

1.1 A bill for an act

1.2 relating to public safety; modifying provisions relating to background checks of  
1.3 persons licensed by the Department of Human Services; modifying provisions  
1.4 governing public hearings and public access to juvenile records; authorizing the  
1.5 expungement of certain juvenile records; authorizing the commissioner of human  
1.6 services to grant set asides or variances for certain individuals disqualified  
1.7 from licensure because of an offense committed as a juvenile; amending  
1.8 Minnesota Statutes 2008, sections 245C.27, subdivision 2; 245C.28, subdivision  
1.9 3; 609A.02, subdivision 2; 609A.03, subdivisions 1, 2, 4, 5, 5a, 7; 626.556,  
1.10 subdivision 10i; 626.557, subdivision 9d; Minnesota Statutes 2009 Supplement,  
1.11 sections 245C.24, subdivision 2; 245C.27, subdivision 1; 256.045, subdivision 3.

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

1.13 **ARTICLE 1**

1.14 **DHS LICENSING**

1.15 Section 1. Minnesota Statutes 2009 Supplement, section 245C.27, subdivision 1, is  
1.16 amended to read:

1.17 Subdivision 1. **Fair hearing when disqualification is not ~~set aside~~ rescinded.** (a)  
1.18 If the commissioner does not ~~set aside~~ rescind a disqualification of an individual under  
1.19 section 245C.22 who is disqualified on the basis of a preponderance of evidence that the  
1.20 individual committed an act or acts that meet the definition of any of the crimes listed in  
1.21 section 245C.15; for a determination under section 626.556 or 626.557 of substantiated  
1.22 maltreatment that was serious or recurring under section 245C.15; or for failure to make  
1.23 required reports under section 626.556, subdivision 3; or 626.557, subdivision 3, pursuant  
1.24 to section 245C.15, subdivision 4, paragraph (b), clause (1), the individual may request  
1.25 a fair hearing under section 256.045, unless the disqualification is deemed conclusive  
1.26 under section 245C.29.

2.1 (b) The fair hearing is the only administrative appeal of the final agency  
2.2 determination for purposes of appeal by the disqualified individual. The disqualified  
2.3 individual does not have the right to challenge the accuracy and completeness of data  
2.4 under section 13.04.

2.5 (c) Except as provided under paragraph (e), if the individual was disqualified based  
2.6 on a conviction of, admission to, or Alford Plea to any crimes listed in section 245C.15,  
2.7 subdivisions 1 to 4, or for a disqualification under section 256.98, subdivision 8, the  
2.8 reconsideration decision under section 245C.22 is the final agency determination for  
2.9 purposes of appeal by the disqualified individual and is not subject to a hearing under  
2.10 section 256.045. If the individual was disqualified based on a judicial determination, that  
2.11 determination is treated the same as a conviction for purposes of appeal.

2.12 (d) This subdivision does not apply to a public employee's appeal of a disqualification  
2.13 under section 245C.28, subdivision 3.

2.14 (e) Notwithstanding paragraph (c), if the commissioner does not set aside a  
2.15 disqualification of an individual who was disqualified based on both a preponderance  
2.16 of evidence and a conviction or admission, the individual may request a fair hearing  
2.17 under section 256.045, unless the disqualifications are deemed conclusive under section  
2.18 245C.29. The scope of the hearing conducted under section 256.045 with regard to the  
2.19 disqualification based on a conviction or admission shall be limited solely to whether the  
2.20 individual poses a risk of harm, according to section 256.045, subdivision 3b. In this case,  
2.21 the reconsideration decision under section 245C.22 is not the final agency decision for  
2.22 purposes of appeal by the disqualified individual.

2.23 Sec. 2. Minnesota Statutes 2008, section 245C.27, subdivision 2, is amended to read:

2.24 Subd. 2. **Consolidated fair hearing.** (a) If an individual who is disqualified on the  
2.25 bases of serious or recurring maltreatment requests a fair hearing on the maltreatment  
2.26 determination under section 626.556, subdivision 10i, or 626.557, subdivision 9d, and  
2.27 requests a fair hearing under this section on the disqualification, which has not been  
2.28 ~~set aside~~ rescinded, the scope of the fair hearing under section 256.045 shall include the  
2.29 maltreatment determination and the disqualification.

2.30 (b) A fair hearing is the only administrative appeal of the final agency determination.  
2.31 The disqualified individual does not have the right to challenge the accuracy and  
2.32 completeness of data under section 13.04.

2.33 (c) This subdivision does not apply to a public employee's appeal of a disqualification  
2.34 under section 245C.28, subdivision 3.

3.1 Sec. 3. Minnesota Statutes 2008, section 245C.28, subdivision 3, is amended to read:

3.2 Subd. 3. **Employees of public employer.** (a) If the commissioner does not ~~set~~  
3.3 ~~aside~~ rescind the disqualification of an individual who is an employee of an employer, as  
3.4 defined in section 179A.03, subdivision 15, the individual may request a contested case  
3.5 hearing under chapter 14, unless the disqualification is deemed conclusive under section  
3.6 245C.29. The request for a contested case hearing must be made in writing and must be  
3.7 postmarked and sent within 30 calendar days after the employee receives notice that the  
3.8 disqualification has not been ~~set aside~~ rescinded. If the individual was disqualified based  
3.9 on a conviction or admission to any crimes listed in section 245C.15, the scope of the  
3.10 contested case hearing shall be limited solely to whether the individual poses a risk of  
3.11 harm pursuant to section 245C.22.

