

A bill for an act

relating to vulnerable adults; modifying provisions governing investigations, reviews, and hearings; making the crime of criminal abuse of a vulnerable adult a registrable offense under the predatory offender registration law; changing terminology; increasing the criminal penalty for assaulting a vulnerable adult; providing criminal penalties; amending Minnesota Statutes 2010, sections 144.7065, subdivision 10; 243.166, subdivision 1b; 245C.28, by adding a subdivision; 256.021; 256.045, subdivision 4; 518.165, subdivision 5; 524.5-118, subdivision 2; 609.2231, by adding a subdivision; 609.224, subdivision 2; 626.557, subdivisions 9, 9a, 9c, 9d, 12b; 626.5571, subdivision 1; 626.5572, subdivision 13.

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

Section 1. Minnesota Statutes 2010, section 144.7065, subdivision 10, is amended to read:

Subd. 10. **Relation to other law; data classification.** (a) Adverse health events described in subdivisions 2 to 6 do not constitute "maltreatment," "neglect," or "a physical injury that is not reasonably explained" under section 626.556 or 626.557 and are excluded from the reporting requirements of sections 626.556 and 626.557, provided the facility makes a determination within 24 hours of the discovery of the event that this section is applicable and the facility files the reports required under this section in a timely fashion.

(b) A facility that has determined that an event described in subdivisions 2 to 6 has occurred must inform persons who are mandated reporters under section 626.556, subdivision 3, or 626.5572, subdivision 16, of that determination. A mandated reporter otherwise required to report under section 626.556, subdivision 3, or 626.557, subdivision 3, paragraph (e), is relieved of the duty to report an event that the facility determines under paragraph (a) to be reportable under subdivisions 2 to 6.

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2.1 (c) The protections and immunities applicable to voluntary reports under sections
2.2 626.556 and 626.557 are not affected by this section.

2.3 (d) Notwithstanding section 626.556, 626.557, or any other provision of Minnesota
2.4 statute or rule to the contrary, ~~neither~~ a lead agency under section 626.556, subdivision 3c,
2.5 ~~or a lead investigative agency under section 626.5572~~, subdivision 13, the commissioner
2.6 of health, ~~nor~~ or the director of the Office of Health Facility Complaints is not required to
2.7 conduct an investigation of or obtain or create investigative data or reports regarding an
2.8 event described in subdivisions 2 to 6. If the facility satisfies the requirements described
2.9 in paragraph (a), the review or investigation shall be conducted and data or reports shall
2.10 be obtained or created only under sections 144.706 to 144.7069, except as permitted
2.11 or required under sections 144.50 to 144.564, or as necessary to carry out the state's
2.12 certification responsibility under the provisions of sections 1864 and 1867 of the Social
2.13 Security Act. If a licensed health care provider reports an event to the facility required to
2.14 be reported under subdivisions 2 to 6 in a timely manner, the provider's licensing board is
2.15 not required to conduct an investigation of or obtain or create investigative data or reports
2.16 regarding the individual reporting of the events described in subdivisions 2 to 6.

2.17 (e) Data contained in the following records are nonpublic and, to the extent they
2.18 contain data on individuals, confidential data on individuals, as defined in section 13.02:

2.19 (1) reports provided to the commissioner under sections 147.155, 147A.155,
2.20 148.267, 151.301, and 153.255;

2.21 (2) event reports, findings of root cause analyses, and corrective action plans filed by
2.22 a facility under this section; and

2.23 (3) records created or obtained by the commissioner in reviewing or investigating
2.24 the reports, findings, and plans described in clause (2).

2.25 For purposes of the nonpublic data classification contained in this paragraph, the
2.26 reporting facility shall be deemed the subject of the data.

2.27 Sec. 2. Minnesota Statutes 2010, section 243.166, subdivision 1b, is amended to read:

2.28 Subd. 1b. **Registration required.** (a) A person shall register under this section if:

2.29 (1) the person was charged with or petitioned for a felony violation of or attempt to
2.30 violate, or aiding, abetting, or conspiracy to commit, any of the following, and convicted
2.31 of or adjudicated delinquent for that offense or another offense arising out of the same
2.32 set of circumstances:

2.33 (i) murder under section 609.185, paragraph (a), clause (2);

2.34 (ii) kidnapping under section 609.25;

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3.1 (iii) criminal sexual conduct under section 609.342; 609.343; 609.344; 609.345;
3.2 609.3451, subdivision 3; or 609.3453; or

3.3 (iv) indecent exposure under section 617.23, subdivision 3;

3.4 (2) the person was charged with or petitioned for a violation of, or attempt to
3.5 violate, or aiding, abetting, or ~~conspiracy~~ conspiring to commit criminal abuse in violation
3.6 of section 609.2325, subdivision 1, paragraph (b), false imprisonment in violation of
3.7 section 609.255, subdivision 2; soliciting a minor to engage in prostitution in violation of
3.8 section 609.322 or 609.324; soliciting a minor to engage in sexual conduct in violation of
3.9 section 609.352; using a minor in a sexual performance in violation of section 617.246;
3.10 or possessing pornographic work involving a minor in violation of section 617.247, and
3.11 convicted of or adjudicated delinquent for that offense or another offense arising out
3.12 of the same set of circumstances;

3.13 (3) the person was sentenced as a patterned sex offender under section 609.3455,
3.14 subdivision 3a; or

3.15 (4) the person was convicted of or adjudicated delinquent for, including pursuant
3.16 to a court martial, violating a law of the United States, including the Uniform Code of
3.17 Military Justice, similar to the offenses described in clause (1), (2), or (3).

3.18 (b) A person also shall register under this section if:

3.19 (1) the person was convicted of or adjudicated delinquent in another state for an
3.20 offense that would be a violation of a law described in paragraph (a) if committed in
3.21 this state;

3.22 (2) the person enters this state to reside, work, or attend school, or enters this state
3.23 and remains for 14 days or longer; and

3.24 (3) ten years have not elapsed since the person was released from confinement
3.25 or, if the person was not confined, since the person was convicted of or adjudicated
3.26 delinquent for the offense that triggers registration, unless the person is subject to a longer
3.27 registration period under the laws of another state in which the person has been convicted
3.28 or adjudicated, or is subject to lifetime registration.

