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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 3868

02/26/2020 Authored by Moller
03/16/2020 The bill was read for the first time and referred to the Committee on Health and Human Services Policy
Adoption of Report: Amended and re-referred to the Judiciary Finance and Civil Law Division

1.1 A bill for an act
1.2 relating to human services; requiring a national criminal history record check for
1.3 guardians and conservators; requiring quarterly review of licensing agency data
1.4 for study subjects; amending Minnesota Statutes 2018, sections 245C.10, by adding
1.5 a subdivision; 245C.32, subdivision 2; 524.5-118.

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

1.7 Section 1. Minnesota Statutes 2018, section 245C.10, is amended by adding a subdivision
1.8 to read:

1.9 Subd. 15. Guardians and conservators. The commissioner shall recover the cost of
1.10 conducting background studies for guardians and conservators under section 524.5-118
1.11 through a fee of no more than \$110 per study. The fees collected under this subdivision are
1.12 appropriated to the commissioner for the purpose of conducting background studies.

1.13 Sec. 2. Minnesota Statutes 2018, section 245C.32, subdivision 2, is amended to read:

1.14 Subd. 2. Use. (a) The commissioner may also use these systems and records to obtain
1.15 and provide criminal history data from the Bureau of Criminal Apprehension, criminal
1.16 history data held by the commissioner, and data about substantiated maltreatment under
1.17 section 626.556 or 626.557, for other purposes, provided that:

- 1.18 (1) the background study is specifically authorized in statute; or
1.19 (2) the request is made with the informed consent of the subject of the study as provided
1.20 in section 13.05, subdivision 4.

1.21 (b) An individual making a request under paragraph (a), clause (2), must agree in writing
1.22 not to disclose the data to any other individual without the consent of the subject of the data.

2.1 (c) The commissioner may recover the cost of obtaining and providing background study  
2.2 data by charging the individual or entity requesting the study a fee of no more than \$20 per  
2.3 study. The fees collected under this paragraph are appropriated to the commissioner for the  
2.4 purpose of conducting background studies.

2.5 ~~(d) The commissioner shall recover the cost of obtaining background study data required~~  
2.6 ~~under section 524.5-118 through a fee of \$50 per study for an individual who has not lived~~  
2.7 ~~outside Minnesota for the past ten years, and a fee of \$100 for an individual who has resided~~  
2.8 ~~outside of Minnesota for any period during the ten years preceding the background study.~~  
2.9 ~~The commissioner shall recover, from the individual, any additional fees charged by other~~  
2.10 ~~states' licensing agencies that are associated with these data requests. Fees under subdivision~~  
2.11 ~~3 also apply when criminal history data from the National Criminal Records Repository is~~  
2.12 ~~required.~~

2.13 Sec. 3. Minnesota Statutes 2018, section 524.5-118, is amended to read:

2.14 **524.5-118 BACKGROUND STUDY.**

2.15 Subdivision 1. **When required; exception.** (a) The court shall require a background  
2.16 study under this section:

2.17 (1) before the appointment of a guardian or conservator, unless a background study has  
2.18 been done on the person under this section within the previous ~~two~~ five years; and

2.19 (2) once every ~~two~~ five years after the appointment, if the person continues to serve as  
2.20 a guardian or conservator.

2.21 (b) The background study must include:

2.22 (1) criminal history data from the Bureau of Criminal Apprehension, other criminal  
2.23 history data held by the commissioner of human services, and data regarding whether the  
2.24 person has been a perpetrator of substantiated maltreatment of a vulnerable adult or minor;

2.25 (2) criminal history data from ~~the National Criminal Records Repository if the proposed~~  
2.26 ~~guardian or conservator has not resided in Minnesota for the previous ten years or if the~~  
2.27 ~~Bureau of Criminal Apprehension information received from the commissioner of human~~  
2.28 ~~services under subdivision 2, paragraph (b), indicates that the subject is a multistate offender~~  
2.29 ~~or that the individual's multistate offender status is undetermined~~ a national criminal history  
2.30 record check as defined in section 245C.02, subdivision 13c; and

2.31 (3) state licensing agency data if a search of the database or databases of the agencies  
2.32 listed in subdivision 2a shows that the proposed guardian or conservator has ever held a

3.1 professional license directly related to the responsibilities of a professional fiduciary from  
3.2 an agency listed in subdivision 2a that was conditioned, suspended, revoked, or canceled.

