

Breakout #402 – Marlene S. Garvis

Related Statutes

Minn. Stat. Ch. 245C

Minn. Stat. Sec. 152.18

Minn. Stat. Ch. 364

Minn. Stat. Sec. 148.261

Minn. Stat. Sec. 609.72

Minn. Stat. Ch. 609A

Minn. Stat. Secs. 214.29, 214.32, 214.33



Minnesota Board of Nursing: Complaint Resolution Process

Board decisions to discipline nurses or dismiss complaints have been generally reasonable, but it has taken too long to suspend nurses when public safety is at risk.

Key Facts and Findings:

- The Minnesota Board of Nursing received nearly 1,800 complaints in fiscal year 2014—about 15 complaints for every 1,000 licensed nurses in the state.
- In fiscal year 2014, 72 percent of board actions on complaints were dismissals, and 24 and 4 percent, respectively, involved disciplinary or nondisciplinary action.
- Between fiscal years 2009 through 2014, the board imposed suspensions more frequently than any other form of discipline.
- While complaint resolution outcomes have been generally reasonable, it has taken the board too long to resolve some complaints, putting public safety at risk.
- The board's ability to resolve many complaints in a timely, consistent manner has been adversely affected by its limited investigatory authority and lack of internal guidelines or administrative rules.
- The board's complaint resolution process has not always been fair to nurses, and some provisions of state law are too strict.
- The board must sometimes process complaints against nurses who are participating in the Health Professionals Services Program (HPSP), an alternative-to-discipline monitoring program, without the board's knowledge.

Key Recommendations:

- The Legislature should:
 - Allow the board to continue using its authority under the *Nurse Practice Act* to suspend nurses.
 - Give board staff greater authority to investigate and dismiss complaints.
 - Allow the board to expunge certain information about actions it has taken from nurses' public records, when appropriate.
 - Require the board to send a list of nurses who have complaints filed against them to HPSP, where staff would identify nurses enrolled in their program.
- The Minnesota Board of Nursing should:
 - Make greater and quicker use of its authority to temporarily suspend nurses.
 - Develop guidelines or administrative rules to help board members determine appropriate actions for certain types of complaints and delegate to staff greater responsibility to resolve some complaints.
- The Minnesota Board of Nursing and HPSP should develop joint policies and procedures to identify when nurses participating in HPSP must be reported to the board.

Report Summary

One of the Minnesota Board of Nursing's important responsibilities is to receive and resolve complaints against the nurses it regulates. The board's primary goal is to protect the public from incompetent practice or inappropriate behavior by nurses. At the same time, the board must provide nurses with adequate due process. Achieving that balance is often complex and challenging.

To help fulfill the board's mission, the 1995 Legislature created the Health Professionals Services Program (HPSP). This program monitors the practice of nurses (and other health professionals) with substance abuse problems or other physical, mental, or health conditions. The Minnesota Board of Nursing may refer nurses to HPSP. Nurses may also refer themselves or be referred by third parties. In these latter situations, the nursing board may not know that the nurses have conditions that, if left unmonitored or untreated, may affect their practice.

In fiscal year 2014, the board received 1,784 complaints. Of the board actions taken on complaints that year, 72 percent were dismissals, 24 percent involved disciplinary actions, and 4 percent involved nondisciplinary actions.

Overall, the board's final complaint resolution decisions have been generally reasonable.

Board decisions to dismiss or take other actions to resolve complaints have been reasonable—that is, its decisions have generally been appropriate given the nurses' violations. Complaint outcomes have adequately protected the public. The board has generally imposed its most serious actions—license suspension or revocation—in situations where the public has been at risk. If anything, the

board has tended to err on the side of public safety in disciplining nurses. For example, disciplinary actions made up 24 percent of all actions taken by the board in fiscal year 2014. The board most frequently disciplined nurses by suspending their licenses. Suspensions made up at least 43 percent of all disciplinary actions in 2014, up from 31 percent in 2009.

The board's high dismissal rate—72 percent in 2014—is misleading. Dismissals often involved complaints against nurses not working in Minnesota, or complaints that did not rise to the level of board action. The board also dismissed complaints that were unfounded, duplicative, had already been addressed by nurses or employers, or did not allege violations of state law. Finally, the board dismissed complaints that were too vague or general to investigate. In the complaints we reviewed, dismissal seemed the appropriate and reasonable decision.

The board has acted too slowly to suspend nurses, which has placed the public at risk.

Although the board has generally resolved complaints within timeframes set in statute and board policy, it has not always acted quickly enough when public safety is at risk.

The board has rarely used its authority to issue temporary suspensions to quickly remove nurses from practice. It issued only 11 temporary suspensions in fiscal years 2009 through 2014, with 7 of the 11 issued in 2014. Although temporary suspensions are done in situations where the public is at a serious risk of harm, the board issued the suspensions within four months of receiving a complaint in only about half of these cases. We identified several instances where the board could have—and should have—acted more quickly than it did.

The Legislature should expand the authority of board staff to investigate and dismiss complaints.

Statutes require that the board forward complaints requiring investigation to the Office of the Attorney General. While the law does not define what constitutes an investigation, the board has generally interpreted it to include fieldwork and interviews with nurses. Consequently, board staff do not routinely conduct interviews with nurses or talk with other involved parties outside of discipline conferences.

The board's limited investigatory powers have led to delays and gaps in its ability to build sound cases in a timely manner. Some staff told us they could potentially conclude an investigation with a ten-minute phone interview, but they believe state law prevents them from doing this. Instead, in the majority of complaints that require investigation, board staff convene discipline review panels to interview nurses, which adds time to the resolution process.

The board's investigatory authority should be expanded, which is in keeping with national nursing guidelines for effective regulatory agencies. Several Minnesota state agencies, including the departments of Human Services and Health, routinely interview individuals and visit sites as part of their complaint investigation processes.

To reduce some of the workload and time required of board members, board staff should be able to dismiss more complaints themselves—without requiring the approval of two board members. One board member told us that reviewing dismissed complaints takes time away from other work board members could be doing, especially since members rarely disagree with staff recommendations to dismiss. Further, allowing staff to dismiss complaints should reduce the board's reliance on discipline conferences to resolve some complaints.

The board should adopt guidelines or rules to ensure more timely and consistent decisions.

The board should develop guidelines or administrative rules that describe violations of state law and the range of board actions appropriate for each type of violation. Guidelines or rules are especially needed given that we found inconsistencies in how the board handled low-level practice complaints. They are also needed to help the board manage the increased number of complaints it will receive once it fully implements the criminal background checks required by the 2013 Legislature.

Further, the board should expand staff's ability to propose settlements in cases where violations do not pose a serious risk to the public. In keeping with current law, all disciplinary actions would not become final until full board approval. The board would need to develop guidelines that delineate the type of complaints staff could handle themselves. This could, in turn, reduce the number of discipline conferences needed.

The complaint resolution process is not always fair to nurses.

Participating in a discipline conference is the only time most nurses have to talk directly with staff or the board member who ultimately decides what action to recommend to the board. But most nurses come to the conferences without attorneys to help them understand the process. Much of the process—as well as the documents staff send out in advance—are very legalistic. Related documents are not written in plain English. This can be very intimidating to nurses. Furthermore, the board's website provides very little helpful information for nurses involved in the complaint process.

Also, state law may be unduly harsh in making all disciplinary and other actions public information indefinitely. For

example, some advocates for nurses told us that nurses can have difficulty finding employment years after having completed remedial courses to improve their practice. Even in some cases of nurse discipline, it may not serve a public safety purpose to keep all actions public forever.

Unlike some states, Minnesota does not have a system that expunges parts of nurses' records so that the public cannot see some actions taken against them. The 2014 Legislature amended state law to allow for expunging some criminal convictions from the public record. The same consideration should be bestowed upon nurses—especially for nurses not convicted of any crimes.

Staff must process complaints against nurses enrolled in HPSP without the board's knowledge.

In theory, the board has no knowledge of nurses who self refer to HPSP or are referred there by third parties, such as employers. This makes it difficult for the board to investigate complaints against nurses. The board only learns about their participation if HPSP (1) notifies the board when nurses do not comply with program requirements or (2) discharges nurses for any reason other than successful completion. Over half of the self-referred or third-party referred nurses in HPSP whose cases were closed in fiscal years 2010 through 2014 eventually came to the board's

attention, most often because they did not comply with HPSP requirements.

Overall, 83 percent of the nurses participating in and successfully completing HPSP without the board's knowledge had no complaints filed against them while in HPSP. At the same time, however, board staff processed complaints against 17 percent of the nurses who successfully completed HPSP without the board's knowledge.

Statutes should allow the board to learn if nurses with complaints filed against them have enrolled in HPSP.

The Legislature should amend statutes to allow the board to routinely submit a list of nurses with complaints filed against them to HPSP, where staff would identify whether any of those nurses were enrolled in their program.

It is not necessary that the board know the identity of all nurses successfully participating in HPSP if the board or HPSP has not received any complaints against them. Staff at HPSP have done a good job monitoring nurses; nurses who are compliant with the program likely do not pose a public safety risk. Thus, the confidentiality provisions that allow nurses to refer themselves or be referred by third parties without being reported to the board should continue, as long as the nurses thus referred do not have complaints filed against them.

Summary of Agencies' Responses

In a letter dated March 3, 2015, Shirley Brekken, Executive Director, Minnesota Board of Nursing, said that, "Generally, the Board believes the report is accurate and agrees with the facts and findings." The board commented favorably on the report's key recommendations, but took exception to OLA recommendations allowing suspended nurses to participate in the Health Professionals Services Program. In a letter dated February 26, 2015, Monica Feider, Program Manager, Health Professionals Services Program, disagreed with OLA recommendations that would result in nurse-specific policies, procedures, and mechanisms.

The full evaluation report, *Minnesota Board of Nursing: Complaint Resolution Process*, is available at 651-296-4708 or: www.auditor.leg.state.mn.us/ped/2015/nursing.htm



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CONTENTS

Building America

- ▶ Help Wanted: Prioritizing Deferred Maintenance
- ▶ Fueling Transportation Revenues
- ▶ Bridging Partnerships
- ▶ Millennials Trade Cars for Metro Cards
- ▶ By The Book: How Safe are our Bridges?
- ▶ 10 Questions: Maine Rep. Andrew McLean
- ▶ Beyond the Grades: ASCE Report Card
- ▶ Money on the Line for Transportation
- ▶ Grid Modernization
- ▶ Water Wars
- ▶ Acronym Soup
- ▶ MIC3: Transition for Military Kids
- ▶ Freshman Orientation: Part 2
- ▶ Leadership Corner
- ▶ Final Facts

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Minnesota Requires Background Checks for Health Licenses

By Marina Byrd, CSG Graduate Research Assistant

Minnesota this year became the 36th state to pass a law requiring a fingerprint-based criminal background check for nurses and all other health licensing boards.

"Public protection was a high priority for us," said Minnesota Sen. Kathy Sheran, one of the authors of Senate File 588. "It was very important for us to give licenses to people who are reliable and trustworthy." The law takes effect in January 2018.

Sheran supported a bill in 2012 that would have required only those applying to the Boards of Nursing and Dentistry to get the federal level fingerprint-based background checks.

"The legislators questioned why the bill only applied to those two health professions," said Shirley Brekken, executive director of the Minnesota Board of Nursing. That bill failed, but legislators brought the issue back this year.

"We wanted consistency across all health licensing boards who license people to work with vulnerable or dependent people," said Sheran. House Bill 1223, approved this year, requires all health boards to complete fingerprint-based background checks.

Only 14 states—Alabama, Colorado, Connecticut, Hawaii, Maine, Massachusetts, Montana, Nebraska, New York, Pennsylvania, Vermont, Virginia, Washington and Wisconsin—do not require fingerprint-based background checks for nurses to gain licensure.

By Jan. 1, 2018, anyone applying for an initial license, license by endorsement or reapplying for licensure after a gap in time must complete a federal level fingerprint-based criminal background check.

According to Brekken, some health licensing boards were further along in the background check

process than others. The delay in implementation of the new law, she said, will help ensure everyone is on the same page.

"The 2018 timeframe allows all health licensing boards to establish a solid decision-making process and infrastructure database to effectively handle the new law," she said.

Public protection is the core mission of all boards of nursing, according to Maryann Alexander, chief officer of nursing regulation at the National Council of State Boards of Nursing. The level of trust that comes with the practice of nursing, coupled with the ease of mobility between jurisdictions, requires boards of nursing to vigilantly assess the qualifications of nurses, she said.

State boards of nursing license nearly 4.2 million nurses nationwide, and Sheran said the law requiring the fingerprint-based background check will help the state better serve the people of Minnesota.

"We expect boards to protect the public from exploitation," said Sheran. "We want to create an environment to give the board every opportunity to protect the public."

Alexander agrees.

"Fingerprint-based criminal background checks are the most effective means for boards to ascertain the true identity and criminal history of an applicant," she said.

According to a Minnesota Sunset Commission Report, fingerprint checks have higher accuracy than name or Social Security number checks. Fingerprint checks also use the FBI's nationwide criminal database. This allows the background check to detect crimes across state borders.

The law doesn't just protect potential patients.

"The law also needs to protect the person who worked hard to get a license," said Sheran.

The law can protect the applicant by keeping the data protected and private. The data secured from the fingerprint check will be used only for criminal offenses that relate to the applicant's job, and allows the applicant to review the data and challenge inaccurate information.

The Council of State Governments adopted a resolution in December 2012 to support fingerprint-based criminal background checks for nurses applying for licensure. The CSG resolution recommends the policy to states because, "nurses work with the sick, disabled, elderly and other vulnerable populations, and it is in the interest of public safety to review nurse licensure applicants' past criminal behavior in determining whether they should be granted a license to practice nursing in a state or territory."

CSG Resources

- ▶ [Capitol Research: "Nurse Licensure Criminal Background Checks"](#)
- ▶ ["Resolution Supporting Criminal Background Checks for Nurses Applying for State Licensure"](#)

Other Resources

- ▶ [Minnesota Department for Public Health: "Sunset Commission: Health Licensing Board Section 26 –Criminal Background Check Study and Proposed Legislation."](#)
- ▶ [Minnesota Senate: Senate File 588](#)



CHAPTER 245C

HUMAN SERVICES BACKGROUND STUDIES

245C.01	TITLE.	245C.21	REQUESTING RECONSIDERATION OF DISQUALIFICATION.
245C.02	DEFINITIONS.	245C.22	REVIEW AND ACTION ON A RECONSIDERATION REQUEST.
245C.03	BACKGROUND STUDY; INDIVIDUALS TO BE STUDIED.	245C.23	COMMISSIONER'S RECONSIDERATION NOTICE.
245C.04	WHEN BACKGROUND STUDY MUST OCCUR.	245C.24	DISQUALIFICATION; BAR TO SET ASIDE A DISQUALIFICATION; REQUEST FOR VARIANCE.
245C.05	BACKGROUND STUDY; INFORMATION AND DATA PROVIDED TO COMMISSIONER.	245C.25	CONSOLIDATED RECONSIDERATION OF MALTREATMENT DETERMINATION AND DISQUALIFICATION.
245C.051	DESTRUCTION OF BACKGROUND STUDY SUBJECT INFORMATION.	245C.26	RECONSIDERATION OF A DISQUALIFICATION FOR AN INDIVIDUAL LIVING IN A LICENSED HOME.
245C.07	STUDY SUBJECT AFFILIATED WITH MULTIPLE FACILITIES.	245C.27	FAIR HEARING RIGHTS.
245C.08	BACKGROUND STUDY; COMMISSIONER REVIEWS.	245C.28	CONTESTED CASE HEARING RIGHTS.
245C.09	FAILURE OR REFUSAL TO COOPERATE WITH BACKGROUND STUDY.	245C.29	CONCLUSIVE DETERMINATIONS OR DISPOSITIONS.
245C.10	BACKGROUND STUDY; FEES.	245C.30	VARIANCE FOR A DISQUALIFIED INDIVIDUAL.
245C.11	BACKGROUND STUDY; COUNTY AGENCIES.	245C.301	NOTIFICATION OF SET-ASIDE OR VARIANCE.
245C.12	BACKGROUND STUDY; TRIBAL ORGANIZATIONS.	245C.31	INDIVIDUAL REGULATED BY A HEALTH-RELATED LICENSING BOARD; DISQUALIFICATION BASED ON MALTREATMENT.
245C.13	BACKGROUND STUDY PROCESSING.	245C.32	SYSTEMS AND RECORDS.
245C.14	DISQUALIFICATION.	245C.33	ADOPTION AND TRANSFER OF PERMANENT LEGAL AND PHYSICAL CUSTODY BACKGROUND STUDY REQUIREMENTS.
245C.15	DISQUALIFYING CRIMES OR CONDUCT.	245C.34	ADOPTION AND CHILD FOSTER CARE BACKGROUND STUDIES; TRIBAL ORGANIZATIONS.
245C.16	DISQUALIFIED INDIVIDUAL'S RISK OF HARM.		
245C.17	NOTICE OF BACKGROUND STUDY RESULTS.		
245C.18	OBLIGATION TO REMOVE DISQUALIFIED INDIVIDUAL FROM DIRECT CONTACT.		
245C.19	TERMINATION OF AFFILIATION BASED ON DISQUALIFICATION NOTICE.		
245C.20	LICENSE HOLDER RECORD KEEPING.		

245C.01 TITLE.

This chapter may be cited as the "Department of Human Services Background Studies Act."

History: 2003 c 15 art 1 s 1

245C.02 DEFINITIONS.

Subdivision 1. **Scope.** The definitions in this section apply to this chapter.

Subd. 2. **Access to persons served by a program.** "Access to persons served by a program" means physical access to persons receiving services, access to the persons' personal property, or access to the persons' personal, financial, or health information, without continuous, direct supervision, as defined in subdivision 8.

Subd. 3. **Annual or annually.** "Annual" or "annually" has the meaning given in section 245A.02, subdivision 2b.

Subd. 4. **Applicant.** "Applicant" has the meaning given in section 245A.02, subdivision 3.

Subd. 4a. **Authorized fingerprint collection vendor.** "Authorized fingerprint collection vendor" means a qualified organization under a written contract with the commissioner to provide services in accordance with section 245C.05, subdivision 5, paragraph (d).

Subd. 5. **Background study.** "Background study" means the review of records conducted by the commissioner to determine whether a subject is disqualified from direct contact with persons served by a program and, where specifically provided in statutes, whether a subject is disqualified from having access to persons served by a program.

Subd. 6. **Child.** "Child" has the meaning given in section 245A.02, subdivision 4.

Subd. 7. **Commissioner.** "Commissioner" has the meaning given in section 245A.02, subdivision 5.

Subd. 8. **Continuous, direct supervision.** "Continuous, direct supervision" means an individual is within sight or hearing of the program's supervising individual to the extent that the program's supervising individual is capable at all times of intervening to protect the health and safety of the persons served by the program.

Subd. 9. **Contractor.** "Contractor" means any individual, regardless of employer, who is providing program services for hire under the control of the provider.

Subd. 9a. **Conviction.** "Conviction" has the meaning given in section 609.02, subdivision 5.

Subd. 10. **County agency.** "County agency" has the meaning given in section 245A.02, subdivision 6.

Subd. 11. **Direct contact.** "Direct contact" means providing face-to-face care, training, supervision, counseling, consultation, or medication assistance to persons served by the program.

Subd. 12. **License.** "License" has the meaning given in section 245A.02, subdivision 8.

Subd. 13. **License holder.** "License holder" has the meaning given in section 245A.02, subdivision 9.

Subd. 13a. **NETStudy.** "NETStudy" means the commissioner's online system implemented in July 2004 and used by entities for submitting background study requests required under this chapter.

Subd. 13b. **NETStudy 2.0.** "NETStudy 2.0" means the commissioner's system that replaces both NETStudy and the department's internal background study processing system. NETStudy 2.0 is designed to enhance protection of children and vulnerable adults by improving the accuracy of background studies through fingerprint-based criminal record checks and expanding the background studies to include a review of information from the Minnesota Court Information System and the national crime information database. NETStudy 2.0 is also designed to increase efficiencies in and the speed of the hiring process by:

- (1) providing access to and updates from public Web-based data related to employment eligibility;
- (2) decreasing the need for repeat studies through electronic updates of background study subjects' criminal records;
- (3) supporting identity verification using subjects' Social Security numbers and photographs;
- (4) using electronic employer notifications; and
- (5) issuing immediate verification of subjects' eligibility to provide services as more studies are completed under the NETStudy 2.0 system.

Subd. 14. **Person.** "Person" means a child as defined in subdivision 6 or an adult as defined in section 245A.02, subdivision 2.

Subd. 14a. **Private agency.** "Private agency" has the meaning given in section 245A.02, subdivision 12.

Subd. 15. **Reasonable cause.** "Reasonable cause" means information or circumstances exist which provide the commissioner with articulable suspicion that further pertinent information may exist concerning a subject. The commissioner has reasonable cause when, but not limited to, the commissioner has received a report from the subject, the license holder, or a third party indicating that the subject has a history that would disqualify the individual or that may pose a risk to the health or safety of persons receiving services.

Subd. 16. **Recurring maltreatment.** "Recurring maltreatment" means more than one incident of maltreatment for which there is a preponderance of evidence that the maltreatment occurred and that the subject was responsible for the maltreatment.

Subd. 17. [Repealed, 2004 c 288 art 1 s 83]

Subd. 17a. **Roster.** (a) "Roster" means the electronic method used to identify the entity or entities required to conduct background studies under this chapter with which a background subject is affiliated. There are three types of rosters: active roster, inactive roster, and master roster.

(b) "Active roster" means the list of individuals specific to an entity who have been determined eligible under this chapter to provide services for the entity and who the entity has identified as affiliated. An individual shall remain on the entity's active roster and is considered affiliated until the commissioner determines the individual is ineligible or the entity removes the individual from the entity's active roster.

(c) "Inactive roster" means the list maintained by the commissioner of individuals who are eligible under this chapter to provide services and are not on an active roster. Individuals shall remain on the inactive roster for no more than 180 consecutive days, unless the individual submits a written request to the commissioner requesting to remain on the inactive roster for a longer period of time. Upon the commissioner's receipt of information that may cause an individual on the inactive roster to be disqualified under this chapter, the commissioner shall remove the individual from the inactive roster, and if the individual again seeks a position requiring a background study, the individual shall be required to complete a new background study.

(d) "Master roster" means the list maintained by the commissioner of all individuals who, as a result of a background study under this chapter, and regardless of affiliation with an entity, are determined by the commissioner to be eligible to provide services for one or more entities. The master roster includes all background study subjects on rosters under paragraphs (b) and (c).

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

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

- (1) diagnostic testing, assessment, or observation;
- (2) the application of, recommendation to use, or prescription solely for a remedy that is available over the counter without a prescription; or
- (3) a prescription solely for a topical antibiotic to treat burns when there is no follow-up appointment.

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

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

Subd. 19. **Subject of a background study.** "Subject of a background study" means an individual on whom a background study is required or completed.

History: 2003 c 15 art 1 s 2; 2004 c 288 art 1 s 38; 2007 c 112 s 26; 2007 c 147 art 3 s 5; 2010 c 329 art 1 s 14; 2014 c 250 s 1-4; 2015 c 78 art 4 s 33

245C.03 BACKGROUND STUDY; INDIVIDUALS TO BE STUDIED.

