

2014 -- S 2652

=====
LC004290
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

A N A C T

RELATING TO CRIMINAL PROCEDURE

Introduced By: Senators Lombardi, DiPalma, Satchell, Jabour, and Conley

Date Introduced: March 04, 2014

Referred To: Senate Judiciary

(Attorney General)

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 12 of the General Laws entitled "CRIMINAL PROCEDURE" is
2 hereby amended by adding thereto the following chapter:

3 CHAPTER 1.6

4 NATIONAL CRIMINAL RECORDS CHECK SYSTEM

5 **12-1.6-1. Automated fingerprint identification system database.** -- The department of
6 attorney general may establish and maintain an automated fingerprint identification system
7 database that would allow the department to store and maintain all fingerprints submitted in
8 accordance with the national criminal records check system. The automated fingerprint
9 identification system database would provide for an automatic notification if, and when, a
10 subsequent criminal arrest fingerprint card is submitted to the system that matches a set of
11 fingerprints previously submitted in accordance with a national criminal records check. If the
12 mentioned arrest results in a conviction, the department shall immediately notify those
13 individuals and entities with which that individual is associated and who are required to be
14 notified of disqualifying information concerning national criminal records checks as provided in
15 chapters 17, 17.4, 17.7.1 of title 23 or § 23-1-52. The information in the database established
16 under this section is confidential and not subject to disclosure under chapter 38-2.

17 **12-1.6-2. Long-term healthcare workers.** -- The department of attorney general shall
18 maintain an electronic, web-based system to assist facilities, licensed under chapters 17, 17.4,
19 17.7.1 of title 23 or § 23-1-52, required to check relevant registries and conduct national criminal

1 records checks of routine contact patient employees. The department of attorney general shall
2 provide for an automated notice, as authorized in § 12-1.6-1, to those facilities if a routine contact
3 patient employee is subsequently convicted of a disqualifying offense, as described in the relevant
4 licensing statute. The department of attorney general may charge a facility a one-time, set-up fee
5 of up to one hundred dollars (\$100) for access to the electronic web-based system under this
6 section.

7 **12-1.6-3. Immunity from liability.** -- The department of attorney general; the
8 department of health; or an employer who disqualifies an applicant from employment or
9 continued employment; on the basis of a disqualification notice as described in § 12-1.6-2, or of a
10 national criminal records check relating to disqualifying information, shall not be liable for civil
11 damages or subject to any claim, demand, cause of action, or proceeding of any nature as a result
12 of the disqualification.

13 **12-1.6-4. Rules and regulations.** -- The department of attorney general may promulgate
14 rules and regulations to carry out the intent of this chapter.

15 SECTION 2. Section 23-1-52 of the General Laws in Chapter 23-1 entitled "Department
16 of Health" is hereby amended to read as follows:

17 **23-1-52. Adult day care program licensure.** -- (a) The director is authorized and
18 directed to establish a program for the licensure of adult day care programs. "Adult day care
19 program" shall mean a comprehensive, nonresidential program designed to address the biological,
20 psychological, and social needs of adults through individual plans of care that incorporate, as
21 needed, a variety of health, social, and related support services in a protective setting. The
22 director is further authorized to promulgate regulations as he or she deems necessary to
23 implement these provisions.

24 (b) Any person seeking employment in any adult day care facility licensed herein and
25 having routine contact with an adult day care client or having access to such a client's belongings
26 or funds shall undergo a national criminal records check that shall include fingerprints submitted
27 to the Federal Bureau of Investigation (FBI) by the bureau of criminal identification of the
28 department of attorney general. The national criminal records check shall be processed prior to, or
29 within one week of, employment. All persons who, as of September 30, 2014, are already
30 employed by an adult day care facility and all persons who, as of such date, already provide
31 services under this section shall be exempted from the requirements of this section for purposes
32 of their current employment only.

33 (1) The director may, by rule, identify those positions requiring national criminal records
34 checks. The employee, through the employer, shall apply to the bureau of criminal identification

1 of the department of attorney general for a national criminal records check. Upon the discovery of
2 any disqualifying information as defined in § 23-1-52(c), and in accordance with rules
3 promulgated by the director, the bureau of criminal identification of the department of attorney
4 general shall inform the applicant in writing, of the nature of the disqualifying information; and,
5 without disclosing the nature of the disqualifying information, shall notify the employer, in
6 writing, that disqualifying information has been discovered.

