



Minnesota
Community
Corrections
Association

HAPPENINGS

President's Message

By Mark Groves

I am excited about serving as President of MCCA for 2008. I think I've served on the board for about five years now. This is my "swan-song" year. Next year, I'll be "past-president" doing "Past President" stuff and gracefully rotate off the board.

We've got a really strong, working board of directors this year. We have some new faces: Christopher Jahнке and Brian Stoll herald from Wright County Court Services. Chris is our "President-Elect" and Brian is our new Finance Chair.

Our dynamic Marketing Committee duo is Rob Hope from Goodwill Easter Seals and Sarah Walker from 180 Degrees. The energy they are devoting to our Motorcycle Rally and Golf Tournament is a welcome sight to behold.

Our new Secretary is Shawn Ullrich and our new Education & Training Board Representative is Martha Nzimbi. Both of them are from our very own Minnesota Department of Correc-

tions.

Mary Dombrovski, Colleen Crockford, Amy Zabransky, and Sandy Hand rotated off the board this year. Their contributions to MCCA cannot be measured. I enjoyed serving with them and MCCA is a better association because of them.

Please refer to the MCCA Board of Directors roster in this issue for details of 2008 MCCA Board.

MCCA hosted it's first annual motorcycle run this year. It was quite an adventure. You can get a peek at what the day was like by reading the article about it in this newsletter. The turnout wasn't what we were hoping for, but . . . We are hopeful next year's event attracts more riders.

We changed the format of our golf tournament this year from a 9-hole to an 18-hole event. This year's event was held at Oak Marsh Golf Course on

June 6, 2008. We all had a fun time despite the severe weather the day before. It was quite windy and we experienced some rain. The course was soggy. But . . . everyone in attendance had a great time. Watch for details on next year's event.

We tried again this year to host a crappie tournament without success. The folks who organized and "ran the show" for us moved on. We are very hopeful to bring this event back in 2009. If you are interested in helping organize next year's crappie tournament, please contact me. I think we should have a meeting in early fall 2008 to begin planning it.

I have been a "one-man-show" collecting news articles, designing, creating, and editing MCCA's Happenings newsletter. I need HELP! Please contact me if you'd like to be the "layout" person for future editions. I'll continue to do the rest of the duties.

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MCCA Workshops

June: Prostitution

July: Employment

August Resiliency

September: Faribault Tour

October: Street Drugs

Legislative Report By Calvin Saari

Late Sunday evening, May 18, 2008, the Minnesota House of Representatives adjourned *Sine Die*, thus putting an end to the 2008 Legislative Session. Although this was a short session, having begun on February 12th, it was an active and often contentious session with the DFL majority in both the Senate and the House and the Republican Governor and the minority leadership often taking widely diverse approaches in their efforts to solve the State's budget problems. The Session began with great expectations from Committee Chairs as legislators began to process of considering new fiscal and policy proposals in the various committees. A mood change was evident in the last week of February when the State economists revealed an almost \$ 1 billion deficit in the budget. This obviously meant that there would be a priority shift to solving the financial dilemma and the recognition that "new dollars" would be difficult to find in order to fund the many new legislative proposals that had already been offered. And that would be the way the rest of the legislative session went. Committees continued to work hard to advance new legislative proposals and several new "policy" initiatives were passed, and several others needing a funding basis were left in waiting until the leadership and the Governor could agree on a supplemental budget package that would address the financial issues and yet fund governmental operations for the next year.

By the first of May, still lacking an

agreement to funding, that became the primary focus of the legislative session as the party leadership and the Governor's staff began a serious negotiation to reach agreement on the revenue sources and the supplemental budget plan for the next year. This process would last until the last hours of the legislative session when on May 18th, they announced that an agreement had been reached that would allow the legislature to finalize their legislative proposals, now almost all put into major omnibus bills, and begin an orderly conclusion to the 2008 Session.

We spent most of our time as the MCA legislative liaison, in tracking legislative proposals in the Senate and House Public Safety Finance and Civil Justice Committees where all Corrections and Public Safety proposals were considered. During the Session, we tracked about sixty five different bills impacting our membership. There were several new proposals brought forward as a result of the Paymar/Higgins Re-entry Work Group and others from recommendations of the state mandated Collateral Sanctions Committee. In the end however, most of these required new funding and fell by the wayside for consideration at another time. A few items did get included in the Public Safety Omnibus bill, HF 2996 which eventually was passed by both legislative chambers and was signed by the Governor on May 12th. The final bill contained language from 10 different

bills and included, among others, the following provisions:

- Provisions that modify the civil commitment of sexually dangerous persons.
- Modification of sex offender registration requiring offenders who do not have a primary address to notify local authorities where they will be going at least three days before they leave a correctional facility.
- Requires registration as a predatory offender for anyone convicted of a comparable offense in another state.
- Requires that at jail intake there must be a check completed against the BCA apprehension predatory offender registration database.
- Provides the Court authority to charge a convenience fee when taking any payments by credit card.
- Requires additional work by probation officers conducting pre-sentencing investigations which must include veteran status and requires consultation with veteran mental health, with recommendations for treatment as appropriate.

