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**Background Checks of Prospective
Employees/Amendments to 24 P.S. § 1-111**

On June 30, 2011 the Pennsylvania General Assembly passed Act 24 of 2011, which included several amendments to the Public School Code, including significant changes to 24 P.S. § 1-111 (“Section 111”) governing background checks of prospective employees and convictions of certain offenses for all applicants and existing employees. The amendments take effect September 29, 2011.

Section 111 previously excluded individuals from eligibility for employment if they had been convicted of any of the specific enumerated offenses, within the five years immediately preceding the date of submission of the criminal background check. The amendments to Section 111 removed the five year limiting language. Under amended Section 111 an individual convicted of one of the crimes specifically listed in subsection (e) may not be employed by a school or intermediate unit regardless of how much time has elapsed since the conviction.

The amendments also expand the list of disqualifying offenses that the statute previously contained. In addition to the existing offenses, the statute now disqualifies individuals convicted under any of the following provisions of Title 18 of the Pennsylvania Consolidated Statutes (the “Criminal Code”):

- Section 2910 (Relating to Luring a Child into a Motor Vehicle or Structure).
- Section 3124.2 (Relating to Institutional Sexual Assault).
- Section 3129 (Relating to Sexual Intercourse with an Animal).
- Section 6301(A)(1) (Relating to Corruption of Minors).
- Section 6318 (Relating to Unlawful Contact with Minors).
- Section 6319 (Relating to Solicitation of Minors to Traffic Drugs).
- Section 6320 (Relating to Sexual Exploitation of Children).

In addition, a conviction for any offense that is “similar in nature” to the crimes specifically listed in Section 111 “under the laws or former laws of the United States or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico or a foreign nation, or under a former law of this Commonwealth” also disqualifies an individual from eligibility for employment.

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The statute also now provides that individuals convicted of felonies of the first, second or third degree, other than those specifically listed in subsection (E) of the statute are precluded from employment for ten (10) years from the expiration of the sentence for the offense. 24 P.S. § 111(e), (f), as amended. Individuals convicted of a misdemeanor of the first degree are eligible for employment only after five (5) years have elapsed from the date of expiration of the sentence. Finally, if a prospective employee has been convicted more than once for an offense under 75 PA.C.S. § 3802(A),(B),(C), or (D) (Relating to Driving Under the Influence of Alcohol or Controlled Substance), and the offense is graded a misdemeanor, the applicant is only eligible for employment if three (3) years have elapsed since the date of expiration of the sentence for the most recent offense.

In regard to reporting obligations, the amendments impose strict reporting requirements on current employees and job applicants. Specifically, all current employees and job applicants are required to report any arrests or convictions for any of the offenses identified in Section 111.

The Pennsylvania Department of Education (“PDE”) has been directed to develop a standardized form to be used with current and prospective employees for the written reporting to the employer of any arrest or conviction for any of the offenses listed in subsection (e). PDE legal staff interprets the amendment to provide an additional ninety (90) days for the completion of the form following the effective date of the statute. Therefore, by December 28, 2011, all current employees are required to submit the PDE form, including whether they have been convicted of an offense enumerated under subsection (e). If an employee refuses to submit the form, the employer must immediately require the employee to submit a current criminal background check. PDE is presently drafting the required form, which will be provided to you in a separate mailing.

If any current employee is arrested or convicted of any of the offenses listed in subsection (e) after September 29, 2011, the employee must provide written notice to the school district within seventy-two (72) hours after the arrest or conviction. *See* 24 P.S. § 111(J)(2). If a school district administrator or other staff member responsible for employment decisions has a reasonable belief that an employee was arrested or has a conviction related to one of the offenses required to be reported, the school district must immediately require that the employee submit a current criminal background check.

The amendments to Section 111 make significant changes to the eligibility for employment in schools within the Commonwealth and may necessitate revisions to your existing policies, job applications and notices to new and existing employees.



