

15A:3A-1 to 15A:3A-5

LEGISLATIVE HISTORY CHECK

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LAWS OF: 1999 **CHAPTER:** 432

NJSA: 15A:3A-1 to 15A:3A-5 (Criminal background checks—youth agency employees)

BILL NO: A2640 (Substituted for S1539)

SPONSOR(S): Kramer and Wright

DATE INTRODUCED: November 16, 1998

COMMITTEE: **ASSEMBLY:** Senior Issues and Community Services

SENATE: ----

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** December 13, 1999 **Re-enacted:** January 10, 2000

SENATE: December 13, 1999 **Re-enacted:** January 10, 2000

DATE OF APPROVAL: January 18, 2000

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL: Second Reprint
(Amendments during passage denoted by superscript numbers)

A2640

SPONSORS STATEMENT: (Begins on page 5 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** [Yes](#)

SENATE: No

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: [Yes](#)

S1539

SPONSORS STATEMENT: (Begins on page 5 of original bill) [Yes](#)
Bill and Sponsor Statement identical to A2640

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: [Yes](#)

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: [Yes](#)

Identical to legislative Fiscal Estimate to A2640

VETO MESSAGE: [Yes](#)

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext. 103 or refdesk@njstatelib.org

REPORTS:

No

HEARINGS:

No

NEWSPAPER ARTICLES:

"Bill designed to protect kids," 1-14-00, Courier News, p. B1.

Yes

Title 15A.
Chapter 3A. (New)
Youth Serving
Organization
Employees or
Volunteers.
§§1-5
C.15A:3A-1
to
15A:3A-5
§6
Note to §§1-5

P.L. 1999, CHAPTER 432, *approved January 18, 2000*
Assembly, No. 2640 (*Second Reprint*)

1 **AN ACT** concerning criminal history record background checks of
2 employees and volunteers of nonprofit youth serving organizations
3 and supplementing Title 2A of the New Jersey Statutes.
4

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

7
8 1. As used in this act:

9 ²["Commissioner" means the Commissioner of Community
10 Affairs.]²

11 "Criminal history record background check" means a determination
12 of whether a person has a criminal record by cross-referencing that
13 person's name and fingerprints with those on file with the Federal
14 Bureau of Investigation, Identification Division and the State Bureau
15 of Identification in the Division of State Police.

16 "Department" means the Department of ²[Community Affairs] Law
17 and Public Safety².

18 "Nonprofit youth serving organization" or "organization" means a
19 corporation, association or other organization established pursuant to
20 Title 15 of the Revised Statutes, Title 15A of the New Jersey Statutes,
21 or other law of this State,²but excluding public and nonpublic
22 schools,² and which provides recreational, ²[educational,]² cultural,
23 charitable, social or other activities or services for persons younger
24 than 18 years of age, and is exempt from federal income taxes.
25

26 2. a. A nonprofit youth serving organization may request, through
27 the department, that the State Bureau of Identification in the Division
28 of State Police conduct a criminal history record background check on
29 each prospective and current employee or volunteer of the

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ASC committee amendments adopted December 2, 1999.

² Assembly amendments adopted in accordance with Governor's recommendations January 10, 2000.

1 organization.

2 b. For the purpose of conducting the criminal history record
3 background check, the division shall examine ²[it's] its² own files and
4 arrange for a similar examination by federal authorities. The division
5 shall inform the department whether the person's criminal history
6 record background check reveals a conviction of a disqualifying crime
7 or offense as specified in section 3 of this act.

8 c. The division shall conduct a criminal history record background
9 check only upon receipt of the written consent to the check of the
10 prospective or current employee or volunteer.

11 d. ²[If a prospective or current employee or volunteer refuses to
12 consent to or cooperate in the securing of a criminal history record
13 background check when one is requested by the organization, the
14 organization shall terminate or deny the appointment of that person as
15 an employee or volunteer.

16 e.]² The organization or the prospective or current employee or
17 volunteer shall bear the costs associated with conducting criminal
18 history background checks. Notwithstanding any law or regulation to
19 the contrary, the ²[State Bureau of Investigation] department² shall
20 not charge a fee for a criminal history record background check that
21 exceeds the actual cost of conducting that check ². as determined by
22 the Attorney General. The Attorney General shall annually certify to
23 the State Treasurer the cost per criminal history background check in
24 the immediately preceding year².

25

26 3. A person ²[shall] may² be disqualified from serving as an
27 employee or volunteer of a nonprofit youth serving organization if that
28 person's criminal history record background check reveals a record of
29 conviction of any of the following crimes and offenses:

30 a. In New Jersey, any crime or disorderly persons offense:

31 (1) involving danger to the person, meaning those crimes and
32 disorderly persons offenses set forth in N.J.S.2C:11-1 et seq.,
33 N.J.S.2C:12-1 et seq., N.J.S.2C:13-1 et seq., N.J.S.2C:14-1 et seq. or
34 N.J.S.2C:15-1 et seq.;

35 (2) against the family, children or incompetents, meaning those
36 crimes and disorderly persons offenses set forth in N.J.S.2C:24-1 et
37 seq.;

38 (3) involving theft as set forth in chapter 20 of Title 2C of the New
39 Jersey Statutes;

40 (4) involving any controlled dangerous substance or controlled
41 substance analog as set forth in chapter 35 of Title 2C of the New
42 Jersey Statutes except paragraph (4) of subsection a. of
43 N.J.S.2C:35-10.

