1.1   .... moves to amend H.F. No. 962, the first engrossment, 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.

1.7   (b) "Brady-Giglio material" as used in the section means all data about a public employee

1.8   witness that has been determined by a prosecuting authority, according to law and pursuant

1.9   to their policy 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" as used in this section shall have the same definition

1.13   of "not public data" in section 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 same meaning as defined in section 13.43, subdivision 1.

1.17   (g) "Private data or information" as used in this section shall have the same definition

1.18   of "private data" in section 13.02, 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 retain the Brady-Giglio material in

2.11   a secured, limited access environment that is only accessible to designated personnel;

2.12   (3) the requirement of the prosecuting authority to designate and identify responsible

2.13   attorney personnel to oversee and administer their shared obligations under the policy;

2.14   (4) procedures for a public employer, including a law enforcement authority, to notify

2.15   the prosecuting authority of conduct by a public employee that could meet the definition of

2.16   Brady-Giglio material;

2.17   (5) procedures for the prosecuting authority to notify the public employer and the subject

2.18   of the data of the following:

2.19   (i) when the prosecuting authority requests personnel data;

2.20   (ii) when the prosecuting authority has determined it will retain an individual's data,

2.21   including any not public data, for Brady-Giglio purposes;

2.22   (iii) when the prosecuting authority receives a court order that, in its discretion, may

2.23   trigger disclosure obligations in future cases under Brady-Giglio; and

2.24   (iv) when the prosecuting authority discloses Brady-Giglio material to a defendant in a

2.25   criminal action handled by the prosecuting authority, provided that the public employee

2.26   made a written request to receive such notice;

2.27   (6) procedures for the prosecuting authority to receive supplemental data or information

2.28   from the public employer or the subject of the data for the purpose of updating Brady-Giglio

2.29   material or requesting that the prosecuting authority reconsider its Brady-Giglio

2.30   determination;

3.1 (7) procedures for protecting retained personnel data for Brady-Giglio purposes from

3.2 public disclosure or any improper use outside of a criminal action where that data may be

3.3 disclosed or relevant; and

3.4 (8) procedures for educating law enforcement agencies and other public employers about

3.5 the contents and requirements of the policy and their roles in assisting with their

3.6 implementation.

3.7 Subd. 3. **Prohibition on do not call.** Except where otherwise authorized or required by

3.8 law, a prosecuting authority's disclosure of Brady-Giglio information must be on a

3.9 case-by-case basis when the prosecuting authority has determined that the information about

3.10 a testifying witness could be material. A prosecuting authority may not create or establish

3.11 a blanket do not use or do not call list, status, or designation for public employees because

3.12 that determination must be case specific. "Do not call" or "do not use" for purposes of this

3.13 section means a predetermined, generic policy or decision by a prosecuting authority that

3.14 a public employee witness will never be called to testify in any proceeding. The fact that a

3.15 prosecuting agency has not called a public employee in any proceedings does not constitute

3.16 or create the presumption of the existence of a blanket prohibition list.

3.17 Subd. 4. **Data access.** (a) Pursuant to the provision in section 13.05, subdivision 9, a

3.18 public employer shall allow any prosecuting authority with a written policy under this

3.19 section to have limited access to personnel data, including private and not public data,

3.20 maintained by the public employer that could contain data that may be favorable to a

3.21 defendant or impeaching of a witness. The public employer shall allow the access under

3.22 this subdivision when the prosecuting authority communicates that:

3.23 (1) the subject of the personnel data is a current or former public employee of that

3.24 employer;

3.25 (2) the subject of the personnel data is or could reasonably be a witness in a current or

3.26 future criminal action; and

3.27 (3) the prosecuting authority seeks the information for the sole purpose of complying

3.28 with its professional obligations pursuant to Brady-Giglio and related legal authorities.

