

1.1 A bill for an act

1.2 relating to children; requiring appointment of a guardian ad litem in certain
1.3 family law proceedings; providing for family screening and therapeutic
1.4 management in cases involving parental allegations of sexual abuse; modifying
1.5 provisions governing child maltreatment investigations; providing for a working
1.6 group to develop screening tools; amending Minnesota Statutes 2008, sections
1.7 518.165, subdivision 2, by adding a subdivision; 626.556, subdivisions 10, 14;
1.8 Minnesota Statutes 2009 Supplement, section 626.556, subdivision 2.

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

1.10 Section 1. Minnesota Statutes 2008, section 518.165, subdivision 2, is amended to read:

1.11 Subd. 2. **Required appointment of guardian ad litem.** (a) In all proceedings for
1.12 child custody or for marriage dissolution or legal separation in which custody or parenting
1.13 time with a minor child is an issue, the court shall appoint a guardian ad litem if:

1.14 (1) the court has reason to believe that the minor child is a victim of domestic
1.15 child abuse or neglect, as those terms are defined in sections 260C.007 and 626.556;
1.16 ~~respectively, the court shall appoint a guardian ad litem;~~ or

1.17 (2) a parent alleges that the minor child is a victim of sexual abuse, as defined in
1.18 section 626.556, committed by the other parent and there is no physical evidence of the
1.19 abuse.

1.20 (b) The guardian ad litem shall represent the interests of the child and advise the
1.21 court with respect to custody and parenting time. If the child is represented by a guardian
1.22 ad litem in any other pending proceeding, the court may appoint that guardian to represent
1.23 the child in the custody or parenting time proceeding. No guardian ad litem need be
1.24 appointed if the alleged domestic child abuse or neglect is before the court on a juvenile
1.25 dependency and neglect petition. Nothing in this subdivision requires the court to appoint

S.F. No. 3218, as introduced - 86th Legislative Session (2009-2010) [10-5684]

2.1 a guardian ad litem in any proceeding for child custody, marriage dissolution, or legal
2.2 separation in which an allegation of domestic child abuse or neglect has not been made.

2.3 Sec. 2. Minnesota Statutes 2008, section 518.165, is amended by adding a subdivision
2.4 to read:

2.5 Subd. 2b. **Family screening and therapeutic management; parental allegation**
2.6 **of sexual abuse.** (a) This subdivision applies if a guardian ad litem is appointed under
2.7 subdivision 1, paragraph (a), clause (2), and there is not sufficient evidence of sexual
2.8 abuse for purposes of a criminal prosecution or a determination under section 626.556 that
2.9 maltreatment involving sexual abuse by the parent has occurred. The guardian ad litem
2.10 shall conduct an initial screening of the family by obtaining information regarding:

2.11 (1) the child's general and sexual behavior and emotional adjustment;

2.12 (2) the behavior of the parent alleged to have committed sexual abuse and the
2.13 presence of empirically validated risk factors for sexual abuse; and

2.14 (3) the relevant behavior and background of the parent who is alleging sexual abuse.

2.15 To the extent appropriate, the guardian ad litem shall obtain information on other
2.16 children in the family. Based on information obtained from the screening, the guardian
2.17 ad litem shall make a recommendation to the court as to whether it would be in the best
2.18 interests of the child to order the family to participate in a family therapeutic management
2.19 process.

2.20 (b) Upon recommendation from the guardian ad litem, the court may order that the
2.21 parents and the child who is the alleged victim of sexual abuse participate in a therapeutic
2.22 management process. If the family is referred to the process, the court shall appoint a
2.23 therapeutic management coordinator to oversee a comprehensive evaluation of the parents
2.24 and the alleged victim and develop a family-focused intervention and reunification plan.

2.25 (c) In conducting the initial screening of family members under paragraph (a), the
2.26 guardian ad litem shall use questionnaires approved by the state court administrator.

2.27 **EFFECTIVE DATE.** This section is effective August 1, 2011.

2.28 Sec. 3. Minnesota Statutes 2009 Supplement, section 626.556, subdivision 2, is
2.29 amended to read:

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

2.32 (a) "Family assessment" or "assessment" means a comprehensive assessment of
2.33 child safety, risk of subsequent child maltreatment, and family strengths and needs that is
2.34 applied to a child maltreatment report that does not allege substantial child endangerment.

