

SB

201

ALASKA STATE SENATE



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SENATE JUDICIARY COMMITTEE

Senator Ralph Seekins, Chairman
District D

Senate Bill 201 Sponsor Statement

“An Act relating to home care and respite care.”

Senate Bill 201 corrects errors identified by the Revisor of Statutes in Chapters 45 and 118, SLA 1994.

Specifically, Chapter 45 enacted various provisions containing a reference to a section that at the same time was repealed by Section 4 of Chapter 118. The section in question was former AS 12.62.035, relating to access to certain crime information. As a consequence of the enactment of these two bills, various sections contain a reference to something that no longer exists.

Senate Bill 201 corrects this error by replacing the repealed information with criminal history record information permitted by “Public Law 105-277 and Alaska Statute 12.62”.

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MEMORANDUM

December 18, 2002

SUBJECT: 2003 Additional Revisor's Bill (Work Order No. 23-LS0118\A)

TO: Senator Robin Taylor
Chair, Legislative Council

FROM: James P. Crawford 
Assistant Revisor

The following is a sectional analysis of a draft of an additional revisor's bill submitted separately from the general 2003 Revisor's Bill drafted by Pamela Finley.

Like the general revisor's bill, this bill is prepared under AS 01.05.036. However, this bill deals with a discreet set of related errors arising from the contemporaneous enactment of ch. 45, SLA 1994 and ch. 118, SLA 1994.

Specifically, ch. 45 enacted various provisions containing a reference to a section that at the same time was repealed by sec. 4 of ch. 118. The section in question was former AS 12.62.035, relating to access to certain crime information. As a consequence of the enactment of these two bills, various sections contain a reference to something that no longer exists. The sections in question are AS 47.05.017(a), AS 47.65.050(b), and 47.65.100(e), (enacted by ch. 45 and addressed presently in sections 1, 3, and 4, respectively) and AS 47.14.100(h) (based on AS 47.10.230, also enacted in ch. 45, and addressed presently in section 2). The solution proposed in this bill simply reflects the fact that AS 12.62.035 has been repealed and makes no substantive change.

That said, there may be a greater than usual possibility that the legislature will want to reject this proposed solution and move this set of corrections to another bill in which the problem may be addressed substantively.

This possibility is suggested by the fact that starting with ch. 118, the legislature in recent years has tended to frame its crime information request statutes in more up-to-date terms of "criminal justice information," a phrase currently defined in AS 12.62.900. If this phrase were implemented in place of "former AS 12.62.035(a)" as a solution to the problem, a substantive change would occur because "criminal justice information" yields more information than that yielded under former AS 12.62.035.

For example, one sub-category of criminal justice information is "past conviction information." This one sub-category of information alone would provide information

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concerning all misdemeanor offenses (as opposed to just some under former AS 12.62.035), as well as "the terms of any sentence, probation, suspended imposition of sentence, or discretionary or mandatory parole" and "information that a criminal conviction or sentence has been reversed, vacated, set aside, or been the subject of executive clemency" – information that former AS 12.62.035 did not cover.

Thus, resort to the "criminal justice information" example above as a solution to the problem, while perhaps a preferable alternative to the solution presented here, would represent a legislative policy choice more appropriately advanced through a substantive bill. However, because the possibility exists that the legislature may prefer this alternative, these related corrections have been gathered together and set out as a group in a separate revisor's bill as a means of providing a potentially convenient starting point for a substantive bill should the legislature elect to go that route.

TBC:lmb
02-167.lmb

Enclosure

Federal Statutes Authorizing Criminal Background Checks for Nursing Facility Job Applicants and Employees

There are approximately 15 federal laws that permit criminal background checks for civil (i.e., employment and licensing) purposes. Fingerprinting, either through electronic "live scans" or paper and ink "hard cards," is required for all federal criminal background checks conducted for employment and licensing purposes.

