

CHAPTER 119

AN ACT concerning criminal history record checks and amending P.L.1986, c.116, P.L.1989, c.104, P.L.1989, c.229 and P.L.1998, c.31.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 2 of P.L.1989, c.229 (C.18A:6-4.14) is amended to read as follows:

C.18A:6-4.14 Criminal history record check for applicant for nonpublic school employment.

2. An applicant for employment or service in any of the positions covered by this act shall submit to the Commissioner of Education his or her name, address and fingerprints taken in accordance with procedures established by the commissioner. The commissioner is hereby authorized to exchange fingerprint data with and to receive criminal history record information from the Federal Bureau of Investigation and the Division of State Police for use in making the determinations required by this act. No criminal history record check shall be performed pursuant to this act unless the applicant shall have furnished his or her written consent to such a check. The applicant shall bear the cost for the criminal history record check, including all costs for administering and processing the check.

2. Section 3 of P.L.1989, c.229 (C.18A:6-4.15) is amended to read as follows:

C.18A:6-4.15 Determination, reporting of qualification; written notice, notice of pending charge.

3. The commissioner shall apply the same requirements, procedures and standards and shall proceed in the same manner as is prescribed in P.L.1986, c.116 (C.18A:6-7.1 et seq.) for determining whether the applicant would be qualified or disqualified for employment in the public schools and shall inform the applicant of his determination in writing. The commissioner shall also provide written notification to the chief administrator of the nonpublic school, which requires the criminal history record check as a condition of employment, of his determination as to whether the candidate would be qualified or disqualified for employment in the public schools.

Following qualification for employment pursuant to this section, the State Bureau of Identification shall immediately forward to the Commissioner of Education any information which the bureau receives on a charge pending against an employee of the nonpublic school which requires a criminal history record check as a condition of employment. If the charge is for one of the crimes or offenses enumerated in section 1 of P.L.1986, c.116 (C.18A:6-7.1), the commissioner shall notify the chief administrator of the nonpublic school.

3. Section 1 of P.L.1986, c.116 (C.18A:6-7.1) is amended to read as follows:

C.18A:6-7.1 Criminal record check in public school employment.

1. A facility, center, school, or school system under the supervision of the Department of Education and board of education which cares for, or is involved in the education of children under the age of 18 shall not employ or contract for the services of any teaching staff member or substitute teacher, teacher aide, child study team member, school physician, school nurse, custodian, school maintenance worker, cafeteria worker, school law enforcement officer, school secretary or clerical worker or any other person serving in a position which involves regular contact with pupils unless the employer has first determined consistent with the requirements and standards of this act, that no criminal history record information exists on file in the Federal Bureau of Investigation, Identification Division, or the State Bureau of Identification which would disqualify that individual from being employed or utilized in such capacity or position. An individual employed by a board of education or a school bus contractor holding a contract with a board of education, in the capacity of a school bus driver, shall be required to meet the criminal history record requirements pursuant to section 6 of P.L.1989, c.104 (C.18A:39-19.1). This section shall not apply to any individual who provides services on a voluntary basis.

An individual, except as provided in subsection g. of this section, shall be permanently disqualified from employment or service under this act if the individual's criminal history record check reveals a record of conviction for any crime of the first or second degree; or

- a. An offense as set forth in chapter 14 of Title 2C of the New Jersey Statutes, or as set

forth in N.J.S.2C:24-4 and 2C:24-7, or as set forth in R.S.9:6-1 et seq., or as set forth in N.J.S.2C:29-2; or

b. An offense involving the manufacture, transportation, sale, possession, distribution or habitual use of a "controlled dangerous substance" as defined in the "Comprehensive Drug Reform Act of 1987," N.J.S.2C:35-1 et al. or "drug paraphernalia" as defined pursuant to N.J.S.2C:36-1 et seq.; or

c. (1) A crime involving the use of force or the threat of force to or upon a person or property including, but not limited to, robbery, aggravated assault, stalking, kidnapping, arson, manslaughter and murder; or

(2) A crime as set forth in chapter 39 of Title 2C of the New Jersey Statutes, a third degree crime as set forth in chapter 20 of Title 2C of the New Jersey Statutes, or a crime as listed below:

Recklessly endangering another person	N.J.S.2C:12-2
Terroristic threats	N.J.S.2C:12-3
Criminal restraint	N.J.S.2C:13-2
Luring, enticing child into motor vehicle, structure or isolated area	P.L.1993, c.291
Causing or risking widespread injury or damage	N.J.S.2C:17-2
Criminal mischief	N.J.S.2C:17-3
Burglary	N.J.S.2C:18-2
Usury	N.J.S.2C:21-19
Threats and other improper influence	N.J.S.2C:27-3
Perjury and false swearing	N.J.S.2C:28-3
Resisting arrest	N.J.S.2C:29-2
Escape	N.J.S.2C:29-5;

or

(3) Conspiracy to commit or an attempt to commit any of the crimes described in this act.

d. For the purposes of this section, a conviction exists if the individual has at any time been convicted under the laws of this State or under any similar statutes of the United States or any other state for a substantially equivalent crime or other offense.

e. Notwithstanding the provisions of this section, an individual shall not be disqualified from employment or service under this act on the basis of any conviction disclosed by a criminal record check performed pursuant to this act without an opportunity to challenge the accuracy of the disqualifying criminal history record.

f. When charges are pending for a crime or any other offense enumerated in this section, the employing board of education shall be notified that the candidate shall not be eligible for employment until the commissioner has made a determination regarding qualification or disqualification upon adjudication of the pending charges.

g. This section shall first apply to criminal history record checks conducted on or after the effective date of P.L.1998, c.31 (C.18A:6-7.1c et al.); except that in the case of an individual employed by a board of education or a contracted service provider who is required to undergo a check upon employment with another board of education or contracted service provider, the individual shall be disqualified only for the following offenses:

(1) any offense enumerated in this section prior to the effective date of P.L.1998, c.31 (C.18A:6-7.1c et al.); and

(2) any offense enumerated in this section which had not been enumerated in this section prior to the effective date of P.L.1998, c.31 (C.18A:6-7.1c et al.), if the person was convicted of that offense on or after the effective date of that act.

4. Section 2 of P.L.1986, c.116 (C.18A:6-7.2) is amended to read as follows:

C.18A:6-7.2 Finger printing.

2. An applicant for employment or service in any of the positions covered by this act shall submit to the Commissioner of Education his or her name, address and fingerprints taken in

accordance with procedures established by the commissioner. The Commissioner of Education is hereby authorized to exchange fingerprint data with and receive criminal history record information from the federal Bureau of Investigation and the Division of State Police for use in making the determinations required by this act. No criminal history record check shall be performed pursuant to this act unless the applicant shall have furnished his or her written consent to such a check. The applicant shall bear the cost for the criminal history record check, including all costs for administering and processing the check.

5. Section 13 of P.L.1998, c.31 (C.18A:6-7.2a) is amended to read as follows:

C.18A:6-7.2a Authority of commissioner.

13. The Commissioner of Education is authorized to:

- a. receive all criminal history data necessary to complete the criminal history records check as required pursuant to P.L.1986, c.116 (C.18A:6-7.1 et seq.) and section 6 of P.L.1989, c.104 (C.18A:39-19.1), or as permitted pursuant to P.L.1989, c.229 (C.18A:6-4.13 et seq.);
- b. receive all data in accordance with section 3 of P.L.1986, c.116 (C.18A:6-7.3), section 6 of P.L.1989, c.104 (C.18A:39-19.1) and section 3 of P.L.1989, c. 229 (C.18A:6-4.15) on charges pending against an employee or school bus driver who has previously undergone a criminal history records check; and
- c. adjust the fees set by the Department of Education for the criminal history records checks.

6. Section 3 of P.L.1986, c.116 (C.18A:6-7.3) is amended to read as follows:

C.18A:6-7.3 Notice to applicant; notice of pending charges.

3. Upon receipt of the criminal history record information for an applicant from the Federal Bureau of Investigation and the Division of State Police, the Commissioner of Education shall notify the applicant, in writing, of the applicant's qualification or disqualification for employment or service under this act. If the applicant is disqualified, the convictions which constitute the basis for the disqualification shall be identified in the written notice to the applicant. The applicant shall have 14 days from the date of the written notice of disqualification to challenge the accuracy of the criminal history record information. If no challenge is filed or if the determination of the accuracy of the criminal history record information upholds the disqualification, the commissioner shall notify the employing board of education that the applicant has been disqualified from employment, and a copy of the written notice of disqualification for applicants who hold a certificate issued by the State Board of Examiners shall be forwarded to that board.

The commissioner is authorized to share all criminal history record information regarding teaching staff members with the State Board of Examiners. In addition, the commissioner is authorized to share criminal history record information of an applicant from the Federal Bureau of Investigation or the State Bureau of Identification with the appropriate court in order to obtain copies of the judgment of conviction and such other documents as the commissioner deems necessary to confirm the completeness and accuracy of the record.