Subdivision 1. **Licensed programs.** (a) The commissioner shall conduct a background study on:

- (1) the person or persons applying for a license;
- (2) an individual age 13 and over living in the household where the licensed program will be provided who is not receiving licensed services from the program;
- (3) current or prospective employees or contractors of the applicant who will have direct contact with persons served by the facility, agency, or program;
- (4) volunteers or student volunteers who will have direct contact with persons served by the program to provide program services if the contact is not under the continuous, direct supervision by an individual listed in clause (1) or (3);
- (5) an individual age ten to 12 living in the household where the licensed services will be provided when the commissioner has reasonable cause;
- (6) an individual who, without providing direct contact services at a licensed program, may have unsupervised access to children or vulnerable adults receiving services from a program, when the commissioner has reasonable cause; and
- (7) all managerial officials as defined under section 245A.02, subdivision 5a.

(b) For family child foster care settings, a short-term substitute caregiver providing direct contact services for a child for less than 72 hours of continuous care is not required to receive a background study under this chapter.

Subd. 2. **Personal care provider organizations.** The commissioner shall conduct background studies on any individual required under sections 256B.0651 to 256B.0654 and 256B.0659 to have a background study completed under this chapter.

Subd. 3. **Supplemental nursing services agencies.** The commissioner shall conduct all background studies required under this chapter and initiated by supplemental nursing services agencies registered under section 144A.71, subdivision 1.

Subd. 4. **Personnel agencies; educational programs; professional services agencies.** The commissioner also may conduct studies on individuals specified in subdivision 1, paragraph (a), clauses (3) and (4), when the studies are initiated by:

- (1) personnel pool agencies;
- (2) temporary personnel agencies;
- (3) educational programs that train individuals by providing direct contact services in licensed programs; and
- (4) professional services agencies that are not licensed and which contract with licensed programs to provide direct contact services or individuals who provide direct contact services.

Subd. 5. **Other state agencies.** The commissioner shall conduct background studies on applicants and license holders under the jurisdiction of other state agencies who are required in other statutory sections to initiate background studies under this chapter, including the applicant's or license holder's employees, contractors, and volunteers when required under other statutory sections.

Subd. 6. **Unlicensed home and community-based waiver providers of service to seniors and individuals with disabilities.** The commissioner shall conduct background studies on any individual required under section 256B.4912 to have a background study completed under this chapter.

Subd. 7. **Children's therapeutic services and supports providers.** The commissioner shall conduct background studies according to this chapter when initiated by a children's therapeutic services and supports provider under section 256B.0943.

Subd. 8. **Self-initiated background studies.** Upon implementation of NETStudy 2.0, the commissioner shall conduct background studies according to this chapter when initiated by an individual who is not on the master roster. A subject under this subdivision who is not disqualified must be placed on the inactive roster.

Subd. 9. **Community first services and supports organizations.** The commissioner shall conduct background studies on any individual required under section 256B.85 to have a background study completed under this chapter.

Subd. 10. **Providers of group residential housing or supplementary services.** The commissioner shall conduct background studies on any individual required under section 256I.04 to have a background study completed under this chapter.

Subd. 11. **Child protection workers or social services staff having responsibility for child protective duties.** (a) The commissioner must complete background studies, according to paragraph (b) and section 245C.04, subdivision 10, when initiated by a county social services agency or by a local welfare agency according to section 626.559, subdivision 1b.

(b) For background studies completed by the commissioner under this subdivision, the commissioner shall not make a disqualification decision, but shall provide the background study information received to the county that initiated the study.

Subd. 12. **Providers of special transportation service.** The commissioner shall conduct background studies on any individual required under section 174.30 to have a background study completed under this chapter.

History: 2003 c 15 art 1 s 3; 2004 c 288 art 1 s 39,40; 1Sp2005 c 4 art 1 s 26; 2009 c 79 art 6 s 3; 2009 c 142 art 3 s 1; 2009 c 173 art 1 s 4; 1Sp2011 c 9 art 3 s 2; 2012 c 216 art 16 s 16; 2014 c 250 s 5,6; 2014 c 262 art 4 s 9; art 5 s 6; 2014 c 312 art 26 s 1; 2015 c 21 art 1 s 48; 2015 c 71 art 1 s 3,4; art 11 s 8

245C.04 WHEN BACKGROUND STUDY MUST OCCUR.

Subdivision 1. **Licensed programs.** (a) The commissioner shall conduct a background study of an individual required to be studied under section 245C.03, subdivision 1, at least upon application for initial license for all license types.

(b) The commissioner shall conduct a background study of an individual required to be studied under section 245C.03, subdivision 1, at reapplication for a license for family child care.

(c) The commissioner is not required to conduct a study of an individual at the time of reapplication for a license if the individual's background study was completed by the commissioner of human services and the following conditions are met:

(1) a study of the individual was conducted either at the time of initial licensure or when the individual became affiliated with the license holder;

(2) the individual has been continuously affiliated with the license holder since the last study was conducted; and

(3) the last study of the individual was conducted on or after October 1, 1995.

(d) The commissioner of human services shall conduct a background study of an individual specified under section 245C.03, subdivision 1, paragraph (a), clauses (2) to (6), who is newly affiliated with a child foster care license holder. The county or private agency shall collect and forward to the commissioner the information required under section 245C.05, subdivisions 1 and 5. The background study conducted by the commissioner of human services under this paragraph must include a review of the information required under section 245C.08, subdivisions 1, 3, and 4.

(e) The commissioner shall conduct a background study of an individual specified under section 245C.03, subdivision 1, paragraph (a), clauses (2) to (6), who is newly affiliated with an adult foster care or family adult day services license holder: (1) the county shall collect and forward to the commissioner the information required under section 245C.05, subdivision 1, paragraphs (a) and (b), and subdivision 5, paragraphs (a) and (b), for background studies conducted by the commissioner for all family adult day services and for adult foster care when the adult foster care license holder resides in the adult foster care residence; (2) the license holder shall collect and forward to the commissioner the information required under section 245C.05, subdivisions 1, paragraphs (a) and (b); and 5, paragraphs (a) and (b), for background studies conducted by the commissioner for adult foster care when the license holder does not reside in the adult foster care residence; and (3) the background study conducted by the commissioner under this paragraph must include a review of the information required under section 245C.08, subdivision 1, paragraph (a), and subdivisions 3 and 4.

(f) Applicants for licensure, license holders, and other entities as provided in this chapter must submit completed background study requests to the commissioner using the electronic system known as NETStudy

before individuals specified in section 245C.03, subdivision 1, begin positions allowing direct contact in any licensed program.

(g) For an individual who is not on the entity's active roster, the entity must initiate a new background study through NETStudy when:

(1) an individual returns to a position requiring a background study following an absence of 120 or more consecutive days; or

(2) a program that discontinued providing licensed direct contact services for 120 or more consecutive days begins to provide direct contact licensed services again.

The license holder shall maintain a copy of the notification provided to the commissioner under this paragraph in the program's files. If the individual's disqualification was previously set aside for the license holder's program and the new background study results in no new information that indicates the individual may pose a risk of harm to persons receiving services from the license holder, the previous set-aside shall remain in effect.

(h) For purposes of this section, a physician licensed under chapter 147 is considered to be continuously affiliated upon the license holder's receipt from the commissioner of health or human services of the physician's background study results.

(i) For purposes of family child care, a substitute caregiver must receive repeat background studies at the time of each license renewal.

Subd. 2. Other state agencies. Applicants and license holders under the jurisdiction of other state agencies who are required in other statutory sections to initiate background studies under this chapter must submit completed background study forms to the commissioner before the background study subject begins in a position allowing direct contact in the licensed program or, where applicable, prior to being employed.

Subd. 3. Personal care provider organizations. (a) The commissioner shall conduct a background study of an individual required to be studied under section 245C.03, subdivision 2, at least upon application for initial enrollment under sections 256B.0651 to 256B.0654 and 256B.0659.

(b) Organizations required to initiate background studies under sections 256B.0651 to 256B.0654 and 256B.0659 for individuals described in section 245C.03, subdivision 2, must submit a completed background study request to the commissioner using the electronic system known as NETStudy before those individuals begin a position allowing direct contact with persons served by the organization.

(c) Organizations required to initiate background studies under sections 256B.0651 to 256B.0654 and 256B.0659 for individuals described in section 245C.03, subdivision 2, must initiate a new background study through NETStudy when an individual returns to a position requiring a background study following an absence of 120 or more consecutive days.

Subd. 4. Supplemental nursing services agencies. (a) The commissioner shall conduct a background study of an individual required to be studied under section 245C.03, subdivision 3, at least upon application for registration under section 144A.71, subdivision 1.

(b) Each supplemental nursing services agency must initiate background studies using the electronic system known as NETStudy before an individual begins a position allowing direct contact with persons served by the agency and annually thereafter.

(c) A supplemental nursing services agency that initiates background studies through NETStudy 2.0 is exempt from the requirement to initiate annual background studies under paragraph (b) for individuals who are on the agency's active roster.

Subd. 4a. Agency background studies; electronic criminal case information updates; rosters; and criteria for eliminating repeat background studies. (a) The commissioner shall develop and implement an electronic process as a part of NETStudy 2.0 for the regular transfer of new criminal case information that is added to the Minnesota court information system. The commissioner's system must include for review only information that relates to individuals who are on the master roster.

(b) The commissioner shall develop and implement an online system as a part of NETStudy 2.0 for agencies that initiate background studies under this chapter to access and maintain records of background studies initiated by that agency. The system must show all active background study subjects affiliated with that agency and the status of each individual's background study. Each agency that initiates background studies must use this system to notify the commissioner of discontinued affiliation for purposes of the processes required under paragraph (a).

(c) After an entity initiating a background study has paid the applicable fee for the study and has provided the individual with the privacy notice required under section 245C.05, subdivision 2c, NETStudy 2.0 shall immediately inform the entity whether the individual requires a background study or whether the individual is immediately eligible to provide services based on a previous background study. If the individual is immediately eligible, the entity initiating the background study shall be able to view the information previously supplied by the individual who is the subject of a background study as required under section 245C.05, subdivision 1, including the individual's photograph taken at the time the individual's fingerprints were recorded. The commissioner shall not provide any entity initiating a subsequent background study with information regarding the other entities that initiated background studies on the subject.

(d) Verification that an individual is eligible to provide services based on a previous background study is dependent on the individual voluntarily providing the individual's Social Security number to the commissioner at the time each background study is initiated. When an individual does not provide the individual's Social Security number for the background study, that study is not transferable and a repeat background study on that individual is required if the individual seeks a position requiring a background study under this chapter with another entity.

Subd. 5. Personnel agencies; educational programs; professional services agencies. (a) Agencies, programs, and individuals who initiate background studies under section 245C.03, subdivision 4, must initiate the studies annually using the electronic system known as NETStudy.

(b) Agencies, programs, and individuals who initiate background studies through NETStudy 2.0 are exempt from the requirement to initiate annual background studies under paragraph (a) for individuals who are on the agency's or program's active roster.

Subd. 6. Unlicensed home and community-based waiver providers of service to seniors and individuals with disabilities. (a) Providers required to initiate background studies under section 256B.4912 must initiate a study using the electronic system known as NETStudy before the individual begins in a position allowing direct contact with persons served by the provider.

(b) Except as provided in paragraphs (c) and (d), the providers must initiate a background study annually of an individual required to be studied under section 245C.03, subdivision 6.

(c) After an initial background study under this subdivision is initiated on an individual by a provider of both services licensed by the commissioner and the unlicensed services under this subdivision, a repeat annual background study is not required if:

(1) the provider maintains compliance with the requirements of section 245C.07, paragraph (a), regarding one individual with one address and telephone number as the person to receive sensitive background study information for the multiple programs that depend on the same background study, and that the individual who is designated to receive the sensitive background information is capable of determining, upon the request of the commissioner, whether a background study subject is providing direct contact services in one or more of the provider's programs or services and, if so, at which location or locations; and

(2) the individual who is the subject of the background study provides direct contact services under the provider's licensed program for at least 40 hours per year so the individual will be recognized by a probation officer or corrections agent to prompt a report to the commissioner regarding criminal convictions as required under section 245C.05, subdivision 7.

(d) A provider who initiates background studies through NETStudy 2.0 is exempt from the requirement to initiate annual background studies under paragraph (b) for individuals who are on the provider's active roster.

Subd. 7. New study required with legal name change. (a) For a background study completed on an individual required to be studied under section 245C.03, the license holder or other entity that initiated the background study must initiate a new background study using the electronic system known as NETStudy when an individual who is affiliated with the license holder or other entity undergoes a legal name change.

(b) For background studies subject to a fee paid through the NETStudy system, the entity that initiated the study may initiate a new study under paragraph (a) or notify the commissioner of the name change through a notice to the commissioner.

Subd. 8. Current or prospective contractors serving multiple family child care license holders. Current or prospective contractors who are required to have a background study under section 245C.03, subdivision 1, who provide services for multiple family child care license holders in a single county, and will have direct contact with children served in the family child care setting are required to have only one background study which is transferable to all family child care programs in that county if:

(1) the county agency maintains a record of the contractor's background study results which verify the contractor is approved to have direct contact with children receiving services;

(2) the license holder contacts the county agency and obtains notice that the current or prospective contractor is in compliance with background study requirements and approved to have direct contact; and

(3) the contractor's background study is repeated every two years.

Subd. 9. Community first services and supports organizations. (a) The commissioner shall conduct a background study of an individual required to be studied under section 245C.03, subdivision 9, at least upon application for initial enrollment under section 256B.85.

(b) Before an individual described in section 245C.03, subdivision 9, begins a position allowing direct contact with a person served by an organization required to initiate a background study under section 256B.85, the organization must receive a notice from the commissioner that the support worker is:

(1) not disqualified under section 245C.14; or

(2) disqualified, but the individual has received a set-aside of the disqualification under section 245C.22.

Subd. 10. **Child protection workers or social services staff having responsibility for child protective duties.** The commissioner shall conduct background studies of employees of county social services and local welfare agencies having responsibility for child protection duties when the background study is initiated according to section 626.559, subdivision 1b.

History: 2003 c 15 art 1 s 4; 2007 c 147 art 3 s 6; 2009 c 79 art 1 s 8; art 6 s 4; 2009 c 142 art 2 s 23; 2009 c 173 art 1 s 5,6; 2012 c 216 art 16 s 17; 2012 c 247 art 4 s 11; 2013 c 108 art 5 s 3; 2014 c 228 art 5 s 1; 2014 c 250 s 7,8; 2014 c 262 art 4 s 9; art 5 s 3,6; 2014 c 291 art 1 s 5; 2014 c 312 art 26 s 2; 2015 c 71 art 1 s 5; 2015 c 78 art 4 s 34-36

245C.05 BACKGROUND STUDY; INFORMATION AND DATA PROVIDED TO COMMISSIONER.

Subdivision 1. **Individual studied.** (a) The individual who is the subject of the background study must provide the applicant, license holder, or other entity under section 245C.04 with sufficient information to ensure an accurate study, including:

(1) the individual's first, middle, and last name and all other names by which the individual has been known;

(2) current home address, city, and state of residence;

(3) current zip code;

(4) sex;

(5) date of birth;

(6) driver's license number or state identification number; and

(7) upon implementation of NETStudy 2.0, the home address, city, county, and state of residence for the past five years.

(b) Every subject of a background study conducted or initiated by counties or private agencies under this chapter must also provide the home address, city, county, and state of residence for the past five years.

(c) Every subject of a background study related to private agency adoptions or related to child foster care licensed through a private agency, who is 18 years of age or older, shall also provide the commissioner a signed consent for the release of any information received from national crime information databases to the private agency that initiated the background study.

(d) The subject of a background study shall provide fingerprints and a photograph as required in subdivision 5.

Subd. 2. **Applicant, license holder, or other entity.** (a) The applicant, license holder, or other entities as provided in this chapter shall verify that the information collected under subdivision 1 about an individual who is the subject of the background study is correct and must provide the information on forms or in a format prescribed by the commissioner.

(b) The information collected under subdivision 1 about an individual who is the subject of a completed background study may only be viewable by an entity that initiates a subsequent background study on that individual under NETStudy 2.0 after the entity has paid the applicable fee for the study and has provided the individual with the privacy notice in subdivision 2c.

Subd. 2a. **County or private agency.** For background studies related to child foster care, county and private agencies must collect the information under subdivision 1 and forward it to the commissioner.

Subd. 2b. **County agency to collect and forward information to commissioner.** For background studies related to all family adult day services and to adult foster care when the adult foster care license holder resides in the adult foster care residence, the county agency must collect the information required under subdivision 1 and forward it to the commissioner.

Subd. 2c. **Privacy notice to background study subject.** (a) Prior to initiating each background study, the entity initiating the study must provide the commissioner's privacy notice to the background study subject required under section 13.04, subdivision 2. The notice must be available through the commissioner's electronic NETStudy and NETStudy 2.0 systems and shall include the information in paragraphs (b) and (c).

(b) The background study subject shall be informed that any previous background studies that received a set-aside will be reviewed, and without further contact with the background study subject, the commissioner may notify the agency that initiated the subsequent background study:

(1) that the individual has a disqualification that has been set aside for the program or agency that initiated the study;

(2) the reason for the disqualification; and

(3) that information about the decision to set aside the disqualification will be available to the license holder upon request without the consent of the background study subject.

(c) The background study subject must also be informed that:

(1) the subject's fingerprints collected for purposes of completing the background study under this chapter must not be retained by the Department of Public Safety, Bureau of Criminal Apprehension, or by the commissioner, but will be retained by the Federal Bureau of Investigation;

(2) effective upon implementation of NETStudy 2.0, the subject's photographic image will be retained by the commissioner, and if the subject has provided the subject's Social Security number for purposes of the background study, the photographic image will be available to prospective employers and agencies initiating background studies under this chapter to verify the identity of the subject of the background study;

(3) the commissioner's authorized fingerprint collection vendor shall, for purposes of verifying the identity of the background study subject, be able to view the identifying information entered into NETStudy 2.0 by the entity that initiated the background study, but shall not retain the subject's fingerprints, photograph, or information from NETStudy 2.0. The authorized fingerprint collection vendor shall retain no more than the subject's name and the date and time the subject's fingerprints were recorded and sent, only as necessary for auditing and billing activities;

(4) the commissioner shall provide the subject notice, as required in section 245C.17, subdivision 1, paragraph (a), when an entity initiates a background study on the individual;

(5) the subject may request in writing a report listing the entities that initiated a background study on the individual as provided in section 245C.17, subdivision 1, paragraph (b);

(6) the subject may request in writing that information used to complete the individual's background study in NETStudy 2.0 be destroyed if the requirements of section 245C.051, paragraph (a), are met; and

(7) notwithstanding clause (6), the commissioner shall destroy:

(i) the subject's photograph after a period of two years when the requirements of section 245C.051, paragraph (c), are met; and

(ii) any data collected on a subject under this chapter after a period of two years following the individual's death as provided in section 245C.051, paragraph (d).

Subd. 3. Additional information from individual studied. (a) For purposes of completing the background study, the commissioner may request the individual's Social Security number or race. The individual is not required to provide this information to the commissioner.

(b) The commissioner may also require additional information if the commissioner determines the information is necessary to complete the background study. Failure to provide the required information may result in a disqualification pursuant to section 245C.09.

Subd. 4. Electronic transmission. (a) For background studies conducted by the Department of Human Services, the commissioner shall implement a secure system for the electronic transmission of:

(1) background study information to the commissioner;

(2) background study results to the license holder;

(3) background study results to county and private agencies for background studies conducted by the commissioner for child foster care; and

(4) background study results to county agencies for background studies conducted by the commissioner for adult foster care and family adult day services.

(b) Unless the commissioner has granted a hardship variance under paragraph (c), a license holder or an applicant must use the electronic transmission system known as NETStudy or NETStudy 2.0 to submit all requests for background studies to the commissioner as required by this chapter.

(c) A license holder or applicant whose program is located in an area in which high-speed Internet is inaccessible may request the commissioner to grant a variance to the electronic transmission requirement.

Subd. 5. Fingerprints and photograph. (a) Before the implementation of NETStudy 2.0, except as provided in paragraph (c), for any background study completed under this chapter, when the commissioner has reasonable cause to believe that further pertinent information may exist on the subject of the background study, the subject shall provide the commissioner with a set of classifiable fingerprints obtained from an authorized agency.

(b) Before the implementation of NETStudy 2.0, for purposes of requiring fingerprints, the commissioner has reasonable cause when, but not limited to, the:

(1) information from the Bureau of Criminal Apprehension indicates that the subject is a multistate offender;

(2) information from the Bureau of Criminal Apprehension indicates that multistate offender status is undetermined; or

(3) commissioner has received a report from the subject or a third party indicating that the subject has a criminal history in a jurisdiction other than Minnesota.

(c) Notwithstanding paragraph (d), for background studies conducted by the commissioner for child foster care, adoptions, or a transfer of permanent legal and physical custody of a child, the subject of the background study, who is 18 years of age or older, shall provide the commissioner with a set of classifiable fingerprints obtained from an authorized agency.

(d) For background studies initiated on or after the implementation of NETStudy 2.0, every subject of a background study must provide the commissioner with a set of the background study subject's classifiable fingerprints and photograph. The photograph and fingerprints must be recorded at the same time by the commissioner's authorized fingerprint collection vendor and sent to the commissioner through the commissioner's secure data system described in section 245C.32, subdivision 1a, paragraph (b). The fingerprints shall not be retained by the Department of Public Safety, Bureau of Criminal Apprehension, or the commissioner, but will be retained by the Federal Bureau of Investigation. The commissioner's authorized fingerprint collection vendor shall, for purposes of verifying the identity of the background study subject, be able to view the identifying information entered into NETStudy 2.0 by the entity that initiated the background study, but shall not retain the subject's fingerprints, photograph, or information from NETStudy 2.0. The authorized fingerprint collection vendor shall retain no more than the name and date and time the subject's fingerprints were recorded and sent, only as necessary for auditing and billing activities.

Subd. 6. **Applicant, license holder, other entities, and agencies.** (a) The applicant, license holder, other entities as provided in this chapter, Bureau of Criminal Apprehension, law enforcement agencies, commissioner of health, and county agencies shall help with the study by giving the commissioner criminal conviction data and reports about the maltreatment of adults substantiated under section 626.557 and the maltreatment of minors substantiated under section 626.556.

(b) If a background study is initiated by an applicant, license holder, or other entities as provided in this chapter, and the applicant, license holder, or other entity receives information about the possible criminal or maltreatment history of an individual who is the subject of the background study, the applicant, license holder, or other entity must immediately provide the information to the commissioner.

(c) The program or county or other agency must provide written notice to the individual who is the subject of the background study of the requirements under this subdivision.

Subd. 7. **Probation officer and corrections agent.** (a) A probation officer or corrections agent shall notify the commissioner of an individual's conviction if the individual:

(1) has been affiliated with a program or facility regulated by the Department of Human Services or Department of Health, a facility serving children or youth licensed by the Department of Corrections, or any type of home care agency or provider of personal care assistance services within the preceding year; and

(2) has been convicted of a crime constituting a disqualification under section 245C.14.

(b) For the purpose of this subdivision, "conviction" has the meaning given it in section 609.02, subdivision 5.

(c) The commissioner, in consultation with the commissioner of corrections, shall develop forms and information necessary to implement this subdivision and shall provide the forms and information to the commissioner of corrections for distribution to local probation officers and corrections agents.

(d) The commissioner shall inform individuals subject to a background study that criminal convictions for disqualifying crimes will be reported to the commissioner by the corrections system.

(e) A probation officer, corrections agent, or corrections agency is not civilly or criminally liable for disclosing or failing to disclose the information required by this subdivision.

