

DEPARTMENT OF HUMAN SERVICES

LICENSING DIVISION

LEGISLATIVE REPORT

BACKGROUND STUDY PROCESS

AND VULNERABLE ADULT ACT REVIEW

(Laws of Minnesota 2002, chapter 292, section 3)

JANUARY 2003

COST OF PREPARING THE REPORT

The cost of preparing this report is provided to comply with the requirements of Minnesota Statutes, section 3.197 which states:

3.197 **Required reports.** A report to the legislature must contain, at the beginning of the report, the cost of preparing the report, including any costs incurred by another agency or another level of government.

This report has been prepared by Department of Human Services, Division of Licensing, staff. No outside consultants assisted in the development of this report.

It took approximately 130 hours of staff time to write this report for a total staff cost of almost \$6,000, including salary and benefits.

The cost of printing and distributing 30 copies of the report is estimated to be \$150.

The total cost of writing, printing, and distributing this report is \$6,150.

Stakeholders and staff members from the Departments of Human Services, Health, Corrections, and Children Families and Learning spent time on the background study consultation and review process so this report could be written. Those hours are not included in the cost of this report, but the activities are described below.

- There were 190 stakeholders who responded to the survey, which took at least 20 minutes to complete, for a total of at least 65 hours. There were 30 stakeholders who attended one of two meetings that lasted three hours each for a total of 90 hours. The Department of Human Services wants to thank these stakeholders for their participation and valuable input into this process.
- Staff members from the Department of Human Services also: identified stakeholders to be consulted; developed the background studies survey; converted the survey into a Web format; converted the survey results into spreadsheets; created charts; analyzed the survey results; prepared for and conducted the stakeholder meetings; and gathered and compiled investigative, background studies, and appeals data. Staff members from the Departments of Health; Corrections; and Children Families and Learning gathered and supplied investigative data.

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2002 LEGISLATIVE DIRECTIVE

Laws of Minnesota 2002, chapter 292, section 3

BACKGROUND STUDY PROCESS AND VULNERABLE ADULT ACT REVIEW

The commissioner of human services shall consult with the commissioners of health and corrections, the attorney general, and stakeholder groups involved with vulnerable adult maltreatment investigations under Minnesota Statutes, section 626.557, and the background studies completed under Minnesota Statutes, section 245A.04, and inform the legislature about the issues reported to be most in need of a policy review by the legislature.

Stakeholders consulted must include representatives of provider groups for programs licensed by the commissioners of health, human services, and corrections; unions; the ombudsman for mental health and mental retardation; and consumer advocacy groups.

The review shall include a report on available data regarding the background study set-aside and variance processes and the resulting maltreatment findings against people with criminal histories who have been allowed by a state agency to provide services to children and vulnerable adults.

The review shall also include a report on the data regarding maltreatment investigations, rates of substantiation of maltreatment, appeals of findings, and appeal results. The review shall also examine crimes that currently are considered disqualifying crimes and recommend any change to current laws deemed appropriate.

The commissioner shall provide this report to the chairs of the senate health and family security committee and the house of representatives health and human services committee by January 15, 2003.

EXECUTIVE SUMMARY

The Consultation and Review Process

1. Survey:

The Department of Human Services (DHS) conducted a statewide survey of stakeholders in the background study process over a three-week period in September and October of 2002. The Web survey notices were sent to 566 stakeholders. The survey covered 16 background study issues. A majority of the stakeholders responding to the survey did not recommend any changes in 12 of those issues.

There were 189 stakeholders, or 33 percent, who responded to the survey. The stakeholders who responded were: one representative each from the Department of Health (MDH), Department of Corrections (DOC), and Office of the Ombudsman for Mental Health and Mental Retardation; two representatives from the Office of the Attorney General; 67 County and Private Licensing Agencies; 75 Providers; 21 Provider Organizations; 13 Consumer Advocacy Organizations and Individual Consumers or Advocates; and 8 Unions and Professional Associations.

2. Stakeholder Meetings: Two meetings with 30 stakeholders were held in November 2002 to highlight the results of the survey and to discuss the advantages and disadvantages of making changes to the current background study process. The issues discussed were those identified by more than half of the survey respondents as issues for the Legislature to review.

3. Data Review: Data was gathered on background studies, maltreatment investigations, and appeals from the DHS Licensing Division, Appeals and Regulations Division, Aging and Adult Services Division and Children's Research, Planning and Evaluation; and from MDH, DOC, and the Department of Children, Families and Learning (DCFL).

Topics Identified in Survey, 2002 Legislation, and the Legislative Directive

1. When a Background Study Subject Can Begin to Provide Direct Contact Services
2. Disqualification "Look-back" Period for Felonies and Maltreatment
3. Disqualifications for Substantiated Maltreatment
4. State Agency Discretion to Set Aside a Disqualification
5. National Record Check with Federal Bureau of Investigation
6. Changes to Disqualification Crimes

Topic 1: When a Background Study Subject Can Begin to Provide Direct Contact Services (Identified in Survey)

Currently, background study subjects can begin to provide direct contact services after a background study form is submitted to DHS.

Survey Results: Almost nine-tenths of the survey respondents recommended that the Legislature either allow direct contact services if the subject is under direct supervision while the study is being processed, or allow direct contact only after the background study has been completed and the program receives a clearance notice.

Stakeholder Meetings: Stakeholders preferred the supervision option (in spite of the problems presented to some programs like home health care) over waiting until the background study is complete, but said it would be costly to double staff. There was concern that both options would increase the staff shortage problem. There were no examples given of problems related to the current requirement of allowing employees to begin providing direct contact services after a background study form is submitted to DHS.

Data Review: A review of background studies data on individuals responsible for maltreatment in DHS-licensed programs showed that there were no cases where delaying a new employee's direct contact until the program received background study results would have prevented maltreatment.

Topic 2: Disqualification “Look-back” Period for Felonies and Maltreatment (Identified in Survey)

Currently, disqualifying characteristics are divided into four look-back periods: unlimited, 15 years, ten years, and seven years. The look-back period is unlimited for violent crimes, involuntary termination of parental rights, and some felonies; 15 years for other felonies; ten years for gross misdemeanors; and seven years for misdemeanors, serious or recurring maltreatment, and failure to report serious or recurring maltreatment.

15 Year Look-Back Period for Felonies and 7 Year Look-Back Period for Maltreatment

Survey Results: A little more than half of the respondents recommended that the Legislature make the look-back period for all felonies unlimited, and a little less than two thirds of the respondents recommended that the Legislature make the look-back period for maltreatment unlimited.

Stakeholder Meetings: Stakeholders expressed more interest in extending the look-back period for maltreatment than for felonies. Reasons given were: maltreatment is what background studies are seeking to prevent; and there is already an unlimited look-back period for violent felony crimes. There were no examples given of problems related to the current look-back periods for felonies and maltreatment.

Data Review: A review of background studies data on individuals responsible for maltreatment in DHS-licensed programs showed that there were no cases where extension of the look-back period for felonies or maltreatment would have prevented maltreatment.

Topic 3. Disqualifications for Substantiated Maltreatment (Identified by Survey)

Currently, a finding of maltreatment that is not “serious” or “recurring maltreatment” as defined in statute is not a disqualification.

Survey Results: Slightly more than two-thirds of the survey respondents recommended that the Legislature require disqualifying individuals for all findings of substantiated maltreatment.

Stakeholder Meetings: Stakeholders said that while it would simplify the disqualification process, narrow the issues at fair hearings, and add non-recurring financial exploitation as a disqualification, there are some types of maltreatment without serious outcomes that should not warrant disqualification. There were no examples given by stakeholders of maltreatment that should have, but did not result in disqualification.

Data Review: Background studies and investigative data over a four year time period from 1998 to 2001 was reviewed. There were no cases where individuals who maltreated in DHS, MDH, and DOC-licensed programs had a history of non-disqualifying maltreatment.

Topic 4. State Agency Discretion to Set Aside a Disqualification (Identified by Survey)

Currently there are some offenses for which DHS may not set aside a disqualification. This restriction applies to persons providing services in family child care homes and child or adult foster care when services provided are in the license holder’s home. This is referred to as a “permanent, ten year, or seven year bar.” For the ten year bars involving convictions, the time is counted from the discharge of the sentence imposed for the offense. Variances can be granted to a provider to allow study subjects in this category to provide direct contact services under specified conditions. The survey asked if the bars should apply to each specified category of background study subjects.

Survey Results: Almost all survey respondents recommended to the Legislature that the bars from reconsideration of a disqualification apply to all background study subjects.

Stakeholder Meetings: Stakeholders said that it would simplify the reconsideration process, there would be fewer appeals, and there would be consistency in the application of the requirement for all types of providers. A shortcoming of this approach would be that it would not allow for any flexibility, consideration of extenuating circumstances, or provide a chance for people to prove their rehabilitation. While the majority of survey respondents indicated they agreed with state agency decisions regarding set-asides, stakeholders said that survey respondents probably were not in positions to actually know about many, if any, decisions made. There were no examples of inappropriate decisions given by stakeholders.

