

CHAPTER 626

PEACE OFFICERS; AUTHORITY; TRAINING;
REPORTING

626.556	REPORTING OF MALTREATMENT OF MINORS.	626.8454	MANUAL AND POLICY FOR INVESTIGATING CASES INVOLVING CHILDREN WHO ARE MISSING AND ENDANGERED.
626.557	REPORTING OF MALTREATMENT OF VULNERABLE ADULTS.	626.8517	ELIGIBILITY FOR RECIPROCITY EXAMINATION BASED ON RELEVANT MILITARY EXPERIENCE.
626.5572	DEFINITIONS.	626.863	UNAUTHORIZED PRACTICE.
626.843	RULES, STANDARDS; EXECUTIVE DIRECTOR.		
626.845	POWERS AND DUTIES.		

626.556 REPORTING OF MALTREATMENT OF MINORS.

[For text of subd 1, see M.S.2008]

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

(a) "Family assessment" means a comprehensive assessment of child safety, risk of subsequent child maltreatment, and family strengths and needs that is applied to a child maltreatment report that does not allege substantial child endangerment. Family assessment does not include a determination as to whether child maltreatment occurred but does determine the need for services to address the safety of family members and the risk of subsequent maltreatment.

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

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

- (1) egregious harm as defined in section 260C.007, subdivision 14;
- (2) sexual abuse as defined in paragraph (d);
- (3) abandonment under section 260C.301, subdivision 2;
- (4) neglect as defined in paragraph (f), clause (2), that substantially endangers the child's physical or mental health, including a growth delay, which may be referred to as failure to thrive, that has been diagnosed by a physician and is due to parental neglect;
- (5) murder in the first, second, or third degree under section 609.185, 609.19, or 609.195;
- (6) manslaughter in the first or second degree under section 609.20 or 609.205;
- (7) assault in the first, second, or third degree under section 609.221, 609.222, or 609.223;
- (8) solicitation, inducement, and promotion of prostitution under section 609.322;

- (9) criminal sexual conduct under sections 609.342 to 609.3451;
- (10) solicitation of children to engage in sexual conduct under section 609.352;
- (11) malicious punishment or neglect or endangerment of a child under section 609.377 or 609.378;
- (12) use of a minor in sexual performance under section 617.246; or
- (13) parental behavior, status, or condition which mandates that the county attorney file a termination of parental rights petition under section 260C.301, subdivision 3, paragraph (a).

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

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

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

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

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

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

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

(5) nothing in this section shall be construed to mean that a child is neglected 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; except that a parent, guardian, or caretaker, or a person mandated to report pursuant to subdivision 3, has a duty to report if a lack of medical care may cause serious danger to the child's health. This section does not impose upon persons, not otherwise legally responsible for providing a child with necessary food, clothing, shelter, education, or medical care, a duty to provide that care;

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

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

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

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

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

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

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

(2) striking a child with a closed fist;

(3) shaking a child under age three;

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

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

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

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

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

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

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

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

(i) "Facility" means:

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

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

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

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

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

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

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

(n) "Threatened injury" means a statement, overt act, condition, or status that represents a substantial risk of physical or sexual abuse or mental injury. Threatened injury includes, but is not limited to, exposing a child to a person responsible for the child's care, as defined in paragraph (e), clause (1), who has:

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

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

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

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

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

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

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

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

[For text of subs 3 to 3b, see M.S.2008]

Subd. 3c. Local welfare agency, Department of Human Services or Department of Health responsible for assessing or investigating reports of maltreatment. (a) The county local welfare agency is the agency responsible for assessing or investigating allegations of maltreatment in child foster care, family child care, legally unlicensed child care, juvenile correctional facilities licensed under section 241.021 located in the local

welfare agency's county, and reports involving children served by an unlicensed personal care provider organization under section 256B.0659. Copies of findings related to personal care provider organizations under section 256B.0659 must be forwarded to the Department of Human Services provider enrollment.

(b) The Department of Human Services is the agency responsible for assessing or investigating allegations of maltreatment in facilities licensed under chapters 245A and 245B, except for child foster care and family child care.

