Bill as Introduced

HB 513 – AS INTRODUCED

2003 SESSION

03-1000
06/09

HOUSE BILL ***513***

AN ACT relative to background checks of law enforcement agency employees.

SPONSORS: Rep. Kennedy, Merr 34

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill requires all employees of the division of state police, fish and game department, liquor commission bureau of licensing and enforcement, health and human services department, bureau of children, and local police to undergo a criminal background check before being offered permanent employment.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

03-1000
06/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Three

AN ACT relative to background checks of law enforcement agency employees.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Police Departments; Employment; Criminal Background Check Required for All Employees. Amend RSA 105:4 to read as follows:

105:4 Employment.

I. The selectmen, or superintendent under their direction, may employ police officers in the detection and conviction of criminals and the prevention of crime in their town, and in the preservation of order on public or special occasions.

II.(a) The selectmen or superintendent under their direction shall complete a criminal history records check on every selected applicant for employment in any position in the police department prior to a final offer of employment. The selectmen or superintendent under their direction may extend a conditional offer of employment to a selected applicant, with a final offer of employment subject to a successfully completed criminal history records check. No selected applicant may be extended a conditional offer of employment unless the selectmen or superintendent under their direction has initiated a criminal history records check. The selectmen or superintendent under their direction shall not be held liable in any lawsuit alleging that the extension of a conditional or final offer of employment to an applicant with a criminal history was in any way negligent or deficient, if the selectmen or superintendent under their direction fulfilled the requirements of this section.

(b) The selected applicant for employment with the police department shall submit to the employer a notarized criminal history records release form, as provided by the division of state police, which authorizes the release of information regarding the presence or absence of any record of convictions of the applicant of felonies or misdemeanors which have not been annulled. The applicant shall submit with the release form a complete set of fingerprints taken by a qualified law enforcement agency. In the event that the first set of fingerprints is invalid due to insufficient pattern and a second set of fingerprints is necessary in order to complete the criminal history records check, the conditional offer of employment shall remain in effect.

(c) The selectmen or superintendent under their direction shall submit the criminal history records release form to the division of state police, which shall conduct a criminal history records check through its records and through the Federal Bureau of Investigation. Upon completion of the background investigation, the state police shall

report the presence or absence of any crime to the selectmen or superintendent under their direction. Under no circumstances shall the criminal records be released to the selectmen or superintendent under their direction. The selectmen or superintendent under their direction shall maintain the confidentiality of all criminal history records information received pursuant to this paragraph. If the criminal history records information indicates no criminal record, the selectmen or superintendent under their direction shall destroy the information received immediately following its review of the information. If the criminal history records information indicates that the applicant has been convicted of a felony or of a misdemeanor which has not been annulled, the selectmen or superintendent under their direction shall review the information for a hiring decision. The selectmen or superintendent under their direction shall destroy any criminal history record information that indicates a criminal record within 30 days of receiving such information.

(d) The selectmen or superintendent under their direction may require the selected applicant for employment to pay the actual costs of the background investigation and a criminal history records check.

2 New Paragraph; State Police; Civilian Employees; Criminal Background Check Required. Amend RSA 106-B:7 by inserting after paragraph III the following new paragraph:

IV.(a) The director shall complete a criminal history records check on every selected applicant for employment in any position in the division prior to a final offer of employment. The director may extend a conditional offer of employment to a selected applicant, with a final offer of employment subject to a successfully completed criminal history records check. No selected applicant may be extended a conditional offer of employment unless the director has initiated a criminal history records check. The director shall not be held liable in any lawsuit alleging that the extension of a conditional or final offer of employment to an applicant with a criminal history was in any way negligent or deficient, if the director fulfilled the requirements of this section.

(b) The selected applicant for employment with the division shall submit a notarized criminal history records release form, as provided by the division, which authorizes the release of information regarding the presence or absence of any record of convictions of the applicant of felonies or misdemeanors which have not been annulled. The applicant shall submit with the release form a complete set of fingerprints taken by a qualified law enforcement agency. In the event that the first set of fingerprints is invalid due to insufficient pattern and a second set of fingerprints is necessary in order to complete the criminal history records check, the conditional offer of employment shall remain in effect.