Data Review: Out of over 1.4 million background studies conducted by DHS since 1991, 10,748 disqualifications were set aside by state agencies. There were 18 people, or 0.17 percent, whose disqualification was set aside and who were subsequently found responsible

for maltreatment. Overall, there were 10,730 set-asides that were not followed by maltreatment.

Topic 5. National Record Check with Federal Bureau of Investigation (Proposed in 2002 Legislation but Not Adopted)

Currently FBI records are sought when there is reasonable cause to believe the FBI has information pertinent to a disqualification. The cost for DHS to process an FBI study is approximately \$30, and it may take as long as three months to get the FBI record. The survey asked if there should be a change to the current requirement for when a national record check should be conducted.

Survey Results: One-fifth of the survey respondents recommended to the Legislature that either a national record check be conducted on study subjects living outside of Minnesota in the last five years or that a record check be conducted on all study subjects.

Stakeholder Meetings: Stakeholders said that while a national record check would result in a more thorough background study, it would be costly, time consuming, and distasteful for people without criminal records to be fingerprinted. Other than the case described below, there were no other examples given of problems related to persons providing services who did not have a national record check with the FBI.

Data Review: There were over 515,500 background studies conducted from 2000 through 2002 and over 4,800 times that fingerprints were requested for a national record check with the FBI. There were 80 disqualifications as a result of information from an FBI record out of over 12,600 total disqualifications.

One case has been noted where an individual who had a disqualifying crime on file at the FBI sexually abused a vulnerable adult in a DHS and MDH-licensed program in 2001. When the background study was conducted, there was not a record at the Minnesota Bureau of Criminal Apprehension (BCA) for this individual, so there was nothing to trigger a national record check with the FBI. The program had information about his conviction but did not notify DHS. Had they done so, DHS would have had reasonable cause to obtain information on the conviction. The 2002 Legislature passed legislation requiring programs to notify DHS immediately when they have knowledge of possible maltreatment or criminal history. A check of his record in another state revealed that he was convicted of aggravated battery in 1986 which was the equivalent of a felony assault in Minnesota.

Topic 6. Changes to Disqualification Crimes (Legislative Directive)

The survey asked if each specific disqualifying crime should be maintained or if there should be additional disqualifying crimes.

Survey Results: Almost all survey respondents recommended that the Legislature keep the current disqualifying crimes and a little over four-fifths of the respondents did not recommend that the Legislature add additional crimes for disqualification

Stakeholder Meetings: There were no examples of problems related to current disqualifying crimes or examples of situations suggesting that new disqualifying crimes should be added to the statute.

Data Review: There was an extensive review by a legislative task force of disqualifying crimes in 1996, and the 1997 Legislature established the current list of disqualifying crimes and the look-back periods. Since then, the Legislature has created some new crimes, and some have been added to the list of disqualifying crimes. Two more recently established crimes that are not yet disqualifiers are state lottery fraud and identity theft. While these crimes are starting to surface in background studies, but are not on the current list of disqualifiers, DHS has the authority to disqualify individuals for any crimes if there is a preponderance of evidence that they meet the elements of a specifically listed disqualifying crime.

Data on Background Studies, Maltreatment, and Appeals

Maltreatment: In general, over the past four years DHS, MDH, DCFL, and counties completed over 73,500 maltreatment investigations. About two-fifths of the investigations substantiated maltreatment. When maltreatment was substantiated in DHS and MDH programs, approximately one-third of the times the facility was found responsible, and two-thirds of the time the individual was found responsible.

Appeals: About one in three fair hearings, one in 14 Court of Appeals hearings, and five in eight Office of Administrative Hearings resulted in reversal of decisions on maltreatment or disqualifications. An increasing number of DHS decisions on disqualifications for recurring maltreatment are being overturned.

Background Studies: DHS has completed over 1.4 million background studies, resulting in about 24,000 disqualifications. State agencies have set aside 10,748 of those disqualifications, and 18 of those people went on to commit maltreatment. While the 18 decisions were arguably “flawed,” a review of the cases shows virtually no connection between the criminal history and the maltreatment committed.

Commissioner’s Recommendation: The Commissioner does not recommend any substantive changes to the background study requirements.

DHS will continue to monitor for the occurrence of new crimes in background studies and may propose amendments in the future to add to the list of disqualifying crimes, but it is not necessary at this time.

The Commissioner recommends clarifying language for the definition of “recurring maltreatment.” The current definition of recurring maltreatment allows for a range of interpretations.

While the Commissioner recognizes that for some stakeholders there would be an increased level of comfort in changing the current background study process, the data available does not support that additional changes will result in increased protection for vulnerable people from maltreatment.

BACKGROUND

In 1991 DHS began conducting background studies on individuals providing direct contact services in DHS-licensed facilities. The statutory requirements for background studies found in Minnesota Statutes, chapter 245A, have been amended every year by the Legislature since the DHS studies began. Major legislative requirements enacted since 1991 include:

- The 1995 Legislature required MDH to begin contracting with DHS to conduct background studies on individuals providing direct contact services in MDH-licensed facilities according to the procedures in Minnesota Statutes, chapter 245A.
- The 1997 Legislature required DHS to begin conducting background studies on individuals providing direct contact services in non-licensed personal care provider organizations.
- The 1999 Legislature required MDH to expand its contract with DHS to begin conducting background studies on all employees of nursing homes and boarding care homes in July 1999.
- The 2001 Legislature required DOC to begin contracting with DHS to conduct background studies on individuals providing direct contact services in DOC-licensed secure and non-secure residential and detention programs for youth according to the procedures in Minnesota Statutes, chapter 245A.

Legislation was proposed by the Attorney General in 2002 regarding the background study process that was not adopted. The Attorney General proposed that a national record check be conducted on all background study subjects and that the background study subject provide direct contact services only after the background study results are received by the facility.

The 2002 Legislature:

- added four new disqualifying crimes so that all violent crimes under Minnesota Statutes, section 609.1095, are now disqualifying crimes;
- moved nine crimes to an increased (unlimited) “look-back” category for disqualification;
- moved those same nine crimes from a ten year period for which DHS may not set aside a disqualification for home-based DHS-licensed programs (family child care, adult or child foster care in license holder’s home) to a permanent restriction;

- allowed a license-holder, upon request and without the consent of the individual, to be told the nature of the disqualification and the factors that were the bases of the decision to set aside the disqualification; and
- required the consultation and review process reflected in this report.

TOPICS IDENTIFIED IN SURVEY, 2002 LEGISLATION, AND THE LEGISLATIVE DIRECTIVE

The survey covered 16 background study issues. A majority of the stakeholders responding to the survey did not recommend any changes in 12 of those issues. Four issues were identified by a majority of the respondents for Legislative review and included:

- When a Background Study Subject Can Begin to Provide Direct Contact Services
- Disqualification “Look-back” Period for Felonies and Maltreatment
- Disqualifications for Substantiated Maltreatment
- State Agency Discretion to Set Aside a Disqualification

Topic 1. When a Background Study Subject Can Begin to Provide Direct Contact Services (Identified in Survey)

