

This Document can be made available
in alternative formats upon request

State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. **563**

01/31/2019 Authored by Moran, Christensen, Edelson, Huot, Halverson and others
The bill was read for the first time and referred to the Committee on Health and Human Services Policy
03/11/2019 Adoption of Report: Re-referred to the Public Safety and Criminal Justice Reform Finance and Policy Division
03/18/2019 Adoption of Report: Re-referred to the Committee on Ways and Means

1.1 A bill for an act

1.2 relating to child abuse; creating Heaven's Law; directing the commissioner of

1.3 human services to report to the legislature on information sharing in interstate

1.4 child protection investigations; requiring an investigation into a future interstate

1.5 compact on child protection data; requiring that certain information be requested

1.6 as part of an assessment or investigation; requiring consideration of past

1.7 maltreatment to determine investigations; amending Minnesota Statutes 2018,

1.8 section 626.556, subdivisions 10, 10e.

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

1.10 Section 1. **TITLE.**

1.11 This act shall be known as "Heaven's Law."

1.12 Sec. 2. Minnesota Statutes 2018, section 626.556, subdivision 10, is amended to read:

1.13 Subd. 10. **Duties of local welfare agency and local law enforcement agency upon**

1.14 **receipt of report; mandatory notification between police or sheriff and agency.** (a) The

1.15 police department or the county sheriff shall immediately notify the local welfare agency

1.16 or agency responsible for child protection reports under this section orally and in writing

1.17 when a report is received. The local welfare agency or agency responsible for child protection

1.18 reports shall immediately notify the local police department or the county sheriff orally and

1.19 in writing when a report is received. The county sheriff and the head of every local welfare

1.20 agency, agency responsible for child protection reports, and police department shall each

1.21 designate a person within their agency, department, or office who is responsible for ensuring

1.22 that the notification duties of this paragraph are carried out. When the alleged maltreatment

1.23 occurred on tribal land, the local welfare agency or agency responsible for child protection

1.24 reports and the local police department or the county sheriff shall immediately notify the

2.1 tribe's social services agency and tribal law enforcement orally and in writing when a report
2.2 is received.

2.3 (b) Upon receipt of a report, the local welfare agency shall determine whether to conduct
2.4 a family assessment or an investigation as appropriate to prevent or provide a remedy for
2.5 child maltreatment. The local welfare agency:

2.6 (1) shall conduct an investigation on reports involving sexual abuse or substantial child
2.7 endangerment;

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

2.11 (3) may conduct a family assessment for reports that do not allege sexual abuse or
2.12 substantial child endangerment. In determining that a family assessment is appropriate, the
2.13 local welfare agency may consider issues of child safety, parental cooperation, and the need
2.14 for an immediate response;

2.15 (4) may conduct a family assessment on a report that was initially screened and assigned
2.16 for an investigation. In determining that a complete investigation is not required, the local
2.17 welfare agency must document the reason for terminating the investigation and notify the
2.18 local law enforcement agency if the local law enforcement agency is conducting a joint
2.19 investigation; and

2.20 (5) shall provide immediate notice, according to section 260.761, subdivision 2, to an
2.21 Indian child's tribe when the agency has reason to believe the family assessment or
2.22 investigation may involve an Indian child. For purposes of this clause, "immediate notice"
2.23 means notice provided within 24 hours.

2.24 If the report alleges neglect, physical abuse, or sexual abuse by a parent, guardian, or
2.25 individual functioning within the family unit as a person responsible for the child's care, or
2.26 sexual abuse by a person with a significant relationship to the child when that person resides
2.27 in the child's household or by a sibling, the local welfare agency shall immediately conduct
2.28 a family assessment or investigation as identified in clauses (1) to (4). In conducting a family
2.29 assessment or investigation, the local welfare agency shall gather information on the existence
2.30 of substance abuse and domestic violence and offer services for purposes of preventing
2.31 future child maltreatment, safeguarding and enhancing the welfare of the abused or neglected
2.32 minor, and supporting and preserving family life whenever possible. If the report alleges a
2.33 violation of a criminal statute involving sexual abuse, physical abuse, or neglect or
2.34 endangerment, under section 609.378, the local law enforcement agency and local welfare

agency shall coordinate the planning and execution of their respective investigation and assessment efforts to avoid a duplication of fact-finding efforts and multiple interviews. Each agency shall prepare a separate report of the results of its investigation or assessment. In cases of alleged child maltreatment resulting in death, the local agency may rely on the fact-finding efforts of a law enforcement investigation to make a determination of whether or not maltreatment occurred. When necessary the local welfare agency shall seek authority to remove the child from the custody of a parent, guardian, or adult with whom the child is living. In performing any of these duties, the local welfare agency shall maintain appropriate records.