(c) The division shall conduct a criminal history records check through its records and through the Federal Bureau of Investigation. If the criminal history records information indicates no criminal record, the director shall destroy the information received immediately following its review of the information. If the criminal history records information indicates that the applicant

has been convicted of a felony or of a misdemeanor which has not been annulled, the director shall review the information for a hiring decision. The director shall destroy any criminal history record information that indicates a criminal record within 30 days of receiving such information.

(d) The director may require the selected applicant for employment to pay the actual costs of the background investigation and a criminal history records check.

3 New Paragraph; Department of Health and Human Services; Bureau of Children; Employees; Criminal Background Check Required. Amend RSA 170-G:8-c by inserting after paragraph VI the following new paragraph:

VI-a.(a) In addition to the requirements of paragraphs I-VI, the bureau of children shall complete a criminal history records check on every selected applicant for employment in any position in the bureau prior to a final offer of employment. The bureau may extend a conditional offer of employment to a selected applicant, with a final offer of employment subject to a successfully completed criminal history records check. No selected applicant may be extended a conditional offer of employment unless the bureau has initiated a criminal history records check. The bureau shall not be held liable in any lawsuit alleging that the extension of a conditional or final offer of employment to an applicant with a criminal history was in any way negligent or deficient, if the bureau of children fulfilled the requirements of this section.

(b) The selected applicant for employment with the bureau of children shall submit to the bureau a notarized criminal history records release form, as provided by the division of state police, which authorizes the release of information regarding the presence or absence of any record of convictions of the applicant of felonies or misdemeanors which have not been annulled. The applicant shall submit with the release form a complete set of fingerprints taken by a qualified law enforcement agency or an authorized employee of bureau of children. In the event that the first set of fingerprints is invalid due to insufficient pattern and a second set of fingerprints is necessary in order to complete the criminal history records check, the conditional offer of employment shall remain in effect.

(c) The bureau of children shall submit the criminal history records release form to the division of state police, which shall conduct a criminal history records check through its records and through the Federal Bureau of Investigation. Upon completion of the background investigation, the state police shall report the presence or absence of any crime to the bureau. Under no circumstances shall the criminal records be released to the bureau. The bureau shall maintain the confidentiality of all criminal history records information received pursuant to this paragraph. If the criminal history records information indicates no criminal record, the bureau shall destroy the information received immediately following its review of the information. If the criminal history records information indicates that the applicant has been convicted of a felony or of a misdemeanor which

has not been annulled, the bureau shall review the information for a hiring decision. The bureau shall destroy any criminal history record information that indicates a criminal record within 30 days of receiving such information.

(d) The bureau of children may require the selected applicant for employment to pay the actual costs of the background investigation and a criminal history records check.

4 Liquor Commission; Assistants and Employees; Bureau of Enforcement and Licensing; Criminal Background Check Required. Amend RSA 176:7 to read as follows:

176:7 Assistants and Employees.

I. The state liquor commission may employ such assistants as are, in its opinion, necessary for the proper transaction of its business, and fix their compensation, subject to the rules of the director of personnel. It may secure any necessary technical or professional assistance.

II.(a) The commission shall complete a criminal history records check on every selected applicant for employment in any position in the bureau of enforcement and licensing prior to a final offer of employment. The commission may extend a conditional offer of employment to a selected applicant, with a final offer of employment subject to a successfully completed criminal history records check. No selected applicant may be extended a conditional offer of employment unless the commission has initiated a criminal history records check. The commission shall not be held liable in any lawsuit alleging that the extension of a conditional or final offer of employment to an applicant with a criminal history was in any way negligent or deficient, if the commission fulfilled the requirements of this section.

(b) The selected applicant for employment with the bureau of licensing and enforcement shall submit to the employer a notarized criminal history records release form, as provided by the division of state police, which authorizes the release of information regarding the presence or absence of any record of convictions of the applicant of felonies or misdemeanors which have not been annulled. The applicant shall submit with the release form a complete set of fingerprints taken by a qualified law enforcement agency or an authorized employee of the commission. In the event that the first set of fingerprints is invalid due to insufficient pattern and a second set of fingerprints is necessary in order to complete the criminal history records check, the conditional offer of employment shall remain in effect.

