

1.1 A bill for an act

1.2 relating to human services; making changes to licensing provisions; modifying
1.3 background study requirements, disqualifications, and data classification;
1.4 making changes to juvenile proceedings; modifying juvenile records and
1.5 offenses; allowing a set aside or variance to disqualification; requiring child care
1.6 centers to develop risk management plans; amending Minnesota Statutes 2008,
1.7 sections 144A.071, subdivision 4c; 245A.07, subdivision 2a; 245A.30; 245A.66;
1.8 245B.05, subdivision 7; 245C.02, subdivision 18; 609A.02, subdivision 2;
1.9 609A.03, subdivisions 1, 2, 4, 5, 5a, 7; Minnesota Statutes 2009 Supplement,
1.10 sections 245A.03, subdivision 2; 245A.04, subdivisions 5, 7; 245A.07,
1.11 subdivisions 1, 3; 245A.144; 245A.50, subdivision 5; 245C.15, subdivision 2;
1.12 245C.20; 245C.22, subdivision 7; 245C.24, subdivision 2; 626.556, subdivisions
1.13 2, 10e; repealing Minnesota Rules, part 2500.5000.

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

1.15 **ARTICLE 1**

1.16 **LICENSING**

1.17 Section 1. Minnesota Statutes 2008, section 144A.071, subdivision 4c, is amended to
1.18 read:

1.19 Subd. 4c. **Exceptions for replacement beds after June 30, 2003.** (a) The
1.20 commissioner of health, in coordination with the commissioner of human services, may
1.21 approve the renovation, replacement, upgrading, or relocation of a nursing home or
1.22 boarding care home, under the following conditions:

1.23 (1) to license and certify an 80-bed city-owned facility in Nicollet County to be
1.24 constructed on the site of a new city-owned hospital to replace an existing 85-bed facility
1.25 attached to a hospital that is also being replaced. The threshold allowed for this project
1.26 under section 144A.073 shall be the maximum amount available to pay the additional
1.27 medical assistance costs of the new facility;

2.1 (2) to license and certify 29 beds to be added to an existing 69-bed facility in St.
2.2 Louis County, provided that the 29 beds must be transferred from active or layaway status
2.3 at an existing facility in St. Louis County that had 235 beds on April 1, 2003.

2.4 The licensed capacity at the 235-bed facility must be reduced to 206 beds, but the payment
2.5 rate at that facility shall not be adjusted as a result of this transfer. The operating payment
2.6 rate of the facility adding beds after completion of this project shall be the same as it was
2.7 on the day prior to the day the beds are licensed and certified. This project shall not
2.8 proceed unless it is approved and financed under the provisions of section 144A.073;

2.9 (3) to license and certify a new 60-bed facility in Austin, provided that: (i) 45 of
2.10 the new beds are transferred from a 45-bed facility in Austin under common ownership
2.11 that is closed and 15 of the new beds are transferred from a 182-bed facility in Albert Lea
2.12 under common ownership; (ii) the commissioner of human services is authorized by the
2.13 2004 legislature to negotiate budget-neutral planned nursing facility closures; and (iii)
2.14 money is available from planned closures of facilities under common ownership to make
2.15 implementation of this clause budget-neutral to the state. The bed capacity of the Albert
2.16 Lea facility shall be reduced to 167 beds following the transfer. Of the 60 beds at the
2.17 new facility, 20 beds shall be used for a special care unit for persons with Alzheimer's
2.18 disease or related dementias;

2.19 (4) to license and certify up to 80 beds transferred from an existing state-owned
2.20 nursing facility in Cass County to a new facility located on the grounds of the
2.21 Ah-Gwah-Ching campus. The operating cost payment rates for the new facility shall be
2.22 determined based on the interim and settle-up payment provisions of Minnesota Rules,
2.23 part 9549.0057, and the reimbursement provisions of section 256B.431. The property
2.24 payment rate for the first three years of operation shall be \$35 per day. For subsequent
2.25 years, the property payment rate of \$35 per day shall be adjusted for inflation as provided
2.26 in section 256B.434, subdivision 4, paragraph (c), as long as the facility has a contract
2.27 under section 256B.434; ~~and~~

2.28 (5) to initiate a pilot program to license and certify up to 80 beds transferred from
2.29 an existing county-owned nursing facility in Steele County relocated to the site of a new
2.30 acute care facility as part of the county's Communities for a Lifetime comprehensive plan
2.31 to create innovative responses to the aging of its population. Upon relocation to the new
2.32 site, the nursing facility shall delicense 28 beds. The property payment rate for the first
2.33 three years of operation of the new facility shall be increased by an amount as calculated
2.34 according to items (i) to (v):

3.1 (i) compute the estimated decrease in medical assistance residents served by the
3.2 nursing facility by multiplying the decrease in licensed beds by the historical percentage
3.3 of medical assistance resident days;

3.4 (ii) compute the annual savings to the medical assistance program from the
3.5 delicensure of 28 beds by multiplying the anticipated decrease in medical assistance
3.6 residents, determined in item (i), by the existing facility's weighted average payment rate
3.7 multiplied by 365;

3.8 (iii) compute the anticipated annual costs for community-based services by
3.9 multiplying the anticipated decrease in medical assistance residents served by the nursing
3.10 facility, determined in item (i), by the average monthly elderly waiver service costs for
3.11 individuals in Steele County multiplied by 12;

3.12 (iv) subtract the amount in item (iii) from the amount in item (ii);

3.13 (v) divide the amount in item (iv) by an amount equal to the relocated nursing
3.14 facility's occupancy factor under section 256B.431, subdivision 3f, paragraph (c),
3.15 multiplied by the historical percentage of medical assistance resident days.

3.16 For subsequent years, the adjusted property payment rate shall be adjusted for
3.17 inflation as provided in section 256B.434, subdivision 4, paragraph (c), as long as the
3.18 facility has a contract under section 256B.434-; and

3.19 (6) to consolidate and relocate nursing facility beds to a new site in Goodhue County
3.20 and to integrate these services with other community-based programs and services under a
3.21 communities for a lifetime pilot program and comprehensive plan to create innovative
3.22 responses to the aging of its population. Eighty beds in the city of Red Wing shall be
3.23 transferred from the downsizing and relocation of an existing 84-bed, hospital-owned
3.24 nursing facility and the entire closure or downsizing of beds from a 65-bed nonprofit
3.25 nursing facility in the community resulting in the delicensure of 69 beds in the two
3.26 existing facilities. Notwithstanding the carryforward of the approval authority in section
3.27 144A.073, subdivision 11, the funding approved in April 2009 by the commissioner of
3.28 health for a project in Goodhue County shall not carry forward. The closure of the 69 beds
3.29 shall not be eligible for a planned closure rate adjustment under section 256B.437. The
3.30 construction project permitted in this clause shall not be eligible for a threshold project
3.31 rate adjustment under section 256B.434, subdivision 4f. The property payment rate for
3.32 the first three years of operation of the new facility shall be increased by an amount as
3.33 calculated according to items (i) to (vi):

3.34 (i) compute the estimated decrease in medical assistance residents served by both
3.35 nursing facilities by multiplying the difference between the occupied beds of the two
3.36 nursing facilities for the reporting year ending September 30, 2009, and the projected

4.1 occupancy of the facility at 95 percent occupancy by the historical percentage of medical
4.2 assistance resident days;

4.3 (ii) compute the annual savings to the medical assistance program from the
4.4 delicensure by multiplying the anticipated decrease in the medical assistance residents,
4.5 determined in item (i), by the hospital-owned nursing facility weighted average payment
4.6 rate multiplied by 365;

4.7 (iii) compute the anticipated annual costs for community-based services by
4.8 multiplying the anticipated decrease in medical assistance residents served by the
4.9 facilities, determined in item (i), by the average monthly elderly waiver service costs for
4.10 individuals in Goodhue County multiplied by 12;

4.11 (iv) subtract the amount in item (iii) from the amount in item (ii);

4.12 (v) multiply the amount in item (iv) by 57 percent; and

4.13 (vi) divide the difference of the amount in item (iv) and the amount in item (v) by an
4.14 amount equal to the relocated nursing facility's occupancy factor under section 256B.431,
4.15 subdivision 3f, paragraph (c), multiplied by the historical percentage of medical assistance
4.16 resident days.

4.17 For subsequent years, the adjusted property payment rate shall be adjusted for
4.18 inflation as provided in section 256B.434, subdivision 4, paragraph (c), as long as the
4.19 facility has a contract under section 256B.434.

4.20 (b) Projects approved under this subdivision shall be treated in a manner equivalent
4.21 to projects approved under subdivision 4a.

