

Draft Recommendations: Remedies Subcommittee

I. Permanency Issues

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.

II. Preponderance of the Evidence

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.

III. Process

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