(c) The commission shall submit the criminal history records release form to the division of state police, which shall conduct a criminal history records check through its records and through the Federal Bureau of Investigation. Upon completion of the background investigation, the state police shall report the presence or absence of any crime to the commission. Under no circumstances shall the criminal records be released to the commission. The commission shall maintain the confidentiality of all criminal history

records information received pursuant to this paragraph. If the criminal history records information indicates no criminal record, the commission shall destroy the information received immediately following its review of the information. If the criminal history records information indicates that the applicant has been convicted of a felony or of a misdemeanor which has not been annulled, the commission shall review the information for a hiring decision. The commission shall destroy any criminal history record information that indicates a criminal record within 30 days of receiving such information.

(d) The commission may require the selected applicant for employment to pay the actual costs of the background investigation and a criminal history records check.

5 Fish and Game Department Employees; Criminal Background Check Required. Amend RSA 206:24 to read as follows:

206:24 [~~Number, etc.~~] ***Employees.***

I. Subject to regulations of the state personnel commission, the executive director shall determine the number of conservation officers and superintendents of hatcheries, shall appoint and remove all conservation officers and superintendents of hatcheries, and shall hire such experts and office assistants as in his judgment are necessary for the proper execution of his duties. A copy of the appointment of each conservation officer shall be filed in the office of the executive director.

II.(a) The executive director shall complete a criminal history records check on every selected applicant for employment in any position in the department prior to a final offer of employment. The executive director may extend a conditional offer of employment to a selected applicant, with a final offer of employment subject to a successfully completed criminal history records check. No selected applicant may be extended a conditional offer of employment unless the executive director has initiated a criminal history records check. The department shall not be held liable in any lawsuit alleging that the extension of a conditional or final offer of employment to an applicant with a criminal history was in any way negligent or deficient, if the executive director fulfilled the requirements of this section.

(b) The selected applicant for employment with the department shall submit to the employer a notarized criminal history records release form, as provided by the division of state police, which authorizes the release of information regarding the presence or absence of any record of convictions of the applicant of felonies or misdemeanors which have not been annulled. The applicant shall submit with the release form a complete set of fingerprints taken by a qualified law enforcement agency or an authorized employee of the department. In the event that the first set of fingerprints is invalid due to insufficient pattern and a second set of fingerprints is necessary in order to complete the criminal history records check, the conditional offer of employment shall remain in effect.

(c) The executive director shall submit the criminal history records release form to the division of state police, which shall conduct a criminal history records check through its records and through the Federal Bureau of Investigation. Upon completion of the background investigation, the state police shall report the presence or absence of any crime to the executive director. Under no circumstances shall the criminal records be released to the executive director. The executive director shall maintain the confidentiality of all criminal history records information received pursuant to this paragraph. If the criminal history records information indicates no criminal record, the executive director shall destroy the information received immediately following its review of the information. If the criminal history records information indicates that the applicant has been convicted of a felony or of a misdemeanor which has not been annulled, the executive director shall review the information for a hiring decision. The executive director shall destroy any criminal history record information that indicates a criminal record within 30 days of receiving such information.

(d) The department may require the selected applicant for employment to pay the actual costs of the background investigation and a criminal history records check.

6 Effective Date. This act shall take effect January 1, 2004.

Speakers

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 513 Date Feb 19, 2003

Committee E D+A

**** Please Print All Information ****

Name	Address	Phone	Representing	(check one) Pro	Con
Maura Carroll	P.O. Box 617 Concord	224-7447	N.H. Municipal Assn		✓

Hearing Minutes

HOUSE COMMITTEE ON EXECUTIVE DEPARTMENTS AND ADMINISTRATION

PUBLIC HEARING ON HB 513

BILL TITLE: relative to background checks of law enforcement agency employees.