4.22 Sec. 2. Minnesota Statutes 2009 Supplement, section 245A.03, subdivision 2, is
4.23 amended to read:

4.24 Subd. 2. **Exclusion from licensure.** (a) This chapter does not apply to:

4.25 (1) residential or nonresidential programs that are provided to a person by an
4.26 individual who is related unless the residential program is a child foster care placement
4.27 made by a local social services agency or a licensed child-placing agency, except as
4.28 provided in subdivision 2a;

4.29 (2) nonresidential programs that are provided by an unrelated individual to persons
4.30 from a single related family;

4.31 (3) residential or nonresidential programs that are provided to adults who do
4.32 not abuse chemicals or who do not have a chemical dependency, a mental illness, a
4.33 developmental disability, a functional impairment, or a physical disability;

4.34 (4) sheltered workshops or work activity programs that are certified by the
4.35 commissioner of employment and economic development;

- 5.1 (5) programs operated by a public school for children 33 months or older;
- 5.2 (6) nonresidential programs primarily for children that provide care or supervision
5.3 for periods of less than three hours a day while the child's parent or legal guardian is in
5.4 the same building as the nonresidential program or present within another building that is
5.5 directly contiguous to the building in which the nonresidential program is located;
- 5.6 (7) nursing homes or hospitals licensed by the commissioner of health except as
5.7 specified under section 245A.02;
- 5.8 (8) board and lodge facilities licensed by the commissioner of health that do not
5.9 ~~provide services for five or more persons whose primary diagnosis is mental illness that do~~
5.10 ~~not provide intensive residential treatment~~ children's residential services under Minnesota
5.11 Rules, chapter 2960, mental health or chemical dependency treatment;
- 5.12 (9) homes providing programs for persons placed by a county or a licensed agency
5.13 for legal adoption, unless the adoption is not completed within two years;
- 5.14 (10) programs licensed by the commissioner of corrections;
- 5.15 (11) recreation programs for children or adults that are operated or approved by a
5.16 park and recreation board whose primary purpose is to provide social and recreational
5.17 activities;
- 5.18 (12) programs operated by a school as defined in section 120A.22, subdivision 4;
5.19 YMCA as defined in section 315.44; YWCA as defined in section 315.44; or JCC as
5.20 defined in section 315.51, whose primary purpose is to provide child care or services to
5.21 school-age children;
- 5.22 (13) Head Start nonresidential programs which operate for less than 45 days in
5.23 each calendar year;
- 5.24 (14) noncertified boarding care homes unless they provide services for five or more
5.25 persons whose primary diagnosis is mental illness or a developmental disability;
- 5.26 (15) programs for children such as scouting, boys clubs, girls clubs, and sports and
5.27 art programs, and nonresidential programs for children provided for a cumulative total of
5.28 less than 30 days in any 12-month period;
- 5.29 (16) residential programs for persons with mental illness, that are located in hospitals;
- 5.30 (17) the religious instruction of school-age children; Sabbath or Sunday schools; or
5.31 the congregate care of children by a church, congregation, or religious society during the
5.32 period used by the church, congregation, or religious society for its regular worship;
- 5.33 (18) camps licensed by the commissioner of health under Minnesota Rules, chapter
5.34 4630;
- 5.35 (19) mental health outpatient services for adults with mental illness or children
5.36 with emotional disturbance;

6.1 (20) residential programs serving school-age children whose sole purpose is cultural
6.2 or educational exchange, until the commissioner adopts appropriate rules;

6.3 (21) unrelated individuals who provide out-of-home respite care services to persons
6.4 with developmental disabilities from a single related family for no more than 90 days in a
6.5 12-month period and the respite care services are for the temporary relief of the person's
6.6 family or legal representative;

6.7 (22) respite care services provided as a home and community-based service to a
6.8 person with a developmental disability, in the person's primary residence;

6.9 (23) community support services programs as defined in section 245.462, subdivision
6.10 6, and family community support services as defined in section 245.4871, subdivision 17;

6.11 (24) the placement of a child by a birth parent or legal guardian in a preadoptive
6.12 home for purposes of adoption as authorized by section 259.47;

6.13 (25) settings registered under chapter 144D which provide home care services
6.14 licensed by the commissioner of health to fewer than seven adults;

6.15 (26) chemical dependency or substance abuse treatment activities of licensed
6.16 professionals in private practice as defined in Minnesota Rules, part 9530.6405, subpart
6.17 15, when the treatment activities are not paid for by the consolidated chemical dependency
6.18 treatment fund;

6.19 (27) consumer-directed community support service funded under the Medicaid
6.20 waiver for persons with developmental disabilities when the individual who provided
6.21 the service is:

6.22 (i) the same individual who is the direct payee of these specific waiver funds or paid
6.23 by a fiscal agent, fiscal intermediary, or employer of record; and

6.24 (ii) not otherwise under the control of a residential or nonresidential program that is
6.25 required to be licensed under this chapter when providing the service; or

6.26 (28) a program serving only children who are age 33 months or older, that is
6.27 operated by a nonpublic school, for no more than four hours per day per child, with no
6.28 more than 20 children at any one time, and that is accredited by:

6.29 (i) an accrediting agency that is formally recognized by the commissioner of
6.30 education as a nonpublic school accrediting organization; or

6.31 (ii) an accrediting agency that requires background studies and that receives and
6.32 investigates complaints about the services provided.

6.33 A program that asserts its exemption from licensure under item (ii) shall, upon
6.34 request from the commissioner, provide the commissioner with documentation from the
6.35 accrediting agency that verifies: that the accreditation is current; that the accrediting

7.1 agency investigates complaints about services; and that the accrediting agency's standards
7.2 require background studies on all people providing direct contact services.

7.3 (b) For purposes of paragraph (a), clause (6), a building is directly contiguous to a
7.4 building in which a nonresidential program is located if it shares a common wall with the
7.5 building in which the nonresidential program is located or is attached to that building by
7.6 skyway, tunnel, atrium, or common roof.

7.7 (c) Nothing in this chapter shall be construed to require licensure for any services
7.8 provided and funded according to an approved federal waiver plan where licensure is
7.9 specifically identified as not being a condition for the services and funding.

7.10 Sec. 3. Minnesota Statutes 2009 Supplement, section 245A.04, subdivision 5, is
7.11 amended to read:

7.12 Subd. 5. **Commissioner's right of access.** When the commissioner is exercising
7.13 the powers conferred by this chapter and sections 245.69, 626.556, and 626.557, the
7.14 commissioner must be given access to the physical plant and grounds where the program
7.15 is provided, documents and records, including records maintained in electronic format,
7.16 persons served by the program, and staff whenever the program is in operation and the
7.17 information is relevant to inspections or investigations conducted by the commissioner.
7.18 The commissioner must be given access without prior notice and as often as the
7.19 commissioner considers necessary if the commissioner is ~~conducting an investigation~~
7.20 ~~of allegations of~~ investigating alleged maltreatment ~~or other~~, conducting a licensing
7.21 inspection, or investigating an alleged violation of applicable laws or rules. In conducting
7.22 inspections, the commissioner may request and shall receive assistance from other state,
7.23 county, and municipal governmental agencies and departments. The applicant or license
7.24 holder shall allow the commissioner to photocopy, photograph, and make audio and video
7.25 tape recordings during the inspection of the program at the commissioner's expense. The
7.26 commissioner shall obtain a court order or the consent of the subject of the records or the
7.27 parents or legal guardian of the subject before photocopying hospital medical records.

7.28 Persons served by the program have the right to refuse to consent to be interviewed,
7.29 photographed, or audio or videotaped. Failure or refusal of an applicant or license holder
7.30 to fully comply with this subdivision is reasonable cause for the commissioner to deny the
7.31 application or immediately suspend or revoke the license.

7.32 Sec. 4. Minnesota Statutes 2009 Supplement, section 245A.04, subdivision 7, is
7.33 amended to read:

8.1 Subd. 7. **Grant of license; license extension.** (a) If the commissioner determines
8.2 that the program complies with all applicable rules and laws, the commissioner shall issue
8.3 a license. At minimum, the license shall state:

8.4 (1) the name of the license holder;

8.5 (2) the address of the program;

8.6 (3) the effective date and expiration date of the license;

8.7 (4) the type of license;

8.8 (5) the maximum number and ages of persons that may receive services from the
8.9 program; and

8.10 (6) any special conditions of licensure.

8.11 (b) The commissioner may issue an initial license for a period not to exceed two
8.12 years if:

8.13 (1) the commissioner is unable to conduct the evaluation or observation required
8.14 by subdivision 4, paragraph (a), clauses (3) and (4), because the program is not yet
8.15 operational;

8.16 (2) certain records and documents are not available because persons are not yet
8.17 receiving services from the program; and

8.18 (3) the applicant complies with applicable laws and rules in all other respects.

8.19 (c) A decision by the commissioner to issue a license does not guarantee that any
8.20 person or persons will be placed or cared for in the licensed program. A license shall not
8.21 be transferable to another individual, corporation, partnership, voluntary association, other
8.22 organization, or controlling individual or to another location.

