



Description of graphic: RI State Seal an anchor in gold behind a blue wheelchair logo. Just below is a blue banner with the state motto "Hope". All are in the center of a ring of 8 blue stars, in groups of 2 separated by the logos for Braille, hearing aids, low vision and amplified phone.

Governor's Commission on Disabilities Legislation Committee

Monday March 26, 2012 10-11 AM

John O. Pastore Center, 41 Cherry Dale Court,
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 meeting graphic	<p>Attendees: Linda Ward (Chair.); Sharon Brinkworth; Rosemary C. Carmody; Heather Daglieri; Judi Drew; Timothy Flynn; Roger Harris; Angelina Stabile</p> <p>Absentees: William R. Inlow (Vice Chair.); Julie DeRosa; Linda Deschenes; Sarah Everhart Skeels; Kathleen Heren; Elaina Goldstein; Kate McCarthy-Barnett; Paula Parker; Arthur M. Plitt; Gwendolyn Reeve; Theresa Thielke; Msgr. Gerard O. Sabourin; & Dawn Wardyga</p>
Guests:	Joe Lindbeck (AG); Elizabeth Earls & Miranda Cummings (RICCMHO); Vivian Weisman (MHARI); Leo Canuel (PARI), Frederick Sneesby (DHS); Michael Cronan (OHHS) & Kathleen Kelly (DOC).
Staff:	Bob Cooper

	Agenda Topics	Moderator/Leader	Time
 new graphic	<p>H 7806 An Act Relating to State Affairs And Government</p> <p>S 2652, H 7555, & H 7838 Acts Relating to Public Records - Access To Public Records</p>	Joe Lindbeck, Office of the Attorney General	10:00
	<p>Purpose/Goal: To reach consensus of amending the Attorney General's Public Records and Criminal Background Check bills</p>		
	<p>Discussion: The H 7806 An Act Relating To State Affairs And Government, otherwise known at The Criminal Background Check Act. Concerns were expressed about:</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> The overly broad listing of Level One Offenses and the impact of prohibiting the hiring well qualified persons in behavioral healthcare, who have a criminal record. Some of the most effective peer counselors and behavioral healthcare professionals currently working are effective because of the knowledge gained through their criminal experiences. The level one offenses should not include substance abuse related crimes. <input checked="" type="checkbox"/> The decision to hire someone in spite of their criminal record should remain with the employer, not EOHHS. 		
	Current Law	Proposed Law	

Current Law	Proposed Law
<p>Covered Facilities: health care facility¹, a nursing facility, a home nursing care provider, or a home care provider; (§ 23-17); assisted living residence (§ 23-17.4); nursing service agency (§ 23-17.1); day program services, residential services, support services or advocacy services for persons with developmental disabilities, persons who are mentally ill and persons who are substance abusers and which is licensed by the department of mental health, retardation, and hospitals (§ 40.1-25.1)</p>	<p>Covered Facilities: A nursing facility; a home nursing care provider; a home care provider; or a hospice service; an assisted living residence; a nursing services agency any facility or program licensed by the department of behavioral healthcare, developmental disabilities and hospitals; any facility or program operated by the department of behavioral healthcare, developmental disabilities and hospitals; and any other long-term care facility or provider.</p>
<p>Offenses Covered: A single list of crimes disqualifying an applicant from employment: murder, voluntary manslaughter, involuntary manslaughter, first degree sexual assault, second degree sexual assault, third degree sexual assault, assault on persons sixty (60) years of age or older, assault with intent to commit specified felonies (murder, robbery, rape, burglary, or the abominable and detestable crime against nature) felony assault, patient abuse, neglect or mistreatment of patients, burglary, first degree arson, robbery, felony drug offenses, larceny, or felony banking law violations.²</p>	<p>Offenses Covered: Level 1 Offenses: Murder, manslaughter, first degree sexual assault, second degree sexual assault, assault on persons sixty (60) years of age or older, assault with intent to commit specified felonies (murder, robbery, rape, burglary, or the abominable and detestable crime against nature), felony assault, patient abuse, neglect or mistreatment of patients, burglary, first degree arson, robbery, any felony involving the illegal manufacture, sale or delivery of a controlled substance, or possession with intent to manufacture, sell or deliver a controlled substance, felony obtaining money under false pretenses, felony embezzlement, abuse, neglect and/or exploitation of adults with severe impairments, exploitation of elders, felony larceny, or felony banking law violations, or a crime under section 1128(a) of the Social Security Act (42 U.S.C. 1320a-7(a)).</p>
<p>The Decider: The employer shall make a judgment regarding the continued employment of the employee.³</p>	<p>The Decider: Level 1 Offenders can never be employed in direct patient access jobs (unless record is expunged. "(a) Any person who is a first offender may file a motion for the expungement of all records and records of conviction for a felony or misdemeanor by filing a motion in the court in which the conviction took place, provided that no person who has been convicted of a crime of violence⁴ shall have his or her records and records of conviction expunged.</p> <p>(c) A person may file a motion for the expungement of records relating to a felony conviction after ten (10) years from the date of the completion of his or her sentence.)</p>
	<p>Level 2 Offenses - The Office of Health and Human Services can authorize employment</p>

1-1 SECTION 1. Title 42 of the General Laws entitled "STATE AFFAIRS AND
1-2 GOVERNMENT" is hereby amended by adding thereto the following chapter:
1-3 **CHAPTER 9.4**
1-4 **CRIMINAL BACKGROUND CHECK ACT**
1-5 **42-9.4-1. Definitions. – As used in this chapter:**
1-6 **(1) "Adult" means a person eighteen (18) years of age or older.**
1-7 **(2) "Applicant" or "Direct Patient Access Applicant" means a person applying to be a**
1-8 **direct patient access employee at a covered facility or a person providing services under chapter**
1-9 **40-8.1.**
1-10 **(3) "Attorney General" means the attorney general of the state of Rhode Island, or his or**
1-11 **her designee.**