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At A Glance
Act 24 Changes to The Public School Code

Section 111	Prior to Act 24	Excluded individuals from eligibility for employment if they had been convicted of any of the specific enumerated offenses within five years preceding the date of the criminal history report.
	After September 29, 2011 (*newly enumerated offenses within Section 111)	Excludes individuals from eligibility for employment if they <u>have ever been convicted</u> of any of the specific enumerated offenses, resulting in <u>no time</u> restrictions, and adds new offenses from Title 18: <ul style="list-style-type: none"> • Chapter 25 (relating to criminal homicide) • Section 2702 (relating to aggravated assault) • Section 2709.1 (relating to stalking) • Section 2901 (relating to kidnapping) • Section 2902 (relating to unlawful restraint) • *Section 2910 (relating to luring a child into a motor vehicle or structure) • Section 3121 (relating to rape) • Section 3122.1 (relating to statutory sexual assault) • Section 3123 (relating to involuntary deviate sexual intercourse) • Section 3124.1 (relating to sexual assault) • *Section 3124.2 (relating to institutional sexual assault) • Section 3125 (relating to aggravated indecent assault) • Section 3126 (relating to indecent assault) • Section 3127 (relating to indecent exposure) • *Section 3129 (relating to sexual intercourse with animal) • Section 4302 (relating to incest) • Section 4303 (relating to concealing death of child) • Section 4304 (relating to endangering welfare of children) • Section 4305 (relating to dealing in infant children) • Section 5902(b) (relating to felony offense of prostitution and related offenses) • Section 5903(c) or (d) (relating to obscene and other sexual materials and performances) • Section 6301(A)(1) (relating to corruption of minors) • Section 6312 (relating to sexual abuse of children) • *Section 6318 (relating to unlawful contact with minor) • *Section 6319 (relating to solicitation of minors to traffic drugs) • *Section 6320 (relating to sexual exploitation of children)

Prior to Act 24	An individual's criminal record was not considered beyond the listed offenses.
After September 29, 2011	<p>If the criminal history record shows that an individual has been convicted:</p> <ul style="list-style-type: none"> • of a felony offense of the first, second, or third degree other than those listed above, the individual shall be eligible for prospective employment only if ten years has elapsed from the date of expiration of the sentence for the offense. • of a misdemeanor of the first degree, the individual shall be eligible for prospective employment only if five years has elapsed from the date of expiration of the sentence for the offense. • more than once for an offense relating to driving under the influence of alcohol or a controlled substance and the offense is a misdemeanor of the first degree, the individual shall be eligible for prospective employment only if a period of three years has elapsed from the date of expiration of the sentence for the most recent offense.
Prior to Act 24	<p>The criminal background check did <i>not</i> apply to employees who were:</p> <ol style="list-style-type: none"> 1. under twenty-one years of age; 2. employed for periods of ninety days or less; and 3. part of a job development and/or job training program.
After September 29, 2011	This section has been stricken; all employees shall be required to provide a criminal history record
After September 29, 2011	The criminal record is required as a condition of continued employment
After September 29, 2011	PDE shall release a standardized form for reporting criminal convictions. All employees shall complete the form and submit to the District <i>before</i> December 28, 2011.
After September 29, 2011	<p>If an employee is arrested or convicted for an enumerated offense, the employee shall provide written notice (utilizing the PDE form once available) to the District within 72-hours</p> <ul style="list-style-type: none"> • Failure to disclose a conviction or arrest shall subject the employee to discipline <ul style="list-style-type: none"> ○ Termination, denial of employment, and/or criminal prosecution • If an Administrator has a reasonable belief that an employee was arrested or has a conviction, the Administrator shall immediately require a current report of criminal history <ul style="list-style-type: none"> ○ The cost of the criminal history report shall be borne by the employing entity

