



EDUCATION PRACTICE

ALERT

CHANGES TO PENNSYLVANIA SCHOOL CODE §1-111: CRIMINAL BACKGROUND CHECKS

By A. Kyle Berman

On June 30, 2011, Pennsylvania Governor Corbett signed Act 24 of 2011, amending the Pennsylvania Public School Code of 1949 (the School Code). The changes discussed here concern the changes to the criminal background checks required by School Code section 111 (24 P.S. §1 111).

Under both the old and new versions of §1-111, a school entity – including all public school districts, charter schools, vo-tech schools, intermediate units and **all private schools** – needed to get a criminal background check (under §1-111) and a child abuse clearance (under 23 Pa. C.S.A. §6354, et seq.) on any potential employee prior to hire. Under Act 24, those criminal background checks are more stringent.

Section 1-111 has a specific list of offenses that the legislature feels are especially egregious. However, where a person was convicted of one of those offenses, the former version only barred the person from employment in a school entity for five years following the conviction. The idea, apparently, was that a person may be rehabilitated and should get another chance.

With the amendments, the enumerated list is slightly expanded,¹ and a person convicted of one of them will be **forever** barred from employment in a school entity.

The amendments go into effect on **September 28, 2011**. At that point, in addition to the permanent bar for listed offenses, if a person was convicted of **any unlisted felony or any unlisted first-degree misdemeanor**, there is a new requirement that the applicant must wait 10 years on the felony or five years on the misdemeanor² after the end of his or her sentence before applying for a job.

Every school is also required to get statements from its current employees relating to prior criminal convictions. It must do so by December 27, 2011. The Pennsylvania Department of Education is supposed to create a form for this purpose. Any failure by an employee to reveal a prior criminal conviction for one of the listed offenses will be subject to criminal prosecution.

Finally, while the statute claims that it should not be read to interfere with a school making employment, discipline or termination decisions, another section of the School Code requires that any school employee who is convicted of one of the enumerated offenses of §1-111 shall be fired.

For more information about this topic, please contact A. Kyle Berman at 610.397.7980 or aberman@foxrothschild.com or any member of Fox Rothschild's Education Practice Group.

¹ Six additional crimes: luring of a child into a motor vehicle or structure, institutional sexual assault, sexual intercourse with an animal, unlawful contact with a minor, solicitation of minors to traffic drugs, sexual exploitation of children.

² There is an exception for DUI where it is graded as a first degree misdemeanor. There, the exclusion period is only three years from the end of the sentence.