¹ "Health care facility" means any institutional health service provider, facility or institution, place, building, agency, or portion thereof, whether a partnership or corporation, whether public or private, whether organized for profit or not, used, operated, or engaged in providing health care services, including but not limited to hospitals; nursing facilities; home nursing care provider (which shall include skilled nursing services and may also include activities allowed as a home care provider or as a nursing service agency); home care provider (which may include services such as personal care or homemaker services); rehabilitation centers; kidney disease treatment centers; health maintenance organizations; free-standing emergency care facilities, and facilities providing surgical treatment to patients not requiring hospitalization (surgi-centers); hospice care, and physician ambulatory surgery centers and podiatry ambulatory surgery centers providing surgical treatment. The term "health care facility" also includes organized ambulatory care facilities which are not part of a hospital but which are organized and operated to provide health care services to outpatients such as central services facilities serving more than one health care facility or health care provider, treatment centers, diagnostic centers, outpatient clinics, infirmaries and health centers, school based health centers and neighborhood health centers. The term "health care facility" also includes a mobile health screening vehicle as defined in this section.

² §23-17.7.1-20 does not include burglary in the list of crimes

³ §23-17.4-27 The "Administrator" determines if continued employment is warranted.

⁴ (1) "Crime of violence" includes murder, manslaughter, first degree arson, kidnapping with intent to extort, robbery, larceny from the person, first degree sexual assault, second degree sexual assault, first and second degree child molestation, assault with intent to murder, assault with intent to rob, assault with intent to commit first degree sexual assault, burglary, and entering a dwelling house with intent to commit murder, robbery, sexual assault, or larceny.

- 1-12 (4) “Criminal Background Check” means a national criminal records check that shall
1-13 include fingerprints submitted to the federal bureau of investigation (FBI).
- 1-14 (5) “Conviction” means, in addition to judgments of conviction entered by a court
1-15 subsequent to a finding of guilty or a plea of guilty, those instances where the defendant has
1-16 entered a plea of nolo contendere and has received a sentence of probation and those instances
1-17 where a defendant has entered into a deferred sentence agreement.
- 1-18 (6) “Covered Facility” means:
- 1-19 (i) A nursing facility; a home nursing care provider; a home care provider; or a hospice
1-20 service that is or is required to be licensed, registered or certified with the state pursuant to
2-1 chapter 23-17;
- 2-2 (ii) An assisted living residence that is or is required to be licensed with the state pursuant
2-3 to chapter 23-17.4;
- 2-4 (iii) A nursing services agency that is or is required to be licensed with the state pursuant
2-5 to chapter 23-17.7.1;
- 2-6 (iv) Any facility or program licensed by the department of behavioral healthcare,
2-7 developmental disabilities and hospitals pursuant to chapter 40.1-24;
- 2-8 (v) Any facility or program operated by the department of behavioral healthcare,
2-9 developmental disabilities and hospitals; and
- 2-10 (vi) Any other long-term care facility or provider.
- 2-11 (7) “Day(s)” means calendar days.
- 2-12 **(8) “Department” means the Rhode Island department of attorney general.**
- 2-13 (9) “BCI” means the bureau of criminal identification of the department of attorney
2-14 general.
- 2-15 (10) “Direct Patient Access Employee” means:
- 2-16 (i) A person who has access to a patient or resident of a covered facility through
2-17 employment or through a contract with such covered facility and has duties that involve or may
2-18 involve one-on-one contact with a patient or resident of the covered facility; or
- 2-19 (ii) A person who has access to the belongings or funds of a patient or resident of a
2-20 covered facility through employment or through a contract with such covered facility.
- 2-21 (iii) These provisions do not include volunteers unless the volunteer has duties that are
2-22 equivalent to the duties of a direct patient access employee and those duties involve or may
2-23 involve one-on-one contact with a patient or resident of the covered facility.
- 2-24 (11) “EOHHS” means the Rhode Island executive office of health and human services, or
2-25 its designee.
- 2-26 (12) “Livescan Vendor” means an entity whose equipment has been certified by the
2-27 department to collect an individual’s demographics and inkless fingerprints and, in a manner
2-28 prescribed by the department, electronically transmit the fingerprints and a daily file of required
2-29 data to the department. The department shall negotiate a contract with one or more vendors that
2-30 effectively demonstrate that the vendor has demonstrated sufficient experience transmitting
2-31 fingerprints electronically to the department and that the vendor can successfully transmit the
2-32 required data in a manner prescribed by the department.
- 2-33 (13) “Long-term Care Facility or Provider” means a facility or provider that receives
2-34 payment for services under title XVIII or XIX of the Social Security Act and is:
- 3-1 (i) A long-term care hospital (as described in section 1886(d)(1)(B)(iv) of the Social
3-2 Security Act (42 U.S.C. 1395ww(d)(1)(B)(iv));
- 3-3 (ii) A provider of personal care services as defined in the state’s waiver under Title XIX
3-4 of the Social Security Act relating to the provision of home and community-based services;
- 3-5 (iii) A provider of adult day care; or
- 3-6 (iv) An intermediate care facility for the mentally retarded (as defined in section 1905(d)
3-7 of the Social Security Act (42 U.S.C. 1396d(d)).
- 3-8 (14) “Provisionally employed” means that the applicant is employed by a covered facility
3-9 or provides services as provided in chapter 40-8.1, during a period of time after the applicant’s
3-10 fingerprints have been submitted for the processing of a criminal background check, but before
3-11 the results of the criminal background check have been received. During this time, the applicant
3-12 shall not have supervisory or disciplinary power or routine contact with patients or residents

3-13 without the presence of others.

3-14 **42-9.4-2. Criminal Background Check.** – (a) Any adult person seeking employment in
3-15 any covered facility as a direct patient access employee or who provides services as a direct
3-16 patient access employee as provided in chapter 40-8.1, whether compensated or not, shall
3-17 undergo a criminal background check to be processed prior to employment or providing such
3-18 services, except as otherwise provided in this section. All persons who, as of January 1, 2013, are
3-19 already employed by a covered facility and all persons who, as of such date, already provide
3-20 services under chapter 40-8.1 shall be exempted from the requirements of this section for
3-21 purposes of their current employment only.

