

324.21

**ARTICLE 16**

324.22

**CHILD PROTECTION BACKGROUND CHECKS**

324.23 Section 1. Minnesota Statutes 2020, section 299C.60, is amended to read:

324.24 **299C.60 CITATION.**

324.25 Sections 299C.60 to 299C.64 may be cited as the "Minnesota Child, Elder, and

324.26 Individuals with Disabilities Protection Background Check Act."

325.1 Sec. 2. Minnesota Statutes 2020, section 299C.61, is amended by adding a subdivision to

325.2 read:

325.3 Subd. 1a. **Authorized agency.** "Authorized agency" means the licensing agency or, if

325.4 one does not exist, the Bureau of Criminal Apprehension. Licensing agencies include but

325.5 are not limited to the:

325.6 (1) Department of Human Services;

325.7 (2) Department of Health; and

325.8 (3) Professional Educator Licensing and Standards Board.

325.9 Sec. 3. Minnesota Statutes 2020, section 299C.61, subdivision 2, is amended to read:

325.10 Subd. 2. **Background check crime.** "Background check crime" includes child abuse

325.11 crimes, murder, manslaughter, felony level assault or any assault crime committed against

325.12 a minor or vulnerable adult, kidnapping, arson, criminal sexual conduct, and

325.13 prostitution-related crimes.

325.14 Sec. 4. Minnesota Statutes 2020, section 299C.61, is amended by adding a subdivision to

325.15 read:

325.16 Subd. 2a. **Care.** "Care" means the provision of care, treatment, education, training,

325.17 instruction, supervision, or recreation to children, the elderly, or individuals with disabilities.

325.18 Sec. 5. Minnesota Statutes 2020, section 299C.61, subdivision 4, is amended to read:

325.19 Subd. 4. **Child abuse crime.** "Child abuse crime" means:

325.20 (1) an act committed against a minor victim that constitutes a violation of section 609.185,

325.21 paragraph (a), clause (5); 609.221; 609.222; 609.223; 609.224; 609.2242; 609.322; 609.324;

325.22 609.342; 609.343; 609.344; 609.345; 609.352; 609.377; ~~or 609.378;~~ or 617.247; or

325.23 (2) a violation of section 152.021, subdivision 1, clause (4); 152.022, subdivision 1,

325.24 clause (5) or (6); 152.023, subdivision 1, clause (3) or (4); 152.023, subdivision 2, clause

325.25 (4) or (6); or 152.024, subdivision 1, clause (2), (3), or (4).

325.26 Sec. 6. Minnesota Statutes 2020, section 299C.61, is amended by adding a subdivision to  
325.27 read:

325.28 Subd. 8b. **Covered individual.** "Covered individual" means an individual:

326.1 (1) who has, seeks to have, or may have access to children, the elderly, or individuals  
326.2 with disabilities, served by a qualified entity; and

326.3 (2) who:

326.4 (i) is employed by or volunteers with, or seeks to be employed by or volunteer with, a  
326.5 qualified entity; or

326.6 (ii) owns or operates, or seeks to own or operate, a qualified entity.

326.7 Sec. 7. Minnesota Statutes 2020, section 299C.61, is amended by adding a subdivision to  
326.8 read:

326.9 Subd. 8c. **Individuals with disabilities.** "Individuals with disabilities" means persons  
326.10 with a mental or physical impairment who require assistance to perform one or more daily  
326.11 living tasks.

326.12 Sec. 8. Minnesota Statutes 2020, section 299C.61, is amended by adding a subdivision to  
326.13 read:

326.14 Subd. 8d. **National criminal history background check system.** "National criminal  
326.15 history background check system" means the criminal history record system maintained by  
326.16 the Federal Bureau of Investigation based on fingerprint identification or any other method  
326.17 of positive identification.

326.18 Sec. 9. Minnesota Statutes 2020, section 299C.61, is amended by adding a subdivision to  
326.19 read:

326.20 Subd. 8e. **Qualified entity.** "Qualified entity" means a business or organization, whether  
326.21 public, private, for-profit, not-for-profit, or voluntary, that provides care or care placement  
326.22 services, including a business or organization that licenses or certifies others to provide care  
326.23 or care placement services.

