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State of Minnesota

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HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 2621

- 04/27/2017 Authored by Franson, Scott, Pugh, Lohmer, Whelan and others
The bill was read for the first time and referred to the Committee on Health and Human Services Reform
- 05/01/2017 By motion, recalled and re-referred to the Committee on Civil Law and Data Practices Policy
- 05/04/2017 Adoption of Report: Amended and re-referred to the Committee on Public Safety and Security Policy and Finance
Pursuant to Joint Rule 2.03, re-referred to the Committee on Rules and Legislative Administration
- 05/08/2017 Adoption of Report: Re-referred to the Committee on Public Safety and Security Policy and Finance
Joint Rule 2.03 has been waived for any subsequent committee action on this bill
- 05/09/2017 Adoption of Report: Amended and re-referred to the Committee on Health and Human Services Reform
- 05/11/2017 Adoption of Report: Placed on the General Register as Amended
Read for the Second Time
- 05/15/2017 Calendar for the Day, Amended
Read Third Time as Amended
Passed by the House as Amended and transmitted to the Senate to include Floor Amendments

1.1 A bill for an act

1.2 relating to public safety; expanding the crime of female genital mutilation; updating

1.3 requirements for education and outreach; expanding the definition of egregious

1.4 harm; expanding child in need of protection or services to include a victim of

1.5 female genital mutilation; providing for definition of maltreatment for reporting

1.6 maltreatment of minors; prescribing penalties; amending Minnesota Statutes 2016,

1.7 sections 144.3872; 260.012; 260C.007, subdivisions 6, 14; 609.2245, subdivision

1.8 1, by adding subdivisions; 626.556, subdivisions 2, 3.

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

1.10 Section 1. Minnesota Statutes 2016, section 144.3872, is amended to read:

1.11 **144.3872 FEMALE GENITAL MUTILATION; EDUCATION AND OUTREACH.**

1.12 The commissioner of health shall carry out appropriate education, prevention, and

1.13 outreach activities in communities that traditionally practice female circumcision, excision,

1.14 or infibulation to inform people in those communities about the health risks and emotional

1.15 trauma inflicted by those practices and to inform them and the medical community of the

1.16 criminal penalties and potential loss of custody of a child contained in section 609.2245.

1.17 The commissioner shall work with culturally appropriate groups to obtain private funds to

1.18 help finance these prevention and outreach activities.

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

1.20 Sec. 2. Minnesota Statutes 2016, section 260.012, is amended to read:

1.21 **260.012 DUTY TO ENSURE PLACEMENT PREVENTION AND FAMILY**

1.22 **REUNIFICATION; REASONABLE EFFORTS.**

2.1 (a) Once a child alleged to be in need of protection or services is under the court's
2.2 jurisdiction, the court shall ensure that reasonable efforts, including culturally appropriate
2.3 services, by the social services agency are made to prevent placement or to eliminate the
2.4 need for removal and to reunite the child with the child's family at the earliest possible time,
2.5 and the court must ensure that the responsible social services agency makes reasonable
2.6 efforts to finalize an alternative permanent plan for the child as provided in paragraph (e).
2.7 In determining reasonable efforts to be made with respect to a child and in making those
2.8 reasonable efforts, the child's best interests, health, and safety must be of paramount concern.
2.9 Reasonable efforts to prevent placement and for rehabilitation and reunification are always
2.10 required except upon a determination by the court that a petition has been filed stating a
2.11 prima facie case that:

2.12 (1) the parent has subjected a child to egregious harm as defined in section 260C.007,
2.13 subdivision 14;

2.14 (2) the parental rights of the parent to another child have been terminated involuntarily;

2.15 (3) the child is an abandoned infant under section 260C.301, subdivision 2, paragraph
2.16 (a), clause (2);

2.17 (4) the parent's custodial rights to another child have been involuntarily transferred to a
2.18 relative under Minnesota Statutes 2010, section 260C.201, subdivision 11, paragraph (d),
2.19 clause (1), section 260C.515, subdivision 4, or a similar law of another jurisdiction;

2.20 (5) the parent has committed sexual abuse as defined in section 626.556, subdivision 2,
2.21 against the child or another child of the parent;

2.22 (6) the parent has committed an offense that requires registration as a predatory offender
2.23 under section 243.166, subdivision 1b, paragraph (a) or (b); or

2.24 (7) the provision of services or further services for the purpose of reunification is futile
2.25 and therefore unreasonable under the circumstances.

