

ASSEMBLY, No. 366

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman HOLZAPFEL

1 AN ACT requiring criminal history record checks for candidates for
2 employment in public institutions of higher education and
3 supplementing chapter 6 of Title 18A of the New Jersey Statutes.
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5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

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8 1. A public institution of higher education shall not employ or
9 contract for the services of any person serving in a position which
10 involves regular contact with students unless the employer has first
11 determined consistent with the requirements and standards of this act
12 that no criminal history record information exists on file in the Federal
13 Bureau of Investigation, Identification Division, or the State Bureau
14 of Identification which would disqualify that individual from being
15 employed or utilized in that capacity or position. This section shall not
16 apply to any individual who provides services on a voluntary basis. An
17 individual shall be disqualified from employment or service under this
18 act if the individual's criminal history record check reveals a record of
19 conviction of any of the following crimes and offenses:

20 a. In New Jersey, any crime or disorderly persons offense:

21 (1) bearing upon or involving sexual offense or child molestation
22 as set forth in N.J.S.2C:14-1 et seq; or

23 (2) endangering the welfare of children or incompetents, as set
24 forth in N.J.S.2C:24-4 and N.J.S.2C:24-7; or

25 b. A crime or offense involving the manufacture, transportation,
26 sale, possession, or habitual use of a "controlled dangerous substance"
27 as defined in the "New Jersey Controlled Dangerous Substances Act,"
28 P.L.1970, c.226 (C.24:21-1 et seq.); or

29 c. (1) A crime or offense involving the use of force or the threat
30 of force to or upon a person or property including: armed robbery,
31 aggravated assault, kidnapping, arson, manslaughter and murder; or

32 (2) A simple assault involving the use of force which results in
33 bodily injury; or

34 d. In any other state or jurisdiction, a conviction involving conduct
35 which, if committed in New Jersey, would constitute any of the crimes

1 or disorderly persons offenses described in this section.

2 e. Notwithstanding the provisions of this section, an individual
3 shall not be disqualified from employment or service under this act on
4 the basis of any conviction disclosed by a criminal record check
5 performed pursuant to this act if the individual has affirmatively
6 demonstrated to the Commission on Higher Education clear and
7 convincing evidence of rehabilitation. In determining whether an
8 individual has affirmatively demonstrated rehabilitation, the following
9 factors shall be considered:

10 (1) The nature and responsibility of the position which the
11 convicted individual would hold;

12 (2) The nature and seriousness of the offense;

13 (3) The circumstances under which the offense occurred;

14 (4) The date of the offense;

15 (5) The age of the individual when the offense was committed;

16 (6) Whether the offense was an isolated or repeated incident;

17 (7) Any social conditions which may have contributed to the
18 offense;

19 (8) Any evidence of rehabilitation, including good conduct in
20 prison or in the community, counseling or psychiatric treatment
21 received, acquisition of additional academic or vocational schooling,
22 successful participation in correctional work-release programs, or the
23 recommendation of persons who have had the individual under their
24 supervision.

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26 2. A public institution of higher education may employ a candidate
27 provisionally for a period not to exceed six months pending
28 completion of a criminal history record check provided that the
29 candidate submits to the commission a sworn statement attesting that
30 the candidate has not been convicted of any crime or disorderly
31 persons offense as described in section 1 of this act.

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33 3. An individual employed by a public institution of higher
34 education in a temporary or adjunct capacity or position who is rehired
35 annually by that institution shall only be required to undergo a criminal
36 history record check upon initial employment.

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38 4. An applicant for employment or service in any position covered
39 by this act shall submit to the executive director of the Commission on
40 Higher Education his name, address, and fingerprints taken on
41 standard fingerprint cards by a State or municipal law enforcement
42 agency. The executive director is hereby authorized to exchange
43 fingerprint data with and receive criminal history record information
44 from the federal Bureau of Investigation and the Division of State
45 Police for use in making the determinations required by this act. A
46 criminal history record check shall not be performed pursuant to this

1 section unless the applicant has furnished written consent to the check.
2 The applicant shall bear the cost for the criminal history record check.

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4 5. Upon receipt of the criminal history record information for an
5 applicant from the Federal Bureau of Investigation and the Division of
6 State Police, the executive director shall notify the applicant in writing
7 of the applicant's qualification or disqualification for employment or
8 service under this act. If the applicant is disqualified, the convictions
9 which constitute the basis for the disqualification shall be identified in
10 the written notice and a copy of the notice shall be forwarded to the
11 governing body of the institution of higher education. The applicant
12 shall have 30 days from the date of the written notice of
13 disqualification to petition the executive director for a hearing on the
14 accuracy of the criminal history record information or to establish
15 rehabilitation under subsection e. of section 1 of this act.

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17 6. The Commission on Higher Education may maintain the records
18 on a candidate for not longer than one year from the date of
19 determination as to the candidate's qualification or disqualification for
20 employment with an employer.

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22 7. Any employer who fails to comply with the provisions of this act
23 shall be subject to a fine of not more than \$500.

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25 8. This act shall take effect immediately.

26 27 28 STATEMENT

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30 This bill requires criminal history record checks for all employees
31 of public institutions of higher education hired for positions which
32 involve regular contact with students. An individual would be
33 disqualified from employment or a contract for service arrangement
34 with the institution if the check reveals a record of conviction of any
35 crime or offense involving a sexual offense or child molestation or
36 endangering the welfare of children or incompetents; a crime involving
37 the manufacture, transportation, sale, possession, or habitual use of a
38 controlled dangerous substance; a crime or offense involving the use
39 of force or the threat of force to or upon a person or property
40 including armed robbery, assault, kidnapping, arson, manslaughter, and
41 murder; or a simple assault involving the use of force which results in
42 bodily injury.

43 The bill provides that an individual shall not be disqualified from
44 employment under the act on the basis of any conviction if the
45 individual is able to demonstrate to the Commission on Higher
46 Education clear and convincing evidence of rehabilitation. The bill

1 outlines the factors to be considered by the commission in making a
2 determination on the individual's rehabilitation.

3 The bill outlines the procedures to be followed in processing the
4 record check and stipulates that the cost of the check is to be borne by
5 the candidate for employment. Any public institution of higher
6 education which fails to comply with the bill's provisions would be
7 subject to a fine of not more than \$500.

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12 Requires criminal history record checks for candidates for employment
13 in public institutions of higher education.