

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

**S.F. No. 3492**

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DATE	D-PG	OFFICIAL STATUS
02/28/2022	5143	Introduction and first reading Referred to Human Services Reform Finance and Policy
03/24/2022	5618	Withdrawn and re-referred to Civil Law and Data Practices Policy
04/04/2022		Comm report: To pass as amended and re-refer to Human Services Reform Finance and Policy

1.1 A bill for an act

1.2 relating to human services; establishing the Department of Human Services systemic

1.3 critical incident review team; removing language regarding public health care

1.4 programs and certain trusts; modifying the best interests of the child standard;

1.5 amending Minnesota Statutes 2020, sections 256.01, by adding a subdivision;

1.6 256B.056, subdivision 3b; 518.17, subdivision 1; repealing Minnesota Statutes

1.7 2020, section 501C.1206.

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

1.9 Section 1. Minnesota Statutes 2020, section 256.01, is amended by adding a subdivision

1.10 to read:

1.11 Subd. 12b. Department of Human Services systemic critical incident review team. (a)

1.12 The commissioner may establish a Department of Human Services systemic critical incident

1.13 review team to review critical incidents reported as required under section 626.557 for

1.14 which the Department of Human Services is responsible under section 626.5572, subdivision

1.15 13; chapter 245D; or Minnesota Rules, chapter 9544. When reviewing a critical incident,

1.16 the systemic critical incident review team shall identify systemic influences to the incident

1.17 rather than determining the culpability of any actors involved in the incident. The systemic

1.18 critical incident review may assess the entire critical incident process from the point of an

1.19 entity reporting the critical incident through the ongoing case management process.

1.20 Department staff shall lead and conduct the reviews and may utilize county staff as reviewers.

1.21 The systemic critical incident review process may include but is not limited to:

1.22 (1) data collection about the incident and actors involved. Data may include the critical

1.23 incident report under review; previous incident reports pertaining to the person receiving

1.24 services; the service provider's policies and procedures applicable to the incident; the

2.1 coordinated service and support plan as defined in section 245D.02, subdivision 4b, for the  
2.2 person receiving services; or an interview of an actor involved in the critical incident or the  
2.3 review of the critical incident. Actors may include:

2.4 (i) staff of the provider agency;

2.5 (ii) lead agency staff administering home and community-based services delivered by  
2.6 the provider;

2.7 (iii) Department of Human Services staff with oversight of home and community-based  
2.8 services;

2.9 (iv) Department of Health staff with oversight of home and community-based services;

2.10 (v) members of the community including advocates, legal representatives, health care  
2.11 providers, pharmacy staff, or others with knowledge of the incident or the actors in the  
2.12 incident; and

2.13 (vi) staff from the office of the ombudsman for mental health and developmental  
2.14 disabilities;

2.15 (2) systemic mapping of the critical incident. The team conducting the systemic mapping  
2.16 of the incident may include any actors identified in clause (1), designated representatives  
2.17 of other provider agencies, regional teams, and representatives of the local regional quality  
2.18 council identified in section 256B.097; and

2.19 (3) analysis of the case for systemic influences.

2.20 Data collected by the critical incident review team shall be aggregated and provided to  
2.21 regional teams, participating regional quality councils, and the commissioner. The regional  
2.22 teams and quality councils shall analyze the data and make recommendations to the  
2.23 commissioner regarding systemic changes that would decrease the number and severity of  
2.24 critical incidents in the future or improve the quality of the home and community-based  
2.25 service system.

2.26 (b) Cases selected for the systemic critical incident review process shall be selected by  
2.27 a selection committee among the following critical incident categories:

2.28 (1) cases of caregiver neglect identified in section 626.5572, subdivision 17;

2.29 (2) cases involving financial exploitation identified in section 626.5572, subdivision 9;

2.30 (3) incidents identified in section 245D.02, subdivision 11;

2.31 (4) incidents identified in Minnesota Rules, part 9544.0110; and

3.1 (5) service terminations reported to the department in accordance with section 245D.10,  
3.2 subdivision 3a.