8.23 (d) A license holder must notify the commissioner and obtain the commissioner's
8.24 approval before making any changes that would alter the license information listed under
8.25 paragraph (a).

8.26 (e) Except as provided in paragraphs (g) and (h), the commissioner shall not issue or
8.27 reissue a license if the applicant, license holder, or controlling individual has:

8.28 (1) been disqualified and the disqualification was not set aside and no variance has
8.29 been granted;

8.30 (2) has been denied a license within the past two years;

8.31 (3) had a license revoked within the past five years; or

8.32 (4) has an outstanding debt related to a license fee, licensing fine, or settlement
8.33 agreement for which payment is delinquent.

8.34 When a license is revoked under clause (1) or (3), the license holder and controlling
8.35 individual may not hold any license under chapter 245A or 245B for five years following

9.1 the revocation, and other licenses held by the applicant, license holder, or controlling
9.2 individual shall also be revoked.

9.3 (f) The commissioner shall not issue or reissue a license if an individual living in
9.4 the household where the licensed services will be provided as specified under section
9.5 245C.03, subdivision 1, has been disqualified and the disqualification has not been set
9.6 aside and no variance has been granted.

9.7 (g) Pursuant to section 245A.07, subdivision 1, paragraph (b), when a license has
9.8 been suspended or revoked and the suspension or revocation is under appeal, the program
9.9 may continue to operate pending a final order from the commissioner. If the license under
9.10 suspension or revocation will expire before a final order is issued, a temporary provisional
9.11 license may be issued provided any applicable license fee is paid before the temporary
9.12 provisional license is issued.

9.13 (h) Notwithstanding paragraph (g), when a revocation is based on the disqualification
9.14 of a controlling individual or license holder, and the controlling individual or license holder
9.15 is ordered under section 245C.17 to be immediately removed from direct contact with
9.16 persons receiving services or is ordered to be under continuous, direct supervision when
9.17 providing direct contact services, the program may continue to operate only if the program
9.18 complies with the order and submits documentation demonstrating compliance with the
9.19 order. If the disqualified individual fails to submit a timely request for reconsideration, or
9.20 if the disqualification is not set aside and no variance is granted, the order to immediately
9.21 remove the individual from direct contact or to be under continuous, direct supervision
9.22 remains in effect pending the outcome of a hearing and final order from the commissioner.

9.23 ~~(g)~~ (i) For purposes of reimbursement for meals only, under the Child and Adult Care
9.24 Food Program, Code of Federal Regulations, title 7, subtitle B, chapter II, subchapter A,
9.25 part 226, relocation within the same county by a licensed family day care provider, shall
9.26 be considered an extension of the license for a period of no more than 30 calendar days or
9.27 until the new license is issued, whichever occurs first, provided the county agency has
9.28 determined the family day care provider meets licensure requirements at the new location.

9.29 ~~(h)~~ (j) Unless otherwise specified by statute, all licenses expire at 12:01 a.m. on the
9.30 day after the expiration date stated on the license. A license holder must apply for and
9.31 be granted a new license to operate the program or the program must not be operated
9.32 after the expiration date.

9.33 (k) The commissioner shall not issue or reissue a license if it has been determined that
9.34 a tribal licensing authority has established jurisdiction to license the program or service.

9.35 **EFFECTIVE DATE.** This section is effective the day following final enactment.

10.1 Sec. 5. Minnesota Statutes 2009 Supplement, section 245A.07, subdivision 1, is
10.2 amended to read:

10.3 Subdivision 1. **Sanctions; appeals; license.** (a) In addition to making a license
10.4 conditional under section 245A.06, the commissioner may suspend or revoke the license,
10.5 impose a fine, or secure an injunction against the continuing operation of the program of a
10.6 license holder who does not comply with applicable law or rule. When applying sanctions
10.7 authorized under this section, the commissioner shall consider the nature, chronicity, or
10.8 severity of the violation of law or rule and the effect of the violation on the health, safety,
10.9 or rights of persons served by the program.

10.10 (b) If a license holder appeals the suspension or revocation of a license and the
10.11 license holder continues to operate the program pending a final order on the appeal, ~~and~~
10.12 ~~the license expires during this time period,~~ the commissioner shall issue the license holder
10.13 a temporary provisional license. ~~The temporary provisional license is effective on the date~~
10.14 ~~issued and expires on the date that a final order is issued.~~ Unless otherwise specified by the
10.15 commissioner, variances in effect on the date of the license sanction under appeal continue
10.16 under the temporary provisional license. If a license holder fails to comply with applicable
10.17 law or rule while operating under a temporary provisional license, the commissioner may
10.18 impose additional sanctions under this section and section 245A.06, and may terminate
10.19 any prior variance. ~~If the license holder prevails on the appeal and the effective period~~
10.20 ~~of the previous license has expired~~ a temporary provisional license is set to expire, a
10.21 new temporary provisional license shall be issued to the license holder upon payment of
10.22 any fee required under section 245A.10. ~~The effective date of the new license shall be~~
10.23 ~~retroactive to the date the license would have shown had no sanction been initiated. The~~
10.24 ~~expiration date shall be the expiration date of that license had no license sanction been~~
10.25 ~~initiated.~~ The temporary provisional license shall expire on the date the final order is
10.26 issued. If the license holder prevails on the appeal, a new nonprovisional license shall
10.27 be issued for the remainder of the current license period.

10.28 (c) If a license holder is under investigation and the license is due to expire
10.29 before completion of the investigation, the program shall be issued a new license upon
10.30 completion of the reapplication requirements and payment of any applicable license fee.
10.31 Upon completion of the investigation, a licensing sanction may be imposed against the
10.32 new license under this section, section 245A.06, or 245A.08.

10.33 (d) Failure to reapply or closure of a license by the license holder prior to the
10.34 completion of any investigation shall not preclude the commissioner from issuing a
10.35 licensing sanction under this section, section 245A.06, or 245A.08 at the conclusion
10.36 of the investigation.

11.1 Sec. 6. Minnesota Statutes 2008, section 245A.07, subdivision 2a, is amended to read:

11.2 Subd. 2a. **Immediate suspension expedited hearing.** (a) Within five working days
11.3 of receipt of the license holder's timely appeal, the commissioner shall request assignment
11.4 of an administrative law judge. The request must include a proposed date, time, and place
11.5 of a hearing. A hearing must be conducted by an administrative law judge within 30
11.6 calendar days of the request for assignment, unless an extension is requested by either
11.7 party and granted by the administrative law judge for good cause. The commissioner shall
11.8 issue a notice of hearing by certified mail or personal service at least ten working days
11.9 before the hearing. The scope of the hearing shall be limited solely to the issue of whether
11.10 the temporary immediate suspension should remain in effect pending the commissioner's
11.11 final order under section 245A.08, regarding a licensing sanction issued under subdivision
11.12 3 following the immediate suspension. The burden of proof in expedited hearings under
11.13 this subdivision shall be limited to the commissioner's demonstration that reasonable
11.14 cause exists to believe that the license holder's actions or failure to comply with applicable
11.15 law or rule poses, or if the actions of other individuals or conditions in the program poses
11.16 an imminent risk of harm to the health, safety, or rights of persons served by the program.
11.17 "Reasonable cause" means there exist specific articulable facts or circumstances which
11.18 provide the commissioner with a reasonable suspicion that there is an imminent risk of
11.19 harm to the health, safety, or rights of persons served by the program.

11.20 (b) The administrative law judge shall issue findings of fact, conclusions, and a
11.21 recommendation within ten working days from the date of hearing. The parties shall have
11.22 ten calendar days to submit exceptions to the administrative law judge's report. The
11.23 record shall close at the end of the ten-day period for submission of exceptions. The
11.24 commissioner's final order shall be issued within ten working days from the close of the
11.25 record. Within 90 calendar days after a final order affirming an immediate suspension, the
11.26 commissioner shall make a determination regarding whether a final licensing sanction
11.27 shall be issued under subdivision 3. The license holder shall continue to be prohibited
11.28 from operation of the program during this 90-day period.

11.29 (c) When the final order under paragraph (b) affirms an immediate suspension, and a
11.30 final licensing sanction is issued under subdivision 3 and the license holder appeals that
11.31 sanction, the license holder continues to be prohibited from operation of the program
11.32 pending a final commissioner's order under section 245A.08, subdivision 5, regarding the
11.33 final licensing sanction.

11.34 **EFFECTIVE DATE.** This section is effective the day following final enactment.

