DHS BACKGROUND STUDIES, DISQUALIFICATIONS, AND SET-ASIDES

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REPORT AND RECOMMENDATIONS OF THE 2007 COLLATERAL SANCTIONS COMMITTEE

DHS Background Studies, Disqualifications, and Set-Asides

SPECIAL REPORT TO THE LEGISLATURE

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INTRODUCTION

The 2007 Minnesota Legislature created a Collateral Sanctions Committee charged with studying the effect of criminal records on employment. The Committee's work, and its recommendations, are set out in a report submitted to the Legislature on January 15, 2008. The report is available on the website of the Minnesota Sentencing Guidelines Commission: www.msgc.state.mn.us. Hard copies may be requested from the Commission office.

The Legislature also mandated that the Collateral Sanctions Committee "review [Department of Human Services] background study provisions, as well as set-aside and variance policies" and "recommend changes in these laws to recodify and simplify them" and "appropriate substantive changes…consistent with good public policy and public safety." See, Appendix B.

The policy underlying this report will be best understood by those who first read the January 15, 2008, Criminal Records report's sections entitled *Background*, *General Policy*, *Licensing and Background Checks*, *Minnesota Statute §364*, and *Certificates of Relief*. Some of that material is repeated here, but the earlier report most clearly manifests the Committee's commitment to public safety and the fact that its recommendations arise from careful consideration of ideas from many sources.

BACKGROUND

Along with a host of other responsibilities, the Department of Human Services (DHS) is charged with protecting many of Minnesota's most vulnerable citizens by preventing individuals who are likelier than most to harm people or steal property from working in licensed programs serving children and vulnerable adults (e.g.: elderly, chemically dependent, mentally ill, developmentally delayed). In addition, DHS does background checks of employees in unlicensed personal care agencies paid through Medical Assistance. Some DHS background studies are done for programs supervised by the Department of Corrections (DOC) and the Department of Health (MDH). Determinations as to individuals' suitability for work with children and vulnerable adults are appropriately skewed toward safeguarding clients, as opposed to enabling qualified people to be employed.

While this bias in favor of safety makes sense, it is important that DHS procedures be as transparent, understandable and fair as possible. The public benefits when people are able to get and keep jobs for which they are fully qualified. And the public benefits when there is no shortage of good care-givers for people in the programs with which DHS is involved.

DHS, like all institutions required to evaluate human behavior, necessarily exercises substantial amounts of discretion. People, their circumstances, and their behavior are various; and no totally objective system has yet been devised that will reliably sort them into clear-cut categories. Our Legislature is understandably concerned with guiding and constraining discretion, so that its exercise will result in sound, reasonably reliable judgments that treat everyone in our heterogeneous population fairly. However, it is inevitable that these evaluations will sometimes be erroneous and that, when they are, someone may be seriously harmed.

This essential fact is difficult for us to accept; and when such a failure occurs, lawmakers frequently engage in strenuous efforts to limit institutional efforts to limit institutional discretion, in the hope that similar damage can be averted in the future. It is always appropriate to make sure that damage occurred despite reasonable, appropriate exercise of discretion and that it was not the result of negligence or inadequate procedures. But we can never judge people correctly every time, and we can never devise any law or practice that will completely protect everyone we want to protect.

To say this is to state the obvious, but it is worth doing so; because it seems that major 2005 changes in the law governing background studies completed under Chapter 245C occurred in a period where the public and its representatives in the Legislature were determined to eliminate risk by limiting discretion. Many of those most knowledgeable about DHS licensing and background checks believe that the 2005 changes were made without an adequate statistical basis and have done more harm than good. They also believe that the changes have had negative unintended consequences that have unreasonably and unfairly damaged good, well-qualified workers.

BACKGROUND STUDY PROCESS

Minnesota Statute §245C.03 requires that certain persons receive a background study by DHS. These persons include: anyone applying for a DHS license, anyone age 13 and over living in the household where a licensed program will be provided (e.g.: day care and foster care), current and/or prospective employees/contractors who will have direct contact with vulnerable populations, volunteers who will have unsupervised direct contact with vulnerable populations, and managerial officials. In nursing homes, a background study is required on all employees. If the Commissioner has reasonable cause, background studies can also be required of individuals who may have unsupervised access to vulnerable populations without providing direct contact services (e.g.: a frequently visiting "boyfriend" of a family child care provider), as well as individuals between the ages of 10 and 12 living in a household where a licensed program will be provided.

In conducting these required background studies, DHS reviews information from a number of sources: criminal history information from the Minnesota Bureau of Criminal Apprehension; substantiated reports of maltreatment from DHS, Minnesota Department of Health (MDH), and Social Services Information System (SSIS); juvenile court records, when applicable; and other agencies when reasonable cause, arrest, and investigative information is needed.[1]

Using the above sources of information, DHS determines whether or not an applicant is disqualified from having direct contact, or access to, persons receiving services. Applicants are commonly disqualified for one of the following reasons: a conviction, admission, Alford Plea, or DHS determination that there is a preponderance of the evidence that the individual committed an act that meets the definition of one of the offenses listed in M.S. §245C.15. They are also disqualified for having serious or recurring substantiated reports of maltreatment. Depending on the level of the offense (i.e.: misdemeanor, gross misdemeanor, or felony), and how it is "ranked" by M.S. §245C.15, an applicant will be disqualified for varying lengths of time. Generally, felonies result in a 15 year disqualification, 10 years for gross misdemeanors, and 7 years for misdemeanor-level offenses.

If DHS makes a determination that a person is disqualified, the agency provides notice to the applicant of their disqualification. At this time, the applicant is also given information on how to request reconsideration. With the exception of the offenses that result in a permanent bar

[1] M.S. §245C.08

(described on next page), applicants can request a reconsideration. Depending on the applicant's risk of harm, as determined by the Commissioner of Human Services, the applicant may be allowed to continue working while requesting reconsideration.

In requesting reconsideration, the applicant must include the following information: evidence that the information relied upon for making the determination was incorrect, if applicant is challenging correctness; evidence that the information relied upon for making a determination on serious or recurring maltreatment was incorrect; or evidence that the applicant does not pose a risk of harm to any person receiving services.[2] There are essentially four decisions that can come from a reconsideration:

1.) Rescission
If the information used to disqualify the applicant is found to have been incorrect, DHS rescinds the disqualification.

2.) Set-Aside
If the Commissioner determines that the applicant has provided sufficient evidence to demonstrate that they no longer pose a risk of harm, DHS provides a "set-aside" for the applicant, allowing them to provide direct contact services.

3.) Variance
If the Commissioner determines that there are conditions under which the applicant may provide services or have access that minimize the risk of harm, DHS provides a "variance" for the applicant. Variances differ from set-asides in several important ways: variances can only be requested by an employer, not the applicant; and variances require supervision of the applicant at all times. Variances are also time-limited and specify the conditions with which the applicant and the program must comply.

4.) Not Set-Aside
If the Commissioner determines that the applicant has failed to provide sufficient evidence that they no longer pose a risk of harm, the disqualification remains; the offense is not set aside.

[2] M.S. §245C.22, subd.4

In 2005, M.S. §245C.24 was amended to create permanent bars for certain offenses across all settings. Permanent disqualifications existed before 2005; the list of offenses eligible for permanent disqualification was also expanded in 2005.[3] However, the Commissioner no longer has discretion to issue a set-aside or variance for a permanent disqualification in any setting, even when appropriate. Anyone who has committed one of the offenses listed in M.S. §245C.15, subd.1, is now permanently barred from receiving DHS clearance; the applicant is not ever eligible for a set-aside or variance.

To provide some perspective on the magnitude of the background study process in Minnesota, DHS conducted over 450,000 background studies between calendar years 2006 and 2007.[4] Of those, 16,938 resulted in disqualifications (roughly four percent). In addition, county agencies conducted approximately 108,000 background studies during the same timeframe. DHS was unable to report on how many of the county-level background studies resulted in disqualifications.[5]

[3] M.S. §245C.15, subd.1
[4] Because one person may seek employment at more than one facility in a given year, it is important to note that the numbers above relate to the number of background studies conducted, not necessarily the number of people involved.
[5] Data in this paragraph provided by Department of Human Services.

General Policy

The general policy set out in this section was discussed at length in the full Collateral Sanctions report, which was submitted to the Legislature on January 15, 2008. The report, entitled *Criminal Records and Employment in Minnesota*, is available on the website of the Minnesota Sentencing Guidelines Commission: www.msgc.state.mn.us. Hard copies may be requested from the Commission office.

It should be noted that these broad principles are not original ideas of the Collateral Sanctions Committee. Rather, they are an extension of what have been determined to be best practices by many policy groups and individuals who have spent much time and effort on this topic.

1. Public safety is enhanced when employers are readily able to learn of all criminal data that reasonably bears on an individual's suitability for a particular job, especially when the job provides access to vulnerable people.

2. Public safety is enhanced when ex-offenders are able to work and to support themselves and their families. We must, therefore, make it easier for them to gain acceptance in society by insuring that access to criminal record data is limited responsibly, that the data is correct and intelligible to employers, and that employers are encouraged to weigh the data's impact fairly.

3. It is desirable to seal criminal records that do not bear on a person's honesty or on the risk that s/he may harm another.

4. Since it is appropriate that many criminal records remain reasonably available to employers, it is desirable to create legal processes by which rehabilitated ex-offenders may receive official determinations that their records should not bar them from employment. Examples include certificates of relief from disability, certificates of good conduct, and pardons. These legal determinations should provide relief from liability for employers who hire those who receive them.

5. In general, statutory bars should be triggered only by convictions. However, this Committee realizes there are reasons why certain state licensing agencies, particularly those which evaluate individuals who seek employment in areas where there is access

to vulnerable people or significant risk of theft or fraud, might wish to investigate further the facts underlying an arrest not leading to conviction. In those cases, the arrest should not, in itself, constitute a bar or a reason to deny licensure. Investigations into arrest should have clearly-defined procedural safeguards, including the right of the subjects to notice and an opportunity to provide evidence on their own behalf.

6. There should be a clear relationship between the conviction barring employment and the employment itself. For instance, a conviction for welfare fraud should not bar employment as a nursing assistant in a nursing home.

7. In general, there should be no conviction that triggers an absolute or permanent bar from employment. Licensing agencies should have the discretion to determine whether a person has been rehabilitated, or whether the actual facts of a crime constitute evidence of unsuitability for a particular job. Many agencies have the ability to issue provisional licenses, or to authorize a person to work in a specific job where there is no real risk of harm to anyone. They should be allowed to make such accommodations when they are clearly justified.

8. Bars to employment should be proportional to the seriousness of the convictions that trigger them. Thus, less serious offenses should bar employment or licensure for a shorter period of time than crimes presenting a greater degree of risk to others.

9. "Look-back" periods – that is, the length of time for which convictions bar employment – should be carefully defined, with serious consideration to what is known about recidivism, the ranking of specific crimes in our sentencing guidelines, and other factors bearing on a rational calibration of the look-backs. Because misdemeanors are numerous and cause serious damage to people's employment opportunities, it is particularly important not to create unnecessarily long look-backs for them. Look-backs should not be based on "magic numbers," such as 3, 5 or 7, that come readily to mind. They should not be based solely on some already-established criminal look-back that has nothing to do with employment.

MINNESOTA STATUTE §245C

In 2005, the Legislature amended M.S. §245C, which relates to background studies and the disqualification of individuals from working in various licensed programs that serve children and vulnerable adults. The amended statute requires DHS to bar from employment some people it had previously been able to clear for work in licensed programs.

