

Vulnerable Adult Justice Project Work Sheet for 2011 Legislative Priorities

Criminal Code Committee	Action	Decision 2011
<p>Minn. Stat. Section 609.233 CRIMINAL NEGLECT.</p> <p>Retains the gross misdemeanor language of current law. New language adds a definition and penalties for deprivation of a vulnerable adult's necessities when the caregiver is reasonably able to make the necessary provisions, with resulting substantial or great bodily harm. Extends the exemptions currently in law for criminal neglect to the felony provision. See Attachment #1 for language.</p>	<p>Presentation to VAJP 9/17/10</p>	
<p>Minn. Stat. Section 243.166, subdivision 1b. PREDATORY OFFENDER REGISTRATION</p> <p>Bill proposes to make criminal abuse of a vulnerable adult under section 609.2325 a registrable offense under the predatory offender registration law. See Attachment #2 for bill language as introduced.</p>	<p>Introduced and heard in the House as a VAJP proposal.</p>	
<p>Minn. Stat. Section 609.2231 and new subdivision 609.224, subdivision 2. CRIMINAL PENALTY FOR ASSAULT of a VULNERABLE ADULT</p> <p>Bill proposes to make uniform the charge and penalty for assault of a vulnerable adult. There is no change to current law concerning assault by a caregiver. This pertains to assailants who are not caregivers but who either know or have reason to know that the victim is a vulnerable adult. See Attachment #3 for bill language as introduced.</p>	<p>Introduced and heard in the House as a VAJP proposal</p>	

<p>Protections Committee Proposals</p>		
<p>Minn. Stat. Sec. 256.021. VULNERABLE ADULT MALTREATMENT REVIEW PANEL.</p> <p>Corrects title of long-term care ombudsman program. Amplifies panel’s request for pertinent records to a written request made to the supervisor of the investigator who conducted the investigation under review. Defines “specific rationale” for requests that lead agencies respond to the panel’s recommendations. Clarifies communication of the decision to the vulnerable adult or the interested person who requested the review. See <u>Attachment #4</u> for language.</p>	<p>Presented to the VAJP for discussion on 7/09/10.</p>	
<p>Minn. Stat. Sec. 256.045. ADMINISTRATIVE AND JUDICIAL REVIEW OF HUMAN SERVICE MATTERS.</p> <p>Provides a new opportunity for a vulnerable adult who is the subject of a substantiated maltreatment case to receive notice (and for certain other legal representatives to receive notice) in the event that the finding is challenged in a human services appeal. [Committee seeks drafting advice to assure that the same would be true of a hearing before an Administrative Law Judge.) See <u>Attachment #5</u> for language.</p>	<p>Presented to the VAJP for discussion on 9/17/10.</p>	
<p>Minn. Stat. Sec. 626.557, Subd. 9c. VULNERABLE ADULT ACT, Lead Agency Notifications</p> <p>Adds health care agent to those entitled, under circumstances in current law, to receive notice of the final disposition and delays in an investigation. Adds that if the lead (investigative) agency changes its final disposition following a reconsideration or review, the vulnerable adult, guardian, and health care agent shall be notified. Limitations in current law (VA or delegates’ awareness of the investigation, well being of the VA) are not changed. See <u>Attachment #6</u> for language.</p>	<p>Presented to the VAJP for discussion on 8/13/10.</p>	

Jurisdictional Issues Committee Proposals		
<p>Minnesota Statutes – multiple sections that related to VA investigations</p> <p>Changes terminology of “Lead Agency” to “Lead Investigative Agency.” See Attachment #7 for language. May ultimately be drafted as an instruction to the Revisor rather than to copy all these pages.</p>	<p>Presented to the VAJP for discussion on 6/11/10.</p>	
<p>Minn. Stat. Sec. 626.5571, Subd 1. MULTIDISCIPLINARY ADULT PROTECTION TEAM.</p> <p>Adds “representatives from local tribal governments” to the list of entities counties may ask to participate in multidisciplinary adult protection teams. See Attachment #8 for language.</p>	<p>Presented to the VAJP for discussion on 7/09/10.</p>	
<p>Minn. Stat. Sec. 626.5572 VULNERABLE ADULT ACT DEFINITIONS</p> <p>Subd. 13 establishes the changed terminology of “Lead Agency” to “Lead Investigative Agency” and amends each of the three LIA definitions (Department of Health, Department of Human Services, Counties). The amended definitions describe the jurisdictions of each in plainer language than current law. This change supports both Common Entry Point education and Public Awareness, while preserving enough elasticity in the definitions for agencies to cover new and emerging services for vulnerable adults. See Appendix #9 for language.</p>	<p>Presented to the VAJP for discussion on 9/17/2010.</p>	

Attachment #1 – “Extreme Neglect / Deprivation” of a vulnerable adult

609.233 CRIMINAL NEGLECT.

Subdivision 1. **Crime Gross Misdemeanor.** A caregiver or operator who intentionally neglects a vulnerable adult or knowingly permits conditions to exist that result in the abuse or neglect of a vulnerable adult is guilty of a gross misdemeanor. For purposes of this section, "abuse" has the meaning given in section 626.5572, subdivision 2, and "neglect" means a failure to provide a vulnerable adult with necessary food, clothing, shelter, health care, or supervision.

Subd. 2. **Felony.** A caregiver or operator who intentionally deprives a vulnerable adult of necessary food, clothing, shelter, health care, or supervision, or intentionally forsakes a duty to provide food, clothing, shelter, health care, or supervision when the caregiver or operator is reasonably able to make the necessary provisions and causes substantial or great bodily harm is guilty of a felony and may be sentenced as provided in subdivision 2a.

Subd. 2a. **Penalties for Felony Violation.** (a) A person who violates subdivision 2 and causes substantial bodily harm may be sentenced to imprisonment of not more than two years or to payment of a fine of not more than \$5,000.00, or both. (b) A person who violates subdivision 2 and causes great bodily harm may be sentenced to imprisonment of not more than five years or to a payment of a fine not more than \$10,000.00, or both.