(f) Upon receipt of disqualifying information, the commissioner shall provide the notice required under section 245C.17, as appropriate, to agencies on record as having initiated a background study or making a request for documentation of the background study status of the individual.

(g) This subdivision does not apply to family child care programs.

History: 2003 c 15 art 1 s 5; 1Sp2003 c 14 art 6 s 5; 2004 c 288 art 1 s 41-44; 2007 c 112 s 27; 2007 c 147 art 3 s 7-11; 2009 c 79 art 1 s 9,10; 2009 c 173 art 1 s 7; 2012 c 216 art 16 s 18-21; 2012 c 247 art 4 s 12; 2014 c 228 art 5 s 2; 2014 c 250 s 9-13; 2014 c 262 art 5 s 4; 2014 c 312 art 25 s 3; 2015 c 78 art 4 s 37

245C.051 DESTRUCTION OF BACKGROUND STUDY SUBJECT INFORMATION.

(a) A background study subject may request in writing to the commissioner that information used to complete the individual's study in NETStudy 2.0 be destroyed if the individual:

- (1) has not been affiliated with any entity for the previous two years; and
- (2) has no current disqualifying characteristic.

(b) After receiving the request and verifying the information in paragraph (a), the commissioner shall destroy the information used to complete the subject's background study and shall keep a record of the subject's name and a notation of the date that the information was destroyed.

(c) When a previously studied individual has not been on the master roster for two years, the commissioner shall destroy the photographic image of the individual obtained under section 245C.05, subdivision 5, paragraph (d).

(d) Any data collected on an individual under this chapter that is maintained by the commissioner that has not been destroyed according to paragraph (b) or (c) shall be destroyed when two years have elapsed from the individual's actual death that is reported to the commissioner or when 90 years have elapsed since the individual's birth except when readily available data indicate that the individual is still living.

History: 2014 c 250 s 14

245C.06 [Repealed, 2007 c 112 s 59]

245C.07 STUDY SUBJECT AFFILIATED WITH MULTIPLE FACILITIES.

(a) Subject to the conditions in paragraph (d), when a license holder, applicant, or other entity owns multiple programs or services that are licensed by the Department of Human Services, Department of Health, or Department of Corrections, only one background study is required for an individual who provides direct contact services in one or more of the licensed programs or services if:

(1) the license holder designates one individual with one address and telephone number as the person to receive sensitive background study information for the multiple licensed programs or services that depend on the same background study; and

(2) the individual designated to receive the sensitive background study information is capable of determining, upon request of the department, whether a background study subject is providing direct contact services in one or more of the license holder's programs or services and, if so, at which location or locations.

(b) When a license holder maintains background study compliance for multiple licensed programs according to paragraph (a), and one or more of the licensed programs closes, the license holder shall immediately notify the commissioner which staff must be transferred to an active license so that the background studies can be electronically paired with the license holder's active program.

(c) When a background study is being initiated by a licensed program or service or a foster care provider that is also registered under chapter 144D, a study subject affiliated with multiple licensed programs or services may attach to the background study form a cover letter indicating the additional names of the programs or services, addresses, and background study identification numbers.

When the commissioner receives a notice, the commissioner shall notify each program or service identified by the background study subject of the study results.

The background study notice the commissioner sends to the subsequent agencies shall satisfy those programs' or services' responsibilities for initiating a background study on that individual.

(d) If a background study was conducted on an individual related to child foster care and the requirements under paragraph (a) are met, the background study is transferable across all licensed programs. If a background study was conducted on an individual under a license other than child foster care and the requirements under paragraph (a) are met, the background study is transferable to all licensed programs except child foster care.

(e) The provisions of this section that allow a single background study in one or more licensed programs or services do not apply to background studies submitted by adoption agencies, supplemental nursing services agencies, personnel agencies, educational programs, professional services agencies, and unlicensed personal care provider organizations.

(f) For an entity operating under NETStudy 2.0, the entity's active roster must be the system used to document when a background study subject is affiliated with multiple entities. For a background study to be transferable:

(1) the background study subject must be on and moving to a roster for which the person designated to receive sensitive background study information is the same; and

(2) the same entity must own or legally control both the roster from which the transfer is occurring and the roster to which the transfer is occurring. For an entity that holds or controls multiple licenses, or unlicensed personal care provider organizations, there must be a common highest level entity that has a legally identifiable structure that can be verified through records available from the secretary of state.

History: 2003 c 15 art 1 s 7; 1Sp2005 c 4 art 1 s 27; 2007 c 112 s 28; 2009 c 142 art 2 s 24; 2012 c 216 art 16 s 22; 2014 c 250 s 15; 2015 c 78 art 4 s 38

245C.08 BACKGROUND STUDY; COMMISSIONER REVIEWS.

Subdivision 1. **Background studies conducted by Department of Human Services.** (a) For a background study conducted by the Department of Human Services, the commissioner shall review:

(1) information related to names of substantiated perpetrators of maltreatment of vulnerable adults that has been received by the commissioner as required under section 626.557, subdivision 9c, paragraph (j);

(2) the commissioner's records relating to the maltreatment of minors in licensed programs, and from findings of maltreatment of minors as indicated through the social service information system;

(3) information from juvenile courts as required in subdivision 4 for individuals listed in section 245C.03, subdivision 1, paragraph (a), when there is reasonable cause;

(4) information from the Bureau of Criminal Apprehension, including information regarding a background study subject's registration in Minnesota as a predatory offender under section 243.166;

(5) except as provided in clause (6), information from the national crime information system when the commissioner has reasonable cause as defined under section 245C.05, subdivision 5, or as required under section 144.057, subdivision 1, clause (2); and

(6) for a background study related to a child foster care application for licensure, a transfer of permanent legal and physical custody of a child under sections 260C.503 to 260C.515, or adoptions, the commissioner shall also review:

(i) information from the child abuse and neglect registry for any state in which the background study subject has resided for the past five years; and

(ii) information from national crime information databases, when the background study subject is 18 years of age or older.

(b) Notwithstanding expungement by a court, the commissioner may consider information obtained under paragraph (a), clauses (3) and (4), unless the commissioner received notice of the petition for expungement and the court order for expungement is directed specifically to the commissioner.

(c) The commissioner shall also review criminal case information received according to section 245C.04, subdivision 4a, from the Minnesota court information system that relates to individuals who have already been studied under this chapter and who remain affiliated with the agency that initiated the background study.

(d) When the commissioner has reasonable cause to believe that the identity of a background study subject is uncertain, the commissioner may require the subject to provide a set of classifiable fingerprints for purposes of completing a fingerprint-based record check with the Bureau of Criminal Apprehension. Fingerprints collected under this paragraph shall not be saved by the commissioner after they have been used to verify the identity of the background study subject against the particular criminal record in question.

(e) The commissioner may inform the entity that initiated a background study under NETStudy 2.0 of the status of processing of the subject's fingerprints.

Subd. 2. Background studies conducted by a county agency. (a) For a background study conducted by a county agency for family child care services, the commissioner shall review:

(1) information from the county agency's record of substantiated maltreatment of adults and the maltreatment of minors;

(2) information from juvenile courts as required in subdivision 4 for:

(i) individuals listed in section 245C.03, subdivision 1, paragraph (a), who are ages 13 through 23 living in the household where the licensed services will be provided; and

(ii) any other individual listed under section 245C.03, subdivision 1, when there is reasonable cause; and

(3) information from the Bureau of Criminal Apprehension.

(b) If the individual has resided in the county for less than five years, the study shall include the records specified under paragraph (a) for the previous county or counties of residence for the past five years.

(c) Notwithstanding expungement by a court, the county agency may consider information obtained under paragraph (a), clause (3), unless the commissioner received notice of the petition for expungement and the court order for expungement is directed specifically to the commissioner.

Subd. 3. **Arrest and investigative information.** (a) For any background study completed under this section, if the commissioner has reasonable cause to believe the information is pertinent to the disqualification of an individual, the commissioner also may review arrest and investigative information from:

- (1) the Bureau of Criminal Apprehension;
- (2) the commissioner of health;
- (3) a county attorney;
- (4) a county sheriff;
- (5) a county agency;
- (6) a local chief of police;
- (7) other states;
- (8) the courts;
- (9) the Federal Bureau of Investigation;
- (10) the National Criminal Records Repository; and
- (11) criminal records from other states.

(b) The commissioner is not required to conduct more than one review of a subject's records from the Federal Bureau of Investigation if a review of the subject's criminal history with the Federal Bureau of Investigation has already been completed by the commissioner and there has been no break in the subject's affiliation with the license holder who initiated the background study.

Subd. 4. **Juvenile court records.** (a) For a background study conducted by the Department of Human Services, the commissioner shall review records from the juvenile courts for an individual studied under section 245C.03, subdivision 1, paragraph (a), when the commissioner has reasonable cause.

(b) For a background study conducted by a county agency, the commissioner shall review records from the juvenile courts for individuals listed in section 245C.03, subdivision 1, who are ages 13 through 23 living in the household where the licensed services will be provided. The commissioner shall also review records from juvenile courts for any other individual listed under section 245C.03, subdivision 1, when the commissioner has reasonable cause.

(c) The juvenile courts shall help with the study by giving the commissioner existing juvenile court records relating to delinquency proceedings held on individuals described in section 245C.03, subdivision 1, paragraph (a), when requested pursuant to this subdivision.

(d) For purposes of this chapter, a finding that a delinquency petition is proven in juvenile court shall be considered a conviction in state district court.

(e) Juvenile courts shall provide orders of involuntary and voluntary termination of parental rights under section 260C.301 to the commissioner upon request for purposes of conducting a background study under this chapter.

History: 2003 c 15 art 1 s 8; 1Sp2003 c 14 art 6 s 5; 2004 c 288 art 1 s 45-47; 1Sp2005 c 4 art 1 s 28,29; 2007 c 112 s 29; 2007 c 147 art 3 s 12,13; 2008 c 361 art 5 s 1; 2009 c 79 art 1 s 11; 2009 c 142 art 2 s 25; art 3 s 2-4; 2013 c 108 art 5 s 4; 2014 c 228 art 5 s 3; 2014 c 312 art 25 s 4; 2015 c 71 art 7 s 8

245C.09 FAILURE OR REFUSAL TO COOPERATE WITH BACKGROUND STUDY.

Subdivision 1. **Disqualification; licensing action.** An applicant's, license holder's, or other entity's failure or refusal to cooperate with the commissioner, including failure to provide additional information required under section 245C.05, is reasonable cause to disqualify a subject, deny a license application, or immediately suspend or revoke a license or registration.

Subd. 2. **Employment action.** An individual's failure or refusal to cooperate with the background study is just cause for denying or terminating employment of the individual if the individual's failure or refusal to cooperate could cause the applicant's application to be denied or the license holder's license to be immediately suspended or revoked.

History: 2003 c 15 art 1 s 9; 2004 c 288 art 1 s 48; 2007 c 112 s 30

245C.10 BACKGROUND STUDY; FEES.

Subdivision 1. [Repealed, 2009 c 142 art 2 s 49]

Subd. 1a. **Expenses.** Section 181.645 does not apply to background studies completed under this chapter.

Subd. 2. **Supplemental nursing services agencies.** The commissioner shall recover the cost of the background studies initiated by supplemental nursing services agencies registered under section 144A.71, subdivision 1, through a fee of no more than \$20 per study charged to the agency. The fees collected under this subdivision are appropriated to the commissioner for the purpose of conducting background studies.

Subd. 3. **Personal care provider organizations.** The commissioner shall recover the cost of background studies initiated by a personal care provider organization under sections 256B.0651 to 256B.0654 and 256B.0659 through a fee of no more than \$20 per study charged to the organization responsible for submitting the background study form. The fees collected under this subdivision are appropriated to the commissioner for the purpose of conducting background studies.

Subd. 4. **Temporary personnel agencies, educational programs, and professional services agencies.** The commissioner shall recover the cost of the background studies initiated by temporary personnel agencies, educational programs, and professional services agencies that initiate background studies under section 245C.03, subdivision 4, through a fee of no more than \$20 per study charged to the agency. The fees collected under this subdivision are appropriated to the commissioner for the purpose of conducting background studies.

Subd. 5. **Adult foster care and family adult day services.** The commissioner shall recover the cost of background studies required under section 245C.03, subdivision 1, for the purposes of adult foster care and family adult day services licensing, through a fee of no more than \$20 per study charged to the license holder. The fees collected under this subdivision are appropriated to the commissioner for the purpose of conducting background studies.

Subd. 6. **Unlicensed home and community-based waiver providers of service to seniors and individuals with disabilities.** The commissioner shall recover the cost of background studies initiated by unlicensed home and community-based waiver providers of service to seniors and individuals with disabilities under section 256B.4912 through a fee of no more than \$20 per study.

Subd. 7. **Private agencies.** The commissioner shall recover the cost of conducting background studies under section 245C.33 for studies initiated by private agencies for the purpose of adoption through a fee of no more than \$70 per study charged to the private agency. The fees collected under this subdivision are appropriated to the commissioner for the purpose of conducting background studies.

Subd. 8. **Children's therapeutic services and supports providers.** The commissioner shall recover the cost of background studies required under section 245C.03, subdivision 7, for the purposes of children's therapeutic services and supports under section 256B.0943, through a fee of no more than \$20 per study charged to the license holder. The fees collected under this subdivision are appropriated to the commissioner for the purpose of conducting background studies.

Subd. 9. **Human services licensed programs.** The commissioner shall recover the cost of background studies required under section 245C.03, subdivision 1, for all programs that are licensed by the commissioner, except child foster care and family child care, through a fee of no more than \$20 per study charged to the license holder. The fees collected under this subdivision are appropriated to the commissioner for the purpose of conducting background studies.

Subd. 10. **Community first services and supports organizations.** The commissioner shall recover the cost of background studies initiated by an agency-provider delivering services under section 256B.85, subdivision 11, or a financial management services provider providing service functions under section 256B.85, subdivision 13, through a fee of no more than \$20 per study, charged to the organization responsible for submitting the background study form. The fees collected under this subdivision are appropriated to the commissioner for the purpose of conducting background studies.

Subd. 11. **Providers of group residential housing or supplementary services.** The commissioner shall recover the cost of background studies initiated by providers of group residential housing or supplementary services under section 256I.04 through a fee of no more than \$20 per study. The fees collected under this subdivision are appropriated to the commissioner for the purpose of conducting background studies.

Subd. 12. **Child protection workers or social services staff having responsibility for child protective duties.** The commissioner shall recover the cost of background studies initiated by county social services agencies and local welfare agencies for individuals who are required to have a background study under section 626.559, subdivision 1b, through a fee of no more than \$20 per study. The fees collected under this subdivision are appropriated to the commissioner for the purpose of conducting background studies.

Subd. 13. **Providers of special transportation service.** The commissioner shall recover the cost of background studies initiated by providers of special transportation service under section 174.30 through a fee of no more than \$20 per study. The fees collected under this subdivision are appropriated to the commissioner for the purpose of conducting background studies.

History: 2003 c 15 art 1 s 10; 1Sp2005 c 4 art 5 s 7,8; 2007 c 147 art 3 s 14; 2009 c 79 art 1 s 12,13; art 6 s 5; 2009 c 173 art 1 s 8,9; 1Sp2011 c 9 art 3 s 3; art 4 s 8; 2014 c 262 art 4 s 9; art 5 s 6; 2014 c 312 art 26 s 3; 2015 c 71 art 1 s 6,7; art 11 s 9; 2015 c 78 art 4 s 39; art 6 s 3

245C.11 BACKGROUND STUDY; COUNTY AGENCIES.

Subdivision 1. [Repealed, 2009 c 79 art 1 s 21]

Subd. 2. [Repealed, 2009 c 79 art 1 s 21]

Subd. 3. **Criminal history data.** County agencies shall have access to the criminal history data in the same manner as county licensing agencies under this chapter for purposes of background studies completed by county agencies on legal nonlicensed child care providers to determine eligibility for child care funds under chapter 119B.

Subd. 4. **Background study.** A county agency may accept a background study completed by the commissioner under this chapter in place of the background study required under section 245A.16, subdivision 3, for educational programs that train individuals by providing direct contact services in licensed programs.

History: 2003 c 15 art 1 s 11; 2007 c 112 s 31; 2007 c 147 art 3 s 15,16

245C.12 BACKGROUND STUDY; TRIBAL ORGANIZATIONS.

(a) For the purposes of background studies completed by tribal organizations performing licensing activities otherwise required of the commissioner under this chapter, after obtaining consent from the background study subject, tribal licensing agencies shall have access to criminal history data in the same manner as county licensing agencies and private licensing agencies under this chapter.

(b) Tribal organizations may contract with the commissioner to obtain background study data on individuals under tribal jurisdiction related to adoptions according to section 245C.34. Tribal organizations may also contract with the commissioner to obtain background study data on individuals under tribal jurisdiction related to child foster care according to section 245C.34.

(c) For the purposes of background studies completed to comply with a tribal organization's licensing requirements for individuals affiliated with a tribally licensed nursing facility, the commissioner shall obtain criminal history data from the National Criminal Records Repository in accordance with section 245C.32.

History: 2003 c 15 art 1 s 12; 2007 c 147 art 3 s 17; 2015 c 71 art 7 s 9

245C.13 BACKGROUND STUDY PROCESSING.

Subdivision 1. **Completion of background study.** Upon receipt of the background study forms from an applicant, license holder, or other entity as provided in this chapter required to initiate a background study under section 245C.04, the commissioner shall complete the background study and provide the notice required under section 245C.17, subdivision 1.

Subd. 2. **Direct contact pending completion of background study.** The subject of a background study may not perform any activity requiring a background study under paragraph (b) until the commissioner has issued one of the notices under paragraph (a).

(a) Notices from the commissioner required prior to activity under paragraph (b) include:

(1) a notice of the study results under section 245C.17 stating that:

(i) the individual is not disqualified; or

(ii) more time is needed to complete the study but the individual is not required to be removed from direct contact or access to people receiving services prior to completion of the study as provided under

section 245C.17, subdivision 1, paragraph (b) or (c). The notice that more time is needed to complete the study must also indicate whether the individual is required to be under continuous direct supervision prior to completion of the background study;

(2) a notice that a disqualification has been set aside under section 245C.23; or

(3) a notice that a variance has been granted related to the individual under section 245C.30.

(b) Activities prohibited prior to receipt of notice under paragraph (a) include:

(1) being issued a license;

(2) living in the household where the licensed program will be provided;

(3) providing direct contact services to persons served by a program unless the subject is under continuous direct supervision; or

(4) having access to persons receiving services if the background study was completed under section 144.057, subdivision 1, or 245C.03, subdivision 1, paragraph (a), clause (2), (5), or (6), unless the subject is under continuous direct supervision.

History: 2003 c 15 art 1 s 13; 2004 c 288 art 1 s 49; 2005 c 136 art 6 s 1; 2007 c 112 s 32; 2009 c 142 art 2 s 26; 2014 c 250 s 16

245C.14 DISQUALIFICATION.

Subdivision 1. **Disqualification from direct contact.** (a) The commissioner shall disqualify an individual who is the subject of a background study from any position allowing direct contact with persons receiving services from the license holder or entity identified in section 245C.03, upon receipt of information showing, or when a background study completed under this chapter shows any of the following:

(1) a conviction of, admission to, or Alford plea to one or more crimes listed in section 245C.15, regardless of whether the conviction or admission is a felony, gross misdemeanor, or misdemeanor level crime;

(2) a preponderance of the evidence indicates the individual has committed an act or acts that meet the definition of any of the crimes listed in section 245C.15, regardless of whether the preponderance of the evidence is for a felony, gross misdemeanor, or misdemeanor level crime; or

(3) an investigation results in an administrative determination listed under section 245C.15, subdivision 4, paragraph (b).

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

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

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

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

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

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

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

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

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

History: 2003 c 15 art 1 s 14; 2004 c 288 art 1 s 50; 2007 c 112 s 33; 2009 c 142 art 3 s 5

245C.15 DISQUALIFYING CRIMES OR CONDUCT.

Subdivision 1. **Permanent disqualification.** (a) An individual is disqualified under section 245C.14 if: (1) regardless of how much time has passed since the discharge of the sentence imposed, if any, for the offense; and (2) unless otherwise specified, regardless of the level of the offense, the individual has committed any of the following offenses: sections 243.166 (violation of predatory offender registration law); 609.185 (murder in the first degree); 609.19 (murder in the second degree); 609.195 (murder in the third degree); 609.20 (manslaughter in the first degree); 609.205 (manslaughter in the second degree); a felony offense under 609.221 or 609.222 (assault in the first or second degree); a felony offense under sections 609.2242 and 609.2243 (domestic assault), spousal abuse, child abuse or neglect, or a crime against children; 609.2247 (domestic assault by strangulation); 609.228 (great bodily harm caused by distribution of drugs); 609.245 (aggravated robbery); 609.25 (kidnapping); 609.2661 (murder of an unborn child in the first degree); 609.2662 (murder of an unborn child in the second degree); 609.2663 (murder of an unborn child in the third degree); 609.322 (solicitation, inducement, and promotion of prostitution); 609.324, subdivision 1 (other prohibited acts); 609.342 (criminal sexual conduct in the first degree); 609.343 (criminal sexual conduct in the second degree); 609.344 (criminal sexual conduct in the third degree); 609.345 (criminal sexual conduct in the fourth degree); 609.3451 (criminal sexual conduct in the fifth degree); 609.3453 (criminal sexual predatory conduct); 609.352 (solicitation of children to engage in sexual conduct); 609.365 (incest); a felony offense under 609.377 (malicious punishment of a child); a felony offense under 609.378 (neglect or endangerment of a child); 609.561 (arson in the first degree); 609.66, subdivision 1e (drive-by shooting); 609.749, subdivision 3, 4, or 5 (felony-level stalking); 609.855, subdivision 5 (shooting at or in a public transit vehicle or facility); 617.23, subdivision 2, clause (1), or subdivision 3, clause (1) (indecent exposure involving a minor); 617.246 (use of minors in sexual performance prohibited); or 617.247 (possession of pictorial representations of minors).

(b) An individual's aiding and abetting, attempt, or conspiracy to commit any of the offenses listed in paragraph (a), as each of these offenses is defined in Minnesota Statutes, permanently disqualifies the individual under section 245C.14.

(c) An individual's offense in any other state or country, where the elements of the offense are substantially similar to any of the offenses listed in paragraph (a), permanently disqualifies the individual under section 245C.14.

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

(e) If the individual studied commits one of the offenses listed in paragraph (a) that is specified as a felony-level only offense, but the sentence or level of offense is a gross misdemeanor or misdemeanor, the individual is disqualified, but the disqualification look-back period for the offense is the period applicable to gross misdemeanor or misdemeanor offenses.

