

1.1 **Senator Mathews from the Committee on Civil Law and Data Practices Policy, to**  
1.2 **which was referred**

1.3 **S.F. No. 3492:** A bill for an act relating to human services; establishing the Department  
1.4 of Human Services systemic critical incident review team; removing language regarding  
1.5 public health care programs and certain trusts; amending Minnesota Statutes 2020, sections  
1.6 256.01, by adding a subdivision; 501C.1206.

1.7 Reports the same back with the recommendation that the bill be amended as follows:

1.8 Page 3, line 8, delete everything after "(d)"

1.9 Page 3, line 9, delete everything before "The proceedings"

1.10 Page 3, line 10, after "are" insert "confidential data on individuals or"

1.11 Page 3, line 11, delete "subdivision 13, and are" insert "subdivisions 3 and 13. Data that

1.12 document a person's opinions formed as a result of the review are"

1.13 Page 3, line 19, delete everything after "about"

1.14 Page 3, line 20, delete "team or"

1.15 Page 3, after line 20, insert:

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

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

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

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

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

1.27 Page 3, delete section 2 and insert:

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

1.29 **Subd. 3b. Treatment of trusts.** (a) It is the public policy of this state that individuals  
1.30 use all available resources to pay for the cost of long-term care services, as defined in section  
1.31 256B.0595, before turning to Minnesota health care program funds, and that trust instruments

- 2.1 should not be permitted to shield available resources of an individual or an individual's
- 2.2 spouse from such use.
- 2.3 (b) A "medical assistance qualifying trust" is a revocable or irrevocable trust, or similar
- 2.4 legal device, established on or before August 10, 1993, by a person or the person's spouse
- 2.5 under the terms of which the person receives or could receive payments from the trust
- 2.6 principal or income and the trustee has discretion in making payments to the person from
- 2.7 the trust principal or income. Notwithstanding that definition, a medical assistance qualifying
- 2.8 trust does not include: (1) a trust set up by will; (2) a trust set up before April 7, 1986, solely
- 2.9 to benefit a person with a developmental disability living in an intermediate care facility
- 2.10 for persons with developmental disabilities; or (3) a trust set up by a person with payments
- 2.11 made by the Social Security Administration pursuant to the United States Supreme Court
- 2.12 decision in *Sullivan v. Zebley*, 110 S. Ct. 885 (1990). The maximum amount of payments
- 2.13 that a trustee of a medical assistance qualifying trust may make to a person under the terms
- 2.14 of the trust is considered to be available assets to the person, without regard to whether the
- 2.15 trustee actually makes the maximum payments to the person and without regard to the
- 2.16 purpose for which the medical assistance qualifying trust was established.
- 2.17 (b) (c) Trusts established after August 10, 1993, are treated according to United States
- 2.18 Code, title 42, section 1396p(d).
- 2.19 (e) (d) For purposes of paragraph (e), a pooled trust means a trust established under
- 2.20 United States Code, title 42, section 1396p(d)(4)(C).
- 2.21 (e) (e) A beneficiary's interest in a pooled trust is considered an available asset unless
- 2.22 the trust provides that upon the death of the beneficiary or termination of the trust during
- 2.23 the beneficiary's lifetime, whichever is sooner, the department receives any amount, up to
- 2.24 the amount of medical assistance benefits paid on behalf of the beneficiary, remaining in
- 2.25 the beneficiary's trust account after a deduction for reasonable administrative fees and
- 2.26 expenses, and an additional remainder amount. The retained remainder amount of the
- 2.27 subaccount must not exceed ten percent of the account value at the time of the beneficiary's
- 2.28 death or termination of the trust, and must only be used for the benefit of disabled individuals
- 2.29 who have a beneficiary interest in the pooled trust.
- 2.30 (f) (f) Trusts may be established on or after December 12, 2016, by a person who has
- 2.31 been determined to be disabled, according to United States Code, title 42, section
- 2.32 1396p(d)(4)(A), as amended by section 5007 of the 21st Century Cures Act, Public Law
- 2.33 114-255.

