CRIMINAL RECORDS 
IN THE HIRING PROCESS 

What records employers can use, and how to help your clients take some control of their background checks.

1. A Guide to Reading Criminal Records 
2. A Guide to the Fair Credit Reporting Act 
3. A Guide to Civil Rights and Records 
4. A Guide to Public Employment and Ban the Box 
5. A Guide to the Department of Human Services 
Background Studies 

The Council on Crime and Justice offers these guides as a way to help people find jobs despite having criminal records. These guides can help service providers who serve those with criminal records and persons with criminal records to find work in a variety of fields, and fight for fair treatment in the hiring process. The Council on Crime and Justice encourages any who encounter legal problems in the legal areas highlighted by these guides to seek the assistance of a licensed attorney. These guides are meant to prepare those with certain criminal records to recognize when their rights are being violated. These worksheets are not meant to train service providers or others on the law in Minnesota or any other jurisdiction. These guides are not legal advice. 

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A Service Provider’s Guide to Reading Criminal Records

Many different government agencies create and store criminal records. The three most common places to find Minnesota criminal records are: law enforcement offices, courthouses, and the Bureau of Criminal Apprehension. Also, many private companies keep copies of criminal records. For instance, newspapers, websites, and private background checking companies all hold and use these records for different reasons.

**Law Enforcement Records:** Law enforcement officers create records about arrests, citations, and other situations involving official constraints on liberty (like stopping someone for questioning on the street). These records do not indicate guilt, and employers need to be careful when reviewing an applicant’s law enforcement records.

The Equal Employment Opportunity Commission (EEOC) has stated that denials of employment due to information on law enforcement records can discriminate against protected minority groups, and can lead to civil right violations and lawsuits.

**Court Records:** Court records show what offenses prosecutors charge, and if the court found the defendant guilty. Keep in mind these court record categories:

**Offense Levels:** Offenses range from petty misdemeanors to felonies.

- **Felonies** are defined by the possibility of incarceration for more than one year, or a fine of more than $3,000, or both.

- **Gross misdemeanors** are defined by the possibility of incarceration for 91 to 365 days, or a fine of $1,001 to 3,000, or both.

- **Misdemeanors** are defined by the possibility of incarceration for up to 90 days, or a fine of $301 to $1,000, or both.

- **Petty misdemeanors** cannot lead to incarceration. The maximum sentence for this offense is a fine of up to $300. A petty misdemeanor is not a crime.

**Dispositions:** Not all interactions with the criminal justice system are resolved with a conviction. Below are a few of the most common dispositions (or resolutions) of arrests and court cases in Minnesota:

- **Arrest:** Essentially, a meaningful seizure of liberty which may result with being taken into custody. The arresting officer sends a police report to the prosecutor, who may or may not decide to charge the individual with a crime.

- **Dismissal:** Both the prosecutor and the court can dismiss criminal charges before trying the individual. The court does not find guilt when it dismisses a charge.

- **Continuance for Dismissal:** The defendant does not plead guilty. The prosecutor suspends prosecution for a period of time, and the charges are dismissed if the
defendant complies with the conditions of the continuance – typically, no same or similar offenses within a one-year period.

**Stay of Adjudication:** After the defendant enters a plea of guilt, the judge withholds conviction upon the condition that the individual successfully complete probation. *This is not a conviction.*

**Stay of Imposition:** After the defendant enters a plea of guilt, the judge adjudicates the individual, but does not impose the sentence upon the condition that the individual successfully complete probation. *At the end of probation, the offense will be deemed a misdemeanor despite being originally charged as a felony.*

**Stay of Execution:** The judge imposes a sentence, but suspends execution of this sentence upon the condition that the individual successfully complete probation.

**Execution of Sentence:** The judge executes the sentence, incarcerating the individual. With good behavior, Minnesota may allow an individual to leave custody after 2/3 of the sentence is completed. The individual remains on parole or probation until the original sentence would have ended.

You should be able to recognize what offense the prosecutor charged an individual with, and what the court ultimately found. This will help you train your clients in learning how to talk to employers about their criminal records, and will help your client recognize when employers are violating their civil rights. The EEOC has stated that denials of employment due to criminal records can discriminate against protected minority groups. Part of helping your clients avoid these violations of civil rights is helping your client know what is on his or her record, and helping your client know how to convey that information to employers in job interviews.

**The Bureau of Criminal Apprehension:** The BCA collects criminal records in a repository in St. Paul. It is the source of most criminal record information in Minnesota.

