



DHS Background Study Components

Background Study Types



Department of Human Services programs



Department of Health programs



Personnel agencies, educational programs



Adult foster care



Guardians Ad Litem



Child care



Department of Corrections programs



Child foster care and adoptions



Guardians and conservators



Personal care agencies



Tribal organizations – child foster care/adoptions



Non-emergency medical transportation

Examples of provider types by regulating agency:

Department of Human Services

- Child Care
- Child Foster Care
- Children's Residential Facility
- Home & Community Based Services
- Housing Support Services
- Personal Care Provider
- Substance Use Disorder Treatment

Department of Health

- Assisted Living
- Boarding Care
- Health Occupation Provider
- Hospitals
- Home Care Provider
- Hospice Care
- Nursing Home

Department of Corrections

- Children's Residential Facility

2018 Background Studies Dashboard

198,715 individuals studied
361,707 study applications

2019 Background Studies Dashboard

227,946 individuals studied
373,222 study applications

Disqualified background studies

2018

4,414 individuals

2019

5,749 individuals

Disqualified Background Studies

Disqualified background studies

2018

4,414 individuals

2019

5,749 individuals

Disqualifying Offense	2018	2019
Theft of Property (moveable)	1,296	1,652
5 th Degree Possession; Schedule 1, 2, 3, 4 – Drug (Not Marijuana)	505	667
Misdemeanor Domestic Assault; Inflicts Bodily Harm	214	227
Check Forgery; Possession w/ intent to Defraud	183	179
Financial Transaction; Card Fraud/Use	162	196
Drugs – 5 th Degree – Procure/Possess/Control by Fraud or Deceit	22	13
Domestic Assault	107	131
Malicious Punishment of a Child	6	15

Disqualifications by Provider Type

2018

	<u># Disqualified</u>
Home & Community Based Services	4,085
Home Care Providers	3,068
Personal Care Provider Organization	3,406
Nursing Homes	1,271
Substance Use Disorder Treatment	331
DHS Child Foster Care	287
DHS Corp. Child Foster Care	88

2019

	<u># Disqualified</u>
Personal Care Provider Organization	4,946
Home & Community Based Services	4,841
Home Care Provider	4,166
Nursing Homes	1,541
Substance Use Disorder Treatment	385
DHS Child Foster Care	301
DHS Corp. Child Foster Care	142

Life of a Study – Federal Laws

Background studies processes follow state and federal laws. Key federal laws include:

- Adam Walsh Child Protection and Safety Act of 2006 (42 USC § 671(a)(20))
- Child Care and Development Block Grant (CCDBG) law (42 USC § 9858f) and regulations (45 CFR § 98.43)
- National Child Protection Act, as amended by the Volunteers for Children Act (NCPA/VCA (42 USC § 5119a(a)(3) and 34 USC § 40102)
- Public Law 92-544: authorizes the FBI to share criminal history record information with state and local government agencies

Life of a Study – Study Requested in NETStudy 2.0

- 95% of background studies are processed in DHS's NETStudy 2.0 system
 - 5% are processed in DHS's legacy LIS system
- 9,000,000 actions logged per day
- In 2015, 13,000 providers began using the system
- To date, 37,382 entities use DHS's NETStudy 2.0 system

Provider completes background study request in the NETStudy 2.0 system



Life of a Study – Fingerprinting Appointment

- The fingerprint vendor was selected by the state request for proposal (RFP) process according to state statutes and rules for procurement and contracting.
- Background study subjects receive an email from IDEMIA within a few minutes of the background study application being submitted in NETStudy 2.0 by the provider. The email includes instructions for study subjects to use IDEMIA's pre-enrollment system and information on locating a fingerprint location.