44 b. In any other state or jurisdiction, conduct which, if committed
45 in New Jersey, would constitute any of the crimes or disorderly
46 persons offenses described in subsection a. of this section.

1 ²[4. a. The commissioner shall promptly notify a prospective or
2 current employee or volunteer whose criminal history record
3 background check reveals a disqualifying criminal conviction. The
4 person shall have 30 days from the receipt of that notice to petition the
5 commissioner for a review and cite reasons substantiating the review.

6 b. Notwithstanding the provisions of section 3 of this act, no
7 person shall be disqualified from serving as an employee or volunteer
8 of a nonprofit youth serving organization on the basis of any
9 conviction disclosed by a criminal history record background check if
10 the person has affirmatively demonstrated to the commissioner clear
11 and convincing evidence of the person's rehabilitation. In determining
12 whether a person has affirmatively demonstrated rehabilitation, the
13 commissioner shall consider the following factors:

14 (1) the nature and responsibility of the position which the
15 convicted person would hold or has held, as the case may be;

16 (2) the nature and seriousness of the offense;

17 (3) the circumstances under which the offense occurred;

18 (4) the date of the offense;

19 (5) the age of the person when the offense was committed;

20 (6) whether the offense was an isolated or repeated incident;

21 (7) any social conditions which may have contributed to the
22 offense; and

23 (8) any evidence of rehabilitation, including good conduct in prison
24 or the community, counseling or psychiatric treatment received,
25 acquisition of additional academic or vocational schooling, successful
26 participation in correctional work-release programs or the
27 recommendation of those who have had the person under their
28 supervision.

29 c. The department shall promptly advise the nonprofit youth
30 serving organization whether a person is qualified to serve as an
31 employee or volunteer of the organization.]²

32
33 ²[5.] 4.² a. Prospective or current employees and volunteers of
34 nonprofit youth serving organizations shall submit their name, address,
35 fingerprints and written consent to the organization for the criminal
36 history record background check to be performed. The organization
37 shall supply this documentation to the ²[commissioner] Attorney
38 General², who shall coordinate the background check.

39 b. The ²[commissioner] Attorney General² is authorized to
40 exchange fingerprint data with, and receive criminal history record
41 information for use by nonprofit youth serving organizations from the
42 Federal Bureau of Investigation, Identification Section and the
43 Division of State Police, Bureau of Identification and such other law
44 enforcement agencies and jurisdictions as may be necessary for the
45 purposes of this act.

46 c. The department shall act as a clearinghouse for the collection

1 and dissemination of information obtained as a result of conducting
2 criminal history record background checks pursuant to this act.

3
4 ²[6.] 5.² The ²[commissioner] Attorney General², pursuant to the
5 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
6 seq.), shall adopt rules and regulations to effectuate the purposes of
7 this act ²[, including ¹[, but not limited to:

8 a. Guidelines for determining whether a person is fit to serve as an
9 employee or volunteer of a nonprofit youth serving organization;

10 b. Procedures requiring nonprofit youth serving organizations to
11 make documented, good faith efforts to obtain information and
12 recommendations concerning the person's fitness to serve a youth
13 sports coach;

14 c. Procedures for resolving disputes when a person is found
15 unqualified to serve as an employee or volunteer;

16 d. Guidelines] guidelines¹, to be developed after consultation with
17 the Attorney General,]² concerning access to ²and dissemination of²
18 information obtained as a result of conducting a criminal history
19 record background check.

20
21 ²[7.] 6.² This act shall take effect ²[on the first day of the third
22 month] 90 days² following enactment.

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24
25 _____
26
27 Authorizes criminal background checks for youth agency employees
28 and volunteers.

ASSEMBLY, No. 2640

STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED NOVEMBER 16, 1998

Sponsored by:

Assemblyman PAUL KRAMER

District 14 (Mercer and Middlesex)

Assemblywoman BARBARA WRIGHT

District 14 (Mercer and Middlesex)

SYNOPSIS

Authorizes criminal background checks for youth agency employees and volunteers.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning criminal history record background checks of
2 employees and volunteers of nonprofit youth serving organizations
3 and supplementing Title 2A of the New Jersey Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. As used in this act:

9 "Commissioner" means the Commissioner of Community Affairs.

10 "Criminal history record background check" means a determination
11 of whether a person has a criminal record by cross-referencing that
12 person's name and fingerprints with those on file with the Federal
13 Bureau of Investigation, Identification Division and the State Bureau
14 of Identification in the Division of State Police.

15 "Department" means the Department of Community Affairs.

16 "Nonprofit youth serving organization" or "organization" means a
17 corporation, association or other organization established pursuant to
18 Title 15 of the Revised Statutes, Title 15A of the New Jersey Statutes,
19 or other law of this State, and which provides recreational,
20 educational, cultural, charitable, social or other activities or services
21 for persons younger than 18 years of age, and is exempt from federal
22 income taxes.

23

24 2. a. A nonprofit youth serving organization may request, through
25 the department, that the State Bureau of Identification in the Division
26 of State Police conduct a criminal history record background check on
27 each prospective and current employee or volunteer of the
28 organization.

29 b. For the purpose of conducting the criminal history record
30 background check, the division shall examine its own files and arrange
31 for a similar examination by federal authorities. The division shall
32 inform the department whether the person's criminal history record
33 background check reveals a conviction of a disqualifying crime or
34 offense as specified in section 3 of this act.