If the family assessment or investigation indicates there is a potential for abuse of alcohol or other drugs by the parent, guardian, or person responsible for the child's care, the local welfare agency shall conduct a chemical use assessment pursuant to Minnesota Rules, part 9530.6615.

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

(d) Authority of the local welfare agency responsible for assessing or investigating the child abuse or neglect report, the agency responsible for assessing or investigating the report, and of the local law enforcement agency for investigating the alleged abuse or neglect includes, but is not limited to, authority to interview, without parental consent, the alleged victim and any other minors who currently reside with or who have resided with the alleged offender. The interview may take place at school or at any facility or other place where the alleged victim or other minors might be found or the child may be transported to, and the interview conducted at, a place appropriate for the interview of a child designated by the local welfare agency or law enforcement agency. The interview may take place outside the presence of the alleged offender or parent, legal custodian, guardian, or school official. For family assessments, it is the preferred practice to request a parent or guardian's permission to interview the child prior to conducting the child interview, unless doing so would compromise the safety assessment. Except as provided in this paragraph, the parent, legal custodian, or guardian shall be notified by the responsible local welfare or law enforcement

agency no later than the conclusion of the investigation or assessment that this interview has occurred. Notwithstanding rule 32 of the Minnesota Rules of Procedure for Juvenile Courts, the juvenile court may, after hearing on an ex parte motion by the local welfare agency, order that, where reasonable cause exists, the agency withhold notification of this interview from the parent, legal custodian, or guardian. If the interview took place or is to take place on school property, the order shall specify that school officials may not disclose to the parent, legal custodian, or guardian the contents of the notification of intent to interview the child on school property, as provided under this paragraph, and any other related information regarding the interview that may be a part of the child's school record. A copy of the order shall be sent by the local welfare or law enforcement agency to the appropriate school official.

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

Except where the alleged offender is believed to be a school official or employee, the time and place, and manner of the interview on school premises shall be within the discretion of school officials, but the local welfare or law enforcement agency shall have the exclusive authority to determine who may attend the interview. The conditions as to time, place, and manner of the interview set by the school officials shall be reasonable and the interview shall be conducted not more than 24 hours after the receipt of the notification unless another time is considered necessary by agreement between the school officials and the local welfare or law enforcement agency. Where the school fails to comply with the provisions of this

paragraph, the juvenile court may order the school to comply. Every effort must be made to reduce the disruption of the educational program of the child, other students, or school staff when an interview is conducted on school premises.

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

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

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

(i) The local welfare agency responsible for conducting a family assessment or investigation shall collect available and relevant information to determine child safety, risk of subsequent child maltreatment, and family strengths and needs and share not public information with an Indian's tribal social services agency without violating any law of the state that may otherwise impose duties of confidentiality on the local welfare agency in order to implement the tribal state agreement. The local welfare agency or the agency responsible for investigating the report shall collect available and relevant information to ascertain whether maltreatment occurred and whether protective services are needed. Information collected includes, when relevant, information with regard to the person reporting the alleged maltreatment, including the nature of the reporter's relationship to the child and

to the alleged offender, and the basis of the reporter's knowledge for the report; the child allegedly being maltreated; the alleged offender; the child's caretaker; and other collateral sources having relevant information related to the alleged maltreatment. The local welfare agency or the agency responsible for investigating the report may make a determination of no maltreatment early in an investigation, and close the case and retain immunity, if the collected information shows no basis for a full investigation.

The local welfare agency or the agency responsible for conducting the assessment or investigation must ask for information relevant to the assessment or investigation ~~must be asked for, and, including a search of the central child abuse and neglect registry or equivalent registry maintained by each state where the alleged offender has resided in the preceding five years, to the extent information is available.~~ This information may include:

(1) the child's sex and age; prior reports of maltreatment, including any maltreatment reports that were screened out and not accepted for assessment or investigation; information relating to developmental functioning; credibility of the child's statement; and whether the information provided under this clause is consistent with other information collected during the course of the assessment or investigation;

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

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

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

Nothing in this paragraph precludes the local welfare agency, the local law enforcement agency, or the agency responsible for assessing or investigating the report from collecting other relevant information necessary to conduct the assessment or investigation.