S.F. No. 3218, as introduced - 86th Legislative Session (2009-2010) [10-5684]

3.1 Family assessment does not include a determination as to whether child maltreatment
3.2 occurred but does determine the need for services to address the safety of family members
3.3 and the risk of subsequent maltreatment.

3.4 (b) "Investigation" means fact gathering related to the current safety of a child
3.5 and the risk of subsequent maltreatment that determines whether child maltreatment
3.6 occurred and whether child protective services are needed. An investigation must be used
3.7 when reports involve substantial child endangerment, and for reports of maltreatment in
3.8 facilities required to be licensed under chapter 245A or 245B; under sections 144.50 to
3.9 144.58 and 241.021; in a school as defined in sections 120A.05, subdivisions 9, 11, and
3.10 13, and 124D.10; or in a nonlicensed personal care provider association as defined in
3.11 sections 256B.04, subdivision 16, and 256B.0625, subdivision 19a.

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

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

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

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

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

3.23 (5) murder in the first, second, or third degree under section 609.185, 609.19, or
3.24 609.195;

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

3.26 (7) assault in the first, second, or third degree under section 609.221, 609.222, or
3.27 609.223;

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

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

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

3.31 (11) malicious punishment or neglect or endangerment of a child under section
3.32 609.377 or 609.378;

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

3.34 (13) parental behavior, status, or condition which mandates that the county attorney
3.35 file a termination of parental rights petition under section 260C.301, subdivision 3,
3.36 paragraph (a).

4.1 (d) "Sexual abuse" means the subjection of a child by a person responsible for the
4.2 child's care, by a person who has a significant relationship to the child, as defined in
4.3 section 609.341, or by a person in a position of authority, as defined in section 609.341,
4.4 subdivision 10, to any act which constitutes a violation of section 609.342 (criminal sexual
4.5 conduct in the first degree), 609.343 (criminal sexual conduct in the second degree),
4.6 609.344 (criminal sexual conduct in the third degree), 609.345 (criminal sexual conduct
4.7 in the fourth degree), or 609.3451 (criminal sexual conduct in the fifth degree). Sexual
4.8 abuse also includes any act which involves a minor which constitutes a violation of
4.9 prostitution offenses under sections 609.321 to 609.324 or 617.246. Sexual abuse includes
4.10 threatened sexual abuse.

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

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

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

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

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

4.32 (4) failure to ensure that the child is educated as defined in sections 120A.22 and
4.33 260C.163, subdivision 11, which does not include a parent's refusal to provide the parent's
4.34 child with sympathomimetic medications, consistent with section 125A.091, subdivision 5;

4.35 (5) nothing in this section shall be construed to mean that a child is neglected solely
4.36 because the child's parent, guardian, or other person responsible for the child's care in

5.1 good faith selects and depends upon spiritual means or prayer for treatment or care of
5.2 disease or remedial care of the child in lieu of medical care; except that a parent, guardian,
5.3 or caretaker, or a person mandated to report pursuant to subdivision 3, has a duty to report
5.4 if a lack of medical care may cause serious danger to the child's health. This section does
5.5 not impose upon persons, not otherwise legally responsible for providing a child with
5.6 necessary food, clothing, shelter, education, or medical care, a duty to provide that care;

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

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

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

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

5.21 (g) "Physical abuse" means any physical injury, mental injury, or threatened injury,
5.22 inflicted by a person responsible for the child's care on a child other than by accidental
5.23 means, or any physical or mental injury that cannot reasonably be explained by the child's
5.24 history of injuries, or any aversive or deprivation procedures, or regulated interventions,
5.25 that have not been authorized under section 121A.67 or 245.825.

