

Human Services Background Study Eligibility Task Force Interim Report

for

March 1, 2022

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The Human Services Background Study Eligibility Task Force was established in 2021 to review the statutes relating to human services background study eligibility and disqualifications, including but not limited to Minnesota Statutes, sections 245C.14 and 245C.15.

The task force must:

1. evaluate the existing statutes' effectiveness in protecting the individuals served by programs for which background studies are conducted under Minnesota Statutes, chapter 245C, including by gathering and reviewing available background study disqualification data;
2. identify the existing statutes' weaknesses and inefficiencies, ways in which the existing statutes may unnecessarily or unintentionally prevent qualified individuals from providing services or securing employment, and any additional areas for improvement or modernization; and
3. develop legislative proposals that improve or modernize the human services background study eligibility and disqualification statutes, or otherwise address the issues identified in clauses (1) and (2).

The task force shall submit an interim report by March 1, 2022 and a final report by December 16, 2022 to the chairs and ranking minority members of the committees in the house of representatives and the senate with jurisdiction over human services licensing.

[Minnesota Special Session Laws 2021, Chapter 7, Article 2, Section 74](#)

Overview

The Task Force was provided specific topics to study in the enacting legislation, which have provided a framework for the Task Force's ongoing work. The Task Force has met seven times. Video of each Task Force meeting as well as meeting minutes, agendas, and materials are all available on the Task Force's website (www.lcc.mn.gov/hsbtf/). The Task Force has also set up three subcommittees to work on specific topics. Video of each subcommittee meeting as well as meeting minutes, agendas, and materials are also available on the Task Force's website.

The Task Force has also set up a portal for public comment on the website discussed above. It invites comment from all members of the public, especially those affected by the background study process.

The Task Force's work is ongoing. Though the Task Force has not completed specific recommended draft legislative language at the time of this Interim Report, it has made substantial progress in preparing to provide concrete recommendations for the Legislature by the December 16, 2022 final report. See the section entitled "Recommendations," below, for a discussion of specific areas of interest that the Task Force is working on.

Meeting One- October 15, 2021

The Task Force elected Jon Geffen as Chair and Dean Gilbertson as Vice-Chair. Legislative staff provided an overview of the legislation that established the Task Force. Staff from the Department of Human Services (DHS) provided an overview of DHS background studies.

Meeting Two- November 12, 2021

A survey of members inquiring about topics of interest was circulated before the meeting. Legislative staff provided an overview of the results of this survey. Members discussed topics of interest and information needs. Members agreed to establish a Working Group on Subcommittees to discuss a subcommittee structure in more depth (*see* attached Appendix A).

Meeting Three- December 10, 2021

The Task Force elected Gina Evans to replace Dean Gilbertson (who resigned from the Task Force for personal reasons) as Vice-Chair. DHS staff gave an overview of the background study process. Members discussed and adopted the recommendations of the Working Group on Subcommittees (*see* attached Appendix A). They established subcommittees on Data (*see*

attached Appendix B), Disqualifications (*see* attached Appendix C), and Remedies (*see* attached Appendix D).

Meeting Four- January 14, 2022

The Task Force received reports from the three subcommittees and discussed their activities. Members also discussed previous recommendations by the 2007 Collateral Sanctions Committee, and the role of public comment and lived experience in future Task Force meetings. A member provided a presentation on their lived experiences with the background study process.

Meeting Five- January 28, 2022

The Task Force received reports from the three subcommittees and discussed their activities. Guest speakers also provided a presentation on recent legislative changes to background studies related to child foster care, and a presentation on lived experiences.

Meeting Six- February 11, 2022

The Task Force received reports from the three subcommittees and discussed their activities. DHS staff gave an overview of data provided to the Task Force. A member provided a presentation on their lived experiences with the background study process.

Meeting Seven- February 25, 2022

The Task Force heard presentations from guest speakers on lived experiences and employers' experiences with the background study process. Members discussed the March 1 Interim Report. The Task Force voted to adopt proposed draft text and to empower the Chair and Vice-Chair to approve the final text, with 17 members in favor, 1 opposed, and 1 abstention. The Task Force also voted to include a submission commenting on the Recommendations to be provided by DHS with 17 members in favor, and none opposed.