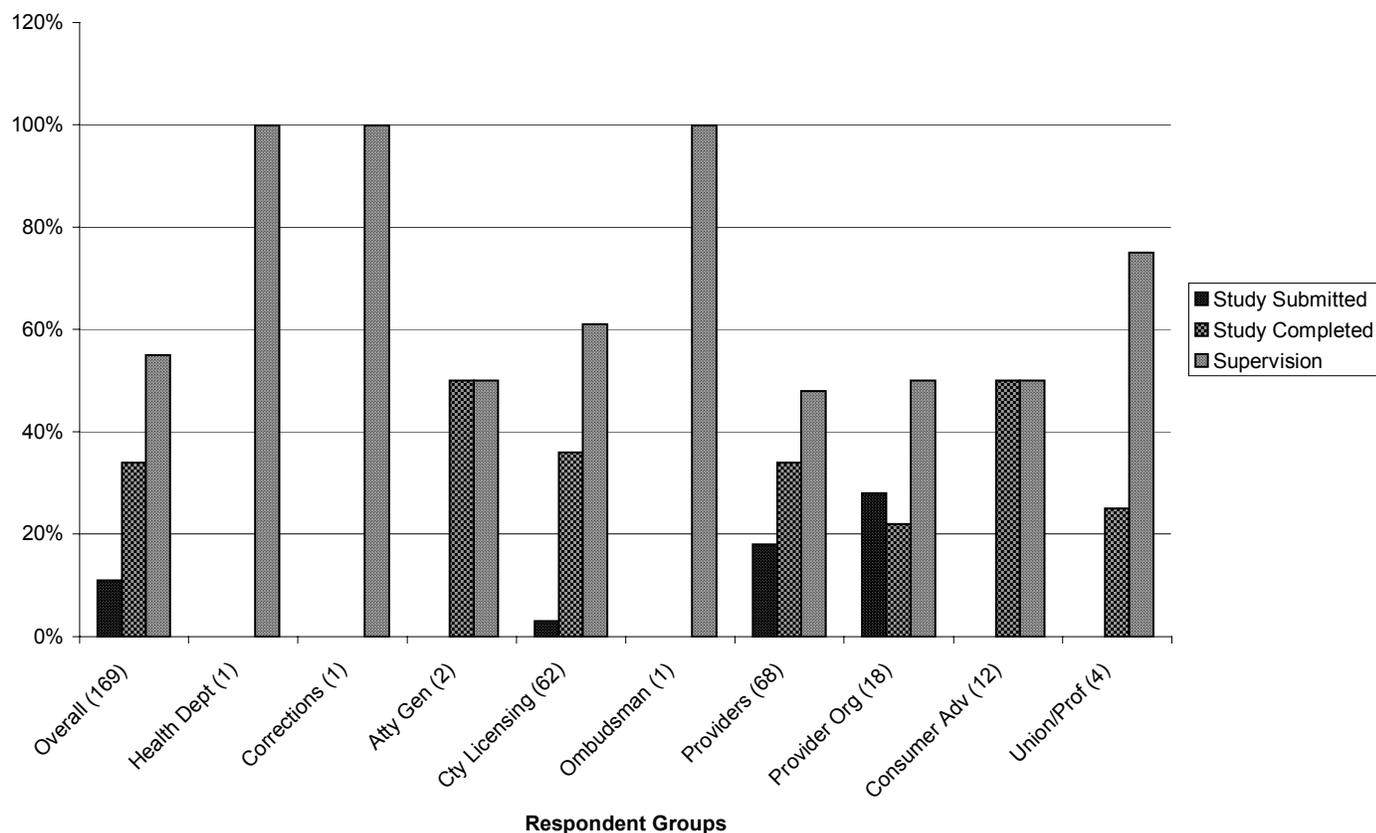
Currently, background study subjects can begin to provide direct contact services after a background study form is submitted to DHS.

Survey Results:

- 20 did not respond to this question and 11 percent (19 respondents) recommended that the Legislature keep the current requirement
- 89 percent (150 respondents) recommended that the Legislature:
 - either allow direct contact services if the subject is under direct supervision while the study is being processed (55 percent), or
 - allow direct contact only after the background study has been completed and the program receives a clearance notice (34 percent)

Figure 1 shows the overall survey results and the results by respondent group.

Figure 1 Begin Direct Contact Services



Stakeholders Meeting Feedback: Following are the advantages and disadvantages identified by meeting participants if the Legislature requires either the employee be supervised pending background study completion or that no direct contact services begin until after a background study is completed.

Advantages:

- There would be increased consumer and public confidence and more protection for vulnerable people.
- Regarding supervision versus waiting for the background study completion: the facility may have a better employee because of the added supervision.
- Supervision pending study results would not be a burden in all programs because many programs already supervise employees during training and orientation, so the study may be completed before training is completed anyway.
- Providers would be in a better position to request additional funding because of an additional supervision requirement.

Disadvantages:

- There would be higher costs because of double staffing.
- It would increase the staff shortage problem.
- Programs such as home health care, hospitals, family child care, child and adult foster care, small facilities, and especially emergency relative foster care, would have great difficulty in providing supervision pending study results.
- There may be a tendency for some programs to provide inadequate supervision pending the study results.

Other comments included that the feasibility of making this change would definitely hinge on how long it takes to complete the study. If a national record check were required for all study subjects, the background study would take longer.

Data Review: A review of background studies conducted by DHS on 223 people who were found responsible for maltreatment in DHS-licensed programs in fiscal years 1998 through 2001 showed that the licensed program received the background study results from DHS in three cases after the incident of maltreatment. However, in those three cases, the person was cleared for providing direct contact, so the timing of when the results were received by the program would not have prevented the three incidents of maltreatment. In all three cases the incident of maltreatment occurred when there was another staff person present.

Topic 2. Disqualification “Look-back” Period for Felonies and Maltreatment (Identified in Survey)

Currently, there are four look-back periods specified for each disqualifying characteristic: unlimited, 15 years, ten years, and seven years. The look-back period is unlimited for violent crimes, involuntary termination of parental rights, and some felonies; 15 years for other felonies; ten years for gross misdemeanors; and seven years for misdemeanors, serious or recurring maltreatment, and failure to report serious or recurring maltreatment. A majority of respondents wanted an increase in the 15 year look-back period since discharge from the sentence imposed for felonies and in the seven year look-back period from a finding of serious or recurring substantiated maltreatment.

Survey Results:

15 Year Look-Back Period for Felonies

- 35 did not respond to this question and 42 percent (65 respondents) recommended that the Legislature keep the current 15 year look-back period
- 55 percent (84 respondents) recommended that the Legislature make the look-back period unlimited
- 3 percent (5 respondents) recommended that the Legislature change the look-back period to another period of time ranging from 3 to 25 years

7 Year Look-Back Period for Maltreatment

- 35 did not respond to this question and 21 percent (32 respondents) recommended that the Legislature keep the current 7 year look-back period

- 62 percent (95 respondents) recommended that the Legislature make the look-back period unlimited
- 17 percent (27 respondents) recommended that the Legislature change the look-back period to another period of time ranging from 1 to 15 years

Figures 2 and 3 show the overall survey results and the results by respondent group.