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

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

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

5.34 (3) shaking a child under age three;

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

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

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

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

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

6.10 (9) unreasonable physical confinement or restraint not permitted under section
6.11 609.379, including but not limited to tying, caging, or chaining; or

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

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

6.17 (i) "Facility" means:

6.18 (1) a licensed or unlicensed day care facility, residential facility, agency, hospital,
6.19 sanitarium, or other facility or institution required to be licensed under sections 144.50 to
6.20 144.58, 241.021, or 245A.01 to 245A.16, or chapter 245B;

6.21 (2) a school as defined in sections 120A.05, subdivisions 9, 11, and 13; and
6.22 124D.10; or

6.23 (3) a nonlicensed personal care provider organization as defined in sections 256B.04,
6.24 subdivision 16, and 256B.0625, subdivision 19a.

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

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

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

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

6.34 (n) "Threatened injury" means a statement, overt act, condition, or status that
6.35 represents a substantial risk of physical or sexual abuse or mental injury. Threatened

S.F. No. 3218, as introduced - 86th Legislative Session (2009-2010) [10-5684]

7.1 injury includes, but is not limited to, exposing a child to a person responsible for the
7.2 child's care, as defined in paragraph (e), clause (1), who has:

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

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

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

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

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

7.17 (p) "Accidental" means a sudden, not reasonably foreseeable, and unexpected
7.18 occurrence or event which:

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

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

7.24 Sec. 4. Minnesota Statutes 2008, section 626.556, subdivision 10, is amended to read:

7.25 Subd. 10. **Duties of local welfare agency and local law enforcement agency upon**
7.26 **receipt of report.** (a) Upon receipt of a report, the local welfare agency shall determine
7.27 whether to conduct a family assessment or an investigation as appropriate to prevent or
7.28 provide a remedy for child maltreatment. The local welfare agency:

7.29 (1) shall conduct an investigation on reports involving substantial child
7.30 endangerment;

7.31 (2) shall begin an immediate investigation if, at any time when it is using a family
7.32 assessment response, it determines that there is reason to believe that substantial child
7.33 endangerment or a serious threat to the child's safety exists;

7.34 (3) may conduct a family assessment for reports that do not allege substantial child
7.35 endangerment. In determining that a family assessment is appropriate, the local welfare

8.1 agency may consider issues of child safety, parental cooperation, and the need for an
8.2 immediate response; and

8.3 (4) may conduct a family assessment on a report that was initially screened and
8.4 assigned for an investigation. In determining that a complete investigation is not required,
8.5 the local welfare agency must document the reason for terminating the investigation and
8.6 notify the local law enforcement agency if the local law enforcement agency is conducting
8.7 a joint investigation.

8.8 If the report alleges neglect, physical abuse, or sexual abuse by a parent, guardian,
8.9 or individual functioning within the family unit as a person responsible for the child's
8.10 care, or sexual abuse by a person with a significant relationship to the child when that
8.11 person resides in the child's household or by a sibling, the local welfare agency shall
8.12 immediately conduct a family assessment or investigation as identified in clauses (1)
8.13 to (4). In conducting a family assessment or investigation, the local welfare agency
8.14 shall gather information on the existence of substance abuse and domestic violence and
8.15 offer services for purposes of preventing future child maltreatment, safeguarding and
8.16 enhancing the welfare of the abused or neglected minor, and supporting and preserving
8.17 family life whenever possible. If the report alleges a violation of a criminal statute
8.18 involving sexual abuse, physical abuse, or neglect or endangerment, under section
8.19 609.378, the local law enforcement agency and local welfare agency shall coordinate the
8.20 planning and execution of their respective investigation and assessment efforts to avoid a
8.21 duplication of fact-finding efforts and multiple interviews. Each agency shall prepare a
8.22 separate report of the results of its assessment or investigation. In cases of alleged child
8.23 maltreatment resulting in death, the local agency may rely on the fact-finding efforts of a
8.24 law enforcement investigation to make a determination of whether or not maltreatment
8.25 occurred. When necessary the local welfare agency shall seek authority to remove the
8.26 child from the custody of a parent, guardian, or adult with whom the child is living. In
8.27 performing any of these duties, the local welfare agency shall maintain appropriate records.