3-22 (b) The applicant shall apply to the BCI for a criminal background check. The BCI may
3-23 utilize a Livescan vendor as a designee to fulfill the requirements of this chapter.

3-24 (c) If the results of the criminal background check have not been received within seven
3-25 (7) days, upon verification that an applicant has submitted his or her fingerprints for the
3-26 processing of a criminal background check, the applicant may be provisionally employed by the
3-27 covered facility or provide services under chapter 40-8.1 until the results of the criminal
3-28 background check are completed, but in no case may this exceed sixty (60) days.

3-29 (d) Upon the discovery of any disqualifying information, as defined in section 42-9.4-3
3-30 and in accordance with the rules and regulations promulgated by the department, the BCI shall
3-31 inform the applicant of the nature of the disqualifying information; and, without disclosing the
3-32 nature of the disqualifying information, shall notify the covered facility that disqualifying
3-33 information has been discovered. The disqualification notice shall include notice of the
3-34 applicant's right to appeal the denial or termination of employment and that the applicant may
4-1 request an appeal of denial or termination of employment as provided in section 42-9.4-4. If a
4-2 covered facility provisionally employed an applicant as provided in subsection (c), upon the
4-3 covered facility's receipt of the disqualification notice, the covered facility must terminate the
4-4 applicant's employment within fourteen (14) days, unless the applicant requests an appeal in
4-5 accordance with section 42-9.4-4 and, in doing so, requests to remain provisionally employed
4-6 while the appeal is reviewed. Upon receipt of an applicant's request to remain provisionally
4-7 employed during the appeal process, the department or the EOHHS shall inform the relevant
4-8 covered facility that the disqualified individual has requested an appeal and advise the covered
4-9 facility that the individual may remain provisionally employed until the date the covered facility
4-10 receives the department's or EOHHS's written decision or until the applicant has been employed
4-11 for sixty (60) days, whichever date is earlier. In those situations in which no disqualifying
4-12 information has been found, the BCI shall inform the applicant, the covered facility, and EOHHS
4-13 of this fact.

4-14 (e) The covered facility shall initiate a criminal background check on all direct patient
4-15 access applicants, the results of which will be maintained by the BCI. Failure to initiate criminal
4-16 background checks on any prospective direct patient access employee would be grounds to
4-17 revoke the license or registration of the covered facility. The covered facility shall maintain on
4-18 file, subject to inspection by the EOHHS, evidence that criminal background checks have been
4-19 initiated on all direct patient access employees employed by or performing services at or for the
4-20 covered facility after the date specified in this subsection, and the results of such checks. Failure
4-21 to maintain that evidence would be grounds to revoke the license or registration of the covered
4-22 facility. The date specified in this subsection is either:

4-23 (1) October 1, 1991, if the covered facility is a nursing facility, a home nursing care
4-24 provider, a home care provider, or an assisted living residence; or

4-25 (2) January 1, 2013, if the covered facility is any other type of facility, program, or
4-26 provider.

4-27 (f) It shall be the responsibility of the applicant to pay for the criminal background check
4-28 fees. The fees shall be established by rules and regulations promulgated pursuant to section 42-
4-29 9.4-9 of this chapter.

4-30 **42-9.4-3. Disqualifying information.** – (a) Information produced by a criminal
4-31 background check pertaining to a conviction for the following crimes will disqualify the applicant
4-32 from employment:

4-33 **(1) The following offenses are considered level one offenses: Murder, manslaughter, first**

4-34 degree sexual assault, second degree sexual assault, assault on persons sixty (60) years of age or
5-1 older, assault with intent to commit specified felonies (murder, robbery, rape, burglary, or the
5-2 abominable and detestable crime against nature), felony assault, patient abuse, neglect or
5-3 mistreatment of patients, burglary, first degree arson, robbery, any felony involving the illegal
5-4 manufacture, sale or delivery of a controlled substance, or possession with intent to manufacture,
5-5 sell or deliver a controlled substance, felony obtaining money under false pretenses, felony
5-6 embezzlement, abuse, neglect and/or exploitation of adults with severe impairments, exploitation
5-7 of elders, felony larceny, or felony banking law violations, or a crime under section 1128(a) of
5-8 the Social Security Act (42 U.S.C. 1320a-7(a)).

5-9 (2) The following offenses are considered level two offenses: Felony drug possession and
5-10 third degree sexual assault.

5-11 42-9.4-4. Appeal of Denial or Termination of Employment. – (a) An applicant who
5-12 has been denied or terminated from employment due to receiving a disqualification notice may
5-13 appeal such denial or termination. The appeal procedure shall be dependent on whether the nature
5-14 of the disqualification is a level one or a level two offense.

5-15 (b) If the applicant’s disqualification is based on a level one offense, the appeal shall be
5-16 limited only to the accuracy of the information provided in the criminal background check.

5-17 (1) The applicant must submit a request for appeal in writing to the department within
5-18 (14) days of the applicant’s receipt of the disqualification notice provided in subsection 42-9.4-
5-19 2(d). In the request, the applicant must include a copy of his or her disqualification notice that
5-20 identifies the specific disqualifying offense and provide evidence that he or she was not convicted
5-21 of the disqualifying offense.

5-22 (2) Within thirty (30) days of receipt of the applicant’s request, the department shall
5-23 review the applicant’s submitted materials and conduct a hearing for the applicant to demonstrate
5-24 that the information contained in the disqualification notice was inaccurate.

5-25 (3) The department must deny the appeal if the applicant failed to submit a timely request
5-26 for appeal or if the applicant fails to demonstrate that the information contained in the
5-27 disqualification notice was inaccurate. Upon denial, the department shall notify, in writing, the
5-28 applicant, the covered facility, and EOHHS that the disqualification was not overturned due to the
5-29 information in the criminal background check being found accurate or because the applicant
5-30 failed to submit a timely request.