Subd. 2 3. **Exemptions.** A vulnerable adult is not neglected or deprived, and a caregiver has not forsaken a duty, under subdivisions 1 or 2 above for the sole reason that:

(1) the vulnerable adult or a person with authority to make health care decisions for the vulnerable adult under sections 144.651, 144A.44, 253B.03, or 524.5-101 to 524.5-502, or chapter 145B, 145C, or 252A, refuses consent or withdraws consent, consistent with that authority and within the boundary of reasonable medical practice, to any therapeutic conduct, including any care, service, or procedure to diagnose, maintain, or treat the physical or mental condition of the vulnerable adult or, where permitted under law, to provide nutrition and hydration parenterally or through intubation; this paragraph does not enlarge or diminish rights otherwise held under law by:

- (i) a vulnerable adult or a person acting on behalf of a vulnerable adult, including an involved family member, to consent to or refuse consent for therapeutic conduct; or
- (ii) a caregiver to offer or provide or refuse to offer or provide therapeutic conduct;

(2) the vulnerable adult, a person with authority to make health care decisions for the vulnerable adult, or a caregiver in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the vulnerable adult in lieu of medical care, provided that this is consistent with the prior practice or belief of the vulnerable adult or with the expressed intentions of the vulnerable adult; or

(3) the vulnerable adult, who is not impaired in judgment or capacity by mental or emotional dysfunction or undue influence, engages in consensual sexual contact with:

- (i) a person including a facility staff person when a consensual sexual personal relationship existed prior to the caregiving relationship; or
- (ii) a personal care attendant, regardless of whether the consensual sexual personal relationship existed prior to the caregiving relationship.

Attachment #2 – Predatory Offender Registry

H.F. No. 3276/S.F.3194, as introduced - 86th Legislative Session (2009-2010) Posted on Mar 01, 2010

1.1 A bill for an act

1.2 relating to public safety; **making the crime of criminal abuse of a vulnerable adult**

1.3 **a registrable offense under the predatory offender registration law;** amending

1.4 Minnesota Statutes 2009 Supplement, section 243.166, subdivision 1b.

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

1.6 Section 1. Minnesota Statutes 2009 Supplement, section 243.166, subdivision 1b,

1.7 is amended to read:

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

1.9 (1) the person was charged with or petitioned for a felony violation of or attempt to

1.10 violate, or aiding, abetting, or conspiracy to commit, any of the following, and convicted

1.11 of or adjudicated delinquent for that offense or another offense arising out of the same

1.12 set of circumstances:

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

1.14 (ii) kidnapping under section 609.25;

1.15 (iii) criminal sexual conduct under section 609.342; 609.343; 609.344; 609.345;

1.16 609.3451, subdivision 3 ; or 609.3453; or

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

1.18 (2) the person was charged with or petitioned for a violation of, or attempt to

1.19 violate, or aiding, abetting, or ~~conspiracy~~ conspiring to commit criminal abuse in violation

1.20 of section 609.2325, subdivision 1, paragraph (b), false imprisonment in violation of

1.21 section 609.255, subdivision 2; soliciting a minor to engage in prostitution in violation of

1.22 section 609.322 or 609.324; soliciting a minor to engage in sexual conduct in violation of

1.23 section 609.352; using a minor in a sexual performance in violation of section 617.246;

1.24 or possessing pornographic work involving a minor in violation of section 617.247, and
2.1 convicted of or adjudicated delinquent for that offense or another offense arising out
2.2 of the same set of circumstances;
2.3 (3) the person was sentenced as a patterned sex offender under section 609.3455,
2.4 subdivision 3a ; or
2.5 (4) the person was convicted of or adjudicated delinquent for, including pursuant
2.6 to a court martial, violating a law of the United States, including the Uniform Code of
2.7 Military Justice, similar to the offenses described in clause (1), (2), or (3).
2.8 (b) A person also shall register under this section if:
2.9 (1) the person was convicted of or adjudicated delinquent in another state for an
2.10 offense that would be a violation of a law described in paragraph (a) if committed in
2.11 this state;
2.12 (2) the person enters this state to reside, work, or attend school, or enters this state
2.13 and remains for 14 days or longer; and
2.14 (3) ten years have not elapsed since the person was released from confinement
2.15 or, if the person was not confined, since the person was convicted of or adjudicated
2.16 delinquent for the offense that triggers registration, unless the person is subject to a longer
2.17 registration period under the laws of another state in which the person has been convicted
2.18 or adjudicated, or is subject to lifetime registration.
2.19 If a person described in this paragraph is subject to a longer registration period
2.20 in another state or is subject to lifetime registration, the person shall register for that
2.21 time period regardless of when the person was released from confinement, convicted, or
2.22 adjudicated delinquent.
2.23 (c) A person also shall register under this section if the person was committed
2.24 pursuant to a court commitment order under section 253B.185 or Minnesota Statutes
2.25 1992, section 526.10, or a similar law of another state or the United States, regardless of
2.26 whether the person was convicted of any offense.
2.27 (d) A person also shall register under this section if:
2.28 (1) the person was charged with or petitioned for a felony violation or attempt to
2.29 violate any of the offenses listed in paragraph (a), clause (1), or a similar law of another

- 2.30 state or the United States, or the person was charged with or petitioned for a violation of
2.31 any of the offenses listed in paragraph (a), clause (2), or a similar law of another state or
2.32 the United States;
2.33 (2) the person was found not guilty by reason of mental illness or mental deficiency
2.34 after a trial for that offense, or found guilty but mentally ill after a trial for that offense, in
2.35 states with a guilty but mentally ill verdict; and
3.1 (3) the person was committed pursuant to a court commitment order under section
3.2 253B.18 or a similar law of another state or the United States.
3.3 **EFFECTIVE DATE.** This section is effective August 1, 2010, and applies to crimes
3.4 committed on or after that date.
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Attachment #3 – Criminal Assault of a Vulnerable Adult