3.29 If a person described in this paragraph is subject to a longer registration period
3.30 in another state or is subject to lifetime registration, the person shall register for that
3.31 time period regardless of when the person was released from confinement, convicted, or
3.32 adjudicated delinquent.

3.33 (c) A person also shall register under this section if the person was committed
3.34 pursuant to a court commitment order under section 253B.185 or Minnesota Statutes
3.35 1992, section 526.10, or a similar law of another state or the United States, regardless of
3.36 whether the person was convicted of any offense.

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4.1 (d) A person also shall register under this section if:

4.2 (1) the person was charged with or petitioned for a felony violation or attempt to
4.3 violate any of the offenses listed in paragraph (a), clause (1), or a similar law of another
4.4 state or the United States, or the person was charged with or petitioned for a violation of
4.5 any of the offenses listed in paragraph (a), clause (2), or a similar law of another state or
4.6 the United States;

4.7 (2) the person was found not guilty by reason of mental illness or mental deficiency
4.8 after a trial for that offense, or found guilty but mentally ill after a trial for that offense, in
4.9 states with a guilty but mentally ill verdict; and

4.10 (3) the person was committed pursuant to a court commitment order under section
4.11 253B.18 or a similar law of another state or the United States.

4.12 **EFFECTIVE DATE.** This section is effective August 1, 2011, and applies to crimes
4.13 committed on or after that date.

4.14 Sec. 3. Minnesota Statutes 2010, section 245C.28, is amended by adding a subdivision
4.15 to read:

4.16 **Subd. 5. Maltreatment involving vulnerable adult; notice and participation.** For
4.17 a contested case hearing under this section involving a determination of maltreatment of a
4.18 vulnerable adult under section 626.557, the administrative law judge shall provide notice
4.19 of the hearing to the vulnerable adult who is the subject of the substantiated maltreatment
4.20 and, if known, the guardian or health care agent of the vulnerable adult. The vulnerable
4.21 adult, the vulnerable adult's guardian, or the vulnerable adult's health care agent may
4.22 attend and participate in the hearing at the discretion of and to the degree determined
4.23 by the administrative law judge.

4.24 Sec. 4. Minnesota Statutes 2010, section 256.021, is amended to read:

4.25 **256.021 VULNERABLE ADULT MALTREATMENT REVIEW PANEL.**

4.26 Subdivision 1. **Creation.** (a) The commissioner of human services shall establish a
4.27 review panel for purposes of reviewing lead investigative agency determinations regarding
4.28 maltreatment of a vulnerable adult in response to requests received under section 626.557,
4.29 subdivision 9d, paragraph (b). The panel shall hold quarterly meetings for purposes of
4.30 conducting reviews under this section.

4.31 (b) The review panel consists of:

4.32 (1) the commissioners of health and human services or their designees;

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5.1 (2) the ~~ombudsperson~~ ombudsman for ~~older Minnesotans~~ long-term care and
5.2 ~~ombudsperson~~ ombudsman for mental health and developmental disabilities, or their
5.3 designees; and

5.4 (3) a member of the board on aging, appointed by the board.

5.5 Subd. 2. **Review procedure.** (a) If a vulnerable adult or an interested person acting
5.6 on behalf of the vulnerable adult requests a review under this section, the panel shall
5.7 review the request at its next quarterly meeting. If the next quarterly meeting is within
5.8 ten days of the panel's receipt of the request for review, the review may be delayed until
5.9 the next subsequent meeting. The panel shall review the request and the investigation
5.10 memorandum and may review any other data on the investigation maintained by the lead
5.11 investigative agency that are pertinent and necessary to its review of the final disposition.
5.12 If more than one person requests a review under this section with respect to the same final
5.13 disposition, the review panel shall combine the requests into one review. The panel shall
5.14 submit its written request for the case file and other documentation relevant to the review
5.15 to the supervisor of the investigator conducting the investigation under review.

5.16 (b) Within 30 days of the review under this section, the panel shall notify the director
5.17 or manager of the lead investigative agency and the vulnerable adult or interested person
5.18 who requested the review as to whether the panel ~~agrees~~ concurs with the final disposition
5.19 or whether the lead investigative agency must reconsider the final disposition. If the panel
5.20 determines that the lead investigative agency must reconsider the final disposition, the
5.21 panel must make specific investigative recommendations to the director or manager of the
5.22 lead investigative agency. Within 30 days the lead investigative agency shall conduct a
5.23 review and report back to the panel with its determination and the specific rationale for its
5.24 final disposition. At a minimum, the specific rationale must include a detailed response to
5.25 each of the investigative recommendations of the panel.

5.26 (c) Upon receiving the report of reconsideration from the lead investigative agency,
5.27 the panel shall communicate the decision in writing to the vulnerable adult or interested
5.28 person acting on behalf of the vulnerable adult who requested the review. The panel
5.29 shall include the specific rationale provided by the lead investigative agency as part of
5.30 the communication.

5.31 Subd. 3. **Report.** By January 15 of each year, the panel shall submit a report to the
5.32 committees of the legislature with jurisdiction over section 626.557 regarding the number
5.33 of requests for review it receives under this section, the number of cases where the panel
5.34 requires the lead investigative agency to reconsider its final disposition, and the number of
5.35 cases where the final disposition is changed, and any recommendations to improve the
5.36 review or investigative process.

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6.1 Subd. 4. **Data.** Data of the review panel created or received as part of a review
6.2 under this section are private data on individuals as defined in section 13.02.