RECOMMENDATIONS

1. **"Grandfather" individuals who successfully worked in set-aside status before the 2005 changes.**

The least controversial and most obviously sensible change the 2008 Legislature can make to M.S. §245C is to restore the employment potential of people who had clearly established their trustworthiness before the 2005 bars were enacted. The most troubling accounts of irrational and unintended damage caused by the 2005 changes came from people whom the law made unemployable, despite good, solid records of working with clients in licensed programs.

There are many workers to whom DHS had granted set-asides prior to 2005, who had been valued employees, and who became unemployable because they had committed an offense that now triggers an absolute bar to work in a program that falls under the jurisdiction of M.S. §245C. Set-asides allowed them to work at a specific job with a specified licensed program. When they left that program for a better opportunity, or because they moved, or for any other reason, they learned that they were no longer eligible for a set-aside to do the work they had been doing for years. Even returning to a program where they had been employed previously under a set-aside was impossible.

Some individuals who have done good work with vulnerable clients for five, ten, or fifteen years are no longer employable. They have lost income, and vulnerable people have lost the benefit of their experience and their dedication to work that is essential, often difficult, and not particularly well-paid. M.S. §245C should be amended to allow DHS to provide set-asides for workers who are absolutely barred from their jobs by the 2005 changes and who were successfully employed at a licensed facility prior to July 15, 2005.

2. Reconsider disqualifications for drug or alcohol-related offenses and clarify policy as necessary.

In 1992, Lisa* was convicted of a third-degree controlled substance crime. Since her discharge in 1996, she has been sober, an active member of her church, and working to raise two children on her own. In 2006, DHS disqualified her from her job because of the 1992 conviction. She was eligible for a set-aside, but her employer told her that they could not take her back because the disqualification information would have to be made available to clients. Lisa attempted to get an expungement, but the judge could only seal her court records. This left her criminal information still available through the BCA and DHS. She is now living on public assistance because of her inability to find a job.

*All names used in narratives are fictitious. All of the narratives are accurate accounts of the real experiences of particular Minnesotans.

The 15-year disqualifications now set forth in M.S. §245C.15, subd.2(a) conclude with "[felony-level violation of] Chapter 152 (controlled substances); or a felony-level conviction involving alcohol or drug use." The last disqualifier is impossible to discern by any method that is fair or consistent. Unless being under the influence is an element of the offense – in which case the offense should be specified – it will only be detected on a hit-or-miss basis (e.g.: if DHS happens to see a police report and the officer writing the report happens to notice it and write it down). Given the fact that alcohol and drugs are "involved" with a majority of all felonies, the best way to give these words effect would be to make every felony disqualifier for 15 years.[6] This, of course, would not make sense, which is why the Legislature created disqualifications for only some felonies and ranked them.

According to DHS, the vague language stating "felony-level conviction involving alcohol or drug use" was added several years ago after the Centers for Medicare and Medicaid Services (CMS) determined that Minnesota's background study law was deficient as it related to child foster care background studies. Felony-level conviction involving alcohol or drug use was a required disqualification to achieve compliance with federal Title IV-E requirements relating to federal payments for foster care and adoption assistance.[7] At issue was several million dollars, and while there was not any clear interpretation available as to what this phrase was intended by CMS to address, DHS initiated its addition to this section of the law to achieve compliance, and refers to it only as the basis for disqualifying individuals for felony-level DWIs.

[6] According to a 1997 study conducted by the Bureau of Justice Statistics, just over 50 percent of state prison inmates admitted that they were under the influence of drugs and/or alcohol when they committed the current offense. (http://www.ojp.usdoj.gov/bjs/pub/pdf/satsfp97.pdf)

[7] Section 471(a)(20) of the Social Security Act (42 U.S.C. 671(a)(20)).

Further research is required to analyze the implications of eliminating this vague language from Chapter 245C.

By merely citing felonies under Chapter 152, the statute treats a casual drug user, an addicted person, and one who makes his living selling drugs to addicted people or manufacturing meth, in exactly the same way. We know that many people abuse drugs and that drug abuse is, in part, a medical issue. The people who come to the attention of law enforcement and subsequently stop using controlled substances should not be treated the same as major felons.

Alcoholics and former drug addicts often want to reinforce their own sobriety and to help others by volunteering with people in rehabilitative programs or by themselves becoming chemical dependency counselors or working with addicted people as volunteers. Alcoholics Anonymous was conceived and promulgated by an alcoholic; AA and its many variants are essentially communities of people who have heavily abused mind-altering chemicals, and their success is undeniable. In many instances, former abusers make the most effective chemical dependency counselors, which is why they have been welcome in educational institutions offering courses leading to certification as counselors.

A. **After further research and analysis of federal requirements, amend the drug and alcohol references cited above from M.S. §245C.15. If possible, provide that DHS may disqualify persons who have drug or alcohol-related convictions, as it deems appropriate.**

DHS has the expertise necessary to determine the circumstances under which former drug and alcohol offenders can safely work in licensed programs. In addition, the programs themselves are fully capable of enforcing drug and alcohol policies and detecting violators.

B. **Call on experts to determine what, if any, new laws are required to protect people in licensed programs from drug and alcohol abusers.**

Our state is the home of many internationally-recognized experts on substance abuse. Some of them are public employees in the University of Minnesota medical schools and in a host of

other programs in our state colleges and universities. To the extent that the Legislature believes that protection of vulnerable adults and children from misconduct by substance abusers is inadequate, these gifted public servants should be called upon for advice and ideas.

3. Eliminate involuntary termination of parental rights as a bar to DHS evaluation of an individual's qualification for employment with vulnerable adults and children.

M.S. §245C.15, subd.1 presently provides that involuntary termination of one's parental rights is a permanent bar to employment in a DHS-licensed program. This bar is not reasonable.

Consider that children as young as 15 years of age not infrequently become parents, that fathers are sometimes unaware of their child's existence until after the child has been placed for adoption, that Minnesota has recognized that abandonment is not always blameworthy and encouraged mothers to do it safely, that untreated mental illness and addiction force parents to relinquish their children and may subsequently be successfully treated, that many of the situations resulting in termination are temporary, and that parenting presents unique challenges that do not arise in any other relationship.

If there is any life event that should be assessed on a case-by-case basis, it is this one. Termination files are usually voluminous, and they are open to inspection. There is no reason to believe that DHS cannot fairly evaluate whether a person who has lost the right to parent his or her child is suitable for work in a licensed program. Termination of parental rights is not a valid basis for an absolute bar to DHS clearance.

Voluntary termination of parental rights is not generally a disqualification, except that for individuals seeking to provide child care or foster care, voluntary termination of parental rights under M.S. §260C.301, subd.1, paragraph (b), and subd.3 (required termination of parental rights) is a disqualification. According to DHS, termination of parental rights is a required disqualification for compliance with federal Title IV-E requirements relating to federal payments for foster care and adoption assistance.[8] Further research is required to analyze implications of eliminating termination of parental rights as a disqualification under Chapter 245C.

[8] Section 471(a)(20) of the Social Security Act (42 U.S.C. 671(a)(20)).

4. **Eliminate all permanent bars, other than those for murder, manslaughter, and criminal sexual conduct.**

As explained in the General Policy section, above, it is best that people be evaluated individually, using standards designed to focus on factors that clarify the relationship, if any, between a person's past behavior and the employment s/he now seeks. Those who work with offenders know that every serious crime encompasses behavior from forgivable to unintelligibly evil. The worst crime may be committed in circumstances that suggest that the offender is unlikely ever to break the law again, and a lesser crime in a way that suggests that the offender presents an ongoing risk to others.

DHS is specifically charged with protecting our most vulnerable citizens. Even though homicide perpetrators are distributed along the full range of blameworthiness, and are not very likely to recidivate, it does not seem unreasonable that they never be cleared to work with vulnerable people.

Criminal sexual conduct cases mentioned in the media are often very high profile and, rightfully, invoke a great deal of fear in the public. It is also true that children and vulnerable adults are the people most frequently victimized by the most deviant sex offenders. Such predators are often drawn to settings where their targets are numerous. These realities, the impossibility of accurately screening out all of the most dangerous sex offenders, and the widespread public abhorrence of sex offenders make it

Mark* is a recently retired man in his sixties. He is a Vietnam veteran and, like too many veterans, suffered untreated post-traumatic stress. In the early 1980s, Mark was a fully employed family man; but he was also a serious alcoholic who denied both his mental illness and his addiction. While intoxicated, he sexually abused his teen-aged daughter, who told her mother what had happened. This terrible event was what it took to motivate Mark to change his life.

He fully acknowledged his crime, pled guilty to criminal sexual conduct as a felony and was placed on probation, which he successfully completed. He completed sex offender therapy and chemical dependency treatment, and he has never had any further involvement with the criminal justice system. His family is intact, because of his total acceptance of responsibility for harming his daughter and the therapy afforded everyone involved.

While he was still on probation, Mark became a chemical dependency counselor and worked with addicted men. He was associated at one point with a nationally-recognized Minnesota treatment program. Mark founded an organization that has worked to provide other veterans with the treatment that saved his own life and helped heal his family.

He recently retired as CEO of that program and was approached by the celebrated treatment facility, which was interested in hiring him as a counselor. Although Mark, who is a person of color and is particularly valuable as a counselor for that reason, would like nothing better than to work with addicted men again, he is permanently barred from volunteer or paid chemical dependency counseling because of his twenty-five-year-old sex offense.

difficult – and pointless – for the Committee to oppose permanently barring all sex offenders from obtaining DHS clearances.[9]

As for the rest of the crimes that trigger permanent bars, the Committee stands by what is nationally agreed to be the best practice: ex-offenders should not be barred from any employment wholesale and for life. The range of circumstances in which a crime may be committed, the various personalities of offenders, and the differing facts encompassed within a single crime's elements all point to the appropriateness of evaluating ex-criminals individually. This is especially true when there is no clear nexus between a crime and the requirements of the job for which s/he is being evaluated.

5. **Eliminate from M.S. §245.15 offenses that have no meaningful relationship to the tasks and responsibilities of the jobs for which DHS qualifies people.**

M.S. §245C.15, subd.2, 3, and 4 list dozens of misdeeds that disqualify those whom commit them from working in licensed programs for 15, 10, or 7 years. Many of the offenses listed bear no meaningful relationship to the tasks and responsibilities of the jobs for which DHS does background checks. While it may be possible to come up with an articulable link between offense and job (e.g.: one who wrongfully obtains assistance is dishonest and, therefore, might steal from a client), the nexus between some of the offenses and the job is not strong enough to require their disqualification.

The following offenses are in this category, and the Committee recommends that they be eliminated from the statute and that DHS be allowed to determine whether people who have committed them may nevertheless be qualified or given set-asides.

A.) <u>M.S. §245C.15, subd.2: Felony disqualifications to be eliminated</u>

256.98	Wrongfully Obtaining Assistance
268.182	False Representation; Concealment of Facts
393.07	Food Stamp Fraud
609.21	Criminal Vehicular Homicide & Injury
609.229	Crimes Committed for the Benefit of a Gang[10]
609.498	Tampering with a Witness

[9] Sex offenses as here defined do not include the crime of Failure to Register.
[10] These merely enhance a crime, and it is that crime that should trigger a bar.