2.26 (b) When the court makes one of the prima facie determinations under paragraph (a),
2.27 either permanency pleadings under section 260C.505, or a termination of parental rights
2.28 petition under sections 260C.141 and 260C.301 must be filed. A permanency hearing under
2.29 sections 260C.503 to 260C.521 must be held within 30 days of this determination.

2.30 (c) In the case of an Indian child, in proceedings under sections 260B.178, 260C.178,
2.31 260C.201, 260C.202, 260C.204, 260C.301, or 260C.503 to 260C.521, the juvenile court
2.32 must make findings and conclusions consistent with the Indian Child Welfare Act of 1978,
2.33 United States Code, title 25, section 1901 et seq., as to the provision of active efforts. In

3.1 cases governed by the Indian Child Welfare Act of 1978, United States Code, title 25, section
3.2 1901, the responsible social services agency must provide active efforts as required under
3.3 United States Code, title 25, section 1911(d).

3.4 (d) "Reasonable efforts to prevent placement" means:

3.5 (1) the agency has made reasonable efforts to prevent the placement of the child in foster
3.6 care by working with the family to develop and implement a safety plan; or

3.7 (2) given the particular circumstances of the child and family at the time of the child's
3.8 removal, there are no services or efforts available which could allow the child to safely
3.9 remain in the home.

3.10 (e) "Reasonable efforts to finalize a permanent plan for the child" means due diligence
3.11 by the responsible social services agency to:

3.12 (1) reunify the child with the parent or guardian from whom the child was removed;

3.13 (2) assess a noncustodial parent's ability to provide day-to-day care for the child and,
3.14 where appropriate, provide services necessary to enable the noncustodial parent to safely
3.15 provide the care, as required by section 260C.219;

3.16 (3) conduct a relative search to identify and provide notice to adult relatives as required
3.17 under section 260C.221;

3.18 (4) place siblings removed from their home in the same home for foster care or adoption,
3.19 or transfer permanent legal and physical custody to a relative. Visitation between siblings
3.20 who are not in the same foster care, adoption, or custodial placement or facility shall be
3.21 consistent with section 260C.212, subdivision 2; and

3.22 (5) when the child cannot return to the parent or guardian from whom the child was
3.23 removed, to plan for and finalize a safe and legally permanent alternative home for the child,
3.24 and considers permanent alternative homes for the child inside or outside of the state,
3.25 preferably through adoption or transfer of permanent legal and physical custody of the child.

3.26 (f) Reasonable efforts are made upon the exercise of due diligence by the responsible
3.27 social services agency to use culturally appropriate and available services to meet the needs
3.28 of the child and the child's family. Services may include those provided by the responsible
3.29 social services agency and other culturally appropriate services available in the community.
3.30 At each stage of the proceedings where the court is required to review the appropriateness
3.31 of the responsible social services agency's reasonable efforts as described in paragraphs (a),
3.32 (d), and (e), the social services agency has the burden of demonstrating that:

4.1 (1) it has made reasonable efforts to prevent placement of the child in foster care;

4.2 (2) it has made reasonable efforts to eliminate the need for removal of the child from
4.3 the child's home and to reunify the child with the child's family at the earliest possible time;

4.4 (3) it has made reasonable efforts to finalize an alternative permanent home for the child,
4.5 and considers permanent alternative homes for the child inside or outside of the state; or

4.6 (4) reasonable efforts to prevent placement and to reunify the child with the parent or
4.7 guardian are not required. The agency may meet this burden by stating facts in a sworn
4.8 petition filed under section 260C.141, by filing an affidavit summarizing the agency's
4.9 reasonable efforts or facts the agency believes demonstrate there is no need for reasonable
4.10 efforts to reunify the parent and child, or through testimony or a certified report required
4.11 under juvenile court rules.