6.3 Sec. 5. Minnesota Statutes 2010, section 256.045, subdivision 4, is amended to read:

6.4 Subd. 4. **Conduct of hearings.** (a) All hearings held pursuant to subdivision 3, 3a,
6.5 3b, or 4a shall be conducted according to the provisions of the federal Social Security
6.6 Act and the regulations implemented in accordance with that act to enable this state to
6.7 qualify for federal grants-in-aid, and according to the rules and written policies of the
6.8 commissioner of human services. County agencies shall install equipment necessary to
6.9 conduct telephone hearings. A state human services referee may schedule a telephone
6.10 conference hearing when the distance or time required to travel to the county agency
6.11 offices will cause a delay in the issuance of an order, or to promote efficiency, or at the
6.12 mutual request of the parties. Hearings may be conducted by telephone conferences unless
6.13 the applicant, recipient, former recipient, person, or facility contesting maltreatment
6.14 objects. The hearing shall not be held earlier than five days after filing of the required
6.15 notice with the county or state agency. The state human services referee shall notify all
6.16 interested persons of the time, date, and location of the hearing at least five days before
6.17 the date of the hearing. Interested persons may be represented by legal counsel or other
6.18 representative of their choice, including a provider of therapy services, at the hearing
6.19 and may appear personally, testify and offer evidence, and examine and cross-examine
6.20 witnesses. The applicant, recipient, former recipient, person, or facility contesting
6.21 maltreatment shall have the opportunity to examine the contents of the case file and
6.22 all documents and records to be used by the county or state agency at the hearing at a
6.23 reasonable time before the date of the hearing and during the hearing. In hearings under
6.24 subdivision 3, paragraph (a), clauses (4), (8), and (9), either party may subpoena the
6.25 private data relating to the investigation prepared by the agency under section 626.556
6.26 or 626.557 that is not otherwise accessible under section 13.04, provided the identity of
6.27 the reporter may not be disclosed.

6.28 (b) The private data obtained by subpoena in a hearing under subdivision 3,
6.29 paragraph (a), clause (4), (8), or (9), must be subject to a protective order which prohibits
6.30 its disclosure for any other purpose outside the hearing provided for in this section without
6.31 prior order of the district court. Disclosure without court order is punishable by a sentence
6.32 of not more than 90 days imprisonment or a fine of not more than \$1,000, or both. These
6.33 restrictions on the use of private data do not prohibit access to the data under section 13.03,
6.34 subdivision 6. Except for appeals under subdivision 3, paragraph (a), clauses (4), (5), (8),
6.35 and (9), upon request, the county agency shall provide reimbursement for transportation,

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7.1 child care, photocopying, medical assessment, witness fee, and other necessary and
7.2 reasonable costs incurred by the applicant, recipient, or former recipient in connection with
7.3 the appeal. All evidence, except that privileged by law, commonly accepted by reasonable
7.4 people in the conduct of their affairs as having probative value with respect to the issues
7.5 shall be submitted at the hearing and such hearing shall not be "a contested case" within
7.6 the meaning of section 14.02, subdivision 3. The agency must present its evidence prior to
7.7 or at the hearing, and may not submit evidence after the hearing except by agreement of
7.8 the parties at the hearing, provided the petitioner has the opportunity to respond.

7.9 (c) In hearings under subdivision 3, paragraph (a), clauses (4), (8), and (9), involving
7.10 determinations of maltreatment or disqualification made by more than one county agency,
7.11 by a county agency and a state agency, or by more than one state agency, the hearings
7.12 may be consolidated into a single fair hearing upon the consent of all parties and the state
7.13 human services referee.

7.14 (d) For hearings under subdivision 3, paragraph (a), clause (4) or (10), the human
7.15 services referee shall provide notice of the hearing to the vulnerable adult who is the
7.16 subject of the substantiated maltreatment and, if known, the guardian or health care
7.17 agent of the vulnerable adult. The vulnerable adult, the vulnerable adult's guardian, or
7.18 the vulnerable adult's health care agent may attend and participate in the hearing at the
7.19 discretion of and to the degree determined by the human services referee.

7.20 Sec. 6. Minnesota Statutes 2010, section 518.165, subdivision 5, is amended to read:

7.21 **Subd. 5. Procedure, criminal history, and maltreatment records background**
7.22 **study.** (a) When the court requests a background study under subdivision 4, paragraph
7.23 (a), the request shall be submitted to the Department of Human Services through the
7.24 department's electronic online background study system.

7.25 (b) When the court requests a search of the National Criminal Records Repository,
7.26 the court must provide a set of classifiable fingerprints of the subject of the study on a
7.27 fingerprint card provided by the commissioner of human services.

7.28 (c) The commissioner of human services shall provide the court with criminal
7.29 history data as defined in section 13.87 from the Bureau of Criminal Apprehension in
7.30 the Department of Public Safety, other criminal history data held by the commissioner
7.31 of human services, and data regarding substantiated maltreatment of a minor under
7.32 section 626.556, and substantiated maltreatment of a vulnerable adult under section
7.33 626.557, within 15 working days of receipt of a request. If the subject of the study has
7.34 been determined by the Department of Human Services or the Department of Health
7.35 to be the perpetrator of substantiated maltreatment of a minor or vulnerable adult

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8.1 in a licensed facility, the response must include a copy of the public portion of the
8.2 investigation memorandum under section 626.556, subdivision 10f, or the public portion
8.3 of the investigation memorandum under section 626.557, subdivision 12b. When the
8.4 background study shows that the subject has been determined by a county adult protection
8.5 or child protection agency to have been responsible for maltreatment, the court shall be
8.6 informed of the county, the date of the finding, and the nature of the maltreatment that
8.7 was substantiated. The commissioner shall provide the court with information from the
8.8 National Criminal Records Repository within three working days of the commissioner's
8.9 receipt of the data. When the commissioner finds no criminal history or substantiated
8.10 maltreatment on a background study subject, the commissioner shall make these results
8.11 available to the court electronically through the secure online background study system.

8.12 (d) Notwithstanding section 626.556, subdivision 10f, or 626.557, subdivision 12b,
8.13 if the commissioner or county lead agency or lead investigative agency has information
8.14 that a person on whom a background study was previously done under this section has
8.15 been determined to be a perpetrator of maltreatment of a minor or vulnerable adult, the
8.16 commissioner or the county may provide this information to the court that requested the
8.17 background study.

