

ASSEMBLY, No. 406

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblywoman HECK

1 AN ACT concerning education and amending various parts of statutory
2 law.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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

9 1. A facility, center, school, or school system under the supervision
10 of the Department of Education and board of education which cares
11 for, or is involved in the education of children under the age of 18
12 shall not employ or contract for the services of any teaching staff
13 member or substitute teacher, teacher aide, child study team member,
14 school physician, school nurse, custodian, school maintenance worker,
15 cafeteria worker, school law enforcement officer, school secretary or
16 clerical worker or any other person serving in a position which
17 involves regular contact with pupils except individuals serving as
18 school bus drivers unless the employer has first determined consistent
19 with the requirements and standards of this act, that no criminal
20 history record information exists on file in the Federal Bureau of
21 Investigation, Identification Division, or the State Bureau of
22 Identification which would disqualify that individual from being
23 employed or utilized in such capacity or position. An individual
24 employed by a board of education or a school bus contractor holding
25 a contract with a board of education, in the capacity of a school bus
26 driver, shall be required to meet the criminal history record
27 requirements pursuant to section 6 of P.L.1989, c.104
28 (C.18A:39-19.1). This section shall not apply to any individual who
29 provides services on a voluntary basis. An individual other than a
30 school bus driver shall be disqualified from employment or service
31 under this act if the individual's criminal history record check reveals
32 a record of conviction of any of the following crimes and offenses:

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

- 1 a. In New Jersey, any crime or disorderly persons offense:
- 2 (1) bearing upon or involving sexual offense or child molestation
3 as set forth in N.J.S.2C:14-1 et seq.; or
- 4 (2) endangering the welfare of children or incompetents, as set
5 forth in N.J.S.2C:24-4 and N.J.S.2C:24-7; or
- 6 b. A crime or offense involving the manufacture, transportation,
7 sale, possession, or habitual use of a "controlled dangerous substance"
8 as defined in the "New Jersey Controlled Dangerous Substances Act,"
9 P.L.1970, c.226 (C.24:21-1 et seq.); or
- 10 c. (1) A crime or offense involving the use of force or the threat
11 of force to or upon a person or property including: armed robbery,
12 aggravated assault, kidnapping, arson, manslaughter and murder; or
- 13 (2) A simple assault involving the use of force which results in
14 bodily injury; or
- 15 (3) A crime involving burglary as set forth in N.J.S.2C:18-2; or
16 (4) A crime involving theft or related offenses as set forth in
17 N.J.S.2C:20-1 et seq.; or
18 (5) A crime involving forgery and fraudulent practices as set forth
19 in N.J.S.2C:21-1 et seq.; or
20 (6) A crime involving bribery or corrupt influence as set forth in
21 N.J.S.2C:27-1 et seq. and N.J.S.2C:29-8; or
22 (7) A crime of perjury or other falsification in official matters as
23 set forth in N.J.S.2C:28-1 et seq.; or
24 (8) A crime of official misconduct as set forth in N.J.S.2C:30-2
25 and N.J.S.2C:30-3; or
26 (9) Conspiracy to commit a crime described in this section of this
27 act.
- 28 d. In any other state or jurisdiction, a conviction involving
29 conduct which, if committed in New Jersey, would constitute any of
30 the crimes or disorderly persons offenses described in this section of
31 this act.
- 32 e. Notwithstanding the provisions of this section, an individual
33 shall not be disqualified from employment or service under this act on
34 the basis of any conviction disclosed by a criminal record check
35 performed pursuant to this act if the individual has affirmatively
36 demonstrated to the Commissioner of Education clear and convincing
37 evidence of his or her rehabilitation. In determining whether an
38 individual has affirmatively demonstrated rehabilitation, the following
39 factors shall be considered:
- 40 (1) The nature and responsibility of the position which the
41 convicted individual would hold;
- 42 (2) The nature and seriousness of the offense;
- 43 (3) The circumstances under which the offense occurred;
- 44 (4) The date of the offense;
- 45 (5) The age of the individual when the offense was committed;
- 46 (6) Whether the offense was an isolated or repeated incident;

1 (7) Any social conditions which may have contributed to the
2 offense;

3 (8) Any evidence of rehabilitation, including good conduct in
4 prison or in the community, counseling or psychiatric treatment
5 received, acquisition of additional academic or vocational schooling,
6 successful participation in correctional work-release programs, or the
7 recommendation of persons who have had the individual under their
8 supervision.

9 (cf: P.L.1989, c.156, s.1)

10

11 2. Section 1 of P.L.1987 c.164 (C.18A:6-7.1a) is amended to read
12 as follows:

13 1. a. A board of education may employ a candidate provisionally
14 for a period not to exceed six months, pending completion of a
15 criminal history records check required pursuant to P.L.1986, c.116
16 (C.18A:6-7.1 et seq.); provided that the candidate submits to the
17 commissioner a sworn statement attesting that the candidate has not
18 been convicted of any crime or disorderly persons offense as described
19 by that act.

