

<u>367.36, subd. 1</u>	<u>326.23</u>	<u>326.229</u>
<u>383A.12, subd. 2</u>	<u>245.68</u>	<u>245.66</u>
<u>383B.221, subd. 2</u>	<u>144.8092</u>	<u>144.8091</u>
<u>394.24, subd. 3</u>	<u>473.122</u>	<u>473.121</u>
<u>394.25, subd. 5a</u>	<u>473.122</u>	<u>473.121</u>
<u>458A.26</u>	<u>197.45</u>	<u>197.455</u>
<u>458A.26</u>	<u>197.47</u>	<u>197.46</u>
<u>469.174, subd. 19</u>	<u>473.872</u>	<u>473.871</u>
<u>471.49, subd. 10</u>	<u>326.23</u>	<u>326.229</u>
<u>473.146, subd. 1</u>	<u>473.872</u>	<u>473.871</u>
<u>473.411, subds. 4,5</u>	<u>473.404</u>	<u>473.405</u>
<u>473.415, subd. 1</u>	<u>473.404</u>	<u>473.405</u>
<u>473.446, subd. 1</u>	<u>473.404</u>	<u>473.405</u>
<u>473.446, subd. 1a</u>	<u>473.404</u>	<u>473.405</u>
<u>473.449</u>	<u>473.404</u>	<u>473.405</u>
<u>473.639</u>	<u>360.093</u>	<u>360.073</u>
<u>473F.02, subd. 21</u>	<u>473.122</u>	<u>473.123</u>
<u>477A.0122, subd. 1</u>	<u>275.0725</u>	<u>257.0725</u>
<u>524.1-201</u>	<u>527.01</u>	<u>527.21</u>

Presented to the governor May 16, 1995

Signed by the governor May 18, 1995, 11:35 a.m.

#### CHAPTER 187—S.F.No. 342

*An act relating to children; modifying liability provisions for child abuse investigations; providing for attorney fees in certain actions; providing for the establishment of protocols for investigations; prohibiting certain conflicts of interest; providing for access to data regarding determinations of maltreatment; amending Minnesota Statutes 1994, section 626.556, subdivisions 4, 5, 10, 10b, 10e, 10f, and by adding a subdivision.*

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

Section 1. Minnesota Statutes 1994, section 626.556, subdivision 4, is amended to read:

Subd. 4. **IMMUNITY FROM LIABILITY.** (a) The following persons are immune from any civil or criminal liability that otherwise might result from their actions, if they are acting in good faith:

(1) any person making a voluntary or mandated report under subdivision 3 or under section 626.5561 or assisting in an assessment under this section or under section 626.5561;

(2) any ~~social worker~~ person with responsibility for performing duties under

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this section or supervisor employed by a local welfare agency or the commissioner complying with subdivision 10d ~~or the provisions of section 626.5561~~; and

(3) any public or private school, facility as defined in subdivision 2, or the employee of any public or private school or facility who permits access by a local welfare agency or local law enforcement agency and assists in an investigation or assessment pursuant to subdivision 10 or under section 626.5561.

(b) A person who is a supervisor or ~~social worker~~ person with responsibility for performing duties under this section employed by a local welfare agency or the commissioner complying with subdivisions 10 and 11 or section 626.5561 or any related rule or provision of law is immune from any civil or criminal liability that might otherwise result from the person's actions, if the person is (1) acting in good faith and exercising due care, or (2) acting in good faith and following the information collection procedures established under subdivision 10, paragraphs (h), (i), and (j).

(c) This subdivision does not provide immunity to any person for failure to make a required report or for committing neglect, physical abuse, or sexual abuse of a child.

(d) If a person who makes a voluntary or mandatory report under subdivision 3 prevails in a civil action from which the person has been granted immunity under this subdivision, the court may award the person attorney fees and costs.

Sec. 2. Minnesota Statutes 1994, section 626.556, subdivision 5, is amended to read:

Subd. 5. **MALICIOUS AND RECKLESS REPORTS.** Any person who knowingly or recklessly makes a false report under the provisions of this section shall be liable in a civil suit for any actual damages suffered by the person or persons so reported and for any punitive damages set by the court or jury, plus costs and reasonable attorney fees.

