

11:9-2 ET AL.

LEGISLATIVE HISTORY CHECKLIST

NJSA 11:9-2; 11:9-6; 11:10-6.1 et al.

Laws of 1974 Chapter 160

Bill No. A 1610

Sponsor(s) Deverin & Martin

Date Introduced April 29

Committee: Assembly Institutions, Health & Welfare

Senate -----

Amended during passage Yes

Date of passage: Assembly May 13

Senate May 16

Date of approval Nov. 15

Following statements are attached if available:

Sponsor statement YES

Committee Statement: Assembly No

Senate No

Fiscal Note No

Veto message No

Message on signing Yes

Following were printed:

Reports Yes No

Hearings No

New Jersey Documents mentioned in sponsor's statement:

- 974.90 NJ Legislature. Assembly. Institutions & Welfare Comm.
- P959 Public Hearings on Prison Reform, held May 16 & June 12, 1972.
- 1972c 2v.

(over)

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NJ
KA6.2 974.90
2c and C 929
1971a 1971

NJ. Criminal Law Revision Commission.
NJ Penal Code; final report.
Newark, NJ, Oct. 1971. 2 v.

Contents: v.1- Report and penal code
v. 2-Commentary

974.90
P 959
1972b

NJ. Commn. on Vocational Education in Correctional Institutions.
Final Report. [Trenton] 1972

ASSEMBLY, No. 1610

STATE OF NEW JERSEY

INTRODUCED APRIL 29, 1974

By Assemblymen DEVERIN and MARTIN

Referred to Committee on Institutions, Health and Welfare

AN ACT concerning employment rights in the State, counties, municipalities and school districts of persons with criminal records, amending R. S. 11:9-2, 11:9-6, 11:17-1 and 11:23-2, amending and supplementing "An act concerning discrimination against eligibles certified for appointment in the competitive class in civil service, and supplementing chapter 10 of Title 11 of the Revised Statutes," approved August 8, 1939 (P. L. 1939, c. 322).

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

1 1. R. S. 11:9-2 is amended to read as follows:

2 11:9-2. The tests mentioned in section 11:9-1 of this Title shall
3 be competitive, free, and except as to such limitations as to age,
4 residence, health, [habits, character,] sex and other qualifications
5 as may be lawfully considered [desirable] relevant by the chief
6 examiner and secretary and specified in the Civil Service Examina-
7 tion Announcement Bulletin or other civil service examination
8 announcement, open to citizens who may be lawfully appointed to
9 any position in the class for which they are held, who have resided
10 in this State for at least 12 months prior to the date of the test.

11 If it appears that an employment list containing sufficient names
12 to provide a full certification to fill existing or anticipated vacan-
13 cies is not likely to be established from among qualified residents
14 in the State, the chief examiner and secretary may, with the ap-
15 proval of the commission, admit qualified citizens of the United
16 States to such tests.

17 For positions involving unskilled and semiskilled laboring work,
18 or involving domestic, attending, or other housekeeping and cus-
19 todial services at State institutions where the character of the
20 work, the relatively low rate of compensation, or the place of work,
21 makes it impracticable to secure at stated times a sufficient number

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

22 of applicants to supply the needs of the service, the chief examiner
 23 and secretary may, with the approval of the commission, provide
 24 by regulation for a procedure permitting the testing of applicants
 25 singly or in groups at stated places for laboring work, and at State
 26 institutions or elsewhere for domestic, attending, housekeeping or
 27 custodial service at any time on due notice of such tests, but with-
 28 out public advertising as required in this chapter.

1 2. R. S. 11:9-6 is amended to read as follows:

2 11:9-6. The chief examiner and secretary shall reject the appli-
 3 cation of a person for admission to a test for establishing an em-
 4 ployment list, or refuse to test an applicant or certify the name
 5 of an eligible, who:

6 a. Lacks the established qualification requirements for the posi-
 7 tion for which he applies or has been tested; or

8 b. Is physically unfit to perform effectively the duties of the
 9 position in which he seeks employment; or

10 c. **[Is]** *Has within 4 months of the application been* addicted to
 11 the habitual use of drugs or intoxicating liquors; or

12 d. **[Has been guilty of a crime or infamous or notoriously dis-**
 13 **graceful conduct; or]** (*Deleted by amendment.*)

14 e. Has been dismissed from the public service for delinquency;
 15 or

16 f. Has made false statements of a material fact or practiced or
 17 attempted to practice any deception or fraud in his application, in
 18 his tests or in securing his eligibility or appointment.