3.29 (b) Nothing in this section prevents a public employer from objecting in good faith to

3.30 the nature or scope of data or information that a prosecuting authority requests to access in

3.31 order to fulfill its Brady-Giglio obligation. The objection may be resolved by an agreement

3.32 between the public employer and prosecuting authority that shall incorporate the protections

3.33 and penalties of this section, or by an in-camera action before the district court pursuant to

3.34 a motion, complaint for declaratory relief, or appropriate petition for a writ. The scope of

4.1   the court's review in such matter shall be limited to: (1) whether the prosecuting authority's

4.2   policy complies with subdivision 2; and (2) whether the public employer's objection relates

4.3   to data that may be favorable to a defendant or impeaching of a witness.

4.4   Subd. 5. **Restrictions on data.** (a) Subject to the limitations of the Minnesota Government

4.5   Data Practices Act, any personnel data designated as Brady-Giglio material and disclosed

4.6   in a criminal action by any agency or government entity under this section or pursuant to

4.7   any court order shall maintain its original data classification.

4.8   (b) A prosecuting authority shall retain only Brady-Giglio material for purposes of

4.9   fulfilling constitutional obligations in future criminal proceedings. If a prosecuting authority

4.10   reasonably determines that certain Brady-Giglio material is no longer relevant in any future

4.11   criminal proceeding due to changes in circumstances, the prosecuting authority shall destroy

4.12   such material. If a prosecuting authority receives data that is not Brady-Giglio material,

4.13   including but not limited to personal information as defined in section 609.5151, the

4.14   prosecuting authority shall redact or destroy such non-Brady-Giglio data and notify the

4.15   public employer of the redaction or destruction of such non-Brady-Giglio data.

4.16   (c) A prosecuting authority shall disclose Brady-Giglio material received from a public

4.17   employer to the court or a party in a criminal action as required under applicable law or

4.18   court order. A prosecuting authority may disclose such data to the current or former employee

4.19   who is the subject of the data; to a law enforcement agency in response to an inquiry under

4.20   Minnesota Rules, part 6700.0670, subpart 2, item (A), subitem (13); or to another prosecuting

4.21   authority that is in compliance with the requirements of subdivision 2 of this section. A

4.22   prosecuting authority shall not disclose such data to any other person. Nothing in this section

4.23   requires the disclosure of attorney work-product related to Brady-Giglio material.

4.24   (d) The district court shall make appropriate safeguards to protect personnel data and

4.25   classified data designated as Brady-Giglio material when disclosure is necessary to pro se

4.26   parties representing themselves as defendants in any criminal action. The district court may

4.27   appoint standby legal counsel to handle any Brady-Giglio material that must be disclosed

4.28   in a criminal action to a pro se party.

4.29   (e) The district court may issue protective orders restricting the disclosure and use of

4.30   personnel data provided to the defendant pursuant to this statute upon the request of a

4.31   prosecuting authority.

4.32   (f) If a prosecuting authority requests Brady-Giglio material that is private data or not

4.33   public data under this section, the public employer shall promptly notify the subject of the

4.34   data of the request.

5.1   Subd. 6. **Penalty for failing to protect Brady-Giglio material.** Recipients of

5.2   Brady-Giglio material in a criminal action marked by the prosecution authority or the court

5.3   as originating from a public employee's personnel file shall protect that data from further

5.4   disclosure outside of the criminal action. Recipients of this data who fail to abide by this

5.5   subdivision or a protective order issued under subdivision 5, paragraph (e) are punishable

5.6   by a misdemeanor.

5.7   Subd. 7. **Judicial notice to public employer and prosecuting authority.** If a court

5.8   finds that a public employee, including a peace officer, who testifies at a hearing or submits

5.9   other testimonial evidence, has been untruthful, the district court shall provide notice to the

5.10   public employer, employee, and the local prosecuting authority, as well as the parties in the

5.11   applicable case.

5.12   Subd. 8. **Compliance with other laws.** The provisions of this section shall not be

5.13   construed in any way, manner, or form to restrict prosecutors or judges from fulfilling their

5.14   constitutional, professional, and ethical obligations.

5.15   **EFFECTIVE DATE.** This section is effective February 1, 2027. Nothing in this section

5.16   limits a prosecuting authority's ability to adopt a policy regarding updating Brady-Giglio

5.17   material or reconsidering a Brady-Giglio determination prior to the effective date."

5.18   Amend the title accordingly