3.12 (b) If the commissioner does not ~~set aside~~ rescind a disqualification that is based on  
3.13 a maltreatment determination, the scope of the contested case hearing must include the  
3.14 maltreatment determination and the disqualification. In such cases, a fair hearing must  
3.15 not be conducted under section 256.045.

3.16 (c) If the commissioner does not rescind a disqualification that is based on a  
3.17 preponderance of evidence that the individual committed an act or acts that meet the  
3.18 definition of any of the crimes listed in section 245C.15, the scope of the contested case  
3.19 hearing must include the disqualification decision. In such cases, a fair hearing must  
3.20 not be conducted under section 256.045.

3.21 ~~(c)~~ (d) Rules adopted under this chapter may not preclude an employee in a contested  
3.22 case hearing for a disqualification from submitting evidence concerning information  
3.23 gathered under this chapter.

3.24 ~~(d)~~ (e) When an individual has been disqualified from multiple licensed programs  
3.25 and the disqualifications have not been ~~set aside~~ rescinded under section 245C.22, if at  
3.26 least one of the disqualifications entitles the person to a contested case hearing under this  
3.27 subdivision, the scope of the contested case hearing shall include all disqualifications from  
3.28 licensed programs which were not ~~set aside~~ rescinded.

3.29 ~~(e)~~ (f) In determining whether the disqualification should be set aside, the  
3.30 administrative law judge shall consider all of the characteristics that cause the individual  
3.31 to be disqualified in order to determine whether the individual poses a risk of harm. The  
3.32 administrative law judge's recommendation and the commissioner's order to set aside  
3.33 a disqualification that is the subject of the hearing constitutes a determination that the  
3.34 individual does not pose a risk of harm and that the individual may provide direct contact  
3.35 services in the individual program specified in the set aside.

4.1 Sec. 4. Minnesota Statutes 2009 Supplement, section 256.045, subdivision 3, is  
4.2 amended to read:

4.3 Subd. 3. **State agency hearings.** (a) State agency hearings are available for the  
4.4 following:

4.5 (1) any person applying for, receiving or having received public assistance, medical  
4.6 care, or a program of social services granted by the state agency or a county agency or  
4.7 the federal Food Stamp Act whose application for assistance is denied, not acted upon  
4.8 with reasonable promptness, or whose assistance is suspended, reduced, terminated, or  
4.9 claimed to have been incorrectly paid;

4.10 (2) any patient or relative aggrieved by an order of the commissioner under section  
4.11 252.27;

4.12 (3) a party aggrieved by a ruling of a prepaid health plan;

4.13 (4) except as provided under chapter 245C, any individual or facility determined by  
4.14 a lead agency to have maltreated a vulnerable adult under section 626.557 after they have  
4.15 exercised their right to administrative reconsideration under section 626.557;

4.16 (5) any person whose claim for foster care payment according to a placement of the  
4.17 child resulting from a child protection assessment under section 626.556 is denied or not  
4.18 acted upon with reasonable promptness, regardless of funding source;

4.19 (6) any person to whom a right of appeal according to this section is given by other  
4.20 provision of law;

4.21 (7) an applicant aggrieved by an adverse decision to an application for a hardship  
4.22 waiver under section 256B.15;

4.23 (8) an applicant aggrieved by an adverse decision to an application or redetermination  
4.24 for a Medicare Part D prescription drug subsidy under section 256B.04, subdivision 4a;

4.25 (9) except as provided under chapter 245A, an individual or facility determined  
4.26 to have maltreated a minor under section 626.556, after the individual or facility has  
4.27 exercised the right to administrative reconsideration under section 626.556;

4.28 (10) except as provided under chapter 245C, an individual disqualified under  
4.29 sections 245C.14 and 245C.15, which has not been ~~set aside~~ rescinded under sections  
4.30 245C.22 and 245C.23, on the basis of serious or recurring maltreatment; a preponderance  
4.31 of the evidence that the individual has committed an act or acts that meet the definition  
4.32 of any of the crimes listed in section 245C.15, subdivisions 1 to 4; or for failing to make  
4.33 reports required under section 626.556, subdivision 3, or 626.557, subdivision 3. Hearings  
4.34 regarding a maltreatment determination under clause (4) or (9) and a disqualification under  
4.35 this clause in which the basis for a disqualification is serious or recurring maltreatment,  
4.36 which has not been ~~set aside~~ rescinded under sections 245C.22 and 245C.23, shall be

5.1 consolidated into a single fair hearing. In such cases, the scope of review by the human  
5.2 services referee shall include both the maltreatment determination and the disqualification.  
5.3 The failure to exercise the right to an administrative reconsideration shall not be a bar to a  
5.4 hearing under this section if federal law provides an individual the right to a hearing to  
5.5 dispute a finding of maltreatment. Individuals and organizations specified in this section  
5.6 may contest the specified action, decision, or final disposition before the state agency by  
5.7 submitting a written request for a hearing to the state agency within 30 days after receiving  
5.8 written notice of the action, decision, or final disposition, or within 90 days of such written  
5.9 notice if the applicant, recipient, patient, or relative shows good cause why the request  
5.10 was not submitted within the 30-day time limit; or

5.11 (11) any person with an outstanding debt resulting from receipt of public assistance,  
5.12 medical care, or the federal Food Stamp Act who is contesting a setoff claim by the  
5.13 Department of Human Services or a county agency. The scope of the appeal is the validity  
5.14 of the claimant agency's intention to request a setoff of a refund under chapter 270A  
5.15 against the debt.