Following qualification for employment pursuant to this section, the State Bureau of Identification shall immediately forward to the Commissioner of Education any information which the bureau receives on a charge pending against an employee. If the charge is for one of the crimes or offenses enumerated in section 1 of P.L.1986, c.116 (C.18A:6-7.1), the commissioner shall notify the employing board of education or contractor, and the board or contractor shall take appropriate action. If the pending charge results in conviction, the employee shall not be eligible for continued employment.

7. Section 6 of P.L.1989, c.104 (C.18A:39-19.1) is amended to read as follows:

C.18A:39-19.1 Bus drivers required to submit certain information to commissioner; notice of pending charges.

6. a. Prior to employment as a school bus driver, and upon application for renewal of a school bus driver's license, a bus driver shall submit to the Commissioner of Education his or her name, address and fingerprints taken on standard fingerprint cards by a law enforcement agency. No criminal history record check shall be furnished without his or her written consent to such a check. The applicant shall bear the cost for the criminal history record check, including all costs for administering and processing the check.

Upon receipt of the criminal history record information for an applicant from the Federal Bureau of Investigation and the Division of State Police, the Commissioner of Education shall notify the applicant, in writing, of the applicant's qualification or disqualification as a school bus driver. If the applicant is disqualified, the convictions which constitute the basis for the disqualification shall be identified in the written notice to the applicant. A school bus driver, except as provided in subsection e. of this section, shall be permanently disqualified from employment or service if the individual's criminal history record reveals a record of conviction for which public school employment candidates are disqualified pursuant to section 1 of P.L.1986, c.116 (C.18A:6-7.1).

Following qualification for employment as a school bus driver pursuant to this section, the State Bureau of Identification shall immediately forward to the Commissioner of Education any information which the bureau receives on a charge pending against the school bus driver. If the charge is for one of the crimes or offenses enumerated in section 1 of P.L.1986, c.116 (C.18A:6-7.1), the commissioner shall notify the employing board of education or contractor, and the board or contractor shall take appropriate action. If the pending charge results in conviction, the school bus driver shall not be eligible for continued employment.

A school bus driver shall not be eligible to operate a school bus if the individual's bus driver's license is currently revoked or suspended by the Division of Motor Vehicle Services in accordance with R.S.39:3-10.1.

b. Notwithstanding the provisions of this section, an individual shall not be disqualified from employment or service under this act on the basis of any conviction disclosed by a criminal history record check performed pursuant to this section without an opportunity to challenge the accuracy of the disqualifying criminal history record.

c. When charges are pending for a crime or any other offense enumerated in section 1 of P.L.1986, c.116 (C.18A:6-7.1), the employing board of education or contractor shall be notified that the candidate shall not be eligible for employment until the commissioner has made a determination regarding qualification or disqualification upon adjudication of the pending charges.

d. The applicant shall have 14 days from the date of the written notice of disqualification to challenge the accuracy of the criminal history record information. If no challenge is filed or if the determination of the accuracy of the criminal history record information upholds the disqualification, notification of the applicant's disqualification for employment shall be forwarded to the Division of Motor Vehicle Services. The local board of education or the school bus contractor and the County Superintendent of Schools shall also be notified of the disqualification. Notwithstanding the provisions of any law to the contrary, the Director of the Division of Motor Vehicle Services shall, upon notice of disqualification from the Commissioner of Education, immediately revoke the applicant's special license issued pursuant to R.S.39:3-10.1 without necessity of a further hearing. Candidates' records shall be maintained in accordance with the provisions of section 4 of P.L.1986, c.116 (C.18A:6-7.4).

e. This section shall first apply to criminal history record checks conducted on or after the effective date of P.L.1998, c.31 (C.18A:6-7.1c et al.); except that in the case of a school bus driver employed by a board of education or a contracted service provider who is required to undergo a check upon application for renewal of a school bus driver's license, the individual shall be disqualified only for the following offenses:

(1) any offense enumerated in this section prior to the effective date of P.L.1998, c.31 (C.18A:6-7.1c et al.); and

(2) any offense enumerated in this section which had not been enumerated in this section prior to the effective date of P.L.1998, c.31 (C.18A:6-7.1c et al.), if the person was convicted of that offense on or after the effective date of that act.

8. This act shall take effect immediately.

Approved December 12, 2002.