4.12 (g) Once the court determines that reasonable efforts for reunification are not required
4.13 because the court has made one of the prima facie determinations under paragraph (a), the
4.14 court may only require reasonable efforts for reunification after a hearing according to
4.15 section 260C.163, where the court finds there is not clear and convincing evidence of the
4.16 facts upon which the court based its prima facie determination. In this case when there is
4.17 clear and convincing evidence that the child is in need of protection or services, the court
4.18 may find the child in need of protection or services and order any of the dispositions available
4.19 under section 260C.201, subdivision 1. Reunification of a child with a parent is not required
4.20 if the parent has been convicted of:

4.21 (1) a violation of, or an attempt or conspiracy to commit a violation of, sections 609.185
4.22 to 609.20; 609.222, subdivision 2; or 609.223 in regard to another child of the parent;

4.23 (2) a violation of section 609.222, subdivision 2; ~~or 609.223;~~ or 609.2245, subdivision
4.24 1, clause (2), in regard to the child;

4.25 (3) a violation of, or an attempt or conspiracy to commit a violation of, United States
4.26 Code, title 18, section 1111(a) or 1112(a), in regard to another child of the parent;

4.27 (4) committing sexual abuse as defined in section 626.556, subdivision 2, against the
4.28 child or another child of the parent; or

4.29 (5) an offense that requires registration as a predatory offender under section 243.166,
4.30 subdivision 1b, paragraph (a) or (b).

4.31 (h) The juvenile court, in proceedings under sections 260B.178, 260C.178, 260C.201,
4.32 260C.202, 260C.204, 260C.301, or 260C.503 to 260C.521, shall make findings and
4.33 conclusions as to the provision of reasonable efforts. When determining whether reasonable

5.1 efforts have been made, the court shall consider whether services to the child and family
5.2 were:

- 5.3 (1) relevant to the safety and protection of the child;
- 5.4 (2) adequate to meet the needs of the child and family;
- 5.5 (3) culturally appropriate;
- 5.6 (4) available and accessible;
- 5.7 (5) consistent and timely; and
- 5.8 (6) realistic under the circumstances.

5.9 In the alternative, the court may determine that provision of services or further services
5.10 for the purpose of rehabilitation is futile and therefore unreasonable under the circumstances
5.11 or that reasonable efforts are not required as provided in paragraph (a).

5.12 (i) This section does not prevent out-of-home placement for treatment of a child with a
5.13 mental disability when it is determined to be medically necessary as a result of the child's
5.14 diagnostic assessment or individual treatment plan indicates that appropriate and necessary
5.15 treatment cannot be effectively provided outside of a residential or inpatient treatment
5.16 program and the level or intensity of supervision and treatment cannot be effectively and
5.17 safely provided in the child's home or community and it is determined that a residential
5.18 treatment setting is the least restrictive setting that is appropriate to the needs of the child.

5.19 (j) If continuation of reasonable efforts to prevent placement or reunify the child with
5.20 the parent or guardian from whom the child was removed is determined by the court to be
5.21 inconsistent with the permanent plan for the child or upon the court making one of the prima
5.22 facie determinations under paragraph (a), reasonable efforts must be made to place the child
5.23 in a timely manner in a safe and permanent home and to complete whatever steps are
5.24 necessary to legally finalize the permanent placement of the child.

5.25 (k) Reasonable efforts to place a child for adoption or in another permanent placement
5.26 may be made concurrently with reasonable efforts to prevent placement or to reunify the
5.27 child with the parent or guardian from whom the child was removed. When the responsible
5.28 social services agency decides to concurrently make reasonable efforts for both reunification
5.29 and permanent placement away from the parent under paragraph (a), the agency shall disclose
5.30 its decision and both plans for concurrent reasonable efforts to all parties and the court.
5.31 When the agency discloses its decision to proceed on both plans for reunification and
5.32 permanent placement away from the parent, the court's review of the agency's reasonable
5.33 efforts shall include the agency's efforts under both plans.

