

## REMEDIES SUBCOMMITTEE RECOMMENDATION NOTES – PERMANENCY

### I. GENERAL DISCUSSIONS/RECOMMENDATIONS

Separate out the use for the background studies to have different disqualifying crimes:

1. Adam Walsh Act Compliance (*The group needs to consider if this should be broader to include all programs that work with children – including the Adam Walsh Act, Child Care Development Block Grant, Children’s Residential Facilities, and Head Start or add a 5<sup>th</sup> bucket for the remaining programs that work with children*)
2. Alcohol CD Related
3. Family Caretaker
4. Other vulnerable adults (nursing homes, long-term care, PCA’s (non family))

*Questions for DHS – how often do programs have to go through multiple background studies – i.e. Adam Walsh and Child Care Development Block Grant.*

Separate out direct contact v. no direct contact

No permanent DQ’s for juveniles

For non-Adam Walsh – no permanent bar to set-aside – to be discussed as part of the last topic

### II. PERMANENT SPECIFIC CRIME DISCUSSIONS/RECOMMENDATIONS

Below is the breakdown of the Minnesota Permanent DQ list with what is required by Adam Walsh:

#### **Permanent Bar – Adam Walsh**

*Federal - 42 U.S.C. § 671(a)(20)(A)(i) – 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*

#### **Felony conviction for child abuse or neglect**

- a felony offense under [609.377](#) (malicious punishment of a child);
- a felony offense under [609.378](#) (neglect or endangerment of a child);

#### **For spousal abuse**

- [609.2242](#) and [609.2243](#) (domestic assault)
- [609.2247](#) (domestic assault by strangulation);

#### **For a crime against children (including child pornography)**

- [609.2242](#) and [609.2243](#) (domestic assault)

- [609.2247](#) (domestic assault by strangulation);
- [609.322](#) (solicitation, inducement, and promotion of prostitution); (Subd 1)
- [609.324, subdivision 1](#) (other prohibited acts); **child prostitution offenses**
- [609.352](#) (solicitation of children to engage in sexual conduct);
- [609.2242](#) and [609.2243](#) (domestic assault)
- [609.2247](#) (domestic assault by strangulation);
- [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
- [609.25](#) (kidnapping)

**For a crime involving violence, including rape, sexual assault, or homicide but not including other physical assault or battery**

- [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); **drug dealer manslaughter?, it is homicide**
- [609.205](#) (manslaughter in the second degree); **no use of force required, but it is homicide**
- [609.2247](#) (domestic assault by strangulation); **is this different than physical assault?**
- [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); **dangerous/depraved mind?**
- [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); **Subd. 3**
- [609.3453](#) (criminal sexual predatory conduct); **for most 609.341 (22) “predatory crimes”**
- [609.3458](#) (sexual extortion); **likely to be sexual assault**
- [609.245](#) (aggravated robbery); **likely a crime of violence in most if not all fact patterns**
- [609.561](#) (arson in the first degree); **assuming arson is a crime of violence**
- [609.66, subdivision 1e](#) (drive-by shooting);
- [609.855, subdivision 5](#) (shooting at or in a public transit vehicle or facility);

**5 Year Bar from date of incident- Adam Walsh**

*Federal - 42 U.S.C. § 671(a)(20)(A)(ii) - 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;*

- a felony offense under [609.2242](#) and [609.2243](#) (domestic assault) **victim is not spouse or child**

- a felony offense under [609.221](#) or [609.222](#) (assault in the first or second degree)
- a felony offense under [609.223](#) or [609.2231](#) (assault in the third or fourth degree)
- Drug related offenses- chapter 152 (drugs; controlled substance); or Minnesota Statutes 2012, section [609.21](#); or a felony-level conviction involving alcohol or drug use.

### **245C Permanent Disqualifications that are not Adam Walsh Offenses**

- [609.3451](#) (criminal sexual conduct in the fifth degree); **Subd. 2**
- [609.3453](#) (criminal sexual predatory conduct); **where “predatory crime” is assault 1-3**
- [609.365](#) (incest);
- [243.166](#) (violation of predatory offender registration law);
- [609.228](#) (great bodily harm caused by distribution of drugs);
- [609.322](#) (solicitation, inducement, and promotion of prostitution); **?? (Subd 1a)**
- [609.749, subdivision 3, 4, or 5](#) (felony-level harassment or stalking); **mostly no use force element**
- 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

United States Code, title 42, section 9858f – ***this is where we need to decide if we are going to separate Adam Walsh from the remaining subdivisions since Assault is included***

- Required to register on a state sex offender registry or National Sex Offender Registry
- has been convicted of a felony consisting of—
  - murder, as described in section 1111 of title 18;
  - child abuse or neglect;
  - a crime against children, including child pornography;
  - spousal abuse;
  - a crime involving rape or sexual assault;
  - kidnapping;
  - arson;
  - physical assault or battery; or
  - subject to subsection (e)(4), a drug-related offense committed during the preceding 5 years; or
- has been convicted of a violent misdemeanor committed as an adult against a child, including the following crimes: child abuse, child endangerment, sexual assault, or of a misdemeanor involving child pornography.

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The term “crime of violence” means—

(a)an offense that has as an element the use, attempted use, or threatened use of physical force against the person or prop-erty of another, or

(b)any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

### III. FOLLOW-UP

#### **FOR THE NEXT MEETING:**

1. Finalize the buckets for DQ background study uses
2. Finalize the permanent DQ list, including whether different background study uses have a different list of crimes (As a reminder – the 2008 recommendations included the removal of all non-murder and CSC crimes for non-Adam Walsh background studies)

*Question for DHS: whether someone who formerly had to register, but no longer has to register, is permanently disqualified?*

LD to discuss with Chair Geffen how much detail is requested from the Remedies subcommittee for our recommendations and how a request could be made for the financial cost of background studies