

AN EXAMINATION OF LAWS GOVERNING CRIMINAL BACKGROUND
CHECKS OF SCHOOL PERSONNEL IN STATES BELONGING TO THE
SOUTHERN ASSOCIATION OF COLLEGES AND SCHOOLS

by

GLORIA J. GABRIEL

(Under the Direction of John Dayton)

ABSTRACT

Because of the need to protect children from persons who should not have access to them in an unsupervised setting, many state legislatures are enacting statutes requiring criminal background checks of school personnel. This study analyzed these statutes in the eleven states belonging to The Southern Association of Colleges and Schools (SACS). This study found that: (1) The first legislation relating to criminal background checks on school employees was enacted in Louisiana in 1986; (2) currently, ten of the eleven SACS states require criminal background checks on some school personnel; (3) nine states require fingerprints; (4) eight states require a national background check through the FBI; (5) six states require the applicant to pay the cost of the background check, while one state requires the employing agency to pay the cost; (6) five states allow the applicant to be employed pending receipt of the criminal background report; (7) five states prohibit employment based on findings of a criminal background; (8) five states provide for confidentiality of the criminal background record; (9) four states have provisions that allow persons to appeal a denial of employment based on the criminal background record; (10) three states require that the person to be investigated must give written permission for the investigation; (11) three states have statutes that require that state law enforcement agencies must respond to a request for a criminal background request from the school agency; and (12) two states provide penalties for noncompliance of the statute. This study concluded that there is significant variation in the requirements of the reviewed states regarding criminal background checks on school personnel. This study includes recommendations intended to provide more consistent, comprehensive protection of children in the school setting.

INDEX WORDS: Criminal background checks, Criminal history, Negligent hiring, School personnel.

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A Dissertation Submitted to the Graduate Faculty of The University of Georgia in Partial
Fulfillment of the Requirements of the Degree

DOCTOR OF EDUCATION

ATHENS, GEORGIA

2003

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DEDICATION

This work is dedicated to my grandchildren:

Mitchell Lee Gabriel,

Jack Walter Dangerfield,

Lily Claire Dangerfield, and

those yet to be born

It is my hope that this work will help to ensure that you will always be safe.

May your lives be filled with only those people who love you.

ACKNOWLEDGEMENTS

Many people have assisted me in my research. I am grateful to Dr. John Dayton who has guided and encouraged me to find my way. Without his guidance, this work would not have been possible.

Many thanks go to Dr. Catherine Sielke and Dr. Sally Zepeda who have asked the right questions to focus my research, and have helped me with revision and re-writing.

To Tonya, thank you for the hours on the phone when you have offered the encouragement to keep me plodding toward this final product. Your humor has kept me going and relatively sane.

To Glen, thank you for the many times you came home from college and, more recently, from your own home to repair the computer. Without you, the final product could not have been done!

Finally, to Gerry, thank you for the many years that you have assisted me. You have cooked, cleaned, done laundry, run errands, and chauffeured our children when they were young. You have proofread, made phone calls, and taken me for long walks on the beach as needed. Most of all, however, you have encouraged me by simply been there when I needed you, listening and supporting. You have provided the wind beneath my wings and encouraged me to soar to whatever heights I wished to go. I am forever thankful for your love and support.

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CHAPTER 1

INTRODUCTION

The myth is that people who work in education are high-minded individuals, incapable of doing harm to those in their charge. The sad reality is that it isn't necessarily so. A criminal element exists at every stratum of life, and sick, perverted people can be found in every profession – including education. (Sharp & Walter, 1990, p 31)

In recent years, there has been much concern in the United States regarding the protection of children from persons who may harm them. School employees should be chosen for both their expertise and their desire to provide a safe, nurturing environment for students. Yet, we often read or hear of employees who are accused of child molestation in their present positions, and are then found to have had a history of such incidents. Many of these incidents have resulted in either dismissal without the allegations being pursued, or in arrests with criminal conviction. In some cases, the incidents have also resulted in litigation against the institutions that hired the employee. Public schools are no exception. Many school districts have inadvertently hired teachers who have a history of abusing children (Regotti, 1992).

Instances where children have been abused by those responsible for their care are certainly not new. However, the issue was brought to the forefront of public attention in 1983 when the employees and owners of Virginia McMartin Pre-School in Manhattan Beach, California were charged with 208 incidents of child molestation (Eberle, 1993). In the trial that followed, accusations were made and evidence was presented that seven caretakers, including the owner of the facility, were using the children in satanic rituals

that involved physical, emotional, and sexual abuse (Eberle, 1993). Although the trial ended in mistrial, news media coverage of the case was extensive. Through nightly accounts of the alleged horrors that had taken place in the facility, parents became increasingly aware of the dangers of placing trust for their child's care into the hands of others.

Problems, however, have not been limited to daycare institutions. No area of our society is immune, including public schools. In every situation where adults have access to children, incidents of abuse have occurred. Media accounts of priests, nurses, bus drivers, daycare workers, and others abusing children in their care are found almost daily. Public schools have also been the location of many such incidents. For example, in 1987, three boys in Cleveland, Oklahoma were awarded \$135,000 in damages because of sexual abuse by a teacher when the jury learned that the teacher had been convicted of sodomy in 1972 and that a relative of the teacher had warned the district that the teacher had "pedophile tendencies" (Baas, 1990). In 1989, a California school district was sued for several million dollars based on a claim of negligent hiring, after a male drama teacher was convicted of sexual assault on a male student (DeMitchell, 1990). A reference check on the teacher a year earlier did not reveal that he had been investigated in his last position for the alleged molestation of students in 12 separate incidents (DeMitchell, 1990).

These incidents are not isolated occurrences. Other media reports have included an incident involving a 52-year-old male special education teacher in Madrid, New York who was convicted of raping three children in his classroom (Graves, 1994), a 36-year-old female Junior High school social studies teacher, twice named Teacher of the Year in

her school, who was convicted of raping a 14 year old boy (Graves, 1994), a 22-year veteran female teacher of physical education who was convicted of sexually assaulting a teen-age girl at her school (Graves, 1994), and a 39-year-old female teacher who was convicted of sexual abuse of four girls in kindergarten through fourth grade in the school where she taught music (Graves, 1994).

In Georgia, a well publicized incident occurred in September 1992, when Elliot Wigginton, one of the nation's best known teachers and 1986 Georgia Teacher of the Year, was arrested for fondling a 10-year-old Clarke County boy ("Foxfire Founder Denies," 1992). A trial was not held because Wigginton later admitted guilt and was sentenced to one year in prison ("Foxfire Founder Gets Year," 1992). However, before his admission of guilt, prosecutors announced their intention to present evidence of similar molestations by Wigginton of 10 boys, the earliest of which occurred in 1969 ("Wigginton Has History," 1992). The Georgia Bureau of Investigation had also investigated allegations of sexual misconduct in 1986, but had not pursued prosecution because the statute of limitations had expired on the accusations ("GBI Probed Wigginton," 1992).

In 1996, William Walsh, a teacher in Walton County, Georgia, was charged with five counts of child molestation that allegedly occurred in a Social Circle Elementary School ("Teacher in Child Sex Case," 1996). Walsh had also been investigated in 1995 by Gilmer County authorities for allegedly fondling two boys while teaching there ("Teacher in Child Sex Case," 1996).

Georgia § 19-7-5 defines "child abuse" as any of four acts: (1) physical injury or death inflicted upon a child by a parent or caretaker by other than accidental means; (2)

neglect or exploitation of a child by a parent or caretaker; (3) sexual abuse of a child; or (4) sexual exploitation of a child (Georgia Code § 19-7-5(b)(3)).

Research in this area indicates that situations such as those discussed earlier are not uncommon. Wishnietsky's 1991 survey of high school graduates in North Carolina found that 17.7% of males and 82.2% of females reported sexual harassment by faculty or staff during their school years, and 13.5% of the students who responded to the survey reported that they had engaged in sexual intercourse with a teacher (Shakeshaft, 1994). A 1993 study by the American Association of University Women found that 25% of females and 10% of males in grades eight through eleven reported that they have been sexually harassed in some way during their school career by a member of the faculty or staff (Shakeshaft, 1994; Graves, 1994).

Increasingly, parents and the public are looking closely at who is employed in the public school, from the superintendent of schools to the bus driver. Yet, many communities have realized the consequences of poor district hiring decisions only when they have found that their children have been victimized. Thus, many communities may have lost faith in the ability of the local school district to safeguard their children, and are seeking to protect their children through other policies and procedures to ensure careful screening.

Public schools are also seeking methods of protecting children. One method is to screen applicants during the hiring process. Yet screening methods often depend on information provided by the applicant, and dependence on this information is risky because applications commonly contain exaggerations, omissions, and false statements.

Inaccuracies and falsifications of information on employment applications often include false reasons for leaving a position, jobs never held, and the amount of education attained (Barada, 1994; Seidler, 1990). A study by *Small Business Report* found that about one-third of Americans deliberately falsify information submitted on resumes (“To Catch a Phony,” 1993). Other surveys have also confirmed that applicants sometime give false information when completing applications. In one such study, it was found that almost one-third of 200 randomly selected resumes for positions at Equifax, Inc. had inaccurate information (Rigdon, 1992). In 1991, The Port Authority of New York and New Jersey conducted a study to determine whether falsifying information on job resumes was a major concern. The group ran a help-wanted ad for an electrician with mastery of the Sontag Connector, a device that does not exist. Of the 170 applicants who responded, one-third claimed that they were Sontag experts (McGarvey, 1993).

Although protecting children should be the most compelling reason for efforts to ensure that employees will not endanger children in schools, financial considerations also provide an additional incentive. Investigation into the background of a potential employee is necessary because under the theory of *respondent superior* (let the superior respond for the actions of the agent), courts commonly hold employers accountable for the actions of their employees if the employer is negligent in hiring or supervising that person.

Negligent hiring has been defined as “the failure of an employer to use reasonable care in carrying out a pre-employment investigation of a candidate’s past job performance and fitness for the job to be filled” (Barada, 1994, p. 38). Through the late 1980s, negligent hiring cases were based on allegations that the employer becomes liable

when an employee is acting within the scope of the job description and injures a third person. That is, the courts considered whether the injurious act was a part of the job, whether it occurred while the employee was on duty, and whether the employee was motivated to serve the employer. In more recent cases, however, the courts have taken a broader view, holding employers responsible for the actions of their employees if the third party was injured by an employee acting under the auspices of employment, the employee was found by the court to be unfit for the job, the court establishes that the employer knew or should have known about the unfitness of the employee, and the injury was a foreseeable consequence of the hiring (Block, 1993). In *Fallon v. Indian Trail School*, (1986) the court stated:

Liability for negligent hiring arises ... when a particular unfitness of an applicant creates a danger of harm to a third person which the employer knew, or should have known, when he hired and placed this applicant in employment where he could injure others. (*Fallon*, 1986, p. 935)

Examples of court decisions in favor of victims claiming negligent hiring are numerous. In *Ponticas v. K.M.S. Investments* (1983), the court found that an employer was liable for failing to inquire appropriately into the background of an apartment manager who subsequently raped a tenant. In *Malorney v. B&L Motor Freight* (1986), a case in which a B&L driver sexually assaulted a hitchhiker, the court ruled the employer should have foreseen the unfitness of the driver by investigating his criminal record that listed previous sexual assaults. In *Salinas v. Fort Worth Baggage Co.* (1987), the court awarded \$4,500,000 for negligent hiring when a Fort Worth Baggage Company driver with a previous record of a violent assault on a woman picked up and transported a woman to a deserted area where she was raped and robbed. In a recent case in Mesquite, Texas, jurors awarded \$2,675,000 to the parents of a 16-month old girl who was abused

by an employee of La Petite Academy when the girl was found with bruising and welting on her legs and thighs (“Daycare Center Hit,” 2002). Jurors recently awarded \$625,000 to a woman who was raped after it was disclosed that the Complete Messenger Service employee who committed the rape had admitted on his employment application that he had prior convictions (“Baby Sitter Gets”, 2002). In February of 2002, a former patient of Baylor University Medical Center in Waco, Texas, was awarded \$850,000 for injuries resulting from a sexual assault by a patient care technician who was on probation for molesting his sixteen year old daughter (“Patient Gets \$850,000,” 2002).

School districts also have also been found to be liable for damages incurred by their employees. In *Franklin v. Gwinnett County Public Schools* (1992), the U. S. Supreme Court ruled that “a damages remedy is available for an action brought to enforce Title IX” because a student was sexually abused by a coach, violating her protection from sexual harassment and discrimination (p. 76).

The results of litigation indicates that if a proper pre-employment investigation would have revealed an employee’s unfitness, the court will likely hold the employer accountable for negligent hiring. Thus, it is clearly in the best interests of employers to carefully review the applicant’s background before hiring. Baldwin, Greaves, Haynsworth, & Johnson (2001) recommend that employers use the following in order to protect themselves against negligent hiring litigation: (a) Obtain a criminal background investigation through information obtained from the state’s department of law enforcement, (b) make a reasonable effort to contact references and former employees, (c) require the applicant to complete a job application that includes questions on whether

he/she has ever been convicted of a crime, and (d) if the job includes driving, obtain written authorization to get a driver's license record of the applicant (Haynsworth, 2001).

Fenton & Miller (1991) found negligent hiring cases to be one of the fastest growing areas of employment law. They concluded that, because of the nature of their services, some types of businesses are more susceptible to negligent hiring lawsuits. Among those are hospitals, nursing homes, day care facilities, and, of course, public schools (Fenton and Miller, 1991). Therefore, for both ethical and financial reasons, schools must protect children from those who should not have access to children.

Employers, however, must be careful not to expose themselves to liability for civil rights violations. For example, African-Americans are arrested with disproportionate frequency as compared to whites (Greenebaum, 2002). Using information regarding arrests to exclude African-Americans could lead to liability for discrimination since arrests do not necessarily lead to conviction. Conviction records, however, would be acceptable screening criteria.

Although school districts may seek to know all that is possible about an individual's background, they must also balance this need with the individual's right to privacy. This can be overcome by notifying the individual that the employment is subject to a satisfactory background investigation and obtaining written consent to perform the investigation (Greenebaum, 2002).

The Equal Employment Opportunity Commission (EEOC) suggests that employers consider three elements before deciding not to hire an applicant because of his or her criminal record: (a) the nature and gravity of the offense, (b) the amount of time

that has passed since the conviction or completion of the sentence, and (c) the nature of the job sought or held (Johnson & Steptoe, 2001).

Information obtained from The National Child Abuse and Neglect Data System for the 2000 calendar year shows that approximately 879,000 children were victims of child maltreatment. Of this number, twenty-nine percent were physically or sexually abused. Victimization rates for sexual abuse were 1.7 victims per 1,000 female children compared to 0.4 victims per 1,000 male children (National Clearinghouse on Child Abuse and Neglect Information, 2003).

No recent data are available to show how many of these cases resulted from abuse by school personnel. However, a 1988 study by Zakariya showed that slightly less than 0.1% of the total reported cases of child abuse involved school personnel (Zakariya, 1988). By applying this data to the cases of 2000, one may conclude that approximately 875 abuse cases involved school personnel.

Problem Statement

Media reports of abuse and public demands for protection of children are increasingly pressuring law makers and school officials to tighten screening procedures of potential employees in order to provide a safer environment for children. Legislators are attempting to provide greater protection through legislation mandating criminal background checks on school employees and others with access to children in educational institutions. However, the degree of protection provided by these laws depends on the quality of these laws. Further, to comply with the law, and to help deter child abuse in schools, school officials need to know and understand the laws relating to criminal background checks of employees and other persons. This study will provide school

officials and other education policy makers with an examination of laws governing criminal background checks of school personnel in states belonging to the Southern Association of Colleges and Schools (SACS).

Research Questions

This study will address the following research questions:

1. What is the current status of legislation relating to criminal background checks for school personnel in states belonging to The Southern Association of Colleges and Schools?
2. How does Georgia legislation compare with that of other states in The Southern Association of Colleges and Schools?

Procedures

This study reviewed criminal background check laws for school personnel in the states belonging to SACS, and compared these states' legislation on this topic. Research for this study focused on analyzing current state statutes in states belonging to SACS to review and compare the status of laws regarding criminal background checks for school personnel. Chapter 2 provided a chronological review of relevant statutes and scholarly commentaries relating to criminal background checks on school personnel. Relevant laws and scholarly commentaries identified from data bases such as "FindLaw," "Lexis-Nexis," and "Westlaw," and articles in law and educational journals, were collected and synthesized to create a current and accurate composite perspective regarding the laws governing criminal background checks in the identified states. Historical cases and documents were accessed through a search of the University of Georgia library and other libraries and these materials were reviewed and analyzed. Chapter 3 includes a

comparison of the laws in the states belonging to SACS. The purpose of this comparison is to identify the various elements of these statutes and identify possible strengths or shortcomings in current Georgia law. Chapter 4 provides a summary of findings, conclusions based on these findings, and comments and suggestions for school administrators and other education policy makers.

Significance of the Study

Current research on laws and practices regarding criminal background checks in educational institutions is limited. No recent Georgia specific research on this subject was found. Therefore, Georgia school officials and education policy makers should find this study helpful in better understanding, implementing, and possibly modifying laws and policies in this area. This research will assist school district officials in reviewing their current policies and procedures for criminal background checks, and help them to determine whether present laws and practices provide an adequate investigation of the history of potential employees.

Limitations of the Study

The information gathered for this study was limited to legislation in those states that are members of SACS. Additionally, information was limited to state requirements as defined by legislative statutes. No information was presented regarding policies or practices of local units of education.

CHAPTER 2

REVIEW OF THE LITERATURE

The first section of Chapter II presents an overview of pertinent material contained in relevant scholarly works on the topic of criminal background checks for school personnel. The next section consists of a review of relevant cases related to the topic. The final section is a review of relevant state statutes of those states whose schools are members of The Southern Association of Colleges and Schools (SACS).

Review of Materials Related to Criminal Background Checks

There has been much debate as to “how much is enough” in regards to investigating the backgrounds of potential employees. Bates suggests:

The amount of screening done on an applicant must be proportionate to the degree of risk presented by the position to be filled. The greater the risk, the more effort must be made to investigate... The risk posed by a particular position depends on access. If employees are able to subject others to harm because of having unsupervised access to them ... then risk exists. (Bates, 1990, p 7A-8A)

Failure to verify applicant information and to inquire into the backgrounds of public school applicants has sometimes led to the hiring of persons with criminal backgrounds. In 1993, an elementary school employee in the Dallas Independent School District was charged with indecency with a child. When it was revealed that the teacher had two prior sex-related convictions that the district apparently had no knowledge of, the *Dallas Morning News* decided to look into the backgrounds of personnel working for the Dallas Independent School District. The investigator for the newspaper crosschecked

employee's names with criminal records in the Dallas County district attorney's office. The search revealed that 185 of the 16,000 Dallas Independent School District employees had records of convictions involving welfare fraud, murder, armed robbery, and drug distribution (Natale, 1993). In the Dallas Independent School District, failure to investigate backgrounds had resulted in the hiring of many individuals who should not have been given access to children.

In 1993, Virginia had no systematic way of verifying information on applicants. However, all Virginia school systems required applicants to list convictions for crimes such as child abuse or sexual molestation of children. In that year, Fairfax County Public Schools was granted permission to fingerprint applicants and run background checks on prospective personnel. Through this investigation, it was found that 2% of teacher applicants and 6% of prospective substitutes in Fairfax County Public Schools had criminal records although the applicants did not disclose this information on the applications ("Background Checks for Teachers," 1993).

Based on data such as this, at least two professional organizations recommend criminal background checks for personnel. In 1990, The American Association of School Administrators and The National Association of State Boards of Education developed guidelines for dealing with employee's actions in sexual abuse cases (Baas, 1990). Both of these organizations recommended that each state should routinely check for criminal convictions and review its statutes to clearly identify the authority and the procedures related to complaints and hearings, penalties, and prosecution, and issues of rehabilitation and reinstatement. By 1990, some states began to make FBI checks mandatory for

teacher certification (Baas, 1990). California, for instance, enacted a law in 1990 requiring fingerprint checks of applicants for all school positions (Baas, 1990).

Some authorities have questioned the necessity to conduct criminal background checks on all applicants for public school positions, and raised concerns about applicants' rights to privacy. For example, Graves (1994) stated, "No one knows for sure how many teachers are abusing children in the United States" (p 11), but estimated that the number makes up less than one percent of all sexual abuse cases involving children (Graves, 1994).

However, data collected through surveys of school children would seem to indicate that the problem is much broader. Wishnietsky's 1991 survey of high school graduates in North Carolina found that more than 17% of males and more than 82% of females reported sexual harassment by faculty or staff during their school years, and more than 13% had engaged in sexual intercourse with a teacher (Shakeshaft, 1994). However, Wishnietsky also found that only 7% of these students reported that they complained to school authorities about the incident (Shakeshaft, 1994).

A 1993 study by the American Association of University Women found that 25% of females and 10% of males in grades eight through eleven reported that they have been sexually harassed in some way during their school career by a member of the faculty or staff (Graves, 1994; Shakeshaft, 1994).

In 1994, Shakeshaft completed a 4-year study funded by the U.S. Department of Education in which she reviewed 225 cases where students or their parents filed complaints of sexual harassment by school personnel. Shakeshaft concluded that 96% of abusers are male, likely to be a coach or teach drama, art, music, or physical education,

and are popular among students. Most of the abusers define themselves as heterosexual. Information on victims showed that 75% of the cases involved female victims, 20% involved male victims, and 5% involved both male and female victims. Shakeshaft found that males were abused more frequently in elementary school than in high school, but that females were equally likely to be sexually abused in elementary and high school. Shakeshaft concluded that districts in which sexual abuse rarely occurs have four common characteristics: (a) They have strong, clear, sexual harassment policies; (b) they educate students and staff about sexual harassment, district policies, and what to do if harassment occurs; (c) staff in these districts know possible symptoms of sexual harassment and speak up when they see signs that a student might be abused; and (d) the districts screen prospective employees and follow-up carefully on references (Shakeshaft, 1994).

Two major studies were found that relate to screening applicants for positions as school personnel. The first was conducted in 1989 by Carol DeFrances and Richard Titus on behalf of the U. S. Department of Justice (DeFrances & Titus, 1989). DeFrances and Titus conducted an examination of pre-employment screening in school districts in eighteen states. States were selected based on legislation in effect in July 1987 in order to represent an equal number of four types of state legislation regarding criminal background checks. The types were mandatory, permitted, permitted on all employees (not just school-level personnel), and not mentioned. The research was conducted through a survey that was mailed to the superintendents of the school districts in the selected states.

DeFrances and Titus found: (a) 21% of the school systems asked candidates about other names that he or she had used before, (b) 11% required a signed waiver allowing a review of the applicant's police and FBI files, (c) 27% ask applicants about prior arrests, (d) 34% asked about convictions or guilty pleas, (e) 15% asked about pending charges, and (f) 7% asked about acquittals. However, 63% did not require any of these items (DeFrances & Titus, 1989).

In reviewing information regarding the processing of applicants, the authors found: (a) 58% of the respondents reported that they conduct criminal background checks, but only 16% require fingerprints; (b) 95% attempt to verify answers on applications by contacting previous employers; (c) 70% attempt to verify answers on applications by contacting character references; (d) 84% asked about reasons for leaving a previous position; and (e) 46% asked about revocation or denial of a teaching certificate. However, 11% did not seek any of the information listed in the above five items (DeFrances & Titus, 1989). DeFrances and Titus also found that state sex offender and child abuse and neglect registries were not reported to be used at all (DeFrances & Titus, 1989).

Other findings of DeFrances and Titus (1989) included: (a) School system size is a more important determinant of screening procedures than applicable state legislation or any other factor; (b) smaller systems rely more on employment and character references than on criminal background checks; (c) school systems in states with no legislation on the subject are considerably less likely to conduct criminal background checks than those whose legislations expressly mandate or permit those checks; (d) when criminal background checks were conducted, they were usually done without fingerprints; and (e)

applicants for certain types of jobs, such as food service, custodial, contract employees, or volunteers were screened less thoroughly or not at all (DeFrances & Titus, 1989).

In a more recent study, Lohnas (1994) conducted a review of screening procedures for public school applicants in the states of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont. He found: (a) 72% of the respondents required persons to indicate if they had ever been convicted of a crime, (b) 17% used applications that require applicants to give other names, (c) 13% required fingerprints, (d) 22% required the applicant to sign a waiver allowing review of police and FBI files, and (e) 58% required none of these.

Like DeFrances and Titus, Lohnas (1994) also found that applicants were often screened for criminal history or not according to the position sought. Respondents reported: (a) 50% required applicants for positions as bus drivers to be screened; (b) 33% required administrators, teachers, and custodians to be screened; (c) 25% required screening for teacher aides, clerical staff, and security personnel; (d) 24% required screening of food service workers; and (e) 15% required screening on volunteers. Lohnas found that only 4% required no one to have a background check.

Although the FBI has the largest repository of criminal records in the United States, Lohnas also found that most school districts rely on state and local police reviews with only 15% using the Federal Bureau of Investigation (FBI) as a source of information (Lohnas, 1994). In reviewing available information found in FBI files, however, Lohnas concluded that accessing criminal background information may not always be possible or may be incomplete due to the very short time that some information is kept in FBI records (Lohnas, 1994). Information on arrests that have resulted in prosecution is only

available for one year after the arrest. Therefore, information that resulted in prosecution, but not conviction, is not available after one year even though lack of conviction may have been for reasons other than acquittal (mistrial, for instance) (Lohnas, 1994).

Another source of information for criminal background checks is The National Association of State Directors of Teacher Education and Certification (NASDTEC). NASDTEC maintains the Teacher Identification Clearinghouse, a national database that lists teachers whose certifications have been revoked, suspended, or denied within the past ten years. Member states are provided with monthly updates of names, known aliases, birth dates, and Social Security numbers of individuals who have been added to the list. All fifty states are members of this clearinghouse (Baas, 1990). Many school systems, however, apparently do not know of or choose not to use this resource. Lohnas (1994) found that only 5% of the 523 schools that he surveyed in the northeastern United States even knew that the clearinghouse existed.

Review of Related Litigation

Review of the relevant litigation shows that school districts are held responsible for the actions of their employees if they were found guilty of negligent hiring. Cases in this section are arranged chronologically.

Fallon v. Indian Trail School (1986) set precedent in defining negligent hiring. In this case, the plaintiffs, Mary Jane Fallon and her parents, sued Indian Trail School to recover damages for spinal injuries suffered because of a trampoline accident that occurred on February 23, 1975 in her sixth-grade physical education class. The plaintiff contended that: (a) The trampoline is an “abnormally dangerous instrumentality” (Fallon, 1986), and therefore, the school is liable for injuries sustained during its use; (b) the

school and school district were negligent in the selection and use of the trampoline; (c) the school and school district were negligent in hiring and supervising teachers who used this trampoline; and (d) there was evidence of “willful and wanton misconduct” of the teachers, school, and school district with regard to the method in which they conducted the physical education class. When the trial court dismissed the first three charges, plaintiffs appealed the decision to the Appellate Court of Illinois. Judge Strouse affirmed the lower court decision. In giving his opinion of count three, negligent hiring, Strouse stated:

There are many kinds of unfitness for employment that do not give rise to tort liability for negligent hiring... For example, employers may hire the mentally and physically handicapped, who have some degree of unfitness. Such employers, however, do not assume liability because of their employee’s unfitness. Liability for negligent hiring arises only when a particular unfitness of an applicant creates a danger of harm to a third person which the employer knew, or should have known, when he hired and placed this applicant in employment where he could injure others. (Fallon, 1986, p. 935)

Fallon v. Indian Trail School (1986) thus established the three criteria currently used in determining negligent hiring. They are: (a) The employee had “a particular unfitness” for the position that could create a danger of harm to third persons, (b) the “particular unfitness” was known or should have been known to the employer at the time of hiring, and (c) this “particular unfitness” resulted in the claimed injury (Fallon, 1986). Simply stated, the courts place a burden on each employer to exercise reasonable care to protect its clients, employees, etc. from injury caused by employees who the employer knows, or should know, pose a risk of harm.

In *Isley v. Capuchin Province* (1995), defendant Capuchin Province brought motion before the United States District Court for the Eastern District of Michigan, Southern Division, to dismiss charges against them made by Paul Isley. Isley alleged that

Fathers Jim Wolf and Gale Leifeld sexually molested him while he was a student at St. Lawrence Seminary in Fond-du-Lac, Wisconsin and a resident at the Pre-Novitiate house in Detroit, Michigan. In charges against the “non-abuser” defendants, Isley alleged (a) breach of contract, (b) statutory negligence, and (c) common law negligence which included negligent hiring and negligent supervision of the abuser defendants. Capuchin Province officials argued, in regards to the claims of negligent hiring and negligent supervision, that Wisconsin does not recognize such claims as independent causes of action. Further, they argued, if claims of negligent hiring and negligent supervision were recognized by the state of Wisconsin, the Court does not have jurisdiction to adjudicate the claim because to do so would amount to excessive entanglement with religion and would violate the First Amendment of the U. S. Constitution and the Wisconsin Constitution.

The court dismissed the plaintiff’s claims of negligent hiring with the following statement:

It is well settled that when a court is required to interpret Canon Law or internal church policies and practices, the First Amendment is violated because such judicial inquiry would constitute excessive government entanglement with religion.... Any inquiry into the decision of who should be permitted to become or remain a priest necessarily would involve prohibited excessive entanglement with religion. Therefore Plaintiff’s claims of negligence predicated upon a “negligent hiring” theory will be dismissed. (Isley, 1995, p. 1150-1151)

Doe v. Hillsboro Independent School District (1996) was appealed to the United States Court of Appeals for the Fifth Circuit from the United States District Court for the Western District of Texas. The facts of the case were as follows. In May of 1993, Jane Doe was a student at Hillsboro Middle School in Hillsboro, Texas. At her teacher’s request, she remained after school for academic work. During the after-school studies,

Jane's teacher asked her to go upstairs for some supplies. During the time she was gone from the room, a male custodian employed by the district chased Jane into an empty classroom and locked the classroom door. He then assaulted and raped her. Jane did not disclose the event to anyone. In December, Jane's parents became aware that she was pregnant. When they demanded that she explain, Jane told them of the rape. The family went to the police, and the custodian was arrested. Shortly after his arrest, the custodian entered a guilty plea to rape.

Even though Texas law required that school districts investigate the criminal background of each prospective employee, Hillsboro Independent School District officials had not investigated any of its prospective employees. At the time of the incident, at least one-third of Hillsboro Middle School's maintenance staff had criminal records, including convictions for murder, armed robbery, unlawful weapons possession, drug offenses, and cruelty to animals. The custodian who committed the rape also had a criminal record.

Jane Doe's father sued Hillsboro Independent School District, its board members, its supervisor, and the Hillsboro maintenance staff manager. Doe alleged that the district and the individual defendants had hired convicted criminals in violation of state law and had failed to supervise them adequately. Doe claimed that these acts had caused a deprivation of the constitutional rights of his daughter and demonstrated the deliberate indifference of the school officials to Jane's constitutional rights.