H.F. No. 3333/S.F.3195, as introduced - 86th Legislative Session (2009-2010) Posted on Mar 03, 2010

- 1.1 A bill for an act
1.2 relating to public safety; **increasing the criminal penalty for assaulting a**
1.3 **vulnerable adult;** providing criminal penalties; amending Minnesota Statutes
1.4 2008, sections 609.2231, by adding a subdivision; 609.224, subdivision 2.
1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.6 Section 1. Minnesota Statutes 2008, section 609.2231, is amended by adding a
1.7 subdivision to read:
1.8 Subd. 8. **Vulnerable adults.** (a) As used in this subdivision, "vulnerable adult" has
1.9 the meaning given in section 609.232, subdivision 11.
1.10 (b) Whoever assaults and inflicts demonstrable bodily harm on a vulnerable adult,
1.11 knowing or having reason to know that the person is a vulnerable adult, is guilty of a
1.12 gross misdemeanor.
1.13 **EFFECTIVE DATE.** This section is effective August 1, 2010, and applies to crimes
1.14 committed on or after that date.

1.15 Sec. 2. Minnesota Statutes 2008, section 609.224, subdivision 2, is amended to read:
1.16 Subd. 2. **Gross misdemeanor.** (a) Whoever violates the provisions of subdivision 1
1.17 against the same victim within ten years of a previous qualified domestic violence-related
1.18 offense conviction or adjudication of delinquency is guilty of a gross misdemeanor and
1.19 may be sentenced to imprisonment for not more than one year or to payment of a fine of
1.20 not more than \$3,000, or both.
1.21 (b) Whoever violates the provisions of subdivision 1 within three years of a previous
1.22 qualified domestic violence-related offense conviction or adjudication of delinquency is
2.1 guilty of a gross misdemeanor and may be sentenced to imprisonment for not more than
2.2 one year or to payment of a fine of not more than \$3,000, or both.
2.3 ~~(c) A caregiver, as defined in section 609.232, who is an individual and who violates~~
2.4 ~~the provisions of subdivision 1 against a vulnerable adult, as defined in section 609.232, is~~
2.5 ~~guilty of a gross misdemeanor and may be sentenced to imprisonment for not more than~~
2.6 ~~one year or to payment of a fine of not more than \$3,000, or both.~~
2.7 **EFFECTIVE DATE.** This section is effective August 1, 2010, and applies to crimes
2.8 committed on or after that date.

Attachment #4 Vulnerable Adult Maltreatment Review Panel

Minn. Stat. Sec. 256.021. VULNERABLE ADULT MALTREATMENT REVIEW PANEL.

Subdivision 1. **Creation.**

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

(b) The review panel consists of:

- (1) the commissioners of health and human services or their designees;
- (2) the ~~ombudsperson~~ ombudsman for ~~elder Minnesotans~~ long-term care and ~~ombudsperson~~ ombudsman for mental health and

developmental disabilities, or their designees; and
(3) a member of the board on aging, appointed by the board.

Subd. 2. Review procedure.

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

(b) Within 30 days of the review under this section, the panel shall notify the director or manager of the lead investigative agency and the vulnerable adult or interested person who requested the review as to whether the panel agrees concurs with the final disposition or whether the lead investigative agency must reconsider the final disposition. If the panel determines that the lead investigative agency must reconsider the final disposition, the panel must make specific investigative recommendations to the director or manager of the lead investigative agency. Within 30 days the lead investigative agency shall conduct a review and report back to the panel with its determination and the specific rationale for its final disposition.

For purposes of this section, "specific rationale" includes, but is not limited to, the lead investigative agency responding with detail to each of the investigative recommendations from the panel.

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

Subd. 3. Report.

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

Subd. 4. Data.

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

Attachment #5 Protections for vulnerable adults in cases where substantiated findings of maltreatment are challenged

Minn. Stat. Sec. 256.045. ADMINISTRATIVE AND JUDICIAL REVIEW OF HUMAN SERVICE MATTERS.

Subd. 4. Conduct of hearings.

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

(b) The private data obtained by subpoena in a hearing under subdivision 3, paragraph (a), clause (4), (8), or (9), must be subject to a protective order which prohibits its disclosure for any other purpose outside the hearing provided for in this section without prior order of the district court. Disclosure without court order is punishable by a sentence of not more than 90 days imprisonment or a fine of not more than \$1,000, or both. These restrictions on the use of private data do not prohibit access to the data under section 13.03, subdivision 6. Except for appeals under subdivision 3, paragraph (a), clauses (4), (5), (8), and (9), upon request, the county agency shall provide reimbursement for transportation, child care, photocopying, medical assessment, witness fee, and other necessary and reasonable costs incurred by the applicant, recipient, or former recipient in connection with the appeal. All evidence, except that privileged by law, commonly accepted by reasonable people in the conduct of their affairs as having probative value with respect to the issues shall be submitted at the hearing and such hearing shall not be "a contested case" within the meaning of section 14.02, subdivision 3. The agency must present its evidence prior to or at the hearing, and may not submit evidence after the hearing except by agreement of the parties at the hearing, provided the petitioner has the opportunity to respond.

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

(d) For hearings under subdivision 3, paragraph (a), clauses (4) and (10), the vulnerable adult who is the subject of the substantiated maltreatment and, if known, the guardian or health care agent of the vulnerable adult shall receive notice of the hearing from the human services referee.

Attachment #6 –

Minn. Stat. § 626.557. REPORTING OF MALTREATMENT OF VULNERABLE ADULTS. Notification of change in final disposition.

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

(e) The lead investigative agency shall complete its final disposition within 60 calendar days. If the lead investigative agency is unable to complete its final disposition within 60 calendar days, the lead investigative agency shall notify the following persons provided that the notification will not endanger the vulnerable adult or hamper the investigation:

- (1) the vulnerable adult or the vulnerable adult's ~~legal~~ guardian or health care agent, when known, if the lead investigative agency knows them to be aware of the investigation; and
- (2) the facility, where applicable.

