

Bullet Points DQ Subcommittee

Disqualification Subcommittee Overview:

The Disqualification Subcommittee of the Task Force was organized to review the list of criminal matters enumerated in 245C.15 to determine if there are areas the law for improvement. The DQ Subcommittee reviewed the law with the paramount concern for the health and safety of vulnerable adults and children. Notwithstanding this concern, the DQS sought ways to simplify the law, reduce disqualifications for those who do not pose a risk of harm to vulnerable populations.

The DQ subcommittee reviewed the following topics:

- List of Disqualifying Offenses
- Length of Disqualification for Offenses
- Date disqualification period should begin
- Juvenile Offenses
- Child Foster Care

Juvenile Offenses:

i. Law:

Under current law, the reviewing agency (DHS, MDH, etc.) review juvenile records when conducting a BGS. The reviewing agency is required to use “juvenile adjudications” when determining if a person is disqualified from direct care positions.

Accordingly, if a fourteen-year-old is adjudicated for a burglary, then they are disqualified for 15 years; the same as an adult committing the crime.

ii. Concern:

- The Background Study Act treats juvenile adjudications the same way as adult convictions. Juvenile adjudications are not, by law criminal convictions. Juvenile process is different – no trial by jury, goal is support and rehabilitation, etc.
- Brain Science/Maturity. Advances in science, and recent decisions by the Supreme Court illustrate that as a matter of fact, children’s brains are developing. Children fundamentally contrast with adults both physiologically and psychologically, such that when they offend, while we must hold them accountable, this must be done in a developmentally appropriate manner. “Developmental changes that occur during childhood and [continuing through] adolescence ... are relevant to competence, culpability, and likely response to treatment.”
- Racial Disparities. In HC, from 2018-2022, 66.5% of juvenile prosecution are listed as “Black or African American.” While 19.89% identify as “white.” According to 2021

Census, 74.2 of Hennepin County residents identify as “white alone” while 13.8% identified as “Black or African American alone.”

- 260B.002 POLICY ON DISPROPORTIONATE MINORITY CONTACT. It is the policy of the state of Minnesota to identify and eliminate barriers to racial, ethnic, and gender fairness within the criminal justice, juvenile justice, corrections, and judicial systems, in support of the fundamental principle of fair and equitable treatment under law.
- Some juvenile matters are severe and require exclusion from vulnerable individuals.

iii. Recommendation:

- a) Continue to permit disqualification of juveniles certified and prosecuted as adults in the same manner as adult convictions.
- b) For those who are adjudicated delinquent under the juvenile court system, and not certified as an adult, the disqualified period is 5 years.
- c) Disqualification period begins
 1. the date of conviction, if the individual was convicted of the violation but not committed to the custody of the commissioner of corrections; or
 2. the date of release from prison, if the individual was convicted of the violation and committed to the custody of the commissioner of corrections.
- d) Permit DHS to set-aside a permanent disqualification if said DQ was based on a juvenile record

Note: Some members believe that juvenile cases should be treated the same as adult cases.

Other members believe that juvenile matters should never be used to disqualify an individual.

Length of Disqualification:

- i. Law: Minnesota law currently separates the length of a disqualification into four (4) categories:
 - a) **Permanent Disqualification.** Disqualification period never expires. Reserved for serious offenses (regardless of the level of the offense) such as murder, kidnapping, criminal sexual conduct. *See* 245C.15, Subd. 1 for a complete list.
 - b) **15-Year Disqualification.** Disqualification period ends 15 years since the discharge of sentence. List includes felony level offenses of numerous crimes. *See* 245C.15, Subd. 2 for a complete list.
 - c) **10-Year Disqualification.** Disqualification period ends 10 years since the discharge of sentence. List includes gross misdemeanor level offenses of numerous crimes. *See* 245C.15, Subd. 3 for a complete list.
 - d) **7-year Disqualification.** Disqualification period ends 7 years since the discharge of sentence. List includes misdemeanor level offenses of numerous crimes and substantiated serious or recurring maltreatment of a minor (260E) or vulnerable adult (626.557). *See* 245C.15, Subd. 4 for a complete list.

ii. Concern:

- DQ Periods longer than other states
- Racial disparities. The Department of Human Services provided data from 2018-2019 showing that of all the individuals who are disqualified:
 - 48% White
 - 43% African American
 - 9% “Unknown/other”
 - 5% Native American
 - 2% Asian or Pacific Islander
 - 2% Non provided

This data illustrates the disparate impact these laws have on certain communities. For example, according to the 2020 Census:

- 77.5% White alone:
- 7.0% Black/African American alone
- 1.2% American Indian/Alaska Native alone
- 5.2% Asian alone
- 0.1% Native Hawaiian/Other Pacific Islander alone
- 3.0% Some other race alone
- 6.1% Two or more races

- 15-year disqualification for drug possession is inconsistent with public safety. DQ periods longer than necessary to maintain public safety.: The 2008 Taskforce recommendations noted concerns with this issue.
- Current law levies the exact same 15-year disqualification for a 5th Degree Controlled Substance possession offense and a 1st Degree Controlled Substance Offense. In sum, the law treats an individual who is addicted to a chemical that same as a person who sells the chemical.
- Exceeds Adam Walsh requirements.
- Inconsistent with Minnesota's criminal expungement statute. *See* Chapter 609A. In the expungement statute, a person may seek expungement as follows:

Diversion or Stay of Adjudication	One year after completion of Sentence
Misdemeanor Conviction	Two years after completion of Sentence
Goss Misdemeanor	Three years after completion of Sentence
Felony	Five years after completion of Sentence

As a result, individuals with financial means can expunge these criminal records years before they are no longer a disqualification under the BGSA. For example, a person who was convicted of a misdemeanor theft may seek an expungement two years after completing the terms of their sentence. However, if not expunged, that misdemeanor theft will remain a disqualification for 7 years after the completion of their sentence.

This is incongruent, does not make sense, and results in unfair treatment to those without the money to pay for an attorney to expunge their case.

- Confusing/hard to implement

iii. Recommendation:

- a) Eliminate current structure of 7/10/15/permanent DQ. The current structure includes disqualifications that are far too long. Not commiserate with statutory need/purpose of protecting the vulnerable.
- b) Replace with two tier system of 5 year and permanent DQ. Consistent with Adam Walsh Act (AWA).

Note: Some members believe that the current structure is sufficient, and focus should shift to shortening the processing times for obtaining set-asides.

List of Disqualifying Offenses

i. Law:

Minnesota Statutes section 245C.15.

ii. Concern:

- Includes misdemeanor offenses that not based on community safety (Drug possession, crimes of poverty, property crimes, etc)?
- Removes employer from making informed decision. BGS law prohibits employers from hiring those they think are best suited for job.
- Many offenses not listed in federal law (AWA and Block Grant)
- Inconsistent with other states
- Inconsistent with new Child Foster Care law. Several offenses were removed from the list of Dq's while others reduced in length.

iii. Recommendation:

Eliminate any misdemeanor/Gross Misdemeanor offense that does not involve health and safety of vulnerable individuals. For example:

- Wrongfully obtaining public assistance Minn. Stat.§ 256.98
- Unemployment Fraud Minn. Stat.§ 268.182
- Federal SNAP Fraud Minn. Stat.§ 397.03
- Medical Assistance Fraud Minn. Stat.§ 609.466
- Theft Minn. Stat.§ 609.466
- Bringing Stolen Goods in MN Minn. Stat.§ 609.525

- Issuance of Dishonored Check Minn. Stat.§ 609.535
- Financial Transaction Card Fraud Minn. Stat.§ 609.821

Reduce the disqualification period of felony crimes that do not involve the health and safety of vulnerable individuals. Under the recommendations herein, the new disqualification period for the below listed crimes is five (5) years.

- Wrongfully obtaining public assistance Minn. Stat.§ 256.98
- Unemployment Fraud Minn. Stat.§ 268.182
- Federal SNAP Fraud Minn. Stat.§ 397.03
- Medical Assistance Fraud Minn. Stat.§ 609.466
- Possession of Shoplifting gear Minn. Stat.§ 609.521
- Bringing Stolen Goods in MN Minn. Stat.§ 609.525
- Issuance of Dishonored Check Minn. Stat.§ 609.535
- Possession Burglary Tool Minn. Stat.§ 609.59
- Insurance Fraud Minn. Stat.§ 609.11
- Aggravated Forgery Minn. Stat.§ 609.625
- Forgery Minn. Stat.§ 609.63
- Check Forgery/Offering a Forged Ck Minn. Stat.§ 609.631
- Fraud in Obtaining Credit Minn. Stat.§ 609.82
- Financial Transaction Card Fraud Minn. Stat.§ 609.821
- Drug cases under Chapter 152 Chapter 152 (see note below).

NOTE: The subcommittee recommends reducing the length of a disqualification based on a drug conviction to reflect that many of these individuals struggle with chemical use but recover.