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

6.2 Sec. 3. Minnesota Statutes 2016, section 260C.007, subdivision 6, is amended to read:

6.3 Subd. 6. **Child in need of protection or services.** "Child in need of protection or
6.4 services" means a child who is in need of protection or services because the child:

6.5 (1) is abandoned or without parent, guardian, or custodian;

6.6 (2)(i) has been a victim of physical or sexual abuse as defined in section 626.556,
6.7 subdivision 2, (ii) resides with or has resided with a victim of child abuse as defined in
6.8 subdivision 5 or domestic child abuse as defined in subdivision 13, (iii) resides with or
6.9 would reside with a perpetrator of domestic child abuse as defined in subdivision 13 or child
6.10 abuse as defined in subdivision 5 or 13, or (iv) is a victim of emotional maltreatment as
6.11 defined in subdivision 15;

6.12 (3) is without necessary food, clothing, shelter, education, or other required care for the
6.13 child's physical or mental health or morals because the child's parent, guardian, or custodian
6.14 is unable or unwilling to provide that care;

6.15 (4) is without the special care made necessary by a physical, mental, or emotional
6.16 condition because the child's parent, guardian, or custodian is unable or unwilling to provide
6.17 that care;

6.18 (5) is medically neglected, which includes, but is not limited to, the withholding of
6.19 medically indicated treatment from a disabled infant with a life-threatening condition. The
6.20 term "withholding of medically indicated treatment" means the failure to respond to the
6.21 infant's life-threatening conditions by providing treatment, including appropriate nutrition,
6.22 hydration, and medication which, in the treating physician's or physicians' reasonable medical
6.23 judgment, will be most likely to be effective in ameliorating or correcting all conditions,
6.24 except that the term does not include the failure to provide treatment other than appropriate
6.25 nutrition, hydration, or medication to an infant when, in the treating physician's or physicians'
6.26 reasonable medical judgment:

6.27 (i) the infant is chronically and irreversibly comatose;

6.28 (ii) the provision of the treatment would merely prolong dying, not be effective in
6.29 ameliorating or correcting all of the infant's life-threatening conditions, or otherwise be
6.30 futile in terms of the survival of the infant; or

6.31 (iii) the provision of the treatment would be virtually futile in terms of the survival of
6.32 the infant and the treatment itself under the circumstances would be inhumane;

7.1 (6) is one whose parent, guardian, or other custodian for good cause desires to be relieved
7.2 of the child's care and custody, including a child who entered foster care under a voluntary
7.3 placement agreement between the parent and the responsible social services agency under
7.4 section 260C.227;

7.5 (7) has been placed for adoption or care in violation of law;

7.6 (8) is without proper parental care because of the emotional, mental, or physical disability,
7.7 or state of immaturity of the child's parent, guardian, or other custodian;

7.8 (9) is one whose behavior, condition, or environment is such as to be injurious or
7.9 dangerous to the child or others. An injurious or dangerous environment may include, but
7.10 is not limited to, the exposure of a child to criminal activity in the child's home;

7.11 (10) is experiencing growth delays, which may be referred to as failure to thrive, that
7.12 have been diagnosed by a physician and are due to parental neglect;

7.13 (11) is a sexually exploited youth;

7.14 (12) has committed a delinquent act or a juvenile petty offense before becoming ten
7.15 years old;

7.16 (13) is a runaway;

7.17 (14) is a habitual truant;

7.18 (15) has been found incompetent to proceed or has been found not guilty by reason of
7.19 mental illness or mental deficiency in connection with a delinquency proceeding, a
7.20 certification under section 260B.125, an extended jurisdiction juvenile prosecution, or a
7.21 proceeding involving a juvenile petty offense; ~~or~~

7.22 (16) has a parent whose parental rights to one or more other children were involuntarily
7.23 terminated or whose custodial rights to another child have been involuntarily transferred to
7.24 a relative and there is a case plan prepared by the responsible social services agency
7.25 documenting a compelling reason why filing the termination of parental rights petition under
7.26 section 260C.503, subdivision 2, is not in the best interests of the child; or

7.27 (17) is a victim of female genital mutilation in violation of section 609.2245, subdivision
7.28 1.

