



## HOT TOPICS:

### PENNSYLVANIA'S LIFETIME EMPLOYMENT BAN HELD UNCONSTITUTIONAL

In December 2015, Pennsylvania's Commonwealth Court struck down parts of the Pennsylvania Older Adult Protective Services Act (OAPSA) on the grounds that it violates the Pennsylvania Constitution. OAPSA required certain facilities to conduct criminal background checks for prospective and current staff, and precluded the employment of individuals convicted of specific crimes. The Court took issue both with the arbitrary parameters of the law and the absence of any discretion in applying a permanent ban on employment. At issue:

- The ban applied regardless of the job sought at the facility or the time since the conviction.
- There was no right to appeal the ban.
- Existing employees that had been employed for at least one year as of July 1, 1998, were exempt from exclusion based on a criminal history.

PA's experience with OAPSA demonstrates the importance of instituting a process for waivers and appeals. The NBCP requires an independent appeals process that allows for "consideration of the passage of time, extenuating circumstances, demonstration of rehabilitation, and relevancy of the particular disqualifying information with respect to the current employment of the individual."

The Court decision also serves as a reminder that across-the-board, lifetime exclusions may be impermissible. NBCP States should seek to relate exclusionary periods to the job sought. One final lesson is to avoid including arbitrary or unreasonable distinctions in the law, such as a hire date. NBCP States should exercise caution in enacting and enforcing their legislation, ensuring that there are rational, job-related reasons for all exclusions from employment.

Learn more about *Peake v. Commonwealth* on [BGCheckInfo](#).

## RECIDIVISM FACTS

In March 2016, the United States Sentencing Commission published [Recidivism Among Federal Offenders: A Comprehensive Overview](#). This research substantially expands on the scope of previous Commission recidivism projects. In addition to a different set of offenders – U.S. citizen federal offenders released in 2005 – the current study group is much larger than those in previous Commission studies. Key findings of the Commission's study found that "49.3% of the federal offenders who reentered the community in 2005 were rearrested for a new crime or rearrested for a violation of supervision conditions during the eight year follow-up period." In addition, age and scale of criminal histories were the two factors that related closely with differences in recidivism rates. The Commission found that younger offenders recidivated at considerably higher rates than older offenders and offenders with vast criminal histories recidivated at much higher rates than offenders with lesser criminal histories.

## INTERESTING LEGISLATION

[PolitickerNJ](#) published a press release on February 4, 2016, on a requirement for international background checks for doctors and surgeons in New Jersey. The bill was created in response to a case of a Passaic County doctor who was convicted of manslaughter in the United Kingdom and then began practicing in New Jersey. Senate Majority Leader Loretta Weinberg sponsored this bill to require international background checks for all applicants looking to practice medicine or surgery in New Jersey. The bill was approved by the Senate Health and Human Services and Senior Citizens Committee.

Senator Weinberg commented on the necessity for the bill saying, "Patients deserve to know that their medical professionals have the appropriate training, education, but also that they have conducted themselves in compliance with the law." The legislation (\$975) prohibits the Board of Medical Examiners from issuing or renewing a license to any applicant for licensure until it has determined that the applicant does not have any criminal history with law enforcement in any foreign country in which the applicant has resided.

## QUARTERLY REPORTS DUE APRIL 30, 2016

Reports for the quarter ending March 31, 2016, are due by close of business on **April 30, 2016**. Send them in before you come to the Annual Training Meeting. Please be sure to use the new Cost Report that includes your State's name. The report templates are available on the [NBCP BGCheckInfo](#) website.

### Shout out!

Hawaii was the first State to submit their report last quarter!

## NBCP RESOURCES

The [BGCheckInfo Website](#) provides access to a comprehensive collection of original resource documents written specifically for existing and anticipated NBCP States. These documents provide detailed information on a number of background check issues, including information on current standards of practice in the field of background checks. Check out the newest resource papers:

- Impact of EEOC Guidance
- How to Inform and Engage Stakeholders
- Reducing Duplicate Fingerprinting.

## UPCOMING MEETINGS:

**NBCP Annual Training Meeting**, May 2-4, 2016, Annapolis, MD