Section 118	Effective August 29, 2011	Collection of identifying education of students attending institutions of higher education <ul style="list-style-type: none"> • Pertains to Higher Education
Section 221.1	Effective Immediately (June 30, 2011)	DPE and DPW shall suspend the collection of data through PELICAN and PIMS with exceptions <ul style="list-style-type: none"> • One exception is the information relating to background checks required in Section 111
Section 223	Effective July 1, 2011	The Board of Directors of each District shall have or maintain a certified safety committee for the purposes of Section 1002(B) of the Workers' Compensation Act <ul style="list-style-type: none"> • Penalty for failure to comply is a deduction from the entitlement under the Act • Self-insured or pooled Districts are not required to comply
Section 615	Effective July 1, 2011	A Board of Directors may reopen the 2011-2012 budget to reflect federal and state allocations for FY 2010-2011 and FY 2011-2012
Section 703	Effective December 28, 2011	Approval by the PDE shall not be required for school buildings and playgrounds on any school construction project for which state reimbursement is not requested
Section 731	Effective December 28, 2011	Language inserted indicating that approval by PDE is not required for projects, plans and specifications for projects for which reimbursement from the Commonwealth is not requested
Section 731.1	Effective December 28, 2011	Same comment as Section 731
Section 907-A (formerly 957)	Effective Immediately (June 30, 2011)	By February 1 of each year, an IU shall submit to PDE a report on subsidies and funds received: <ul style="list-style-type: none"> • Listing all contracts, agreements, POs or MOUs between a Commonwealth Agency and an IU or between IUs in an amount greater than \$50,000 PDE shall develop a format to be used by the reporting IUs
Section 921-A (formerly 971)	Effective Immediately (June 30, 2011)	PDE shall post the IU reports on the website

<p>Section 1003</p>	<p>Effective August 29, 2011</p> <p>(*new accreditation standard)</p>	<p>No individual shall receive a letter of eligibility or be elected or appointed as a district superintendent or assistant district superintendent, unless:</p> <ol style="list-style-type: none"> 1. He holds a diploma from a college or other institution approved by PDE; 2. He has had six years successful teaching experience...; 3. He has completed a graduate program in education 4. In First Class School Districts, five years experience may be substituted for graduate classes. <p>OR</p> <ol style="list-style-type: none"> 1. *He holds a graduate degree in business or finance and has at least four years of relevant experience in business, finance or management <ul style="list-style-type: none"> • An individual elected or appointed as a district superintendent or assistant district superintendent for the first time shall successfully complete a leadership development program <p>Language was removed that allowed an individual “serving either as a county, district, or assistant county or district superintendent, or associate superintendent, in this Commonwealth, at the time this Act becomes effective, shall, irrespective of the foregoing requirements, be considered sufficient qualification for any of the aforesaid offices.” Presumptively, the removal of the language from the draft signals that the service is not sufficient to maintain the office if the other qualifications have not been met.</p>
<p>Section 1134</p>	<p>Effective July 1, 2011</p> <p>Expires June 30, 2012</p>	<p>The Commonwealth shall create a pool for each school comprised of the professional and temporary professional employees who have received notice of suspension from the Commonwealth as a result of the Commonwealth’s decision to cease Commonwealth operation of the school</p> <ul style="list-style-type: none"> • For the three years immediately following the formal notice of suspension, employees in the pool shall be offered employment when a vacancy exists by: <ul style="list-style-type: none"> ○ A district 17 miles or less from the former school ○ A district with greater than 8000 students 45 miles or less from the former school • Positions shall be offered, in order of seniority, to all members of the pool <p>Employees hired from the pool shall be credited by the hiring district for all sick leave accumulated and years of service</p>
<p>Section 1201</p>	<p>Effective June 30, 2011</p>	<p>Residency Certificate and Intern Certificate added to the list of certificates that are recognized as qualifying the holder of the certificate to teach in the public schools</p>

