

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2719 Session of
2008

INTRODUCED BY DeLUCA, CONKLIN, CRUZ, FRANKEL, GEIST, HARHART,
HARKINS, KORTZ, MAHONEY, McGEEHAN, McILVAINE SMITH, MELIO,
MURT, MYERS, RAPP, READSHAW, ROCK, SIPTROTH, K. SMITH,
SONNEY, VEREB, WOJNAROSKI, YOUNGBLOOD AND MENSCH,
JULY 23, 2008

REFERRED TO COMMITTEE ON EDUCATION, JULY 23, 2008

AN ACT

1 Amending the act of March 10, 1949 (P.L.30, No.14), entitled "An
2 act relating to the public school system, including certain
3 provisions applicable as well to private and parochial
4 schools; amending, revising, consolidating and changing the
5 laws relating thereto," requiring current school employees to
6 undergo criminal background checks.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Section 111 of the act of March 10, 1949 (P.L.30,
10 No.14), known as the Public School Code of 1949, amended
11 December 19, 1990 (P.L.1362, No.211), December 23, 2003
12 (P.L.304, No.48), July 11, 2006 (P.L.1092, No.114), and July 20,
13 2007 (P.L.278, No.45), is amended to read:

14 Section 111. Background Checks of Employees and Prospective
15 Employees; Conviction of Employees of Certain Offenses.--(a) This
16 section shall apply to all prospective employees of public and
17 private schools, intermediate units and area vocational-
18 technical schools, including independent contractors and their

1 employees, except those employees and independent contractors and
2 their employees who have no direct contact with children. This
3 subsection shall expire March 31, 2007.

4 (a.1) Beginning April 1, 2007, this section shall apply to
5 all prospective employees of public and private schools,
6 intermediate units and area vocational-technical schools,
7 including, but not limited to, teachers, substitutes, janitors,
8 cafeteria workers, independent contractors and their employees,
9 except those employees and independent contractors and their
10 employees who have no direct contact with children.

11 (1) Beginning April 1, 2007, this section shall apply to bus
12 drivers offered employment by a school district, private school,
13 nonpublic school, intermediate unit or area vocational-technical
14 school or by an independent contractor.

15 (2) Beginning April 1, 2007, this section shall apply to
16 student teacher candidates assigned to all public and private
17 schools, intermediate units and area vocational-technical
18 schools.

19 (3) For purposes of this section, "student teacher
20 candidate" shall mean an individual participating in a classroom
21 teaching, internship, clinical or field experience who, as part
22 of a program for the initial or advanced preparation of
23 professional educators, performs classroom teaching or assists
24 in the education program in a public or private school,
25 intermediate unit or area vocational-technical school under the
26 supervision of educator preparation program faculty.

27 (4) Prior to a student teacher candidate's participation in
28 any classroom teaching, internship, clinical or field
29 experience, that candidate shall provide to the administrator of
30 his or her educator preparation program all criminal history

1 record information required of an employe or prospective employe
2 who is subject to this section.

3 (5) The student teacher candidate may not participate in any
4 classroom teaching, internship, clinical or field experience if
5 this section would prohibit an employe or prospective employe
6 subject to this section from being employed under those
7 circumstances.

8 (6) During the course of a student teacher candidate's
9 participation in an educator preparation program, the
10 administrator of the student teacher candidate's educator
11 preparation program shall maintain a copy of the criminal
12 history record information that was provided by the student
13 teacher candidate. The penalty provisions of subsection (g)
14 shall be applicable to the administrator of a student teacher
15 candidate's educator preparation program.

16 (7) If a student teacher candidate is continuously enrolled
17 in an educator preparation program, the criminal history record
18 information initially submitted by that candidate to that
19 program shall remain valid during that period of enrollment. If
20 a student teacher candidate's enrollment in an educator
21 preparation program is interrupted or if that candidate
22 transfers to another educator preparation program, the candidate
23 shall provide to the administrator of his or her educator
24 preparation program all criminal history record information
25 required of an employe who is subject to this section.

