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**REPORT OF THE MINNESOTA DEPARTMENT OF HUMAN SERVICES'  
REVIEW OF A MECHANISM FOR INCLUDING CHILD MALTREATMENT  
REPORTS IN THE CRIMINAL HISTORY BACKGROUND CHECKS THAT  
ARE REQUIRED TO BE PERFORMED ON SCHOOL EMPLOYEE AND  
TEACHER LICENSE APPLICANTS**



Minnesota Department of Human Services  
Division of Licensing  
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Pursuant to 1995 Minn. Laws Chap. 226  
Art. 3 Sec. 53

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## **Executive Summary**

The 1995 Minnesota Legislature directed the Commissioner of Human Services to convene a work group and to make recommendations for developing a mechanism to including child maltreatment reports in the criminal history background checks that are required to be performed on school employee and teacher license applicants beginning in January 1996. Also to be considered and reported on were the data privacy issues raised by including these reports in the background checks and any other related issues.

As required by the legislature, the Department of Human Services prepared this report including the input of the Board of Education; the Board of Teaching; the Department of Children, Families, and Learning; the Bureau of Criminal Apprehension; and the School Boards Association.

The report contains eleven specific recommendations related to the expansion of current background studies on school employee and teacher license applicants to include child maltreatment findings.

The first three recommendations include a delay in requiring the expanded background studies until the centralized perpetrator index is established as part of the Social Service Information System, targeted to be in place by January 1, 1999.

Two recommendations address the need for the establishment of an accessible and effective mechanism for substantiated perpetrators of maltreatment to appeal the administrative determinations, and recommend that the legislation clearly directs study subjects to that appeal process if they are opposed to a maltreatment determination that surfaces as part of a background study.

Four of the recommendations address specific data practices issues related to the need to clarify the length of time that a child maltreatment determination should be part of a background study, clarification of access to the names of substantiated perpetrators and the investigative data supporting the determination, and a new requirement for investigating agencies to report new child maltreatment determinations to the licensing boards.

The final two recommendations address protection of school board hiring authorities from civil liability for denying employment based on a maltreatment determination provided to them and a recommendation for a simplified approach to conducting background studies whereby school districts could access all background study data through contact with one state agency.

## **Introduction**

The 1995 Minnesota Legislature directed the Commissioner of Human Services to convene a work group and to make recommendations for developing a mechanism to including child maltreatment reports in the criminal history background checks that are required to be performed on school employee and teacher license applicants beginning in January 1996. Also to be considered and reported on are the data privacy issues raised by including these reports in the background checks and any other related issues.

This report contains a review of the current related systems and the Commissioner's recommendations.

## **Charge of the Work Group**

Laws of Minnesota 1995, Chapter 226, Article 3, section 53, requires the Commissioner of Human Services to convene a work group and make recommendations regarding:

- \* the development of a mechanism for including child maltreatment reports in the criminal history background checks that are required to be performed on school employee and teacher license applicants under Minnesota Statutes, sections 120.1045 and 125.05, subdivision 8; and
- \* the data privacy issues raised by including these reports in the background checks and any other related issues

The work group is required to include representatives of:

- \* the state board of education,
- \* the board of teaching,
- \* the school boards association,
- \* the commissioner of education, and
- \* the superintendent of the bureau of criminal apprehension.

## **Background:**

Determinations of child maltreatment are administrative determinations made by 89 separate agencies: 87 county child protection agencies; the Minnesota Department of Human Services (DHS); and in limited cases, by the Minnesota Department of Health (MDH). The determinations are made under the authority and direction found in Minnesota Statutes, section 626.556, the Reporting of Maltreatment of Minors Act. Determinations reached by DHS are limited to investigations completed in facilities licensed by DHS, and determinations by MDH are limited to investigations completed in facilities licensed by MDH. Determinations reached by county child protection agencies may be related to investigations of alleged maltreatment in family settings and/or facilities licensed by DHS or MDH. County determinations, however, are increasingly limited to family settings.

There is currently not a central database containing the names of all substantiated perpetrators of child maltreatment. To conduct a complete background study on any individual that would include a review of substantiated child maltreatment would require contacting each of the 87 county child protection agencies, DHS, and MDH.

For any system of background studies to effectively include determinations of substantiated child maltreatment, there must be a central registry of substantiated perpetrators of child maltreatment.