Notwithstanding sections 13.384 or 144.291 to 144.298, the local welfare agency has access to medical data and records for purposes of clause (3). Notwithstanding the data's classification in the possession of any other agency, data acquired by the local welfare agency or the agency responsible for assessing or investigating the report during the course of the assessment or investigation are private data on individuals and must be maintained in accordance with subdivision 11. Data of the commissioner of education collected or maintained during and for the purpose of an investigation of alleged maltreatment in a school are governed by this section, notwithstanding the data's classification as educational, licensing, or personnel data under chapter 13.

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

(j) Upon receipt of a report, the local welfare agency shall conduct a face-to-face contact with the child reported to be maltreated and with the child's primary caregiver sufficient to complete a safety assessment and ensure the immediate safety of the child. The face-to-face contact with the child and primary caregiver shall occur immediately if sexual abuse or substantial child endangerment is alleged and within five calendar days for all other reports. If the alleged offender was not already interviewed as the primary caregiver, the local welfare agency shall also conduct a face-to-face interview with the alleged offender in the early stages of the assessment or investigation. At the initial contact, the local child welfare agency or the agency responsible for assessing or investigating the report must inform the alleged offender of the complaints or allegations made against the individual in a manner consistent with laws protecting the rights of the person who made the report. The interview with the alleged offender may be postponed if it would jeopardize an active law enforcement investigation.

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

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

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

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

Sec. 3. Minnesota Statutes 2018, section 626.556, subdivision 10e, is amended to read:

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

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

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

(d) If the commissioner of education conducts an assessment or investigation, the commissioner shall determine whether maltreatment occurred and what corrective or protective action was taken by the school facility. If a determination is made that maltreatment has occurred, the commissioner shall report to the employer, the school board, and any appropriate licensing entity the determination that maltreatment occurred and what corrective or protective action was taken by the school facility. In all other cases, the commissioner shall inform the school board or employer that a report was received, the subject of the report, the date of the initial report, the category of maltreatment alleged as defined in paragraph (f), the fact that maltreatment was not determined, and a summary of the specific reasons for the determination.

(e) When maltreatment is determined in an investigation involving a facility, the investigating agency shall also determine whether the facility or individual was responsible, or whether both the facility and the individual were responsible for the maltreatment using

9.1 the mitigating factors in paragraph (i). Determinations under this subdivision must be made
9.2 based on a preponderance of the evidence and are private data on individuals or nonpublic
9.3 data as maintained by the commissioner of education.

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

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

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

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

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

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

9.11 (g) For the purposes of this subdivision, a determination that child protective services
9.12 are needed means that the local welfare agency has documented conditions during the
9.13 assessment or investigation sufficient to cause a child protection worker, as defined in
9.14 section 626.559, subdivision 1, to conclude that a child is at significant risk of maltreatment
9.15 if protective intervention is not provided and that the individuals responsible for the child's
9.16 care have not taken or are not likely to take actions to protect the child from maltreatment
9.17 or risk of maltreatment, including careful consideration of past maltreatment and information
9.18 obtained from any central child abuse and neglect registry, regardless of where the past
9.19 events occurred.

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

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

9.29 (1) whether the actions of the facility or the individual caregivers were according to,
9.30 and followed the terms of, an erroneous physician order, prescription, individual care plan,
9.31 or directive; however, this is not a mitigating factor when the facility or caregiver was
9.32 responsible for the issuance of the erroneous order, prescription, individual care plan, or

10.1 directive or knew or should have known of the errors and took no reasonable measures to
10.2 correct the defect before administering care;

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

10.8 (3) whether the facility or individual followed professional standards in exercising
10.9 professional judgment.

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

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

10.21 Sec. 4. **INTERSTATE TRANSFER OF CHILD PROTECTION DATA.**

10.22 The commissioner of human services is directed to investigate and report to the legislature
10.23 on potential improvements and advancements in the sharing of child maltreatment data
10.24 between states, including consideration for interstate compacts or interstate agreements to
10.25 improve access to child maltreatment investigative and determination data to protect the
10.26 welfare of children in Minnesota and throughout the country. The commissioner shall report
10.27 to the legislature on challenges and solutions to the sharing of data on child maltreatment
10.28 between states no later than February 1, 2020.