609.521	Possession of Shoplifting Gear
609.535	Issuance of Dishonored Checks
609.71	Riot
617.241	Distribution of Obscene Materials
260C.301	Voluntary Termination of Parental Rights

B.) M.S. §245C.15, subd.3: Gross misdemeanor disqualifications to be eliminated

256.98	Wrongfully Obtaining Assistance
268.182	False Representation
393.07	Food Stamp Fraud
609.21	Criminal Vehicular Operation
609.33	Disorderly House
609.535	Issuance of Dishonored Checks
609.71	Riot
617.241	Distribution of Obscene Materials
617.243	Distribution of Indecent Literature

C.) M.S. §245C.15, subd.4: Misdemeanor disqualifications to be eliminated

256.98	Wrongfully Obtaining Assistance
268.182	False Representation
393.07	Food Stamp Fraud
518B.01	Violation of an Order for Protection
609.21	Criminal Vehicular Operation
609.3232	Violation of an Order for Protection
609.535	Issuance of Dishonored Checks
609.66	Dangerous Weapons
609.665	Spring Guns
609.79	Obscene or Harassing Phone Calls
609.795	Letter Opening – Harassment

6. **Reduce the length of disqualifications and create four new categories – 15-year, 10-year, 5-year, and 3-year – into which offenses are rationally sorted.**

It should be recognized that, since all of the time-limited disqualifications begin to run upon discharge of any sentence imposed, they may actually last longer than the statutory 15, 10 and 7 years. The felons placed on probation are generally those deemed least dangerous and most amenable to rehabilitation. Felony probationary sentences may remain open for a term up to the statutory maximum, and many offenders who are imprisoned have their sentences discharged well before lower-risk individuals do.

> Bill* is a 24-year-old with a college degree in Criminal Justice. After graduating, he completed Law Enforcement Skills training and passed the POST Board test. While he was interning at a DOC residential program for juveniles, the facility was notified by DHS that Bill is permanently barred from working or volunteering at any juvenile facility. When he was a juvenile, he shot at an empty, parked vehicle. A juvenile court sentenced him for drive-by shooting as an Extended Jurisdiction Juvenile, which meant he was on probation until the age of 21. He was never required to serve time at Red Wing. He had no prior offenses of any kind and he has never had any since. The DOC program had hoped to hire him, because they liked his work as an intern and because they believe that he has so much to offer teenagers who have made the kind of bad decision he made at that age. Of course, it was Bill's own desire to help delinquent youngsters that motivated his college and law enforcement training.

According to the Bureau of Justice Statistics, if recidivism is going to occur, it often occurs within three years of release.[11] Because of this fact, it makes sense to reconsider the lengths of statutory DHS disqualifications. Shortening the time-frames will have little impact on public safety, but it will give more prospective workers an opportunity to gain employment in licensed programs.

At present, M.S. §245C does not sort the offenses triggering time-limited bars in terms of their relative seriousness. In subdivision 2, where 15-year disqualifications are set forth, for instance, there are offenses ranging from a statutory maximum sentence of two years to thirty years. Minnesota has a rational gradation of crimes in which sentences are related to the gravity of offenses in a meaningful way. While there is always disagreement about whether a given offense is not punished severely enough or is punished too severely, every sentence was created or ratified by a majority of the Legislature.

[11] Bureau of Justice Statistics (2002). *Recidivism of prisoners released in 1994* (Publication # NCJ 193427). Retrieved on January 24, 2008 from http://www.ojp.usdoj.gov/bjs/pub/pdf/rpr94.pdf

It does not make sense that a crime punishable by no more than two years be considered as blameworthy and dangerous as one punishable up to thirty years. It is not necessary to set out here the many strange juxtapositions apparent in each category of bars to make the point; they are quite obvious.

A. 15-Year Disqualifications

The following felonies involving direct harm to people would continue to trigger disqualification for 15 years:[12]

609.215	Aiding Suicide
609.223	Assault 3
609.224	Assault 5
609.2325	Criminal Abuse of Vulnerable Adult
609.2335	Financial Exploitation of Vulnerable Adult
609.235	Use of Drugs to Injure, Facilitate a Crime
609.24	Simple Robbery
609.255	False Imprisonment
609.2664	Manslaughter 1 of Unborn
609.2665	Manslaughter 2 of Unborn
609.267	Assault 1 of Unborn
609.2671	Assault 2 of Unborn
609.268	Injury / Death of Unborn
609.27	Coercion
609.275	Attempt to Coerce
609.527	Identity Theft
609.562	Arson 2
609.563	Arson 3
609.582	Burglary
609.687	Adulteration
609.713	Terroristic Threats
617.23	Indecent Exposure

B. 10-Year Disqualifications

The following felonies, most of which are property crimes, would trigger disqualification for 10 years (currently 15 years):

[12] The 15-year disqualifications would also include all of the crimes removed from the permanent disqualifications list, with the exception of M.S. §609.855, Shooting at an Unoccupied Public Transit Vehicle. Because of the low statutory maximum on this felony offense, it is on the 10 year disqualification list.

609.165	Certain Persons Not to Possess Firearms
609.2231	Assault 4
609.466	Medical Assistance Fraud
609.52	Theft
609.525	Bringing Stolen Goods into State
609.53	Receiving Stolen Property
609.59	Possession of Burglary Tools
609.611	Insurance Fraud
609.625	Aggravated Forgery
609.63	Forgery
609.631	Check Forgery
609.635	Obtaining Signature under False Pretense
609.66	Dangerous Weapons
609.67	Machine Guns and Short-Barreled Shotguns
609.82	Fraud in Obtaining Credit
609.821	Financial Transaction Card Fraud
609.855	Shooting at a Public Transit Vehicle / Facility (Unoccupied)
624.713	Certain Persons Not to Possess Firearms

The following gross misdemeanors involving direct harm to people would continue to trigger disqualification for 10 years:

609.224	Assault 5
609.2242	Domestic Assault
609.23	Mistreatment of Persons Confined
609.231	Mistreatment of Residents or Patients
609.2325	Criminal Abuse of Vulnerable Adult
609.233	Criminal Neglect of Vulnerable Adult
609.2335	Financial Exploitation of Vulnerable Adult
609.265	Abduction
609.275	Attempt to Coerce
609.324	Engage Minor in Prostitution
609.377	Malicious Punishment of a Child
609.378	Neglect or Endangerment of a Child
609.527	Identity Theft
609.582	Burglary
609.72	Disorderly Conduct – Caregiver
609.746	Interference with Privacy

609.749	Harassment; Stalking
617.23	Indecent Exposure (not involving a minor)
617.293	Display Harmful Materials to a Minor

C. 5-Year Disqualifications

The following gross misdemeanor offenses, most of which are property crimes, would trigger disqualification for five years (currently 10 years):

518B.01	Violation of an Order for Protection
609.234	Failure to Report Maltreatment of Vulnerable Adult
609.466	Medical Assistance Fraud
609.52	Theft
609.525	Bringing Stolen Goods into State
609.53	Receiving Stolen Property
609.59	Possession of Burglary Tools
609.611	Insurance Fraud
609.631	Check Forgery
609.66	Dangerous Weapons
609.82	Fraud in Obtaining Credit
609.821	Financial Transaction Card Fraud

The following misdemeanors would also trigger disqualification for five years (currently seven years):

609.224	Assault 5
609.2242	Domestic Assault
609.2335	Financial Exploitation of Vulnerable Adult
609.234	Failure to Report Maltreatment
609.2672	Assault 3 of Unborn
609.527	Identity Theft
609.746	Interference with Privacy
609.795	Harassment – Letter or Package
609.82	Fraud in Obtaining Credit
609.821	Financial Transaction Card Fraud
617.23	Indecent Exposure

D. 3-Year Disqualifications

The following misdemeanors would trigger disqualification for three years (currently seven years):

518B.01	Violation of an Order for Protection
609.234	Failure to Report Maltreatment of Vulnerable Adult
609.27	Coercion
609.3232	Violation of an Order for Protection
609.466	Medical Assistance Fraud
609.52	Theft
609.525	Bringing Stolen Goods into State
609.53	Receiving Stolen Property
609.611	Insurance Fraud
609.66	Dangerous Weapons
617.293	Display Harmful Materials to a Minor

The Committee also recommends that licensing agencies, including DHS, be required to consider the following factors every time they weigh an individual's criminal record. If they deny licensure or employment in a position allowing direct contact or access to children or vulnerable adults based on criminal history, they must provide the applicant with their evaluation of the factors:

1) The public interest in protecting property and the safety and welfare of individuals.
2) The public interest in reducing recidivism among ex-offenders by not irrationally preventing their licensure and employment.
3) The specific duties and responsibilities necessarily related to the license being sought.
4) The relationship, if any, between the applicant’s criminal convictions and those specific duties and responsibilities.
5) The time elapsed since the criminal offenses were committed.
6) The age of the person at the time the offenses were committed.
7) The potential and/or actual harm the offenses posed to human beings.

8) The potential and/or actual loss of wealth or property caused by the offenses.

9) Any evidence produced by the applicant, or produced on his/her behalf, concerning rehabilitation and good conduct. Such evidence includes, but is not limited to, the following:

    a) Successful completion of the conditions for a continuance for dismissal, a stay of adjudication, or a stay of imposition. These are evidenced by dismissal of criminal charges, vacation and/or dismissal of convictions, reduction of a felony to a gross misdemeanor, or reduction of a gross misdemeanor to a misdemeanor.

    b) Pardon.

    c) Sealing or expungement.

    d) Any document showing completion of probation, parole, or supervised release.

    e) A showing that at least one year has elapsed since release from any local, state, or federal correctional institution without subsequent conviction, that the applicant is complying with all terms and conditions of probation, parole, or supervised release, and that the applicant is not currently charged with any offense.

    f) Evidence of the actions, circumstances, social conditions and other factors involved in the offenses.

    g) Letters of reference by persons who know the applicant's criminal history.

PROCEDURE

The people whom DHS and counties disqualify from employment in licensed facilities are often individuals who have relatively little formal education. Being cleared for a job is usually of critical importance to them. The Committee understands that DHS and county background checks are primarily intended to protect vulnerable people and that making sure that qualified workers are able to obtain positions in licensed programs is not the agency's business. It is, however, good public policy to enable all Minnesotans who wish to do the challenging and important work of promoting the health and welfare of vulnerable children and adults, and who are fully qualified to do so, to engage in the service areas licensed by DHS. Given our state's commitment to health care and early education, our nationally-respected determination to help our citizens to achieve freedom from disabling chemical dependency, and our understanding of what it takes to maintain the independence, productivity, and well-being of our aging population, we surely should do our best to make certain that good workers are not unnecessarily barred from helping us to realize our ambitions in these critical areas.

DHS is a complex bureaucracy charged with a huge number of important responsibilities. The Committee has no basis from which to recommend major changes in the procedures the agency uses in carrying out its business. We have, for instance, avoided any comment on the Department's complex appeal system, though it appears that the system is so daunting that very few of the largely unrepresented individuals who fail to achieve clearances for work could possibly utilize it. The Committee realizes that even changes that seem minor to us could have unintended consequences. The following comments and recommendations are important, and we have included them because we believe that they can be achieved without expenditure disproportionate to their value and without disrupting DHS as a whole.