Figure 2 Felony Look-Back

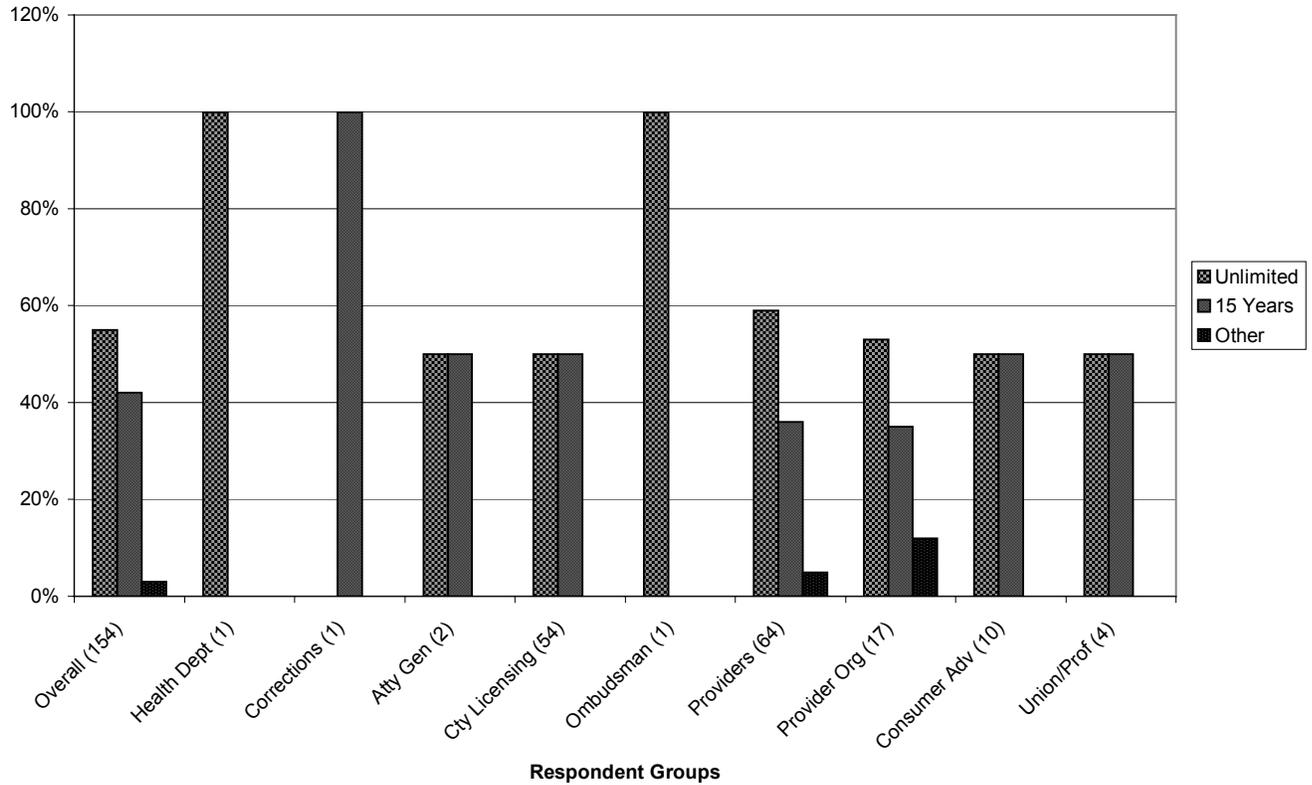
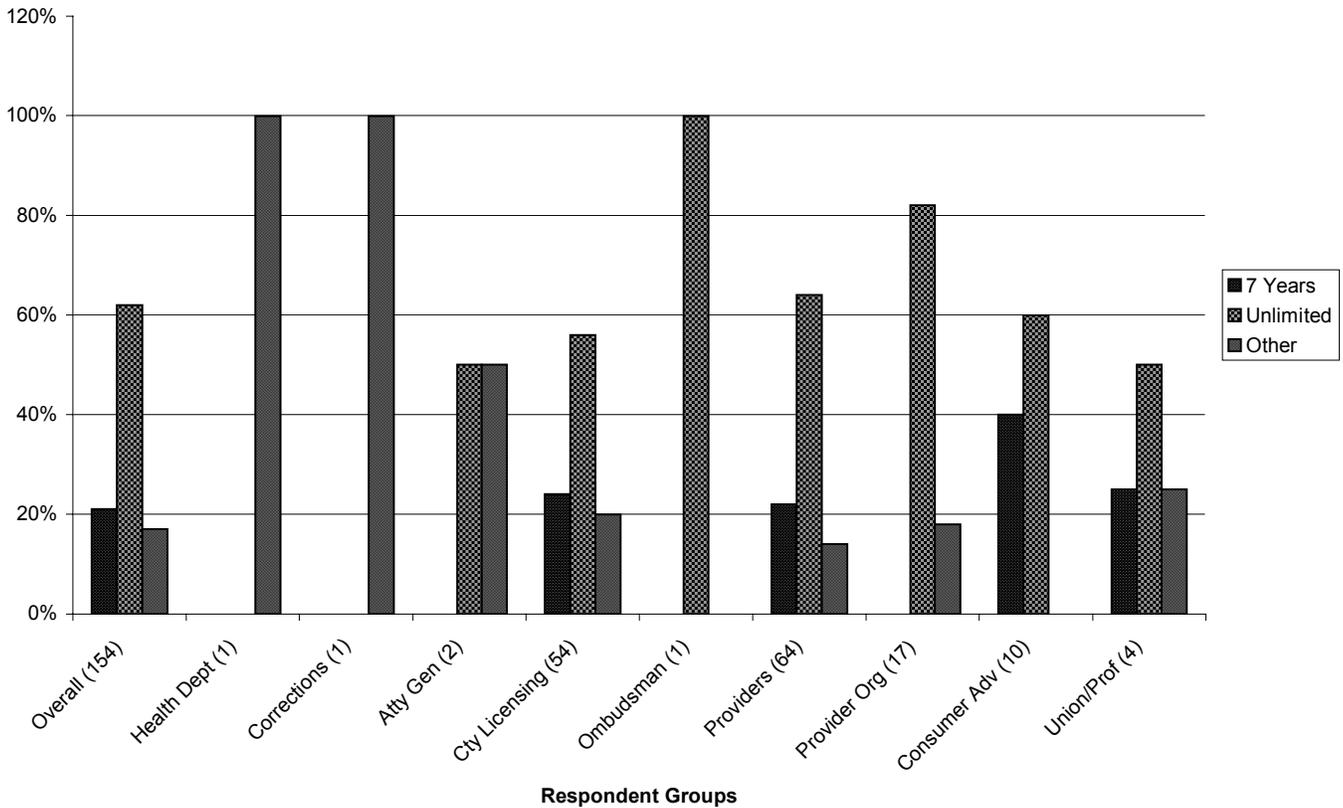


Figure 3 Maltreatment Look-Back



Stakeholders Meeting Feedback: Following are the advantages and disadvantages identified by meeting participants if the Legislature increases the look-back period for felonies and substantiated maltreatment.

Advantages:

- There would be increased consumer and public confidence and more protection for vulnerable people.
- The look-back period for maltreatment should be increased, since maltreatment is what background studies are seeking to prevent. It should not be the current shortest look-back period of seven years.
- The look-back period for maltreatment should be increased because currently there is less incentive for maltreatment perpetrators to participate in rehabilitation as there is for those who go through the criminal justice system.

Disadvantages:

- Violent felony crimes already have an unlimited look-back period.
- An unlimited look-back period for all felonies is not consistent with society’s belief in rehabilitation.

- There are increased costs to counties and state agencies due to more requests for reconsideration of a disqualification.

Other comments included that if the maltreatment look-back period is increased the retention period for investigation records would have to be changed to coincide with the look-back period.

Data Review: A review of background studies conducted by DHS on 223 people who were found responsible for maltreatment in DHS-licensed programs in fiscal years 1998 through 2001 showed that there were no cases where extension of the look-back period for felonies or maltreatment would have prevented maltreatment.

Topic 3. Disqualifications for Substantiated Maltreatment (Identified by Survey)

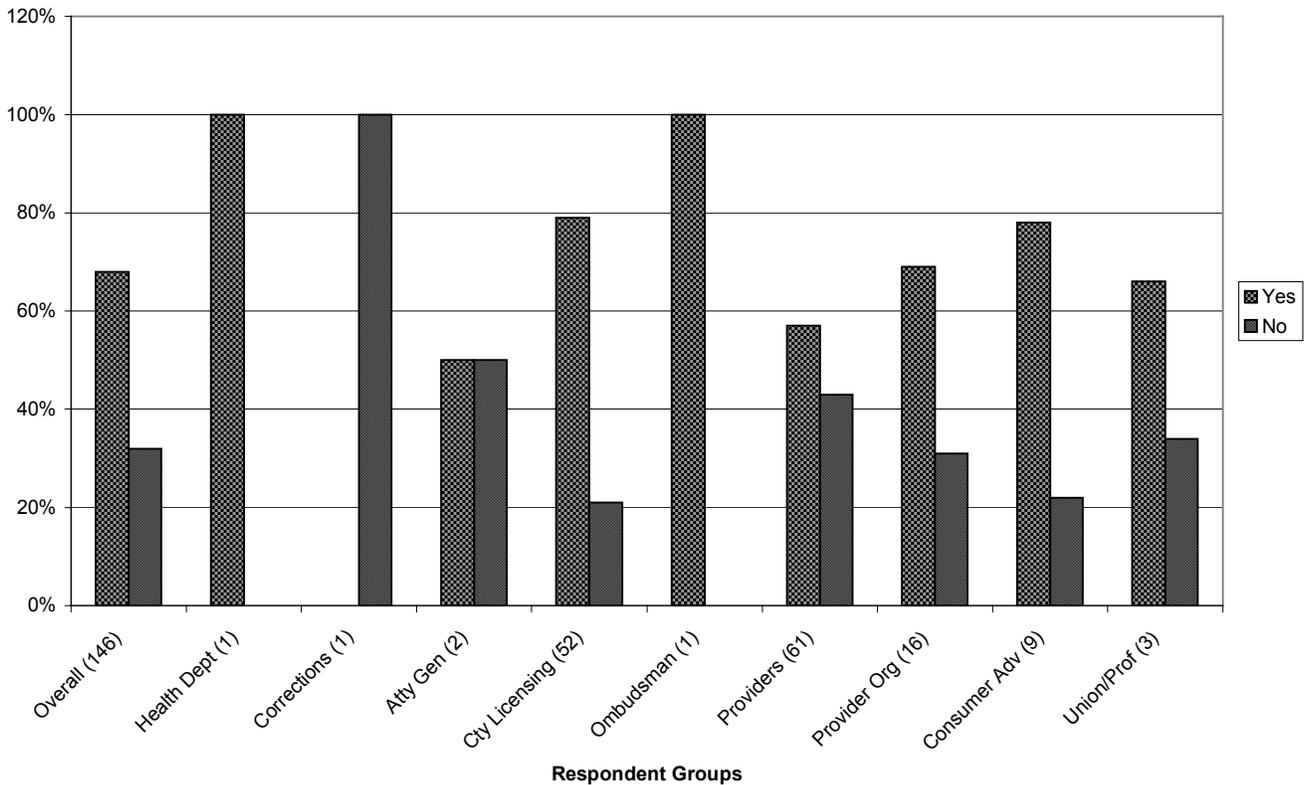
Currently, a finding of maltreatment that is not serious or recurring maltreatment as defined in statute is not a disqualification.

Survey Results:

- 43 did not respond to this question and 32 percent (47 respondents) recommended that the Legislature keep the current requirement
- 68 percent (99 respondents) recommended that the Legislature require disqualifying for all findings of substantiated maltreatment

Figure 4 shows the overall survey results and the results by respondent group. (Yes = all findings of maltreatment should be a disqualification. No = keep the current requirement.)

