



# House of Representatives

General Assembly

**File No. 429**

February Session, 2018

House Bill No. 5259

*House of Representatives, April 12, 2018*

The Committee on Judiciary reported through REP. TONG of the 147th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

***AN ACT CONCERNING CRIMINAL OFFENSES THAT DISQUALIFY AN INDIVIDUAL FROM OBTAINING EMPLOYMENT OR VOLUNTEERING AT A LONG-TERM CARE FACILITY.***

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

1 Section 1. Section 19a-491c of the 2018 supplement to the general  
2 statutes is repealed and the following is substituted in lieu thereof  
3 (*Effective October 1, 2018*):

4 (a) As used in this section:

5 (1) "Criminal history and patient abuse background search" or  
6 "background search" means (A) a review of the registry of nurse's  
7 aides maintained by the Department of Public Health pursuant to  
8 section 20-102bb, (B) checks of state and national criminal history  
9 records conducted in accordance with section 29-17a, and (C) a review  
10 of any other registry specified by the Department of Public Health  
11 which the department deems necessary for the administration of a  
12 background search program.

13 (2) "Direct access" means physical access to a patient or resident of a  
14 long-term care facility that affords an individual with the opportunity  
15 to commit abuse or neglect against or misappropriate the property of a  
16 patient or resident.

17 (3) "Disqualifying offense" means a conviction of any crime  
18 described in 42 USC 1320a-7(a)(1), (2), (3) or (4) or a substantiated  
19 finding of neglect, abuse or misappropriation of property by a state or  
20 federal agency pursuant to an investigation conducted in accordance  
21 with 42 USC 1395i-3(g)(1)(C) or 42 USC 1396r(g)(1)(C). "Disqualifying  
22 offense" includes, but is not limited to, a conviction under section 53a-  
23 54a, 53a-54b, 53a-54c, 53a-54d, 53a-55, 53a-55a, 53a-59, 53a-59a, 53a-70,  
24 53a-70a, 53a-70c, 53a-71, 53a-72a, 53a-72b, 53a-100aa, 53a-101, 53a-102,  
25 53a-111, 53a-122, 53a-123 or 53a-134.

26 (4) "Long-term care facility" means any facility, agency or provider  
27 that is a nursing home, as defined in section 19a-521, a residential care  
28 home, as defined in section 19a-521, a home health agency, as defined  
29 in section 19a-490, an assisted living services agency, as defined in  
30 section 19a-490, an intermediate care facility for individuals with  
31 intellectual disabilities, as defined in 42 USC 1396d(d), a chronic  
32 disease hospital, as defined in section 19a-550, or an agency providing  
33 hospice care which is licensed to provide such care by the Department  
34 of Public Health or certified to provide such care pursuant to 42 USC  
35 1395x.

36 (b) (1) On or before July 1, 2012, the Department of Public Health  
37 shall create and implement a criminal history and patient abuse  
38 background search program, within available appropriations, in order  
39 to facilitate the performance, processing and analysis of the criminal  
40 history and patient abuse background search of individuals who have  
41 direct access.

42 (2) The Department of Public Health shall develop a plan to  
43 implement the criminal history and patient abuse background search  
44 program, in accordance with this section. In developing such plan, the  
45 department shall (A) consult with the Commissioners of Emergency