Legislative Report, continued from previous page

- Deleted language regarding previous appropriations to the courts for Drug Courts. (This puts funding for Drug Courts in serious jeopardy.)
- Calls for a Study Group to consider the impact on presumption of joint physical custody of children after divorce; and establishes a working group to discuss the state's controlled substance laws, with a report due to the Legislature by January 15, 2009.
- Requires that the DOC perform an internal review of the department's guidelines for revocation of parole and supervised release, with a report required to the Legislature by March 1, 2009.

Several other provisions were pulled from the bill before delivery to the Governor, many specific to Re-entry issues, including

the establishment of a certificate of good conduct which was a highly recommended provision of both the Paymar Work Group and the Collateral Sanctions Committee.

The passage of the Public Safety Omnibus supplemental budget bill, HF 1812/SF 3813, put the finishing touches on the funding cuts for this next year. The gains we made in 2007 with increases in the Short-term Offender per diems was cut for next year, as well as significant cuts to funding for Crim-Net, and some cuts in other line items which are still being assessed for their impact.

As legislative leaders and the Governor are traveling around the state expounding on the "great success" of this Session, our assessment is one of relief that at least the financial problems of the budget were

addressed (at least in the short term), a significant bonding bill was authorized which should help spur our economy, and the cuts that were made are still "livable". And with this, we can remain optimistic that we will be able to pursue our new legislative agenda with enthusiasm with the start of a new biennium in January 2009.

The MCA Legislative Committee is currently working on the development of a new Legislative agenda with Position Papers and we strongly solicit input and participation from the membership. Check the MCA website for committee members and contact us if you'd like to participate.

*Calvin Saari
MCA Legislative Liaison and
MCA Legislative Committee
Chair*

So You Want a Day Off?

So you want a day off? Let's take a look at what you are asking for!

There are 365 days this year. There are 52 weeks per year in which you already have 2 days off per week, leaving 261 days available for work. Since you spend 16 hours each day away from work, you have used up 170 days, leaving only 91 days available.

You spend 30 minutes each day on coffee break. That accounts for 23 days each year, leaving only 68 days available. With a one hour lunch period each day, you have used up another 46 days, leaving only 22 days available for work.

You normally spend 2 days per year on sick leave. This leaves you only 20 days available for work. We are off for 5 holidays per year, so your available working time is down to 15 days.

We generously give you 14 days vacation per year which leaves only one day available for work and I'll be damned if you're going to take that day off!

MCCA's First Annual Motorcycle Rally was a "Roaring Success," By Mark Groves

The DOC Central Office parking lot was alive with the sound of throaty engines as approximately 22 motorcycle enthusiasts converged to begin MCCA's first annual motorcycle rally on May 17, 2008. Our mission for this gathering was to have fun and enjoy the beginning of summer. We also wanted to help build camaraderie among community corrections bikers. Our MCCA Motorcycle Run volunteers, Sarah Walker, Jamie Tatarek and Catie Blake greeted us and served donuts and pastries to those of us who decided to skip breakfast. Dan Cain rounded us up, summarized the plan for the day, briefed us on our route, and got us going.

The morning started out beautiful. The sun was shining and the temperature was in the 50s. Our two lead riders were Jim Linehan, from the Rush City Correctional Facility and Bill Wagner from RS Eden. The rest of us brought up the rear. We started out for Lino Lakes Correctional Facility at 10:30 a.m. We drove through the city and into the country, side-by-side. What a sight to see as we drove up Snelling Avenue past the State Fairgrounds. You can bet there was a head or two pointed in our direction as we paraded through St. Paul.

We arrived at Lino Lakes, safe and sound. Bridget Letnes, Shawn Ullrich and Rob Hope watched us arrive with big smiles, all around. Now that we were getting the hang of the day, the riders drew their second poker playing card, shot some bull and mounted back up for the ride to Rush City. To our surprise, when we actually got to the town of Rush City, the local sheriff noted our arrival and stopped traffic at the town's only stop sign, and allowed us to pass as a group. I don't know about the rest of the bikers, but I felt pretty darned special. It kind of reminded me of my days in the military when I was the Brigade Commander's driver driving him around Europe with our Military Police escort.

At Rush City Correctional Facility, we were met by Kelley Heifort who treated us to refreshing bottled water and we drew our third poker card. We visited a bit and moved on to Stillwater. The ride from Rush City to Stillwater was an adventure to behold. The sky looked ominous and it began to rain. The temps dipped. Road spray on the highway was ugly but we made good time. The rain finally dissipated but the overcast skies and temps in the mid to upper 40's made the experienced bikers glad they were wearing their leathers. Me? I thought the day was going to be sunny and warm. I was wearing a University of Minnesota wind breaker, jeans and hiking boots. Lucky for me, another biker took pity on me when we stopped for gas and asked me if I'd like to borrow some gloves. Through chattering teeth and shivering shoulders, I mumbled: "Ssssuurrre." You can bet your last nickel I'll be wearing leathers and have my saddlebags stuffed with whatever I need for any imaginable weather condition next year! I think I'll pack my electric socks, gloves and snowmobile suit, just in case.