Membership

Minnesota Special Session Laws 2021, Chapter 7, Article 2, Section 74, Subd. 2:

(a) The task force shall consist of 26 members, appointed as follows:

- (1) two members representing licensing boards whose licensed providers are subject to the provisions in Minnesota Statutes, section 245C.03, one appointed by the speaker of the house of representatives, and one appointed by the senate majority leader;
- (2) the commissioner of human services or a designee;
- (3) the commissioner of health or a designee;
- (4) two members representing county attorneys and law enforcement, one appointed by the speaker of the house of representatives, and one appointed by the senate majority leader;
- (5) two members representing licensed service providers who are subject to the provisions in Minnesota Statutes, section 245C.15, one appointed by the speaker of the house of representatives, and one appointed by the senate majority leader;
- (6) four members of the public, including two who have been subject to disqualification based on the provisions of Minnesota Statutes, section 245C.15, and two who have been subject to a set-aside based on the provisions of Minnesota Statutes, section 245C.15, with one from each category appointed by the speaker of the house of representatives, and one from each category appointed by the senate majority leader;
- (7) one member appointed by the governor's Workforce Development Board;
- (8) one member appointed by the One Minnesota Council on Diversity, Inclusion, and Equity;
- (9) two members representing the Minnesota courts, one appointed by the speaker of the house of representatives, and one appointed by the senate majority leader;
- (10) one member appointed jointly by Mid-Minnesota Legal Aid, Southern Minnesota Legal Services, and the Legal Rights Center;
- (11) one member representing Tribal organizations, appointed by the Minnesota Indian Affairs Council;
- (12) two members from the house of representatives, including one appointed by the speaker of the house of representatives and one appointed by the minority leader in the house of representatives;

(13) two members from the senate, including one appointed by the senate majority leader and one appointed by the senate minority leader;

(14) two members representing county human services agencies appointed by the Minnesota Association of County Social Service Administrators, including one appointed to represent the metropolitan area as defined in Minnesota Statutes, section 473.121, subdivision 2, and one appointed to represent the area outside of the metropolitan area; and

(15) two attorneys who have represented individuals that appealed a background study disqualification determination based on Minnesota Statutes, sections 245C.14 and 245C.15, one appointed by the speaker of the house of representatives, and one appointed by the senate majority leader.

Senator Bobby Joe Champion

Senate
Appointed by: Senate Minority
Leader

Dean Gilbertson (resigned 11/23/2021)

Licensing Board
Appointed by: Senate Majority
Leader

Lucas Dawson

Attorney representing individuals
appealing a background study
disqualification
Appointed by: Speaker of the House

Benjamin Hanson

Commissioner of Health Designee
Appointed by: Commissioner of
Health

Joshua Esmay

Mid-MN Legal Aid/Southern MN
Legal Services/Legal Rights Center
Appointed by: Mid-MN Legal
Aid/Southern MN Legal
Services/Legal Rights Center

Elizabeth Huntley (appointed 1/31/2022)

Licensing Boards
Appointed by: Speaker of the House

Dave Irvin

Licensed service provider
Appointed by: Senate Majority
Leader

Gina Evans, Co-chair

Subject to a "set aside"
Appointed by: Senate Majority
Leader

Tiffany Kacir

Representing area outside of the
Metro
Appointed by: MN Association of
County Social Service Administrators

Jon Geffen, Chair

Attorney representing individuals
appealing a background study
disqualification
Appointed by: Senate Majority
Leader

Roy Kammer (appointed 12/13/2021)

Licensing Board
Appointed by: Senate Majority
Leader

Lieutenant Andy Knotz

Law enforcement
Appointed by: Senate Majority
Leader

Honorable Gail Kulick

Minnesota Courts
Appointed by: Speaker of the House

Senator Andrew Mathews

Senate
Appointed by: Senate Majority
Leader

Nicole Mattson

Licensed service provider
Appointed by: Speaker of the House

Kimberly Miller (resigned 11/2/2021)

Licensing Boards
Appointed by: Speaker of the House

Representative Kelly Moller

Representative
Appointed by: Speaker of the House

Inspector General Kulani Moti

Commissioner of Human Services
Designee
Appointed by: Commissioner of
Human Services

Max Page

County Attorney
Appointed by: Speaker of the House

Jolene Rebertus

Appointee
Appointed by: One MN Council on
Diversity, Inclusion, and Equity

Representative Kristin Robbins

Representative
Appointed by: House Minority
Leader

Leo Sandoval

Subject to disqualification
Appointed by: Speaker of the House

Honorable Melissa Saterbak

Minnesota Courts
Appointed by: Senate Majority
Leader

Melissa Sherlock

Representing the metro area
Appointed by: MN Association of
County Social Service Administrators

Dywon Tatum

Subject to disqualification
Appointed by: Senate Majority
Leader

TaShonda Williamson

Subject to a "set aside"
Appointed by: Speaker of the House

Vacant

Appointee
Appointed by: Governor's Workforce
Development Board

Vacant

Representing Tribal Organizations
Appointed by: MN Indian Affairs
Council

Recommendations

The Task Force's work is ongoing, and it does not have specific statutory language to recommend at this time. Nonetheless, the Task Force's work to date has identified several topics of interest which will receive further attention in future meetings.¹ The Task Force expects to make specific recommendations reflecting its work on these topics in its final report.