8.18 Sec. 7. Minnesota Statutes 2010, section 524.5-118, subdivision 2, is amended to read:

8.19 Subd. 2. **Procedure; criminal history and maltreatment records background**
8.20 **check.** (a) The court shall request the commissioner of human services to complete a
8.21 background study under section 245C.32. The request must be accompanied by the
8.22 applicable fee and the signed consent of the subject of the study authorizing the release of
8.23 the data obtained to the court. If the court is requesting a search of the National Criminal
8.24 Records Repository, the request must be accompanied by a set of classifiable fingerprints
8.25 of the subject of the study. The fingerprints must be recorded on a fingerprint card
8.26 provided by the commissioner of human services.

8.27 (b) The commissioner of human services shall provide the court with criminal
8.28 history data as defined in section 13.87 from the Bureau of Criminal Apprehension in the
8.29 Department of Public Safety, other criminal history data held by the commissioner of
8.30 human services, and data regarding substantiated maltreatment of vulnerable adults under
8.31 section 626.557 and substantiated maltreatment of minors under section 626.556 within
8.32 15 working days of receipt of a request. If the subject of the study has been the perpetrator
8.33 of substantiated maltreatment of a vulnerable adult or minor, the response must include
8.34 a copy of the public portion of the investigation memorandum under section 626.557,
8.35 subdivision 12b, or the public portion of the investigation memorandum under section

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9.1 626.556, subdivision 10f. If the court did not request a search of the National Criminal
9.2 Records Repository and information from the Bureau of Criminal Apprehension indicates
9.3 that the subject is a multistate offender or that multistate offender status is undetermined,
9.4 the response must include this information. The commissioner shall provide the court with
9.5 information from the National Criminal Records Repository within three working days
9.6 of the commissioner's receipt of the data.

9.7 (c) Notwithstanding section 626.557, subdivision 12b, or 626.556, subdivision 10f,
9.8 if the commissioner of human services or a county lead agency or lead investigative
9.9 agency has information that a person on whom a background study was previously done
9.10 under this section has been determined to be a perpetrator of maltreatment of a vulnerable
9.11 adult or minor, the commissioner or the county may provide this information to the court
9.12 that requested the background study. The commissioner may also provide the court
9.13 with additional criminal history or substantiated maltreatment information that becomes
9.14 available after the background study is done.

9.15 Sec. 8. Minnesota Statutes 2010, section 609.2231, is amended by adding a subdivision
9.16 to read:

9.17 Subd. 8. **Vulnerable adults.** (a) As used in this subdivision, "vulnerable adult" has
9.18 the meaning given in section 609.232, subdivision 11.

9.19 (b) Whoever assaults and inflicts demonstrable bodily harm on a vulnerable adult,
9.20 knowing or having reason to know that the person is a vulnerable adult, is guilty of a
9.21 gross misdemeanor.

9.22 **EFFECTIVE DATE.** This section is effective August 1, 2011, and applies to crimes
9.23 committed on or after that date.

9.24 Sec. 9. Minnesota Statutes 2010, section 609.224, subdivision 2, is amended to read:

9.25 Subd. 2. **Gross misdemeanor.** (a) Whoever violates the provisions of subdivision 1
9.26 against the same victim within ten years of a previous qualified domestic violence-related
9.27 offense conviction or adjudication of delinquency is guilty of a gross misdemeanor and
9.28 may be sentenced to imprisonment for not more than one year or to payment of a fine of
9.29 not more than \$3,000, or both.

9.30 (b) Whoever violates the provisions of subdivision 1 within three years of a previous
9.31 qualified domestic violence-related offense conviction or adjudication of delinquency is
9.32 guilty of a gross misdemeanor and may be sentenced to imprisonment for not more than
9.33 one year or to payment of a fine of not more than \$3,000, or both.

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10.1 ~~(c) A caregiver, as defined in section 609.232, who is an individual and who violates~~
10.2 ~~the provisions of subdivision 1 against a vulnerable adult, as defined in section 609.232, is~~
10.3 ~~guilty of a gross misdemeanor and may be sentenced to imprisonment for not more than~~
10.4 ~~one year or to payment of a fine of not more than \$3,000, or both.~~

10.5 **EFFECTIVE DATE.** This section is effective August 1, 2011, and applies to crimes
10.6 committed on or after that date.

10.7 Sec. 10. Minnesota Statutes 2010, section 626.557, subdivision 9, is amended to read:

10.8 Subd. 9. **Common entry point designation.** (a) Each county board shall designate
10.9 a common entry point for reports of suspected maltreatment. Two or more county boards
10.10 may jointly designate a single common entry point. The common entry point is the unit
10.11 responsible for receiving the report of suspected maltreatment under this section.

10.12 (b) The common entry point must be available 24 hours per day to take calls from
10.13 reporters of suspected maltreatment. The common entry point shall use a standard intake
10.14 form that includes:

- 10.15 (1) the time and date of the report;
- 10.16 (2) the name, address, and telephone number of the person reporting;
- 10.17 (3) the time, date, and location of the incident;
- 10.18 (4) the names of the persons involved, including but not limited to, perpetrators,
10.19 alleged victims, and witnesses;
- 10.20 (5) whether there was a risk of imminent danger to the alleged victim;
- 10.21 (6) a description of the suspected maltreatment;
- 10.22 (7) the disability, if any, of the alleged victim;
- 10.23 (8) the relationship of the alleged perpetrator to the alleged victim;
- 10.24 (9) whether a facility was involved and, if so, which agency licenses the facility;
- 10.25 (10) any action taken by the common entry point;
- 10.26 (11) whether law enforcement has been notified;
- 10.27 (12) whether the reporter wishes to receive notification of the initial and final
10.28 reports; and
- 10.29 (13) if the report is from a facility with an internal reporting procedure, the name,
10.30 mailing address, and telephone number of the person who initiated the report internally.

10.31 (c) The common entry point is not required to complete each item on the form prior
10.32 to dispatching the report to the appropriate lead investigative agency.

10.33 (d) The common entry point shall immediately report to a law enforcement agency
10.34 any incident in which there is reason to believe a crime has been committed.

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11.1 (e) If a report is initially made to a law enforcement agency or a lead investigative
11.2 agency, those agencies shall take the report on the appropriate common entry point intake
11.3 forms and immediately forward a copy to the common entry point.

11.4 (f) The common entry point staff must receive training on how to screen and
11.5 dispatch reports efficiently and in accordance with this section.

