

**SENATE
STATE OF MINNESOTA
NINETY-SECOND SESSION**

S.F. No. 398

(SENATE AUTHORS: CHAMPION)

DATE	D-PG	OFFICIAL STATUS
01/28/2021	184	Introduction and first reading Referred to Civil Law and Data Practices Policy

1.1 A bill for an act

1.2 relating to human services; modifying requirements for legal parent to petition for

1.3 reestablishment of the legal parent and child relationship; prohibiting

1.4 disqualification of individuals subject to human services background studies with

1.5 expunged criminal records; amending Minnesota Statutes 2020, sections 245C.14,

1.6 subdivisions 1, 2; 245C.15, by adding a subdivision; 245C.22, by adding a

1.7 subdivision; 245C.24, by adding a subdivision; 260C.329, subdivisions 3, 7, 8.

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

1.9 Section 1. Minnesota Statutes 2020, section 245C.14, subdivision 1, is amended to read:

1.10 Subdivision 1. **Disqualification from direct contact.** (a) The commissioner shall

1.11 disqualify an individual who is the subject of a background study from any position allowing

1.12 direct contact with persons receiving services from the license holder or entity identified in

1.13 section 245C.03, upon receipt of information showing, or when a background study

1.14 completed under this chapter shows any of the following:

1.15 (1) a conviction of, admission to, or Alford plea to one or more crimes listed in section

1.16 245C.15, regardless of whether the conviction or admission is a felony, gross misdemeanor,

1.17 or misdemeanor level crime;

1.18 (2) a preponderance of the evidence indicates the individual has committed an act or

1.19 acts that meet the definition of any of the crimes listed in section 245C.15, regardless of

1.20 whether the preponderance of the evidence is for a felony, gross misdemeanor, or

1.21 misdemeanor level crime; or

1.22 (3) an investigation results in an administrative determination listed under section

1.23 245C.15, subdivision 4, paragraph (b).

2.1 (b) No individual who is disqualified following a background study under section
2.2 245C.03, subdivisions 1 and 2, may be retained in a position involving direct contact with
2.3 persons served by a program or entity identified in section 245C.03, unless the commissioner
2.4 has provided written notice under section 245C.17 stating that:

2.5 (1) the individual may remain in direct contact during the period in which the individual
2.6 may request reconsideration as provided in section 245C.21, subdivision 2;

2.7 (2) the commissioner has set aside the individual's disqualification for that program or
2.8 entity identified in section 245C.03, as provided in section 245C.22, subdivision 4; or

2.9 (3) the license holder has been granted a variance for the disqualified individual under
2.10 section 245C.30.

2.11 (c) The commissioner shall not disqualify an individual under this subdivision based on
2.12 (1) a record of conviction that was expunged under chapter 609A in an expungement order
2.13 that directed the Department of Human Services to seal records related to the expungement,
2.14 or (2) any underlying fact or element from an expunged record of an arrest, criminal charge,
2.15 or conviction when an expungement order directed the Department of Human Services to
2.16 seal records related to the expungement. Nothing in this paragraph prohibits the commissioner
2.17 from disqualifying an individual based upon a separate administrative determination under
2.18 section 245C.15, subdivision 4, paragraph (b), unless there is a court order directed to the
2.19 Department of Human Services to expunge an administrative order.

2.20 Sec. 2. Minnesota Statutes 2020, section 245C.14, subdivision 2, is amended to read:

2.21 Subd. 2. **Disqualification from access.** (a) If an individual who is studied under section
2.22 245C.03, subdivision 1, paragraph (a), clauses (2), (5), and (6), is disqualified from direct
2.23 contact under subdivision 1, the commissioner shall also disqualify the individual from
2.24 access to a person receiving services from the license holder.

2.25 (b) No individual who is disqualified following a background study under section
2.26 245C.03, subdivision 1, paragraph (a), clauses (2), (5), and (6), or as provided elsewhere
2.27 in statute who is disqualified as a result of this section, may be allowed access to persons
2.28 served by the program unless the commissioner has provided written notice under section
2.29 245C.17 stating that:

2.30 (1) the individual may remain in direct contact during the period in which the individual
2.31 may request reconsideration as provided in section 245C.21, subdivision 2;

3.1 (2) the commissioner has set aside the individual's disqualification for that licensed
3.2 program or entity identified in section 245C.03 as provided in section 245C.22, subdivision
3.3 4; or

3.4 (3) the license holder has been granted a variance for the disqualified individual under
3.5 section 245C.30.

3.6 (c) The commissioner shall not disqualify an individual under this subdivision based on
3.7 (1) a record of conviction that was expunged under chapter 609A in an expungement order
3.8 that directed the Department of Human Services to seal records related to the expungement,
3.9 or (2) any underlying fact or element from an expunged record of an arrest, criminal charge,
3.10 or conviction when an expungement order directed the Department of Human Services to
3.11 seal records related to the expungement. Nothing in this paragraph prohibits the commissioner
3.12 from disqualifying an individual based upon a separate administrative determination under
3.13 section 245C.15, subdivision 4, paragraph (b), unless there is a court order directed to the
3.14 Department of Human Services to expunge an administrative order.