- **Data on the background study process show inefficiencies for job applicants, employers, and taxpayers.**
 - Data provided by the Department of Human Services (DHS) show that Minnesota conducted **734,929 background studies** in 2018-2019, on **426,661 distinct individuals**.²
 - Of the 426,661 people studied in 2018 and 2019, only **2.4%** (10,163) received a disqualification.
 - **82%** (2,927) of the 3,556 disqualified applicants who requested reconsideration in 2018-2019 ultimately had their disqualifications set-aside (meaning that agency reviewers determined they **did not pose an unacceptable risk of harm**) or rescinded.
 - Anecdotally, the reconsideration process can take considerable time after an initial disqualification notice. Even if a set-aside or other determination allowing an applicant to work is statistically likely to occur, delays in receiving this determination can lead to applicants **losing job opportunities** and employers having difficulty in **filling open positions**.
 - Taxpayer-funded **agency staff** must conduct all of these background studies (even if multiple studies are requested for the same person) and review all of these reconsideration requests (even if they are statistically likely to be granted).

- **Data on the background study process show a number of concerning trends.**
 - 82% of people who requested reconsideration in 2018-2019 had their disqualifications set-aside or rescinded. However, **65%** (6,607) of the 10,163 people who received a disqualification **did not exercise their right to make this request**.
 - The number of people receiving a disqualification **increased from 5,300 in 2018 to 8,402 in 2019**.

¹ The Task Force received, and continues to receive, detailed data productions from the Minnesota Department of Human Services' Background Studies and Data Analytics Divisions (DHS). The data productions are disaggregated in accordance with Task Force requests. The numbers reflected in this Recommendation have been extrapolated from DHS' data productions. For this reason, the numbers reflected in this Recommendation may not harmonize with data produced by DHS in response to other requests and alternate conclusions could be drawn. However, for purposes of the Task Force and in context of testimony and other information received in the Task Force and its subcommittee meetings, the Task Force finds the data included in its Recommendation significant.

² At the direction of the Chair and Vice-Chair, language that may have been inaccurate or confusing was removed from this section after the Task Force vote to adopt the draft report. The vote empowered the Chair and Vice-Chair to make corrections of this nature.

- **Specific types of employers** have job applicants disqualified at greater rates than average. For example, almost **10% of study subjects** for jobs in the substance use disorder treatment field received a disqualification in 2019. Anecdotally, people in recovery who want to bring their experience and expertise to this field can face considerable barriers if their previous substance use brought them into contact with the criminal justice system
 - Members of **many communities of color** are disproportionately likely to receive a disqualification. For example, almost **14.5%** of Native American study subjects in 2019 were disqualified. These racial disparities in outcome can be pronounced for particular employer types. For example, almost **10%** of African American applicants for positions in housing support programs were disqualified in 2018.
- **The Task Force is scrutinizing disqualifications under §245C.15**
 - List of Disqualifying Crimes: §245C.15 includes a very extensive list of crimes that disqualify a person from working in a direct care position. This list is more extensive than the equivalent in many other states. The Task Force is reviewing **whether some of these offenses have any impact on the safety of vulnerable individuals.**
 - Length of Disqualification: The Subcommittee is reviewing **whether the current length of a disqualification is too long.** Minnesota law has four separate disqualification periods:
 - Permanent Disqualification
 - 15-year Disqualification
 - 10-year Disqualification
 - 7-year Disqualification

As noted below, these disqualification periods are **significantly longer than other states and relevant federal law.** For example, a simple possession of a drug (other than marijuana) is a felony which carries a 15-year disqualification.
 - Other States' Laws: Based on preliminary research, Minnesota's law disqualifies **more individuals** and for **longer periods of time** compared to other states. Minnesota law appears to be unusual in these areas and it is disputable if this departure provides increased protection to vulnerable individuals.
 - Data and Science: The Task Force desires to make recommendations based on data and science. For example, the Disqualification Subcommittee is investigating **recidivism data** to determine when an individual with a criminal record is less likely to reoffend and is no longer a threat to public safety. Moreover, it is reviewing the **science behind the juvenile brain** to determine when and how juvenile records should be used to disqualify an individual.

- **The Task Force is scrutinizing how evidence is used under §245C**
 - Preponderance of the Evidence: §245C.14 requires that study subjects be disqualified if “a **preponderance of the evidence** indicates the individual has committed an act or acts” on the list of disqualifying crimes in §245C.15. Preponderance of the Evidence (informally, a “more likely than not” standard) is a **lower evidentiary standard** than that required for a criminal conviction. The use of this standard can lead to disqualifying people for conduct which was **never proven or admitted to in court**. The Task Force is concerned that this creates a significant risk of innocent people being disqualified. Additionally, ongoing comparative research indicates that **Minnesota is unusual in using this standard**. Most other state statutes comparable to §245C require disqualification for convictions, pleas, and other adverse findings with a higher evidentiary standard than the Preponderance of the Evidence.
 - Juvenile Records: §245C.08 **requires that juvenile records be reviewed** when determining whether the applicant is disqualified. The law further requires that the reviewing agency treat these **noncriminal records the same as criminal records** and **apply the same disqualification as an adult**. For example, if a 15-year-old is adjudicated delinquent related to an assault, that incident can potentially disqualify them permanently from ever working in a position providing direct care to vulnerable individuals.