The notice shall contain the reason for the delay and the projected completion date. If the lead investigative agency is unable to complete its final disposition by a subsequent projected completion date, the lead investigative agency shall again notify the vulnerable adult or the vulnerable adult's ~~legal~~ guardian or health care agent, when known if the lead agency knows them to be aware of the investigation, and the facility, where applicable, of the reason for the delay and the revised projected completion date provided that the notification will not endanger the vulnerable adult or hamper the investigation. A lead investigative agency's inability to complete the final disposition within 60 calendar days or by any projected completion date does not invalidate the final disposition.

(f) Within ten calendar days of completing the final disposition, the lead investigative agency shall provide a copy of the public investigation memorandum under subdivision 12b, paragraph (b), clause (1), when required to be completed under this section, to the following persons:

- (1) the vulnerable adult, or the vulnerable adult's ~~legal~~ guardian or health care agent, if known unless the lead investigative agency knows that the notification would endanger the well-being of the vulnerable adult;
- (2) the reporter, if the reporter requested notification when making the report, provided this notification would not endanger the well-being of the vulnerable adult;
- (3) the alleged perpetrator, if known;
- (4) the facility; and
- (5) the ombudsman for long-term care, or the ombudsman for mental health and developmental disabilities, as appropriate.

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

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

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

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

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

Subd. 9d. Administrative reconsideration; review panel.

(a) Except as provided under paragraph (e), any individual or facility which a lead investigative agency determines has maltreated a vulnerable adult, or the vulnerable adult or an interested person acting on behalf of the vulnerable adult, regardless of the lead investigative agency's determination, who contests the lead investigative agency's final disposition of an allegation of maltreatment, may request the lead investigative agency to reconsider its final disposition. The request for reconsideration must be submitted in writing to the lead investigative agency within 15 calendar days after receipt of notice of final disposition or, if the request is made by an interested person who is not entitled to notice, within 15 days after receipt of the notice by the vulnerable adult or the vulnerable adult's ~~legal~~ guardian or health care agent. If mailed, the request for reconsideration must be postmarked and sent to the lead investigative agency within 15 calendar days of the individual's or facility's receipt of the final disposition. If the request for reconsideration is made by personal service, it must be received by the lead investigative agency within 15 calendar days of the individual's or facility's receipt of the final disposition. An individual who was determined to have maltreated a vulnerable adult under this section and who was disqualified on the basis of serious or recurring maltreatment under sections 245C.14 and 245C.15, may request reconsideration of the maltreatment determination and the disqualification. The request for reconsideration of the maltreatment determination and the disqualification must be submitted in writing within 30 calendar days of the individual's receipt of the notice of disqualification under sections 245C.16 and 245C.17. If mailed, the request for reconsideration of the maltreatment determination and the disqualification must be postmarked and sent to the lead investigative agency within 30 calendar days of the individual's receipt of the notice of disqualification. If the request for reconsideration is made by personal service, it must be received by the lead investigative agency within 30 calendar days after the individual's receipt of the notice of disqualification.

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

Attachment #7 – Various Sections of MN Law - Changing Terminology of “Lead Agency” to “Lead Investigative Agency”

Minn. Stat. § 13A.02. ACCESS TO FINANCIAL RECORDS BY GOVERNMENT AUTHORITIES PROHIBITED.

Subdivision 1. Access by government.

Except as authorized by this chapter, no government authority may have access to, or obtain copies of, or the information contained in, the financial records of any customer from a financial institution unless the financial records are reasonably described and:

- (1) the customer has authorized the disclosure;
- (2) the financial records are disclosed in response to a search warrant;
- (3) the financial records are disclosed in response to a judicial or administrative subpoena;
- (4) the financial records are disclosed to law enforcement, a lead investigative agency as defined in section 626.5572, subdivision 13, or prosecuting authority that is investigating financial exploitation of a vulnerable adult in response to a judicial subpoena or administrative subpoena under section 388.23; or
- (5) the financial records are disclosed pursuant to section 609.535 or other statute or rule.

Minn. Stat. § 144.7065. FACILITY REQUIREMENTS TO REPORT, ANALYZE, AND CORRECT.

Subd. 10. Relation to other law; data classification.

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

Minn. Stat. § 256.021. VULNERABLE ADULT MALTREATMENT REVIEW PANEL.

Subdivision 1. Creation.

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

(b) The review panel consists of:

- (1) the commissioners of health and human services or their designees;
- (2) the ~~ombudsperson~~ ombudsman for ~~elder Minnesotans~~ long-term care and ~~ombudsperson~~ ombudsman for mental health and

developmental disabilities, or their designees; and
(3) a member of the board on aging, appointed by the board.

Subd. 2. Review procedure.

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

(b) Within 30 days of the review under this section, the panel shall notify the director or manager of the lead investigative agency and the vulnerable adult or interested person who requested the review as to whether the panel agrees concurs with the final disposition or whether the lead investigative agency must reconsider the final disposition. If the panel determines that the lead investigative agency must reconsider the final disposition, the panel must make specific investigative recommendations to the director or manager of the lead investigative agency. Within 30 days the lead investigative agency shall conduct a review and report back to the panel with its determination and the specific rationale for its final disposition.

For purposes of this section, "specific rationale" includes, but is not limited to, the lead investigative agency responding with detail to each of the investigative recommendations from the panel.

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

Subd. 3. Report.

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

Minn. Stat. § 256.045. ADMINISTRATIVE AND JUDICIAL REVIEW OF HUMAN SERVICE MATTERS.

Subd. 3. State agency hearings.