5.16 (b) The hearing for an individual or facility under paragraph (a), clause (4), (9), or  
5.17 (10), is the only administrative appeal to the final agency determination specifically,  
5.18 including a challenge to the accuracy and completeness of data under section 13.04.  
5.19 Hearings requested under paragraph (a), clause (4), apply only to incidents of maltreatment  
5.20 that occur on or after October 1, 1995. Hearings requested by nursing assistants in nursing  
5.21 homes alleged to have maltreated a resident prior to October 1, 1995, shall be held as a  
5.22 contested case proceeding under the provisions of chapter 14. Hearings requested under  
5.23 paragraph (a), clause (9), apply only to incidents of maltreatment that occur on or after  
5.24 July 1, 1997. A hearing for an individual or facility under paragraph (a), clause (9), is  
5.25 only available when there is no juvenile court or adult criminal action pending. If such  
5.26 action is filed in either court while an administrative review is pending, the administrative  
5.27 review must be suspended until the judicial actions are completed. If the juvenile court  
5.28 action or criminal charge is dismissed or the criminal action overturned, the matter may be  
5.29 considered in an administrative hearing.

5.30 (c) For purposes of this section, bargaining unit grievance procedures are not an  
5.31 administrative appeal.

5.32 (d) The scope of hearings involving claims to foster care payments under paragraph  
5.33 (a), clause (5), shall be limited to the issue of whether the county is legally responsible  
5.34 for a child's placement under court order or voluntary placement agreement and, if so,  
5.35 the correct amount of foster care payment to be made on the child's behalf and shall not

6.1 include review of the propriety of the county's child protection determination or child  
6.2 placement decision.

6.3 (e) A vendor of medical care as defined in section 256B.02, subdivision 7, or a  
6.4 vendor under contract with a county agency to provide social services is not a party and  
6.5 may not request a hearing under this section, except if assisting a recipient as provided in  
6.6 subdivision 4.

6.7 (f) An applicant or recipient is not entitled to receive social services beyond the  
6.8 services prescribed under chapter 256M or other social services the person is eligible  
6.9 for under state law.

6.10 (g) The commissioner may summarily affirm the county or state agency's proposed  
6.11 action without a hearing when the sole issue is an automatic change due to a change in  
6.12 state or federal law.

6.13 Sec. 5. Minnesota Statutes 2008, section 626.556, subdivision 10i, is amended to read:

6.14 Subd. 10i. **Administrative reconsideration; review panel.** (a) Administrative  
6.15 reconsideration is not applicable in family assessments since no determination concerning  
6.16 maltreatment is made. For investigations, except as provided under paragraph (e), an  
6.17 individual or facility that the commissioner of human services, a local social service  
6.18 agency, or the commissioner of education determines has maltreated a child, an interested  
6.19 person acting on behalf of the child, regardless of the determination, who contests  
6.20 the investigating agency's final determination regarding maltreatment, may request the  
6.21 investigating agency to reconsider its final determination regarding maltreatment. The  
6.22 request for reconsideration must be submitted in writing to the investigating agency within  
6.23 15 calendar days after receipt of notice of the final determination regarding maltreatment  
6.24 or, if the request is made by an interested person who is not entitled to notice, within  
6.25 15 days after receipt of the notice by the parent or guardian of the child. If mailed, the  
6.26 request for reconsideration must be postmarked and sent to the investigating agency  
6.27 within 15 calendar days of the individual's or facility's receipt of the final determination. If  
6.28 the request for reconsideration is made by personal service, it must be received by the  
6.29 investigating agency within 15 calendar days after the individual's or facility's receipt of the  
6.30 final determination. Effective January 1, 2002, an individual who was determined to have  
6.31 maltreated a child under this section and who was disqualified on the basis of serious or  
6.32 recurring maltreatment under sections 245C.14 and 245C.15, may request reconsideration  
6.33 of the maltreatment determination and the disqualification. The request for reconsideration  
6.34 of the maltreatment determination and the disqualification must be submitted within 30  
6.35 calendar days of the individual's receipt of the notice of disqualification under sections

7.1 245C.16 and 245C.17. If mailed, the request for reconsideration of the maltreatment  
7.2 determination and the disqualification must be postmarked and sent to the investigating  
7.3 agency within 30 calendar days of the individual's receipt of the maltreatment  
7.4 determination and notice of disqualification. If the request for reconsideration is made by  
7.5 personal service, it must be received by the investigating agency within 30 calendar days  
7.6 after the individual's receipt of the notice of disqualification.

