

## Criminals; Rehabilitation

### CHAPTER 364

#### CRIMINAL OFFENDERS; REHABILITATION

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#### 364.01 POLICY.

The legislature declares that it is the policy of the state of Minnesota to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the resumption of the responsibilities of citizenship. The opportunity to secure employment or to pursue, practice, or engage in a meaningful and profitable trade, occupation, vocation, profession or business is essential to rehabilitation and the resumption of the responsibilities of citizenship.

**History:** 1974 c 298 s 1

#### 364.02 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 364.01 to 364.10, the terms defined in this section have the meanings given them.

Subd. 2. **Occupation.** "Occupation" includes all occupations, trades, vocations, professions, businesses, or employment of any kind for which a license is required to be issued by the state of Minnesota, its agencies, or political subdivisions.

Subd. 3. **License.** "License" includes all licenses, permits, certificates, registrations, or other means required to engage in an occupation which are granted or issued by the state of Minnesota, its agents or political subdivisions before a person can pursue, practice, or engage in any occupation.

Subd. 4. **Public employment.** "Public employment" includes all employment with the state of Minnesota, its agencies, or political subdivisions.

Subd. 5. **Conviction of crime or crimes.** "Conviction of crime or crimes" shall be limited to convictions of felonies, gross misdemeanors, and misdemeanors for which a jail sentence may be imposed. No other criminal conviction shall be considered.

Subd. 6. **Hiring or licensing authority.** "Hiring or licensing authority" shall mean the person, board, commission, or department of the state of Minnesota, its agencies or political subdivisions, responsible by law for the hiring of persons for public employment or the licensing of persons for occupations.

**History:** 1974 c 298 s 2

**364.021 PUBLIC EMPLOYMENT; CONSIDERATION OF CRIMINAL RECORDS.**

(a) A public employer may not inquire into or consider the criminal record or criminal history of an applicant for public employment until the applicant has been selected for an interview by the employer.

(b) This section does not apply to the Department of Corrections or to public employers who have a statutory duty to conduct a criminal history background check or otherwise take into consideration a potential employee's criminal history during the hiring process.

(c) This section does not prohibit a public employer from notifying applicants that law or the employer's policy will disqualify an individual with a particular criminal history background from employment in particular positions.

**History:** 2009 c 59 art 5 s 11

**364.03 RELATION OF CONVICTION TO EMPLOYMENT OR OCCUPATION.**

Subdivision 1. **No disqualification from licensed occupations.** Notwithstanding any other provision of law to the contrary, no person shall be disqualified from public employment, nor shall a person be disqualified from pursuing, practicing, or engaging in any occupation for which a license is required solely or in part because of a prior conviction of a crime or crimes, unless the crime or crimes for which convicted directly relate to the position of employment sought or the occupation for which the license is sought.

Subd. 2. **Conviction relating to public employment sought.** In determining if a conviction directly relates to the position of public employment sought or the occupation for which the license is sought, the hiring or licensing authority shall consider:

- (1) the nature and seriousness of the crime or crimes for which the individual was convicted;
- (2) the relationship of the crime or crimes to the purposes of regulating the position of public employment sought or the occupation for which the license is sought;
- (3) the relationship of the crime or crimes to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the position of employment or occupation.

Subd. 3. **Evidence of rehabilitation.** (a) A person who has been convicted of a crime or crimes which directly relate to the public employment sought or to the occupation for which a license is sought shall not be disqualified from the employment or occupation if the person can show competent evidence of sufficient rehabilitation and present fitness to perform the duties of the public employment sought or the occupation for which the license is sought. Sufficient evidence of rehabilitation may be established by the production of:

- (1) a copy of the local, state, or federal release order; and
- (2) evidence showing that at least one year has elapsed since release from any local, state, or federal correctional institution without subsequent conviction of a crime; and evidence showing compliance with all terms and conditions of probation or parole; or
- (3) a copy of the relevant Department of Corrections discharge order or other documents showing completion of probation or parole supervision.

(b) In addition to the documentary evidence presented, the licensing or hiring authority shall consider any evidence presented by the applicant regarding:

- (1) the nature and seriousness of the crime or crimes for which convicted;

(2) all circumstances relative to the crime or crimes, including mitigating circumstances or social conditions surrounding the commission of the crime or crimes;

(3) the age of the person at the time the crime or crimes were committed;

(4) the length of time elapsed since the crime or crimes were committed; and

(5) all other competent evidence of rehabilitation and present fitness presented, including, but not limited to, letters of reference by persons who have been in contact with the applicant since the applicant's release from any local, state, or federal correctional institution.

**History:** 1974 c 298 s 3; 1986 c 444

#### **364.04 AVAILABILITY OF RECORDS.**

The following criminal records shall not be used, distributed, or disseminated by the state of Minnesota, its agents or political subdivisions in connection with any application for public employment nor in connection with an application for a license:

(1) Records of arrest not followed by a valid conviction.

(2) Convictions which have been, pursuant to law, annulled or expunged.

(3) Misdemeanor convictions for which no jail sentence can be imposed.