Individual officials of the school district (but not the school district) filed a motion seeking dismissal for failure to state a valid cause of action, and claimed qualified immunity. The district court denied the motion, stating, "The court is persuaded Plaintiff

has adequately stated a claim for relief” (Doe v. Hillsboro, 1996, p. 1399). The defendants then appealed to the Fifth Circuit Court of Appeals. Judges Wiener, Garza, and Benavides addressed the issue of negligent hiring by stating:

Doe’s allegations that the school officials failed to investigate the criminal records of prospective employees satisfies the inadequacy element. Common sense recommends and state law demands that, in the interest of the safety of school children, school officials investigate the criminal histories of prospective school employees. The school officials’ total abdication of this responsibility constitutes a facially inadequate hiring process. Second, the hiring inadequacies alleged here reveal ... such recklessness or gross negligence as to amount to conscious indifference to the plaintiff’s constitutional rights. ... [A] persistent, widespread pattern of hiring school employees with a background of crime and violence is manifested. Third, a jury could reasonably conclude that when school officials hire a staff, one-third of whom are violent criminals, ... and place them in constant contact with students, there is a “real nexus” between the hiring of these criminals... and the constitutional injuries suffered by victims like Jane. (Doe v. Hillsboro, 1996, p. 1404)

The court also denied the motion to dismiss based on qualified immunity of the school officials. The court stated:

We disagree. Since 1987, the law has been clearly established that school children do have a liberty interest that is protected by the Due Process Clause of the Fourteenth Amendment, and physical sexual abuse by a school employee violates that interest. (Doe v. Hillsboro, 1996, p.1406)

Mueller v. Community Consolidated School District 54 (1997) was reviewed by the Illinois State Court of Appeals in March 1997. The case was first considered in Cook County, Illinois, where Kathleen Math, on behalf of her daughter, Sarah Mueller, sued Community Consolidated School District 54 and Anthony Robinson. The facts of the case were as follows. Mueller was a student at Margaret Mead Junior High School in Elk Grove, Illinois in February 1992, where she was manager of the wrestling team that was coached by Robinson, a teacher in the school. Robinson often drove members and managers home after practice. On February 28, 1992, while delivering Mueller home

after practice, Robinson drove her to his residence where he sexually assaulted her. In November 1993, the case was dismissed by trial court. The plaintiffs filed a motion to reconsider and the motion was denied. They then appealed the case to the Illinois State Court of Appeals, alleging that: (a) The school district did not conduct a background check on Robinson, thereby violating Illinois School Code; and (b) the district had been negligent in hiring Robinson since it owed Mueller the duty of “reasonable care and caution” in the hiring and investigation of Robinson and therefore should have known that Robinson had a “criminal background exhibiting moral turpitude” which made him unfit for a position dealing with minors (Mueller, 1997, p. 342). The Illinois State Court of Appeals remanded the case back to the lower court for trial, stating that there was adequate information to bring charge of negligence and, therefore, the case should not have been dismissed.

Citing *Fallon v. Indian Trail School* in his summary statement, Judge Patrick E. McGann stated: “We agree ... that this alleges sufficient facts to satisfy ... elements of a negligent hiring cause of action” (Mueller, 1997, p. 342). Community School had also requested dismissal under Illinois Code § 2-201 which gives governmental entities immunity from liability for injuries resulting from exercise of discretionary authority. Community School contended that hiring of personnel is discretionary for the district. The court stated,

Here the School District’s discretion is fettered by the criminal-background-check statute. The statute provides that the School District shall not knowingly employ a person for whom a criminal background investigation has not been initiated. We find that it requires the School District to at least commence an investigation of employment applicants before it is vested with the discretionary authority to hire. We therefore conclude that the School District’s failure to comply with the statutorily imposed condition precedent vitiates any immunity it might otherwise have enjoyed. (Mueller, 1997, p. 346)

In 1998, the criteria for negligent hiring set in *Fallon v. Indian Trail School* (1986) was cited in overturning a court decision regarding a suit in the public arena. In *Oakley v. Flor-Shin* (1998), Judges Johnson and Schroder of the Kentucky Court of Appeals reversed a lower court decision to dismiss the case of Holly A. Oakley. Oakley was an employee of K-Mart in Versailles, Kentucky. William Bayes was employed by Flor-Shin, Inc., a company that was under contract with K-Mart to maintain its floors. On the night of February 18, 1994, the two were locked inside the store alone, and Oakley was sexually assaulted by Bayes. Bayes later pled guilty to the attack. Oakley sued Flor-Shin, alleging that: (a) Bayes's history showed a likelihood to inflict injury because his criminal record included burglary, theft, bail jumping, criminal attempt to commit rape, and carrying a concealed weapon; (b) Flor-Shin knew or should have known of this criminal history because the regional manager who hired Bayes was the brother-in-law of Bayes; and (3) Flor-Shin knew that Bayes would be locked inside the store with a single K-Mart employee. In addition, Flor-Shin had a contract agreement with K-Mart to conduct criminal background checks on employees of Flor-Shin who were assigned to K-Mart. Citing *Fallon v. Indian Trail School* (1986), The Kentucky Court of Appeals reversed the lower court decision to dismiss the case and remanded the case for further proceedings.

In *Burnell v. Williams*, (1998), a motion to dismiss charges against Mansfield City School Board of Education in Cleveland Ohio, was considered by the U.S. District Court for the Northern District of Ohio, Eastern Division. The plaintiff's claim was as follows. Heather Burnell was a student in the sixth-grade art class of Larry Williams at John Simpson Middle School in Mansfield, Ohio for the 1990-1991 school year. Late in the

1991-1992 school year, Heather developed a close relationship with Williams that included hugging and kissing, but not sexual intercourse or nudity. Burnell did not tell anyone of the incidents until May of 1992 when she confided to a friend. That same month, Burnell's mother read of the incidents in Heather's diary. Valarie Burnell confronted Williams about his conduct and told him to stay away from Heather, but did not report the incident to school officials. In late August 1992, Valarie Burnell informed the principal and stated in a note that she had known of the incident since May, but had handled the situation herself. Principal Castle and Superintendent Coleman investigated the incident and subsequently relieved Williams of teaching responsibilities on September 4, 1992. Williams resigned shortly afterward. Heather refused to return to school, claiming that she was harassed by students because of the incident. The school district privately tutored her at district expense. Burnell sued, charging the superintendent and Mansfield City School Board of Education with (a) sexual assault and battery, (b) assault, (c) child endangering, (d) child abuse, (e) negligent hiring and intentional infliction of emotional distress.

The court dismissed the charge of negligent hiring. Judge James Gwin stated that the evidence presented "show[ed] the school board could not have known, before his hiring, that Williams had propensities toward sexual misconduct" (Burnell, 1998, p. 895).

In *Godar v. Marion Independent School District* (1999), the Supreme Court of Iowa reviewed a decision from the Iowa District Court for Linn County. The facts in this case were as follows. Luke Godar, age 37 at the time of filing, filed suit against the school district for negligence and against Gerald Edwards on claim of intentional injury.

Godar sought damages for sexual abuse that allegedly took place over a period of several years while he was a student in the school district. In 1968, during the time that Godar was a student, Edwards was hired as the curriculum director for the district. Edwards was responsible for various duties, including supervising teaching in classroom, assisting in the selection of textbooks, etc. At that time, Edwards was also a volunteer and assistant with a local Boy Scouts group.

Godar testified in the trial court that the first incident of sexual abuse by Edwards was at a Boy Scout camp when he was in elementary school, and that he remembered being sexually abused in his sixth grade year on the premises and in the school parking lots of several school district buildings. According to Godar, the abusive situations occurred approximately once a month and continued through his high school years, both on and off school district property.

Godar testified that he did not report the abuse to his parents or any school official because his mother was very fond of Edwards, often inviting him to dinner. He explained that he discovered the “injury” from the sexual abuse in 1991 during counseling. Godar’s brother also testified that Edwards had sexually abused him when he was in junior high school and that the abuse occurred at the school. In addition, two other witnesses reported sexual abuse by Edward during their school years.

Richard Sorensen was superintendent of the school district at the time of the alleged incidents. He testified that he had no knowledge of any allegations of inappropriate conduct by Edwards. Edwards denied that he had sexually abused Godar or any of the witnesses.

The court concluded that Edwards was not acting within the scope of his employment during the course of any alleged sexual abuse, and thus the school district was not liable. The court also concluded, in respect to Godar's claim against the school district for negligence, that Godar failed to show that the school district knew or should have known of Edwards's alleged sexual abuse or that the school district was negligent in hiring, supervising, or retaining Edwards. Godar appealed the case. The Supreme Court of Iowa affirmed the lower court decision on both counts, stating:

We agree with the district court's determination that any alleged sexual abuse by Edwards was not an act committed within the scope of this employment for which the school district may be held liable. ... There is no evidence to show that Edwards's alleged conduct was expected, foreseeable, or sanctioned by the school district (Godar, 1999, p. 707). An employer has a duty to exercise reasonable care in hiring individuals, who, because of their employment, may pose a threat of injury to members of the public. ... [However,] we believe that Godar failed to present sufficient evidence to suggest that the school district "should have known" that Edwards was sexually abusing him. ... The evidence does not show any reason for school district officials to be suspicious. ... The school district [is] not liable for negligence in hiring defendant Edwards. Godar presented no evidence showing the former superintendent ... had any knowledge at the time of hiring that defendant Edwards had a history of inappropriate conduct. (Godar, 1999, p. 709)

In Gordon, v. Ottumwa Community School District (2000), plaintiffs alleged that in April 1997, an elementary school student was sexually abused by an employee at Lincoln Elementary School in Ottumwa Community School District. The facts of the case were as follows. Ginny Gordon attended Lincoln Elementary School in Ottumwa. Harold Skinner was a volunteer in the school during the early to mid-1990s. During the time of his volunteer work, two incidents occurred involving Skinner. In 1995, a parent complained to Lincoln Elementary principal, Kevin Farmer, that after her daughter hugged Skinner, he kissed her on the lips, was slow to release her from his embrace, and patted her on the rear end. Farmer initiated an investigation and interviewed Skinner who

admitted that he had been in the building to pick up his grandchild and had hugged a child who approached him to give him a hug. He denied kissing the student or intentionally touching the child on the rear end. Farmer told Skinner not to reenter the building until further notice.

Farmer reported the results of his investigation to the parent and explained that she could notify the police. In addition, Farmer initiated a conference call with the police and the parent where she was advised of her options. The parent decided not to file charges.

Farmer did not feel that the student was credible and felt that the complaint was unfounded. Nonetheless, he met with Skinner, explained the District's expectations of how to return a hug from a student, and told him that it is never appropriate to make facial contact with a student.

Approximately one week later, another student approached Farmer. She told Farmer and a counselor that Skinner had driven her and several other students home after a skating party. During the ride, she was sitting next to Skinner and he had slapped the top of her thigh. Farmer, the student, and the counselor discussed the incident and concluded that the touch was not something to be concerned about.

In March of 1996, the District hired Skinner to serve as a substitute in the positions of crossing guard, custodian, and teacher's aide. In late March 1997, a substitute teacher reported that Skinner had slapped a student while substituting as a teacher's aide in a "severe and profound" special education classroom. Farmer investigated the incident. He found that the student could not communicate due to the disability and that the incident was not seen by the student's teacher or other classroom

aides. Skinner denied slapping the student. Farmer examined the child and did not find any marks on his face. Farmer was not convinced that the incident had occurred, but instructed that Skinner was not to substitute in that room again.

In April 1997, Ginny Gordon reported to her mother that, on a day when Skinner was working as a substitute crossing guard, he had taken Ginny's hand and caused her to touch his groin area on the outside of his clothes. In addition, she reported that he had touched her genital area on the outside of her underpants. She also said that, shortly afterward, Skinner asked her to raise her legs and spread them apart, but that she had told him no. Ginny's mother reported the allegations to the police and called Farmer who informed the superintendent, Joe Scalzo. Scalzo immediately took steps to ensure that Skinner was not used as a substitute employee at the school until the situation was resolved, notified Farmer of this, and notified Skinner to stay away from the school premises. On the following day, Farmer initiated an investigation, interviewing both Ginny and Skinner. Skinner denied the allegations and resigned. Skinner was later convicted of two counts of indecent contact with a child.

Gordon sued Ottumwa Community School District on five charges. One of the complaints was for respondent superior liability and negligent hiring, retention, and supervision of Skinner. The district filed a request in the U. S. District Court for the Southern District of Iowa, Central Division, for judgment on all claims against the district. Judge Ross Walters addressed the charge of negligent hiring, stating:

Of the three prior alleged incidents, ... one could provide the requisite notice. ... The allegations that Skinner hugged a female student, accompanied by kissing her on the lips and patting her rear end was an allegation of sexually inappropriate conduct. The length of the hug, the kiss, and the patting were the concern ... That these facts were serious enough to give Farmer notice of a likelihood that Skinner would sexually abuse another student is open to question. However ... the Court

concludes a reasonable fact finder could find from the specificity of the information, its source, ... and the manner in which it was reported that the report had enough indicia of credibility to put the District on notice that Skinner presented a risk of sexually inappropriate conduct (Gordon, 2000, p. 1082). [However,] none of the statutes and regulations ... prescribed a course of action for Farmer to follow in making decisions about hiring, retention, or supervision of Skinner ... It followed that the principal retained the ability to exercise judgment and discretion in these regards (Gordon, 2000, p. 1086). ... We agree with the district court's assessment that decisions to 'investigate, hire, fire, and retain' employees are generally discretionary... and cannot be the basis for liability on the part of the school district. ... [Therefore,] the defendant District is exempted from liability. (Gordon, 2000, p. 1089)

In *Schlesinger v. Pitney Bowes* (2001), the Supreme Court of New York ruled that Schlesinger did not have a basis for bringing suit against Pitney Bowes, Inc for negligent hiring. The facts of the case are as follows. Lillian Schlesinger was an employee of Audit and Surveys, Inc where one of her duties was to oversee the performance of contracts with the defendant, Pitney Bowes, Inc. for the lease of mailing equipment. Bennet Elfenbein, an employee of Pitney Bowes, Inc. was the representative who serviced the equipment at Audit and Surveys, Inc. In November 1994, Ms. Schlesinger wrote a letter to Dan Gooley, Elfenbein's supervisor, complaining that she had received an irate telephone call from Elfenbein as a result of her earlier conversation with Gooley in which she had expressed dissatisfaction with Elfenbein's performance. Because of the letter, Gooley replaced Elfenbein as the Pitney representative for the Audit and Surveys account. In addition, Schlesinger wrote a letter of complaint in April 1995, notifying Gooley of what she believed to be an improperly modified lease agreement that Elfenbein had prepared.

Gooley and another supervisor, Gallagher, conducted an internal investigation and discovered that the lease had been altered without authorization. They confronted Elfenbein and informed him that further problems could result in serious disciplinary

action, including termination of his employment. Elfenbein responded with profanity and accused Gooley and Gallagher of being “anti-Semites.” Gallagher then terminated Elfenbein’s employment based on the documentation and his response to the charges.

On June 16, Schlesinger found a message on her voice mail from Elfenbein stating that she should “sleep with one eye open” because he would make her “pay” for costing him his job. Schlesinger notified Pitney Bowes who secured a private security firm to protect her.

Schlesinger sued Pitney Bowes, seeking recovery for emotional distress damages. She charged negligent hiring and retention, and negligent disclosure of her name during the termination meeting. The court dismissed the complaint, concluding,

The record demonstrated that at the time Mr. Elfenbein left the allegedly threatening voice-mail message, he had already been terminated as a Pitney employee. As such ... [the] injury was not direct and demonstrable, but instead, incidental and merely co-lateral to Pitney’s contract with A&S, plaintiff’s employer. Nothing in that contract could have remotely placed Pitney on reasonable notice that it should have anticipated that plaintiff would expect that it would be directly responsible for Mr. Elfenbein’s assaultive behavior. As such, Pitney, owing no duty to plaintiff, cannot be held liable for negligence. (Schlesinger, 2001, p. 298)

A similar situation occurred in *Stephens v. Greensboro Properties* (2001). In this case, the parents of Martrial Stephens sued Greensboro Properties, Inc., charging negligent hiring. The facts of the case follow. Stanley Scott was an apartment complex maintenance man for Greensboro Properties. Scott also lived in the apartment complex. Scott truthfully stated on his employment application that he had no convictions for any felony within the company’s prohibited five-year period. An authorized employment background check, however, disclosed a history of convictions for violent crimes prior to the five-year period. Scott was hired after explaining the circumstances surrounding his

prior convictions, and worked at the apartment complex on 24-hour call doing maintenance work. He also assumed the role of a security agent for the complex although this job was never authorized or paid for by the company.

One Saturday in July 1997, while off-duty, Scott became intoxicated. During a conversation with several people in the parking lot of the apartment complex, Scott removed a gun from his pocket and pointed it at Martricial Stephens. The gun discharged, killing Stephens. The parents of Stephens sued Greensboro Properties, charging negligence in hiring.

The court ruled that Scott was not acting within the scope of his employment. On the day of the incident, he was not working in his maintenance job nor was he acting in his unofficial role as security official for the apartment complex. Therefore, the court concluded, the act was purely personal in nature. (Stephens, 2001)

In two recent cases, the Florida Supreme Court has ruled that churches are not protected by the U. S. Constitution from lawsuits charging sexual abuse by clergy. *Malicki v. Doe* (2002), and *Doe v. Evans* are the cases. In *Malicki*, the Court reviewed an appeal by Father Jan Malicki, St. David Catholic Church, and the Archdiocese of Miami to dismiss the complaint of Jane Doe I and Jane Doe II, two women alleging that church officials were negligent in hiring and supervising Jan Malicki. The facts of the case show that Jane Doe I, a minor, worked at St. David in exchange for tuition to attend St. Thomas Catholic High School. Jane Doe II was an adult parishioner who worked at St. David under the direct control of Malicki. Both women alleged that, on several occasions, they were “fondled, molested, touched, abused, sexually assaulted, and/or battered ”by Malicki (Malicki v. Doe, 2002, p. 352).

The church defendants argued that court resolution of the case would create involvement in the decisions of the church and were, therefore, forbidden by the First Amendment of the Constitution. At trial court, the case was dismissed with the court concluding that the First Amendment barred consideration of the claim. The decision was appealed to the Third District Court. The Third District Court reversed the decision, stating that the issue was one of tort law and did not require investigation into religious doctrine or practice. The Third District Court concluded that court consideration of the case would not involve a violation of First Amendment rights and was, therefore, appropriate.

The Church defendants appealed this decision to the Supreme Court of Florida. In their written opinion, Judges Shaw, Anstead, Lewis, and Quince affirmed the lower court decision by stating

Substantial authority in both the state and federal courts concludes that the right to religious freedom and autonomy protected by the First Amendment is not violated by permitting the courts to adjudicate tort liability against a religious institution based on a claim that a clergy member engaged in tortuous conduct... with a parishioner (*Malicki v. Doe*, 2002, p. 358). ... The Church Defendants do not claim that the underlying acts of its priest in committing sexual assault and battery was governed by sincerely held religious beliefs or practices.... [Therefore] the Free Exercise Clause is not implicated in this case because the conduct sought to be regulated... is not rooted in religious belief (*Malicki v. Doe*, 2002, p. 361). ... We conclude that the First Amendment does not provide a shield behind which a church may avoid liability for harm caused to an adult and a child parishioner arising from the alleged sexual assault or battery by one of its clergy. (*Malicki v. Doe*, 2002, p. 365)

In *Jane Doe v. Evans* (2002), the Supreme Court of Florida reviewed an appeal from the Fourth District Court of Appeal. The following facts were reviewed. Jane Doe brought lawsuit against Reverend William D. Evans, III, the Church of the Holy Redeemer, Inc., the Diocese of Southeast Florida, Inc, and Calvin O. Schofield, Jr.,

bishop of the Diocese. Doe alleged that while she was a parishioner at Holy Redeemer, Reverend Evans had counseled her regarding her marital problems. She stated that, during the time of counseling, Evans had initiated a romantic relationship with her that had lasted for several months. Doe alleged that the Church Defendants were aware of prior incidents involving sexual misconduct by Evans during counseling at another church, but did nothing to protect Doe. Doe, therefore, brought suit based on allegations of negligent hiring and supervision against the Church Defendants.

The Church defendants moved to dismiss the case, claiming that Doe's tort claims are barred by the First Amendment that prohibits excessive entanglement of church and state. The trial court granted the motion to dismiss. Doe appealed to the Fourth District Court of Appeals. The Fourth District affirmed the lower court decision. Doe then appealed to the Supreme Court of Florida.

The Supreme Court reversed the decision of the lower courts by referring to its recent decision in *Malicki v. Doe* (2002). Judges Shaw, Anstead, Lewis, and Quince delivered the majority opinion in stating,

[In *Malicki*,] the First Amendment does not preclude a secular court from imposing liability against a church for harm caused to an adult and a child parishioner arising from the alleged sexual assault or battery by one of its clergy. ... Consequently, we conclude that Doe's right to bring negligent hiring and supervision claims is not barred by the First Amendment (*Jane Doe*, 2002, p. 373).

Review of Federal Laws Related to Criminal Background Checks

There are no federal laws requiring criminal background checks on employees of public schools. However, Public Law 98-473 may encourage criminal background checks on some personnel who work with children. It provides guidance, but falls short of requiring such review. Enacted in 1985, Public Law 98-473 gave states twenty-five

million dollars in child abuse prevention and treatment training funds for parents, childcare workers, and licensors. A part of the stipulations for receipt of the funds includes a provision that, after September 30, 1985, states without laws to allow criminal background checks of those persons who work in childcare facilities will lose an amount equal to half of their training money. This loss comes from the state's overall Federal Social Services Block Grant (Title XX of the Social Security Act) that supports programs for childcare, foster care, family planning, etc. (Fead, 1985).

This law would seem to encourage screening of school personnel also. Fead points out, however, that public schools are not mentioned in the law. It only requires that state laws must cover workers in "child care facilities" that have primary custody of children for 20 hours or more per week and in juvenile detention, correction, or treatment facilities. Therefore, it is only in states where schools are considered "child care facilities" that this federal statute would change screening practices for schools (Fead, 1985).

Public Law 103-209, The National Child Protection Act of 1993, established the means to provide national criminal background checks for child care providers. Section 2 of the National Child Protection Act of 1993 requires that each state must report child abuse crime information through a national criminal history check system. The act established a timeline for implementation in such a manner to provide a national computerized criminal history file within five years that lists all identifiable child abuse crime cases within the last five years. It requires that states must continue to report at least 80% of the final dispositions of all child abuse crime cases and take steps to achieve 100% reporting.

In addition, section three of this act authorizes, but does not require, states to establish procedures that require designated qualified entities to request a nationwide criminal background check on employees, applicants for employment, or volunteers in order to determine whether that person has been convicted of a crime that bears upon an individual's fitness to have responsibility for the safety and well-being of children (National Child Protection Act, 1993). Qualified entities are defined as a business or organization, whether public, private, for-profit, not-for-profit, or voluntary, that provides child care or child care placement services, including a business or organization that licenses or certifies others to provide child care or child care placement services (National Child Protection Act, 1993).

This law stipulates that no request may be made unless the following requirements have been met: (a) The requesting entity must provide a set of fingerprints from the provider; (b) the provider must complete a form with information including name, address, date of birth of the provider, and information, if any, on prior convictions; (c) the requesting entity must notify the provider that the request for a criminal background check is to be done; (d) the requesting entity must notify the provider of his/her right to obtain a copy of the report and to challenge the accuracy and completeness of the information before final determination is made by the agency; (e) the requesting entity must notify the provider that, prior to the completion of the criminal background check, the entity may choose to deny the provider unsupervised access to a child to whom the entity provides child care (National Child Protection Act, 1993).

Review of Laws Related to Criminal Background Checks in States Belonging to SACS

States to be reviewed are the states whose schools are members of the Southern Association of Colleges and Schools. Those states are: Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia. This section is arranged chronologically according to the first enactment of laws requiring criminal background checks for school personnel. The chronologically ordered list is Louisiana, Virginia, South Carolina, Tennessee, Georgia, Texas, Kentucky, Alabama, Florida, Mississippi, and North Carolina. This section reviews laws in effect in March 2003.

Louisiana

Enacted in 1986, Louisiana § 15:587.1 states that employers must request that the Louisiana Bureau of Investigation supply information regarding whether an applicant for a position has been convicted of, or pled nolo contendere to, any one or more of the following crimes: (a) murder or manslaughter; (b) rape or sexual battery; (c) incest; (d) intentional exposure to AIDS virus; (e) kidnapping; (f) criminal neglect of family; (g) criminal abandonment; (h) crimes against juveniles including child desertion, sale of minor children, indecent behavior with a juvenile, pornography, molestation, contributing to the delinquency of juveniles, cruelty to juveniles, or carnal knowledge of a juvenile; (i) prostitution, including soliciting, inciting, or promoting prostitution, prostitution by massage, pandering, letting premises for prostitution, enticing persons into prostitution, or operating a place of prostitution; (j) obscenity or letting premises for obscenity; (k) crimes against nature; (l) cruelty to the infirmed; or (m) prohibited acts involving controlled substances including the manufacture, distribution, production, or dispensing

of controlled substances or possession of a controlled substance with intent to produce, manufacture, distribute, or dispense (Louisiana Statutes Annotated § 15:587.1, 2002).

The request to the Louisiana Bureau of Investigation must be on a form prepared by the bureau and signed by a responsible officer or official of the organization making the request. The person to be investigated must give signed permission for the investigation and release of information. In addition to these requirements, the statute specifies that the Louisiana Bureau of Investigation must make available to the state Department of Education and to the governing authority of any elementary and secondary school a record of all criminal convictions for the prior ten-year period. The law specifies that this information is confidential in accordance with applicable federal or state law. The Louisiana Bureau of Investigation and the Department of Public Safety and Corrections, corrections services, may utilize the National Crime Information Center to conduct the criminal background checks (Louisiana Statutes Annotated § 15:587.1, 2002).

Section 15:587.1 also requires that the Louisiana Bureau of Investigation must provide a report “promptly and in writing”, but states that the Bureau may provide only information as to whether or not that person has been convicted of or pled nolo contendere to any such crime or crimes, the crime or crimes of which he has been convicted or to which he has pled nolo contendere, and the date or dates on which they occurred. Section 15.587.1 also requires that the bureau make a simultaneous request of the FBI for information. Crimes to be reported are crimes involving convictions or convictions for attempt or conspiracy to commit any of the listed offenses (Louisiana Statutes Annotated § 15:587.1, 2002).

Section 15:587.1 requires that the cost of the investigation be borne by the agency requesting the information and may not be charged to the individual applicant. It also provides that any person representing any public entity who fails to comply with the provisions of this statute or who employs a person in violation of this statute will be fined up to five hundred dollars (Louisiana Statutes Annotated § 15:587.1, 2002).

Also enacted in 1986, § 17:15 says that no person who has been convicted of or has pled nolo contendere to a crime listed in § 15:587.1 can be hired by any public or private elementary or secondary school system as a teacher, substitute teacher, bus driver, substitute bus driver, janitor, or any school employee who might be placed in a position of supervisory or disciplinary authority over school children (Louisiana Statutes Annotated § 17:15.A.1, 2002) unless approved in writing by a district judge of the parish and the district attorney. If approval is granted, the school must, within 30 days, file a copy of the statement of approval with the state superintendent of education. In addition, the school must keep the statement on file and make it available to any law enforcement officer upon request (Louisiana Statutes Annotated § 17:15.A.1, 2002).

Section 17.15 requires that a school board must dismiss any school employee who has supervisory or disciplinary authority over school children upon the final conviction of any crime listed above, except criminal neglect of family. When an employee is dismissed because of those reasons, the superintendent of schools is required to notify the state superintendent of education within thirty days after the dismissal (Louisiana Statutes Annotated § 17:15, 2002).

Section 17.15 provides, however, for a school board to reemploy a teacher or other school employee who has been convicted of a crime listed in § 15:587.1-C upon

obtaining written approval of the district judge of the parish and the district attorney, or upon obtaining written documentation from the court in which the conviction occurred stating that the conviction has been reversed, set aside, or vacated. Again, this statement of approval of the judge and district attorney or written documentation from the court must be kept on file by the school, must be produced upon request to any law enforcement officer, and must be submitted to the state superintendent of education within thirty days (Louisiana Statutes Annotated § 17:15, 2002).

Section 17.15 requires the state board to establish regulations that set requirements and procedures consistent with the provisions of § 15:587.1. This law specifically requires that these regulations must include the requirement and the procedure for the submission of a person's fingerprints to the Louisiana Bureau of Criminal Identification and Information before employment of the person. However, a person who has submitted his fingerprints to the Louisiana Bureau of Criminal Identification and Information may be temporarily hired pending the report from the bureau (Louisiana Statutes Annotated § 17:15, 2002).

Section 17.3991 covers requirements for charter schools regarding hiring of persons with criminal backgrounds. The requirements are identical to the regulations for public schools (Louisiana Statutes Annotated § 17:3391, 2002).

Virginia

Enacted in July 1989, Virginia § 22.1-296.2 states that school boards must require any applicant who is offered or accepts employment after July 1, 1989 to submit to fingerprinting and to provide descriptive information to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal

Bureau of Investigation in order to obtain criminal background information (Code of Virginia Annotated § 22.1-296.2, 2002). The law specifically states that all personnel must receive this review, whether they are full-time or part-time, permanent or temporary. The school board may pay for the cost of the fingerprinting or criminal background check or require the applicant to pay for all or a portion of the cost of the fingerprinting or criminal background check (Code of Virginia Annotated § 22.1-296.2, 2002).

The Virginia Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, must report to the school board whether or not the applicant has ever been convicted of a felony, Class 1 misdemeanor or an equivalent offense in another state. Specific crimes listed that must be reported are sexual assault, obscenity and related offenses, drugs, moral turpitude, and physical abuse, sexual abuse, or neglect of a child (Code of Virginia Annotated § 22.1-296.2, 2002).

In order to reduce the cost of conducting criminal background checks, Virginia § 22.296.2 allows any school board to share information obtained during a criminal background check with another school board if the review was conducted within the previous ninety days, the applicant has requested that the information be shared, and the two districts have agreed on how to divide the costs of the fingerprinting and criminal background check between the applicant and the school boards (Code of Virginia Annotated § 22.296.2, 2002).

Virginia § 22.1-296.3 requires that the governing boards of private or parochial elementary or secondary schools which are accredited by a statewide accrediting organization recognized by the State Board of Education prior to January 1, 1996, must

also require any applicant who accepts employment for the first time after July 1, 1998 to submit to a criminal background check in the same manner as for public school employees, including the submission of fingerprints and descriptive information to be forwarded for the review. This statute also allows the Department of State Police to assess a fee for this service, not to exceed fifteen dollars per request. Reporting procedures from the Central Criminal Record Exchange are the same as those required in reporting to public schools (Code of Virginia Annotated § 22.1-296.3, 2002).

Section 19.2-83.1 requires any law enforcement agent who arrests a person for a felony or a Class 1 misdemeanor and finds that the person is an employee in any public school to file a report of the arrest with the superintendent of the employing school district. The statute states that this must be done “as soon as reasonably practical” (Code of Virginia Annotated § 19.2-83.1, 2002).