7.7 (b) Except as provided under paragraphs (e) and (f), if the investigating agency  
7.8 denies the request or fails to act upon the request within 15 working days after receiving  
7.9 the request for reconsideration, the person or facility entitled to a fair hearing under section  
7.10 256.045 may submit to the commissioner of human services or the commissioner of  
7.11 education a written request for a hearing under that section. Section 256.045 also governs  
7.12 hearings requested to contest a final determination of the commissioner of education. For  
7.13 reports involving maltreatment of a child in a facility, an interested person acting on behalf  
7.14 of the child may request a review by the Child Maltreatment Review Panel under section  
7.15 256.022 if the investigating agency denies the request or fails to act upon the request or  
7.16 if the interested person contests a reconsidered determination. The investigating agency  
7.17 shall notify persons who request reconsideration of their rights under this paragraph.  
7.18 The request must be submitted in writing to the review panel and a copy sent to the  
7.19 investigating agency within 30 calendar days of receipt of notice of a denial of a request  
7.20 for reconsideration or of a reconsidered determination. The request must specifically  
7.21 identify the aspects of the agency determination with which the person is dissatisfied.

7.22 (c) If, as a result of a reconsideration or review, the investigating agency changes  
7.23 the final determination of maltreatment, that agency shall notify the parties specified in  
7.24 subdivisions 10b, 10d, and 10f.

7.25 (d) Except as provided under paragraph (f), if an individual or facility contests the  
7.26 investigating agency's final determination regarding maltreatment by requesting a fair  
7.27 hearing under section 256.045, the commissioner of human services shall assure that the  
7.28 hearing is conducted and a decision is reached within 90 days of receipt of the request for  
7.29 a hearing. The time for action on the decision may be extended for as many days as the  
7.30 hearing is postponed or the record is held open for the benefit of either party.

7.31 (e) ~~Effective January 1, 2002,~~ If an individual was disqualified under sections  
7.32 245C.14 and 245C.15, on the basis of a determination of maltreatment, which was  
7.33 serious or recurring, and the individual has requested reconsideration of the maltreatment  
7.34 determination under paragraph (a) and requested reconsideration of the disqualification  
7.35 under sections 245C.21 to 245C.27, reconsideration of the maltreatment determination and  
7.36 reconsideration of the disqualification shall be consolidated into a single reconsideration.

8.1 If reconsideration of the maltreatment determination is denied or the disqualification is not  
8.2 ~~set aside~~ rescinded under sections 245C.21 to 245C.27, the individual may request a fair  
8.3 hearing under section 256.045. If an individual requests a fair hearing on the maltreatment  
8.4 determination and the disqualification, the scope of the fair hearing shall include both the  
8.5 maltreatment determination and the disqualification.

8.6 (f) ~~Effective January 1, 2002,~~ If a maltreatment determination or a disqualification  
8.7 based on serious or recurring maltreatment is the basis for a denial of a license under  
8.8 section 245A.05 or a licensing sanction under section 245A.07, the license holder has the  
8.9 right to a contested case hearing under chapter 14 and Minnesota Rules, parts 1400.8505  
8.10 to 1400.8612. As provided for under section 245A.08, subdivision 2a, the scope of the  
8.11 contested case hearing shall include the maltreatment determination, disqualification,  
8.12 and licensing sanction or denial of a license. In such cases, a fair hearing regarding  
8.13 the maltreatment determination and disqualification shall not be conducted under  
8.14 section 256.045. Except for family child care and child foster care, reconsideration of a  
8.15 maltreatment determination as provided under this subdivision, and reconsideration of a  
8.16 disqualification as provided under section 245C.22, shall also not be conducted when:

8.17 (1) a denial of a license under section 245A.05 or a licensing sanction under section  
8.18 245A.07, is based on a determination that the license holder is responsible for maltreatment  
8.19 or the disqualification of a license holder based on serious or recurring maltreatment;

8.20 (2) the denial of a license or licensing sanction is issued at the same time as the  
8.21 maltreatment determination or disqualification; and

8.22 (3) the license holder appeals the maltreatment determination or disqualification, and  
8.23 denial of a license or licensing sanction.

8.24 Notwithstanding clauses (1) to (3), if the license holder appeals the maltreatment  
8.25 determination or disqualification, but does not appeal the denial of a license or a licensing  
8.26 sanction, reconsideration of the maltreatment determination shall be conducted under  
8.27 sections 626.556, subdivision 10i, and 626.557, subdivision 9d, and reconsideration of the  
8.28 disqualification shall be conducted under section 245C.22. In such cases, a fair hearing  
8.29 shall also be conducted as provided under sections 245C.27, 626.556, subdivision 10i, and  
8.30 626.557, subdivision 9d.

8.31 If the disqualified subject is an individual other than the license holder and upon  
8.32 whom a background study must be conducted under chapter 245C, the hearings of all  
8.33 parties may be consolidated into a single contested case hearing upon consent of all parties  
8.34 and the administrative law judge.