11.6 (g) When a centralized database is available, the common entry point has access to
11.7 the centralized database and must log the reports in on the database.

11.8 Sec. 11. Minnesota Statutes 2010, section 626.557, subdivision 9a, is amended to read:

11.9 Subd. 9a. **Evaluation and referral of reports made to common entry point unit.**
11.10 The common entry point must screen the reports of alleged or suspected maltreatment for
11.11 immediate risk and make all necessary referrals as follows:

11.12 (1) if the common entry point determines that there is an immediate need for
11.13 adult protective services, the common entry point agency shall immediately notify the
11.14 appropriate county agency;

11.15 (2) if the report contains suspected criminal activity against a vulnerable adult, the
11.16 common entry point shall immediately notify the appropriate law enforcement agency;

11.17 (3) the common entry point shall refer all reports of alleged or suspected
11.18 maltreatment to the appropriate lead investigative agency as soon as possible, but in any
11.19 event no longer than two working days; and

11.20 (4) if the report contains information about a suspicious death, the common entry
11.21 point shall immediately notify the appropriate law enforcement agencies, the local
11.22 medical examiner, and the ombudsman for mental health and developmental disabilities
11.23 established under section 245.92. Law enforcement agencies shall coordinate with the
11.24 local medical examiner and the ombudsman as provided by law.

11.25 Sec. 12. Minnesota Statutes 2010, section 626.557, subdivision 9c, is amended to read:

11.26 Subd. 9c. **Lead investigative agency; notifications, dispositions, determinations.**

11.27 (a) Upon request of the reporter, the lead investigative agency shall notify the reporter that
11.28 it has received the report, and provide information on the initial disposition of the report
11.29 within five business days of receipt of the report, provided that the notification will not
11.30 endanger the vulnerable adult or hamper the investigation.

11.31 (b) Upon conclusion of every investigation it conducts, the lead investigative agency
11.32 shall make a final disposition as defined in section 626.5572, subdivision 8.

11.33 (c) When determining whether the facility or individual is the responsible party for
11.34 substantiated maltreatment or whether both the facility and the individual are responsible

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12.1 for substantiated maltreatment, the lead investigative agency shall consider at least the
12.2 following mitigating factors:

12.3 (1) whether the actions of the facility or the individual caregivers were in accordance
12.4 with, and followed the terms of, an erroneous physician order, prescription, resident
12.5 care plan, or directive. This is not a mitigating factor when the facility or caregiver is
12.6 responsible for the issuance of the erroneous order, prescription, plan, or directive or
12.7 knows or should have known of the errors and took no reasonable measures to correct the
12.8 defect before administering care;

12.9 (2) the comparative responsibility between the facility, other caregivers, and
12.10 requirements placed upon the employee, including but not limited to, the facility's
12.11 compliance with related regulatory standards and factors such as the adequacy of facility
12.12 policies and procedures, the adequacy of facility training, the adequacy of an individual's
12.13 participation in the training, the adequacy of caregiver supervision, the adequacy of facility
12.14 staffing levels, and a consideration of the scope of the individual employee's authority; and

12.15 (3) whether the facility or individual followed professional standards in exercising
12.16 professional judgment.

12.17 (d) When substantiated maltreatment is determined to have been committed by
12.18 an individual who is also the facility license holder, both the individual and the facility
12.19 must be determined responsible for the maltreatment, and both the background study
12.20 disqualification standards under section 245C.15, subdivision 4, and the licensing actions
12.21 under section 245A.06 or 245A.07 apply.

12.22 (e) The lead investigative agency shall complete its final disposition within 60
12.23 calendar days. If the lead investigative agency is unable to complete its final disposition
12.24 within 60 calendar days, the lead investigative agency shall notify the following persons
12.25 provided that the notification will not endanger the vulnerable adult or hamper the
12.26 investigation: (1) the vulnerable adult or the vulnerable adult's ~~legal~~ guardian or health
12.27 care agent, when known, if the lead investigative agency knows them to be aware of
12.28 the investigation; and (2) the facility, where applicable. The notice shall contain the
12.29 reason for the delay and the projected completion date. If the lead investigative agency is
12.30 unable to complete its final disposition by a subsequent projected completion date, the
12.31 lead investigative agency shall again notify the vulnerable adult or the vulnerable adult's
12.32 ~~legal~~ guardian or health care agent, when known if the lead investigative agency knows
12.33 them to be aware of the investigation, and the facility, where applicable, of the reason for
12.34 the delay and the revised projected completion date provided that the notification will not
12.35 endanger the vulnerable adult or hamper the investigation. A lead investigative agency's

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13.1 inability to complete the final disposition within 60 calendar days or by any projected
13.2 completion date does not invalidate the final disposition.

13.3 (f) Within ten calendar days of completing the final disposition, the lead investigative
13.4 agency shall provide a copy of the public investigation memorandum under subdivision
13.5 12b, paragraph (b), clause (1), when required to be completed under this section, to the
13.6 following persons: (1) the vulnerable adult, or the vulnerable adult's ~~legal~~ guardian
13.7 or health care agent, if known, unless the lead investigative agency knows that the
13.8 notification would endanger the well-being of the vulnerable adult; (2) the reporter, if the
13.9 reporter requested notification when making the report, provided this notification would
13.10 not endanger the well-being of the vulnerable adult; (3) the alleged perpetrator, if known;
13.11 (4) the facility; and (5) the ombudsman for long-term care, or the ombudsman for mental
13.12 health and developmental disabilities, as appropriate.

13.13 (g) If, as a result of a reconsideration, review, or hearing, the lead investigative
13.14 agency changes the final disposition, or if a final disposition is changed on appeal, the lead
13.15 investigative agency shall notify the parties specified in paragraph (f).

13.16 ~~(g)~~ (h) The lead investigative agency shall notify the vulnerable adult who is the
13.17 subject of the report or the vulnerable adult's ~~legal~~ guardian or health care agent, if known,
13.18 and any person or facility determined to have maltreated a vulnerable adult, of their appeal
13.19 or review rights under this section or section 256.021.