Three of these laws permit nursing facilities to seek criminal background checks on employees and job applicants. Two of the three laws, as amended, authorize nursing facilities to seek FBI criminal background information regardless of whether the state where the facility is located has enacted its own law to permit access to state criminal background records. The third law authorizes nursing facilities to seek federal criminal background checks if the state where the facility is located has enacted a law to authorize access to state criminal background information.

Current procedures under all three federal laws require nursing facilities to channel requests for FBI criminal background information through a designated state agency. (A list of State Agency Contacts is attached.) Summaries of each law's major provisions, advantages and limitations follow.

I. Public Law 105-277

Section 124 of Pub. L. 105-277, enacted in 1998, enables nursing facilities ("NFs") and home health care agencies ("HHAs") to request fingerprint-based national criminal history checks by the FBI for employees or job applicants for positions involving direct patient care. The NF or HHA seeking the background check must contact the designated state agency to obtain fingerprint cards and then must send the completed cards along with additional information from the applicant back to the state agency for processing. The state agency then will check its own criminal history record information (CHRI) and will forward the fingerprint cards to the FBI for a check of the FBI records. If any CHRI is found by the state, FBI, or both, the designated state agency will forward it to the NF or HHA for its use in making an employment determination for the applicant.

Pub. L. 105-277 does not require states to enact implementing legislation before NFs and HHAs can request federal criminal background checks of employees or job applicants. This is intended to give all NFs and HHAs nationwide the ability to seek access to the CHRI retained by the FBI. The statute does not specify that a law enforcement agency must take the individual's fingerprints, therefore it may be permissible for a private company to perform the actual fingerprinting.

II. National Child Protection Act of 1993

The National Child Protection Act of 1993, 42 U.S.C. § 5119a, was amended by the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322 § 320928, to allow for federal criminal background checks of individuals who work for, own, or operate a business that provides care to the elderly or individuals with disabilities, as well as those who are responsible for the safety and well-being of children. This statute was amended again in 1998 by the Volunteers for Children Act, Pub. L. 105-251 § 222, to allow for federal criminal background checks even when the state does not have an authorizing statute or regulations.

Under this law, "qualified entities" (as designated by the state) may request federal criminal background checks of a "provider" pursuant to specified guidelines. If a state has a statute or regulations that require qualified entities to request such federal background checks, the state procedures must be followed in addition to the federal guidelines. A "qualified entity" is defined as a business or organization, whether public, private, for-profit, not-for-profit, or voluntary that provides (or licenses or certifies others to provide) care or care placement services to children, the elderly, or individuals with disabilities. A "provider" is defined as any person who: is an employee, an applicant for employment, or a volunteer for a qualified entity; is an owner or operator of a qualified entity; or has or may have unsupervised access to a child to whom the qualified entity provides child care. Thus, under this statute, federal criminal background checks may be obtained for owners, operators, employees, volunteers, and job applicants of entities that provide health care services to children, the elderly or disabled. It should be noted that as long as the entity is "qualified," all of its employees and volunteers are amenable to backgrounding.

Therefore, the scope of employees and/or job applicants for whom criminal background checks can be sought is broader than under Pub. L. 105-277. Under both statutes, the health care employer submits the applicant's fingerprints and identification information to the designated state agency for processing. However, the NCPA, as amended, requires that the state agency make the determination of the applicant's fitness for the job, not the employer. Both statutes allow for federal criminal background checks in the absence of state implementing legislation.

III. Public Law 92-544

Passed by Congress in 1972, Pub. L. 92-544 is an appropriations statute that provides funding to the FBI for acquiring, collecting, classifying, preserving, and exchanging identification records with duly authorized officials of the federal government, the states,

cities, and other institutions. Under this federal law, health care employers have the ability to obtain federal criminal background checks of employees and job applicants, under certain conditions. First, there must be a state law authorizing health care employers to request such background checks from state and local government officials. Second, the authorizing state statute must be approved by the Attorney General of the United States.

