

Minnesota Background Studies 2018-2019 Supplement: Preponderance of Evidence Questions

This supplement is intended to answer three questions related to the preponderance of evidence standard used in background studies determinations as requested by the background studies taskforce. Each section below answers and provides context on each of the three questions asked by the task force.

The information above each section of tables is intended to provide context and understanding on what data is included in each respective section. There are [Additional Notes and Data Definitions](#) at the end of this packet with more information on specific terms and data points. The tables start at a high level and then progress into more detail in each section as data is disaggregated further.

Question 1: Preponderance of evidence (POE) reviews that were not disqualifying

Taskforce Question: “We are interested in seeing a racially disaggregated breakdown of subjects who received a POE review and who were *not* disqualified.”

POE reviews are conducted by the Legal Counsel’s office in the Office of Inspector General, at the request of researchers in the Background Studies Division. Attorneys review a number of factors to determine if there is a POE—in other words, if it is more likely than not—that a study subject committed a disqualifying crime or conduct. Once a POE is found, that POE determination can be disqualifying for multiple background study determinations for that study subject in the same way a conviction can be disqualifying for multiple background study determinations for a study subject.

The Legal Counsel’s Office keeps a log of POE reviews outside of the NETStudy 2.0 system because NETStudy 2.0 does not currently have functionality to track this work. This log tracks all reviews that were conducted, and whether or not a POE was found. This log does not track the race/ethnicity of study subjects for which a crime or conduct is being reviewed, so the data in [Table 1](#) below cannot be disaggregated by race as requested by the taskforce as this data does not exist.

Table 3 from Overview 3 provides counts of disqualifying crimes and conduct based on a POE in 2018-2019. These counts are related to, but cannot be directly compared to the counts of preponderance of evidence reviews provided in [Table 1](#) below for the following reasons:

- Disqualifying crimes and conduct counted in Table 3 from Overview 3 from 2018-2019 may have had their POE determined in a review that occurred before 2018, and POE reviews conducted in 2018-2019 may not have been used in a disqualifying determination until after 2019.

- One POE determination can be used in multiple background study determinations for the same study subject, so the same POE determination can count as multiple disqualifying crimes and conduct across background study determinations. Therefore, one POE review in [Table 1](#) below may have led to multiple disqualifying crimes and conduct in Table 3 Overview 3 if it was used in multiple background study determinations for the same study subject.

Table 1: Preponderance of evidence reviews by finding, 2018-2019

Year of PoE Review	PoE Found	PoE Not Found	Total Reviews
2018	204	163	367
2019	306	366	672
Total	510	529	1,039

Question 2: Domestic assault disqualifications based on preponderance of evidence (POE)

Taskforce question: “How many disqualifications for domestic assault that used a POE standard were based on first-time offenses?”

There is no way of tracking if a disqualifying offense is a first-time offense in the background studies database. [Table 2](#) below shows the count of all disqualifying crimes and conduct based on a POE of domestic assault in 2018-2019. This table is a subset of the data in Overview 3, Table 6. Note that one POE determination can be used in multiple background study determinations for the same study subject, so it can be counted multiple times in the [Table 2](#). In cases where the same disqualifying information is used in multiple background study determinations, it will be counted for each determination in which it is used as a disqualifying factor.

Table 2: Distinct count of disqualifying domestic assault offenses determined by preponderance of evidence by year, offense type, and race.

Year/Crime or Conduct	African American	Asian or Pacific Islander	Native American	None Provided	Unknown/Other	White	Grand Total
2018	135	<10	<10	<10	25	197	373
609.2242 - DOMESTIC ASSAULT	130	<10	<10	<10	25	196	366
609.2247 - DOMESTIC ASSAULT BY STRANGULATION	<10		<10			<10	<10
2019	227	<10	10	<10	57	186	493
609.2242 - DOMESTIC ASSAULT	217	<10	<10	<10	56	183	478
609.2247 - DOMESTIC ASSAULT BY STRANGULATION	10		<10		<10	<10	15
Grand Total	362	<10	19	12	82	383	866

Question 3: Preponderance of evidence (POE) determinations overturned in administrative hearings

Taskforce question: “How many subjects who were disqualified based on a POE determination were successful at having their disqualification reversed by an administrative law judge?”

As shown in Table 3 of Overview 3, POE determinations were used as a disqualifying factor in background study determinations 498 times in 2018 and 821 times in 2019 for a total of 1,319. Of those, less than 10 were overturned by either an administrative law judge in a contested case hearing or a human services judge in a fair hearing.