8.35 (g) For purposes of this subdivision, "interested person acting on behalf of the  
8.36 child" means a parent or legal guardian; stepparent; grandparent; guardian ad litem; adult



9.1 stepbrother, stepsister, or sibling; or adult aunt or uncle; unless the person has been  
9.2 determined to be the perpetrator of the maltreatment.

9.3 Sec. 6. Minnesota Statutes 2008, section 626.557, subdivision 9d, is amended to read:

9.4 Subd. 9d. **Administrative reconsideration; review panel.** (a) Except as provided  
9.5 under paragraph (e), any individual or facility which a lead agency determines has  
9.6 maltreated a vulnerable adult, or the vulnerable adult or an interested person acting on  
9.7 behalf of the vulnerable adult, regardless of the lead agency's determination, who contests  
9.8 the lead agency's final disposition of an allegation of maltreatment, may request the  
9.9 lead agency to reconsider its final disposition. The request for reconsideration must be  
9.10 submitted in writing to the lead agency within 15 calendar days after receipt of notice of  
9.11 final disposition or, if the request is made by an interested person who is not entitled to  
9.12 notice, within 15 days after receipt of the notice by the vulnerable adult or the vulnerable  
9.13 adult's legal guardian. If mailed, the request for reconsideration must be postmarked and  
9.14 sent to the lead agency within 15 calendar days of the individual's or facility's receipt of  
9.15 the final disposition. If the request for reconsideration is made by personal service, it must  
9.16 be received by the lead agency within 15 calendar days of the individual's or facility's  
9.17 receipt of the final disposition. An individual who was determined to have maltreated a  
9.18 vulnerable adult under this section and who was disqualified on the basis of serious or  
9.19 recurring maltreatment under sections 245C.14 and 245C.15, may request reconsideration  
9.20 of the maltreatment determination and the disqualification. The request for reconsideration  
9.21 of the maltreatment determination and the disqualification must be submitted in writing  
9.22 within 30 calendar days of the individual's receipt of the notice of disqualification  
9.23 under sections 245C.16 and 245C.17. If mailed, the request for reconsideration of  
9.24 the maltreatment determination and the disqualification must be postmarked and sent  
9.25 to the lead agency within 30 calendar days of the individual's receipt of the notice of  
9.26 disqualification. If the request for reconsideration is made by personal service, it must be  
9.27 received by the lead agency within 30 calendar days after the individual's receipt of the  
9.28 notice of disqualification.

9.29 (b) Except as provided under paragraphs (e) and (f), if the lead agency denies the  
9.30 request or fails to act upon the request within 15 working days after receiving the request  
9.31 for reconsideration, the person or facility entitled to a fair hearing under section 256.045,  
9.32 may submit to the commissioner of human services a written request for a hearing  
9.33 under that statute. The vulnerable adult, or an interested person acting on behalf of the  
9.34 vulnerable adult, may request a review by the Vulnerable Adult Maltreatment Review  
9.35 Panel under section 256.021 if the lead agency denies the request or fails to act upon the

10.1 request, or if the vulnerable adult or interested person contests a reconsidered disposition.  
10.2 The lead agency shall notify persons who request reconsideration of their rights under this  
10.3 paragraph. The request must be submitted in writing to the review panel and a copy sent  
10.4 to the lead agency within 30 calendar days of receipt of notice of a denial of a request for  
10.5 reconsideration or of a reconsidered disposition. The request must specifically identify the  
10.6 aspects of the agency determination with which the person is dissatisfied.

10.7 (c) If, as a result of a reconsideration or review, the lead agency changes the final  
10.8 disposition, it shall notify the parties specified in subdivision 9c, paragraph (d).

10.9 (d) For purposes of this subdivision, "interested person acting on behalf of the  
10.10 vulnerable adult" means a person designated in writing by the vulnerable adult to act  
10.11 on behalf of the vulnerable adult, or a legal guardian or conservator or other legal  
10.12 representative, a proxy or health care agent appointed under chapter 145B or 145C,  
10.13 or an individual who is related to the vulnerable adult, as defined in section 245A.02,  
10.14 subdivision 13.

10.15 (e) If an individual was disqualified under sections 245C.14 and 245C.15, on  
10.16 the basis of a determination of maltreatment, which was serious or recurring, and  
10.17 the individual has requested reconsideration of the maltreatment determination under  
10.18 paragraph (a) and reconsideration of the disqualification under sections 245C.21 to  
10.19 245C.27, reconsideration of the maltreatment determination and requested reconsideration  
10.20 of the disqualification shall be consolidated into a single reconsideration. If reconsideration  
10.21 of the maltreatment determination is denied or if the disqualification is not ~~set aside~~  
10.22 rescinded under sections 245C.21 to 245C.27, the individual may request a fair hearing  
10.23 under section 256.045. If an individual requests a fair hearing on the maltreatment  
10.24 determination and the disqualification, the scope of the fair hearing shall include both the  
10.25 maltreatment determination and the disqualification.