3.15 Sec. 3. Minnesota Statutes 2020, section 245C.15, is amended by adding a subdivision to
3.16 read:

3.17 Subd. 6. **Expunged criminal records.** The commissioner shall not disqualify an
3.18 individual subject to a background study under this chapter based on (1) a record of
3.19 conviction that was expunged under chapter 609A and the order was directed specifically
3.20 to the commissioner, or (2) any underlying fact or element from an expunged record of an
3.21 arrest, criminal charge, or conviction and the order was directed specifically to the
3.22 commissioner. Nothing in this subdivision prohibits the commissioner from disqualifying
3.23 an individual based upon a separate administrative determination under section 245C.15,
3.24 subdivision 4, paragraph (b), unless there is a court order directed specifically to the
3.25 commissioner to expunge an administrative order.

3.26 Sec. 4. Minnesota Statutes 2020, section 245C.22, is amended by adding a subdivision to
3.27 read:

3.28 Subd. 8. **Expunged records.** This section does not apply if the subject of a background
3.29 study has a conviction that was expunged under chapter 609A in an expungement order that
3.30 directed the Department of Human Services to seal records related to the expungement, or
3.31 any underlying fact or element from an expunged record of an arrest, criminal charge, or
3.32 conviction when an expungement order directed the Department of Human Services to seal
3.33 records related to the expungement. Nothing in this subdivision prohibits the commissioner

4.1 from disqualifying an individual based upon a separate administrative determination under
 4.2 section 245C.15, subdivision 4, paragraph (b), unless there is a court order directed to the
 4.3 Department of Human Services to expunge an administrative order.

4.4 Sec. 5. Minnesota Statutes 2020, section 245C.24, is amended by adding a subdivision to
 4.5 read:

4.6 Subd. 6. **Expunged criminal records.** The commissioner shall not disqualify an
 4.7 individual subject to a background study under this chapter based on (1) a record of
 4.8 conviction that was expunged under chapter 609A in an expungement order that directed
 4.9 the Department of Human Services to seal records related to the expungement, or (2) any
 4.10 underlying fact or element from an expunged record of an arrest, criminal charge, or
 4.11 conviction when an expungement order directed the Department of Human Services to seal
 4.12 records related to the expungement. Nothing in this subdivision prohibits the commissioner
 4.13 from disqualifying an individual based upon a separate administrative determination under
 4.14 section 245C.15, subdivision 4, paragraph (b), unless there is a court order directed to the
 4.15 Department of Human Services to expunge an administrative order.

4.16 Sec. 6. Minnesota Statutes 2020, section 260C.329, subdivision 3, is amended to read:

4.17 Subd. 3. **Petition.** ~~The county attorney or~~ A legal parent whose parental rights were
 4.18 terminated under a previous order of the court may file a petition for the reestablishment
 4.19 of the legal parent and child relationship. A parent filing a petition under this section shall
 4.20 pay a filing fee in the amount required under section 357.021, subdivision 2, clause (1). The
 4.21 filing fee may be waived pursuant to chapter 563. A petition for the reestablishment of the
 4.22 legal parent and child relationship may be filed when:

4.23 (1) ~~in cases where the county attorney is the petitioning party, both the responsible social~~
 4.24 ~~services agency and the county attorney agree that~~ reestablishment of the legal parent and
 4.25 child relationship is in the child's best interests;

4.26 (2) the parent has corrected the conditions that led to an order terminating parental rights;

4.27 (3) the parent is willing and has the capability to provide day-to-day care and maintain
 4.28 the health, safety, and welfare of the child;

4.29 (4) the child has been in foster care for at least ~~48~~ 24 months after the court issued the
 4.30 order terminating parental rights;

4.31 (5) the child has not been adopted; and

5.1 (6) the child is not the subject of a written adoption placement agreement between the
5.2 responsible social services agency and the prospective adoptive parent, as required under
5.3 Minnesota Rules, part 9560.0060, subpart 2.

5.4 Sec. 7. Minnesota Statutes 2020, section 260C.329, subdivision 7, is amended to read:

5.5 Subd. 7. **Service of petition on the parties.** The petition for the reestablishment of the
5.6 legal parent and child relationship and notice of hearing on the petition must be served on:

5.7 (1) the child;

5.8 ~~(2) in cases where the county attorney is the petitioning party, the parent whose rights~~
5.9 ~~have been terminated and with whom the legal parent and child relationship is proposed to~~
5.10 ~~be reestablished;~~

5.11 ~~(3)~~ (2) the county attorney;

5.12 ~~(4)~~ (3) the responsible social services agency;

5.13 ~~(5)~~ (4) the child's guardian ad litem; and

5.14 ~~(6)~~ (5) the child's tribe if the child is subject to the Indian Child Welfare Act.

5.15 Sec. 8. Minnesota Statutes 2020, section 260C.329, subdivision 8, is amended to read:

5.16 Subd. 8. **Hearing.** The court may grant the petition ordering the reestablishment of the
5.17 legal parent and child relationship only if it finds by clear and convincing evidence that:

5.18 (1) reestablishment of the legal parent and child relationship is in the child's best interests;

5.19 (2) the child has not been adopted;

5.20 (3) the child is not the subject of a written adoption placement agreement between the
5.21 responsible social services agency and the prospective adoptive parent, as required under
5.22 Minnesota Rules, part 9560.0060, subpart 2;

5.23 (4) at least ~~48~~ 24 months have elapsed following a final order terminating parental rights
5.24 and the child remains in foster care;

5.25 (5) the child desires to reside with the parent;

5.26 (6) the parent has corrected the conditions that led to an order terminating parental rights;
5.27 and

5.28 (7) the parent is willing and has the capability to provide day-to-day care and maintain
5.29 the health, safety, and welfare of the child.