7.29 Sec. 4. Minnesota Statutes 2016, section 260C.007, subdivision 14, is amended to read:

7.30 Subd. 14. **Egregious harm.** "Egregious harm" means the infliction of bodily harm to a
7.31 child or neglect of a child which demonstrates a grossly inadequate ability to provide

8.1 minimally adequate parental care. Except as stated in clause (11), the egregious harm need
8.2 not have occurred in the state or in the county where a termination of parental rights action
8.3 is otherwise properly venued. Egregious harm includes, but is not limited to:

8.4 (1) conduct towards a child that constitutes a violation of sections 609.185 to 609.2114,
8.5 609.222, subdivision 2, 609.223, or any other similar law of any other state;

8.6 (2) the infliction of "substantial bodily harm" to a child, as defined in section 609.02,
8.7 subdivision 7a;

8.8 (3) conduct towards a child that constitutes felony malicious punishment of a child under
8.9 section 609.377;

8.10 (4) conduct towards a child that constitutes felony unreasonable restraint of a child under
8.11 section 609.255, subdivision 3;

8.12 (5) conduct towards a child that constitutes felony neglect or endangerment of a child
8.13 under section 609.378;

8.14 (6) conduct towards a child that constitutes assault under section 609.221, 609.222, or
8.15 609.223;

8.16 (7) conduct towards a child that constitutes solicitation, inducement, or promotion of,
8.17 or receiving profit derived from prostitution under section 609.322;

8.18 (8) conduct towards a child that constitutes murder or voluntary manslaughter as defined
8.19 by United States Code, title 18, section 1111(a) or 1112(a);

8.20 (9) conduct towards a child that constitutes aiding or abetting, attempting, conspiring,
8.21 or soliciting to commit a murder or voluntary manslaughter that constitutes a violation of
8.22 United States Code, title 18, section 1111(a) or 1112(a); ~~or~~

8.23 (10) conduct toward a child that constitutes criminal sexual conduct under sections
8.24 609.342 to 609.345; or

8.25 (11) conduct towards a child that constitutes a violation of section 609.2245, subdivision
8.26 1, which occurred while the child was a resident of the United States and on or after the
8.27 effective date of this act.

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

8.29 Sec. 5. Minnesota Statutes 2016, section 609.2245, subdivision 1, is amended to read:

8.30 Subdivision 1. **Crime.** Except as otherwise permitted in subdivision 2, the following
8.31 individuals are guilty of a felony and may be sentenced as provided in subdivision 4:

9.1 (1) whoever knowingly (i) circumcises, excises, or infibulates, in whole or in part, the
9.2 labia majora, labia minora, or clitoris of another, or (ii) performs any other harmful procedure
9.3 to the female genitalia of a minor for nonmedical purposes, including but not limited to
9.4 pricking, piercing, incising, scraping, and cauterization, is guilty of a felony. Consent to the
9.5 procedure by a minor on whom it is performed or by the minor's parent is not a defense to
9.6 a violation of this subdivision; and

9.7 (2) the parent, guardian, or other person legally responsible or charged with the care or
9.8 custody of a minor who knowingly allows the circumcision, excision, or infibulation, in
9.9 whole or in part, of the labia majora, labia minora, or clitoris of the female minor, or any
9.10 other harmful procedure to the female genitalia for nonmedical purposes, including but not
9.11 limited to pricking, piercing, incising, scraping, and cauterization of the female minor's
9.12 genitals.

9.13 **EFFECTIVE DATE.** This section is effective the day following final enactment and
9.14 applies to crimes committed on or after that date.

9.15 Sec. 6. Minnesota Statutes 2016, section 609.2245, is amended by adding a subdivision
9.16 to read:

9.17 Subd. 3. **Custody of child.** A violation of, or attempt to violate subdivision 1, clause
9.18 (2), is a condition that endangers a child's health or welfare and justifies taking the child
9.19 into custody pursuant to section 260C.175, subdivision 1.