Figure 4 Disqualification for All Maltreatment



Stakeholders Meeting Feedback: Following are the advantages and disadvantages identified by meeting participants if the Legislature broadens the disqualification requirement for serious or recurring maltreatment to all substantiated maltreatment.

Advantages:

- There would be increased consumer and public confidence and more protection for vulnerable people.
- It would eliminate the need to determine if maltreatment is serious or recurring.
- There would be fewer appeals of disqualifications because there would no longer be challenges based on whether the maltreatment is serious or recurring.
- Non-recurring financial exploitation would be a disqualification.

Disadvantages:

- Educational neglect is not always serious enough to warrant a disqualification.
- Some neglect is poverty related and should not warrant a disqualification.
- There is some inconsistency among state agencies and counties as to what is determined to be maltreatment.
- Good providers sometimes make mistakes that are determined to be maltreatment that do not have serious outcomes.
- Some “challenging” people receiving services are not really vulnerable and yet there may be a finding of maltreatment that would result in a disqualification.
- It would have a detrimental effect on potential foster care providers due to the risk of more allegations and the resulting increased likelihood of maltreatment investigations.

Other Comments:

- Disqualification for substantiated abuse findings but not all neglect findings should be considered.
- Meeting participants had difficulty in assessing this issue without data on maltreatment findings, or knowledge of maltreatment definitions.
- There is a need to identify more predictors of maltreatment so it can be prevented.
- Making this change is a distraction from a real discussion of what enhances care or would prevent maltreatment.
- Survey respondents’ answers were based on their perception of the background study process, not necessarily their knowledge of it.
- It was suggested that another risk assessment risk assessment, such as “structured decision making” used by county child protection, could be used to determine if substantiated maltreatment should be a disqualification instead of disqualifying for maltreatment if it is serious or recurring.

Data Review: Data over a four year time period from 1998 to 2001 was reviewed. There were no cases where individuals found responsible for maltreatment in DHS, MDH, and DOC-licensed programs had non-disqualifying maltreatment in their background.

Topic 4. State Agency Discretion to Set Aside a Disqualification (Identified by Survey): Currently there are some offenses for which DHS may not set aside a disqualification. This

restriction applies to persons providing services in family child care homes and child or adult foster care when services provided are in the license holder's home. This is referred to as a "permanent, ten year, or seven year bar." For the ten year bars involving convictions, the time is counted from the discharge of the sentence imposed for the offense. Variances can be granted to a provider to allow study subjects in this category to provide direct contact services under specified conditions. The survey asked if the bars should apply to each specified category of background study subjects.

Survey Results:

- 81 did not respond to this question
- 57 percent (108 respondents) recommended that the Legislature apply bars to:
 - Family child care, adult or child foster care in license holder's home (home-based DHS-licensed) (98 percent)
 - Family child care, adult or child foster care not in license holder's home (corporate DHS-licensed) (92 percent)
 - All other DHS and MDH-licensed programs (90 percent)
 - DOC-licensed programs (87 percent)
 - Non-licensed personal care provider organizations (88 percent)
 - Registered supplemental nursing services agencies (85 percent)

DOC, the Ombudsman, and one of two respondents from the Office of the Attorney General said the Legislature should apply the bars to all groups.

Stakeholders Meeting Feedback: Following are the advantages and disadvantages identified by meeting participants if the Legislature broadens the application of the prohibition from setting aside disqualifications for some offenses listed as permanent, ten year, and seven year bars, to include all other background study subjects.

Advantages:

- There would be increased consumer and public confidence and more protection for vulnerable people.
- It is simpler and less work for county and state agencies because there will be no requests for reconsideration based on the person's risk of harm and no need to make a decision on whether a disqualification should be set aside or not.
- It would be less costly because there would be fewer requests for reconsideration for counties and state agencies to handle.
- There would be no uncertainty about a disqualified person's status—they would not be able to provide direct contact services for the period of time for which there is a prohibition from setting aside a disqualification.
- There would be consistency in the application of this requirement for all types of providers.

Disadvantages:

- There would be no flexibility to treat cases individually.
- There is no chance for the disqualified person to prove their rehabilitation.

- There would be no allowance for any extenuating circumstances about the individual case.
- There is no need to broaden the application of this provision since state agencies are doing good job now in making decisions whether a person's disqualification should be set aside or not.

Other comments included:

- Survey respondents probably do not know if there were bad decisions made by state agencies if a disqualification should be set aside or not.
- The question was raised regarding how many employers keep persons whose disqualification was set aside. There is no data available to answer this question.
- Meeting participants also discussed the discretion state agencies have in granting or denying a variance for a person to provide direct contact services when they are subject to a bar from reconsideration. An advantage is that it allows for flexibility and it involves the employer. Disadvantages are that it may not be practical in some types of facilities, such as hospitals; and it is too complicated for parents (because it is easier to be more definitive about if their child's provider is qualified or not).

Data Review: There were 1,420,570 background studies conducted for DHS, MDH, and DOC-licensed programs and for non-licensed personal care provider organizations from March 29, 1991, through November 30, 2002. There were 23,916 disqualifications and 10,748 of those were set aside. There were 18 people, or 0.17 percent, whose disqualification was set aside and who were subsequently found responsible for maltreatment. Overall, on 10,730 occasions people were eligible after a disqualification was set aside to provide care and services without a subsequent finding of substantiated maltreatment.

Topic 5. National Record Check with Federal Bureau of Investigation (Proposed in 2002 Legislation but not Adopted)

This issue was not identified by most stakeholders as an issue for the Legislature to review, but there was proposed legislation in 2002 in House File 3121 and Senate File 2660 that was not adopted requiring a national record check with the FBI for all background study subjects.

Currently, fingerprints for background study subjects are obtained when there is reasonable cause to believe the FBI has information pertinent to a disqualification. In order to do a search of the records at the FBI, the study subject must supply classifiable fingerprints to DHS, which are then processed through the BCA with the FBI. The FBI sends the results of their search directly to DHS, but it takes anywhere from six weeks to three months. The cost for DHS to process each set of fingerprints is approximately \$30.

The BCA cannot transmit fingerprints electronically to the FBI for non-criminal justice purposes such as the DHS background studies. Once a process is established for non-criminal justice purposes, the results of the FBI check could be obtained in days rather than the weeks and months it currently takes for the data. However, the BCA is not in a position to transmit fingerprints electronically for DHS background studies because of a lack of funding.

Survey Results:

The survey asked if the current process for a national record check should change.

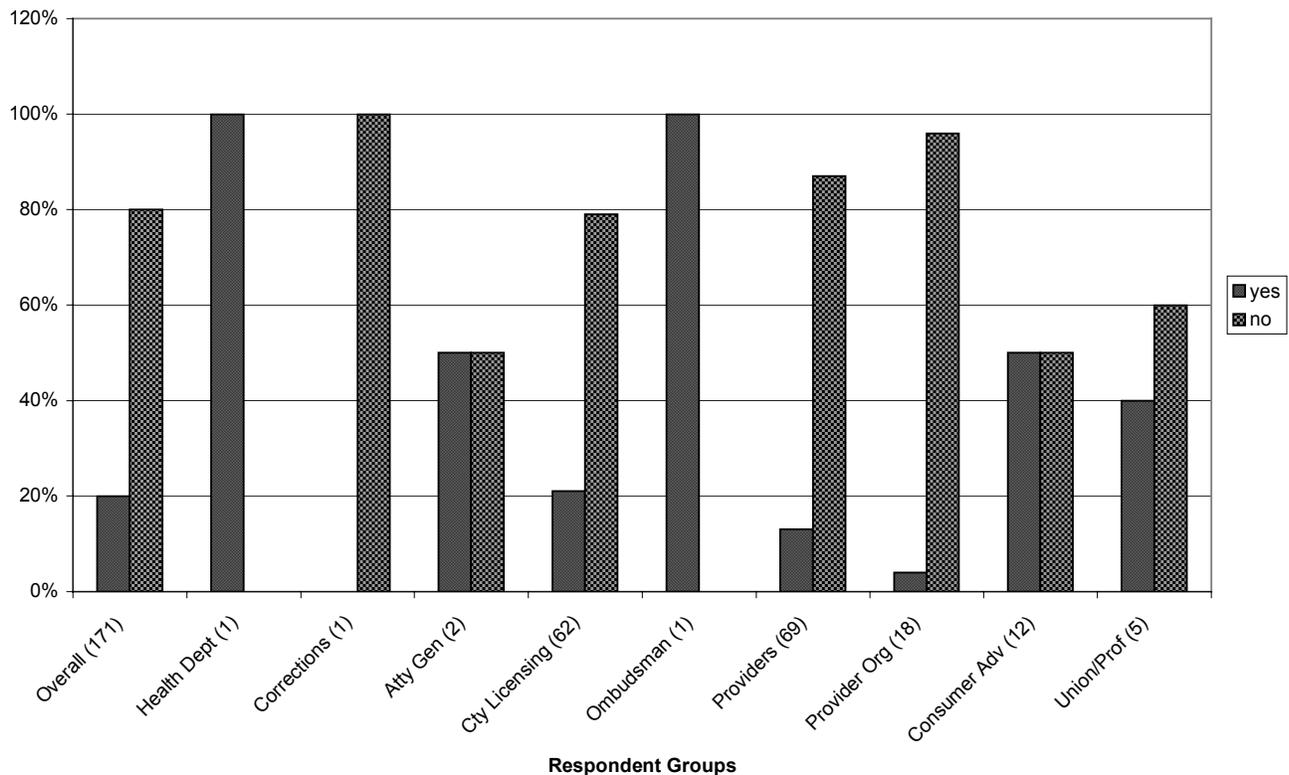
- 18 did not respond to this question and 80 percent (137 respondents) recommended that the Legislature keep the current process
- 20 percent (34 respondents) recommended to the Legislature that either a national record check be conducted on study subjects living outside of Minnesota in the last five years or that a record check be conducted on all study subjects.