**Private Entities:** There are too many private background checking companies to list them all. These companies run background checks for employment, housing, and other purposes, and these companies get all of their information from the three places listed above. This copying of records can lead to many errors, and can promulgate mistakes made in the government records. These companies must keep accurate records, and it may be up to your client to notify these companies when they are making a mistake.
A Service Provider’s Guide to FCRA

The Fair Credit Reporting Act (FCRA) requires employers to follow certain procedures before seeking or obtaining criminal background checks on potential employees. Also, FCRA requires employers to take certain steps whenever they take adverse action against a potential employee due to information in a criminal background check, and FCRA regulates what information background check companies can report on a criminal background check. Employers and background check companies who do not comply with FCRA procedures expose themselves to lawsuits in federal courts, government investigations, and fines.

Written Notice and Permission

Before employers request a criminal background check, the employer must notify the applicant in writing of this intent to check. The notice must appear on a document separate from other application materials, and the employer must receive written permission before requesting information from a background check company. Electronically submitted permission is sufficient.

Adverse Action Procedures

If an employer desires to use, in any way, a criminal background check in taking "adverse action" against a job applicant or an employee (i.e., denying a job, reassigning or terminating an employee, or denying a promotion), an employer must take the following steps:

Step 1: Before an employer takes adverse action: Give the applicant or employee a copy of the background check and a copy of "A Summary of Your Rights Under the Fair Credit Reporting Act" — published by the Federal Trade Commission (FTC), and found at: http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre35.pdf

Step 2: After an employer takes adverse action: Send an oral, written, or electronic communication to the applicant or employee including:

1) Notice that adverse action has been taken,
2) Name and contact information for the company that supplied the background check,
3) Notice of the applicant or employee’s right to dispute the accuracy or completeness of any information the company supplied to the employer, and
4) Notice of the applicant or employee’s right to an additional, free copy of the criminal background check from the agency, upon request, within 60 days.

1 For more information, please see the FCRA at http://www.ftc.gov/os/statutes/031224fcra.pdf (accessed June 1, 2011) and SHRM’s summary of FCRA compliance at http://www.shrm.org/LegalIssues/FederalResources/FederalStatutesRegulationsandGuidance/Pages/FairCreditReportingAct%28FCRA%29of1969.aspx (accessed June 1, 2011)
**Information in Criminal Background Checks**

FCRA regulates the background checks that employers obtain from private background checking companies (often called consumer reporting agencies or CRAs). Under FCRA, CRAs must periodically update their criminal record information, and must remove outdated or inaccurate information.

**Outdated Criminal Information:** CRAs cannot report arrest information that is older than seven years. CRAs can report information on criminal convictions indefinitely.

**Inaccurate Information:** CRAs are required to remove inaccurate information from background checks, and must investigate claims of inaccuracy. If something erroneous shows up on a background check, notify the CRA. The law requires that the CRA take a look.

**Expunged and Pardoned Records**

If a court expunges a criminal record or the pardon board grants a pardon to your client, CRAs should reflect this decision by updating their files, and the CRA should remove all expunged records from future background checks. In addition, Minnesota law states that if a criminal record is “sealed, expunged, or the subject of a pardon, the business screening service shall promptly delete the record.” Minn. Stat. § 332.70.

If the court has expunged your client’s record or if the pardon board has granted your client a pardon, take these steps before applying to a job:

1) Find out which CRA is running the background checks for the company your client is applying to,

2) If you are having trouble finding out which CRA is running the background checks, call the company your client is applying to and ask (ask the human resources department, if the company has one),

3) Notify the CRA, through a letter, that the court expunged the record or the pardon board granted a pardon.

4) The CRA will notify you after they act upon the information in your letter.

**For More Information and to Report Violations**

Contact one of these locations:

Council on Crime and Justice
822 South Third Street, Suite 100
Minneapolis, MN 55415
(612) 353-3000
[www.crimeandjustice.org](http://www.crimeandjustice.org)

Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
(202) 326-2222
[www.ftc.gov](http://www.ftc.gov)
A Service Provider’s Guide to Civil Rights and Records

To avoid civil rights violations, employers should follow the guidelines below.

**Arrest Records (Arrested and never charged with a crime)**

1) Employers must not deny employment to a job applicant simply because the applicant has an arrest record. If an employer considers arrest records in the hiring process, the employer must determine if the alleged conduct is related to the job.

