



Senate

File No. 802

General Assembly

January Session, 2003

(Reprint of File No. 563)

Substitute Senate Bill No. 946
As Amended by Senate Amendment
Schedule "A" and House Amendment
Schedules "A" and "B"

Approved by the Legislative Commissioner
May 31, 2003

AN ACT CONCERNING CRIMINAL HISTORY RECORDS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2003*) (a) The Commissioner of
2 Mental Retardation shall require each applicant for employment in a
3 Department of Mental Retardation program that provides direct
4 services to persons with mental retardation to submit to a check of
5 such applicant's state criminal background.

6 (b) The commissioner may require private sector service providers
7 under contract with or licensed by the department to provide
8 residential, day or support services to persons with mental retardation,
9 to require each applicant for employment who will have direct and
10 ongoing contact with persons and families receiving such services to
11 submit to a check of such applicant's state criminal background. If the
12 department requires such providers to have such applicants submit to
13 such checks, the administrative costs associated with such checks shall
14 be considered an allowable cost on the annual cost report.

15 (c) If such checks are conducted, no applicant shall be hired by the
16 department or a private sector service provider until the results of such
17 checks are available.

18 Sec. 2. (*Effective from passage*) The Commissioner of Mental
19 Retardation shall prepare a report outlining the legislative, fiscal and
20 logistical issues regarding a proposal to require each applicant for
21 employment (1) in a Department of Mental Retardation program that
22 provides direct services to persons with mental retardation, or (2) by a
23 private sector service provider under contract with or licensed by the
24 department to provide residential, day or support services to persons
25 with mental retardation, to submit to a national criminal history
26 records check. Such report shall describe the type of check to be done,
27 the estimated cost of conducting such check, the legislative authority
28 necessary for conducting such check, and any additional legislative,
29 fiscal or logistical issues associated with conducting national criminal
30 history records checks. Not later than January 1, 2004, the
31 commissioner shall submit such report, in accordance with section 11-
32 4a of the general statutes, to the joint standing committee of the
33 General Assembly having cognizance of matters relating to public
34 health.

35 Sec. 3. Section 31-51i of the general statutes is repealed and the
36 following is substituted in lieu thereof (*Effective from passage*):

37 (a) For the purposes of this section, "employer" means any person
38 engaged in business who has one or more employees, including the
39 state or any political subdivision of the state.

40 (b) No employer or an employer's agent, representative or designee
41 may require an employee or prospective employee to disclose the
42 existence of any arrest, criminal charge or conviction, the records of
43 which have been erased pursuant to section 46b-146, 54-76o or 54-142a.

44 (c) An employment application form that contains any question
45 concerning the criminal history of the applicant shall contain a notice,
46 in clear and conspicuous language: (1) That the applicant is not

47 required to disclose the existence of any arrest, criminal charge or
48 conviction, the records of which have been erased pursuant to section
49 46b-146, 54-76o or 54-142a, (2) that criminal records subject to erasure
50 pursuant to section 46b-146, 54-76o or 54-142a are records pertaining to
51 a finding of delinquency or that a child was a member of a family with
52 service needs, an adjudication as a youthful offender, a criminal charge
53 that has been dismissed or nolle, a criminal charge for which the
54 person has been found not guilty or a conviction for which the person
55 received an absolute pardon, and (3) that any person whose criminal
56 records have been erased pursuant to section 46b-146, 54-76o or 54-
57 142a shall be deemed to have never been arrested within the meaning
58 of the general statutes with respect to the proceedings so erased and
59 may so swear under oath.

60 (d) No employer or an employer's agent, representative or designee
61 shall deny employment to a prospective employee solely on the basis
62 that the prospective employee had a prior arrest, criminal charge or
63 conviction, the records of which have been erased pursuant to section
64 46b-146, 54-76o or 54-142a.

65 (e) No employer or an employer's agent, representative or designee
66 shall discharge, or cause to be discharged, or in any manner
67 discriminate against, any employee solely on the basis that the
68 employee had, prior to being employed by such employer, an arrest,
69 criminal charge or conviction, the records of which have been erased
70 pursuant to section 46b-146, 54-76o or 54-142a.

