

*24 P.S. § 1-111*

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

\*PA.C.S. DOCUMENTS ARE CURRENT THROUGH 2011-75, July 7, 2011\*

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\*\*\* AUGUST 26, 2011 ANNOTATION SERVICE \*\*\*

PENNSYLVANIA STATUTES  
TITLE 24. EDUCATION  
CHAPTER 1. PUBLIC SCHOOL CODE OF 1949  
ARTICLE I. PRELIMINARY PROVISIONS

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24 P.S. § 1-111 (2011)

§ 1-111. Background checks of prospective employes; conviction of employes of certain offenses

(a) This section shall apply to all prospective employes of public and private schools, intermediate units and area vocational-technical schools, including independent contractors and their employes, except those employes and independent contractors and their employes who have no direct contact with children. This subsection shall expire March 31, 2007.

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

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

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

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

(4) Prior to a student teacher candidate's participation in any classroom teaching, internship, clinical or field experience, that candidate shall provide to the administrator of his or her educator preparation program all criminal history record information required of an employe or prospective employe who is subject to this section.

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

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

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

(b) Administrators of public and private schools, intermediate units and area vocational-technical schools shall require prospective employes to submit with their employment application, pursuant to 18 Pa.C.S. Ch.91 (relating to criminal history record information), a report of criminal history record information from the Pennsylvania State Police or a statement from the Pennsylvania State Police that the State Police central repository contains no such information relating to that person. Such report of criminal history record information shall be no more than one (1) year old. An applicant may submit a copy of the required information with the application for employment. Administrators shall maintain a copy of the required information. Administrators shall require contractors to produce a report of criminal history record information for each prospective employe of such contractor prior to employment. A copy of the report of criminal history record information from the Pennsylvania State Police shall be made available to the applicant in a manner prescribed by the Department of Education.

(c) Where the applicant has not been a resident of this Commonwealth for at least two (2) years immediately preceding the date of application for employment, administrators shall require the applicant to submit with the application for employment a set of fingerprints which may be submitted to the Federal Bureau of Investigation for Federal criminal history record information pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544, 86 Stat. 1115 or a copy of such Federal criminal history record. Administrators shall forward the set of fingerprints for the Federal criminal history record to the Department of Education. The Department of Education shall be the intermediary for the purposes of this section. The Department of Education shall return the Federal criminal history record to the applicant. When the applicant provides a copy of the Federal criminal history record, it shall be no more than one (1) year old. Administrators shall maintain a copy of the required information and shall require each applicant to produce a Federal criminal history record that may not be more than one (1) year old at the time of employment. The original Federal criminal history record shall be returned to the applicant. This subsection shall expire March 31, 2007.

(c.1) Beginning April 1, 2007, administrators shall maintain on file with the application for employment a copy of the Federal criminal history record in a manner prescribed by the Department of Education. At a minimum, the Department of Education shall prescribe a method for applicants to submit a set of fingerprints to be transmitted to the Federal Bureau of Investigation for Federal criminal history record information pursuant to the applicable Federal law. The Federal criminal history record information report shall be no more than one (1) year old. Administrators shall maintain a copy of the required information and shall require each applicant to secure a Federal criminal history record information report that may not be more than one (1) year old at the time of employment. A copy of the Federal criminal history record information report shall be made available to the applicant in a manner prescribed by the Department of Education.

(c.2) The provisions of 18 Pa.C.S. § 9121(b)(2) (relating to general regulations) shall not apply if the request is made pursuant to this section.

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

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

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

Chapter 25 (relating to criminal homicide).

Section 2702 (relating to aggravated assault).

Section 2709.1 (relating to stalking).

Section 2901 (relating to kidnapping).

Section 2902 (relating to unlawful restraint).

Section 2910 (relating to luring a child into a motor vehicle or structure).

Section 3121 (relating to rape).

Section 3122.1 (relating to statutory sexual assault).

Section 3123 (relating to involuntary deviate sexual intercourse).

Section 3124.1 (relating to sexual assault).

Section 3124.2 (relating to institutional sexual assault).

Section 3125 (relating to aggravated indecent assault).

Section 3126 (relating to indecent assault).

Section 3127 (relating to indecent exposure).

Section 3129 (relating to sexual intercourse with animal).

Section 4302 (relating to incest).

Section 4303 (relating to concealing death of child).

Section 4304 (relating to endangering welfare of children).

Section 4305 (relating to dealing in infant children).

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

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

Section 6301(a)(1)(relating to corruption of minors).

Section 6312 (relating to sexual abuse of children).

Section 6318 (relating to unlawful contact with minor).

Section 6319 (relating to solicitation of minors to traffic drugs).

Section 6320 (relating to sexual exploitation of children).