12.1 Sec. 7. Minnesota Statutes 2009 Supplement, section 245A.07, subdivision 3, is
12.2 amended to read:

12.3 Subd. 3. **License suspension, revocation, or fine.** (a) The commissioner may
12.4 suspend or revoke a license, or impose a fine if a license holder fails to comply fully with
12.5 applicable laws or rules, if a license holder, a controlling individual, or an individual
12.6 living in the household where the licensed services are provided or is otherwise subject
12.7 to a background study has a disqualification which has not been set aside under section
12.8 245C.22, or if a license holder knowingly withholds relevant information from or gives
12.9 false or misleading information to the commissioner in connection with an application
12.10 for a license, in connection with the background study status of an individual, during an
12.11 investigation, or regarding compliance with applicable laws or rules. A license holder
12.12 who has had a license suspended, revoked, or has been ordered to pay a fine must be
12.13 given notice of the action by certified mail or personal service. If mailed, the notice
12.14 must be mailed to the address shown on the application or the last known address of the
12.15 license holder. The notice must state the reasons the license was suspended, revoked, or
12.16 a fine was ordered.

12.17 (b) If the license was suspended or revoked, the notice must inform the license
12.18 holder of the right to a contested case hearing under chapter 14 and Minnesota Rules, parts
12.19 1400.8505 to 1400.8612. The license holder may appeal an order suspending or revoking
12.20 a license. The appeal of an order suspending or revoking a license must be made in writing
12.21 by certified mail or personal service. If mailed, the appeal must be postmarked and sent to
12.22 the commissioner within ten calendar days after the license holder receives notice that the
12.23 license has been suspended or revoked. If a request is made by personal service, it must be
12.24 received by the commissioner within ten calendar days after the license holder received
12.25 the order. Except as provided in subdivision 2a, paragraph (c), if a license holder submits
12.26 a timely appeal of an order suspending or revoking a license, the license holder may
12.27 continue to operate the program as provided in section 245A.04, subdivision 7, paragraphs
12.28 (g) and (h), until the commissioner issues a final order on the suspension or revocation.

12.29 (c)(1) If the license holder was ordered to pay a fine, the notice must inform the
12.30 license holder of the responsibility for payment of fines and the right to a contested case
12.31 hearing under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. The appeal
12.32 of an order to pay a fine must be made in writing by certified mail or personal service. If
12.33 mailed, the appeal must be postmarked and sent to the commissioner within ten calendar
12.34 days after the license holder receives notice that the fine has been ordered. If a request is
12.35 made by personal service, it must be received by the commissioner within ten calendar
12.36 days after the license holder received the order.

13.1 (2) The license holder shall pay the fines assessed on or before the payment date
13.2 specified. If the license holder fails to fully comply with the order, the commissioner
13.3 may issue a second fine or suspend the license until the license holder complies. If the
13.4 license holder receives state funds, the state, county, or municipal agencies or departments
13.5 responsible for administering the funds shall withhold payments and recover any payments
13.6 made while the license is suspended for failure to pay a fine. A timely appeal shall stay
13.7 payment of the fine until the commissioner issues a final order.

13.8 (3) A license holder shall promptly notify the commissioner of human services,
13.9 in writing, when a violation specified in the order to forfeit a fine is corrected. If upon
13.10 reinspection the commissioner determines that a violation has not been corrected as
13.11 indicated by the order to forfeit a fine, the commissioner may issue a second fine. The
13.12 commissioner shall notify the license holder by certified mail or personal service that a
13.13 second fine has been assessed. The license holder may appeal the second fine as provided
13.14 under this subdivision.

13.15 (4) Fines shall be assessed as follows: the license holder shall forfeit \$1,000 for
13.16 each determination of maltreatment of a child under section 626.556 or the maltreatment
13.17 of a vulnerable adult under section 626.557 for which the license holder is determined
13.18 responsible for the maltreatment under section 626.556, subdivision 10e, paragraph (i),
13.19 or 626.557, subdivision 9c, paragraph (c); the license holder shall forfeit \$200 for each
13.20 occurrence of a violation of law or rule governing matters of health, safety, or supervision,
13.21 including but not limited to the provision of adequate staff-to-child or adult ratios, and
13.22 failure to comply with background study requirements under chapter 245C; and the license
13.23 holder shall forfeit \$100 for each occurrence of a violation of law or rule other than those
13.24 subject to a \$1,000 or \$200 fine above. For purposes of this section, "occurrence" means
13.25 each violation identified in the commissioner's fine order. Fines assessed against a license
13.26 holder that holds a license to provide the residential-based habilitation services, as defined
13.27 under section 245B.02, subdivision 20, and a license to provide foster care, may be
13.28 assessed against both licenses for the same occurrence, but the combined amount of the
13.29 fines shall not exceed the amount specified in this clause for that occurrence.

13.30 (5) When a fine has been assessed, the license holder may not avoid payment by
13.31 closing, selling, or otherwise transferring the licensed program to a third party. In such an
13.32 event, the license holder will be personally liable for payment. In the case of a corporation,
13.33 each controlling individual is personally and jointly liable for payment.

14.1 Sec. 8. Minnesota Statutes 2009 Supplement, section 245A.144, is amended to read:

14.2 **245A.144 SUDDEN INFANT DEATH AND SHAKEN BABY SYNDROME**
14.3 **FOR CHILD FOSTER CARE PROVIDERS.**

14.4 (a) Licensed child foster care providers that care for infants or children through five
14.5 years of age must document that before staff persons and caregivers assist in the care of
14.6 infants or children through five years of age, they are instructed on the standards in section
14.7 245A.1435 and receive training on reducing the risk of sudden infant death syndrome
14.8 and shaken baby syndrome for infants and young children. This section does not apply
14.9 to emergency relative ~~foster care~~ placement under section 245A.035. The training on
14.10 reducing the risk of sudden infant death syndrome and shaken baby syndrome may be
14.11 provided as:

14.12 (1) orientation training to child foster care providers, who care for infants or children
14.13 through five years of age, under Minnesota Rules, part 2960.3070, subpart 1; or

14.14 (2) in-service training to child foster care providers, who care for infants or children
14.15 through five years of age, under Minnesota Rules, part 2960.3070, subpart 2.

14.16 (b) Training required under this section must be at least one hour in length and must
14.17 be completed at least once every five years. At a minimum, the training must address the
14.18 risk factors related to sudden infant death syndrome and shaken baby syndrome, means
14.19 of reducing the risk of sudden infant death syndrome and shaken baby syndrome, and
14.20 license holder communication with parents regarding reducing the risk of sudden infant
14.21 death syndrome and shaken baby syndrome.

14.22 (c) Training for child foster care providers must be approved by the county or private
14.23 licensing agency and that is responsible for monitoring the child foster care provider
14.24 under section 245A.16. The approved training fulfills, in part, training required under
14.25 Minnesota Rules, part 2960.3070.

14.26 Sec. 9. Minnesota Statutes 2008, section 245A.30, is amended to read:

14.27 **245A.30 LICENSING PROHIBITION FOR CERTAIN JUVENILE**
14.28 **FACILITIES SERVING CHILDREN.**

14.29 The commissioner may not:

14.30 (1) issue any license under ~~Minnesota Rules, parts 9545.0905 to 9545.1125, this~~
14.31 chapter for the residential placement of juveniles children at a facility if the facility accepts
14.32 juveniles children who reside outside of Minnesota without an agreement with the entity
14.33 placing the juvenile child at the facility that obligates the entity to pay the educational and
14.34 medical expenses of the juvenile child; or

15.1 (2) renew a license under ~~Minnesota Rules, parts 9545.0905 to 9545.1125~~, this
15.2 chapter for the residential placement of juveniles children if the facility accepts juveniles
15.3 children who reside outside of Minnesota without an agreement with the entity placing the
15.4 juvenile child at the facility that obligates the entity to pay the educational and medical
15.5 expenses of the juvenile child.

15.6 Sec. 10. Minnesota Statutes 2009 Supplement, section 245A.50, subdivision 5, is
15.7 amended to read:

15.8 Subd. 5. **Sudden infant death syndrome and shaken baby syndrome training.**

15.9 (a) License holders must document that before staff persons, caregivers, and helpers
15.10 assist in the care of infants, they are instructed on the standards in section 245A.1435 and
15.11 receive training on reducing the risk of sudden infant death syndrome. In addition, license
15.12 holders must document that before staff persons, caregivers, and helpers assist in the care
15.13 of infants and children under school age, they receive training on reducing the risk of
15.14 shaken baby syndrome. The training in this subdivision may be provided as initial training
15.15 under subdivision 1 or ongoing annual training under subdivision 7.

15.16 (b) Sudden infant death syndrome reduction training required under this subdivision
15.17 must be at least one-half hour in length and must be completed at least once every five
15.18 years. At a minimum, the training must address the risk factors related to sudden infant
15.19 death syndrome, means of reducing the risk of sudden infant death syndrome in child
15.20 care, and license holder communication with parents regarding reducing the risk of
15.21 sudden infant death syndrome.

