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MEMORANDUM

DATE: June 12, 2012

TO: All Members of the Delaware State Senate
and House of Representatives

FROM: Ms. Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: S.B. 216 [Criminal Background Checks]

The State Council for Persons with Disabilities (SCPD) has reviewed S.B. 216 which is designed to revise existing criminal background and drug screening laws applicable to long-term care facilities, the Delaware Psychiatric Center, personal assistance agencies, hospice, and home health agencies. One of the principal purposes of the bill is to convert to an electronic background check system. The attached fiscal note contemplates a \$150,000 annual cost which would be offset by a \$15.00 fee based on 10,000 background checks annually. SCPD has the following observations.

First, the bill may be “underinclusive” in coverage. For example, the Department licenses adult day care facilities pursuant to Title 16 Del.C. §122(3)s. The implementing Division of Public Health Regulations are codified at 16 DE Admin Code Part 4402. They include the following standards:

13.1 Adult day care providers must comply with the special employment practices relating to health care and child care facilities (19 Del.C. §708 and 11 Del.C. §8563) and adult abuse registry check (11 Del.C. §8564) and the regulations promulgated by the Department of Labor regarding same.

13.2 No employee shall be less than 18 years of age and no person shall be employed who has been convicted of a crime where the victim was a person regardless of whether the crime was a felony or misdemeanor.

The bill does not apply to adult day care providers.

Second, the bill contains multiple immunity references (lines 19-20 and 49-51). Such immunity is not granted in current criminal background check statutes. See Title 11 Del.C. §§8560-8564 and 8570-8572. Although the synopsis recites that “(l)imited liability is provided”, this is misleading.

The immunity provided to employers is “unlimited”:

An employer that uses the Background Check Center to secure background information is immune from liability when making decisions in reliance on the Background Check Center data. (lines 19-20)

(1) No Employer or facility shall be subject to suit directly, derivatively, or by way of contribution, for any civil damages resulting from a hiring decision made in reliance on information provided by the BCC. (lines 50-51)

Literally, this gives employers carte blanche to refuse to hire based on an arrest without conviction and violate federal and State anti-discrimination laws. For example, the attached News Journal article describes the recent adoption of EEOC policy which counsels that “an arrest without a conviction is generally not an acceptable reason to deny employment.” The article confirms that there is nationwide concern of employer use of criminal background checks to prevent the employment of minorities, noting that “1 in 3 black men and 1 in 6 Hispanic men will be incarcerated during their lifetime” compared to 1 in 17 white men. See also attached May, 2012 News Journal article, “Philadelphia Limits Questions About Criminal Records”; and March 24, 2012 News Journal article, “Making Probation a Positive Recognized at Awards Event”.

Persons with mental disabilities are also disproportionately involved in the criminal justice system. The attached August 12, 2011 letter memorandum from the Bazelon Center includes the following observations:

Frequently people with mental illnesses are arrested for “nuisance” crimes related to their disabilities, such as disorderly conduct or trespass. Adults with mental illnesses are arrested more than twice as often as adults without mental illness. The arrest of individuals with mental illnesses often reflects individuals’ inability to access needed mental health services, and/or police officers’ lack of knowledge about the symptoms of mental illness.

At 3.

In June 2011, the Governor signed S.B. No. 59 into law. Consistent with the attachment, it authorized Delaware’s 39 professional licensing boards to allow reinstatement of licenses after 5 years have passed since the conviction. The rationale is that ex-offenders cannot secure employment and should not be unduly penalized if they have paid their debt to society. S.B. 216 undermines S.B. 59 since an applicant could have a license restored under S.B. 59 after 5 years and an employer could arbitrarily refuse to hire the applicant solely based on the conviction appearing in the BCC. See also 16 DE Admin Code 3105, §6.0, excluding “old” convictions from the definition of “disqualifying crimes” and contemplating individualized consideration of certain factors in assessing crimes (§7.0).

The immunity section in S.B. 216 invites employers to refuse employment based on arrest record without conviction, minor convictions, convictions for crimes with no relationship to patient safety, convictions which have been pardoned, and very old convictions. There is also some “tension” between the immunity section’s authorization to not hire based on anything in the background check

and the adoption of a list of crimes which are deemed related to patient care and disqualifying. See lines 130-131, 194-195, 419-420, 529-532. The immunity provisions are unnecessary components of the legislation and should be stricken.