(c) The Department of Health is the agency responsible for assessing or investigating allegations of child maltreatment in facilities licensed under sections 144.50 to 144.58 and 144A.46.

(d) The commissioners of human services, public safety, and education must jointly submit a written report by January 15, 2007, to the education policy and finance committees of the legislature recommending the most efficient and effective allocation of agency responsibility for assessing or investigating reports of maltreatment and must specifically address allegations of maltreatment that currently are not the responsibility of a designated agency.

[For text of subds 3d to 10d, see M.S.2008]

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.

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

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

- (1) physical abuse as defined in subdivision 2, paragraph (g);
- (2) neglect as defined in subdivision 2, paragraph (f);
- (3) sexual abuse as defined in subdivision 2, paragraph (d);

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

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

(g) 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.

(h) 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.

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

(1) whether the actions of the facility or the individual caregivers were according to, and followed the terms of, an erroneous physician order, prescription, individual care plan, or directive; however, this is not a mitigating factor when the facility or caregiver was responsible for the issuance of the erroneous order, prescription, individual care plan, or directive or knew or should have known of the errors and took no reasonable measures to correct the defect before administering care;

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

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

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

(k) Individual counties may implement more detailed definitions or criteria that indicate which allegations to investigate, as long as a county's policies are consistent with the definitions in the statutes and rules and are approved by the county board. Each local welfare agency shall periodically inform mandated reporters under subdivision 3 who work in the county of the definitions of maltreatment in the statutes and rules and any additional definitions or criteria that have been approved by the county board.

Subd. 10f. Notice of determinations. Within ten working days of the conclusion of a family assessment, the local welfare agency shall notify the parent or guardian of the child of the need for services to address child safety concerns or significant risk of subsequent child maltreatment. The local welfare agency and the family may also jointly agree that family support and family preservation services are needed. Within ten working days of the conclusion of an investigation, the local welfare agency or agency responsible for assessing or investigating the report 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 determination and a summary of the specific reasons for the determination. When the investigation involves a child foster care setting that is monitored by a private licensing agency under section 245A.16, the local welfare agency responsible for assessing or investigating the report shall notify the private licensing agency of the determination and shall provide a summary of the specific reasons for the determination. The notice to the private licensing agency must include identifying private data, but not the identity of the reporter of maltreatment. 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, the notice shall include the length of time that the records will be kept under subdivision 11c. The investigating agency shall notify the parent or guardian of the child who is the subject of the report, and any person or facility determined to have maltreated a child, of their appeal or review rights under this section or section 256.022. The notice must also state that a finding of maltreatment may result in denial of a license application or background study disqualification under chapter 245C related to employment or services that are licensed by the Department of Human Services under chapter 245A, the Department of Health under chapter 144 or 144A, the Department of Corrections under section 241.021, and from providing services related to an unlicensed personal care provider organization under chapter 256B.

[For text of subds 10g to 15, see M.S.2008]

History: 2009 c 79 art 8 s 74; 2009 c 86 art 1 s 86; 2009 c 142 art 2 s 43-45; 2009 c 173 art 1 s 39

626.557 REPORTING OF MALTREATMENT OF VULNERABLE ADULTS.

[For text of subds 1 to 3a, see M.S.2008]

Subd. 4. Reporting. (a) Except as provided in paragraph (b), a mandated reporter shall immediately make an oral report to the common entry point. Use of a telecommunications device for the deaf or other similar device shall be considered an oral report. The common entry point may not require written reports. To the extent possible, the report must be of sufficient content to identify the vulnerable adult, the caregiver, the nature and extent of the suspected maltreatment, any evidence of previous maltreatment, the name and address of the reporter, the time, date, and location of the incident, and any other information that the reporter believes might be helpful in investigating the suspected maltreatment. A mandated reporter may disclose not public data, as defined in section 13.02, and medical records under sections 144.291 to 144.298, to the extent necessary to comply with this subdivision.