(a) State agency hearings are available for the following:

- (1) any person applying for, receiving or having received public assistance, medical care, or a program of social services granted by the state agency or a county agency or the federal Food Stamp Act whose application for assistance is denied, not acted upon with reasonable promptness, or whose assistance is suspended, reduced, terminated, or claimed to have been incorrectly paid;
- (2) any patient or relative aggrieved by an order of the commissioner under section 252.27;
- (3) a party aggrieved by a ruling of a prepaid health plan;
- (4) except as provided under chapter 245C, any individual or facility determined by a lead investigative agency to have maltreated a vulnerable adult under section 626.557 after they have exercised their right to administrative reconsideration under section 626.557;
- (5) any person whose claim for foster care payment according to a placement of the child resulting from a child protection assessment under section 626.556 is denied or not acted upon with reasonable promptness, regardless of funding source;
- (6) any person to whom a right of appeal according to this section is given by other provision of law;
- (7) an applicant aggrieved by an adverse decision to an application for a hardship waiver under section 256B.15;
- (8) an applicant aggrieved by an adverse decision to an application or redetermination for a Medicare Part D prescription drug subsidy under section 256B.04, subdivision 4a;
- (9) except as provided under chapter 245A, an individual or facility determined to have maltreated a minor under section 626.556, after the individual or facility has exercised the right to administrative reconsideration under section 626.556;
- (10) except as provided under chapter 245C, an individual disqualified under sections 245C.14 and 245C.15, which has not been set aside under sections 245C.22 and 245C.23, on the basis of serious or recurring maltreatment; a preponderance of the evidence that the individual has committed an act or acts that meet the definition of any of the crimes listed in section 245C.15, subdivisions 1 to 4; or for failing to make reports required under section 626.556, subdivision 3, or 626.557, subdivision 3. Hearings regarding a maltreatment determination under clause (4) or (9) and a disqualification under this clause in which the basis for a disqualification is serious or recurring maltreatment, which has not been set aside under sections 245C.22 and 245C.23, shall be consolidated into a single fair hearing. In such cases, the scope of review by the human services referee shall include both the maltreatment determination and the disqualification. The failure to exercise the right to an administrative reconsideration shall not be a bar to a hearing under this section if federal law provides an individual the right to a hearing to dispute a finding of maltreatment. Individuals and organizations specified in this section may contest the specified action, decision, or final disposition before the state agency by submitting a written request for a hearing to the state agency within 30 days after receiving written notice of the action, decision, or final disposition, or within 90 days of such written notice if the applicant, recipient, patient, or relative shows good cause why the request was not submitted within the 30-day time limit; or
- (11) any person with an outstanding debt resulting from receipt of public assistance, medical care, or the federal Food Stamp Act who is contesting a setoff claim by the Department of Human Services or a county agency. The scope of the appeal is the validity of the claimant agency's intention to request a setoff of a refund under chapter 270A against the debt.

Minn. Stat. § 518.165. GUARDIANS FOR MINOR CHILDREN.

Subd. 5. Procedure, criminal history, and maltreatment records background study.

(d) Notwithstanding section 626.556, subdivision 10f, or 626.557, subdivision 12b, if the commissioner or county lead agency or lead investigative agency has information that a person on whom a background study was previously done under this section has been determined to be a

perpetrator of maltreatment of a minor or vulnerable adult, the commissioner or the county may provide this information to the court that requested the background study.

Minn. Stat. § 524.5-118. BACKGROUND STUDY.

Subd. 2. Procedure; criminal history and maltreatment records background check.

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

Minn. Stat. § 626.557. REPORTING OF MALTREATMENT OF VULNERABLE ADULTS.

Subd. 3. Timing of report.

(a) A mandated reporter who has reason to believe that a vulnerable adult is being or has been maltreated, or who has knowledge that a vulnerable adult has sustained a physical injury which is not reasonably explained shall immediately report the information to the common entry point. If an individual is a vulnerable adult solely because the individual is admitted to a facility, a mandated reporter is not required to report suspected maltreatment of the individual that occurred prior to admission, unless:

(1) the individual was admitted to the facility from another facility and the reporter has reason to believe the vulnerable adult was maltreated in the previous facility; or

(2) the reporter knows or has reason to believe that the individual is a vulnerable adult as defined in section 626.5572, subdivision 21, clause (4).

(b) A person not required to report under the provisions of this section may voluntarily report as described above.

(c) Nothing in this section requires a report of known or suspected maltreatment, if the reporter knows or has reason to know that a report has been made to the common entry point.

(d) Nothing in this section shall preclude a reporter from also reporting to a law enforcement agency.

(e) A mandated reporter who knows or has reason to believe that an error under section 626.5572, subdivision 17, paragraph (c), clause (5), occurred must make a report under this subdivision. If the reporter or a facility, at any time believes that an investigation by a lead investigative agency will determine or should determine that the reported error was not neglect according to the criteria under section 626.5572, subdivision 17, paragraph (c), clause (5), the reporter or facility may provide to the common entry point or directly to the lead investigative agency information

explaining how the event meets the criteria under section 626.5572, subdivision 17, paragraph (c), clause (5). The lead investigative agency shall consider this information when making an initial disposition of the report under subdivision 9c.

Subd. 5. Immunity; protection for reporters.

- (a) A person who makes a good faith report is immune from any civil or criminal liability that might otherwise result from making the report, or from participating in the investigation, or for failure to comply fully with the reporting obligation under section 609.234 or 626.557, subdivision 7.
- (b) A person employed by a lead investigative agency or a state licensing agency who is conducting or supervising an investigation or enforcing the law in compliance with this section or any related rule or provision of law is immune from any civil or criminal liability that might otherwise result from the person's actions, if the person is acting in good faith and exercising due care.
- (c) A person who knows or has reason to know a report has been made to a common entry point and who in good faith participates in an investigation of alleged maltreatment is immune from civil or criminal liability that otherwise might result from making the report, or from failure to comply with the reporting obligation or from participating in the investigation.
- (d) The identity of any reporter may not be disclosed, except as provided in subdivision 12b.
- (e) For purposes of this subdivision, "person" includes a natural person or any form of a business or legal entity.