   A record is related to the job if:
   • the applicant engaged in the conduct for which he or she was arrested; and
   • the conduct is both job-related and fairly recent.

2) The Equal Employment Opportunity Commission (EEOC), a federal agency, requires employers to give your client notice that your client may not be hired because of an arrest records. If an employer does not provide this notice, or denies your client employment just because of an arrest record, contact the EEOC.

**Court Records (Charged with a crime, whether charges dismissed or not)**

1) Employers cannot have a policy that denies employment to every job applicant with a criminal charge or conviction. This would disproportionately impact job applicants in communities of color. Blacks, Latinos, and Native Americans are more likely to be arrested and convicted of crimes, and employers need to account for this overrepresentation in creating hiring policies based on arrest or conviction records.

2) Otherwise, employers can deny your client employment because of criminal charges or convictions only if the charge or conviction meets these minimum requirements:

   i. The charge or conviction directly relates to the position sought. In making this determination, an employer must consider:

      a. the nature and gravity of the offense;
      b. the time that has elapsed since completion of the sentence; and
      c. the nature of the job held or sought.

   ii. The decision not to hire your client because of a charge or conviction does not disproportionately harm certain racial groups.

   iii. There is no alternative policy that would fulfill the needs of the employer without disproportionately harming certain racial groups.

3) Employers must consider signs of personal rehabilitation.

**For More Information or to Report Violations:**

EEOC (Minnesota Office)
330 South Second Avenue, Suite 430
Minneapolis, MN 55401-2224
Phone: (612) 335-4040
A Service Provider’s Guide to Public Employment

Minnesota law puts limits on what records public employers (cities, counties, state agencies and boards) can use in the hiring process. Minnesota also regulates when a public employer can ask about records, and punishes employers who break these rules.

**Professional Licensing**

Many jobs require federal, state, and local licenses, and many of these licenses require a background check before issuance. For example, interstate railroad engineers are licensed by the federal government, accountants are licensed by the state, and massage therapists are often licensed by cities. Each of these licenses requires a background check. To find information on federal, state, and local licenses look in these locations:

- **Federal:** The agency your client is applying to will have information. Also, the Office of Personnel Management has certain background checking requirement: [www.opm.gov/federal/](http://www.opm.gov/federal/).
- **State:** The Office or Enterprise Technology has compiled a searchable list of all jobs that require licenses in Minnesota: [www.license.mn.gov](http://www.license.mn.gov).
- **Local:** Search city and county ordinances for licensing requirements.

Note: Even if the job your client is applying for does not require a license, the job may, by law, require a background check. For instance, child daycare attendants do not require licenses, but they must submit to a background check run by the Department of Human Services. The House Research Department has compiled a non-exhaustive list of state jobs that require background checks: [www.house.leg.state.mn.us/hrd/pubs/bkgdchck.pdf](https://www.house.leg.state.mn.us/hrd/pubs/bkgdchck.pdf).

**Ban the Box**

Many public employers may not ask about criminal records on job applications, and can only consider a job applicant’s criminal records after the public employer has selected the applicant for an interview. At this interview stage, public employers can run a background check, and can ask job applicants about criminal records.

**Consideration of Criminal Records**

When Minnesota public employers and licensing boards consider criminal records, the agencies and boards can only consider records *directly related* to the job or the license. In determining what records directly relate to a job or license, reviewers must consider:

1) The nature and seriousness of the crime that led to a conviction
2) The purpose of regulating or licensing the position
3) Relation of the crime to the “ability, capacity, and fitness” required for the job.
Minnesota public employers and licensing boards must also consider evidence of rehabilitation and present fitness. Evidence that would establish this includes:

1) A local, state, or federal release order, **and**
2) At least one year after release with no new convictions, and evidence of successful completion of probation or parole, **or**
3) A document showing successful completion of probation or parole.

Also, Minnesota public employers and licensing boards must consider social circumstances that led to the crime, the age of the record, letters of recommendation, and “all other competent evidence of rehabilitation and present fitness.”

State employers may not consider arrest records that did not lead to valid convictions, expunged records, and public employers may not consider petty misdemeanors.