7 (2) An employee against whom disqualifying information has been found may provide a
8 copy of the national criminal records check to the employer. The employer shall make a judgment
9 regarding the continued employment of the employee.

10 (3) In those situations in which no disqualifying information has been found, the bureau
11 of criminal identification of the department of attorney general shall inform the applicant and the
12 employer, in writing, of this fact.

13 (4) The employer shall maintain on file, subject to inspection by the department of health,
14 evidence that statewide criminal records checks have been initiated on all employees seeking
15 employment between January 1, 2008, and September 30, 2014, and the results of the checks. The
16 employer shall maintain on file, subject to inspection by the department, evidence that national
17 criminal records checks have been initiated on all employees seeking employment on or after
18 October 1, 2014, and the results of those checks. Failure to maintain that evidence may be
19 grounds to revoke the license or registration of the employer.

20 (5) The employee shall be responsible for the cost of conducting the national criminal
21 records check through the bureau of criminal identification of the department of attorney general.

22 (c) Information produced by a national criminal records check pertaining to conviction
23 for the following crimes will result in a letter to the employee and employer disqualifying the
24 applicant from employment: murder, voluntary manslaughter, involuntary manslaughter, first-
25 degree sexual assault, second-degree sexual assault, third-degree sexual assault, assault on
26 persons sixty (60) years of age or older, assault with intent to commit specified felonies (murder,
27 robbery, rape, burglary, or the abominable and detestable crimes against nature), felony assault,
28 patient abuse, neglect or mistreatment of patients, burglary, first-degree arson, robbery, felony
29 drug offenses, felony obtaining money under false pretenses, felony embezzlement, abuse,
30 neglect and/or exploitation of adults with severe impairments, exploitation of elders, felony
31 larceny, or felony banking law violations, or a crime under section 1128(a) of the Social Security
32 Act (42 U.S.C. §1320a-7(a)). An employee against whom disqualifying information has been
33 found may provide a copy of the national criminal records check to the employer who shall make
34 a judgment regarding the continued employment of the employee. For purposes of this

1 subsection, "conviction" means, in addition to judgments of conviction entered by a court
2 subsequent to a finding of guilty or a plea of guilty, those instances where the defendant has
3 entered a plea of nolo contendere and has received a sentence of probation and those instances
4 where a defendant has entered into a deferred sentence agreement with the attorney general.

5 SECTION 3. Sections 23-17-34 and 23-17-37 of the General Laws in Chapter 23-17
6 entitled "Licensing of Health Care Facilities" are hereby amended to read as follows:

7 **23-17-34. Criminal records review - Nursing facilities - Home nursing care**
8 **providers and home care providers. --** (a) Any person seeking employment in a nursing facility,
9 a home nursing care provider, hospice provider, or a home care provider ~~which~~ who is or is
10 required to be₂ licensed, registered₂ or certified with the department of health if that employment
11 involves routine contact with a patient or resident without the presence of other employees, shall
12 undergo a national criminal background records check ~~to~~ which shall include fingerprints
13 submitted to the Federal Bureau of Investigation (FBI) by the bureau of criminal identification of
14 the department of attorney general. The national criminal records check shall be initiated prior to₂
15 or within one week of₂ employment. ~~All employees hired prior to the enactment of this section~~
16 ~~shall be exempted from the requirements of this section.~~ All persons who, as of September, 30,
17 2014, are already employed by a covered facility or provider and all persons who, as of such date,
18 already provide services under this chapter, shall be exempted from the requirements of this
19 section for purposes of their current employment only.

20 (b) The director of the department of health may₂ by rule₂ identify those positions
21 requiring criminal background records checks. The identified employee, through the employer,
22 shall apply to the bureau of criminal identification of the ~~state police or local police~~ department of
23 attorney general for a statewide national criminal records check. ~~Fingerprinting shall not be~~
24 ~~required.~~ Upon the discovery of any disqualifying information as defined in ~~section~~ §23-17-37
25 and₂ in accordance with the rule promulgated by the director of health, the bureau of criminal
26 identification of the ~~state police or the local police~~ department of attorney general will inform the
27 applicant, in writing, of the nature of the disqualifying information; and, without disclosing the
28 nature of the disqualifying information, will notify the employer, in writing, that disqualifying
29 information has been discovered.