Regulations implementing this law give the Director of the FBI the power and authority of the Attorney General to approve and conduct exchanges of identification records with officials of state and local governments for employment and licensing purposes if authorized by a state statute that has met the approval of the Attorney General. See 28 C.F.R. § 0.85(j). Pub. L. 92-544 and its implementing regulation do not provide guidelines for obtaining federal criminal background checks. Presumably, such guidelines or procedures would be established under the enabling (or other) state statute.

The FBI, consistent with several legal opinions from the U.S. Department of Justice, has established the mandatory elements of a state statute enacted under the auspices of Pub. L. 92-544. The state statute must:

- (1) Exist as a result of a legislative enactment;
- (2) Require that the criminal background check be fingerprint-based;
- (3) Authorize the submission of fingerprints to the State Identification Bureau for forwarding to the FBI for a national criminal history check;
- (4) Identify the categories of licensees amenable to backgrounding; and
- (5) Provide that an authorized government agency be the recipient of the results of the record check.

Pub. L. 92-544 does not allow federal criminal records to be shared directly with health care employers. Like the NCPA, as amended, Pub. L. 92-544 requires that the state agency make the determination of the applicant's fitness for the job, not the employer. A table listing those states which have enacted laws authorizing criminal background checks pursuant to Pub. L. 92-544 follows as Attachment C.

Attachment A

Public Law 105-277

The steps for conducting a background check include:

- (1) The NF or HHA contacts the state Control Terminal Officer ("CTO") and/or State Identification Bureau ("SIB") to request fingerprint cards (which bear a state-of-origin number for tracking purposes);
- (2) The NF or HHA gives the fingerprint cards to the applicant;
- (3) The applicant goes to the local police department or sheriff's office to get fingerprinted, which involves:
 - (a) Providing his/her name, address, and date of birth as they appear on a government document (e.g., a driver's license);
 - (b) Certifying that he/she has not been convicted of a crime and is not under indictment for a crime, or describing the crime and facts involved; and
 - (c) Having his/her fingerprints "rolled" onto the fingerprint cards;
- (4) The applicant returns the fingerprint cards and supporting information to the NF or HHA;
- (5) The NF or HHA sends the fingerprint cards, supporting information, and FBI fee (currently \$24) to the state agency (e.g., CTO, SIB) or other agency designated by the Attorney General no more than 7 business days after the fingerprints were taken;
- (6) The FBI conducts a check of its criminal history records (which include records of serious state offenses) and provides the results of the search to the submitting state agency;
- (7) The state agency receives the federal results from the FBI and forwards them with the state results to the NF or HHA; and
- (8) The NF or HHA makes the determination whether the applicant has a criminal record which would adversely affect the employment decision. In other words, the facility does not get a yes/no answer on whether to hire the individual. The statute provides immunity to the NF or HHA for making this determination based on incomplete or inaccurate information.

* Note: the local law enforcement agency and state agency may charge separate fees. Although the statute is silent as to additional fees, the FBI has concluded that such fingerprinting and processing fees are not limited by federal law.

Attachment B

National Child Protection Act of 1993

The steps for conducting a background check include:

- (1) The NF or HHA must seek and obtain from the appropriate state agency "qualified entity" status under 42 U.S.C. § 5119(a)(1).
- (2) The qualified entity obtains from the provider (i.e., employee or applicant):
 - (1) Fingerprints (presumably taken at a local law enforcement agency or by a private company);
 - (a) A signed statement to the qualified entity that:
 - (1) Contains the name, address, and date of birth of the provider as it appears on a valid I.D.;
 - (i) The provider has not been convicted and is not under pending indictment for a crime, or a description of the crime and conviction must be given;
 - (ii) Notifies the provider that the qualified entity may request a background check;
 - (iii) Notifies the provider of the provider's rights to: obtain a copy of any background check report, challenge the accuracy and completeness of any information contained in any report, and obtain a prompt decision on that challenge before a final determination is made by the state agency; and
 - (iv) Notifies the provider that before the background check is complete, the qualified entity may restrict the provider's access to a person to whom the qualified entity provides care;
- (3) The qualified entity submits the background check request, provider's fingerprints and supporting documentation to the state agency designated to report, receive, or disseminate background check information (an "authorized agency");
- (4) The authorized agency will review state records and also transmit the fingerprints to the FBI for a national check (which will be returned to the state). The state will make a reasonable effort to provide a consolidated response to the request within 15 days;
- (5) The authorized agency makes a determination whether the provider has been convicted of, or is under indictment for, a crime that bears upon the provider's fitness to be responsible for the safety and well-being of children, the elderly, or individuals with disabilities, and conveys that determination to the qualified entity. The qualified entity then notifies the provider of the determination.