Subd. 2. 15-year disqualification. (a) An individual is disqualified under section 245C.14 if: (1) less than 15 years have passed since the discharge of the sentence imposed, if any, for the offense; and (2) the individual has committed a felony-level violation of any of the following offenses: sections 256.98 (wrongfully obtaining assistance); 268.182 (false representation; concealment of facts); 393.07, subdivision 10, paragraph (c) (federal Food Stamp Program fraud); 609.165 (felon ineligible to possess firearm); 609.2112, 609.2113, or 609.2114 (criminal vehicular homicide or injury); 609.215 (suicide); 609.223 or 609.2231 (assault in the third or fourth degree); repeat offenses under 609.224 (assault in the fifth degree); 609.229 (crimes committed for benefit of a gang); 609.2325 (criminal abuse of a vulnerable adult); 609.2335 (financial exploitation of a vulnerable adult); 609.235 (use of drugs to injure or facilitate crime); 609.24 (simple robbery); 609.255 (false imprisonment); 609.2664 (manslaughter of an unborn child in the first degree); 609.2665 (manslaughter of an unborn child in the second degree); 609.267 (assault of an unborn child in the first degree); 609.2671 (assault of an unborn child in the second degree); 609.268 (injury or death of an unborn child in the commission of a crime); 609.27 (coercion); 609.275 (attempt to coerce); 609.466 (medical assistance fraud); 609.495 (aiding an offender); 609.498, subdivision 1 or 1b (aggravated first-degree or first-degree tampering with a witness); 609.52 (theft); 609.521 (possession of shoplifting gear); 609.525 (bringing stolen goods into Minnesota); 609.527 (identity theft); 609.53 (receiving stolen property); 609.535 (issuance of dishonored checks); 609.562 (arson in the second degree); 609.563 (arson in the third degree); 609.582 (burglary); 609.59 (possession of burglary tools); 609.611 (insurance fraud); 609.625 (aggravated forgery); 609.63 (forgery); 609.631 (check forgery; offering a forged check); 609.635 (obtaining signature by false pretense); 609.66 (dangerous weapons); 609.67 (machine guns and short-barreled shotguns); 609.687 (adulteration); 609.71 (riot); 609.713 (terroristic threats); 609.82 (fraud in obtaining credit); 609.821 (financial transaction card fraud); 617.23 (indecent exposure), not involving a minor; repeat offenses under 617.241 (obscene materials and performances; distribution and exhibition prohibited; penalty); 624.713 (certain persons not to possess firearms); chapter 152 (drugs; controlled substance); or Minnesota Statutes 2012, section 609.21; or a felony-level conviction involving alcohol or drug use.

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

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

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

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

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

Subd. 3. **Ten-year disqualification.** (a) An individual is disqualified under section 245C.14 if: (1) less than ten years have passed since the discharge of the sentence imposed, if any, for the offense; and (2) the individual has committed a gross misdemeanor-level violation of any of the following offenses: sections 256.98 (wrongfully obtaining assistance); 268.182 (false representation; concealment of facts); 393.07, subdivision 10, paragraph (c) (federal Food Stamp Program fraud); 609.2112, 609.2113, or 609.2114 (criminal vehicular homicide or injury); 609.221 or 609.222 (assault in the first or second degree); 609.223 or 609.2231 (assault in the third or fourth degree); 609.224 (assault in the fifth degree); 609.224, subdivision 2, paragraph (c) (assault in the fifth degree by a caregiver against a vulnerable adult); 609.2242 and 609.2243 (domestic assault); 609.23 (mistreatment of persons confined); 609.231 (mistreatment of residents or patients); 609.2325 (criminal abuse of a vulnerable adult); 609.233 (criminal neglect of a vulnerable adult); 609.2335 (financial exploitation of a vulnerable adult); 609.234 (failure to report maltreatment of a vulnerable adult); 609.265 (abduction); 609.275 (attempt to coerce); 609.324, subdivision 1a (other prohibited acts; minor engaged in prostitution); 609.33 (disorderly house); 609.377 (malicious punishment of a child); 609.378 (neglect or endangerment of a child); 609.466 (medical assistance fraud); 609.52 (theft); 609.525 (bringing stolen goods into Minnesota); 609.527 (identity theft); 609.53 (receiving stolen property); 609.535 (issuance of dishonored checks); 609.582 (burglary); 609.59 (possession of burglary tools); 609.611 (insurance fraud); 609.631 (check forgery; offering a forged check); 609.66 (dangerous weapons); 609.71 (riot); 609.72, subdivision 3 (disorderly conduct against a vulnerable adult); repeat offenses under 609.746 (interference with privacy); 609.749, subdivision 2 (stalking); 609.82 (fraud in obtaining credit); 609.821 (financial transaction card fraud); 617.23 (indecent exposure), not involving a minor; 617.241 (obscene materials and performances); 617.243 (indecent literature, distribution); 617.293 (harmful materials; dissemination and display to minors prohibited); or Minnesota Statutes 2012, section 609.21; or violation of an order for protection under section 518B.01, subdivision 14.

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

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

(d) If the individual studied commits one of the offenses listed in paragraph (a), but the sentence or level of offense is a misdemeanor disposition, the individual is disqualified but the disqualification lookback period for the offense is the period applicable to misdemeanors.

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

Subd. 4. Seven-year disqualification. (a) An individual is disqualified under section 245C.14 if: (1) less than seven years has passed since the discharge of the sentence imposed, if any, for the offense; and (2) the individual has committed a misdemeanor-level violation of any of the following offenses: sections 256.98 (wrongfully obtaining assistance); 268.182 (false representation; concealment of facts); 393.07, subdivision 10, paragraph (c) (federal Food Stamp Program fraud); 609.2112, 609.2113, or 609.2114 (criminal vehicular homicide or injury); 609.221 (assault in the first degree); 609.222 (assault in the second degree); 609.223 (assault in the third degree); 609.2231 (assault in the fourth degree); 609.224 (assault in the fifth degree); 609.2242 (domestic assault); 609.2335 (financial exploitation of a vulnerable adult); 609.234 (failure to report maltreatment of a vulnerable adult); 609.2672 (assault of an unborn child in the third degree); 609.27 (coercion); violation of an order for protection under 609.3232 (protective order authorized; procedures; penalties); 609.466 (medical assistance fraud); 609.52 (theft); 609.525 (bringing stolen goods into Minnesota); 609.527 (identity theft); 609.53 (receiving stolen property); 609.535 (issuance of dishonored checks); 609.611 (insurance fraud); 609.66 (dangerous weapons); 609.665 (spring guns); 609.746 (interference with privacy); 609.79 (obscene or harassing telephone calls); 609.795 (letter, telegram, or package; opening; harassment); 609.82 (fraud in obtaining credit); 609.821 (financial transaction card fraud); 617.23 (indecent exposure, not involving a minor); 617.293 (harmful materials; dissemination and display to minors prohibited); or Minnesota Statutes 2012, section 609.21; or violation of an order for protection under section 518B.01 (Domestic Abuse Act).

(b) An individual is disqualified under section 245C.14 if less than seven years has passed since a determination or disposition of the individual's:

(1) failure to make required reports under section 626.556, subdivision 3, or 626.557, subdivision 3, for incidents in which: (i) the final disposition under section 626.556 or 626.557 was substantiated maltreatment, and (ii) the maltreatment was recurring or serious; or

(2) substantiated serious or recurring maltreatment of a minor under section 626.556, a vulnerable adult under section 626.557, or serious or recurring maltreatment in any other state, the elements of which are substantially similar to the elements of maltreatment under section 626.556 or 626.557 for which: (i) there is a preponderance of evidence that the maltreatment occurred, and (ii) the subject was responsible for the maltreatment.

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

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

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

(f) An individual is disqualified under section 245C.14 if less than seven years has passed since the individual was disqualified under section 256.98, subdivision 8.

Subd. 5. **Mental illness.** The commissioner may not disqualify an individual subject to a background study under this chapter because that individual has, or has had, a mental illness as defined in section 245.462, subdivision 20.

History: 2003 c 15 art 1 s 15; 1Sp2003 c 14 art 6 s 7; 2004 c 288 art 1 s 51-53; 2005 c 136 art 6 s 2; 1Sp2005 c 4 art 1 s 30-33; 2006 c 212 art 3 s 17; 2007 c 112 s 34-37; 2009 c 142 art 2 s 27-30; 2010 c 299 s 14; 2010 c 329 art 1 s 15

245C.16 DISQUALIFIED INDIVIDUAL'S RISK OF HARM.

Subdivision 1. **Determining immediate risk of harm.** (a) If the commissioner determines that the individual studied has a disqualifying characteristic, the commissioner shall review the information immediately available and make a determination as to the subject's immediate risk of harm to persons served by the program where the individual studied will have direct contact with, or access to, people receiving services.

(b) The commissioner shall consider all relevant information available, including the following factors in determining the immediate risk of harm:

- (1) the recency of the disqualifying characteristic;
- (2) the recency of discharge from probation for the crimes;
- (3) the number of disqualifying characteristics;
- (4) the intrusiveness or violence of the disqualifying characteristic;
- (5) the vulnerability of the victim involved in the disqualifying characteristic;

(6) the similarity of the victim to the persons served by the program where the individual studied will have direct contact;

(7) whether the individual has a disqualification from a previous background study that has not been set aside; and

(8) if the individual has a disqualification which may not be set aside because it is a permanent bar under section 245C.24, subdivision 1, the commissioner may order the immediate removal of the individual from any position allowing direct contact with, or access to, persons receiving services from the program.

(c) This section does not apply when the subject of a background study is regulated by a health-related licensing board as defined in chapter 214, and the subject is determined to be responsible for substantiated maltreatment under section 626.556 or 626.557.

(d) This section does not apply to a background study related to an initial application for a child foster care license.

(e) Except for paragraph (f), this section does not apply to a background study that is also subject to the requirements under section 256B.0659, subdivisions 11 and 13, for a personal care assistant or a qualified professional as defined in section 256B.0659, subdivision 1.

(f) If the commissioner has reason to believe, based on arrest information or an active maltreatment investigation, that an individual poses an imminent risk of harm to persons receiving services, the commissioner may order that the person be continuously supervised or immediately removed pending the conclusion of the maltreatment investigation or criminal proceedings.

Subd. 2. **Findings.** (a) After evaluating the information immediately available under subdivision 1, the commissioner may have reason to believe one of the following:

(1) the individual poses an imminent risk of harm to persons served by the program where the individual studied will have direct contact;

(2) the individual poses a risk of harm requiring continuous, direct supervision while providing direct contact services during the period in which the subject may request a reconsideration; or

(3) the individual does not pose an imminent risk of harm or a risk of harm requiring continuous, direct supervision while providing direct contact services during the period in which the subject may request a reconsideration.

(b) After determining an individual's risk of harm under this section, the commissioner must notify the subject of the background study and the applicant or license holder as required under section 245C.17.

Subd. 3. **County agency.** (a) County licensing agencies performing duties under this section may develop an alternative system for determining the subject's immediate risk of harm to persons served by the program, providing the notices under subdivision 2, paragraph (b), and documenting the action taken by the county licensing agency.

(b) Each county licensing agency's implementation of the alternative system is subject to approval by the commissioner.

(c) Notwithstanding this alternative system, county licensing agencies shall complete the requirements of section 245C.17.

History: 2003 c 15 art 1 s 16; 2004 c 288 art 1 s 54; 2007 c 112 s 38; 2007 c 147 art 3 s 18; 2012 c 216 art 16 s 23; 2014 c 228 art 5 s 4

245C.17 NOTICE OF BACKGROUND STUDY RESULTS.

Subdivision 1. **Time frame for notice of study results and auditing system access.** (a) Within three working days after the commissioner's receipt of a request for a background study submitted through the commissioner's NETStudy or NETStudy 2.0 system, the commissioner shall notify the background study subject and the license holder or other entity as provided in this chapter in writing or by electronic transmission of the results of the study or that more time is needed to complete the study. The notice to the individual shall include the identity of the entity that initiated the background study.

(b) Before being provided access to NETStudy 2.0, the license holder or other entity under section 245C.04 shall sign an acknowledgment of responsibilities form developed by the commissioner that includes identifying the sensitive background study information person, who must be an employee of the license holder or entity. All queries to NETStudy 2.0 are electronically recorded and subject to audit by the commissioner. The electronic record shall identify the specific user. A background study subject may request in writing to the commissioner a report listing the entities that initiated a background study on the individual.

(c) When the commissioner has completed a prior background study on an individual that resulted in an order for immediate removal and more time is necessary to complete a subsequent study, the notice that more time is needed that is issued under paragraph (a) shall include an order for immediate removal of the individual from any position allowing direct contact with or access to people receiving services pending completion of the background study.

Subd. 2. **Disqualification notice sent to subject.** (a) If the information in the study indicates the individual is disqualified from direct contact with, or from access to, persons served by the program, the commissioner shall disclose to the individual studied:

- (1) the information causing disqualification;
- (2) instructions on how to request a reconsideration of the disqualification;
- (3) an explanation of any restrictions on the commissioner's discretion to set aside the disqualification under section 245C.24, when applicable to the individual;
- (4) a statement that, if the individual's disqualification is set aside under section 245C.22, the applicant, license holder, or other entity that initiated the background study will be provided with the reason for the individual's disqualification and an explanation that the factors under section 245C.22, subdivision 4, which were the basis of the decision to set aside the disqualification shall be made available to the license holder upon request without the consent of the subject of the background study;
- (5) a statement indicating that if the individual's disqualification is set aside or the facility is granted a variance under section 245C.30, the individual's identity and the reason for the individual's disqualification will become public data under section 245C.22, subdivision 7, when applicable to the individual;
- (6) a statement that when a subsequent background study is initiated on the individual following a set-aside of the individual's disqualification, and the commissioner makes a determination under section 245C.22, subdivision 5, paragraph (b), that the previous set-aside applies to the subsequent background study, the applicant, license holder, or other entity that initiated the background study will be informed in the notice under section 245C.22, subdivision 5, paragraph (c):
 - (i) of the reason for the individual's disqualification;
 - (ii) that the individual's disqualification is set aside for that program or agency; and

(iii) that information about the factors under section 245C.22, subdivision 4, that were the basis of the decision to set aside the disqualification are available to the license holder upon request without the consent of the background study subject; and

(7) the commissioner's determination of the individual's immediate risk of harm under section 245C.16.

(b) If the commissioner determines under section 245C.16 that an individual poses an imminent risk of harm to persons served by the program where the individual will have direct contact with, or access to, people receiving services, the commissioner's notice must include an explanation of the basis of this determination.

(c) If the commissioner determines under section 245C.16 that an individual studied does not pose a risk of harm that requires immediate removal, the individual shall be informed of the conditions under which the agency that initiated the background study may allow the individual to have direct contact with, or access to, people receiving services, as provided under subdivision 3.

Subd. 3. Disqualification notification. (a) The commissioner shall notify an applicant, license holder, or other entity as provided in this chapter who is not the subject of the study:

(1) that the commissioner has found information that disqualifies the individual studied from being in a position allowing direct contact with, or access to, people served by the program; and

(2) the commissioner's determination of the individual's risk of harm under section 245C.16.

(b) If the commissioner determines under section 245C.16 that an individual studied poses an imminent risk of harm to persons served by the program where the individual studied will have direct contact with, or access to, people served by the program, the commissioner shall order the license holder to immediately remove the individual studied from any position allowing direct contact with, or access to, people served by the program.

(c) If the commissioner determines under section 245C.16 that an individual studied poses a risk of harm that requires continuous, direct supervision, the commissioner shall order the applicant, license holder, or other entities as provided in this chapter to:

(1) immediately remove the individual studied from any position allowing direct contact with, or access to, people receiving services; or

(2) before allowing the disqualified individual to be in a position allowing direct contact with, or access to, people receiving services, the applicant, license holder, or other entity, as provided in this chapter, must:

(i) obtain from the disqualified individual a copy of the individual's notice of disqualification from the commissioner that explains the reason for disqualification;

(ii) ensure that the individual studied is under continuous, direct supervision when in a position allowing direct contact with, or access to, people receiving services during the period in which the individual may request a reconsideration of the disqualification under section 245C.21; and

(iii) ensure that the disqualified individual requests reconsideration within 30 days of receipt of the notice of disqualification.

(d) If the commissioner determines under section 245C.16 that an individual studied does not pose a risk of harm that requires continuous, direct supervision, the commissioner shall order the applicant, license holder, or other entities as provided in this chapter to:

(1) immediately remove the individual studied from any position allowing direct contact with, or access to, people receiving services; or

(2) before allowing the disqualified individual to be in any position allowing direct contact with, or access to, people receiving services, the applicant, license holder, or other entity as provided in this chapter must:

(i) obtain from the disqualified individual a copy of the individual's notice of disqualification from the commissioner that explains the reason for disqualification; and

(ii) ensure that the disqualified individual requests reconsideration within 15 days of receipt of the notice of disqualification.

(e) The commissioner shall not notify the applicant, license holder, or other entity as provided in this chapter of the information contained in the subject's background study unless:

(1) the basis for the disqualification is failure to cooperate with the background study or substantiated maltreatment under section 626.556 or 626.557;

(2) the Data Practices Act under chapter 13 provides for release of the information; or

(3) the individual studied authorizes the release of the information.

Subd. 4. Disqualification notice to family child care or foster care provider. For studies on individuals pertaining to a license to provide family child care or group family child care, foster care for children in the provider's own home, or foster care or day care services for adults in the provider's own home, the commissioner is not required to provide a separate notice of the background study results to the individual who is the subject of the study unless the study results in a disqualification of the individual.

Subd. 5. Notice to county or private agency. For studies on individuals related to a license to provide child foster care, the commissioner shall also provide a notice of the background study results to the county or private agency that initiated the background study.

Subd. 6. Notice to county agency. For studies on individuals related to a license to provide adult foster care and family adult day services, the commissioner shall also provide a notice of the background study results to the county agency that initiated the background study.

History: 2003 c 15 art 1 s 17; 2004 c 288 art 1 s 55,56; 2005 c 136 art 6 s 3-5; 2007 c 112 s 39,40; 2007 c 147 art 3 s 19; 2009 c 79 art 1 s 14; 2012 c 216 art 16 s 24; 2014 c 250 s 17

245C.18 OBLIGATION TO REMOVE DISQUALIFIED INDIVIDUAL FROM DIRECT CONTACT.

Upon receipt of notice from the commissioner, the license holder must remove a disqualified individual from direct contact with persons served by the licensed program if:

(1) the individual does not request reconsideration under section 245C.21 within the prescribed time;

(2) the individual submits a timely request for reconsideration, the commissioner does not set aside the disqualification under section 245C.22, subdivision 4, and the individual does not submit a timely request for a hearing under sections 245C.27 and 256.045, or 245C.28 and chapter 14; or

(3) the individual submits a timely request for a hearing under sections 245C.27 and 256.045, or 245C.28 and chapter 14, and the commissioner does not set aside or rescind the disqualification under section 245A.08, subdivision 5, or 256.045.

History: 2003 c 15 art 1 s 18; 2004 c 288 art 1 s 57

245C.19 TERMINATION OF AFFILIATION BASED ON DISQUALIFICATION NOTICE.

An applicant or license holder that terminates affiliation with persons studied under section 245C.03, when the termination is made in good faith reliance on a notice of disqualification provided by the commissioner, shall not be subject to civil liability.

History: 2003 c 15 art 1 s 19

245C.20 LICENSE HOLDER RECORD KEEPING.

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

Subd. 2. **Background studies initiated by others; personnel pool agencies, temporary personnel agencies, supplemental nursing services agencies, or professional services agencies.** When a license holder relies on a background study initiated by a personnel pool agency, a temporary personnel agency, a supplemental nursing services agency, or a professional services agency for a person required to have a background study completed under section 245C.03, the license holder must maintain a copy of the background study results in the license holder's files.

Subd. 2a. **Background studies initiated by others; educational programs.** When a license holder relies on a background study initiated by an educational program for a person required to have a background study completed under section 245C.03 and the person is on the educational program's active roster, the license holder is responsible for ensuring that the background study has been completed. The license holder may satisfy the documentation requirements through a written agreement with the educational program verifying that documentation of the background study may be provided upon request and that the educational program will inform the license holder if there is a change in the person's background study status. The license holder remains responsible for ensuring that all background study requirements are met.

Subd. 3. **Background studies identified on active rosters.** The requirements in subdivisions 1 and 2 are met for entities for which active rosters are implemented and for whom all individuals affiliated with the entity are recorded on the active roster.

History: 2003 c 15 art 1 s 20; 2004 c 288 art 1 s 58; 2009 c 79 art 1 s 15; 2010 c 329 art 1 s 16; 2014 c 228 art 5 s 5; 2014 c 250 s 18; 2015 c 78 art 4 s 40,41

245C.21 REQUESTING RECONSIDERATION OF DISQUALIFICATION.

Subdivision 1. **Who may request reconsideration.** An individual who is the subject of a disqualification may request a reconsideration of the disqualification. The individual must submit the request for reconsideration to the commissioner in writing.

Subd. 1a. **Submission of reconsideration request.** (a) For disqualifications related to studies conducted by county agencies for family child care, and for disqualifications related to studies conducted by the commissioner for child foster care, adult foster care, and family adult day services, the individual shall submit the request for reconsideration to the county agency that initiated the background study.

(b) For disqualifications related to studies conducted by the commissioner for child foster care providers monitored by private licensing agencies under section 245A.16, the individual shall submit the request for reconsideration to the private agency that initiated the background study.

(c) A reconsideration request shall be submitted within 30 days of the individual's receipt of the disqualification notice or the time frames specified in subdivision 2, whichever time frame is shorter.

(d) The county or private agency shall forward the individual's request for reconsideration and provide the commissioner with a recommendation whether to set aside the individual's disqualification.

Subd. 2. **Time frame for requesting reconsideration.** (a) When the commissioner sends an individual a notice of disqualification based on a finding under section 245C.16, subdivision 2, paragraph (a), clause (1) or (2), the disqualified individual must submit the request for a reconsideration within 30 calendar days of the individual's receipt of the notice of disqualification. If mailed, the request for reconsideration must be postmarked and sent to the commissioner within 30 calendar days of the individual's receipt of the notice of disqualification. If a request for reconsideration is made by personal service, it must be received by the commissioner within 30 calendar days after the individual's receipt of the notice of disqualification. Upon showing that the information under subdivision 3 cannot be obtained within 30 days, the disqualified individual may request additional time, not to exceed 30 days, to obtain the information.

(b) When the commissioner sends an individual a notice of disqualification based on a finding under section 245C.16, subdivision 2, paragraph (a), clause (3), the disqualified individual must submit the request for reconsideration within 15 calendar days of the individual's receipt of the notice of disqualification. If mailed, the request for reconsideration must be postmarked and sent to the commissioner within 15 calendar days of the individual's receipt of the notice of disqualification. If a request for reconsideration is made by personal service, it must be received by the commissioner within 15 calendar days after the individual's receipt of the notice of disqualification.

(c) An individual who was determined to have maltreated a child under section 626.556 or a vulnerable adult under section 626.557, and who is disqualified on the basis of serious or recurring maltreatment, may request a reconsideration of both the maltreatment and the disqualification determinations. The request must be submitted within 30 calendar days of the individual's receipt of the notice of disqualification. If mailed, the request for reconsideration must be postmarked and sent to the commissioner within 30 calendar days of the individual's receipt of the notice of disqualification. If a request for reconsideration is made by personal service, it must be received by the commissioner within 30 calendar days after the individual's receipt of the notice of disqualification.

(d) Except for family child care and child foster care, reconsideration of a maltreatment determination under sections 626.556, subdivision 10i, and 626.557, subdivision 9d, and reconsideration of a disqualification under section 245C.22, shall not be conducted when:

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

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

(3) the license holder appeals the maltreatment determination, disqualification, and denial of a license or licensing sanction. In such cases, a fair hearing under section 256.045 must not be conducted under sections 245C.27, 626.556, subdivision 10i, and 626.557, subdivision 9d. Under section 245A.08, subdivision 2a, the scope of the consolidated contested case hearing must include the maltreatment determination, disqualification, and denial of a license or licensing sanction.

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

Subd. 3. Disqualified individuals; information for reconsideration. (a) The disqualified individual requesting reconsideration must submit information showing that:

(1) the information the commissioner relied upon in determining the underlying conduct that gave rise to the disqualification is incorrect;

(2) for maltreatment, the information the commissioner relied upon in determining that maltreatment was serious or recurring is incorrect; or

(3) the subject of the study does not pose a risk of harm to any person served by the applicant, license holder, or other entities as provided in this chapter, by addressing the information required under section 245C.22, subdivision 4.