3.3 (c) The systemic critical incident review under this section shall not replace the process  
3.4 for screening or investigating cases of alleged maltreatment of an adult under section 626.557.  
3.5 The department may select cases for systemic critical incident review, under the jurisdiction  
3.6 of the commissioner, reported for suspected maltreatment and closed following initial or  
3.7 final disposition.

3.8 (d) The proceedings and records of the review team are confidential data on individuals  
3.9 or protected nonpublic data as defined in section 13.02, subdivisions 3 and 13. Data that  
3.10 document a person's opinions formed as a result of the review are not subject to discovery  
3.11 or introduction into evidence in a civil or criminal action against a professional, the state,  
3.12 or a county agency arising out of the matters that the team is reviewing. Information,  
3.13 documents, and records otherwise available from other sources are not immune from  
3.14 discovery or use in a civil or criminal action solely because the information, documents,  
3.15 and records were assessed or presented during proceedings of the review team. A person  
3.16 who presented information before the systemic critical incident review team or who is a  
3.17 member of the team shall not be prevented from testifying about matters within the person's  
3.18 knowledge. In a civil or criminal proceeding, a person shall not be questioned about opinions  
3.19 formed by the person as a result of the review.

3.20 (e) By October 1 of each year, the commissioner shall prepare an annual public report  
3.21 containing the following information:

3.22 (1) the number of cases reviewed under each critical incident category identified in  
3.23 paragraph (b) and a geographical description of where cases under each category originated;

3.24 (2) an aggregate summary of the systemic themes from the critical incidents examined  
3.25 by the critical incident review team during the previous year;

3.26 (3) a synopsis of the conclusions, incident analyses, or exploratory activities taken in  
3.27 regard to the critical incidents examined by the critical incident review team; and

3.28 (4) recommendations made to the commissioner regarding systemic changes that could  
3.29 decrease the number and severity of critical incidents in the future or improve the quality  
3.30 of the home and community-based service system.

3.31 Sec. 2. Minnesota Statutes 2020, section 256B.056, subdivision 3b, is amended to read:

3.32 Subd. 3b. **Treatment of trusts.** (a) It is the public policy of this state that individuals  
3.33 use all available resources to pay for the cost of long-term care services, as defined in section

4.1 256B.0595, before turning to Minnesota health care program funds, and that trust instruments  
4.2 should not be permitted to shield available resources of an individual or an individual's  
4.3 spouse from such use.

4.4 (b) A "medical assistance qualifying trust" is a revocable or irrevocable trust, or similar  
4.5 legal device, established on or before August 10, 1993, by a person or the person's spouse  
4.6 under the terms of which the person receives or could receive payments from the trust  
4.7 principal or income and the trustee has discretion in making payments to the person from  
4.8 the trust principal or income. Notwithstanding that definition, a medical assistance qualifying  
4.9 trust does not include: (1) a trust set up by will; (2) a trust set up before April 7, 1986, solely  
4.10 to benefit a person with a developmental disability living in an intermediate care facility  
4.11 for persons with developmental disabilities; or (3) a trust set up by a person with payments  
4.12 made by the Social Security Administration pursuant to the United States Supreme Court  
4.13 decision in *Sullivan v. Zebley*, 110 S. Ct. 885 (1990). The maximum amount of payments  
4.14 that a trustee of a medical assistance qualifying trust may make to a person under the terms  
4.15 of the trust is considered to be available assets to the person, without regard to whether the  
4.16 trustee actually makes the maximum payments to the person and without regard to the  
4.17 purpose for which the medical assistance qualifying trust was established.

4.18 ~~(b)~~ (c) Trusts established after August 10, 1993, are treated according to United States  
4.19 Code, title 42, section 1396p(d).

4.20 ~~(e)~~ (d) For purposes of paragraph ~~(d)~~ (e), a pooled trust means a trust established under  
4.21 United States Code, title 42, section 1396p(d)(4)(C).