Subd. 5a. Financial institution cooperation.

Financial institutions shall cooperate with a lead investigative agency, law enforcement, or prosecuting authority that is investigating maltreatment of a vulnerable adult and comply with reasonable requests for the production of financial records as authorized under section 13A.02, subdivision 1. Financial institutions are immune from any civil or criminal liability that might otherwise result from complying with this subdivision.

Subd. 9. Common entry point designation.

- (a) Each county board shall designate a common entry point for reports of suspected maltreatment. Two or more county boards may jointly designate a single common entry point. The common entry point is the unit responsible for receiving the report of suspected maltreatment under this section.
- (b) The common entry point must be available 24 hours per day to take calls from reporters of suspected maltreatment. The common entry point shall use a standard intake form that includes:
 - (1) the time and date of the report;
 - (2) the name, address, and telephone number of the person reporting;
 - (3) the time, date, and location of the incident;
 - (4) the names of the persons involved, including but not limited to, perpetrators, alleged victims, and witnesses;
 - (5) whether there was a risk of imminent danger to the alleged victim;
 - (6) a description of the suspected maltreatment;
 - (7) the disability, if any, of the alleged victim;

- (8) the relationship of the alleged perpetrator to the alleged victim;
- (9) whether a facility was involved and, if so, which agency licenses the facility;
- (10) any action taken by the common entry point;
- (11) whether law enforcement has been notified;
- (12) whether the reporter wishes to receive notification of the initial and final reports; and
- (13) if the report is from a facility with an internal reporting procedure, the name, mailing address, and telephone number of the person who initiated the report internally.

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

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

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

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

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

Subd. 9a. Evaluation and referral of reports made to common entry point unit.

The common entry point must screen the reports of alleged or suspected maltreatment for immediate risk and make all necessary referrals as follows:

- (1) if the common entry point determines that there is an immediate need for adult protective services, the common entry point agency shall immediately notify the appropriate county agency;
- (2) if the report contains suspected criminal activity against a vulnerable adult, the common entry point shall immediately notify the appropriate law enforcement agency;
- (3) the common entry point shall refer all reports of alleged or suspected maltreatment to the appropriate lead investigative agency as soon as possible, but in any event no longer than two working days; and
- (4) if the report contains information about a suspicious death, the common entry point shall immediately notify the appropriate law enforcement agencies, the local medical examiner, and the ombudsman for mental health and developmental disabilities as established under section 245.92. Law enforcement agencies shall coordinate with the local medical examiner and the ombudsman as provided by law.

Subd. 9b. Response to reports.

Law enforcement is the primary agency to conduct investigations of any incident in which there is reason to believe a crime has been committed. Law enforcement shall initiate a response immediately. If the common entry point notified a county agency for adult protective services, law enforcement shall cooperate with that county agency when both agencies are involved and shall exchange data to the extent authorized in subdivision 12b, paragraph (g). County adult protection shall initiate a response immediately. Each lead investigative agency shall complete the investigative process for reports within its jurisdiction. A lead investigative agency, county, adult protective agency, licensed facility, or law enforcement agency shall cooperate in coordinating its investigation with other agencies and may assist another agency upon request within the limits of its resources and expertise and shall exchange data to the extent authorized in subdivision 12b, paragraph (g). The lead investigative agency shall obtain the results of any investigation conducted by law enforcement officials. The lead investigative agency has the right to enter facilities and inspect and copy records as part of investigations. The lead investigative agency has access to not public data, as defined in section 13.02, and medical records under sections 144.291 to 144.298, that are maintained by facilities to the extent necessary to conduct its investigation. Each lead investigative agency shall develop guidelines for prioritizing reports for investigation.

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

- (a) Upon request of the reporter, the lead investigative agency shall notify the reporter that it has received the report, and provide information on the initial disposition of the report within five business days of receipt of the report, provided that the notification will not endanger the vulnerable adult or hamper the investigation.
- (b) Upon conclusion of every investigation it conducts, the lead investigative agency shall make a final disposition as defined in section 626.5572, subdivision 8.
- (c) When determining whether the facility or individual is the responsible party for substantiated maltreatment or whether both the facility and the individual are responsible for substantiated maltreatment, the lead investigative agency shall consider at least the following mitigating factors:
- (1) whether the actions of the facility or the individual caregivers were in accordance with, and followed the terms of, an erroneous physician order, prescription, resident care plan, or directive. This is not a mitigating factor when the facility or caregiver is responsible for the issuance of the erroneous order, prescription, plan, or directive or knows or should have known of the errors and took no reasonable measures to correct the defect before administering care;
 - (2) the comparative responsibility between the facility, other caregivers, and requirements placed upon the employee, including but not limited to, the facility's compliance with related regulatory standards and factors such as the adequacy of facility policies and procedures, the adequacy of facility training, the adequacy of an individual's participation in the training, the adequacy of caregiver supervision, the adequacy of facility staffing levels, and a consideration of the scope of the individual employee's authority; and
 - (3) whether the facility or individual followed professional standards in exercising professional judgment.
- (d) When substantiated maltreatment is determined to have been committed by an individual who is also the facility license holder, both the individual and the facility must be determined responsible for the maltreatment, and both the background study disqualification standards under section 245C.15, subdivision 4, and the licensing actions under section 245A.06 or 245A.07 apply.

(e) The lead investigative agency shall complete its final disposition within 60 calendar days. If the lead investigative agency is unable to complete its final disposition within 60 calendar days, the lead investigative agency shall notify the following persons provided that the notification will not endanger the vulnerable adult or hamper the investigation:

- (1) the vulnerable adult or the vulnerable adult's legal guardian or health care agent, when known, if the lead investigative agency knows them to be aware of the investigation; and
- (2) the facility, where applicable.