Additional Notes and Data Definitions

1. Background Study **data sources** can include, but are not limited to, state criminal history, federal criminal history, Minnesota Court Information System (MNCIS), Minnesota child and adult maltreatment registries, and criminal or maltreatment records from other states.
2. An **eligible determination** means the background study subject was **not** determined to have committed a disqualifying crime or conduct in [Minn. Stat. sec. 245C.15](#)
3. A **disqualified determination** means the background study subject was determined responsible for a disqualifying crime or conduct in [Minn. Stat. sec. 245C.15](#)
4. A **disqualification rescinded – determination now eligible** determination means the initial determination was disqualifying and became eligible upon appeal.
5. A **background study provider application** is the record created by the provider when submitting a background study request. Background study provider applications can be created by providers at any time. If there is already another background study determination in process for the same person, the new background study application will connect to the in process background study determination (provided the background study requirements are met). In addition, existing background study determinations can transfer to new background study provider application submissions. The connection of background study provider applications to existing background study determinations creates efficiencies for study subjects and providers.
6. For an **undetermined determination**, DHS reviews information that was received but does not make an eligibility or disqualification decision on the determination (hence the determination is “undetermined”).
7. **Active roster** means the list of individuals specific to an entity who have been determined eligible to provide services for the entity and who the entity has identified as affiliated. See [Minn. Stat. sec. 245C.02 subd. 17a \(b\)](#)
8. A **rapback notification** (Record of Arrest and Prosecutions Back) is a notification DHS receives about new potentially disqualifying information for a background study subject with an active provider roster affiliation.
9. An **eligible rapback determination** means that the information received through the rapback process was found to belong to the study subject, but after review was determined to not be a disqualifying crime or conduct.
10. The Race/Ethnicity categories captured in the Background Studies system and used in the summarized data above are collected for purposes of a background study fingerprint study. These categories are determined by the FBI CJIS policy and must be used for fingerprint background studies. DHS does not collect other race/ethnicity data that would allow for different or more detailed break outs of racial or ethnic groups.
11. **Risk of Harm** is the assessed immediate risk of harm the determination subject poses to the persons receiving services that the subject will have direct contact with or direct access to.
 - a. **Low:** It is determined that “an individual studied does not pose a risk of harm that requires continuous, direct supervision”. A low risk of harm individual is allowed to continue providing services during their reconsideration request period and has 15 days to request a reconsideration. ([Minn. Stat. sec. 245C.17 subd. 3](#))
 - b. **Medium:** It is determined that “an individual studied poses a risk of harm that requires continuous, direct supervision”. A medium risk of harm individual is allowed to continue providing services under continuous and direct supervision during their reconsideration request period and has 30 days to request a reconsideration. ([Minn. Stat. sec. 245C.17 subd. 3](#))
 - c. **High:** It is determined that “an individual studied poses an imminent risk of harm”. A high risk of harm individual must be immediately removed from service and has 30 days to request a reconsideration. ([Minn. Stat. sec. 245C.17 subd. 3](#))

- d. **Not Applicable:** The risk of harm category in cases where an individual is not allowed to provide services until either an eligible determination, a set aside, or a variance has been obtained
12. A **conviction disqualification** is based on a conviction, regardless of whether it was preceded by a plea or a trial.
 13. An **admission disqualification** is based on guilty pleas without convictions, guilty pleas with stays of adjudication, or admissions in juvenile court without adjudication.
 14. An **Alford Plea disqualification** is based on Alford pleas without convictions or with stays of adjudication, or Alford pleas in juvenile court without adjudication. An Alford Plea is similar to an out of state offense with a no contest plea.
 15. A **preponderance of disqualification** is based on a determination by DHS that it is more likely than not that investigation, court, maltreatment, and other relevant records support a finding that the subject committed disqualifying conduct
 16. A **maltreatment disqualification** is based on a determination by DHS that records of substantiated maltreatment or substantiated failure to report maltreatment meet the definitions of serious and/or recurring in [Minn. Stat. sec. 245C.02](#)
 17. An **Involuntary Termination of Parental Rights disqualification** is based on terminations of parental rights under the standards of [Minn. Stat. sec. 260C.301 subd. 1\(b\)](#) or subd. 3
 18. An **administrative disqualification** is based on a stipulation or finding by a judge that the subject is disqualified for wrongfully obtaining assistance under [Minn. Stat. sec. 256.98 subd. 8](#)