**It is recommended that there be no attempt to include child maltreatment determination in background studies completed by the Board of Teaching, the Board of Education, and the school district hiring authorities until a centralized perpetrator index is established.**

### Current DHS Background Study Use of Substantiated Maltreatment Determinations:

Historically, the administrative agencies' focus of investigations into child maltreatment has been primarily to determine whether children were maltreated, to determine any risk of harm to the children, and to identify appropriate risk reduction measures. The issue of administering consequences for substantiated perpetrators was referred to the criminal justice system. In recent years, however, there has been an increasing use of substantiated maltreatment determinations to deliver administrative agency consequences for substantiated perpetrators in the form of limiting their employment or service with children and vulnerable adults.

In 1996 DHS will complete an estimated 200,000 background studies. These studies, conducted under the authority of Minnesota Statutes, sections 144.057 and 245A.04, are being completed on all individuals who provide direct contact services in facilities and programs licensed by MDH and DHS. In addition to a review of criminal conviction data from the Minnesota Bureau of Criminal Apprehension, each routine background study includes a review of the names of some substantiated perpetrators of maltreatment of both children and vulnerable adults.

The substantiated perpetrator database maintained by DHS includes substantiated perpetrators from all investigations completed by DHS. In addition, it includes the substantiated perpetrators from investigations completed by county child protection and adult protection agencies when the investigations resulted in negative licensing action against a foster care provider or a family day care provider. It does not include names of substantiated perpetrators whose maltreatment was not associated with a licensed facility.

While not fully operationalized at the time of this report, effective October 1, 1995, all 87 county adult protection agencies and MDH are required to forward the names of substantiated perpetrators of adult maltreatment to DHS for the purpose of establishing a centralized list of perpetrators of vulnerable adult maltreatment. [See Minnesota Statutes, section 626.557, subdivision 9c, (i), or Laws of Minnesota, 1995, Chapter 229.] These substantiated perpetrators will be added to the database used by DHS to complete background studies.

As required in Minnesota Statutes, section 626.556, subdivision 11c, (b), the records for substantiated child maltreatment determinations must be maintained by the investigating agency for "at least 10 years following the date of the final entry in the case record." However, because the DHS background study rule (in Minnesota Rules, part 9543.3070) prohibits DHS from disqualifications for a substantiated maltreatment determination more than seven years old, perpetrators remain on the list for only seven years.

While a name on the list is representative of substantiated maltreatment, there are many events that can warrant a finding of substantiated maltreatment. The significant variability among investigation findings can be attributed, in part, to the variable interpretations of statutory definitions of child maltreatment by investigating agencies. Also a factor in the variability has been the standard of evidence required to be met for maltreatment determinations. Until 1994, when the evidentiary standard for counties to substantiate maltreatment was raised to a "preponderance of evidence," the child protection rule allowed counties to meet only a "credible evidence" standard. DHS has found it essential to review each investigation and determination before an employment related action is taken in a licensed program.

The DHS background study process requires an individual review of each investigation to determine: whether the finding is supported by a preponderance of evidence; that the current statutory definitions of child maltreatment were met; that the individual was clearly culpable for the maltreatment; and that the substantiated maltreatment was either serious or recurring. The regulations define serious to include sexual abuse and physical injuries requiring a the care of a physician. Recurring means either more than one substantiated determination or one determination substantiating multiple maltreatment events.

## **Right to Challenge Substantiated Maltreatment Determinations:**

As background studies using administrative maltreatment determinations have become more commonly required, there has been increasing concern about not just the variability in determinations, but also the lack of appeal rights for substantiated perpetrators.

Under the Government Data Practices Act (in Minnesota Statutes, section 13.04), all individuals have the right to challenge the accuracy and completeness of any government agency's data of which they are the subject. This right also applies to the data used to reach a maltreatment determination, and by some statutory interpretations, it applies to the determination itself. This process, however, is not intended to address whether the agency should have made a determination of maltreatment based on the evidence.

This right to challenge the accuracy and completeness of investigation data has not been uniformly recognized throughout Minnesota's adult and child protection system.

Various groups have appealed to the Legislature for attention to this matter, and in the 1995 legislative session two laws were passed addressing the issue. One law addressed the issue with regard to determinations of substantiated maltreatment of vulnerable adults, and the other partially addressed the issue with regard to determinations of substantiated maltreatment of children.

Laws of Minnesota, 1995, Chapter 229, amended Minnesota Statutes, sections 626.557 and 256.045 to establish, first, an administrative reconsideration of a determination of substantiated maltreatment of a vulnerable adult, and second, a fair hearing to appeal the administrative reconsideration decision.

Laws of Minnesota, 1995, Chapter 187, section 9, requires DHS to review and make recommendations on possible alternative dispute resolution or fair hearing procedures for resolving issues of alleged child maltreatment. The report will recommend a system of appeal rights similar to those established for substantiated perpetrators of adult maltreatment in Laws of Minnesota, 1995, Chapter 229.