15.22 (c) Shaken baby syndrome training required under this subdivision must be at
15.23 least one-half hour in length and must be completed at least once every five years. At a
15.24 minimum, the training must address the risk factors related to shaken baby syndrome,
15.25 means of reducing the risk of shaken baby syndrome in child care, and license holder
15.26 communication with parents regarding reducing the risk of shaken baby syndrome.

15.27 (d) Training for family and group family child care providers must be approved
15.28 by the county licensing agency.

15.29 (e) The commissioner shall make available for viewing by all licensed child care
15.30 providers a video presentation on the dangers associated with shaking infants and young
15.31 children. The video presentation shall be part of the initial and ongoing annual training of
15.32 licensed child care providers, caregivers, and helpers caring for children under school age.
15.33 The commissioner shall provide to child care providers and interested individuals, at cost,
15.34 copies of a video approved by the commissioner of health under section 144.574 on the
15.35 dangers associated with shaking infants and young children.

16.1 Sec. 11. Minnesota Statutes 2008, section 245A.66, is amended to read:

16.2 **245A.66 REQUIREMENTS; MALTREATMENT OF MINORS.**

16.3 Subdivision 1. Internal review. Except for family child care settings and foster care
16.4 for children in the license holder's residence, license holders serving children shall:

16.5 (1) establish and maintain policies and procedures to ensure that an internal review
16.6 is completed and that corrective action is taken if necessary to protect the health and
16.7 safety of children in care when the facility has reason to know that an internal or external
16.8 report of alleged or suspected maltreatment has been made. The review must include
16.9 an evaluation of whether:

16.10 (i) related policies and procedures were followed;

16.11 (ii) the policies and procedures were adequate;

16.12 (iii) there is a need for additional staff training;

16.13 (iv) the reported event is similar to past events with the children or the services
16.14 involved; and

16.15 (v) there is a need for corrective action by the license holder to protect the health and
16.16 safety of children in care.

16.17 Based on the results of this review, the license holder must develop, document, and
16.18 implement a corrective action plan designed to correct current lapses and prevent future
16.19 lapses in performance by individuals or the license holder, if any;

16.20 (2) identify the primary and secondary person or position who will ensure that, when
16.21 required, internal reviews are completed. The secondary person shall be involved when
16.22 there is reason to believe that the primary person was involved in the alleged or suspected
16.23 maltreatment; and

16.24 (3) document that the internal review has been completed and provide documentation
16.25 showing the review was completed to the commissioner upon the commissioner's request.
16.26 The documentation provided to the commissioner by the license holder may consist of a
16.27 completed checklist that verifies completion of each of the requirements of the review.

16.28 Subd. 2. Child care centers; risk reduction plan. (a) Child care centers licensed
16.29 under this chapter and Minnesota Rules, chapter 9503, must develop a risk reduction plan
16.30 that assesses the general risks to children served by the child care center. The license
16.31 holder must establish procedures to minimize identified risks, train staff on the procedures,
16.32 and annually review the procedures.

16.33 (b) The risk reduction plan must include an assessment of risk to children the center
16.34 serves or intends to serve based on the following:

17.1 (1) an assessment of the risk presented by the vulnerability of the children served,
17.2 including an evaluation of the following factors: age, developmental functioning, and the
17.3 physical and emotional health of children the program serves or intends to serve;

17.4 (2) an assessment of the risks presented by the physical plant where the licensed
17.5 services are provided, including an evaluation of the following factors: the condition and
17.6 design of the facility and its outdoor space, bathrooms, storage areas and accessibility of
17.7 medications and cleaning products that are harmful to children when children are not
17.8 supervised, doors where finger pinching may occur, and the existence of areas that are
17.9 difficult to supervise; and

17.10 (3) an assessment of the risks presented by the environment for each facility and
17.11 for each site, including an evaluation of the following factors: the type of grounds and
17.12 terrain surrounding the building and the proximity to hazards, busy roads, and publicly
17.13 accessed businesses.

17.14 (c) The risk reduction plan must include a statement of measures that will be taken
17.15 to minimize the risk of harm presented to children. At a minimum, the risk reduction
17.16 plan must address the following:

17.17 (1) a general description of supervision, programming, and reference to the
17.18 policies and procedures developed and implemented to address the risks identified in the
17.19 assessment required under paragraph (b) related to the general population served, the
17.20 physical plant, and environment;

17.21 (2) in addition to any program-specific risks identified in paragraph (b), the plan
17.22 must include or refer to policies and procedures developed and implemented to minimize
17.23 the risk of harm or injury to children, including:

17.24 (i) closing children's fingers in doors, including cabinet doors;

17.25 (ii) leaving children in the community without supervision;

17.26 (iii) children leaving the facility without supervision;

17.27 (iv) caregiver dislocation of children's elbows;

17.28 (v) burns from hot food or beverages, whether served to children or being consumed
17.29 by caregivers, and the devices used to warm food and beverages;

17.30 (vi) injuries from equipment, such as scissors and glue guns;

17.31 (vii) sunburn;

17.32 (viii) feeding children foods to which they are allergic;

17.33 (ix) children falling from changing tables; and

17.34 (x) children accessing dangerous items or chemicals or coming into contact with
17.35 residue from harmful cleaning products; and

17.36 (3) the plan shall prohibit the accessibility of hazardous items to children.

18.1 Subd. 3. **Orientation to risk reduction plan and annual review of plan.** (a) The
18.2 license holder shall ensure that all mandated reporters, as defined in section 626.556,
18.3 subdivision 3, who are under the control of the license holder, receive an orientation to
18.4 the risk reduction plan prior to first providing unsupervised direct contact services, as
18.5 defined in section 245C.02, subdivision 11, to children, not to exceed 14 days from the
18.6 first supervised direct contact, and annually thereafter.

18.7 (b) The license holder must review the risk reduction plan annually. When
18.8 conducting the review, the license holder must consider incidents that have occurred in
18.9 the center since the last review, including:

18.10 (1) the assessment factors in the plan;

18.11 (2) the internal reviews conducted under this section, if any;

18.12 (3) substantiated maltreatment findings, if any; and

18.13 (4) incidents that caused injury or harm to a child, if any, that occurred since the
18.14 last review.

18.15 Following any change to the risk reduction plan, the license holder must inform mandated
18.16 reporters, under the control of the license holder, of the changes in the risk reduction plan.

18.17 Sec. 12. Minnesota Statutes 2008, section 245B.05, subdivision 7, is amended to read:

18.18 **Subd. 7. Reporting incidents.** (a) The license holder must maintain information
18.19 about and report incidents under section 245B.02, subdivision 10, clauses (1) to (7), to the
18.20 consumer's legal representative, other licensed caregiver, if any, and case manager within
18.21 24 hours of the occurrence, or within 24 hours of receipt of the information unless the
18.22 incident has been reported by another license holder. An incident under section 245B.02,
18.23 subdivision 10, clause (8), must be reported as required under paragraph (c) unless the
18.24 incident has been reported by another license holder.

18.25 (b) When the incident involves more than one consumer, the license holder must
18.26 not disclose personally identifiable information about any other consumer when making
18.27 the report to each consumer's legal representative, other licensed caregiver, if any, and
18.28 case manager unless the license holder has the consent of a consumer or a consumer's
18.29 legal representative.

18.30 (c) Within 24 hours of reporting maltreatment as required under section 626.556
18.31 or 626.557, the license holder must inform the consumer's legal representative and case
18.32 manager of the report unless there is reason to believe that the legal representative or case
18.33 manager is involved in the suspected maltreatment. The information the license holder
18.34 must disclose is the nature of the activity or occurrence reported, the agency that receives

19.1 the report, and the telephone number of the Department of Human Services Licensing
19.2 Division.

19.3 (d) Except as provided in paragraph (e), death or serious injury of the consumer
19.4 must also be reported to the Department of Human Services Licensing Division and the
19.5 ombudsman, as required under sections 245.91 and 245.94, subdivision 2a.

19.6 (e) When a death or serious injury occurs in a facility certified as an intermediate
19.7 care facility for persons with developmental disabilities, the death or serious injury must
19.8 be reported to the Department of Health, Office of Health Facility Complaints, and the
19.9 ombudsman, as required under sections 245.91 and 245.94, subdivision 2a.

19.10 Sec. 13. Minnesota Statutes 2008, section 245C.02, subdivision 18, is amended to read:

19.11 Subd. 18. **Serious maltreatment.** (a) "Serious maltreatment" means sexual abuse,
19.12 maltreatment resulting in death, ~~maltreatment~~ neglect resulting in serious injury which
19.13 reasonably requires the care of a physician whether or not the care of a physician was
19.14 sought, or abuse resulting in serious injury.