46 Services and Public Protection, Developmental Services, Mental Health  
47 and Addiction Services, Social Services and Consumer Protection, or  
48 their designees, the State Long-Term Care Ombudsman, or a designee,  
49 the chairperson of the Board of Pardons and Paroles, or a designee, a  
50 representative of each category of long-term care facility and  
51 representatives from any other agency or organization the  
52 Commissioner of Public Health deems appropriate, (B) evaluate factors  
53 including, but not limited to, the administrative and fiscal impact of  
54 components of the program on state agencies and long-term care  
55 facilities, background check procedures currently used by long-term  
56 care facilities, federal requirements pursuant to Section 6201 of the  
57 Patient Protection and Affordable Care Act, P.L. 111-148, as amended  
58 from time to time, and the effect of full and provisional pardons on  
59 employment, and (C) outline (i) an integrated process with the  
60 Department of Emergency Services and Public Protection to cross-  
61 check and periodically update criminal information collected in  
62 criminal databases, (ii) a process by which individuals with  
63 disqualifying offenses can apply for a waiver, and (iii) the structure of  
64 an Internet-based portal to streamline the criminal history and patient  
65 abuse background search program. The Department of Public Health  
66 shall submit such plan, including a recommendation as to whether  
67 homemaker-companion agencies should be included in the scope of  
68 the background search program, to the joint standing committees of  
69 the General Assembly having cognizance of matters relating to aging,  
70 appropriations and the budgets of state agencies, and public health, in  
71 accordance with the provisions of section 11-4a, not later than  
72 February 1, 2012.

73 (c) (1) Except as provided in subdivision (2) of this subsection, each  
74 long-term care facility, prior to extending an offer of employment to, or  
75 entering into a contract for, the provision of long-term care services  
76 with any individual who will have direct access, or prior to allowing  
77 any individual to begin volunteering at such long-term care facility  
78 when the long-term care facility reasonably expects such volunteer will  
79 regularly perform duties that are substantially similar to those of an  
80 employee with direct access, shall require that such individual submit

81 to a background search. The Department of Public Health shall  
82 prescribe the manner by which (A) long-term care facilities perform  
83 the review of (i) the registry of nurse's aides maintained by the  
84 department pursuant to section 20-102bb, and (ii) any other registry  
85 specified by the department, including requiring long-term care  
86 facilities to report the results of such review to the department, and (B)  
87 individuals submit to state and national criminal history records  
88 checks, including requiring the Department of Emergency Services and  
89 Public Protection to report the results of such checks to the Department  
90 of Public Health.

91 (2) No long-term care facility shall be required to comply with the  
92 provisions of this subsection if the individual provides evidence to the  
93 long-term care facility that such individual submitted to a background  
94 search conducted pursuant to subdivision (1) of this subsection not  
95 more than three years immediately preceding the date such individual  
96 applies for employment, seeks to enter into a contract or begins  
97 volunteering with the long-term care facility and that the prior  
98 background search confirmed that the individual did not have a  
99 disqualifying offense.

100 (d) (1) The Department of Public Health shall review all reports  
101 provided to the department pursuant to subsection (c) of this section. If  
102 any such report contains evidence indicating that an individual has a  
103 disqualifying offense, the department shall provide notice to the  
104 individual and the long-term care facility indicating the disqualifying  
105 offense and providing the individual with the opportunity to file a  
106 request for a waiver pursuant to subdivisions (2) and (3) of this  
107 subsection.

108 (2) An individual may file a written request for a waiver with the  
109 department not later than thirty days after the date the department  
110 mails notice to the individual pursuant to subdivision (1) of this  
111 subsection. The department shall mail a written determination  
112 indicating whether the department shall grant a waiver pursuant to  
113 subdivision (3) of this subsection not later than fifteen business days

114 after the department receives the written request from the individual,  
115 except that said time period shall not apply to any request for a waiver  
116 in which an individual challenges the accuracy of the information  
117 obtained from the background search.

118 (3) The department may grant a waiver from the provisions of  
119 subsection (e) of this section to an individual who identifies mitigating  
120 circumstances surrounding the disqualifying offense, including (A)  
121 inaccuracy in the information obtained from the background search,  
122 (B) lack of a relationship between the disqualifying offense and the  
123 position for which the individual has applied, (C) evidence that the  
124 individual has pursued or achieved rehabilitation with regard to the  
125 disqualifying offense, or (D) that substantial time has elapsed since  
126 committing the disqualifying offense. The department and its  
127 employees shall be immune from liability, civil or criminal, that might  
128 otherwise be incurred or imposed, for good faith conduct in granting  
129 waivers pursuant to this subdivision.