The issues of appeal rights and the appropriate use of child maltreatment determinations are also getting attention as part of the federal reform efforts. While vetoed, the most recent conference committee report would have required that within two years of enactment, all states have in place a process for appealing child maltreatment determinations. Additionally, states would have been required to have in place laws that would facilitate the prompt expungement of records that are accessible to the public or that are used for purposes of employment or other background checks in cases determined to be unsubstantiated or false.

Prior to an adverse decision against a teacher's license or the denial of an application for a teacher's license, the individual has a right to a contested case hearing before an administrative law judge according to the procedures in Minnesota Statutes, Chapter 14. So that the licensing agency is not in the position to defend the actions and determinations of the county child protection agencies, the mechanism for appealing these determinations must be established and implemented prior to expanded use of the determinations. Individuals who wish to challenge an investigation determination as a result of a denied teacher license should be directed to challenge the investigation determination with the agency that completed the investigation.

**It is recommended that, prior to the expanded use of child protection determinations for employment related decisions, there must be in place an accessible and effective system for substantiated perpetrators to appeal the maltreatment determination.**

**It is recommended that statutory language clearly state that when a background study subject disagrees with the determination of substantiated maltreatment, that the appropriate appeal of that determination is with the agency that made the determination.**

### Creation of a Centralized Perpetrator Index:

The list of perpetrators maintained by DHS does not and should not represent a system of duplicative records of investigation agency findings. The background study system's substantiated perpetrator list is merely an index or a pointer system to indicate which agency has records of substantiated child maltreatment that need to be reviewed to make an employment related decision. When a study determines that an individual has a record of substantiated maltreatment, the information in the system must be sufficient to determine which investigating agency needs to be contacted and from which file that agency needs to provide information.

The list of substantiated perpetrators also must not include the names of any individuals for whom maltreatment has not been substantiated. Multiple yet unsubstantiated determinations are not justification for inclusion on the list of perpetrators.

There are two viable methods for creating a central registry of substantiated perpetrators of child maltreatment. The first is already a planned and integral component of the Social Services Information System project currently underway. The second would require a modification of a current system of reporting information to DHS.

### The Social Services Information System:

DHS and the counties are currently working in partnership to create a case management and information system that will network information about services to children and families. The new system will be essential to Minnesota's ability to report use of services and funds for Minnesota's children. Federal funding is available for a majority of the project costs.

One component of the new system will be a centralized perpetrator index. The creation and maintenance of this index will be built into the new system, and it will be located at DHS. The design of this perpetrator index will meet proposed state criteria for a centralized registry of substantiated perpetrators of maltreatment of minors.

The target date for implementation of the centralized perpetrator index is the fourth quarter of 1998.

### Modification of the Current Data Reporting System:

The second viable method for creating a centralized perpetrator registry would be a modification of the responsibilities of county child protection agencies, MDH, and DHS to require reporting the names and dates of birth of substantiated perpetrators of child maltreatment to a common source. To do this would require an amendment to the Maltreatment of Minors Act, Minnesota Statutes, section 626.556, that is similar to the 1995 amendment to the Vulnerable Adult Act, Minnesota Statutes, section 626.557, subdivision 9c, (i).

Laws of Minnesota, 1995, Chapter 229, amended Minnesota Statutes, section 626.557, to state that all county adult protection agencies and MDH "must provide to the commissioner of human services [their] final dispositions, including the names of substantiated perpetrators. The commissioner of human services shall establish records to retain the names of substantiated perpetrators."

While the counties are currently required to report statistical information to DHS related to each report of alleged child maltreatment and the investigation/assessment determination, the system does not include reporting the names of substantiated perpetrators of child maltreatment.

The central registry of substantiated perpetrators of child maltreatment would most appropriately be maintained by DHS as part of the current background study system. As stated above, DHS currently maintains a computerized incomplete database of substantiated perpetrators of child maltreatment



and vulnerable adult maltreatment. This system is prepared to include the names of substantiated perpetrators of adult maltreatment when forwarded by MDH and the 87 county adult protection agencies. With little modification to the system, it could also incorporate the additional names of substantiated perpetrators of child maltreatment.

Adding these substantiated perpetrators to the current perpetrator database would involve negligible costs to MDH because MDH makes very few determinations of child maltreatment. It would include more significant costs for DHS and the county child protection agencies.