(b) In order to determine the individual's risk of harm, the commissioner may require additional information from the disqualified individual as part of the reconsideration process. If the individual fails to provide the required information, the commissioner may deny the individual's request.

Subd. 4. Notice of request for reconsideration. Upon request, the commissioner may inform the applicant, license holder, or other entities as provided in this chapter who received a notice of the individual's disqualification under section 245C.17, subdivision 3, or has the consent of the disqualified individual, whether the disqualified individual has requested reconsideration.

History: 2003 c 15 art 1 s 21; 2004 c 288 art 1 s 59,60; 1Sp2005 c 4 art 1 s 34; 2007 c 112 s 41,42; 2007 c 147 art 3 s 20; 2009 c 79 art 1 s 16; 2009 c 173 art 1 s 10

245C.22 REVIEW AND ACTION ON A RECONSIDERATION REQUEST.

Subdivision 1. Time frame; response to disqualification reconsideration requests. (a) The commissioner shall respond in writing or by electronic transmission to all reconsideration requests for which the basis for the request is that the information the commissioner relied upon to disqualify is incorrect or inaccurate within 30 working days of receipt of a complete request and all required relevant information.

(b) If the basis for a disqualified individual's reconsideration request is that the individual does not pose a risk of harm, the commissioner shall respond to the request within 15 working days after receiving a complete request for reconsideration and all required relevant information.

(c) If the disqualified individual's reconsideration request is based on both the correctness or accuracy of the information the commissioner relied upon to disqualify the individual and the individual's risk of harm, the commissioner shall respond to the request within 45 working days after receiving a complete request for reconsideration and all required relevant information.

Subd. 2. Incorrect information; rescission. The commissioner shall rescind the disqualification if the commissioner finds that the information relied upon to disqualify the subject is incorrect.

Subd. 3. Preeminent weight given to safety of persons being served. In reviewing a request for reconsideration of a disqualification, the commissioner shall give preeminent weight to the safety of each person served by the license holder, applicant, or other entities as provided in this chapter over the interests of the disqualified individual, license holder, applicant, or other entity as provided in this chapter, and any single factor under subdivision 4, paragraph (b), may be determinative of the commissioner's decision whether to set aside the individual's disqualification.

Subd. 4. Risk of harm; set aside. (a) The commissioner may set aside the disqualification if the commissioner finds that the individual has submitted sufficient information to demonstrate that the individual does not pose a risk of harm to any person served by the applicant, license holder, or other entities as provided in this chapter.

(b) In determining whether the individual has met the burden of proof by demonstrating the individual does not pose a risk of harm, the commissioner shall consider:

- (1) the nature, severity, and consequences of the event or events that led to the disqualification;
- (2) whether there is more than one disqualifying event;
- (3) the age and vulnerability of the victim at the time of the event;
- (4) the harm suffered by the victim;
- (5) vulnerability of persons served by the program;
- (6) the similarity between the victim and persons served by the program;
- (7) the time elapsed without a repeat of the same or similar event;

(8) documentation of successful completion by the individual studied of training or rehabilitation pertinent to the event; and

- (9) any other information relevant to reconsideration.

(c) If the individual requested reconsideration on the basis that the information relied upon to disqualify the individual was incorrect or inaccurate and the commissioner determines that the information relied upon to disqualify the individual is correct, the commissioner must also determine if the individual poses a risk of harm to persons receiving services in accordance with paragraph (b).

Subd. 5. Scope of set-aside. (a) If the commissioner sets aside a disqualification under this section, the disqualified individual remains disqualified, but may hold a license and have direct contact with or access to persons receiving services. Except as provided in paragraph (b), the commissioner's set-aside of a

disqualification is limited solely to the licensed program, applicant, or agency specified in the set aside notice under section 245C.23. For personal care provider organizations, the commissioner's set-aside may further be limited to a specific individual who is receiving services. For new background studies required under section 245C.04, subdivision 1, paragraph (g), if an individual's disqualification was previously set aside for the license holder's program and the new background study results in no new information that indicates the individual may pose a risk of harm to persons receiving services from the license holder, the previous set-aside shall remain in effect.

(b) If the commissioner has previously set aside an individual's disqualification for one or more programs or agencies, and the individual is the subject of a subsequent background study for a different program or agency, the commissioner shall determine whether the disqualification is set aside for the program or agency that initiated the subsequent background study. A notice of a set-aside under paragraph (c) shall be issued within 15 working days if all of the following criteria are met:

(1) the subsequent background study was initiated in connection with a program licensed or regulated under the same provisions of law and rule for at least one program for which the individual's disqualification was previously set aside by the commissioner;

(2) the individual is not disqualified for an offense specified in section 245C.15, subdivision 1 or 2;

(3) the commissioner has received no new information to indicate that the individual may pose a risk of harm to any person served by the program; and

(4) the previous set-aside was not limited to a specific person receiving services.

(c) When a disqualification is set aside under paragraph (b), the notice of background study results issued under section 245C.17, in addition to the requirements under section 245C.17, shall state that the disqualification is set aside for the program or agency that initiated the subsequent background study. The notice must inform the individual that the individual may request reconsideration of the disqualification under section 245C.21 on the basis that the information used to disqualify the individual is incorrect.

Subd. 6. Rescission of set-aside. The commissioner may rescind a previous set aside of a disqualification under this section based on new information that indicates the individual may pose a risk of harm to persons served by the applicant, license holder, or other entities as provided in this chapter. If the commissioner rescinds a set-aside of a disqualification under this subdivision, the appeal rights under sections 245C.21, 245C.27, subdivision 1, and 245C.28, subdivision 3, shall apply.

Subd. 7. Classification of certain data. (a) Notwithstanding section 13.46, except as provided in paragraph (f), upon setting aside a disqualification under this section, the identity of the disqualified individual who received the set-aside and the individual's disqualifying characteristics are public data if the set-aside was:

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

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

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

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

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

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

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

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

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

(4) the disqualification relates to a license to provide relative child foster care. As used in this clause, "relative" has the meaning given it under section 260C.007, subdivision 26b or 27; or

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

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

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

(iii) the disqualifying act occurred before the adoption.

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

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

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

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

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

(f) When the commissioner has reason to know that a disqualified individual has received an order for expungement for the disqualifying record that does not limit the commissioner's access to the record, and the record was opened or exchanged with the commissioner for purposes of a background study under this chapter, the data that would otherwise become public under paragraph (a) or (b) remain private data.

History: 2003 c 15 art 1 s 22; 1Sp2003 c 14 art 6 s 6; 2004 c 288 art 1 s 61-64; 2005 c 136 art 6 s 6; 1Sp2005 c 4 art 1 s 35-37; 2006 c 264 s 9; 2007 c 112 s 43,44; 2009 c 142 art 2 s 31; 2010 c 329 art 1 s 17; 2012 c 216 art 16 s 25; 2014 c 228 art 5 s 6; 2014 c 246 s 1; 2015 c 21 art 1 s 49; 2015 c 78 art 1 s 6

245C.23 COMMISSIONER'S RECONSIDERATION NOTICE.

Subdivision 1. **Disqualification that is rescinded or set aside.** (a) If the commissioner rescinds or sets aside a disqualification, the commissioner shall notify the applicant, license holder, or other entity in writing or by electronic transmission of the decision.

(b) In the notice from the commissioner that a disqualification has been rescinded, the commissioner must inform the applicant, license holder, or other entity that the information relied upon to disqualify the individual was incorrect.

(c) Except as provided in paragraph (d), in the notice from the commissioner that a disqualification has been set aside, the commissioner must inform the applicant, license holder, or other entity of the reason for the individual's disqualification and that information about which factors under section 245C.22, subdivision 4, were the basis of the decision to set aside the disqualification are available to the license holder upon request without the consent of the background study subject.

(d) When the commissioner has reason to know that a disqualified individual has received an order for expungement for the disqualifying record that does not limit the commissioner's access to the record, and the record was opened or exchanged with the commissioner for purposes of a background study under this chapter, the information provided under paragraph (c) must only inform the applicant, license holder, or other entity that the disqualifying criminal record is sealed under a court order.

Subd. 2. Commissioner's notice of disqualification that is not set aside. (a) The commissioner shall notify the license holder of the disqualification and order the license holder to immediately remove the individual from any position allowing direct contact with persons receiving services from the license holder if:

(1) the individual studied does not submit a timely request for reconsideration under section 245C.21;

(2) the individual submits a timely request for reconsideration, but the commissioner does not set aside the disqualification for that license holder under section 245C.22, unless the individual has a right to request a hearing under section 245C.27, 245C.28, or 256.045;

(3) an individual who has a right to request a hearing under sections 245C.27 and 256.045, or 245C.28 and chapter 14 for a disqualification that has not been set aside, does not request a hearing within the specified time; or

(4) an individual submitted a timely request for a hearing under sections 245C.27 and 256.045, or 245C.28 and chapter 14, but the commissioner does not set aside the disqualification under section 245A.08, subdivision 5, or 256.045.

(b) If the commissioner does not set aside the disqualification under section 245C.22, and the license holder was previously ordered under section 245C.17 to immediately remove the disqualified individual from direct contact with persons receiving services or to ensure that the individual is under continuous, direct supervision when providing direct contact services, the order remains in effect pending the outcome of a hearing under sections 245C.27 and 256.045, or 245C.28 and chapter 14.

(c) If the commissioner does not set aside the disqualification under section 245C.22, and the license holder was not previously ordered under section 245C.17 to immediately remove the disqualified individual from direct contact with persons receiving services or to ensure that the individual is under continuous direct supervision when providing direct contact services, the commissioner shall order the individual to remain under continuous direct supervision pending the outcome of a hearing under sections 245C.27 and 256.045, or 245C.28 and chapter 14.

(d) For background studies related to child foster care, the commissioner shall also notify the county or private agency that initiated the study of the results of the reconsideration.

(e) For background studies related to adult foster care and family adult day services, the commissioner shall also notify the county that initiated the study of the results of the reconsideration.

History: 2003 c 15 art 1 s 23; 2004 c 288 art 1 s 65,66; 1Sp2005 c 4 art 1 s 38; 2007 c 147 art 3 s 21; 2009 c 79 art 1 s 17; 2014 c 228 art 5 s 7; 2014 c 246 s 2

245C.24 DISQUALIFICATION; BAR TO SET ASIDE A DISQUALIFICATION; REQUEST FOR VARIANCE.

Subdivision 1. **Minimum disqualification periods.** The disqualification periods under subdivisions 3 and 4 are the minimum applicable disqualification periods. The commissioner may determine that an individual should continue to be disqualified from licensure because the individual continues to pose a risk of harm to persons served by that individual, even after the minimum disqualification period has passed.

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

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

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

Subd. 3. **Ten-year bar to set aside disqualification.** (a) The commissioner may not set aside the disqualification of an individual in connection with a license to provide family child care for children, foster care for children in the provider's home, or foster care or day care services for adults in the provider's home if: (1) less than ten years has passed since the discharge of the sentence imposed, if any, for the offense; or (2) when disqualified based on a preponderance of evidence determination under section 245C.14, subdivision 1, paragraph (a), clause (2), or an admission under section 245C.14, subdivision 1, paragraph (a), clause (1), and less than ten years has passed since the individual committed the act or admitted to committing the act, whichever is later; and (3) the individual has committed a violation of any of the following offenses: sections 609.165 (felon ineligible to possess firearm); criminal vehicular homicide or criminal vehicular operation causing death under 609.2112, 609.2113, or 609.2114 (criminal vehicular homicide or injury); 609.215 (aiding suicide or aiding attempted suicide); felony violations under 609.223 or 609.2231 (assault in the third or fourth degree); 609.229 (crimes committed for benefit of a gang); 609.713 (terroristic threats); 609.235 (use of drugs to injure or to facilitate crime); 609.24 (simple robbery); 609.255 (false imprisonment); 609.562 (arson in the second degree); 609.71 (riot); 609.498, subdivision 1 or 1b (aggravated first-degree or first-degree tampering with a witness); burglary in the first or second degree under 609.582 (burglary); 609.66 (dangerous weapon); 609.665 (spring guns); 609.67 (machine guns and short-barreled shotguns); 609.749, subdivision 2 (gross misdemeanor stalking); 152.021 or 152.022 (controlled substance crime in the first or second degree); 152.023, subdivision 1, clause (3) or (4) or subdivision 2, clause (4) (controlled substance crime in the third degree); 152.024, subdivision 1, clause (2), (3), or (4) (controlled substance crime in the fourth degree); 609.224, subdivision 2, paragraph (c) (fifth-degree assault by a caregiver against a vulnerable adult); 609.23 (mistreatment of persons confined); 609.231 (mistreatment of residents or

patients); 609.2325 (criminal abuse of a vulnerable adult); 609.233 (criminal neglect of a vulnerable adult); 609.2335 (financial exploitation of a vulnerable adult); 609.234 (failure to report); 609.265 (abduction); 609.2664 to 609.2665 (manslaughter of an unborn child in the first or second degree); 609.267 to 609.2672 (assault of an unborn child in the first, second, or third degree); 609.268 (injury or death of an unborn child in the commission of a crime); repeat offenses under 617.23 (indecent exposure); 617.293 (disseminating or displaying harmful material to minors); a felony-level conviction involving alcohol or drug use, a gross misdemeanor offense under 609.324, subdivision 1 (other prohibited acts); a gross misdemeanor offense under 609.378 (neglect or endangerment of a child); a gross misdemeanor offense under 609.377 (malicious punishment of a child); 609.72, subdivision 3 (disorderly conduct against a vulnerable adult); or 624.713 (certain persons not to possess firearms); or Minnesota Statutes 2012, section 609.21.

(b) The commissioner may not set aside the disqualification of an individual if less than ten years have passed since the individual's aiding and abetting, attempt, or conspiracy to commit any of the offenses listed in paragraph (a) as each of these offenses is defined in Minnesota Statutes.

(c) The commissioner may not set aside the disqualification of an individual if less than ten years have passed since the discharge of the sentence imposed for an offense in any other state or country, the elements of which are substantially similar to the elements of any of the offenses listed in paragraph (a).

Subd. 4. Seven-year bar to set aside disqualification. The commissioner may not set aside the disqualification of an individual in connection with a license to provide family child care for children, foster care for children in the provider's home, or foster care or day care services for adults in the provider's home if within seven years preceding the study:

(1) the individual committed an act that constitutes maltreatment of a child under section 626.556, subdivision 10e, and the maltreatment resulted in substantial bodily harm as defined in section 609.02, subdivision 7a, or substantial mental or emotional harm as supported by competent psychological or psychiatric evidence; or

(2) the individual was determined under section 626.557 to be the perpetrator of a substantiated incident of maltreatment of a vulnerable adult that resulted in substantial bodily harm as defined in section 609.02, subdivision 7a, or substantial mental or emotional harm as supported by competent psychological or psychiatric evidence.

History: 2003 c 15 art 1 s 24; 2005 c 136 art 6 s 7; 1Sp2005 c 4 art 1 s 39,40; 2006 c 264 s 10; 2007 c 112 s 45; 2008 c 361 art 1 s 1; 2009 c 142 art 2 s 32,33; 2010 c 299 s 14

245C.25 CONSOLIDATED RECONSIDERATION OF MALTREATMENT DETERMINATION AND DISQUALIFICATION.

(a) If an individual is disqualified on the basis of a determination of maltreatment under section 626.556 or 626.557, which was serious or recurring, and the individual requests reconsideration of the maltreatment determination under section 626.556, subdivision 10i, or 626.557, subdivision 9d, and also requests reconsideration of the disqualification under section 245C.21, the commissioner shall consolidate the reconsideration of the maltreatment determination and the disqualification into a single reconsideration.

(b) For maltreatment and disqualification determinations made by county agencies, the county agency shall conduct the consolidated reconsideration. If the county agency has disqualified an individual on multiple bases, one of which is a county maltreatment determination for which the individual has a right to request reconsideration, the county shall conduct the reconsideration of all disqualifications.

(c) If the county has previously conducted a consolidated reconsideration under paragraph (b) of a maltreatment determination and a disqualification based on serious or recurring maltreatment, and the county subsequently disqualifies the individual based on that determination, the county shall conduct the reconsideration of the subsequent disqualification. The scope of the subsequent disqualification shall be limited to whether the individual poses a risk of harm in accordance with section 245C.22, subdivision 4. If the commissioner subsequently disqualifies the individual in connection with a child foster care license based on the county's previous maltreatment determination, the commissioner shall conduct the reconsideration of the subsequent disqualification.

History: 2003 c 15 art 1 s 25; 2004 c 288 art 1 s 67; 2009 c 142 art 2 s 34

245C.26 RECONSIDERATION OF A DISQUALIFICATION FOR AN INDIVIDUAL LIVING IN A LICENSED HOME.

In the case of any ground for disqualification under this chapter, if the act was committed by an individual other than the applicant or license holder residing in the applicant's or license holder's home, the applicant or license holder may seek reconsideration when the individual who committed the act no longer resides in the home.

History: 2003 c 15 art 1 s 26; 2004 c 288 art 1 s 68

245C.27 FAIR HEARING RIGHTS.

Subdivision 1. **Fair hearing following a reconsideration decision.** (a) An individual who is disqualified on the basis of a preponderance of evidence that the individual committed an act or acts that meet the definition of any of the crimes listed in section 245C.15; for a determination under section 626.556 or 626.557 of substantiated maltreatment that was serious or recurring under section 245C.15; or for failure to make required reports under section 626.556, subdivision 3; or 626.557, subdivision 3, pursuant to section 245C.15, subdivision 4, paragraph (b), clause (1), may request a fair hearing under section 256.045, following a reconsideration decision issued under section 245C.23, unless the disqualification is deemed conclusive under section 245C.29.

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

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

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

(e) Notwithstanding paragraph (c), if the commissioner does not set aside a disqualification of an individual who was disqualified based on both a preponderance of evidence and a conviction or admission, the individual may request a fair hearing under section 256.045, unless the disqualifications are deemed conclusive under section 245C.29. The scope of the hearing conducted under section 256.045 with regard to the disqualification based on a conviction or admission shall be limited solely to whether the individual

poses a risk of harm, according to section 256.045, subdivision 3b. In this case, the reconsideration decision under section 245C.22 is not the final agency decision for purposes of appeal by the disqualified individual.

Subd. 2. Consolidated fair hearing following a reconsideration decision. (a) If an individual who is disqualified on the bases of serious or recurring maltreatment requests a fair hearing on the maltreatment determination under section 626.556, subdivision 10i, or 626.557, subdivision 9d, and requests a fair hearing under this section on the disqualification following a reconsideration decision under section 245C.23, the scope of the fair hearing under section 256.045 shall include the maltreatment determination and the disqualification.

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

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

History: 2003 c 15 art 1 s 27; 1Sp2003 c 14 art 6 s 6; 2004 c 288 art 1 s 69,70; 1Sp2005 c 4 art 1 s 41; 2007 c 112 s 46; 2009 c 142 art 2 s 35; 2010 c 329 art 2 s 1,2

245C.28 CONTESTED CASE HEARING RIGHTS.

Subdivision 1. License holder. (a) If a maltreatment determination or a disqualification for which reconsideration was timely requested and which was not set aside is the basis for a denial of a license under section 245A.05 or a licensing sanction under section 245A.07, the license holder has the right to a contested case hearing under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. The license holder must submit the appeal under section 245A.05 or 245A.07, subdivision 3.

(b) As provided under section 245A.08, subdivision 2a, if the denial of a license or licensing sanction is based on a disqualification for which reconsideration was timely requested and was not set aside, the scope of the consolidated contested case hearing must include:

(1) the disqualification, to the extent the license holder otherwise has a hearing right on the disqualification under this chapter; and

(2) the licensing sanction or denial of a license.

(c) As provided for under section 245A.08, subdivision 2a, if the denial of a license or licensing sanction is based on a determination of maltreatment under section 626.556 or 626.557, or a disqualification for serious or recurring maltreatment which was not set aside, the scope of the contested case hearing must include:

(1) the maltreatment determination, if the maltreatment is not conclusive under section 245C.29;

(2) the disqualification, if the disqualification is not conclusive under section 245C.29; and

(3) the licensing sanction or denial of a license. In such cases, a fair hearing must not be conducted under section 256.045. If the disqualification was based on a determination of substantiated serious or recurring maltreatment under section 626.556 or 626.557, the appeal must be submitted under sections 245A.07, subdivision 3, and 626.556, subdivision 10i, or 626.557, subdivision 9d.

(d) Except for family child care and child foster care, reconsideration of a maltreatment determination under sections 626.556, subdivision 10i, and 626.557, subdivision 9d, and reconsideration of a disqualification under section 245C.22, must not be conducted when:

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

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

(3) the license holder appeals the maltreatment determination, disqualification, and denial of a license or licensing sanction. In such cases a fair hearing under section 256.045 must not be conducted under sections 245C.27, 626.556, subdivision 10i, and 626.557, subdivision 9d. Under section 245A.08, subdivision 2a, the scope of the consolidated contested case hearing must include the maltreatment determination, disqualification, and denial of a license or licensing sanction.

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

Subd. 2. Individual other than license holder. If the basis for the commissioner's denial of a license under section 245A.05 or a licensing sanction under section 245A.07 is a maltreatment determination or disqualification that was not set aside under section 245C.22, and the disqualified subject is an individual other than the license holder and upon whom a background study must be conducted under section 245C.03, the hearing of all parties may be consolidated into a single contested case hearing upon consent of all parties and the administrative law judge.

Subd. 3. Employees of public employer. (a) A disqualified individual who is an employee of an employer, as defined in section 179A.03, subdivision 15, may request a contested case hearing under chapter 14, and specifically Minnesota Rules, parts 1400.8505 to 1400.8612, following a reconsideration decision under section 245C.23, unless the disqualification is deemed conclusive under section 245C.29. The request for a contested case hearing must be made in writing and must be postmarked and sent within 30 calendar days after the employee receives notice of the reconsideration decision. If the individual was disqualified based on a conviction or admission to any crimes listed in section 245C.15, the scope of the contested case hearing shall be limited solely to whether the individual poses a risk of harm pursuant to section 245C.22.

(b) When an individual is disqualified based on a maltreatment determination, the scope of the contested case hearing under paragraph (a), must include the maltreatment determination and the disqualification. In such cases, a fair hearing must not be conducted under section 256.045.

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

(d) When an individual has been disqualified from multiple licensed programs, if at least one of the disqualifications entitles the person to a contested case hearing under this subdivision, the scope of the contested case hearing shall include all disqualifications from licensed programs.

(e) In determining whether the disqualification should be set aside, the administrative law judge shall consider all of the characteristics that cause the individual to be disqualified, as well as all the factors set forth in section 245C.22, in order to determine whether the individual has met the burden of demonstrating that the individual does not pose a risk of harm. The administrative law judge's recommendation and the

commissioner's order to set aside a disqualification that is the subject of the hearing constitutes a determination that the individual does not pose a risk of harm and that the individual may provide direct contact services in the individual program specified in the set aside.

(f) An individual may not request a contested case hearing under this section if a contested case hearing has previously been held regarding the individual's disqualification on the same basis.

Subd. 4. **Final agency order.** The commissioner's final order under section 245A.08, subdivision 5, is conclusive on the issue of maltreatment and disqualification, including for purposes of subsequent background studies. The contested case hearing under this section is the only administrative appeal of the final agency determination, specifically, including a challenge to the accuracy and completeness of data under section 13.04.

