occurred solely because the  
22.26 child's parent, guardian, or other person responsible for the child's care in good faith selects  
22.27 and depends upon spiritual means or prayer for treatment or care of disease or remedial care  
22.28 of the child, in lieu of medical care. However, if lack of medical care may result in serious  
22.29 danger to the child's health, the local welfare agency may ensure that necessary medical  
22.30 services are provided to the child.

22.31 (i) When determining whether the facility or individual is the responsible party, or  
22.32 whether both the facility and the individual are responsible for determined maltreatment in  
22.33 a facility, the investigating agency shall consider at least the following mitigating factors:

23.1 (1) whether the actions of the facility or the individual caregivers were according to,  
23.2 and followed the terms of, an erroneous physician order, prescription, individual care plan,  
23.3 or directive; however, this is not a mitigating factor when the facility or caregiver was  
23.4 responsible for the issuance of the erroneous order, prescription, individual care plan, or  
23.5 directive or knew or should have known of the errors and took no reasonable measures to  
23.6 correct the defect before administering care;

23.7 (2) comparative responsibility between the facility, other caregivers, and requirements  
23.8 placed upon an employee, including the facility's compliance with related regulatory standards  
23.9 and the adequacy of facility policies and procedures, facility training, an individual's  
23.10 participation in the training, the caregiver's supervision, and facility staffing levels and the  
23.11 scope of the individual employee's authority and discretion; and

23.12 (3) whether the facility or individual followed professional standards in exercising  
23.13 professional judgment.

23.14 The evaluation of the facility's responsibility under clause (2) must not be based on the  
23.15 completeness of the risk assessment or risk reduction plan required under section 245A.66,  
23.16 but must be based on the facility's compliance with the regulatory standards for policies  
23.17 and procedures, training, and supervision as cited in Minnesota Statutes and Minnesota  
23.18 Rules.

23.19 (j) Notwithstanding paragraph (i), when maltreatment is determined to have been  
23.20 committed by an individual who is also the facility license or certification holder, both the  
23.21 individual and the facility must be determined responsible for the maltreatment, and both  
23.22 the background study disqualification standards under section 245C.15, subdivision 4, and  
23.23 the licensing or certification actions under section 245A.06, 245A.07, 245H.06, or 245H.07  
23.24 apply.