5-31 (4) The department shall overturn the disqualification if it finds that the information
5-32 provided in the criminal background check is inaccurate. If an applicant’s disqualification is
5-33 overturned, the department shall notify the applicant, the covered facility, and EOHHS of the
5-34 decision in writing. In such decision, the department must inform the applicant, the covered
6-1 facility, and EOHHS that the information relied upon to disqualify the applicant was inaccurate.

6-2 (c) If the applicant’s disqualification is based on a level two offense, the appeal shall
6-3 consider whether the disqualification should be overturned due to any or some combination of the
6-4 following factors: the passage of time since the disqualifying conviction, extenuating
6-5 circumstances surrounding the disqualifying conviction, the applicant’s demonstration of
6-6 rehabilitation and the relevancy of the disqualifying information to the employment applied for.

6-7 (1) The applicant must submit the request for appeal in writing to the EOHHS within
6-8 fourteen (14) days of the applicant’s receipt of the disqualification notice provided in subsection
6-9 42-9.4-2(d). In the request, the applicant must include a copy of his or her disqualification notice
6-10 that identifies the specific disqualifying offense and provide evidence that supports the factors in
6-11 subsection (c).

6-12 (2) Within thirty (30) days of receipt of the applicant’s request, the EOHHS shall review
6-13 the applicant’s submitted materials and conduct a hearing for the applicant to demonstrate that the
6-14 disqualification should be overturned due to any or some combination of the factors in subsection
6-15 (c).

6-16 (3) Upon consideration of the factors in subsection (c), if EOHHS determines that the
6-17 applicant’s disqualification should not be overturned or the applicant failed to submit a timely
6-18 request for appeal, the EOHHS must deny the appeal. Upon denial, the EOHHS shall notify, in
6-19 writing, the applicant, the covered facility, and the department that the disqualification was not
6-20 overturned and the basis for the denial.

6-21 (4) The EOHHS shall grant the appeal if it finds that the information contained in the
6-22 applicant's criminal background check and applicant's presentation of pertinent factors in
6-23 subsection (c) warrant that the applicant's disqualification should be overturned. If an applicant's
6-24 disqualification is overturned, the EOHHS shall notify the applicant, the covered facility, and the
6-25 department of the decision in writing and state the specific findings thereto.

6-26 **42-9.4-5. Automated Fingerprint Identification System Database.** - The department
6-27 may establish and maintain an automated fingerprint identification system database that would
6-28 allow the department to store and maintain all fingerprints submitted under this chapter and
6-29 would provide for an automatic notification if and when a subsequent criminal arrest fingerprint
6-30 card submitted into the system matches a set of fingerprints previously submitted under the
6-31 chapter. If the aforementioned arrest results in a conviction, the department shall immediately
6-32 notify each covered facility with which that individual is associated. The information in the
6-33 database established under this section is confidential and is not subject to disclosure under the
6-34 access to public records act, chapter 2 of title 38 of the general laws.

7-1 **42-9.4-6. Electronic Web-based Registry System.** – The department or EOHHS shall
7-2 maintain an electronic web-based system to assist covered facilities required to check relevant
7-3 registries and conduct criminal background checks of direct patient access applicants and to
7-4 provide for an automated notice to those covered facilities for those persons inputted in the
7-5 system who, since the initial criminal background check, have been convicted of a disqualifying
7-6 offense or have been the subject of a substantiated finding of abuse, neglect or misappropriation
7-7 of property. The department or EOHHS may charge a covered facility a one-time set up fee of up
7-8 to one hundred dollars (\$100) for access to the electronic web-based system under this section.

7-9 **42-9.4-7. Immunity from liability.** – The department, the EOHHS, and a covered
7-10 facility who disqualifies an applicant from employment or continued employment on the basis of
7-11 a disqualification notice as described in subsection 42-9.4-2(d) or of a criminal background check
7-12 relating to disqualifying information shall not be liable for civil damages or subject to any claim,
7-13 demand, cause of action, or proceeding of any nature as a result of the disqualification.

7-14 **42-9.4-8. Rules and regulations.** – The department and the EOHHS is authorized to
7-15 promulgate rules and regulations to carry out the intent of this chapter.

7-16 SECTION 2. Section 23-17-34 of the General Laws in Chapter 23-17 entitled "Licensing
7-17 of Health Care Facilities" is hereby amended to read as follows:

7-18 **23-17-34. Criminal records review – Nursing facilities – Home nursing care**
7-19 **providers and home care providers.** – (a) Any adult person seeking employment as a direct
7-20 patient access employee, whether compensated or not, in a nursing facility, a home nursing care
7-21 provider, or a home care provider which is or is required to be licensed, registered or certified
7-22 with the department of health ~~if that employment involves routine contact with a patient or~~
7-23 ~~resident without the presence of other employees,~~ shall undergo a criminal background check as
7-24 ~~provided in chapter 42-9.4 to be initiated prior to or within one week of employment. All~~
7-25 ~~employees hired prior to the enactment of this section shall be exempted from the requirements of~~
7-26 ~~this section.~~

7-27 (b) The director of the department of health may by rule identify those positions requiring
7-28 criminal background checks. ~~The identified employee, through the employer, shall apply to the~~
7-29 ~~bureau of criminal identification of the state police or local police department for a statewide~~
7-30 ~~criminal records check. Fingerprinting shall not be required. Upon the discovery of any~~
7-31 ~~disqualifying information as defined in § 23-17-37 and in accordance with the rule promulgated~~
7-32 ~~by the director of health, the bureau of criminal identification of the state police or the local~~
7-33 ~~police department will inform the applicant, in writing, of the nature of the disqualifying~~
7-34 ~~information; and, without disclosing the nature of the disqualifying information, will notify the~~
8-1 ~~employer, in writing, that disqualifying information has been discovered.~~

8-2 (c) ~~An employee against whom disqualifying information has been found may request~~
8-3 ~~that a copy of the criminal background report be sent to the employer who shall make a judgment~~
8-4 ~~regarding the continued employment of the employee.~~

8-5 (d) ~~In those situations in which no disqualifying information has been found, the bureau~~
8-6 ~~of criminal identification of the state police or the local police shall inform the applicant and the~~
8-7 ~~employer, in writing, of this fact.~~

8-8 (c)(e) The employer shall maintain on file, subject to inspection by the department of
8-9 health, evidence that criminal records checks have been initiated on all employees seeking
8-10 employment after October 1, 1991, and the results of the checks. Failure to maintain that evidence
8-11 would be grounds to revoke the license or registration of the employer.