19 If, however, it shall appear that any such person, who is ineligible
 20 under **[subparagraphs d.] subparagraph e. [and f.]** hereof, has
 21 achieved a degree of rehabilitation that indicates that his or her
 22 employment would not be incompatible with the welfare of society
 23 and the aims and objectives to be accomplished by the agency of
 24 government where such person is to be employed, then the chief
 25 examiner and secretary may, provided that the appointing au-
 26 thority of the employing agency shall concur therein, admit such
 27 person to appropriate tests, and subsequently certify such person
 28 as eligible for employment. When the chief examiner and secretary
 29 refuses to examine an applicant or after examination to certify an
 30 eligible, the Civil Service Commission shall afford such person an
 31 opportunity to submit facts for consideration in a review of the
 32 refusal.

1 3. Section 1 of P. L. 1939, c. 322 (C. 11:10-6.1) is amended to
 2 read as follows:

3 1. *Except as herein provided, [Whenever,] whenever* in making
 4 an appointment to any position in the competitive class, pursuant

5 to chapter 10 of Title 11 of the Revised Statutes, from among those
6 graded highest in an open competitive examination, an appointing
7 officer shall appoint or give employment to any person graded
8 lower in such examination than any other person or persons whom
9 such appointing officer might lawfully have appointed to or given
10 employment in such position, and who was willing to accept such
11 position or employment, such appointing officer shall within 5 days
12 after making such appointment or giving such employment enter
13 upon the records of his office the statement in writing of his reasons
14 for appointing or giving employment to the person so appointed
15 or given employment, and his reasons for failing to appoint or to
16 give employment to the person or persons so graded higher in such
17 examination, and shall, within the same period, transmit a copy of
18 such statement to the commission, certifying under oath that the
19 said statement is a true and complete statement of his reasons for
20 the acts referred to therein, and that such acts were not done by
21 reason of race, color, political faith, **[or]** creed, *national origin,*
22 *ancestry, marital status, sex or prior criminal record* of any per-
23 son so appointed or given employment, or any person not appointed
24 or given employment, *except that sex may be a reason for such*
25 *acts if R. S. 11:22-17 is applicable, and except that such prior*
26 *criminal record may be a reason for such acts if N. J. S. 2A:93-5*
27 *is applicable or if the criminal record includes a conviction for a*
28 *crime that relates adversely to the employment sought. In deter-*
29 *mining that a conviction for a crime relates adversely to the em-*
30 *ployment sought, the appointing officer shall explain in writing*
31 *how the following factors, or any other factors, relates to the em-*
32 *ployment sought:*

- 33 *a. The nature and duties of the position for which the person*
34 *is applying;*
- 35 *b. Nature and seriousness of the crime;*
- 36 *c. Circumstances under which the crime occurred;*
- 37 *d. Date of the crime;*
- 38 *e. Age of the person when the crime was committed;*
- 39 *f. Whether the crime was an isolated or repeated incident;*
- 40 *g. Social conditions which may have contributed to the crime;*
- 41 *h. Any evidence of rehabilitation, including good conduct in*
42 *prison or in the community, counseling or psychiatric treatment*
43 *received, acquisition of additional academic or vocational schooling,*
44 *successful participation in correctional work-release programs, or*
45 *the recommendations of persons who have or have had the appli-*
46 *cant under their supervision.*

47 Until such certified statement is filed as herein provided, the
 48 Civil Service Commission shall not include in the payroll the name
 49 of the person so appointed or given employment. *The Civil Service*
 50 *Commission shall afford any person denied an appointment or*
 51 *employment pursuant to this section an opportunity to submit facts*
 52 *for consideration in a review of the denial.*

53 *The presentation to an appointing officer of evidence of a pardon*
 54 *or of the expungement of a criminal conviction, pursuant to N. J. S.*
 55 *2A:164-28, or of a certificate of the Federal or State Parole Board,*
 56 *or of the Chief Probation Officer of a United States District Court*
 57 *or a county who has supervised the applicant's probation, that the*
 58 *applicant has achieved a degree of rehabilitation indicating that*
 59 *his engaging in the proposed employment would not be incompati-*
 60 *ble with the welfare of society shall preclude an appointing offi-*
 61 *cer, other than appointing officer of a corrections or law enforce-*
 62 *ment agency, from considering the prior criminal record as a reason*
 63 *for failing to appoint or to give employment to any person.*

1 4. R. S. 11:17-1 is amended to read as follows:

2 11:17-1. *Except as herein provided, [No] No person in or seek-*
 3 *ing admission to the classified service shall be appointed, demoted*
 4 *or removed or be favored or discriminated against [because] on*
 5 *account of any arrest or on account of race, creed, color, national*
 6 *origin, ancestry, marital status, sex or [his] political or religious*
 7 *opinions or affiliations. Except as herein provided, [No] no ques-*
 8 *tion [in a test] asked orally or contained in a test or on any form*
 9 *used in connection with the carrying out of the provisions of this*
 10 *subtitle shall relate to any arrest or to the race, creed, color, na-*
 11 *tional origin, ancestry, marital status, or political or religious*
 12 *opinions or affiliations of a competitor, prospective competitor or*
 13 *eligible on an employment or reemployment list established and*
 14 *maintained by the commission and chief examiner and secretary.*