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

8.34 (b) When a local agency receives a report or otherwise has information indicating
8.35 that a child who is a client, as defined in section 245.91, has been the subject of physical
8.36 abuse, sexual abuse, or neglect at an agency, facility, or program as defined in section

9.1 245.91, it shall, in addition to its other duties under this section, immediately inform the
9.2 ombudsman established under sections 245.91 to 245.97. The commissioner of education
9.3 shall inform the ombudsman established under sections 245.91 to 245.97 of reports
9.4 regarding a child defined as a client in section 245.91 that maltreatment occurred at a
9.5 school as defined in sections 120A.05, subdivisions 9, 11, and 13, and 124D.10.

9.6 (c) Authority of the local welfare agency responsible for assessing or investigating
9.7 the child abuse or neglect report, the agency responsible for assessing or investigating
9.8 the report, and of the local law enforcement agency for investigating the alleged abuse or
9.9 neglect includes, but is not limited to, authority to interview, without parental consent,
9.10 the alleged victim and any other minors who currently reside with or who have resided
9.11 with the alleged offender. The interview may take place at school or at any facility or
9.12 other place where the alleged victim or other minors might be found or the child may be
9.13 transported to, and the interview conducted at, a place appropriate for the interview of a
9.14 child designated by the local welfare agency or law enforcement agency. The interview
9.15 may take place outside the presence of the alleged offender or parent, legal custodian,
9.16 guardian, or school official. For family assessments, it is the preferred practice to request
9.17 a parent or guardian's permission to interview the child prior to conducting the child
9.18 interview, unless doing so would compromise the safety assessment. Except as provided in
9.19 this paragraph, the parent, legal custodian, or guardian shall be notified by the responsible
9.20 local welfare or law enforcement agency no later than the conclusion of the investigation
9.21 or assessment that this interview has occurred. Notwithstanding rule 32 of the Minnesota
9.22 Rules of Procedure for Juvenile Courts, the juvenile court may, after hearing on an ex parte
9.23 motion by the local welfare agency, order that, where reasonable cause exists, the agency
9.24 withhold notification of this interview from the parent, legal custodian, or guardian. If the
9.25 interview took place or is to take place on school property, the order shall specify that
9.26 school officials may not disclose to the parent, legal custodian, or guardian the contents
9.27 of the notification of intent to interview the child on school property, as provided under
9.28 this paragraph, and any other related information regarding the interview that may be a
9.29 part of the child's school record. A copy of the order shall be sent by the local welfare or
9.30 law enforcement agency to the appropriate school official.

9.31 (d) When the local welfare, local law enforcement agency, or the agency responsible
9.32 for assessing or investigating a report of maltreatment determines that an interview should
9.33 take place on school property, written notification of intent to interview the child on school
9.34 property must be received by school officials prior to the interview. The notification
9.35 shall include the name of the child to be interviewed, the purpose of the interview, and
9.36 a reference to the statutory authority to conduct an interview on school property. For

S.F. No. 3218, as introduced - 86th Legislative Session (2009-2010) [10-5684]

10.1 interviews conducted by the local welfare agency, the notification shall be signed by the
10.2 chair of the local social services agency or the chair's designee. The notification shall be
10.3 private data on individuals subject to the provisions of this paragraph. School officials
10.4 may not disclose to the parent, legal custodian, or guardian the contents of the notification
10.5 or any other related information regarding the interview until notified in writing by the
10.6 local welfare or law enforcement agency that the investigation or assessment has been
10.7 concluded, unless a school employee or agent is alleged to have maltreated the child.
10.8 Until that time, the local welfare or law enforcement agency or the agency responsible
10.9 for assessing or investigating a report of maltreatment shall be solely responsible for any
10.10 disclosures regarding the nature of the assessment or investigation.

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

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

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

10.35 (g) The commissioner of human services, the ombudsman for mental health and
10.36 developmental disabilities, the local welfare agencies responsible for investigating reports,

11.1 the commissioner of education, and the local law enforcement agencies have the right to
11.2 enter facilities as defined in subdivision 2 and to inspect and copy the facility's records,
11.3 including medical records, as part of the investigation. Notwithstanding the provisions of
11.4 chapter 13, they also have the right to inform the facility under investigation that they are
11.5 conducting an investigation, to disclose to the facility the names of the individuals under
11.6 investigation for abusing or neglecting a child, and to provide the facility with a copy of
11.7 the report and the investigative findings.