30 (c) An employee against whom disqualifying information has been found may provide
31 ~~request that~~ a copy of the national criminal records check ~~background report be sent~~ to the
32 employer who shall make a judgment regarding the continued employment of the employee.

33 (d) In those situations in which no disqualifying information has been found, the bureau
34 of criminal identification of the ~~state police or the local police~~ department of attorney general

1 shall inform the applicant and the employer, in writing, of this fact.

2 (e) The employer shall maintain on file, subject to inspection by the department of health,
3 evidence that statewide criminal records checks have been initiated on all employees seeking
4 employment ~~after~~ between October 1, 1991, and September 30, 2014, and the results of the
5 checks. Failure to maintain that evidence would be grounds to revoke the license or registration of
6 the employer. The employer shall maintain on file, subject to inspection by the department of
7 health, evidence that national criminal records checks have been initiated on all employees
8 seeking employment on or after October 1, 2014, and the results of those checks.

9 (f) ~~It shall be the responsibility of the bureau of criminal identification of the state police~~
10 ~~or the local police department to conduct the criminal records check to the applicant for~~
11 ~~employment without charge to either the employee or the employer.~~ The employee shall be
12 responsible for the cost of conducting the national criminal records check through the bureau of
13 criminal identification of the department of attorney general.

14 **23-17-37. Disqualifying information.** -- (a) Information produced by a national criminal
15 records ~~review~~ check pertaining to conviction~~s~~ for the following crimes will result in a letter to
16 the employee and employer disqualifying the applicant from employment: murder, voluntary
17 manslaughter, involuntary manslaughter, first degree sexual assault, second degree sexual
18 assault, third degree sexual assault, assault on persons sixty (60) years of age or older, assault
19 with intent to commit specified felonies (murder, robbery, rape, burglary, or the abominable and
20 detestable crime against nature) felony assault, patient abuse, neglect or mistreatment of patients,
21 burglary, first degree arson, robbery, felony drug offenses, felony larceny, or felony banking law
22 violations, felony obtaining money under false pretenses, felony embezzlement, abuse, neglect
23 and/or exploitation of adults with severe impairments, exploitation of elders, or a crime under
24 section 1128(a) of the Social Security Act (42 U.S.C. §1320a-7(a)). An employee against whom
25 disqualifying information has been found may ~~request that~~ provide a copy of the national criminal
26 ~~background report be sent~~ records check to the employer who shall make a judgment regarding
27 the continued employment of the employee.

28 (b) For purposes of this section, "conviction" means, in addition to judgments of
29 conviction entered by a court subsequent to a finding of guilty or a plea of guilty, those instances
30 where the defendant has entered a plea of nolo contendere and has received a sentence of
31 probation and those instances where a defendant has entered into a deferred sentence agreement
32 with the attorney general.

33 SECTION 4. Chapter 23-17 of the General Laws entitled "Licensing of Health Care
34 Facilities" is hereby amended by adding thereto the following section:

1 **23-17-62. Criminal records review - long-term care hospital.** -- (a) For the purposes of
2 this section, a "long-term care hospital" shall mean a facility as described in 42 U.S.C. 1395 §
3 ww(d)(1)(iv), that receives payment for inpatient services it provides to Medicare beneficiaries
4 pursuant to 42 U.S.C. § 1395ww(m).

5 (b) Any person seeking employment in any long-term care hospital, having routine
6 contact with a long-term care hospital patient or having access to such a patient's belongings or
7 funds, shall undergo a national criminal records check that shall include fingerprints submitted to
8 the Federal Bureau of Investigation (FBI) by the bureau of criminal identification of the
9 department of attorney general. The national criminal records check shall be processed prior to, or
10 within one week of, employment. All persons who, as of September 30, 2014, are already
11 employed by a long-term care hospital and all persons who, as of such date, already provide
12 services under this section, shall be exempted from the requirements of this section for purposes
13 of their current employment only.