8-12 ~~(f) It shall be the responsibility of the bureau of criminal identification of the state police~~
8-13 ~~or the local police department to conduct the criminal records check to the applicant for~~
8-14 ~~employment without charge to either the employee or the employer.~~

8-15 SECTION 3. Sections 23-17-37 and 23-17-39 of the General Laws in Chapter 23-17
8-16 entitled "Licensing of Health Care Facilities" are hereby repealed.

8-17 ~~**23-17-37. Disqualifying information.**— (a) Information produced by a criminal records~~
8-18 ~~review pertaining to conviction, for the following crimes will result in a letter to the employee~~
8-19 ~~and employer disqualifying the applicant from employment: murder, voluntary manslaughter,~~
8-20 ~~involuntary manslaughter, first degree sexual assault, second degree sexual assault, third degree~~
8-21 ~~sexual assault, assault on persons sixty (60) years of age or older, assault with intent to commit~~
8-22 ~~specified felonies (murder, robbery, rape, burglary, or the abominable and detestable crime~~
8-23 ~~against nature) felony assault, patient abuse, neglect or mistreatment of patients, burglary, first~~
8-24 ~~degree arson, robbery, felony drug offenses, larceny, or felony banking law violations. **An**~~
8-25 ~~**employee against whom disqualifying information has been found may request that a copy of the**~~
8-26 ~~**criminal background report be sent to the employer who shall make a judgment regarding the**~~
8-27 ~~**continued employment of the employee.**~~

8-28 ~~(b) For purposes of this section, "conviction" means, in addition to judgments of~~
8-29 ~~conviction entered by a court subsequent to a finding of guilty or a plea of guilty, those instances~~
8-30 ~~where the defendant has entered a plea of nolo contendere and has received a sentence of~~
8-31 ~~probation and those instances where a defendant has entered into a deferred sentence agreement~~
8-32 ~~with the attorney general.~~

8-33 ~~**23-17-39. Immunity from liability.**— No employer who disqualifies an individual from~~
8-34 ~~employment or continued employment within thirty (30) days of receipt of a letter containing~~
9-1 ~~disqualifying information as defined in section 23-17-37 or of a criminal background report~~
9-2 ~~relating to the individual shall be liable for civil damages or subject to any claim, demand, cause~~
9-3 ~~of action or proceeding of any nature as a result of the disqualification.~~

9-4 SECTION 4. Section 23-17.7.1-17 of the General Laws in Chapter 23-17.7.1 entitled
9-5 "Licensing of Nursing Service Agencies" is hereby amended to read as follows:

9-6 ~~**23-17.7.1-17. Criminal records review.**— (a) Any adult person seeking employment as~~
9-7 ~~a direct patient access employee, whether compensated or not, in a facility which is or is required~~
9-8 ~~to be licensed or registered with the department of health ~~if that employment involves routine~~~~
9-9 ~~~~contact with a patient or resident without the presence of other employees~~, shall undergo a~~
9-10 ~~criminal background check as provided in chapter 42-9.4., ~~which shall be initiated prior to, or~~~~
9-11 ~~~~within one week of, employment. All employees hired prior to the enactment of this section shall~~~~
9-12 ~~~~be exempted from the requirements of this section.~~~~

9-13 (b) The director of the department of health may, by rule, identify those positions
9-14 requiring criminal background checks. ~~The employee, through the employer, shall apply to the~~
9-15 ~~bureau of criminal identification of the state police or local police department for a statewide~~
9-16 ~~criminal records check. Fingerprinting shall not be required. Upon the discovery of any~~
9-17 ~~disqualifying information as defined in § 23-17.7.1-20 and in accordance with the rule~~
9-18 ~~promulgated by the director of the department of health, the bureau of criminal identification of~~
9-19 ~~the state police or the local police department will inform the applicant, in writing, of the nature~~
9-20 ~~of the disqualifying information; and, without disclosing the nature of the disqualifying~~
9-21 ~~information, will notify the employer, in writing, that disqualifying information has been~~
9-22 ~~discovered.~~

9-23 ~~(c) **An employee against whom disqualifying information under § 23-17.7.1-20(b) has**~~
9-24 ~~**been found may request that a copy of the criminal background report be sent to the employer**~~
9-25 ~~**who shall make a judgment regarding the continued employment of the employee.**~~

9-26 (d) In those situations in which no disqualifying information has been found, the bureau
9-27 of criminal identification of the state police or the local police shall inform the applicant and the
9-28 employer, in writing, of this fact.

9-29 (e) The employer shall maintain on file, subject to inspection by the department of health,
9-30 evidence that criminal records checks have been initiated on all employees. Failure to maintain
9-31 that evidence would be grounds to revoke the license or registration of the employer.

9-32 (f) ~~It shall be the responsibility of the bureau of criminal identification of the state police~~
9-33 ~~or the local police department to conduct the criminal records check to the applicant for~~
9-34 ~~employment without charge to either the employee or the employer.~~

10-1 SECTION 5. Sections 23-17.7.1-18, 23-17.7.1-20 and 23-17.7.1-21 of the General Laws
10-2 in Chapter 23-17.7.1 entitled "Licensing of Nursing Service Agencies" are hereby repealed.