History: 2003 c 15 art 1 s 28; 2004 c 288 art 1 s 71-73; 1Sp2005 c 4 art 1 s 42; 2007 c 112 s 47; 2010 c 329 art 2 s 3; 2014 c 228 art 5 s 8,9

245C.29 CONCLUSIVE DETERMINATIONS OR DISPOSITIONS.

Subdivision 1. **Conclusive maltreatment determination or disposition.** Unless otherwise specified in statute, a maltreatment determination or disposition under section 626.556 or 626.557 is conclusive, if:

(1) the commissioner has issued a final order in an appeal of that determination or disposition under section 245A.08, subdivision 5, or 256.045;

(2) the individual did not request reconsideration of the maltreatment determination or disposition under section 626.556 or 626.557; or

(3) the individual did not request a hearing of the maltreatment determination or disposition under section 256.045.

Subd. 2. **Conclusive disqualification determination.** (a) A disqualification is conclusive for purposes of current and future background studies if:

(1) the commissioner has issued a final order in an appeal of the disqualification under section 245A.08, subdivision 5, 245C.28, subdivision 3, or 256.045, or a court has issued a final decision;

(2) the individual did not request reconsideration of the disqualification under section 245C.21 on the basis that the information relied upon to disqualify the individual was incorrect; or

(3) the individual did not timely request a hearing on the disqualification under this chapter, chapter 14, or section 256.045 after previously being given the right to do so.

(b) When a licensing action under section 245A.05, 245A.06, or 245A.07 is based on the disqualification of an individual in connection with a license to provide family child care, foster care for children in the provider's own home, or foster care services for adults in the provider's own home, that disqualification shall be conclusive for purposes of the licensing action if a request for reconsideration was not submitted within 30 calendar days of the individual's receipt of the notice of disqualification.

(c) If a disqualification is conclusive under this section, the individual has a right to request reconsideration on the risk of harm under section 245C.21 unless the commissioner is barred from setting aside the

disqualification under section 245C.24. The commissioner's decision regarding the risk of harm shall be the final agency decision and is not subject to a hearing under this chapter, chapter 14, or section 256.045.

History: 2003 c 15 art 1 s 29; 2004 c 288 art 1 s 74; 2014 c 228 art 5 s 10

245C.30 VARIANCE FOR A DISQUALIFIED INDIVIDUAL.

Subdivision 1. **License holder variance.** (a) Except for any disqualification under section 245C.15, subdivision 1, when the commissioner has not set aside a background study subject's disqualification, and there are conditions under which the disqualified individual may provide direct contact services or have access to people receiving services that minimize the risk of harm to people receiving services, the commissioner may grant a time-limited variance to a license holder.

(b) The variance shall state the reason for the disqualification, the services that may be provided by the disqualified individual, and the conditions with which the license holder or applicant must comply for the variance to remain in effect.

(c) Except for programs licensed to provide family child care, foster care for children in the provider's own home, or foster care or day care services for adults in the provider's own home, the variance must be requested by the license holder.

Subd. 2. **Disclosure of reason for disqualification.** (a) The commissioner may not grant a variance for a disqualified individual unless the applicant or license holder requests the variance and the disqualified individual provides written consent for the commissioner to disclose to the applicant or license holder the reason for the disqualification.

(b) This subdivision does not apply to programs licensed to provide family child care for children, foster care for children in the provider's own home, or foster care or day care services for adults in the provider's own home. When the commissioner grants a variance for a disqualified individual in connection with a license to provide the services specified in this paragraph, the disqualified individual's consent is not required to disclose the reason for the disqualification to the license holder in the variance issued under subdivision 1.

Subd. 3. **Consequences for failing to comply with conditions of variance.** When a license holder permits a disqualified individual to provide any services for which the subject is disqualified without complying with the conditions of the variance, the commissioner may terminate the variance effective immediately and subject the license holder to a licensing action under sections 245A.06 and 245A.07.

Subd. 4. **Termination of a variance.** The commissioner may terminate a variance for a disqualified individual at any time for cause.

Subd. 5. **Final decision.** The commissioner's decision to grant or deny a variance is final and not subject to appeal under the provisions of chapter 14.

History: 2003 c 15 art 1 s 30; 1Sp2005 c 4 art 1 s 43,44

245C.301 NOTIFICATION OF SET-ASIDE OR VARIANCE.

(a) Except as provided under paragraphs (b) and (c), if required by the commissioner, family child care providers and child care centers must provide a written notification to parents considering enrollment of a child or parents of a child attending the family child care or child care center if the program employs or has living in the home any individual who is the subject of either a set-aside or variance.

(b) Notwithstanding paragraph (a), family child care license holders are not required to disclose that the program has an individual living in the home who is the subject of a set-aside or variance if:

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

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

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

(c) The notice specified in paragraph (a) is not required when the period of disqualification in section 245C.15, subdivisions 2 to 4, has been exceeded.

History: *1Sp2005 c 4 art 1 s 45; 2006 c 264 s 11; 2007 c 112 s 48*

245C.31 INDIVIDUAL REGULATED BY A HEALTH-RELATED LICENSING BOARD; DISQUALIFICATION BASED ON MALTREATMENT.

Subdivision 1. **Board determines disciplinary or corrective action.** (a) When the subject of a background study is regulated by a health-related licensing board as defined in chapter 214, and the commissioner determines that the regulated individual is responsible for substantiated maltreatment under section 626.556 or 626.557, instead of the commissioner making a decision regarding disqualification, the board shall make a determination whether to impose disciplinary or corrective action under chapter 214.

(b) This section does not apply to a background study of an individual regulated by a health-related licensing board if the individual's study is related to child foster care, adult foster care, or family child care licensure.

Subd. 2. **Commissioner's notice to board.** (a) The commissioner shall notify the health-related licensing board:

(1) upon completion of a background study that produces a record showing that the individual was determined to have been responsible for substantiated maltreatment;

(2) upon the commissioner's completion of an investigation that determined the individual was responsible for substantiated maltreatment; or

(3) upon receipt from another agency of a finding of substantiated maltreatment for which the individual was responsible.

(b) The commissioner's notice to the health-related licensing board shall indicate whether the commissioner would have disqualified the individual for the substantiated maltreatment if the individual were not regulated by the board.

(c) The commissioner shall concurrently send the notice under this subdivision to the individual who is the subject of the background study.

Subd. 3. **Commissioner's or local agency's referral to board.** (a) When the commissioner or a local agency has reason to believe that the direct contact services provided by an individual may fall within the jurisdiction of a health-related licensing board, the commissioner or local agency shall refer the matter to the board as provided in this section.

(b) If, upon review of the information provided by the commissioner, a health-related licensing board informs the commissioner that the board does not have jurisdiction to take disciplinary or corrective action,

the commissioner shall make the appropriate disqualification decision regarding the individual as otherwise provided in this chapter.

Subd. 4. **Facility monitoring.** (a) The commissioner has the authority to monitor the facility's compliance with any requirements that the health-related licensing board places on regulated individuals practicing in a facility either during the period pending a final decision on a disciplinary or corrective action or as a result of a disciplinary or corrective action. The commissioner has the authority to order the immediate removal of a regulated individual from direct contact or access when a board issues an order of temporary suspension based on a determination that the regulated individual poses an immediate risk of harm to persons receiving services in a licensed facility.

(b) A facility that allows a regulated individual to provide direct contact services while not complying with the requirements imposed by the health-related licensing board is subject to action by the commissioner as specified under sections 245A.06 and 245A.07.

(c) The commissioner shall notify a health-related licensing board immediately upon receipt of knowledge of a facility's or individual's noncompliance with requirements the board placed on a facility or upon an individual regulated by the board.

History: 2003 c 15 art 1 s 31

245C.32 SYSTEMS AND RECORDS.

Subdivision 1. **Establishment.** The commissioner may establish systems and records to fulfill the requirements of this chapter.

Subd. 1a. **NETStudy 2.0 system.** (a) The commissioner shall design, develop, and test the NETStudy 2.0 system and implement it no later than September 1, 2015.

(b) The NETStudy 2.0 system developed and implemented by the commissioner shall incorporate and meet all applicable data security standards and policies required by the Federal Bureau of Investigation (FBI), Department of Public Safety, Bureau of Criminal Apprehension, and the Office of MN.IT Services. The system shall meet all required standards for encryption of data at the database level as well as encryption of data that travels electronically among agencies initiating background studies, the commissioner's authorized fingerprint collection vendor, the commissioner, the Bureau of Criminal Apprehension, and in cases involving national criminal record checks, the FBI.

(c) The data system developed and implemented by the commissioner shall incorporate a system of data security that allows the commissioner to control access to the data field level by the commissioner's employees. The commissioner shall establish that employees have access to the minimum amount of private data on any individual as is necessary to perform their duties under this chapter.

(d) The commissioner shall oversee regular quality and compliance audits of the authorized fingerprint collection vendor.

Subd. 1b. **Civil remedies.** When accessing private data on individuals through NETStudy 2.0, entities that are authorized to initiate background studies and the commissioner's authorized fingerprint collection vendors shall be subject to all responsibilities and civil remedies applicable to a responsible authority or government entity as specified under section 13.08.

Subd. 2. **Use.** (a) The commissioner may also use these systems and records to obtain and provide criminal history data from the Bureau of Criminal Apprehension, criminal history data held by the

commissioner, and data about substantiated maltreatment under section 626.556 or 626.557, for other purposes, provided that:

(1) the background study is specifically authorized in statute; or

(2) the request is made with the informed consent of the subject of the study as provided in section 13.05, subdivision 4.

(b) An individual making a request under paragraph (a), clause (2), must agree in writing not to disclose the data to any other individual without the consent of the subject of the data.

(c) The commissioner may recover the cost of obtaining and providing background study data by charging the individual or entity requesting the study a fee of no more than \$20 per study. The fees collected under this paragraph are appropriated to the commissioner for the purpose of conducting background studies.

(d) The commissioner shall recover the cost of obtaining background study data required under section 524.5-118 through a fee of \$50 per study for an individual who has not lived outside Minnesota for the past ten years, and a fee of \$100 for an individual who has resided outside of Minnesota for any period during the ten years preceding the background study. The commissioner shall recover, from the individual, any additional fees charged by other states' licensing agencies that are associated with these data requests. Fees under subdivision 3 also apply when criminal history data from the National Criminal Records Repository is required.

Subd. 3. National records search. (a) When specifically required by statute, the commissioner shall also obtain criminal history data from the National Criminal Records Repository.

(b) To obtain criminal history data from the National Criminal Records Repository, the commissioner shall require classifiable fingerprints of the data subject and must submit these fingerprint requests through the Bureau of Criminal Apprehension.

(c) The commissioner may require the background study subject to submit fingerprint images electronically. The commissioner may not require electronic fingerprint images until the electronic recording and transfer system is available for noncriminal justice purposes and the necessary equipment is in use in the law enforcement agency in the background study subject's local community.

(d) The commissioner may recover the cost of obtaining and providing criminal history data from the National Criminal Records Repository by charging the individual or entity requesting the study a fee of no more than \$30 per study. The fees collected under this subdivision are appropriated to the commissioner for the purpose of obtaining criminal history data from the National Criminal Records Repository.

History: 2003 c 12 art 2 s 4; 2003 c 15 art 1 s 32; 1Sp2005 c 4 art 5 s 9; 2013 c 86 art 2 s 1; 2014 c 250 s 19,20

245C.33 ADOPTION AND TRANSFER OF PERMANENT LEGAL AND PHYSICAL CUSTODY BACKGROUND STUDY REQUIREMENTS.

Subdivision 1. Background study requirements. (a) Before placement of a child for purposes of adoption, the commissioner shall conduct a background study on individuals listed in sections 259.41, subdivision 3, and 260C.611, for county agencies and private agencies licensed to place children for adoption. When a prospective adoptive parent is seeking to adopt a child who is currently placed in the prospective adoptive parent's home and is under the guardianship of the commissioner according to section 260C.325,

subdivision 1, paragraph (b), and the prospective adoptive parent holds a child foster care license, a new background study is not required when:

(1) a background study was completed on persons required to be studied under section 245C.03 in connection with the application for child foster care licensure after July 1, 2007;

(2) the background study included a review of the information in section 245C.08, subdivisions 1, 3, and 4; and

(3) as a result of the background study, the individual was either not disqualified or, if disqualified, the disqualification was set aside under section 245C.22, or a variance was issued under section 245C.30.

(b) Before the kinship placement agreement is signed for the purpose of transferring permanent legal and physical custody to a relative under sections 260C.503 to 260C.515, the commissioner shall conduct a background study on each person age 13 or older living in the home. When a prospective relative custodian has a child foster care license, a new background study is not required when:

(1) a background study was completed on persons required to be studied under section 245C.03 in connection with the application for child foster care licensure after July 1, 2007;

(2) the background study included a review of the information in section 245C.08, subdivisions 1, 3, and 4; and

(3) as a result of the background study, the individual was either not disqualified or, if disqualified, the disqualification was set aside under section 245C.22, or a variance was issued under section 245C.30. The commissioner and the county agency shall expedite any request for a set-aside or variance for a background study required under chapter 256N.

Subd. 2. Information and data provided to county or private agency. The subject of the background study shall provide the information specified in section 245C.05.

Subd. 3. Information and data provided to commissioner. The county or private agency shall forward the data collected under subdivision 2 to the commissioner.

Subd. 4. Information commissioner reviews. (a) The commissioner shall review the following information regarding the background study subject:

(1) the information under section 245C.08, subdivisions 1, 3, and 4;

(2) information from the child abuse and neglect registry for any state in which the subject has resided for the past five years; and

(3) information from national crime information databases, when required under section 245C.08.

(b) The commissioner shall provide any information collected under this subdivision to the county or private agency that initiated the background study. The commissioner shall also provide the agency:

(1) notice whether the information collected shows that the subject of the background study has a conviction listed in United States Code, title 42, section 671(a)(20)(A); and

(2) for background studies conducted under subdivision 1, paragraph (a), the date of all adoption-related background studies completed on the subject by the commissioner after June 30, 2007, and the name of the county or private agency that initiated the adoption-related background study.

History: 2007 c 147 art 3 s 22; 2010 c 269 art 2 s 1; 2014 c 312 art 25 s 5,6

245C.34 ADOPTION AND CHILD FOSTER CARE BACKGROUND STUDIES; TRIBAL ORGANIZATIONS.

Subdivision 1. **Background studies may be conducted by commissioner.** (a) Tribal organizations may contract with the commissioner under section 245C.12 to obtain background study data on individuals under tribal jurisdiction related to adoptions.

(b) Tribal organizations may contract with the commissioner under section 245C.12 to obtain background study data on individuals under tribal jurisdiction related to child foster care.

(c) Background studies initiated by tribal organizations under paragraphs (a) and (b) must be conducted as provided in subdivisions 2 and 3.

Subd. 2. **Information and data provided to tribal organization.** The background study subject must provide the information specified in section 245C.05.

Subd. 3. **Information and data provided to commissioner.** The tribal organization shall forward the data collected under subdivision 2 to the commissioner.

Subd. 4. **Information commissioner reviews.** (a) The commissioner shall review the following information regarding the background study subject:

- (1) the information under section 245C.08, subdivisions 1, 3, and 4;
 - (2) information from the child abuse and neglect registry for any state in which the subject has resided for the past five years; and
 - (3) information from national crime information databases, when required under section 245C.08.
- (b) The commissioner shall provide any information collected under this subdivision to the tribal organization that initiated the background study. The commissioner shall indicate if the information collected shows that the subject of the background study has a conviction listed in United States Code, title 42, section 671(a)(20)(A).

History: 2007 c 147 art 3 s 23

152.18 DISCHARGE AND DISMISSAL.

Subdivision 1. **Deferring prosecution for certain first time drug offenders.** (a) A court may defer prosecution as provided in paragraph (c) for any person found guilty, after trial or upon a plea of guilty, of a violation of section 152.023, subdivision 2, 152.024, subdivision 2, 152.025, subdivision 2, or 152.027, subdivision 2, 3, 4, or 6, paragraph (d), for possession of a controlled substance, who:

(1) has not previously participated in or completed a diversion program authorized under section 401.065;

(2) has not previously been placed on probation without a judgment of guilty and thereafter been discharged from probation under this section; and

(3) has not been convicted of a felony violation of this chapter, including a felony-level attempt or conspiracy, or been convicted by the United States or another state of a similar offense that would have been a felony under this chapter if committed in Minnesota, unless ten years have elapsed since discharge from sentence.

(b) The court must defer prosecution as provided in paragraph (c) for any person found guilty of a violation of section 152.025, subdivision 2, who:

(1) meets the criteria listed in paragraph (a), clauses (1) to (3); and

(2) has not previously been convicted of a felony offense under any state or federal law or of a gross misdemeanor under section 152.025.

(c) In granting relief under this section, the court shall, without entering a judgment of guilty and with the consent of the person, defer further proceedings and place the person on probation upon such reasonable conditions as it may require and for a period, not to exceed the maximum sentence provided for the violation. The court may give the person the opportunity to attend and participate in an appropriate program of education regarding the nature and effects of alcohol and drug abuse as a stipulation of probation. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may, in its discretion, dismiss the proceedings against the person and discharge the person from probation before the expiration of the maximum period prescribed for the person's probation. If during the period of probation the person does not violate any of the conditions of the probation, then upon expiration of the period the court shall discharge the person and dismiss the proceedings against that person. Discharge and dismissal under this subdivision shall be without court adjudication of guilt, but a not public record of it shall be retained by the Bureau of Criminal Apprehension for the purpose of use by the courts in determining the merits of subsequent proceedings against the person. The not public record may also be opened only upon court order for purposes of a criminal investigation, prosecution, or sentencing. Upon request by law enforcement, prosecution, or corrections authorities, the bureau shall notify the requesting party of the existence of the not public record and the right to seek a court order to open it pursuant to this section. The court shall forward a record of any discharge and dismissal under this subdivision to the bureau which shall make and maintain the not public record of it as provided under this subdivision. The discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime or for any other purpose.

For purposes of this subdivision, "not public" has the meaning given in section 13.02, subdivision 8a.

Subd. 2. [Repealed, 1996 c 408 art 9 s 10]

Subd. 3. **Expungement of certain marijuana offenses.** Any person who has been found guilty of a violation of section 152.09 with respect to a small amount of marijuana which violation occurred prior to

April 11, 1976, and whose conviction would have been a petty misdemeanor under the provisions of section 152.15, subdivision 2, clause (5) in effect on April 11, 1978, but whose conviction was for an offense more serious than a petty misdemeanor under laws in effect prior to April 11, 1976, may petition the court in which the person was convicted to expunge from all official records, other than the nonpublic record retained by the Department of Public Safety pursuant to section 152.15, subdivision 2, clause (5), all recordation relating to the person's arrest, indictment or information, trial and conviction of an offense more serious than a petty misdemeanor. The court, upon being satisfied that a small amount was involved in the conviction, shall order all the recordation expunged. No person as to whom an order has been entered pursuant to this subdivision shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge conviction of an offense greater than a petty misdemeanor, unless possession of marijuana is material to a proceeding.

History: 1971 c 937 s 18; 1973 c 693 s 14; 1978 c 639 s 1; 1986 c 444; 1989 c 290 art 3 s 21; 1992 c 569 s 13; 1993 c 326 art 13 s 11; 1995 c 226 art 2 s 2; 1996 c 408 art 9 s 2; 2012 c 240 s 3; 2016 c 160 s 10

CHAPTER 364

CRIMINAL OFFENDERS; REHABILITATION

364.01	POLICY.	364.05	NOTIFICATION UPON DENIAL OF EMPLOYMENT OR DISQUALIFICATION FROM OCCUPATION.
364.02	DEFINITIONS.	364.06	VIOLATIONS; PROCEDURE; REMEDIES.
364.021	PUBLIC AND PRIVATE EMPLOYMENT; CONSIDERATION OF CRIMINAL RECORDS.	364.07	APPLICATION.
364.03	RELATION OF CONVICTION TO EMPLOYMENT OR OCCUPATION.	364.08	PRACTICE OF LAW; EXCEPTION.
364.04	AVAILABILITY OF RECORDS.	364.09	EXCEPTIONS.
		364.10	VIOLATION OF CIVIL RIGHTS.

364.01 POLICY.

The legislature declares that it is the policy of the state of Minnesota to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the resumption of the responsibilities of citizenship. The opportunity to secure employment or to pursue, practice, or engage in a meaningful and profitable trade, occupation, vocation, profession or business is essential to rehabilitation and the resumption of the responsibilities of citizenship.

History: 1974 c 298 s 1

364.02 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 364.01 to 364.10, the terms defined in this section have the meanings given them.

Subd. 2. **Occupation.** "Occupation" includes all occupations, trades, vocations, professions, businesses, or employment of any kind for which a license is required to be issued by the state of Minnesota, its agencies, or political subdivisions.

Subd. 3. **License.** "License" includes all licenses, permits, certificates, registrations, or other means required to engage in an occupation which are granted or issued by the state of Minnesota, its agents or political subdivisions before a person can pursue, practice, or engage in any occupation.

Subd. 4. **Public employment.** "Public employment" includes all employment with the state of Minnesota, its agencies, or political subdivisions.

Subd. 5. **Conviction of crime or crimes.** "Conviction of crime or crimes" shall be limited to convictions of felonies, gross misdemeanors, and misdemeanors for which a jail sentence may be imposed. No other criminal conviction shall be considered.

Subd. 6. **Hiring or licensing authority.** "Hiring or licensing authority" shall mean the person, board, commission, or department of the state of Minnesota, its agencies or political subdivisions, responsible by law for the hiring of persons for public employment or the licensing of persons for occupations.

History: 1974 c 298 s 2

364.021 PUBLIC AND PRIVATE EMPLOYMENT; CONSIDERATION OF CRIMINAL RECORDS.

(a) A public or private employer may not inquire into or consider or require disclosure of the criminal record or criminal history of an applicant for employment until the applicant has been selected for an interview

by the employer or, if there is not an interview, before a conditional offer of employment is made to the applicant.

(b) This section does not apply to the Department of Corrections or to employers who have a statutory duty to conduct a criminal history background check or otherwise take into consideration a potential employee's criminal history during the hiring process.

(c) This section does not prohibit an employer from notifying applicants that law or the employer's policy will disqualify an individual with a particular criminal history background from employment in particular positions.

History: 2009 c 59 art 5 s 11; 2013 c 61 s 3

364.03 RELATION OF CONVICTION TO EMPLOYMENT OR OCCUPATION.

Subdivision 1. **No disqualification from licensed occupations.** Notwithstanding any other provision of law to the contrary, no person shall be disqualified from public employment, nor shall a person be disqualified from pursuing, practicing, or engaging in any occupation for which a license is required solely or in part because of a prior conviction of a crime or crimes, unless the crime or crimes for which convicted directly relate to the position of employment sought or the occupation for which the license is sought.

Subd. 2. **Conviction relating to public employment sought.** In determining if a conviction directly relates to the position of public employment sought or the occupation for which the license is sought, the hiring or licensing authority shall consider:

- (1) the nature and seriousness of the crime or crimes for which the individual was convicted;
- (2) the relationship of the crime or crimes to the purposes of regulating the position of public employment sought or the occupation for which the license is sought;
- (3) the relationship of the crime or crimes to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the position of employment or occupation.