Sec. 3. Minnesota Statutes 1994, section 626.556, subdivision 10, is amended to read:

Subd. 10. **DUTIES OF LOCAL WELFARE AGENCY AND LOCAL LAW ENFORCEMENT AGENCY UPON RECEIPT OF A REPORT.** (a) If the report alleges neglect, physical abuse, or sexual abuse by a parent, guardian, or individual functioning within the family unit as a person responsible for the child's care, the local welfare agency shall immediately conduct an assessment and offer protective social services for purposes of preventing further abuses, safeguarding and enhancing the welfare of the abused or neglected minor, and preserving family life whenever possible. If the report alleges a violation of a criminal statute involving sexual abuse, physical abuse, or neglect or endangerment, under section 609.378, the local law enforcement agency and local welfare

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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. 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.

(b) 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.

(c) Authority of the local welfare agency responsible for assessing the child abuse or neglect 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 ~~perpetrator~~ 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 ~~perpetrator~~ alleged offender or parent, legal custodian, guardian, or school official. 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 49.02 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.

(d) When the local welfare or local law enforcement agency 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

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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. Until that time, the local welfare or law enforcement agency shall be solely responsible for any disclosures regarding the nature of the assessment or investigation.

Except where the alleged ~~perpetrator~~ 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.

(e) Where the ~~perpetrator~~ 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 ~~perpetrator~~ alleged offender or any person responsible for the child's care at reasonable places and times as specified by court order.

(f) Before making an order under paragraph (e), 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.

(g) The commissioner, the ombudsman for mental health and mental retardation, the local welfare agencies responsible for investigating reports, 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

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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.

(h) The local welfare agency 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 may make a determination of no maltreatment early in an assessment, and close the case and retain immunity, if the collected information shows no basis for a full assessment or investigation.

Information relevant to the assessment or investigation must be asked for, and may include:

(1) the child's sex and age, prior reports of maltreatment, 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, a record check for prior reports of maltreatment, and criminal charges and convictions. The local welfare agency 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 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.

Nothing in this paragraph precludes the local welfare agency from collecting other relevant information necessary to conduct the assessment or investigation. Notwithstanding the data's classification in the possession of any other agency, data acquired by the local welfare agency during the course of the assessment or investigation are private data on individuals and must be maintained in accordance with subdivision 11.

(i) In the initial stages of an assessment or investigation, the local welfare agency shall conduct a face-to-face observation of the child reported to be maltreated and a face-to-face interview of the alleged offender. The interview with the alleged offender may be postponed if it would jeopardize an active law enforcement investigation.

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(j) The local welfare agency shall use a question and answer interviewing format with questioning as nondirective as possible to elicit spontaneous responses. 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.

Sec. 4. Minnesota Statutes 1994, section 626.556, subdivision 10b, is amended to read:

Subd. 10b. **DUTIES OF COMMISSIONER; NEGLECT OR ABUSE IN A FACILITY.** (a) The commissioner shall immediately investigate if the report alleges that:

(1) a child who is in the care of a facility as defined in subdivision 2 is neglected, physically abused, or sexually abused by an individual in that facility, or has been so neglected or abused by an individual in that facility within the three years preceding the report; or

(2) a child was neglected, physically abused, or sexually abused by an individual in a facility defined in subdivision 2, while in the care of that facility within the three years preceding the report.

The commissioner shall arrange for the transmittal to the commissioner of reports received by local agencies and may delegate to a local welfare agency the duty to investigate reports. In conducting an investigation under this section, the commissioner has the powers and duties specified for local welfare agencies under this section. The commissioner or local welfare agency may interview any children who are or have been in the care of a facility under investigation and their parents, guardians, or legal custodians.

(b) Prior to any interview, the commissioner or local welfare agency shall notify the parent, guardian, or legal custodian of a child who will be interviewed in the manner provided for in subdivision 10d, paragraph (a). If reasonable efforts to reach the parent, guardian, or legal custodian of a child in an out-of-home placement have failed, the child may be interviewed if there is reason to believe the interview is necessary to protect the child or other children in the facility. The commissioner or local agency must provide the information required in this subdivision to the parent, guardian, or legal custodian of a child interviewed without parental notification as soon as possible after the interview. When the investigation is completed, any parent, guardian, or legal custodian notified under this subdivision shall receive the written memorandum provided for in subdivision 10d, paragraph (c).

(c) In conducting investigations under this subdivision the commissioner or

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local welfare agency shall obtain access to information consistent with subdivision 10, paragraphs (h), (i), and (j).