Costs to DHS would include those related to forms design and printing, developing and sending a bulletin to counties, training county employees, modifying the current perpetrator database, manually entering the names and other identifying information for an estimated 11,000 substantiated perpetrators per year, and maintaining the database.

Costs to the counties would include those associated with obtaining the date of birth for each substantiated perpetrator; providing the name and date of birth of the substantiated perpetrator on either a modified version of the existing form or a new and separate form; and the costs of providing training to county employees to submit this information.

Some county child protection agencies are currently providing the statistical maltreatment data in an electronic format. To modify this system would require some programming costs to DHS and to the counties.

Creation of a centralized index of substantiated perpetrators through either of the above methods would also enhance the completeness of the background studies completed by DHS.

**It is recommended that the planned Social Services Information System's centralized perpetrator index be recognized as the preferred method for generating such a database to be used for background studies.**

**It is recommended that, because the Social Services Information System's projected implementation of the centralized perpetrator index will be the fourth quarter of 1998, the inclusion of child maltreatment determinations in these background studies should not precede January 1, 1999.**

#### **Access to a Centralized Perpetrator Index:**

Independent of the new interests related to background studies of people in schools, DHS will continue efforts to establish a centralized index of substantiated perpetrators for background studies in DHS and MDH licensed facilities. Rather than keeping duplicative databases, it would be more efficient for the Board of Education, the Board of Teaching, and the various hiring authorities to contact DHS to review the substantiated perpetrator index as part of their background studies.

DHS can work with the Board of Teaching, the Board of Education, and the School Boards Association to establish procedures for submitting the names of individuals to be studied to DHS for checking against the substantiated perpetrator index. Options available would include having the study subject complete a scannable form (as is the current DHS process) or having the information provided to DHS on floppy disk (also a current process option). Because the background study activities for the Board of Education and the Board of Teaching are centralized in the Department of Children, Families, and Learning, this information could be transmitted electronically over the State's computer network (MNet).

There must be specific clarification of what information will be provided to the Board of Education, the Board of Teaching, and the school district hiring authorities.

The board of education and the board of teaching currently have a specific statutory process for reviewing information about licensees, whether it is received as part of a complaint or as a result of a criminal record check, and determining whether the information evidences "immoral character or conduct" (see Minnesota Statutes, section 125.09). This governing statute also permits the boards to seek the consent of a student and a student's parent to provide the licensing board with information that may aid the licensing board in the investigation and license proceedings.

If background studies are to be expanded to include child maltreatment determinations, the licensing boards must be allowed access to not only the determination of maltreatment, but also to the investigative data that lead to the maltreatment finding. Consistent with the direction found in Minnesota Statutes, section 125.09, the licensing boards, with assistance of the Attorney General's Office, must be allowed to review the investigative information and to determine whether the information represents "immoral character or conduct." The DHS centralized perpetrator index would provide the licensing board with the name of the agency that has the investigative data and with sufficient identifying information so the investigating agency could retrieve the data for the licensing board.

**It is recommended that both Minnesota Statutes, chapter 125 and section 626.556, be amended to give the licensing boards the authority to access the data from closed investigations that were completed under the authority of Minnesota Statutes, section 626.556.**

**Minnesota Statutes, section 626.556 should also be amended to require the reporting of new substantiated maltreatment determinations to the Board of Education or the Board of Teaching when the investigating agency has reason to believe that the substantiated perpetrator of child maltreatment is a licensed teacher.**

The needs of the various school district hiring authorities in this area are different than those of the licensing boards. If their background studies are to be expanded to include child maltreatment determinations, the agencies do not want to receive and review the investigative data pertaining to the maltreatment determination. Rather, these agencies would prefer that any information received would represent a conclusive determination, and that the data "must be meaningful" in and of itself.

If school districts are to begin making hiring determination solely on the basis of an administrative agency finding of substantiated maltreatment, the need for creation of an appeal mechanism as discussed in the section titled, "Right to Challenge Maltreatment Determinations" is essential. There also needs to be some specific immunity from civil liability for making these hiring decisions.

**It is recommended that, if maltreatment determinations are included in school district background studies, that school boards be granted statutory authority to receive the determinations of substantiated maltreatment. It is also recommended that school boards be granted specific statutory authority, with immunity from civil liability, to deny employment to any individual identified as a substantiated perpetrator of child maltreatment.**

Providing information from a centralized perpetrator index to school boards, the Board of Education, and the Board of Teaching, would result in minimal costs to DHS.