10.26 (f) If a maltreatment determination or a disqualification based on serious or recurring  
10.27 maltreatment is the basis for a denial of a license under section 245A.05 or a licensing  
10.28 sanction under section 245A.07, the license holder has the right to a contested case hearing  
10.29 under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. As provided  
10.30 for under section 245A.08, the scope of the contested case hearing must include the  
10.31 maltreatment determination, disqualification, and licensing sanction or denial of a license.  
10.32 In such cases, a fair hearing must not be conducted under section 256.045. Except for  
10.33 family child care and child foster care, reconsideration of a maltreatment determination  
10.34 under this subdivision, and reconsideration of a disqualification under section 245C.22,  
10.35 must not be conducted when:

11.1 (1) a denial of a license under section 245A.05, or a licensing sanction under section  
11.2 245A.07, is based on a determination that the license holder is responsible for maltreatment  
11.3 or the disqualification of a license holder based on serious or recurring maltreatment;

11.4 (2) the denial of a license or licensing sanction is issued at the same time as the  
11.5 maltreatment determination or disqualification; and

11.6 (3) the license holder appeals the maltreatment determination or disqualification, and  
11.7 denial of a license or licensing sanction.

11.8 Notwithstanding clauses (1) to (3), if the license holder appeals the maltreatment  
11.9 determination or disqualification, but does not appeal the denial of a license or a licensing  
11.10 sanction, reconsideration of the maltreatment determination shall be conducted under  
11.11 sections 626.556, subdivision 10i, and 626.557, subdivision 9d, and reconsideration of the  
11.12 disqualification shall be conducted under section 245C.22. In such cases, a fair hearing  
11.13 shall also be conducted as provided under sections 245C.27, 626.556, subdivision 10i, and  
11.14 626.557, subdivision 9d.

11.15 If the disqualified subject is an individual other than the license holder and upon  
11.16 whom a background study must be conducted under chapter 245C, the hearings of all  
11.17 parties may be consolidated into a single contested case hearing upon consent of all parties  
11.18 and the administrative law judge.

11.19 (g) Until August 1, 2002, an individual or facility that was determined by the  
11.20 commissioner of human services or the commissioner of health to be responsible for  
11.21 neglect under section 626.5572, subdivision 17, after October 1, 1995, and before August  
11.22 1, 2001, that believes that the finding of neglect does not meet an amended definition of  
11.23 neglect may request a reconsideration of the determination of neglect. The commissioner  
11.24 of human services or the commissioner of health shall mail a notice to the last known  
11.25 address of individuals who are eligible to seek this reconsideration. The request for  
11.26 reconsideration must state how the established findings no longer meet the elements of  
11.27 the definition of neglect. The commissioner shall review the request for reconsideration  
11.28 and make a determination within 15 calendar days. The commissioner's decision on this  
11.29 reconsideration is the final agency action.

11.30 (1) For purposes of compliance with the data destruction schedule under subdivision  
11.31 12b, paragraph (d), when a finding of substantiated maltreatment has been changed as  
11.32 a result of a reconsideration under this paragraph, the date of the original finding of a  
11.33 substantiated maltreatment must be used to calculate the destruction date.

11.34 (2) For purposes of any background studies under chapter 245C, when a  
11.35 determination of substantiated maltreatment has been changed as a result of a  
11.36 reconsideration under this paragraph, any prior disqualification of the individual under

12.1 chapter 245C that was based on this determination of maltreatment shall be rescinded,  
12.2 and for future background studies under chapter 245C the commissioner must not use the  
12.3 previous determination of substantiated maltreatment as a basis for disqualification or as a  
12.4 basis for referring the individual's maltreatment history to a health-related licensing board  
12.5 under section 245C.31.

12.6 **ARTICLE 2**

12.7 **PUBLIC SAFETY**

12.8 Section 1. Minnesota Statutes 2009 Supplement, section 245C.24, subdivision 2, is  
12.9 amended to read:

12.10 Subd. 2. **Permanent bar to set aside a disqualification.** (a) Except as otherwise  
12.11 provided in ~~paragraph (b)~~ this subdivision, the commissioner may not set aside the  
12.12 disqualification of any individual disqualified pursuant to this chapter, regardless of how  
12.13 much time has passed, if the individual was disqualified for a crime or conduct listed in  
12.14 section 245C.15, subdivision 1.

12.15 (b) For an individual in the chemical dependency or corrections field who was  
12.16 disqualified for a crime or conduct listed under section 245C.15, subdivision 1, and whose  
12.17 disqualification was set aside prior to July 1, 2005, the commissioner must consider  
12.18 granting a variance pursuant to section 245C.30 for the license holder for a program  
12.19 dealing primarily with adults. A request for reconsideration evaluated under this paragraph  
12.20 must include a letter of recommendation from the license holder that was subject to the  
12.21 prior set-aside decision addressing the individual's quality of care to children or vulnerable  
12.22 adults and the circumstances of the individual's departure from that service.

12.23 (c) When a licensed foster care provider adopts an individual who had received  
12.24 foster care services from the provider for over six months, and the adopted individual is  
12.25 required to receive a background study under section 245C.03, subdivision 1, paragraph  
12.26 (a), clause (2) or (6), the commissioner may grant a variance to the license holder under  
12.27 section 245C.30 to permit the adopted individual with a permanent disqualification  
12.28 to remain affiliated with the license holder under the conditions of the variance when  
12.29 the variance is recommended by the county of responsibility for each of the remaining  
12.30 individuals in placement in the home and the licensing agency for the home.