MDH, the Ombudsman, and one of two respondents from the Office of the Attorney General said that there should be both a national search for all, and for those living outside Minnesota in the last 5 years.

Figure 5 shows the overall survey results and the results by respondent group.

- Yes = Change current national record check requirement
- No = Keep the current national record check requirement

Figure 5 National Record Check Change



Stakeholders Meeting Feedback: Following are the advantages and disadvantages identified by meeting participants if the Legislature requires a national record check with the FBI either for all background study subjects or for those living outside Minnesota in the last five years.

Advantages:

- There would be increased consumer and public confidence and more protection for vulnerable people.
- There would be an increased chance of discovering a person's criminal history.
- It would allow for a check on our ever-increasing mobile population, which includes people commuting from surrounding states to work in Minnesota.
- It would be a deterrence for some people from applying for work, knowing that criminal history in other states may be discovered.
- It would decrease programs' liability because a more thorough background study will be conducted.

Disadvantages:

- There would be increased workload for police departments to fingerprint more people and for DHS and the BCA to process more fingerprints.
- It would be expensive because it costs approximately \$30 to process each set of fingerprints and the cost of reimbursing each background study subject for being fingerprinted averages about \$10.
- It would be distasteful for people without criminal records to be fingerprinted.
- It would probably deter more people with no criminal record than those with a record from applying to work in programs.
- It would have a negative impact on staffing.
- It would provide a false sense of security for facilities.
- The increased turnaround time for background study results may increase liability for facilities.
- It would be a barrier to employment because of the complicated process.
- There would be no legislative support for subjecting all background study subjects to being fingerprinted.

Questions Raised:

- Is there a way to target possible offenders?
- Is there a cheaper alternative to obtaining fingerprints and going to the FBI?

Data Review: There were over 515,500 background studies conducted from 2000 to 2002 and over 4,800 times that fingerprints were requested so a national record check with the FBI could be conducted. There were 80 disqualifications as a result of information from an FBI record out of over 12,600 total disqualifications.

One case has been noted where an individual who had a disqualifying crime on file at the FBI sexually abused a vulnerable adult in a DHS and MDH-licensed program in 2001. When the background study was conducted, there was not a record at the Minnesota Bureau of Criminal Apprehension (BCA) for this individual, so there was nothing to trigger a national record check with the FBI. The program had information about his conviction but did not notify DHS. Had they done so, DHS would have had reasonable cause to obtain information on the conviction. The 2002 Legislature passed legislation requiring programs to notify DHS immediately when they have knowledge of possible maltreatment or criminal history. A check of his record in

another state revealed that he was convicted of aggravated battery in 1986 which was the equivalent of a felony assault in Minnesota.

Topic 6. Changes to Disqualification Crimes (Legislative Directive)

The 2002 Legislature directed that the Commissioner examine crimes that currently are considered disqualifying crimes and recommend any changes to current laws deemed appropriate. The survey asked if each specific disqualifying crime should be maintained or if there should be additional disqualifying crimes.

Survey Results:

- Maintain current disqualifying crimes -- Respondents were asked about each specific disqualifying crime, so the range of the responses for each category is shown.
 - ❑ Keep current unlimited look-back offenses (ranged from 90 to 99 percent)
 - ❑ Keep current felony disqualifiers (ranged from 70 to 97 percent)
 - ❑ Keep current gross misdemeanor disqualifiers (ranged from 73 to 99 percent)
 - ❑ Keep current misdemeanor disqualifiers (ranged from 86 to 97 percent)
 - ❑ Keep current serious or recurring maltreatment (95 percent)
 - ❑ Keep current failure to report serious or recurring maltreatment (91 percent)

Stakeholder Meetings: There were no examples of problems related to current disqualifying crimes or that there should be new disqualifying crimes.

Data Review: There was an extensive review of disqualifying crimes in 1996 and the 1997 Legislature standardized the disqualifying crimes for all programs and established the current look-back period. Since then, as the Legislature created new crimes, some were added to the list of disqualifying crimes. State lottery fraud and identity theft are examples of new crimes that are starting to surface in background studies. They are not on the current list of disqualifiers, but DHS can disqualify for these crimes now under the provision that there is a preponderance of evidence that they meet the elements of the disqualifying crime of theft.

Commissioner's Recommendation: The Commissioner does not recommend any changes to current disqualifying crimes. DHS will continue to monitor for the occurrence of new crimes in background studies and may propose amendments in the future to add to the list of disqualifying crimes, but it is not necessary at this time.

OTHER SURVEY RESULTS

Stakeholders were surveyed on all aspects of the background study process. The numbers below are the percentages of the survey respondents that thought that the current background study procedures should remain the same.

- Keep requirement for who should be studied (74 percent)
- Keep current standard for national record search with FBI (80 percent)

- Maintain look-back period for disqualifications
 - Remain 10 years for gross misdemeanors (62 percent)
 - Remain 7 years for misdemeanors (66 percent)
 - Remain 7 years for failure to report serious or recurring maltreatment (45 percent) – 38 percent thought failure to report serious or recurring maltreatment should be increased to unlimited; 18 percent thought failure to report serious or recurring maltreatment should be changed and the time specified ranged from 2 to 15 years

- Continue to disqualify on a preponderance of evidence of disqualifying crimes (77 percent)

- Assessment of immediate risk of harm procedure. Currently when a person is disqualified, an “immediate risk of harm” assessment is made to determine:
 - a. if the person should be immediately removed from direct contact pending a request for reconsideration of the disqualification (the program is notified of the disqualification);
 - b. if the person can remain in direct contact while under direct supervision pending a request for reconsideration of the disqualification within 30 days (the program is notified of the disqualification); or
 - c. if the person can remain in direct contact pending a request for reconsideration of the disqualification within 15 days (the program is not notified of the disqualification unless the disqualification is not set aside).

Almost three-fourths (73 percent) said to keep the current immediate risk of harm procedure. Of note here is a case in 2001 where an individual sexually assaulted a vulnerable adult in an MDH-licensed program during the time period pending a request for reconsideration. The individual was disqualified for a 1996 burglary conviction and the immediate risk of harm assessment determined that the individual could remain in direct contact pending a request for reconsideration of the disqualification within 15 days (item c above).

- State agency reconsideration of disqualifications
 - Agreed with DHS Decisions (88 percent)
 - Agreed with MDH Decisions (95 percent)
 - Agreed with DOC Decisions (98 percent)

- Disqualifiers for which DHS has no discretion to set aside: Currently there are some offenses for which DHS may not set aside a disqualification. This restriction applies to persons providing services in family child care homes and child or adult foster care when services provided are in the license holder’s home. This is called a “permanent, 10 year, or 7

year bar.” For the 10 year and 7 year bars involving convictions, the time is counted from the discharge of the sentence imposed for the offense. Stakeholders were surveyed on whether each specific bar from a set aside should remain. The range of responses for each category of bars from a set aside are shown:

- Remain for offenses with no discretion permanently (80 to 92 percent)
 - Remain for offenses with no discretion for 10 years (70 to 89 percent)
 - Remain for offenses with no discretion for 7 years (91 to 92 percent)
- Continue to allow discretion to grant a variance for disqualifiers DHS cannot set aside (59 percent)
 - Appeal procedure for conviction disqualifications not set aside should remain at Court of Appeals rather than allow a fair hearing (60 percent)
 - Allow direct contact under supervision pending fair hearing results (47 percent). While a majority of respondents did not want to continue to allow this current provision, it was not brought forward as an issue for discussion at the stakeholder meetings. There was only a slight majority that did not want to allow it, and facilities have the choice of whether to have these people in direct contact at all.
 - Background study information should remain classified as private data (61 percent)

DATA ON BACKGROUND STUDIES, MALTREATMENT, AND APPEALS

Background Studies—Persons Disqualified, Set Aside, Maltreatment Occurred After Disqualification Set Aside

1. Minnesota Department of Human Services and Non-Licensed Personal Care Provider Organizations

DHS has conducted a total of 575,909 background studies for DHS-licensed programs since March 29, 1991, and for non-licensed personal care provider organizations (PCPOs) since August 1, 1997. There were 9,021 disqualifications and 3,524 were set aside. There were 14 people found culpable for maltreatment after their disqualifications were set aside. That is four-tenths of one percent (0.4 percent) of the total number of people set aside by DHS. Those 14 cases are described in Table 1.