(b) A boarding care home that is licensed under sections 144.50 to 144.58 and certified under Title 19 of the Social Security Act, a nursing home that is licensed under section 144A.02 and certified under Title 18 or Title 19 of the Social Security Act, or a hospital that is licensed under sections 144.50 to 144.58 and has swing beds certified under Code of Federal Regulations, title 42, section 482.66, may submit a report electronically to the common entry point instead of submitting an oral report. The report may be a duplicate of the initial report the facility submits electronically to the commissioner of health to comply with the reporting requirements under Code of Federal Regulations, title 42, section 483.13. The commissioner of health may modify these reporting requirements to include items required under paragraph (a) that are not currently included in the electronic reporting form.

[For text of subd 4a, see M.S.2008]

Subd. 5. Immunity; protection for reporters. (a) A person who makes a good faith report is immune from any civil or criminal liability that might otherwise result from making the report, or from participating in the investigation, or for failure to comply fully with the reporting obligation under section 609.234 or 626.557, subdivision 7.

(b) A person employed by a lead agency or a state licensing agency who is conducting or supervising an investigation or enforcing the law in compliance with this section 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 acting in good faith and exercising due care.

(c) A person who knows or has reason to know a report has been made to a common entry point and who in good faith participates in an investigation of alleged maltreatment is immune from civil or criminal liability that otherwise might result from making the report, or from failure to comply with the reporting obligation or from participating in the investigation.

(d) The identity of any reporter may not be disclosed, except as provided in subdivision 12b.

(e) For purposes of this subdivision, "person" includes a natural person or any form of a business or legal entity.

Subd. 5a. **Financial institution cooperation.** Financial institutions shall cooperate with a lead agency, law enforcement, or prosecuting authority that is investigating maltreatment of a vulnerable adult and comply with reasonable requests for the production of financial records as authorized under section 13A.02, subdivision 1. Financial institutions are immune from any civil or criminal liability that might otherwise result from complying with this subdivision.

[For text of subds 6 to 9a, see M.S.2008]

Subd. 9b. **Response to reports.** Law enforcement is the primary agency to conduct investigations of any incident in which there is reason to believe a crime has been committed. Law enforcement shall initiate a response immediately. If the common entry point notified a county agency for adult protective services, law enforcement shall cooperate with that county agency when both agencies are involved and shall exchange data to the extent authorized in subdivision 12b, paragraph (g). County adult protection shall initiate a response immediately. Each lead agency shall complete the investigative process for reports within its jurisdiction. A lead agency, county, adult protective agency, licensed facility, or law enforcement agency shall cooperate in coordinating its investigation with other agencies and may assist another agency upon request within the limits of its resources and expertise and shall exchange data to the extent authorized in subdivision 12b, paragraph (g). The lead agency shall obtain the results of any investigation conducted by law enforcement officials. The lead agency has the right to enter facilities and inspect and copy records as part of investigations. The lead agency has access to not public data, as defined in section 13.02, and medical records under sections 144.291 to 144.298, that are maintained by facilities to the extent necessary to conduct its investigation. Each lead agency shall develop guidelines for prioritizing reports for investigation.

Subd. 9c. **Lead agency; notifications, dispositions, determinations.** (a) Upon request of the reporter, the lead agency shall notify the reporter that it has received the report, and provide information on the initial disposition of the report within five business days of receipt of the report, provided that the notification will not endanger the vulnerable adult or hamper the investigation.

(b) Upon conclusion of every investigation it conducts, the lead agency shall make a final disposition as defined in section 626.5572, subdivision 8.

(c) When determining whether the facility or individual is the responsible party for substantiated maltreatment or whether both the facility and the individual are responsible for substantiated maltreatment, the lead agency shall consider at least the following mitigating factors:

(1) whether the actions of the facility or the individual caregivers were in accordance with, and followed the terms of, an erroneous physician order, prescription, resident care plan, or directive. This is not a mitigating factor when the facility or caregiver is responsible for the issuance of the erroneous order, prescription, plan, or directive or knows or should have known of the errors and took no reasonable measures to correct the defect before administering care;

(2) the comparative responsibility between the facility, other caregivers, and requirements placed upon the employee, including but not limited to, the facility's compliance with related regulatory standards and factors such as the adequacy of facility policies and procedures, the adequacy of facility training, the adequacy of an individual's participation in the training, the adequacy of caregiver supervision, the adequacy of facility staffing levels, and a consideration of the scope of the individual employee's authority; and

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

(d) When substantiated maltreatment is determined to have been committed by an individual who is also the facility license holder, both the individual and the facility must be determined responsible for the maltreatment, and both the background study disqualification standards under section 245C.15, subdivision 4, and the licensing actions under section 245A.06 or 245A.07 apply.

