

Human Services

FY 2022-23 Biennial Budget Change Item

Change Item Title: Background Studies Transition to Fee Schedule

Fiscal Impact (\$000s)	FY 2022	FY 2023	FY 2024	FY 2025
General Fund				
Expenditures	0	0	0	0
Revenues	0	0	0	0
Other Funds				
Expenditures	4,043	5,390	5,390	5,390
Revenues	(4,043)	(5,390)	(5,390)	(5,390)
Net Fiscal Impact = (Expenditures – Revenues)	0	0	0	0
FTEs	7	17	17	17

Recommendation:

The Governor recommends removing the background study fees from statute, unchanged since 2005, and implementing a fee schedule that allows the Department of Human Services (DHS) to recover the actual costs of completing background studies. The legislatively established fee of \$20 for many study types is well below the \$42 average cost to conduct a study. The result is a net loss of roughly \$22 for each of those studies, resulting in an annual structural deficit of \$2.8 million in FY 2020 which is estimated to grow to \$3.1 million in FY 2021, and \$3.5 million in FY 2022. In FY 2020, DHS was able to leverage available funds from other accounts to mitigate the shortfall, and is projected to be able to do so in FY 2021, as well. However, this flexibility is not available beginning in FY 2022. Publication of the fee schedule would reflect an initial increase of \$22 for studies currently set at \$20 to enable DHS to address the structural deficit and to fund critical background studies positions to support Minnesota’s workforce needs and the safety of children and vulnerable adults.

The Governor also recommends planning for the establishment of a fingerprint-based Federal Bureau of Investigation (FBI) study as the baseline DHS background study for adults aged 18 and older with standardized tiers of background studies consistent with federal and state requirements. Having a higher standard for a baseline study would provide greater protection to individuals served by department and partner organization programs while streamlining the study requirements. Study subjects would have more opportunities to transfer study results to future employers, resulting in saved costs and time for those individuals.

Rationale/Background:

The Background Studies Division (BGS) is statutorily responsible for performing many complex functions within a highly regulated industry while also operating as a fee-for-service enterprise. The funding model for the division relies heavily on special revenue generated from fees to support the operation, provide social impact and benefit, and maintain long-term sustainability. Unfortunately, rising costs associated with conducting background studies, coupled with the division’s expanding, statutorily-driven work responsibilities has significantly outgrown the revenue provided for by the current statutorily fixed fee schedule.

Since DHS began conducting background studies, significant changes have been made to laws and standards for many health and human services programs. These programs serve ever-increasing numbers of the state’s most vulnerable child and adult populations. As a result of the changes, more provider types are required to submit background studies on new hires, and in some cases, studies must be submitted for their existing employees as well.

At the same time, the market demand for qualified employees in sectors serving vulnerable populations continues to rise, escalating concerns from providers, trade associations, and other employers about statutory enactments specific to background studies. Study subjects, employers, providers, and community agencies cite direct and

indirect workforce impacts in the areas of recruitment, selection, hiring, employee turnover, and job retention across sectors because of statutory background studies requirements. These requirements impact the workforce and may create an unintended workforce disparity.

This proposal ensures the division is able to: (1) meet the increased demand for studies, (2) respond effectively to the increasing complexity of studies, (3) avoid and remedy study backlogs, (4) address the statutorily-set background study fee cap which has remained unchanged since 2005, (5) address escalating costs, often paid to third parties, to conduct background studies and criminal history searches, and (6) benefit providers and their employees by standardizing studies so they can be transferred between employers.

Under the current funding constraints imposed by a statutorily mandated fee schedule, the division is unable to meet its statutory responsibilities to conduct critical background studies for positions that support Minnesota's workforce needs and protects the safety of children and vulnerable adults. This proposal establishes a sustainable funding model for operations, infrastructure, and staffing capacity to enable the division to respond to current study requirements and plan for future growth.

Current financial pressures

DHS conducts background studies for over 50 provider types, encompassing over 33,000 entities, many of which have unique study requirements outlined in Minnesota Statutes chapter 245C. The number of background study applications received by DHS has continuously increased. For example, in FY 2018, DHS received 330,624 background study applications; in FY 2019, the number increased by 11% to 372,139. This is a trend that is expected to continue.

The increase in study applications is driven in large part by the state and federal expansion of the provider types whose employees are statutorily subject to background studies. Federal and state background study requirements have also changed significantly in the past four years and have added to the complexity of studies requiring more staff time to complete. For example, the federal Child Care and Development Block Grant Act now requires a fingerprint-based FBI background study for all child care providers, while the federal Family First Prevention Services Act requires fingerprint-based FBI background studies for any individual employed by licensed children's residential facilities in any role. This lack of consistency between study types creates confusion for study subjects, providers, and policymakers

Greater volume and complexity also increases the expense of conducting studies, which DHS has limited ability to control. Fees that may be charged to providers by DHS for background studies are legislatively established. For example, Minnesota Statutes, section 245C.10 requires the commissioner to recover the costs of certain employment studies through fees of no more than \$20 per study. The \$20 fee was established in 2005 and has not increased in 15 years, failing to keep pace with rising costs. Other study fees are set elsewhere in statute or through interagency contracts and are difficult to change to reflect actual costs.