Investigations Triggered By Arrests

It is entirely appropriate and desirable that DHS is empowered to look beyond convictions in determining whether or not a person has committed a disqualifying act. Even though the guarantee that we will be held innocent until proven guilty beyond a reasonable doubt is absolutely central to our democracy, the reality is that there are many reasons why people who, in fact, have done one of the acts that trigger disqualification might not be convicted. Where the state is not depriving people of their liberty and is exercising its responsibility to protect vulnerable individuals, it must be possible to gain the fullest understanding of reality. It is acceptable, too, that factual determinations be made by a lesser standard than proof beyond a reasonable doubt.

M.S. §245C.14 requires DHS and counties to disqualify individuals if they find, by a preponderance of the evidence, that an individual committed an act that meets the elements of any of the crimes listed in M.S. §245C.15. Under this authority, DHS is allowed to inquire about arrests, and information that a person was arrested may trigger further review to address the question of whether s/he has committed a disqualifying act. At present, DHS sometimes calls a review of the arrest report an "investigation" and sometimes decides, based on the arrest report alone, that a person committed an offense. This is not acceptable.

RECOMMENDATIONS

1. Arrest reports will trigger investigations, but they must be supplemented. An arrest report alone cannot be the basis for a DHS determination that a person committed a wrongful act.

2. If recommendation 1, above, cannot be achieved, then at least arrest reports that did not result in a charge, or were followed by a court finding that probable cause for the case to continue did not exist, must be supplemented. Such arrests cannot be the basis for a DHS determination that a person committed a wrongful act.

3. When DHS determines that an arrest report is cause for further investigation, the subject of the report will be given an opportunity to testify in person or by affidavit or to submit evidence on his/her behalf, prior to any decision by DHS. If DHS deems it advisable, the person may be required to sign a waiver of speedy determination, recognizing that the investigation will take time.

4. The forms DHS provides for persons seeking a reconsideration of a decision concerning a disqualification must not assume that the applicants are guilty by focusing on the details and consequences of an act that the applicant may deny ever happened. In general, the notices and forms with which DHS communicates with individuals subject to background checks should be rewritten, aiming at a seventh-grade reading level.

The police who write arrest reports are usually not at the scene of a crime; they rely on witnesses and, in some cases, other evidence, to determine whether to forward a case for prosecution. The least serious cases, such as simple theft, get the least investigation. Any criminal justice professional can provide examples of cases in which the evidence was such that the arrested person was charged, and it subsequently became clear that witnesses or

complainants lied, or seemingly strong evidence turned out to be of little value, or was pointing in the wrong direction. If an arrested person is never charged, or a court determines that there is insufficient probable cause and dismisses the case, an arrest report alone must never be used to decide that an individual is actually guilty.

Many cases – especially misdemeanors – are continued for dismissal without a plea. The prosecutor requests that the court set aside the case for a specified period, with an agreement that it will be dismissed if the defendant is not rearrested and, sometimes, meets some other condition that will not be supervised by the court. The defendant agrees to give up the right to have the matter resolved speedily and is not required to enter any plea; there is, therefore, no admission of guilt. Most people charged with misdemeanors have no attorneys. They are understandably reluctant to try to represent themselves in a trial or unable to afford the additional time off from work it would take to schedule a further hearing, so they can show the prosecutor evidence of innocence, or so the prosecutor can investigate further. In these cases, too, it is absolutely unacceptable to take an arrest report alone as evidence of guilt.

Finally, the rule is not that an arrest report can bar a person from qualification. The rule is that an arrest report can be reason to investigate the person further. At the very least, a person whose background check is delayed for further investigation based on an arrest report must be given a chance to be heard in person or by affidavit *before* DHS, decides that s/he has committed a disqualifying offense. DHS should be required to contact at least one person named in the arrest report – other than the officer who wrote it, when s/he is just a recorder of hearsay – to provide an affidavit or recorded statement. This is particularly important where DHS is considering whether an individual has committed an offense that is an absolute bar to clearance.

It may be argued that doing something more nearly resembling a real investigation will unreasonably delay a determination. However, many subjects of background checks report delays long past the statutory limit before their cases are decided. Understanding that DHS does not have the resources to meet the time limits, Minnesota courts have not held delay alone as being grounds to reverse DHS. And the subject can certainly be required to waive speedy resolution in order for an investigation to be done.

It is not adequate merely to provide that a person disqualified without a conviction may request reconsideration. As noted above, the appeal processes utilized by DHS are daunting. Most important, in some cases, DHS, the same agency that found that there is a preponderance of evidence that the person is guilty of misconduct, does the reconsideration review. In other cases, DHS disqualifies the individual, but the reconsideration review is conducted by another agency, MDH or DOC. In a third group of background studies, counties (most often the county attorney) have determined there is a preponderance of evidence for a disqualification, and DHS conducts the reconsideration review.

The forms DHS provides for people to use in requesting reconsiderations are the best evidence of the problem. Besides being written at a level too difficult for most applicants, the forms seem to presume that applicants are guilty. They do not guide people to an understanding of what they might show in attempting to establish their innocence, they are not open-ended, and – above all – they are written for people who actually have committed a wrongful act. See forms, Appendix D.

Melanie* was convicted of gross misdemeanor check forgery in 2005. Two years later, when her DHS license as a Personal Care Assistant was due for renewal, she was informed that she was disqualified as a result of her conviction. Although she applied for a set-aside, it took many months before receiving any response from DHS. When Melanie inquired about why there was such a delay, she was informed that there was a "backlog" at DHS. Before receiving an answer from DHS, Melanie's job was terminated; her employer explained that they could not wait any longer. Now, even if she receives a set-aside, her job will no longer be available. If she finds employment somewhere else, she will have to begin the process all over again with DHS, since a set-aside only applies to a particular employer. Melanie has been forced to move back in with her parents and may need to turn to public assistance if she is unable to find a job.

Disseminating Information to Prospective Employees of DHS-Licensed Programs

Since the applications for background checks of prospective employees are made by the employers, it is not entirely surprising that the DHS website does not appear to provide information about who is qualified to work in DHS-licensed programs or how DHS conducts background checks. At least, the website's search engine did not yield any entries of this kind when effort was made to find the information.

The published document link, which was also used in the search, yielded a list of more than 1,200 documents that was not organized in any discernable way: information about how to get to DHS and park, about agency applications for licensure, about getting care for one's elderly

parents, about using Minnesota Healthcare, about appealing denial of welfare benefits, and a myriad of other topics that gave clear evidence of DHS's importance and complexity were all jumbled together. If an informative document is available on the site, it was not found.

RECOMMENDATIONS

The DHS website should provide readily accessible information about the law governing background checks, about the way checks are done, and especially about who is and is not allowed to work in a licensed program. The website should also display forms for seeking reconsideration of DHS disqualifications and refusals of set-asides.

The information specified in this recommendation is of great general interest, and it should be better understood. While subjects of checks get forms through their prospective employers and directly from the Department, Minnesotans should be able to understand, through the website, whether it makes sense for them to pursue training for work in licensed programs and whether they even want to apply for work in such areas. Clients of licensed programs and their families would likely appreciate the information, as well.

APPENDICES

A. Committee's Enabling Statute
B. Statutory Mandate for DHS Report
C. DHS Background Study Statutes
D. DHS Forms

Minnesota Session Laws 2007: Ch. 54, Art. 7

Sec. 23. **COLLATERAL SANCTIONS COMMITTEE.**

Subdivision 1. **Establishment; duties.** The Collateral Sanctions Committee shall study issues related to collateral sanctions. Specifically, the committee shall study how collateral sanctions are addressed in other states and determine best practices on this. In addition, the committee shall study issues relating to how criminal convictions and adjudications affect an individual's employment and professional licensing opportunities in Minnesota. The committee shall consider the policy implications of providing a process to allow individuals currently prohibited from certain types of employment or professional licensing because of a criminal record to seek a waiver. The committee shall make recommendations on changes in law and policy it deems appropriate in this area. By January 15, 2008, the committee shall report its findings and recommendations to the chairs and ranking minority members of the committees having jurisdiction over criminal justice policy in the senate and house of representatives.

Subd. 2. **Resources.** The Sentencing Guidelines Commission shall provide technical and research assistance to the committee, with the assistance of the commissioner of public safety and the commissioner of corrections.

Subd. 3. **Membership.** The committee consists of the following:

(1) the executive director of the Sentencing Guidelines Commission, who shall serve as the committee's chair and convening authority;

(2) the commissioner of public safety, or designee;

(3) the commissioner of corrections, or designee;

(4) the attorney general, or designee;

(5) the state public defender, or designee;

(6) a crime victim's advocate, appointed by the commissioner of public safety;

(7) a county attorney, appointed by the Minnesota County Attorneys Association;

(8) a city attorney, appointed by the League of Minnesota Cities;

(9) a district court judge, appointed by the Judicial Council;

(10) a private criminal defense attorney, appointed by the Minnesota Association of Criminal Defense Lawyers;

(11) a probation officer, appointed by the Minnesota Association of County Probation Officers;

(12) two peace officers, one appointed by the Minnesota Sheriffs' Association and the other appointed by the Minnesota Chiefs of Police Association;

(13) two members with knowledge of housing issues, one of whom is a landlord and the other a tenant, appointed by the commissioner of public safety;

(14) a member from the employment industry, appointed by the commissioner of public safety;

(15) a member from a community crime prevention organization, appointed by the commissioner of public safety;

(16) a member from a community of color, appointed by the commissioner of public safety;

(17) a member who is an ex-criminal offender, appointed by the commissioner of public safety; and

(18) a member from an agency that provides re-entry services to offenders being released from incarceration, appointed by the commissioner of public safety.

Subd. 4. **Expenses; expiration.** The provisions of Minnesota Statutes, section 15.059, apply to the committee. The committee expires on January 15, 2008.

Subd. 5. **Definition.** As used in this section, "collateral sanctions" has the meaning given in Minnesota Statutes, section 609B.050, subdivision 1.

EFFECTIVE DATE. This section is effective the day following final enactment.

Minnesota Session Laws 2007: Ch. 112, Sec. 58

Sec. 58. **BACKGROUND STUDY REVIEW.**

(a) The Collateral Consequences Committee described in Laws 2006, chapter 260, article 1, section 45, or successor entity, shall review the background study provisions contained in Minnesota Statutes, chapter 245C, as well as set-aside and variance policies. The committee shall recommend changes in these laws to recodify and simplify them, and recommend appropriate substantive changes to them consistent with good public policy and public safety.

(b) By February 1, 2008, the committee shall report its findings and recommendations to the chairs and ranking minority members of the senate and house of representatives committees having jurisdiction over human services and criminal justice policy.

Minnesota Statute §245C.15

245C.15 DISQUALIFYING CRIMES OR CONDUCT.

Subdivision 1. **Permanent disqualification.** (a) An individual is disqualified under section 245C.14 if: (1) regardless of how much time has passed since the discharge of the sentence imposed, if any, for the offense; and (2) unless otherwise specified, regardless of the level of the offense, the individual has committed any of the following offenses: sections 243.166 (violation of predatory offender registration law); 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); 609.205 (manslaughter in the second degree); a felony offense under 609.221 or 609.222 (assault in the first or second degree); a felony offense under sections 609.2242 and 609.2243 (domestic assault), spousal abuse, child abuse or neglect, or a crime against children; 609.2247 (domestic assault by strangulation); 609.228 (great bodily harm caused by distribution of drugs); 609.245 (aggravated robbery); 609.25 (kidnapping); 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); 609.322 (solicitation, inducement, and promotion of prostitution); 609.324, subdivision 1 (other prohibited acts); 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); 609.3453 (criminal sexual predatory conduct); 609.352 (solicitation of children to engage in sexual conduct); 609.365 (incest); a felony offense under 609.377 (malicious punishment of a child); a felony offense under 609.378 (neglect or endangerment of a child); 609.561 (arson in the first degree); 609.66, subdivision 1e (drive-by shooting); 609.749, subdivision 3, 4, or 5 (felony-level harassment; stalking); 609.855, subdivision 5 (shooting at or in a public transit vehicle or facility); 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); or 617.247 (possession of pictorial representations of minors). An individual also is disqualified under section 245C.14 regardless of how much time has passed since the involuntary termination of the individual's parental rights under section 260C.301.