The pursuit of and review of this information by the Board of Education, the Board of Teaching, and the school boards throughout the state would result in staffing costs to those agencies. For the Board of Education and the Board of Teaching, there would also be costs involved for the Attorney General's Office review of substantiated investigation information. All agencies would have costs associated with the revision of application forms, communication of new procedures, and the establishment or modification of computerized records systems or databases.

### **Simplification of Background Studies for School Boards:**

Obtaining criminal history information by the Board of Education and the Board of Teaching is consolidated in a system implemented by the Department of Children, Families, and Learning. This state agency has an efficient process, similar to that used by DHS, whereby criminal history data is transmitted electronically over the MNet system. This system allows for the electronic batch processing of criminal record checks on many subjects at a time, typically over night.

School district hiring authorities have no such connection, and they must submit necessary documentation to the Bureau of Criminal Apprehension for each individual studied.

A concern of the school districts is that if the background study requirements are expanded to include child maltreatment determinations, ideally there would be a single state agency from which they could obtain all necessary background study information. With the capability for electronic transfer of data between state agencies, this need could fairly easily be met.

**It is recommended that school districts be permitted to initiate background study requests to a single state agency. Through the electronic transfer of data from other state agencies, the state agency should obtain and provide necessary background study data to the school district hiring authorities.**

### **Summary of Recommendations :**

The Commissioner of the Department of Human Services recommends the following:

1. There should be no requirement to include child maltreatment determinations in background studies completed by the Board of Teaching, the Board of Education, and the school district hiring authorities until a centralized perpetrator index is established.
2. The centralized perpetrator index component of the Social Services Information System that is under development through a DHS and county partnership is the preferred method for generating a database of perpetrators to be used for background studies.
3. Because the Social Services Information System's projected implementation of the centralized perpetrator index will be the fourth quarter of 1998, the inclusion of child maltreatment determinations in these background studies should not precede January 1, 1999.
4. Before administrative determinations of substantiated child maltreatment are used for additional employment related decisions, there must be in place an accessible and effective system for substantiated perpetrators to appeal a maltreatment determination.
5. Statutory language should clearly state that, when a background study subject disagrees with the determination of substantiated maltreatment, the appropriate appeal of that determination is with the agency that made the determination.
6. Statutory language should identify the length of time that a substantiated child maltreatment determination will be included in the background study process, and it should be the same length of time as either the Department of Human Services studies or the same as the data retention schedule in the Maltreatment of Minors Act (Minnesota Statutes, section 626.556).
7. Both Minnesota Statutes, chapter 125 and section 626.556, should be amended to give the Board of Education and the Board of Teaching the authority to access the data from closed investigations that were completed under the authority of Minnesota Statutes, section 626.556.
8. Minnesota Statutes, section 626.556 should be amended to require the reporting of new substantiated maltreatment determinations to the Board of Education or the Board of Teaching when the investigating agency has reason to believe that the substantiated perpetrator of child maltreatment is a licensed teacher.
9. If maltreatment determinations are included in school district background studies, school boards should be granted statutory authority to receive the determinations of substantiated maltreatment.
10. School boards should be granted specific statutory authority, with immunity from civil liability, to deny employment to any individual identified as a substantiated perpetrator of child maltreatment.
11. School districts should be permitted to initiate background study requests to a single state agency. Through the electronic transfer of data from other state agencies, the designated state agency should obtain and provide necessary background study data to the school district hiring authorities.

**INDIVIDUALS/AGENCIES WHO CONTRIBUTED TO THIS REPORT**

Judith A. Wain, Executive Secretary  
Minnesota Board of Teaching  
608 Capitol Square  
550 Cedar Street  
St. Paul, Minnesota 55101

Marsha Gronseth, Executive Director  
State Board of Education  
715 Capitol Square  
550 Cedar Street  
St. Paul, Minnesota 55101

George Droubie  
Department of Children, Families, and Learning  
Capitol Square  
550 Cedar Street  
St. Paul, Minnesota 55101

Melissa Johnson  
Minnesota School Boards Association  
1900 World Trade Center  
St. Paul, Minnesota 55101

Karen McDonald, Director  
CCH Section  
Minnesota Bureau of Criminal Apprehension  
1246 University Avenue  
St. Paul, Minnesota 55104

Jerry Kerber, Supervisor  
Investigations and Background Studies  
Department of Human Services  
444 Lafayette Road  
St. Paul, Minnesota 55155-3842

Erin Sullivan Sutton  
Children's Initiative  
Department of Human Services  
444 Lafayette Road  
St. Paul, Minnesota 55155-3830

Jean Swanson Broberg  
Social Services Information System Project  
Department of Human Services  
444 Lafayette Road  
St. Paul, Minnesota 55155-3839