19.15 (b) For purposes of this definition, "care of a physician" is treatment received or
19.16 ordered by a physician, physician assistant, or nurse practitioner, but does not include:

19.17 (1) diagnostic testing, assessment, or observation;

19.18 (2) the application of, recommendation to use, or prescription solely for a remedy
19.19 that is available over the counter without a prescription; or

19.20 (3) a prescription solely for a topical antibiotic to treat burns when there is no
19.21 follow-up appointment.

19.22 (c) For purposes of this definition, "abuse resulting in serious injury" means: bruises,
19.23 bites, skin laceration, or tissue damage; fractures; dislocations; evidence of internal
19.24 injuries; head injuries with loss of consciousness; extensive second-degree or third-degree
19.25 burns and other burns for which complications are present; extensive second-degree or
19.26 third-degree frostbite and other frostbite for which complications are present; irreversible
19.27 mobility or avulsion of teeth; injuries to the eyes; ingestion of foreign substances and
19.28 objects that are harmful; near drowning; and heat exhaustion or sunstroke.

19.29 (d) Serious maltreatment includes neglect when it results in criminal sexual conduct
19.30 against a child or vulnerable adult.

19.31 Sec. 14. Minnesota Statutes 2009 Supplement, section 245C.15, subdivision 2, is
19.32 amended to read:

19.33 Subd. 2. **15-year disqualification.** (a) An individual is disqualified under section
19.34 245C.14 if: (1) less than 15 years have passed since the discharge of the sentence imposed,

20.1 if any, for the offense; and (2) the individual has committed a felony-level violation
20.2 of any of the following offenses: sections 256.98 (wrongfully obtaining assistance);
20.3 268.182 (false representation; concealment of facts); 393.07, subdivision 10, paragraph
20.4 (c) (federal Food Stamp Program fraud); 609.165 (felon ineligible to possess firearm);
20.5 609.21 (criminal vehicular homicide and injury); 609.215 (suicide); 609.223 or 609.2231
20.6 (assault in the third or fourth degree); repeat offenses under 609.224 (assault in the fifth
20.7 degree); 609.229 (crimes committed for benefit of a gang); 609.2325 (criminal abuse of a
20.8 vulnerable adult); 609.2335 (financial exploitation of a vulnerable adult); 609.235 (use of
20.9 drugs to injure or facilitate crime); 609.24 (simple robbery); 609.255 (false imprisonment);
20.10 609.2664 (manslaughter of an unborn child in the first degree); 609.2665 (manslaughter
20.11 of an unborn child in the second degree); 609.267 (assault of an unborn child in the first
20.12 degree); 609.2671 (assault of an unborn child in the second degree); 609.268 (injury
20.13 or death of an unborn child in the commission of a crime); 609.27 (coercion); 609.275
20.14 (attempt to coerce); 609.466 (medical assistance fraud); 609.495 (aiding an offender);
20.15 609.498, subdivision 1 or 1b (aggravated first-degree or first-degree tampering with a
20.16 witness); 609.52 (theft); 609.521 (possession of shoplifting gear); 609.525 (bringing
20.17 stolen goods into Minnesota); 609.527 (identity theft); 609.53 (receiving stolen property);
20.18 609.535 (issuance of dishonored checks); 609.562 (arson in the second degree);
20.19 609.563 (arson in the third degree); 609.582 (burglary); 609.59 (possession of burglary
20.20 tools); 609.611 (insurance fraud); 609.625 (aggravated forgery); 609.63 (forgery);
20.21 609.631 (check forgery; offering a forged check); 609.635 (obtaining signature by
20.22 false pretense); 609.66 (dangerous weapons); 609.67 (machine guns and short-barreled
20.23 shotguns); 609.687 (adulteration); 609.71 (riot); 609.713 (terroristic threats); 609.82
20.24 (fraud in obtaining credit); 609.821 (financial transaction card fraud); 617.23 (indecent
20.25 exposure), not involving a minor; repeat offenses under 617.241 (obscene materials and
20.26 performances; distribution and exhibition prohibited; penalty); 624.713 (certain persons
20.27 not to possess firearms); chapter 152 (drugs; controlled substance); or a felony-level
20.28 conviction involving alcohol or drug use.

20.29 (b) An individual is disqualified under section 245C.14 if less than 15 years has
20.30 passed since the individual's aiding and abetting, attempt, or conspiracy to commit any
20.31 of the offenses listed in paragraph (a), as each of these offenses is defined in Minnesota
20.32 Statutes.

20.33 (c) An individual is disqualified under section 245C.14 if less than 15 years has
20.34 passed since ~~the individual's~~ termination of the individual's parental rights under section
20.35 260C.301, subdivision 1, paragraph (b), or 3.

21.1 (d) An individual is disqualified under section 245C.14 if less than 15 years has
21.2 passed since the discharge of the sentence imposed for an offense in any other state or
21.3 country, the elements of which are substantially similar to the elements of the offenses
21.4 listed in paragraph (a).

21.5 (e) If the individual studied commits one of the offenses listed in paragraph (a), but
21.6 the sentence or level of offense is a gross misdemeanor or misdemeanor, the individual
21.7 is disqualified but the disqualification look-back period for the offense is the period
21.8 applicable to the gross misdemeanor or misdemeanor disposition.

21.9 (f) When a disqualification is based on a judicial determination other than a
21.10 conviction, the disqualification period begins from the date of the court order. When a
21.11 disqualification is based on an admission, the disqualification period begins from the
21.12 date of an admission in court. When a disqualification is based on an Alford Plea, the
21.13 disqualification period begins from the date the Alford Plea is entered in court. When
21.14 a disqualification is based on a preponderance of evidence of a disqualifying act, the
21.15 disqualification date begins from the date of the dismissal, the date of discharge of the
21.16 sentence imposed for a conviction for a disqualifying crime of similar elements, or the
21.17 date of the incident, whichever occurs last.

21.18 **EFFECTIVE DATE.** This section is effective retroactively from May 22, 2009.

21.19 Sec. 15. Minnesota Statutes 2009 Supplement, section 245C.20, is amended to read:

21.20 **245C.20 LICENSE HOLDER RECORD KEEPING.**

21.21 **Subdivision 1. Background studies initiated by program.** A licensed program
21.22 shall document the date the program initiates a background study under this chapter in the
21.23 program's personnel files. When a background study is completed under this chapter, a
21.24 licensed program shall maintain a notice that the study was undertaken and completed
21.25 in the program's personnel files. Except when background studies are initiated through
21.26 the commissioner's online system, if a licensed program has not received a response from
21.27 the commissioner under section 245C.17 within 45 days of initiation of the background
21.28 study request, the licensed program must contact the human services licensing division
21.29 to inquire about the status of the study. If a license holder initiates a background study
21.30 under the commissioner's online system, but the background study subject's name does
21.31 not appear in the list of active or recent studies initiated by that license holder, the
21.32 license holder must either contact the human services licensing division or resubmit the
21.33 background study information online for that individual.

22.1 Subd. 2. **Background studies initiated by others.** When a license holder relies on
22.2 a background study initiated by a personnel pool agency, a temporary personnel agency,
22.3 an educational program, or a professional services agency for a person required to have a
22.4 background study completed under section 245C.03, the license holder must maintain a
22.5 copy of the background study results in the license holder's files.

22.6 Sec. 16. Minnesota Statutes 2009 Supplement, section 245C.22, subdivision 7, is
22.7 amended to read:

22.8 **Subd. 7. Classification of certain data.** (a) Notwithstanding section 13.46, upon
22.9 setting aside a disqualification under this section, the identity of the disqualified individual
22.10 who received the set-aside and the individual's disqualifying characteristics are public
22.11 data if the set-aside was:

22.12 (1) for any disqualifying characteristic under section 245C.15, when the set-aside
22.13 relates to a child care center or a family child care provider licensed under chapter 245A; or

22.14 (2) for a disqualifying characteristic under section 245C.15, subdivision 2.

22.15 (b) Notwithstanding section 13.46, upon granting a variance to a license holder
22.16 under section 245C.30, the identity of the disqualified individual who is the subject of
22.17 the variance, the individual's disqualifying characteristics under section 245C.15, and the
22.18 terms of the variance are public data, when the variance:

22.19 (1) is issued to a child care center or a family child care provider licensed under
22.20 chapter 245A; or

22.21 (2) relates to an individual with a disqualifying characteristic under section 245C.15,
22.22 subdivision 2.

22.23 (c) The identity of a disqualified individual and the reason for disqualification
22.24 remain private data when:

22.25 (1) a disqualification is not set aside and no variance is granted, except as provided
22.26 under section 13.46, subdivision 4;

22.27 (2) the data are not public under paragraph (a) or (b);

22.28 (3) the disqualification is rescinded because the information relied upon to disqualify
22.29 the individual is incorrect; ~~or~~

22.30 (4) the disqualification relates to a license to provide relative child foster care.