10-3 ~~**23-17.7.1-18. Prior criminal records checks.** -- If an applicant for employment has~~
10-4 ~~undergone a statewide criminal records check within eighteen (18) months of an application for~~
10-5 ~~employment, then an employer may request from the bureau of criminal identification or local~~
10-6 ~~police a letter indicating if any disqualifying information was discovered. The bureau of criminal~~
10-7 ~~identification will respond without disclosing the nature of the disqualifying information. The~~
10-8 ~~letter may be maintained on file to satisfy the requirements of this chapter.~~

10-9 ~~**23-17.7.1-20. Disqualifying information.** -- (a) Information produced by a criminal~~
10-10 ~~records review pertaining to conviction, for the following crimes will result in a letter to the~~
10-11 ~~employee and employer disqualifying the applicant from the employment: murder, voluntary~~
10-12 ~~manslaughter, involuntary manslaughter, first degree sexual assault, second degree sexual assault,~~
10-13 ~~third degree sexual assault, assault on persons sixty (60) years of age or older, assault with intent~~
10-14 ~~to commit specified felonies (murder, robbery, rape, burglary, or the abominable and detestable~~
10-15 ~~crime against nature), felony assault, patient abuse, neglect or mistreatment of patients, first~~
10-16 ~~degree arson, robbery, felony drug offenses, larceny, or felony banking law violations.~~

10-17 ~~(b) Information produced by a criminal records review pertaining to convictions for~~
10-18 ~~crimes other than those listed in subsection (a) of this section shall entitle, but not obligate the~~
10-19 ~~employer to decline to hire the applicant. **An employee against whom conviction information**~~
10-20 ~~**related to this subsection has been found may request that a copy of the criminal background**~~
10-21 ~~**report be sent to the employer who shall make a determination regarding the continued**~~
10-22 ~~**employment of the employee.**~~

10-23 ~~(c) For purposes of this section "conviction" means, in addition to judgments of~~
10-24 ~~conviction entered by a court subsequent to a finding of guilty or a plea of guilty, those instances~~
10-25 ~~where the defendant has entered a plea of nolo contendere and has received a sentence of~~
10-26 ~~probation and those instances where a defendant has entered into a deferred sentence agreement~~
10-27 ~~with the attorney general.~~

10-28 ~~**23-17.7.1-21. Immunity from liability.** -- No employer who disqualifies an individual~~
10-29 ~~from employment or continued employment within thirty (30) days of receipt of a letter~~
10-30 ~~containing disqualifying information as defined in section 23-17.7.1-20 or of a criminal~~
10-31 ~~background report relating to that information shall be liable for civil damages or subject to any~~
10-32 ~~claim, cause of action, or proceeding of any nature as a result of the disqualification.~~

10-33 SECTION 6. Section 23-17.4-27 of the General Laws in Chapter 23-17.4 entitled
10-34 "Assisted Living Residence Licensing Act" is hereby amended to read as follows:

11-1 ~~**23-17.4-27. Criminal records review.** -- (a) Any adult person seeking employment as a~~
11-2 ~~direct patient access employee, whether compensated or not, in any assisted living residence~~
11-3 ~~licensed under this act ~~and having routine contact with a resident or having access to a resident's~~~~
11-4 ~~belongings or funds shall undergo a criminal background check as provided in chapter 42-9.4 to~~
11-5 ~~be processed prior to or within one week of employment. All employees hired prior to the~~
11-6 ~~enactment of this section shall be exempted from the requirements of this section.~~

11-7 (b) The director of the department of health may by rule identify those positions requiring
11-8 criminal background checks. ~~The employee, through the employer, shall apply to the bureau of~~
11-9 ~~criminal identification of the state police or local police department for a statewide criminal~~
11-10 ~~records check. Fingerprinting shall not be required. Upon the discovery of any disqualifying~~
11-11 ~~information as defined in § 23-17.4-30 and in accordance with the rule promulgated by the~~
11-12 ~~director of health, the bureau of criminal identification of the state police or the local police~~
11-13 ~~department will inform the applicant in writing of the nature of the disqualifying information;~~
11-14 ~~and, without disclosing the nature of the disqualifying information, will notify the employer in~~
11-15 ~~writing that disqualifying information has been discovered.~~

11-16 (c) ~~An employee against whom disqualifying information has been found may request~~
11-17 ~~that a copy of the criminal background report be sent to the employer. The administrator shall~~
11-18 ~~make a judgment regarding the continued employment of the employee.~~

11-19 (d) ~~In those situations in which no disqualifying information has been found, the bureau~~
11-20 ~~of criminal identification (BCI) of the state police or the local police shall inform the applicant~~
11-21 ~~and the employer in writing of this fact.~~

11-22 (e) ~~The employer shall maintain on file, subject to inspection by the department of health,~~
11-23 ~~evidence that criminal records checks have been initiated on all employees seeking employment~~
11-24 ~~after October 1, 1991, and the results of the checks. Failure to maintain that evidence would be~~
11-25 ~~grounds to revoke the license or registration of the employer.~~

11-26 (f) ~~It shall be the responsibility of the bureau of criminal identification (BCI) of the state~~
11-27 ~~police or the local police department to conduct the criminal records check to the applicant for~~
11-28 ~~employment without charge to either the employee or employer.~~

11-29 SECTION 7. Sections 23-17.4-28, 23-17.4-30 and 23-17.4-32 of the General Laws in
11-30 Chapter 23-17.4 entitled "Assisted Living Residence Licensing Act" are hereby repealed.

11-31 ~~**23-17.4-28. Prior criminal records checks.** -- If an applicant for employment has~~
11-32 ~~undergone a statewide criminal records check within eighteen (18) months of an application for~~
11-33 ~~employment, then an employer may request from the bureau of criminal identification or local~~
11-34 ~~police a letter indicating if any disqualifying information was discovered. The bureau of criminal~~
12-1 ~~identification will respond without disclosing the nature of the disqualifying information. The~~
12-2 ~~letter may be maintained on file to satisfy the requirements of this chapter.~~

12-3 ~~**23-17.4-30. Disqualifying information.** -- (a) Information produced by a criminal~~
12-4 ~~records review pertaining to conviction, for the following crimes will result in a letter to the~~
12-5 ~~employee and employer disqualifying the applicant from employment: murder, voluntary~~
12-6 ~~manslaughter, involuntary manslaughter, first degree sexual assault, second degree sexual assault,~~
12-7 ~~third degree sexual assault, assault on persons sixty (60) years of age or older, assault with intent~~
12-8 ~~to commit specified felonies (murder, robbery, rape, burglary, or the abominable and detestable~~
12-9 ~~crime against nature) felony assault, patient abuse, neglect or mistreatment of patients, burglary,~~
12-10 ~~first degree arson, robbery, felony drug offenses, larceny or felony banking law violations. **An**~~
12-11 ~~**employee against whom disqualifying information has been found may request that a copy of the**~~
12-12 ~~**criminal background report be sent to the employer who shall make a judgment regarding the**~~
12-13 ~~**continued employment of the employee.**~~