Third, there are multiple references to “mental retardation” (lines 34 and 89). Compare both H.A. 1 to H.B. 245, amending Title 11 Del.C. §8564(a), and H.B. No. 214. The updated language should be used.

Fourth, the comma between “16 Del.C.” and “Chapter 11” in line 38 should be deleted.

Fifth, it would be preferable to “link” the concepts of strict confidentiality (lines 149-150) and record-keeping (lines 52-53). For example, the Division could add a provision that the employer must adopt safeguards to maintain the confidentiality of the data obtained from the BCC.

Sixth, in lines 100 and 203, consider substituting “obtaining” for “getting”.

Seventh, the bill ostensibly creates a conflict with Title 16 Del.C. §122(3)07 and 8. The latter statute would allow civil penalties of less than \$1,000 for violations based on consideration of several factors. The bill (lines 138-139 and 339-342) categorically requires at least a \$1,000 penalty and does not mention the factors.

Eighth, the bill (lines 169-178, 230-231, 401-402, 490-492, 571-572) imposes strict liability on an applicant who does not comply with the criminal background check standards with a \$1,000 minimum civil penalty. This is “overbroad”. Someone applying as a dishwasher in a nursing home who does not know about the requirement of a criminal background check and is hired by the employer violates lines 169-170 and 177 despite lack of fault. There should be some requirement that the violation be “knowing and willful”. Compare line 607, requiring the violation to be “willful”. See also the comparable Title 11 Del.C. §8572:

Any person seeking a license under Chapter 12 of Title 14 or employment with a public school who knowingly provides false, incomplete or inaccurate criminal history information or who otherwise knowingly violates the provisions of §8571 of this title shall be guilty of a class G felony and shall be punished according to Chapter 42 of this title.

[emphasis supplied]

Ninth, in lines 186, 411, and 580, the reference should be to Title 11 Del.C. §1911.

Tenth, there is an odd reference to “provide these things for himself or herself” at lines 256-257. There is no definition or description of “these things” and the reference makes no sense.

Eleventh, lines 309-310 authorize private individuals to obtain a Criminal History “at the individual’s expense”. It would be preferable to clarify that the cost should not exceed the fee determined by lines 43-48.

Twelfth, lines 458-459 conflict with lines 482-483.

Thank you for your consideration and please contact SCPD if you have any questions regarding our observations or recommendation on the proposed legislation.

cc: Ms. Deborah Gottschalk
Mr. Brian Hartman, Esq.
Delaware Trial Lawyers Association
American Civil Liberties Union
National Alliance on Mental Illness – DE Chapter
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

sb 216 cbc 6-12-12

146TH GENERAL ASSEMBLY

FEE IMPACT STATEMENT

BILL: SENATE BILL NO. 216
SPONSOR: Senator Henry
DESCRIPTION: AN ACT TO AMEND TITLE 29 AND TITLE 16 OF THE DELAWARE CODY BY ESTABLISHING AN ELECTRONIC WEB-BASED BACKGROUND CHECK CENTER FOR EMPLOYMENT IN LONG TERM CARE OR COMMUNITY SETTINGS.

ASSUMPTIONS:

In accordance with Volume 68, Chapter 216, Laws of Delaware, the following information is provided relating to mandatory background checks.

Description of Legislation

This legislation implements an electronic background check system that will be accessed by employers seeking information on individuals prior to employment in work settings requiring mandatory background checks.

Affected Entities

This will affect all employers who are required by law to secure background checks before hiring an individual to work in a nursing facility, or to work with individuals requiring home health, hospice, or personal care services in the community.

Fiscal Impact Estimate

The user fee will be calculated based on the funds required to maintain the electronic Background Check Center. According to the Department of Health and Social Services (DHSS), it will take approximately \$150,000 annually to maintain the system. DHSS also estimates the number of background checks per year is approximately 10,000; therefore a fee of \$15.00 per background check would be required.

Intended Use of Revenue Generated

All revenue generated will be deposited in a special Background Check Center account to cover maintenance and operating expenses.

Office of Controller General
May 14, 2012
LNC:kea
0311460049

Criminal background check policy updated

EEOC issues new hiring guidelines for employers

By SAM HANANEL
Associated Press

WASHINGTON — Is an arrest in a barroom brawl 20 years ago a job disqualifier?