22.31 As used in this clause, "relative" has the meaning given it under section 260C.007,
22.32 subdivision 27; or

22.33 (5) the disqualified individual is a household member of a licensed foster care
22.34 provider and:

23.1 (i) the disqualified individual previously received foster care services from this
23.2 licensed foster care provider;

23.3 (ii) the disqualified individual was subsequently adopted by this licensed foster
23.4 care provider; and

23.5 (iii) the disqualifying act occurred before the adoption.

23.6 (d) Licensed family child care providers and child care centers must provide notices
23.7 as required under section 245C.301.

23.8 (e) Notwithstanding paragraphs (a) and (b), the identity of household members who
23.9 are the subject of a disqualification related set-aside or variance is not public data if:

23.10 (1) the household member resides in the residence where the family child care is
23.11 provided;

23.12 (2) the subject of the set-aside or variance is under the age of 18 years; and

23.13 (3) the set-aside or variance only relates to a disqualification under section 245C.15,
23.14 subdivision 4, for a misdemeanor-level theft crime as defined in section 609.52.

23.15 Sec. 17. Minnesota Statutes 2009 Supplement, section 626.556, subdivision 2, is
23.16 amended to read:

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

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

23.25 (b) "Investigation" means fact gathering related to the current safety of a child
23.26 and the risk of subsequent maltreatment that determines whether child maltreatment
23.27 occurred and whether child protective services are needed. An investigation must be used
23.28 when reports involve substantial child endangerment, and for reports of maltreatment in
23.29 facilities required to be licensed under chapter 245A or 245B; under sections 144.50 to
23.30 144.58 and 241.021; in a school as defined in sections 120A.05, subdivisions 9, 11, and
23.31 13, and 124D.10; or in a nonlicensed personal care provider association as defined in
23.32 sections 256B.04, subdivision 16, and 256B.0625, subdivision 19a.

23.33 (c) "Substantial child endangerment" means a person responsible for a child's care,
23.34 and in the case of sexual abuse includes a person who has a significant relationship to the
23.35 child as defined in section 609.341, or a person in a position of authority as defined in

24.1 section 609.341, who by act or omission commits or attempts to commit an act against a
24.2 child under their care that constitutes any of the following:

24.3 (1) egregious harm as defined in section 260C.007, subdivision 14;

24.4 (2) sexual abuse as defined in paragraph (d);

24.5 (3) abandonment under section 260C.301, subdivision 2;

24.6 (4) neglect as defined in paragraph (f), clause (2), that substantially endangers the
24.7 child's physical or mental health, including a growth delay, which may be referred to as
24.8 failure to thrive, that has been diagnosed by a physician and is due to parental neglect;

24.9 (5) murder in the first, second, or third degree under section 609.185, 609.19, or
24.10 609.195;

24.11 (6) manslaughter in the first or second degree under section 609.20 or 609.205;

24.12 (7) assault in the first, second, or third degree under section 609.221, 609.222, or
24.13 609.223;

24.14 (8) solicitation, inducement, and promotion of prostitution under section 609.322;

24.15 (9) criminal sexual conduct under sections 609.342 to 609.3451;

24.16 (10) solicitation of children to engage in sexual conduct under section 609.352;

24.17 (11) malicious punishment or neglect or endangerment of a child under section
24.18 609.377 or 609.378;

24.19 (12) use of a minor in sexual performance under section 617.246; or

24.20 (13) parental behavior, status, or condition which mandates that the county attorney
24.21 file a termination of parental rights petition under section 260C.301, subdivision 3,
24.22 paragraph (a).

24.23 (d) "Sexual abuse" means the subjection of a child by a person responsible for the
24.24 child's care, by a person who has a significant relationship to the child, as defined in
24.25 section 609.341, or by a person in a position of authority, as defined in section 609.341,
24.26 subdivision 10, to any act which constitutes a violation of section 609.342 (criminal sexual
24.27 conduct in the first degree), 609.343 (criminal sexual conduct in the second degree),
24.28 609.344 (criminal sexual conduct in the third degree), 609.345 (criminal sexual conduct
24.29 in the fourth degree), or 609.3451 (criminal sexual conduct in the fifth degree). Sexual
24.30 abuse also includes any act which involves a minor which constitutes a violation of
24.31 prostitution offenses under sections 609.321 to 609.324 or 617.246. Sexual abuse includes
24.32 threatened sexual abuse.

24.33 (e) "Person responsible for the child's care" means (1) an individual functioning
24.34 within the family unit and having responsibilities for the care of the child such as a
24.35 parent, guardian, or other person having similar care responsibilities, or (2) an individual
24.36 functioning outside the family unit and having responsibilities for the care of the child

25.1 such as a teacher, school administrator, other school employees or agents, or other lawful
25.2 custodian of a child having either full-time or short-term care responsibilities including,
25.3 but not limited to, day care, babysitting whether paid or unpaid, counseling, teaching,
25.4 and coaching.

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

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

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

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

25.18 (4) failure to ensure that the child is educated as defined in sections 120A.22 and
25.19 260C.163, subdivision 11, which does not include a parent's refusal to provide the parent's
25.20 child with sympathomimetic medications, consistent with section 125A.091, subdivision 5;

25.21 (5) nothing in this section shall be construed to mean that a child is neglected solely
25.22 because the child's parent, guardian, or other person responsible for the child's care in
25.23 good faith selects and depends upon spiritual means or prayer for treatment or care of
25.24 disease or remedial care of the child in lieu of medical care; except that a parent, guardian,
25.25 or caretaker, or a person mandated to report pursuant to subdivision 3, has a duty to report
25.26 if a lack of medical care may cause serious danger to the child's health. This section does
25.27 not impose upon persons, not otherwise legally responsible for providing a child with
25.28 necessary food, clothing, shelter, education, or medical care, a duty to provide that care;

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

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

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

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

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

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

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

26.21 (2) striking a child with a closed fist;

26.22 (3) shaking a child under age three;

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

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

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

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

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

26.34 (9) unreasonable physical confinement or restraint not permitted under section
26.35 609.379, including but not limited to tying, caging, or chaining; or

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

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

27.6 (i) "Facility" means:

27.7 (1) a licensed or unlicensed day care facility, residential facility, agency, hospital,
27.8 sanitarium, or other facility or institution required to be licensed under sections 144.50 to
27.9 144.58, 241.021, or 245A.01 to 245A.16, or chapter 245B;

27.10 (2) a school as defined in sections 120A.05, subdivisions 9, 11, and 13; and
27.11 124D.10; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28.12 (q) "Nonmaltreatment mistake" means:

28.13 (1) at the time of the incident, the individual was performing duties identified in the
28.14 center's child care program plan required under Minnesota Rules, part 9503.0045;

28.15 (2) the individual has not been determined responsible for a similar incident that
28.16 resulted in a finding of maltreatment for at least seven years;

28.17 (3) the individual has not been determined to have committed a similar
28.18 nonmaltreatment mistake under this paragraph for at least four years;

28.19 (4) any injury to a child resulting from the incident, if treated, is treated only with
28.20 remedies that are available over the counter, whether ordered by a medical professional or
28.21 not; and

28.22 (5) except for the period when the incident occurred, the facility and the individual
28.23 providing services were both in compliance with all licensing requirements relevant to the
28.24 incident.

28.25 This definition only applies to child care centers licensed under Minnesota Rules,
28.26 chapter 9503. If clauses (1) to (5) apply, rather than making a determination of substantial
28.27 maltreatment by the individual, the commissioner of human services shall determine that
28.28 a nonmaltreatment mistake was made by the individual.

28.29 Sec. 18. Minnesota Statutes 2009 Supplement, section 626.556, subdivision 10e,
28.30 is amended to read:

28.31 Subd. 10e. **Determinations.** (a) The local welfare agency shall conclude the family
28.32 assessment or the investigation within 45 days of the receipt of a report. The conclusion of
28.33 the assessment or investigation may be extended to permit the completion of a criminal
28.34 investigation or the receipt of expert information requested within 45 days of the receipt
28.35 of the report.

29.1 (b) After conducting a family assessment, the local welfare agency shall determine
29.2 whether services are needed to address the safety of the child and other family members
29.3 and the risk of subsequent maltreatment.

29.4 (c) After conducting an investigation, the local welfare agency shall make two
29.5 determinations: first, whether maltreatment has occurred; and second, whether child
29.6 protective services are needed.

29.7 (d) If the commissioner of education conducts an assessment or investigation,
29.8 the commissioner shall determine whether maltreatment occurred and what corrective
29.9 or protective action was taken by the school facility. If a determination is made that
29.10 maltreatment has occurred, the commissioner shall report to the employer, the school
29.11 board, and any appropriate licensing entity the determination that maltreatment occurred
29.12 and what corrective or protective action was taken by the school facility. In all other cases,
29.13 the commissioner shall inform the school board or employer that a report was received,
29.14 the subject of the report, the date of the initial report, the category of maltreatment alleged
29.15 as defined in paragraph (f), the fact that maltreatment was not determined, and a summary
29.16 of the specific reasons for the determination.