35 c. The division shall conduct a criminal history record background
36 check only upon receipt of the written consent to the check of the
37 prospective or current employee or volunteer.

38 d. If a prospective or current employee or volunteer refuses to
39 consent to or cooperate in the securing of a criminal history record
40 background check when one is requested by the organization, the
41 organization shall terminate or deny the appointment of that person as
42 an employee or volunteer.

43 e. The organization or the prospective or current employee or
44 volunteer shall bear the costs associated with conducting criminal
45 history background checks. Notwithstanding any law or regulation to
46 the contrary, the State Bureau of Investigation shall not charge a fee

1 for a criminal history record background check that exceeds the actual
2 cost of conducting that check.

3

4 3. A person shall be disqualified from serving as an employee or
5 volunteer of a nonprofit youth serving organization if that person's
6 criminal history record background check reveals a record of
7 conviction of any of the following crimes and offenses:

8 a. In New Jersey, any crime or disorderly persons offense:

9 (1) involving danger to the person, meaning those crimes and
10 disorderly persons offenses set forth in N.J.S.2C:11-1 et seq.,
11 N.J.S.2C:12-1 et seq., N.J.S.2C:13-1 et seq., N.J.S.2C:14-1 et seq. or
12 N.J.S.2C:15-1 et seq.;

13 (2) against the family, children or incompetents, meaning those
14 crimes and disorderly persons offenses set forth in N.J.S.2C:24-1 et
15 seq.;

16 (3) involving theft as set forth in chapter 20 of Title 2C of the New
17 Jersey Statutes;

18 (4) involving any controlled dangerous substance or controlled
19 substance analog as set forth in chapter 35 of Title 2C of the New
20 Jersey Statutes except paragraph (4) of subsection a. of
21 N.J.S.2C:35-10.

22 b. In any other state or jurisdiction, conduct which, if committed
23 in New Jersey, would constitute any of the crimes or disorderly
24 persons offenses described in subsection a. of this section.

25

26 4. a. The commissioner shall promptly notify a prospective or
27 current employee or volunteer whose criminal history record
28 background check reveals a disqualifying criminal conviction. The
29 person shall have 30 days from the receipt of that notice to petition the
30 commissioner for a review and cite reasons substantiating the review.

31 b. Notwithstanding the provisions of section 3 of this act, no
32 person shall be disqualified from serving as an employee or volunteer
33 of a nonprofit youth serving organization on the basis of any
34 conviction disclosed by a criminal history record background check if
35 the person has affirmatively demonstrated to the commissioner clear
36 and convincing evidence of the person's rehabilitation. In determining
37 whether a person has affirmatively demonstrated rehabilitation, the
38 commissioner shall consider the following factors:

39 (1) the nature and responsibility of the position which the
40 convicted person would hold or has held, as the case may be;

41 (2) the nature and seriousness of the offense;

42 (3) the circumstances under which the offense occurred;

43 (4) the date of the offense;

44 (5) the age of the person when the offense was committed;

45 (6) whether the offense was an isolated or repeated incident;

46 (7) any social conditions which may have contributed to the

1 offense; and

2 (8) any evidence of rehabilitation, including good conduct in prison
3 or the community, counseling or psychiatric treatment received,
4 acquisition of additional academic or vocational schooling, successful
5 participation in correctional work-release programs or the
6 recommendation of those who have had the person under their
7 supervision.

8 c. The department shall promptly advise the nonprofit youth
9 serving organization whether a person is qualified to serve as an
10 employee or volunteer of the organization.

11

12 5. a. Prospective or current employees and volunteers of nonprofit
13 youth serving organizations shall submit their name, address,
14 fingerprints and written consent to the organization for the criminal
15 history record background check to be performed. The organization
16 shall supply this documentation to the commissioner, who shall
17 coordinate the background check.

18 b. The commissioner is authorized to exchange fingerprint data
19 with, and receive criminal history record information for use by
20 nonprofit youth serving organizations from the Federal Bureau of
21 Investigation, Identification Section and the Division of State Police,
22 Bureau of Identification and such other law enforcement agencies and
23 jurisdictions as may be necessary for the purposes of this act.

24 c. The department shall act as a clearinghouse for the collection
25 and dissemination of information obtained as a result of conducting
26 criminal history record background checks pursuant to this act.

27

28 6. The commissioner, pursuant to the "Administrative Procedure
29 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and
30 regulations to effectuate the purposes of this act, including, but not
31 limited to:

32 a. Guidelines for determining whether a person is fit to serve as an
33 employee or volunteer of a nonprofit youth serving organization;

34 b. Procedures requiring nonprofit youth serving organizations to
35 make documented, good faith efforts to obtain information and
36 recommendations concerning the person's fitness to serve a youth
37 sports coach;

38 c. Procedures for resolving disputes when a person is found
39 unqualified to serve as an employee or volunteer;

40 d. Guidelines, to be developed after consultation with the Attorney
41 General, concerning access to information obtained as a result of
42 conducting a criminal history record background check.

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44 7. This act shall take effect on the first day of the third month
45 following enactment.

STATEMENT

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This bill would permit nonprofit youth serving organizations to request the State Police to perform criminal background checks on current and prospective employees and volunteers. Persons whose background checks revealed criminal convictions would be disqualified as an employee or volunteer of the organization. The bill defines a nonprofit youth organization as one which provides recreational, educational, cultural, charitable, social or other activities or services to persons under 18 years of age.