Third-party costs incurred by DHS when conducting background studies have increased while DHS fees have remained stagnant. DHS pays fees to the Minnesota Bureau of Criminal Apprehension (BCA) for each study, as well as fees to the FBI when FBI studies are required. Those fees are entirely outside DHS's control. For instance, when the FBI increased its study fee in January 2018 from \$17 to \$18.25 per study, DHS was unable to respond in order to recover that expense. In addition to the BCA and FBI fees, DHS is required to pay 10% of the total expenditures as indirect costs to support statewide financial administration.

As the table below illustrates, the third party costs alone exceed the \$20 fee by \$3.25; consequently, DHS is losing \$3.25 per study in addition to all costs associated with processing studies.

Fixed Third Party Costs: \$23.25 <ul style="list-style-type: none"> • BCA \$5 • FBI \$18.25 	Current Study Fee: \$20 \$23.25 - \$20 = -\$3.25	Costs Not Covered by Fee: <ul style="list-style-type: none"> • Research • Help Desk • Legal Analysis/ Appeals • NETStudy 2.0 System • Policy Analysis • Project Management • Administration
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The financial strain created by DHS’s inability to recover third party costs such as FBI fees is compounded by the increased demand for FBI studies. There was a 3% increase in FBI studies in FY 2017, followed by a 5% increase in FY 2018. The number jumped 28% in FY 2019, with 87,848 of the total 105,677 newly-mandated FBI studies in the category of employment studies, which has a legislatively mandated fee of \$20 that was set before the higher level of study was required.

While demands for background studies, along with their costs, have steadily increased over the past several years, available funding to support the processing of background studies has decreased. General fund appropriations for this program have remained largely flat, and due to third-party cost increases described above, revenue generated from the increasing number of background studies is insufficient to cover base programmatic costs.

FY2020 Special Revenue Costs	
Total Expenses	\$8,389,589
Revenue Collected	\$5,591,319
Over/Under **	(\$2,798,270)
** Paid by 2020 General Fund Allotment	
2021 Special Revenue Projected Costs	
Salary	\$5,896,893
Non-salary	\$2,775,166
Subtotal	\$8,672,059
10% Indirect Cost	\$867,206
TOTAL Projected Cost	\$9,539,265
Estimated Revenue	\$6,418,274
Over/Under	(\$3,120,991)

The average cost of processing a background study is currently over \$42, resulting in a net loss of roughly \$22 per study for many of the study types processed by DHS.

The Background Study program is in structural deficit. For several years, the program absorbed cost increases by drawing down on surpluses within its special revenue fund. However, these surpluses were finally exhausted in FY 2019. As shown in the table on the right, that deficit has grown 11.5% in the span of one year: from \$2.8 million in FY2020 to a projected \$3.1 million in FY2021. That rate of growth suggests a projected deficit of \$3.5 million in FY2022.¹

With statutory limits on the ability of DHS to recover the actual costs of background studies, the department cannot correct its structural deficit, nor invest in the staff and infrastructure necessary to respond in a timely manner to the ever-growing demand for studies, and to eliminate and prevent backlogs. These impacts increase the risk to vulnerable populations, and generates significant uncertainty for service providers and their employees.

Proposal:

This proposal removes the specific fees for background studies listed in statute. Instead, Minnesota Statutes, section 245C.10 would authorize DHS to publish a fee schedule each fiscal year, effective July 1, 2021. The schedule would be published on the DHS public website 90 days before going into effect and would specify cost components such as FBI, BCA, and DHS processing fees. The initial fee schedule would be posted July 1, 2021, for implementation September 1, 2021. For subsequent years, the schedule would be posted on March 1 and implemented on July 1.

The initial fee schedule would include a \$22 per-study fee increase for all background studies currently listed in statute with a fee of \$20, allowing DHS to recover the cost of conducting the study. For entities that contract with DHS for studies, the per-transaction fee increase will be incorporated into the contracts. The fee increase calculation is based on the following components:

- \$5 charged by the BCA to DHS
- \$18.25 charged by the FBI to DHS
- \$18.75 DHS processing fee, covering study expenses, including initial research and determination, rap back (continuously updated criminal record information after study has been completed), due process for disqualifications, and systems maintenance and updates.

The additional fee revenue would allow the division to increase staffing levels, resulting in more timely processing of background studies, greater ability to address backlogs, investment in needed systems enhancements, and additional stakeholder engagement.