Subd. 3. **Evidence of rehabilitation.** (a) A person who has been convicted of a crime or crimes which directly relate to the public employment sought or to the occupation for which a license is sought shall not be disqualified from the employment or occupation if the person can show competent evidence of sufficient rehabilitation and present fitness to perform the duties of the public employment sought or the occupation for which the license is sought. Competent evidence of sufficient rehabilitation may be established by the production of the person's most recent certified copy of a United States Department of Defense form DD-214 showing the person's honorable discharge, or separation under honorable conditions, from the United States armed forces for military service rendered following conviction for any crime that would otherwise disqualify the person from the public employment sought or the occupation for which the license is sought, or:

- (1) a copy of the local, state, or federal release order; and
- (2) evidence showing that at least one year has elapsed since release from any local, state, or federal correctional institution without subsequent conviction of a crime; and evidence showing compliance with all terms and conditions of probation or parole; or
- (3) a copy of the relevant Department of Corrections discharge order or other documents showing completion of probation or parole supervision.

(b) In addition to the documentary evidence presented, the licensing or hiring authority shall consider any evidence presented by the applicant regarding:

- (1) the nature and seriousness of the crime or crimes for which convicted;
- (2) all circumstances relative to the crime or crimes, including mitigating circumstances or social conditions surrounding the commission of the crime or crimes;
- (3) the age of the person at the time the crime or crimes were committed;
- (4) the length of time elapsed since the crime or crimes were committed; and
- (5) all other competent evidence of rehabilitation and present fitness presented, including, but not limited to, letters of reference by persons who have been in contact with the applicant since the applicant's release from any local, state, or federal correctional institution.

(c) The certified copy of a person's United States Department of Defense form DD-214 showing the person's honorable discharge or separation under honorable conditions from the United States armed forces ceases to qualify as competent evidence of sufficient rehabilitation for purposes of this section upon the person's conviction for any gross misdemeanor or felony committed by the person subsequent to the effective date of that honorable discharge or separation from military service.

History: 1974 c 298 s 3; 1986 c 444; 2013 c 142 art 4 s 9

364.04 AVAILABILITY OF RECORDS.

The following criminal records shall not be used, distributed, or disseminated by the state of Minnesota, its agents or political subdivisions in connection with any application for public employment nor in connection with an application for a license:

- (1) Records of arrest not followed by a valid conviction.
- (2) Convictions which have been, pursuant to law, annulled or expunged.
- (3) Misdemeanor convictions for which no jail sentence can be imposed.

History: 1974 c 298 s 4

364.05 NOTIFICATION UPON DENIAL OF EMPLOYMENT OR DISQUALIFICATION FROM OCCUPATION.

If a hiring or licensing authority denies an individual a position of public employment or disqualifies the individual from pursuing, practicing, or engaging in any occupation for which a license is required, solely or in part because of the individual's prior conviction of a crime, the hiring or licensing authority shall notify the individual in writing of the following:

- (1) the grounds and reasons for the denial or disqualification;
- (2) the applicable complaint and grievance procedure as set forth in section 364.06;
- (3) the earliest date the person may reapply for a position of public employment or a license; and
- (4) that all competent evidence of rehabilitation presented will be considered upon reapplication.

History: 1974 c 298 s 5

364.06 VIOLATIONS; PROCEDURE; REMEDIES.

Subdivision 1. **Public employers.** Any complaints or grievances concerning violations of sections 364.01 to 364.10 by public employers shall be processed and adjudicated in accordance with the procedures set forth in chapter 14, the Administrative Procedure Act.

Subd. 2. **Private employers.** (a) The commissioner of human rights shall investigate violations of section 364.021 by a private employer. If the commissioner finds that a violation has occurred, the commissioner may impose penalties as provided in paragraphs (b) and (c).

(b) For violations that occur before January 1, 2015, the penalties are as follows:

(1) for the first violation, the commissioner shall issue a written warning to the employer that includes a notice regarding the penalties for subsequent violations;

(2) if a first violation is not remedied within 30 days of the issuance of a warning under clause (1), the commissioner may impose up to a \$500 fine; and

(3) subsequent violations before January 1, 2015, are subject to a fine of up to \$500 per violation, not to exceed \$500 in a calendar month.

(c) For violations that occur after December 31, 2014, the penalties are as follows:

(1) for employers that employ ten or fewer persons at a site in this state, the penalty is up to \$100 for each violation, not to exceed \$100 in a calendar month;

(2) for employers that employ 11 to 20 persons at a site in this state, the penalty is up to \$500 for each violation, not to exceed \$500 in a calendar month; and

(3) for employers that employ more than 20 persons at one or more sites in this state, the penalty is up to \$500 for each violation, not to exceed \$2,000 in a calendar month.

(d) The remedies under this subdivision are exclusive. A private employer is not otherwise liable for complying with or failing to comply with section 364.021.

History: 1974 c 298 s 6; 1982 c 424 s 130; 2013 c 61 s 4

364.07 APPLICATION.

The provisions of sections 364.01 to 364.10 shall prevail over any other laws and rules which purport to govern the granting, denial, renewal, suspension, or revocation of a license or the initiation, suspension, or termination of public employment on the grounds of conviction of a crime or crimes. In deciding to grant, deny, revoke, suspend, or renew a license, or to deny, suspend, or terminate public employment for a lack of good moral character or the like, the hiring or licensing authority may consider evidence of conviction of a crime or crimes but only in the same manner and to the same effect as provided for in sections 364.01 to 364.10. Nothing in sections 364.01 to 364.10 shall be construed to otherwise affect relevant proceedings involving the granting, denial, renewal, suspension, or revocation of a license or the initiation, suspension, or termination of public employment.

History: 1974 c 298 s 7; 1985 c 248 s 70

364.08 PRACTICE OF LAW; EXCEPTION.

This chapter shall not apply to the practice of law or judicial branch employment; but nothing in this section shall be construed to preclude the Supreme Court, in its discretion, from adopting the policies set forth in this chapter.

History: 1974 c 298 s 8; 2009 c 83 art 2 s 26

364.09 EXCEPTIONS.

(a) This chapter does not apply to the licensing process for peace officers; to law enforcement agencies as defined in section 626.84, subdivision 1, paragraph (f); to fire protection agencies; to eligibility for a private detective or protective agent license; to the licensing and background study process under chapters 245A and 245C; to the licensing and background investigation process under chapter 240; to eligibility for school bus driver endorsements; to eligibility for special transportation service endorsements; to eligibility for a commercial driver training instructor license, which is governed by section 171.35 and rules adopted under that section; to emergency medical services personnel, or to the licensing by political subdivisions of taxicab drivers, if the applicant for the license has been discharged from sentence for a conviction within the ten years immediately preceding application of a violation of any of the following:

(1) sections 609.185 to 609.2114, 609.221 to 609.223, 609.342 to 609.3451, or 617.23, subdivision 2 or 3; or Minnesota Statutes 2012, section 609.21;

(2) any provision of chapter 152 that is punishable by a maximum sentence of 15 years or more; or

(3) a violation of chapter 169 or 169A involving driving under the influence, leaving the scene of an accident, or reckless or careless driving.

This chapter also shall not apply to eligibility for juvenile corrections employment, where the offense involved child physical or sexual abuse or criminal sexual conduct.

(b) This chapter does not apply to a school district or to eligibility for a license issued or renewed by the Board of Teaching or the commissioner of education.

(c) Nothing in this section precludes the Minnesota Police and Peace Officers Training Board or the state fire marshal from recommending policies set forth in this chapter to the attorney general for adoption in the attorney general's discretion to apply to law enforcement or fire protection agencies.

(d) This chapter does not apply to a license to practice medicine that has been denied or revoked by the Board of Medical Practice pursuant to section 147.091, subdivision 1a.

(e) This chapter does not apply to any person who has been denied a license to practice chiropractic or whose license to practice chiropractic has been revoked by the board in accordance with section 148.10, subdivision 7.

(f) This chapter does not apply to any license, registration, or permit that has been denied or revoked by the Board of Nursing in accordance with section 148.261, subdivision 1a.

(g) This chapter does not supersede a requirement under law to conduct a criminal history background investigation or consider criminal history records in hiring for particular types of employment.

History: 1974 c 298 s 9; 1983 c 304 s 5; 1986 c 444; 1Sp1986 c 1 art 9 s 28; 1987 c 378 s 16; 1989 c 85 s 1; 1989 c 171 s 8; 1989 c 290 art 8 s 2; 1990 c 542 s 16; 1991 c 265 art 9 s 69; 1992 c 499 art 8 s 24;

1992 c 578 s 54; 1993 c 159 s 1; 1995 c 18 s 12; 1995 c 226 art 3 s 45; 1997 c 248 s 44; 1Sp1997 c 2 s 58; 1998 c 398 art 5 s 55; 1999 c 191 s 1; 2000 c 478 art 2 s 7; 2001 c 144 s 1; 2003 c 15 art 1 s 33; 2003 c 130 s 12; 2005 c 10 art 2 s 4; 2010 c 349 s 2; 2013 c 61 s 5; 2014 c 180 s 9; 2014 c 291 art 4 s 57; 2015 c 77 art 4 s 21

364.10 VIOLATION OF CIVIL RIGHTS.

Violation of the rights established in sections 364.01 to 364.10 by a public employer shall constitute a violation of a person's civil rights.

History: *1974 c 298 s 10; 2013 c 61 s 6*

148.261 GROUNDS FOR DISCIPLINARY ACTION.

Subdivision 1. **Grounds listed.** The board may deny, revoke, suspend, limit, or condition the license and registration of any person to practice advanced practice, professional, or practical nursing under sections 148.171 to 148.285, or to otherwise discipline a licensee or applicant as described in section 148.262. The following are grounds for disciplinary action:

(1) Failure to demonstrate the qualifications or satisfy the requirements for a license contained in sections 148.171 to 148.285 or rules of the board. In the case of a person applying for a license, the burden of proof is upon the applicant to demonstrate the qualifications or satisfaction of the requirements.

(2) Employing fraud or deceit in procuring or attempting to procure a permit, license, or registration certificate to practice advanced practice, professional, or practical nursing or attempting to subvert the licensing examination process. Conduct that subverts or attempts to subvert the licensing examination process includes, but is not limited to:

(i) conduct that violates the security of the examination materials, such as removing examination materials from the examination room or having unauthorized possession of any portion of a future, current, or previously administered licensing examination;

(ii) conduct that violates the standard of test administration, such as communicating with another examinee during administration of the examination, copying another examinee's answers, permitting another examinee to copy one's answers, or possessing unauthorized materials; or

(iii) impersonating an examinee or permitting an impersonator to take the examination on one's own behalf.

(3) Conviction of a felony or gross misdemeanor reasonably related to the practice of professional, advanced practice registered, or practical nursing. Conviction as used in this subdivision includes a conviction of an offense that if committed in this state would be considered a felony or gross misdemeanor without regard to its designation elsewhere, or a criminal proceeding where a finding or verdict of guilt is made or returned but the adjudication of guilt is either withheld or not entered.

(4) Revocation, suspension, limitation, conditioning, or other disciplinary action against the person's professional or practical nursing license or advanced practice registered nursing credential, in another state, territory, or country; failure to report to the board that charges regarding the person's nursing license or other credential are pending in another state, territory, or country; or having been refused a license or other credential by another state, territory, or country.

(5) Failure to or inability to perform professional or practical nursing as defined in section 148.171, subdivision 14 or 15, with reasonable skill and safety, including failure of a registered nurse to supervise or a licensed practical nurse to monitor adequately the performance of acts by any person working at the nurse's direction.

(6) Engaging in unprofessional conduct, including, but not limited to, a departure from or failure to conform to board rules of professional or practical nursing practice that interpret the statutory definition of professional or practical nursing as well as provide criteria for violations of the statutes, or, if no rule exists, to the minimal standards of acceptable and prevailing professional or practical nursing practice, or any nursing practice that may create unnecessary danger to a patient's life, health, or safety. Actual injury to a patient need not be established under this clause.

(7) Failure of an advanced practice registered nurse to practice with reasonable skill and safety or departure from or failure to conform to standards of acceptable and prevailing advanced practice registered nursing.

(8) Delegating or accepting the delegation of a nursing function or a prescribed health care function when the delegation or acceptance could reasonably be expected to result in unsafe or ineffective patient care.

(9) Actual or potential inability to practice nursing with reasonable skill and safety to patients by reason of illness, use of alcohol, drugs, chemicals, or any other material, or as a result of any mental or physical condition.

(10) Adjudication as mentally incompetent, mentally ill, a chemically dependent person, or a person dangerous to the public by a court of competent jurisdiction, within or without this state.

(11) Engaging in any unethical conduct, including, but not limited to, conduct likely to deceive, defraud, or harm the public, or demonstrating a willful or careless disregard for the health, welfare, or safety of a patient. Actual injury need not be established under this clause.

(12) Engaging in conduct with a patient that is sexual or may reasonably be interpreted by the patient as sexual, or in any verbal behavior that is seductive or sexually demeaning to a patient, or engaging in sexual exploitation of a patient or former patient.

(13) Obtaining money, property, or services from a patient, other than reasonable fees for services provided to the patient, through the use of undue influence, harassment, duress, deception, or fraud.

(14) Revealing a privileged communication from or relating to a patient except when otherwise required or permitted by law.

(15) Engaging in abusive or fraudulent billing practices, including violations of federal Medicare and Medicaid laws or state medical assistance laws.

(16) Improper management of patient records, including failure to maintain adequate patient records, to comply with a patient's request made pursuant to sections 144.291 to 144.298, or to furnish a patient record or report required by law.

(17) Knowingly aiding, assisting, advising, or allowing an unlicensed person to engage in the unlawful practice of advanced practice, professional, or practical nursing.

(18) Violating a rule adopted by the board, an order of the board, or a state or federal law relating to the practice of advanced practice, professional, or practical nursing, or a state or federal narcotics or controlled substance law.

(19) Knowingly providing false or misleading information that is directly related to the care of that patient unless done for an accepted therapeutic purpose such as the administration of a placebo.

(20) Aiding suicide or aiding attempted suicide in violation of section 609.215 as established by any of the following:

(i) a copy of the record of criminal conviction or plea of guilty for a felony in violation of section 609.215, subdivision 1 or 2;

(ii) a copy of the record of a judgment of contempt of court for violating an injunction issued under section 609.215, subdivision 4;

(iii) a copy of the record of a judgment assessing damages under section 609.215, subdivision 5; or

(iv) a finding by the board that the person violated section 609.215, subdivision 1 or 2. The board shall investigate any complaint of a violation of section 609.215, subdivision 1 or 2.

(21) Practicing outside the scope of practice authorized by section 148.171, subdivision 5, 10, 11, 13, 14, 15, or 21.

(22) Making a false statement or knowingly providing false information to the board, failing to make reports as required by section 148.263, or failing to cooperate with an investigation of the board as required by section 148.265.

(23) Engaging in false, fraudulent, deceptive, or misleading advertising.

(24) Failure to inform the board of the person's certification or recertification status as a certified registered nurse anesthetist, certified nurse-midwife, certified nurse practitioner, or certified clinical nurse specialist.

(25) Engaging in clinical nurse specialist practice, nurse-midwife practice, nurse practitioner practice, or registered nurse anesthetist practice without a license and current certification or recertification by a national nurse certification organization acceptable to the board.

(26) Engaging in conduct that is prohibited under section 145.412.

(27) Failing to report employment to the board as required by section 148.211, subdivision 2a, or knowingly aiding, assisting, advising, or allowing a person to fail to report as required by section 148.211, subdivision 2a.

Subd. 1a. **Conviction of a felony-level criminal sexual offense.** (a) Except as provided in paragraph (e), the board may not grant or renew a license to practice nursing to any person who has been convicted on or after August 1, 2014, of any of the provisions of section 609.342, subdivision 1, 609.343, subdivision 1, 609.344, subdivision 1, paragraphs (c) to (o), or 609.345, subdivision 1, paragraphs (c) to (o), or a similar statute in another jurisdiction.

(b) A license to practice nursing is automatically revoked if the licensee is convicted of an offense listed in paragraph (a).

(c) A license to practice nursing that has been denied or revoked under this subdivision is not subject to chapter 364.

(d) For purposes of this subdivision, "conviction" means a plea of guilty, a verdict of guilty by a jury, or a finding of guilty by the court, unless the court stays imposition or execution of the sentence and final disposition of the case is accomplished at a nonfelony level.

(e) The board may establish criteria whereby an individual convicted of an offense listed in paragraph (a) may become licensed provided that the criteria:

(1) utilize a rebuttable presumption that the applicant is not suitable for licensing;

(2) provide a standard for overcoming the presumption; and

(3) require that a minimum of ten years has elapsed since the applicant's sentence was discharged.

The board shall not consider an application under this paragraph if the board determines that the victim involved in the offense was a patient or a client of the applicant at the time of the offense.

Subd. 2. [Repealed, 1976 c 222 s 209]

Subd. 3. [Repealed, 1989 c 194 s 22]

Subd. 4. **Evidence.** In disciplinary actions alleging a violation of subdivision 1, clause (3) or (4), or subdivision 1a, a copy of the judgment or proceeding under the seal of the court administrator or of the administrative agency that entered the same shall be admissible into evidence without further authentication and shall constitute prima facie evidence of the violation concerned.

Subd. 5. **Examination; access to medical data.** The board may take the following actions if it has probable cause to believe that grounds for disciplinary action exist under subdivision 1, clause (9) or (10):

(a) It may direct the applicant or nurse to submit to a mental or physical examination or chemical dependency evaluation. For the purpose of this subdivision, when a nurse licensed under sections 148.171 to 148.285 is directed in writing by the board to submit to a mental or physical examination or chemical dependency evaluation, that person is considered to have consented and to have waived all objections to admissibility on the grounds of privilege. Failure of the applicant or nurse to submit to an examination when directed constitutes an admission of the allegations against the applicant or nurse, unless the failure was due to circumstances beyond the person's control, and the board may enter a default and final order without taking testimony or allowing evidence to be presented. A nurse affected under this paragraph shall, at reasonable intervals, be given an opportunity to demonstrate that the competent practice of professional, advanced practice registered, or practical nursing can be resumed with reasonable skill and safety to patients. Neither the record of proceedings nor the orders entered by the board in a proceeding under this paragraph, may be used against a nurse in any other proceeding.

(b) It may, notwithstanding sections 13.384, 144.651, 595.02, or any other law limiting access to medical or other health data, obtain medical data and health records relating to a registered nurse, advanced practice registered nurse, licensed practical nurse, or applicant for a license without that person's consent. The medical data may be requested from a provider, as defined in section 144.291, subdivision 2, paragraph (h), an insurance company, or a government agency, including the Department of Human Services. A provider, insurance company, or government agency shall comply with any written request of the board under this subdivision and is not liable in any action for damages for releasing the data requested by the board if the data are released pursuant to a written request under this subdivision unless the information is false and the provider giving the information knew, or had reason to believe, the information was false. Information obtained under this subdivision is classified as private data on individuals as defined in section 13.02.

History: 1945 c 242 s 10; 1975 c 360 s 9; 1976 c 222 s 55; 1986 c 444; 1989 c 194 s 12; 1992 c 464 art 1 s 56; 1992 c 559 art 1 s 4; 1992 c 577 s 3; 1993 c 88 s 5; 1999 c 172 s 6,7,18; 1999 c 227 s 22; 2002 c 272 s 2; 2007 c 147 art 10 s 15; 2012 c 278 art 2 s 11; 2014 c 235 s 29; 2014 c 291 art 4 s 8,9

609.72 DISORDERLY CONDUCT.

Subdivision 1. **Crime.** Whoever does any of the following in a public or private place, including on a school bus, knowing, or having reasonable grounds to know that it will, or will tend to, alarm, anger or disturb others or provoke an assault or breach of the peace, is guilty of disorderly conduct, which is a misdemeanor:

(1) engages in brawling or fighting; or

(2) disturbs an assembly or meeting, not unlawful in its character; or

(3) engages in offensive, obscene, abusive, boisterous, or noisy conduct or in offensive, obscene, or abusive language tending reasonably to arouse alarm, anger, or resentment in others.

A person does not violate this section if the person's disorderly conduct was caused by an epileptic seizure.

Subd. 2. [Repealed, 1969 c 226 s 1]

Subd. 3. **Caregiver; penalty for disorderly conduct.** A caregiver, as defined in section 609.232, who violates the provisions of subdivision 1 against a vulnerable adult, as defined in section 609.232, may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

History: 1963 c 753 art 1 s 609.72; 1967 c 242 s 1; 1971 c 23 s 71; 1988 c 689 art 2 s 236; 1991 c 279 s 34; 1994 c 636 art 2 s 46; 1995 c 229 art 2 s 7

CHAPTER 609A

EXPUNGEMENT

609A.01	EXPUNGEMENT OF CRIMINAL RECORDS.	609A.03	PETITION TO EXPUNGE CRIMINAL RECORDS.
609A.02	GROUND FOR ORDER.	609A.04	REMEDY.
609A.025	NO PETITION REQUIRED IN CERTAIN CASES WITH PROSECUTOR AGREEMENT AND NOTIFICATION.		

609A.01 EXPUNGEMENT OF CRIMINAL RECORDS.

This chapter provides the grounds and procedures for expungement of criminal records under section 13.82; 152.18, subdivision 1; 299C.11, where a petition is authorized under section 609A.02, subdivision 3; or other applicable law. The remedy available is limited to a court order sealing the records and prohibiting the disclosure of their existence or their opening except under court order or statutory authority. Nothing in this chapter authorizes the destruction of records or their return to the subject of the records.

History: 1996 c 408 art 9 s 7

609A.02 GROUND FOR ORDER.

Subdivision 1. **Certain controlled substance offenses.** Upon the dismissal and discharge of proceedings against a person under section 152.18, subdivision 1, for violation of section 152.024, 152.025, or 152.027 for possession of a controlled substance, the person may petition under section 609A.03 for the sealing of all records relating to the arrest, indictment or information, trial, and dismissal and discharge.

Subd. 2. **Juveniles prosecuted as adults.** A petition for the sealing of a conviction record may be filed under section 609A.03 by a person who has been committed to the custody of the commissioner of corrections upon conviction of a crime following certification to district court under section 260B.125, if the person:

(1) is finally discharged by the commissioner; or

(2) has been placed on probation by the court under section 609.135 and has been discharged from probation after satisfactory fulfillment of it.

Subd. 3. **Certain criminal proceedings.** (a) A petition may be filed under section 609A.03 to seal all records relating to an arrest, indictment or information, trial, or verdict if the records are not subject to section 299C.11, subdivision 1, paragraph (b), and if:

(1) all pending actions or proceedings were resolved in favor of the petitioner. For purposes of this chapter, a verdict of not guilty by reason of mental illness is not a resolution in favor of the petitioner. For the purposes of this chapter, an action or proceeding is resolved in favor of the petitioner, if the petitioner received an order under section 590.11 determining that the petitioner is eligible for compensation based on exoneration;

(2) the petitioner has successfully completed the terms of a diversion program or stay of adjudication and has not been charged with a new crime for at least one year since completion of the diversion program or stay of adjudication;

(3) the petitioner was convicted of or received a stayed sentence for a petty misdemeanor or misdemeanor and has not been convicted of a new crime for at least two years since discharge of the sentence for the crime;

(4) the petitioner was convicted of or received a stayed sentence for a gross misdemeanor and has not been convicted of a new crime for at least four years since discharge of the sentence for the crime; or

(5) the petitioner was convicted of or received a stayed sentence for a felony violation of an offense listed in paragraph (b), and has not been convicted of a new crime for at least five years since discharge of the sentence for the crime.