Not necessarily, the government said Wednesday in new guidelines on how employers can avoid running afoul of laws prohibiting job discrimination.

The Equal Employment Opportunity Commission's updated policy on criminal background checks is part of an effort to rein in practices that can limit job opportunities for minorities who have higher arrest and conviction rates than whites.

"You thought prison was hard, try finding a decent job when you get out," EEOC member Chai Feldblum said.

She cited Justice Department statistics showing that 1 in 3 black men and 1 in 6 Hispanic men will be incarcerated during their lifetime. That compares with 1 in 17 white men who will serve time.

"The ability of African-Americans and Hispanics to gain employment after prison is one of the paramount civil justice issues of our time," said Stuart Ishimaru, one of three Democrats on the five-member commission.

About 73 percent of employers conduct criminal background checks on all job candidates, according to a 2010 survey by the Society for Human Resource Management. Another 19 percent of employers do so only for selected job candidates.

That data often can be

inaccurate or incomplete, according to a report this month from the National Consumer Law Center.

EEOC commissioners said the growing practice has grave implications for blacks and Hispanics, who are disproportionately represented in the criminal justice system and face high rates of unemployment.

But some employers say the new policy — approved in a 4-1 vote — could make it more cumbersome and expensive to conduct background checks. Companies see the checks as a way to keep workers and customers safe, weed out unsavory workers and prevent negligent-hiring claims.

The new standards urge employers to give applicants a chance to explain a past criminal misconduct before they are rejected outright. An applicant might say the report is inaccurate or point out that the conviction was expunged. It may be completely unrelated to the job, or a former convict may show he's been fully rehabilitated.

The EEOC also recommends that employers stop asking about past convictions on job applications. And it says an arrest without a conviction is not generally an acceptable reason to deny employment. *

The guidelines are the first attempt since 1990 to update the commission's policy on criminal background checks.

While the guidance does not have the force of regulations — and may conflict with state requirements for some job applicants — it sets a higher bar in explaining how businesses can avoid violating the law.

"It's going to be much more burdensome," said Pamela Devata, a Chicago employment lawyer who has represented companies trying to comply with EEOC's requirements.

Phila. limits questions about criminal record

Businesses can ask in interview

By **MARYCLAIRE DALE**
Associated Press

PHILADELPHIA — Philadelphia will soon become the latest U.S. city to “ban the box,” prohibiting questions about a person’s criminal record on job applications. The president of the NAACP plans to be in town Monday when Mayor Michael Nutter signs the law.

Employers can still ask candidates about the issue, but proponents say ex-offenders at least deserve a chance to get a foot in the door. They say the interviews never come if they admit their records early on.

“Americans believe in second chances. We believe that when somebody has paid their debt to society, they deserve the right to earn a living, reunite their

families,” said Benjamin Todd Jealous, president of the civil rights group.

Chicago, Boston and several other cities have adopted similar measures. Some involve only public-sector jobs, but the Philadelphia law will apply to most public and private employers.

About 65 million Americans, or one in four, have a criminal record, while 90 percent of employers use criminal background checks, according to New York’s National Employment Law Project, which released a report on the issue last month.

The group argues that stable employment will help former offenders straighten out their lives, and save tax dollars that would otherwise go toward supporting them in or out of prison.

Some business groups, including the Greater Philadelphia Chamber of Commerce, oppose the law.



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Making probation a positive recognized at awards event

Officials laud locals who turned their lives around

By MIKE CHALMERS and SEAN O'SULLIVAN
The News Journal

Five years ago, after being caught with a gun he wasn't supposed to have, Tarrell Anderson faced a federal prison sentence and made a decision.

His life as a drug dealer had to end, he said, and his life as a responsible father had to begin. Anderson earned his GED, learned job skills behind bars and, after being released last year, got a job, a promotion, an apartment and a car.

"It's been long, and it's been hard, too," Anderson said, wiping away tears Friday morning as federal officials recognized him as a model probationer.



Tarrell Anderson (left), supervisor at Waste Carpet Depot in New Castle, received an award Friday for being a model probationer.
THE NEWS JOURNAL/SUCHAT PEDERSON

The sixth annual Workforce Development Ceremony is a way for the U.S. Probation Office in Delaware to draw attention to its programs that help ex-offenders successfully return to society. It was held at the J. Caleb Boggs Federal Building

in Wilmington.