This bill would provide the State's myriad youth organizations with a structured mechanism for checking the criminal histories of those employees and volunteers who have direct contact with children and youth and eliminating those with criminal convictions. In so doing, the bill parallels the provisions of federal legislation (H.R.2488) sponsored by Congressman Bob Franks and others which would permit nonprofit youth serving organizations to request authorized state agencies to perform nationwide background checks.

The criminal history record background check required by the bill would entail cross-referencing a person's name and fingerprints against those in the criminal records on file with the Federal Bureau of Investigation, Identification Division and the State Bureau of Identification in the Division of State Police.

Specifically, the bill would require the Department of Community Affairs to initiate a criminal history record background check of current and prospective employees and volunteers at the request of a youth serving organization. The cost of the background check is to be borne by the organization or the prospective or current employee or volunteer.

Under the bill, a person would be disqualified to serve as an employee or volunteer if the person's criminal history record background check indicates that the person has been convicted in New Jersey or another jurisdiction of a crime or disorderly offense: (1) involving danger to another person, such as criminal homicide, assault, reckless endangerment, terroristic threats, stalking, kidnapping, sexual offenses and robbery; (2) against the family, children or incompetents, including bigamy, endangering the welfare of children, incompetents, the elderly or the disabled, willful nonsupport, unlawful adoption or domestic violence; (3) involving theft; and (4) involving a controlled dangerous substance.

The bill authorizes the Commissioner of Community Affairs to receive criminal history information and exchange fingerprint data with law enforcement agencies. The commissioner, however, is prohibited from initiating a criminal history record background check without the subject's written consent to the check. Prospective and current employees and volunteers are required by the bill to submit their name,

1 signature, address and fingerprints to the youth organization. The
2 organization is required to forward this information to the
3 commissioner.

4 The commissioner is required to promptly notify a person whose
5 criminal history record indicates a disqualifying criminal conviction.
6 The person has 30 days from the date of notification to appeal the
7 finding on the grounds that it is inaccurate or the person has been
8 successfully rehabilitated. In determining whether the person has been
9 rehabilitated, the commissioner is to consider: (1) the nature and
10 responsibility of the position which the convicted person would hold
11 or has held; (2) the nature and seriousness of the offense committed;
12 (3) the circumstances under which the offense occurred; (4) the date
13 of the offense; (5) the age of the person when the offense was
14 committed; (6) whether the offense was an isolated or repeated
15 incident; (7) any social conditions which may have contributed to the
16 offense; and (8) any evidence of rehabilitation, including good conduct
17 in prison or the community, counseling or psychiatric treatment
18 received, acquisition of additional academic or vocational schooling,
19 successful participation in correctional work-release programs or the
20 recommendation of those who have had the person under their
21 supervision.

22 The bill directs the department to act as a clearinghouse for the
23 collection and dissemination of information relating to criminal history
24 record background checks required by the bill.

ASSEMBLY SENIOR ISSUES AND COMMUNITY SERVICES
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2640

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 2, 1999

The Assembly Senior Issues and Community Services Committee reports favorably and with committee amendments Assembly Bill No. 2640.

This bill would permit nonprofit youth serving organizations to request the State Police to perform criminal background checks on current and prospective employees or volunteers. Persons whose background checks revealed criminal convictions would be disqualified as an employee or volunteer of the organization. The bill defines a nonprofit youth serving organization as one which provides recreational, educational, cultural, charitable, social or other activities or services to persons under 18 years of age.

This bill would establish a mechanism for checking the criminal histories of those employees or volunteers who have direct contact with children in order to eliminate those with criminal convictions. The criminal history record background check would entail cross-referencing a person's name and fingerprints against those in the criminal records on file with the Federal Bureau of Investigation, Identification Division and the State Bureau of Identification in the Division of State Police. The cost of the background check would be borne by the organization or the employee or volunteer.

Under the bill, a person would be disqualified to serve as an employee or volunteer if the person's criminal history record background check indicates that the person has been convicted in New Jersey or another jurisdiction of a crime or disorderly offense: (1) involving danger to another person, such as criminal homicide, assault, stalking, kidnapping, sexual offenses and robbery; (2) against the family, including endangering the welfare of children, neglect of the elderly or the disabled or endangering the welfare of incompetents; (3) involving theft; and (4) involving drugs.

The bill authorizes the Commissioner of Community Affairs to receive criminal history information and exchange fingerprint data with law enforcement agencies. The commissioner, however, is prohibited from initiating a criminal history record background check without the

subject's written consent to the check. Prospective and current employees or volunteers would be required to submit their name, signature, address and fingerprints to the youth organization. The organization would forward this information to the commissioner.

The commissioner would promptly notify a person whose criminal history record indicates a disqualifying criminal conviction. The person has 30 days from the date of notification to appeal the finding on the grounds that it is inaccurate or the person has been successfully rehabilitated. In determining whether the person has been rehabilitated, the commissioner would consider the following factors: (1) the nature and responsibility of the position which the convicted person would hold or has held; (2) the nature and seriousness of the offense committed; (3) the circumstances under which the offense occurred; (4) the date of the offense; (5) the age of the person when the offense was committed; (6) whether the offense was an isolated or repeated incident; (7) any social conditions which may have contributed to the offense; and (8) any evidence of rehabilitation, including good conduct in prison or the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs or the recommendation of those who have had the person under their supervision.