(e) The lead agency shall complete its final disposition within 60 calendar days. If the lead agency is unable to complete its final disposition within 60 calendar days, the lead agency shall notify the following persons provided that the notification will not endanger the vulnerable adult or hamper the investigation: (1) the vulnerable adult or the vulnerable adult's legal guardian, when known, if the lead agency knows them to be aware of the investigation; and (2) the facility, where applicable. The notice shall contain the reason for the delay and the projected completion date. If the lead agency is unable to complete its final disposition by a subsequent projected completion date, the lead agency shall again notify the vulnerable adult or the vulnerable adult's legal guardian, when known if the lead agency knows them to be aware of the investigation, and the facility, where applicable, of the reason for the delay and the revised projected completion date provided that the notification will not endanger the vulnerable adult or hamper the investigation. A lead agency's inability to complete the final disposition within 60 calendar days or by any projected completion date does not invalidate the final disposition.

(f) Within ten calendar days of completing the final disposition, the lead agency shall provide a copy of the public investigation memorandum under subdivision 12b, paragraph (b), clause (1), when required to be completed under this section, to the following persons: (1) the vulnerable adult, or the vulnerable adult's legal guardian, if known unless the lead agency knows that the notification would endanger the well-being of the vulnerable adult; (2) the reporter, if the reporter requested notification when making the report, provided this notification would not endanger the well-being of the vulnerable adult; (3) the alleged perpetrator, if known; (4) the facility; and (5) the ombudsman for long-term care, or the ombudsman for mental health and developmental disabilities, as appropriate.

(g) The lead agency shall notify the vulnerable adult who is the subject of the report or the vulnerable adult's legal guardian, if known, and any person or facility determined to have maltreated a vulnerable adult, of their appeal or review rights under this section or section 256.021.

(h) The lead agency shall routinely provide investigation memoranda for substantiated reports to the appropriate licensing boards. These reports must include the names of substantiated perpetrators. The lead agency may not provide investigative memoranda for inconclusive or false reports to the appropriate licensing boards unless the lead agency's investigation gives reason to believe that there may have been a violation of the applicable professional practice laws. If the investigation memorandum is provided to a licensing

board, the subject of the investigation memorandum shall be notified and receive a summary of the investigative findings.

(i) In order to avoid duplication, licensing boards shall consider the findings of the lead agency in their investigations if they choose to investigate. This does not preclude licensing boards from considering other information.

(j) The lead agency must provide to the commissioner of human services its final dispositions, including the names of all substantiated perpetrators. The commissioner of human services shall establish records to retain the names of substantiated perpetrators.

[For text of subds 9d to 10, see M.S.2008]

Subd. 10b. **Investigations; guidelines.** Each lead agency shall develop guidelines for prioritizing reports for investigation. When investigating a report, the lead agency shall conduct the following activities, as appropriate:

- (1) interview of the alleged victim;
- (2) interview of the reporter and others who may have relevant information;
- (3) interview of the alleged perpetrator;
- (4) examination of the environment surrounding the alleged incident;
- (5) review of pertinent documentation of the alleged incident; and
- (6) consultation with professionals.

Subd. 12b. **Data management.** (a) In performing any of the duties of this section as a lead agency, the county social service agency shall maintain appropriate records. Data collected by the county social service agency under this section are welfare data under section 13.46. Notwithstanding section 13.46, subdivision 1, paragraph (a), data under this paragraph that are inactive investigative data on an individual who is a vendor of services are private data on individuals, as defined in section 13.02. The identity of the reporter may only be disclosed as provided in paragraph (c).

