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ACT 24 CHANGES TO CRIMINAL BACKGROUND CHECK STATUTE

On June 30, 2011 Governor Corbett signed into law Act 24 of 2011. Act 24 contained a number of significant changes to the Pennsylvania Public School Code. In particular, Act 24 amended Section 111 of the School Code. The changes to Section 111 went into effect September 28, 2011.

SECTION 111 OF THE SCHOOL CODE

Section 111 of the School Code requires background checks for employees of public and private schools, intermediate units and area vocational-technical schools (AVTS) as well as independent contractors and their employees who have direct contact with children, and student teacher candidates assigned to public and private schools.

Background Checks

Under Section 111 of the School Code, all applicants for employment in public and private schools are subject to following three background checks:

1. Pennsylvania State Police Criminal Records Check
2. Department of Public Welfare Child Abuse History Clearance
3. Federal Criminal History Record Information

Disqualifying Offenses

In addition, Section 111(e) enumerates a list of offenses for which a conviction will bar employment of such an applicant.

Prior to Act 24, Section 111(e) enumerated a list of offenses for which a conviction *within five years immediately preceding the criminal background report* would bar employment of such an applicant. As worded, the law prohibited a person convicted of any of the crimes listed in Section 111(e) from being hired for a period of five (5) years from the date of the conviction. Prior to Act 24, those offenses were as follows:

criminal homicide	indecent exposure
aggravated assault	incest
stalking	concealing death of child
kidnapping	endangering welfare of children
unlawful restraint	dealing in infant children
rape	prostitution and related offenses (felony)
statutory sexual assault	obscene and other sexual materials and performances
involuntary deviate sexual intercourse sexual assault	corruption of minors
aggravated indecent assault indecent assault	sexual abuse of children
Felony offenses under "The Controlled Substance, Drug, Device and Cosmetic Act" ¹	
Similar federal, out-of-state offenses or former laws of Pennsylvania	

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SIGNIFICANT CHANGES TO SECTION 111 UNDER ACT 24

Permanent Disqualification

Under Act 24, as amended Section 111 now *permanently* excludes from school employment any persons convicted of any of the offenses listed in Section 111(e).²

Additional Disqualifying Offenses

Act 24 also added several additional crimes to the list of Section 111(e) offenses that now *permanently* disqualify individuals from school employment. In addition to those stated above, those offenses now include crimes related to luring a child into a motor vehicle or structure, institutional sexual assault, sexual intercourse with animals, unlawful contact with minors, solicitation of minors to traffic drugs and sexual exploitation of children.

Act 24 further added new subsection (f1) which outlines specific offenses upon which a conviction will now bar employment of such an applicant for a period of ten years, five years or three years respectively depending upon the offense.

Specifically, anyone who has been convicted of any felony of the first, second or third degree, not listed in Section 111(e), shall be barred from school employment for 10 years after the expiration of the sentence. A conviction of any first degree misdemeanor will prohibit employment for five (5) years after the completion of the sentence. A second offense of driving under the influence of alcohol or a controlled substance, graded as a first degree misdemeanor, will result in a three (3) year prohibition on hiring from the date of the completion of the sentence for the most recent offense.

No Exemptions for Summer and Seasonal Student Applicants

Act 24 also eliminates the exemptions which had permitted certain persons under 21, in a job training program in which summer or seasonal students are hired by a school district, to work at schools for up to 90 days without a background check.

Form PDE 6004 and Current Employees

Act 24 added the requirement that current employees complete the required form developed by PDE to report prior arrests or convictions for any offense listed in Section 111(e). This form (PDE-6004) is now available on the PDE website. As stated by PDE, this requirement is an important mechanism to help ensure that current employees, who may not have been subject to a previous background check, are now required to provide assurances that they have not been previously arrested or convicted of a Section 111(e) offense.

Specifically, under Section 111 (j) (1) and (2), within 90 days of the effective date of the statute (December 27, 2011) all current employees are required to complete form PDE-6004 and return it to their school administrator and thereupon report any prior arrests or convictions for any offense listed in Section 111(e).

Under Act 24, School Administrators are responsible for making sure that all employees complete this form. If an employee refuses to submit the form, section 111(j)(3) requires that the School Administrator require the employee to submit a new criminal background report. School Administrators are being advised by PDE to notify their employees of the availability of PDE-6004 as soon as possible as well as inform them to whom the

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form must be returned and the applicable deadline. Again, the form must be completed and returned by the employees by December 27, 2011.

Further Employee Reporting Requirements

In addition, under Act 24, all school employees are required to report to the School Administrator within seventy-two (72) hours any arrest or conviction of an offense listed in Section 111(e) that occurs after September 28, 2011. Form PDE-6004 should be used to report these arrests or convictions to the School Administrator.

Further Cause for Employee Background Checks

Act 24 also requires that if a School Administrator has a reasonable belief that an employee was arrested or convicted of a Section 111(e) offense and the employee has not notified the a school administrator of such arrest or conviction, the school administrator must require the school employee to submit to a current Section 111 background check at the employer's expense.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.

1. The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101--780-144) establishes certain offenses as felonies. Without providing an extensive list here, the relevant felony offenses in the Act generally are those offenses related to the illegal manufacture, delivery, or sale of "controlled substances" or the possession with intent to manufacture, deliver or sell "controlled substances."
2. Note that under Section 527(a), any employee convicted of delivery of a controlled substance or possession with intent to deliver a controlled substance, is subject to termination. Under Section 527(b) of the School Code, employees convicted of any of the listed offenses in Section 111(e)(1) (2) and (3) are subject to immediate dismissal if the conviction occurs while employed by a school employer. In addition, certificated employees who are convicted any felony listed under Section 111 may be subject to dismissal under Section 1122 (conviction of a felony or acceptance of a guilty plea or nolo contendere).