During our ride, we had to dodge a bale of hay dropped from some farmer's truck. More than once, we drove through cow manure spilled over the country roads (the stench made my eyes water and my nostrils sting). Way to go, Bessie! But . . . are you ready for this? Here's the best part. During our ride, we were passed by a trooper with his lights flashing. Thinking he was going to some unconnected emergency we kept our pace. Lo, and behold. Surprise, surprise. He pulled over just ahead of our leaders and motioned us all to the side of the road. I thought to myself, "Are you kidding me?" As is often the case when riding, our speed had crept up over the posted limit. The officer was not a happy camper. He wanted to know what our hurry was, being a nice day and all. We told him that we actually were not in any particular hurry and that we were all corrections professionals just out for a nice ride. While collecting our driver's licenses, he reminded us that, as correctional workers, we should know better. There we were, 20 motorcycles on the side of the road and 22 people lamenting the fines we would need to pay for our transgressions. Instead of a

MCCA Motorcycle Rally, continued from previous page

ride for ex-offender reentry, we had become a ride of new offender orientation. The shame! Luckily the officer had compassion and felt sorry for us. He gave us a stern warning and let us proceed, with our tails between our legs. Turns out, he was a pretty nice guy. He had a good sense of humor and posed for pictures with us and we shared a joke or two. Whew! I was certain I'd be sharing half of my federal government rebate "stimulus" check to Mayberry, Minnesota.

Because we were running late, we skipped Stillwater and rode right to Oak Park Heights. Jennifer Gast and the volunteers from the first four stops were there to greet us. What a sight to see! It looked like a small-town carnival. A warm, delicious meal was waiting for us served by Willie Pouncy of CWF Solutions. The chief cook was Dick Voss. The sun reappeared. The temperature rose. And, we gobbled down our hamburgers, brats, beans, chips and washed it all down with cold sodas. We traded stories, and delighted about our first annual MCCA motorcycle ride now tucked, safely under our belts. We drew our fourth and fifth poker cards. The lucky, duck who won the \$100 bucks for the best poker hand was Hector Matascastillo from DEED. Believe it or not, he had a heart flush draw from five cards. Some of the others had a pair, two pair or five totally unrelated cards. Congratulations, Hector!

I'll tell you what, though. The dicey situation of us being pulled over by the cops was animatedly told, re-told and told again at the BBQ. This event was definitely one for the books. You can't make stuff like this up. I don't know about you, but . . . I can't wait until next year's rally. I'm hopeful we'll stay out of the "hoosegow" next year! We'll see you at next year's Second Annual Motorcycle Rally and Poker Run. Vroooooommm!



Second Chance Act Signed into Law

The Second Chance Act of 2007 was signed into law by the president on April 9, 2008. It received broad bipartisan support from Congress. The legislation reauthorizes the Omnibus Crime Control and Safe Streets Act of 1968 (OCCSSA), authorizing grant funds that promote comprehensive planning and collaborative delivery of services to individuals recently released from prison. The Second Chance Act, H.R. 1593, was introduced by Representative Danny Davis on March 20, 2007. It passed in the House by a 347 to 62 vote on November 13, 2007 and cleared the Senate by unanimous consent on March 11, 2008. Earlier versions of the Second Chance Act were introduced by Senators Biden and Specter and then-Representative Portman. The law is available at <http://thomas.loc.gov>. The Second Chance Act reauthorizes (but does not appropriate funds for) \$300 million in grant programs to facilitate successful reentry.

The legislation authorizes:

- \$110 million for adult and juvenile offender state and local reentry demonstration programs;
 - \$40 million for grant projects to provide job training, mentoring, and transitional services;
 - \$20 million for reentry courts;
 - \$130 million in funding for substance abuse treatment, education and training, and mentoring.
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Minnesota
Community
Corrections
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MCCA Board of Directors

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We're on the Web!
www.mnmcca.com

The MCCA *Happenings* newsletter is prepared by Mark Groves.

The statements contained in *Happenings* are the personal views of the authors and do not constitute MCCA policy or endorsement by the Association or its Board of Directors, unless so indicated.

MCCA does not assume responsibility for the contents of the *Happenings* articles as submitted by contributors.

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MCCA Mission Statement

The mission of MCCA is to promote the value and recognition of community corrections as an equal partner in the societal response to public safety and offender reintegration. We accomplish this mission through training, advocacy, fellowship and collaboration.

Education & Training Events

Prostitution

One of the more perplexing problems within the criminal justice system is that of prostitution. It affects not only corrections but many other community institutions such as public health, child protection, drugs/alcohol addictions, and law enforcement. Prostituted women are variously referred to as victims, perpetrators, responsible/not responsible for their behavior and each definition carries with it the use of community resources to address the problem and its consequences.

This training will cover:

- The growing recognition of trafficking for purposes of slave labor and prostitution and the federal government's tying of funding to foreign nations conditional on their commitment to end human trafficking.
- Address how our culture is divided on whether prostitution should be legal or decriminalized.
- Give participants a greater understanding of the factors creating and reinforcing the lifestyle of prostituted women and girls.
- Discuss the role of chemicals in perpetuating the prostitution lifestyle.
- Provide one model treatment option which has demonstrated effective outcomes at a cost far less than the deployment of the criminal justice model.
- Present a whole community solutions strategy for prostitution *abatement*.