3.3 (c) If the guardian or conservator is not an individual, the background study must be  
3.4 done on all individuals currently employed by the proposed guardian or conservator who  
3.5 will be responsible for exercising powers and duties under the guardianship or  
3.6 conservatorship.

3.7 (d) If the court determines that it would be in the best interests of the ward or protected  
3.8 person to appoint a guardian or conservator before the background study can be completed,  
3.9 the court may make the appointment pending the results of the study, however, the  
3.10 background study must then be completed as soon as reasonably possible after appointment,  
3.11 no later than 30 days after appointment.

3.12 (e) The fee for background studies conducted under this section is specified in section  
3.13 245C.10, subdivision 14. The fee for conducting a background study for appointment of a  
3.14 professional guardian or conservator must be paid by the guardian or conservator. In other  
3.15 cases, the fee must be paid as follows:

3.16 (1) if the matter is proceeding in forma pauperis, the fee is an expense for purposes of  
3.17 section 524.5-502, paragraph (a);

3.18 (2) if there is an estate of the ward or protected person, the fee must be paid from the  
3.19 estate; or

3.20 (3) in the case of a guardianship or conservatorship of the person that is not proceeding  
3.21 in forma pauperis, the court may order that the fee be paid by the guardian or conservator  
3.22 or by the court.

3.23 (f) The requirements of this subdivision do not apply if the guardian or conservator is:

3.24 (1) a state agency or county;

3.25 (2) a parent or guardian of a proposed ward or protected person who has a developmental  
3.26 disability, if the parent or guardian has raised the proposed ward or protected person in the  
3.27 family home until the time the petition is filed, unless counsel appointed for the proposed  
3.28 ward or protected person under section 524.5-205, paragraph (d); 524.5-304, paragraph (b);  
3.29 524.5-405, paragraph (a); or 524.5-406, paragraph (b), recommends a background study;  
3.30 or

3.31 (3) a bank with trust powers, bank and trust company, or trust company, organized under  
3.32 the laws of any state or of the United States and which is regulated by the commissioner of  
3.33 commerce or a federal regulator.

4.1 Subd. 2. **Procedure; criminal history and maltreatment records background**  
4.2 **check.** (a) The court shall request the commissioner of human services to complete a  
4.3 background study under section 245C.32. The request must be accompanied by the applicable  
4.4 fee and ~~the signed consent of the subject of the study authorizing the release of the data~~  
4.5 ~~obtained to the court. If the court is requesting a search of the National Criminal Records~~  
4.6 ~~Repository, the request must be accompanied by~~ acknowledgment that the study subject  
4.7 received a privacy notice required under subdivision 3. The commissioner of human services  
4.8 shall conduct a national criminal history record check. The study subject shall submit a set  
4.9 of classifiable fingerprints of the subject of the study. The fingerprints must be recorded on  
4.10 a fingerprint card provided by the commissioner of human services.

4.11 (b) The commissioner of human services shall provide the court with criminal history  
4.12 data as defined in section 13.87 from the Bureau of Criminal Apprehension in the Department  
4.13 of Public Safety, other criminal history data held by the commissioner of human services,  
4.14 ~~and~~ data regarding substantiated maltreatment of vulnerable adults under section 626.557  
4.15 and substantiated maltreatment of minors under section 626.556, and criminal history  
4.16 information from other states or jurisdictions as indicated from a national criminal history  
4.17 record check within ~~15~~ 20 working days of receipt of a request. If the subject of the study  
4.18 has been the perpetrator of substantiated maltreatment of a vulnerable adult or minor, the  
4.19 response must include a copy of the public portion of the investigation memorandum under  
4.20 section 626.557, subdivision 12b, or the public portion of the investigation memorandum  
4.21 under section 626.556, subdivision 10f. ~~If the court did not request a search of the National~~  
4.22 ~~Criminal Records Repository and information from the Bureau of Criminal Apprehension~~  
4.23 ~~indicates that the subject is a multistate offender or that multistate offender status is~~  
4.24 ~~undetermined, the response must include this information. The commissioner shall provide~~  
4.25 ~~the court with information from the National Criminal Records Repository within three~~  
4.26 ~~working days of the commissioner's receipt of the data~~ The commissioner shall provide the  
4.27 court with information from a review of information according to subdivision 2a if the study  
4.28 subject provided information indicating current or prior affiliation with a state licensing  
4.29 agency.