Data maintained by the common entry point are confidential data on individuals or protected nonpublic data as defined in section 13.02. Notwithstanding section 138.163, the common entry point shall maintain data for three calendar years after date of receipt and then destroy the data unless otherwise directed by federal requirements.

(b) The commissioners of health and human services shall prepare an investigation memorandum for each report alleging maltreatment investigated under this section. County social service agencies must maintain private data on individuals but are not required to prepare an investigation memorandum. During an investigation by the commissioner of health or the commissioner of human services, data collected under this section are confidential data on individuals or protected nonpublic data as defined in section 13.02. Upon completion of the investigation, the data are classified as provided in clauses (1) to (3) and paragraph (c).

(1) The investigation memorandum must contain the following data, which are public:

- (i) the name of the facility investigated;
- (ii) a statement of the nature of the alleged maltreatment;
- (iii) pertinent information obtained from medical or other records reviewed;
- (iv) the identity of the investigator;
- (v) a summary of the investigation's findings;

(vi) statement of whether the report was found to be substantiated, inconclusive, false, or that no determination will be made;

- (vii) a statement of any action taken by the facility;
- (viii) a statement of any action taken by the lead agency; and
- (ix) when a lead agency's determination has substantiated maltreatment, a statement of whether an individual, individuals, or a facility were responsible for the substantiated maltreatment, if known.

The investigation memorandum must be written in a manner which protects the identity of the reporter and of the vulnerable adult and may not contain the names or, to the extent possible, data on individuals or private data listed in clause (2).

(2) Data on individuals collected and maintained in the investigation memorandum are private data, including:

- (i) the name of the vulnerable adult;
- (ii) the identity of the individual alleged to be the perpetrator;
- (iii) the identity of the individual substantiated as the perpetrator; and
- (iv) the identity of all individuals interviewed as part of the investigation.

(3) Other data on individuals maintained as part of an investigation under this section are private data on individuals upon completion of the investigation.

(c) After the assessment or investigation is completed, the name of the reporter must be confidential. The subject of the report may compel disclosure of the name of the reporter only with the consent of the reporter or upon a written finding by a court that the report was false and there is evidence that the report was made in bad faith. This subdivision does not alter disclosure responsibilities or obligations under the Rules of Criminal Procedure, except that where the identity of the reporter is relevant to a criminal prosecution, the district court shall do an in-camera review prior to determining whether to order disclosure of the identity of the reporter.

(d) Notwithstanding section 138.163, data maintained under this section by the commissioners of health and human services must be maintained under the following schedule and then destroyed unless otherwise directed by federal requirements:

(1) data from reports determined to be false, maintained for three years after the finding was made;

(2) data from reports determined to be inconclusive, maintained for four years after the finding was made;

(3) data from reports determined to be substantiated, maintained for seven years after the finding was made; and

(4) data from reports which were not investigated by a lead agency and for which there is no final disposition, maintained for three years from the date of the report.

(e) The commissioners of health and human services shall each annually report to the legislature and the governor on the number and type of reports of alleged maltreatment involving licensed facilities reported under this section, the number of those requiring investigation under this section, and the resolution of those investigations. The report shall identify:

(1) whether and where backlogs of cases result in a failure to conform with statutory time frames;

(2) where adequate coverage requires additional appropriations and staffing; and

(3) any other trends that affect the safety of vulnerable adults.

(f) Each lead agency must have a record retention policy.

(g) Lead agencies, prosecuting authorities, and law enforcement agencies may exchange not public data, as defined in section 13.02, if the agency or authority requesting the data determines that the data are pertinent and necessary to the requesting agency in initiating, furthering, or completing an investigation under this section. Data collected under this section must be made available to prosecuting authorities and law enforcement officials, local county agencies, and licensing agencies investigating the alleged maltreatment under this section. The lead agency shall exchange not public data with the vulnerable adult maltreatment review panel established in section 256.021 if the data are pertinent and necessary for a review requested under that section. Upon completion of the review, not public data received by the review panel must be returned to the lead agency.

