

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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HOUSE DRH60271-LE-228A (3/14)

Short Title: Criminal History Checks/DPI Employees. (Public)

Sponsors: Representative Fisher.

Referred to:

A BILL TO BE ENTITLED

AN ACT AUTHORIZING CRIMINAL HISTORY RECORD CHECKS OF  
EMPLOYEES OF AND APPLICANTS FOR EMPLOYMENT WITH THE  
DEPARTMENT OF PUBLIC INSTRUCTION.

The General Assembly of North Carolina enacts:

**SECTION 1.** Chapter 114 of the General Statutes is amended by adding a  
new section to read:

**"§ 114-19.20. Criminal history record checks of employees of and applicants for  
employment with the Department of Public Instruction.**

(a) Definitions. – As used in this section, the term:

(1) "Covered person" means any of the following:

- a. An applicant for employment or a current employee in a position in the Department of Public Instruction who has direct or indirect ability to access Public Instruction records, documents, or electronic data.
- b. A person who supervises positions in the Department of Public Instruction with direct or indirect ability to access Public Instruction records, documents, or electronic data.
- c. An applicant for employment or a current employee in a position in the Department of Public Instruction.
- d. An independent contractor or an employee of an independent contractor that has contracted to provide services to the Department of Public Instruction.

(2) "Criminal history" means a State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon a covered person's fitness for employment in the Department of Public Instruction. The crimes include, but are not limited to, criminal

1 offenses as set forth in any of the following Articles of Chapter 14 of  
2 the General Statutes: Article 5, Counterfeiting and Issuing Monetary  
3 Substitutes; Article 5A, Endangering Executive and Legislative  
4 Officers; Article 6, Homicide; Article 7A, Rape and Other Sex  
5 Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction;  
6 Article 13, Malicious Injury or Damage by Use of Explosive or  
7 Incendiary Device or Material; Article 14, Burglary and Other  
8 Housebreakings; Article 15, Arson and Other Burnings; Article 16,  
9 Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19,  
10 False Pretenses and Cheats; Article 19A, Obtaining Property or  
11 Services by False or Fraudulent Use of Credit Device or Other Means;  
12 Article 19B, Financial Transaction Card Crime Act; Article 20,  
13 Frauds; Article 21, Forgery; Article 26, Offenses Against Public  
14 Morality and Decency; Article 26A, Adult Establishments; Article 27,  
15 Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31,  
16 Misconduct in Public Office; Article 35, Offenses Against the Public  
17 Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection  
18 of Minors; Article 40, Protection of the Family; Article 59, Public  
19 Intoxication; and Article 60, Computer-Related Crime. The crimes  
20 also include possession or sale of drugs in violation of the North  
21 Carolina Controlled Substances Act, Article 5 of Chapter 90 of the  
22 General Statutes, and alcohol-related offenses such as sale to underage  
23 persons in violation of G.S. 18B-302, or driving while impaired  
24 violation of G.S. 20-138.1 through G.S. 20-138.5.

25 (b) When requested by the Department of Public Instruction, the North Carolina  
26 Department of Justice may provide to the requesting department a covered person's  
27 criminal history from the State Repository of Criminal Histories. Such request shall not  
28 be due to a person's age, sex, race, color, national origin, religion, creed, political  
29 affiliation, or handicapping condition as defined by G.S. 168A-3. For requests for a  
30 State criminal history record check only, the requesting department shall provide to the  
31 Department of Justice a form consenting to the check, signed by the covered person to  
32 be checked and any additional information required by the Department of Justice.  
33 National criminal record checks are authorized for covered applicants who have not  
34 resided in the State of North Carolina during the past five years. For national checks the  
35 Department of Public Instruction shall provide to the North Carolina Department of  
36 Justice the fingerprints of the covered person to be checked, any additional information  
37 required by the Department of Justice, and a form signed by the covered person to be  
38 checked, consenting to the check of the criminal record and to the use of fingerprints  
39 and other identifying information required by the State or National Repositories. The  
40 fingerprints of the individual shall be forwarded to the State Bureau of Investigation for  
41 a search of the State criminal history record file and the State Bureau of Investigation  
42 for a national criminal history record check. The Department of Public Instruction shall  
43 keep all information pursuant to this section confidential. The Department of Justice

1 shall charge a reasonable fee for conducting the checks of the criminal history records  
2 authorized by this section.

3 (c) All releases of criminal history information to the Department of Public  
4 Instruction shall be subject to, and in compliance with, rules governing the  
5 dissemination of criminal history record checks as adopted by the North Carolina  
6 Division of Criminal Information. All of the information either department receives  
7 through the checking of the criminal history is privileged information and for the  
8 exclusive use of that department.

9 (d) If the covered person's verified criminal history record check reveals one or  
10 more convictions covered under subsection (a) of this section, then the conviction shall  
11 constitute just cause for not selecting the person for employment, or for dismissing the  
12 person from current employment with the Department of Public Instruction. The  
13 conviction shall not automatically prohibit employment; however, the following factors  
14 shall be considered by the Department of Public Instruction in determining whether  
15 employment shall be denied:

16 (1) The level and seriousness of the crime;

17 (2) The date of the crime;

18 (3) The age of the person at the time of the conviction;

19 (4) The circumstances surrounding the commission of the crime, if  
20 known;

21 (5) The nexus between the criminal conduct of the person and job duties  
22 of the person;

23 (6) The prison, jail, probation, parole, rehabilitation, and employment  
24 records of the person since the date the crime was committed; and

25 (7) The subsequent commission by the person of a crime listed in  
26 subsection (a) of this section.

27 (e) The Department of Public Instruction may deny employment to or dismiss a  
28 covered person who refuses to consent to a criminal history record check or use of  
29 fingerprints or other identifying information required by the State or National  
30 Repositories of Criminal Histories. Any such refusal shall constitute just cause for the  
31 employment denial or the dismissal from employment.

32 (f) The Department of Public Instruction may extend a conditional offer of  
33 employment pending the results of a criminal history record check authorized by this  
34 section."

35 **SECTION 2.** This act becomes effective October 1, 2007.