The bill directs the department to act as a clearinghouse for the collection and dissemination of information relating to criminal history record background checks required by the bill.

The committee amended the bill to remove specific issues from the scope of the rules and regulations that would be promulgated by the Commissioner of Community Affairs.

LEGISLATIVE FISCAL ESTIMATE

ASSEMBLY, No. 2640

STATE OF NEW JERSEY

208th LEGISLATURE

DATED: JULY 14, 1999

Assembly Bill No. 2640 of 1998 would permit nonprofit youth serving organizations to request that State Police criminal background checks be performed on current and prospective employees and volunteers. The bill defines a nonprofit youth organization as one which provides recreational, educational, cultural, charitable, social or other activities or services to persons under 18 years of age.

The bill requires the Department of Community Affairs (DCA) to act as the conduit agency in initiating these criminal history record background checks. DCA would be responsible for receiving properly documented requests for background checks, for requesting the State Bureau of Identification (SBI) in the Division of State Police to perform the checks, and for notifying the youth serving organization of the results of the check. DCA would also resolve disputes over these results and establish a clearinghouse for collecting and disseminating information pertaining to the checks.

The actual cost of the background check, as performed by the SBI, would be borne by the youth serving organization or its prospective or current employee or volunteer. This cost would be \$49 per employee and \$36 per volunteer, according to the SBI.

The State cost to administer this bill would depend on the number of employees and volunteers of youth serving agencies who are eligible for background checks under this bill and the number of these individuals for whom checks may be requested. DCA, which would administer this program, indicates that its costs cannot be estimated because this information is not available.

The Office of Legislative Services (OLS) concurs with the department's finding that the number of background checks which might be requested under the bill's provisions cannot be estimated. However, OLS notes that the Department of Education and the Division of Consumer Affairs in the Department of Law and Public Safety presently serve as conduit agencies in the performance of background checks on local school district employees and home health aides. Information provided by these agencies indicates their administrative costs per background check range from \$15 to \$17.50.

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

SENATE, No. 1539

STATE OF NEW JERSEY
208th LEGISLATURE

INTRODUCED DECEMBER 10, 1998

Sponsored by:

Senator PETER A. INVERSO

District 14 (Mercer and Middlesex)

SYNOPSIS

Authorizes criminal background checks for youth agency employees and volunteers.

CURRENT VERSION OF TEXT

As introduced.



S1539 INVERSO

1 **AN ACT** concerning criminal history record background checks of
2 employees and volunteers of nonprofit youth serving organizations
3 and supplementing Title 2A of the New Jersey Statutes.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. As used in this act:

9 "Commissioner" means the Commissioner of Community Affairs.

10 "Criminal history record background check" means a determination
11 of whether a person has a criminal record by cross-referencing that
12 person's name and fingerprints with those on file with the Federal
13 Bureau of Investigation, Identification Division and the State Bureau
14 of Identification in the Division of State Police.

15 "Department" means the Department of Community Affairs.

16 "Nonprofit youth serving organization" or "organization" means a
17 corporation, association or other organization established pursuant to
18 Title 15 of the Revised Statutes, Title 15A of the New Jersey Statutes,
19 or other law of this State, and which provides recreational,
20 educational, cultural, charitable, social or other activities or services
21 for persons younger than 18 years of age, and is exempt from federal
22 income taxes.

23

24 2. a. A nonprofit youth serving organization may request, through
25 the department, that the State Bureau of Identification in the Division
26 of State Police conduct a criminal history record background check on
27 each prospective and current employee or volunteer of the
28 organization.

29 b. For the purpose of conducting the criminal history record
30 background check, the division shall examine it's own files and arrange
31 for a similar examination by federal authorities. The division shall
32 inform the department whether the person's criminal history record
33 background check reveals a conviction of a disqualifying crime or
34 offense as specified in section 3 of this act.

35 c. The division shall conduct a criminal history record background
36 check only upon receipt of the written consent to the check of the
37 prospective or current employee or volunteer.

38 d. If a prospective or current employee or volunteer refuses to
39 consent to or cooperate in the securing of a criminal history record
40 background check when one is requested by the organization, the
41 organization shall terminate or deny the appointment of that person as
42 an employee or volunteer.

43 e. The organization or the prospective or current employee or
44 volunteer shall bear the costs associated with conducting criminal
45 history background checks. Notwithstanding any law or regulation to
46 the contrary, the State Bureau of Investigation shall not charge a fee

S1539 INVERSO

1 for a criminal history record background check that exceeds the actual
2 cost of conducting that check.

3

4 3. A person shall be disqualified from serving as an employee or
5 volunteer of a nonprofit youth serving organization if that person's
6 criminal history record background check reveals a record of
7 conviction of any of the following crimes and offenses:

8 a. In New Jersey, any crime or disorderly persons offense:

9 (1) involving danger to the person, meaning those crimes and
10 disorderly persons offenses set forth in N.J.S.2C:11-1 et seq.,
11 N.J.S.2C:12-1 et seq., N.J.S.2C:13-1 et seq., N.J.S.2C:14-1 et seq. or
12 N.J.S.2C:15-1 et seq.;

13 (2) against the family, children or incompetents, meaning those
14 crimes and disorderly persons offenses set forth in N.J.S.2C:24-1 et
15 seq.;

16 (3) involving theft as set forth in chapter 20 of Title 2C of the New
17 Jersey Statutes;

18 (4) involving any controlled dangerous substance or controlled
19 substance analog as set forth in chapter 35 of Title 2C of the New
20 Jersey Statutes except paragraph (4) of subsection a. of
21 N.J.S.2C:35-10.

