

524.5-118 BACKGROUND STUDY.

Subdivision 1. **When required; exception.** (a) The court shall require a background study under this section:

(1) before the appointment of a guardian or conservator, unless a background study has been done on the person under this section within the previous five years; and

(2) once every five years after the appointment, if the person continues to serve as a guardian or conservator.

(b) The background study must include criminal history data from the Bureau of Criminal Apprehension, other criminal history data held by the commissioner of human services, and data regarding whether the person has been a perpetrator of substantiated maltreatment of a vulnerable adult and a minor.

(c) The court shall request a search of the National Criminal Records Repository if the proposed guardian or conservator has not resided in Minnesota for the previous five years or if the Bureau of Criminal Apprehension information received from the commissioner of human services under subdivision 2, paragraph (b), indicates that the subject is a multistate offender or that the individual's multistate offender status is undetermined.

(d) If the guardian or conservator is not an individual, the background study must be done on all individuals currently employed by the proposed guardian or conservator who will be responsible for exercising powers and duties under the guardianship or conservatorship.

(e) If the court determines that it would be in the best interests of the ward or protected person to appoint a guardian or conservator before the background study can be completed, the court may make the appointment pending the results of the study.

(f) The fee for conducting a background study for appointment of a professional guardian or conservator must be paid by the guardian or conservator. In other cases, the fee must be paid as follows:

(1) if the matter is proceeding in forma pauperis, the fee is an expense for purposes of section 524.5-502, paragraph (a);

(2) if there is an estate of the ward or protected person, the fee must be paid from the estate; or

(3) in the case of a guardianship or conservatorship of the person that is not proceeding in forma pauperis, the court may order that the fee be paid by the guardian or conservator or by the court.

(g) The requirements of this subdivision do not apply if the guardian or conservator is:

- (1) a state agency or county;
- (2) a parent or guardian of a proposed ward or protected person who has a developmental disability, if the parent or guardian has raised the proposed ward or protected person in the family home until the time the petition is filed, unless counsel appointed for the proposed ward or protected person under section 524.5-205, paragraph (d); 524.5-304, paragraph (b); 524.5-405, paragraph (a); or 524.5-406, paragraph (b), recommends a background study; or
- (3) a bank with trust powers, bank and trust company, or trust company, organized under the laws of any state or of the United States and which is regulated by the commissioner of commerce or a federal regulator.

Subd. 2. Procedure; criminal history and maltreatment records background check. (a) The court shall request the commissioner of human services to complete a background study under section 245C.32. The request must be accompanied by the applicable fee and the signed consent of the subject of the study authorizing the release of the data obtained to the court. If the court is requesting a search of the National Criminal Records Repository, the request must be accompanied by a set of classifiable fingerprints of the subject of the study. The fingerprints must be recorded on a fingerprint card provided by the commissioner of human services.

(b) The commissioner of human services shall provide the court with criminal history data as defined in section 13.87 from the Bureau of Criminal Apprehension in the Department of Public Safety, other criminal history data held by the commissioner of human services, and data regarding substantiated maltreatment of vulnerable adults under section 626.557 and substantiated maltreatment of minors under section 626.556 within 15 working days of receipt of a request. If the subject of the study has been the perpetrator of substantiated maltreatment of a vulnerable adult or minor, the response must include a copy of the public portion of the investigation memorandum under section 626.557, subdivision 12b, or the public portion of the investigation memorandum under section 626.556, subdivision 10f. If the court did not request a search of the National Criminal Records Repository and information from the Bureau of Criminal Apprehension indicates that the subject is a multistate offender or that multistate offender status is undetermined, the response must include this information. The commissioner shall provide the court with information from the National Criminal Records Repository within three working days of the commissioner's receipt of the data.

(c) Notwithstanding section 626.557, subdivision 12b, or 626.556, subdivision 10f, if the commissioner of human services or a county lead agency has information that a person on whom a background study was previously done under this section has been determined to be a perpetrator of maltreatment of a vulnerable adult or minor, the commissioner or the county may provide this

information to the court that requested the background study. The commissioner may also provide the court with additional criminal history or substantiated maltreatment information that becomes available after the background study is done.

Subd. 3. Form. The commissioner of human services shall develop a form to be used for requesting a background study under this section, which must include:

- (1) a notification to the subject of the study that the court will request the commissioner to perform a background study under this section;
- (2) a notification to the subject of the rights in subdivision 4; and
- (3) a signed consent to conduct the background study.

Subd. 4. Rights. The court shall notify the subject of a background study that the subject has the following rights:

- (1) the right to be informed that the court will request a background study on the subject for the purpose of determining whether the person's appointment or continued appointment is in the best interests of the ward or protected person;
- (2) the right to be informed of the results of the study and to obtain from the court a copy of the results; and
- (3) the right to challenge the accuracy and completeness of information contained in the results under section 13.04, subdivision 4, except to the extent precluded by section 256.045, subdivision 3.

History: 2003 c 12 art 1 s 16; 2004 c 146 art 2 s 2; 2005 c 56 s 1; 2009 c 59 art 6 s 22