



# Remedies Subcommittee – Permanent DQ Update

MAY 20, 2022

# Permanent DQ Statute – 245C.15, Subd. 1 – List of Crimes

- ▶ [609.185](#) (murder in the first degree);
- ▶ [609.19](#) (murder in the second degree);
- ▶ [609.195](#) (murder in the third degree);
- ▶ [609.20](#) (manslaughter in the first degree);
- ▶ [609.205](#) (manslaughter in the second degree);
- ▶ a felony offense under sections [609.2242](#) and [609.2243](#) (domestic assault), spousal abuse, child abuse or neglect, or a crime against children;
- ▶ [609.2247](#) (domestic assault by strangulation);
- ▶ [609.25](#) (kidnapping);
- ▶ [609.2661](#) (murder of an unborn child in the first degree);
- ▶ [609.2662](#) (murder of an unborn child in the second degree);
- ▶ [609.2663](#) (murder of an unborn child in the third degree);
- ▶ [609.322](#) (solicitation, inducement, and promotion of prostitution);
- ▶ [609.324, subdivision 1](#) (other prohibited acts);
- ▶ [609.342](#) (criminal sexual conduct in the first degree);
- ▶ [609.343](#) (criminal sexual conduct in the second degree);
- ▶ [609.344](#) (criminal sexual conduct in the third degree);
- ▶ [609.345](#) (criminal sexual conduct in the fourth degree);
- ▶ [609.3451](#) (criminal sexual conduct in the fifth degree);

# Permanent DQ Statute – 245C.15, Subd. 1 – List of Crimes Continued

- ▶ [609.3453](#) (criminal sexual predatory conduct);
- ▶ [609.3458](#) (sexual extortion);
- ▶ [609.352](#) (solicitation of children to engage in sexual conduct);
- ▶ [609.365](#) (incest);
- ▶ a felony offense under [609.377](#) (malicious punishment of a child);
- ▶ a felony offense under [609.378](#) (neglect or endangerment of a child);
- ▶ [617.23](#), subdivision 2, clause (1), or subdivision 3, clause (1) (indecent exposure involving a minor);
- ▶ [617.246](#) (use of minors in sexual performance prohibited);
- ▶ [617.247](#) (possession of pictorial representations of minors);
- ▶ [243.166](#) (violation of predatory offender registration law);
- ▶ a felony offense under [609.221](#) or [609.222](#) (assault in the first or second degree);
- ▶ [609.228](#) (great bodily harm caused by distribution of drugs);
- ▶ [609.245](#) (aggravated robbery);
- ▶ [609.561](#) (arson in the first degree);
- ▶ [609.66, subdivision 1e](#) (drive-by shooting);
- ▶ [609.749, subdivision 3](#), 4, or 5 (felony-level harassment or stalking);
- ▶ [609.855, subdivision 5](#) (shooting at or in a public transit vehicle or facility);

# Additional Permanent DQ's Based on the Permanent Crimes List

- ▶ for a child care background study subject, conviction of a crime that would make the individual ineligible for employment under United States Code, title 42, section 9858f, except for a felony drug conviction, regardless of whether a period of disqualification under subdivisions 2 to 4, would apply if the individual were not a child care background study subject (Child Care Block Grant)
- ▶ Aiding and abetting, attempt, or conspiracy
- ▶ Disqualification based on judicial determination other than conviction
- ▶ Disqualifications based on preponderance of the evidence
- ▶ Disqualifications based on juvenile delinquency adjudication

# Permanent DQ's

- ▶ 37 enumerated crimes, plus all aiding and abetting, attempt or conspiracy
- ▶ Permanent DQs:
  - ▶ 2018 – 553 (12,639 Total Disqualifications)
  - ▶ 2018 – 1,191 (20,087 Total Disqualifications)
- ▶ This does not include the other DQ's – 15-year (other felonies), 10-year (gross misdemeanors), and 7-year (misdemeanors)
- ▶ Permanent DQ List is based on Federal Requirements, in part

# Federal Laws that Pertain to DQ's

- ▶ Adam Walsh Child Protection and Safety Act
  - ▶ Child Care Development Block Grant
  - ▶ Family First Prevent Services Act
  - ▶ Head Start
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- ▶ These are federal laws that are linked to federal funding

# Adam Walsh Act

- ▶ in any case involving a child on whose behalf such payments are to be so made in which a record check reveals a felony conviction for child abuse or neglect, for spousal abuse, for a crime against children (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery, if a State finds that a court of competent jurisdiction has determined that the felony was committed at any time, such final approval shall not be granted; and
- ▶ in any case involving a child on whose behalf such payments are to be so made in which a record check reveals a felony conviction for physical assault, battery, or a drug-related offense, if a State finds that a court of competent jurisdiction has determined that the felony was committed within the past 5 years, such final approval shall not be granted