Attachment C State Agency Contacts

State contacts to facilitate the processing of nursing facility / home health care applicant fingerprints to the FBI for national criminal history background checks are listed below. States that submit or exchange fingerprint information electronically with the FBI for civil purposes, which expedites processing time, are identified by "yes" or "no." States with background check statutes enacted pursuant to Public Law 92-544 for nursing facility and/or home health employees and applicants are identified by "yes," "no," or "may." (It was not clear to the FBI whether laws in the latter category applied specifically to nursing facility personnel.)

<u>State</u>	<u>Elec. Proc.</u>	<u>PL 92-544</u>	<u>Address / Phone Number</u>
Alabama	No	No	Alabama Bureau of Investigation Post Office Box 1511 Montgomery, AL 36102-1511 (334) 395-4340 Att: James Potts
Alaska	Yes	Yes	Department of Public Safety 5700 Tudor Road Anchorage, AK 99507 (907) 269-5708 Att: Kathy Monfreda
Arizona	No	Yes	Arizona Department of Public Safety Post Office Box 6638 Phoenix, AZ 85005-6638 (602) 223-2400
Arkansas	No	Yes	Arkansas State Police/ID Bureau #1 State Police Plaza Drive Little Rock, AR 72209 (501) 618-8500 Att: Sherrie Ewing
California	Yes	Yes	Department of Justice, BCII Post Office Box 903417 Sacramento, CA 94203-4170 (916) 227-3324 Att: Applicant Processing Program
Colorado	No	No	Colorado Bureau of Investigation Suite 300 690 Kipling Street Denver, CO 80215 (303) 239-4301 Att: AIC R. Armstrong

<u>State</u>	<u>Elec. Proc.</u>	<u>PL 92-544</u>	<u>Address / Phone Number</u>
Connecticut	Yes	No	Department of Public Health 410 Capitol Avenue Hartford, CT 06134 (860) 509-7218 Att: Bureau of Admin. and Support Services
Delaware	No	Yes	Delaware State Police Headquarters Department of Public Safety Post Office Box 430 Dover, DE 19903-0430 302-739-5960 Att: Major Michael J. McDonald
District of Columbia	No	No	Dist. of Columbia Metropolitan Police Dept. 300 Indiana Avenue, NW Washington, DC 20001 202-727-4110 or 5516 Att: Deloris Hunter
Florida	No	Yes	Criminal Justice Information Services Florida Department of Law Enforcement P.O. Box 1489 Tallahassee, FL 32302 850-410-7100 Attn: Donna M. Uzzell
Georgia	Yes	No	Georgia Bureau of Investigation P.O. Box 370748 Decatur, GA 30037-0748 404-244-2601 Attn: Paul C. Heppner
Hawaii	No	No	Hawaii Criminal Justice Data Center Room 101, Kekuanao'a Bldg. 465 South King Street (808) 587-3100 Att: Hannah Kawakami
Idaho	No	Yes	Idaho State Police Bureau of Criminal Identification Post Office Box 700 Meridian, ID 83680 (208) 884-7130 Att: Maria Wiley