14 (1) The director may, by rule, identify those positions requiring national criminal records
15 checks. The employee, through the employer, shall apply to the bureau of criminal identification
16 of the department of attorney general for a national criminal records check. Upon the discovery of
17 any disqualifying information, as defined in § 23-17-62(c), and in accordance with the rule
18 promulgated by the director, the bureau of criminal identification of the department of attorney
19 general shall inform the applicant, in writing, of the nature of the disqualifying information; and,
20 without disclosing the nature of the disqualifying information, shall notify the employer, in
21 writing, that disqualifying information has been discovered.

22 (2) An employee against whom disqualifying information has been found may provide a
23 copy of the national criminal records report to the employer. The employer shall make a judgment
24 regarding the continued employment of the employee.

25 (3) In those situations in which no disqualifying information has been found, the bureau
26 of criminal identification of the department of attorney general shall inform the applicant and the
27 employer, in writing, of this fact.

28 (4) The employer shall maintain on file, subject to inspection by the department, evidence
29 that statewide criminal records checks have been initiated on all employees seeking employment
30 between October 1, 1991, and September 30, 2014, and the results of the checks. The employer
31 shall maintain on file, subject to inspection by the department, evidence that national criminal
32 records checks have been initiated on all employees seeking employment on or after October 1,
33 2014, and the results of those checks. Failure to maintain that evidence would be grounds to
34 revoke the license or registration of the employer.

1 (5) The employee shall be responsible for the cost of conducting the national criminal
2 records check through the bureau of criminal identification of the department of attorney general.

3 (c) Information produced by a national criminal records check pertaining to conviction,
4 for the following crimes will result in a letter to the employee and employer disqualifying the
5 applicant from employment: murder, voluntary manslaughter, involuntary manslaughter, first-
6 degree sexual assault, second-degree sexual assault, third-degree sexual assault, assault on
7 persons sixty (60) years of age or older, assault with intent to commit specified felonies (murder,
8 robbery, rape, burglary, or the abominable and detestable crimes against nature), felony assault,
9 patient abuse, neglect or mistreatment of patients, burglary, first-degree arson, robbery, felony
10 drug offenses, felony obtaining money under false pretenses, felony embezzlement, abuse,
11 neglect and/or exploitation of adults with severe impairments, exploitation of elders, felony
12 larceny, or felony banking law violations, or a crime under section 1128(a) of the Social Security
13 Act (42 U.S.C. § 1320a-7(a)). An employee against whom disqualifying information has been
14 found may provide a copy of the national criminal records check to the employer who shall make
15 a judgment regarding the continued employment of the employee. For purposes of this
16 subsection, "conviction" means, in addition to judgments of conviction entered by a court
17 subsequent to a finding of guilty or a plea of guilty, those instances where the defendant has
18 entered a plea of nolo contendere and has received a sentence of probation and those instances
19 where a defendant has entered into a deferred sentence agreement with the attorney general.

20 SECTION 5. Sections 23-17.4-27 and 23-17.4-30 of the General Laws in Chapter 23-
21 17.4 entitled "Assisted Living Residence Licensing Act" are hereby amended to read as follows:

22 **23-17.4-27. Criminal records review.** -- (a) Any person seeking employment in any
23 assisted living residence licensed under this act, and having routine contact with a resident or
24 having access to a resident's belongings or funds, shall undergo a national criminal background
25 records check ~~to~~ that shall include fingerprints submitted to the Federal Bureau of Investigation
26 (FBI) by the bureau of criminal identification of the department of attorney general. The national
27 criminal records check shall be processed prior to or within one week of employment. ~~All~~
28 ~~employees hired prior to the enactment of this section shall be exempted from the requirements of~~
29 ~~this section.~~ All persons who, as of September 30, 2014, are already employed by an assisted
30 living residence and all persons who, as of such date, already provide services under this chapter,
31 shall be exempted from the requirements of this section for purposes of their current employment
32 only.

33 (b) The director of the department of health may, by rule, identify those positions
34 requiring national criminal background records checks. The employee, through the employer,

1 shall apply to the bureau of criminal identification of the ~~state police or local police~~ department of
2 attorney general for a statewide national criminal records check. ~~Fingerprinting shall not be~~
3 ~~required.~~ Upon the discovery of any disqualifying information as defined in ~~section § 23-17.4-30,~~
4 and in accordance with the rule promulgated by the director of health, the bureau of criminal
5 identification of the ~~state police or the local police~~ department of attorney general will inform the
6 applicant in writing of the nature of the disqualifying information; and, without disclosing the
7 nature of the disqualifying information, will notify the employer in writing that disqualifying
8 information has been discovered.