Presenter: William (Bill) Nelson is a career corrections professional, with more than 44-years experience working in correctional settings. He, and his team, approached the Minnesota Legislature in 1999 to secure funds for the creation of a women's recovery center. This center has become an award winning model for correctional innovation. Bill has published an article describing the program in *Corrections Today*, and has twice made presentations in Sweden at the University of Goteborg and the University of Stockholm, along with work in other states, including Montana, Oklahoma, Illinois and Massachusetts. In February 2006 he provided Congressional testimony supporting the Second Chance Act and in Fall 2007 he co-produced a documentary with Twin Cities Public Television on the subject of prostitution which later earned two film awards.

Date: Friday, June 13, 2008

Time: 9:00 a.m.—12:00 p.m.

Location: Brown College – Room 324

1440 Northland Drive (494 & Pilot Knob Road) Mendota Heights, MN

Registration should be e-mailed to Dani Harrington at: dharrington@rseden.org

This training is free to MCCA members.

If you are not an MCCA member, you may attend this workshop and pay your annual \$30 membership. Workshops are free for current MCCA members and your membership is good for one calendar year!

Education & Training Events

Upcoming Education & Training Events

***July:* Job Development: A Demand Driven Approach**

Tuesday, July 8th

9:00 – 12:00pm

Goodwill/Easter Seals

***August:* Resiliency.** *Exact date, time and locations have not yet, been determined.*

***September:* Tour of MCF – FRB.** *Exact date, time and locations have not yet, been determined.*

***October:* Street Drugs.** *Exact date, time and locations have not yet, been determined.*

November : No trainings due to the Women's Conference, which will be held on *Wednesday, November 12*. The topic will be '**Moving from Shame & Blame to Compassion & Accountability**', presented by Dr. Brene Brown.

***December:* Problem Solving; SMART Plans** *Exact date, time and locations have not yet, been determined.*

Please visit our website at:

www.mnmcca.com

for details.

Recognition for Excellence: Robbie Robinson Service Award

The Robbie Robinson Staff Excellence Award is presented by MCCA to a staff person who has demonstrated outstanding achievement and dedication to community corrections. Robbie Robinson spent more than 20 years of his adult life in prison for a series of offenses, and upon release, developed a safe and sober living environment in 1973 for men returning to the community from prison. This program is called 180 Degrees. The Robbie Robinson Award requires that the recipient be nominated by a peer or a number of peers.

We are pleased to announce that Nancy O'Hara is awarded this year's *Recognition for Excellence: Robbie Robinson Service Award*. Nancy works as a therapist at Alpha Human Services for the past 18-years. Jan Wagener from Hennepin County Community Corrections nominated her. According to the Jan, "Nancy has demonstrated outstanding service in working with a difficult client population. She quietly works behind the scenes providing therapeutic counseling in a professional and respectful manner. She deals effectively with her clients by being direct, fair and firm. She holds her clients accountable and yet, supports and encourages them. Her clinical skills excel and she often goes above and beyond in working with her clients. She even provides counseling sessions for clients after they've graduated from the program. Nancy O'Hara's work in our field continues the attitude and work performance that Robbie Robinson represented."

Our hats' off to you, Nancy O'Hara for this year's RR Award.

Past Recipients

"Going above and beyond the call of duty" is the recurring statement used in describing the work habits of our past award recipients. Here they are.

1983	Dale Fisher
1984	Mike McGrane
1985	Liz Tellers
1986	Joan Cichosz
1987	Lennis Carpentier
1988	Jim Bransford
1989	Helen Trickey
1990	Joseph Adderley
1991	David Mathews
1992	Steve Rancour & Tom Kane
1993	Ken Pugh
1994	Nina Swanson
1995	Wayne Eggleston
1996	Raul Sanchez
1997	Jan Wagener & Roy Adams
1998	Kris McGregor
1999	David Heacock
2000	Dona Woltering
2001	Michelle Moran
2002	Kathy Tarver-King
2003	Paul Stasica
2004	Doreen Robinson
2005	Harriette Manis
2006	Tamara Persaud
2007	Scotty Emanuel
2008	Nancy O'Hara



Minnesota's Fifth Annual Conference on Women Offenders: "Moving from Shame and Blame to Empathy and Accountability"

The prevalence of traumatic experiences in the lives of women offenders is extraordinarily high. Unless appropriately addressed, these experiences may lead to ongoing layering of shame and guilt. Research establishes a direct link between deviant behavior and actions to women who have faced ongoing shame throughout their lifetime. As women experience shame and guilt at higher levels than men, this linkage may be particularly troubling for women offenders. The criminal justice system, while providing "punishment" for guilt, may also contribute to further shame. It is important that professionals learn to help women offenders to overcome shameful pasts, learn to build empathy and become responsible for their actions and choices. Above all, understanding how shame affects corrections clients and how to reduce those actions may contribute to better outcomes for women offenders.

Minnesota's Fifth Annual Conference on Women Offenders: "Moving from Shame and Blame to Empathy and Accountability" will be held on Wednesday, November 12, 2008, at the University of Minnesota Continuing Education Center in St. Paul, Minnesota. "Moving from Shame and Blame to Empathy and Accountability" will feature Dr. Brené Brown, Ph.D., LMSW. Dr. Brown is a member of the research faculty at the University of Houston Graduate College of Social Work and has spent the past eight years studying shame and empathy as a member of the University of Houston Graduate College of Social Work. Dr. Brown will define shame and note the differences between shame, guilt and embarrassment. She will give insight to women's experiences with shame and the difficulties to overcome it, explain the link between shame and deviant or criminal behavior, and provide conference participants with skills and knowledge needed to help women offenders to develop resiliency to shame. The conference will also feature guest speaker Mary T. Whitney, local author, advocate and abuse survivor, to share her personal stories of shame resiliency. This year's conference will reveal the implications of shame for women and how to assist women offenders to overcome shame and find resiliency. This resiliency will lead women to stronger self-esteem and cognitive processing, leading to a higher sense of self-responsibility.