According to § 22.1-296.2, upon receipt of information regarding an arrest of an employee, the superintendent is required to inform the school board. The school board must then require the employee to submit to fingerprinting and to provide information to be forwarded along with the employee’s fingerprints through the Virginia Central Criminal Records Exchange to the Federal Bureau of Investigation in order to obtain criminal background information regarding him/her. The statute provides that the school board may pay for all or a portion of the cost of the fingerprinting or criminal background check, or, in its discretion, require the applicant to pay for all or a portion of the costs. The Virginia Central Criminal Records Exchange is responsible for reporting the results of the FBI investigation to the school board, including whether the employee has been convicted of any of the following offenses: (a) murder; (b) abduction for immoral

purposes; (c) sexual assault; (d) failing to secure medical attention for an injured child; (e) pandering; (f) crimes against nature involving children; (g) taking indecent liberties with children; (h) neglect of children; (i) obscenity offenses; (j) possession or distribution of drugs; (k) arson; (l) use of a firearm in the commission of a felony; and (m) an equivalent offense in another state (Code of Virginia Annotated § 22.1-296.2, 2002).

Confidentiality of records is secured for the applicant or employee of public schools through § 22.1-296.2. This statute states that the contents of the record may only be used by the school board. Section 22.1-296.2 further ensures confidentiality by requiring that the Central Criminal Records Exchange may not disclose information to the school board regarding any charges or convictions of any crimes not specified and that the applicant must be provided with a copy of the information in his criminal history record if the record results in his/her being denied employment (Code of Virginia Annotated § 22.1-296.2, 2002). Section 22.1-296.3 requires confidentiality of records requested by private or parochial school in the same manner as 22.1-296.2 (Code of Virginia Annotated § 22.1-296.3, 2002).

South Carolina

Enacted in 1990, Code of Laws of South Carolina, § 59-25-115 specifies that any person who applies for initial certification must undergo a fingerprint review conducted by the South Carolina State Law Enforcement Division and the Federal Bureau of Investigation to determine any criminal history. The individual applying for initial certification must pay the fee charged by the Federal Bureau of Investigation, if any (Code of Laws of South Carolina § 59-25-115, 2001).

Section 43-52 also requires that a FBI fingerprint review card must be submitted to the State Office of Teacher Education for the processing of an application for teaching credentials and states that no applicant may receive an Induction or Professional Certificate without a clear FBI background check. Eligible applicants who have prior arrests and/or convictions must undergo a review by the State Board of Education and be approved before a certificate may be issued (Code of Laws of South Carolina § 43-52.6, 2001).

Section 59-40-60 covers requirements for formation of a charter school. It requires that all teachers, whether certified or noncertified, must undergo the background checks and other investigations required for certified teachers before they may teach in the charter school (Code of Laws of South Carolina § 59-40-60, 2001).

Tennessee

Tennessee Code § 49-5-413, enacted in 1993, states that a local board of education must require any person applying for a position as a teacher or other position requiring proximity to school children to agree to the release of all investigative records to the local board for examination for the purpose of verifying the accuracy of criminal violation information. A part of this requirement is that the person must provide a fingerprint sample and submit to a criminal background check to be conducted by the Tennessee Bureau of Investigation. The cost of the investigation is to be paid by the applicant. This statute exempts any retired teacher who is applying for a position as a teacher if that person is making application to the local board of education from which he/she retired (Tennessee Code § 49-5-413, 2002).

Section 49-5-413 also specifies that the applicant will be provided a copy of all criminal background records that are provided to the local board of education. For future employment in any Tennessee district, the applicant may submit copies of the initial criminal background check documentation in lieu of additional criminal background checks, and will not be required to pay any additional costs. Although the applicant must bare the cost of the records check, the local board of education may reimburse the applicant for the costs of the investigation if the applicant accepts a position (Tennessee Code § 49-5-413, 2002).

Section 49-5-413 states that the local board of education may establish a policy authorizing payments for investigations of an applicant for the positions of school maintenance, clean up, food service, and duties other than administrative or teaching functions or duties. If such a requirement is established through local policy, the local board of education must pay for the investigation of all applicants regardless of whether the applicant accepts the final offer for employment (Tennessee Code § 49-5-413, 2002).

Section 49-6-2107 states that no person may be issued a certificate to drive a school bus until the results of the an investigation to determine whether the applicant has been found guilty of any criminal offense and the criminal records have been made a part of the person's permanent file. However, in the event that school bus drivers cannot be obtained in conformity with these provisions, the state board of education is authorized to issue temporary certificates to school bus drivers and to permit the use of equipment on a temporary basis in order that school transportation may be provided (Tennessee Code § 49-6-2107, 2002).

Section 49-6-2107 prohibits the issuance of a certificate to drive a school bus to any person who has been convicted within the past five years of driving under the influence of an intoxicant, vehicular assault, vehicular homicide, aggravated vehicular homicide, or the manufacture, delivery, sale or possession of a controlled substance. If the request for a certificate to drive a school bus occurs five years or more after the date of any such a conviction, the board of education may issue the person a certificate (Tennessee Code § 49-6-2107, 2002).

Georgia

Georgia's statute that covers the hiring of school personnel is Georgia Code Annotated section 20-2-211. Effective in 1994, § 20-2-211 requires that each person who is to be issued a contract of employment as a teacher, principal, or other certificated professional personnel for the first time after July 1, 1994, must be fingerprinted and have a criminal background check made prior to the issuing of a contract. The statute gave permission, however, for the local unit of administration to employ a person under a provisional or temporary contract for a maximum of 120 days to allow for the receipt of the results of the criminal background check. In 1997, the statute was amended to allow employment for a maximum of 200 days pending the receipt of the results of the criminal background check (Georgia Code § 20-2-211, 2002).

In 2000, § 20-2-211 was again amended to include all personnel employed by a local unit of administration rather than only teachers, principals, and other certificated professional personnel. Again, the local units of education may allow employment for a maximum of 200 days pending the results of the criminal background check. In addition, this new amendment, effective July 1, 2000, requires that certificated personnel who are

currently employed must have a criminal background check done upon any certificate renewal application to the Professional Standards Commission, and that the local unit of education must adopt policies to provide for the criminal background checks of non-certificated personnel continued in the employment in the local unit of administration. The statute requires that fingerprints must be submitted to the National Crime Information Center through the Federal Bureau of Investigation. Section 20-2-211 assigns the duty of fingerprinting to the local law enforcement agency (Georgia Code § 20-2-211, 2002).

Section 20-2-211 gives the local unit of administration the authority to pay the fees for fingerprint processing or to require the individual who is seeking employment to pay it. It assigns to the State Board of Education the duty of submitting the statute to the Georgia Bureau of Investigation for submission to the FBI and the U. S. Department of Justice for their consent to conduct criminal record checks through the National Crime Information Center as required by federal law, and states that a criminal background check through the National Crime Information Center will not be required unless such consent is given. Section § 20-2-211 provides for confidentiality of records received during the criminal background check and stipulates that this information may be used only for the purpose of making decisions regarding the hiring of that individual (Georgia Code § 20-2-211, 2002).

Texas

In 1995, Texas enacted legislation relating to criminal background checks on persons who hold positions in public schools. The Texas Education Code Annotated section 22.082 requires that the Texas State Board for Educator Certification must obtain

“from any law enforcement or criminal justice agency”, all criminal background history information that relates to an applicant for or holder of a teaching certificate (Texas Codes Annotated § 22.082 (1999)). Section 22.083 allows any school district, whether public, private, or charter, a regional education service center, or shared services arrangement, to obtain all criminal background information that relates to a person whom the agency employs or intends to employ and any person who volunteers or who intends to serve as a volunteer with that agency (Texas Codes Annotated § 22.083, 1999).

In addition, § 22.083 states that a school district may obtain criminal background information that relates to some employees of or applicants for employment by a person who contracts with the district. Persons allowed to be investigated are those who have or will have continuing duties related to the contracted services that are or will be performed on school property or locations where students are regularly present (Texas Codes Annotated § 22.083, 1999).

A school agency may discharge an employee if the district or school obtains information of the employee’s conviction of a felony or of a misdemeanor involving moral turpitude that the employee did not disclose during the initial inquiry (Texas Codes Annotated § 22.085, 1999).

Section 22.083 also states that the superintendent/director of a school district, school (public, private, or charter), regional education service center, or shared services arrangement is required to give written notification to the State Board for Educator Certification if the he/she receives information that an applicant for or holder of a certificate has a reported criminal history (Texas Codes Annotated § 22.083, 1999).

Section 22.084 requires that a local unit of education who contracts for transportation services must obtain all criminal background information that relates to any person employed or intended for hire as a bus driver. In addition, the agency that provides transportation services must submit the names and other identifying data required to obtain criminal background information on each person who will be in contact with children. If any school district obtains information that a person has been convicted of a felony or a misdemeanor involving moral turpitude, the district must inform the chief personnel officer of the agency with whom the district has contracted. That agency may not employ the person to drive a bus on which students are transported without the permission of the board of trustees of the school district (Texas Codes Annotated § 22.084, 1999).

Kentucky

Created in 1998, § 160.380 of the Kentucky Revised Statutes Annotated places restrictions on employing violent offenders or persons convicted of sex crimes and authorizes criminal background checks on job applicants. This statute states that no superintendent may employ, in a position that involves supervisory or disciplinary power over a minor, any person who is a violent offender or has been convicted of a sex crime defined in KRS 17.165 as a felony. It does, however, allow the superintendent to employ, at its discretion, persons convicted of sex crimes classified as misdemeanors (Kentucky Revised Statutes Annotated § 160.380, 2002).

Section 17.165 defines felony sex crimes as: (a) rape; (b) sodomy; (c) sexual abuse; (d) sexual misconduct; (e) prostitution; (f) promoting prostitution; (g) escape; (h) unlawful transaction with a minor; (i) use of a minor in a sexual performance; (j)

promoting a sexual performance by a minor; and (k) advertising, distributing, or promoting the sale of material portraying a sexual performance by a minor or using minors to advertise, distribute, or promote such sales (Kentucky Revised Statutes Annotated § 17.165, 2002).

Section 160.380.4 requires that, beginning January 1, 1999, the superintendent of any local unit of education must require a national and state criminal background check on all new certified hires in the school district. The criminal background check is to be conducted by the Kentucky State Police and the Federal Bureau of Investigation. Excluded are certified individuals who were employed in another certified position in a Kentucky school district within six months of the date of hire and who had previously submitted to a national and state criminal background check for the previous employment. All fingerprints requested under this section must be on an applicant fingerprint card provided by Kentucky State Police and forwarded to the Federal Bureau of Investigation from the Kentucky State Police after a state criminal background check is conducted. The results of the state and federal criminal background check are sent to the hiring superintendent. Fees charged for the criminal background check can be an amount no greater than the actual cost of processing the request and conducting the search (Kentucky Revised Statutes Annotated § 160.380, 2002).

In addition, § 160.380 requires that the superintendent of any local unit of education conduct a state criminal background check on all classified initial hires. However, the criminal background check is only required to be conducted through the Kentucky State Police. Again, any request for records must be on an applicant fingerprint card provided by Kentucky State Police, the results of the state criminal

background check are sent to the hiring superintendent, and any fee charged by the Kentucky State Police may be an amount no greater than the actual cost of processing the request and conducting the search (Kentucky Revised Statutes Annotated § 160.380, 2002).

Section 60.380 allows employment on probationary status pending receipt of the criminal background check. However, application for the criminal record of a probationary employee must be made no later than the date that probationary employment begins. Continued employment is contingent on the receipt of the criminal background check documenting that the probationary employee has no record of sex crimes or violent offender crimes as defined in section § 17.165 as a capital offense, Class A felony, or Class B felony involving the death of the victim, rape in the first degree, sodomy in the first degree, or crimes that result in serious physical injury of the victim. Section 160.380 requires that probationary employment must terminate on receipt of a criminal background check documenting a record of a sex crime or as a violent offender, and that no further procedures shall be required. These allowances and provisions also apply to nonfaculty coaching and nonfaculty assistant coaching positions (Kentucky Revised Statutes Annotated § 60.380, 2002).

Kentucky section 161.148 defines “volunteers” as adults who assist teachers, administrators, or other staff in public school classrooms, schools, or school district programs and do not receive compensation for their work. This statute requires that each local board of education develop and adopt a policy requiring a state criminal background check on all volunteers who have contact with students on a regularly scheduled or continuing basis, or who have supervisory responsibility for children at a school site or

on school-sponsored trips. The records may be requested from the Kentucky Justice Cabinet or the Kentucky Administrative Office of the Courts, or both. Under § 161.148, any request for a criminal records check of a volunteer under this subsection must be on a form or through a process approved by the Justice Cabinet or the Administrative Office of the Courts. If the cabinet or the Administrative Office of the Courts charges fees, the local board of education must arrange to pay the cost. Fees may be paid from local funds or donations from any source including volunteers. The provisions of this section do not apply to students who are enrolled in an educational institution and participate in observations and educational activities under direct supervision of a local school teacher or administrator in a public school (Kentucky Revised Statutes Annotated § 161.148, 2002).

Section 161.185 allows for nonfaculty coaches or nonfaculty assistants to accompany students on all school-sponsored or school-endorsed athletic trips. However, it specifies that these persons must be at least twenty-one years of age, may not be a violent offender or convicted of a sex crime as defined by § 17.165 that is classified as a felony, and must submit to a criminal background check under the provisions of § 160.380 (Kentucky Revised Statutes Annotated § 161.185, 2002).

Alabama

Enacted in 1999, Alabama Code § 16-22A-5 states that criminal background checks must be conducted on all applicants seeking positions with public or nonpublic schools and as State Department of Education personnel who have unsupervised access to, or provide education, training, instruction, or supervision for children in an educational setting. In addition, Section 16-22A-5 requires that criminal background

checks must be conducted on all current personnel in public schools, nonpublic schools, or The State Department of Education if the person is under review. Section 16-22A-5 also states that no public school, nonpublic school, or State Department of Education agency may hire an individual who will have unsupervised access to a child without first obtaining a criminal background report, except on a temporary emergency basis. In instances of placement on an emergency basis, however, the statute allows the applicant to be employed until the Department of Public Safety completes a background check (Alabama Code § 16-22A, 2002).

Under Alabama § 16-22A-4, a criminal background check may be initiated on a current employee by any authorized employer by submitting a written signed statement to the chief executive officer of the authorized employer. The statute states that the employer must give reasonable grounds for making the request (Alabama Code § 16-22A, 2002).

Section 16-22A-5 requires that criminal background reports for public school applicants and employees must be sent to the State Department of Education who forwards the report to the chief executive officer of the local employing board. Nationwide criminal background reports for nonpublic school employees must be sent directly from the Department of Public Safety to the State Department of Education. The State Superintendent of Education must review the criminal background report and determine whether the applicant meets the suitability criteria for employment (Alabama Code § 16-22A, 2002). The State Superintendent of Education must issue a suitability determination to the chief executive officer of the nonpublic school requesting the determination. The criteria for suitability for hire is defined in § 16-22A-3 as not having

been convicted of a child abuse crime defined under state law as a crime that involves the physical or mental injury, sexual abuse or exploitation, or maltreatment of a child (Alabama Code § 16-22A, 2002).

Section 16-22A-5 requires the Department of Public Safety to perform a criminal background review upon request by any public entity authorized to make a request and to forward the information to the requesting party in a standardized format. The Department of Public Safety is also required by § 16-22A-5 to provide an Alabama Bureau of Investigation criminal background check within a reasonable time of the receipt of the request. In addition, the Department of Public Safety must request a criminal background check from the Federal Bureau of Investigation within a reasonable time of receipt of the request (Alabama Code § 16-22A, 2002).

Section 16-22A-5 also requires the Department of Public Safety, upon receipt of the criminal background report from the Federal Bureau of Investigation, to forward the report to the State Department of Education within a reasonable time of the receipt of the report. The report must be sent by certified mail with a copy of the report be sent concurrently to the applicant or current employee under review by certified mail (Alabama Code § 16-22A, 2002).

Under provisions of § 16-22A-5, the applicant is responsible for the cost of the criminal background check. However, if an employing entity requests a criminal background check for a current employee under review, the employer is responsible for the cost of the criminal background check. When a noncertified job applicant is determined by the prospective employer to be financially unable to pay the costs of a

criminal background check, the prospective employer may pay the fee associated with the background check (Alabama Code § 16-22A, 2002).

Section 16-22A-5 states that refusal by an applicant or current employee under review to sign and date a consent to obtain a criminal background check and to provide two acceptable sets of fingerprints will prevent employment or certification of an applicant, or the continued employment or certification in a position requiring unsupervised access to children (Alabama Code § 16-22A, 2002).

Section 16-22A-5 stipulates that review of a current employee may be based upon reasonable suspicion only, and that no current employee under review will be subjected to a criminal background check for only political or personal reasons. Any current employee who will be required to undergo a criminal background check must be apprised of the reasons for the request and be provided the opportunity to supply additional information on his or her behalf to the employer (Alabama Code § 16-22A, 2002).

Section 16-22A-6 requires that any request to the Department of Public Safety for a criminal background check must be accompanied by two complete sets of fingerprints and written consent from the applicant or current employee authorizing for the release of the criminal background information to the authorized receiving agency. For public education employment, this agency is the Alabama State Department of Education. For nonpublic school employment, the agent is the Alabama State Superintendent of Education (Alabama Code § 16-22A, 2002).

Section 16-22A-6 requires that an applicant for certification must submit two complete sets of fingerprints and the cost of the criminal background check at the time

that the application for certification is submitted to the State Department of Education (Alabama Code § 16-22A, 2002).

Section 16-22A-8 says that the Department of Public Safety and the State Department of Education must schedule training to all local superintendents of education or their appointed representatives in proper fingerprinting techniques. In addition, the chief executive officers of nonpublic schools will arrange with the Department of Public Safety for training of their superintendent, headmaster, or other duly appointed representatives in proper fingerprinting techniques. The Department of Public Safety may charge a reasonable fee for the training of personnel on proper fingerprinting techniques. However, the fee must be standard and equal for all participants in the program regardless of whether they represent public or private entities. The Department of Public Safety must furnish standard fingerprint cards to the State Department of Education, local employing boards, and upon request, to nonpublic schools. The cards are to be used only by personnel who have been trained in fingerprinting techniques (Alabama Code § 16-22A, 2002).

Section 16-22A-10 covers confidentiality of information by requiring that all reports of criminal background information received by the State Department of Education, any local superintendent of a city or county board of education, or any nonpublic school from the Department of Public Safety must be confidential and marked as such and not further disclosed or made available for public inspection. All criminal background information reports are specifically excluded from any requirement of public disclosure as a public record. Transmittal of any criminal background information must be accomplished in a nontransparent package, sealed, and marked confidential with

instructions to be opened only by the person named on the package and authorized to receive the information (Alabama Code § 16-22A, 2002).

Section 16-22A-10 allows for the following actions which are not violation of confidentiality: (a) Showing the report of criminal history background information to the applicant or current employee under review to give him or her the opportunity to challenge the report, (b) releasing the report to a court in the event of litigation brought by the applicant or current employee under review, and (c) use of the information in preparation, investigation, and presentation during administrative proceedings involving revocation of certificate brought by the State Superintendent of Education, termination by the employer, or restriction on unsupervised access to a child in an educational setting (Alabama Code § 16-22A, 2002).

Section 16-22A-13 states that, in the event of a backlog of requests for criminal records checks that results in delays in receipt of the criminal history report, neither the educational agency, the state, any subdivision of the state, the State Superintendent of Education, the State Department of Education, or any agent of the State Department of Education will be liable in any action for damages if damages result from failure to conduct a criminal background check (Alabama Code § 16-22A, 2002).

Section 16-22A-14 allows nonpublic school to choose not to fingerprint their applicants. In such circumstances, however, the statute requires that the applicant apply for a background check through the local unit of public education in which the school is located. The local public unit of education is required to process the applicant in the same manner as other applicants (Alabama Code § 16-22A, 2002). Section 16-22A-15 excludes all church officials, except those who are full-time regular classroom teachers,

from the requirement to have the criminal background check (Alabama Code § 16-22A, 2002).

Florida

Florida Statutes Annotated § 231, enacted in the legislative session of 2000, outlined requirements for background checks for school personnel. In 2002, section 231 was replaced by section 1012. This was a reorganization of the law rather than a re-writing, and the two sections are the same in content.

Section 1012.32 requires that all personnel who are hired to fill positions that will require direct contact with students must file a complete set of fingerprints to be submitted to the Florida Department of Law Enforcement and the Federal Bureau of Investigation for processing. This law states that employees will be on probationary status while this check is being done. Further, if the employee is found to have been convicted of a crime of moral turpitude, he/she cannot be employed in any position that requires direct contact with students. The statute, however, gives the employee a right to appeal the decision although there is no information regarding the process of the appeal. Section 1012.32 states that the cost of fingerprint processing may be borne by the local school board or the employee. Personnel who have been fingerprinted or screened according to this statute and who have not been unemployed for more than 90 days are not required to be fingerprinted or screened again in order to comply with the requirements (Florida Statutes Annotated § 1012.32, 2002).

Section 1012.21 authorizes the Florida Department of Education to periodically perform a criminal background check on individuals who hold a teaching certificate.

There is no requirement or guidance as to when or how this record check is to be conducted (Florida Statutes Annotated § 1012.21, 2002).

Under § 1012.56, which governs teacher certification, is the requirement that a fingerprint check by the Department of Law Enforcement and the Federal Bureau of Investigation be conducted when certification is sought. If the fingerprint report indicates a criminal history or if the applicant acknowledges a criminal history, the applicant's records are to be referred to the Bureau of Educator Standards for review and determination of eligibility for certification (Florida Statutes Annotated § 1012.56, 2002).

Section 1012.39 covers the hiring of substitute teachers, teachers of adult education, non-degreed teachers of vocational programs, and nondegreed career specialists. The statute requires the filing of a complete set of fingerprints for use in conducting a background check for criminal history (Florida Statutes Annotated § 1012.39, 2002).

Section 1012.35 also covers the hiring of substitute teachers and includes the requirement of the filing of a complete set of fingerprints for use in conducting a background check for criminal history (Florida Statutes Annotated § 1012.35, 2002). Therefore, the requirement of criminal background checks on substitute teachers is covered in both § 1012.35 and § 1012.39.

Section 1012.797 requires that any law enforcement agency must notify the appropriate school district school superintendent of the name and address of any employee of the school district who is charged with a felony or a misdemeanor involving the abuse of a minor child or the sale or possession of a controlled substance. Notification must be made within 48 hours of the charge. The notification must include

the specific charge for which the school district employee was arrested (Florida Statutes Annotated § 1012.797, 2002).

Mississippi

Effective in July 2000, Mississippi Code Annotated section 37-9-17 requires that each local school district superintendent must require criminal background checks and current child abuse registry information for all new hires of a school under the control of the Mississippi Board of Education. The information obtained from the criminal record information and registry checks must be kept on file at the local school district (Mississippi Code Annotated § 37-9-17, 2001).

This background check requires that the applicant be fingerprinted with the fingerprints checked at the state level and through the FBI for a national criminal background check. The cost for such fingerprinting and criminal background check may be no more than fifty dollars, and the cost is the responsibility of the applicant. This statute stipulates, however, that the Mississippi Board of Education or the local school board may elect to pay the fee for the fingerprinting and criminal background check on behalf of any applicant (Mississippi Code Annotated § 37-9-17, 2002).

Section 39-7-17 mandates the confidentiality of the information obtained during the criminal history check and forbids the dissemination of the information obtained through such a review to anyone except to fulfill the purpose of this law (Mississippi Code Annotated § 37-9-17, 2002).

Section 39-9-17 also lists offenses that will result in the new hire being ineligible for employment. They include felony conviction, guilty plea, or plea of nolo contendere to the following: (a) possession or sale of drugs; (b) murder; (c) manslaughter; (d) armed

robbery; (e) rape; (f) sexual battery; (g) kidnapping, if the victim was below the age of eighteen; (h) rape and assault with intent to ravish; (i) enticing child for concealment, prostitution, or marriage; (j) touching of a child for lustful purposes; (k) the dissemination of sexually oriented material to children; (l) exploitation of children; (m) carnal knowledge of a stepchild, adopted child, or child of a cohabiting partner; (n) unnatural intercourse; (o) attempt to commit any of the above-referenced offenses; (p) adultery or fornication between teacher and pupil; (q) any other offense resulting in a conviction in another jurisdiction, whether state, federal or military, which, if committed in this state, would be deemed to be such a crime without regard to its designation elsewhere; (r) any offense resulting in a conviction in another jurisdiction, whether state, federal, or military, for which registration is required in the jurisdiction where the was convicted; (s) child abuse; (t) arson; (u) grand larceny; (v) burglary; (w) gratification of lust; and (x) aggravated assault that has not been reversed on appeal or for which a pardon has not been granted (Mississippi Code Annotated § 37-9-17, 2002).

Section 37-9-17 also states that any employment contract must be voided if the new hire receives a disqualifying criminal background check. The applicant may appeal the decision to the Mississippi Board of Education or the school board, or before a hearing officer designated for such purpose, to show mitigating circumstances that may exist. In such instances, the new hire may be employed at the school if The Mississippi Board of Education or local school board grants a waiver. Waiver may be granted for circumstances that may include, but not be limited to: (a) the age at which the crime was committed; (b) the circumstances surrounding the crime; (c) the length of time and criminal history since the conviction; (d) the work history; (e) current employment and

character references; and (f) other evidence demonstrating the ability of the person to perform the employment responsibilities competently and demonstrating that the person does not pose a threat to the health or safety of the children at the school (Mississippi Code Annotated § 37-9-17, 2002).

Mississippi Code Annotated § 37-3-51 requires that each circuit clerk must notify the Mississippi Department of Education of the conviction of any licensed person employed by a public or private elementary or secondary school upon conviction of a felony or a sex offense. Sex offense is defined as: (a) carnal knowledge of a child under fourteen years of age; (b) sexual battery; (c) seduction of a child under age eighteen; (d) touching of a child for lustful purposes; (e) dissemination of sexually oriented material to children; (f) the exploitation of children; (g) carnal knowledge of a stepchild, adopted child, or child of a cohabitating partner; (h) unnatural intercourse; or (i) any other offense committed in another jurisdiction that, if committed in this state, would be deemed to be such a crime without regard to its designation elsewhere (Mississippi Code Annotated § 37-3-51, 2002).

North Carolina

The General Statutes of North Carolina do not have any requirements regarding criminal background checks for school personnel. However, The General Statutes of North Carolina, § 115C-332, requires school governing agencies to develop policy on whether and under what circumstances criminal background checks will be conducted. The following information is based on a review of what is permitted, although not required, by North Carolina law.

Enacted in 1995, North Carolina General Statutes Annotated, section 115C-332 defines “criminal history” as a county, state, or federal criminal history of conviction of a crime, whether a misdemeanor or a felony, that indicates an individual (a) poses a threat to the physical safety of students or personnel, or (b) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as school personnel (§ 115C-332). This law lists crimes to be included. They are: (a) endangering executive and legislative officers; (b) homicide; (c) rape and kindred offenses; (d) assaults; (e) kidnapping and abduction; (f) malicious injury or damage by use of explosive or incendiary device or material; (g) burglary and other housebreakings; (h) arson and other burnings; (i) larceny; (j) robbery; (k) embezzlement; (l) false pretense and cheats; (m) obtaining property or services by false or fraudulent use of credit device or other means; (n) frauds; (o) forgery; (p) offenses against public morality and decency; (q) adult establishments; (r) prostitution; (s) perjury; (t) bribery; (u) misconduct in public office; (v) offenses against the public peace; (w) riots and civil disorders; (x) protection of minors; (y) computer-related crime; (z) possession or sale of drugs in violation of the North Carolina Controlled Substances Act; (aa) alcohol-related offenses such as sale to underage persons or driving while impaired; (bb) similar crimes under federal law or under the laws of other states (General Statutes of North Carolina Annotated § 115C-332, 2002).

North Carolina section 115C-332 defines “school personnel” as: (a) an employee of a local board of education, full-time or part-time, including substitute teachers, driver training teachers, bus drivers, clerical staff, and custodians; (b) any independent contractor of a local board of education, if the independent contractor carries out duties

customarily performed by school personnel or has significant access to students; (c) any employee of an independent contractor of a local board of education, if the independent contractor carries out duties customarily performed by school personnel or has significant access to students (General Statutes of North Carolina Annotated § 115C-332, 2002).

Under § 115-332, the North Carolina Department of Justice is required to provide a criminal record check to any local board of education who requests information on a person who is employed or has applied for employment in a public or nonpublic school in that school district. The results of the submission of fingerprints to the State and National Repositories of Criminal Histories must be included in the report. The employee or applicant must give permission for the record check to be done (General Statutes of North Carolina Annotated § 115C-332, 2002).

For those local boards who choose to require a criminal background check on employees, section 115C-332 requires that the local board of education consider refusal to consent to a background check when making employment decisions and when making decisions with regard to independent contractors (General Statutes of North Carolina Annotated § 115C-332, 2002).

Section 115C-332 requires the local board of education to review the criminal history it receives and to use the information to determine whether the employee (a) poses a threat to the physical safety of students or personnel, or (b) has demonstrated that he/she does not have the integrity or honesty to fulfill his/her duties as public school personnel. Finally the local board of education must use this information when making employment decisions and decisions with regard to independent contractors and must make written record of how it used the information when making employment decisions

and decisions with regard to independent contractors (General Statutes of North Carolina Annotated § 115C-332, 2002).

Section 115C-332 requires that the local board of education must also provide the State Board of Education with the criminal history it receives on any person who is certificated, certified, or licensed by the State Board of Education. The State Board of Education must then review the criminal history and determine whether the person's certificate or license should be revoked in accordance with state laws and rules regarding revocation (General Statutes of North Carolina Annotated § 115C-332, 2002).

Information obtained during the criminal background check must be kept confidential by the local board of education except to fulfill the purposes of the law. Section 115C-332 also allows the local board of education to destroy the information received after one year (General Statutes of North Carolina Annotated § 115C-332, 2002).

Section 115C-332 requires that each local board of education apply its policy uniformly in requiring applicants for school personnel positions to be checked for criminal history. However, it allows local boards of education to employ an applicant conditionally while checking the person's criminal history and making a decision based on the results of the check. In addition, the local board of education may not require the applicant to pay for the criminal background check (General Statutes of North Carolina Annotated § 115C-332, 2002).

North Carolina section 115C-238.29K covers charter schools in relation to the use of criminal history reviews. This statute defines "criminal history" and "school personnel" in the same manner as use in describing public schools, and includes the same

crimes as reason to refuse employment to an applicant. In addition, this statute requires that the State Board of Education must adopt a policy on whether and under what circumstances charter school are required to conduct criminal background checks on present and future employees. All requirements are the same as listed in 115C-332. It stipulates that, upon receipt of the results of the criminal background check, the State Board will review the criminal history in the same manner as stated in § 115-332 and will make written recommendation regarding employment to the board of directors of the charter school (General Statutes of North Carolina Annotated § 115C-238.29K, 2002).

In § 114-19.2, the North Carolina Department of Justice is given authorization to conduct criminal record checks as described in § 115C-332 and § 115C-238.29K (General Statutes of North Carolina Annotated § 114-19.2, 2002).