(b) Paragraph (a), clause (5), applies to the following offenses:

(1) section 35.824 (altering livestock certificate);

(2) section 62A.41 (insurance regulations);

(3) section 86B.865, subdivision 1 (certification for title on watercraft);

(4) section 152.025 (controlled substance in the fifth degree); or 152.097 (sale of simulated controlled substance);

(5) section 168A.30, subdivision 1 (certificate of title false information); or 169.09, subdivision 14, paragraph (a), clause (2) (accident resulting in great bodily harm);

(6) chapter 201; 203B; or 204C (voting violations);

(7) section 228.45; 228.47; 228.49; 228.50; or 228.51 (false bill of lading);

(8) section 256.984 (false declaration in assistance application);

(9) section 296A.23, subdivision 2 (willful evasion of fuel tax);

(10) section 297D.09, subdivision 1 (failure to affix stamp on scheduled substances);

(11) section 297G.19 (liquor taxation); or 340A.701 (unlawful acts involving liquor);

(12) section 325F.743 (precious metal dealers); or 325F.755, subdivision 7 (prize notices and solicitations);

(13) section 346.155, subdivision 10 (failure to control regulated animal);

(14) section 349.2127; or 349.22 (gambling regulations);

(15) section 588.20 (contempt);

(16) section 609.27, subdivision 1, clauses (2) to (5) (coercion);

(17) section 609.31 (leaving state to evade establishment of paternity);

(18) section 609.485, subdivision 4, paragraph (a), clause (2) or (4) (escape from civil commitment for mental illness);

(19) section 609.49 (failure to appear in court);

(20) section 609.52, subdivision 3, clause (3)(a) (theft of \$5,000 or less), or other theft offense that is sentenced under this provision; or 609.52, subdivision 3a, clause (1) (theft of \$1,000 or less with risk of bodily harm);

(21) section 609.525 (bringing stolen goods into state);

- (22) section 609.526, subdivision 2, clause (2) (metal dealer receiving stolen goods);
- (23) section 609.527, subdivision 5b (possession or use of scanning device or reencoder); 609.528, subdivision 3, clause (3) (possession or sale of stolen or counterfeit check); or 609.529 (mail theft);
- (24) section 609.53 (receiving stolen goods);
- (25) section 609.535, subdivision 2a, paragraph (a), clause (1) (dishonored check over \$500);
- (26) section 609.54, clause (1) (embezzlement of public funds \$2,500 or less);
- (27) section 609.551 (rustling and livestock theft);
- (28) section 609.5641, subdivision 1a, paragraph (a) (wildfire arson);
- (29) section 609.576, subdivision 1, clause (3), item (iii) (negligent fires);
- (30) section 609.595, subdivision 1, clauses (2) to (4), and subdivision 1a, paragraph (a) (criminal damage to property);
- (31) section 609.597, subdivision 3, clause (3) (assaulting or harming police horse);
- (32) section 609.625 (aggravated forgery); 609.63 (forgery); 609.631, subdivision 4, clause (3)(a) (check forgery \$2,500 or less); 609.635 (obtaining signature by false pretense); 609.64 (recording, filing forged instrument); or 609.645 (fraudulent statements);
- (33) section 609.65, clause (1) (false certification by notary); or 609.651, subdivision 4, paragraph (a) (lottery fraud);
- (34) section 609.652 (fraudulent driver's license and identification card);
- (35) section 609.66, subdivision 1a, paragraph (a) (discharge of firearm; silencer); or 609.66, subdivision 1b (furnishing firearm to minor);
- (36) section 609.662, subdivision 2, paragraph (b) (duty to render aid);
- (37) section 609.686, subdivision 2 (tampering with fire alarm);
- (38) section 609.746, subdivision 1, paragraph (e) (interference with privacy; subsequent violation or minor victim);
- (39) section 609.80, subdivision 2 (interference with cable communications system);
- (40) section 609.821, subdivision 2 (financial transaction card fraud);
- (41) section 609.822 (residential mortgage fraud);
- (42) section 609.825, subdivision 2 (bribery of participant or official in contest);
- (43) section 609.855, subdivision 2, paragraph (c), clause (1) (interference with transit operator);
- (44) section 609.88 (computer damage); or 609.89 (computer theft);
- (45) section 609.893, subdivision 2 (telecommunications and information services fraud);
- (46) section 609.894, subdivision 3 or 4 (cellular counterfeiting);

(47) section 609.895, subdivision 3, paragraph (a) or (b) (counterfeited intellectual property);

(48) section 609.896 (movie pirating);

(49) section 624.7132, subdivision 15, paragraph (b) (transfer pistol to minor); 624.714, subdivision 1a (pistol without permit; subsequent violation); or 624.7141, subdivision 2 (transfer of pistol to ineligible person); or

(50) section 624.7181 (rifle or shotgun in public by minor).

(c) Paragraph (a), clause (3) or (4), does not apply if the crime involved domestic abuse or sexual assault, as defined in section 518B.01, subdivision 2, or to violation of an order for protection under section 518B.01, subdivision 14, a harassment restraining order under section 609.748, subdivision 6, a violation of section 609.749, or a violation of section 629.75. This paragraph expires on July 15, 2015.

Subd. 4. **Expungement prohibited.** Records of a conviction of an offense for which registration is required under section 243.166 may not be expunged.

History: 1996 c 408 art 9 s 8; 1999 c 139 art 4 s 2; 2001 c 209 s 1; 2005 c 136 art 12 s 10; 2014 c 246 s 6; 2014 c 269 s 2

609A.025 NO PETITION REQUIRED IN CERTAIN CASES WITH PROSECUTOR AGREEMENT AND NOTIFICATION.

(a) If the prosecutor agrees to the sealing of a criminal record, the court shall seal the criminal record for a person described in section 609A.02, subdivision 3, without the filing of a petition unless it determines that the interests of the public and public safety in keeping the record public outweigh the disadvantages to the subject of the record in not sealing it.

(b) Before agreeing to the sealing of a record under this section, the prosecutor shall make a good faith effort to notify any identifiable victims of the offense of the intended agreement and the opportunity to object to the agreement.

(c) Subject to paragraph (b), the agreement of the prosecutor to the sealing of records for a person described in section 609A.02, subdivision 3, paragraph (a), clause (2), may occur before or after the criminal charges are dismissed.

History: 2014 c 246 s 7

609A.03 PETITION TO EXPUNGE CRIMINAL RECORDS.

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

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

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

(2) the petitioner's date of birth;

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

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

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

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

(7) petitioner's criminal conviction record indicating all convictions for misdemeanors, gross misdemeanors, or felonies in this state, and for all comparable convictions in any other state, federal court, or foreign country, whether the convictions occurred before or after the arrest or conviction for which expungement is sought;

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

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

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

Subd. 3. Service of petition and proposed order. (a) The petitioner shall serve by mail the petition for expungement and a proposed expungement order on the prosecutorial office that had jurisdiction over the offense for which expungement is sought and all other state and local government agencies and jurisdictions whose records would be affected by the proposed order. The petitioner shall also serve by mail the attorney for each agency and jurisdiction.

(b) The prosecutorial office that had jurisdiction over the offense for which expungement is sought shall serve by mail the petition for expungement and a proposed expungement order on any victims of the offense for which expungement is sought who have requested notice of expungement pursuant to section 611A.06. Service under this paragraph does not constitute a violation of an existing order for protection, restraining order, or other no contact order.

(c) The prosecutorial office's notice to victims of the offense under this subdivision must specifically inform the victims of the victims' right to be present and to submit an oral or written statement at the expungement hearing described in subdivision 4.

(d) An agency or jurisdiction that is served with a petition under this subdivision may submit to the court private or confidential data on the petitioner that the agency or jurisdiction determines is necessary to respond to the petition. As part of the submission, the agency or jurisdiction shall inform the court and the petitioner that the submission contains private or confidential data that may become accessible to the public as part of the expungement proceeding. The petitioner may, at the time of filing the petition or after that time, file a request with the court to seal the private or confidential data that are submitted by the agency or jurisdiction.

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

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

- (1) sealing the record; and
- (2) burdening the court and public authorities to issue, enforce, and monitor an expungement order.

(b) Except as otherwise provided by this paragraph, if the petitioner is petitioning for the sealing of a criminal record under section 609A.02, subdivision 3, paragraph (a), clause (1) or (2), the court shall grant the petition to seal the record unless the agency or jurisdiction whose records would be affected establishes by clear and convincing evidence that the interests of the public and public safety outweigh the disadvantages to the petitioner of not sealing the record.

(c) In making a determination under this subdivision, the court shall consider:

- (1) the nature and severity of the underlying crime, the record of which would be sealed;
- (2) the risk, if any, the petitioner poses to individuals or society;
- (3) the length of time since the crime occurred;
- (4) the steps taken by the petitioner toward rehabilitation following the crime;
- (5) aggravating or mitigating factors relating to the underlying crime, including the petitioner's level of participation and context and circumstances of the underlying crime;
- (6) the reasons for the expungement, including the petitioner's attempts to obtain employment, housing, or other necessities;
- (7) the petitioner's criminal record;
- (8) the petitioner's record of employment and community involvement;
- (9) the recommendations of interested law enforcement, prosecutorial, and corrections officials;
- (10) the recommendations of victims or whether victims of the underlying crime were minors;

(11) the amount, if any, of restitution outstanding, past efforts made by the petitioner toward payment, and the measures in place to help ensure completion of restitution payment after expungement of the record if granted; and

(12) other factors deemed relevant by the court.

(d) Notwithstanding section 13.82, 13.87, or any other law to the contrary, if the court issues an expungement order it may require that the criminal record be sealed, the existence of the record not be revealed, and the record not be opened except as required under subdivision 7. Records must not be destroyed or returned to the subject of the record.

(e) Information relating to a criminal history record of an employee, former employee, or tenant that has been expunged before the occurrence of the act giving rise to the civil action may not be introduced as evidence in a civil action against a private employer or landlord or its employees or agents that is based on the conduct of the employee, former employee, or tenant.

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

Subd. 6. Order concerning controlled substance offenses. If the court orders the sealing of the record of proceedings under section 152.18, the effect of the order shall be to restore the person, in the contemplation of the law, to the status the person occupied before the arrest, indictment, or information. The person shall not be held guilty of perjury or otherwise of giving a false statement if the person fails to acknowledge the arrest, indictment, information, or trial in response to any inquiry made for any purpose.

Subd. 6a. Order when context and circumstances of the underlying crime indicate a nexus between the criminal record to be expunged and person's status as a crime victim. If the court finds, under subdivision 5, paragraph (c), clause (5), that the context and circumstances of the underlying crime indicate a nexus between the criminal record to be expunged and the person's status as a crime victim, then the effect of the court order to seal the record of the proceedings shall be to restore the person, in the contemplation of the law, to the status the person occupied before the arrest, indictment, or information. The person shall not be guilty of perjury or otherwise of giving a false statement if the person fails to acknowledge the arrest, indictment, information, or trial in response to any inquiry made for any purpose. The court may request a sworn statement from a staff member of a state-funded victim services organization or a licensed health care provider as evidence to support a determination under subdivision 5.

Subd. 7. Limitations of order effective before January 1, 2015. (a) Upon issuance of an expungement order related to a charge supported by probable cause, the DNA samples and DNA records held by the Bureau of Criminal Apprehension and collected under authority other than section 299C.105, shall not be sealed, returned to the subject of the record, or destroyed.

(b) Notwithstanding the issuance of an expungement order:

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

(2) an expunged record of a conviction may be opened for purposes of evaluating a prospective employee in a criminal justice agency without a court order; and

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

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

(c) This subdivision applies to expungement orders subject to its limitations and effective before January 1, 2015.

Subd. 7a. **Limitations of order effective January 1, 2015, and later.** (a) Upon issuance of an expungement order related to a charge supported by probable cause, the DNA samples and DNA records held by the Bureau of Criminal Apprehension and collected under authority other than section 299C.105 shall not be sealed, returned to the subject of the record, or destroyed.

(b) Notwithstanding the issuance of an expungement order:

(1) except as provided in clause (2), an expunged record may be opened, used, or exchanged between criminal justice agencies without a court order for the purposes of initiating, furthering, or completing a criminal investigation or prosecution or for sentencing purposes or providing probation or other correctional services;

(2) when a criminal justice agency seeks access to a record that was sealed under section 609A.02, subdivision 3, paragraph (a), clause (1), after an acquittal or a court order dismissing for lack of probable cause, for purposes of a criminal investigation, prosecution, or sentencing, the requesting agency must obtain an ex parte court order after stating a good-faith basis to believe that opening the record may lead to relevant information;

(3) an expunged record of a conviction may be opened for purposes of evaluating a prospective employee in a criminal justice agency without a court order;

(4) an expunged record of a conviction may be opened for purposes of a background study under section 245C.08 unless the commissioner had been properly served with notice of the petition for expungement and the court order for expungement is directed specifically to the commissioner of human services;

(5) an expunged record of a conviction may be opened for purposes of a background check required under section 122A.18, subdivision 8, unless the court order for expungement is directed specifically to the Board of Teaching or the licensing division of the Department of Education; and

(6) the court may order an expunged record opened upon request by the victim of the underlying offense if the court determines that the record is substantially related to a matter for which the victim is before the court.

(c) An agency or jurisdiction subject to an expungement order shall maintain the record in a manner that provides access to the record by a criminal justice agency under paragraph (b), clause (1) or (2), but notifies the recipient that the record has been sealed. The Bureau of Criminal Apprehension shall notify the commissioner of human services, the Board of Teaching, or the licensing division of the Department of Education of the existence of a sealed record and of the right to obtain access under paragraph (b), clause (4) or (5). Upon request, the agency or jurisdiction subject to the expungement order shall provide access

to the record to the commissioner of human services, the Board of Teaching, or the licensing division of the Department of Education under paragraph (b), clause (4) or (5).

(d) An expunged record that is opened or exchanged under this subdivision remains subject to the expungement order in the hands of the person receiving the record.

(e) A criminal justice agency that receives an expunged record under paragraph (b), clause (1) or (2), must maintain and store the record in a manner that restricts the use of the record to the investigation, prosecution, or sentencing for which it was obtained.

(f) For purposes of this section, a "criminal justice agency" means a court or government agency that performs the administration of criminal justice under statutory authority.

(g) This subdivision applies to expungement orders subject to its limitations and effective on or after January 1, 2015.

Subd. 8. **Distribution and confirmation of expungement orders.** (a) The court administrator shall send a copy of an expungement order to each agency and jurisdiction whose records are affected by the terms of the order and send a letter to the petitioner identifying each agency that received the order.

(b) If requested in the petition, each agency and jurisdiction receiving the order must send a letter to the petitioner at an address provided in the petition confirming the receipt of the expungement order and that the record has been expunged.

(c) Data on the petitioner in a letter sent under this subdivision are private data on individuals as defined in section 13.02.

Subd. 9. **Stay of order; appeal.** An expungement order shall be stayed automatically for 60 days after the order is filed and, if the order is appealed, during the appeal period. A person or an agency or jurisdiction whose records would be affected by the order may appeal the order within 60 days of service of notice of filing of the order. An agency or jurisdiction or its officials or employees need not file a cost bond or supersedeas bond in order to further stay the proceedings or file an appeal.

History: 1996 c 408 art 9 s 9; 1998 c 367 art 11 s 19; 2000 c 311 art 4 s 8; 2001 c 209 s 2-5; 2003 c 28 art 3 s 6; 2005 c 83 s 1; 2005 c 136 art 12 s 11; 1Sp2005 c 4 art 1 s 53; 2014 c 246 s 8-14

609A.04 REMEDY.

An individual whose record is expunged under this chapter or other law may bring an action under section 13.08 against a government entity that knowingly opens or exchanges the expunged record in a manner not authorized by law.

History: 2014 c 246 s 15

214.29 PROGRAM REQUIRED.

Each health-related licensing board, including the Emergency Medical Services Regulatory Board under chapter 144E, shall either conduct a health professionals service program under sections 214.31 to 214.37 or contract for a diversion program under section 214.28.

History: *2000 c 284 s 9; 2014 c 291 art 4 s 51*

214.32 PROGRAM OPERATIONS AND RESPONSIBILITIES.

Subdivision 1. **Management.** (a) A Health Professionals Services Program Committee is established, consisting of one person appointed by each participating board, with each participating board having one vote. The committee shall designate one board to provide administrative management of the program, set the program budget and the pro rata share of program expenses to be borne by each participating board, provide guidance on the general operation of the program, including hiring of program personnel, and ensure that the program's direction is in accord with its authority. If the participating boards change which board is designated to provide administrative management of the program, any appropriation remaining for the program shall transfer to the newly designated board on the effective date of the change. The participating boards must inform the appropriate legislative committees and the commissioner of management and budget of any change in the administrative management of the program, and the amount of any appropriation transferred under this provision.

(b) The designated board, upon recommendation of the Health Professional Services Program Committee, shall hire the program manager and employees and pay expenses of the program from funds appropriated for that purpose. The designated board may apply for grants to pay program expenses and may enter into contracts on behalf of the program to carry out the purposes of the program. The participating boards shall enter into written agreements with the designated board.

(c) An advisory committee is established to advise the program committee consisting of:

(1) one member appointed by each of the following: the Minnesota Academy of Physician Assistants, the Minnesota Dental Association, the Minnesota Chiropractic Association, the Minnesota Licensed Practical Nurse Association, the Minnesota Medical Association, the Minnesota Nurses Association, and the Minnesota Podiatric Medicine Association;

(2) one member appointed by each of the professional associations of the other professions regulated by a participating board not specified in clause (1); and

(3) two public members, as defined by section 214.02.

Members of the advisory committee shall be appointed for two years and members may be reappointed.

Subd. 2. **Services.** (a) The program shall provide the following services to program participants:

(1) referral of eligible regulated persons to qualified professionals for evaluation, treatment, and a written plan for continuing care consistent with the regulated person's illness. The referral shall take into consideration the regulated person's financial resources as well as specific needs;

(2) development of individualized program participation agreements between participants and the program to meet the needs of participants and protect the public. An agreement may include, but need not be limited to, recommendations from the continuing care plan, practice monitoring, health monitoring, practice restrictions, random drug screening, support group participation, filing of reports necessary to document compliance, and terms for successful completion of the regulated person's program; and

(3) monitoring of compliance by participants with individualized program participation agreements or board orders.

(b) The program may develop services related to sections 214.31 to 214.37 for employers and colleagues of regulated persons from participating boards.

Subd. 3. **Participant costs.** Each program participant shall be responsible for paying for the costs of physical, psychosocial, or other related evaluation, treatment, laboratory monitoring, and random drug screens.

Subd. 4. **Eligibility.** Admission to the health professional services program is available to a person regulated by a participating board who is unable to practice with reasonable skill and safety by reason of illness, use of alcohol, drugs, chemicals, or any other materials, or as a result of any mental, physical, or psychological condition. Admission in the health professional services program shall be denied to persons:

- (1) who have diverted controlled substances for other than self-administration;
- (2) who have been terminated from this or any other state professional services program for noncompliance in the program;
- (3) currently under a board disciplinary order or corrective action agreement, unless referred by a board;
- (4) regulated under sections 214.17 to 214.25, unless referred by a board or by the commissioner of health;
- (5) accused of sexual misconduct; or
- (6) whose continued practice would create a serious risk of harm to the public.

Subd. 5. **Completion; voluntary termination; discharge.** A regulated person completes the program when the terms of the program participation agreement are fulfilled. A regulated person may voluntarily terminate participation in the health professionals service program at any time by reporting to the person's board. The program manager may choose to discharge a regulated person from the program and make a referral to the person's board at any time for reasons including but not limited to: the degree of cooperation and compliance by the regulated person, the inability to secure information or the medical records of the regulated person, or indication of other possible violations of the regulated person's practice act. The regulated person shall be notified in writing by the program manager of any change in the person's program status. A regulated person who has been terminated or discharged from the program may be referred back to the program for monitoring.

Subd. 6. **Duties of a participating board.** Upon receiving a report from the program manager in accordance with section 214.33, subdivision 3, and if the participating health-related licensing board has probable cause to believe continued practice by the regulated person presents an imminent risk of serious harm, the health-related licensing board shall proceed pursuant to the requirements in section 214.077.

History: 1994 c 556 s 3; 1997 c 192 s 31; 1998 c 407 art 2 s 94; 2000 c 284 s 11; 2001 c 161 s 41; 2003 c 87 s 51; 2007 c 123 s 131; 2009 c 101 art 2 s 109; 2014 c 291 art 4 s 53; 2016 c 125 s 14

214.33 REPORTING.

Subdivision 1. **Permission to report.** A person who has personal knowledge that a regulated person has the inability to practice with reasonable skill and safety by reason of illness, use of alcohol, drugs, chemicals or any other materials, or as a result of any mental, physical, or psychological condition may report that knowledge to the program or to the board. A report to the program under this subdivision fulfills the reporting requirement contained in a regulated person's practice act.

Subd. 2. **Self-reporting.** A person regulated by a participating board who is unable to practice with reasonable skill and safety by reason of illness, use of alcohol, drugs, chemicals, or any other materials, or as a result of any mental, physical, or psychological condition shall report to the person's board or the program.

Subd. 3. **Program manager.** (a) The program manager shall report to the appropriate participating board a regulated person who:

- (1) does not meet program admission criteria;
 - (2) violates the terms of the program participation agreement;
 - (3) leaves or is discharged from the program except upon fulfilling the terms for successful completion of the program as set forth in the participation agreement;
 - (4) is subject to the provisions of sections 214.17 to 214.25;
 - (5) causes identifiable patient harm;
 - (6) unlawfully substitutes or adulterates medications;
 - (7) writes a prescription or causes a prescription to be dispensed in the name of a person, other than the prescriber, or veterinary patient for the personal use of the prescriber;
 - (8) alters a prescription without the knowledge of the prescriber for the purpose of obtaining a drug for personal use;
 - (9) unlawfully uses a controlled or mood-altering substance or uses alcohol while providing patient care or during the period of time in which the regulated person may be contacted to provide patient care or is otherwise on duty, if current use is the reason for participation in the program or the use occurs while the regulated person is participating in the program; or
 - (10) is alleged to have committed violations of the person's practice act that are outside the authority of the health professionals services program as described in sections 214.31 to 214.37.
- (b) The program manager shall inform any reporting person of the disposition of the person's report to the program.

Subd. 4. **Board.** A board may refer any regulated person to the program consistent with section 214.32, subdivision 4, if the board believes the regulated person will benefit and the public will be protected.

Subd. 5. **Employer mandatory reporting.** (a) An employer of a person regulated by a health-related licensing board, and a health care institution or other organization where the regulated person is engaged in providing services, must report to the appropriate licensing board that a regulated person has diverted narcotics or other controlled substances in violation of state or federal narcotics or controlled substance law if:

(1) the employer, health care institution, or organization making the report has knowledge of the diversion; and

(2) the regulated person has diverted narcotics or other controlled substances from the reporting employer, health care institution, or organization, or at the reporting institution or organization.

(b) The requirement to report under this subdivision does not apply if:

(1) the regulated person is self-employed;

(2) the knowledge was obtained in the course of a professional-patient relationship and the regulated person is the patient; or

(3) knowledge of the diversion first becomes known to the employer, health care institution, or other organization, either from (i) an individual who is serving as a work site monitor approved by the health professionals services program for the regulated person who has self-reported to the health professionals services program, and who has returned to work pursuant to a health professionals services program participation agreement and monitoring plan; or (ii) the regulated person who has self-reported to the health professionals services program and who has returned to work pursuant to the health professionals services program participation agreement and monitoring plan.

History: 1994 c 556 s 4; 2014 c 291 art 4 s 54,55