13.20 ~~(h)~~ (i) The lead investigative agency shall routinely provide investigation memoranda
13.21 for substantiated reports to the appropriate licensing boards. These reports must include
13.22 the names of substantiated perpetrators. The lead investigative agency may not provide
13.23 investigative memoranda for inconclusive or false reports to the appropriate licensing
13.24 boards unless the lead investigative agency's investigation gives reason to believe that
13.25 there may have been a violation of the applicable professional practice laws. If the
13.26 investigation memorandum is provided to a licensing board, the subject of the investigation
13.27 memorandum shall be notified and receive a summary of the investigative findings.

13.28 ~~(i)~~ (j) In order to avoid duplication, licensing boards shall consider the findings of
13.29 the lead investigative agency in their investigations if they choose to investigate. This
13.30 does not preclude licensing boards from considering other information.

13.31 ~~(j)~~ (k) The lead investigative agency must provide to the commissioner of human
13.32 services its final dispositions, including the names of all substantiated perpetrators.
13.33 The commissioner of human services shall establish records to retain the names of
13.34 substantiated perpetrators.

13.35 Sec. 13. Minnesota Statutes 2010, section 626.557, subdivision 9d, is amended to read:

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14.1 Subd. 9d. **Administrative reconsideration; review panel.** (a) Except as provided
14.2 under paragraph (e), any individual or facility which a lead investigative agency
14.3 determines has maltreated a vulnerable adult, or the vulnerable adult or an interested
14.4 person acting on behalf of the vulnerable adult, regardless of the lead investigative
14.5 agency's determination, who contests the lead investigative agency's final disposition of an
14.6 allegation of maltreatment, may request the lead investigative agency to reconsider its
14.7 final disposition. The request for reconsideration must be submitted in writing to the lead
14.8 investigative agency within 15 calendar days after receipt of notice of final disposition or,
14.9 if the request is made by an interested person who is not entitled to notice, within 15 days
14.10 after receipt of the notice by the vulnerable adult or the vulnerable adult's ~~legal~~ guardian
14.11 or health care agent. If mailed, the request for reconsideration must be postmarked
14.12 and sent to the lead investigative agency within 15 calendar days of the individual's or
14.13 facility's receipt of the final disposition. If the request for reconsideration is made by
14.14 personal service, it must be received by the lead investigative agency within 15 calendar
14.15 days of the individual's or facility's receipt of the final disposition. An individual who
14.16 was determined to have maltreated a vulnerable adult under this section and who was
14.17 disqualified on the basis of serious or recurring maltreatment under sections 245C.14
14.18 and 245C.15, may request reconsideration of the maltreatment determination and the
14.19 disqualification. The request for reconsideration of the maltreatment determination and the
14.20 disqualification must be submitted in writing within 30 calendar days of the individual's
14.21 receipt of the notice of disqualification under sections 245C.16 and 245C.17. If mailed,
14.22 the request for reconsideration of the maltreatment determination and the disqualification
14.23 must be postmarked and sent to the lead investigative agency within 30 calendar days of
14.24 the individual's receipt of the notice of disqualification. If the request for reconsideration
14.25 is made by personal service, it must be received by the lead investigative agency within 30
14.26 calendar days after the individual's receipt of the notice of disqualification.

14.27 (b) Except as provided under paragraphs (e) and (f), if the lead investigative agency
14.28 denies the request or fails to act upon the request within 15 working days after receiving
14.29 the request for reconsideration, the person or facility entitled to a fair hearing under
14.30 section 256.045, may submit to the commissioner of human services a written request for
14.31 a hearing under that statute. The vulnerable adult, or an interested person acting on behalf
14.32 of the vulnerable adult, may request a review by the Vulnerable Adult Maltreatment
14.33 Review Panel under section 256.021 if the lead investigative agency denies the request
14.34 or fails to act upon the request, or if the vulnerable adult or interested person contests a
14.35 reconsidered disposition. The lead investigative agency shall notify persons who request
14.36 reconsideration of their rights under this paragraph. The request must be submitted

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15.1 in writing to the review panel and a copy sent to the lead investigative agency within
15.2 30 calendar days of receipt of notice of a denial of a request for reconsideration or of a
15.3 reconsidered disposition. The request must specifically identify the aspects of the lead
15.4 investigative agency determination with which the person is dissatisfied.

15.5 (c) If, as a result of a reconsideration or review, the lead investigative agency changes
15.6 the final disposition, it shall notify the parties specified in subdivision 9c, paragraph ~~(d)~~ (f).

15.7 (d) For purposes of this subdivision, "interested person acting on behalf of the
15.8 vulnerable adult" means a person designated in writing by the vulnerable adult to act
15.9 on behalf of the vulnerable adult, or a legal guardian or conservator or other legal
15.10 representative, a proxy or health care agent appointed under chapter 145B or 145C,
15.11 or an individual who is related to the vulnerable adult, as defined in section 245A.02,
15.12 subdivision 13.

15.13 (e) If an individual was disqualified under sections 245C.14 and 245C.15, on
15.14 the basis of a determination of maltreatment, which was serious or recurring, and
15.15 the individual has requested reconsideration of the maltreatment determination under
15.16 paragraph (a) and reconsideration of the disqualification under sections 245C.21 to
15.17 245C.27, reconsideration of the maltreatment determination and requested reconsideration
15.18 of the disqualification shall be consolidated into a single reconsideration. If reconsideration
15.19 of the maltreatment determination is denied and the individual remains disqualified
15.20 following a reconsideration decision, the individual may request a fair hearing under
15.21 section 256.045. If an individual requests a fair hearing on the maltreatment determination
15.22 and the disqualification, the scope of the fair hearing shall include both the maltreatment
15.23 determination and the disqualification.