<u>State</u>	<u>Elec. Proc.</u>	<u>PL 92-544</u>	<u>Address / Phone Number</u>
Illinois	Yes	No	Illinois State Police Division of Administration P.O. Box 19461 Springfield, IL 62794-9461 217-524-4432 Att: Ted L. Stoica
Indiana	No	No	Indiana State Police 100 N. Senate Ave. Rm. 302 Indianapolis, IN 46204 (317) 232-8263 Att: Major Karen Butt
Iowa	No	No	Division of Criminal Investigation Wallace State Office Bldg. Des Moines, IA 50319 (515) 281-4776 Att: Angell Magnani
Kansas	No	No	Kansas Bureau of Investigation 1620 SW Tyler Topeka, KS 66612-1837 Att: Adult Record Unit
Kentucky	No	No	Kentucky State Police 1250 Louisville Road Frankfort, KY 40601 (502) 227-8700 Att: Lieut. Tommy Burris
Louisiana	Yes	No	Louisiana Department of Public Safety Communications Division of State Police P.O. Box 66614 Baton Rouge, LA 70896 504-925-6325 Attn: Lieutenant Jerry Patrick
Maine	Yes	No	Maine State Police 36 Hospital Street Augusta, ME 04333 207-624-7062 Attn: Major Jeffrey Harmon

<u>State</u>	<u>Elec. Proc.</u>	<u>PL 92-544</u>	<u>Address / Phone Number</u>
Maryland	No	May	Department of Public Safety and Correctional Services 1201 Reisterstown Rd. Pikesville, MD 21208 (410) 764-5160 x 305 Att: Mike Tarlton
Massachusetts	Yes	No	Criminal History Systems Board Criminal Justice Information Systems 200 Arlington Street Chelsea, MA 02150 617-660-4713 Attn: John MacPherson
Michigan	Yes	No	Michigan State Police Criminal Justice Information Center 7150 Harris Dr. Lansing, MI 48913 (517) 322-1038 Att: AIT
Minnesota	Yes	Yes	Minnesota Department of Public Safety 1246 University Avenue Saint Paul, MN 55104-4197 (651) 603-0670
Mississippi	Yes	No	MS Department of Public Safety Post Office Box 958 Jackson, MS 39205 (601) 933-2600 Att: Applicant Processing Unit
Missouri	No	May	Missouri State Highway Patrol 1510 East Elm Street Jefferson City, MO 65102 573-526-6140 Att: Major William K. Seibert, Jr.
Montana	Yes	No	Justice Information Services 303 N. Roberts Street Helena, MT 59620 (406) 444-3625 Att: CSB - Records Section

<u>State</u>	<u>Elec. Proc.</u>	<u>PL 92-544</u>	<u>Address / Phone Number</u>
Nebraska	Yes	No	Nebraska State Patrol Post Office Box 94907 Lincoln, NE 68509 (402) 471-4545 Att: Ms. Marlene Dailey
Nevada	No	Yes	NV Highway Patrol Records and Identification Services 808 W. Nye Lane Carson City, NV 89703 (775) 687-1600
New Hampshire	No	No	New Hampshire State Police Support Services Bureau 10 Hazen Drive Concord, NH 03305 603-271-2151 Att: Major Frederick H. Booth
New Jersey	Yes	Yes	CJIS Control Unit New Jersey State Police P.O. Box 7068 West Trenton, NJ 08628-0068 609-882-2000 Ext. 2294 Att: Lieutenant Russell Dunfee
New Mexico	Yes	No	Department of Public Safety Technical and Emergency Support Division Communication Management Bureau P.O. Box 1628 Santa Fe, NM 87504-1628 505-827-9026 Att: Jeffery Wilkerson
New York	No	No	New York State Police Building #22 1220 Washington Avenue Albany, NY 12226 518-457-6811 Att: Steven Cumoletti

