



**Written Statement by the
Pennsylvania State Education Association (PSEA)**

**Regarding
Section 111 Changes within Act 24 of 2011**

**Presented to the
Senate Education Committee
Tuesday, November 15, 2011**



PSEA agrees that persons convicted of heinous crimes should not be working in schools and supports appropriate efforts to ensure that this does not happen, and we know that this was the impetus behind enactment of the changes to Section 111 of the Public School Code within Act 24 of 2011. Beyond that primary goal, the new law has caused confusion due to apparent inconsistencies contained within it. Unfortunately, these inconsistencies could cause undue harm to otherwise upstanding and excellent school employees.

Background

Pennsylvania has a strong history of ensuring safe school environments. First enacted in 1985, Section 111 was originally designed to prevent private and public schools from hiring persons convicted of certain crimes, stating:

No person subject to this act shall be employed in a public or private school, intermediate unit or vocational-technical school where the report of criminal history record information indicates the applicant has been convicted, within five years....

The list of Section 111 crimes, which has expanded over time, included certain 1st, 2nd, and 3rd degree felonies, as well as certain 1st and 2nd degree misdemeanors.

Additional safeguards have been established as well, beyond the background check requirements, the General Assembly enacted further protections in 1990 by adding language, contained in Section 527 of the Public School Code, which provides that school employees convicted of those same crimes “while employed,” can no longer be employed, and thus have the same bar for any future public or private school employment. In addition, under the Professional Educator Discipline Act, any teacher (whether a current employee or not) will lose his/her certificate for conviction of an enumerated crime.

Act 24 of 2011

The primary goals of this portion of Act 24 were to expand the list of enumerated crimes within Section 111 and extend the five year bar on employment to a lifetime bar. In turn, this also results in a lifetime bar for reinstatement of certification. Additionally, it adds reporting requirements for current employees. These reporting requirements are one area of apparent inconsistency within the Act.

Act 24 requires all current employees to complete a look-back report, covering all dates up to September 28, 2011, and includes a responsibility to report going forward from September 28, 2011. Both reports relate only to those crimes enumerated in Section 111(e)(1)-(3). This look-back report is due December 27, 2011, and is to be completed on the PDE published form PDE-6004.

Subsection (j) of Act 24, which addresses the content of the look-back report is inconsistently worded as to whether the look-back report must disclose only convictions, or both **arrests** and convictions, for the enumerated crimes. PSEA sought clarification from PDE, and PDE explained its position that the look-back report should include arrests as well as convictions. While PSEA believes the statute is confusingly phrased, and has doubts as to the relevance of old *arrest* information to employers, due to the fact that a district cannot terminate an employee

simply because of a past arrest, it has advised its members to comply with the instructions on PDE-6004.

To be clear, PSEA has asked districts not to accelerate the statutory deadline of December 27, 2011, so that we have time to advise our members, answer any questions, and assist them in fully and accurately completing the report.

As to the increase of the ban from a five year ban to a lifetime bar, most of the crimes listed in Section 111(e) obviously relate to an inability to teach, for example, a conviction for sexual abuse of children. Yet, one could argue that not every crime listed in Section 111(e) should result in a per se lifetime bar from employment or from reinstatement of certification. With respect to arguably unrelated felonies (aggravated assault, for example) or lesser crimes (graded as misdemeanors), PSEA believes that those situations should be examined on their facts, and that an appropriate decision should be made with respect to employment or certification based on the specific facts of each case. There are also potential constitutional concerns, if the Act is construed retroactively to require districts to automatically terminate any employee who has a prior conviction but who was lawfully employable when hired. The law should be construed in a way to avoid constitutional infirmities and appropriate action should be taken in each situation based upon its particular facts. As to both of these points, see Warren County Human Services v. State Civil Service Commission, 884 A.2d 70 (2004) in which the Commonwealth Court held that the Child Protective Services Law's lifetime ban on previously convicted applicants was unconstitutional where the law created per se prohibitions that had no temporal proximity to the time of hiring, and allowed removal of child care workers whose work was exemplary based on a twenty year old conviction for aggravated assault.

In summary, PSEA supports legislation that promotes student safety and agrees that convictions of certain felonies should result in a lifetime bar to school employment or certification. PSEA believes the interests of the Commonwealth, school students, school employers, and school employees are best served by laws that are understandable in their directives, and constitutional in operation. PSEA will assist its members in completing the PDE-6004 look-back report and will advise its members as to reporting requirements going forward. PSEA will handle issues relating to Section 111 on a case-by-case basis, if they arise.