15.24 (f) If a maltreatment determination or a disqualification based on serious or recurring
15.25 maltreatment is the basis for a denial of a license under section 245A.05 or a licensing
15.26 sanction under section 245A.07, the license holder has the right to a contested case hearing
15.27 under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. As provided
15.28 for under section 245A.08, the scope of the contested case hearing must include the
15.29 maltreatment determination, disqualification, and licensing sanction or denial of a license.
15.30 In such cases, a fair hearing must not be conducted under section 256.045. Except for
15.31 family child care and child foster care, reconsideration of a maltreatment determination
15.32 under this subdivision, and reconsideration of a disqualification under section 245C.22,
15.33 must not be conducted when:

15.34 (1) a denial of a license under section 245A.05, or a licensing sanction under section
15.35 245A.07, is based on a determination that the license holder is responsible for maltreatment
15.36 or the disqualification of a license holder based on serious or recurring maltreatment;

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

16.3 (3) the license holder appeals the maltreatment determination or disqualification, and
16.4 denial of a license or licensing sanction.

16.5 Notwithstanding clauses (1) to (3), if the license holder appeals the maltreatment
16.6 determination or disqualification, but does not appeal the denial of a license or a licensing
16.7 sanction, reconsideration of the maltreatment determination shall be conducted under
16.8 sections 626.556, subdivision 10i, and 626.557, subdivision 9d, and reconsideration of the
16.9 disqualification shall be conducted under section 245C.22. In such cases, a fair hearing
16.10 shall also be conducted as provided under sections 245C.27, 626.556, subdivision 10i, and
16.11 626.557, subdivision 9d.

16.12 If the disqualified subject is an individual other than the license holder and upon
16.13 whom a background study must be conducted under chapter 245C, the hearings of all
16.14 parties may be consolidated into a single contested case hearing upon consent of all parties
16.15 and the administrative law judge.

16.16 (g) Until August 1, 2002, an individual or facility that was determined by the
16.17 commissioner of human services or the commissioner of health to be responsible for
16.18 neglect under section 626.5572, subdivision 17, after October 1, 1995, and before August
16.19 1, 2001, that believes that the finding of neglect does not meet an amended definition of
16.20 neglect may request a reconsideration of the determination of neglect. The commissioner
16.21 of human services or the commissioner of health shall mail a notice to the last known
16.22 address of individuals who are eligible to seek this reconsideration. The request for
16.23 reconsideration must state how the established findings no longer meet the elements of
16.24 the definition of neglect. The commissioner shall review the request for reconsideration
16.25 and make a determination within 15 calendar days. The commissioner's decision on this
16.26 reconsideration is the final agency action.

16.27 (1) For purposes of compliance with the data destruction schedule under subdivision
16.28 12b, paragraph (d), when a finding of substantiated maltreatment has been changed as
16.29 a result of a reconsideration under this paragraph, the date of the original finding of a
16.30 substantiated maltreatment must be used to calculate the destruction date.

16.31 (2) For purposes of any background studies under chapter 245C, when a
16.32 determination of substantiated maltreatment has been changed as a result of a
16.33 reconsideration under this paragraph, any prior disqualification of the individual under
16.34 chapter 245C that was based on this determination of maltreatment shall be rescinded,
16.35 and for future background studies under chapter 245C the commissioner must not use the
16.36 previous determination of substantiated maltreatment as a basis for disqualification or as a

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17.1 basis for referring the individual's maltreatment history to a health-related licensing board
17.2 under section 245C.31.

17.3 Sec. 14. Minnesota Statutes 2010, section 626.557, subdivision 12b, is amended to
17.4 read:

17.5 Subd. 12b. **Data management.** (a) In performing any of the duties of this section as
17.6 a lead investigative agency, the county social service agency shall maintain appropriate
17.7 records. Data collected by the county social service agency under this section are welfare
17.8 data under section 13.46. Notwithstanding section 13.46, subdivision 1, paragraph (a),
17.9 data under this paragraph that are inactive investigative data on an individual who is a
17.10 vendor of services are private data on individuals, as defined in section 13.02. The identity
17.11 of the reporter may only be disclosed as provided in paragraph (c).

17.12 Data maintained by the common entry point are confidential data on individuals or
17.13 protected nonpublic data as defined in section 13.02. Notwithstanding section 138.163,
17.14 the common entry point shall maintain data for three calendar years after date of receipt
17.15 and then destroy the data unless otherwise directed by federal requirements.

17.16 (b) The commissioners of health and human services shall prepare an investigation
17.17 memorandum for each report alleging maltreatment investigated under this section.
17.18 County social service agencies must maintain private data on individuals but are not
17.19 required to prepare an investigation memorandum. During an investigation by the
17.20 commissioner of health or the commissioner of human services, data collected under this
17.21 section are confidential data on individuals or protected nonpublic data as defined in
17.22 section 13.02. Upon completion of the investigation, the data are classified as provided in
17.23 clauses (1) to (3) and paragraph (c).

17.24 (1) The investigation memorandum must contain the following data, which are
17.25 public:

- 17.26 (i) the name of the facility investigated;
- 17.27 (ii) a statement of the nature of the alleged maltreatment;
- 17.28 (iii) pertinent information obtained from medical or other records reviewed;
- 17.29 (iv) the identity of the investigator;
- 17.30 (v) a summary of the investigation's findings;
- 17.31 (vi) statement of whether the report was found to be substantiated, inconclusive,
17.32 false, or that no determination will be made;
- 17.33 (vii) a statement of any action taken by the facility;
- 17.34 (viii) a statement of any action taken by the lead investigative agency; and

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18.1 (ix) when a lead investigative agency's determination has substantiated maltreatment,
18.2 a statement of whether an individual, individuals, or a facility were responsible for the
18.3 substantiated maltreatment, if known.

18.4 The investigation memorandum must be written in a manner which protects the
18.5 identity of the reporter and of the vulnerable adult and may not contain the names or, to
18.6 the extent possible, data on individuals or private data listed in clause (2).

18.7 (2) Data on individuals collected and maintained in the investigation memorandum
18.8 are private data, including:

18.9 (i) the name of the vulnerable adult;

18.10 (ii) the identity of the individual alleged to be the perpetrator;

18.11 (iii) the identity of the individual substantiated as the perpetrator; and

18.12 (iv) the identity of all individuals interviewed as part of the investigation.

18.13 (3) Other data on individuals maintained as part of an investigation under this section
18.14 are private data on individuals upon completion of the investigation.