**Conference registrations materials will be available online
by September 15 on the MCCA website.**

Puns: The Purest and Truest Form of Humor

- I wondered why the baseball was getting bigger. Then it hit me.
- Police were called to a daycare where a three-year-old was resisting a rest.
- Did you hear about the guy whose whole left side was cut off? He's all right now.
- The roundest knight at King Arthur's round table was Sir Cumference.
- To write with a broken pencil is pointless.
- When fish are in schools they sometimes take debate.
- The short fortune teller who escaped from prison was a small medium at large.
- A thief who stole a calendar got twelve months.
- A thief fell in wet cement and broke his leg. He became a hardened criminal.
- Thieves who steal corn from a garden could be charged with stalking.
- We'll never run out of math teachers because they always multiply.
- When the smog lifts in Los Angeles, U. C. L. A.
- The math professor went crazy with the blackboard. He did a number on it.
- The professor discovered that her theory of earthquakes was on shaky ground.
- The dead batteries were given out free of charge.
- If you take a laptop computer for a run you could jog your memory.
- A dentist and a manicurist fought tooth and nail.
- What's the definition of a will? (It's a dead give-away).
- A bicycle can't stand alone; it is two tired.
- Time flies like an arrow; fruit flies like a banana.
- A backward poet writes inverse.
- In a democracy it's your vote that counts; in feudalism, it's your Count that votes.
- A chicken crossing the road: poultry in motion.
- If you don't pay your exorcist you can get repossessed.
- With each marriage she got a new name and a dress.
- Show me a piano falling down a mine shaft and I'll show you A-flat miner.
- When a clock is really hungry it goes back four seconds.
- The guy who fell onto an upholstery machine was fully recovered.
- A grenade fell onto a kitchen floor in France, resulted in Linoleum Blownapart.
- You are stuck with your debt if you can't budge it.
- He broke into song because he couldn't find the key.
- A calendar's days are numbered.
- A lot of money is tainted: 'Taint yours, and 'taint mine.
- A boiled egg is hard to beat.
- He had a photographic memory which was never developed.
- A plateau is a high form of flattery.
- Those who get too big for their britches will be exposed in the end.
- When you've seen one shopping center you've seen a mall.
- When she saw her first strands of gray hair, she thought she'd dye.
- Bakers trade bread recipes on a knead to know basis.
- Santa's helpers are subordinate clauses.
- Acupuncture: a jab well done.
- And finally, There was the person who sent forty-two different puns to his friends, with the hope that at least ten of the puns would make them laugh.

No pun in ten did.

Competing Vulnerabilities Under the Human Services Background Studies Act, By Michael Burns and Lindsay Shaw

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A client comes into your office and tells you that she just lost her job at a local nursing home and needs your help to get her job back. She hands you a letter that indicates that she has been "dis-qualified" from working in the nursing home, or any other facility licensed by the Minnesota Department of Human Services (DHS) or the Minnesota Department of Health (MDH), because she did not pass a required background check. She is somewhat confused by the letter, and you have never even heard of someone being disqualified by the state from being able to work. What advice would you give her? Before you can advise your client, you need to understand the law.

What Is Disqualification?

The Human Services Background Studies Act is designed to protect Minnesota's most vulnerable population. After an individual has applied for a license, job, or volunteer opportunity working with vulnerable people, the Minnesota Department of Health and/or the Department of Human Services conducts an extensive background check on that individual. A background study must also be conducted for Minnesota Department of Corrections employees who will be working with children or youth. The background check examines all criminal conviction and arrest records dating back to the age of 13, as well as substantiated reports of maltreatment of minors or vulnerable adults.

If individuals have a disqualifying characteristic in their past, they are not allowed to work with vulnerable populations for a certain period of time, unless they can convince the agency that the disqualifying act did not occur or that they do not pose a risk of harm to vulnerable people.

What Is the Disqualification Process?

There are four different levels of disqualification under the Background Studies Act. The most severe disqualifying acts, such as violent felonies, sex crimes, and involuntary termination of parental rights, result in permanent disqualifications from working with vulnerable people. Other felony crimes result in 15-year disqualifications. Gross misdemeanor crimes carry a 10-year disqualification. Misdemeanors and non-criminal acts, such as maltreatment of a minor or vulnerable adult, carry seven-year disqualification periods.

When the agency discovers that individuals have a disqualifying characteristic in their past, it notifies them that they have been disqualified from working at the position. The individual then has 30 days to respond in writing.

In response, individuals can offer proof that information used to disqualify them was incorrect. In *Moore v. Comm'r of Human Svcs.*, an individual successfully challenged his disqualification because the criminal conviction information used to disqualify him contained erroneous information about the disposition of his criminal conviction.

Individuals can also admit that the disqualifying information is correct and submit information showing that they do not pose a risk of harm to the vulnerable population. There are seven "risk of harm" factors used to evaluate the individual. These factors examine the disqualifying act, the similarity between the victim and the persons served, as well as rehabilitation.