This proposal would also support planning necessary to establish the fingerprint-based FBI study as the baseline DHS background study for adults aged 18 and older, and would provide standardized tiers of background studies, each with consistent components and requirements across study types in the same tier. Increasing the rigor of the baseline DHS study to a FBI study would provide greater protection to individuals served by department and partner organization programs and would offer greater transparency for study subjects, programs, and policymakers. Study subjects would benefit from more opportunities to transfer results to future employers.

The tiers of background study components would align with state and federal law, and studies within each tier would have similar requirements. For example, depending on the requirements of a study type, searching the child abuse and neglect registry, completing a comprehensive out-of-state check, or reviewing professional licensing registries would be done in addition to the FBI study. This tier structure also would have workforce benefits. Increasing uniformity across programs would result in greater transferability of background study determinations for study subjects and programs. BGS would introduce proposed changes to create the standardized study tiers during the 2022 legislative session.

This proposal streamlines processes and offsets some of the increased fee costs for providers and background study subjects by aligning background study requirements. Aligning the study requirements (which have been splintered over time by federal and state law changes), paired with clarifying that the background study determination can be transferred to other provider types, will reduce repeat background studies and related fingerprinting. Those changes also will make the background study process more transparent for policymakers because they will have several options for study requirements with clear, consistent components rather than requirements that vary by individual study type.

The overarching goals of the proposal are greater transparency and accountability that will result in 1) improved safety for people served by programs, 2) streamlined processes for study subjects, and 3) greater transferability of background study determinations for study subjects and programs. The new fee schedule will reflect actual costs for various study elements while ensuring transparency via publication of those costs.

Fiscal Impact:

The overall impact of the proposal would provide additional revenue in the Background Studies Special Revenue Fund in the amount of \$9,433,000 in the 2022-2023 biennium and \$10,780,000 in the 2024-2025 biennium. There would be no cost to the general fund.

	FY 2022	FY 2023
Current Projected Annual Budget without Fee Increase	\$7,287	\$7,287
Proposed Fee Increase	\$4,043	\$5,390
- Eliminate Structural Deficit in Special Revenue Fund	\$3,583	\$3,483
- New FTEs Required to Meet Statutory Obligations	\$460 (7 FTEs)	\$1,907 (17 FTEs)

Without an increase in fees, in FY 2022 and 2023, the annual budget for the background studies division would be \$7,287,000 (\$869k in General Fund allocation and \$6,418,000 in Special Revenue from background study fees). An additional \$9,433,000 is needed in FY 2022-23 to correct the structural deficit in the Special Revenue account and meet all statutory obligations. Of this amount, \$7,066,000 is needed to eliminate the structural deficit, with an additional \$2,367,000 needed to add staff necessary to meet statutory obligations. These obligations include accommodating the growth in number and complexity of studies, including the permanent elimination of the backlog.

The proposed change to the fee schedule would apply to approximately 245,000 studies annually, resulting in estimated annual revenue of \$10,461,000 in FY 2022, and \$11,808,000 in FY2023-25 in the special revenue fund. The proposal will fund fund 7 essential FTEs to the Background Studies Division in fiscal year 2022 and 17 essential FTEs in fiscal years 2023-2025.

These additional FTE, several of which have been previously planned for but remain unfunded, will increase the division’s capacity to conduct studies and permanently eliminate study backlogs, and provide critical infrastructure support in the areas of training, IT, and general operations. These additional staff will also be integral in the planning and implementation of the study standardization project described above. On-boarding of the FTEs are projected to begin in January 2022. These FTEs include:

- 2 FTE as project managers (Human Services Program Representatives 2 – (convert 1 current temp to permanent, add 1 new) to work with internal and external stakeholders to plan and implement legislative/policy changes and innovations within the division, create/update process documentation, and onboard new providers.
- 1 FTE as analyst (Human Services Project Consultant) to conduct on-going policy analysis, research and plan legislation related to standardized study tiers.
- 4 FTE as researchers (Human Services Program Representatives 1 – convert 2 current temp to permanent, add 3 new) to conduct background studies.
- 1 FTE as a lead researcher (Human Services Program Specialists 1)–to conduct background studies and provide guidance to other researchers.
- 3 FTE as operations support specialists (Human Services Program Specialists 1) to support research teams and the contact center.
- 1 FTE as a supervisor (Human Services Supervisor 3) to manage the enterprise training team.
- 1 FTE as a lead trainer (Human Services Program Representative 2)–to conduct training and provide guidance to other trainers.
- 2 FTE as trainers (Human Services Program Representative 1)–(convert 1 current temp to permanent, add 1 new) to conduct training for background studies customers.

- 1 FTE as customer support specialist lead (Human Services Program Representative 2)– technical call center staff interface and troubleshoot entity/accountholders NETStudy 2.0 Help Desk. Provide guidance to other customer support staff.
- 1 FTE as customer support specialist (Human Services Program Representative 1)– technical call center staff interface and troubleshoot entity/accountholders NETStudy 2.0 Help Desk.