12.31 (d) The commissioner shall consider granting a set aside under section 245C.22 or a  
12.32 variance under section 245C.30 to an individual who is now 21 years of age or older and  
12.33 who was disqualified for a crime or conduct listed under section 245C.15, subdivision 1,  
12.34 occurring while the individual was under the age of 18. This paragraph does not apply to

13.1 individuals who were convicted of the disqualifying crime following certification under  
13.2 section 260B.125.

13.3 Sec. 2. Minnesota Statutes 2008, section 609A.02, subdivision 2, is amended to read:

13.4 Subd. 2. **Offenses committed by juveniles** ~~prosecuted as adults~~. A petition for  
13.5 the sealing of ~~a conviction record~~ any type of delinquency or criminal record relating to a  
13.6 juvenile matter may be filed under section 609A.03 by a person who has ~~been committed~~  
13.7 ~~to the custody of the commissioner of corrections upon conviction of a crime following~~  
13.8 ~~certification to district court under section 260B.125, if the person successfully completed~~  
13.9 the terms of the person's disposition or sentence and who is no longer under correctional  
13.10 supervision for the offense, if:

13.11 (1) ~~is finally discharged by the commissioner, or~~ the person received a disposition  
13.12 under section 260B.198, regardless of whether the person was adjudicated delinquent;

13.13 (2) ~~has been placed on probation by the court under section 609.135 and has been~~  
13.14 ~~discharged from probation after satisfactory fulfillment of it~~ the matter was designated  
13.15 an extended jurisdiction juvenile prosecution under section 260B.130 and the person's  
13.16 adult sentence was never executed;

13.17 (3) the matter was designated an extended jurisdiction juvenile prosecution under  
13.18 section 260B.130 and the person's adult sentence was subsequently executed; or

13.19 (4) the matter was certified for adult prosecution under section 260B.125.

13.20 Sec. 3. Minnesota Statutes 2008, section 609A.03, subdivision 1, is amended to read:

13.21 Subdivision 1. **Petition; filing fee.** An individual who is the subject of a criminal  
13.22 record who is seeking the expungement of the record shall file a petition under this section  
13.23 and pay a filing fee in the amount required under section 357.021, subdivision 2, clause  
13.24 (1). The filing fee may be waived in cases of indigency and shall be waived in the cases  
13.25 described in section 609A.02, subdivision 2, clause (1) or (2), and subdivision 3.

13.26 Sec. 4. Minnesota Statutes 2008, section 609A.03, subdivision 2, is amended to read:

13.27 Subd. 2. **Contents of petition.** (a) A petition for expungement shall be signed under  
13.28 oath by the petitioner and shall state the following:

13.29 (1) the petitioner's full name and all other legal names or aliases by which the  
13.30 petitioner has been known at any time;

13.31 (2) the petitioner's date of birth;

13.32 (3) all of the petitioner's addresses from the date of the offense or alleged offense in  
13.33 connection with which an expungement order is sought, to the date of the petition;

14.1 (4) why expungement is sought, if it is for employment or licensure purposes, the  
14.2 statutory or other legal authority under which it is sought, and why it should be granted;

14.3 (5) the details of the offense or arrest for which expungement is sought, including  
14.4 the date and jurisdiction of the occurrence, either the names of any victims or that there  
14.5 were no identifiable victims, whether there is a current order for protection, restraining  
14.6 order, or other no contact order prohibiting the petitioner from contacting the victims or  
14.7 whether there has ever been a prior order for protection or restraining order prohibiting the  
14.8 petitioner from contacting the victims, the court file number, and the date of conviction  
14.9 or of dismissal;

14.10 (6) in the case of a conviction or adjudication delinquency record, what steps the  
14.11 petitioner has taken since the time of the offense toward personal rehabilitation, including  
14.12 treatment, work, or other personal history that demonstrates rehabilitation;

14.13 (7) petitioner's criminal conviction and adjudication delinquency record indicating  
14.14 all convictions and adjudication findings of delinquency for misdemeanors, gross  
14.15 misdemeanors, or felonies in this state, and for all comparable convictions and adjudication  
14.16 findings of delinquency in any other state, federal court, or foreign country, whether the  
14.17 convictions or adjudication findings of delinquency occurred before or after the arrest ~~or~~  
14.18 conviction, or adjudication finding of delinquency for which expungement is sought;

14.19 (8) petitioner's criminal charges record indicating all prior and pending criminal  
14.20 charges against the petitioner in this state or another jurisdiction, including all criminal  
14.21 charges that have been continued for dismissal or stayed for adjudication, or have been the  
14.22 subject of pretrial diversion; and

14.23 (9) all prior requests by the petitioner, whether for the present offense or for any  
14.24 other offenses, in this state or any other state or federal court, for pardon, return of arrest  
14.25 records, or expungement or sealing of a criminal record, whether granted or not, and all  
14.26 stays of adjudication or imposition of sentence involving the petitioner.

