

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

S.F. No. 395

(SENATE AUTHORS: CHAMPION)

DATE
01/19/2023

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Introduction and first reading
Referred to Health and Human Services

OFFICIAL STATUS

1.1 A bill for an act
1.2 relating to human services; prohibiting disqualification of individuals subject to
1.3 human services background studies with expunged criminal records; amending
1.4 Minnesota Statutes 2022, section 245C.08, subdivisions 1, 3.

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

1.6 Section 1. Minnesota Statutes 2022, section 245C.08, subdivision 1, is amended to read:

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

1.10 (1) information related to names of substantiated perpetrators of maltreatment of
1.11 vulnerable adults that has been received by the commissioner as required under section
1.12 626.557, subdivision 9c, paragraph (j);

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

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

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

1.21 (5) except as provided in clause (6), information received as a result of submission of
1.22 fingerprints for a national criminal history record check, as defined in section 245C.02,

2.1 subdivision 13c, when the commissioner has reasonable cause for a national criminal history
 2.2 record check as defined under section 245C.02, subdivision 15a, or as required under section
 2.3 144.057, subdivision 1, clause (2);

2.4 (6) for a background study related to a child foster family setting application for licensure,
 2.5 foster residence settings, children's residential facilities, a transfer of permanent legal and
 2.6 physical custody of a child under sections 260C.503 to 260C.515, or adoptions, and for a
 2.7 background study required for family child care, certified license-exempt child care, child
 2.8 care centers, and legal nonlicensed child care authorized under chapter 119B, the
 2.9 commissioner shall also review:

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

2.12 (ii) when the background study subject is 18 years of age or older, or a minor under
 2.13 section 245C.05, subdivision 5a, paragraph (c), information received following submission
 2.14 of fingerprints for a national criminal history record check; and

2.15 (iii) when the background study subject is 18 years of age or older or a minor under
 2.16 section 245C.05, subdivision 5a, paragraph (d), for licensed family child care, certified
 2.17 license-exempt child care, licensed child care centers, and legal nonlicensed child care
 2.18 authorized under chapter 119B, information obtained using non-fingerprint-based data
 2.19 including information from the criminal and sex offender registries for any state in which
 2.20 the background study subject resided for the past five years and information from the national
 2.21 crime information database and the national sex offender registry; and

2.22 (7) for a background study required for family child care, certified license-exempt child
 2.23 care centers, licensed child care centers, and legal nonlicensed child care authorized under
 2.24 chapter 119B, the background study shall also include, to the extent practicable, a name
 2.25 and date-of-birth search of the National Sex Offender Public website.

2.26 (b) ~~Notwithstanding expungement by a court~~ For any action taken in this chapter, the
 2.27 ~~commissioner may~~ shall not consider the following information obtained under paragraph
 2.28 (a), clauses (3) and (4), ~~unless~~ or subdivision 3, paragraph (a):

2.29 (1) a record that was expunged under chapter 260B or 609A, where the commissioner
 2.30 received notice of the petition for expungement and the court order for expungement is
 2.31 directed specifically to the commissioner;

2.32 (2) any underlying fact or element of the expunged record, including an arrest or criminal
 2.33 charge, or the taking of a child into custody or filing of a delinquency petition, where the

3.1 commissioner received notice of the petition for expungement and the court order for
3.2 expungement is directed specifically to the commissioner; or

3.3 (3) any record sealed under section 299C.11 or 609A.025.

3.4 Nothing in this paragraph prohibits the commissioner from considering information from
3.5 a separate administrative decision under this chapter.

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

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

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

3.18 Sec. 2. Minnesota Statutes 2022, section 245C.08, subdivision 3, is amended to read:

3.19 Subd. 3. **Arrest and investigative information.** (a) For any background study completed
3.20 under this section, and according to the limitations in subdivision 1, paragraph (b), if the
3.21 commissioner has reasonable cause to believe the information is pertinent to the
3.22 disqualification of an individual, the commissioner also may review arrest and investigative
3.23 information from:

3.24 (1) the Bureau of Criminal Apprehension;

3.25 (2) the commissioners of health and human services;

3.26 (3) a county attorney;

3.27 (4) a county sheriff;

3.28 (5) a county agency;

3.29 (6) a local chief of police;

3.30 (7) other states;

3.31 (8) the courts;

4.1 (9) the Federal Bureau of Investigation;

4.2 (10) the National Criminal Records Repository; and

4.3 (11) criminal records from other states.

4.4 (b) Except when specifically required by law, the commissioner is not required to conduct
4.5 more than one review of a subject's records from the Federal Bureau of Investigation if a
4.6 review of the subject's criminal history with the Federal Bureau of Investigation has already
4.7 been completed by the commissioner and there has been no break in the subject's affiliation
4.8 with the entity that initiated the background study.

4.9 (c) If the commissioner conducts a national criminal history record check when required
4.10 by law and uses the information from the national criminal history record check to make a
4.11 disqualification determination, the data obtained is private data and cannot be shared with
4.12 private agencies or prospective employers of the background study subject.

4.13 (d) If the commissioner conducts a national criminal history record check when required
4.14 by law and uses the information from the national criminal history record check to make a
4.15 disqualification determination, the license holder or entity that submitted the study is not
4.16 required to obtain a copy of the background study subject's disqualification letter under
4.17 section 245C.17, subdivision 3.