[First Reprint]

ASSEMBLY, No. 1019

STATE OF NEW JERSEY

214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

Sponsored by:
Assemblywoman L. GRACE SPENCER
District 29 (Essex and Union)
Assemblyman RALPH R. CAPUTO
District 28 (Essex)
Assemblywoman ANNETTE QUIJANO
District 20 (Union)
Assemblywoman CARIDAD RODRIGUEZ
District 33 (Hudson)

SYNOPSIS

Requires criminal history record check of school district volunteers.

CURRENT VERSION OF TEXT

As amended by the General Assembly on June 21, 2010.

(Sponsorship Updated As Of: 6/25/2010)

AN ACT concerning criminal history record checks for school district volunteers and amending P.L.1986, c.116 and P.L.1998, c.31.

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

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

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 for pay or contract for the paid 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). 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 **[**may**]** <u>shall</u> require criminal history record checks for individuals who, on an unpaid voluntary basis, provide services that involve regular contact with pupils. **[**In the case of school districts involved in a sending-receiving relationship, the decision to require criminal history record checks for volunteers shall be made jointly by the boards of education of the sending and receiving districts.**]** [1]<u>The commissioner shall define an unpaid volunteer who has regular contact with pupils.</u>[1]

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

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

Matter underlined <u>thus</u> is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
[1]Assembly floor amendments adopted June 21, 2010.

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 (C.2C:13-6)
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 <u>or service</u> 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.

(cf: P.L.2007, c.82, s.1)

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

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.

[If a facility, center, school, or school system under the supervision of the Department of Education or board of education requires a criminal history record check for an unpaid volunteer, the facility, center, school, or school system under the supervision of the Department of Education or school board shall reimburse the applicant for the cost of the check.**]** A facility, center, school, or school system under the supervision of the Department of Education or board of education may reimburse an applicant serving in a paid position <u>or as an unpaid volunteer</u> for the cost of the check.

(cf: P.L.2007, c.82, s.2)

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

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, or unpaid volunteer 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.

(cf: P.L.2002, c.119, s.5)

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

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 or service, 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 or service 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 or

unpaid volunteer. 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 or unpaid volunteer shall not be eligible for continued employment or service.
(cf: P.L.2002, c.119, s.6)

5. Section 4 of P.L.1986, c.116 (C.18A:6-7.4) is amended to read as follows:

4. The Commissioner of Education may maintain the criminal record and application documents on a candidate for no longer than three years from the date of determination as to the candidate's qualification or disqualification for employment with an employer or service as an unpaid volunteer. The three-year retention limitation shall not apply to statistical data on crimes and any other offenses or an ongoing list of candidates who are qualified or disqualified. All documents submitted by a candidate and all criminal history record information shall be maintained by the commissioner in a confidential manner.
(cf: P.L.1998, c.31, s.9)

6. This act shall take effect immediately and shall first be applicable to unpaid volunteers in the 2010-2011 school year.