130 (4) After completing a review pursuant to subdivision (1) of this  
131 subsection, the department shall notify in writing the long-term care  
132 facility to which the individual has applied for employment or with  
133 which the individual seeks to enter into a contract or volunteer (A) of  
134 any disqualifying offense and any information the individual provided  
135 to the department regarding mitigating circumstances surrounding  
136 such offense, or of the lack of a disqualifying offense, and (B) whether  
137 the department granted a waiver pursuant to subdivision (3) of this  
138 subsection.

139 (e) Notwithstanding the provisions of section 46a-80, no long-term  
140 care facility shall employ an individual required to submit to a  
141 background search, contract with any such individual to provide long-  
142 term care services or allow such individual to volunteer if the long-  
143 term care facility receives notice from the department that the  
144 individual has a disqualifying offense in the individual's background  
145 search and the department has not granted a waiver pursuant to  
146 subdivision (3) of subsection (d) of this section. A long-term care

147 facility may, but is not obligated to, employ, enter into a contract with  
148 or allow to volunteer an individual who was granted a waiver  
149 pursuant to said subdivision (3).

150 (f) (1) Except as provided in subdivision (2) of this subsection, a  
151 long-term care facility shall not employ, enter into a contract with or  
152 allow to volunteer any individual required to submit to a background  
153 search until the long-term care facility receives notice from the  
154 Department of Public Health pursuant to subdivision (4) of subsection  
155 (d) of this section.

156 (2) A long-term care facility may employ, enter into a contract with  
157 or allow to volunteer an individual required to submit to a background  
158 search on a conditional basis before the long-term care facility receives  
159 notice from the department that such individual does not have a  
160 disqualifying offense, provided: (A) The employment or contractual or  
161 volunteer period on a conditional basis shall last not more than sixty  
162 days, except the sixty-day time period may be extended by the  
163 department to allow for the filing and consideration of written request  
164 for a waiver of a disqualifying offense filed by an individual pursuant  
165 to subsection (d) of this section, (B) the long-term care facility has  
166 begun the review required under subsection (c) of this section and the  
167 individual has submitted to checks pursuant to subsection (c) of this  
168 section, (C) the individual is subject to direct, on-site supervision  
169 during the course of such conditional employment or contractual or  
170 volunteer period, and (D) the individual, in a signed statement (i)  
171 affirms that the individual has not committed a disqualifying offense,  
172 and (ii) acknowledges that a disqualifying offense reported in the  
173 background search required by subsection (c) of this section shall  
174 constitute good cause for termination and a long-term care facility may  
175 terminate the individual if a disqualifying offense is reported in said  
176 background search.

177 (g) Notwithstanding the provisions of subsection (b) of this section,  
178 the department may phase in implementation of the criminal history  
179 and patient abuse background search program by category of long-

180 term care facility. No long-term care facility shall be required to  
 181 comply with the provisions of subsections (c), (e) and (f) of this section  
 182 until the date notice is published by the Commissioner of Public  
 183 Health in the Connecticut Law Journal indicating that the  
 184 commissioner is implementing the criminal history and patient abuse  
 185 background search program for the category of such long-term care  
 186 facility.

187 (h) The department shall adopt regulations, in accordance with the  
 188 provisions of chapter 54, to implement the provisions of this section.  
 189 The department may implement policies and procedures consistent  
 190 with the provisions of this section while in the process of adopting  
 191 such policies and procedures as regulation, provided notice of  
 192 intention to adopt regulations is [printed in the Connecticut Law  
 193 Journal] posted on the eRegulations System not later than twenty days  
 194 after the date of implementation. Such policies and procedures shall be  
 195 valid until the time final regulations are effective.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2018</i>	19a-491c

**JUD**      *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

---

***OFA Fiscal Note******State Impact:*** None***Municipal Impact:*** None***Explanation***

This bill, which expands the list of disqualifying offenses prohibiting long-term care facilities from employing/contracting with/allowing people to volunteer, does not result in a fiscal impact to the state or municipalities.

