

SENATE
STATE OF MINNESOTA
NINETIETH SESSION

S.F. No. 2881

(SENATE AUTHORS: LATZ, Little, Cwodzinski and Hall)

DATE

03/01/2018

D-PG

6244

OFFICIAL STATUS

Introduction and first reading

Referred to Judiciary and Public Safety Finance and Policy

03/14/2018

Comm report: To pass as amended

Second reading

1.1 A bill for an act

1.2 relating to child protection; including possession of child pornography in reportable

1.3 conduct under the Maltreatment of Minors Act; amending Minnesota Statutes 2017

1.4 Supplement, section 626.556, subdivision 2.

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

1.6 Section 1. Minnesota Statutes 2017 Supplement, section 626.556, subdivision 2, is amended

1.7 to read:

1.8 Subd. 2. **Definitions.** As used in this section, the following terms have the meanings

1.9 given them unless the specific content indicates otherwise:

1.10 (a) "Accidental" means a sudden, not reasonably foreseeable, and unexpected occurrence

1.11 or event which:

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

1.13 (2) if occurring while a child is receiving services from a facility, happens when the

1.14 facility and the employee or person providing services in the facility are in compliance with

1.15 the laws and rules relevant to the occurrence or event.

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

1.17 (c) "Facility" means:

1.18 (1) a licensed or unlicensed day care facility, certified license-exempt child care center,

1.19 residential facility, agency, hospital, sanitarium, or other facility or institution required to

1.20 be licensed under sections 144.50 to 144.58, 241.021, or 245A.01 to 245A.16, or chapter

1.21 144H, 245D, or 245H;

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

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

2.5 (d) "Family assessment" means a comprehensive assessment of child safety, risk of
2.6 subsequent child maltreatment, and family strengths and needs that is applied to a child
2.7 maltreatment report that does not allege sexual abuse or substantial child endangerment.
2.8 Family assessment does not include a determination as to whether child maltreatment
2.9 occurred but does determine the need for services to address the safety of family members
2.10 and the risk of subsequent maltreatment.

2.11 (e) "Investigation" means fact gathering related to the current safety of a child and the
2.12 risk of subsequent maltreatment that determines whether child maltreatment occurred and
2.13 whether child protective services are needed. An investigation must be used when reports
2.14 involve sexual abuse or substantial child endangerment, and for reports of maltreatment in
2.15 facilities required to be licensed or certified under chapter 245A, 245D, or 245H; under
2.16 sections 144.50 to 144.58 and 241.021; in a school as defined in section 120A.05,
2.17 subdivisions 9, 11, and 13, and chapter 124E; or in a nonlicensed personal care provider
2.18 association as defined in section 256B.0625, subdivision 19a.

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

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

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

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

2.32 (3) failure to provide for necessary supervision or child care arrangements appropriate
2.33 for a child after considering factors as the child's age, mental ability, physical condition,

3.1 length of absence, or environment, when the child is unable to care for the child's own basic
3.2 needs or safety, or the basic needs or safety of another child in their care;

3.3 (4) failure to ensure that the child is educated as defined in sections 120A.22 and
3.4 260C.163, subdivision 11, which does not include a parent's refusal to provide the parent's
3.5 child with sympathomimetic medications, consistent with section 125A.091, subdivision
3.6 5;

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

3.15 (6) prenatal exposure to a controlled substance, as defined in section 253B.02, subdivision
3.16 2, used by the mother for a nonmedical purpose, as evidenced by withdrawal symptoms in
3.17 the child at birth, results of a toxicology test performed on the mother at delivery or the
3.18 child at birth, medical effects or developmental delays during the child's first year of life
3.19 that medically indicate prenatal exposure to a controlled substance, or the presence of a
3.20 fetal alcohol spectrum disorder;

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

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

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

3.29 (h) "Nonmaltreatment mistake" means:

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

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

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

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

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

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

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

(j) "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.

(k) "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 125A.0942 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:

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

(9) 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;

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

(11) 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.

(l) "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.

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

(n) "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, or a violation of possession of pornographic work offenses under section 617.247. Effective May 29, 2017, sexual abuse includes all reports of known or suspected child sex trafficking involving a child who is identified as a victim of sex trafficking. Sexual abuse includes child sex trafficking as defined in section 609.321, subdivisions 7a and 7b. Sexual abuse includes threatened sexual abuse which includes the status of a parent or household member who has committed a violation which requires registration as an offender under section 243.166, subdivision 1b, paragraph (a) or (b), or required registration under section 243.166, subdivision 1b, paragraph (a) or (b).

(o) "Substantial child endangerment" means 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) abandonment under section 260C.301, subdivision 2;

(3) neglect as defined in paragraph (g), clause (2), 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;

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

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

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

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

(8) criminal sexual conduct under sections 609.342 to 609.3451;

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

(10) malicious punishment or neglect or endangerment of a child under section 609.377 or 609.378;

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

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

(p) "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 (j), 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, subdivision 1, 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 Minnesota Statutes 2010, section 260C.201, subdivision 11, paragraph (d), clause (1), section 260C.515, subdivision 4, or a similar law of another jurisdiction.

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

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

(r) 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.