(h) Each lead agency shall keep records of the length of time it takes to complete its investigations.

(i) A lead agency may notify other affected parties and their authorized representative if the agency has reason to believe maltreatment has occurred and determines the information will safeguard the well-being of the affected parties or dispel widespread rumor or unrest in the affected facility.

(j) Under any notification provision of this section, where federal law specifically prohibits the disclosure of patient identifying information, a lead agency may not provide any notice unless the vulnerable adult has consented to disclosure in a manner which conforms to federal requirements.

[For text of subs 14 to 18, see M.S.2008]

Subd. 20. Cause of action for financial exploitation; damages. (a) A vulnerable adult who is a victim of financial exploitation has a cause of action against a person who committed the financial exploitation. In an action under this subdivision, the vulnerable adult is entitled to recover damages equal to three times the amount of compensatory damages or \$10,000, whichever is greater.

(b) In addition to damages under paragraph (a), the vulnerable adult is entitled to recover reasonable attorney fees and costs, including reasonable fees for the services of a guardian or conservator or guardian ad litem incurred in connection with a claim under this subdivision.

(c) An action may be brought under this subdivision regardless of whether there has been a report or final disposition under this section or a criminal complaint or conviction related to the financial exploitation.

History: 2009 c 119 s 11-16; 2009 c 142 art 2 s 46,47; 2009 c 159 s 107

626.5572 DEFINITIONS.

[For text of subs 1 to 5, see M.S.2008]

Subd. 6. Facility. (a) "Facility" means a hospital or other entity required to be licensed under sections 144.50 to 144.58; a nursing home required to be licensed to serve adults under section 144A.02; a residential or nonresidential facility required to be licensed to serve adults under sections 245A.01 to 245A.16; a home care provider licensed or required to be licensed under section 144A.46; a hospice provider licensed under sections 144A.75 to 144A.755; or a person or organization that exclusively offers, provides, or arranges for personal care assistant services under the medical assistance program as authorized under sections 256B.04, subdivision 16, 256B.0625, subdivision 19a, 256B.0651 to 256B.0656, and 256B.0659.

(b) For home care providers and personal care attendants, the term "facility" refers to the provider or person or organization that exclusively offers, provides, or arranges for

personal care services, and does not refer to the client's home or other location at which services are rendered.

[For text of subs 7 to 12, see M.S.2008]

Subd. 13. **Lead agency.** "Lead agency" is the primary administrative agency responsible for investigating reports made under section 626.557.

(a) The Department of Health is the lead agency for the facilities which are licensed or are required to be licensed as hospitals, home care providers, nursing homes, residential care homes, boarding care homes, or residential facilities that are also federally certified as intermediate care facilities that serve people with developmental disabilities.

(b) The Department of Human Services is the lead agency for the programs licensed or required to be licensed as adult day care, adult foster care, programs for people with developmental disabilities, mental health programs, or chemical health programs.

(c) The county social service agency or its designee is the lead agency for all other reports, including reports involving vulnerable adults receiving services from an unlicensed personal care provider organization under section 256B.0659.

[For text of subs 14 to 20, see M.S.2008]

Subd. 21. **Vulnerable adult.** (a) "Vulnerable adult" means any person 18 years of age or older who:

(1) is a resident or inpatient of a facility;

(2) receives services at or from a facility required to be licensed to serve adults under sections 245A.01 to 245A.15, except that a person receiving outpatient services for treatment of chemical dependency or mental illness, or one who is served in the Minnesota sex offender program on a court-hold order for commitment, or is committed as a sexual psychopathic personality or as a sexually dangerous person under chapter 253B, is not considered a vulnerable adult unless the person meets the requirements of clause (4);

(3) receives services from a home care provider required to be licensed under section 144A.46; or from a person or organization that exclusively offers, provides, or arranges for personal care assistant services under the medical assistance program as authorized under sections 256B.04, subdivision 16, 256B.0625, subdivision 19a, 256B.0651, 256B.0653 to 256B.0656, and 256B.0659; or

(4) regardless of residence or whether any type of service is received, possesses a physical or mental infirmity or other physical, mental, or emotional dysfunction:

(i) that impairs the individual's ability to provide adequately for the individual's own care without assistance, including the provision of food, shelter, clothing, health care, or supervision; and

(ii) because of the dysfunction or infirmity and the need for care or services, the individual has an impaired ability to protect the individual's self from maltreatment.