18.15 (c) After the assessment or investigation is completed, the name of the reporter
18.16 must be confidential. The subject of the report may compel disclosure of the name of the
18.17 reporter only with the consent of the reporter or upon a written finding by a court that
18.18 the report was false and there is evidence that the report was made in bad faith. This
18.19 subdivision does not alter disclosure responsibilities or obligations under the Rules of
18.20 Criminal Procedure, except that where the identity of the reporter is relevant to a criminal
18.21 prosecution, the district court shall do an in-camera review prior to determining whether
18.22 to order disclosure of the identity of the reporter.

18.23 (d) Notwithstanding section 138.163, data maintained under this section by the
18.24 commissioners of health and human services must be maintained under the following
18.25 schedule and then destroyed unless otherwise directed by federal requirements:

18.26 (1) data from reports determined to be false, maintained for three years after the
18.27 finding was made;

18.28 (2) data from reports determined to be inconclusive, maintained for four years after
18.29 the finding was made;

18.30 (3) data from reports determined to be substantiated, maintained for seven years
18.31 after the finding was made; and

18.32 (4) data from reports which were not investigated by a lead investigative agency
18.33 and for which there is no final disposition, maintained for three years from the date of
18.34 the report.

18.35 (e) The commissioners of health and human services shall each annually report to
18.36 the legislature and the governor on the number and type of reports of alleged maltreatment

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19.1 involving licensed facilities reported under this section, the number of those requiring
19.2 investigation under this section, and the resolution of those investigations. The report
19.3 shall identify:

19.4 (1) whether and where backlogs of cases result in a failure to conform with statutory
19.5 time frames;

19.6 (2) where adequate coverage requires additional appropriations and staffing; and

19.7 (3) any other trends that affect the safety of vulnerable adults.

19.8 (f) Each lead investigative agency must have a record retention policy.

19.9 (g) Lead investigative agencies, prosecuting authorities, and law enforcement
19.10 agencies may exchange not public data, as defined in section 13.02, if the agency or
19.11 authority requesting the data determines that the data are pertinent and necessary to the
19.12 requesting agency in initiating, furthering, or completing an investigation under this
19.13 section. Data collected under this section must be made available to prosecuting authorities
19.14 and law enforcement officials, local county agencies, and licensing agencies investigating
19.15 the alleged maltreatment under this section. The lead investigative agency shall exchange
19.16 not public data with the vulnerable adult maltreatment review panel established in section
19.17 256.021 if the data are pertinent and necessary for a review requested under that section.
19.18 Notwithstanding section 138.17, upon completion of the review, not public data received
19.19 by the review panel must be ~~returned to the lead agency~~ destroyed.

19.20 (h) Each lead investigative agency shall keep records of the length of time it takes to
19.21 complete its investigations.

19.22 (i) A lead investigative agency may notify other affected parties and their authorized
19.23 representative if the lead investigative agency has reason to believe maltreatment has
19.24 occurred and determines the information will safeguard the well-being of the affected
19.25 parties or dispel widespread rumor or unrest in the affected facility.

19.26 (j) Under any notification provision of this section, where federal law specifically
19.27 prohibits the disclosure of patient identifying information, a lead investigative agency may
19.28 not provide any notice unless the vulnerable adult has consented to disclosure in a manner
19.29 which conforms to federal requirements.

19.30 Sec. 15. Minnesota Statutes 2010, section 626.5571, subdivision 1, is amended to read:

19.31 Subdivision 1. **Establishment of team.** A county may establish a multidisciplinary
19.32 adult protection team comprised of the director of the local welfare agency or designees,
19.33 the county attorney or designees, the county sheriff or designees, and representatives of
19.34 health care. In addition, representatives of mental health or other appropriate human

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20.1 service agencies, representatives from local tribal governments, and adult advocate groups
20.2 may be added to the adult protection team.

20.3 Sec. 16. Minnesota Statutes 2010, section 626.5572, subdivision 13, is amended to
20.4 read:

20.5 Subd. 13. **Lead investigative agency.** "Lead investigative agency" is the primary
20.6 administrative agency responsible for investigating reports made under section 626.557.

20.7 (a) The Department of Health is the lead investigative agency for ~~the facilities which~~
20.8 ~~are~~ or services licensed or ~~are~~ required to be licensed as hospitals, home care providers,
20.9 nursing homes, ~~residential care homes~~, boarding care homes, ~~or hospice providers~~,
20.10 residential facilities that are also federally certified as intermediate care facilities that serve
20.11 people with developmental disabilities, or any other facility or service not listed in this
20.12 subdivision that is licensed or required to be licensed by the Department of Health for
20.13 the care of vulnerable adults. "Home care provider" has the meaning provided in section
20.14 144A.43, subdivision 4, and applies when care or services are delivered in the vulnerable
20.15 adult's home, whether a private home or a housing with services establishment registered
20.16 under chapter 144D, including those that offer assisted living services under chapter 144G.

20.17 (b) The Department of Human Services is the lead investigative agency for ~~the~~
20.18 ~~programs~~ facilities or services licensed or required to be licensed as adult day care,
20.19 adult foster care, programs for people with developmental disabilities, family adult day
20.20 services, mental health programs, ~~or mental health clinics~~, chemical ~~health~~ dependency
20.21 programs, the Minnesota sex offender program, or any other facility or service not listed
20.22 in this subdivision that is licensed or required to be licensed by the Department of Human
20.23 Services. The Department of Human Services is the lead investigative agency for services
20.24 provided to vulnerable adults by day training and habilitation and supported employment
20.25 services providers who are reimbursed on the basis of holding a qualifying Department of
20.26 Human Services license or certification.

20.27 (c) The county social service agency or its designee is the lead investigative agency
20.28 for all other reports, including, but not limited to, reports involving vulnerable adults
20.29 receiving services from ~~an unlicensed~~ a personal care provider organization under section
20.30 256B.0659.

20.31 Sec. 17. **REVISOR'S INSTRUCTION.**

20.32 The revisor of statutes shall change the terms "lead agency" and "lead agency's" to
20.33 "lead investigative agency" or "lead investigative agency's" wherever they appear in
20.34 Minnesota Statutes, sections 13A.02; 256.045; 626.557; and 626.5572.