***The Out Years******State Impact:*** None***Municipal Impact:*** None



**OLR Bill Analysis****HB 5259*****AN ACT CONCERNING CRIMINAL OFFENSES THAT DISQUALIFY AN INDIVIDUAL FROM OBTAINING EMPLOYMENT OR VOLUNTEERING AT A LONG-TERM CARE FACILITY.*****SUMMARY**

This bill expands the list of disqualifying offenses that generally prohibit a long-term care facility (see BACKGROUND) from (1) employing, or contracting with, anyone who will have direct access in providing long-term care services or (2) allowing anyone to begin volunteering if the facility reasonably expects the volunteer to regularly perform duties that are substantially similar to those of an employee with direct access. By law, long-term care facilities must require people who will have direct access to patients or residents to undergo a criminal history and patient abuse background search (see BACKGROUND).

The bill adds convictions for 17 specified crimes to the list of disqualifying offenses under current law (see below).

The bill also replaces an obsolete reference to the Connecticut Law Journal with the eRegulations System regarding the place where the Department of Public Health (DPH) commissioner must post notice of intention to adopt regulations.

EFFECTIVE DATE: October 1, 2018

**DISQUALIFYING OFFENSE**

Facilities are generally prohibited by law from hiring or contracting with an individual, unless DPH grants a waiver (see BACKGROUND), (1) before receiving notice of his or her background check results from DPH or (2) if a search reveals a disqualifying offense.

Under current law, a “disqualifying offense” is a (1) substantiated finding of neglect, abuse, or misappropriation of property by a state or federal agency under an investigation conducted in accordance with federal Medicare and Medicaid laws or (2) conviction for:

1. state or federal crimes of patient neglect or abuse in connection with the delivery of a health care item or service,
2. a federal crime related to the delivery of an item or service pertaining to the Medicare program or any state health care program receiving certain federal funds (e. g. , Medicaid), or
3. any state or federal felony relating to health care fraud or controlled substances committed after August 21, 1996.

The bill expands this list to include convictions for the following crimes:

1. murder;
2. murder with special circumstances;
3. felony murder;
4. arson murder;
5. 1<sup>st</sup> degree manslaughter;
6. 1<sup>st</sup> degree manslaughter with a firearm;
7. 1<sup>st</sup> degree assault;
8. 1<sup>st</sup> degree assault of a person who is elderly, blind, disabled, pregnant, or has an intellectual disability;
9. 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> degree sexual assault;
10. 1<sup>st</sup> degree aggravated sexual assault;
11. aggravated sexual assault of a minor;

12. 3<sup>rd</sup> degree sexual assault with a firearm;
13. home invasion;
14. 1<sup>st</sup> and 2<sup>nd</sup> degree burglary;
15. 1<sup>st</sup> degree arson;
16. 1<sup>st</sup> and 2<sup>nd</sup> degree larceny; and
17. 1<sup>st</sup> degree robbery.

### **CONDITIONAL EMPLOYMENT**

The law, unchanged by the bill, allows a facility to offer conditional, supervised employment for up to 60 days while waiting for DPH's notification. The law also allows DPH to extend the 60-day period to give the department time to review an individual's written request to waive a disqualifying offense.

### **BACKGROUND**

#### ***Long-Term Care Facility***

"Long-term care facility" means any facility, agency or provider that is a nursing home, a residential care home, a home health agency, an assisted living services agency, an intermediate care facility for individuals with intellectual disabilities, a chronic disease hospital, or a licensed or certified hospice care provider.

#### ***Criminal History and Patient Abuse Background Search***

The law defines "criminal history and patient abuse background search" or "background search" as (1) state and national criminal history record checks conducted in accordance with state law, (2) a review of DPH's nurse's aide registry, and (3) a review of any other registry that DPH specifies and deems necessary for administering a background search program.

#### ***Waiver***

Existing law, unchanged by the bill, allows an individual to submit a waiver request to DPH within 30 days after being notified that he or

she has a disqualifying offense. DPH then has 15 days to mail a written determination unless the individual challenges the accuracy of the background search information. In that case, the 15-day deadline does not apply.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable

Yea 39 Nay 0 (03/28/2018)