There are four possible outcomes from a written request for reconsideration, several of which allow an individual to continue working. First, the agency may decide that the disqualifying act did not occur, and it will rescind the disqualification. This means that the individual is free to work with no restrictions on that job or any other human services job. Second, the agency may grant a "set-aside," which means that individuals are allowed to work unsupervised at the specific program at which they are currently working. If they desire to work at a different program, they must undergo a new background study.

Competing Vulnerabilities Under the Human Services Background Studies Act, Continued from previous page

Third, the agency may allow a variance, which allows the individual to continue working in a supervised capacity at the specific program. Only an employer can request a variance, not the individual. Finally, the agency may decide that the person continues to pose a risk of harm, and it will uphold the disqualification, which prevents the individual from working at that position.

How Can an Individual Challenge Disqualification?

If the agency upholds the disqualification after reviewing a written request for reconsideration, individuals have several options to challenge their disqualification, depending on the type of disqualifying act. For non-criminal disqualifying acts (such as maltreatment of a minor or vulnerable adult) and disqualifications based on the agency's determination that a disqualifying act likely occurred, the individual is entitled to an administrative hearing.

At the administrative hearing, individuals can contest the underlying determination of a disqualifying act, as well as the conclusion that they pose a risk of harm to vulnerable persons at the job they have been disqualified from. A hearing is only possible if the individual has preserved appeal rights throughout the initial phases of the disqualification process. Assistant attorney generals and county attorneys appear on behalf of the state at these hearings. If the subject loses the fair hearing, he or she can request judicial review and finally appellate review.

No administrative hearing is available for individuals disqualified because of a criminal conviction or an administrative disqualification. The court of appeals has upheld this restriction despite numerous procedural due process challenges, reasoning that the individual was afforded the "full panoply" of due process rights during the proceedings that resulted in his or her conviction. The only remedy available for such individuals is to wait out their disqualification period, assuming that they do not have a disqualification that permanently bars them from working in human services. If the agency does not grant a set-aside, the subject must then file for a writ of certiorari with the court of appeals.

Policy Considerations: Weighing Competition Vulnerabilities

What Are the Interests at Stake?

The Background Studies Act was written to protect the state's young, old, and physically, emotionally, or mentally challenged citizens. Naturally, these individuals cannot properly care for or protect themselves. As such, the law includes several safety precautions for individuals interested in caring for vulnerable Minnesotans.

When evaluating a disqualified individual's request for reconsideration, the agency is required to give preeminent weight to the safety of the individuals to be served over the rights of the disqualified individual. When evaluating the risk of harm factors, any single factor can serve to disqualify an individual. Additionally, when conducting background studies, the agency is authorized to examine an extensive amount of private data, including arrests that were never prosecuted, juvenile criminal records dating back to the age of 13, and county Child Protection files. The standard of proof for determining that a non-conviction disqualifying act occurred is a preponderance of the evidence, not the much higher "beyond a reasonable doubt" standard that applies in criminal cases. Finally, disqualifications can also be based on admissions of a disqualifying offense, an Alford Plea, or an administrative disqualification that never rose to the level of a crime.

Competing Goals

While these safeguards may be understandable, in practice, the sweeping nature of these disqualifications raises strong concerns about the vulnerabilities of the disqualified individuals. When viewing the Background Studies Act and Minnesota's public assistance system from an Olympian perspective, it becomes clear that we have implemented two mutually exclusive goals.

We are requiring public assistance recipients, many of whom have crimes of poverty in their personal history, to transition from welfare to work. Yet we are channeling them into jobs that they later discover they are disqualified from working. Moreover, we have implemented an appeal system that often proves to be too sophisticated for these individuals to fully understand.

Competing Vulnerabilities Under the Human Services Background Studies Act, Continued from previous page

A quick review of the appellants in disqualification appellate case law, as well as an understanding of the clientele seeking legal assistance with the disqualification process through legal aid and volunteer lawyer channels, reveals that most of the disqualified persons are not doctors or nurse practitioners. Rather, they are working at entry-level, low-wage health care jobs, such as personal care attendants, home health aides, and certified nursing assistants, which pay about \$9 to \$14 per hour.

One must be aware of our public benefits system to understand the impact of disqualifications in such jobs. In Minnesota, families are allowed to participate in our welfare system, the Minnesota Family Investment Plan (MFIP), for a total of 60 months in a lifetime. During that time, the state directs participants to enter the workforce and become self-sufficient. Many MFIP job counselors encourage MFIP participants to seek employment in entry-level human services jobs because the demand for health care assistance is so great, and because these jobs pay a livable wage without requiring years of schooling. Most individuals have used their 60 months of MFIP by the time they have transitioned into a job.

Several crimes of poverty, such as theft, issuing a worthless check from one's own checking account, and minor drug crimes, can disqualify an individual from working in human services for up to 15 years. A 2007 legislative amendment has added a non-criminal administrative determination of public assistance fraud as a seven-year disqualification. Many individuals who enter these low-paying health care jobs have lived on the margins of poverty for most of their lives, and they have used public assistance. As a consequence they may have a crime of poverty on their criminal record. These individuals are disqualified from working in human services because of a mistake made in their past, before or even while they were living off of public assistance. Such policies that leave individuals without a job and without a financial safety net can only serve to increase recidivism.