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

9.21 Sec. 7. Minnesota Statutes 2016, section 609.2245, is amended by adding a subdivision
9.22 to read:

9.23 Subd. 4. **Penalties.** A person who violates subdivision 1 may be sentenced as follows:

9.24 (1) if the act results in narrowing of the vaginal orifice with creation of a covering seal
9.25 by cutting and appositioning the labia minora, labia majora, or both, imprisonment for not
9.26 more than 20 years or payment of a fine of not more than \$30,000, or both;

9.27 (2) if the act results in partial or total removal of the clitoris and the labia minora,
9.28 imprisonment of not more than ten years or payment of a fine of not more than \$20,000, or
9.29 both;

9.30 (3) if the act results in partial or total removal of the clitoris, prepuce, or both,
9.31 imprisonment of not more than five years or a payment of a fine of not more than \$10,000,
9.32 or both; or

10.1 (4) if the act constitutes a harmful procedure to the female genitalia not described in
10.2 clauses (1) to (3), including but not limited to pricking, piercing, incising, scraping, and
10.3 cauterization, imprisonment of not more than five years or a payment of a fine of not more
10.4 than \$10,000, or both.

10.5 **EFFECTIVE DATE.** This section is effective the day following final enactment and
10.6 applies to violations committed on or after that date.

10.7 Sec. 8. Minnesota Statutes 2016, section 626.556, subdivision 2, is amended to read:

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

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

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

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

10.16 (b) "Commissioner" means the commissioner of human services.

10.17 (c) "Facility" means:

10.18 (1) a licensed or unlicensed day care facility, residential facility, agency, hospital,
10.19 sanitarium, or other facility or institution required to be licensed under sections 144.50 to
10.20 144.58, 241.021, or 245A.01 to 245A.16, or chapter 245D;

10.21 (2) a school as defined in section 120A.05, subdivisions 9, 11, and 13; and chapter 124E;
10.22 or

10.23 (3) a nonlicensed personal care provider organization as defined in section 256B.0625,
10.24 subdivision 19a.

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

11.1 (e) "Investigation" means fact gathering related to the current safety of a child and the
11.2 risk of subsequent maltreatment that determines whether child maltreatment occurred and
11.3 whether child protective services are needed. An investigation must be used when reports
11.4 involve sexual abuse or substantial child endangerment, and for reports of maltreatment in
11.5 facilities required to be licensed under chapter 245A or 245D; under sections 144.50 to
11.6 144.58 and 241.021; in a school as defined in section 120A.05, subdivisions 9, 11, and 13,
11.7 and chapter 124E; or in a nonlicensed personal care provider association as defined in section
11.8 256B.0625, subdivision 19a.

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

11.11 (1) mental injury as defined in paragraph (g);

11.12 (2) neglect as defined in paragraph (h);

11.13 (3) physical abuse as defined in paragraph (l);

11.14 (4) sexual abuse as defined in paragraph (o);

11.15 (5) substantial child endangerment as defined in paragraph (p); and

11.16 (6) threatened injury as defined in paragraph (q).

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

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

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

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

11.30 (3) failure to provide for necessary supervision or child care arrangements appropriate
11.31 for a child after considering factors as the child's age, mental ability, physical condition,

12.1 length of absence, or environment, when the child is unable to care for the child's own basic
12.2 needs or safety, or the basic needs or safety of another child in their care;

12.3 (4) failure to ensure that the child is educated as defined in sections 120A.22 and
12.4 260C.163, subdivision 11, which does not include a parent's refusal to provide the parent's
12.5 child with sympathomimetic medications, consistent with section 125A.091, subdivision
12.6 5;

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

12.15 (6) prenatal exposure to a controlled substance, as defined in section 253B.02, subdivision
12.16 2, used by the mother for a nonmedical purpose, as evidenced by withdrawal symptoms in
12.17 the child at birth, results of a toxicology test performed on the mother at delivery or the
12.18 child at birth, medical effects or developmental delays during the child's first year of life
12.19 that medically indicate prenatal exposure to a controlled substance, or the presence of a
12.20 fetal alcohol spectrum disorder;

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

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

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

12.29 ~~(h)~~ (i) "Nonmaltreatment mistake" means:

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

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

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

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

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

13.9 This definition only applies to child care centers licensed under Minnesota Rules, chapter
13.10 9503. If clauses (1) to (5) apply, rather than making a determination of substantiated
13.11 maltreatment by the individual, the commissioner of human services shall determine that a
13.12 nonmaltreatment mistake was made by the individual.