DATE: February 19, 2003

LOB ROOM: 100 SH **Time Public Hearing Called to Order:** 9:00 AM

Time Adjourned: 9:20 AM

(please circle if present)

Committee Members: Reps. O'Neil, Hamel, Langer, Goulet, Zolla, N. Allan, Dexter, Hall, C. Robertson, Bergin, LaFlamme, Milligan, W. Field, Fitzgerald, Maybeck, Clayton, Schulze, DeJoie, Irwin, Pilotte and F. Sullivan.

Bill Sponsors: Rep. Kennedy, Merr 34

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Hamel, introduced bill in the absence of the sponsor.
*Earl Sweeney, Director, Police Standards & Training, 271-2133. Supports bill. This bill goes further than current background check. We do background checks on all. The local police departments does the checking. No penalty if you do not comply.

Respectfully submitted,

Ray L Langer

Rep. Ray Langer, Clerk

Disposition: Subcommittee, Chair Rep. Allen

Testimony

Testimony of Earl M. Sweeney
Director of Police Standards and Training
HB 513 - Police Background Checks

Ladies and Gentlemen of the Committee:

My name is Earl Sweeney and I am the Director of the NH Police Standards and Training Council. I am here neither for nor against HB 513, but to offer information regarding the present system for background checks of police employees.

The Police Standards and Training Council is empowered by RSA Chapter 188-F to establish by administrative rule the minimum standards for hiring and certification of police officers, probation/parole officers, and State corrections officers. This applies to State Police, Fish and Game officers, Motor Vehicle Inspectors, Liquor Inspectors, Agriculture Inspectors, Forest Rangers, Deputy Sheriffs, city and town Police Officers.

The Council has a rule in place, and has had one in place for many years now, regarding background investigations, that was adopted through the legislative rulemaking process. The hiring authority must conduct or cause to be conducted a background investigation before appointing a person or investing them with authority as a police, probation/parole or State corrections officer. The applicant has to complete a confidential personal history form on a form supplied by the Training Council, disclosing personal data including date and place of birth, social security and driver license numbers, scars and marks, nicknames, a listing of residences for the past 10 years including address and dates, a work history for the past 10 years including the names of their employer, supervisor, co-worker, dates of employment and reason for leaving, military record, educational history, special qualifications and skills, convictions, arrests, detentions and civil litigation, traffic conviction and accident record, marital and family history, financial history and obligations.

The department that wants to hire this person then must fingerprint them and submit an FBI fingerprint card through the State Police and send the Training Council a photocopy of the card to ensure that it was done, check for any record with the National Crime Information Center, do a credit check with a commercial credit reporting agency, check motor vehicle records in every state where the applicant has resided or worked, check with present and past neighbors, spouses and landlords, check with present and past employers for the past 5 years, check local police files in all communities where the person has ever lived or worked, check military discharge papers, and verify the accuracy of high school diplomas, college degrees, driver license, social security card and birth, baptism or naturalization records.

The department has to retain a copy of this report in their files until 5 years after the termination of the employee if hired, and make it available for inspection by representatives from the Training Council, who perform spot audits from time to time.

Thus, some of what this bill requires is already required by Council rule. What is different is that the bill goes into some additional detail from what the Council rule does, and it also requires

background checks and fingerprint cards on all civilian State Police, certain civilian Liquor Commission, Fish and Game employees and employees of the Bureau of Children and Families, and on and provides that an employee may be required to reimburse the hiring agency for the cost of the criminal history part of the background check.

If this bill was to pass, we would recommend that you insert an amendment stating that nothing contained in the bill is exempts police departments from complying with Police Standards and Training Council rules on background checks of sworn police officers. I will leave language for such an amendment with the Committee following my remarks. I would also note that there are other law enforcement agents such as Deputy Sheriffs, Forest Rangers, Motor Vehicle Inspectors and Agriculture Inspectors that are not mentioned in this bill, but that are covered by the Council's administrative rules.

Thank you for listening, and I would be pleased to respond to any questions that you may have.

NH Police Standards and Training Council
Proposed Amendment to HB 513

1. Amend RSA 105:4 by inserting after subparagraph II (d) the following new subparagraph II (e):

(e) Nothing in this section shall exempt law enforcement agencies from complying with any additional rules adopted pursuant to RSA 541-A by the police standards and training council regarding background checks.