(b) For purposes of this subdivision, "care or services" means care or services for the health, safety, welfare, or maintenance of an individual.

History: 2009 c 79 art 6 s 20,21; art 8 s 75; 2009 c 119 s 17; 2009 c 142 art 2 s 48

626.843 RULES, STANDARDS; EXECUTIVE DIRECTOR.

Subdivision 1. **Rules required.** The board shall adopt rules with respect to:

(1) the certification of postsecondary schools to provide programs of professional peace officer education;

(2) minimum courses of study and equipment and facilities to be required at each certified school within the state;

- (3) minimum qualifications for coordinators and instructors at certified schools offering a program of professional peace officer education located within this state;
- (4) minimum standards of physical, mental, and educational fitness which shall govern the admission to professional peace officer education programs and the licensing of peace officers within the state, by any state, county, municipality, or joint or contractual combination thereof, including members of the Minnesota State Patrol;
- (5) board-approved continuing education courses that ensure professional competence of peace officers and part-time peace officers;
- (6) minimum standards of conduct which would affect the individual's performance of duties as a peace officer. These standards shall be established and published. The board shall review the minimum standards of conduct described in this clause for possible modification in 1998 and every three years after that time;
- (7) a set of educational learning objectives that must be met within a certified school's professional peace officer education program. These learning objectives must concentrate on the knowledge, skills, and abilities deemed essential for a peace officer. Education in these learning objectives shall be deemed satisfactory for the completion of the minimum basic training requirement;
- (8) the establishment and use by any political subdivision or state law enforcement agency that employs persons licensed by the board of procedures for investigation and resolution of allegations of misconduct by persons licensed by the board. The procedures shall be in writing and shall be established on or before October 1, 1984;
- (9) the issues that must be considered by each political subdivision and state law enforcement agency that employs persons licensed by the board in establishing procedures under section 626.5532 to govern the conduct of peace officers who are in pursuit of a vehicle being operated in violation of section 609.487, and requirements for the training of peace officers in conducting pursuits. The adoption of specific procedures and requirements is within the authority of the political subdivision or agency;
- (10) supervision of part-time peace officers and requirements for documentation of hours worked by a part-time peace officer who is on active duty. These rules shall be adopted by December 31, 1993;
- (11) citizenship requirements for peace officers and part-time peace officers;
- (12) driver's license requirements for peace officers and part-time peace officers; and
- (13) such other matters as may be necessary consistent with sections 626.84 to 626.863. Rules promulgated by the attorney general with respect to these matters may be continued in force by resolution of the board if the board finds the rules to be consistent with sections 626.84 to 626.863.

[For text of subd 2, see M.S.2008]

Subd. 3. Board authority. The board may, in addition:

- (1) recommend studies, surveys, and reports to be made by the executive director regarding the carrying out of the objectives and purposes of sections 626.841 to 626.863;
- (2) visit and inspect any certified school that offers the professional peace officer education program or for which application for certification has been made;
- (3) make recommendations, from time to time, to the executive director, attorney general, and the governor regarding the carrying out of the objectives and purposes of sections 626.841 to 626.863;
- (4) perform such other acts as may be necessary or appropriate to carry out the powers and duties of the board under sections 626.841 to 626.863; and

(5) cooperate with and receive financial assistance from and join in projects or enter into contracts with the federal government or its agencies for the furtherance of the purposes of Laws 1977, chapter 433.