No additional costs for systems changes are anticipated because the required changes could be incorporated into the existing scope of work of the DHS-contracted partner’s development schedule.

Impact on Children and Families:

The proposal protects the health, safety, and rights of those receiving services from DHS and other state agency programs while contributing to the availability of an appropriately vetted workforce for providers serving vulnerable children and adults.

Equity and Inclusion:

The proposal affects the safety and quality of child care and other programs serving children and vulnerable adults. Greater transferability of background study determinations for study subjects gives those individuals eligible to work greater job flexibility.

Results:

Success will be measured by 1) improved safety for people served by programs, 2) streamlined processes for study subjects, 3) greater transferability of background study determinations for study subjects and programs, and 4) publication of a fee schedule that reflects actual costs and is clear to stakeholders.

Fiscal Detail:

Net Impact by Fund (dollars in thousands)			FY 22	FY 23	FY 22-23	FY 24	FY 25	FY 24-25
General Fund			0	0	0	0	0	0
HCAF								
Federal TANF								
Total All Funds			0	0	0	0	0	0
Fund	BACT#	Description	FY 22	FY 23	FY 22-23	FY 24	FY 25	FY 24-25
DED	Rev1	Background Studies Fee Revenue	(4,043)	(5,390)	(9,433)	(5,390)	(5,390)	(10,780)
DED	11	Eliminate Background Studies Structural Deficit	3,583	3,483	7,066	3,512	3,512	7,024
DED	11	Background Studies staff	460	1,907	2,367	1,878	1,878	3,756
Requested FTE’s								
Fund	BACT#	Description	FY 22	FY 23	FY 22-23	FY 24	FY 25	FY 24-25
GF	11	OPS-Background Studies FTEs – 6 months in FY22	7	17		17	17	

¹ In FY 2020, DHS was able to mitigate the shortfall in the Special Revenue fund through refinancing costs with available federal Child Care Development Block Grant funding. Based on current projections, the agency will be forced to rely on these funds in FY 2021, as well. However, this funding will be exhausted at the end of FY 2021, with no new funds available for FY 2022.

Human Services

FY 2022-23 Biennial Budget Change Item

Change Item Title: Background Studies Federal Compliance

Fiscal Impact (\$000s)	FY 2022	FY 2023	FY 2024	FY 2025
General Fund				
Expenditures	772	264	195	195
Revenues	0	0	0	0
Other Funds				
Expenditures	0	0	0	0
Revenues	0	0	0	0
Net Fiscal Impact = (Expenditures – Revenues)	772	264	195	195
FTEs	4	3.5	2	2

Recommendation:

The Governor recommends appropriating \$1,036,000 in FY 2022-23 and \$390,000 in FY 2024-25 for the Department of Human Services (DHS), Background Studies Division to fund systems changes and provide operational support necessary to bring Minnesota Statutes, chapter 245C (Department of Human Services Background Studies Act) into compliance with federal regulations.

These changes include updating Minnesota Statutes, chapter 245C to include all Minnesota statutory references and federal citations necessary to comply with Federal Bureau of Investigation (FBI) requirements to share study subject data with DHS. The update will also include the addition of background study requirements currently contained in other chapters governing specific providers of services for children and vulnerable adults. These changes also add language to Minnesota Statutes chapter 245C to bring Minnesota into compliance with the federal Child Care and Development Block Grant (CCDBG) law (42 USC § 9858f) and regulations (45 CFR § 98.43).

Rationale/Background:

DHS needs to make two changes to the background studies statute to come into compliance with federal regulations. The first change will ensure DHS can continue to receive necessary data about study subjects from the Federal Bureau of Investigations (FBI). Without these changes, the Minnesota Bureau of Criminal Apprehension (BCA) may be prohibited from sharing FBI fingerprint-based state and federal criminal history records information with DHS. DHS cannot conduct studies that require those records if the BCA is prohibited from sharing that information. Several study types, including guardianships, foster care, and employment studies throughout many health and human services programs would be affected.

Each of the background study types requiring a fingerprint-based FBI study must identify the federal law that gives DHS the authority to receive national criminal history record information. Currently, DHS uses three of the four options for the basis of authority for individual study types:

- Public Law 92.544
- Child Care and Development Block Grant (CCDBG) law (42 USC § 9858f) and regulations (45 CFR § 98.43)
- Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248, Social Security Act Title IV-E)

Discussions with the FBI and BCA have continued to uncover areas where the background study program designed and operated by DHS over the last 20 years does not easily fit the requirements under Public Law 92.544. Data sharing restrictions under P.L. 92.544 would require considerable changes to the program, and costs to partner agencies to come into compliance. Based on those discussions, in conjunction with OIG Legal, the Background Studies Division has determined that a better course of action would be to update the basis of authority for a

number of background study types completed by DHS to the National Child Protection Act, as amended by the Volunteers for Children Act (NCPA/VCA (42 U.S.C. § 5119a(a)(3) and Title 34, U.S.C. Section 40102)). The NCPA/VCA allows more flexibility to DHS as an agency designated by the state authorized agency (BCA) to request FBI fingerprint-based background check information. Most of DHS's study types not covered under a specific federal statute qualify under this designation, as the NCPA/VCA covers individuals providing services for children, the elderly, and individuals with disabilities.