4.22 ~~(d)~~ (e) A beneficiary's interest in a pooled trust is considered an available asset unless  
4.23 the trust provides that upon the death of the beneficiary or termination of the trust during  
4.24 the beneficiary's lifetime, whichever is sooner, the department receives any amount, up to  
4.25 the amount of medical assistance benefits paid on behalf of the beneficiary, remaining in  
4.26 the beneficiary's trust account after a deduction for reasonable administrative fees and  
4.27 expenses, and an additional remainder amount. The retained remainder amount of the  
4.28 subaccount must not exceed ten percent of the account value at the time of the beneficiary's  
4.29 death or termination of the trust, and must only be used for the benefit of disabled individuals  
4.30 who have a beneficiary interest in the pooled trust.

4.31 ~~(e)~~ (f) Trusts may be established on or after December 12, 2016, by a person who has  
4.32 been determined to be disabled, according to United States Code, title 42, section  
4.33 1396p(d)(4)(A), as amended by section 5007 of the 21st Century Cures Act, Public Law  
4.34 114-255.

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

5.2 Sec. 3. Minnesota Statutes 2020, section 518.17, subdivision 1, is amended to read:

5.3 Subdivision 1. **Best interests of the child.** (a) In evaluating the best interests of the child  
5.4 for purposes of determining issues of custody and parenting time, the court must consider  
5.5 and evaluate all relevant factors, including:

5.6 (1) a child's physical, emotional, cultural, spiritual, and other needs, and the effect of  
5.7 the proposed arrangements on the child's needs and development;

5.8 (2) any special medical, mental health, developmental disability, or educational needs  
5.9 that the child may have that may require special parenting arrangements or access to  
5.10 recommended services;

5.11 (3) the reasonable preference of the child, if the court deems the child to be of sufficient  
5.12 ability, age, and maturity to express an independent, reliable preference;

5.13 (4) whether domestic abuse, as defined in section 518B.01, has occurred in the parents'  
5.14 or either parent's household or relationship; the nature and context of the domestic abuse;  
5.15 and the implications of the domestic abuse for parenting and for the child's safety, well-being,  
5.16 and developmental needs;

5.17 (5) any physical, mental, or chemical health issue of a parent that affects the child's  
5.18 safety or developmental needs;

5.19 (6) the history and nature of each parent's participation in providing care for the child;

5.20 (7) the willingness and ability of each parent to provide ongoing care for the child; to  
5.21 meet the child's ongoing developmental, emotional, spiritual, and cultural needs; and to  
5.22 maintain consistency and follow through with parenting time;

5.23 (8) the effect on the child's well-being and development of changes to home, school,  
5.24 and community;

5.25 (9) the effect of the proposed arrangements on the ongoing relationships between the  
5.26 child and each parent, siblings, and other significant persons in the child's life;

5.27 (10) the benefit to the child in maximizing parenting time with both parents and the  
5.28 detriment to the child in limiting parenting time with either parent;

5.29 (11) except in cases in which domestic abuse as described in clause (4) has occurred,  
5.30 the disposition of each parent to support the child's relationship with the other parent and

6.1 to encourage and permit frequent and continuing contact between the child and the other  
6.2 parent; and

6.3 (12) the willingness and ability of parents to cooperate in the rearing of their child; to  
6.4 maximize sharing information and minimize exposure of the child to parental conflict; and  
6.5 to utilize methods for resolving disputes regarding any major decision concerning the life  
6.6 of the child.

6.7 (b) Clauses (1) to (9) govern the application of the best interests of the child factors by  
6.8 the court:

6.9 (1) The court must make detailed findings on each of the factors in paragraph (a) based  
6.10 on the evidence presented and explain how each factor led to its conclusions and to the  
6.11 determination of custody and parenting time. The court may not use one factor to the  
6.12 exclusion of all others, and the court shall consider that the factors may be interrelated.

6.13 (2) The court shall consider that it is in the best interests of the child to promote the  
6.14 child's healthy growth and development through safe, stable, nurturing relationships between  
6.15 a child and both parents.

6.16 (3) The court shall consider both parents as having the capacity to develop and sustain  
6.17 nurturing relationships with their children unless there are substantial reasons to believe  
6.18 otherwise. In assessing whether parents are capable of sustaining nurturing relationships  
6.19 with their children, the court shall recognize that there are many ways that parents can  
6.20 respond to a child's needs with sensitivity and provide the child love and guidance, and  
6.21 these may differ between parents and among cultures.