[For text of subd 4, see M.S.2008]

History: 2009 c 59 art 5 s 16,17

626.845 POWERS AND DUTIES.

Subdivision 1. **Powers and duties.** The board shall have the following powers and duties:

(1) to certify postsecondary schools to provide programs of professional peace officer education based on a set of board-approved professional peace officer education learning objectives;

(2) to issue certificates to postsecondary schools, and to revoke certification when necessary to maintain the objectives and purposes of sections 626.841 to 626.863;

(3) to license peace officers who have met the education and experience requirements and passed examinations as required by the board;

(4) to develop and administer licensing examinations based on the board's learning objectives;

(5) to consult and cooperate with continuing education providers for the development of in-service training programs for peace officers;

(6) to consult and cooperate with postsecondary schools for the development and improvement of professional peace officer education;

(7) to consult and cooperate with other departments and agencies of the state and federal government concerned with peace officer standards and training;

(8) to perform such other acts as may be necessary and appropriate to carry out the powers and duties of sections 626.841 to 626.863;

(9) to obtain criminal conviction data for persons seeking a license to be issued or possessing a license issued by the board. The board shall have authority to obtain criminal conviction data to the full extent that any other law enforcement agency, as that term is defined by state or federal law, has to obtain the data;

(10) to prepare and transmit annually to the governor a report of its activities with respect to allocation of money appropriated to it for peace officers training, including the name of each recipient of money for that purpose and the amount awarded; and

(11) to assist and cooperate with any political subdivision or state law enforcement agency that employs persons licensed by the board to establish written policies as mandated by the state pertaining to persons licensed by the board, and to enforce licensing sanctions for failure to implement these policies.

In addition, the board may maintain data received from law enforcement agencies under section 626.87, subdivision 5, provide the data to requesting law enforcement agencies who are conducting background investigations, and maintain data on applicants and licensees as part of peace officer license data. The data that may be maintained include the name of the law enforcement agency conducting the investigation and data on the candidate provided under section 626.87, subdivision 5, clauses (1) and (2).

History: 2009 c 59 art 5 s 18

626.8454 MANUAL AND POLICY FOR INVESTIGATING CASES INVOLVING CHILDREN WHO ARE MISSING AND ENDANGERED.

[For text of subs 1 to 3, see M.S.2008]

Subd. 4. **Available resources.** If an agency, board, or local representative reviews or updates its policies for missing children or persons investigations, it may consider the following resources:

- (1) nonprofit search and rescue organizations that provide trained animal searches, specialized equipment, and man trackers;
- (2) assistance from other law enforcement agencies at the local, state, or federal level, or qualified missing persons organizations;
- (3) use of subpoenas or search warrants for electronic and wireless communication devices, computers, and Web sites; and
- (4) assistance and services provided by the Civil Air Patrol.

History: 2009 c 38 s 14

626.8517 ELIGIBILITY FOR RECIPROCITY EXAMINATION BASED ON RELEVANT MILITARY EXPERIENCE.

(a) For purposes of this section:

- (1) "active service" has the meaning given in section 190.05, subdivision 5; and
- (2) "relevant military experience" means:

(i) five years' active service experience in a military law enforcement occupational specialty;

(ii) three years' active service experience in a military law enforcement occupational specialty, and completion of a two-year or more degree from a regionally accredited postsecondary education institution; or

(iii) five years' cumulative experience as a full-time peace officer in another state combined with active service experience in a military law enforcement occupational specialty.

(b) A person who has relevant military experience and who has been honorably discharged from military active service as evidenced by a form DD-214 is eligible to take the reciprocity examination.

History: 2009 c 94 art 3 s 20

626.863 UNAUTHORIZED PRACTICE.

(a) A person who is not a peace officer or part-time peace officer is guilty of a misdemeanor if the person: (1) makes a representation of being a peace officer or part-time peace officer, or (2) performs or attempts to perform an act, duty, or responsibility reserved by law for licensed peace officers and part-time peace officers.

(b) A peace officer who authorizes or knowingly allows a person to violate paragraph (a) is guilty of a misdemeanor.

(c) The board shall designate the appropriate law enforcement agency to investigate violations of this section. The attorney general shall prosecute violations of this section.

(d) A person who violates this section and who has previously been convicted of a violation of this section is guilty of a gross misdemeanor.

History: 2009 c 59 art 5 s 19