The second change to the background study statute will ensure DHS is in compliance with federal CCDBG requirements and continues to receive funding under that program without penalty. The CCDBG law (42 USC § 9858f) and regulations (45 CFR § 98.43) require a cleared background study as a condition of all types of employment in a regulated child care setting. Current state law prohibits child care providers from hiring a person who is disqualified under Minnesota Statutes section 245C.14, but if a current staff member is subsequently disqualified after employment, the person is only prohibited from direct contact with program participants rather than prohibiting them from working in the facility or setting in any capacity.

Proposal:

This proposal makes changes to Minnesota Statutes, chapter 245C to ensure the department has the authority to continue to submit and receive FBI data, and to make determinations for background studies, by updating the basis of authority for DHS to receive national and state criminal history record information.

Updating the basis of authority to NCPA/VCA for a majority of provider types will require significant systems changes. The NCPA/VCA requires that each study subject submitting fingerprints must receive and submit a signed consent notice, where current practice is to provide a privacy notice. This change would require new functionality for the NETStudy 2.0 system. In addition, the NCPA/VCA requires DHS to have processes in place for a study subject to receive a copy of their report and to appeal any information it contains. These processes necessitate changing study subjects' disqualification letters to state how the study subject can submit a data request.

The systems updates are necessary for accurate and clear communication with study subjects and providers about employment status and due process. Temporary staff will coordinate the systems changes and ensure a smooth transition to operations under the new statutory language through meetings with stakeholders and training during implementation. The additional staff will also assist other DHS divisions by researching background study requirements in their respective statutes and providing technical assistance for updating their language as necessary. The background studies division does not currently have adequate staff to give providers and other divisions within DHS support at the level they will need to work with these changes in study processes.

The statutory language has been developed in collaboration with the BCA to ensure it meets FBI compliance requirements.

Other key components of the statutory updates include:

- Inclusion in chapter 245C of background study requirements currently in the chapters governing specific programs. Currently, the specific requirements for many programs are included in the program-specific chapters and not 245C. This proposal would add all background studies requirements to 245C. As a result, 245C would contain both standard background study requirements as well as any unique requirements for each study type, clarifying DHS's statutory authority and making requirements transparent for study subjects and employers.
- Creation of a new section within 245C codifying the process for alternative studies that are completed by DHS, which forwards study results to state and tribal agencies to make a determination of eligibility. Section 245C.03 currently includes both study types for which DHS makes the determination of eligibility and study types for which other state and tribal agencies make the determination. This proposal would add section 245C.031 to break out the alternative studies. Having the two study types in individual

sections makes the different requirements and processes clearer for study subjects, employers, and policymakers.

DHS would implement the updated Minnesota Chapter 245C effective July 1, 2021.

DHS will also update statute to require regulated child care settings to separate from employment any current staff member — regardless of role — who is disqualified under Minnesota Statutes section 245C.14.

DHS would implement the provision for regulated child care settings effective January 1, 2022, to allow time for necessary systems changes and stakeholder engagement.

Fiscal Impact:

This proposal also invests \$1,036,000 in FY 2022-23 and \$390,000 in FY 2024-25 to provide the funding necessary for systems changes and provider and study subject support throughout implementation of the statutory changes.

Changes to NETStudy 2.0 are estimated to cost \$166,400 in FY 2022. Updating the basis of authority and implementing a new signed consent process will require extensive systems changes to the Background Studies NETStudy 2.0 system. Implementation of the provision for regulated child care settings also requires systems changes to NETStudy 2.0 to split regulated child care settings into two provider types, thereby adding a new provider type. The changes will be completed by DHS's external contractor for the NETStudy 2.0 system.

Changes to the Adobe Experience Manager (AEM) system are estimated to cost \$685,937 in FY 2022-23 and \$261,280 in FY 2024-25. Changing the basis of authority for DHS to receive national and state criminal history record information will require systems AEM takes data from the NETStudy 2.0 system and provides the appropriate letter to inform the study subject about the result of the study. NCPA/VCA requires that a study subject have access to their report if so desired. As a result, all disqualification letters generated within AEM need to be updated to have clear instructions on the process to obtain information and ask for an appeal. The change also requires other AEM updates to fully automate the new processes, and to reflect the new child care provider types. These changes will be completed by MNIT. AEM systems costs are listed below as 50% of the total cost to reflect the state share of the cost.