(b) An individual's aiding and abetting, attempt, or conspiracy to commit any of the offenses listed in paragraph (a), as each of these offenses is defined in Minnesota Statutes, permanently disqualifies the individual under section 245C.14.

(c) An individual's offense in any other state or country, where the elements of the offense are substantially similar to any of the offenses listed in paragraph (a), permanently disqualifies the individual under section 245C.14.

(d) When a disqualification is based on a judicial determination other than a conviction, the disqualification period begins from the date of the court order. When a disqualification is based on an admission, the disqualification period begins from the date of an admission in court. When a disqualification is based on a preponderance of evidence of a disqualifying act, the disqualification date begins from the date of the dismissal, the date of discharge of the sentence imposed for a conviction for a disqualifying crime of similar elements, or the date of the incident, whichever occurs last.

(e) If the individual studied commits one of the offenses listed in paragraph (a) that is specified as a felony-level only offense, but the sentence or level of offense is a gross

misdemeanor or misdemeanor, the individual is disqualified, but the disqualification look-back period for the offense is the period applicable to gross misdemeanor or misdemeanor offenses.

Subd. 2. **15-year disqualification.** (a) An individual is disqualified under section 245C.14 if: (1) less than 15 years have passed since the discharge of the sentence imposed, if any, for the offense; and (2) the individual has committed a felony-level violation of any of the following offenses: sections 256.98 (wrongfully obtaining assistance); 268.182 (false representation; concealment of facts); 393.07, subdivision 10, paragraph (c) (federal Food Stamp Program fraud); 609.165 (felon ineligible to possess firearm); 609.21 (criminal vehicular homicide and injury); 609.215 (suicide); 609.223 or 609.2231 (assault in the third or fourth degree); repeat offenses under 609.224 (assault in the fifth degree); 609.229 (crimes committed for benefit of a gang); 609.2325 (criminal abuse of a vulnerable adult); 609.2335 (financial exploitation of a vulnerable adult); 609.235 (use of drugs to injure or facilitate crime); 609.24 (simple robbery); 609.255 (false imprisonment); 609.2664 (manslaughter of an unborn child in the first degree); 609.2665 (manslaughter of an unborn child in the second degree); 609.267 (assault of an unborn child in the first degree); 609.2671 (assault of an unborn child in the second degree); 609.268 (injury or death of an unborn child in the commission of a crime); 609.27 (coercion); 609.275 (attempt to coerce); 609.466 (medical assistance fraud); 609.498, subdivision 1 or 1b (aggravated first degree or first degree tampering with a witness); 609.52 (theft); 609.521 (possession of shoplifting gear); 609.525 (bringing stolen goods into Minnesota); 609.527 (identity theft); 609.53 (receiving stolen property); 609.535 (issuance of dishonored checks); 609.562 (arson in the second degree); 609.563 (arson in the third degree); 609.582 (burglary); 609.59 (possession of burglary tools); 609.611 (insurance fraud); 609.625 (aggravated forgery); 609.63 (forgery); 609.631 (check forgery; offering a forged check); 609.635 (obtaining signature by false pretense); 609.66 (dangerous weapons); 609.67 (machine guns and short-barreled shotguns); 609.687 (adulteration); 609.71 (riot); 609.713 (terroristic threats); 609.82 (fraud in obtaining credit); 609.821 (financial transaction card fraud); 617.23 (indecent exposure), not involving a minor; repeat offenses under 617.241 (obscene materials and performances; distribution and exhibition prohibited; penalty); 624.713 (certain persons not to possess firearms); chapter 152 (drugs; controlled substance); or a felony-level conviction involving alcohol or drug use.

(b) An individual is disqualified under section 245C.14 if less than 15 years has passed since the individual's aiding and abetting, attempt, or conspiracy to commit any of the offenses listed in paragraph (a), as each of these offenses is defined in Minnesota Statutes.

(c) For foster care and family child care an individual is disqualified under section 245C.14 if less than 15 years has passed since the individual's voluntary termination of the individual's parental rights under section 260C.301, subdivision 1, paragraph (b), or 260C.301, subdivision 3.

(d) An individual is disqualified under section 245C.14 if less than 15 years has passed since the discharge of the sentence imposed for an offense in any other state or country, the elements of which are substantially similar to the elements of the offenses listed in paragraph (a).

(e) If the individual studied commits one of the offenses listed in paragraph (a), but the sentence or level of offense is a gross misdemeanor or misdemeanor, the individual is disqualified but the disqualification look-back period for the offense is the period applicable to the gross misdemeanor or misdemeanor disposition.

(f) When a disqualification is based on a judicial determination other than a conviction,

the disqualification period begins from the date of the court order. When a disqualification is based on an admission, the disqualification period begins from the date of an admission in court. When a disqualification is based on a preponderance of evidence of a disqualifying act, the disqualification date begins from the date of the dismissal, the date of discharge of the sentence imposed for a conviction for a disqualifying crime of similar elements, or the date of the incident, whichever occurs last.

Subd. 3. **Ten-year disqualification.** (a) An individual is disqualified under section 245C.14 if: (1) less than ten years have passed since the discharge of the sentence imposed, if any, for the offense; and (2) the individual has committed a gross misdemeanor-level violation of any of the following offenses: sections 256.98 (wrongfully obtaining assistance); 268.182 (false representation; concealment of facts); 393.07, subdivision 10, paragraph (c) (federal Food Stamp Program fraud); 609.21 (criminal vehicular homicide and injury); 609.221 or 609.222 (assault in the first or second degree); 609.223 or 609.2231 (assault in the third or fourth degree); 609.224 (assault in the fifth degree); 609.224, subdivision 2, paragraph (c) (assault in the fifth degree by a caregiver against a vulnerable adult); 609.2242 and 609.2243 (domestic assault); 609.23 (mistreatment of persons confined); 609.231 (mistreatment of residents or patients); 609.2325 (criminal abuse of a vulnerable adult); 609.233 (criminal neglect of a vulnerable adult); 609.2335 (financial exploitation of a vulnerable adult); 609.234 (failure to report maltreatment of a vulnerable adult); 609.265 (abduction); 609.275 (attempt to coerce); 609.324, subdivision 1a (other prohibited acts; minor engaged in prostitution); 609.33 (disorderly house); 609.377 (malicious punishment of a child); 609.378 (neglect or endangerment of a child); 609.466 (medical assistance fraud); 609.52 (theft); 609.525 (bringing stolen goods into Minnesota); 609.527 (identity theft); 609.53 (receiving stolen property); 609.535 (issuance of dishonored checks); 609.582 (burglary); 609.59 (possession of burglary tools); 609.611 (insurance fraud); 609.631 (check forgery; offering a forged check); 609.66 (dangerous weapons); 609.71 (riot); 609.72, subdivision 3 (disorderly conduct against a vulnerable adult); repeat offenses under 609.746 (interference with privacy); 609.749, subdivision 2 (harassment; stalking); 609.82 (fraud in obtaining credit); 609.821 (financial transaction card fraud); 617.23 (indecent exposure), not involving a minor; 617.241 (obscene materials and performances); 617.243 (indecent literature, distribution); 617.293 (harmful materials; dissemination and display to minors prohibited); or violation of an order for protection under section 518B.01, subdivision 14.

(b) An individual is disqualified under section 245C.14 if less than ten years has passed since the individual's aiding and abetting, attempt, or conspiracy to commit any of the offenses listed in paragraph (a), as each of these offenses is defined in Minnesota Statutes.

(c) An individual is disqualified under section 245C.14 if less than ten years has passed since the discharge of the sentence imposed for an offense in any other state or country, the elements of which are substantially similar to the elements of any of the offenses listed in paragraph (a).

(d) If the individual studied commits one of the offenses listed in paragraph (a), but the sentence or level of offense is a misdemeanor disposition, the individual is disqualified but the disqualification lookback period for the offense is the period applicable to misdemeanors.

(e) When a disqualification is based on a judicial determination other than a conviction, the disqualification period begins from the date of the court order. When a disqualification is based on an admission, the disqualification period begins from the date of an admission in court.

When a disqualification is based on a preponderance of evidence of a disqualifying act, the disqualification date begins from the date of the dismissal, the date of discharge of the sentence imposed for a conviction for a disqualifying crime of similar elements, or the date of the incident, whichever occurs last.

Subd. 4. **Seven-year disqualification.** (a) An individual is disqualified under section 245C.14 if: (1) less than seven years has passed since the discharge of the sentence imposed, if any, for the offense; and (2) the individual has committed a misdemeanor-level violation of any of the following offenses: sections 256.98 (wrongfully obtaining assistance); 268.182 (false representation; concealment of facts); 393.07, subdivision 10, paragraph (c) (federal Food Stamp Program fraud); 609.21 (criminal vehicular homicide and injury); 609.221 (assault in the first degree); 609.222 (assault in the second degree); 609.223 (assault in the third degree); 609.2231 (assault in the fourth degree); 609.224 (assault in the fifth degree); 609.2242 (domestic assault); 609.2335 (financial exploitation of a vulnerable adult); 609.234 (failure to report maltreatment of a vulnerable adult); 609.2672 (assault of an unborn child in the third degree); 609.27 (coercion); violation of an order for protection under 609.3232 (protective order authorized; procedures; penalties); 609.466 (medical assistance fraud); 609.52 (theft); 609.525 (bringing stolen goods into Minnesota); 609.527 (identity theft); 609.53 (receiving stolen property); 609.535 (issuance of dishonored checks); 609.611 (insurance fraud); 609.66 (dangerous weapons); 609.665 (spring guns); 609.746 (interference with privacy); 609.79 (obscene or harassing telephone calls); 609.795 (letter, telegram, or package; opening; harassment); 609.82 (fraud in obtaining credit); 609.821 (financial transaction card fraud); 617.23 (indecent exposure), not involving a minor; 617.293 (harmful materials; dissemination and display to minors prohibited); or violation of an order for protection under section 518B.01 (Domestic Abuse Act).

(b) An individual is disqualified under section 245C.14 if less than seven years has passed since a determination or disposition of the individual's:

(1) failure to make required reports under section 626.556, subdivision 3, or 626.557, subdivision 3 , for incidents in which: (i) the final disposition under section 626.556 or 626.557 was substantiated maltreatment, and (ii) the maltreatment was recurring or serious; or

(2) substantiated serious or recurring maltreatment of a minor under section 626.556, a vulnerable adult under section 626.557, or serious or recurring maltreatment in any other state, the elements of which are substantially similar to the elements of maltreatment under section 626.556 or 626.557 for which: (i) there is a preponderance of evidence that the maltreatment occurred, and (ii) the subject was responsible for the maltreatment.

(c) An individual is disqualified under section 245C.14 if less than seven years has passed since the individual's aiding and abetting, attempt, or conspiracy to commit any of the offenses listed in paragraphs (a) and (b), as each of these offenses is defined in Minnesota Statutes.