6.22 (4) The court shall not consider conduct of a party that does not affect the party's  
6.23 relationship with the child.

6.24 (5) Disability alone, as defined in section 363A.03, of a proposed custodian or the child  
6.25 shall not be determinative of the custody of the child.

6.26 (6) The court shall consider evidence of a violation of section 609.507 in determining  
6.27 the best interests of the child.

6.28 (7) There is no presumption for or against joint physical custody, except as provided in  
6.29 clause (9).

6.30 (8) Joint physical custody does not require an absolutely equal division of time.

6.31 (9) The court shall use a rebuttable presumption that upon request of either or both  
6.32 parties, joint legal custody is in the best interests of the child. However, the court shall use

7.1 a rebuttable presumption that joint legal custody or joint physical custody is not in the best  
7.2 interests of the child if domestic abuse, as defined in section 518B.01, has occurred between  
7.3 the parents. In determining whether the presumption is rebutted, the court shall consider  
7.4 the nature and context of the domestic abuse and the implications of the domestic abuse for  
7.5 parenting and for the child's safety, well-being, and developmental needs. Disagreement  
7.6 alone over whether to grant sole or joint custody does not constitute an inability of parents  
7.7 to cooperate in the rearing of their children as referenced in paragraph (a), clause (12).

7.8 (c) In a proceeding involving the custodial responsibility of a service member's child, a  
7.9 court may not consider only a parent's past deployment or possible future deployment in  
7.10 determining the best interests of the child. For purposes of this paragraph, "custodial  
7.11 responsibility" has the meaning given in section 518E.102, paragraph (f).

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

7.13 Sec. 4. **REPEALER.**

7.14 **Minnesota Statutes 2020, section 501C.1206, is repealed.**

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

**501C.1206 PUBLIC HEALTH CARE PROGRAMS AND CERTAIN TRUSTS.**

(a) It is the public policy of this state that individuals use all available resources to pay for the cost of long-term care services, as defined in section 256B.0595, before turning to Minnesota health care program funds, and that trust instruments should not be permitted to shield available resources of an individual or an individual's spouse from such use.

(b) When a state or local agency makes a determination on an application by the individual or the individual's spouse for payment of long-term care services through a Minnesota public health care program pursuant to chapter 256B, any irrevocable inter vivos trust or any legal instrument, device, or arrangement similar to an irrevocable inter vivos trust created on or after July 1, 2005, containing assets or income of an individual or an individual's spouse, including those created by a person, court, or administrative body with legal authority to act in place of, at the direction of, upon the request of, or on behalf of the individual or individual's spouse, becomes revocable for the sole purpose of that determination. For purposes of this section, any inter vivos trust and any legal instrument, device, or arrangement similar to an inter vivos trust:

(1) shall be deemed to be located in and subject to the laws of this state; and

(2) is created as of the date it is fully executed by or on behalf of all of the settlors or others.

(c) For purposes of this section, a legal instrument, device, or arrangement similar to an irrevocable inter vivos trust means any instrument, device, or arrangement which involves a settlor who transfers or whose property is transferred by another including, but not limited to, any court, administrative body, or anyone else with authority to act on their behalf or at their direction, to an individual or entity with fiduciary, contractual, or legal obligations to the settlor or others to be held, managed, or administered by the individual or entity for the benefit of the settlor or others. These legal instruments, devices, or other arrangements are irrevocable inter vivos trusts for purposes of this section.

(d) In the event of a conflict between this section and the provisions of an irrevocable trust created on or after July 1, 2005, this section shall control.

(e) This section does not apply to trusts that qualify as supplemental needs trusts under section 501C.1205 or to trusts meeting the criteria of United States Code, title 42, section 1396p (d)(4)(a) and (c) for purposes of eligibility for medical assistance.

(f) This section applies to all trusts first created on or after July 1, 2005, as permitted under United States Code, title 42, section 1396p, and to all interests in real or personal property regardless of the date on which the interest was created, reserved, or acquired.