This proposal requires 4 FTEs in FY 2022-2023, and transitions to 2 FTE in FY2024-2025, to support implementation of these provisions:

- 1 17L (temporary). This position will meet with stakeholders and conduct training related to the updated statutory language and will work with other DHS program areas and partners to research and update background study requirements in their respective statutes. This position will also serve as the project manager for the signed consent project, including related stakeholder engagement. Lastly, this position will coordinate the necessary systems changes related to the child care provision. Without this level of coordination and support, study subjects and providers will lack necessary information to transition to the new statutory language, and other DHS divisions will have duplicative statutory language.
- 1 11L (temporary). This position will assist with the technical aspects of the signed consent project and will provide NET Study 2.0 subject matter expertise. This position will update the training manual and will provide other technical support.
- 2 8L. These positions will provide triage support for the manual processes of collecting and verifying consent forms before system upgrade completion. After systems changes are operational, the positions will address studies stopped by NETStudy 2.0 because of information contained in or missing from submitted consent forms.

DHS calculates fringe benefits at 30% of salary and overhead costs at \$14,000 up front (paid in fiscal year 2022) and \$1,300 per month per FTE ongoing.

Impact on Children and Families:

Without access to FBI fingerprint-based state and federal criminal history records information, DHS would not be able to meet many requirements of Minnesota Statutes, chapter 245C as well as federal laws and regulations. As a result, DHS would not be able to ensure the safety of Minnesota’s vulnerable populations. Lack of compliance with CCDBG requirements could result in penalties that impact the resources available to child care throughout the state.

Equity and Inclusion:

The proposal affects the safety and quality of child care and other programs serving children and vulnerable adults. Changes would increase the pool of available workers who are appropriately vetted for those programs.

Results:

Success will be measured by FBI acceptance of the clarifying language and DHS authorization to receive FBI and Minnesota criminal history results for study subjects as needed to complete background studies. State compliance with CCDBG requirements will be an additional measure of success.

Fiscal Detail:

Net Impact by Fund (dollars in thousands)			FY 22	FY 23	FY 22-23	FY 24	FY 25	FY 24-25
General Fund			772	264	1,036	195	195	390
HCAF								
Federal TANF								
Other Fund			0	0	0	0	0	0
Total All Funds			772	264	1,036	195	195	390
Fund	BACT#	Description	FY 22	FY 23	FY 22-23	FY 24	FY 25	FY 24-25
GF	11	Systems State Share (AEM @ 50%)	327	16	343	65	65	130
GF	11	P/T Vendor Contracts for NETStudy 2.0	\$166	\$0	166	0	0	0
SR	11	Move vendor funds to Special Revenue	(166)	0	(166)	0	0	0
SR	11	P/T Vendor contracts for NETStudy 2.0	166	0	166	0	0	0
GF	11	Background Studies staff	411	365	776	191	191	382
GF	Rev1	OPS Admin FFP @ 32%	(132)	(117)	(249)	(61)	(61)	(122)
Requested FTE's								
Fund	BACT#	Description	FY 22	FY 23	FY 22-23	FY 24	FY 25	FY 24-25
GF	11	OPS-Background Studies FTEs	4	3.5		2	2	0

Human Services

FY 2022-23 Biennial Budget Change Item

Change Item Title: Adding New DHS Background Study Partners

Fiscal Impact (\$000s)	FY 2022	FY 2023	FY 2024	FY 2025
General Fund				
Expenditures	0	0	0	0
Revenues	0	0	0	0
Other Funds				
Expenditures	408	408	408	408
Revenues	(408)	(408)	(408)	(408)
Net Fiscal Impact = (Expenditures – Revenues)	0	0	0	0
FTEs	0	0	0	0

Recommendation:

The Governor recommends a change to Minnesota Statutes chapter 245C (Department of Human Services Background Studies Act) authorizing the Department of Human Services (DHS) to conduct background studies for the Professional Educator Licensing and Standards Board (PELSB) and MNSure.

Rationale/Background:

The 2019 Legislature required PELSB to contract with DHS to conduct background studies for first-time teaching license applicants. The requirement was added to Minnesota Statutes, chapter 122A (Teachers and other educators) but not Minnesota Statutes, chapter 245C (Human Services background studies).

During implementation of the policy change, the Minnesota Bureau of Criminal Apprehension (BCA) raised concerns about DHS's authority to conduct background studies for PELSB. The Federal Bureau of Investigation (FBI) reviewed the statute change to determine if the new language met the requirements of Public Law 92-544, which controls access to FBI criminal history record information. On April 24, 2020, the FBI determined that Minnesota Statutes, section 122A.18, subd. 8 does not qualify for DHS access to FBI criminal history record information. As a result, DHS does not have access to the criminal history record information necessary to conduct background studies for first-time applicants for licenses for educators.