# Adam Walsh Broken Down

- ▶ Permanent DQ:
  - ▶ If the individual has a felony conviction for:
    - ▶ Child Abuse & Neglect
    - ▶ Spousal Abuse
    - ▶ Crimes Against Children (including child pornography)
    - ▶ Crimes involving violence, including rape, sexual assault, or homicide, but not including other physical assault or batter
- ▶ 5 Year DQ from the date of the incident:
  - ▶ If the individual has a felony conviction for:
    - ▶ Physical assault or battery
    - ▶ Drug related offenses
- ▶ Does not cover:
  - ▶ Gross Misdemeanors
  - ▶ Misdemeanors
  - ▶ Non-convictions – stays of adjudication, preponderance of the evidence, juvenile delinquency adjudications



# Child Care Development Block Grant

- ▶ Permanent DQ:
  - ▶ If the individual has a felony conviction for:
    - ▶ Homicide
    - ▶ Child abuse and neglect
    - ▶ Crimes against children (including child pornography)
    - ▶ Spousal abuse
    - ▶ Crimes involving rape or sexual assault
    - ▶ Kidnapping
    - ▶ Arson
    - ▶ Physical assault or battery
    - ▶ Violent misdemeanors committed by an adult against a child including child abuse, child endangerment, sexual assault

# Child Care Development Block Grant

## Continued

- ▶ 5 Year DQ from the date of the incident:
  - ▶ If the individual has a felony conviction for:
    - ▶ Drug related offenses
- ▶ Indeterminate time period:
  - ▶ Refusal to consent to process or making materially false statements
  - ▶ The individual is registered or is required to be registered as a predatory offender
- ▶ Does not cover:
  - ▶ Gross Misdemeanors
  - ▶ Misdemeanors (most)
  - ▶ Non-convictions, preponderance of the evidence, or juvenile delinquency adjudications

# Children's Residential Facilities

- ▶ Follows Adam Walsh

# Head Start

- ▶ Follows Child Care Block Grant

## Areas of Note for the Remedies Subcommittee

- ▶ The current statutory framework applies to all background studies despite no federal requirements for individuals that work with adults
- ▶ The permanency list includes crimes that are not required by federal statutes (next slide)
- ▶ The permanency list needs to be updated based on new legislation – Minnesota's Child Torture Statute (effective September 2021)

# Areas of Note Continued

- ▶ Permanent DQ crimes that are not required by Adam Walsh
  - ▶ [609.3451](#) (criminal sexual conduct in the fifth degree); Subd. 2 – Gross Misdemeanor (153 individuals in 2018 & 2019)
  - ▶ [609.3453](#) (criminal sexual predatory conduct); where “predatory crime” is assault 1-3 (0 in 2018 & 2019)
  - ▶ [609.365](#) (incest) (<20 in 2018 & 2019)
  - ▶ [243.166](#) (violation of predatory offender registration law) (42 in 2018 and 2019)
  - ▶ [609.228](#) (great bodily harm caused by distribution of drugs) (0 in 2018 & 2019)
  - ▶ [609.322](#) (solicitation, inducement, and promotion of prostitution); (Subd 1a) (< 20 in 2018 & 2019)
  - ▶ [609.749, subdivision 3, 4, or 5](#) (felony-level harassment or stalking); mostly no use force element (<26 in 2018 and 2019)
  - ▶ Aiding and abetting, attempt, or conspiracy
  - ▶ Disqualification based on judicial determination other than conviction
  - ▶ Disqualifications based on preponderance of the evidences
  - ▶ Disqualifications based on juvenile delinquency adjudication
- ▶ 7 additional crimes + all aiding and abetting, attempt, or conspiracy, and all non-convictions
- ▶ \*\*\*The number of individuals disqualified includes delinquents, admissions, Alford pleas, convictions and POES

# Proposed Recommendation - 1

- ▶ **Federal Law Compliance**- Background studies that need to comply with Federal statutes such as Adam Walsh Act or Child Care Development Block Grant should be limited to a list of disqualifications necessary to comply with those Federal Statutes. It is possible that AW/CCDBG may need to be combined if there is enough overlap.

# Proposed Recommendation – 2

- ▶ **For background studies that do not need federal law compliance, adopt the 2008 taskforce recommendation that permanent disqualifications be limited to Murder, Manslaughter and Felony Criminal Sexual Conduct.**
- ▶ The report noted that People should be evaluated individually. Ex offenders should not be barred from any employment wholesale and for life, especially when there is no clear nexus between the crime and the job for which the person is being evaluated.



# Proposed Recommendation – 3

- ▶ **Further remove any permanent disqualifications altogether for Substance Use Disorder related positions and facilities, Family Caretaker positions, and any disqualification based on conduct engaged in by a juvenile.**
  - ▶ Remove any permanent disqualifications for positions that do not have direct unsupervised access to vulnerable people