**History:** 1974 c 298 s 4

#### **364.05 NOTIFICATION UPON DENIAL OF EMPLOYMENT OR DISQUALIFICATION FROM OCCUPATION.**

If a hiring or licensing authority denies an individual a position of public employment or disqualifies the individual from pursuing, practicing, or engaging in any occupation for which a license is required, solely or in part because of the individual's prior conviction of a crime, the hiring or licensing authority shall notify the individual in writing of the following:

(1) the grounds and reasons for the denial or disqualification;

(2) the applicable complaint and grievance procedure as set forth in section 364.06;

(3) the earliest date the person may reapply for a position of public employment or a license; and

(4) that all competent evidence of rehabilitation presented will be considered upon reapplication.

**History:** 1974 c 298 s 5

#### **364.06 VIOLATIONS, PROCEDURE.**

Any complaints or grievances concerning violations of sections 364.01 to 364.10 shall be processed and adjudicated in accordance with the procedures set forth in chapter 14, the Administrative Procedure Act.

**History:** 1974 c 298 s 6; 1982 c 424 s 130

#### **364.07 APPLICATION.**

The provisions of sections 364.01 to 364.10 shall prevail over any other laws and rules which purport to govern the granting, denial, renewal, suspension, or revocation of a license or the initiation, suspension, or termination of public employment on the grounds of conviction of a crime or crimes. In deciding to grant, deny, revoke, suspend, or renew a license, or to deny,

suspend, or terminate public employment for a lack of good moral character or the like, the hiring or licensing authority may consider evidence of conviction of a crime or crimes but only in the same manner and to the same effect as provided for in sections 364.01 to 364.10. Nothing in sections 364.01 to 364.10 shall be construed to otherwise affect relevant proceedings involving the granting, denial, renewal, suspension, or revocation of a license or the initiation, suspension, or termination of public employment.

**History:** 1974 c 298 s 7; 1985 c 248 s 70

### **364.08 PRACTICE OF LAW; EXCEPTION.**

This chapter shall not apply to the practice of law or judicial branch employment; but nothing in this section shall be construed to preclude the Supreme Court, in its discretion, from adopting the policies set forth in this chapter.

**History:** 1974 c 298 s 8; 2009 c 83 art 2 s 26

### **364.09 EXCEPTIONS.**

(a) This chapter does not apply to the licensing process for peace officers; to law enforcement agencies as defined in section 626.84, subdivision 1, paragraph (f); to fire protection agencies; to eligibility for a private detective or protective agent license; to the licensing and background study process under chapters 245A and 245C; to eligibility for school bus driver endorsements; to eligibility for special transportation service endorsements; to eligibility for a commercial driver training instructor license, which is governed by section 171.35 and rules adopted under that section; to emergency medical services personnel, or to the licensing by political subdivisions of taxicab drivers, if the applicant for the license has been discharged from sentence for a conviction within the ten years immediately preceding application of a violation of any of the following:

(1) sections 609.185 to 609.21, 609.221 to 609.223, 609.342 to 609.3451, or 617.23, subdivision 2 or 3;

(2) any provision of chapter 152 that is punishable by a maximum sentence of 15 years or more; or

(3) a violation of chapter 169 or 169A involving driving under the influence, leaving the scene of an accident, or reckless or careless driving.

This chapter also shall not apply to eligibility for juvenile corrections employment, where the offense involved child physical or sexual abuse or criminal sexual conduct.

(b) This chapter does not apply to a school district or to eligibility for a license issued or renewed by the Board of Teaching or the commissioner of education.

(c) Nothing in this section precludes the Minnesota Police and Peace Officers Training Board or the state fire marshal from recommending policies set forth in this chapter to the attorney general for adoption in the attorney general's discretion to apply to law enforcement or fire protection agencies.

(d) This chapter does not apply to a license to practice medicine that has been denied or revoked by the Board of Medical Practice pursuant to section 147.091, subdivision 1a.

(e) This chapter does not apply to any person who has been denied a license to practice chiropractic or whose license to practice chiropractic has been revoked by the board in accordance with section 148.10, subdivision 7.

**History:** 1974 c 298 s 9; 1983 c 304 s 5; 1986 c 444; 1Sp1986 c 1 art 9 s 28; 1987 c 378 s 16; 1989 c 85 s 1; 1989 c 171 s 8; 1989 c 290 art 8 s 2; 1990 c 542 s 16; 1991 c 265 art 9 s 69; 1992 c 499 art 8 s 24; 1992 c 578 s 54; 1993 c 159 s 1; 1995 c 18 s 12; 1995 c 226 art 3 s 45; 1997 c 248 s 44; 1Sp1997 c 2 s 58; 1998 c 398 art 5 s 55; 1999 c 191 s 1; 2000 c 478 art 2 s 7; 2001 c 144 s 1; 2003 c 15 art 1 s 33; 2003 c 130 s 12; 2005 c 10 art 2 s 4; 2010 c 349 s 2

### **364.10 VIOLATION OF CIVIL RIGHTS.**

Violation of the rights established in sections 364.01 to 364.10 shall constitute a violation of a person's civil rights.

**History:** 1974 c 298 s 10