The notice shall contain the reason for the delay and the projected completion date. If the lead investigative agency is unable to complete its final disposition by a subsequent projected completion date, the lead investigative agency shall again notify the vulnerable adult or the vulnerable adult's legal guardian or health care agent, when known if the lead investigative agency knows them to be aware of the investigation, and the facility, where applicable, of the reason for the delay and the revised projected completion date provided that the notification will not endanger the vulnerable adult or hamper the investigation. A lead investigative agency's inability to complete the final disposition within 60 calendar days or by any projected completion date does not invalidate the final disposition.

(f) Within ten calendar days of completing the final disposition, the lead investigative agency shall provide a copy of the public investigation memorandum under subdivision 12b, paragraph (b), clause (1), when required to be completed under this section, to the following persons:

- (1) the vulnerable adult, or the vulnerable adult's legal guardian or health care agent, if known unless the lead investigative agency knows that the notification would endanger the well-being of the vulnerable adult;
- (2) the reporter, if the reporter requested notification when making the report, provided this notification would not endanger the well-being of the vulnerable adult;
- (3) the alleged perpetrator, if known;
- (4) the facility; and
- (5) the ombudsman for long-term care, or the ombudsman for mental health and developmental disabilities, as appropriate.

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

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

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

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

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

Subd. 9d. Administrative reconsideration; review panel.

(a) Except as provided under paragraph (e), any individual or facility which a lead investigative agency determines has maltreated a vulnerable adult, or the vulnerable adult or an interested person acting on behalf of the vulnerable adult, regardless of the lead investigative agency's determination, who contests the lead investigative agency's final disposition of an allegation of maltreatment, may request the lead investigative agency to reconsider its final disposition. The request for reconsideration must be submitted in writing to the lead investigative agency within 15 calendar days after receipt of notice of final disposition or, if the request is made by an interested person who is not entitled to notice, within 15 days after receipt of the notice by the vulnerable adult or the vulnerable adult's legal guardian or health care agent. If mailed, the request for reconsideration must be postmarked and sent to the lead investigative agency within 15 calendar days of the individual's or facility's receipt of the final disposition. If the request for reconsideration is made by personal service, it must be received by the lead investigative agency within 15 calendar days of the individual's or facility's receipt of the final disposition. An individual who was determined to have maltreated a vulnerable adult under this section and who was disqualified on the basis of serious or recurring maltreatment under sections 245C.14 and 245C.15, may request reconsideration of the maltreatment determination and the disqualification. The request for reconsideration of the maltreatment determination and the disqualification must be submitted in writing within 30 calendar days of the individual's receipt of the notice of disqualification under sections 245C.16 and 245C.17. If mailed, the request for reconsideration of the maltreatment determination and the disqualification must be postmarked and sent to the lead investigative agency within 30 calendar days of the individual's receipt of the notice of disqualification. If the request for reconsideration is made by personal service, it must be received by the lead investigative agency within 30 calendar days after the individual's receipt of the notice of disqualification.

(b) Except as provided under paragraphs (e) and (f), if the lead investigative agency denies the request or fails to act upon the request within 15 working days after receiving the request for reconsideration, the person or facility entitled to a fair hearing under section 256.045, may submit to the commissioner of human services a written request for a hearing under that statute. The vulnerable adult, or an interested person acting on behalf of the vulnerable adult, may request a review by the Vulnerable Adult Maltreatment Review Panel under section 256.021 if the lead investigative agency denies the request or fails to act upon the request, or if the vulnerable adult or interested person contests a reconsidered disposition. The lead investigative agency shall notify persons who request reconsideration of their rights under this paragraph. The request must be submitted in writing to the review panel and a copy sent to the lead investigative agency within 30 calendar days of receipt of notice of a denial of a request for reconsideration or of a reconsidered disposition. The request must specifically identify the aspects of the lead investigative agency determination with which the person is dissatisfied.

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

Subd. 9e. Education requirements.

(a) The commissioners of health, human services, and public safety shall cooperate in the development of a joint program for education of lead investigative agency investigators in the appropriate techniques for investigation of complaints of maltreatment. This program must be developed by July 1, 1996. The program must include but need not be limited to the following areas:

- (1) information collection and preservation;
- (2) analysis of facts;
- (3) levels of evidence;
- (4) conclusions based on evidence;
- (5) interviewing skills, including specialized training to interview people with unique needs;
- (6) report writing;
- (7) coordination and referral to other necessary agencies such as law enforcement and judicial agencies;
- (8) human relations and cultural diversity;
- (9) the dynamics of adult abuse and neglect within family systems and the appropriate methods for interviewing relatives in the course of the assessment or investigation;
- (10) the protective social services that are available to protect alleged victims from further abuse, neglect, or financial exploitation;
- (11) the methods by which lead investigative agency investigators and law enforcement workers cooperate in conducting assessments and investigations in order to avoid duplication of efforts; and
- (12) data practices laws and procedures, including provisions for sharing data.

(b) The commissioners of health, human services, and public safety shall offer at least annual education to others on the requirements of this section, on how this section is implemented, and investigation techniques.

(c) The commissioner of human services, in coordination with the commissioner of public safety shall provide training for the common entry point staff as required in this subdivision and the program courses described in this subdivision, at least four times per year. At a minimum, the training shall be held twice annually in the seven-county metropolitan area and twice annually outside the seven-county metropolitan area. The commissioners shall give priority in the program areas cited in paragraph (a) to persons currently performing assessments and investigations pursuant to this section.

(d) The commissioner of public safety shall notify in writing law enforcement personnel of any new requirements under this section. The commissioner of public safety shall conduct regional training for law enforcement personnel regarding their responsibility under this section.

(e) Each lead investigative agency investigator must complete the education program specified by this subdivision within the first 12 months of work as a lead investigative agency investigator.

A lead investigative agency investigator employed when these requirements take effect must complete the program within the first year after training is available or as soon as training is available.