326.24 Sec. 10. Minnesota Statutes 2020, section 299C.62, subdivision 1, is amended to read:

326.25 Subdivision 1. **Generally.** The superintendent shall develop procedures in accordance  
326.26 with United States Code, title 34, section 40102, to enable a children's service provider  
326.27 qualified entity to request a background check to determine whether a children's service  
326.28 worker covered worker is the subject of any reported conviction for a background check  
326.29 crime. The superintendent shall perform the background check by retrieving and reviewing  
326.30 data on background check crimes. The superintendent is authorized to exchange fingerprints  
327.1 with the Federal Bureau of Investigation for purposes of a criminal history the background  
327.2 check. The superintendent shall recover the cost of a background check through a fee charged

327.3 ~~the children's service provider to the qualified entity and make reasonable efforts to respond~~  
327.4 ~~to the inquiry within 15 business days.~~

327.5 Sec. 11. Minnesota Statutes 2020, section 299C.62, subdivision 2, is amended to read:

327.6 Subd. 2. **Background check; requirements.** ~~(a) The superintendent may not perform~~  
327.7 ~~a background check under this section unless the children's service provider submits a~~  
327.8 ~~written document, signed by the children's service worker on whom the background check~~  
327.9 ~~is to be performed, containing the following:~~

327.10 (1) ~~a question asking whether the children's service worker has ever been convicted of~~  
327.11 ~~a background check crime and if so, requiring a description of the crime and the particulars~~  
327.12 ~~of the conviction;~~

327.13 (2) ~~a notification to the children's service worker that the children's service provider will~~  
327.14 ~~request the superintendent to perform a background check under this section; and~~

327.15 (3) ~~a notification to the children's service worker of the children's service worker's rights~~  
327.16 ~~under subdivision 3.~~

327.17 (b) ~~Background checks performed under this section may only be requested by and~~  
327.18 ~~provided to authorized representatives of a children's service provider who have a need to~~  
327.19 ~~know the information and may be used only for the purposes of sections 299C.60 to 299C.64.~~  
327.20 ~~Background checks may be performed pursuant to this section not later than one year after~~  
327.21 ~~the document is submitted under this section.~~

327.22 The superintendent may not perform a background check of a covered individual under  
327.23 this section unless the covered individual:

327.24 (1) completes and signs a statement that:

327.25 (i) contains the name, address, and date of birth appearing on a valid identification  
327.26 document, as defined in United States Code, title 18, section 1028, of the covered individual;

327.27 (ii) the covered individual has not been convicted of a crime and, if the covered individual  
327.28 has been convicted of a crime, contains a description of the crime and the particulars of the  
327.29 conviction;

327.30 (iii) notifies the covered individual that the entity may request a background check under  
327.31 subdivision 1;

328.1 (iv) notifies the covered individual of the covered individual's rights under subdivision  
328.2 3; and

328.3 (v) notifies the covered individual that prior to the completion of the background check  
328.4 the qualified entity may choose to deny the covered individual access to a person to whom  
328.5 the qualified entity provides care; and

328.6 (2) if requesting a national criminal history background check, provides a set of  
328.7 fingerprints.

328.8 Sec. 12. Minnesota Statutes 2020, section 299C.62, subdivision 3, is amended to read:

328.9 Subd. 3. **Children's service worker Covered individuals rights.** (a) ~~The children's~~  
328.10 ~~service provider shall notify the children's service worker of the children's service worker's~~  
328.11 ~~rights under paragraph (b).~~

328.12 (b) ~~A children's service worker who is the subject of a background check request has~~  
328.13 ~~the following rights:~~

328.14 (1) ~~the right to be informed that a children's service provider will request a background~~  
328.15 ~~check on the children's service worker:~~

328.16 (i) ~~for purposes of the children's service worker's application to be employed by, volunteer~~  
328.17 ~~with, be an independent contractor for, or be an owner of a children's service provider or~~  
328.18 ~~for purposes of continuing as an employee, volunteer, independent contractor, or owner;~~  
328.19 ~~and~~

328.20 (ii) ~~to determine whether the children's service worker has been convicted of any crime~~  
328.21 ~~specified in section 299C.61, subdivision 2 or 4;~~

328.22 (2) ~~the right to be informed by the children's service provider of the superintendent's~~  
328.23 ~~response to the background check and to obtain from the children's service provider a copy~~  
328.24 ~~of the background check report;~~

328.25 (3) ~~the right to obtain from the superintendent any record that forms the basis for the~~  
328.26 ~~report;~~

328.27 (4) ~~the right to challenge the accuracy and completeness of any information contained~~  
328.28 ~~in the report or record pursuant to section 13.04, subdivision 4;~~

328.29 (5) ~~the right to be informed by the children's service provider if the children's service~~  
328.30 ~~worker's application to be employed with, volunteer with, be an independent contractor for,~~  
328.31 ~~or be an owner of a children's service provider, or to continue as an employee, volunteer,~~  
329.1 ~~independent contractor, or owner, has been denied because of the superintendent's response;~~  
329.2 ~~and~~

329.3 (6) ~~the right not to be required directly or indirectly to pay the cost of the background~~  
329.4 ~~check.~~

329.5 The qualified entity shall notify the covered individual who is subjected to a background  
329.6 check under subdivision 1 that the individual has the right to:

329.7 (1) obtain a copy of any background check report;

329.8 (2) challenge the accuracy or completeness of the information contained in the background  
329.9 report or record pursuant to section 13.04, subdivision 4, or applicable federal authority;  
329.10 and

329.11 (3) be given notice of the opportunity to appeal and instructions on how to complete the  
329.12 appeals process.