Employers will be permitted to review these offenses and make a determination whether the person is eligible to work for that employer.

Date disqualification period should begin

i. Law:

The law delineates between convictions, admissions, preponderance of the evince, court orders and Alford Pleas. Minn. Stat. 245C.15, Subd. 1 (d).

Conviction:

For a conviction, the disqualification period begins at the conclusion of an individual's sentence. Minn. Stat. 245C.15, Subd. 1 (d). For example, under the current law, a person who is cited for felony drug possession, a felony in Minnesota, that person is disqualified for 15 years after completion of the terms of the sentence. Accordingly, if the person is sentenced to five (5) years of probation beginning in 2015 and ending in 2020, the person's 15 year disqualification period will begin in 2020, and expire in 2035.

Admission:

When a disqualification is based on an admission (but not a conviction), the disqualification begins from the date of the admission in Court. Minn. Stat. 245C.15, Subd. 1 (d). This situation arises in cases where, for example, an individual is charged with crime, admits to engaging in the criminal activity, but the court does accept the plea in lieu of probation or other terms.

Preponderance of Evidence:

POE disqualification begins on the date of the dismissal of charges, the date of the sentence imposed, or date of the incidence, whichever occurs last. Minn. Stat. 245C.15, Subd. 1 (d).

Alford Plea:

Disqualification for Alford Plea begins the date the Alford Plea is entered in court. Minn. Stat. 245C.15, Subd. 1 (d). An Alford Plea is a plea in criminal court whereby a defendant does not admit to the criminal act and asserts innocence, but admits that the evidence is likely to persuade a judge or jury of the person's guilt.

Non-Conviction Judicial Determination:

Begins the date of the Court Order.

ii. Concern:

- Use of end of sentence leads to unfair and unequal results (long probation periods, Covid issues, right to a trial, etc).
- Not based on conduct. Not in your control.
- For example, some individuals receive longer probation sentences than others. Moreover, some counties are unwilling to reduce probationary periods after a successful period of good behavior, while other counties do so regularly. This results in longer disqualification periods based on the county of residence more than risk of harm.
- Creates longer disqualification periods for those who exercise right to a criminal trial. An individual charged with a crime has a constitutional right to a trial. This process takes time. If that person exercises their right to a trial, and is found guilty, their disqualification period will last longer than a person who committed the same crime on

the same day and took a plea deal. The subcommittee questions whether it is legal to punish a person for exercising a constitutional right.

- Inconsistent with new child foster care rules.

iii. Recommendation:

Implement the following language:

(1) the date of incident, if the individual was convicted of the violation but not committed to the custody of the commissioner of corrections; or

(2) the date of release from prison, if the individual was convicted of the violation and committed to the custody of the commissioner of corrections.

Notes: Some member suggested keeping the date of release from supervisor or date of conviction. This suggested was based on idea that the time a person is crime free while on court supervision is less meaningful than when not supervised.

Licensed Family Foster Setting Disqualifications:

i. Law:

Minnesota Statutes section 245C.15, subd. 4a. Please note that this subdivision is separate from the other parts of Minnesota's background study act. Accordingly, those seeking a child foster care license under this section are considered apart from other direct care positions such as nursing assistant, childcare worker, personal home attendant, etc. Subdivision 4a applies only to licensed family foster care settings. This is a recent change in the law that was implemented in July 2022.

ii. Concern:

- The law is new and not enough time has transpired to determine the benefits, if any, of the changes.
- Members with knowledge of child foster care licensing indicated positive response to most of the new changes. Members noted it will make it possible for some deserving individuals to obtain foster care licenses to care for their relatives who previously were excluded from providing such caregiving.
- Some members expressed concern that the new law includes twenty (20) year disqualification for a voluntary or involuntary termination of their parental rights.

iii. Recommendation:

The subcommittee recommends not changing the child foster care laws set forth in subdivision 4a at this time. Rather, the subcommittee recommends that the Department of Human Services ensure that it collects certain data to track the impact of the prior legislative changes. The subcommittee recommends that DHS collect and monitor the following data points:

- How many child foster applicants were still denied due to DQs (with the new laws)?

- What are the basis for DQs?
- How many applicants requested reconsideration?
- Of those requesting- how many were granted a set-aside.
- How many DQs were due to a prior TPR (with breakdown if due to voluntary vs involuntary) of the applicant?
- How many were still denied a license after County risk of assessments occurred?
- How many of those ended up licensed but had a facility investigation or disrupted placement?
- With all these measures there also still needs to be an eye to the racial demographics.

Members:

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