All lead investigative agency investigators having responsibility for investigation duties under this section must receive a minimum of eight hours of continuing education or in-service training each year specific to their duties under this section.

Subd. 10b. Investigations; guidelines.

Each lead investigative agency shall develop guidelines for prioritizing reports for investigation. When investigating a report, the lead investigative agency shall conduct the following activities, as appropriate:

- (1) interview of the alleged victim;
- (2) interview of the reporter and others who may have relevant information;
- (3) interview of the alleged perpetrator;
- (4) examination of the environment surrounding the alleged incident;
- (5) review of pertinent documentation of the alleged incident; and
- (6) consultation with professionals.

Subd. 12b. **Data management.**

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

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

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

- (1) The investigation memorandum must contain the following data, which are public:
 - (i) the name of the facility investigated;
 - (ii) a statement of the nature of the alleged maltreatment;
 - (iii) pertinent information obtained from medical or other records reviewed;
 - (iv) the identity of the investigator;
 - (v) a summary of the investigation's findings;
 - (vi) statement of whether the report was found to be substantiated, inconclusive, false, or that no determination will be made;
 - (vii) a statement of any action taken by the facility;
 - (viii) a statement of any action taken by the lead investigative agency; and
 - (ix) when a lead investigative agency's determination has substantiated maltreatment, a statement of whether an individual, individuals, or a facility were responsible for the substantiated maltreatment, if known.

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

- (2) Data on individuals collected and maintained in the investigation memorandum are private data, including:
 - (i) the name of the vulnerable adult;
 - (ii) the identity of the individual alleged to be the perpetrator;
 - (iii) the identity of the individual substantiated as the perpetrator; and

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

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

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

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

- (1) data from reports determined to be false, maintained for three years after the finding was made;
- (2) data from reports determined to be inconclusive, maintained for four years after the finding was made;
- (3) data from reports determined to be substantiated, maintained for seven years after the finding was made; and
- (4) data from reports which were not investigated by a lead investigative agency and for which there is no final disposition, maintained for three years from the date of the report.

(e) The commissioners of health and human services shall each annually report to the legislature and the governor on the number and type of reports of alleged maltreatment involving licensed facilities reported under this section, the number of those requiring investigation under this section, and the resolution of those investigations. The report shall identify:

- (1) whether and where backlogs of cases result in a failure to conform with statutory time frames;
- (2) where adequate coverage requires additional appropriations and staffing; and
- (3) any other trends that affect the safety of vulnerable adults.

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

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

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

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

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

Subd. 16. Implementation authority.

(d) By September 1, 1995, each lead investigative agency shall develop the guidelines required in subdivision 9b.

Attachment #8 – Local Tribal Governments’ participation in Multidisciplinary Adult Protection Teams

Minn. Stat. § 626.5571, Subd 1. MULTIDISCIPLINARY ADULT PROTECTION TEAM.

Subdivision 1. Establishment of team.

A county may establish a multidisciplinary adult protection team comprised of the director of the local welfare agency or designees, the county attorney or designees, the county sheriff or designees, and representatives of health care. In addition, representatives of mental health or other appropriate human service agencies, representatives from local tribal governments, and adult advocate groups may be added to the adult protection team.

Attachment #9 – Clarified Definitions of Lead Agencies

Minn. Stat. Sec. 626.5572. DEFINITIONS. Lead Investigative Agencies

Subd. 8. Final disposition.

"Final disposition" is the determination of an investigation by a lead investigative agency that a report of maltreatment under Laws 1995, chapter 229, is substantiated, inconclusive, false, or that no determination will be made. When a lead investigative agency determination has substantiated maltreatment, the final disposition also identifies, if known, which individual or individuals were responsible for the substantiated maltreatment, and whether a facility was responsible for the substantiated maltreatment.

Subd. 12. Initial disposition.

"Initial disposition" is the lead investigative agency's determination of whether the report will be assigned for further investigation.

Subd. 13. Lead investigative agency.

"Lead investigative agency" is the primary administrative agency responsible for investigating reports made under section 626.557.

(a) The Department of Health is the lead investigative agency for ~~the facilities or services which are~~ licensed or ~~are~~ required to be licensed as hospitals, home care providers, nursing homes, ~~residential care homes~~, boarding care homes, hospice providers, or residential facilities that are also federally certified as intermediate care facilities that serve people with developmental disabilities, or any other facility or service, not listed elsewhere in this subdivision, that is licensed or required to be licensed by the Department of Health for the care of vulnerable adults.

For purposes of sections 626.557 through 626.5572, "home care provider" has the meaning provided in section 144A.43, subdivision 4, and applies when care or services are delivered in the vulnerable adult's home, whether a private home or a housing with services establishment registered under chapter 144D, including those that offer assisted living services under chapter 144G.

(b) The Department of Human Services is the lead investigative agency for ~~the programs~~ facilities or services licensed or required to be licensed as adult day care, adult foster care, programs for people with developmental disabilities, family adult day services, mental health programs, mental health clinics, ~~or~~ chemical health dependency programs, the Minnesota sex offender program, or any other facility or service, not listed elsewhere in this subdivision, that is licensed or required to be licensed by the Department of Human Services.

For purposes of sections 626.557 through 626.5572, the Department of Human Services is the lead investigative agency for services provided to vulnerable adults by day training and habilitation and supported employment services providers who are reimbursed on the basis of holding a qualifying Department of Human Services license or certification.

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

Subd. 17. **Neglect.**

(e) If the findings of an investigation by a lead investigative agency result in a determination of substantiated maltreatment for the sole reason that the actions required of a facility under paragraph (c), clause (5), item (iv), (v), or (vi), were not taken, then the facility is subject to a correction order. An individual will not be found to have neglected or maltreated the vulnerable adult based solely on the facility's not having taken the actions required under paragraph (c), clause (5), item (iv), (v), or (vi). This must not alter the lead investigative agency's determination of mitigating factors under section 626.557, subdivision 9c, paragraph (c).