"Folks sometimes need a second chance," said Jack McDonough, chief of the federal probation office in Delaware. "We all do."

See PROBATION, Page B9

Probation: Employers urged to hire

Continued from Page B1

In the past few years, the office has helped probationers get jobs, housing and other services, including cognitive-behavioral therapy — a form of psychotherapy that focuses on how thoughts influence feelings and behaviors.

McDonough said it helps probationers value employment and stability.

"We can get people jobs, but his helps with job retention," McDonough said.

The approach has helped cut recidivism dramatically. Among medium- and high-risk offenders who receive cognitive-behavioral therapy, only 10 percent are arrested again within a year of being released, far below national averages that range from 40 percent to 70 percent, he said.

William D. Burrell, a 19-year veteran of probation services in New Jersey who is now a corrections consultant, praised the Delaware program.

Burrell, who recently appeared at John Jay College's Guggenheim Symposium on Crime in America, said the U.S. correctional system generally is "addicted to punishment," instead of considering ways to help ex-offenders reform and avoid slipping back into criminal ways. The Delaware program sends a positive message to ex-offenders that the focus on punishment is ending and the system is now interested in helping probationers get back on track, he said. "That is an important mind-set



Tarrell Anderson, supervisor at Waste Carpet Depot in New Castle, was honored Friday during the sixth annual Workforce Development Ceremony. THE NEWS JOURNAL/SUCHAT PEDERSON

for the system to embrace," Burrell said.

Anderson, 30, had a history of drug dealing and probation violations, but he never spent more than six months at a time behind bars, said John Selvaggi, deputy chief of the federal probation office. That changed in November 2007, when police caught Anderson — a felon — with a handgun during a traffic stop. He was sentenced to four years in federal prison.

Anderson said the sentence scared him.

"When they told me how much time I had to do, that was the wake-up," he said.

Anderson said he was determined to make the most of his prison time, so he took courses in HVAC and commercial driving. He served 40 months in Kentucky and New Jersey before being released.

While living with his mother, Anderson went to work as a laborer at Waste Carpet Depot, a carpet recycling company in New Castle. He worked his way up to

supervisor two months ago, increasing his salary and allowing him to take better care of his girlfriend and three children, ages 7, 10 and 12.

Selvaggi said it's rare to see a probationer make so much progress in less than a year.

The ceremony also recognized Local 199 of Laborers' International Union of North America, which started working with the federal probation office a year ago to get ex-offenders work on road-construction crews.

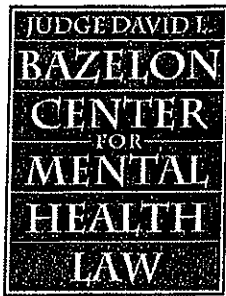
"Our Local is very forgiving of people who have arrest records, as long as they want to do the job" and have experience in construction, said Tobby Lamb, president of Local 199.

Burrell said recognition efforts like Friday's ceremony also encourage employers to hire ex-offenders.

"We so desperately need employers to step up and hire ex-offenders," Burrell said. "We need to cultivate those employers that are willing to step up."

McDonough also thanked the St. Vincent de Paul Society for helping probationers get transitional housing and Delaware Technical Community College for providing vocational training.

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Civil Rights and Human Dignity

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August 12, 2011

Stephen Llewellyn
Executive Secretariat
U.S. Equal Employment Opportunity Commission
131 M Street, N.E.
Washington, D.C. 20507

Re: July 26, 2011 Public Commission Meeting

Dear Mr. Llewellyn:

The Judge David L. Bazelon Center for Mental Health Law, the National Alliance on Mental Illness, and Mental Health America submit these comments for the record following the Commission's 26, 2011 public meeting titled "Striking the Balance Between Workplace Fairness and Workplace Safety."

The Bazelon Center is a national nonprofit legal advocacy that represents individuals with psychiatric disabilities. The Center engages in litigation, policy advocacy, education and training to promote the rights of individuals with psychiatric disabilities in all areas of life, including employment, health care, voting, public benefits, parental rights, educational opportunities, housing, and community living.

The National Alliance on Mental Illness (NAMI) is the Nation's grassroots organization dedicated to improving the lives of individuals and families affected by mental illness. NAMI has a long history of advocating for policies and programs both to prevent the unnecessary incarceration of people living with serious mental illness and to facilitate appropriate services and meaningful employment for persons with these illnesses following discharge.