CHAPTER 3

ANALYSIS AND COMPARISON OF THE LAWS IN STATES

BELONGING TO SACS

The first section of Chapter III presents a discussion of court cases. The second section presents a comparison and analysis of the contents of laws relating to criminal background checks of school employees in SACS states. The final section is a comparison of the laws.

Analysis of Litigation

The first relevant case in which a court defined negligent hiring was *Fallon v. Indian Trail School* (1986). Illinois Appellate Court Judge Strouse stated that liability for negligent hiring arises when an employer hires a person whom he/she knew or should have known was unfit for the position because of some history that might create a danger of harm to a third person if the employee was placed in the position. This is the first case where the courts place a burden on each employer to exercise reasonable care to protect its clients, employees, etc. from injury caused by employees who the employer knows, or should know, pose a risk of harm. *Fallon v. Indian Trail School* (1986) thus established the three criteria currently used in determining negligent hiring. They are: (a) The employee had “a particular unfitness” for the position that could create a danger of harm to third persons, (b) the “particular unfitness” was known or should have been known to

the employee at the time of hiring, and (c) this “particular unfitness” resulted in the claimed injury (Fallon, 1986).

Fallon has been cited as setting precedence for other cases of negligent hiring (Mueller, 1997; Oakley, 1998). Since the concept of negligent hiring was first defined, there have been many court cases where employers have been sued because of the actions of their employees (Burnell, 1998; Doe, 1996; Gordon, 2000; Mueller, 1997). Several court cases were reviewed as a means of gaining perspective on court decisions regarding negligent hiring. Cases are presented below with analysis. The cases have been grouped by their relationships with each other.

In the first set of cases reviewed, the courts dealt with situations where individuals sued a religious organization. The courts were forced to consider whether making decisions regarding hiring by the Church would constitute entanglement of Church and State, thereby violating the First Amendment of the Constitution.

In *Isley v. Capuchin Province* (1995), Isley, a former student at the church school, claimed that a priest had sexually molested him during the time he was a student. He sued the church for negligent hiring. The court dismissed the claim of negligent hiring, stating that an inquiry into whether the church had acted properly in allowing the priest access to children would require the court to interpret internal church policies and practices. The court stated that to do so would be a violation of the First Amendment because such judicial inquiry would constitute excessive government entanglement with religion.

However, seven years later, the result was quite different. In *Malicki v. Doe* (2002), the court reviewed an appeal from church defendants to dismiss the complaint of

negligent hiring. In the case, two women alleged that church officials were negligent in hiring and supervising Malicki who had a prior history of inappropriate behavior with parishioners. The first woman, a minor, worked at the church and attended the church high school. The second woman worked at the church under the direct control of Malicki. Both women alleged that Malicki had sexually assaulted them. At trial court, the case was dismissed with the court concluding that the First Amendment barred consideration of the claim. This was similar to the results in *Isley* (1995). An appeal to the Third District Court of Florida reversed the decision, stating that the issue involved tort law and did not require investigation into religious doctrine or practice. The defendants then appealed the decision of the district court to the Supreme Court of Florida. The Supreme Court of Florida affirmed the decision of the district court by stating that The First Amendment was not violated because the church did not claim that the sexual assault and battery were governed by religious beliefs or practices of the church. That is, the conduct in question was not a part of a religious belief system. Therefore, the court concluded that the First Amendment would not provide a shield, and the church could be held liable for the actions of its employees.

A similar result occurred in *Jane Doe v. Evans* (2002). Jane Doe brought lawsuit against Evans and the church. She alleged that Evans had initiated a romantic relationship with her during counseling. Doe alleged that the Church Defendants were aware of prior incidents involving sexual misconduct by Evans during counseling at another church, but did nothing to protect her. When trial court dismissed the case based on the First Amendment, Doe appealed. The Fourth District Court of Florida affirmed the lower court decision, and Doe then appealed to the Supreme Court of Florida. The

court reversed the lower court's decision, stating that The First Amendment does not prohibit a court from imposing liability against a church when one of its clergy causes harm to a person.

The next set of cases deal with the discretionary authority of the schools to hire and retain employees. In *Gordon v. Ottumwa Community School District* (2000), the parents of an elementary school child alleged that a school employee had sexually molested the child. The parents sued the school district for negligent hiring, claiming that there had been three prior incidents that should have caused the employer to suspect that the employee might be dangerous. In the Court's statement regarding the charge of negligent hiring, it was noted that there are no state or federal statutes or regulations prescribing a course of action for the principal to follow in making decisions about hiring or retaining an employee. Therefore, the hiring and retention of employees is discretionary. The court concluded that, although one of the prior incidents should have warned the school district that the employee might present a risk of sexually inappropriate conduct, the district is exempt from liability because there are no laws governing the district's decisions under such situations. It is interesting to note that, in *Gordon*, the court clearly indicated that the school principal should have been aware of the risk presented by this employee. However, since the law gives the principal discretionary authority in making decisions regarding the level of risk in such cases, the district is exempt from liability.

Mueller v. Community Consolidated School District 54 (1997) concerned a female student who alleged that she was sexually assaulted by her athletic coach in the coach's home. Mueller sued the school district for negligent hiring. The school district

requested dismissal under the Illinois statute that gives governmental entities immunity from liability for injuries resulting from the exercise of discretionary authority. This motion was based on the contention that hiring of personnel is discretionary for the district. The court refused the motion for dismissal, stating that, because the district is required by state law to initiate a criminal background check before an employee is allowed to begin employment, the district's failure to comply with the procedures prescribed by law makes it accountable for the outcome. Just as the lack of an applicable statute had caused the district to be exempt from liability in *Gordon*, the presence of a state statute requiring background checks resulted in employer liability in *Mueller*.

In the next set of cases, the defendant employers were found not guilty. The courts reached these decisions because the harm caused by the employees were not related to the employees' duties, and the courts concluded that other factors gave the employees access to the victims.

In *Stephens v. Greensboro Properties* (2001), Stephens sued Greensboro Properties, Inc., charging negligent hiring of Stanley Scott, the maintenance man for Greensboro Properties. Scott lived in the apartment complex and had a prior history of violent behavior. Stephens and his son were residents in the apartment complex. While off-duty and intoxicated, Scott shot Stephen's son in the parking lot of the apartment complex. The court ruled that Scott was not acting within the scope of his employment. On the day of the incident, he was not working in his maintenance job. In addition, Scott's job did not give him supervisory duties over Stephen's son or unsupervised access to the child. Therefore, the court concluded, the act was personal in nature and not the result of Scott's employment.

In *Godar v. Marion Independent School District* (1999), the Supreme Court of Iowa reviewed a decision from a lower court. In the case, Godar, an adult male, sued the school district for negligence in hiring. Godar alleged that he was sexually abused over a period of several years by a district employee, Gerald Edwards. Godar claimed that the abuse took place both on and off the school campus, during school hours and outside of school hours. During the presentation of the case, it was revealed that Edwards was also a volunteer who worked with Godar's Boy Scout troop and frequently came to Godar's home as his mother's guest. In addition, Edwards's assigned duties with the school district did not give him unsupervised access to students, and Edwards had no prior history of sexually abusive behaviors. Finally, Godar stated that he did not report the abuse to anyone at the time of its occurrence. The court confirmed the lower court decision to dismiss the charge of negligent hiring against the school district. According to the court, Edwards was not acting within the scope of his employment, and Godar failed to show that the school district knew or should have known of the alleged sexual abuse.

In the next cases, the defendant employers were found not guilty because there was no evidence that the employer knew or should have known of a prior criminal history. In *Schlesinger v. Pitney Bowes* (2001), the court ruled that Schlesinger did not have a basis for bringing suit for negligent hiring. Schlesinger, an employee of Audit and Surveys, Inc, supervised the accounts of Pitney Bowes, Inc. who provided services to A&S, Inc. Schlesinger was threatened by a former employer of Pitney who had been fired because of a complaint from Schlesinger. The court dismissed the charge of

negligent hiring, concluding that there was nothing in the employee's past that should have allowed Pitney to anticipate that the employee would threaten Schlesinger.

In *Burnell v. Williams* (1998), the court considered a case where the employee's duties gave him unsupervised access to the child. In *Burnell*, evidence was presented to show that a seventh-grade female student became romantically involved with a former teacher. The relationship occurred at school. Burnell sued the school district charging negligent hiring. The court dismissed the charge, stating that because the employee had no prior history of such behavior, the school board could not have known, before his hiring, that Williams had propensities toward sexual misconduct. Therefore, the conditions that would prove negligent hiring were not present.

The final cases reviewed are cases in which the courts concluded that the criteria for negligent hiring were present. Two cases were reviewed that fell into this category: *Oakley v. Flor-Shin* (1998), and *Doe v. Hillsboro Independent School District* (1996).

In *Oakley v. Flor-Shin* (1998), the Kentucky Court of Appeals reversed a lower court decision to dismiss a negligent hiring case against Flor-Shin. Flor-Shin held a contract with K-Mart to maintain its floors. The contract stipulated that Flor-Shin would not place persons with a known criminal past in that position. In this case, Oakley, an employee of K-Mart alleged that she was sexually assaulted by Bayes, an employee of Flor-Shin, while locked inside the store. Both employees were on the job at the time. Oakley sued Flor-Shin for negligent hiring. The Kentucky Court of Appeals reversed the lower court decision to dismiss the case, and remanded the case for further proceedings. The reason for the reversal was that there was a prior history of sexual violence by Bayes, and Flor-Shin knew or should have known of the history.

Doe v. Hillsboro Independent School District (1996) involved Jane Doe, a student at Hillsboro Middle School in Hillsboro, Texas. While at school, she was assaulted and raped by a custodian who had a prior record of criminal activity. The school district had not conducted the criminal background check on the custodian as required by state law. The United States Court of Appeals for the Fifth Circuit ruled that the district showed “recklessness and gross negligence” in its hiring procedures and concluded that school children have a “liberty interest that is protected by the Due Process Clause of the Fourteenth Amendment” (Doe, 1996, p.1406).

There is no doubt in each of the eleven cases that the third criteria set in *Fallon* (1986) was met. No court indicated that harm had not been done by the defendant. The reasons for the varied decisions, however, bear examination.

Three cases, *Isley* (1995), *Malicki* (2002), and *Doe* (2002), involved charges against the Church. It is interesting to note that in 1995, the decision of the court was that making judgments concerning hiring decisions of the Church would be a violation of the First Amendment, but the decisions of 2002 were that this would not be a violation because the violation did not relate to the belief system of the Church.

Two cases, *Mueller* (1997) and *Gordon* (2000), deal with the discretionary authority of the schools to hire and retain employees. The decisions of the courts were based on statutes and policies in effect at the time and location of the incidents. In both instances, there was no argument on the side of the defense that the employee had not caused the harm. In the case of *Gordon*, however, there were no statutes or laws that gave guidance to school authorities regarding hiring or retention of employees. Therefore, the case was dismissed due to the discretionary authority of the district. In the

case of Mueller, the district had failed to follow the prescribed procedure for background checks before hiring. Therefore, the courts held that the district did not have discretionary authority and could be held liable for negligent hiring.

Two of the eleven cases, *Stevens* (2001) and *Godar* (1999), ended in decisions by the courts that the employers were not guilty. The decisions were reached because the employees' primary access to the victims was not through employment.

Two cases, *Burnell* (1998) and *Schlesinger* (1999), ended in decisions that there was no responsibility for negligent hiring because the three criteria were not met. In both instances, the primary access to the victims was through employment and harm clearly resulted because of this access. However, in both cases, there was no prior history of criminal activity or propensity toward violent behavior that should have given the employer notice of the possibility of harm to others.

Finally, two of the cases reviewed met all three criteria for negligent hiring. In both *Oakley* (1998) and *Doe* (1996), there was harm to the victims, the employees had a history of sexually inappropriate behavior, and that behavior was known or should have been known to the employers before the employees were placed in a position where they harmed others.

Analysis and Comparison of Laws Relating to Criminal Background Checks of School Employees in SACS States

Laws requiring criminal background checks of school employees in SACS states were enacted in the following order: Louisiana (1986), Virginia (1989), South Carolina (1990), Tennessee (1993), Georgia (1994), Texas (1995), Kentucky (1998), Alabama (1999), Florida (2000), and Mississippi (2000). The first statutes, those of Louisiana,

were enacted in the same year that Illinois Appellate Court defined negligent hiring in *Fallon vs. Indian Trail School* (Fallon, 1986). At the time of this writing, North Carolina has a law that allows, but does not require, criminal background checks on school employees.

In examining the statutes of each state, details of the laws were grouped to find commonalities and differences in the statutes. There is no guidance in the literature regarding what should be contained in such statutes. Therefore, this author has compiled a list of issues based on the contents of the statutes and issues that emerged from an analysis of the statutes. The sixteen issues, analyzed state by state, are listed below.

1. Who must be investigated:

- Alabama: Section 16-22A-5 states that a criminal background check must be conducted on all applicants and current employees under review who are employed by a local board or State Department of Education if that person will have unsupervised access to children in an educational setting. This statute applies to both public and non-public schools. Section 16-22A-15 exempts any pastor, priest, rabbi, clergyman, or other church official from this requirement except when the person is acting in the capacity of a full-time regular classroom teacher.
- Florida: Section 1012.32 states that all personnel who are hired into positions requiring direct contact with students in any district school system or university laboratory school must undergo a criminal background check. Exceptions to this requirement are personnel who have been fingerprinted or screened previously and have not been unemployed for more than 90 days. Section 1012.39 lists

others who are required to have a criminal background check prior to employment. They are: substitute teachers, teachers of adult education, and students performing clinical field experience. In addition, § 1012.56, which governs eligibility for teacher certification in Florida, lists submission to a fingerprint check from the Florida Department of Law Enforcement and the Federal Bureau of Investigation as one of the criteria for certification.

- Georgia: Section 20-2-211 requires that all personnel employed by a local unit of administration after July 1, 2000 must be fingerprinted and have a criminal background check made.
- Kentucky: Section 160.380 requires that a superintendent must request a national and state criminal background check on all new certified and classified hires in the school district and student teachers assigned within the district. Excluded are certified individuals who were employed in another certified position in a Kentucky school district within six months of the date of hire and who had previously submitted to a national and state criminal background check for the previous employment. In addition, all nonfaculty coaches or nonfaculty assistant coaches must also have a background check. Section 161.148 requires that each local board of education develop a policy requiring a criminal background check on all volunteers who have contact with students on a regularly scheduled or continuing basis, or who have supervisory responsibility for children at a school site or on school-sponsored trips. Section 160.380 specifically excludes students enrolled in an educational institution who participate in observations and

educational activities under direct supervision of a local school teacher or administrator in a public school.

- Louisiana: Section 15:587.1 requires that persons who have been given or have applied to be considered for a position of supervisory or disciplinary authority over children must have a criminal background check.
- Mississippi: Section § 37-9-17 requires that a criminal background check be made on any new hires who have applied for employment (licensed or nonlicensed) at a school under the control of the Mississippi Board of Education.
- North Carolina: North Carolina does not have a law that requires criminal background checks on school applicants or employees.
- South Carolina: Section 59-25-115 of the Code of Laws of South Carolina states that all persons applying for initial certification to become certified education personnel must undergo a fingerprint review to determine any criminal history. In addition, section 59-40-60 requires that any noncertified teacher in a charter school must also undergo the background check.
- Tennessee: Section 49-5-413 states that each local board of education must require all persons applying for a position as a teacher or other position requiring proximity to school children, to agree to the release of all investigative records. In addition, the person must supply a fingerprint sample and submit to a criminal background check to be conducted by the Tennessee Bureau of Investigation. Any retired teacher applying for a position as a teacher will not be required to comply with these provisions if the application is being made to the local board of education from which the teacher retired. In addition, Tennessee § 49-6-2107

states that no person may be authorized to drive a school bus unless he/she possesses a certificate issued by the county board of education. A certificate may be issued only after an investigation has been made to determine whether or not he/she has been found guilty of any criminal offense and the criminal records are made a part of the person's permanent file.

- Texas: Section 22.082 states that The State Board for Educator Certification must obtain criminal background information that relates to an applicant for or holder of a certificate issued. Section 22.083 requires a charter school to obtain all criminal background information that relates to any person whom the school intends to employ in any capacity or any person who will serve as a volunteer with the school. Section 22.084 requires that any education agency that contracts with a person for transportation services must obtain all criminal background information that relates to any person they employ as a bus driver, bus monitor, or bus aide.
- Virginia: Section 22.1-296.2 states that, as a condition of employment, school boards must require any applicant who is offered or accepts employment after July 1, 1989, to submit to fingerprinting and to provide personal descriptive information for the purpose of obtaining criminal background information. Section 22.1-296.3 requires that this background check also be conducted for any applicant who accepts employment for the first time after July 1, 1998, in any private or parochial elementary or secondary school which is accredited by a statewide accrediting organization recognized by the State Board of Education.

2. Whether the law gives permission to investigate others:

- Alabama: Section 16-22A-5 stipulates that no current employee may be subjected to a criminal background check for only political or personal reasons. A review of a current employee must be based upon reasonable suspicion. In addition, a current employee under review must be apprised of the reasons supporting the request and must be provided the opportunity to supply additional information on his/her behalf to the employer.
- Florida: Section 1012.21 states that the Department of Education may periodically perform criminal background checks on individuals who hold a teaching certificate.
- Kentucky: Section 160.151 states that any private, parochial, or church school that has voluntarily been certified by the Kentucky Board of Education may require a criminal background check on all new certified hires in the school and student teachers assigned to the school. Certified individuals who were employed in another certified position in a Kentucky school within six months of the date of the hire and who had previously submitted to a national and state criminal background check for previous employment may be excluded.
- Louisiana: Section 15:587.3 states that any religious, charitable, scientific, educational, athletic, or youth-serving institution or organization may require any person who applies to work with children as a volunteer or as a paid employee to submit to a criminal background check to be conducted by the Louisiana State Police.

- North Carolina: The General Statutes of North Carolina do not have any requirements regarding criminal background checks for school personnel. North Carolina section 115C-332, however, states that each local board of education must adopt a policy on whether and under what circumstances an applicant for a school personnel position will be required to be checked for a criminal history before the applicant is offered an unconditional job. Each local board of education must apply its policy uniformly in requiring applicants to be checked. In addition, § 115C-238.29K states that the North Carolina Board of Education must adopt a policy on whether and under what circumstances an applicant for a school personnel position in a charter school will be required to be checked for a criminal history before the applicant is offered an unconditional job. The Board of Education must apply its policy uniformly in requiring applicants for school personnel positions to be checked.
- Texas: Section 22.083 states that any local unit of education, whether public, private, or charter, may obtain all criminal background information that relates to a person whom the local unit of education intends to employ or who intends to serve as a volunteer. In addition, the local unit of education may obtain all criminal background information on any employee of or applicant for employment of a person or agency that contracts with the local unit of education if the employee or applicant has or will have continuing duties where students are regularly present.
- Texas: While Texas § 22.084 requires criminal background checks of all transportation employees of the local unit of education, it does not require this

information of the employees of a commercial transportation company who contracts to provide transportation services to the school agency. Section 22.084 does, however, give permission to the commercial transportation company to conduct criminal background checks on its employees.

- Georgia, Mississippi, South Carolina, Tennessee, and Virginia do not list other persons who may be investigated.

3. Whether fingerprints are required:

- Alabama: Section 16-22A-6 says that a request to the Department of Public Safety for a criminal history background information check must be accompanied by two sets of fingerprints.
- Florida: Section 1012.32 covers new hires and requires the filing of fingerprints. Sections 1012.35 and 1012.39 cover substitute teachers and require the filing of fingerprints. In addition, § 1012.39 covers teachers of adult education and students performing clinical field experience and requires the filing of fingerprints.
- Georgia: Section 20-2-211 states that all personnel employed by a local unit of administration must be fingerprinted and have a criminal background check.
- Kentucky: Kentucky Revised Statutes do not specifically require fingerprints for applicants, new hires, or student teachers. Section 160.380, however, specifies that any fingerprints requested under this section must be on an applicant fingerprint card provided by Kentucky State Police.
- Louisiana: Section 17.15 requires that Louisiana Board of Education regulations regarding implementation of the criminal background check must include the

requirement and the procedure for the submission of a person's fingerprints to the Louisiana Bureau of Criminal Identification and Information.

- Mississippi: Section 37-9-17 states that the background check to be conducted requires that the applicant be fingerprinted with the fingerprints checked both at the state level and through the FBI for a national criminal background check.
- North Carolina: Section 115C-332 requires that, if the local board of education adopts a policy requiring an applicant for a school personnel position to be checked for a criminal history, the local board of education must require that the person to be checked be fingerprinted. Section 115C-238.29K regulates charter schools and requires that, if the North Carolina Board of Education chooses to conduct background checks on employees or applicants for positions in charter school, it must require that the person be fingerprinted.
- South Carolina: Section 43-52 states that an applicant for teacher certification in South Carolina must submit a fingerprint card to the Office of Teacher Education, Certification, and Evaluation. Section 59-25-115 also states that all persons applying for initial certification to become certified education personnel must undergo a state fingerprint review.
- Tennessee: Section 49-5-413 states that a local board of education must require any person applying for a position requiring proximity to school children to supply a fingerprint sample and submit to a criminal background check to be conducted by the Tennessee Bureau of Investigation.
- Texas: Texas does not have a law that requires persons who are investigated to submit fingerprints.

- Virginia: Section 22.1-296.2 states that, as a condition of employment, the school boards of Virginia must require any applicant to submit to fingerprinting to be forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation. In addition, § 22.1-296.3 requires the same process for private or parochial elementary or secondary schools that are accredited by a statewide accrediting organization recognized by the State Board of Education.

4. Agency responsible for implementing these laws:

- Alabama: Section 16-22A-5 states that all education entities, both public and nonpublic, are responsible for obtaining criminal background information on applicants who will have unsupervised access to children. In addition, Alabama § 16-22A-6 states that the State Department of Education, any public school, or any nonpublic school who employs individuals who may have unsupervised access to children must request a criminal background check. Public schools are to submit requests to the State Department of Education. Nonpublic schools are to request information directly from the Department of Public Safety.
- Florida: Section 1012.21 states that the Department of Education may periodically perform criminal background checks on individuals who hold a teaching certificate. Section 1012.32 states that all personnel who are hired to fill positions requiring direct contact with students in any district school system or university laboratory school must, upon employment, file a complete set of fingerprints taken by an authorized law enforcement officer or an employee of the school or district. The statute does not state who is responsible for forwarding the fingerprints, only that they will be submitted to the Department of Law

Enforcement for state processing and to the Federal Bureau of Investigation for federal processing. Section 1012.56 states that the person who seeks teacher certification must submit to a fingerprint check from the Department of Law Enforcement and the Federal Bureau of Investigation. Again, there is no information regarding how this is done.

- Georgia: Section 20-2-211 states that all personnel employed by a local unit of administration must be fingerprinted and have a criminal record check made. There is no statement as to who is to initiate the investigation.
- Kentucky: Section 160.380 states that the superintendent of each local unit of education shall require that each new certified hire and student teacher submit to the criminal background check.
- Louisiana: Section 15:587.1 states that any employer or other person responsible for the actions of persons who have been given or have applied to be considered for a position of supervisory or disciplinary authority over children must request a criminal background check on that person.
- Mississippi: Section 37-9-17 requires that superintendents or directors of schools under the purview of the Mississippi Board of Education and the superintendent of the local school district must require that criminal background checks and current child abuse registry checks are obtained and on file for any new hires applying for employment after July 1, 2000.
- North Carolina: The General Statutes of North Carolina do not have any requirements regarding criminal background checks for school personnel. However, § 115C-332 (for public schools) and § 115C-238.29K (for charter

schools) require school governing agencies to develop policy on whether and under what circumstances criminal background checks will be conducted. If the school governing agency chooses to require criminal background checks, § 115C-238.29K lists The State Board of Education as the requesting agency for charter schools. Under § 115C-332, the local board of education is the requesting agency for its local unit of education.

- South Carolina: Section 59-25-115 states that all persons applying for initial certification must undergo a criminal background check. Section 43-52 also states that an applicant for teaching credentials must submit the documentation to complete the criminal background check to the Office of Teacher Education, Certification, and Evaluation.
- Tennessee: Section 49-5-413 states that each local board of education or superintendent must require all persons applying for a position as a teacher or for any other position requiring proximity to school children, to agree to the release of all investigative records.
- Texas: Section 22.082 states that the State Board for Educator Certification must obtain criminal background information that relates to an applicant for or holder of a teaching certificate. Section 22.083 requires that a charter school must obtain all criminal background information that relates to a person whom the school intends to employ or who has indicated an intention to serve as a volunteer with the school. Section 22.084 requires that any local school unit who contracts with another agency for transportation must obtain all criminal background information that relates to any person employed or intended for employment by

the agency as a bus driver. In addition, section 22.083 allows any local unit of education, public or private, to obtain all criminal background information that relates to a person whom the local agency intends to employ in any capacity, or who has indicated an intention to serve as a volunteer. This statute also allows the local unit of education to obtain criminal background information that relates to an employee of or applicant for employment by any agency that contracts with the local unit of education if that person will have continuing duties to be performed at a location where students are regularly present.

- Virginia: Section 22.1-296.2 requires that the school boards of the state of Virginia must require any applicant who is offered or accepts employment to submit a criminal background check. Section 22.1-296.3 requires the governing boards or administrators of private or parochial elementary or secondary schools that are accredited by a statewide accrediting organization must require any applicant who accepts employment to submit to a criminal background check.

5. Penalties for noncompliance with the law:

- Alabama: Section 16-22A-12 states that the following violations of the statute are Class A misdemeanors: (a) Violating the confidentiality of records provisions; (b) violating lawfully adopted policies related to this statute; (c) knowingly, willfully, and intentionally making or transmitting a false report without reason to believe the accuracy of the report.
- Louisiana: Section 15:587.1 states that any person representing any public entity who fails to comply with the provisions of this statute or who employs a person in violation of this statute will be fined up to five hundred dollars.

- Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia do not have penalties to the agency for noncompliance with the laws governing criminal background checks.

6. State agency to which requests are made:

- Alabama: Section 16-22A-6 states that the request for criminal background checks for public schools will be made through the State Department of Education. The Department of Education will request that the Department of Public Safety secure criminal background information. Nonpublic schools must make the request directly to the Department of Public Safety. In all cases, the Department of Public Safety will then request criminal background information from the Federal Bureau of Investigation.
- Florida: Section 1012.32 states that the fingerprints will be submitted to the Department of Law Enforcement for state processing and to the Federal Bureau of Investigation for federal processing. Section 1012.56 requires that those seeking certification in Florida submit to the same agencies.
- Georgia: Section 20-2-211 states that fingerprints will be submitted to the National Crime Information Center.
- Kentucky: Section 160.380 requires that the Kentucky State Police and the Federal Bureau of Investigation conduct the criminal background check on initial certified hires in all public schools. However, § 160.380 requires that initial classified hires have a criminal background check only through the Kentucky State Police. In addition, § 161.148 states that all volunteers must be checked

through the Kentucky Justice Cabinet or the Kentucky Administrative Office of the Courts, or both.

- Louisiana: Section 15:587.1 states that the request for a criminal background check on the employee or applicant is made to the Louisiana Bureau of Criminal Identification and Information.
- Mississippi: Under section 37-9-17, the criminal background check is required to be done through the Department of Public Safety and through the FBI.
- North Carolina: The General Statutes of North Carolina do not have any requirements regarding criminal background checks for school personnel. If the school governing agency chooses to require criminal background checks, § 115C-332 states that the local board of education will require the person to be checked by the Department of Justice. In regards to charter schools, section 115C-238.29K makes the same requirements.
- South Carolina: Section 59-25-115 states that the applicant for initial certification must undergo a fingerprint review to be conducted by the State Law Enforcement Division and the Federal Bureau of Investigation to determine any criminal history.
- Tennessee: Under provisions of § 49-5-413, the local board of education must require the applicant to supply a fingerprint sample and submit to a criminal background check to be conducted by the Tennessee Bureau of Investigation.
- Texas: Section 22.082 requires that the Texas State Board for Educator Certification must obtain “from any law enforcement or criminal justice agency”, all criminal background information on those who are required to be investigated

(Texas Codes Annotated § 22.082). There is no requirement regarding specific sources of the information.

- Virginia: Section 22.1-296.2 requires that fingerprints and descriptive information on the person be forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation for obtaining criminal background information. Section 22.1-296.3 makes the same requirement of private or parochial elementary or secondary schools that are accredited by a statewide accrediting organization recognized by the State Board of Education.

7. Whether the state investigating agency is required to respond:

- Alabama: Section 16-22A-5 requires that criminal background checks must be performed by the Department of Public Safety upon request by any public entity authorized to make a request and must be forwarded to the requesting party in a standardized format within a reasonable time of the receipt of the request.
- Georgia: Section 20-2-211 states that it is the duty of each law enforcement agency in this state to fingerprint persons required to be fingerprinted. No other agencies are required by Georgia law to respond.
- Louisiana: Under provisions of section 15:587.1, The Louisiana Bureau of Identification and Information must make available to the state Department of Education and to the governing authority of any elementary and secondary school a record of all criminal convictions for a period not to exceed ten years prior to the date of request.
- North Carolina: Section 115C-332 requires that, if the local board of education adopts a policy requiring an applicant for a school personnel position to be

checked for a criminal history, The Department of Justice must provide the criminal history from the state and national repositories of criminal histories. In addition, section 115C-238.29K requires that, if the North Carolina Board of Education chooses to conduct background checks on employees or applicants for positions in charter schools, the fingerprints of the individual must be forwarded to the State Bureau of Investigation, and the State Bureau of Investigation must forward a set of fingerprints to the Federal Bureau of Investigation. In addition, The Department of Justice must provide the criminal history to the State Board of Education.

- Virginia: Section 22.1-296.2 requires that The Virginia Central Criminal Records Exchange must report to the school board whether or not the applicant has ever been convicted of a felony or a Class 1 misdemeanor or an equivalent offense in another state. Section 22.1-296.3 requires the same response for private or parochial elementary or secondary schools that are accredited by a statewide accrediting organization.
- There are no provisions in the laws of Florida, Kentucky, Mississippi, South Carolina, Tennessee, or Texas requiring that law enforcement personnel respond to the request from an educational agency for criminal background checks on personnel.

8. Whether the law requires that the criminal background check request be submitted to a federal agency (FBI):

- Alabama: Section 16-22A-5 states that the Department of Public Safety will request a criminal background check from the Federal Bureau of Investigation within a reasonable time of receipt of the request.
- Florida: Section 1012.32 states that the fingerprints must be submitted to the Department of Law Enforcement for state processing and to the Federal Bureau of Investigation for federal processing.
- Georgia: Section 20-2-211 requires that fingerprints must be in such form and of such quality as shall be acceptable for submission to the National Crime Information Center, a department of the Federal Bureau of Investigation.
- Kentucky: Section 160.380 states that a superintendent of any public school must require that each new certified hire, each new classified hire, each student teacher, each nonfaculty coach, and each nonfaculty assistant coach submit to a national and state criminal background check by the Kentucky State Police. In addition, the Federal Bureau of Investigation must also investigate new certified hires, student teachers, nonfaculty coaches, and nonfaculty assistant coaches. Section 161.148 covers requirements for volunteers. Although this statute requires that volunteers submit to investigation by state agencies, it does not mention requesting information from the FBI.
- Louisiana: Section 15.587.1 requires that the Louisiana Bureau of Criminal Identification and Information make a request of the FBI for information.
- Mississippi: Section 37-9-17 requires that the Department of Public Safety must forward the fingerprints to the FBI for a national criminal background check.