11.8 (h) The local welfare agency responsible for conducting a family assessment or
11.9 investigation shall collect available and relevant information to determine child safety,
11.10 risk of subsequent child maltreatment, and family strengths and needs and share not public
11.11 information with an Indian's tribal social services agency without violating any law of the
11.12 state that may otherwise impose duties of confidentiality on the local welfare agency in
11.13 order to implement the tribal state agreement. The local welfare agency or the agency
11.14 responsible for assessing or investigating the report shall collect available and relevant
11.15 information to ascertain whether maltreatment occurred and whether protective services
11.16 are needed. Information collected includes, when relevant, information with regard to
11.17 the person reporting the alleged maltreatment, including the nature of the reporter's
11.18 relationship to the child and to the alleged offender, and the basis of the reporter's
11.19 knowledge for the report; the child allegedly being maltreated; the alleged offender; the
11.20 child's caretaker; and other collateral sources having relevant information related to the
11.21 alleged maltreatment. The local welfare agency or the agency responsible for assessing
11.22 or investigating the report may make a determination of no maltreatment early in an
11.23 assessment or investigation, and close the case and retain immunity, if the collected
11.24 information shows no basis for a full assessment or investigation.

11.25 Information relevant to the assessment or investigation must be ~~asked for~~ requested,
11.26 and ~~may~~ shall include, to the extent relevant and reasonably available:

11.27 (1) the child's sex and age, prior reports of maltreatment, information relating to
11.28 developmental functioning, credibility of the child's statement in light of the presence or
11.29 absence of corroborating evidence, and whether the information provided under this
11.30 clause is consistent with other information collected during the course of the assessment
11.31 or investigation;

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

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

12.9 (4) information on the existence of domestic abuse and violence in the home of
12.10 the child, the status of any domestic relationship between the reporter and the alleged
12.11 offender, including whether a dissolution proceeding is pending or contemplated if they
12.12 are married, and substance abuse.

12.13 Nothing in this paragraph precludes the local welfare agency, the local law
12.14 enforcement agency, or the agency responsible for assessing or investigating the report
12.15 from collecting other relevant information necessary to conduct the assessment or
12.16 investigation. Notwithstanding sections 13.384 or 144.291 to 144.298, the local welfare
12.17 agency has access to medical data and records for purposes of clause (3). Notwithstanding
12.18 the data's classification in the possession of any other agency, data acquired by the
12.19 local welfare agency or the agency responsible for assessing or investigating the report
12.20 during the course of the assessment or investigation are private data on individuals and
12.21 must be maintained in accordance with subdivision 11. Data of the commissioner of
12.22 education collected or maintained during and for the purpose of an investigation of
12.23 alleged maltreatment in a school are governed by this section, notwithstanding the data's
12.24 classification as educational, licensing, or personnel data under chapter 13.

12.25 In conducting an assessment or investigation involving a school facility as defined
12.26 in subdivision 2, paragraph (i), the commissioner of education shall collect investigative
12.27 reports and data that are relevant to a report of maltreatment and are from local law
12.28 enforcement and the school facility.

12.29 (i) Upon receipt of a report, the local welfare agency shall conduct a face-to-face
12.30 contact with the child reported to be maltreated and with the child's primary caregiver
12.31 sufficient to complete a safety assessment and ensure the immediate safety of the child.
12.32 The face-to-face contact with the child and primary caregiver shall occur immediately
12.33 if substantial child endangerment is alleged and within five calendar days for all other
12.34 reports. If the alleged offender was not already interviewed as the primary caregiver, the
12.35 local welfare agency shall also conduct a face-to-face interview with the alleged offender
12.36 in the early stages of the assessment or investigation. At the initial contact, the local child

S.F. No. 3218, as introduced - 86th Legislative Session (2009-2010) [10-5684]

13.1 welfare agency or the agency responsible for assessing or investigating the report must
13.2 inform the alleged offender of the complaints or allegations made against the individual in
13.3 a manner consistent with laws protecting the rights of the person who made the report.

13.4 The interview with the alleged offender may be postponed if it would jeopardize an active
13.5 law enforcement investigation.