26 (b) Administrators of public and private schools,
27 intermediate units and area vocational-technical schools shall
28 require prospective employes to submit with their employment
29 application, pursuant to 18 Pa.C.S. Ch.91 (relating to criminal
30 history record information), a report of criminal history record

1 information from the Pennsylvania State Police or a statement
2 from the Pennsylvania State Police that the State Police central
3 repository contains no such information relating to that person.
4 Such criminal history record information shall be limited to
5 that which is disseminated pursuant to 18 Pa.C.S. § 9121(b)(2)
6 (relating to general regulations) and shall be no more than one
7 (1) year old. An applicant may submit a copy of the required
8 information with the application for employment. Administrators
9 shall maintain a copy of the required information and shall
10 require each applicant to produce the original document prior to
11 employment. Administrators shall require contractors to produce
12 the original document for each prospective employee of such
13 contractor prior to employment.

14 (c) Where the applicant has not been a resident of this
15 Commonwealth for at least two (2) years immediately preceding
16 the date of application for employment, administrators shall
17 require the applicant to submit with the application for
18 employment a set of fingerprints which may be submitted to the
19 Federal Bureau of Investigation for Federal criminal history
20 record information pursuant to the Federal Bureau of
21 Investigation appropriation of Title II of Public Law 92-544, 86
22 Stat. 1115 or a copy of such Federal criminal history record.
23 Administrators shall forward the set of fingerprints for the
24 Federal criminal history record to the Department of Education.
25 The Department of Education shall be the intermediary for the
26 purposes of this section. The Department of Education shall
27 return the Federal criminal history record to the applicant.
28 When the applicant provides a copy of the Federal criminal
29 history record, it shall be no more than one (1) year old.
30 Administrators shall maintain a copy of the required information

1 and shall require each applicant to produce a Federal criminal
2 history record that may not be more than one (1) year old at the
3 time of employment. The original Federal criminal history record
4 shall be returned to the applicant. This subsection shall expire
5 March 31, 2007.

6 (c.1) Beginning April 1, 2007, administrators shall require
7 the applicant to submit with the application for employment a
8 copy of the Federal criminal history record in a manner
9 prescribed by the Department of Education. At a minimum, the
10 Department of Education shall prescribe a method for applicants
11 to submit a set of fingerprints to be transmitted to the Federal
12 Bureau of Investigation for Federal criminal history record
13 information pursuant to the Federal Bureau of Investigation
14 appropriation of Title II of Public Law 92-544, 86 Stat. 1115.
15 When the applicant provides a copy of the Federal criminal
16 history record, it shall be no more than one (1) year old.
17 Administrators shall maintain a copy of the required information
18 and shall require each applicant to produce a Federal criminal
19 history record that may not be more than one (1) year old at the
20 time of employment. The original Federal criminal history record
21 shall be returned to the applicant.

22 (d) The State Board of Education shall, in the manner
23 provided by law, promulgate the regulations necessary to carry
24 out this section. The regulations shall provide for the
25 confidentiality of criminal history record information obtained
26 pursuant to this act.

27 (e) No person subject to this act shall be employed in a
28 public or private school, intermediate unit or area vocational-
29 technical school where the report of criminal history record
30 information indicates the applicant has been convicted, within

1 five (5) years immediately preceding the date of the report, of
2 any of the following offenses:

3 (1) An offense under one or more of the following provisions
4 of Title 18 of the Pennsylvania Consolidated Statutes:

5 Chapter 25 (relating to criminal homicide).

6 Section 2702 (relating to aggravated assault).

7 Former section 2709(b) (relating to stalking).

8 Section 2709.1 (relating to stalking).

9 Section 2901 (relating to kidnapping).

10 Section 2902 (relating to unlawful restraint).

11 Section 3121 (relating to rape).

12 Section 3122.1 (relating to statutory sexual assault).

13 Section 3123 (relating to involuntary deviate sexual
14 intercourse).

15 Section 3124.1 (relating to sexual assault).

16 Section 3125 (relating to aggravated indecent assault).

17 Section 3126 (relating to indecent assault).

18 Section 3127 (relating to indecent exposure).

19 Section 4302 (relating to incest).

20 Section 4303 (relating to concealing death of child).

21 Section 4304 (relating to endangering welfare of
22 children).

23 Section 4305 (relating to dealing in infant children).

24 A felony offense under section 5902(b) (relating to
25 prostitution and related offenses).

26 Section 5903(c) or (d) (relating to obscene and other
27 sexual materials and performances).

28 Section 6301 (relating to corruption of minors).

29 Section 6312 (relating to sexual abuse of children).

30 (2) An offense designated as a felony under the act of April

1 14, 1972 (P.L.233, No.64), known as "The Controlled Substance,
2 Drug, Device and Cosmetic Act."

3 (3) An out-of-State or Federal offense similar in nature to
4 those crimes listed in clauses (1) and (2).

5 (f) The requirements of this section shall not apply to
6 employes of public and private schools, intermediate units and
7 area vocational-technical schools who meet all the following
8 requirements:

9 (1) The employes are under twenty-one (21) years of age.

10 (2) They are employed for periods of ninety (90) days or
11 less.

12 (3) They are a part of a job development and/or job training
13 program funded in whole or in part by public or private sources.
14 Once employment of a person who meets these conditions extends
15 beyond ninety (90) days, all requirements of this section shall
16 take effect.

17 (g) An administrator, or other person responsible for
18 employment decisions in a school or other institution under this
19 section who wilfully fails to comply with the provisions of this
20 section commits a violation of this act and shall be subject to
21 civil penalty as provided in this section.

22 (1) The department shall have jurisdiction to determine
23 violators of this section and may, following a hearing, assess a
24 civil penalty not to exceed two thousand five hundred dollars
25 (\$2,500).

26 (2) The civil penalty shall be payable to the Commonwealth.

27 (h) [No] A person employed in a public or private school [on
28 the effective date of this section shall be required to],
29 intermediate unit or vocational-technical school, having direct
30 contact with children attending any of these entities, shall

1 obtain the information required [herein] under this section once
2 every five (5) years as a condition of continued employment. Any
3 person who has once obtained the information required under this
4 section may transfer to another school in the same district or
5 established and supervised by the same organization and shall
6 not be required to obtain additional reports before making such
7 transfer.

8 (i) Notwithstanding subsections (b), (c) and (c.1),
9 administrators, before April 1, 2007, may employ in-State
10 applicants on a provisional basis for a single period not to
11 exceed thirty (30) days and may employ out-of-State applicants
12 on a provisional basis for a single period not to exceed ninety
13 (90) days and, after March 31, 2007, may employ any applicants
14 on a provisional basis for a single period not to exceed ninety
15 (90) days, except during a lawful strike proceeding under the
16 provisions of the act of July 23, 1970 (P.L.563, No.195), known
17 as the "Public Employe Relations Act," provided that all of the
18 following conditions are met:

19 (1) the applicant has applied for the information required
20 under subsection (b) and, where applicable, under subsection (c)
21 or (c.1) and the applicant provides a copy of the appropriate
22 completed request forms to the administrator;

23 (2) the administrator has no knowledge of information
24 pertaining to the applicant which would disqualify him from
25 employment pursuant to subsection (e);

26 (3) the applicant swears or affirms in writing that he is
27 not disqualified from employment pursuant to subsection (e);

28 (4) if the information obtained pursuant to subsection (b),
29 (c) or (c.1) reveals that the applicant is disqualified from
30 employment pursuant to subsection (e), the applicant shall be

1 suspended and subject to termination proceedings as provided for
2 by law; and

3 (5) the administrator requires that the applicant not be
4 permitted to work alone with children and that the applicant
5 work in the immediate vicinity of a permanent employe.

6 Section 2. This act shall take effect in 60 days.