(d) An individual is disqualified under section 245C.14 if less than seven years has passed since the discharge of the sentence imposed for an offense in any other state or country, the elements of which are substantially similar to the elements of any of the offenses listed in paragraphs (a) and (b).

(e) When a disqualification is based on a judicial determination other than a conviction, the disqualification period begins from the date of the court order. When a disqualification is based on an admission, the disqualification period begins from the date of an admission in court.

When a disqualification is based on a preponderance of evidence of a disqualifying act, the disqualification date begins from the date of the dismissal, the date of discharge of the sentence imposed for a conviction for a disqualifying crime of similar elements, or the date of the incident, whichever occurs last.

(f) An individual is disqualified under section 245C.14 if less than seven years has passed since the individual was disqualified under section 256.98, subdivision 8.

Subd. 5. **Mental illness.** The commissioner may not disqualify an individual subject to a background study under this chapter because that individual has, or has had, a mental illness as defined in section 245.462, subdivision 20.

Minnesota Statute §245C.24

245C.24 DISQUALIFICATION; BAR TO SET ASIDE A DISQUALIFICATION; REQUEST FOR VARIANCE.

Subdivision 1. **Minimum disqualification periods.** The disqualification periods under subdivisions 3 and 4 are the minimum applicable disqualification periods. The commissioner may determine that an individual should continue to be disqualified from licensure because the individual continues to pose a risk of harm to persons served by that individual, even after the minimum disqualification period has passed.

Subd. 2. **Permanent bar to set aside a disqualification.** (a) Except as provided in paragraph (b), the commissioner may not set aside the disqualification of any individual disqualified pursuant to this chapter, regardless of how much time has passed, if the individual was disqualified for a crime or conduct listed in section 245C.15, subdivision 1.

(b) For an individual in the chemical dependency field who was disqualified for a crime or conduct listed under section 245C.15, subdivision 1, and whose disqualification was set aside prior to July 1, 2005, the commissioner must consider granting a variance pursuant to section 245C.30 for the license holder for a program dealing primarily with adults. A request for reconsideration evaluated under this paragraph must include a letter of recommendation from the license holder that was subject to the prior set-aside decision addressing the individual's quality of care to children or vulnerable adults and the circumstances of the individual's departure from that service.

Subd. 3. **Ten-year bar to set aside disqualification.** (a) The commissioner may not set aside the disqualification of an individual in connection with a license to provide family child care for children, foster care for children in the provider's home, or foster care or day care services for adults in the provider's home if: (1) less than ten years has passed since the discharge of the sentence imposed, if any, for the offense; or (2) when disqualified based on a preponderance of evidence determination under section 245C.14, subdivision 1, paragraph (a), clause (2), or an admission under section 245C.14, subdivision 1, paragraph (a), clause (1), and less than ten years has passed since the individual committed the act or admitted to committing the act, whichever is later; and (3) the individual has committed a violation of any of the following offenses: sections 609.165 (felon ineligible to possess firearm); criminal vehicular homicide under 609.21 (criminal vehicular homicide and injury); 609.215 (aiding suicide or aiding attempted suicide); felony violations under 609.223 or 609.2231 (assault in the third or fourth degree); 609.229 (crimes committed for benefit of a gang); 609.713 (terroristic threats); 609.235

(use of drugs to injure or to facilitate crime); 609.24 (simple robbery); 609.255 (false imprisonment); 609.562 (arson in the second degree); 609.71 (riot); 609.498, subdivision 1 or 1b (aggravated first degree or first degree tampering with a witness); burglary in the first or second degree under 609.582 (burglary); 609.66 (dangerous weapon); 609.665 (spring guns); 609.67 (machine guns and short-barreled shotguns); 609.749, subdivision 2 (gross misdemeanor harassment; stalking); 152.021 or 152.022 (controlled substance crime in the first or second degree); 152.023, subdivision 1, clause (3) or (4) or subdivision 2, clause (4) (controlled substance crime in the third degree); 152.024, subdivision 1, clause (2), (3), or (4) (controlled substance crime in the fourth degree); 609.224, subdivision 2, paragraph (c) (fifth-degree assault by a caregiver against a vulnerable adult); 609.23 (mistreatment of persons confined); 609.231 (mistreatment of residents or patients); 609.2325 (criminal abuse of a vulnerable adult); 609.233 (criminal neglect of a vulnerable adult); 609.2335 (financial exploitation of a vulnerable adult); 609.234 (failure to report); 609.265 (abduction); 609.2664 to 609.2665 (manslaughter of an unborn child in the first or second degree); 609.267 to 609.2672 (assault of an unborn child in the first, second, or third degree); 609.268 (injury or death of an unborn child in the commission of a crime); repeat offenses under 617.23 (indecent exposure); 617.293 (disseminating or displaying harmful material to minors); a felony-level conviction involving alcohol or drug use, a gross misdemeanor offense under 609.324, subdivision 1 (other prohibited acts); a gross misdemeanor offense under 609.378 (neglect or endangerment of a child); a gross misdemeanor offense under 609.377 (malicious punishment of a child); 609.72, subdivision 3 (disorderly conduct against a vulnerable adult); or 624.713 (certain persons not to possess firearms).

(b) The commissioner may not set aside the disqualification of an individual if less than ten years have passed since the individual's aiding and abetting, attempt, or conspiracy to commit any of the offenses listed in paragraph (a) as each of these offenses is defined in Minnesota Statutes.

(c) The commissioner may not set aside the disqualification of an individual if less than ten years have passed since the discharge of the sentence imposed for an offense in any other state or country, the elements of which are substantially similar to the elements of any of the offenses listed in paragraph (a).

Subd. 4. **Seven-year bar to set aside disqualification.** The commissioner may not set aside the disqualification of an individual in connection with a license to provide family child care for children, foster care for children in the provider's home, or foster care or day care services for adults in the provider's home if within seven years preceding the study:

(1) the individual committed an act that constitutes maltreatment of a child under section 626.556, subdivision 10e, and the maltreatment resulted in substantial bodily harm as defined in section 609.02, subdivision 7a, or substantial mental or emotional harm as supported by competent psychological or psychiatric evidence; or

(2) the individual was determined under section 626.557 to be the perpetrator of a substantiated incident of maltreatment of a vulnerable adult that resulted in substantial bodily harm as defined in section 609.02, subdivision 7a, or substantial mental or emotional harm as supported by competent psychological or psychiatric evidence.

Minnesota Department of **Human Services**

Re:
License No.: R
Background Study No.:

Dear Mr. :

(AGENCY) recently submitted your background study. As part of the study, the Division of Licensing received information about you from the Minnesota Bureau of Criminal Apprehension (BCA) and the Champlin Police Department showing that there is a preponderance of evidence that on (DATE) you committed an act which meets the definition of a disqualifying characteristic (§STATUTE - OFFENSE) and pursuant to Minnesota Statutes, section 245C.14, subd. 1, (2), this act disqualifies you from any position allowing direct contact with, or access to, persons receiving services from facilities licensed by the Department of Human Services and the Minnesota Department of Health, from facilities serving children or youth licensed by the Department of Corrections, and from unlicensed Personal Care Provider Organizations.

WHAT WAS TOLD ABOUT YOUR DISQUALIFICATION:

Your employer was told that you are disqualified, but was not told why you are disqualified.

WHAT YOU CAN DO ABOUT YOUR DISQUALIFICATION (How to request reconsideration):

1. You may ask for a reconsideration of your disqualification. You may request reconsideration on two grounds:
   a. if you believe that the information that was used to disqualify you is incorrect, you may send a letter that identifies what information was wrong, explain why the information was wrong, and send in the correct information; and/or,
   b. you can explain why, in spite of your disqualification, you would not harm the people who are receiving services where you work. You can use the enclosed form for this request for reconsideration of your disqualification. You can also send any other information such as work evaluations, recommendations, etc.

2. Information considered by DHS in making the determination that you do not pose a risk of harm to any person served by the program includes:
   a. the nature, severity, and consequences of the event or events that led to the disqualification;
   b. whether there is more than one disqualifying event;
   c. the age and vulnerability of the victim at the time of the event;
   d. the harm suffered by the victim;
   e. vulnerability of persons served by the program;
   f. the similarity between the victim and persons served by the program;
   g. the time elapsed without a repeat of the same or similar event;
   h. documentation of successful completion by the individual studied of training or rehabilitation pertinent to the event; and
   i. any other information relevant to reconsideration.

Pursuant to Minnesota Statutes, section 245C.22, subdivision 3, any single factor above may be determinative of the Commissioner's decision whether to set aside the disqualification.

3. You have 30 days after receiving this letter to send the information to Department of Human Services, Licensing Division - BGS, PO Box 64242, St. Paul, MN 55164-0242.

WHAT COULD DO ABOUT YOUR JOB:

They may or may not choose to let you work: If chooses to let you work:

1. You must provide them a copy of this letter.
2. You must tell them that you are requesting reconsideration of your disqualification
3. They must make sure that you are always within sight or hearing of a supervising person when providing direct contact services.

WHAT WILL HAPPEN:

1. If you do not send the information (your request for reconsideration) within 30 days, will have to immediately remove you from any position allowing direct contact with, or access to, persons receiving services. **This will affect your job in other facilities too**.
2. If you do request reconsideration of your disqualification, the information you provide will be reviewed. You will get a letter after the Department has received all relevant information, telling you what the decision is
3. Pursuant to Minnesota Statutes, section 245C.23, subd. 1, (a), if you request reconsideration and your disqualification is set aside, **the program will be told why you were disqualified.** In addition, the program will also be informed that upon request, and without your consent, information about the factors that were the basis for the decision to set aside your disqualification are available to them.

Even if you are no longer working at , you may still request reconsideration of your disqualification.

If there are any future disqualifying criminal convictions, they will be reported to the Department of Human Services by the corrections system.

Please see the enclosed sheet for further background study information. If you have any questions, you may contact the Call Center at (651) 296-3802.

Sincerely,

Carla Brown, Manager
Division of Licensing

SUGGESTED FORM FOR REQUEST FOR RECONSIDERATION OF DISQUALIFICATION DUE TO A CRIMINAL OFFENSE

You may use this form to request reconsideration of your disqualification or you may write your answers on another sheet, however, all the required questions must be answered. Please use black or blue ink when completing form. Send the following information with any additional attachments to:

Minnesota Department of Human Services
Division of Licensing - BGS
PO Box 64242
St. Paul, MN 55164-0242

Or you may fax the information to: **651-297-1490**

Please print the following information:

Name:_____ Date: _____

Address: _____ Date of Birth: _____

City_____ State_____ Zip Code _____

List all other names by which you have been known:

_____

_____

Telephone Number (including the area code):_____

If your disqualification is set aside, it will be set aside only for the license(s) and/or program(s) under which your background study was submitted.

If you work at any other site or program for the agency(ies) that submitted your background study, you must list them below. Please use the back of this form if you need additional room to list additional programs and/or locations.

If you do not know the license or agency ID number, **contact the license holder or program.**

Name of each Program/License Holder	**License number or agency ID number**	**License holder or program address**	**The services I provide are:**

A. The information about my disqualification is correct._____ YES _____NO

If NO, please explain what was wrong, explain why it was wrong, and include the correct information with **written proof from the court.** Be advised that if it is determined that the information used to disqualify you is correct, a determination will be made as to your risk of harm.
Therefore, you should also respond to all questions in part B.