329.13 Sec. 13. Minnesota Statutes 2020, section 299C.62, subdivision 4, is amended to read:

329.14 Subd. 4. **Response of bureau.** The superintendent shall respond to a background check  
329.15 request within a reasonable time after receiving a request from a qualified entity or the  
329.16 signed, written document described in subdivision 2. The superintendent shall provide the  
329.17 ~~children's service provider~~ qualified entity with a copy of the applicant's covered individual's  
329.18 criminal record or a statement that the applicant covered individual is not the subject of a  
329.19 criminal history record at the bureau. It is the responsibility of the ~~service provider~~ qualified  
329.20 entity to determine if the applicant covered individual qualifies as an employee, volunteer,  
329.21 or independent contractor under this section.

329.22 Sec. 14. Minnesota Statutes 2020, section 299C.62, subdivision 6, is amended to read:

329.23 Subd. 6. **Admissibility of evidence.** Evidence or proof that a background check of a  
329.24 volunteer was not requested under sections 299C.60 to 299C.64 by a ~~children's service~~  
329.25 ~~provider~~ qualified entity is not admissible in evidence in any litigation against a nonprofit  
329.26 or charitable organization.

329.27 Sec. 15. Minnesota Statutes 2020, section 299C.63, is amended to read:

329.28 **299C.63 EXCEPTION; OTHER LAWS.**

329.29 The superintendent is not required to respond to a background check request concerning  
329.30 a ~~children's service worker~~ covered individual who, as a condition of occupational licensure  
329.31 or employment, is subject to the background study requirements imposed by any statute or  
330.1 rule other than sections 299C.60 to 299C.64. ~~A background check performed on a licensee,~~  
330.2 ~~license applicant, or employment applicant under this section does not satisfy the~~  
330.3 ~~requirements of any statute or rule other than sections 299C.60 to 299C.64, that provides~~  
330.4 ~~for background study of members of an individual's particular occupation.~~

330.5 Sec. 16. Minnesota Statutes 2020, section 299C.72, is amended to read:

330.6 **299C.72 MINNESOTA CRIMINAL HISTORY CHECKS.**

330.7 Subdivision 1. **Definitions.** For purposes of this section, the following terms have the  
330.8 meanings given.

330.9 (a) "Applicant for employment" means an individual who seeks either county or city  
330.10 employment or has applied to serve as a volunteer in the county or city.

330.11 (b) "Applicant for licensure" means the individual seeks a license issued by the county  
330.12 or city which is not subject to a federal- or state-mandated background check.

330.13 (c) "Authorized law enforcement agency" means the county sheriff for checks conducted  
330.14 for county purposes, the police department for checks conducted for city purposes, or the  
330.15 county sheriff for checks conducted for city purposes where there is no police department.

330.16 (d) "Criminal history check" means retrieval of criminal history data via the secure  
330.17 network described in section 299C.46.

330.18 (e) "Criminal history data" means adult convictions and adult open arrests less than one  
330.19 year old found in the Minnesota computerized criminal history repository.

330.20 (f) "Current employee" means an individual presently employed by either a county or  
330.21 city or who presently serves as a volunteer in the county or city.

330.22 (g) "Current licensee" means an individual who has previously sought and received a  
330.23 license, which is still presently valid, issued by a county or city.

330.24 ~~(h)~~ (h) "Informed consent" has the meaning given in section 13.05, subdivision 4,  
330.25 paragraph (d).

330.26 Subd. 2. **Criminal history check authorized.** (a) The criminal history check authorized  
330.27 by this section shall not be used in place of a statutorily mandated or authorized background  
330.28 check.

330.29 (b) An authorized law enforcement agency may conduct a criminal history check of an  
330.30 individual who is an applicant for employment ~~or, current employee,~~ applicant for licensure,  
331.1 or current licensee. Prior to conducting the criminal history check, the authorized law  
331.2 enforcement agency must receive the informed consent of the individual.

331.3 (c) The authorized law enforcement agency shall not disseminate criminal history data  
331.4 and must maintain it securely with the agency's office. The authorized law enforcement  
331.5 agency can indicate whether the applicant for employment or applicant for licensure has a  
331.6 criminal history that would prevent hire, acceptance as a volunteer to a hiring authority, or  
331.7 would prevent the issuance of a license to the department that issues the license.