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

- 3.1 Sec. 3. Minnesota Statutes 2020, section 518.17, subdivision 1, is amended to read:
- 3.2 Subdivision 1. **Best interests of the child.** (a) In evaluating the best interests of the child
- 3.3 for purposes of determining issues of custody and parenting time, the court must consider
- 3.4 and evaluate all relevant factors, including:
- 3.5 (1) a child's physical, emotional, cultural, spiritual, and other needs, and the effect of
- 3.6 the proposed arrangements on the child's needs and development;
- 3.7 (2) any special medical, mental health, developmental disability, or educational needs
- 3.8 that the child may have that may require special parenting arrangements or access to
- 3.9 recommended services;
- 3.10 (3) the reasonable preference of the child, if the court deems the child to be of sufficient
- 3.11 ability, age, and maturity to express an independent, reliable preference;
- 3.12 (4) whether domestic abuse, as defined in section 518B.01, has occurred in the parents'
- 3.13 or either parent's household or relationship; the nature and context of the domestic abuse;
- 3.14 and the implications of the domestic abuse for parenting and for the child's safety, well-being,
- 3.15 and developmental needs;
- 3.16 (5) any physical, mental, or chemical health issue of a parent that affects the child's
- 3.17 safety or developmental needs;
- 3.18 (6) the history and nature of each parent's participation in providing care for the child;
- 3.19 (7) the willingness and ability of each parent to provide ongoing care for the child; to
- 3.20 meet the child's ongoing developmental, emotional, spiritual, and cultural needs; and to
- 3.21 maintain consistency and follow through with parenting time;
- 3.22 (8) the effect on the child's well-being and development of changes to home, school,
- 3.23 and community;
- 3.24 (9) the effect of the proposed arrangements on the ongoing relationships between the
- 3.25 child and each parent, siblings, and other significant persons in the child's life;
- 3.26 (10) the benefit to the child in maximizing parenting time with both parents and the
- 3.27 detriment to the child in limiting parenting time with either parent;
- 3.28 (11) except in cases in which domestic abuse as described in clause (4) has occurred,
- 3.29 the disposition of each parent to support the child's relationship with the other parent and
- 3.30 to encourage and permit frequent and continuing contact between the child and the other
- 3.31 parent; and

- 4.1 (12) the willingness and ability of parents to cooperate in the rearing of their child; to
- 4.2 maximize sharing information and minimize exposure of the child to parental conflict; and
- 4.3 to utilize methods for resolving disputes regarding any major decision concerning the life
- 4.4 of the child.
- 4.5 (b) Clauses (1) to (9) govern the application of the best interests of the child factors by
- 4.6 the court:
- 4.7 (1) The court must make detailed findings on each of the factors in paragraph (a) based
- 4.8 on the evidence presented and explain how each factor led to its conclusions and to the
- 4.9 determination of custody and parenting time. The court may not use one factor to the
- 4.10 exclusion of all others, and the court shall consider that the factors may be interrelated.
- 4.11 (2) The court shall consider that it is in the best interests of the child to promote the
- 4.12 child's healthy growth and development through safe, stable, nurturing relationships between
- 4.13 a child and both parents.
- 4.14 (3) The court shall consider both parents as having the capacity to develop and sustain
- 4.15 nurturing relationships with their children unless there are substantial reasons to believe
- 4.16 otherwise. In assessing whether parents are capable of sustaining nurturing relationships
- 4.17 with their children, the court shall recognize that there are many ways that parents can
- 4.18 respond to a child's needs with sensitivity and provide the child love and guidance, and
- 4.19 these may differ between parents and among cultures.
- 4.20 (4) The court shall not consider conduct of a party that does not affect the party's
- 4.21 relationship with the child.
- 4.22 (5) Disability alone, as defined in section 363A.03, of a proposed custodian or the child
- 4.23 shall not be determinative of the custody of the child.
- 4.24 (6) The court shall consider evidence of a violation of section 609.507 in determining
- 4.25 the best interests of the child.
- 4.26 (7) There is no presumption for or against joint physical custody, except as provided in
- 4.27 clause (9).
- 4.28 (8) Joint physical custody does not require an absolutely equal division of time.
- 4.29 (9) The court shall use a rebuttable presumption that upon request of either or both
- 4.30 parties, joint legal custody is in the best interests of the child. However, the court shall use
- 4.31 a rebuttable presumption that joint legal custody or joint physical custody is not in the best
- 4.32 interests of the child if domestic abuse, as defined in section 5 18B.01, has occurred between
- 4.33 the parents. In determining whether the presumption is rebutted, the court shall consider

- 5.1 the nature and context of the domestic abuse and the implications of the domestic abuse for
- 5.2 parenting and for the child's safety, well-being, and developmental needs. Disagreement
- 5.3 alone over whether to grant sole or joint custody does not constitute an inability of parents
- 5.4 to cooperate in the rearing of their children as referenced in paragraph (a), clause (12).
- 5.5 (c) In a proceeding involving the custodial responsibility of a service member's child, a
- 5.6 court may not consider only a parent's past deployment or possible future deployment in
- 5.7 determining the best interests of the child. For purposes of this paragraph, "custodial
- 5.8 responsibility" has the meaning given in section 518E.102, paragraph (f).

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

5.10 **Sec. 4. REPEALER.**

5.11 Minnesota Statutes 2020, section 501C.1206, is repealed.

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

5.13 Amend the title as follows:

5.14 Page 1, line 4, after "trusts;" insert "modifying the best interests of the child standard;"

5.15 Amend the title numbers accordingly

5.16 And when so amended the bill do pass and be re-referred to the Committee on Human

5.17 Services Reform Finance and Policy. Amendments adopted. Report adopted.

5.18 .....

5.19 *Andrew Mathent*  
 (Committee Chair)

5.20 March 31, 2022.....

5.21 (Date of Committee recommendation)