B. I am requesting reconsideration of my disqualification because I don't think I pose any risk of harm to the people receiving services._____
Please respond to all of the following questions to demonstrate that you do not pose a risk of harm to person receiving services.

1. Explain the details of the offense for which you were disqualified. What did you do?

   Date of offense: _____

2. Who were the victim(s) of the offense(s) for which you were disqualified?

   A. What harm was suffered by the victim(s)?

   B. If your offense(s) were against a business or a government agency, how were the business or agency harmed?

3. Information regarding services provided.

   A. Describe the persons who will receive services where you work, live, or are applying to work.

   B. Describe how they are vulnerable.

   C. What services are provided to them? What do you do for them?

4. Explain how the persons receiving services are kept safe so they don't become victims of offense(s) such as the one(s) for which you were disqualified.

5. Are the persons to whom you provide services the same or different from the victim(s) of your offense(s).

   A. How are they the same?

   B. How are they different?

6. Please list the jobs you have had in health or human services before and after your disqualifying crime. List dates of employment with a brief description of your duties.

JOB	DATES	DUTIES

7. Describe any treatment, rehabilitation or training that you have received since the disqualifying offense and include copies of any documents showing that you completed any such training, treatment, or rehabilitation including any discharge summaries.

   A. How has that treatment, training, or rehabilitation helped you understand why you committed the offense?

   B. How do you think that treatment; training, or rehabilitation will keep you from committing other offenses?

8. Explain why you believe that you would not pose a risk of harm to the patients or clients where you work, live, or are applying to work.

9. Supply any other information that could assist the Commissioner in determining whether or not to set aside your disqualification. Additional information may include job performance evaluations and letters of recommendation from your current and former employers/supervisors.

XX **YOU MUST** include a police report of the crime(s) you committed that explains what happened during the arrest. You can get the report at the police department where you were arrested. In addition, you may choose to include court documents. **DO NOT SEND BACK THE BCA RECORD WHICH WAS SENT TO YOU**.

XX **YOU MUST** contact your probation officer and have him/her submit a written report to the address on the front page of this form describing how you have progressed during probation and any other information about your conviction(s). If your probation has been discharged, include a copy of the court document discharging your probation.

NOTE: Failure to submit all the required information may impact the decision whether to set aside your disqualification.

NSA
-dq based on POE
- Subject did not challenge Correctness (correctness conclusive)

Minnesota Department of **Human Services**

June 4, 2007

Re:
License No.:
Background Study No.:

Dear Ms.

On . . 2007, you were disqualified from a position allowing direct contact with persons receiving services from facilities licensed by the Department of Human Services and the Minnesota Department of Health, from facilities serving children or youth licensed by the Department of Corrections, and from unlicensed Personal Care Provider Organizations. You were disqualified as a result of a preponderance of evidence that you committed theft, a felony, pursuant to Minnesota Statutes, section 609.52.

On . . 2007, the Department of Human Services received your request for reconsideration. Your request and the accompanying information were reviewed, as was the information relied upon to make the disqualification decision. Your request for reconsideration of the disqualification decision did not indicate that you believe the information relied upon to disqualify you was incorrect. Therefore, the correctness of your disqualification is conclusive under Minnesota Statutes, section 245C.29, subdivision 2.

The statutory standard for setting aside a disqualification is that the individual must provide adequate information for the Commissioner to determine that the individual does not pose a risk of harm to the persons served by the licensed program. In determining whether you pose a risk of harm to persons served by DHS licensed programs and unlicensed Personal Care Provider Organizations, the Commissioner has considered all of the information that you provided in connection with your request for reconsideration. The Commissioner must consider all of the factors set forth in Minnesota Statutes, section 245C.22, subdivision 4, specifically: (1) the nature, severity, and consequences of the event or events that led to the disqualification; (2) whether there is more than one disqualifying event; (3) the age and vulnerability of the victim at the time of the event; (4) the harm suffered by the victim; (5) the similarity between the victim and persons served by the program; (6) the time elapsed without a repeat of the same or similar event; (7) documentation of successful completion by the individual studied of training or rehabilitation pertinent to the event; and (8) any other information relevant to reconsideration. Pursuant to Minnesota Statutes, section 245C.22, subdivision 3, any single factor above may be determinative of the Commissioner's decision whether to set aside the disqualification.

The Commissioner has applied and weighed all of the above eight factors with respect to your disqualification record, and has given preeminent weight to the safety of each person to be served by the program over the interest of the license holder, disqualified individual, applicant or other entity, as is required by Minnesota Statutes, section 245C.22, subdivision 3. Attached to this letter is a risk of harm assessment which reflects all of the factors considered, and their respective weight. While some of the factors may indicate a lesser risk of harm, based on all of the foregoing, the Commissioner has determined that you have failed to demonstrate that you do not pose a risk of harm. In deciding to not set aside your disqualification, the Commissioner has found the following factors to be determinative:

1. The vulnerability of the people for whom you wish to provide direct contact services. The clients in the program are vulnerable as a result of their physical and/or mental disabilities.

2. The recency of the disqualifying event. It has been less than one year since the disqualifying event occurred. This type of event is a disqualification for fifteen years from the date of the incident. It is therefore too soon to conclude that you have changed your attitude and behavior.

3. The serious nature of the disqualifying event. You are disqualified as a result of a preponderance of evidence that you committed felony theft

4. You have failed to provide any evidence of your rehabilitation or explain why you believe you have been rehabilitated. As a result, there is no evidence that you have undergone changes in your attitude and behavior that will make it unlikely that you will commit a similar act in the future.

Your disqualification has not been set aside. The facility has been notified of this decision. You are disqualified from any position allowing direct contact with, or access to (as these terms are defined under Minnesota Statutes, section 245C.02), persons served by the program.

Pursuant to Minnesota Statutes, section 245C.27, you may appeal this disqualification by requesting a fair hearing under Minnesota Statutes, section 256.045. If you choose to request a fair hearing, the request must be in writing and must be submitted to the Department of Human Services, Division of Licensing, PO Box 64242, St. Paul, MN 55164-0242, attention Legal Unit. The request must be submitted within 30 days of receiving this notice, or within 90 days if you can show good cause why the request was not submitted within the 30-day period. Because the correctness of your disqualification is conclusive, as explained above, the scope of the fair hearing would be limited to whether your disqualification should be set aside because you do not pose a risk of harm to persons served by the program.

If you request a fair hearing within the stated timeline, you may continue to work in a direct contact position at the facility identified above, subject to continuous supervision, as previously ordered. The facility may choose not to retain you in a direct contact position. The Division of Licensing will notify you and the license holder of the status of your disqualification following the hearing. If you do not request a fair hearing within the stated timeline, the facility will be ordered to immediately remove you from any position allowing direct contact with, or access to, persons receiving services from the licensed program.

Minnesota Statutes, section 245C.30, allows the Commissioner to grant a time-limited variance to a license holder for a person whose disqualification has not been set aside, provided there are conditions which minimize the risk of harm to people receiving services. If the license holder is interested in allowing you direct contact with persons receiving services from the licensed program, the license holder may request a variance. If the Commissioner determines that the alternative equivalent measures identified by the license holder assure the health and safety of people receiving services, the variance may be granted.

If you have any questions regarding this letter, please contact me at 651-

Sincerely,

Licensing Legal Office
Division of Licensing

Enclosure

NSA
-dq based on POE
- Subject did not challenge correctness (correctness conclusive)

Minnesota Department of **Human Services**

June 4, 2007

Re:
License No.:
Background Study No.:

Dear Ms.

On . . 2007, you were disqualified from a position allowing direct contact with persons receiving services from facilities licensed by the Department of Human Services and the Minnesota Department of Health, from facilities serving children or youth licensed by the Department of Corrections, and from unlicensed Personal Care Provider Organizations. You were disqualified as a result of a preponderance of evidence that you committed theft, a felony, pursuant to Minnesota Statutes, section 609.52.

On . . 2007, the Department of Human Services received your request for reconsideration. Your request and the accompanying information were reviewed, as was the information relied upon to make the disqualification decision. Your request for reconsideration of the disqualification decision did not indicate that you believe the information relied upon to disqualify you was incorrect. Therefore, the correctness of your disqualification is conclusive under Minnesota Statutes, section 245C.29, subdivision 2.

The statutory standard for setting aside a disqualification is that the individual must provide adequate information for the Commissioner to determine that the individual does not pose a risk of harm to the persons served by the licensed program. In determining whether you pose a risk of harm to persons served by DHS licensed programs and unlicensed Personal Care Provider Organizations, the Commissioner has considered all of the information that you provided in connection with your request for reconsideration. The Commissioner must consider all of the factors set forth in Minnesota Statutes, section 245C.22, subdivision 4, specifically: (1) the nature, severity, and consequences of the event or events that led to the disqualification; (2) whether there is more than one disqualifying event; (3) the age and vulnerability of the victim at the time of the event; (4) the harm suffered by the victim; (5) the similarity between the victim and persons served by the program; (6) the time elapsed without a repeat of the same or similar event; (7) documentation of successful completion by the individual studied of training or rehabilitation pertinent to the event; and (8) any other information relevant to reconsideration. Pursuant to Minnesota Statutes, section 245C.22, subdivision 3, any single factor above may be determinative of the Commissioner's decision whether to set aside the disqualification.

The Commissioner has applied and weighed all of the above eight factors with respect to your disqualification record, and has given preeminent weight to the safety of each person to be served by the program over the interest of the license holder, disqualified individual, applicant or other entity, as is required by Minnesota Statutes, section 245C.22, subdivision 3. Attached to this letter is a risk of harm assessment which reflects all of the factors considered, and their respective weight. While some of the factors may indicate a lesser risk of harm, based on all of the foregoing, the Commissioner has determined that you have failed to demonstrate that you do not pose a risk of harm. In deciding to not set aside your disqualification, the Commissioner has found the following factors to be determinative:

1. The vulnerability of the people for whom you wish to provide direct contact services. The clients in the program are vulnerable as a result of their physical and/or mental disabilities.

2. The recency of the disqualifying event. It has been less than one year since the disqualifying event occurred. This type of event is a disqualification for fifteen years from the date of the incident. It is therefore too soon to conclude that you have changed your attitude and behavior.

3. The serious nature of the disqualifying event. You are disqualified as a result of a preponderance of evidence that you committed felony theft

4. You have failed to provide any evidence of your rehabilitation or explain why you believe you have been rehabilitated. As a result, there is no evidence that you have undergone changes in your attitude and behavior that will make it unlikely that you will commit a similar act in the future.

Your disqualification has not been set aside. The facility has been notified of this decision. You are disqualified from any position allowing direct contact with, or access to (as these terms are defined under Minnesota Statutes, section 245C.02), persons served by the program.

Pursuant to Minnesota Statutes, section 245C.27, you may appeal this disqualification by requesting a fair hearing under Minnesota Statutes, section 256.045. If you choose to request a fair hearing, the request must be in writing and must be submitted to the Department of Human Services, Division of Licensing, PO Box 64242, St. Paul, MN 55164-0242, attention Legal Unit. The request must be submitted within 30 days of receiving this notice, or within 90 days if you can show good cause why the request was not submitted within the 30-day period. Because the correctness of your disqualification is conclusive, as explained above, the scope of the fair hearing would be limited to whether your disqualification should be set aside because you do not pose a risk of harm to persons served by the program.