22 b. In any other state or jurisdiction, conduct which, if committed
23 in New Jersey, would constitute any of the crimes or disorderly
24 persons offenses described in subsection a. of this section.

25

26 4. a. The commissioner shall promptly notify a prospective or
27 current employee or volunteer whose criminal history record
28 background check reveals a disqualifying criminal conviction. The
29 person shall have 30 days from the receipt of that notice to petition the
30 commissioner for a review and cite reasons substantiating the review.

31 b. Notwithstanding the provisions of section 3 of this act, no
32 person shall be disqualified from serving as an employee or volunteer
33 of a nonprofit youth serving organization on the basis of any
34 conviction disclosed by a criminal history record background check if
35 the person has affirmatively demonstrated to the commissioner clear
36 and convincing evidence of the person's rehabilitation. In determining
37 whether a person has affirmatively demonstrated rehabilitation, the
38 commissioner shall consider the following factors:

39 (1) the nature and responsibility of the position which the
40 convicted person would hold or has held, as the case may be;

41 (2) the nature and seriousness of the offense;

42 (3) the circumstances under which the offense occurred;

43 (4) the date of the offense;

44 (5) the age of the person when the offense was committed;

45 (6) whether the offense was an isolated or repeated incident;

46 (7) any social conditions which may have contributed to the

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1 offense; and

2 (8) any evidence of rehabilitation, including good conduct in prison
3 or the community, counseling or psychiatric treatment received,
4 acquisition of additional academic or vocational schooling, successful
5 participation in correctional work-release programs or the
6 recommendation of those who have had the person under their
7 supervision.

8 c. The department shall promptly advise the nonprofit youth
9 serving organization whether a person is qualified to serve as an
10 employee or volunteer of the organization.

11

12 5. a. Prospective or current employees and volunteers of nonprofit
13 youth serving organizations shall submit their name, address,
14 fingerprints and written consent to the organization for the criminal
15 history record background check to be performed. The organization
16 shall supply this documentation to the commissioner, who shall
17 coordinate the background check.

18 b. The commissioner is authorized to exchange fingerprint data
19 with, and receive criminal history record information for use by
20 nonprofit youth serving organizations from the Federal Bureau of
21 Investigation, Identification Section and the Division of State Police,
22 Bureau of Identification and such other law enforcement agencies and
23 jurisdictions as may be necessary for the purposes of this act.

24 c. The department shall act as a clearinghouse for the collection
25 and dissemination of information obtained as a result of conducting
26 criminal history record background checks pursuant to this act.

27

28 6. The commissioner, pursuant to the "Administrative Procedure
29 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and
30 regulations to effectuate the purposes of this act, including, but not
31 limited to:

32 a. Guidelines for determining whether a person is fit to serve as an
33 employee or volunteer of a nonprofit youth serving organization;

34 b. Procedures requiring nonprofit youth serving organizations to
35 make documented, good faith efforts to obtain information and
36 recommendations concerning the person's fitness to serve a youth
37 sports coach;

38 c. Procedures for resolving disputes when a person is found
39 unqualified to serve as an employee or volunteer;

40 d. Guidelines, to be developed after consultation with the Attorney
41 General, concerning access to information obtained as a result of
42 conducting a criminal history record background check.

43

44 7. This act shall take effect on the first day of the third month
45 following enactment.

STATEMENT

1

2

3 This bill would permit nonprofit youth serving organizations to
4 request the State Police to perform criminal background checks on
5 current and prospective employees and volunteers. Persons whose
6 background checks revealed criminal convictions would be disqualified
7 as an employee or volunteer of the organization. The bill defines a
8 nonprofit youth organization as one which provides recreational,
9 educational, cultural, charitable, social or other activities or services
10 to persons under 18 years of age.

11 This bill would provide the State's myriad youth organizations with
12 a structured mechanism for checking the criminal histories of those
13 employees and volunteers who have direct contact with children and
14 youth and eliminating those with criminal convictions. In so doing, the
15 bill parallels the provisions of federal legislation (H.R.2488) sponsored
16 by Congressman Bob Franks and others which would permit nonprofit
17 youth serving organizations to request authorized state agencies to
18 perform nationwide background checks.

19 The criminal history record background check required by the bill
20 would entail cross-referencing a person's name and fingerprints against
21 those in the criminal records on file with the Federal Bureau of
22 Investigation, Identification Division and the State Bureau of
23 Identification in the Division of State Police.

24 Specifically, the bill would require the Department of Community
25 Affairs to initiate a criminal history record background check of
26 current and prospective employees and volunteers at the request of a
27 youth serving organization. The cost of the background check is to be
28 borne by the organization or the prospective or current employee or
29 volunteer.

30 Under the bill, a person would be disqualified to serve as an
31 employee or volunteer if the person's criminal history record
32 background check indicates that the person has been convicted in New
33 Jersey or another jurisdiction of a crime or disorderly offense: (1)
34 involving danger to another person, such as criminal homicide, assault,
35 reckless endangerment, terroristic threats, stalking, kidnapping, sexual
36 offenses and robbery; (2) against the family, children or incompetents,
37 including bigamy, endangering the welfare of children, incompetents,
38 the elderly or the disabled, willful nonsupport, unlawful adoption or
39 domestic violence; (3) involving theft; and (4) involving a controlled
40 dangerous substance.