Inadequate Safeguards and Remedies

The safeguards that are built into the disqualification process have proven inadequate for many disqualified individuals. For example, the set-aside process allows individuals to continue working at a job for which they have been disqualified if they prove that they are trustworthy. Fortunately, agencies have been willing to grant set-asides for older crimes of poverty.

But in practice, several flaws have emerged. A set-aside only works if the employer is willing to retain the employee throughout the disqualification and the months (and sometimes years) of reconsideration and appeals. Due to a severe backlog, many background studies are performed only after an individual has been hired and has been working at a facility for several months. Many employers are reluctant to take a chance on a disqualified individual once they receive a copy of the initial disqualification notice, and they end up firing the employee. Many employers have insurance policies or internal policies that prevent them from taking such a leap of faith. Additionally, although individuals may be allowed to continue to work during the reconsideration and appeal process, many employers are unable to provide the level of supervision required by the state because most of these facilities operate with very lean staffing. Therefore, disqualified individuals are either discouraged from seeking a set-aside, or by the time they have done so, the employer has long-since fired them. In practice, set-asides usually only work for individuals who have an established relationship with an employer.

Moreover, a set-aside only applies to the job for which the background study was performed. This means that set-asides rarely help individuals who are seeking new employment.

Consider the case of a legal aid client who was disqualified because of two 10-year-old theft convictions that occurred during a crisis period in her life. She had been a career certified nursing assistant for decades. She was disqualified from her job when the state performed a background check on her. Her employer immediately fired her, even though she had been working at her job for years. The state granted her a set-aside, but her employer would not rehire her. She

Competing Vulnerabilities Under the Human Services Background Studies Act, Continued from previous page

could not find an employer that would hire her knowing that she would receive an initial disqualification from the state. When she went to legal aid, she was destitute. She had been denied unemployment benefits, she was ineligible for MFIP because she had no minor children, and she was not disabled, so could not qualify for other public assistance. Her old job did not pay very well, so she did not have any lasting savings or investments to rely on. She had even been denied a meaningful criminal expungement. Legal aid could not offer a legal remedy for her situation because the state had already granted her the best solution for a conviction-based disqualification. Nothing could prevent future employers from deciding not to hire her.

Variations are another remedy available for disqualified individuals. Under a variance, disqualified individuals are allowed to continue working at their job under some sort of supervision. The problem with variances is that only an employer can request them, not the employee. They are also subject to the same limitations as set-asides: an employer can choose to fire individuals immediately upon learning that they have a disqualification, without regard to a request for reconsideration. In some instances, employers cannot request variances because the employee may be (as in the case of many group homes) the only staff member on duty, and there would be no one to provide supervision. Similarly, because of lean staffing ratios in larger facilities, many employers do not have adequate staff to provide the level of supervision required by the state.

The reconsideration process is supposed to allow disqualified individuals the opportunity to defend themselves. The agencies are mandated to provide instructions on how to request reconsideration. Indeed, individuals have an established property right in their employment, especially if it involves a license; therefore, due process rights attach to individuals participating in the background study process.

However, in practice, the reconsideration process raises procedural concerns, most importantly, in the area of adequate notice and instruction. The initial disqualification letter that agencies send is full of all of the legal information that a lawyer would need to know in order to proceed. The problem is that individuals working in low-wage health care fields typically do not have a post-secondary education; therefore, reading single-spaced, three-page letters that reference subsections of a 50-page statute can be difficult to understand.

Requesting reconsideration in writing can be equally challenging. While there is a hotline that people can call with questions, the notices do not tell individuals that they should seek legal assistance, nor do the notices explain to individuals that the burden of proof is on the disqualified individual to prove that he or she does not pose a risk of harm to vulnerable persons. There are also no examples to draw from.

The stakes are high when requesting written reconsideration, and individuals are usually not aware of them. If individuals have been disqualified because of a conviction, their written response is the only chance they have to defend themselves before they must file for a writ of cert with the court of appeals. If they make a mistake or fail to include important information, they are not allowed to supplement their record on appeal.

For example, disqualified individuals often write "N/A" when answering important questions because they believe that the question does not apply to them. They also mistakenly respond to only one agency, when two or three agencies have been involved, resulting in a loss of their appeal rights by failing to respond to one of the agency notices. Many disqualified individuals have unknowingly forfeited their appeal rights years before they are even working in human services because they did not know that failing to respond to a maltreatment determination from child protection would years later make their disqualifying act conclusive. Finally, some area schools that train people to become CNAs, PCAs, and home health aides do not perform the extensive types of background checks for applicants that meet state requirements. Therefore, some individuals, who have invested months or even years, not to mention thousands of dollars in student loans, in their education, find out either when they are about to enter the clinical portion of their training or after a few months on the job that they have been disqualified based on a DHS-conducted background study.

Competing Vulnerabilities Under the Human Services Background Studies Act, continued

Disparate Impact?

The broad scope of disqualifiers under the Background Studies Act raises questions about the impact of disqualifications on people of color in Minnesota. The agency can use unprosecuted arrest records as a basis to disqualify individuals. Minnesota has notoriously high levels of unprosecuted arrests for people of color. For example, as of 2001, African Americans experienced a disparity in arrest rates compared to whites by a margin of 14 to one for most felonies, and 21 to one for violent crimes in Minnesota. Similar arrest disparities exist for all people of color in Minnesota.