Mental Health America (formerly known as the National Mental Association) is the oldest mental health advocacy and education organization in the United States. Its board and staff are comprised of professionals with expertise in the diagnosis and treatment of mental illnesses, persons with mental illnesses, and other persons with expertise in mental health public policy. MHA is interested in preventing the criminalization and inappropriate criminal detention of individuals with mental and substance use conditions, and ensuring

these individuals have access to full employment opportunities.

One issue that was not discussed at the July 26th meeting -- and that has not been by the EEOC -- is the impact on job applicants with disabilities of blanket "no hire" criminal background check policies. Testimony at the July meeting pointed out that such policies have a disparate impact on African American and Latino job applicants.¹ The EEOC has taken some steps to articulate how Title VII applies to the use of arrest and conviction records³ as an employment screen. The use of arrest and conviction as an employment screen may also, however, violate the Americans with Disabilities Act (ADA).

The ADA and the EEOC's implementing regulations provide that it is unlawful for a covered entity to use qualification standards, employment tests, or other selection criteria that screen out or tend to screen out a person with a disability or a class of people with disabilities "unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job related for the position in question and is consistent with necessity."⁴ The use of arrest or conviction records as an employment screen tends to screen out job applicants with disabilities. As explained below, consideration of criminal records disproportionately affects people with disabilities. Moreover, in many cases individuals' criminal records are directly related to a disability. Consequently, the use of criminal history to deny employment to individuals with disabilities without regard to when the incidents occurred and what their specific relevance is to the job duties at issue generally violates the ADA.

¹ See, e.g., Testimony of Adam Klein, Partner at Outten & Golden LLP, EEOC Public Meeting of July 26, 2011, <http://www.eeoc.gov/eeoc/meetings/7-26-11/klein.cfm>; Testimony of Stephen Saltzburg, Professor, George Washington University Law School, EEOC Public Meeting of July 26, 2011, <http://www.eeoc.gov/eeoc/meetings/7-26-11/saltzburg.cfm>.
² Policy Guidance on the Consideration of Arrest Records in Employment Decisions under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e et seq. (September 7, 1990), http://www.eeoc.gov/policy/docs/arrest_records.html.

³EEOC Policy Statement on the Issue of Conviction Records under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. (Feb. 4, 1987), <http://www.eeoc.gov/policy/docs/convict1.html>.

⁴42 U.S.C. § 12112(b)(6); 29 C.F.R. § 1630.10(a).

Individuals with psychiatric disabilities are overrepresented in jails and prisons.⁵ According to the American Bar Association, the incidence of mental illness is two to four times higher among prisoners than in the general population.⁶ A recent study found that approximately 14.5% of men and 31% of women in jails had serious mental illness.⁷ A 1999 Bureau of Justice Statistics survey report showed approximately 16% of state prison inmates, 7% of federal prison inmates, and 16% of local jail inmates reporting a mental illness or a psychiatric hospital stay.⁸ A 2006 Bureau of Justice Statistics survey report found that approximately 24% of state prison inmates, 14% of federal prison inmates, and 21% of jail inmates reported a history of mental health problems within the past year.⁹

Frequently people with mental illnesses are arrested for “nuisance” crimes related to their disabilities, such as disorderly conduct or trespass. Adults with mental illnesses are arrested more than twice as often as adults without mental illness.¹⁰ The arrest of individuals with mental illnesses often reflects individuals’ inability to access needed mental health services, and/or police officers’ lack of knowledge about the symptoms of mental illness.¹¹ Additional reasons for high arrest rates include beliefs on the part of police that: (1) arresting the person will ensure that he or she receives food and shelter in jail, (2) an arrest is the only way to get the person off the street and out of trouble, (3) processing an arrest is faster than trying to link the person with mental health and/or substance abuse services, or (4) the criminal justice system may afford access to

⁵ See, e.g., Henry J. Steadman et al., *Prevalence of Serious Mental Illness Among Jail Inmates*, 60 *Psychiatric Services* 761, 761 (2009), <http://ps.psychiatryonline.org/cgi/reprint/60/6/761>; ABA Criminal Justice Section, *Survey on Reentry*, Introduction, at 2 (2009), <http://www.reentry.net/library/attachment.163733>.