<u>State</u>	<u>Elec. Proc.</u>	<u>PL 92-544</u>	<u>Address / Phone Number</u>
North Carolina	Yes	May	North Carolina State Bureau of Investigation Division of Criminal Information 407 North Blount Street Raleigh, NC 27601 919-733-3171 Att: Ronald P. Hawley
North Dakota	Yes	No	North Dakota State Radio Communications P.O. Box 5511 Bismark, ND 58502-5511 701-328-9628 Att: James D. Lueder
Ohio	No	Yes	Bureau of Criminal Identification Post Office Box 365 London, OH 43140 (740) 845-2200 Att: Bill Webb
Oklahoma	No	No	Oklahoma State Bureau of Investigation 6600 N. Harvey Oklahoma City, OK 73111 (405) 848-6724 Att: Ms. Debra Cooper
Oregon	Yes	Yes	Oregon State Police Identification Services 3772 Portland Road NE Salem, OR 97303 (503) 378-3070 ext. 223 Att: Lieut. Cliff Daimler
Pennsylvania	No	Yes	Pennsylvania State Police Bureau of Technology Services Operations Division 1800 Elmerton Avenue Harrisburg, PA 17110 717-787-1330 Att: Corporal John Albring

<u>State</u>	<u>Elec. Proc.</u>	<u>PL 92-544</u>	<u>Address / Phone Number</u>
Puerto Rico	No	No	Puerto Rico Criminal Justice Information Services G.P.O. Box 9020192 San Juan, PR 00902-0192 787-729-2121 Att: Alfonso Golderos
Rhode Island	No	No	Rhode Island State Police Technical Services Unit 311 Danielson Pike North Scituate, RI 02857 401-444-1033 Att: Brian J. Glancy
South Carolina	Yes	Yes	SC Department of Social Services Post Office Box 1520 Columbia, SC 29202 (803) 898-7635 Att: Helen Lebby, Director, Division of Child Day Care Licensing or Teresa Childers-Arnold, Legislative Liaison
South Dakota	Yes	No	South Dakota Division of Criminal Investigation 500 East Capitol Avenue Pierre, SD 57501 605-773-4636 Att: Delton K. Tipton
Tennessee	Yes	No	TN Bureau of Investigation 901 R.S. Gass Blvd. Nashville, TN 37216-2639 (615) 744-4004 Att: Mona Jamison
Texas	Yes	May	TX Department of Protective and Regulatory Services 701 West 51st Austin, TX 78751 (512) 438-4800 Att: Craig Phillips

<u>State</u>	<u>Elec. Proc.</u>	<u>PL 92-544</u>	<u>Address / Phone Number</u>
Utah	No	Yes	Utah Department of Public Safety Bureau of Criminal Identification 3888 West 5400 South Salt Lake City, UT 84118 (801) 965-3858 Att: Alice Emerson, Supervisor, Fingerprint Section
Vermont	No	No	VT Crime Information Center 103 S. Main Street Waterbury, VT 05671 (802) 244-8727 Att: Max Schlueter
Virginia	No	No	Virginia State Police Post Office Box 27472 Richmond, VA 23261-7472 (804) 674-2147 Att: Lieut. T.W. Turner
Washington	No	May	Washington State Patrol Post Office Box 42619 Olympia, WA 98504-2619 (360) 570-5250 Att: Identification Section
West Virginia	Yes	No	West Virginia Division of Public Safety Communications Section 725 Jefferson Road South Charleston, WV 25309 304-746-2154 Att: Sergeant Roy L. McCallister
Wisconsin	No	No	DOJ Crime Information Bureau 123 W. Washington Avenue Madison, WI 53701-2718 (608) 266-7399 Att: Dir. Michael Moschkau
Wyoming	No	May	WY Division of Criminal Investigation 316 W. 22nd Street Cheyenne, WY 82002 (307) 777-7523 Att: Criminal Records

Contact Steven G. Shandy, Program Analyst, U.S. Department of Justice, 202-514-9577 or Steve.Shandy@usdoj.gov for PL 92-544 state law citations or if you have questions.



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the House HESS
Committee Name
 Committee on SB 201 Dated 3-25-04
Bill / Subject

Re Criminal history checks

Is this committee aware that employees of
 API who care for very vulnerable adults,
 are not required to have criminal
 background checks.

SIGNED: Jeanette Grasto
Testifier
Alaska Mental Health Board + NAMI
Representing
1369 Ballaine Rd, E6KS, AK 99709 - 6402
Address / Phone Number
907-455-6263