(2) An offense designated as a felony under the act of April 14, 1972 (P.L. 233, No. 64), known as "The Controlled Substance, Drug, Device and Cosmetic Act."

(3) An offense similar in nature to those crimes listed in clauses (1) and (2) under the laws or former laws of the United States or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico or a foreign nation, or under a former law of this Commonwealth.

(f) Deleted by 2011, June 30, P.L. 112, No. 24, § 1, effective in 90 days [Sept. 28, 2011].

(f.1)(1) If the report of criminal history record information indicates the person has been convicted of a felony offense of the first, second or third degree other than those enumerated under subsection (e), the person shall be eligible for prospective employment only if a period of ten years has elapsed from the date of expiration of the sentence for the offense.

(2) If the conviction is for a misdemeanor of the first degree, the person shall be eligible for prospective employment only if a period of five years has elapsed from the date of expiration of the sentence for the offense.

(3) If the report of criminal history record information indicates the person has been convicted more than once for an offense under 75 Pa.C.S. § 3802(a), (b), (c) or (d)(relating to driving under influence of alcohol or controlled substance) and the offense is graded as a misdemeanor of the first degree under 75 Pa.C.S. § 3803 (relating to grading), the person shall be eligible for prospective employment only if a period of three years has elapsed from the date of expiration of the sentence for the most recent offense.

(f.2) Nothing in this section shall be construed to interfere with the ability of a public or private school, intermediate unit or area vocational-technical school to make employment, discipline or termination decisions.

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

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

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

(h) Any person who has once obtained the information required under this section may transfer to or provide services to another school in the same district, diocese or religious judicatory or established and supervised by the same organization and shall not be required to obtain additional reports before making such transfer.

(i) Notwithstanding subsections (b), (c) and (c.1), administrators, before April 1, 2007, may employ in-State applicants on a provisional basis for a single period not to exceed thirty (30)

days and may employ out-of-State applicants on a provisional basis for a single period not to exceed ninety (90) days and, after March 31, 2007, may employ any applicants on a provisional basis for a single period not to exceed ninety (90) days, except during a lawful strike proceeding under the provisions of the act of July 23, 1970 (P.L. 563, No. 195), known as the "Public Employe Relations Act," provided that all of the following conditions are met:

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

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

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

(4) if the information obtained pursuant to subsection (b), (c) or (c.1) reveals that the applicant is disqualified from employment pursuant to subsection (e), the applicant shall be suspended and subject to termination proceedings as provided for by law; and

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

(j)(1) The department shall develop a standardized form to be used by current and prospective employes of public and private schools, intermediate units and area vocational-technical schools for the written reporting by current and prospective employes of any arrest or conviction for an offense enumerated under subsection (e). The form shall provide a space in which a current or prospective employe who has not been convicted of or arrested for any such offense will respond "no conviction" and "no arrest." The form also shall provide that failure to accurately report any arrest or conviction for an offense enumerated under subsection (e) shall subject the current or prospective employe to criminal prosecution under 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities). The department shall publish the form on its publicly accessible Internet website and in the Pennsylvania Bulletin.

(2) Within ninety (90) days of the effective date of this subsection, all current employes of a public or private school, intermediate unit or area vocational-technical school shall complete the form described in clause (1), indicating whether or not they have been convicted of an offense enumerated under subsection (e).

(3) If, as required in clause (2), an employe refuses to submit the form described in clause (1), the administrator or other person responsible for employment decisions in a school or other institution shall immediately require the employe to submit to the administrator a current report of criminal history record information as required under subsections (a.1), (b) and (c.1).

(4) If the arrest or conviction for an offense enumerated under subsection (e) occurs after the effective date of this subsection, the employe shall provide the administrator or designee with written notice utilizing the form provided for in clause (1) not later than seventy-two (72) hours after an arrest or conviction.

(5) If an administrator or other person responsible for employment decisions in a school or other institution has a reasonable belief that an employe was arrested or has a conviction for an offense required to be reported under clause (2) or (4) and the employe or prospective employe has not notified the administrator as required under this section, the administrator or other person responsible for employment decisions in a school or other institution shall immediately require the employe to submit to the administrator a current report of criminal history record information as required under subsections (a.1), (b) and (c.1). The cost of the criminal background check shall be borne by the employing entity.

(6)(i) An employe who willfully fails to disclose a conviction or an arrest for an offense enumerated under subsection (e)(1) shall be subject to discipline up to and including termination or denial of employment and may be subject to criminal prosecution under 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(ii) An employe who willfully fails to disclose a conviction of any other offense required to be reported by this section may be subject to discipline and may be subject to criminal prosecution under 18 Pa.C.S. § 4904.

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Date/Time: Thursday, September 29, 2011 - 11:21 AM EDT

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