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

5.1 criminal history or substantiated maltreatment information that becomes available after the  
5.2 background study is done.

5.3 Subd. 2a. **Procedure; state licensing agency data.** (a) The court shall request the  
5.4 commissioner of human services to provide the court within 25 working days of receipt of  
5.5 the request with licensing agency data for licenses directly related to the responsibilities of  
5.6 a professional fiduciary if the study subject indicates current or prior affiliation from the  
5.7 following agencies in Minnesota:

5.8 (1) Lawyers Responsibility Board;

5.9 (2) State Board of Accountancy;

5.10 (3) Board of Social Work;

5.11 (4) Board of Psychology;

5.12 (5) Board of Nursing;

5.13 (6) Board of Medical Practice;

5.14 (7) Department of Education;

5.15 (8) Department of Commerce;

5.16 (9) Board of Chiropractic Examiners;

5.17 (10) Board of Dentistry;

5.18 (11) Board of Marriage and Family Therapy;

5.19 (12) Department of Human Services; ~~and~~

5.20 (13) Peace Officer Standards and Training (POST) Board; and

5.21 (14) Professional Educator Licensing and Standards Board.

5.22 (b) The commissioner shall enter into agreements with these agencies to provide ~~for the~~ the  
5.23 commissioner with electronic access to the relevant licensing data ~~by the commissioner,~~  
5.24 and to provide the commissioner with a quarterly list of new sanctions issued by the agency.

5.25 (c) The commissioner shall provide to the court the electronically available data  
5.26 maintained in the agency's database, including whether the proposed guardian or conservator  
5.27 is or has been licensed by the agency, and if the licensing agency database indicates a  
5.28 disciplinary action or a sanction against the individual's license, including a condition,  
5.29 suspension, revocation, or cancellation.

6.1 (d) If the proposed guardian or conservator has resided in a state other than Minnesota  
6.2 in the previous ten years, licensing agency data under this section shall also include the  
6.3 licensing agency data from any other state where the proposed guardian or conservator  
6.4 reported to have resided during the previous ten years if the study subject indicates current  
6.5 or prior affiliation. If the proposed guardian or conservator has or has had a professional  
6.6 license in another state that is directly related to the responsibilities of a professional fiduciary  
6.7 from one of the agencies listed under paragraph (a), state licensing agency data shall also  
6.8 include data from the relevant licensing agency of that state.

6.9 (e) The commissioner is not required to repeat a search for Minnesota or out-of-state  
6.10 licensing data on an individual if the commissioner has provided this information to the  
6.11 court within the prior ~~two~~ five years.

6.12 (f) If an individual has continuously resided in Minnesota since a previous background  
6.13 study under this section was completed, the commissioner is not required to repeat a search  
6.14 for records in another state.

6.15 (g) The commissioner shall review the information in paragraph (c) at least once every  
6.16 four months to determine if an individual who has been studied within the previous five  
6.17 years:

6.18 (1) has new disciplinary action or sanction against the individual's license; or

6.19 (2) did not disclose a prior or current affiliation with a Minnesota licensing agency.

6.20 (h) If the commissioner's review in paragraph (g) identifies new information, the  
6.21 commissioner shall provide any new information to the court.

6.22 Subd. 3. ~~Form~~ **Forms and systems.** The court must provide the study subject with a  
6.23 privacy notice that complies with section 245C.05, subdivision 2c. The commissioner of  
6.24 human services shall develop a form to be used for requesting use the NETStudy 2.0 system  
6.25 to conduct a background study under this section, which must include:

6.26 ~~(1) a notification to the subject of the study that the court will request the commissioner~~  
6.27 ~~to perform a background study under this section;~~

6.28 ~~(2) a notification to the subject of the rights in subdivision 4; and~~

6.29 ~~(3) a signed consent to conduct the background study.~~

6.30 Subd. 4. **Rights.** The court shall notify the subject of a background study that the subject  
6.31 has the following rights:

7.1 (1) the right to be informed that the court will request a background study on the subject  
7.2 for the purpose of determining whether the person's appointment or continued appointment  
7.3 is in the best interests of the ward or protected person;

7.4 (2) the right to be informed of the results of the study and to obtain from the court a  
7.5 copy of the results; and

7.6 (3) the right to challenge the accuracy and completeness of information contained in the  
7.7 results under section 13.04, subdivision 4, except to the extent precluded by section 256.045,  
7.8 subdivision 3.