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

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

13.21 ~~(l)~~ (l) "Physical abuse" means any physical injury, mental injury, or threatened injury,
13.22 inflicted by a person responsible for the child's care on a child other than by accidental
13.23 means, or any physical or mental injury that cannot reasonably be explained by the child's
13.24 history of injuries, or any aversive or deprivation procedures, or regulated interventions,
13.25 that have not been authorized under section 125A.0942 or 245.825.

13.26 Abuse does not include reasonable and moderate physical discipline of a child
13.27 administered by a parent or legal guardian which does not result in an injury. Abuse does
13.28 not include the use of reasonable force by a teacher, principal, or school employee as allowed
13.29 by section 121A.582. Actions which are not reasonable and moderate include, but are not
13.30 limited to, any of the following:

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

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

13.33 (3) shaking a child under age three;

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

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

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

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

14.6 (8) striking a child who is at least age one but under age four on the face or head, which
14.7 results in an injury;

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

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

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

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

14.21 ~~(m)~~ (n) "Report" means any communication received by the local welfare agency, police
14.22 department, county sheriff, or agency responsible for child protection pursuant to this section
14.23 that describes neglect or physical or sexual abuse of a child and contains sufficient content
14.24 to identify the child and any person believed to be responsible for the neglect or abuse, if
14.25 known.

14.26 ~~(n)~~ (o) "Sexual abuse" means the subjection of a child by a person responsible for the
14.27 child's care, by a person who has a significant relationship to the child, as defined in section
14.28 609.341, or by a person in a position of authority, as defined in section 609.341, subdivision
14.29 10, to any act which constitutes a violation of section 609.342 (criminal sexual conduct in
14.30 the first degree), 609.343 (criminal sexual conduct in the second degree), 609.344 (criminal
14.31 sexual conduct in the third degree), 609.345 (criminal sexual conduct in the fourth degree),
14.32 or 609.3451 (criminal sexual conduct in the fifth degree). Sexual abuse also includes any
14.33 act which involves a minor which constitutes a violation of prostitution offenses under

15.1 sections 609.321 to 609.324 or 617.246. Effective May 29, 2017, sexual abuse includes all
15.2 reports of known or suspected child sex trafficking involving a child who is identified as a
15.3 victim of sex trafficking. Sexual abuse includes child sex trafficking as defined in section
15.4 609.321, subdivisions 7a and 7b. Sexual abuse includes threatened sexual abuse which
15.5 includes the status of a parent or household member who has committed a violation which
15.6 requires registration as an offender under section 243.166, subdivision 1b, paragraph (a) or
15.7 (b), or required registration under section 243.166, subdivision 1b, paragraph (a) or (b).

15.8 ~~(o)~~ (p) "Substantial child endangerment" means a person responsible for a child's care,
15.9 by act or omission, commits or attempts to commit an act against a child under their care
15.10 that constitutes any of the following:

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

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

15.13 (3) neglect as defined in paragraph ~~(g)~~ (h), clause (2), that substantially endangers the
15.14 child's physical or mental health, including a growth delay, which may be referred to as
15.15 failure to thrive, that has been diagnosed by a physician and is due to parental neglect;

15.16 (4) murder in the first, second, or third degree under section 609.185, 609.19, or 609.195;

15.17 (5) manslaughter in the first or second degree under section 609.20 or 609.205;

15.18 (6) assault in the first, second, or third degree under section 609.221, 609.222, or 609.223;

15.19 (7) solicitation, inducement, and promotion of prostitution under section 609.322;

15.20 (8) criminal sexual conduct under sections 609.342 to 609.3451;

15.21 (9) solicitation of children to engage in sexual conduct under section 609.352;

15.22 (10) malicious punishment or neglect or endangerment of a child under section 609.377
15.23 or 609.378;

15.24 (11) use of a minor in sexual performance under section 617.246; or

15.25 (12) parental behavior, status, or condition which mandates that the county attorney file
15.26 a termination of parental rights petition under section 260C.503, subdivision 2.

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

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

16.4 (2) been found to be palpably unfit under section 260C.301, subdivision 1, paragraph
16.5 (b), clause (4), or a similar law of another jurisdiction;

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

16.8 (4) committed an act that has resulted in the involuntary transfer of permanent legal and
16.9 physical custody of a child to a relative under Minnesota Statutes 2010, section 260C.201,
16.10 subdivision 11, paragraph (d), clause (1), section 260C.515, subdivision 4, or a similar law
16.11 of another jurisdiction.