Section 1203	Effective June 30, 2011	Residency Certificate and Intern Certificate added to the list of kinds of certificates that are granted by the state
Section 1205.1	Effective August 29, 2011	The requirement that candidates for appointment as a district superintendent or assistant district superintendent complete a leadership development program shall not be suspended
Section 1205.2	Effective August 29, 2011	The requirements for professional educators to complete a program of continuing professional education shall be suspended until June 30, 2013 to allow the Legislative Budget and Finance Committee to conduct a study of the costs and benefits of the continuing professional education program
Section 1205.5	Effective June 30, 2011	Same comments as Sections 1205.1 and 1205.2
Section 1206	Effective June 30, 2011	Candidates holding a valid instructional certificate issued by another state may be eligible for comparable Pennsylvania certification <ul style="list-style-type: none"> • The Secretary of Education shall adopt standards to implement this section
Section 1207.1	Effective June 30, 2011	Powers and Duties of the Secretary of Education with regard to post baccalaureate certification
Section 1304	Effective July 1, 2011	School Districts shall admit beginnings during at least the first two weeks of the term in districts operating on an annual promotion basis and during the first the weeks of either the first or second semester of the school term in districts operating on a semi-annual promotion basis <ul style="list-style-type: none"> • Admission after the first two weeks shall be at the discretion of each school district • This is a change that confines admission to <i>only</i> the first two weeks
Section 1376	Effective July 1, 2011	Removes language relating to the budget line item "For Special Education – Approved Private Schools"
Section 1303-A	Effective July 1, 2011	The MOU entered into with local law enforcement shall include the procedure for the police department review of the annual report (previously a semiannual report)
Section 1310-A	Effective August 29, 2011	A safe schools advocate shall be established for each school, by the executive director of the Commission on Crime and Delinquency
Section 1311-A	Effective August 29, 2011	Relating to the safe schools advocate
Section 1312-A	Effective August 29, 2011	Relating to the safe schools advocate

Section 1604-A	Effective June 30, 2011	By August 8, 2011, the Pennsylvania Interscholastic Athletic Association shall establish a policy requiring that students who in the current or prior school year attended a school entity that has abolished its program of interscholastic athletics in whole or in part shall be eligible to participate without penalty in the program of interscholastic athletics of another school entity in which they are currently enrolled
Section 1602-B	Effective August 29, 2011	Removed the definition of "concurrent enrollment committee"
Section 1611-B	Effective August 29, 2011	Remove reference to "concurrent enrollment committee"
Section 1612-B	Effective August 29, 2011	Remove section relating to the composition and duties of concurrent enrollment committees
Section 1613-B	Effective August 29, 2011	Remove references to "concurrent enrollment committee"
Section 1614-B	Effective August 29, 2011	Remove reference to "concurrent enrollment committee" and inserts language regarding the agreement between the school entity and the eligible postsecondary institution.
Section 1724-A	Effective August 29, 2011	Clean up language to section regarding the enrollment of charter school employees in the public school employees' retirement system
Section 1913-A	Effective July 1, 2011	Community college funding
Section 2002-C	Effective July 1, 2011	Duties of public institutions of higher education expanded
Section 2006.1-C	Effective July 1, 2011	A new section for the transfer of credits between institutions of higher education
Section 2318	Effective July 1, 2011	A new section distributing funds appropriated for libraries
Section 2501	Effective July 1, 2011	Amend the definition of "average daily membership," removing cross-reference to statute
Section 2502.48	Effective July 1, 2011	Remove section indicating it is the goal of the Commonwealth to review and meet state funding targets by FY 2013-2014
Section 2502.49	Effective August 29, 2011	Repeal section "Accountability to Commonwealth taxpayers"
Section 2502.50	Effective July 1, 2011	A new section for the allocation of basic education funding

Section 2509.1	Effective July 1, 2011	Adding sections relating to the payments to intermediate units: <ul style="list-style-type: none"> • Up to \$9M may be utilized for programs administered and operated by IUs during 2011-2012 • 5.5% of the state special education appropriation shall be paid to IUs on account of special education services <ul style="list-style-type: none"> ○ 35% shall be distributed equally ○ 65% shall be distributed in proportion to the number of average daily membership
Section 2509.5	Effective July 1, 2011	Adding a section to indicate that regarding special education payments to school districts, for school years 2009-2010 through 2011-2012 the districts shall be paid the amount they received during the 2008-2009 school year
Section 2010.1	Effective July 1, 2011	Payments made to school districts for the instruction of homebound children shall only be made to the extent funds are appropriated for this purpose
Section 1541	Effective July 1, 2011	Amending statutory cross-references
Section 2599.2	Effective July 1, 2011	Adding a section to the reporting procedures and auditing guidelines for Accountability Grants for the distribution of remaining funding