9 (c) An employee against whom disqualifying information has been found may ~~request~~
10 ~~that provide~~ a copy of the national criminal ~~background report be sent~~ records check to the
11 employer. The administrator shall make a judgment regarding the continued employment of the
12 employee.

13 (d) In those situations in which no disqualifying information has been found, the bureau
14 of criminal identification (BCI) of the ~~state police or the local police~~ department of attorney
15 general shall inform the applicant and the employer in writing of this fact.

16 (e) The employer shall maintain on file, subject to inspection by the department of health,
17 evidence that statewide criminal records checks have been initiated on all employees seeking
18 employment ~~after~~ between October 1, 1991, and September 30, 2014, and the results of the
19 checks. The employer shall maintain on file, subject to inspection by the department of health,
20 evidence that national criminal records checks have been initiated on all employees seeking
21 employment on or after October 1, 2014, and the results of those checks. Failure to maintain that
22 evidence would be grounds to revoke the license or registration of the employer.

23 (f) ~~It shall be the responsibility of the bureau of criminal identification (BCI) of the state~~
24 ~~police or the local police department to conduct the criminal records check to the applicant for~~
25 ~~employment without charge to either the employee or employer.~~ The employee shall be
26 responsible for the cost of conducting the national criminal records check through the bureau of
27 criminal identification of the department of attorney general.

28 **23-17.4-30. Disqualifying information.** -- (a) Information produced by a national
29 criminal records ~~review~~ check pertaining to conviction; for the following crimes will result in a
30 letter to the employee and employer disqualifying the applicant from employment: murder,
31 voluntary manslaughter, involuntary manslaughter, first-degree sexual assault, second-degree
32 sexual assault, third-degree sexual assault, assault on persons sixty (60) years of age or older,
33 assault with intent to commit specified felonies (murder, robbery, rape, burglary, or the
34 abominable and detestable crime against nature) felony assault, patient abuse, neglect or

1 mistreatment of patients, burglary, first-degree arson, robbery, felony drug offenses, felony
2 obtaining money under false pretenses, felony embezzlement, abuse, neglect and/or exploitation
3 of adults with severe impairments, exploitation of elders, felony larceny or felony banking law
4 violations. An employee against whom disqualifying information has been found may ~~request~~
5 ~~that~~ provide a copy of the national criminal ~~background report be sent~~ records check to the
6 employer who shall make a judgment regarding the continued employment of the employee.

7 (b) For purposes of this section, "conviction" means, in addition to judgments of
8 conviction entered by a court subsequent to a finding of guilty or a plea of guilty, those instances
9 where the defendant has entered a plea of nolo contendere and has received a sentence of
10 probation and those instances where a defendant has entered into a deferred sentence agreement
11 with the attorney general.

12 SECTION 6. Sections 23-17.7.1-17 and 23-17.7.1-20 of the General Laws in Chapter 23-
13 17.7.1 entitled "Licensing of Nursing Service Agencies" are hereby amended to read as follows:

14 **23-17.7.1-17. Criminal records review.** -- (a) Any person seeking employment in a
15 facility ~~which~~ who is or is required to be licensed or registered with the department of health if
16 that employment involves routine contact with a patient or resident without the presence of other
17 employees, shall undergo a national criminal ~~background~~ records check, ~~which that~~ shall include
18 fingerprints submitted to the Federal Bureau of Investigation (FBI) by the bureau of criminal
19 identification of the department of attorney general. The national criminal records check shall be
20 initiated prior to, or within one week of, employment. ~~All employees hired prior to the enactment~~
21 ~~of this section shall be exempted from the requirements of this section.~~ All persons who, as of
22 September 30, 2014, are already employed by a covered facility and all persons who, as of such
23 date, already provide services under this chapter, shall be exempt from the requirements of this
24 section for purposes of their current employment only.

