

CHAPTER 292
FORMERLY
SENATE BILL NO. 122
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO CRIMINAL BACKGROUND CHECKS AND MANDATORY DRUG TESTING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 51, Title 16 of the Delaware Code by adding new “Subchapter IIA” thereto as follows:

“Subchapter IIA. Criminal Background Checks; Mandatory Drug Testing

§5137. Legislative Intent; Definitions.

(a) Legislative Intent. The General Assembly’s purpose in requiring criminal background checks and drug testing of Department of Health and Social Services’ employees working at the Delaware Psychiatric Center is to protect the safety and well-being of the patients of such facility. The provisions of this subchapter shall be broadly construed to accomplish this purpose.

(b) Definitions.

(1) ‘Applicant’ means either of the following:

a. A person seeking employment with the Department in any position at the Delaware Psychiatric Center; or

b. A current Department employee who seeks a promotion or transfer to any position at the Delaware Psychiatric Center.

(2) ‘Department’ means the Department of Health and Social Services;

(3) ‘Reasonable suspicion’ means the Department, acting through its supervisory personnel, has a reasonable basis to suspect that a Delaware Psychiatric Center employee: (i) has been convicted of a disqualifying crime since becoming employed; or (ii) is impaired by an illegal drug.

§5138. Criminal Background Checks.

(a) The Department shall not hire or employ an applicant for any position at the Delaware Psychiatric Center without first obtaining a report of the person’s entire Delaware criminal history record from the State Bureau of Identification and a report of the person’s entire federal criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-554.

(b) The State Bureau of Identification shall be the intermediary for the purpose of this section, and the Department shall be the screening point for receipt of said federal criminal history checks.

(c) The Department shall promulgate regulations establishing the criteria for unsuitability for employment, including the types of criminal convictions which shall automatically disqualify a person from working at the Delaware Psychiatric Center and, as to other criminal convictions, the criteria for determining whether a particular individual is unsuitable for employment at the Delaware Psychiatric Center.

(d) Conditional Hire. Notwithstanding the provisions of subsection (a) of this section, whenever exigent circumstances exist, and the Department must fill a position in order to maintain an appropriate level of patient care, the Department may hire an applicant for a position at the Delaware Psychiatric Center on a conditional basis when the Department receives evidence that the applicant has requested his/her State and federal criminal history record, and has been fingerprinted by the State Bureau of Identification. “Evidence” for purposes of this subsection shall be verification from the State Bureau of Identification that the person has been fingerprinted and their State and federal criminal history records requested. The final employment of any applicant conditionally hired pursuant to this subsection shall be contingent upon receipt by the Department of such applicant’s State Bureau of Identification criminal history record verifying that there are no disqualifying convictions, as defined by Department regulations, and a report by the Department that there are no disqualifying convictions in such applicant’s federal criminal record.

(e) The Department shall immediately terminate the employment any Delaware Psychiatric Center employee who is, or has been, convicted of any disqualifying crime upon notification of such conviction.

(f) Notwithstanding any requirements of Chapter 85 of Title 11 to the contrary, the State Bureau of Identification shall furnish information to the Department pertaining to the entire Delaware criminal history record of any applicant. Such information shall be provided to the Department pursuant to the procedures established by the Superintendent of the Delaware State Police. The criminal history information provided to the Department is strictly confidential and its use is restricted to the purpose of determining an applicant's suitability for employment at the Delaware Psychiatric Center.

(g) Every application for employment with the Department in a position at the Delaware Psychiatric Center shall require the applicant to provide any and all information necessary for the Department to obtain a report of the person's entire criminal history record from the State Bureau of Identification and a report of the person's entire federal criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-554. In addition, every application for employment shall contain a signed statement from the applicant that the applicant grants full release for the Department to request and obtain any such records or information contained on a criminal history record.

(h) Any individual who either fails to make a full and complete disclosure on an application, or a full and complete disclosure of any information required to obtain a criminal history record as required by subsection (a) of this section, shall be subject to a civil penalty of not less than \$1,000.00 nor more than \$5,000.00 for each violation.

(i) Except as otherwise noted in this subchapter, the costs for the State Bureau of Identification and Federal Bureau of Identification background checks made pursuant to this section shall be borne by the Department. The Department, however, shall have the right to require more frequent background checks at its own expense.

(j) The Department shall obtain a report of the person's State and federal criminal history whenever it has a reasonable suspicion that a Delaware Psychiatric Center employee has been convicted of a disqualifying crime since becoming employed.

§5139. Drug Testing Required.

(a) Pre-employment testing. - - The Department shall not hire or employ an applicant for any position at the Delaware Psychiatric Center without first obtaining the results of such applicant's mandatory drug screening.

(b) Reasonable suspicion testing. - - The Department, acting through its supervisory personnel, may also conduct a drug test based on a reasonable suspicion that a Delaware Psychiatric Center employee is impaired by an illegal drug.

(c) Any person applying for employment with the Department in a position at the Delaware Psychiatric Center shall be required to submit to mandatory drug screening pursuant to this section and the regulations promulgated by the Department. Such regulations shall require drug testing for the following controlled substances:

- (1) Marijuana/cannabis;
- (2) Cocaine;
- (3) Opiates;
- (4) Phencyclidine ("PCP");
- (5) Amphetamines;

(6) Any other controlled substances specified by the Department in the regulations promulgated pursuant to this subchapter.

(d) Conditional Hire. - - Notwithstanding the provisions of this section, whenever exigent circumstances exist, and the Department must fill a position in order to maintain an appropriate level of patient care, the Department may hire an applicant on a conditional basis when the Department receives evidence that the applicant has actually had the appropriate drug screening. The final employment of any applicant conditionally hired pursuant to this subsection shall be contingent upon receipt of the results of the drug screening. In addition, all applicants conditionally hired pursuant to §5138 of this subchapter shall be informed and acknowledge in writing that the results of his/her drug screen have been requested. Under no circumstances shall an applicant hired on a conditional basis pursuant to this subchapter remain employed on a conditional basis for more than two (2) months.

(e) Any applicant who willfully fails to comply with the requirements of this section shall be subject to a civil penalty of not less than \$1,000.00 nor more than \$5,000.00.

(f) The Department shall adopt policies and procedures for imposing sanctions, which may include suspension and termination, upon any Delaware Psychiatric Center employee whose drug screen indicates that such employee has consumed an illegal drug or drugs. However, no such employee shall be sanctioned when the person has used or consumed the drug or drugs detected according to the directions and terms of a lawfully obtained prescription for such drug or drugs.”

Section 2. The Department shall promulgate regulations implement to the provisions of this Act.

Section 3. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act are declared to be severable.

Approved June 15, 2010