- North Carolina: Section 115C-332 requires that, if the local board of education adopts a policy requiring an applicant for a school personnel position to be checked for a criminal history, The North Carolina Department of Justice must provide the criminal history from the state and National Repositories of Criminal Histories. Since the Criminal Justice Information Services Division of the FBI maintains the National Repository of Criminal History Records, it is assumed that this is the “national repository” that is referred to in this statute. Section 115C-238.29K requires that, if the North Carolina Board of Education chooses to conduct background checks on employees or applicants for positions in charter schools, the fingerprints of the individual must be forwarded to the North Carolina Bureau of Investigation. The state bureau must then forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal background check.
- South Carolina: Section 43-52 states that no applicant may receive an Induction or Professional Certificate without a clear FBI background check. In addition, § 59-25-115 states that all persons applying for initial certification as education personnel must undergo a state fingerprint review to be conducted by the State Law Enforcement Division and by the Federal Bureau of Investigation to determine any criminal history.
- Virginia: Section 22.1-296.2 (regarding public schools) and § 22.1-296.3 (regarding state accredited private or parochial schools) require that any new hire must submit to fingerprinting and provide personal descriptive information to be

forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation for obtaining criminal background information.

- Tennessee and Texas do not have provisions requiring that the request for a background check be submitted to the FBI.

9. What is requested:

- Louisiana: Section 15:587.1 requires that the employer must seek information to ascertain whether that person has been convicted of or pled nolo contendere to certain crimes. Crimes listed are: (a) murder or manslaughter; (b) rape or sexual battery; (c) incest; (d) intentional exposure to AIDS virus; (e) kidnapping; (f) criminal neglect of family; (g) criminal abandonment; (h) crimes against juveniles including child desertion, sale of minor children, indecent behavior with a juvenile, pornography, molestation, contributing to the delinquency of juveniles, cruelty to juveniles, or carnal knowledge of a juvenile; (i) prostitution, including soliciting for prostitutes, inciting prostitution, promoting prostitution, prostitution by massage, pandering, letting premises for prostitution, enticing persons into prostitution, or operating a place of prostitution; (j) obscenity or letting premises for obscenity; (k) crimes against nature; (l) cruelty to the infirmed; or (m) prohibited acts involving controlled substances including manufacture, distribution, production, or dispensing of controlled substances, or possessing controlled substances with intent to produce, manufacture, distribute, or dispense.
- North Carolina: The General Statutes of North Carolina do not have any requirements regarding criminal background checks for school personnel. However, if the school governing agency chooses to require criminal background

checks, § 115C-238.29K (for charter school) and § 115C-332 (for public schools) state that schools may seek “criminal history checks”. Criminal History is defined in each statute as a county, state, or federal criminal history of conviction of a crime that indicates an individual (a) poses a threat to the physical safety of students or personnel, or (b) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as school personnel. These crimes include the following crimes: (a) endangering executive and legislative officers; (b) homicide; (c) rape; (d) assault; (e) kidnapping and abduction; (f) malicious injury or damage by use of explosive or incendiary device or material; (g) robbery, burglary, or other housebreakings; (h) arson; (i) larceny or embezzlement; (j) false pretense and cheats; (k) obtaining property or services by false or fraudulent use of credit device or other means; (l) frauds; (m) forgery; (n) offenses against public morality and decency; (o) adult establishments; (p) prostitution; (q) perjury; (r) bribery; (s) misconduct in public office; (t) offenses against the public peace, including riots and civil disorders; (u) computer-related crime; (v) possession or sale of drugs; (w) sale of alcohol to underage persons; (x) driving while impaired by alcohol.

- The statutes are not specific about what is requested in nine states. However, since there is no notation of specific crimes requested, the implication is that the request is for all criminal history. These states are: (a) Alabama (§ 16-22A-6), (b) Florida (§§ 1012.32, 1012.21, and 1012.56), (c) Georgia (§ 20-2-211), (d) Kentucky (§§ 160.380 and 161.148), (e) Mississippi (§ 37-9-17), (f) South

Carolina (§ 59-25-115), (g) Tennessee (§ 49-5-413), (h) Texas (§§ 22.082 and 22.084), and (i) Virginia (§§ 22.1-296.2 and 22.1-296.3).

10. Information required to be reported by the state agency:

- Alabama: Section 16-22A-5 states that the request from the hiring or employing agency must be for a criminal background information check. Section 16-22A-3 defines “criminal history background information check” as a review of all records involving an arrest or conviction by a criminal justice agency. Section 16-22A-3 lists the following as information to be included in the criminal history: (a) child abuse crime information as defined by the National Child Protection Act of 1993, (b) conviction record information, (c) fingerprint cards, (d) correctional induction and release information, and (e) identifiable descriptions and notations of convictions if dissemination of such information is not forbidden by order of any court of competent jurisdiction or by federal law.
- Louisiana: Section 15:587.1 requires that the Louisiana Bureau of Identification and Information may provide only such information as is necessary to specify whether or not that person has been convicted of or pled nolo contendere to any crime, the crime of which he has been convicted or to which he has pled nolo contendere, and the date or dates on which they occurred.
- Virginia: Section 22.1-296.2 states the Central Criminal Records Exchange must report to the school board whether or not the applicant or current employee under investigation has ever been convicted of a felony or a Class 1 misdemeanor, or an equivalent offense in another state. Specific crimes listed that must be reported are sexual assault, obscenity and related offenses, drugs, moral turpitude, and

physical or sexual abuse or neglect of a child. The Central Criminal Records Exchange may not disclose information to the school board regarding charges or convictions of any crimes not specified in section 22.1-296.2. Section 22.1-296.3 governs private school employees and stipulates that the Central Criminal Records Exchange must report to the governing board or administrator that the applicant meets the criteria or does not meet the criteria for employment based on whether or not the applicant has ever been convicted of the crimes as described in § 22.1-296.2. The Central Criminal Records Exchange may not disclose information regarding specific charges or convictions of any crimes to the private school.

- Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Texas do not have statements concerning what the state agency is required to report to the school agency.

11. Whether permission from the applicant or current employee is required:

- Alabama: Section 16-22A-5 states that the designated official of the employing entity must obtain a signed and dated written consent to obtain criminal background checks for applicants and employees. In addition, section 16-22A-6 requires that all requests to the Department of Public Safety for a criminal background check must be accompanied by written consent from the applicant or current employee under review.
- Louisiana: Section 15:587.1 states that the request for a criminal background check must include a statement signed by the person about whom the request is made which gives his permission for information to be released.

- North Carolina: Section 115C-332 (regarding public schools) and § 115C-238.29K (regarding charter schools) states that, if the governing boards choose to conduct background checks on employees or applicants for positions in charter school, The Board of Education must require the person to sign a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the repositories.
- Tennessee: Section 49-5-413 states that a local board of education must require any person applying for a position as a teacher and any person applying for any other position requiring proximity to school children to agree to the release of all investigative records to the board.
- Florida, Georgia, Kentucky, Mississippi, South Carolina, Texas, and Virginia statutes do not have statements requiring permission from the person who is to be investigated.

12. Whether employment is allowed prior to the receipt of the criminal background check:

- Alabama: Section 16-22A-5 states that an educational institution may hire an individual who may have unsupervised access to children without first obtaining criminal background information on a temporary emergency basis. In such instances, the applicant may be placed on payroll until the Department of Public Safety completes a background check.
- Florida: Section 1012.32 states that new employees will be on probationary status pending fingerprint processing and determination of compliance with standards of good moral character.

- Georgia: Section 20-2-211 states that the local unit of administration has the authority to employ a person, whether certificated or noncertificated, under a provisional or temporary contract for a maximum of 200 days in order to allow for the receipt of the results of the criminal background check.
- Kentucky: Section 60.380 allows employment on probationary status pending receipt of the criminal background check. However, application for the criminal record of a probationary employee must be made no later than the date that probationary employment begins.
- Louisiana: Section 17.15 states that a person who has submitted his fingerprints to the Louisiana Bureau of Criminal Identification and Information may be temporarily hired pending the report from the bureau.
- North Carolina: Both § 115C-238.29K and § 115C-332 state that a local board of education that requires a criminal history check for an applicant may employ the applicant conditionally while the board is checking the person's criminal history and making a decision based on the results of the check.
- Tennessee Code does not make a statement allowing employment before receipt of the criminal background check except in the case of bus drivers. However, section 49-6-2107 states that, in the event that school bus drivers cannot be obtained in conformity with the provisions of this statute, the state board of education may issue temporary certificates so that school transportation may be provided.
- Mississippi, South Carolina, Texas, and Virginia do not have provisions that allow employment prior to receipt of the criminal background check.

13. Whether restrictions are placed on employment as a result of the criminal background check:

- Alabama: Section 16-22A-5 lists two instances where employment is denied. First, if an applicant refuses to sign and date a consent to obtain a criminal background check and to provide fingerprints, the applicant may not be employed until written permission and fingerprints have been given. Second, if a current employee under review refuses to sign and date a consent to obtain a criminal background check and to provide fingerprints, the employee may not continue employment until written permission and fingerprints have been given. In addition, Alabama § 16-22A-12 provides that any person who knowingly submits false information concerning past convictions on an application for employment or other form required for disclosure of criminal convictions may be subject to loss of employment. There is no denial of employment based on findings of criminal background.
- Florida: Section 1012.32 states that employees found to have been convicted of a crime involving moral turpitude may not be employed in any position requiring direct contact with students.
- Kentucky: Section 160.380 states that a superintendent may not employ a person who is a violent offender or has been convicted of certain sex crimes. Crimes include: (a) rape; (b) sodomy; (c) sexual abuse; (d) sexual misconduct; (e) prostitution; (f) promoting prostitution; (g) escape; (h) unlawful transaction with a minor; (i) use of a minor in a sexual performance; (j) promoting a sexual performance by a minor; and (k) advertising, distributing, or promoting the sale of

material portraying a sexual performance by a minor or using minors to advertise, distribute, or promote such sales. The superintendent may employ, at his discretion, persons convicted of sex crimes classified as a misdemeanor. This statute requires that probationary employment of an employee under review will terminate on receipt of a criminal background check documenting a record of a sex crime or as a violent offender, and that no further procedures will be required. Kentucky § 160.151 states that any nonpublic school voluntarily implementing the provisions of this chapter may choose not to employ any person who is a violent offender, has been convicted of a sex crime that is classified as a felony, or has committed a violent crime. Crimes listed under § 160.151 are the same as those listed in § 160.380. A nonpublic school may employ, at its discretion, persons convicted of sex crimes classified as a misdemeanor.

- Louisiana: Section 17.15 states that no person who has been convicted of or has pled nolo contendere to a crime listed in § 15:587.1 can be hired by any public or private school system as a teacher, substitute teacher, bus driver, substitute bus driver, janitor, or any school employee who might be placed in a position of supervisory or disciplinary authority over school children. In addition, any employee who is found to have committed any of the crimes listed in § 15:587.1 must be dismissed upon final conviction of the crime. Crimes listed in § 15:587.1 are: (a) murder or manslaughter; (b) rape or sexual battery; (c) incest; (d) intentional exposure to AIDS virus; (e) kidnapping; (f) criminal neglect of family; (g) criminal abandonment; (h) crimes against juveniles including child desertion, sale of minor children, indecent behavior with a juvenile, pornography,

molestation, contributing to the delinquency of juveniles, cruelty to juveniles, or carnal knowledge of a juvenile; (i) crimes involving prostitution including soliciting for, inciting, promoting, prostitution by massage, pandering, letting premises for prostitution, enticing persons into prostitution, and operating a place of prostitution; (j) obscenity or letting premises for obscenity; (k) crimes against nature; (l) cruelty to the infirmed; or (m) prohibited acts involving controlled substances including manufacture, distribution, production, or dispensing controlled substances or possessing controlled substances with intent to produce, manufacture, distribute, or dispense. Exception to this mandate can be made through written approval by a district judge of the parish and the district attorney. This statement of approval must be kept on file by the school and must be produced upon request to any law enforcement officer. In addition, not later than thirty days after its being placed on file, the school principal must submit a copy of the approval statement to the state superintendent of education. Section 17.3991 covers charter schools and has the same requirements.

- Louisiana: Section 17.15 states that a school board must dismiss any school employee who has supervisory or disciplinary authority over school children upon the final conviction or upon a plea of nolo contendere of any crime listed in § 15:587.1, except criminal neglect of family. Section 15:587.3 states that any person who is requested to comply with the requirements for obtaining a criminal background check and refuses to do so will be prohibited from working with children as a volunteer or as a paid employee.

- Mississippi: Section 39-9-17 states that any employment contract must be voided if the new hire receives a disqualifying criminal background check. Disqualifying findings include disclosure of a conviction, guilty plea, or plea of nolo contendere to: (a) possession or sale of drugs; (b) murder; (c) manslaughter; (d) armed robbery; (e) rape; (f) sexual battery; (g) kidnapping of a person below the age of eighteen; (h) rape or assault with intent to ravish; (i) enticing child for concealment, prostitution, or marriage; (j) touching of a child for lustful purposes; (k) the dissemination of sexually oriented material to children; (l) exploitation of children; (m) carnal knowledge of a stepchild, adopted child or child of a cohabiting partner; (n) unnatural intercourse; (o) attempting to commit any of the above-referenced offenses; (p) adultery or fornication between teacher and pupil; (q) any other offense resulting in a conviction in another jurisdiction which, if committed in this state, would be deemed to be such a crime; (r) any offense resulting in a conviction in another jurisdiction for which registration is required in the jurisdiction where the conviction was had; (s) child abuse; (t) arson; (u) grand larceny; (v) burglary; (w) gratification of lust; and (x) aggravated assault that has not been reversed on appeal or for which a pardon has not been granted.
- North Carolina: Section 115C-332 requires that, if the local board of education chooses to conduct background checks, it must review the criminal history it receives and use the information to determine whether the employee (a) poses a threat to the physical safety of students or personnel, or (b) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as public school personnel. In addition, the local board of education must use this

information when making employment decisions and decisions with regard to independent contractors, and must make written record of how it used the information when making employment decisions and decisions with regard to independent contractors. North Carolina: Section 115C-238.29K states that the State Board will use the information it receives to make decisions in regards to charter schools in the same manner as described for public schools in 115C-332. The State Board will then notify the board of directors of the charter school as to whether the person is qualified to operate or be employed by a charter school. If the State Board recommends dismissal or nonemployment of any person, the board of directors of the charter school must dismiss or refuse to employ that person.

- South Carolina: Section 43-52 states that no applicant may receive an Induction or Professional Certificate without a clear FBI background check.
- Tennessee: Section 49-5-406 states that knowingly falsifying information on an employment application including the criminal background check will be sufficient grounds for termination of employment and will also constitute a Class A misdemeanor that must be reported to the district attorney general for prosecution. The person may not be employed and, if employed, must be dismissed. There is no statement regarding what offenses would cause the person to not be hired or retained. Section 49-6-2107 states that no person may be issued a certificate to drive a school bus who, within five years of applying for such a certificate, has been convicted of a violation of driving under the influence of an

intoxicant, vehicular assault, vehicular homicide, aggravated vehicular homicide, or the manufacture, delivery, sale, or possession of a controlled substance.

- Texas: Section 22.085 states that any school agency may discharge an employee if the district or school obtains information of the employee's conviction of a felony or of a misdemeanor involving moral turpitude that the employee did not disclose to the State Board for Educator Certification or the school agency. This statute, however, does not require dismissal. Section 22.084 requires a school agency that obtains information that a person has been convicted of a felony or a misdemeanor involving moral turpitude to inform the chief personnel officer of the person with whom the school agency has contracted. That company may not employ the person to drive a bus on which students are transported without the permission of the board of trustees of the school agency.
- Georgia and Virginia do not have restrictions on employment based on the criminal background check.

14. Provisions to appeal restrictions on employment:

- Florida: Section 1012.32 states that probationary employees terminated because of their criminal record have the right to appeal such decisions. There is no information regarding the appeals process.
- Louisiana: Section 17.15 states that an applicant or current employee who is denied employment due to a criminal background may be hired if approved in writing by a district judge of the parish and the district attorney. If approval is granted, the school must, within 30 days, file a copy of the statement of approval with the state superintendent of education. In addition, the school must keep the

statement on file and make it available to any law enforcement officer upon request.

- Mississippi: Section 37-9-17 states that the Mississippi Board of Education or the school board may, in its discretion, allow any applicant aggrieved by the employment decision to appear before the respective board, or before a hearing officer designated for such purpose, to show mitigating circumstances which may exist and allow the new hire to be employed at the school. The Mississippi Board of Education or local school board may grant waivers for such mitigating circumstances. This statute list examples of mitigating circumstances as: (a) age at which the crime was committed; (b) circumstances surrounding the crime; (c) length of time and criminal history since the conviction; (d) work history; (e) current employment and character references; and (f) other evidence demonstrating the ability of the person to perform the employment responsibilities competently and that the person does not pose a threat to the health or safety of the children at the school.
- North Carolina: Section 115C-238.29K requires that, if the North Carolina Board of Education chooses to conduct background checks on employees or applicants for positions in charter school, and that review results in denying employment to an applicant or dismissing a current employee, The State Board must notify the school personnel of the procedure for completing or challenging the accuracy of the criminal history and the person's right to contest the State Board's determination in court. There is no information on what that procedure is to be. There is no such provision regarding public school employees or applicants.

- South Carolina: Section 43-52 states that eligible applicants who have prior arrests or convictions must undergo a review by the State Board of Education and be approved before a teaching certificate may be issued.
- Alabama, Kentucky, Tennessee, and Texas do not have provisions to allow for the appeal restrictions on employment based on the criminal background check. Georgia and Virginia also do not mention an appeals process. However, there are no restrictions on employment based on the results of the background check in Georgia and Virginia.

15. Whether the law provides for confidentiality of the criminal background record:

- Alabama: Section 16-22A-5 states that upon receipt of the criminal background information report from the FBI, The Department of Public Safety must forward the report to the State Department of Education and to the applicant or current employee under review. The report is to be sent by certified mail. Alabama § 16-22A-10 states that all reports of criminal background must be confidential and marked as such. Transmittal of criminal background information must be in a nontransparent package, sealed, and marked confidential with instructions to be opened only by the person named on the package and authorized to receive the information. Disclosures that are allowed are: (a) showing the report of criminal background to the applicant or current employee under review to give him or her the opportunity to challenge the report; (b) releasing the report to a court of competent jurisdiction in the event of litigation brought by the applicant or current employee under review; and (c) use of the information in preparation, investigation, and presentation during administrative proceedings involving

revocation of certificate, termination by the employer, or restriction on unsupervised access to a child in an educational setting. Records may not be further disclosed or made available for public inspection. Under § 16-22A-10, all criminal background information reports are excluded from any requirement of public disclosure as a public record.

- Florida: Section 1012.797 states that the information obtained by the district school superintendent may be released only to appropriate school personnel or as otherwise provided by law. Section 1012.797 allows for exception to this confidentiality to the extent necessary to protect the health, safety, and welfare of students.
- Louisiana: Section 15:587.1 states that any recipient of criminal background information must maintain the confidentiality of the information in accordance with applicable federal or state law.
- Mississippi: Section 39-7-17 mandates the confidentiality of the information obtained during the criminal history check and forbids the dissemination of the information obtained through such a review to anyone except to fulfill the purpose of this law.
- North Carolina: The General Statutes of North Carolina do not have any requirements regarding criminal background checks for school personnel. However, §§ 115C-238.29K and 115C-332 require school governing agencies to develop policy on whether and under what circumstances criminal background checks will be conducted. If the school governing agency chooses to require criminal background checks, § 115C-332 and § 115C-238.29K state that all the

information received through the checking of the criminal history is privileged information and is for the exclusive use of the requesting agency. The local board may destroy the information after one calendar year. Section 115C-238.29K states that the State Board of Education may not disclose any portion of the individual's criminal history to the charter school's board of directors or employees.

- Tennessee: Section 49-5-413 specifies that the applicant will be provided a copy of all criminal background information provided to the local board of education. For future employment in any Tennessee district, the applicant may submit copies of the initial criminal background check in lieu of additional criminal background checks, and will not be required to pay any additional costs.
- Virginia: Section 22.296.2 allows any school board to share information on a criminal background check with another school board if the review was conducted within the previous ninety days, the applicant has requested that the information be shared, and the two districts have agreed on how to divide the costs between the applicant and the school boards. The statute further states that the information provided to the school board may not be disseminated except through such a reciprocity agreement. In addition, the Central Criminal Records Exchange may not disclose information to the school board regarding charges or convictions of any crimes not specified in this section. Section 22.1-296.3 governs private school employees. The Central Criminal Records Exchange must report to the governing board that the applicant meets the criteria or does not meet the criteria for employment. The Central Criminal Records Exchange may not

disclose information regarding charges or convictions of any crimes. The information provided to the governing board, administrator, or private organization coordinating such records may not be disseminated.

- Georgia: Section 20-2-211 states that information provided by the Georgia Crime Information Center or the National Crime Information Center may be used only for the purposes of making decisions regarding the hiring of that individual. Although this statute limits the use of the information, it does not specifically forbid dissemination of the information from the background check to others.
- Kentucky, South Carolina, and Texas statutes do not contain provisions to ensure confidentiality of criminal background records.

16. Responsibility for the cost of the criminal background check:

- Alabama: Section 16-22A-5 states that the applicant is responsible for the cost of the criminal history background check. However, if an employing entity requests a criminal background check for a current employee under review, the employer is responsible for the cost. In addition, when a noncertified job applicant is determined by the chief executive officer of the prospective employer to be financially unable to pay the costs, the prospective employer may pay the fee associated with the background check.
- Florida: Section 1012.32 states that the cost of the fingerprint processing may be borne by the district school board or the employee.
- Georgia: Section 20-2-211 states that fees required for a criminal background check may be paid by the local unit of administration or by the individual seeking employment or making application to the Professional Standards Commission.

- Kentucky: Sections 160.151 and 160.380 state that any fee charged by the Kentucky State Police, the Administrative Office of the Courts, or the Federal Bureau of Investigation can be an amount no greater than the actual cost of processing the request and conducting the search. Neither statute gives information regarding who will pay the cost. Section 161.148, however, stipulates that the local board of education must arrange to pay the cost of background checks on volunteers. The funds may be from local funds or donations from any source including volunteers.
- Louisiana: Section 15:587.1 states that the costs of providing the background check must be charged to the agency that made the request. The individual applicant may not bear such costs.
- Mississippi: Section 37-9-17 states that the cost for fingerprinting and the criminal background check may be no more than fifty dollars and the cost is the responsibility of the applicant. This statute stipulates, however, that the Mississippi Board of Education or the local school board may elect to pay the fee for the fingerprinting and criminal background check on behalf of any applicant.
- North Carolina: Section 115C-332 requires that, if the local board of education adopts a policy requiring an applicant for a school position to be checked for a criminal history, the local board may not require the applicant to pay for the criminal background check. Section 115C-238.29K makes the same requirement for charter schools.

- South Carolina: Section 59-25-115 states that the individual who is applying for initial certification must pay the fee charged by the Federal Bureau of Investigation.
- Tennessee: Section 49-5-413 states that any reasonable costs incurred in the investigation of an applicant will be paid by the applicant the first time the applicant applies for a position with a local board of education. The applicant will be provided a copy of all criminal background information provided to the local board of education. In lieu of additional criminal background checks for subsequent applications, the applicant may submit copies of the initial criminal background check information and may not be required to pay any additional costs. Any local board of education may reimburse the applicant for the costs of the investigation if the applicant accepts a position requiring proximity to children. Any local board of education may establish a policy authorizing payments for investigations of an applicant who provides school maintenance, custodial services, food services, and other such functions other than administrative or teaching functions or duties. A local board of education may pay for an investigation of such applicants regardless of whether the applicant accepts an offer for employment.
- Virginia: Section 22.1-296.2 states that school boards may share results of the background check with permission from the applicant. This may be done in order to conserve the costs of conducting the background checks. The statute states, however, that school boards that enter into reciprocity agreements may not each levy the costs of the fingerprinting or criminal records check on the applicant.

This would seem to imply that the applicant bears the cost of the initial background check although this is not explicitly stated.

- Texas does not have any reference to who is responsible for the cost of the criminal background check.

CHAPTER 4

FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

Findings

The public education system of the United States has served its citizens for over 200 years. Parents have come to think of the education system much as they think of the family patriarch: omnipresent, guiding and nurturing, dependable, and strong. Yet, there is an element of the institution that bears closer scrutiny. Because of the necessity for educators to work closely with children in an unsupervised setting, the education field is a prime target for those who seek access to children to harm them. Although most people who work in education are dedicated individuals who strive to serve children in the best possible way, a criminal element exists as it does in every sector of our society.

Society wants schools to provide safe, nurturing environments for its children to learn. Therefore, schools have a moral and ethical duty to employ only those individuals who will contribute to that environment. Yet, it has been observed that we live in a society that closely checks the backgrounds of those who handle its money, but is not so careful of those who work with its children. Public pressure has caused our lawmakers to attempt to provide greater protection through legislation mandating criminal background checks for those who work in schools. This study sought to provide information regarding the laws that govern criminal background checks of school personnel in states belonging to the Southern Association of Colleges and Schools (SACS). A review of

recent court cases and a review of current statutes in the SACS states have lead to several findings regarding the status of legislation in these states. The findings are as follows:

1. As a result of *Fallon v. Indian Trail School* (1986), three criteria are used by the courts in defining negligent hiring. They are:
 - a. Is the person unfit for the position because of some history that could create a danger of harm to a third person if the employee is placed in the position?
 - b. Did the employer know of this history or would the employer have known of the history if he/she had conducted a reasonable background check?
 - c. Was harm caused as a result of the employee gaining access to the victim through the workplace?
2. Although past court cases involving employees of religious agencies have been dismissed based on First Amendment interpretations, recent cases indicate that this may be changing. In two cases of 2002, the courts concluded that Church employers could be held responsible for tort violations because the violations did not relate to the basic beliefs or belief practices of the Church.
3. Review of court cases indicates that, in the absence of clear legislation regarding employee background screening, the discretionary authority of the school system in hiring and retaining employees may provide a shield to protect school systems from negligent hiring liability.
4. In the SACS states, the first legislation relating to conducting criminal background checks on school employees was enacted in Louisiana in 1986. This is the same year that the courts defined negligent hiring in *Fallon v. Indian Trail School*.

5. Ten of the eleven SACS states require criminal background checks on some school personnel.
6. Of the ten states that require background checks:
 - a. Nine require investigation of certified applicants at the time of initial employment;
 - b. Eight require investigation of applicants for classified positions;
 - c. Three require investigation of current certified employees;
 - d. Three require investigation of current classified employees;
 - e. Two require investigation before state certification is granted;
 - f. One requires investigation of volunteers; and
 - g. One requires investigation of student teachers.
7. North Carolina does not require criminal background checks on any employee.

However, legislation requires that local units of education must establish a policy regarding whether and under what conditions such investigations will occur.
8. Of the ten states that require criminal background checks on school employees:
 - a. Nine states require that fingerprints be used.
 - b. Eight states require that the background check be conducted through the FBI.
 - c. Regarding cost of the investigation, six states require that the applicant or employee must pay the cost of the background check, one state requires that the employing agency must pay the cost, and three states do not have provisions stipulating who pays for the cost of the investigation.

- d. Five states allow the applicant to be employed pending receipt of the criminal background report. Georgia limits employment to 200 days. The other four states do not have a time limit.
- e. Five states provide information that limit or prohibit employment based on findings of a criminal background. Of these states, three list specific crimes that will prohibit the applicant or employee from employment, one prohibits employment of any person who has been convicted of a felony crime or Class A misdemeanor, and one prohibits employment of those who have a history of moral turpitude or do not have a clear FBI check. Five states do not have provisions that limit employment.
- f. Five state statutes have provisions that provide for confidentiality of the criminal background record.
- g. Four state statutes have provisions that allow persons to appeal a denial of employment based on the criminal background record.
- h. Three state statutes require that the person to be investigated must give written permission for the investigation.
- i. Three states have statutes that require that state law enforcement agencies must respond to a request for a criminal background check from a school agency. In addition, Georgia's law requires that the local law enforcement agency must fingerprint the person required to be investigated, although there is no law requiring any further response from law enforcement personnel.
- j. Two state statutes provide penalties for noncompliance of the statute.

Descriptive Tables

Some of the findings discussed in the preceding analysis can be summarized and compared using a table. The information has been compiled into tables to help clarify the status of legislation in the SACS states. Issues that are addressed through the tables are:

1. Who must be investigated (Table 1),
2. The law gives permission to investigate others (Table 2),
3. Fingerprints are required (Table 3),
4. Agency responsible for implementation (Table 3),
5. Penalties for noncompliance (Table 3),
6. State agency to which requests are made (Table 3),
7. The state investigating agency is required to respond (Table 3),
8. The criminal background check request must be submitted to the FBI (Table 3),
9. What is requested (Table 3),
10. Information required to be reported by the state agency (Table 3),
11. Permission from the applicant or current employee is required (Table 3),
12. Employment is allowed prior to the receipt of the criminal check (Table 3),
13. Restrictions are placed on employment as a result of the criminal background check (Table 3),
14. Provisions are made to appeal restrictions on employment (Table 3),
15. The law provides for confidentiality of the criminal background record (Table 3),
and,
16. Who is responsible for the cost of the criminal background check (Table 3).

Table 1: Who Must Be Investigated

			AL	FL	GA	KY	LA	MS	NC	SC	TN	TX	VA
Public Schools	Certified Personnel	Applicants	X	X	X	X	X	X		X	X	X	X
		Current Employees	X		X		X					X	
	Classified Personnel	Applicants	X	X	X	X	X	X			X		X
		Current Employees	X		X		X						
	Volunteers					X							
	Student Teachers			X									
Private/ Parochial Schools	Certified Personnel	Applicants	X										X
		Current Employees	X										
	Classified Personnel	Applicants	X										X
		Current Employees	X										
	Volunteers												
	Student Teachers												
Applicants for Certification				X						X			

Additional relative information:

AL - 1) Required for current employees under review.

2) Exempts church officials who are not acting in the capacity of a full-time regular classroom teacher.

KY – Not required of current employees except non-faculty coaches and assistant coaches

LA – Required only of persons who have or will have supervisory or disciplinary authority over children.

SC - Required for any noncertified teacher in a charter school

TN – 1) Required only for persons who will have proximity to schoolchildren.

2) Not required for a retired teacher if the application is being made to the local board of education from which the teacher retired.

3) No person may drive a school bus unless he/she has completed a CBC.