15 *Any person in or seeking admission to the classified service may*
 16 *be questioned as to any arrest resulting in criminal charges pend-*
 17 *ing at the time of the questioning, and as to the circumstances of*
 18 *any conviction for a crime.*

19 *Employees of, applicants for employment with, and corrections*
 20 *or law enforcement agencies, may be questioned as to any arrest.*

1 5. R. S. 11:23-2 is amended to read as follows:

2 11:23-2. The chief examiner and secretary may refuse to examine
 3 an applicant, or after examination to certify an eligible who:

4 a. Lacks any of the established preliminary requirements for
 5 examination or position or employment for which he applies; or

6 b. Is so physically disabled as to be rendered unfit for the per-
7 formance of the duties of the position to which he seeks employ-
8 ment; or

9 c. **[Is]** *Has within 4 months of the application been* addicted to
10 the habitual use of *drugs or* intoxicating liquors **[to excess]**; or

11 d. **[Has been guilty of a crime or of infamous or notoriously**
12 **disgraceful conduct; or]** (*Deleted by amendment.*)

13 e. Has been dismissed from the public service for delinquency
14 or misconduct; or

15 f. Has made false statements of any material fact, or practiced
16 or attempted to practice deception or fraud in his application,
17 examination or in securing his eligibility or appointment.

18 If, however, it shall appear that any such person, who is ineligible
19 under **[subparagraphs d.] subparagraph e. [and f.]** hereof has
20 achieved a degree of rehabilitation that indicates that his or her
21 employment would not be incompatible with the welfare of society
22 and the aims and objectives to be accomplished by the agency of
23 government where such person is to be employed, then the chief
24 examiner and secretary with the concurrence of the appointing
25 authority may admit such person to appropriate tests, and subse-
26 quently certify such person as eligible for employment. When the
27 chief examiner and secretary refuses to examine an applicant or
28 after examination to certify an eligible, the Civil Service Commis-
29 sion shall afford such person an opportunity to submit facts for
30 consideration in a review of the refusal.

1 6. This act shall take effect immediately.

STATEMENT

In hearings during 1972 on proposals to reform New Jersey's Correctional System, the Assembly Institutions and Welfare Committee heard considerable testimony on the importance of jobs in the rehabilitation process for people released from prison.

Two recent commission reports in this State recommended revision of laws discriminating against exoffenders: the New Jersey Criminal Law Revision Commission report of October 1971, and the Governor's Commission on Vocational Education in Correctional Institutions in June, 1972. Both State commissions urged that employment restrictions be considered in connection with the specific crime and the job being sought to widen the employment opportunities for exoffenders, in place of the current legal obstacles

to employment regardless of the man and the nature of his crime. The concepts of this bill have been recommended by various committees of the American Bar Association.

The President's Commission on Law Enforcement and the Administration of Justice in 1967, and more recently in 1973 found that:

“Most states and local public agencies are precluded from hiring exoffenders because of restrictions in civil service legislation and other forms of governmental personnel regulations. These restrictions should be repealed and procedures established to make the prohibition apply only where it is reasonably related to the offender and the particular job involved.”

Service occupations in government account for a growing proportion of employment in our economy, but certain provisions of Civil Service law restrict the ability of former inmates to work in areas where many new job openings occur. This bill would remove these impediments based on a man's previous criminal record. However, the bill does allow that employment may be denied where a man's prior criminal activity relates directly to the nature of the job being sought.

The bill incorporates the Federal Civil Service guidelines (page 4, section 4, lines 28-43) in situations where there is a direct relationship between the crime and the employment sought, and applies to the State and its counties, municipalities and school districts.

FROM THE OFFICE OF THE GOVERNOR

NOVEMBER 15, 1974

FOR FURTHER INFORMATION

FOR IMMEDIATE RELEASE

DICK CAMPBELL

Governor Brendan Byrne signed into law Friday two bills designed to reduce restrictions against employment opportunities for persons convicted of crimes.

One bill, A-1610, increases the ability of persons with criminal records to obtain employment with state, county or municipal governments.

The measure provides that conviction of a crime may be considered in denying employment only if it relates adversely to the specific employment sought. It also provides that no public employer other than a law enforcement agency may ask an applicant questions related to arrests which did not result in a conviction or charges pending at the time of application for employment.

The other bill, A-1611, contains similar provisions for persons convicted of crimes who are seeking a state license necessary to pursue various forms of employment.

In signing the bills, Byrne cautioned that the measures do not provide a "blanket disregard" of a prior criminal record.

"This legislation provides a rational way of dealing with persons with prior experience with the law," he said.

Both bills were sponsored by Assemblymen Thomas J. Deverin, D-Middlesex, and Harold Martin, D-Bergen.

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