

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1327

Short Title: Crim. Record Checks/Psychology Practice Act. (Public)

Sponsors: Representatives Harrison, Martin, Wiley (Primary Sponsors); and Insko.

Referred to: Judiciary I.

April 20, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW THE DEPARTMENT OF JUSTICE TO CONDUCT
3 CRIMINAL HISTORY RECORD CHECKS FROM STATE AND NATIONAL
4 REPOSITORIES OF CRIMINAL HISTORY OF APPLICANTS FOR
5 LICENSURE.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 90-270.4(e) reads as rewritten:

8 "(e) Nothing in this Article shall be construed to prevent qualified members of
9 other professional groups licensed or certified under the laws of this State from
10 rendering services consistent with their professional training and code of ethics, within
11 the scope of practice provided they do not hold themselves out to the public by any title
12 or description stating or implying that they are psychologists or are licensed, certified,
13 or registered to practice psychology."

14 **SECTION 2.** Article 18A of Chapter 90 of the General Statutes is amended
15 by adding the following new section to read:

16 **"§ 90-270.22. Criminal history record checks of applicants for licensure and**
17 **licensees.**

18 (a) The Board may request that an applicant for licensure or reinstatement of a
19 license or that a licensed psychologist or psychological associate currently under
20 investigation by the Board for violating this Article consent to a criminal history record
21 check. Refusal to consent to a criminal history record check may constitute grounds for
22 the Board to deny licensure or reinstatement of a license to an applicant or take
23 disciplinary action against a licensee, including revocation of a license. The Board shall
24 ensure that the State and national criminal history of an applicant or licensee is checked.
25 The Board shall be responsible for providing to the North Carolina Department of
26 Justice the fingerprints of the applicant or licensee to be checked, a form signed by the
27 applicant or licensee consenting to the criminal record check and the use of fingerprints
28 and other identifying information required by the State or National Repositories, and

1 any additional information required by the Department of Justice. The Board shall keep
2 all information obtained pursuant to this section confidential.

3 (b) If an applicant or licensee's criminal history record check reveals one or more
4 convictions listed under subsection (d) of this section, the conviction shall not
5 automatically bar licensure or reinstatement of a license or result in revocation of a
6 license. The Board shall consider all of the following factors regarding the conviction:

7 (1) The level of seriousness of the crime.

8 (2) The date of the crime.

9 (3) The age of the person at the time of the conviction.

10 (4) The circumstances surrounding the commission of the crime, if known.

11 (5) The nexus between the criminal conduct of the person and the job
12 duties of the position to be filled.

13 (6) The person's prison, jail, probation, parole, rehabilitation, and
14 employment records since the date the crime was committed.

15 (7) The subsequent commission by the person of a crime listed in
16 subsection (d) of this section.

17 If, after reviewing the factors, the Board determines that grounds for denial or
18 revocation exist, the Board may deny licensure or reinstatement of a license of the
19 applicant or revoke the license of a licensee. The Board may disclose to the applicant or
20 licensee information contained in the criminal history record check that is relevant to
21 the denial. The Board shall not provide a copy of the criminal history record check to
22 the applicant or licensee. The applicant or licensee shall have the right to appear before
23 the Board to appeal the Board's decision. However, an appearance before the full Board
24 shall constitute an exhaustion of administrative remedies in accordance with Chapter
25 150B of the General Statutes.

26 (c) Limited Immunity. – The Board, its officers and employees, acting in good
27 faith and in compliance with this section, shall be immune from civil liability for
28 denying licensure or reinstatement of a license to an applicant or the revocation of a
29 license of a licensee based on information provided in the applicant's or licensee's
30 criminal history record check.

31 (d) For purposes of this section, the term 'criminal history' means a history of
32 conviction of a State crime, whether a misdemeanor or felony, that bears on an
33 applicant's or licensee's fitness for licensure to practice psychology. The crimes include
34 the criminal offenses set forth in any of the following Articles of Chapter 14 of the
35 General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article
36 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A,
37 Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and
38 Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary
39 Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson
40 and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18,
41 Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property
42 or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B,
43 Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article
44 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments;

1 Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct
2 in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and
3 Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family;
4 Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes
5 also include possession or sale of drugs in violation of the North Carolina Controlled
6 Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related
7 offenses including sale to underage persons in violation of G.S. 18B-302 or driving
8 while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5."

9 **SECTION 3.** Article 4 of Chapter 114 of the General Statutes is amended by
10 adding the following new section to read:

11 **"§ 114-19.16. Criminal record checks of applicants for licensure and licensees.**

12 The Department of Justice may provide to the North Carolina Psychology Board
13 from the State and National Repositories of Criminal Histories the criminal history of
14 any applicant for licensure or reinstatement of a license to practice psychology or a
15 licensed psychologist or psychological associate under Article 18A of Chapter 90 of the
16 General Statutes. Along with the request, the Board shall provide to the Department of
17 Justice the fingerprints of the applicant or licensee, a form signed by the applicant or
18 licensee consenting to the criminal record check and use of fingerprints and other
19 identifying information required by the State and National Repositories, and any
20 additional information required by the Department of Justice. The applicant's or
21 licensee's fingerprints shall be forwarded to the State Bureau of Investigation for a
22 search of the State's criminal history record file, and the State Bureau of Investigation
23 shall forward a set of fingerprints to the Federal Bureau of Investigation for a national
24 criminal history record check. The Board shall keep all information obtained pursuant to
25 this section confidential. The Department of Justice may charge a fee to offset the cost
26 incurred by it to conduct a criminal record check under this section. The fee shall not
27 exceed the actual cost of locating, editing, researching, and retrieving the information."

28 **SECTION 4.** This act is effective when it becomes law.