16.12 A child is the subject of a report of threatened injury when the responsible social services
16.13 agency receives birth match data under paragraph ~~(r)~~ (r) from the Department of Human
16.14 Services.

16.15 ~~(r)~~ (r) Upon receiving data under section 144.225, subdivision 2b, contained in a birth
16.16 record or recognition of parentage identifying a child who is subject to threatened injury
16.17 under paragraph ~~(p)~~ (q), the Department of Human Services shall send the data to the
16.18 responsible social services agency. The data is known as "birth match" data. Unless the
16.19 responsible social services agency has already begun an investigation or assessment of the
16.20 report due to the birth of the child or execution of the recognition of parentage and the
16.21 parent's previous history with child protection, the agency shall accept the birth match data
16.22 as a report under this section. The agency may use either a family assessment or investigation
16.23 to determine whether the child is safe. All of the provisions of this section apply. If the child
16.24 is determined to be safe, the agency shall consult with the county attorney to determine the
16.25 appropriateness of filing a petition alleging the child is in need of protection or services
16.26 under section 260C.007, subdivision 6, clause (16), in order to deliver needed services. If
16.27 the child is determined not to be safe, the agency and the county attorney shall take
16.28 appropriate action as required under section 260C.503, subdivision 2.

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

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

17.1 Sec. 9. Minnesota Statutes 2016, section 626.556, subdivision 3, is amended to read:

17.2 Subd. 3. **Persons mandated to report; persons voluntarily reporting.** (a) A person
17.3 who knows or has reason to believe a child ~~is being neglected or physically or sexually~~
17.4 ~~abused, as defined in subdivision 2~~ is a victim of maltreatment as defined in subdivision 2,
17.5 paragraph (f), or has been neglected or physically or sexually abused a victim of maltreatment
17.6 as defined in subdivision 2, paragraph (f), within the preceding three years, shall immediately
17.7 report the information to the local welfare agency, agency responsible for assessing or
17.8 investigating the report, police department, county sheriff, tribal social services agency, or
17.9 tribal police department if the person is:

17.10 (1) a professional or professional's delegate who is engaged in the practice of the healing
17.11 arts, social services, hospital administration, psychological or psychiatric treatment, child
17.12 care, education, correctional supervision, probation and correctional services, or law
17.13 enforcement; or

17.14 (2) employed as a member of the clergy and received the information while engaged in
17.15 ministerial duties, provided that a member of the clergy is not required by this subdivision
17.16 to report information that is otherwise privileged under section 595.02, subdivision 1,
17.17 paragraph (c).

17.18 (b) Any person may voluntarily report to the local welfare agency, agency responsible
17.19 for assessing or investigating the report, police department, county sheriff, tribal social
17.20 services agency, or tribal police department if the person knows, has reason to believe, or
17.21 suspects a child is being or has been neglected or subjected to physical or sexual abuse.

17.22 (c) A person mandated to report physical or sexual child abuse or neglect occurring
17.23 within a licensed facility shall report the information to the agency responsible for licensing
17.24 the facility under sections 144.50 to 144.58; 241.021; 245A.01 to 245A.16; or chapter 245D;
17.25 or a nonlicensed personal care provider organization as defined in section 256B.0625,
17.26 subdivision 19. A health or corrections agency receiving a report may request the local
17.27 welfare agency to provide assistance pursuant to subdivisions 10, 10a, and 10b. A board or
17.28 other entity whose licensees perform work within a school facility, upon receiving a
17.29 complaint of alleged maltreatment, shall provide information about the circumstances of
17.30 the alleged maltreatment to the commissioner of education. Section 13.03, subdivision 4,
17.31 applies to data received by the commissioner of education from a licensing entity.

17.32 (d) Notification requirements under subdivision 10 apply to all reports received under
17.33 this section.

- 18.1 (e) For purposes of this section, "immediately" means as soon as possible but in no event
- 18.2 longer than 24 hours.