The agency can also use child protection records as a basis to disqualify individuals. Much like arrest rates, involvement in child protection also disproportionately affects people of color in Minnesota. In fact, according to a 2004 Center for the Study of Social Policy report, Minnesota ranked among the worst 16 states in the nation when it came to overrepresentation of African American children placed in foster care.

Accordingly, it is reasonable to conclude that both of these bases for disqualification would have a similar disproportionate effect on people of color.

Using a Preponderance of the Evidence Standard to Disqualify

Perhaps the most troubling part of the Background Studies Act involves using such a low standard of proof to disqualify an individual. Certainly the state would like to prevent violent individuals who escaped prosecution from working with vulnerable people. However, using such a low standard of proof raises several due process considerations for the bulk of people studied.

Beyond looking at convictions, the state can use dismissed criminal charges and even police reports to disqualify an individual under the preponderance standard. As anyone familiar with state and federal criminal procedure knows, police reports are not allowed as substantive evidence in criminal prosecution because they are prepared in anticipation of prosecution and they may be biased. Yet because the state has such a low burden of proof, it can freely use police reports to disqualify. It is also troubling that the state can use very old police reports that would never be used in a criminal prosecution, where a three-year statute of limitations might apply. Thus, witnesses and evidence are very difficult to obtain, making a meaningful defense extremely difficult.

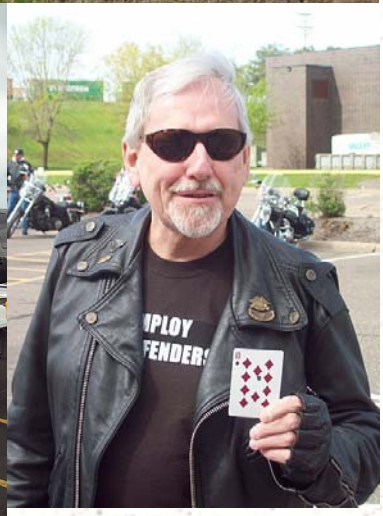
As a result, the fair hearings can turn into just the type of nightmare that the drafters of the rule of evidence intended to avoid. At fair hearings, where the rules of evidence are relaxed, the state can offer the police report as an accurate, contemporaneous account of what actually happened. Under these circumstances, individuals who testify contrary to the contents of an old police report can be (and have been) accused of lying or not being a credible witness because they do not recall precisely what they did several years earlier.

More importantly, considering that careers and livelihoods are at stake for the disqualified individuals, is a preponderance of the evidence standard too low for a disqualification?

Conclusion

The Background Studies Act was written to protect vulnerable Minnesotans. As it has played out in recent years, in addition to protecting vulnerable citizens, it has also created a new type of vulnerable citizen. Individuals who have abandoned a life that involved crime or weaned themselves off of public assistance to become self-sufficient find themselves forced back into poverty without any safety nets. This is why legal aid and volunteer lawyer organizations have become so concerned with the Background Studies law and are making a concerted effort to recruit lawyers to provide legal representation to this new vulnerable population. As the Background Studies Act continues to evolve to better serve our vulnerable citizens, we should also continue to improve the law with the rights of the disqualified individuals in mind.

Motorcycle Run Pictures



Ponderisms

- *Can you cry under water?*
 - *How important does a person have to be before they are considered assassinated instead of just murdered?*
 - *Why do you have to "put your two cents in?" But it's only a "penny for your thoughts?" Where's that extra penny going to?*
 - *Once you're in heaven, do you get stuck wearing the clothes you were buried in for eternity?*
 - *Why does a round pizza come in a square box?*
 - *What disease did cured ham actually have?*
 - *How is it that we put man on the moon before we figured out it would be a good idea to put wheels on luggage?*
 - *Why is it that people say they "slept like a baby" when babies wake up like every two hours?*
 - *If a deaf person has to go to court, is it still called a hearing?*
 - *Why are you IN a movie, but you're ON TV?*
 - *Why do people pay to go up tall buildings and then put money in binoculars to look at things on the ground?*
 - *Why do doctors leave the room while you change? They're going to see you naked anyway.*
 - *Why do toasters always have a setting that burns the toast to a horrible crisp, which no decent human being would eat?*
 - *If Jimmy cracks corn and no one cares, why is there a stupid song about him?*
 - *Can a hearse carrying a corpse drive in the carpool lane ?*
 - *If the professor on Gilligan's Island can make a radio out of a coconut, why can't he fix a hole in a boat?*
 - *Why does Goofy stand erect while Pluto remains on all fours? They're both dogs!*
 - *If Wiley E. Coyote had enough money to buy all that ACME stuff, why didn't he just buy dinner?*
 - *If corn oil is made from corn, and vegetable oil is made from vegetables, what is baby oil made from?*
 - *If electricity comes from electrons, does morality come from morons?*
 - *Do the Alphabet song and Twinkle, Twinkle Little Star have the same tune?*
 - *Why did you just try singing the two songs above?*
 - *Did you ever notice that when you blow in a dog's face, he gets mad at you, but when you take him for a car ride, he sticks his head out the window?*
 - *Are you wondering why you're pondering these?*
-