Table 1. DHS and Non-Licensed PCPOs

Disqualifying Event	Disqualified	Date DHS Set Aside	Subsequent Maltreatment	Facility Type
1. 1985 Two counts Check Forgery	2/24/92	4/28/92	11/16/96 Disqualifying Neglect	DD Residential
2. 1982 Theft, Burg. 1985 Agg. Robbery	5/20/94	7/7/94	*11/94 Disqualifying Sexual Abuse	Group Home for Children (Rule 8)
3. *2/25/93 Physical Abuse	5/25/93	6/6/93	*5/3/94 Disqualifying Physical Abuse	MI Residential for Children (Rule 5)
4. 7/28/95 Felony Drug	5/19/98	6/23/98	8/98 Disqualifying Neglect	CD Residential (Rule 35)
5. *7/25/91 5 th degree Domestic Assault	10/5/99	11/2/98	7/8/99 Disqualifying Sexual Abuse	DD Day Training & Habilitation
6. 1994 Theft-Cash Forged Check	5/15/98	6/23/98	3/17/00 Disqualifying Physical Abuse	DD Adult Foster Care/Waivered Svcs
7. 1995 Theft-Wrong. Obtain. Assistance	4/9/98	6/23/98	5/23/00 Disqualifying Physical Abuse	MI Residential for Children (Rule 5)
8. *1988 Theft-NSF Check	10/27/93	3/23/94	7/30/01 Disqualifying Financial Exploitation	DD Adult Foster Care/Waivered Svcs
9. 1989 2 nd deg Rob 1997 Dishonored Cks	3/15/00	4/11/00	1/01 Disqualifying Financial Exploitation	DD Adult Foster Care/Waivered Svcs
10. 1998 Theft, Un-auth. Use Credit Card	7/17/00	8/16/00	10/22/01 <u>Non-</u> Disqualifying Neglect	Child Care Center (Rule 3)
11. *1982 5 th degree Assault	**6/24/91	7/26/91	*11/23/94 Disqualifying Verbal Abuse	DD Residential
12. *1982 Theft *1984 Aid/Abet Theft 1989 Poss Cocaine/Neg Operation of Weapon	**5/20/94 8/18/94	9/2/94	9/1/01 Disqualifying Neglect	DD Adult Foster Care/Waivered Svcs
13. 1992 Two Convictions for Check Forgery	5/1/96	8/14/96 <u>MDH</u> 4/18/97 <u>DHS</u>	9 & 11/01 Disqualifying Financial Exploitation	DD Adult Foster Care/Waivered Svcs
14. 1986 Forgery	12/23/98	3/27/00	10/23/00 <u>Non-</u> Disqualifying Neglect	Child Care Center (Rule 3)

*Look-back period for disqualification expired

**Look-back period at time of disqualification was 15 years for all crimes

One of the 14 persons was originally disqualified due to maltreatment; two were originally disqualified due to maltreatment and a crime; and 11 were originally disqualified due to crimes. For two of the individuals (cases numbered 10 and 14), the maltreatment determined after their disqualification for crimes was set aside was not serious or recurring, so they were not disqualified for the maltreatment.

In case number 10, where the person was not disqualified for the subsequent maltreatment, the previous set aside for the crime was rescinded. Case number 10 has been appealed to the Minnesota Court of Appeals where the individual is arguing that DHS does not have the authority to rescind a set aside of a disqualification for a crime after they have been found culpable for maltreatment that is not disqualifying.

In case number 11 the look-back period for the original disqualifying crime was 15 years for all crimes. Currently, the look-back period for misdemeanors is 7 years from discharge from probation. If a background study were to be done today for the individuals described in cases numbered 3 and 11, the individual would no longer be disqualified because the look-back period has expired for both the original disqualifying crime or maltreatment, and for the subsequent maltreatment.

In case number 12 the DHS Licensing Division appealed a fair hearing decision that the disqualification should be set aside. The appeal decision affirmed the set-aside.

In case number 14 the individual was no longer working in any programs, so rescinding the previous set aside for the crime was not necessary.

There was one case where a person was determined to be culpable for maltreatment after the disqualification was not set aside but a variance was granted by DHS. In that case the person was disqualified in 1995 by a county agency. In 1999 the disqualification was not set aside, but DHS granted a variance. In 2001 MDH did set aside the disqualification for an MDH-licensed program. In 2002 the individual was found to be responsible for disqualifying physical abuse in a Family Foster Care (Rule 1) program.

2. Minnesota Department of Health

DHS has conducted a total of 840,391 background studies for MDH-licensed programs since October 1, 1995. There were 14,844 disqualifications and 7,201 were set aside. It was determined that four people were found culpable for maltreatment after their disqualifications were set aside. That is six one-hundredths of one percent (0.06) of the total number of people set aside by MDH. Those four cases are described on Table 2.

Table 2. Department of Health

Disqualifying Event	Disqualified	Date MDH Set Aside	Subsequent Maltreatment	Facility Type
1. 1992 3 rd degree Burglary	10/29/97	12/14/01	6/1/02 <u>Non</u> -disqualifying Physical Abuse	Nursing Home
2. 1998 Wrongfully Obtaining Assistance	1/15/99	2/24/99 & 9/26/02	9/24/01 <u>Non</u> -disqualifying Physical Abuse	Nursing Home
3. 1996 Check Forgery	10/9/96	2/27/97	2-3/00 Disqualifying Financial Exploitation	Nursing Home
4. 1993 Aiding & Abetting Felony Drug	12/20/95	12/11/97	1-2/98 Disqualifying Financial Exploitation	Nursing Home

All four of the individuals were originally disqualified due to crimes. For two of the individuals, the maltreatment determined after their disqualification was set aside was not serious or recurring, so they were not disqualified for the maltreatment.

In case number 2, MDH did set aside the disqualification for the crime again after the subsequent maltreatment.

There were no cases where a person was determined to be culpable for maltreatment after their disqualification was not set aside but a variance was granted by MDH.

3. Minnesota Department of Corrections

DHS has conducted a total of 4,270 background studies for DOC-licensed programs since August 1, 2001. There were 51 disqualifications and 23 were set aside. There have been no cases where a person was determined to be culpable for maltreatment after their disqualification was either set aside or a variance granted by DOC.

In summary, there were a total of 10,748 disqualifications set aside. Of those, 18 people were subsequently found responsible for maltreatment.

Maltreatment Investigations

In general, over the past four years DHS, MDH, DCFL, and counties, completed over 73,500 maltreatment investigations. About 40 percent of the investigations substantiated maltreatment. When maltreatment was substantiated in DHS and MDH programs, approximately one-third of the times, the facility was found responsible, and two-thirds of the times, the individual was found responsible.

1. Minnesota Department of Human Services

DHS conducts maltreatment investigations under the Reporting of Maltreatment of Vulnerable Adults Act and the Reporting of Maltreatment of Minors Act in DHS directly licensed facilities and in adult foster care programs. (Other monitoring of adult foster care is delegated to counties.)

Tables 3 and 4 show data on substantiated maltreatment. The numbers reflect the number of investigations completed and the number of investigations where there was at least one allegation of maltreatment that was substantiated. The numbers in the “Facility Culpable” and “Individual Culpable” columns reflect the number of substantiated investigations where a facility was found culpable and where an individual was found culpable. Some individuals are culpable for maltreatment in more than one investigation. The numbers shown in the culpability columns add up to more than the number substantiated because some investigations determined that the facility and an individual were culpable or that more than one individual was culpable. One of four maltreatment investigations were substantiated.

Table 3. DHS Maltreatment of Vulnerable Adults Investigations

Fiscal Year	Investigations Completed	Substantiated	Facility Culpable	Individual Culpable
1998	487	130	35	113
1999	481	135	38	106
2000	487	117	37	90
2001	479	130	41	92
Total	1,934	512	151	401

Table 4. DHS Maltreatment of Minors Investigations

Fiscal Year	Investigations Completed	Substantiated	Facility Culpable	Individual Culpable
1998	146	28	9	24
1999	153	37	8	35
2000	124	28	7	24
2001	197	50	16	37
Total	620	143	40	120

2. Minnesota Department of Health

MDH conducts maltreatment investigations under the Reporting of Maltreatment of Vulnerable Adults Act and the Reporting of Maltreatment of Minors Act in MDH-licensed facilities.