- **The Task Force is scrutinizing how disqualifications are reconsidered in current practice and under statute.**
 - Permanent Bars: §245C.24 **bars the reviewing agency** from setting aside a permanent disqualification under §245C.15. This prevents the reviewing agency from making a **case-by-case determination** whether a person presents a public safety concern or not, **regardless of how much time has passed and how much rehabilitation** the person has accomplished.
 - Permanent Disqualifications: The §245C.15 list of permanent disqualifications mentioned above is extensive. The Task Force is examining this list to determine whether **public safety warrants the inclusion of all of the crimes on this list**, particularly in light of the **permanent bar to considering any evidence of rehabilitation** under §245C.24 (discussed above).
 - Permanency for Juvenile Offenses: The use of juvenile records under §245C.08 (discussed above) can lead to a study subject being **permanently disqualified** (with an attendant bar to reconsideration) for acts they **committed as a juvenile**. The Task Force is examining the public safety rationale for such permanent disqualifications for juvenile conduct, particularly in light of information on the **science behind juvenile brain development** and the evolution of **Minnesota and other states’ law**.
 - Reconsideration for Non-Direct Care Staff: §245C does not give the reviewing agency enough **discretion in issuing a set-aside for non-direct care staff** (for example, maintenance or kitchen staff). Currently everyone (direct-care and non-direct care) are subject to the same risk of harm standards. This shifts the

- emphasis to the **more cumbersome variance process** (in which employers agree to supervise the employee under conditions specified by the reviewing agency).
- Improving the Process: The Task Force is examining ways in which the background study **process can be made more user-friendly**. For example, paper forms are currently the only option to appeal a disqualification, which imposes **unnecessary barriers** to applicants and introduces **additional administrative costs** for reviewing agencies. Moreover, background studies and requests for reconsideration are currently conducted on paper alone, **without an opportunity for an interview or discussion** with an agency representative. This can **impose an additional barrier** to applicants who are less articulate in written communication and contribute to a perception of the process as **impersonal and monolithic**.
 - Process Equity: The Task Force is interested in ensuring that the background study process is conducted in a manner **equitable for study subjects** and respectful of their due process and other civil rights.

Appendix A- Working Group on Subcommittees

Lucas Dawson

Joshua Esmay

Gina Evans

Jon Geffen

Dave Irvin

Inspector General Kulani Moti

Dywon Tatum

TaShonda Williamson (Chair)

Overview

The Working Group on Subcommittees met once to discuss a subcommittee structure to support the Task Force's work, and to make a recommendation to the larger Task Force. This recommendation was adopted at the December 10, 2021 meeting of the Task Force.

Meetings

November 30, 2021

Appendix B- Subcommittee on Data

Gina Evans

Roy Kammer

Nicole Mattson

Rep. Kelly Moller

Jolene Rebertus

TaShonda Williamson (Chair)

Overview

The Subcommittee on Data is responsible for gathering information to support the work of the Task Force, including but not limited to coordinating requests for data from executive branch bodies like the Department of Human Services.

Meetings

December 20, 2021

January 4, 2022

January 10, 2022

January 18, 2022

January 24, 2022

January 31, 2022

February 7, 2022

February 18, 2022

Appendix C- Subcommittee on Disqualification

Lucas Dawson

Jon Geffen (Chair)

Dave Irvin

Tiffany Kacir

Hon. Gail Kulick

Max Page

Rep. Kristin Robbins

Leo Sandoval

Melissa Sherlock

Dywon Tatum

Overview

The Subcommittee on Disqualification is responsible for examining the disqualifying crimes or conduct enumerated in §245C.15, and other elements of disqualification under §245C.

Meetings

December 21, 2021

January 4, 2022

January 18, 2022

February 1, 2022

February 8, 2022

February 15, 2022

Appendix D- Subcommittee on Remedies

Lucas Dawson (Chair)

Joshua Esmay

Gina Evans

Dywon Tatum

TaShonda Williamson

Overview

The Subcommittee on Remedies is responsible for examining the remedies that a background study subject might seek after a determination that they were disqualified under §245C.14 and §245C.15 (for example, requesting a set-aside from the Department of Human Services).

Meetings

December 21, 2021

January 10, 2022

January 24, 2022

February 7, 2022

February 22, 2022