71 (f) The portion of an employment application form which contains
72 information concerning the criminal history record of an applicant or
73 employee shall only be available to the members of the personnel
74 department of the company, firm or corporation or, if the company,
75 firm or corporation does not have a personnel department, the person
76 in charge of employment, and to any employee or member of the
77 company, firm or corporation, or an agent of such employee or
78 member, involved in the interviewing of the applicant.

79 (g) Notwithstanding the provisions of subsection (f) of this section,
80 the portion of an employment application form which contains
81 information concerning the criminal history record of an applicant or
82 employee may be made available as necessary to persons other than
83 those specified in said subsection (f) by:

84 (1) A broker-dealer or investment adviser registered under chapter
85 672a in connection with (A) the possible or actual filing of, or the
86 collection or retention of information contained in, a form U-4 Uniform
87 Application for Securities Industry Registration or Transfer, (B) the
88 compliance responsibilities of such broker-dealer or investment
89 adviser under state or federal law, or (C) the applicable rules of self-
90 regulatory organizations promulgated in accordance with federal law;

91 (2) An insured depository institution in connection with (A) the
92 management of risks related to safety and soundness, security or
93 privacy of such institution, (B) any waiver that may possibly or
94 actually be sought by such institution pursuant to section 19 of the
95 Federal Deposit Insurance Act, 12 USC 1829(a), (C) the possible or
96 actual obtaining by such institution of any security or fidelity bond, or
97 (D) the compliance responsibilities of such institution under state or
98 federal law; and

99 (3) An insurance producer licensed under chapter 701a in
100 connection with (A) the management of risks related to security or
101 privacy of such insurance producer, or (B) the compliance
102 responsibilities of such insurance producer under state or federal law.

103 Sec. 4. (NEW) (*Effective October 1, 2003*) The Department of Public
104 Safety shall perform state and national criminal history records checks
105 at the request of any sworn police officer with respect to any coach
106 involved in a police-sponsored athletic activity where such coach will
107 be in direct contact with children under eighteen years of age. The
108 Department of Public Safety shall charge the sponsoring organization
109 fees for conducting such criminal history records checks as provided in
110 subdivision (1) of subsection (b) of section 29-17a of the general

111 statutes.

This act shall take effect as follows:	
Section 1	<i>October 1, 2003</i>
Sec. 2	<i>from passage</i>
Sec. 3	<i>from passage</i>
Sec. 4	<i>October 1, 2003</i>

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Type	FY 04 \$	FY 05 \$
Department of Mental Retardation	None	None	None
Department of Public Safety	GF - Revenue Gain	Indeterminate	Indeterminate

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill requires each applicant for employment in a Department of Mental Retardation program that provides direct services to submit to a state criminal background check. This requirement is current policy and therefore will result in no additional cost. The bill further allows that the commissioner may require private sector service providers to require direct care applicants to submit to a state criminal records check. As with department employees, this is current practice. However, the bill further requires that the provider administrative costs associated with the state records check are to be considered an allowable cost on the provider’s annual cost report (for those providers that do not utilize the DMR’s records check system and instead incur the cost). The allowable administrative cost provision is not anticipated to result in an increase to the provider contracts as they are negotiated on an annual basis as a result of available funding.

In addition, the bill requires the department to prepare and submit a report to the public health committee outlining various impacts of imposing a national criminal history check. The reporting requirement will result in no additional cost to the department.

The bill requires the Department of Public Safety to perform state and national criminal history records checks on coaches at certain police-sponsored athletic activities. The bill specifies that the cost of such checks would be charged to the sponsoring organization; hence, there would be no cost to the state or municipalities. The bill would result in a revenue gain to the state based on the \$49 fee (\$25 for a state check and \$24 for a national check). The number of checks and the potential revenue gain is unknown at this time.

Finally, the bill allows certain financial employers to make available criminal history information on employment applications and will result in no fiscal impact.

Senate "A" eliminated the national criminal records check and the resulting cost for the Department of Mental Retardation. The amendment also retained the state criminal records check and required the department to prepare and submit a report on the impacts of imposing a national criminal history. These provisions as described above will not result in a cost to the department.

House "A" allows certain financial employers to make available criminal history information on employment applications and will result in no fiscal impact.

House "B" as referenced above will result in a General Fund revenue gain by charging a sponsor a \$49 fee for a state and national criminal history record check of coaches at certain police-sponsored activities.