41 The bill authorizes the Commissioner of Community Affairs to
42 receive criminal history information and exchange fingerprint data with
43 law enforcement agencies. The commissioner, however, is prohibited
44 from initiating a criminal history record background check without the
45 subject's written consent to the check. Prospective and current
46 employees and volunteers are required by the bill to submit their name,

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1 signature, address and fingerprints to the youth organization. The
2 organization is required to forward this information to the
3 commissioner.

4 The commissioner is required to promptly notify a person whose
5 criminal history record indicates a disqualifying criminal conviction.
6 The person has 30 days from the date of notification to appeal the
7 finding on the grounds that it is inaccurate or the person has been
8 successfully rehabilitated. In determining whether the person has been
9 rehabilitated, the commissioner is to consider: (1) the nature and
10 responsibility of the position which the convicted person would hold
11 or has held; (2) the nature and seriousness of the offense committed;
12 (3) the circumstances under which the offense occurred; (4) the date
13 of the offense; (5) the age of the person when the offense was
14 committed; (6) whether the offense was an isolated or repeated
15 incident; (7) any social conditions which may have contributed to the
16 offense; and (8) any evidence of rehabilitation, including good conduct
17 in prison or the community, counseling or psychiatric treatment
18 received, acquisition of additional academic or vocational schooling,
19 successful participation in correctional work-release programs or the
20 recommendation of those who have had the person under their
21 supervision.

22 The bill directs the department to act as a clearinghouse for the
23 collection and dissemination of information relating to criminal history
24 record background checks required by the bill.

SENATE LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

SENATE, No. 1539

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 20, 1999

The Senate Law and Public Safety Committee reports favorably and with committee amendments Senate Bill No. 1539.

This bill would permit nonprofit youth serving organizations to request the State Police to perform criminal background checks on current and prospective employees and volunteers. Persons whose background checks revealed criminal convictions would be disqualified as an employee or volunteer of the organization. The bill defines a nonprofit youth organization as one which provides recreational, educational, cultural, charitable, social or other activities or services to persons under 18 years of age.

This bill would provide the State's myriad youth organizations with a structured mechanism for checking the criminal histories of those employees and volunteers who have direct contact with children and youth and eliminating those with criminal convictions. In so doing, the bill parallels the provisions of federal legislation (H.R.2488) sponsored by Congressman Bob Franks and others which would permit nonprofit youth serving organizations to request authorized state agencies to perform nationwide background checks.

The criminal history record background check required by the bill would entail cross-referencing a person's name and fingerprints against those in the criminal records on file with the Federal Bureau of Investigation, Identification Division and the State Bureau of Identification in the Division of State Police.

Specifically, the bill would require the Department of Community Affairs to initiate a criminal history record background check of current and prospective employees and volunteers at the request of a youth serving organization. The cost of the background check is to be borne by the organization or the prospective or current employee or volunteer.

Under the bill, a person would be disqualified to serve as an employee or volunteer if the person's criminal history record background check indicates that the person has been convicted in New Jersey or another jurisdiction of a crime or disorderly offense: (1) involving danger to another person, such as criminal homicide, assault,

reckless endangerment, terroristic threats, stalking, kidnapping, sexual offenses and robbery; (2) against the family, children or incompetents, including bigamy, endangering the welfare of children, incompetents, the elderly or the disabled, willful nonsupport, unlawful adoption or domestic violence; (3) involving theft; and (4) involving a controlled dangerous substance.

The bill authorizes the Commissioner of Community Affairs to receive criminal history information and exchange fingerprint data with law enforcement agencies. The commissioner, however, is prohibited from initiating a criminal history record background check without the subject's written consent to the check. Prospective and current employees and volunteers are required by the bill to submit their name, signature, address and fingerprints to the youth organization. The organization is required to forward this information to the commissioner.

The commissioner is required to promptly notify a person whose criminal history record indicates a disqualifying criminal conviction. The person has 30 days from the date of notification to appeal the finding on the grounds that it is inaccurate or the person has been successfully rehabilitated. In determining whether the person has been rehabilitated, the commissioner is to consider: (1) the nature and responsibility of the position which the convicted person would hold or has held; (2) the nature and seriousness of the offense committed; (3) the circumstances under which the offense occurred; (4) the date of the offense; (5) the age of the person when the offense was committed; (6) whether the offense was an isolated or repeated incident; (7) any social conditions which may have contributed to the offense; and (8) any evidence of rehabilitation, including good conduct in prison or the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs or the recommendation of those who have had the person under their supervision.

The bill directs the department to act as a clearinghouse for the collection and dissemination of information relating to criminal history record background checks required by the bill.

The committee amended the bill to remove specific issues from the scope of the rules and regulations that would be promulgated by the Commissioner of Community Affairs.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 1539

STATE OF NEW JERSEY

208th LEGISLATURE

DATED: JANUARY 18, 2000

Senate Bill No. 1539 (1R) of 1998 would permit nonprofit youth serving organizations to request that State Police criminal background checks be performed on current and prospective employees and volunteers. The bill defines a nonprofit youth organization as one which provides recreational, educational, cultural, charitable, social or other activities or services to persons under 18 years of age.

The bill requires the Department of Community Affairs (DCA) to act as the conduit agency in initiating these criminal history record background checks. DCA would be responsible for receiving properly documented requests for background checks, for requesting the State Bureau of Identification (SBI) in the Division of State Police to perform the checks, and for notifying the youth serving organization of the results of the check. DCA would also resolve disputes over these results and establish a clearinghouse for collecting and disseminating information pertaining to the checks.

