



**Testimony  
on  
Implementation of Act 24 of 2011  
Enhancements to School Code Section 111  
Relating to  
Employee Background Checks, Hiring Limitations,  
and Self-Reporting of Criminal Convictions and Arrests**

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**Senate Education Committee  
November 16, 2011**

Good morning Chairmen Piccola and Dinniman and members of the Senate Education Committee. Thank you for inviting PSBA to present testimony regarding the implementation of the enhancements added by Act 24 of 2011 to the employee background check provisions of Section 111 of the Public School Code.

PSBA has long advocated that the safety of school students, and that of staff too, must be a top priority in the management of schools and school systems. For years PSBA has lobbied for a variety of improvements to the array of tools available to school boards and school administrators for ensuring that the hours spent in school and on school buses continue to be, statistically, the safest hours of a child's day.

It has always truly amazed and gratified me to think of the huge level of trust parents have in that regard, and how the vast majority of parents who watch their child board a school bus are able to go about their day confident that the child will be returned home safely. That faith is critically important to the entire educational mission. But there is always room for improvement, and any incident, threat or practice that endangers the children in our care also threatens that essential trust, which if eroded can make student achievement far more difficult.

We also recognize that the human element can be the biggest vulnerability in any safety strategy, and the procedures mandated by Section 111 are an extremely important means for avoiding threats from within. PSBA applauds the General Assembly for strengthening Section 111's hiring restrictions and adding the ongoing self-reporting requirements, enhancements that PSBA has long supported, even if not quite as extensive as those PSBA sought.

Implementation of the new provisions, in particular the “look-back” self-reporting requirement to disclose past arrests and convictions, is now underway, but has not been without some questions and uncertainty. Nonetheless, this process will go a long way towards improving our ability to review the suitability of school staff from a student safety standpoint. Let me outline what some of the issues have been or are thought likely.

Initially, there was some uncertainty about whether employees were required to report past arrests as well as convictions, or just past convictions. PDE has clarified the Department’s view, consistent with the design of the disclosure form, that both past arrests and past convictions must be disclosed by the December 27, 2011 deadline. Although we understand that PSEA disagrees with that reading of the statute, PSBA has advised our members, through their local counsel, that they should act in accordance with the PDE interpretation. If an employee attempts to alter the form so that it represents only whether or not there have been past convictions for Section 111(e) offenses, PSBA recommends that school employers regarded it as not having satisfied the self-reporting requirement, the consequence for which is that the employer is to require the employee to furnish a full state and federal criminal history report (which now are supposed to reflect both arrests and convictions).

On the other hand, PSBA has recommended that school employers should not attempt to impose local deadlines for completion of the form that are earlier than that set forth in the statute (90 days after the September 28, 2011 effective date). It is incumbent on employees to recognize that their school district is not likely to be in session on that Tuesday, and make sure they get the form submitted before the holiday break, but we do not believe the statute gives employers authority to enforce earlier deadlines. Moreover,

the “mailbox” rule would regard as timely a form mailed and postmarked by the deadline, giving another option for last-minute submissions, even if schools are closed for the holidays. Another reason for not accelerating the deadline is the possibility that persons with long ago arrests and convictions may not recall many of the details the form requires, such as the date, jurisdiction and specific charges, and they may need time to research and obtain such information.

Those matters aside, the form designed by PDE and its instructions clearly outline the types of offenses that are required to be reported---only those set forth in subsection 111(e) that result in a lifetime hiring ban. However, we are already hearing questions about reporting arrests and convictions for drunk driving and other misdemeanor and felony offenses that are not on that list. Although new language in subsection 111(f.1) now imposes more limited hiring restrictions for other felonies and certain kinds of misdemeanors, they unfortunately are not covered by the self-reporting requirement, so school employers are likely to learn about such other offenses only during the hiring process or by means other than mandatory self-reporting, e.g., through voluntary self-reporting, news reports or the “grapevine.”

The bulk of the real work for school employers and their counsel associated with the new provisions of section 111 will begin in January, when the self-disclosure forms are reviewed, and it will become necessary to answer a number of important things. With regard to disclosed convictions:

- What employment action is mandated, if any? If the conviction is for a felony drug offense or other offense enumerated in subsection 111(e), which occurred while employed by a public or private school

entity, Section 527 of the School Code requires the employee to be terminated “immediately.”

- What employment action can or should be taken, even if not mandated? If the offense did not occur during school employment or is not of the kind addressed by Section 527, termination is not mandatory, but may provide a grounds for termination in accordance with other statutory provisions, such as sections 514 and 1122 of the School Code.
- In the case of certified professional educators, what convictions may need to be further reported to the Professional Standards and Practices Commission for possible action under the Professional Educator Discipline Act?
- For out of state or federal convictions, what is the Pennsylvania equivalent offense, and would it qualify under either subsection (e) or subsection (f.1)?

With regard to arrests:

- With regard to recent arrests where charges are pending, what immediate action should be taken to safeguard the safety of students and staff, and what due process is necessary prior to suspension with or without pay? Should the school employer initiate disciplinary action immediately, independent of the criminal proceedings, or it is better to delay action until criminal proceedings are concluded?
- Information about long ago arrests that did not result in a conviction can pose a different kind of challenge for school employers, since the fact of an arrest, in and of itself, does not provide a proper basis for termination or other adverse employment action. Although such

action could be based on the underlying conduct if it can be proven with competent evidence, that often becomes impossible due to the passage of time. Thus, with regard to older arrests that do not appear to have resulted in a conviction, what if any action could or should be taken? Would further investigation be likely to result in enough evidence to proceed with some type of adverse employment action, and would any such action be appropriate?

- Is the offense of a nature that the employer may have a duty under the Professional Educator Discipline Act to investigate further in order to satisfy reporting requirements?

PSBA is preparing training programs to help school employers tackle this process, and a web conference has already been scheduled for December 13, 2011.

Again, PSBA thanks the Committee for this opportunity to testify. I would be happy at this point to try to answer any questions you may have.