TX – 1) Required for all employees and volunteers of a charter school

2) Required for any employee of any agency that contracts with the public school for transportation services

Table 3: Other Issues

	AL	FL	GA	KY	LA	MS	NC	SC	TN	TX	VA
Fingerprints Are Required	X	X	X	X	X	X	X	X	X		X
There are penalties to the agency for noncompliance with this law	X				X						
The state investigating agency is required to respond	X		X*		X		X				X
The criminal background check request must be submitted to the FBI	X	X	X	X	X	X	X	X			X
Permission from the applicant or current employee is required	X				X		X		X		
Employment is allowed prior to the receipt of the criminal background check	X	X	X	X	X		X				
Restrictions are placed on employment due to a criminal background		X		X	X	X	X	X			
There is provision to appeal restrictions on employment	X				X	X	X	X			
The law provides for confidentiality of the criminal background record	X	X			X	X	X				X
Who is responsible for the cost of the criminal background check	Applicant or employee	X	X	X**			X		X	X	X
				X**		X		X			

*GA - Statute states that it is the duty of each law enforcement agency in this state to fingerprint persons required to be fingerprinted. No other Georgia agencies are required to respond.

**GA – Statute states that the cost may be borne by either the local unit of education or the person under review.

NC – Notations in the column of North Carolina are based on provisions that allow these actions rather than provisions that require them.

Conclusions

For the protection of children, there is clearly a need for effective legislation to provide guidance to local units of education regarding who should and should not work with children. However, there are significant variations in the requirements of states in the SACS states in regards to criminal background checks on school personnel. Some states are very thorough, mandating conditions under which personnel are screened, how the screening is to be done, and how to use the results of the investigation. Others are very general, and one state does require screening. This study concluded that:

1. Three states, including Georgia, require background checks of all employees, but do not require background checks on volunteers or student teachers. Other states require only certified employees or only new hires. No state requires that all of the people who work with children in school systems be investigated.
2. Most states require a national background check, but two states do not. One state does not require fingerprints, conducting the investigation with only information from the applicant. Without a national background check or fingerprints to verify the applicant's identity, these states may risk an incomplete report and, thereby, put children at risk.
3. Only four states require their law enforcement personnel to respond to the request for a criminal background check. These four do not place time restrictions on the response.
4. School systems that follow the specifically required provisions of the laws of their state may still place children at risk. For instance, Georgia requires that all personnel be screened, but does not mandate how this information is to be used.

Only five states specify conditions under which the person is to be denied access to children. Without clear guidelines regarding who may and may not work with children, school districts must continue to exercise discretionary authority over hiring and retention of employees in this matter. Such discretionary authority does not provide consistency across school districts and places children at risk if the school administration does not use good judgment in making decisions.

5. Only two states provide penalties to the local unit of education for noncompliance with the requirements of conducting background checks, and those sanctions are relatively weak.
6. Five states allow the employee to work with children pending the receipt of the background check. In addition, only Georgia limits this time, and the limit under Georgia law is more than one school year.
7. In considering the rights of the individual in regards to criminal background checks, statutes do not always provide for confidentiality of the report or for a process to appeal the contents of the report. Only five state statutes contain a provision ensuring confidentiality and only four allow for an appeal if the criminal background report results in a decision to dismiss or not to hire the individual.

Recommendations

Based on the findings of this study, education policy makers may want to consider the following provisions to better ensure that state policy will produce the desired results in prohibiting access to children by those who should not be allowed that access.

1. Everyone should be investigated who has access to children, including all employees, volunteers, substitute teachers, student teachers, and employees of agencies who contract with the school to provide services to students.
2. Fingerprints should be obtained from all persons in order to conduct the investigation.
3. A criminal background check should be requested through both state and national law databases.
4. Local units of education who do not comply with the law should be penalized, and penalties should be serious enough to provide a sufficient incentive for compliance.
5. Local units of education should not allow personnel to work with children until the criminal background check is completed.
6. State law enforcement agencies should be required to complete the criminal background check in a timely manner. Lawmakers, through consultation with law enforcement agencies, should set the timeline so that schools may complete the required check in a reasonable time.
7. Clear guidelines should be established that regulate who may and may not be given access to children based on criminal background. Guidelines should list specific crimes that would prohibit such access.
8. There should be provisions to allow for an appeal if employment is denied based on criminal background. Statutes should list circumstances to be considered in such an appeal.

9. To protect the rights of all persons, the statutes should ensure confidentiality of the criminal background record.

Criminal background checks for school personnel will not stop child abuse in the schools. No system can be devised to tell us whether a person will become a pedophile or commit some other crime against a child. There is no sure protection for our children from those who would hurt them. A criminal background check can, however, tell us if that person has been found to have committed such crimes before. Such investigations can ensure that previous offenders do not get a chance to become repeat offenders through gaining access to children in the public schools.

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APPENDIX A – ALABAMA

Section 16-22A-2

Under the National Child Protection Act of 1993, Public Law 103-209, 42 U.S.C. 5119, et seq., the states are required to implement a computerized information system to provide child abuse crime information through the Federal Bureau of Investigation National Criminal History Record Information System and may conduct a nationwide criminal history background check for the purpose of determining whether an individual who will have unsupervised access to children is suitable for employment or has been convicted of a crime that bears upon the individual's fitness to teach or have responsibility for the safety and well-being of children as defined in this chapter.

The Legislature finds that there is a compelling state interest and it is in the best interest of the children of Alabama to protect them from those persons who may inflict physical or mental injury or abuse, sexual abuse or exploitation, or maltreatment or other mistreatment upon children. Therefore, in establishing the Alabama Child Protection Act of 1999, it is the Legislature's intent to provide for the implementation of a system that allows the State Superintendent of Education, local boards of education, and other nonpublic schools to ensure that prospective employees and certain current employees are suitable for employment and have not been convicted of a crime that bears upon their fitness to teach or to have responsibility for the safety and well-being of children as defined in this chapter.

(Act 99-361, p. 566, & amp; sect; 2)

Section 16-22A-3 Definitions.

When used in this chapter only, the following terms shall have the following meanings, respectively:

- (1) **APPLICANT.** An individual who submits an application for employment to a local employing board or any nonpublic school, to act in any capacity in which the applicant will have unsupervised access to children in an educational environment. Applicants shall further include any person seeking certification issued by the State Superintendent of Education.
- (2) **AUTHORIZED EMPLOYER.** Any educational entity authorized to obtain criminal history background information, including the State Department of Education, local employing boards, and nonpublic schools which are responsible for hiring employees or contracting with private employers to provide personnel who have unsupervised access to children in an educational setting.
- (3) **CHIEF EXECUTIVE OFFICER.** The State Superintendent of Education; the superintendent of any public county or city school system; the President of the Alabama Institute for Deaf and Blind; the Executive Director of the Alabama School of Fine Arts; the Superintendent of the Department of Youth Services School District; the Executive Director of the Alabama High School of Mathematics and Science; the superintendent of any nonpublic school, or in the absence of a superintendent, the headmaster of any nonpublic school; and the head of any department or employer covered by this chapter but not specifically enumerated herein.

- (4) **CHILD or CHILDREN.** Any person under the age of 19 years, or any youth who suffers from a disability thereby rendering the youth a child for the purpose of receiving elementary and secondary education at public expense, notwithstanding their chronological age.
- (5) **CRIMINAL HISTORY BACKGROUND INFORMATION CHECK.** The review of any and all records containing any information collected and stored in the criminal record repository of the Federal Bureau of Investigation, the Alabama Department of Public Safety, or any other repository of criminal history records, involving an arrest or conviction by a criminal justice agency, including, but not limited to, child abuse crime information as defined by 42 U.S.C. 5119, the National Child Protection Act of 1993, conviction record information, fingerprint cards, correctional induction and release information, identifiable descriptions and notations of convictions; provided, however, dissemination of such information is not forbidden by order of any court of competent jurisdiction or by federal law. Criminal history background information shall not include any analytical records or investigative reports that contain criminal intelligence information or criminal investigation information.
- (6) **CURRENT EMPLOYEE.** Any person who is employed by a local employing board or nonpublic school who has or seeks to have unsupervised access to a child or children, in an educational setting and any person employed to serve an authorized employer as defined in this chapter, including those individuals that provide services to local employing boards or nonpublic schools, when the person so employed has unsupervised access to children in an educational environment.
- (7) **CURRENT EMPLOYEE UNDER REVIEW.** Any current employee whose professional certificate or employment status is under review based upon reasonable suspicion.
- (8) **EDUCATIONAL ENVIRONMENT OR SETTING.** Any building, structure, or location whether public or private property, or vehicle, utilized to or involved in the providing of education, training, instruction, or supervision to children or transportation in connection with such activity provided by a local board of education or nonpublic school.
- (9) **LOCAL EMPLOYING BOARD.** Any public county or city school system which falls under the jurisdiction of the State Board of Education and the State Superintendent of Education, the Alabama Institute for Deaf and Blind, the Alabama School of Fine Arts, Department of Youth Services School District, the Alabama High School of Mathematics and Science, and any public educational employer covered by this chapter but not specifically enumerated herein.
- (10) **NONPUBLIC SCHOOL.** Any nonpublic or private school, including parochial schools, not under the jurisdiction of the State Superintendent of Education and the State Board of Education, yet providing educational services to children. Parents engaged in the home schooling of their own children are specifically excluded from this chapter.
- (11) **REASONABLE SUSPICION.** Belief by a prudent person that reasonable articulable grounds exist to suspect that the employee's past or present behavior should be reviewed to determine if such behavior or conduct bears upon the

individual's fitness to teach or have responsibility for the safety and well-being of children as defined in this chapter.

- (12) **SUITABILITY CRITERIA FOR EMPLOYMENT.** Any noncertified teacher in a nonpublic school or classified employee or applicant in a nonpublic school for employment who has not been convicted of a child abuse crime, as defined herein as a crime committed under the law of the state that involves the physical or mental injury, sexual abuse or exploitation, or maltreatment of a child, shall be deemed suitable for employment.
- (13) **UNSUPERVISED ACCESS TO A CHILD OR CHILDREN.** During the providing of education, training, instruction, supervision to children, or other employment related activities or responsibilities, a person would have unaccompanied control, governance, or contact with a child or children.
- (14) **WRITTEN CONSENT.** A signed statement by the applicant or a current employee under review containing all of the following:
 - a. The name, address, date of birth, race, gender, and social security number appearing on a valid identification document as defined in subsection (d) of 18 O.K. 1028.
 - b. A statement that the applicant or current employee under review has not been convicted of a crime that bears upon the applicant's or employee's fitness to teach or to have responsibility for the safety and well-being of children as defined in this chapter, and if convicted of such a crime, a description of the crime and the particulars of the conviction.
 - c. Notice to the applicant or current employee under review, where reasonable suspicion exists regarding the current employee, that a background check is going to be requested.
 - d. Notice to the applicant or current employee under review who is the subject of the background check of the right to obtain a copy of the background check report, challenge the accuracy and completeness of any information contained in the report, and to obtain a prompt determination as to the validity of such challenge before a decision to retain or hire for employment is made by the employer.
 - e. Notice to the applicant or current employee under review that before a background check is made, the applicant may be denied unsupervised access to children or the opportunity to serve based upon the information contained in the criminal history background check or that employment or service or both may be restricted by the employing entity according to written policy.
 - f. Notice to the applicant that refusal to give written permission for a criminal history background check will result in the applicant not being hired.
 - g. Notice to the applicant or current employee under review that failure to reveal a prior conviction that would bear upon the individual's fitness to teach or to have responsibility for the safety and well-being of children, or any other convictions, may cause the applicant, if later employed, to face dismissal, in accordance with existing applicable statutes, for falsifying the employment application information.
 - h. Notice to the applicant or current employee under review of his or her due process rights.

- i. Notice to the applicant or current employee under review seeking employment or employed by a nonpublic school that the State Superintendent of Education will provide a suitability determination based upon the Federal Bureau of Investigation criminal history information report and the criteria defined herein to the chief executive officer of the nonpublic school.
(Act 99-361, p. 566, § 3; Act 2000-274, § 1)

Section 16-22A-4 Initiation of request for criminal history background check.

Any person who wishes to initiate a request for a criminal history background check of a current employee shall be required to provide a written signed statement to the designated chief executive officer of an authorized employer containing the reasonable articulable grounds supporting a request and initiation of review.
(Act 99-361, p. 566, & sect; 4.)

Section 16-22A-5 Agencies required to conduct criminal history background information checks.

- (a) A criminal history background information check shall be conducted on all applicants seeking positions with, and on all current employees under review employed by any local employing board and any State Department of Education personnel who have unsupervised access to and provide education, training, instruction, or supervision for children in an educational setting.
- (b) A criminal history background information check shall be conducted on all applicants seeking positions with, and on all current employees under review employed by any nonpublic school, who have unsupervised access to or who provide education, training, instruction, or supervision for children in an educational setting.
- (c) No institution listed in subsection (a) or (b) shall hire an individual who may have unsupervised access to a child without first obtaining a criminal history background information check, except on a temporary emergency basis. In the event that this exception is used and a position must be filled by the employer due to exigent circumstances, an applicant may be placed on payroll until such time as the Department of Public Safety completes a background check on the employee.
- (d) Criminal history background information reports for public school applicants and employees shall be sent to the State Department of Education. The State Department of Education shall forward the report to the chief executive officer of the local employing board originating the request for the information within a reasonable time from the State Department of Education's receipt of the report from the Alabama Bureau of Investigation. Any adverse employment action taken as a result of the report of the criminal history background check shall be in accordance with all existing applicable statutes.
- (e) Nationwide criminal history background information reports for nonpublic school employees shall be sent directly from the Department of Public Safety to the State Department of Education within a reasonable time from the receipt of the report from the Alabama Bureau of Investigation. Thereafter, the State Superintendent of Education shall review the criminal history record information report and determine whether the applicant meets the suitability criteria for employment.

- The State Superintendent of Education shall issue a suitability determination to the chief executive officer of the nonpublic school requesting the determination.
- (f) Mandatory criminal history background information checks shall be performed by the Department of Public Safety upon request by any public entity authorized to make a request and shall be forwarded to the requesting party in a standardized format. The Department of Public Safety shall provide an Alabama Bureau of Investigation criminal history background check within a reasonable time of the receipt of such request. Criminal history background checks shall be requested by the Department of Public Safety from the Federal Bureau of Investigation within a reasonable time of receipt of such request.
 - (g) The Department of Public Safety, upon receipt of the criminal history background information report from the Federal Bureau of Investigation, shall forward such report to the State Department of Education within a reasonable time of the receipt of the report by certified mail. A copy of any report from the Department of Public Safety or the Federal Bureau of Investigation shall be sent concurrently to the applicant or current employee under review by certified mail. The fee charged for mandatory criminal history background information checks shall not exceed the statutory and regulatory amounts set under existing guidelines nor shall additional administrative fees of any kind, except for the cost of mailings, be charged which would increase the cost of the criminal history background information check. The applicant is responsible for the cost of the criminal history background information check of the applicant. If an employing entity requests a criminal history background information check for a current employee under review, the employer is responsible for the cost of the criminal history background check. When a noncertified job applicant is determined by the chief executive officer of the prospective employer to be financially unable to pay the costs of a criminal history background check, the prospective employer may pay the fee associated with the background check.
 - (h) The following persons shall obtain a signed and dated written consent to obtain criminal history background information checks for applicants and certain current employees who have unsupervised access to children in an educational setting as provided for in subsections (a) and (b):
 - (1) Persons designated by the public local employing board.
 - (2) Persons designated by the State Department of Education.
 - (3) Persons designated by any other nonpublic school.
 - (i) Refusal by an applicant or current employee under review to sign and date a consent to obtain a criminal history background information check and to provide two acceptable sets of fingerprints shall result in the preclusion of employment or certification of an applicant, or the continued employment or certification in a position requiring unsupervised access to children, until such time as written permission has been given to the employer or appropriate chief executive officer to conduct the criminal history background information check.
 - (j) (1) No current employee under review shall be subjected to a criminal history background information check for only political or personal reasons. A review of a current employee shall be based upon reasonable suspicion.

- (2) A current employee under review shall be apprised of the reasons supporting a request for a criminal history background information check and shall be provided the opportunity to supply additional information on his or her behalf to the employer. Any personnel action taken against the current employee under review shall be in accordance with all applicable state and federal laws as well as any adopted applicable local policies or procedures.

(Act 99-361, p. 566, & amp; sect; 5.)

Section 16-22A-6 Authority of schools and other educational entities to request criminal history background information checks from Department of Public Safety; items necessary to request check.

- (a) The State Department of Education, or authorized public education employing entities responsible for hiring employees who will have unsupervised access to children in an educational setting, shall request through the State Department of Education, that the Department of Public Safety secure from the Federal Bureau of Investigation a criminal history background information check on an applicant or a current employee under review.
- (b) Any nonpublic school in which an individual may have unsupervised access to children in an educational setting, shall through its duly authorized representative under guidelines established by the nonpublic school employer, request the Department of Public Safety secure a state criminal history background information check and a criminal history background information check from the Federal Bureau of Investigation on an applicant or a current employee under review.
- (c) A request to the Department of Public Safety for a criminal history background information check shall be accompanied by the following:
- (1) Two complete functional sets of fingerprints, properly executed by a criminal justice agency or an individual properly trained in fingerprinting techniques.
 - (2) In the case of public education employment, written consent from the applicant or current employee under review for the release of criminal history background information to a specifically designated representative of the State Department of Education authorized to make the request.
 - (3) In the case of nonpublic school employment, written consent from the applicant or current employee under review for the release of criminal history background information to the State Superintendent of Education.
 - (4) A nonrefundable fee to be paid by the applicant or educational entity requesting the criminal history background information check which shall conform to the guidelines promulgated pursuant to 42 U.S.C. 5119, the National Child Protection Act of 1993, and state law. The job applicant shall not be required to pay the fee until the authorized employer is prepared to employ the applicant and request the criminal history background information check. An applicant for certification shall be required to submit two complete acceptable sets of fingerprints and the cost of the criminal history background information check at the time the application for certification is submitted to the State Department of Education. Any fee paid for which a criminal history background information check is not performed shall be refunded to the

applicant or educational entity requesting the criminal history background information check provided two sets of acceptable fingerprints have been provided to the State Department of Education.

(Act 99-361, p. 566, p. 566, & amp; amp; sect; 6)

Section 16-22A-7 Responsibilities of individuals to provide information.

- (a) An applicant for public employment or current public employee under review with the State Department of Education or local employing board, who has or will have unsupervised access to a child or children in an educational setting, shall, upon request, submit the following items to the State Department of Education.
 - (1) Two functional acceptable fingerprint cards, bearing the fingerprints of the individual, properly executed by a criminal justice agency or individual properly trained in fingerprinting techniques.
 - (2) Written consent authorizing the release of any criminal history background information to the State Department of Education and local employing board.
 - (3) A nonrefundable fee in the amount and manner specified by the Department of Public Safety. Any fee required in conjunction with a criminal history background information check of a current employee under review shall be paid by the requesting employing entity.
- (b) An applicant for nonpublic employment or current nonpublic employee under review, who has or will have unsupervised access to a child or children, in an educational setting, shall, upon request, submit the following items to the chief executive officer of the nonpublic school who shall forward such information to the Department of Public Safety:
 - (1) Two functional acceptable fingerprint cards, bearing the fingerprints of the individual, properly executed by a criminal justice agency or individual properly trained in fingerprinting techniques.
 - (2) Written consent authorizing the release of any criminal history background information to the State Superintendent of Education.
 - (3) Acknowledgment that the applicant or current employee under review, seeking employment or employed by a nonpublic school, received notice that the State Superintendent of Education will provide a suitability determination based upon the Federal Bureau of Investigation criminal history information report and the criteria defined herein to the chief executive officer of the nonpublic school.
 - (4) A nonrefundable fee in the amount and manner specified by the Department of Public Safety. Any fee required in conjunction with a criminal history background information check of a current employee under review shall be paid by the requesting employing entity.
- (c) The State Department of Education, local board of education, or other authorized public educational employer, may only request a criminal history background information check on any current employee under review having unsupervised access to a child or children in an educational setting, through the chief executive officer.
- (d) The nonpublic school employer may only request a criminal history background information check on any current employee under review having unsupervised

access to a child or children in an educational setting through the chief executive officer of the nonpublic school employer.
(Act 99-361, p. 566, & amp; sect; 7.)

Section 16-22A-8 Fingerprint training courses.

- (a) The Department of Public Safety and the State Department of Education shall cooperatively schedule sufficient training throughout the state to train all local superintendents of education or their duly appointed representatives in proper fingerprinting techniques.
- (b) The chief executive officers of nonpublic schools shall arrange with the Department of Public Safety for sufficient training in proper fingerprinting techniques of their superintendent, headmaster, or other duly appointed representatives.
- (c) The Department of Public Safety shall be responsible for notifying the State Superintendent of Education when and where training sessions will be held. The State Superintendent of Education shall be responsible for notifying the local superintendents.
- (d) Nonpublic schools required or desiring to participate in the training sessions will be responsible for contacting the Department of Public Safety for information concerning dates, times, and cost of training.
- (e) The State Superintendent of Education and the Department of Public Safety shall train sufficient personnel to ensure implementation of this chapter.
- (f) Nonpublic school employers required to submit fingerprint cards under the stipulations of this chapter shall be responsible for properly training their own representatives and ensuring the implementation of this chapter.
- (g) The Department of Public Safety may charge a reasonable fee for the training on proper fingerprinting techniques, provided that the fee shall be standard and equal for all participants in the program regardless of whether they represent public or private entities.
- (h) The Department of Public Safety shall furnish standard fingerprint cards to the State Department of Education, local employing boards, and upon request, to nonpublic schools to be used only by personnel who have been trained in fingerprinting techniques.

(Act 99-361, p. 566, & amp; sect; 8.)

Section 16-22A-9 Collection and transfer of fingerprints, fees, and information.

- (a) Local boards of education and other public educational entities required to obtain criminal history background information checks under this chapter shall collect and forward to the State Department of Education, two complete acceptable sets of fingerprints, written consent, and nonrefundable fee, when applicable, from applicants or current employees under review who have or seek to have unsupervised access to a child or children.
- (b) Nonpublic school employers shall voluntarily collect and forward two complete acceptable sets of fingerprints, written consent, and nonrefundable fee, when applicable, from applicants or current employees under review who have or seek

to have unsupervised access to a child or children to the Department of Public Safety to request a criminal history background information check.

- (c) When a local employing board sends the items listed in subsection (a) to the State Department of Education, the State Department of Education shall record receipt of the items and forward them to the Department of Public Safety to request a criminal history background information check.
- (d) When a nonpublic school collects the items listed in subsection (b) to forward to the Department of Public Safety, the superintendent, headmaster, or other designated representative of the nonpublic school shall be responsible for recording receipt of the items and forwarding them to the Department of Public Safety to request a criminal history background information check.
- (e) The Department of Public Safety shall forward criminal history background information of public applicants or employees to the office of the State Superintendent of Education.
- (f) Upon receipt of information requested by any public school, the State Department of Education shall take reasonable steps to verify any criminal history for which there was no disposition reported prior to forwarding such information to the chief executive officer for the requesting public local employing board. Any criminal history which would bear on the individual's fitness to teach or have responsibility for the safety and well-being of children or both shall be forwarded to the chief executive officer by certified mail. A copy of any report forwarded by the State Department of Education to a requesting educational entity shall be concurrently forwarded to the applicant or current employee under review by certified mail.
- (g) The Department of Public Safety shall forward state criminal history background information of nonpublic applicants or employees to the State Superintendent of Education.
- (h) Upon receipt of the criminal history record information report from the Federal Bureau of Investigation, the State Superintendent of Education shall review the criminal history record information and determine whether the nonpublic applicant for employment meets the suitability criteria for employment. The State Superintendent of Education shall issue a suitability determination to the chief executive officer of the nonpublic school requesting the determination.

(Act 99-361, p. 566, & sect; 9.)

Section 16-22A-10 confidentiality of information.

- (a) All reports of criminal history background information received by the State Department of Education, any local superintendent of a city or county board of education, or any nonpublic school from the Department of Public Safety shall be confidential and marked as such and not further disclosed or made available for public inspection.
- (b) All criminal history background information reports are specifically excluded from any requirement of public disclosure as a public record as the Legislature finds these documents to be sensitive personnel records.
- (c) Transmittal of any criminal history background information at any time shall be accomplished in a nontransparent package, sealed, and marked confidential with

instructions to be opened only by the person named on the package and authorized to receive the information pursuant to this chapter.

- (d) Without additional public disclosure, the following actions shall not be construed to violate this section:
 - (1) Showing the report of criminal history background information to the applicant or current employee under review to give him or her the opportunity to challenge the report.
 - (2) Releasing the report to a court of competent jurisdiction in the event of litigation brought by the applicant or current employee under review.
 - (3) Use of the information in preparation, investigation, and presentation during administrative proceedings involving revocation of certificate brought by the State Superintendent of Education, termination by the employer, or restriction on unsupervised access to a child in an educational setting.
- (e) Any person having access to criminal history background information check reports and releasing same as provided herein, shall be required to maintain a register consistent with the National Child Protection Act of 1993, Public Law 103-209, 42 U.S.C. 5119, et seq.
- (f) Nothing in this chapter shall be construed to prohibit the distribution of employment or certification status through the National Association of State Directors of Teacher Education and Certification Educator Identification Clearinghouse.

(Act 99-361, p. 566, & amp; amp; sect; 10.)

Section 16-22A-11 Rules and regulations.

The State Department of Education and the Department of Public Safety may adopt rules and regulations to implement the procedures and requirements of this chapter.

(Act 99-361, p. 566, & amp; amp; sect; 11.)

Section 16-22A-12 Penalties.

- (a) Violations. Any person convicted of any of the following actions under this chapter shall be guilty of a Class A misdemeanor:
 - (1) Violating the confidentiality of records provisions.
 - (2) Violating lawfully adopted policies which are provided for in this chapter.
 - (3) Knowingly, willfully, and intentionally making or transmitting a false report or complaint against a current employee or prospective employee without reason to believe the accuracy of such report or complaint.
- (b) False information or failure to disclose. Any person who knowingly submits false information concerning past convictions on an application for employment or other form required for disclosure of criminal convictions may be subject to loss of employment under provisions for termination according to the provisions of applicable existing statutes and to the loss of any certificate issued by the State Superintendent of Education under the provisions of this chapter.

(Act 99-361, p. 566, & amp; amp; amp; sect; 12.)

Section 16-22A-13 Liability.

A qualified educational entity shall not be liable in any action for damages solely for failure to conduct a criminal background check on an educational employee if such failure is due to reasonable time constraints of background check backlogs, nor shall the state or political subdivision thereof, nor any agency, officer, or employee thereof, be liable in any action for damages for the failure of a qualified entity to take action adverse to an individual who was the subject of a criminal history background information check. Neither the State Superintendent of Education, the State Department of Education, nor any agent thereof shall be liable in civil court in an action for damages arising out of any suitability determination. Nothing herein should be construed as a waiver of any sovereign or qualified immunity.

(Act 99-361, p. 566, & amp; sect; 13.)

Section 16-22A-14 Exceptions – Nonpublic Schools.

If a nonpublic school wishes not to do the fingerprinting procedure of their applicants, they shall not be required to do so, then the applicant to the nonpublic school shall request a criminal background check through the local board of education in the city or county in which such nonpublic school is located and the request shall be processed in the same manner as other applicants under the provisions of this chapter.

(Act 99-361, p. 566, & amp; sect; 14.)

Section 16-22A-15 Exceptions – Church Officials.

The provisions of this chapter shall not cover any pastor, priest, rabbi, clergyman, or other church official except when acting in the capacity of a full-time regular classroom teacher.

(Act 99-361, p. 566, & amp; sect; 15.)

Section 16-22A-16 Construction.

Nothing in this chapter shall be construed to establish state control over curriculum or the selection of personnel in private or parochial/church schools, nor is this chapter intended to establish additional regulatory authority over private or parochial/church schools.

(Act 99-361, p. 566, & amp; sect; 16.)

Section 16-22A-17 Disposition of fees.

All fees received by the Department of Public Safety for criminal history background information checks and fingerprint training courses conducted pursuant to this chapter shall be deposited to the Public Safety Automated Fingerprint Identification System Fund, to be appropriated to and expended by the Department of Public Safety in accordance with Section 32-2-61.

(Act 99-361, p. 566, & amp; sect; 17.)

Section 16-22A-18 Repealer.

This chapter is supplementary and shall be construed in pari materia with other laws; provided, however, that to the extent that this chapter specifically conflicts with other laws pertaining to criminal background checks, this law shall take precedence. Nothing contained within this chapter shall be construed to diminish, reduce, or conflict with the authority of the State Superintendent of Education to interpret and apply federal and state education law for the State of Alabama. Those portions of Sections 26-20-1 through 26-20-6 relating to criminal background checks of public, private, parochial, and home school employees are hereby repealed.

(Act 99-361, p. 566, & amp; amp; sect; 18.)

APPENDIX B – FLORIDA

1012.21 Department of Education duties; K-12 personnel. —

- (1) PERIODIC CRIMINAL HISTORY RECORD CHECKS. --In cooperation with the Florida Department of Law Enforcement, the Department of Education may periodically perform criminal history record checks on individuals who hold a certificate pursuant to s. 1012.56 or s. 1012.57.
- (2) COMPUTER DATABASE OF CERTAIN PERSONS WHOSE EMPLOYMENT WAS TERMINATED. —
 - (a) The Department of Education shall establish a computer database containing the names of persons whose employment is terminated under s. 1012.33(1)(a) or (4)(c), which information shall be available to the district school superintendents and their designees.
 - (b) Each district school superintendent shall report to the Department of Education the name of any person terminated under s. 1012.33(1)(a) or (4)(c) within 10 working days after the date of final action by the district school board on the termination, and the department shall immediately enter the information in the computer records.

History. --s. 696, ch. 2002-387.

1012.32 Qualifications of personnel.

- (2) (a) Instructional and non-instructional personnel who are hired to fill positions requiring direct contact with students in any district school system or university laboratory school shall, upon employment, file a complete set of fingerprints taken by an authorized law enforcement officer or an employee of the school or district who is trained to take fingerprints. These fingerprints shall be submitted to the Department of Law Enforcement for state processing and to the Federal Bureau of Investigation for federal processing. The new employees shall be on probationary status pending fingerprint processing and determination of compliance with standards of good moral character. Employees found through fingerprint processing to have been convicted of a crime involving moral turpitude shall not be employed in any position requiring direct contact with students. Probationary employees terminated because of their criminal record shall have the right to appeal such decisions. The cost of the fingerprint processing may be borne by the district school board or the employee.
- (b) Personnel who have been fingerprinted or screened pursuant to this subsection and who have not been unemployed for more than 90 days shall not be required to be refingerprinted or rescreened in order to comply with the requirements of this subsection.

History. -- s. 706, ch. 2002-387.

1012.35 Substitute teachers.—

Each district school board shall adopt rules prescribing the compensation of, and the procedure for employment of, substitute teachers. Such procedure for employment shall include, but is not limited to, the filing of a complete set of fingerprints as required in s. 1012.32.