Tables 5 and 6 show data on substantiated maltreatment. One of three maltreatment investigations were substantiated.

Table 5. MDH Maltreatment of Vulnerable Adults Investigations

Year	Investigations Completed	Substantiated	Facility Culpable	Individual Culpable
1998	318	117	Not Available	65
1999	446	171	Not Available	117
2000	501	196	Not Available	103
2001	540	167	Not Available	101
Total	1,805	651		386

Table 6. MDH Maltreatment of Minors Investigations

Year	Investigations Completed	Substantiated	Facility Culpable	Individual Culpable
1998	1	0	Not Applicable	Not Applicable
1999	0	0	Not Applicable	Not Applicable
2000	7	4	Not Available	4
2001	7	2	Not Available	0
Total	15	6		4

3. Minnesota Department of Corrections

County agencies conduct maltreatment investigations under the Reporting of Maltreatment of Minors Act in DOC-licensed secure and non-secure residential and detention programs for youth. From 1999 to December 2002 counties completed nine investigations of maltreatment in DOC-licensed facilities. One investigation determined maltreatment, but data was not available as to if the facility or an individual was culpable.

4. County Agencies

County agencies conduct maltreatment investigations under the Reporting of Maltreatment of Vulnerable Adults Act in PCPOs, and for all other alleged maltreatment in non-facility settings. Table 7 shows data on substantiated maltreatment. One of four investigations were substantiated.

Table 7. County Maltreatment of Vulnerable Adult Investigations

Year	Investigations Completed	Substantiated	Facility Culpable	Individual Culpable
1998	1,615	460	Not Applicable	Not Applicable
1999	1,671	467	Not Applicable	Not Applicable
2000	1,911	465	Not Applicable	Not Applicable
2001	Not Available	Not Available	Not Applicable	Not Applicable
Total	5,197	1,392		

County agencies conduct maltreatment investigations under the Reporting of Maltreatment of Minors Act in family settings and licensed family child care and child foster care homes. Table 8 shows data on substantiated maltreatment. The alternative response (alternative to a maltreatment investigation) program began in 1999 and is gradually being implemented by counties. The alternative response cases are not included in the data below. Slightly less than one of two investigations were substantiated.

Table 8. County Maltreatment of Minors Investigations

Year	Investigations Completed	Substantiated	Facility Culpable	Individual Culpable
1998	16,197	6,881	Not Applicable	Not Applicable
1999	16,466	7,229	Not Applicable	Not Applicable
2000	16,429	7,728	Not Applicable	Not Applicable
2001	14,607	6,767	Not Applicable	Not Applicable
Total	63,699	28,605		

5. Minnesota Department of Children Families and Learning

DCFL conducts maltreatment investigations under the Reporting of Maltreatment of Minors Act in schools. Table 9 shows data on substantiated maltreatment. DCFL was authorized to conduct maltreatment investigations in schools beginning in September 1999. Reports received until July 2000 were reviewed and assessed, but a minimal number of determinations of maltreatment were made until July 2001 because of the high number of reports and limited staff. One out of three investigations were substantiated.

Table 9. DCFL Maltreatment of Minors Investigations

Fiscal Year	Investigations Completed	Substantiated	Facility Culpable	Individual Culpable
2001	68	35	Not Available	Not Available
2002	162	48	Not Available	Not Available
Total	230	83		

Appeals

About one in three fair hearings, one in 14 Court of Appeals decisions, and five in eight Office of Administrative Hearings overturned decisions on maltreatment or disqualifications. An increasing number of DHS decisions on disqualifications for recurring maltreatment are being overturned.

1. Fair Hearings

Fair hearings before a human services referee are available for appealing: substantiated findings of maltreatment; and for appealing disqualifications that were based on serious or recurring maltreatment, based on failure to report serious or recurring maltreatment, or based on a preponderance of evidence of a disqualifying crime. A fair hearing is conducted and the referee makes a recommendation to the commissioner of the agency that determined maltreatment or that did not set aside a disqualification.

Table 10 shows data for all fair hearing results for substantiated maltreatment of a vulnerable adult. These fair hearings began in 1996. Data was not available as to which agency (DHS, MDH, or a county) made the determination of substantiated maltreatment. One of three vulnerable adult maltreatment fair hearings resulted in a reversal of the substantiated finding.

Table 10. All Vulnerable Adult Maltreatment Fair Hearings

Year	Hearings	Affirmed	Reversed
1996	2	2	
1997	27	18	9
1998	28	12	16
1999	41	27	14
2000	26	23	3
2001	26	18	8
1-11/2002	15	11	4
Total	165	111	54

Table 11 shows data for all fair hearing results for substantiated maltreatment of a minor. These hearings began in 1998. Data was not available as to which agency (DHS, MDH, DCFL, or a county) made the determination of substantiated maltreatment. One of 2.6 maltreatment of minor fair hearings resulted in a reversal of the substantiated finding.

Table 11. All Maltreatment of Minor Fair Hearings

Year	Hearings	Affirmed	Reversed
1998	37	22	15
1999	80	51	29
2000	75	47	28
2001	87	59	28
1-11/2002	83	45	38
Total	362	224	138

Table 12 shows data for all fair hearing results for disqualifications. These hearings began in 2001. An individual may appeal the correctness of the information relied upon to disqualify him/her and/or the decision to not set aside his/her disqualification. If the hearing finds that the information is not correct, the disqualification is rescinded. If the hearing finds that the person does not pose a risk of harm, the disqualification is set aside. Both are referred to as reversals in the following tables. Data was not available as to which agency made the not-set-aside decision. One of 2.3 fair hearings resulted in either reversal or a set aside of the disqualification.

Table 12. All Disqualification Fair Hearings

Year	Hearings	Affirmed	Reversed
2001	2	2	
1-11/2002	32	17	15
Total	34	19	15

Data was available for fair hearing results for DHS disqualifications that were not set aside. Table 13 shows the fair hearing results for disqualifications of persons in DHS directly licensed programs, county delegated licensed programs, and PCPOs. One of two fair hearings resulted in either reversal or a set aside of the disqualification.

Table 13. DHS Disqualification Fair Hearings

Year	Hearings	Affirmed	Reversed	Set Aside
2001	0			
1-11/2002	21	10	4	7

Data was available for fair hearing results for findings of substantiated maltreatment of a vulnerable adult investigated by DHS Licensing Division. Table 14 shows the fair hearing results for DHS maltreatment determinations. One of 3.5 fair hearings resulted in a reversal of the substantiated maltreatment.

Table 14. DHS-Investigated Maltreatment Fair Hearings

Year	Hearings	Affirmed	Reversed
1998	15	8	7
1999	15	13	2
2000	5	2	3
2001	5	5	
1-11/2002	2	2	
Total	42	30	12

Prior to July 1, 2001, maltreatment fair hearings did not include decisions on the disqualification resulting from the maltreatment. The data on Table 15 for 1998 through 2001 reflect the affect of the fair hearing decisions in Table 14 on disqualifications. The data for 2002 does reflect the results of the two hearings that did consolidate the maltreatment and disqualification appeals. One of four fair hearings resulted in either a disqualification being rescinded or set aside.

Table 15. Affect of Fair Hearings on Disqualifications

Year	Hearings	Disqualifications Rescinded Due to Reversal	Disqualifications Set Aside After Affirmation
1998	15	4	Not Applicable
1999	15	1	Not Applicable
2000	5	3	Not Applicable
2001	5	0	0
1-11/2002	2	0	2
Total	42	8	2

2. Court of Appeals

Disqualifications for criminal convictions that have not been set aside can be appealed to the Minnesota Court of Appeals. Table 16 shows the results of appeals of a disqualification that was not set aside by DHS. There have been no MDH or DOC cases appealed to the Court of Appeals. One Court of Appeals decision resulted in a reversal of a disqualification.

Table 16. DHS Disqualification Hearings at Court of Appeals

Year	Hearings	Affirmed	Reversed	Remanded
1996	5	3		2
1997	2	2		
1998	0			
1999	0			
2000	5	2	1	2
2001	1	1		
1-11/2002	1	1		
Total	14	9	1	4

3. Office of Administrative Hearings

Disqualifications of public employees and disqualifications combined with a negative licensing action against a license holder can be appealed to the Office of Administrative Hearings. A contested case hearing is conducted and the administrative law judge makes a recommendation to the commissioner of the agency that did not set aside the disqualification.

Table 17 shows the results of appeals of DHS disqualifications in directly licensed programs and the results of appeals of disqualifications combined with a negative licensing action against a family child care or foster care license holder. Five in eight Office of Administrative Hearings resulted in either a disqualification being rescinded or set aside.

Table 17. DHS Disqualifications at Office of Administrative Hearings

License Type	Hearings	Affirmed	Reversed
Directly Licensed	4	1	3
Family Child Care or Foster Care	4	2	2
Total	8	3	5