Sec. 5. Minnesota Statutes 1994, section 626.556, subdivision 10e, is amended to read:

Subd. 10e. **DETERMINATIONS.** Upon the conclusion of every assessment or investigation it conducts, the local welfare agency shall make two determinations: first, whether maltreatment has occurred; and second, whether child protective services are needed. Determinations under this subdivision must be made based on a preponderance of the evidence.

(a) For the purposes of this subdivision, "maltreatment" means any of the following acts or omissions committed by a person responsible for the child's care:

- (1) physical abuse as defined in subdivision 2, paragraph (d);
- (2) neglect as defined in subdivision 2, paragraph (c);
- (3) sexual abuse as defined in subdivision 2, paragraph (a); or
- (4) mental injury as defined in subdivision 2, paragraph (k).

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

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

Sec. 6. Minnesota Statutes 1994, section 626.556, subdivision 10f, is amended to read:

Subd. 10f. **NOTICE OF DETERMINATIONS.** Within ten working days of the conclusion of an assessment, the local welfare agency shall notify the parent or guardian of the child, the person determined to be maltreating the child, and if applicable, the director of the facility, of the determinations. ~~Within ten working days of completing an investigation of a licensed facility, the local welfare agency shall notify the person alleged to be maltreating the child; the direc-~~

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tor of the facility, and the parent or guardian of the child of the determinations determination and a summary of the specific reasons for the determination. The notice must also include a certification that the information collection procedures under subdivision 10, paragraphs (h), (i), and (j), were followed and a notice of the right of a data subject to obtain access to other private data on the subject collected, created, or maintained under this section. In addition to the determinations, the notice shall include the length of time that the records will be kept under subdivision 11c. When there is no determination of either maltreatment or a need for services, the notice shall also include the alleged perpetrator's right to have the records destroyed.

Sec. 7. Minnesota Statutes 1994, section 626.556, is amended by adding a subdivision to read:

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

(b) A person who conducts an assessment under this section or section 626.5561 may not have:

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

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

If an independent assessor is not available, the person responsible for making the determination under this section may use the services of an assessor with a financial interest, referral, or personal or family relationship.

#### Sec. 8. INFORMATION SHEET ON INVESTIGATION PROCESS.

The commissioner must distribute to all local welfare agencies an information sheet that summarizes the investigation process and is based upon the commissioner's report titled "Recommended Standards for Use when Investigating Reports of Maltreatment in Child Care Facilities." The local welfare agency shall give this information sheet to all parties involved in information collection procedures under Minnesota Statutes, section 626.556, subdivision 10.

#### Sec. 9. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES; RECOMMENDATIONS.

The commissioner of human services, in consultation with county attorneys, law enforcement personnel, representatives of parent and foster parent groups, facilities, attorneys and other advocates who represent the interests of persons who may be accused of child abuse and neglect, other professional human ser-

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vices associations, and the representatives of communities of color shall review and make recommendations to the chairs of the legislative committees on health and human services, judiciary, family services, and crime prevention on possible alternative dispute resolution or fair hearing procedures to be used in reviewing and resolving issues of alleged maltreatment and determinations of whether child protective services are needed. The purpose of the alternative dispute resolution process shall be to provide a prompt and nonadversarial opportunity to resolve allegations of maltreatment. The commissioner shall make these recommendations by January 15, 1996.

Presented to the governor May 16, 1995

Signed by the governor May 18, 1995, 11:37 a.m.

### CHAPTER 188—S.F.No. 155

*An act relating to wild animals; authorizing poultry farmers to trap great horned owls; amending Minnesota Statutes 1994, section 97B.705.*

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

Section 1. Minnesota Statutes 1994, section 97B.705, is amended to read:

#### 97B.705 RESTRICTIONS ON TRAPPING BIRDS.

(a) Except as provided in this section, a person may not take a bird with a steel jaw leg-hold trap mounted on a pole, post, tree stump, or other perch more than three feet above the ground.

(b) A person that has ~~a game farm license~~ and a permit to take great horned owls issued under United States Code, title 16, section 704, may trap great horned owls from April 1 to October 15 if the person has a game farm license or is the owner or operator of a poultry farm. The trap must be a padded jaw trap ~~as prescribed by the commissioner~~ and mounted at a height so that the trapped owl may rest on the ground. The trap must be tended at least twice daily. Uninjured birds shall be released alive and injured birds shall receive appropriate veterinary treatment.

#### Sec. 2. EFFECTIVE DATE.

Section 1 is effective the day following final enactment.

Presented to the governor May 16, 1995

Became law without the governor's signature May 18, 1995

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