1012.39 Employment of substitute teachers, teachers of adult education, nondegreed teachers of career education, and career specialists; students performing clinical field experience.—

- (1) Notwithstanding ss. 1012.32, 1012.55, 1012.56, and 1012.57, or any other provision of law or rule to the contrary, each district school board shall establish the minimal qualifications for:
 - (a) Substitute teachers to be employed pursuant to s. 1012.35. The qualifications shall require the filing of a complete set of fingerprints in the same manner as required by s. 1012.32.
 - (b) Part-time and full-time teachers in adult education programs. The qualifications shall require the filing of a complete set of fingerprints in the same manner as required by s. 1012.32. Faculty employed solely to conduct postsecondary instruction may be exempted from this requirement.
 - (c) Part-time and full-time nondegreed teachers of career and technical programs. Qualifications shall be established for agriculture, business, health occupations, family and consumer sciences, industrial, marketing, career specialist, and public service education teachers, based primarily on successful occupational experience rather than academic training. The qualifications for such teachers shall require:
 1. The filing of a complete set of fingerprints in the same manner as required by s. 1012.32. Faculty employed solely to conduct postsecondary instruction may be exempted from this requirement.

History.-- s. 714, ch. 2002-387.

1012.56 Educator certification requirements.—

- (2) ELIGIBILITY CRITERIA.--To be eligible to seek certification pursuant to this chapter, a person must:
 - (d) Submit to a fingerprint check from the Department of Law Enforcement and the Federal Bureau of Investigation pursuant to s. 1012.32. If the fingerprint reports indicate a criminal history or if the applicant acknowledges a criminal history, the applicant's records shall be referred to the Bureau of Educator Standards for review and determination of eligibility for certification. If the applicant fails to provide the necessary documentation requested by the Bureau of Educator Standards within 90 days after the date of the receipt of the certified mail request, the statement of eligibility and pending application shall become invalid.

1012.797 Notification of district school superintendent of certain charges against or convictions of employees.—

- (1) Notwithstanding the provisions of s. 985.04(4) or any other provision of law to the contrary, a law enforcement agency shall, within 48 hours, notify the

appropriate district school superintendent of the name and address of any employee of the school district who is charged with a felony or with a misdemeanor involving the abuse of a minor child or the sale or possession of a controlled substance. The notification shall include the specific charge for which the employee of the school district was arrested. Such notification shall include other education providers such as the Florida School for the Deaf and the Blind, university lab schools, and private elementary and secondary schools.

- (2) Except to the extent necessary to protect the health, safety, and welfare of other students, the information obtained by the district school superintendent pursuant to this section may be released only to appropriate school personnel or as otherwise provided by law.

History.-- s. 759, ch. 2002-387

APPENDIX C -- GEORGIA

19-7-5.

- (a) The purpose of this Code section is to provide for the protection of children whose health and welfare are adversely affected and further threatened by the conduct of those responsible for their care and protection. It is intended that the mandatory reporting of such cases will cause the protective services of the state to be brought to bear on the situation in an effort to prevent further abuses, to protect and enhance the welfare of these children, and to preserve family life wherever possible. This Code section shall be liberally construed so as to carry out the purposes thereof.
- (b) As used in this Code section, the term:
 - (1) "Abused" means subjected to child abuse.
 - (2) "Child" means any person under 18 years of age.
 - (3) 'Child abuse' means.
 - (A) Physical injury or death inflicted upon a child by a parent or caretaker thereof by other than accidental means; provided, however, physical forms of discipline may be used as long as there is no physical injury to the child;
 - (B) Neglect or exploitation of a child by a parent or caretaker thereof;
 - (C) Sexual abuse of a child; or
 - (D) Sexual exploitation of a child.
 However, no child who in good faith is being treated solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for that reason alone, be considered to be an "abused" child.
 - (3.1) "Sexual abuse" means a person's employing, using, persuading, inducing, enticing, or coercing any minor who is not that person's spouse to engage in any act which involves:
 - (A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;
 - (B) Bestiality;
 - (C) Masturbation;
 - (D) Lewd exhibition of the genitals or pubic area of any person;
 - (E) Flagellation or torture by or upon a person who is nude;
 - (F) Condition of being fettered, bound, or otherwise physically restrained on the part of a person who is nude;
 - (G) Physical contact in an act of apparent sexual stimulation or gratification with any person's clothed or unclothed genitals, pubic area, or buttocks or with a female's clothed or unclothed breasts;
 - (H) Defecation or urination for the purpose of sexual stimulation; or
 - (I) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure;
 "Sexual abuse" shall not include consensual sex acts involving persons of the opposite sex when the sex acts are between minors or between a minor

and an adult who is not more than five years older than the minor. This provision shall not be deemed or construed to repeal any law concerning the age or capacity to consent

- (4) "Sexual exploitation" means conduct by a child's parent or caretaker who allows, permits, encourages, or requires that child to engage in:
 - (A) Prostitution, as defined in Code Section 16-6-9; or
 - (B) Sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct, as defined in Code Section 16-12-100.

20-2-211.

- (e) (1) All personnel employed by a local unit of administration after July 1, 2000, whether or not such personnel hold certificates from the Professional Standards Commission, shall be fingerprinted and have a criminal record check made as required by this subsection. The local unit of administration shall have the authority to employ a person holding such a certificate under a provisional or temporary contract for a maximum of 200 days and to employ a person who does not hold such a certificate for a maximum of 200 days, in order to allow for the receipt of the results of the criminal record check. Teachers, principals, and other certificated personnel whose employment in a local unit of administration is renewed pursuant to this subpart after July 1, 2000, shall have a criminal record check made as required by this subsection upon any certificate renewal application to the Professional Standards Commission. The local unit of administration shall adopt policies to provide for the subsequent criminal record checks of noncertificated personnel continued in employment in the local unit of administration.
- (2) Fingerprints shall be in such form and of such quality as shall be acceptable for submission to the National Crime Information Center under standards adopted by the Federal Bureau of Investigation or the United States Department of Justice. It shall be the duty of each law enforcement agency in this state to fingerprint those persons required to be fingerprinted by this subsection.
- (3) At the discretion of local units of administration, fees required for a criminal record check by the Georgia Crime Information Center, the National Crime Information Center, the Federal Bureau of Investigation, or the United States Department of Justice shall be paid by the local unit of administration or by the individual seeking employment or making application to the Professional Standards Commission.
- (4) It shall be the duty of the State Board of Education to submit this subsection to the Georgia Bureau of Investigation for submission to the Federal Bureau of Investigation and the United States Department of Justice for their consent to conduct criminal record checks through the National Crime Information Center as required by federal law, rules, or regulations. No criminal record checks through the National Crime Information Center shall be required by this subsection unless and until such consent is given.
- (5) Information provided by the Georgia Crime Information Center or the National Crime Information Center shall be used only for the purposes allowed by Code Section 35-3-35 or by applicable federal laws, rules, or regulations.

- (6) The State Board of Education is authorized to adopt rules and regulations necessary to carry out the provisions of this subsection.

35-3-35.

- (a) The center shall be authorized to:
- (1) Make criminal history records maintained by the center available to public agencies, political subdivisions, authorities, and instrumentalities, including state or federal licensing and regulatory agencies or their designated representatives, under the following conditions:
 - (A) Public agencies or political subdivisions shall, at the time of the request, provide the fingerprints of the person whose records are requested or provide a signed consent of the person whose records are requested on a form prescribed by the center which shall include such person's full name, address, social security number, and date of birth;
 - (B) The center may not provide records of arrests, charges, or sentences for crimes relating to first offenders pursuant to Article 3 of Chapter 8 of Title 42 in cases where offenders have been exonerated and discharged without court adjudications of guilt, except as specifically authorized by law; and
 - (C) When the identifying information provided is sufficient to identify persons whose records are requested electronically, the center may disseminate electronically criminal history records of in-state felony convictions, pleas, and sentences without:
 - (i) Fingerprint comparison; or
 - (ii) Consent of the person whose records are requested;
 - (1.1) Make criminal history records maintained by the center available to any county board of registrars or county board of registration and election. The making of an application for voter registration shall be deemed to be consent of the person making the application to release such records to the county board of registrars or county board of registration and election. Such records shall be requested for the sole purpose of verification of information provided on voter registration cards by registration applicants; and
 - (2) Charge fees for disseminating records pursuant to this Code section which will raise an amount of revenue which approximates, as nearly as practicable, the direct and indirect costs to the state for providing such disseminations.
- (b) In the event an employment or licensing decision is made adverse to a person whose record was obtained pursuant to this Code section, the person will be informed by the public agency, political subdivision, authority or instrumentality, or licensing or regulatory agency making the adverse employment decision of all information pertinent to that decision. This disclosure shall include information that a record was obtained from the center, the specific contents of the record, and the effect the record had upon the decision. Failure to provide all such information to the person subject to the adverse decision shall be a misdemeanor.
- (c) Neither the center, its employees, nor any agency or employee of the state shall be responsible for the accuracy of information disseminated nor have any liability for defamation, invasion of privacy, negligence, nor any other claim in connection

with any dissemination pursuant to this Code section and shall be immune from suit based upon such claims.

- (d) Local criminal justice agencies may disseminate criminal history records to public agencies, political subdivisions, authorities, and instrumentalities, including state or federal licensing and regulatory agencies under the same conditions as set forth in paragraph (1) of subsection (a) of this Code section and may charge fees as necessary to reimburse such agencies for their direct and indirect costs associated with providing such disseminations.

- (d.1) When identifying information provided is sufficient to identify persons whose records are requested, local criminal justice agencies may disseminate criminal history records of in-state felony convictions, pleas, and sentences without:

- (1) Fingerprint comparison;
- (2) Prior contact with the center; or
- (3) Consent of the person whose records are requested.

Such information may be disseminated to entities to which such records may be made available under subsection (d) of this Code section under the conditions specified in subparagraph (a)(1)(B) of this Code section upon payment of the fee for the request and when the request is made upon a form prescribed by the center. Such agencies may charge and retain fees as needed to reimburse such agencies for the direct and indirect costs of providing such information and shall have the same immunity therefore as provided in subsection (c) of this Code section.

- (d.2) No fee charged pursuant to this Code section may exceed \$20.00 per person whose criminal history record is requested or be charged to any person or entity authorized prior to January 1, 1995, to obtain information pursuant to this Code section without payment of such fee.
- (e) The council is empowered to adopt rules, regulations, and forms necessary to implement this Code section.

APPENDIX D – KENTUCKY

160.151 Criminal background check on certified employees and student teachers in private, parochial, and church schools -- Fingerprinting -- Disclosure -- Employment of offenders by nonpublic schools.

- (1) (a) Beginning with the 2002-2003 school year, a private, parochial, or church school that has voluntarily been certified by the Kentucky Board of Education in accordance with the provisions of KRS 156.160(3) may require a national and state criminal background check on all new certified hires in the school and student teachers assigned to the school. Certified individuals who were employed in another certified position in a Kentucky school within six (6) months of the date of the hire and who had previously submitted to a national and state criminal background check for previous employment may be excluded from further national or state criminal background checks.
- (b) The national criminal history background check shall be conducted by the Federal Bureau of Investigation. The state criminal history background check shall be conducted by the Kentucky State Police or the Administrative Office of the Courts.
- (c) All fingerprints requested under this section shall be on an applicant fingerprint card provided by the Kentucky State Police. The fingerprint cards shall be forwarded to the Federal Bureau of Investigation by the Kentucky State Police after a state criminal background check has been conducted. Any fee charged by the Kentucky State Police, the Administrative Office of the Courts, or the Federal Bureau of Investigation shall be an amount no greater than the actual cost of processing the request and conducting the search.
- (2) If a school requires a criminal background check for a new hire, the school shall conspicuously include the following disclosure statement on each application or renewal form provided by the employer to an applicant for a certified position: "STATE LAW AUTHORIZES THIS SCHOOL TO REQUIRE A CRIMINAL HISTORY BACKGROUND CHECK AS A CONDITION OF EMPLOYMENT FOR THIS TYPE OF POSITION."
- (3) (a) A nonpublic school voluntarily implementing the provisions of this chapter may choose not to employ any person who is a violent offender as defined by KRS 17.165(2), has been convicted of a sex crime which is classified as a felony as defined by KRS 17.165(1), or has committed a violent crime as defined in KRS 17.165(3). A nonpublic school may employ, at its discretion, persons convicted of sex crimes classified as a misdemeanor.
- (b) If a school term has begun and a certified position remains unfilled or if a vacancy occurs during a school term, a nonpublic school implementing the provisions of this chapter may employ an individual who will have supervisory or disciplinary authority over minors on probationary status pending receipt of a criminal history background check.
- (c) Employment at a nonpublic school implementing the provisions of this chapter may be contingent on the receipt of a criminal history background check

documenting a record as a violent offender, of a sex crime, or of a violent crime as defined in KRS 17.165.

- (d) Nonpublic schools implementing the provisions of this chapter may terminate probationary employment under this section upon receipt of a criminal history background check documenting a record as a violent offender, of a sex crime, or of a violent crime as defined in KRS 17.165.

Effective: July 15, 2002

History: Created 2002 Ky. Acts ch. 285, sec. 1, effective July 15, 2002.

161.148 Use of volunteer personnel -- Criminal records check -- Orientation -- Exception.

- (1) As used in this section, "volunteers" means adults who assist teachers, administrators, or other staff in public school classrooms, schools, or school district programs, and who do not receive compensation for their work.
- (2) Local school districts may utilize adult volunteers in supplementary instructional and non-instructional activities with pupils under the direction and supervision of the professional administrative and teaching staff.
- (3) Each board of education shall develop policies and procedures that encourage volunteers to assist in school or district programs.
- (4) Each local board of education shall develop and adopt a policy requiring a state, criminal records check on all volunteers who have contact with students on a regularly scheduled or continuing basis, or who have supervisory responsibility for children at a school site or on school-sponsored trips. The request for records may be from the Justice Cabinet or the Administrative Office of the Courts, or both, and shall include records of all available convictions as described in KRS 17.160(1). Any request for a criminal records check of a volunteer under this subsection shall be on a form or through a process approved by the Justice Cabinet or the Administrative Office of the Courts. If the cabinet or the Administrative Office of the Courts charges fees, the local board of education shall arrange to pay the cost which may be from local funds or donations from any source including volunteers.
- (5) The local board of education shall provide orientation material to all volunteers who have contact with students on a regularly scheduled or continuing basis, including school policies, safety and emergency procedures, and other information deemed appropriate by the local board of education.
- (6) The provisions of this section shall not apply to students enrolled in an educational institution and who participate in observations and educational activities under direct supervision of a local school teacher or administrator in a public school.

Effective: June 21, 2001

History: Amended 2001 Ky. Acts ch. 60, sec. 1, effective June 21, 2001. -- Created 2000 Ky. Acts ch. 336, sec. 1, effective July 14, 2000.

161.185 Teacher or staff member to accompany students on school-sponsored or endorsed trips -- Exceptions.

- (1) Except as provided in subsection (2), boards of education shall require a member of the school faculty or a member of the administrative staff to accompany students on all school-sponsored or school-endorsed trips.
- (2) Boards of education may permit a nonfaculty coach or nonfaculty assistant, as defined by administrative regulation promulgated by the Kentucky Board of Education under KRS 156.070(2), to accompany students on all school-sponsored or school-endorsed athletic trips. A nonfaculty coach or nonfaculty assistant shall be at least twenty-one (21) years of age, shall not be a violent offender or convicted of a sex crime as defined by KRS 17.165 which is classified as a felony, and shall submit to a criminal record check under KRS 160.380.
- (3) Prior to assuming his or her duties, a nonfaculty coach or nonfaculty assistant shall successfully complete training provided by the local school district. The training shall include, but not be limited to, information on the physical and emotional development of students of the age with whom the nonfaculty coach and nonfaculty assistant will be working, the district's and school's discipline policies, procedures for dealing with discipline problems, and safety and first aid training. Follow-up training shall be provided annually.

Effective: July 15, 1998

History: Amended 1998 Ky. Acts ch. 178, sec. 1, effective July 15, 1998. -- Repealed and reenacted 1990 Ky. Acts ch. 476, Pt. V, sec. 482, effective July 13, 1990. -- Created 1968 Ky. Acts ch. 61, sec. 1.

160.380 School employees -- Restrictions on appointment of relatives, violent offenders, and persons convicted of sex crimes -- National and state criminal history background checks on applicants.

- (3) No superintendent shall employ in any position in the district any person who is a violent offender or has been convicted of a sex crime as defined by KRS 17.165 which is classified as a felony. The superintendent may employ, at his discretion, persons convicted of sex crimes classified as a misdemeanor.
- (4) (a) Beginning January 1, 1999, a superintendent shall require a national and state criminal background check on all new certified hires in the school district and student teachers assigned within the district. Excluded are certified individuals who were employed in another certified position in a Kentucky school district within six (6) months of the date of hire and who had previously submitted to a national and state criminal background check for the previous employment.
- (b) The superintendent shall require that each new certified hire and student teacher, as set forth in paragraph (a) of this subsection, submit to a national and state criminal history background check by the Kentucky State Police and the Federal Bureau of Investigation.
- (c) All fingerprints requested under this section shall be on an applicant fingerprint card provided by Kentucky State Police. The fingerprint cards shall be forwarded to the Federal Bureau of Investigation from the Kentucky State Police after a state criminal background check is conducted. The results of the state and federal criminal background check shall be sent to the hiring superintendent. Any fee charged by the Kentucky State Police and the

Federal Bureau of Investigation shall be an amount no greater than the actual cost of processing the request and conducting the search.

- (5) A superintendent shall require a state criminal background check on all classified initial hires.
 - (a) The superintendent shall require that each classified initial hire submit to a state criminal history background check by the Kentucky State Police.
 - (b) Any request for records under this section shall be on an applicant fingerprint card provided by Kentucky State Police. The results of the state criminal background check shall be sent to the hiring superintendent. Any fee charged by the Kentucky State Police shall be an amount no greater than the actual cost of processing the request and conducting the search.
- (6) (a) If a school term has begun and a certified or classified position remains unfilled or if a vacancy occurs during a school term, a superintendent may employ an individual, who will have supervisory or disciplinary authority over minors, on probationary status pending receipt of the criminal history background check. Application for the criminal record of a probationary employee shall be made no later than the date probationary employment begins.
 - (b) Employment shall be contingent on the receipt of the criminal history background check documenting that the probationary employee has no record of a sex crime nor as a violent offender as defined in KRS 17.165.
 - (c) Notwithstanding KRS 161.720 to 161.800 or any other statute to the contrary, probationary employment under this section shall terminate on receipt by the school district of a criminal history background check documenting a record of a sex crime or as a violent offender as defined in KRS 17.165 and no further procedures shall be required.
 - (d) The provisions of KRS 161.790 shall apply to terminate employment of a certified employee on the basis of a criminal record other than a record of a sex crime or as a violent offender as defined in KRS 17.165.
- (7) (a) Each application or renewal form, provided by the employer to an applicant for a classified position, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A STATE CRIMINAL HISTORY BACKGROUND CHECK AS A CONDITION OF EMPLOYMENT."
 - (b) Each application or renewal form, provided by the employer to an applicant for a certified position, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A NATIONAL AND STATE CRIMINAL HISTORY BACKGROUND CHECK AS A CONDITION OF EMPLOYMENT."
- (8) The provisions of subsections (4), (5), (6), and (7) of this section shall apply to a nonfaculty coach or nonfaculty assistant as defined under KRS 161.185.

Effective: June 21, 2001

History: Amended 2001 Ky. Acts ch. 60, sec. 3, effective June 21, 2001. -- Amended 1998 Ky. Acts ch. 178, sec. 2, effective July 15, 1998; ch. 362, sec. 1, effective July 15, 1998; ch. 467, sec. 1, effective July 15, 1998; and ch. 489, sec. 1, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 349, sec. 1, effective July

15, 1996; and ch. 362, sec. 6, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 192, sec. 1, effective July 15, 1994; and ch. 483, sec. 1, effective July 15, 1994. -- Amended 1992 Ky. Acts ch. 401, sec. 1, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 476, Pt. II, sec. 78, effective July 13, 1990; and ch. 518, sec. 7, effective July 13, 1990. -- Amended 1988 Ky. Acts ch. 345, sec. 4, effective July 15, 1988. -- Amended 1978 Ky. Acts ch. 155, sec. 82, effective June 17, 1978. -- Amended 1974 Ky. Acts ch. 88, sec. 1. -- Amended 1966 Ky. Acts ch. 89, sec. 11. -- Amended 1958 Ky. Acts ch. 126, sec. 18. -- Amended 1942 Ky. Acts ch. 113, sec. 13. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 4399-34.

APPENDIX E -- LOUISIANA

15:587.1. Provision of information to protect children

- A.(1) As provided in R.S. 15:825.3, R.S. 17:15, Children's Code Article 424, and R.S. 46:51.2 and 1441.13, any employer or others responsible for the actions of one or more persons who have been given or have applied to be considered for a position of supervisory or disciplinary authority over children shall request in writing that the bureau supply information to ascertain whether that person or persons have been convicted of, or pled nolo contendere to, any one or more of the crimes listed in Subsection C. The request must be on a form prepared by the bureau and signed by a responsible officer or official of the organization making the request. It must include a statement signed by the person about whom the request is made which gives his permission for such information to be released.
- (2) In addition to the requirements of Paragraph (1) of this Subsection, in responding to a request pursuant to R.S. 17:15, the bureau shall make available to the state Department of Education and to the governing authority of any elementary and secondary school a record of all criminal convictions for a period not to exceed ten years prior to the date of request. Any recipient of such information as provided in this Paragraph shall maintain the confidentiality of such criminal history information in accordance with applicable federal or state law.
- B. (1) Except as otherwise provided in Paragraph (2) of this Subsection relative to requests made pursuant to the provisions of R.S. 17:15, the bureau, upon receiving a request meeting the requirements of Subsection A of this Section, shall provide a report promptly and in writing, but provide only such information as is necessary to specify whether or not that person has been convicted of or pled nolo contendere to any such crime or crimes, the crime or crimes of which he has been convicted or to which he has pled nolo contendere, and the date or dates on which they occurred.
- (2) Upon receiving a request pursuant to the provisions of R.S. 17:15 that meets the requirements of Subsection A of this Section, the bureau of criminal identification and information shall survey its criminal history records and identification files and make a simultaneous request of the Federal Bureau of Investigation for like information from other jurisdictions. The bureau of criminal identification and information shall provide a report promptly and in writing, but provide only such information as is necessary to specify whether or not that person has been convicted of or pled nolo contendere to any such crime or crimes, the crime or crimes of which he has been convicted or to which he has pled nolo contendere, and the date or dates on which they occurred.
- C. The crimes to be reported under this Section are those defined in:
- (1) R.S. 14:30, R.S. 14:30.1, R.S. 14:31, R.S. 14:41 through R.S. 14:45, R.S. 14:74, R.S. 14:78, R.S. 14:79.1, R.S. 14:80 through R.S. 14:86, R.S. 14:89,

R.S. 14:89.1, R.S. 14:92, R.S. 14:93, R.S. 14:93.2.1, R.S. 14:93.3, R.S. 14:106, R.S. 14:282, R.S. 14:286, R.S. 40:966(A), R.S. 40:967(A), R.S. 40:968(A), R.S. 40:969(A), and R.S. 40:970(A) or convictions for attempt or conspiracy to commit any of those offenses;

- (2) Those of a jurisdiction other than Louisiana which, in the judgment of the bureau employee charged with responsibility for responding to the request, would constitute a crime under the provisions cited in this Subsection, and
- (3) Those under the Federal Criminal Code having analogous elements of criminal and moral turpitude.

D. (1) The costs of providing the information required under this Section shall be charged by the bureau to the private employer or to the department, office, or other agency of government which has given, or is considering giving, a person supervisory or disciplinary authority over children or which made the request for information pursuant to the provisions of R.S. 17:15. Neither the individual applicant nor a judge exercising juvenile jurisdiction shall bear such costs.

- (2) The prohibition in Paragraph (1) of this Subsection against an individual applicant bearing any of the costs of providing information shall not apply to requests made pursuant to the provisions of R.S. 17:15.

E. In addition to any penalties otherwise imposed under the provisions of this Chapter, the head of or other responsible person for any public entity who fails to comply with the provisions of Subsection A of this Section or who employs any person in violation of the provisions of R.S. 15:825.3, R.S. 17:15, or R.S. 46:51.2(A) or (B), shall be fined not more than five hundred dollars.

F. This Section may be cited as the "Louisiana Child Protection Act".

G. Notwithstanding any other provision of law to the contrary, the bureau and the Department of Public Safety and Corrections, corrections services, may utilize the National Crime Information Center to conduct such background checks as are required by this Section.

Acts 1986, No. 760, 1, eff. Jan. 1, 1987; Acts 1987, No. 735, 1; Acts 1989, No. 92, 1; Acts 1989, No. 198, 1; Acts 1989, No. 701, 1; Acts 1991, No. 125, 1; Acts 1993, No. 923, 1; Acts 1995, No. 1171, 1; Acts 1997, No. 904, 2, eff. July 10, 1997; Acts 1997, No. 1067, 1; Acts 1999, No. 816, 1; Acts 1999, No. 1052, 1, eff. July 1, 1999; Acts 1999, No. 1144, 1, eff. Jan. 1, 2000; Acts 2001, No. 314, 1, eff. June 6, 2001.

15:587.3. Volunteers and employees in youth-serving organizations; background information

A. A religious, charitable, scientific, educational, athletic or youth-serving institution or organization may require any person, who applies to work with children as a volunteer or as a paid employee, to do one or more of the following:

- (1) Agree to the release of all investigative records to such religious, charitable, scientific, educational, athletic, or youth-service institution or organization for examination for the purpose of verifying the accuracy of criminal violation information contained on an application to work for such institution or organization.

- (2) Supply fingerprint samples and submit to a criminal history records check to be conducted by the Louisiana State Police.
 - (3) Attend a comprehensive youth protection training program which includes adult training on recognition, disclosure, reporting, and prevention of abuse and submit to character, employment, education, and reference checks.
 - B. Any person who is requested to comply with the requirements set forth in Subsection A, and refuses to do so, shall be prohibited from working with children as a volunteer or as a paid employee.
- Acts 1999, No. 816, 1.

17.15 Criminal history review

- A.(1) No person who has been convicted of or has pled nolo contendere to a crime listed in R.S. 15:587.1(C) shall be hired by a public or private elementary or secondary school system as a teacher, substitute teacher, bus driver, substitute bus driver, janitor, or a school employee who might reasonably be expected to be placed in a position of supervisory or disciplinary authority over school children unless approved in writing by a district judge of the parish and the district attorney. This statement of approval shall be kept on file at all times by the school and shall be produced upon request to any law enforcement officer. Also, not later than thirty days after its being placed on file by the school, the school principal shall submit a copy of the statement of approval to the state superintendent of education.
- (2) (a) A city or parish school board shall dismiss:
 - (i) Any permanent teacher who has supervisory or disciplinary authority over school children upon the final conviction of such teacher of any crime listed in R.S. 15:587.1(C), except R.S. 14:74, and any permanent teacher who has pled nolo contendere to any crime listed in R.S. 15:587.1(C), except R.S. 14:74, after a hearing held pursuant to the provisions of Part II of Chapter 2 of this Title.
 - (ii) Any other school employee having supervisory or disciplinary authority over school children if such employee is convicted of or pleads nolo contendere to a crime listed in R.S. 15:587.1(C), except R.S. 14:74.
 - (iii) The superintendent of schools of any school system dismissing an employee pursuant to the provisions of this Paragraph shall notify the state superintendent of education of the employee's dismissal not later than thirty days after such dismissal.
- (b) A city or parish school board may reemploy a teacher or other school employee who has been convicted of a crime listed in R.S. 15:587.1(C), except R.S. 14:74, only upon written approval of the district judge of the parish and the district attorney, or upon written documentation from the court in which the conviction occurred stating that the conviction has been reversed, set aside, or vacated. Any such statement of approval of the judge and the district attorney and any such written documentation from the court shall be kept on file at all times by the school and shall be produced upon request to any law enforcement officer. Also, not later

than thirty days after its being placed on file by the school, the school principal shall submit a copy of any such statement of approval or written documentation from the court to the state superintendent of education.

- B. The board shall establish, by regulation, requirements and procedures consistent with the provisions of R.S. 15:587.1 under which the school systems shall determine whether an applicant or employee has been convicted of or pled nolo contendere to crimes listed in R.S. 15:587.1(C), except R.S. 14:74. Included in this regulation shall be the requirement and the procedure for the submission of a person's fingerprints in a form acceptable to the Louisiana Bureau of Criminal Identification and Information before employment of such person. A person who has submitted his fingerprints to the Louisiana Bureau of Criminal Identification and Information may be temporarily hired pending the report from the bureau as to any convictions of or pleas of nolo contendere by the person to a crime listed in R.S. 15:587.1(C), except R.S. 14:74.
- C. The State Board of Elementary and Secondary Education by rule adopted in accordance with the Administrative Procedure Act may establish requirements and procedures consistent with the provisions of R.S. 15:587.1 for the state Department of Education to determine whether an applicant for, or the recipient of, any certificate or license issued in accordance with state law or board policy, or both, by the department or by the board and who might reasonably be expected to be placed in a position of supervisory or disciplinary authority over school children has been convicted of or pled nolo contendere to crimes listed in R.S. 15:587.1(C). Included in this rule shall be the requirement and the procedure for the submission of a person's fingerprints in a form acceptable to the Louisiana Bureau of Criminal Identification and Information.
- D. For the purposes of this Section, city or parish school board shall mean the governing authority of any public elementary or secondary school.

Added by Acts 1986, No. 760, 2, eff. Jan. 1, 1987. Amended by Acts 1989, No. 14, 2; Acts 1990, No. 618, 1, eff. July 19, 1990; Acts 1993, No. 1056, 1, eff. July 13, 1992; Acts 1999, No. 1052, 2, eff. July 1, 1999.

17. 3991. Charter schools; requirements; limitations; renewal; amendment; revocation

E. A charter school shall not:

- (5) (a) Hire a person who has been convicted of or has plead nolo contendere to a crime listed in R.S. 15:587.1(C) as a teacher, substitute teacher, bus driver, substitute bus driver, janitor, or a school employee who might reasonably be expected to be placed in a position of supervisory or disciplinary authority over school children unless approved in writing by a district judge of the parish and the district attorney. This statement of approval shall be kept on file at all times by the school and shall be produced upon request to any law enforcement officer.
- (b) The board shall establish regulations, requirements, and procedures consistent with the provisions of R.S. 15:587.1 under which the school systems shall determine whether an applicant or employee has been convicted of or plead nolo contendere to crimes listed in R.S. 15:587.1(C), except R.S. 14:74. Included in this regulation shall be the requirement and

the procedure for the submission of a person's fingerprints in a form acceptable to the Louisiana Bureau of Criminal Identification and Information prior to employment of such person. A person who has submitted his fingerprints to the Louisiana Bureau of Criminal Identification and Information may be temporarily hired pending the report from the bureau as to any convictions of or pleas of nolo contendere by the person to a crime listed in R.S. 15:587.1(C), except R.S. 14:74.

Acts 1997, No. 477, § 1, eff. June 30, 1997; Acts 1999, No. 14, § 1; Acts 1999, No. 757, § 1, eff. July 2, 1999; Acts 1999, No. 1210, § 1; Acts 1999, No. 1339, § 1, eff. July 12, 1999; Acts 20

APPENDIX F -- MISSISSIPPI

37-3-51. Notification of Department of Education of conviction of licensed person of certain felonies of sex offenses.