DHS has been completing background studies for MNSure navigators, in-person assisters, and consumer assistant partners in the Licensing Information System (LIS), the precursor to NETStudy 2.0, through a master contract relationship. MNSure must be added to chapter 245C in order to clarify roles and to ensure compliance with the requirements of Public Law 92-544 to allow MNSure to transition to the NETStudy 2.0 system.

Proposal:

This proposal adds clarifying language to chapter 245C that will bring the statute into compliance to allow DHS to receive FBI records that are critical for PELSB's licensure of new teachers and MNSure's employment of vetted staff. DHS will continue to work with the BCA to ensure the new language will provide the necessary authority from the FBI to conduct background studies for PELSB and MNSure. DHS will also continue to work with PELSB and MNSure so that they are aware of the FBI approval status and other aspects of policy implementation.

Fiscal Impact:

The proposal is cost neutral to the general fund. The new PELSB studies will generate an estimated fee revenue of \$816,000 in the 2022-2023 biennium in the Special Revenue Fund, and \$816,000 in the 2024-2025 biennium. The fee revenue is anticipated to offset costs for completing background studies in the same fund during the same period. The fee revenue is based on an estimate of 8,000 new background studies at a cost of \$51 per study.

There is no additional revenue or costs related to adding MNsure to the statute as the change is not expected to impact either the number or cost of the studies conducted.

Impact on Children and Families:

The proposal helps to ensure the safety of children and vulnerable adults by vetting applicants for teacher licensure and for MNsure navigators, in-person assisters, and consumer assistant partners.

Equity and Inclusion:

The proposal affects the safety of students and schools throughout the state. Changes would increase the statewide pool of available teachers who are appropriately vetted. The proposal also affects the safety of people seeking assistance from MNsure navigators, in-person assisters, and consumer assistant partners and would increase the availability of appropriately vetted staff for those positions.

Results:

Success will be measured by DHS having the clear statutory authority to receive FBI and Minnesota criminal history results for study subjects and to forward data to PELSB and MNsure.

Fiscal Detail:

Net Impact by Fund (dollars in thousands)			FY 22	FY 23	FY 22-23	FY 24	FY 25	FY 24-25
General Fund				0	0	0	0	0
HCAF								
Federal TANF								
Other Fund								
Total All Funds				0	0	0	0	0
Fund	BACT#	Description	FY 22	FY 23	FY 22-23	FY 24	FY 25	FY 24-25
DED	Rev1	Background Studies Fee Revenue	(408)	(408)	(816)	(408)	(408)	(816)
DED	Exp	Background Studies Expenditures	408	408	816	408	408	816
Requested FTE's								
Fund	BACT#	Description	FY 22	FY 23	FY 22-23	FY 24	FY 25	FY 24-25
GF	11	OPS-Background Studies FTEs		0	0	0	0	0

Human Services

FY 2021-22 Biennial Budget Change Item

Change Item Title: EIDBI Background Study

Fiscal Impact (\$000s)	FY 2022	FY 2023	FY 2024	FY 2025
General Fund				
Expenditures	0	0	0	0
Revenues	0	0	0	0
Other Funds				
Expenditures	21	21	21	21
Revenues	(21)	(21)	(21)	(21)
Net Fiscal Impact = (Expenditures – Revenues)	0	0	0	0
FTEs	0	0	0	0

Recommendation:

The Governor recommends improving protections for children and youth who receive Early Intensive Developmental and Behavioral Intervention (EIDBI) autism services by requiring EIDBI providers to operate within the background study requirements of the NETStudy system, the Department of Human Services' uniform system for conducting background studies. The net cost to this proposal for the FY 22-23 biennium is zero due to the increase in fees for the background studies which covers the costs.

This proposal adds EIDBI providers to the list of providers subject to the background study requirements and restrictions in [Minnesota Stat. §245C](#), and requires them to use the NETStudy system (the department's uniform system for conducting background studies) to complete staff background studies under that chapter.

Rationale Background:

Early Intensive Developmental Behavioral Intervention (EIDBI) services are provided as a Medical Assistance (MA) benefit. These services provide medically necessary treatment to people under the age of 21 with autism spectrum disorder (ASD) and related conditions. EIDBI services are intended to educate and support parents and families of people with ASD and related conditions; promote people's independence and participation in community life; and improve long-term outcomes and quality of life for people and their families. As of November 1, 2020 567 children were served in the EIDBI program. Since its inception in 2015, 1,451 children have utilized EIDBI services.

Improving EIDBI Provider Background Study Protections

Currently, EIDBI providers are excluded from the NETStudy system if they do not also provide other services that require background studies subject to the requirements under [Minnesota Stat. §245C](#). As a result, many EIDBI providers independently find a source to conduct background studies for prospective staff. If a staff person is identified as having a criminal background, state exclusion criteria under [Minnesota Stat. §245C.15](#) do not currently apply – only federal criteria describing certain crimes involving Medicaid fraud and other financial crimes may apply.