20 b. If the board employs an applicant pursuant to this section it shall
21 submit the applicants name, address and fingerprints pursuant to
22 section 2 of P.L.1986, c.116 (C.18A:6-7.2) to the Criminal History
23 Review Division of the Department of Education within 7 days from
24 the date of employment.

25 c. If the criminal record check discloses the candidate has provided
26 a false sworn statement and has been convicted of a crime or
27 disorderly persons offense as described by the act, the candidate shall
28 immediately be dismissed from employment.

29 d. Notwithstanding the provisions of this section, an individual
30 shall not be disqualified from employment or service under this act on
31 the basis of any conviction disclosed by a criminal record check
32 performed pursuant to this act if the individual has affirmatively
33 demonstrated to the Commissioner of Education clear and convincing
34 evidence of his or her rehabilitation. In determining whether an
35 individual has affirmatively demonstrated rehabilitation, the following
36 factors shall be considered:

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

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

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

41 (4) The date of the offense;

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

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

44 (7) Any social conditions which may have contributed to the
45 offense;

46 (8) Any evidence of rehabilitation, including good conduct in

1 prison or in the community, counseling or psychiatric treatment
2 received, acquisition of additional academic or vocational schooling,
3 successful participation in correctional work-release programs, or the
4 recommendation of persons who have had the individual under their
5 supervision.

6 (cf: P.L.1987, c.164, s.1)

7

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

10 2. An applicant for employment or service in any of the positions
11 covered by this act shall submit to the [Commissioner of Education]
12 board of education his or her name, address and fingerprints taken on
13 standard fingerprint cards by a State or municipal law enforcement
14 agency.

15 The [Commissioner] Department of Education is hereby authorized
16 to exchange fingerprint data with and receive criminal history record
17 information from the Federal Bureau of Investigation and the Division
18 of State Police for use in making the determinations required by this
19 act. No criminal history record check shall be performed pursuant to
20 this act unless the applicant shall have furnished his or her written
21 consent to such a check. The applicant shall bear the cost for the
22 criminal history record check.

23 (cf: P.L.1986, c.116, s.2)

24

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

27 3. Upon receipt of the criminal history record information for an
28 applicant from either the Federal Bureau of Investigation [and] or the
29 Division of State Police, the [Commissioner] Department of Education
30 shall notify the applicant, in writing, of the applicant's qualification or
31 disqualification for employment or service under this act. If the
32 applicant is disqualified, the convictions which constitute the basis for
33 the disqualification shall be identified in the written notice and a copy
34 of the notice shall be forwarded to the State Board of Examiners. The
35 applicant shall have 30 days from the date of the written notice of
36 disqualification to petition the Commissioner of Education for a
37 hearing on the accuracy of the criminal history record information or
38 to establish his or her rehabilitation under subsection c. of section 1 of
39 this act.

40 (cf: P.L.1986, c.116, s.3)

41

42 5. This act shall take place immediately.

STATEMENT

1

2

3 This bill would include the convictions of serious non-violent
4 offenses such as burglary, theft, forgery, bribery, and other related
5 offenses as well as conspiracy to commit these and violent crimes as
6 a basis to disqualify a person from being employed in a position which
7 involves regular contact with pupils. Currently, only the convictions
8 for violent crimes, drug related and sex offenses bar a person from
9 being employed in this capacity.

10 Also, pursuant to P.L.1987, c.164 (C.18A:6-7.1a), a board of
11 education may hire applicants pending the criminal history record
12 check provided applicants give a sworn statement they have no
13 convictions of an offense proscribed by law. However, it has been
14 reported that numerous applicants hired by this practice continued to
15 be employed after evidence they have provided false sworn statements
16 and have convictions of offenses proscribed by law. This bill would
17 require that applicants hired pending a criminal history record check
18 discovered to have provided a false sworn statement and have
19 convictions proscribed by law be immediately dismissed.

20 Applicants were allowed to be employed after discovery of a
21 criminal history in New Jersey within two weeks of investigation by
22 the State Police and the Criminal History Review Division of the
23 Department of Education because the law required a completed
24 investigation including a review of the applicant's criminal history by
25 the Federal Bureau of Investigation which take up to and over a month
26 beyond the State's investigation before any applicant could be
27 removed.

28 This bill would permit the discovery of evidence by either the state
29 or federal authorities that an applicant provided a false sworn
30 statement and has a criminal history as a basis to disqualify that
31 applicant from employment.

32 This bill would also require boards of education that provisionally
33 employ an applicant pending a criminal history check to submit the
34 name, address and fingerprints of the applicant to the Criminal History
35 Review Division within 7 days of the applicant's date of employment
36 for the purpose of beginning the background check as soon as
37 possible.

38

39

40

41

42 Revises law governing criminal history records check for board of
43 education employees.