⁶ ABA Criminal Justice Section, *Survey on Reentry*, *supra* note 5. See also Josiah D. Rich et al., *Medicine and the Epidemic of Incarceration in the United States*, 364 *N. Eng. J. Med.* 2081, 2081 (2011) (major depression and psychotic disorders four to eight times as prevalent in jails and prisons as in general population), <http://gatelessgatezen.files.wordpress.com/2011/06/medicine-incarceration-nejm-060211.pdf>.

⁷ Steadman, *supra* note 5.

⁸ Paula M. Ditton, U.S. Dep’t of Justice, Bureau of Justice Statistics Special Report, *Mental Health and Treatment of Inmates and Probationers* (1999), <http://bjs.ojp.usdoj.gov/content/pub/pdf/mhtip.pdf>.

⁹ Doris J. James & Lauren E. Glaze, U.S. Dep’t of Justice, Bureau of Justice Statistics Special Report, *Mental Health Problems of Prison and Jail Inmates*, <http://bjs.ojp.usdoj.gov/content/pub/pdf/mhppji.pdf>.

¹⁰ Linda A. Teplin, *Keeping the Peace: Police Discretion and Mentally Ill Persons*, *Nat’l Inst. of Justice J.*, July 2000, at 12, <https://www.ncjrs.gov/pdffiles1/jr000244c.pdf>.

¹¹ *Id.*

that would otherwise be unavailable.¹²

The juvenile justice system also serves a disproportionate number of youth with mental health disorders. Over 70% of youth in the juvenile justice system have at least one health disorder.¹³

Individuals with other disabilities are similarly overrepresented in jails, prisons, and juvenile justice facilities, including individuals with intellectual disabilities,¹⁴ learning disabilities,¹⁵ and HIV/AIDS.¹⁶

The use of employment screening tools that have a disproportionate impact on individuals with disabilities compounds the problems that people with disabilities already face in obtaining jobs. Employment rates for individuals with disabilities are far below employment rates for the general population.¹⁷ As the Commission heard from many witnesses during its May 15, 2011 public meeting on Employment of People with Mental Disabilities, the dramatic underemployment of individuals with disabilities – particularly individuals with mental disabilities – has not only caused a loss of potential workforce talent, but also diminished opportunities for people with disabilities to become productive and economically self-sufficient members of society. People with disabilities, like all people, derive meaning from their jobs. Employment increases people's sense of self-worth, self-efficacy, independence, and connection to their communities, and is an important element of recovery from mental illness.¹⁸

¹²Tammy Seltzer, *Mental Health Courts: A Misguided Attempt*, 11 *Psychology, Public Policy & Law* 570, 573 (2006).

¹³National Center for Mental Health and Juvenile Justice, *Youth with Mental Health Disorders in the Juvenile Justice System: Results from a Multi-State Prevalence Study* (June 2006), <http://www.ncmhjj.com>.

¹⁴Joan Petersilia, California Policy Research Center, *Doing Justice? Criminal Offenders with Developmental Disabilities* 24-26 (2000) (overrepresented in youth facilities and state prisons), <http://www.eric.ed.gov/PDFS/ED465905.pdf>.

¹⁵*Id.* at 24-25 (35.6% of juvenile offenders and 10.7% of prisoners have learning disabilities); Joan Petersilia, *When Prisoners Come Home: Parole and Prisoner Reentry* 1-2 (2009) (incidence of learning disabilities among prisoners is 11% compared with 3% among general population).

¹⁶*Id.* at 48-49 (incidence of HIV/AIDS among state prisoners five times incidence among general population).

¹⁷*See, e.g.*, Testimony of Dr. William Kiernan and Testimony of Dr. Gary Bond, EEOC Public Meeting of March 15, 2011, <http://www.eeoc.gov/eeoc/meetings/3-15-11/index.cfm>.

¹⁸*See, e.g.*, Testimony of Dr. Gary Bond, *supra* note 17; Molly K. Tschopp et al., *Employment Barriers and Strategies for Individuals with Psychiatric Disabilities and Criminal Histories*, 26 *J. Vocational Rehabilitation* 175-87 (2007).