Study subject completes electronic pre-enrollment and schedules a fingerprint and photo appointment at an Identogo location

Life of a Study – Fingerprinting and Consent

- The fingerprinting fee is paid by the provider or study subject, as determined by the program.
- The NCPA/VCA requires that each study subject submitting fingerprints must:
 - Receive and submit a signed consent notice
 - Self-disclose any criminal history

Fingerprint fee is paid and study subject completes the fingerprint and photo service

Study subject completes and signs background study consent and disclosure form

Life of a Study – DHS Receives Records

The application information and fingerprints are sent to the Bureau of Criminal Apprehension (BCA).

DHS receives criminal history and Minnesota maltreatment records

- 85% of criminal history and maltreatment checks clear and don't need further interaction
- Some study types have automatic or conditional FBI checks
- BCA and FBI records are returned to DHS in cases that require staff review

Life of a Study – DHS Reviews Records

- For all studies, DHS is required to review:
 - BCA (Bureau of Criminal Apprehension) records
 - Minnesota maltreatment information
- In certain situations*, DHS also reviews:
 - Court records, including juvenile records
 - Law enforcement records, including juvenile records
 - Out of state maltreatment records
 - National Crime Information Center (FBI) records – includes state and federal records nationwide
 - *examples: where DHS has reason to believe such records may exist; program-specific requirements; whether the subject has lived outside of MN in the last 5 years; whether DHS has reason to believe the subject has a criminal record outside of MN
- Federal laws require DHS to review additional records for child foster care, child care, adoption, and children's residential facilities studies

DHS conducts the review of all records received and may request additional records from other repositories and registries.

Life of a Study – Determination

- When the records indicate a finding of criminal or maltreatment history, DHS reviews the information and determines the eligibility of the study subject.

DHS makes a
determination of fitness
eligibility

Life of a Study – Eligibility

- §245C.15 lists the disqualifying crimes and conduct
- Most disqualifications are time-limited (15, 10, 7, 5 years) and some are permanent
 - Some disqualifications are required by federal law
- Difference between disqualifications and bars
 - Disqualification is the background study result that a study subject is ineligible to provide services for a specific program – see §245C.15 for the DQ list
 - Bar is a bar to set aside – it means the subject is not eligible to have their disqualification set aside during the reconsideration process – see §245C.24 for the bars
 - All permanent disqualifications are permanent bars to set aside
 - More about reconsiderations later

Life of a Study – Notification Part 1

- The Commissioner must inform the disqualified study subject of the reason(s) for their disqualification and their right to request reconsideration.
- DHS includes a Suggested Form for Requesting Reconsideration to help study subjects navigate the reconsideration request

Determination Notice
sent to the study subject

Life of a Study – Notification Part 2

- The provider receives notification that information was found to disqualify the study subject.
- The provider is also informed whether the subject is allowed to work during the reconsideration period, and if so, whether supervision is required.

Provider notified in
NETStudy 2.0 system

Life of a Study – Challenging the Outcome Part 1

- All study subjects who are disqualified have the right to challenge their disqualification through reconsiderations and later appeals
- Reconsideration – the first step – see §245C.21-.23
 - Must be made in writing within 15 or 30 days – can request additional 30 days for additional information
 - The agency reviewing the reconsideration request has 15, 30, or 45 days to complete the reconsideration
 - Due process under Chapter 245C involves reconsiderations and appeals, not grievances
 - Agency responsible for the reconsideration makes risk of harm decision – some county involvement for in-home programs

Life of a Study – Challenging the Outcome Part 2

- Types of reconsideration: Correctness and Risk of Harm
 - Correctness – all study subjects can challenge the correctness of their disqualifications every time
 - Study subject says the disqualification is incorrect, and can submit information to support their position
 - If a disqualification is found to be incorrect, it could be rescinded entirely (clear/eligible status), or it could be modified (e.g., felony modified to misdemeanor)
 - If a permanent disqualification (which is also a permanent bar) is modified to a time-limited disqualification, the subject will receive a new letter with an opportunity to request a set aside

Life of a Study – Challenging the Outcome Part 3

Types of reconsideration continued:

- Risk of harm – study subjects whose disqualification does not include a bar to set aside can also challenge risk of harm
- Risk of harm factors – §245C.22, subd. 4(b)
 - Nature, severity, and consequences of the disqualifying event
 - Whether there is more than one disqualifying event
 - Age and vulnerability of the victim at the time of the event
 - Harm suffered by the victim
 - Vulnerability of persons served by the program
 - Similarity between the victim and persons served by the program
 - Time elapsed without a repeat of the same or similar event
 - Documentation of successful completion of relevant training or rehabilitation
 - Any other relevant information

Life of a Study – Challenging the Outcome Part 4

- Results of a risk of harm analysis – set aside or not set aside
 - Set aside – the subject’s disqualification is set aside for a specific program and they can work without restriction at that program
 - Many set asides can be applied to new studies
 - Not set aside – the subject’s disqualification is not set aside
 - In some circumstances the subject might still be allowed to work until their appeal period expires and the disqualification and no set aside become final
 - For licensed programs only – when the provider receives notice that the set aside was denied, they may request a variance

Life of a Study – Challenging the Outcome Part 5

- Bars to set aside – listed in §245C.24
 - A bar means the study subject is not eligible to receive a set aside, so the reconsideration process cannot include a risk of harm analysis
- Bar timelines
 - All permanent disqualifications are also permanent bars to set aside
 - 10, 7, and 5 year bars for certain programs (family child care, family foster care, family adult day care, children’s residential facilities)
- Some bars are required by federal law

Life of a Study – Variances

- Variances – different from set asides
 - Available for licensed and certain certified programs only (not available for unlicensed programs)
 - After the study subject's reconsideration results in a not set aside, the license/certification holder may request a variance
 - For in-home programs such as child foster care, counties provide recommendations
 - If a variance is granted, conditions are placed to mitigate risk
 - Variances are time limited but can be renewed

Life of a Study – Challenging the Outcome Part 6

- Appeals – Evidentiary Hearings
 - Fair hearings
 - Available for first time disqualifications for preponderance of evidence or maltreatment
 - Study subject must request within 30 days of receiving the reconsideration decision, or 90 days with good cause
 - Conducted at DHS by Human Services Judges
 - Both sides can present testimony and other evidence
 - Less formal than district court; rules of evidence do not apply so hearsay is admissible

Life of a Study – Challenging the Outcome Part 7

- Appeals – Evidentiary Hearings cont'd
 - Contested case hearings
 - Available for public employees and for disqualifications involving licensing actions
 - Conducted at Office of Administrative Hearings by Administrative Law Judges
 - Both sides can present testimony and other evidence
 - Not bound by rules of evidence
 - Administrative Law Judge makes recommendation and DHS Commissioner issues final order

Appeals in State Courts

- Appeals to State Courts
 - Fair hearing or contested case hearing –
 - Appeal of final order is to District Court, then Court of Appeals, then Supreme Court
 - If not eligible for fair hearing or contested case hearing –
 - Appeal of reconsideration decision is to Court of Appeals, then Supreme Court

Life of a Study – Expungements

- Expungements – outside of the background study process but may impact a DQ
 - Person with criminal record (“Petitioner”) seeks court order directing affected agencies to seal records
 - Petitioner is required to serve DHS with the petition if they want the order to include DHS
 - DHS reviews the petition and determines whether to object
 - Expungement eligibility standards and factors to consider are different for adult cases and juvenile cases – see §609A.02-03 (adult) and §260B.198, subd. 6 (juvenile)
 - Courts consider several factors that are similar to risk of harm factors for reconsiderations
 - If DHS is ordered to seal and does not appeal, we do not use that information to disqualify the subject next time they have a study
 - If a study is actively in process or a disqualification is actively on reconsideration or appeal (disqualification not yet final), DHS rescinds the disqualification

Thank You!

Questions?

<https://mn.gov/dhs/general-public/background-studies/>