12-14 (b) ~~For purposes of this section, "conviction" means, in addition to judgments of~~
12-15 ~~conviction entered by a court subsequent to a finding of guilty or a plea of guilty, those instances~~
12-16 ~~where the defendant has entered a plea of nolo contendere and has received a sentence of~~
12-17 ~~probation and those instances where a defendant has entered into a deferred sentence agreement~~
12-18 ~~with the attorney general.~~

12-19 ~~**23-17.4-32. Immunity from liability.** -- No employer who disqualifies an individual~~
12-20 ~~from employment or continued employment within thirty (30) days of receipt of a letter~~
12-21 ~~containing disqualifying information as defined in section 23-17.4-30 or of a criminal background~~
12-22 ~~report relating to disqualifying information shall be liable for civil damages or subject to any~~
12-23 ~~claim, demand, cause of action or proceeding of any nature as a result of the disqualification.~~

12-24 SECTION 8. Section 40.1-25.1-3 of the General Laws in Chapter 40.1-25.1 entitled
12-25 "Employee Criminal Records Check" is hereby amended to read as follows:

12-26 ~~**40.1-25.1-3. Criminal records check requirement.** -- (a) Any facility or program~~
12-27 ~~licensed by the department pursuant to § 40.1-24-1 et seq. and any facility or program operated~~
12-28 ~~by the department shall require all adult applicants for employment, as a direct patient access~~
12-29 ~~employee, whether compensated or not, if that employment involves routine contact with~~
12-30 ~~patients, residents or clients without the presence of other employees, to apply to the bureau of~~
12-31 ~~criminal identification of the state police or the local police department for a nationwide criminal~~
12-32 ~~records check for a criminal background check as provided in chapter 42-9.4. The check will~~
12-33 ~~conform to the applicable federal standards, including the taking of fingerprints of the applicant.~~

13-34 (b) ~~If any disqualifying information is discovered with respect to the applicant, the bureau~~
13-35 ~~of criminal identification of the state police or the local police department will inform the~~
13-36 ~~employer, in writing, without disclosing the nature of the disqualifying information, that an item~~

13-37 of disqualifying nature has been discovered. In addition, the bureau of criminal identification of
 13-38 the state police or the local police department will inform the applicant, in writing, of the nature
 13-39 of the disqualifying information. ~~An applicant against whom disqualifying information has been~~
 13-40 ~~found may request that a copy of the criminal background report be sent to the employer who~~
 13-41 ~~shall make a judgment regarding the employment of the applicant.~~

13-42 (c) ~~In those situations in which no disqualifying information has been found, the bureau~~
 13-43 ~~of criminal identification of the state police or the local police department shall inform both the~~
 13-44 ~~applicant and the employer of this fact.~~

13-45 (d) The employer will maintain on file, subject to investigation by the department,
 13-46 evidence that criminal records checks in accordance with this statute have been initiated on all
 13-47 employees seeking employment after August 1, 2001 and the results of the checks. Failure to
 13-48 maintain the evidence on file will be prima facie grounds to revoke the license or certification of
 13-49 the operator of any facility or program licensed or certified by the department.

13-50 (e) ~~It shall be the responsibility of the bureau of criminal identification of the state police~~
 13-51 ~~or the local police department to conduct the national criminal records check for the applicant.~~

13-52 SECTION 9. Sections 40.1-25.1-4 and 40.1-25.1-5 of the General Laws in Chapter 40.1-
 13-53 25.1 entitled "Employee Criminal Records Check" are hereby repealed.

13-54 ~~**40.1-25.1-4. Prior criminal records check.** -- If an applicant has undergone a national~~
 13-55 ~~criminal records check within eighteen (18) months of an application for employment, then an~~
 13-56 ~~employer may request from the bureau of criminal identification of the state police or the local~~
 13-57 ~~police, a letter indicating if any disqualifying information was discovered. The bureau of criminal~~
 13-58 ~~identification of the state police or the local police department shall respond without disclosing~~
 13-59 ~~the nature of any disqualifying information. The letter shall be maintained on file to satisfy the~~
 13-60 ~~requirements of this chapter.~~

13-61 ~~**40.1-25.1-5. Destruction of fingerprint records.** -- At the conclusion of any background~~
 13-62 ~~check required by this chapter, the state police or the local police department will promptly~~
 13-63 ~~destroy the fingerprint card of the applicant.~~

13-64 SECTION 10. The act shall take effect on January 1, 2013.

Discussion: The Public Records Acts S 2652 (text below), H 7838, and H 7555. Concerns were expressed about removing the exemption from the public records law of records which are identifiable to an individual applicant for benefits, client, patient, student, or including, but not limited to, medical treatment, welfare, employment security, pupil records and personal finances.

Current Law	Proposed Law
For the purposes of this chapter, the following records shall not be deemed public:	For the purposes of this chapter, the following records shall not be deemed public:
(A)(I) All records which are identifiable to an individual applicant for benefits, client, patient, student, or employee, including, but not limited to, personnel, medical treatment, welfare, employment security, pupil records, all records relating to a client/attorney relationship and to a doctor/patient relationship and all personal or medical information relating to an individual in any files, including information relating to medical or psychological facts, personal finances, welfare, employment security, student performance, or information in personnel files maintained to hire, evaluate, promote, or discipline any employee of a public body; ⁴	(A)(I)(a) All records relating to a client/attorney relationship and to a doctor/patient relationship, including all medical information relating to an individual in any files; ⁵ (b) Personnel and other personal individually-identifiable records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

1-1 SECTION 1. Sections 38-2-2, 38-2-3, 38-2-4, 38-2-7, 38-2-8 and 38-2-9 of the General
 1-2 Laws in Chapter 38-2 entitled "Access to Public Records" are hereby amended to read as follows:

1-3 **38-2-2. Definitions.** – As used in this chapter:

1-4 (1) "Agency" or "public body" shall mean any executive, legislative, judicial, regulatory,
 1-5 or administrative body of the state, or any political subdivision thereof; including, but not limited
 1-6 to, any department, division, agency, commission, board, office, bureau, authority, any school,
 1-7 fire, or water district, or other agency of Rhode Island state or local government which exercises
 1-8 governmental functions, any authority as defined in section 42-35-1(b), or any other public or

⁵ (ii) However, any reasonably segregable portion of a public record excluded by this section shall be available for public inspections after the deletion of the information which is the basis of the exclusion, if disclosure of the segregable portion does not violate the intent of this section.