29.17 (e) When maltreatment is determined in an investigation involving a facility,
29.18 the investigating agency shall also determine whether the facility or individual was
29.19 responsible, or whether both the facility and the individual were responsible for the
29.20 maltreatment using the mitigating factors in paragraph (i). Determinations under this
29.21 subdivision must be made based on a preponderance of the evidence and are private data
29.22 on individuals or nonpublic data as maintained by the commissioner of education.

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

- 29.25 (1) physical abuse as defined in subdivision 2, paragraph (g);
29.26 (2) neglect as defined in subdivision 2, paragraph (f);
29.27 (3) sexual abuse as defined in subdivision 2, paragraph (d);
29.28 (4) mental injury as defined in subdivision 2, paragraph (m); or
29.29 (5) maltreatment of a child in a facility as defined in subdivision 2, paragraph (i).

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

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

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

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

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

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

30.23 The evaluation of the facility's responsibility under clause (2) must not be based on the
30.24 completeness of the risk assessment or risk reduction plan required under section 245A.66,
30.25 but must be based on the facility's compliance with the regulatory standards for policies
30.26 and procedures, training, and supervision as cited in Minnesota Statutes and Minnesota
30.27 Rules.

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

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

31.1 who work in the county of the definitions of maltreatment in the statutes and rules and any
31.2 additional definitions or criteria that have been approved by the county board.

31.3 Sec. 19. **CONSUMER SATISFACTION; HUMAN SERVICES.**

31.4 (a) The commissioner of human services shall submit a memorandum each year to
31.5 the governor and the chairs of the house and senate standing committees with jurisdiction
31.6 over the department's programs that provides the following information:

31.7 (1) the number of calls made to each of the department's help lines by consumers
31.8 and citizens regarding services provided or regulated by the department;

31.9 (2) the subject matter of the call;

31.10 (3) the number of service-related calls that were resolved;

31.11 (4) the number that remain open; and

31.12 (5) the number that were without merit.

31.13 (b) The initial memorandum shall be submitted no later than February 15, 2012, with
31.14 subsequent memoranda submitted no later than February 15 each following year.

31.15 **EFFECTIVE DATE.** This section is effective January 1, 2011.

31.16 Sec. 20. **CONSUMER SATISFACTION; HEALTH.**

31.17 (a) The commissioner of health shall submit a memorandum each year to the
31.18 governor and the chairs of the house and senate standing committees with jurisdiction
31.19 over the department's programs that provides the following information:

31.20 (1) the number of calls made to each of the department's help lines by consumers
31.21 and citizens regarding services provided or regulated by the department;

31.22 (2) the subject matter of the call;

31.23 (3) the number of service-related calls that were resolved;

31.24 (4) the number that remain open; and

31.25 (5) the number that were without merit.

31.26 (b) The initial memorandum shall be submitted no later than February 15, 2012, with
31.27 subsequent memoranda submitted no later than February 15 each following year.

31.28 **EFFECTIVE DATE.** This section is effective January 1, 2011.

31.29 Sec. 21. **CONSUMER SATISFACTION; COMMERCE.**

31.30 (a) The commissioner of commerce shall submit a memorandum each year to the
31.31 governor and the chairs of the house and senate standing committees with jurisdiction
31.32 over the department's programs that provides the following information:

32.1 (1) the number of calls made to each of the department's help lines by consumers
32.2 and citizens regarding services provided or regulated by the department;

32.3 (2) the subject matter of the call;

32.4 (3) the number of service-related calls that were resolved;

32.5 (4) the number that remain open; and

32.6 (5) the number that were without merit.

32.7 (b) The initial memorandum shall be submitted no later than February 15, 2012, with
32.8 subsequent memoranda submitted no later than February 15 each following year.

32.9 **EFFECTIVE DATE.** This section is effective January 1, 2011.

32.10 Sec. 22. **TRANSFER OF REAL PROPERTY.**

32.11 Notwithstanding any law to the contrary, the commissioner of administration
32.12 may transfer real property purchased in whole or in part with state funds to a federally
32.13 recognized Indian tribe located in the state of Minnesota for the purpose of operating
32.14 a treatment facility in Crow Wing County, for less than the appraised value, or if the
32.15 property has not been appraised, for less than the fair market value as determined by
32.16 the commissioner.

32.17 Sec. 23. **REPEALER.**

32.18 Minnesota Rules, part 2500.5000, is repealed.

32.19 **ARTICLE 2**

32.20 **JUVENILES**

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

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

32.28 (b) For an individual in the chemical dependency or corrections field who was
32.29 disqualified for a crime or conduct listed under section 245C.15, subdivision 1, and whose
32.30 disqualification was set aside prior to July 1, 2005, the commissioner must consider
32.31 granting a variance pursuant to section 245C.30 for the license holder for a program
32.32 dealing primarily with adults. A request for reconsideration evaluated under this paragraph

33.1 must include a letter of recommendation from the license holder that was subject to the
33.2 prior set-aside decision addressing the individual's quality of care to children or vulnerable
33.3 adults and the circumstances of the individual's departure from that service.

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

33.12 (d) The commissioner shall consider granting a set aside under section 245C.22 or a
33.13 variance under section 245C.30 to an individual who is now 21 years of age or older and
33.14 who was disqualified for a crime or conduct listed under section 245C.15, subdivision 1,
33.15 occurring while the individual was under the age of 18. This paragraph does not apply to
33.16 individuals who were convicted of the disqualifying crime following certification under
33.17 section 260B.125.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34.17 (5) the details of the offense or arrest for which expungement is sought, including
34.18 the date and jurisdiction of the occurrence, either the names of any victims or that there
34.19 were no identifiable victims, whether there is a current order for protection, restraining
34.20 order, or other no contact order prohibiting the petitioner from contacting the victims or
34.21 whether there has ever been a prior order for protection or restraining order prohibiting the
34.22 petitioner from contacting the victims, the court file number, and the date of conviction
34.23 or of dismissal;

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

34.27 (7) petitioner's criminal conviction and adjudication delinquency record indicating
34.28 all convictions and adjudication findings of delinquency for misdemeanors, gross
34.29 misdemeanors, or felonies in this state, and for all comparable convictions and adjudication
34.30 findings of delinquency in any other state, federal court, or foreign country, whether the
34.31 convictions or adjudication findings of delinquency occurred before or after the arrest ~~or~~,
34.32 conviction, or adjudication finding of delinquency for which expungement is sought;

34.33 (8) petitioner's criminal charges record indicating all prior and pending criminal
34.34 charges against the petitioner in this state or another jurisdiction, including all criminal

35.1 charges that have been continued for dismissal or stayed for adjudication, or have been the
35.2 subject of pretrial diversion; and

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

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

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

35.12 Subd. 4. **Hearing.** (a) A hearing on the petition shall be held no sooner than 60
35.13 days after service of the petition. A victim of the offense for which expungement is
35.14 sought has a right to submit an oral or written statement to the court at the time of the
35.15 hearing describing the harm suffered by the victim as a result of the crime and the victim's
35.16 recommendation on whether expungement should be granted or denied. The judge shall
35.17 consider the victim's statement when making a decision.

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

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

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

35.29 (1) sealing the record; and

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

35.32 (b) Except as otherwise provided by this paragraph, If the petitioner is petitioning
35.33 for the sealing of a criminal or delinquency record under section 609A.02, subdivision
35.34 3, the court shall grant the petition to seal the record unless the agency or jurisdiction

36.1 whose records would be affected establishes by clear and convincing evidence that the
36.2 interests of the public and public safety outweigh the disadvantages to the petitioner
36.3 of not sealing the record.

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

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

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

36.14 Subd. 5a. **Order concerning crimes of violence.** An order expunging the record
36.15 of a conviction or adjudication delinquency record for a crime of violence as defined
36.16 in section 624.712, subdivision 5, must provide that the person is not entitled to ship,
36.17 transport, possess, or receive a firearm for the remainder of the person's lifetime. Any
36.18 person whose record of conviction or adjudication delinquency record is expunged under
36.19 this section and who thereafter receives a relief of disability under United States Code,
36.20 title 18, section 925, or whose ability to possess firearms has been restored under section
36.21 609.165, subdivision 1d, is not subject to the restriction in this subdivision.

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

36.23 Subd. 7. **Limitations of order.** (a) Upon issuance of an expungement order related
36.24 to a charge supported by probable cause, the DNA samples and DNA records held by
36.25 the Bureau of Criminal Apprehension and collected under authority other than section
36.26 299C.105, shall not be sealed, returned to the subject of the record, or destroyed.

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

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

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

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

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