OLR Bill Analysis

sSB 946 (File 563, as amended by Senate "A" and House "A" and "B")*

AN ACT CONCERNING CRIMINAL HISTORY RECORDS CHECKS FOR EMPLOYEES WHO WORK WITH PERSONS WITH MENTAL RETARDATION.

SUMMARY:

This bill:

1. requires the Department of Mental Retardation (DMR) to conduct state criminal background checks on everyone applying for a job in a DMR program that provides direct care to clients;
2. allows DMR to require private providers that it licenses for direct services to conduct such check on certain prospective employees;
3. requires DMR to study issues involved with requiring national criminal history checks for its and private providers' direct care staff;
4. allows certain financial services institutions and professionals, in specified situations, to make criminal history information that appears on employment application forms available to people outside the hiring process; and
5. permits police-sponsored athletic organizations to obtain state and national criminal history records for prospective coaches.

*Senate Amendment "A" removes a requirement for DMR and private providers to conduct national criminal records checks and requires DMR to study the issues involved with such a requirement.

*House Amendment "A" allows certain financial services institutions and professionals to make available criminal history information on employment applications.

*House Amendment "B" allows police-sponsored athletic

organizations to obtain state and national criminal history records for prospective coaches.

EFFECTIVE DATE: October 1, 2003, except for the DMR report requirement, which is effective upon passage.

DMR BACKGROUND CHECKS

This bill conforms law to current practice by:

1. requiring the DMR to subject everyone applying for a job in a DMR program that provides direct services to clients to state criminal history records checks and
2. permitting DMR to require private providers that it licenses or contracts with for residential, day, or support services to require job applicants who will have direct and ongoing contact with clients and their families to submit to these checks. If DMR requires a private provider to do this, the bill makes the costs of the checks an allowable cost on its annual cost report.

The bill prohibits DMR and any private provider that requires background checks from hiring anyone until the check results are available.

The bill further requires DMR to report on the fiscal, logistical, and legislative issues involved with requiring national criminal history checks for its and private providers' direct care staff. The report must describe the type of check required, the legislative authority needed to do it, estimated costs, and any other additional issues. DMR must submit the report to the Public Health Committee by January 1, 2004.

CRIMINAL HISTORY INFORMATION AND FINANCIAL SERVICES INSTITUTIONS

The law permits only members of a business' personnel department, the person in charge of employment in a firm with no personnel department, and people conducting employment interviews to obtain criminal history information about an applicant or employee contained in an employment application form. The bill allows certain financial services institutions and professionals, in specified situations, to make this information available to other people, as necessary.

1. It allows a broker-dealer or registered investment advisor to make it available in connection with (a) the filing, possible filing, collection, or retention of information contained in a uniform security industry form; (b) legal compliance responsibilities; or (c) self-regulatory organization rules promulgated according to federal law.
2. It allows banks or credit unions to make it available in connection with (a) management risks related to their safety, soundness, security, or privacy; (b) waivers they may seek under the Federal Deposit Insurance Act; (c) obtaining a security or fidelity bond; or (d) their compliance responsibilities under federal law.
3. It allows licensed insurance producers to make it available in connection with (a) management risks related to their security or privacy or (b) their compliance responsibilities under federal law.

POLICE-SPONSORED ATHLETIC ACTIVITY

The bill requires the Department of Public Safety to conduct a national and state criminal history record check on any coach in a police-sponsored athletic activity who will be in direct contact with children under age 18. It must do this when any sworn police officer asks it to do so. The department can charge the sponsoring organization for the cost of conducting the checks.

BACKGROUND

DMR Background Check Policy

Under current DMR policy, all prospective DMR employees must submit to state criminal history records checks. DMR requires all private providers it funds or licenses to conduct state background checks on prospective employees to whom they make conditional offers of employment. These providers can conduct the checks themselves, for example by hiring a private vendor, or they can ask DMR to conduct them through its CT SAFEHIRE system.

Legislative History

The Senate referred this bill to the Appropriations Committee, which

reported it favorably.

COMMITTEE ACTION

Public Health Committee

Joint Favorable Substitute Change of Reference

Yea 21 Nay 0

Judiciary Committee

Joint Favorable Substitute

Yea 36 Nay 0

Appropriations Committee

Joint Favorable Report

Yea 44 Nay 0