13.6 (j) When conducting an assessment or investigation, the local welfare agency shall
13.7 use a question and answer interviewing format with questioning as nondirective as possible
13.8 to elicit spontaneous responses. For investigations only, the following interviewing
13.9 methods and procedures must be used whenever possible when collecting information:

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

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

13.13 (k) In conducting an assessment or investigation involving a school facility as
13.14 defined in subdivision 2, paragraph (i), the commissioner of education shall collect
13.15 available and relevant information and use the procedures in paragraphs (i), (k), and
13.16 subdivision 3d, except that the requirement for face-to-face observation of the child
13.17 and face-to-face interview of the alleged offender is to occur in the initial stages of the
13.18 assessment or investigation provided that the commissioner may also base the assessment
13.19 or investigation on investigative reports and data received from the school facility and
13.20 local law enforcement, to the extent those investigations satisfy the requirements of
13.21 paragraphs (i) and (k), and subdivision 3d.

13.22 (l) In conducting an investigation involving allegations by a parent of sexual abuse
13.23 of a child committed by the other parent, the local welfare agency shall assess the child's
13.24 general and sexual behavior and emotional adjustment, the current behavior of the alleged
13.25 abuser and the presence of empirically validated risk factors for sexual abuse, and the
13.26 relevant behavior and background of the parent who is alleging sexual abuse. To the
13.27 extent appropriate, the local welfare agency shall assess other children in the family.

13.28 Sec. 5. Minnesota Statutes 2008, section 626.556, subdivision 14, is amended to read:

13.29 Subd. 14. **Conflict of interest.** (a) A potential conflict of interest related to assisting
13.30 in an assessment or investigation under this section resulting in a direct or shared financial
13.31 interest with a child abuse and neglect treatment provider or resulting from a personal or
13.32 family relationship with a party in the assessment or investigation must be considered by
13.33 the local welfare agency in an effort to prevent unethical relationships.

13.34 (b) A person who conducts or assists in an assessment or investigation under this
13.35 section or section 626.5561 may not have:

14.1 (1) any direct or shared financial interest or referral relationship resulting in a direct
14.2 shared financial gain with a child abuse and neglect treatment provider; or

14.3 (2) a personal or family relationship with a party in the assessment or investigation.

14.4 If an independent assessor is not available, the person responsible for making the
14.5 determination under this section may use the services of an assessor with a financial
14.6 interest, referral, or personal or family relationship. All parties, including the court, must
14.7 be notified in writing of the conflict, its nature, and the measures taken by the local welfare
14.8 agency to prevent the conflict relationship from affecting the assessment or investigation.

14.9 Sec. 6. **DEVELOPMENT OF FAMILY SCREENING TOOLS.**

14.10 The state court administrator, in conjunction with the executive director of the
14.11 state guardian ad litem program, shall appoint a work group to develop questionnaires
14.12 to be used in the initial screenings of family members under Minnesota Statutes, section
14.13 518.165, subdivision 2b. A separate questionnaire must be developed for screening the
14.14 alleged victim, the parent alleged to have committed the sexual abuse, and the parent who
14.15 is alleging the abuse. The questionnaires must be usable by a nonclinician and yield, to the
14.16 extent feasible, an empirical result that quantifies, within appropriate ranges, the extent to
14.17 which the alleged victim's behavior is consistent with empirically validated conduct of
14.18 children who have been sexually abused; the extent to which the present and past behavior
14.19 of the parent alleged to have committed the sexual abuse is consistent with empirically
14.20 validated risk factors for sexually abusive behavior; and the extent to which the behavior
14.21 and background of the parent alleging the abuse is indicative of conduct associated with
14.22 hypervigilance, overprotectiveness, or other character traits or syndromes that may lead
14.23 to an erroneous belief as to the presence of sexually abusive behavior. The work group
14.24 must include a representative from the state guardian ad litem program, district court,
14.25 Department of Human Services, county family court services, a county attorney's office,
14.26 the Midwest Children's Resource Center, a private practitioner specializing in evaluating
14.27 children who have been sexually abused, and a private practitioner specializing in
14.28 evaluating and treating persons who have committed intrafamilial child sexual abuse. The
14.29 work group shall submit the proposed questionnaires to the state court administrator by
14.30 June 1, 2010.