2. Amend RSA 106-B:7 by inserting after subparagraph IV (d) the following new subparagraph IV (e):

(e) Nothing in this section shall exempt the division from complying with any additional rules adopted pursuant to RSA 541-A by the police standards and training council regarding background checks on its police employees.

3. Amend RSA 176:7 by inserting after subparagraph II (d) the following new subparagraph I (e):

(e) Nothing in this section shall exempt the commission from complying with any additional rules adopted pursuant to RSA 541-A by the police standards and training council regarding background checks for applicants for employment as special agents of the commission engaged in law enforcement duties.

4. Amend RSA 206:24 by inserting after subparagraph II (d) the following new subparagraph (e):

(e) Nothing in this section shall exempt the department from complying with any additional rules adopted pursuant to RSA 541-A by the police standards and training council regarding background checks of conservation officer applicants.

Voting Sheets

HOUSE COMMITTEE ON EXECUTIVE DEPARTMENTS AND ADMINISTRATION

EXECUTIVE SESSION on HB 513

BILL TITLE: **relative to background checks of law enforcement agency employees.**

DATE: March 17, 2003

LOB ROOM: 100 SH

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Irwin

Seconded by Rep. Goulet

Vote: 16-0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: 16-0

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Ray F. Langer, Clerk

OFFICE OF THE HOUSE CLERK 2003 SESSION

EXECUTIVE DEPARTMENTS AND ADMINISTRATION

Bill #: HB513 **Title:** _____

PH Date: 2/19/03 Exec Session Date: 3/17/03

Motion: _____ Amendment #: _____

MEMBER	YEAS	NAYS
O'Neil. Michael. Chairman	16	
Hamel. Albert W. V Chairman	1	
Langer. Rav F	2	
Goulet. Maurice E	3	
Zolla. William R	4	
Allan. Nelson S	5	
Dexter. Judson K	abs	
Hall. Charles Q	6	
Robertson. Carl G	7	
Bergin. Peter F		
LaFlamme. Paul G	8	
Milligan. Robert H	9	
Field. William D	abs	
Fitzgerald. James M	10	
Maybeck. Margie	11	
Clayton. William K	abs	
Schulze. Joan H	12	
DeJoie. John	13	
Irwin. Anne-Marie	14	
Pilotte. Maurice L	15	
Sullivan. Francis B	abs	
	16/0	

TOTAL VOTE:
Printed: 1/6/2003

Committee Report

COMMITTEE REPORT

COMMITTEE: **Executive Departments and Administration**

BILL NUMBER: **HB 513**

TITLE: relative to background checks of law enforcement agency employees.

DATE: March 18, 2003 CONSENT CALENDAR YES ☒ NO ☐

☐ OUGHT TO PASS

☐ OUGHT TO PASS WITH AMENDMENT

☒ INEXPEDIENT TO LEGISLATE

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

This bill would require background checks for law enforcement agency employees before being offered permanent employment. The committee determined, as a result of testimony by Earl Sweeney, Director of Police Standards and Training, that present regulations are more stringent than the proposed regulations. Consequently, the committee found the bill inexpedient to legislate.

Vote 16-0.

Rep. Anne Marie Irwin
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

CONSENT CALENDAR

Executive Departments and Administration

HB 513, relative to background checks of law enforcement agency employees. **INEXPEDIENT TO LEGISLATE**

Rep. Anne Marie Irwin for Executive Departments and Administration: This bill would require background checks for law enforcement agency employees before being offered permanent employment. The committee determined, as a result of testimony by Earl Sweeney, Director of Police Standards and Training, that present regulations are more stringent than the proposed regulations. Consequently, the committee found the bill inexpedient to legislate. **Vote 16-0.**

March 18, 03
HB 513

This bill would require background checks for law enforcement agency employees before being offered permanent employment. The committee determined, as a result of testimony by Earl Sweeney, Director of Police Standards and Training, that present regulations are more stringent than the proposed regulations. Consequently, the committee found the bill inexpedient to legislate.

ITL
Consent

Anne-Marie Irwin