14.27 (b) If there is a current order for protection, restraining order, or other no contact  
14.28 order prohibiting the petitioner from contacting the victims or there has ever been a prior  
14.29 order for protection or restraining order prohibiting the petitioner from contacting the  
14.30 victims, the petitioner shall attach a copy of the order to the petition.

14.31 Sec. 5. Minnesota Statutes 2008, section 609A.03, subdivision 4, is amended to read:

14.32 Subd. 4. **Hearing.** (a) A hearing on the petition shall be held no sooner than 60  
14.33 days after service of the petition. A victim of the offense for which expungement is  
14.34 sought has a right to submit an oral or written statement to the court at the time of the  
14.35 hearing describing the harm suffered by the victim as a result of the crime and the victim's

15.1 recommendation on whether expungement should be granted or denied. The judge shall  
15.2 consider the victim's statement when making a decision.

15.3 (b) The court shall exclude the general public from a hearing on a petition to  
15.4 expunge a record relating to a juvenile matter under section 609A.02, subdivision 2, and  
15.5 may admit only persons who the court determines have a direct interest in the case, unless  
15.6 the hearing on the underlying offense for which expungement is sought was open to the  
15.7 public under section 260B.163, subdivision 1, paragraph (c), or other law.

15.8 Sec. 6. Minnesota Statutes 2008, section 609A.03, subdivision 5, is amended to read:

15.9 Subd. 5. **Nature of remedy; standard; ~~firearms restriction~~.** (a) Except as  
15.10 otherwise provided by paragraph (b) or (c), expungement of a criminal or delinquency  
15.11 record is an extraordinary remedy to be granted only upon clear and convincing evidence  
15.12 that it would yield a benefit to the petitioner commensurate with the disadvantages to  
15.13 the public and public safety of:

15.14 (1) sealing the record; and

15.15 (2) burdening the court and public authorities to issue, enforce, and monitor an  
15.16 expungement order.

15.17 (b) Except as otherwise provided by this paragraph, If the petitioner is petitioning  
15.18 for the sealing of a criminal or delinquency record under section 609A.02, subdivision  
15.19 3, the court shall grant the petition to seal the record unless the agency or jurisdiction  
15.20 whose records would be affected establishes by clear and convincing evidence that the  
15.21 interests of the public and public safety outweigh the disadvantages to the petitioner  
15.22 of not sealing the record.

15.23 (c) If the petitioner is petitioning for the sealing of a criminal or delinquency record  
15.24 under section 609A.02, subdivision 2, clause (1) or (2), the court shall grant the petition  
15.25 to seal the record unless the agency or jurisdiction whose records would be affected  
15.26 establishes by clear and convincing evidence that the interests of the public and public  
15.27 safety outweigh the disadvantages to the petitioner of not sealing the record.

15.28 (d) If the court issues an expungement order it may require that the criminal or  
15.29 delinquency record be sealed, the existence of the record not be revealed, and the record  
15.30 not be opened except as required under subdivision 7. Records must not be destroyed or  
15.31 returned to the subject of the record.

15.32 Sec. 7. Minnesota Statutes 2008, section 609A.03, subdivision 5a, is amended to read:

15.33 Subd. 5a. **Order concerning crimes of violence.** An order expunging the record  
15.34 of a conviction or adjudication delinquency record for a crime of violence as defined

16.1 in section 624.712, subdivision 5, must provide that the person is not entitled to ship,  
16.2 transport, possess, or receive a firearm for the remainder of the person's lifetime. Any  
16.3 person whose record of conviction or adjudication delinquency record is expunged under  
16.4 this section and who thereafter receives a relief of disability under United States Code,  
16.5 title 18, section 925, or whose ability to possess firearms has been restored under section  
16.6 609.165, subdivision 1d, is not subject to the restriction in this subdivision.

16.7 Sec. 8. Minnesota Statutes 2008, section 609A.03, subdivision 7, is amended to read:

16.8 Subd. 7. **Limitations of order.** (a) Upon issuance of an expungement order related  
16.9 to a charge supported by probable cause, the DNA samples and DNA records held by  
16.10 the Bureau of Criminal Apprehension and collected under authority other than section  
16.11 299C.105, shall not be sealed, returned to the subject of the record, or destroyed.

16.12 (b) Notwithstanding the issuance of an expungement order:

16.13 (1) an expunged record may be opened for purposes of a criminal investigation,  
16.14 prosecution, or sentencing, upon an ex parte court order;

16.15 (2) an expunged record of a conviction or adjudication delinquency proceeding may  
16.16 be opened for purposes of evaluating a prospective employee in a criminal justice agency  
16.17 without a court order; and

16.18 (3) an expunged record of a conviction or adjudication delinquency proceeding may  
16.19 be opened for purposes of a background study under section 245C.08 unless the court  
16.20 order for expungement is directed specifically to the commissioner of human services.

16.21 Upon request by law enforcement, prosecution, or corrections authorities, an agency  
16.22 or jurisdiction subject to an expungement order shall inform the requester of the existence  
16.23 of a sealed record and of the right to obtain access to it as provided by this paragraph. For  
16.24 purposes of this section, a "criminal justice agency" means courts or a government agency  
16.25 that performs the administration of criminal justice under statutory authority.