**Exceptions**

These Minnesota rules do not apply to these jobs and professions:

- Lawyers and court employees
- Law enforcement (police, sheriffs, etc.)
- Fire fighters
- Private detectives and security guards
- Taxicab and school bus drivers
- Employees at DHS / MDH licensed facilities
- Commercial driving instructors
- Emergency medical personnel
- School district employees
- Juvenile corrections (in some cases)

These rules do not apply to these offenses, if discharged within the previous ten years:

- All levels of murder and manslaughter
- Drug crimes punishable by 15+ years
- Criminal vehicular homicide
- Driving under the influence
- First through third degree assault
- Leaving the scene of an accident
- Indecent exposure involving a child
- Reckless or careless driving

These rules also do not apply to licensees of the Minnesota Board of Medical Practice and chiropractors who have had their licenses revoked.

**For More Information**

Contact one of these locations:

- **Council on Crime and Justice**
  - 822 South Third Street, Suite 100
  - Minneapolis, MN 55415
  - (612) 353-3000
  - [www.crimeandjustice.org](http://www.crimeandjustice.org)

- **Minnesota Department of Human Rights**
  - 190 East 5th Street, Suite 700
  - Saint Paul MN 55101
  - (651) 296-5663 (TTY 651.296.1283)
  - Toll Free: (800) 657-3704
  - [www.humanrights.state.mn.us](http://www.humanrights.state.mn.us)
A Service Provider’s Guide to DHS Background Studies

In Minnesota, anyone who wants to work in fields or facilities serving “vulnerable persons” must submit to a background study through the Department of Human Services (DHS). Vulnerable persons include children, the elderly, the sick, and other persons with disabilities. This means that anyone wanting to work in healthcare, daycare, education, and other professions or facilities that are licensed by the Minnesota Department of Health or DHS must submit to a background study. DHS also runs background studies on juvenile corrections personnel.

In running this background study, DHS looks at arrests, convictions, and juvenile records as well as other records.

Court and Arrest Records

If DHS finds a court record charging a person with one of the offenses listed in the last section of this guidebook, DHS must disqualify the person from working with vulnerable people for seven, ten, or fifteen years.

If DHS finds an arrest record that never led to charges, DHS must determine if the person in the record “more likely than not” committed the offense. If DHS determines that the person is most likely guilty of the crime for which they were arrested, DHS must disqualify the person from working with vulnerable people for seven, ten, fifteen years, or permanently.

Whether DHS disqualifies the person in the record for seven, ten, fifteen years, or permanently depends on the level of the offense (misdemeanor, gross misdemeanor, felony). Misdemeanors lead to seven year disqualifications, gross misdemeanors to ten year disqualifications, felonies to fifteen year disqualifications, and selected offenses (like most sex crimes) to permanent disqualifications. Generally, disqualifications start from the time the person got off probation or parole, or was released from jail, prison, or lockup.

Contesting a DHS Disqualification

There are three ways to overcome DHS disqualifications: DHS set-asides, court-ordered expungements, and pardons. Each option has unique limitations and advantages.

DHS Set-Asides: DHS allows disqualified persons to appeal their disqualifications directly to DHS. DHS notifies disqualified persons of their ability to appeal in the disqualification letter. DHS also notifies disqualified persons that they can only appeal within a certain time period, usually between fifteen to thirty days. If disqualified persons do not appeal their disqualifications within the specified time period, they may be permanently barred from working with vulnerable persons.

If the DHS appeal is successful, DHS will “set-aside” the disqualification, and will allow the disqualified person to return to work.

In obtaining a set-aside, disqualified persons must prove two things to DHS:

1) He or she did not commit the offense on the arrest or charging record,
2) He or she is no longer a threat to society.

Your clients should always appeal DHS disqualifications. The appeal process is the first and best defense against DHS disqualifications. Your client should also contact an attorney in getting help with the paperwork.

Note: If your client obtains a DHS set-aside, the set-aside only applies to the facility your client was working at when DHS disqualified him or her. If your client gets a new job, your client will have to go through the DHS background study process again.

**Expungements:** Keep in mind that there are two kinds of expungement in Minnesota: statutory and inherent authority expungements.

Statutory expungements have the power to expunge records held by government agencies other than the courts. Your client can use these types of expungement to expunge records held by DHS, and DHS can no longer use these records to disqualify your client.

Inherent authority expungements typically often do not have power to expunge records held by government agencies other than the courts. Your client may not be able to use these types of expungement to expunge records held by DHS.

**Pardons:** The Minnesota governor, chief justice of the Supreme Court, and state attorney general sit on the pardon board. People seeking pardons must submit petitions for pardon to this board, and the board reviews these petitions in determining who receives a pardon.