- (1) Upon the conviction of any licensed personnel as defined in Section 37-9-17, employed by a public or private elementary or secondary school, of any felony, or of a sex offense as defined in subsection (2) of this section, the district attorney or other prosecuting attorney shall identify those defendants for the circuit clerk. Each circuit clerk shall provide the State Department of Education with notice of the conviction of any such personnel of a felony or a sex offense.
 - (2) "Sex offense" shall mean any of the following offenses:
 - (a) Section 97-3-65, Mississippi Code of 1972, relating to the carnal knowledge of a child under fourteen (14) years of age;
 - (b) Section 97-3-95, Mississippi Code of 1972, relating to sexual battery;
 - (c) Section 97-5-21, Mississippi Code of 1972, relating to seduction of a child under age eighteen (18);
 - (d) Section 97-5-23, Mississippi Code of 1972, relating to the touching of a child for lustful purposes;
 - (e) Section 97-5-27, Mississippi Code of 1972, relating to the dissemination of sexually oriented material to children;
 - (f) Section 97-5-33, Mississippi Code of 1972, relating to the exploitation of children;
 - (g) Section 97-5-41, Mississippi Code of 1972, relating to the carnal knowledge of a stepchild, adopted child, or child of a cohabitating partner;
 - (h) Section 97-29-59, Mississippi Code of 1972, relating to unnatural intercourse; or
 - (i) Any other offense committed in another jurisdiction which, if committed in this state, would be deemed to be such a crime without regard to its designation elsewhere.
 - (3) In addition, the State Department of Education is considered to be the employer of such personnel for purposes of requesting a criminal record background checks
- Sources: Laws, 1991, ch. 448, 1; Laws, 2000, ch. 499, 24, eff from and after July 1, 2000.

37-9-17. Selection of licensed employees or non-instructional employees to be employed for school year; increase in compensation of certain licensed employees; fingerprinting and criminal background checks for applicants.

- (2) Superintendents/directors of schools under the purview of the Mississippi Board of Education and the superintendent of the local school district shall require that current criminal records background checks and current child abuse registry checks are obtained, and that such criminal record information and registry checks are on file for any new hires applying for employment as a licensed or nonlicensed employee at a school and not previously employed in such school

under the purview of the Mississippi Board of Education or at such local school district prior to July 1, 2000. In order to determine the applicant's suitability for employment, the applicant shall be fingerprinted. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department of Public Safety to the FBI for a national criminal history record check. The fee for such fingerprinting and criminal history record check shall be paid by the applicant, not to exceed Fifty Dollars (\$50.00); however, the Mississippi Board of Education or the school board of the local school district, in its discretion, may elect to pay the fee for the fingerprinting and criminal history record check on behalf of any applicant. Under no circumstances shall a member of the Mississippi Board of Education, superintendent/director of schools under the purview of the Mississippi Board of Education, local school district superintendent, local school board member or any individual other than the subject of the criminal history record checks disseminate information received through any such checks except insofar as required to fulfill the purposes of this section.

- (3) If such fingerprinting or criminal record checks disclose a felony conviction, guilty plea or plea of nolo contendere to a felony of possession or sale of drugs, murder, manslaughter, armed robbery, rape, sexual battery, sex offense listed in Section 45-33-23(g), child abuse, arson, grand larceny, burglary, gratification of lust or aggravated assault which has not been reversed on appeal or for which a pardon has not been granted, the new hire shall not be eligible to be employed at such school. Any employment contract for a new hire executed by the superintendent of the local school district or any employment of a new hire by a superintendent/director of a new school under the purview of the Mississippi Board of Education shall be voidable if the new hire receives a disqualifying criminal record check. However, the Mississippi Board of Education or the school board may, in its discretion, allow any applicant aggrieved by the employment decision under this section to appear before the respective board, or before a hearing officer designated for such purpose, to show mitigating circumstances which may exist and allow the new hire to be employed at the school. The Mississippi Board of Education or local school board may grant waivers for such mitigating circumstances, which shall include, but not be limited to: (a) age at which the crime was committed; (b) circumstances surrounding the crime; (c) length of time since the conviction and criminal history since the conviction; (d) work history; (e) current employment and character references; (f) other evidence demonstrating the ability of the person to perform the employment responsibilities competently and that the person does not pose a threat to the health or safety of the children at the school.
- (4) No local school district or local school district employee or members of the Mississippi Board of Education or employee of a school under the purview of the Mississippi Board of Education shall be held liable in any employment discrimination suit in which an allegation of discrimination is made regarding an employment decision authorized under this Section 37-9-17.

Sources: Codes, 1942, §§ 6282-07, 6282-08, 6282-09; Laws, 1953, Ex Sess, ch. 20, §§ 7-9; Laws, 1960, ch. 300, § 3; Laws, 1981, ch. 499, § 5; Laws, 1986, ch. 492,

§ 68; Laws, 1989, ch. 491, § 1; Laws, 1997, ch. 545, § 8; Laws, 1998, ch. 408, § 2; Laws, 2000, ch. 486, § 1; Laws, 2000, ch. 587, § 1; Laws, 2001, ch. 500, § 12; Laws, 2002, ch. 583, § 1, eff from and after June 30, 2002.

APPENDIX G – NORTH CAROLINA

114-19.2. Criminal record checks of school personnel.

- (a) The Department of Justice may provide a criminal record check to the local board of education of a person who is employed in a public school in that local school district or of a person who has applied for employment in a public school in that local school district, if the employee or applicant consents to the record check. The Department may also provide a criminal record check of school personnel as defined in G. S. 115C-332 by fingerprint card to the local board of education from National Repositories of Criminal Histories, in accordance with G. S. 115C- 332. The information shall be kept confidential by the local board of education as provided in Article 21A of Chapter 115C.
- (b) The Department of Justice may provide a criminal record check to the employer of a person who is employed in a nonpublic school or of a person who has applied for employment in a nonpublic school, if the employee or applicant consents to the record check. For purposes of this subsection, the term nonpublic school is one that is subject to the provisions of Article 39 of Chapter 115C of the General Statutes, but does not include a home school as defined in that Article.
- (c) The Department of Justice shall charge a reasonable fee for conducting a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information.
- (c1) The Department of Justice may provide a criminal record check to the schools within the Department of Health and Human Services of a person who is employed, applies for employment, or applies to be selected as a volunteer, if the employee or applicant consents to the record check. The Department of Health and Human Services shall keep all information pursuant to this subsection confidential, as provided in Article 7 of Chapter 126 of the General Statutes.
- (d) The Department of Justice shall adopt rules to implement this section.
(1991, c. 705, s. 1; 1993, c. 350, s. 1; 1995, c. 373, s. 2; 1997-443, s. 11A.118(a).)

115C-238.29K. Criminal history checks.

- (a) As used in this section:
 - (1) "Criminal history" means a county, state, or federal criminal history of conviction of a crime, whether a misdemeanor or a felony, that indicates an individual (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as school personnel. These crimes include the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18,

Embezzlement; Article 19, False Pretense and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; and Article 60, Computer-Related Crime. These crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G. S. 18B-302 or driving while impaired in violation of G. S. 20-138.1 through G. S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

- (2) "School personnel" means any:
 - a. Member of the board of directors of a charter school,
 - b. Employee of a charter school, or
 - c. Independent contractor or employee of an independent contractor of a charter school if the independent contractor carries out duties customarily performed by school personnel, whether paid with federal, State, local, or other funds, who has significant access to students or who has responsibility for the fiscal management of a charter school.
- (b) The State Board of Education shall adopt a policy on whether and under what circumstances school personnel shall be required to be checked for a criminal history. The policy shall not require school personnel to be checked for a criminal history check before preliminary approval is granted under G. S. 115C-238.29B. The Board shall apply its policy uniformly in requiring school personnel to be checked for a criminal history. The Board may grant conditional approval of an application while the Board is checking a person's criminal history and making a decision based on the results of the check. The State Board shall not require members of boards of directors of charter schools or employees of charter schools to pay for the criminal history check authorized under this section.
- (c) The Board of Education shall require the person to be checked by the Department of Justice to (i) be fingerprinted and to provide any additional information required by the Department of Justice to a person designated by the State Board, or to the local sheriff or the municipal police, whichever is more convenient for the person, and (ii) sign a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the repositories. The State Board shall consider refusal to consent when deciding whether to grant final approval of an application under G. S. 115C-238.29D and when making an employment recommendation. The fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Department of Justice shall provide to the State Board

of Education the criminal history from the State and National Repositories of Criminal Histories of any school personnel for which the Board requires a criminal history check.

The State Board shall not require members of boards of directors of charter schools or employees of charter schools to pay for the fingerprints authorized under this section.

- (d) The State Board shall review the criminal history it receives on an individual. The State Board shall determine whether the results of the review indicate that the individual (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as school personnel and shall use the information when deciding whether to grant final approval of an application for a charter school under G. S. 115C-238.29D and for making an employment recommendation to the board of directors of a charter school. The State Board shall make written findings with regard to how it used the information when deciding whether to grant final approval under G. S. 115C- 238.29D and when making an employment recommendation.
- (e) The State Board shall notify in writing the board of directors of the charter school of the determination by the State Board as to whether the school personnel is qualified to operate or be employed by a charter school based on the school personnel's criminal history. At the same time, the State Board shall provide to the charter school's board of directors the written findings the Board makes in subsection (d) of this section and its employment recommendation. If the State Board recommends dismissal or nonemployment of any person, the board of directors of the charter school shall dismiss or refuse to employ that person. In accordance with the law regulating the dissemination of the contents of the criminal history file furnished by the Federal Bureau of Investigation, the State Board shall not release nor disclose any portion of the school personnel's criminal history to the charter school's board of directors or employees. The State Board also shall notify the school personnel of the procedure for completing or challenging the accuracy of the criminal history and the personnel's right to contest the State Board's determination in court.
- (f) All the information received by the State Board of Education or the charter school in accordance with subsection (e) of this section through the checking of the criminal history is privileged information and is not a public record but is for the exclusive use of the State Board of Education or the board of directors of the charter school. The State Board of Education or the board of directors of the charter school may destroy the information after it is used for the purposes authorized by this section after one calendar year.
- (g) There shall be no liability for negligence on the part of the State Board of Education or the board of directors of the charter school, or their employees, arising from any act taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance,

indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes. (1997-430, s. 2.)

115C-332. School personnel criminal history checks.

(a) As used in this section:

(1) "Criminal history" means a county, state, or federal criminal history of conviction of a crime, whether a misdemeanor or a felony, that indicates the employee (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as public school personnel. Such crimes include the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretense and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; and Article 60, Computer-Related Crime. Such crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G. S. 18B-302 or driving while impaired in violation of G. S. 20-138.1 through G. S. 20-138.5. In addition to the North Carolina crimes listed in this subparagraph, such crimes also include similar crimes under federal law or under the laws of other states.

(2) "School personnel" means any:

- a. Employee of a local board of education whether full-time or part-time, or
- b. Independent contractor or employee of an independent contractor of a local board of education, if the independent contractor carries out duties customarily performed by school personnel, whether paid with federal, State, local, or other funds, who has significant access to students. School personnel includes substitute teachers, driver training teachers, bus drivers, clerical staff, and custodians.

(b) Each local board of education shall adopt a policy on whether and under what circumstances an applicant for a school personnel position shall be required to be checked for a criminal history before the applicant is offered an unconditional job. Each local board of education shall apply its policy uniformly in requiring applicants for school personnel positions to be checked for a criminal history. A

local board of education that requires a criminal history check for an applicant may employ an applicant conditionally while the board is checking the person's criminal history and making a decision based on the results of the check.

A local board of education shall not require an applicant to pay for the criminal history check authorized under this subsection.

- (c) The Department of Justice shall provide to the local board of education the criminal history from the State and National Repositories of Criminal Histories of any applicant for a school personnel position in the local school administrative unit for which a local board of education requires a criminal history check. The local board of education shall require the person to be checked by the Department of Justice to (i) be fingerprinted and to provide any additional information required by the Department of Justice to a person designated by the local board, or to the local sheriff or the municipal police, whichever is more convenient for the person, and (ii) sign a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the repositories. The local board of education shall consider refusal to consent when making employment decisions and decisions with regard to independent contractors.

The local board of education shall not require an applicant to pay for being fingerprinted.

- (d) The local board of education shall review the criminal history it receives on a person. The local board shall determine whether the results of the review indicate that the employee (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as public school personnel and shall use the information when making employment decisions and decisions with regard to independent contractors. The local board shall make written findings with regard to how it used the information when making employment decisions and decisions with regard to independent contractors.
- (e) The local board of education shall provide to the State Board of Education the criminal history it receives on a person who is certificated, certified, or licensed by the State Board of Education. The State Board of Education shall review the criminal history and determine whether the person's certificate or license should be revoked in accordance with State laws and rules regarding revocation.
- (f) All the information received by the local board of education through the checking of the criminal history or by the State Board of Education in accordance with subsection (d) of this section is privileged information and is not a public record but is for the exclusive use of the local board of education or the State Board of Education. The local board of education or the State Board of Education may destroy the information after it is used for the purposes authorized by this section after one calendar year.
- (g) There shall be no liability for negligence on the part of a local board of education, or its employees, or the State Board of Education, or its employees, arising from any act taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be

actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Chapter 31 of Chapter 143 of the General Statutes. (1995, c. 373, s. 1.)

APPENDIX H – SOUTH CAROLINA

43-52. Application for Teaching Credential--Required Documentation.

The applicant must submit or have submitted to the Office of Teacher Education, Certification and Evaluation the following documentation:

6. Fingerprint Card: The complete FBI fingerprint review card must be submitted before an application can be processed. No applicant may receive an Induction or Professional Certificate without a clear FBI background check. Eligible applicants who have prior arrests and/or convictions must undergo a review by the State Board of Education and be approved before a certificate may be issued.

59-25-115. Applicant for initial certification to undergo state fingerprint review; cost.

All persons applying for initial certification to become certified education personnel in this State shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history and a fingerprint review to be conducted by the Federal Bureau of Investigation to determine any other criminal history.

The fee charged by the Federal Bureau of Investigation, if any, for the fingerprint review must be paid by the individual applying for initial certification.

59-40-60. Charter application; revision; formation of charter school; charter committee; application requirements. [SC ST SEC 59-40-60]

(E) A charter committee is responsible for and has the power to:

- (1) submit an application to operate as a charter school, sign a charter school contract, and ensure compliance with all of the requirements for charter schools provided by law;
- (2) employ and contract with teachers and nonteaching employees, contract for other services, and develop pay scales, performance criteria, and discharge policies for its employees. All teachers whether certified or noncertified must undergo the background checks and other investigations required for certified teachers, as provided by law, before they may teach in the charter school; and

APPENDIX I – TENNESSEE

49-5-406. Employment application, offer, and acceptance.

- (a) (1) Each local board of education or superintendent, as appropriate, shall require all persons applying for a position as a teacher as defined in 49-5-501, or for any other position requiring proximity to school children, to file, in writing, in advance of employment, on forms supplied by the commissioner of education or on forms provided by the local board of education or superintendent, as appropriate, an application stating whether such applicant:
 - (A) Has been convicted of a misdemeanor or a felony in this state or in any other state;
 - (B) Has been dismissed for any of the causes enumerated in 49-2-203 or 49-5-511, and
 - (C) Has or will provide a copy of a written resignation to the most recent local board where such person was employed at least thirty (30) days prior to the beginning date of such person's employment with the board to which application is being made; provided, that the thirty-day notice may be waived by the local board or superintendent, as appropriate, from which such person is resigning employment. The employing local board or superintendent, as appropriate, may rely upon the information submitted in writing by the applicant relative to the applicant's contractual or resignation status as being valid and accurate to meet the requirements of this section.
- (2) Knowingly falsifying information required by subdivision (a)(1) shall be sufficient grounds for termination of employment and shall also constitute a Class A misdemeanor which must be reported to the district attorney general for prosecution. The preceding sentence shall be conspicuously displayed on forms supplied for implementation of subdivision (a)(1). Language conspicuously displayed on such forms shall also advise applicants that the accuracy of such information may be verified by fingerprint and criminal history records check conducted by the TBI pursuant to 49-5-413(a).
- (d) Any person seeking employment in a state educational institution as a superintendent, principal, professor, teacher, tutor, instructor or any other person having in any way the custody and care of students of the public educational institutions of this state is required to make a full disclosure of any prior criminal record and any prior dismissals from employment for cause. A person who violates this subsection commits a Class A misdemeanor. Such person shall not be employed and, if employed despite a violation of this subsection, shall forfeit office.

Acts 1969, ch. 130, 1; 1973, ch. 178, 1; T.C.A., 49-1317, 49-1318; Acts 1989, ch. 591, 1, 6; 1992, ch. 535, 22; 1996, ch. 843, 1.

49-5-413. Investigation of applicants for teaching or child care positions

- (a) In addition to the requirements of 49-5-406, a local board of education or any child care program as defined in 49-1-1102 shall require any person applying for a position as a teacher and any person applying for any other position requiring proximity to school children or to children in a child care program to:
 - (1) Agree to the release of all investigative records to the board or child care program for examination for the purpose of verifying the accuracy of criminal violation information as required by 49-5-406(a) (1)(A); and
 - (2) Supply a fingerprint sample and submit to a criminal history records check to be conducted by the Tennessee bureau of investigation.
 - (b) Any retired teacher applying for a position as a teacher in accordance with the provisions of title 8, chapter 36, part 8, shall not be required to comply with the provisions of this section if the application is being made to the local board of education from which the teacher retired.
 - (c) Any reasonable costs incurred by the Tennessee bureau of investigation in conducting such investigation of an applicant shall be paid by the applicant the first time such applicant applies for a position with a local board of education or a child care program. The applicant shall be provided a copy of all criminal history records check documentation provided to the local board of education or child care program to which the applicant first applies. In lieu of additional criminal history records checks for subsequent applications, the applicant may submit copies of the applicant's initial criminal history records check documentation and shall not be required to pay any additional costs. Any local board of education or child care program may reimburse the applicant for the costs of the investigation if the applicant accepts a position as a teacher or any other position requiring proximity to schoolchildren or children in a child care program. Any local board of education or child care program may establish a policy authorizing payments for investigations of an applicant who provides school maintenance, clean up, food service and other such functions other than administrative or teaching functions or duties. A local board of education or child care program may pay for an investigation of such applicant regardless of whether the applicant accepts an offer for employment with such board of education or child care program.
- Acts 1993, ch. 350, 1; 1996, ch. 843, 2, 3; 1999, ch. 480, 1, 2; 2000, ch. 903, 3; 2000, ch. 981, 50.

49-6-2107. Certification of drivers and equipment.

- (a) No person shall be authorized to drive a school bus in this state unless such person possesses a certificate issued by the county board of education.
- (b) The county board of education is authorized to adopt rules and regulations prescribing the qualifications of school bus drivers in the interest of the safety and health of school pupils.
- (c) No person shall be issued such a certificate until an investigation has been made to determine whether or not such person has been found guilty of any criminal offense and such criminal records made a part of the person's permanent file.
- (d) In the event it should develop that school bus drivers and school bus equipment cannot be obtained in conformity with all the provisions of this part, the state board of education shall be authorized to issue temporary certificates to school

bus drivers and to permit the use of equipment on a temporary basis which does not meet the requirements of this part, to the end that school transportation may be provided to all the children of Tennessee at all times and through any emergency that might develop.

- (e) (1) Notwithstanding any other provision of law or rules and regulations adopted pursuant to subsection (b) to the contrary, no person shall be issued a certificate to drive a school bus in this state who, within five (5) years of such person's request for such a certificate, has been convicted in this state, or in any other jurisdiction, pursuant to a law prohibiting the same conduct, of a violation of any of the following.
 - (A) Driving under the influence of an intoxicant as prohibited by § 55-10-4-1;
 - (B) Vehicular assault as prohibited by § 39-13-106;
 - (C) Vehicular homicide as prohibited by § 39-13-213(a) (2);
 - (D) Aggravated vehicular homicide as prohibited by § 39-13-218; or
 - (E) Manufacture, delivery, sale, or possession of a controlled substance as prohibited by § 39-17-417.
- (2) If the request for a certificate to drive a school bus in this state occurs five (5) years or more after the date of any such conviction, the board of education, in its discretion, may issue the person such a certificate.

[Acts 1947, ch. 92, §§ 7, 15; C. Supp. 1950, §§ 2495.7, 2495.15 (Williams, §§ 2495.8, 2495.16); Acts 1974, ch. 653, § 1; T.C.A. (orig. ed.), §§ 49-2206, 49-2207; Acts 2002, ch. 820, § 1.]

APPENDIX J -- TEXAS

22.082. Access to Criminal History Records by State Board for Educator Certification

The State Board for Educator Certification shall obtain from any law enforcement or criminal justice agency all criminal history record information that relates to an applicant for or holder of a certificate issued under Subchapter B, Chapter 21.

Added by Acts 1995, 74th Leg., ch. 260, 1, eff. May 30, 1995.

22.083. Access to criminal history Records by Local and Regional Education Authorities

(a) A school district, private school, regional education service center, or shared services arrangement may obtain from any law enforcement or criminal justice agency all criminal history record information that relates to a person:

- (1) whom the district, school, service center, or shared services arrangement intends to employ in any capacity; or
- (2) who has indicated, in writing, an intention to serve as a volunteer with the district, school, service center, or shared services arrangement.

(b) An open-enrollment charter school shall obtain from any law enforcement or criminal justice agency all criminal history record information that relates to:

- (1) a person whom the school intends to employ in any capacity; or
- (2) a person who has indicated, in writing, an intention to serve as a volunteer with the school.

(c) A school district, open-enrollment charter school, private school, regional education service center, or shared services arrangement may obtain from any law enforcement or criminal justice agency all criminal history record information that relates to:

- (1) a volunteer or employee of the district, school, service center, or shared services arrangement; or
- (2) an employee of or applicant for employment by a person that contracts with the district, school, service center, or shared services arrangement to provide services, if:
 - (A) the employee or applicant has or will have continuing duties related to the contracted services; and
 - (B) the duties are or will be performed on school property or at another location where students are regularly present:

(d) The superintendent of a district or the director of an open-enrollment charter school, private school, regional education service center, or shared services arrangement shall promptly notify the State Board for Educator Certification in writing if the person obtains or has knowledge of information showing that an applicant for or holder of a certificate issued under Subchapter B, Chapter 21, has a reported criminal history.

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995.

Amended by Acts 2001, 77th Leg., ch. 1504, § 20, eff. Sept. 1, 2001.

22.084. Access to Criminal History Records of School Bus Drivers, Bus Monitors, and Bus Aides

- (a) Except as provided by Subsections (c) and (d), a school district, open-enrollment charter school, private school, regional education service center, or shared services arrangement that contracts with a person for transportation services shall obtain from any law enforcement or criminal justice agency all criminal history record information that relates to:
 - (1) a person employed by the person as a bus driver; or
 - (2) a person the person intends to employ as a bus driver.
- (b) Except as provided by Subsections (c) and (d), a person that contracts with a school district, open-enrollment charter school, private school, regional education service center, or shared services arrangement to provide transportation services shall submit to the district, school, service center, or shared services arrangement the name and other identification data required to obtain criminal history record information of each person described by Subsection (a). If the district, school, service center, or shared services arrangement obtains information that a person described by Subsection (a) has been convicted of a felony or a misdemeanor involving moral turpitude, the district, school, service center, or shared services arrangement shall inform the chief personnel officer of the person with whom the district, school, service center, or shared services arrangement has contracted, and the person may not employ that person to drive a bus on which students are transported without the permission of the board of trustees of the district or service center, the governing body of the open-enrollment charter school, or the chief executive officer of the private school or shared services arrangement.
- (c) A commercial transportation company that contracts with a school district, open-enrollment charter school, private school, regional education service center, or shared services arrangement to provide transportation services may obtain from any law enforcement or criminal justice agency all criminal history record information that relates to:
 - (1) a person employed by the commercial transportation company as a bus driver, bus monitor, or bus aide; or
 - (2) a person the commercial transportation company intends to employ as a bus driver, bus monitor, or bus aide.
- (d) If the commercial transportation company obtains information that a person employed or to be employed by the company has been convicted of a felony or a misdemeanor involving moral turpitude, the company may not employ that person to drive or to serve as a bus monitor or bus aide on a bus on which students are transported without the permission of the board of trustees of the district or service center, the governing body of the open-enrollment charter school, or the chief executive officer of the private school or shared services arrangement. Subsections (a) and (b) do not apply if information is obtained as provided by Subsection (c).

Added by Acts 1995, 74th Leg., ch. 260, 1, eff. May 30, 1995.

Amended by Acts 1997, 75th Leg., ch. 1438, 1, eff. Sept. 1, 1997.

22.085. Discharge of Employees Convicted of Offenses

A school district, open-enrollment charter school, private school, regional education service center, or shared services arrangement may discharge an employee if the district or school obtains information of the employee's conviction of a felony or of a misdemeanor involving moral turpitude that the employee did not disclose to the State Board for Educator Certification or the district, school, service center, or shared services arrangement. An employee discharged under this section is considered to have been discharged for misconduct for purposes of Section 207.044, Labor Code.

Added by Acts 1995, 74th Leg., ch. 260, 1, eff. May 30, 1995.

APPENDIX K – VIRGINIA

19.2-83.1. Report of arrest of school employees for certain offenses.

Every state official or agency and every sheriff, police officer, or other local law-enforcement officer or conservator of the peace having the power to arrest for a felony, upon arresting a person who is known or discovered by the arresting official to be a full-time, part-time, permanent, or temporary teacher or other employee in any public school division in this Commonwealth for a felony or a Class 1 misdemeanor or an equivalent offense in another state shall file a report of such arrest with the division superintendent of the employing division as soon as reasonably practical. The contents of the report required pursuant to this section shall be utilized by the local school division solely to implement the provisions of subsection B of 22.1-296.2 and 22.1-315.

1991, c. 2; 1996, cc. 958, 960; 1997, c. 721; 2001, c. 591.

22.1-296.2. Fingerprinting required; reciprocity permitted.

A. As a condition of employment, the school boards of the Commonwealth shall require any applicant who is offered or accepts employment after July 1, 1989, whether full-time or part-time, permanent, or temporary, to submit to fingerprinting and to provide personal descriptive information to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding such applicant. The school board may (i) pay for all or a portion of the cost of the fingerprinting or criminal records check or (ii) in its discretion, require the applicant to pay for all or a portion of the cost of such fingerprinting or criminal records check.

The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall report to the school board whether or not the applicant has ever been convicted of a felony or a Class 1 misdemeanor or an equivalent offense in another state.

To conserve the costs of conducting criminal history record checks to applicants and school boards, upon the written request and permission of the applicant, a school board shall inform another school board with which reciprocity has been established, and to which the applicant also has applied for employment, of the results of the criminal history record information conducted within the previous ninety days that it obtained concerning the applicant. Criminal history record information pertaining to an applicant for employment by a school board shall be exchanged only between school boards in the Commonwealth in which a current agreement of reciprocity for the exchange of such information has been established and is in effect. Reciprocity agreements between school boards shall provide for the apportionment of the costs of the fingerprinting or criminal records check between the applicant and the school board, as prescribed in this section. However, school boards that enter into reciprocity agreements shall not

each levy the costs of the fingerprinting or criminal records check on the applicant.

- B. The division superintendent shall inform the relevant school board of any notification of arrest of a school board employee received pursuant to 19.2-83.1. The school board shall require such employee, whether full-time or part-time, permanent, or temporary, to submit to fingerprinting and to provide personal descriptive information to be forwarded along with the employee's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding such employee. The school board may (i) pay for all or a portion of the cost of the fingerprinting or criminal records check or (ii) in its discretion, require the applicant to pay for all or a portion of the cost of such fingerprinting or criminal records check.

The Central Criminal Records Exchange, upon receipt of an employee's record or notification that no record exists, shall report to the school board whether or not the employee has been convicted of any of the offenses listed in subsection A of this section. The contents of the employee's record shall be used by the school board solely to implement the provisions of 22.10307 and 22.1-315.

- C. The Central Criminal Records Exchange shall not disclose information to the school board regarding charges or convictions of any crimes not specified in this section. If an applicant is denied employment or a current employee is suspended or dismissed because of information appearing on his criminal history record, the school board shall provide a copy of the information obtained from the Central Criminal Records Exchange to the applicant or employee. The information provided to the school board shall not be disseminated except as provided in this section.

1988, c. 851; 1989, c. 544; 1990, c. 766; 1991, c. 342; 1992, cc. 641, 791; 1993, cc. 210, 458; 1994, cc. 232, 782; 1995, cc. 731, 781, 809; 1996, cc. 396, 467; 1997, cc. 444, 721; 1998, c. 412; 1999, c. 448; 2000, cc. 683, 774, 811; 2001, cc. 591, 677.

22.1-296.3. Certain private school employees subject to fingerprinting and criminal records checks.

- A. As a condition of employment, the governing boards or administrators of private or parochial elementary or secondary schools which are accredited by a statewide accrediting organization recognized, prior to January 1, 1996, by the State Board of Education shall require any applicant who accepts employment for the first time after July 1, 1998, whether full-time or part-time, permanent or temporary, to submit to fingerprinting and to provide personal descriptive information to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding such applicant. The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall report to the governing board or administrator, or to a private organization coordinating such records on behalf of such governing board or administrator pursuant to a written agreement with the

Department of State Police, that the applicant meets the criteria or does not meet the criteria for employment based on whether or not the applicant has ever been convicted of the following crimes or their equivalent if from another jurisdiction: any offense set forth in § 63.2-1719 or § 63.2-1726, use of a firearm in the commission of a felony as set out in § 18.2-53.1, or an equivalent offense in another state.

- B. The Central Criminal Records Exchange shall not disclose information to such governing board, administrator, or private organization coordinating such records regarding charges or convictions of any crimes. If any applicant is denied employment because of information appearing on the criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon request, furnish the applicant the procedures for obtaining a copy of the criminal history record from the Federal Bureau of Investigation. The information provided to the governing board, administrator, or private organization coordinating such records shall not be disseminated except as provided in this section. A governing board or administrator employing or previously employing a temporary teacher or a private organization coordinating such records on behalf of such governing board or administrator pursuant to a written agreement with the Department of State Police may disseminate, at the written request of such temporary teacher, whether such teacher meets the criteria or does not meet the criteria for employment pursuant to subsection A to the governing board or administrator of another accredited private or parochial elementary or secondary school in which such teacher has accepted employment. Such governing board, administrator, or private organization transferring criminal records information pursuant to this section shall be immune from civil liability for any official act, decision or omission done or made in the performance of such transfer, when such acts or omissions are taken in good faith and are not the result of gross negligence or willful misconduct.

In addition to the fees assessed by the Federal Bureau of Investigation, the Department of State Police may assess a fee for responding to requests required by this section which shall not exceed fifteen dollars per request for a criminal records check.

For purposes of this section, "governing board" or "administrator" means the unit or board or person designated to supervise operations of a system of private or parochial schools or a private or parochial school accredited by a statewide accrediting organization recognized, prior to January 1, 1996, by the State Board of Education.

Nothing in this section or § 19.2-389 shall be construed to require any private or parochial school which is not so accredited to comply with this section.

(1996, c. 944; 1998, c. 113; 2002, c. 528.)