

Bullet Points Remedies Subcommittee

Permanency:

- [February recommendations:] The statute as constructed prevents the reviewing agency from making a determination on a case-by-case basis whether there is a public safety concern for this individual or not, regardless of how much time has passed and how much rehabilitation the person has accomplished.
- The current permanency list is exceptionally broad and covers too many offenses. We are exploring other states and federal guidelines.
- There should be no permanent bar for juveniles. We are exploring the science and evolution of law behind juvenile brain development.
- 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. *possibly combine AW/CCDBG if there is enough overlap*

We anticipate that this would require DHS to have a list to help identify when a background study triggers some sort of Federal statute compliance.

- 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.
- 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.
- Also remove permanent disqualifications for positions that do not have direct unsupervised access to vulnerable people

Preponderance of the Evidence (PoE):

- [February recommendations:] Applying the preponderance of the evidence standard leads to disqualifying people for conduct which was either never proven or admitted, which creates a significant risk of innocent people being disqualified. We are exploring other states and federal guidelines which seem to rely more heavily on convictions, rather than the POE standard. Based on our research, Minnesota is unique in that it appears to be the only state that relies on a POE standard.

- Disqualifications will no longer be made on a preponderance of the evidence standard. Disqualifications will only be made for convictions and stays of adjudication.
- Disqualifications based on serious or recurring maltreatment will be made on a clear and convincing standard. Family assessments will not be used to calculate whether maltreatment is recurring. Hearings are always available for disqualifications based on serious or recurring maltreatment, even if the individual did not appeal the maltreatment at the local level. At the hearing, the Department has to prove the maltreatment by clear and convincing maltreatment. The individual may still challenge the underlying maltreatment even if no appeal was done at the local level or was upheld at the local level by a preponderance of the evidence at a Fair Hearing.

Process:

- [February recommendations:] One of the problems with the current process is that it does not give the reviewing agency enough discretion (even with the prospective employee is deemed to be safe) in issuing a set-aside for non-direct care staff (maintenance, kitchen, etc.). Currently everyone (direct-care and non-direct care) are treated the same. This shifts the emphasis to the more cumbersome variance process.
- The process needs to be more user friendly. Standard forms should be available.
- Some other potential problems that we are reviewing, include, but are not limited to:
- Interview or oral appeal process to allow for a personalized review
- The process often takes so long that the job is no longer available once the process is complete
- Whether more people could be allowed to work pending the outcome of the reconsideration request
- Disparities in appeal rights following a denial of a reconsideration
- Honoring a person's right to due process (resource to allow someone to exercise due process) and a remedy is provided for when due process is not given
- Conflict with the expungement statute
- Additional accountability for the reviewing agency for the purpose of identifying civil rights violations
- Suggest that DHS receive funding to update IT infrastructure to improve data retrieval. Task Force data requests took considerable time to fulfil because of the inadequacies of the current database structure. Improving databases will facilitate the work of any future bodies like the Task Force as well as Department management.
- Suggest that improved database infrastructure be used to create regular public reports on background study process, listing statistics like number of applicants, disqualifications, set-asides, etc.

- Current situation: Timing for appeal: 15 days or 30 days ([245C.21](#))

Suggest 30 days for all requests for reconsideration

Suggest good cause exception (include definition)

Suggest certified mail/personal service

Suggest DHS look into building web portal?

- Current situation: Applicant responsible for getting police reports: [245C.21 Subd 3](#)

Suggest agency get reports and provide them to applicant

If DHS can't get the reports prior to issuing DQ, the 30 window for requesting reconsideration doesn't start until DHS provides police reports

- Current Situation: Waiver of appeal: ([245C.29 subd 2](#))

If we don't get rid of POE determinations, add language stating that you don't waive a POE challenge by failure to timely request reconsideration

- Current Situation: DHS response times, by statute: 15 days for risk of harm, 30 days for correctness, 45 days if making both arguments ([245C.22 subd 1](#))

Codify that if agency can't make decision in this timeframe, takes steps to ensure applicant can continue to work

Require final decision within 6 months

- Current Situation: Difficulty with traveling set-asides

Should be codified, and used as widely as possible- maybe ask DHS for guidance on language on how to accomplish

Suggest language allowing agency to apply set-aside to broad set of job; or to different jobs at specific employer

- Current Situation: Issues with Accessibility/ESL/communicating in writing

Create process for initial request for reconsideration to happen in an interview- something akin to a violations bureau hearings officer

Suggest DHS make submissions/correspondence via email possible

- Codify community resources language

Suggest it be codified

- Stay of Adjudication vs. Stay of Imposition DQ length: [245C.15](#)

Suggest stays of adjudication receive shortest disqualification period that DQ subcommittee decides upon

- Risk of Harm factors- [245C.22](#)

In risk of harm analysis, DHS should consider level of supervision and level and frequency of access to vulnerable people involved in the position sought

- Improve accountability by drawing on practices elsewhere in Minnesota law

Applicant winning civil case against agency entitled to attorney's fees

Applicant winning civil case against agency entitled to lost employment income