Overbroad background checks that screen out qualified job applicants with disabilities harm workforce productivity as well as the lives of people with disabilities. This is precisely the type of discrimination that Congress intended the ADA to prohibit. A criminal record should not become a permanent barrier to employment. This is particularly true when the record is related to a person's disability and does not impact the person's current ability to do the job in question. Criminal background checks should not be used to deny employment unless the crimes are recent, significant, and directly related to the duties of the particular job in question.

Clear guidance from the EEOC concerning the ADA's application to the use of criminal background checks is needed. Such guidance would provide employers with greater certainty about what is permitted and would do a great deal to ensure that qualified individuals with disabilities can secure meaningful employment.

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146th General Assembly

Senate Bill # 59

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Primary Sponsor:

Peterson

Additional Sponsor(s): Rep. J. Johnson

CoSponsors:

Sen. Henry; Reps. Barbieri, Hudson

Introduced on : 04/12/2011

Long Title:

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO WAIVER OF CRIMES AND ESTABLISHMENT OF CRIMINAL BACKGROUND REQUIREMENTS RELATED TO PROFESSIONS AND OCCUPATIONS.

Synopsis:

Sections 1-10 and 12-79 of this bill modify provisions that allow the boards of Accountancy, Landscape Architecture, Architects, Podiatry, Chiropractic, Cosmetology & Barbering and Aestheticians, Dentistry and Dental Hygiene, Electrical Examiners, Medical Licensure and Discipline and advisory Councils for Respiratory Care , Genetic Counselors and Acupuncture, Plumbing/HVACR Examiners, Nursing, Occupational Therapy, Examiners of Optometry, Pharmacy, Physical Therapists and Athletic Trainers, Professional Land Surveyors, Dietetics/Nutrition, Real Estate Commission, Real Estate Appraisers, Mental Health and Chemical Dependency Professionals, Funeral Services, Veterinary Medicine, Psychology, Geology, Speech Pathologists, Audiologists, and Hearing Aid Dispensers, Clinical Social Work Examiners, Nursing Home Administrators, Massage and Bodywork and Manufactured Home Installation to grant a waiver of convictions determined to be substantially related to each respective practice. The bill changes the waiting period from 5 years after the discharge of all sentences to 5 years from the date of conviction for a felony provided that the applicant is not incarcerated, on work release, on probation, on parole or serving any part of a suspended sentence. The applicant must also be in substantial compliance with all fines, restitution and community service. The bill removes the 5 year limitation for misdemeanors in its entirety provided that the applicant is not incarcerated, on work release, on probation, on parole or serving any part of a suspended sentence. The applicant must also be in substantial compliance with all fines, restitution and community service.

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Section 11 of bill removes a sentence in §1122 of the Dentistry and Dental Hygiene statute that is no longer applicable due to the requirement for state and federal criminal background checks. Section 80 of the bill adds a provision to the Adult Entertainment statute that is required by the Federal Bureau of Investigation to obtain criminal background checks of adult entertainment licensees and employees in a manner consistent with other Title 24 boards and commissions.

Current Status: Signed On 06/08/2011

Volume 78:44

Chapter

Date Governor acted: 06/08/2011

Full text of Legislation:
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Fiscal Notes/Fee Impact: Not Required

Committee Reports:

Senate Committee report 05/04/11 F=0 M=4 U=0---->

House Committee Report 06/01/11 F=0 M=4 U=0---->

Voting Reports:

Senate vote: () Passed 5/5/2011 3:32:20 PM---->

House vote: () Passed 6/2/2011 5:51:37 PM---->

Actions History:

Jun 08, 2011 - Signed by Governor

Jun 02, 2011 - Passed by House of Representatives. Votes: Passed 38 YES 0 NO 0 NOT VOTING 3 ABSENT 0 VACANT

Jun 01, 2011 - Reported Out of Committee (SUNSET COMMITTEE (POLICY ANALYSIS & GOVERNMENT ACCOUNTABILITY)) in House with 4 On Its Merits

May 10, 2011 - Introduced and Assigned to Sunset Committee (Policy Analysis & Government Accountability) Committee in House

May 05, 2011 - Passed by Senate. Votes: Passed 19 YES 2 NO 0 NOT VOTING 0 ABSENT 0 VACANT

May 04, 2011 - Reported Out of Committee (JUDICIARY) in Senate with 4 On Its Merits

Apr 12, 2011 - Assigned to Judiciary Committee in Senate

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