If you request a fair hearing within the stated timeline, you may continue to work in a direct contact position at the facility identified above, subject to continuous supervision, as previously ordered. The facility may choose not to retain you in a direct contact position. The Division of Licensing will notify you and the license holder of the status of your disqualification following the hearing. If you do not request a fair hearing within the stated timeline, the facility will be ordered to immediately remove you from any position allowing direct contact with, or access to, persons receiving services from the licensed program.

Minnesota Statutes, section 245C.30, allows the Commissioner to grant a time-limited variance to a license holder for a person whose disqualification has not been set aside, provided there are conditions which minimize the risk of harm to people receiving services. If the license holder is interested in allowing you direct contact with persons receiving services from the licensed program, the license holder may request a variance. If the Commissioner determines that the alternative equivalent measures identified by the license holder assure the health and safety of people receiving services, the variance may be granted.

If you have any questions regarding this letter, please contact me at 651-

Sincerely,

Licensing Legal Office
Division of Licensing

Enclosure

· Perm Bar affirmed
- dq based on POE

Minnesota Department of **Human Services**

November 29, 2007

Re:

License No.:
Background Study No.:

Dear Mr.

On , 2007, you were disqualified from a position allowing direct contact with, or access to (as these terms are defined under Minnesota Statutes, section 245C.02), persons receiving services from facilities licensed by the Department of Human Services and the Minnesota Department of Health, from facilities serving children or youth licensed by the Department of Corrections, and from unlicensed Personal Care Provider Organizations. Your disqualification is a result of a preponderance of evidence that on August 22, 2000, you committed an act which meets the definition of a disqualifying characteristic – criminal sexual conduct in the fifth degree pursuant to Minnesota Statutes, section 609.3451.

On , 2007, the Department of Human Services received your request for reconsideration. Your request and the accompanying information were reviewed, as was the information relied upon to make the disqualification decision. This review has resulted in a determination that the information relied upon to disqualify you was correct and that a preponderance of evidence exists that you committed criminal sexual conduct in the fifth degree pursuant to Minnesota Statutes, section 609.3451.

Pursuant to Minnesota Statutes, section 245C.15, subdivision 1, you are permanently disqualified from having direct contact with children or vulnerable adults served in programs licensed by the Department of Human Services. Additionally, under Minnesota Statutes, section 245C.24, subdivision 2, the Commissioner may not set aside this disqualification, regardless of how much time has passed, and regardless of whether it is determined that you pose a risk of harm. Therefore, the risk-of-harm factors listed in Minnesota Statutes, section 245C.22 are not applicable. Finally, pursuant to Minnesota Statutes, section 245C.30, subdivision 1, the Commissioner has no authority to grant a variance relating to this disqualification.

Therefore, your disqualification is affirmed.

You may not work in a position allowing direct contact with persons receiving services from programs licensed by the Department of Human Services. The programs identified above have been ordered to ensure that you are not returned to any position allowing direct contact with, or access to, persons receiving services from their program.

Pursuant to Minnesota Statutes, section 245C.27, you may appeal this disqualification by requesting a fair hearing under Minnesota Statutes, section 256.045. If you choose to request a fair hearing, the request must be in writing and must be submitted to the Department of Human

Services, Division of Licensing, P.O. Box 64242, St. Paul, MN 55164-0242, attention Legal Unit. The request must be submitted within 30 days of receiving this notice, or within 90 days if you can show good cause why the request was not submitted within the 30-day period. Because the Commissioner has no authority to set aside the disqualification, the scope of the hearing would be limited to a determination of the correctness of the disqualification based on a preponderance of evidence.

If you have any questions regarding this letter, please contact me at 651-:

Sincerely,

.ı, Legal Office
Division of Licensing

cc:

MINNESOTA DEPARTMENT OF HUMAN SERVICES LICENSED FACILITIES EDUCATIONAL PROGRAMS, TEMPORARY EMPLOYMENT AGENCIES, PROFESSIONAL SERVICES AGENCIES

BACKGROUND STUDY PRIVACY NOTICE

Because the Minnesota Department of Human Services is requesting that you provide private information about yourself, the Minnesota Government Data Practices Act requires that you be informed of the following:

1. **Purpose and intended use of the information:** Minnesota Statutes, chapter 245C, requires the Minnesota Department of Human Services (DHS) to conduct background studies on individuals providing direct contact services to people receiving services from facilities and agencies licensed by DHS. The background studies are to be completed according to the requirements in Minnesota Statutes, chapter 245C. The information requested will be used to perform a background study of you that will include at least a review of criminal conviction records held by the Minnesota Bureau of Criminal Apprehension and records of substantiated maltreatment of vulnerable adults and children. DHS may also later require you to submit additional information and/or your fingerprints if necessary to complete your background study. For all individuals who are subject to background studies by DHS, the corrections system will report new criminal convictions for disqualifying crimes to DHS. County agencies and the Minnesota Department of Health report substantiated findings of maltreatment of minors and vulnerable adults to DHS.

2. **Whether you may refuse or are legally required to provide the information:** Minnesota Statutes, chapter 245C, states that the individual who is the subject of a study must provide sufficient information to ensure an accurate background study.

3. **Known consequences that may arise from supplying the information:** Individuals who have histories with the characteristics identified in Minnesota Statutes, chapter 245C, will be disqualified from positions allowing direct contact with persons receiving services. Health-related licensing boards will make a determination whether to impose disciplinary or corrective action on individuals regulated by health-related licensing boards who have been determined to be responsible for substantiated maltreatment. Individuals who do not have disqualifying characteristics will not be disqualified.

4. **Known consequences that will arise from refusing to supply the requested information:** Only items identified as "optional" may be left blank. Refusal to provide the information necessary to ensure an accurate and complete background study will result in your disqualification and an order to the agency or facility to remove you from any position allowing direct contact to persons receiving services.

5. **Identification of other agencies or entities authorized to receive this information:** The information you provide will be shared with the Minnesota Bureau of Criminal Apprehension. If DHS has reasonable cause to believe that other agencies may have information pertinent to a disqualification, the information may also be shared with county attorneys, county sheriffs, courts, county agencies, local police, the Federal Bureau of Investigation, the Office of the Attorney General, agencies with criminal record information systems in other states, and juvenile courts. Background study results may be shared with the Minnesota Department of Health, the Minnesota Department of Corrections, the Office of the Attorney General, non-licensed personal care provider organizations, and health-related licensing boards. If you have a disqualifying characteristic, the facility will be told only that you are disqualified and will not be told what caused your disqualification, unless you were disqualified for refusing to cooperate with the background study or for serious and/or recurring maltreatment of a minor or vulnerable adult. The information about you received as part of a background study is classified as private data and, except for the agencies noted, cannot be shared without your consent.

MINNESOTA DEPARTMENT OF HEALTH LICENSED FACILITIES
SUPPLEMENTAL NURSING SERVICES AGENCIES, EDUCATIONAL PROGRAMS, TEMPORARY EMPLOYMENT AGENCIES, PROFESSIONAL SERVICES AGENCIES

BACKGROUND STUDY PRIVACY NOTICE

Because the Minnesota Department of Human Services is requesting that you provide private information about yourself, the Minnesota Government Data Practices Act requires that you be informed of the following:

1. **Purpose and intended use of the information:** Minnesota Statutes, section 144.057, requires the Minnesota Department of Human Services (DHS) to conduct background studies on individuals who have direct contact with patients and residents in hospitals, boarding care homes, outpatient surgical centers, nursing homes, home care agencies, residential care homes, board and lodging establishments registered to provide supportive or health supervision services, individuals employed by supplemental nursing services agencies, and controlling persons of a supplemental nursing services agency; and all other employees in nursing homes. The background studies are to be completed according to the requirements in Minnesota Statutes, chapter 245C. The information requested will be used to perform a background study of you that will include at least a review of criminal conviction records held by the Minnesota Bureau of Criminal Apprehension and records of substantiated maltreatment of vulnerable adults and children. DHS may also later require you to submit additional information and/or your fingerprints if necessary to complete your background study. For all individuals who are subject to background studies by DHS, the corrections system will report new criminal convictions for disqualifying crimes to DHS. County agencies and the Minnesota Department of Health report substantiated findings of maltreatment of minors and vulnerable adults to DHS.

2. **Whether you may refuse or are legally required to provide the information:** Minnesota Statutes, chapter 245C, states that the individual who is the subject of a study must provide sufficient information to ensure an accurate background study.

3. **Known consequences that may arise from supplying the information:** Individuals who have histories with the characteristics identified in Minnesota Statutes, chapter 245C, will be disqualified from positions allowing direct contact with (and, where applicable, access to) persons receiving services. Health-related licensing boards will make a determination whether to impose disciplinary or corrective action on individuals regulated by health-related licensing boards who have been determined to be responsible for substantiated maltreatment. Individuals who do not have disqualifying characteristics will not be disqualified.

4. **Known consequences that will arise from refusing to supply the requested information:** Only items identified as "optional" may be left blank. Refusal to provide the information necessary to ensure an accurate and complete background study will result in your disqualification and an order to the agency or facility to remove you from any position allowing direct contact with (and, where applicable, access to) persons receiving services.

5. **Identification of other agencies or entities authorized to receive this information:** The information you provide will be shared with the Minnesota Bureau of Criminal Apprehension. If DHS has reasonable cause to believe that other agencies may have information pertinent to a disqualification, the information may also be shared with county attorneys, county sheriffs, courts, county agencies, local police, the Federal Bureau of Investigation, the Office of the Attorney General, agencies with criminal record information systems in other states, and juvenile courts. Background study results may be shared with the Minnesota Department of Health, the Minnesota Department of Corrections, the Office of the Attorney General, non-licensed personal care provider organizations, and health-related licensing boards. If you have a disqualifying characteristic, the facility will be told only that you are disqualified and will not be told what caused your disqualification, unless you were disqualified for refusing to cooperate with the background study or for serious and/or recurring maltreatment of a minor or vulnerable adult. The information about you received as part of a background study is classified as private data and, except for the agencies noted, cannot be shared without your consent.

State of Minnesota - Department of Human Services
Division of Licensing

Background Study Clearance
Non-Licensed Personal Care Provider Organization

Mailer Type E
Agency ID [redacted]
Study [redacted]
Study Date 02/07/2008
2 - 3

The individual named here
MAY PROVIDE
direct contact services for the agency named here.

What This Form Is: This is a notice of the result of a background study that was completed by the Minnesota Department of Human Services (DHS). The background study was completed on the individual named above at the request of a non-licensed personal care provider (PCPO), and applies to the agency named above. This form has been mailed to both parties named above. These background study requirements are found in Minnesota Statutes, chapter 245C and section 256B.0627, subdivision 1 (as amended by the 1995 and 1996 Legislatures).

What This Form Means: The individual named above may provide direct contact services for the agency named above. "Direct contact services" is defined in Minnesota Statutes, section 245C.02, subdivision 11, as "providing face-to-face care, training, supervision, counseling, consultation, or medication assistance to persons served by a program."

What To Do With This Form: The individual should keep this form for his/her records. The agency's notice, or a copy of it, must be available upon request for review by representatives of government agencies with jurisdiction over the provision of personal care attendant services. If the individual named above is convicted of a disqualifying crime in the future, the corrections system will report the conviction to DHS. DHS will then contact both the individual and the agency listed above with further instructions.

Non-Transferability of This Clearance: This clearance is not transferable to any agency other than the one identified above.