The actual cost of the background check, as performed by the SBI, would be borne by the youth serving organization or its prospective or current employee or volunteer. This cost would be \$49 per employee and \$36 per volunteer, according to the SBI.

The State cost to administer this bill would depend on the number of employees and volunteers of youth serving agencies who are eligible for background checks under this bill and the number of these individuals for whom checks may be requested. DCA, which would administer this program, indicates that its costs cannot be estimated because this information is not available.

The Office of Legislative Services (OLS) concurs with the department's finding that the number of background checks which might be requested under the bill's provisions cannot be estimated. However, OLS notes that the Department of Education and the Division of Consumer Affairs in the Department of Law and Public Safety presently serve as conduit agencies in the performance of background checks on local school district employees and home health aides. Information provided by these agencies indicates their administrative costs per background check range from \$15 to \$17.50.

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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

ASSEMBLY BILL NO. 2640
(FIRST REPRINT)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 2640 (First Reprint) with my recommendations for reconsideration.

A. Summary of Bill

This bill permits nonprofit youth serving organizations to request the State Police to perform a criminal background check on current and prospective employees or volunteers. Specifically, the bill establishes a mechanism for checking the criminal histories of those employees or volunteers who have direct contact with minors in order to eliminate those with convictions of certain crimes. Second, the bill would disqualify prospective employees and volunteers who have been convicted of certain offenses. It would, however, permit a person found to have a disqualifying conviction to petition the Commissioner of Community Affairs for a finding that the person has been rehabilitated, and hence, is eligible to serve the organization.

B. Recommended Action

I commend the sponsors of this bill and the Legislature for recognizing the need to protect our children by permitting nonprofit youth serving organizations to obtain criminal background checks on their current and prospective employees and volunteers. After careful consideration, I have concluded it is appropriate to permit nonprofit youth serving organizations to obtain certain criminal background information, in order to protect the children of our State. I believe, however, that certain provisions of this bill should be modified to provide for more effective and efficient administration of these background checks. First, the bill places this program in the Department of Community Affairs. I recommend, instead, that this program be placed in the Department of Law and Public Safety, which already has the responsibilities regarding the conduct of criminal background checks.

Second, I am concerned with the language requiring the Commissioner of Community Affairs to determine whether this individual has demonstrated rehabilitation by clear and convincing evidence. I believe that each individual organization is in the

best position to ultimately determine whether an individual is suitable to serve that organization.

Third, I recommend clarifying language to ensure that schools are not covered by the bill. The bill's intent is to address non-profit youth serving organizations, and not public or nonpublic schools. Criminal background checks for schools are currently addressed elsewhere in the law. I have been informed that the inclusion of schools in this bill was an oversight.

Fourth, I am amending the effective date to 90 days after enactment to provide time to promulgate regulations.

Fifth, I am directing the Attorney General to certify annually to the State Treasurer the cost per background check in the preceding year.

Therefore, I herewith return Assembly Bill No. 2640 (First Reprint) and recommend that it be amended as follows:

<u>Page 2, Section 1, Line 9:</u>	Delete in its entirety.
<u>Page 2, Section 1, Line 15:</u>	Delete "Community Affairs" and insert "Law and Public Safety"
<u>Page 2, Section 1, Line 19:</u>	After "State," insert "but excluding public and nonpublic schools,"
<u>Page 2, Section 1, Line 20:</u>	Delete "educational,"
<u>Page 2, Section 2, Line 30:</u>	Delete "it's" and insert "its".
<u>Page 2, Section 2, Lines 38-42:</u>	Delete in their entirety.
<u>Page 3, Section 2, Line 1:</u>	Delete "e." and insert "d."
<u>Page 3, Section 2, Line 4:</u>	Delete "State Bureau of Investigation" and insert "department".
<u>Page 3, Section 2, Line 6:</u>	Delete "." and " insert ", as determined by the Attorney General. The Attorney General shall annually certify to the State Treasurer the cost per criminal history background check in the immediately preceding year."
<u>Page 3, Section 3, Line 8:</u>	Delete "shall" and insert "may"
<u>Page 3, Section 4, Lines 30-46:</u>	Delete in their entirety.
<u>Page 4, Section 4, Lines 1-14:</u>	Delete in their entirety.
<u>Page 4, Section 5, Line 16:</u>	Delete "5" and insert "4"
<u>Page 4, Section 5, Line 20:</u>	Delete "commissioner" and insert "Attorney General"

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

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Page 4, Section 5, Line 22: Delete "commissioner" and insert "Attorney General"

Page 4, Section 6, Line 32: Delete "6" and insert "5"

Page 4, Section 6, Line 32: Delete "commissioner" and insert "Attorney General"

Page 4, Section 6, Line 34: Delete "including"

Page 4, Section 6, Lines 44-45: Delete "guidelines, to be developed after consultation with the Attorney General,"

Page 4, Section 6, Line 45: After "to" insert "and dissemination of"

Page 5, Section 7, Line 1: Delete "7" and insert "6"

Page 5, Section 7, Line 1: Delete "on the first day of the third month" and insert "90 days"

Respectfully,

/s/ Christine Todd Whitman

GOVERNOR

[seal]

Attest:

/s/ Richard S. Mroz

Chief Counsel to the Governor