Pardons can stop DHS from disqualifying your client because the governor is ultimately the head of the DHS. If the governor pardons the record, DHS will no longer use that record to disqualify a person from working with vulnerable people.

The only drawback with pardons is that pardons can be hard to obtain, and pardons do not seal any records. They prevent DHS from using the record during background studies, but pardons do little in preventing the public from accessing the record.

**For More Information**

Contact one of these locations:

- **Council on Crime and Justice**
  822 South Third Street, Suite 100
  Minneapolis, MN 55415
  (612) 353-3000
  [www.crimeandjustice.org](http://www.crimeandjustice.org)

- **Minnesota Department of Human Services**
  190 East 5th Street, Suite 700
  Saint Paul MN 55101
  (651) 296-3971
  [www.dhs.state.mn.us](http://www.dhs.state.mn.us)
Disqualifying Offenses and Disqualification Periods

Only certain arrests, charges, and convictions will lead to the DHS disqualifying you from working with vulnerable people. Also, different offense levels lead to different disqualification periods. Felonies disqualify for fifteen years, gross misdemeanors for ten, misdemeanors for seven, and selected offenses permanently.

Disqualifying Offenses Organized by Offense Level

As required under Minn. Stat. 245C.15, an individual may be disqualified from any position allowing direct contact with persons receiving services from the license holder when a background study shows any of the follow:

Permanent disqualification

An individual is disqualified 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:

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);
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);
609.561 (arson in the first degree);
609.66, subdivision 1e (drive-by shooting);
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).

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;
a felony offense under 609.377 (malicious punishment of a child);
a felony offense under 609.378 (neglect or endangerment of a child);
609.749, subdivision 3, 4, or 5 (felony-level stalking);

Note:
- Aiding and abetting, attempt, or conspiracy to commit any of the above-listed offenses may result in a disqualification
- Offenses in any other state or country, where the elements of the offense are substantially similar to any of the offenses above-listed may result in a permanent disqualification
- A conviction is not necessary for disqualification. 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 an Alford Plea, the disqualification period begins from the date the Alford Plea is entered 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.
- If the individual studied commits one of the above-listed offenses 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 (10 years) or misdemeanor (7 years) offenses.
**15-year disqualification**

An individual is disqualified 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:

- [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);
- [609.495](#) (aiding an offender);
- [609.498](#), subdivision 1 or 1b (aggravated first-degree or first-degree tampering with a witness);
- [609.52](#) (theft);
- [609.521](#) (possessing 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.

Note:
- An individual is disqualified if less than 15 years has passed since the individual's aiding and abetting, attempt, or conspiracy to commit any of the above-listed offenses
- An individual is disqualified if less than 15 years has passed since the termination of the individual's parental rights under section 260C.301, subdivision 1, paragraph (b), or subdivision 3
- An individual is disqualified 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 above-listed offenses
- If the individual studied commits one of the above-listed offenses, 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 (10 years) or misdemeanor (7 years) disposition.
- A conviction is not necessary for disqualification. 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 an Alford Plea, the disqualification period begins from the date the Alford Plea is entered 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.

**Ten-year disqualification**

An individual is disqualified 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);
609.221 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);
Note:

- An individual is disqualified if less than ten years has passed since the individual's aiding and abetting, attempt, or conspiracy to commit any of the above-listed offenses.

- An individual is disqualified 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 above-listed offenses.

- If the individual studied commits one of the above-listed 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 (7 years).

- A conviction is not necessary for disqualification. 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 an Alford Plea, the disqualification period begins from the date the Alford Plea is entered 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.

Seven-year disqualification

An individual is disqualified 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).

Additionally: an individual is disqualified if less than seven years has passed since a determination or disposition of the individual's: 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 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.

256.98, subdivision 8 (wrongfully obtaining assistance, theft – administrative disqualification)
Note:
- An individual is disqualified if less than seven years has passed since the individual’s aiding and abetting, attempt, or conspiracy to commit any of the above-listed offenses
- An individual is disqualified 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 above-listed offenses
- A conviction is not necessary for disqualification. 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 an Alford Plea, the disqualification period begins from the date the Alford Plea is entered 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.

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.15 reformatted by Emily Baxter, Council on Crime and Justice. For the original language of the statute and for more information regarding Chapter 245C, please refer to the Minnesota Office of the Revisor of Statutes website at https://www.revisor.mn.gov/statutes/?id=245C. Nothing in this document constitutes legal advice. For legal advice concerning DHS disqualifications or any other statutory sanction, contact an attorney.