DHS does not have the ability to capture data relating to disqualifications of individual providers for EIDBI because background studies are handled in their entirety between EIDBI service providers and whatever background study vendors they choose to conduct studies.

Proposal:

This proposal adds EIDBI providers to the list of providers subject to the background study requirements and restrictions in [Minnesota Stat. §245C](#), and requires them to use the NETStudy system, the department's uniform system for conducting background studies. As a result, EIDBI providers and DHS will have clear exclusion criteria to apply to people who have criminal backgrounds that would otherwise prohibit them from working directly with children and vulnerable adults. This proposal will also identify a single background study resource for EIDBI providers that is a timely, trusted, and responsible.

Fiscal Impact:

EIDBI service providers would be informed of this change and trained to use the NETStudy system to implement this proposal. Since the number of providers is small, the costs for provider training can be completed within existing resources. In addition, some EIDBI providers are already trained to use the NETStudy system because they are required to use it for other services they provide.

Additional administrative and staff resources will be needed to compensate for the increased workload of the NETStudy system. However, the cost is budget neutral as the proposal recovers the cost of the background studies through a per-study fee paid by EIDBI service providers. The fee will be \$34.34 per transaction.

The overall cost for administering these background studies is about \$21,000 per year but the offsetting revenue of \$21,000 from the background fee offsets this cost. It is expected that about 625 staff will be subject to the background study fee each year.

Impact on Children and Families:

Children and young adults with autism spectrum disorder and related conditions will be directly impacted by this proposal. They will be protected by applying 245C background study and criminal background disqualification criteria to prospective staff. The EIDBI Advisory Group and other parent advocates have been consulted in the development of this proposal.

The anticipated positive impact is that people with disqualifying criminal backgrounds will be unable to serve children and vulnerable adults with autism spectrum disorder and related conditions who may not be in a position to defend themselves or report maltreatment.

Equity and Inclusion:

EIDBI is accessed by a variety of racial groups: ⁱ38% white people, 40% Black, Indigenous and people of color (BIPOC), and 22% are unknown compared with ⁱⁱoverall state demographics of Minnesota in 2019, where 80% are white and 20% are BIPOC. Of enrolled Medicaid recipients with a diagnosis of ASD, racial 47% are white people, 31% BIPOC and 22% unknown. ⁱⁱⁱOverall prevalence data in the state of Minnesota indicates potential disparities related to early-age of diagnosis of ASD amongst underserved communities. Receipt of a diagnosis later in the child's life means less opportunity to access early intervention services during the most critical developmental period. Data also indicated that 25% of the total population of children with autism also have an intellectual disability. This puts them at high risk for abuse or maltreatment.

55% of recipients are being served in the 7 county metro area, with the remaining 45% being served in greater MN counties.

By ensuring that EIDBI providers have access to the same background study system utilized by other providers, all people, regardless of their unique abilities, are equally protected from harm.

One third of EIDBI providers are minority-owned and focus on minority communities. This proposal equips those providers with access to NETStudy to ensure they are able to protect the children they serve and to attract culturally-specific, qualified staff.

Results:

The following information will be collected from NETStudy, DHS Provider Enrollment, and SIRS audits:

- Quantity: How many prospective EIDBI staff persons were subject to a background study during any given year?
- Quality: How many of these prospective staff persons were identified as disqualified due to criminal background, and proactively blocked from working with children and vulnerable adults?
- Result: Have prospective staff with disqualifying criminal histories been identified and prevented from having access to children and vulnerable adults as a result of applying 245C criteria?

IT Related Proposals:

None.

Fiscal Detail:

Net Impact by Fund (dollars in thousands)			FY 22	FY 23	FY 22-23	FY 24	FY 25	FY 24-25
General Fund			0	0	0	0	0	0
HCAF								
Federal TANF								
Other Fund								
Total All Funds								
Fund	BACT#	Description	FY 22	FY 23	FY 22-23	FY 24	FY 25	FY 24-25
SR	11	Background study expense	21	21	42	21	21	42
SR	REV	Background study revenue	(21)	(21)	(42)	(21)	(21)	(42)
Requested FTE's								
Fund	BACT#	Description	FY 22	FY 23	FY 22-23	FY 24	FY 25	FY 24-25

Statutory Change(s):

Amend Minnesota Statutes [245C.03](#), [245C.10](#), [256B.0949](#)

ⁱ Data report from DHS from EIDBI claims on recipient demographics through September 1, 2020

ⁱⁱ 2018 Population Estimates, U.S. Census Bureau, [MN State Demographic Center](#)

ⁱⁱⁱ Minnesota Autism Developmental Disabilities Monitoring Network <https://addm.umn.edu/>