25 (b) The director of the department of health may, by rule, identify those positions
26 requiring national criminal ~~background~~ records checks. The employee, through the employer,
27 shall apply to the bureau of criminal identification of the ~~state police or local police~~ department of
28 attorney general for a ~~statewide~~ national criminal records check. ~~Fingerprinting shall not be~~
29 ~~required.~~ Upon the discovery of any disqualifying information as defined in ~~section §~~ 23-17.7.1-
30 20, and in accordance with the rule promulgated by the director of the department of health, the
31 bureau of criminal identification of the ~~state police or the local police~~ department of attorney
32 general will inform the applicant, in writing, of the nature of the disqualifying information; and,
33 without disclosing the nature of the disqualifying information, will notify the employer, in
34 writing, that disqualifying information has been discovered.

1 (c) An employee against whom disqualifying information under ~~section §~~ 23-17.7.1-20(b)
2 has been found may ~~request that~~ provide a copy of the national criminal ~~background report be~~
3 ~~sent~~ records check to the employer who shall make a judgment regarding the continued
4 employment of the employee.

5 (d) In those situations in which no disqualifying information has been found, the bureau
6 of criminal identification of the ~~state police or the local police~~ department of attorney general
7 shall inform the applicant and the employer, in writing, of this fact.

8 (e) The employer shall maintain on file, subject to inspection by the department of health,
9 evidence that criminal records checks have been initiated on all employees seeking employment
10 between October 1, 1991, and September 30, 2014, and the results of the checks. The employer
11 shall maintain on file, subject to inspection by the department of health, evidence that national
12 criminal records checks have been initiated on all employees seeking employment on or after
13 October 1, 2014, and the results of those checks. Failure to maintain that evidence would be
14 grounds to revoke the license or registration of the employer.

15 (f) ~~It shall be the responsibility of the bureau of criminal identification of the state police~~
16 ~~or the local police department to conduct the criminal records check to the applicant for~~
17 ~~employment without charge to either the employee or the employer. The employee shall be~~
18 responsible for the cost of conducting the national criminal records check through the bureau of
19 criminal identification of the department of attorney general.

20 **23-17.7.1-20. Disqualifying information.** -- (a) Information produced by a national
21 criminal records ~~review~~ check pertaining to conviction_; for the following crimes will result in a
22 letter to the employee and employer disqualifying the applicant from the employment: murder,
23 voluntary manslaughter, involuntary manslaughter, first-degree sexual assault, second-degree
24 sexual assault, third-degree sexual assault, assault on persons sixty (60) years of age or older,
25 assault with intent to commit specified felonies (murder, robbery, rape, burglary, or the
26 abominable and detestable crime against nature), felony assault, patient abuse, neglect or
27 mistreatment of patients, first-degree arson, robbery, felony drug offenses, ~~larceny, or felony~~
28 ~~banking law violations~~ felony obtaining money under false pretenses, felony embezzlement,
29 abuse, neglect, and/or exploitation of adults with severe impairments, exploitation of elders,
30 felony larceny, or felony banking law violations or a crime under section 1128(a) of the Social
31 Security Act (42 U.S.C. § 1320a-7(a)).

32 (b) Information produced by a national criminal records ~~review~~ check pertaining to
33 convictions for crimes other than those listed in subsection (a) of this section shall entitle, but not
34 obligate the employer_, to decline to hire the applicant. An employee against whom conviction

1 information related to this subsection has been found may ~~request that~~ provide a copy of the
2 national criminal ~~background report be sent~~ records check to the employer who shall make a
3 determination regarding the continued employment of the employee.

4 (c) For purposes of this section "conviction" means, in addition to judgments of
5 conviction entered by a court subsequent to a finding of guilty or a plea of guilty, those instances
6 where the defendant has entered a plea of nolo contendere and has received a sentence of
7 probation and those instances where a defendant has entered into a deferred sentence agreement
8 with the attorney general.

9 SECTION 7. Section 1 of this act shall take effect upon passage. Sections 2, 3, 3, 5 and 6
10 of this act shall take effect on September 30, 2014.

=====
LC004290
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO CRIMINAL PROCEDURE

1 This act would expand the type of criminal records check required for persons applying
2 to be routine contact patient employees in a long-term facility or provider.

3 Section 1 of this act would take effect upon passage. Sections 2, 3, 4, 5 and 6 would take
4 effect on September 30, 2014.

=====
LC004290
=====