

1.1 moves to amend H.F. No. 962 as follows:

1.2 Delete everything after the enacting clause and insert:

1.3 "Section 1. **[634.046] PROTECTION OF PERSONNEL DATA ACCESSED BY A**
1.4 **PROSECUTING AUTHORITY.**

1.5 Subdivision 1. **Definitions.** (a) For the purposes of this section, the following terms have
1.6 the meanings given in this subdivision.

1.7 (b) "Brady-Giglio material" means all data about a public employee witness that has
1.8 been determined by a prosecuting authority, according to law and pursuant to their policy
1.9 required in subdivision 2, to be potentially exculpatory and/or impeaching.

1.10 (c) "Criminal action" means any petty misdemeanor, misdemeanor, gross misdemeanor,
1.11 felony, or delinquency proceedings.

1.12 (d) "Not public data or information" has the meaning given "not public data" in section
1.13 13.02, subdivision 8a.

1.14 (e) "Peace officer" or "officer" has the meaning given in section 626.88, subdivision 1,
1.15 paragraph (b).

1.16 (f) "Personnel data" has the meaning given in section 13.43, subdivision 1.

1.17 (g) "Private data or information" has the meaning given "private data" in section 13.02,
1.18 subdivision 12.

1.19 (h) "Prosecuting authority" or "authority" means the public official and their designees
1.20 responsible for initiating and conducting criminal prosecutions, including the Minnesota
1.21 Attorney General's Office, each county attorney's office, and each principal city attorney,
1.22 including any attorney contracted for the prosecution of criminal offenses for a city or
1.23 municipality.

2.1 Subd. 2. Contents of prosecuting authority policy. (a) All prosecuting authorities in
2.2 Minnesota shall implement a written policy to guide the process of seeking and reviewing
2.3 personnel data, and disclosing personnel data if determined to be Brady-Giglio material in
2.4 all criminal actions in Minnesota.

2.5 (b) All policies under this section must state goals and contain objectives and procedures
2.6 to address the following matters:

2.7 (1) the methodology, according to law, used by the prosecuting authority to determine
2.8 whether personnel data will be considered Brady-Giglio material and retained by the
2.9 prosecuting authority;

2.10 (2) the requirement of the prosecuting authority to designate and identify responsible
2.11 attorney personnel to oversee and administer their shared obligations under the policy;

2.12 (3) procedures for a public employer, including a law enforcement authority, to notify
2.13 the prosecuting authority of conduct by a public employee that could meet the definition of
2.14 Brady-Giglio material;

2.15 (4) procedures for the prosecuting authority to notify the public employer and the subject
2.16 of the data of the following:

2.17 (i) when the prosecuting authority subpoenas or requests personnel data or files a motion
2.18 in court to seek the production of personnel data for in camera review;

2.19 (ii) when the prosecuting authority has determined it will retain an individual's data,
2.20 including any not public data, for Brady-Giglio purposes; and

2.21 (ii) after receiving a court order in a criminal action handled by the prosecuting authority
2.22 that makes a determination that a public employee's conduct may need to be disclosed in
2.23 future cases under Brady-Giglio;

2.24 (5) procedures for the prosecuting authority to receive supplemental data or information
2.25 from the public employer or the subject of the data for the purpose of updating Brady-Giglio
2.26 material or requesting that the prosecuting authority reconsider its Brady-Giglio
2.27 determination, including reasonable time frames;

2.28 (6) procedures for protecting retained personnel data for Brady-Giglio purposes from
2.29 public disclosure or any improper use outside of the criminal action where that data may
2.30 be disclosed or relevant; and

3.1 (7) procedures for educating law enforcement agencies and other public employers about
3.2 the contents and requirements of the policy and their roles in assisting with their
3.3 implementation.

3.4 Subd. 3. **Prohibition on do not call.** Except where otherwise authorized or required by
3.5 law, a prosecuting authority's disclosure of Brady-Giglio information must be on a
3.6 case-by-case basis when the prosecuting authority has determined that the information about
3.7 a testifying witness could be material. A prosecuting authority may not create or establish
3.8 a blanket do not use or do not call list, status, or designation for public employee(s) because
3.9 that determination must be case specific. "Do not call" or "do not use" for purposes of this
3.10 section means a predetermined, generic policy or decision by a prosecuting authority that
3.11 a public employee witness will never be called to testify in any proceeding. The fact that a
3.12 prosecuting agency has not called a public employee in any proceedings does not constitute
3.13 or create the presumption of the existence of a blanket prohibition list.

3.14 Subd. 4. **Restrictions on data.** (a) Subject to the limitations of the Minnesota Government
3.15 Data Practices Act, any personnel data designated as Brady-Giglio material and disclosed
3.16 in a criminal action by any agency or government entity under this section or pursuant to
3.17 any court order shall maintain its original data classification.

3.18 (b) Notwithstanding any law to the contrary, a prosecuting authority shall not disclose
3.19 to any person any data that is received from a government entity and is on a current or
3.20 former employee of that entity; provided, however, that the prosecuting authority shall
3.21 disclose such data to the court or any party in a case as required under applicable law. The
3.22 prosecuting authority may disclose such data: to the current or former employee who is the
3.23 subject of the data; in response to an inquiry under Minnesota Administrative Rule
3.24 6700.0670, subpart 2(A)(13); or to another prosecuting authority that is in compliance with
3.25 the requirements of subdivision 2 of this statute.

3.26 (c) The district court shall make appropriate safeguards to protect personnel data and
3.27 classified data designated as Brady-Giglio material when disclosure is necessary to pro se
3.28 parties representing themselves as defendants in any criminal action. The district court may
3.29 appoint standby legal counsel to handle any Brady-Giglio material that must be disclosed
3.30 in a criminal action to a pro se party.

3.31 (d) The district court may issue protective orders restricting the disclosure and use of
3.32 personnel data provided to the defendant pursuant to this statute upon the request of a
3.33 prosecuting authority.

4.1 (e) Recipients of Brady-Giglio material in a criminal action marked by the prosecution
4.2 authority or the court as originating from a public employee's personnel file shall protect
4.3 that data from further disclosure outside of the criminal action. Recipients of this data who
4.4 fail to abide by this subdivision or a protective order issued under paragraph (d) are
4.5 punishable by a misdemeanor.

4.6 Subd. 5. **Judicial notice to public employer and prosecuting authority.** If a court
4.7 finds that a public employee, including a peace officer, who testifies at a hearing or submits
4.8 other testimonial evidence, has been untruthful, the district court shall provide notice to the
4.9 public employer, employee, and the local prosecuting authority, as well as the parties in the
4.10 applicable case.

4.11 Subd. 6. **Compliance with other laws.** The provisions of this section shall not be
4.12 construed in any way, manner, or form to restrict prosecutors or judges from fulfilling their
4.13 constitutional, professional, and ethical obligations."

4.14 Amend the title accordingly