1-9 private agency, person, partnership, corporation, or business entity acting on behalf of and/or in
1-10 place of any public agency.

1-11 (2) "Chief administrative officer" means the highest authority of the public body ~~as~~
1-12 ~~defined in subsection (a) of this section.~~

1-13 (3) "Prevailing plaintiff" means and shall include those persons and entities deemed
1-14 prevailing parties pursuant to 42 U.S.C. section 1988.

1-15 (4) "Public business" means any matter over which the public body has supervision,
1-16 control, jurisdiction, or advisory power.

1-17 (5) "Records or reports reflecting the initial arrest" means the initial face sheet of the law
1-18 enforcement department's report, as well as the law enforcement department's initial written
1-19 narrative statement, pertaining to the arrest of an adult.

2-20 ~~(5)(6)~~ "Public record" or "public records" shall mean all documents, papers, letters, maps,
2-21 books, tapes, photographs, films, sound recordings, magnetic or other tapes, electronic data
2-22 processing records, computer stored data (including electronic mail messages, except specifically
2-23 for any electronic mail messages of or to elected officials with or relating to those they represent
2-24 and correspondence of or to elected officials in their official capacities) or other material
2-25 regardless of physical form or characteristics made or received pursuant to law or ordinance or in
2-26 connection with the transaction of official business by any agency. For the purposes of this
2-27 chapter, the following records shall not be deemed public:

2-28 **(A)(I)(a) All records which are identifiable to an individual applicant for benefits, client,**
2-29 **patient, student, or employee, including, but not limited to, personnel, medical treatment, welfare,**
2-30 **employment security, pupil records, all records relating to a client/attorney relationship and to a**
2-31 **doctor/patient relationship, including and all personal or medical information relating to an**
2-32 **individual in any files, including information relating to medical or psychological facts, personal**
2-33 **finances, welfare, employment security, student performance, or information in personnel files**
2-34 **maintained to hire, evaluate, promote, or discipline any employee of a public body;**

2-35 **(b) Personnel and other personal individually-identifiable records, the disclosure of which**
2-36 **would constitute a clearly unwarranted invasion of personal privacy⁶**; provided, however, with
2-37 respect to employees, the name, gross salary, salary range, total cost of paid fringe benefits, gross
2-38 amount received in overtime, and any other remuneration in addition to salary, job title, job
2-39 description, dates of employment and positions held with the state or municipality, work location,
2-40 business telephone number, ~~the city or town of residence~~, and date of termination shall be public.
2-41 For the purposes of this section "remuneration" shall include any payments received by an
2-42 employee as a result of termination, or otherwise leaving employment.

2-43 (II) Notwithstanding the provisions of this section, or any other provision of the general
2-44 laws to the contrary, the pension records of all persons who are either current or retired members
2-45 of the retirement systems ~~established by the general laws~~ as well as all persons who become
2-46 members of those retirement systems after June 17, 1991 shall be open for public inspection.

2-47 "Pension records" as used in this section shall include all records containing information
2-48 concerning pension and retirement benefits of current and retired members of the retirement
2-49 systems ~~established in title 8, title 36, title 42, and title 45~~ and future members of said systems,
2-50 including all records concerning retirement credits purchased and the ability of any member of
2-51 the retirement system to purchase retirement credits, but excluding all information regarding the
2-52 medical condition of any person and all information identifying the member's designated
2-53 beneficiary or beneficiaries.

3-54 (B) Trade secrets and commercial or financial information obtained from a person, firm,
3-55 or corporation which is of a privileged or confidential nature.

3-56 (C) Child custody and adoption records, records of illegitimate births, and records of
3-57 juvenile proceedings before the family court.

3-58 (D) All records maintained by law enforcement agencies for criminal law enforcement
3-59 and all records relating to the detection and investigation of crime, including those maintained on

⁶ H 7555 adds "pursuant to 5 U.S.C. 552 (b)(6)" The Freedom of Information Act, 5 U.S.C. § 552, As Amended By Public Law No. 104-231, 110 Stat. 3048. "(b) This section does not apply to matters that are -- (6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

3-60 any individual or compiled in the course of a criminal investigation by any law enforcement
3-61 agency. Provided, however, such records shall not be deemed public only to the extent that the
3-62 disclosure of the records or information (a) could reasonably be expected to interfere with
3-63 investigations of criminal activity or with enforcement proceedings, (b) would deprive a person of
3-64 a right to a fair trial or an impartial adjudication, (c) could reasonably be expected to constitute an
3-65 unwarranted invasion of personal privacy, (d) could reasonably be expected to disclose the
3-66 identity of a confidential source, including a state, local, or foreign agency or authority, or any
3-67 private institution which furnished information on a confidential basis, or the information
3-68 furnished by a confidential source, (e) would disclose techniques and procedures for law
3-69 enforcement investigations or prosecutions, or would disclose guidelines for law enforcement
3-70 investigations or prosecutions or (f) could reasonably be expected to endanger the life or physical
3-71 safety of any individual. Records relating to management and direction of a law enforcement
3-72 agency and records or reports reflecting the initial arrest of an adult and the charge or charges
3-73 brought against an adult shall be public.

3-74 (E) Any records which would not be available by law or rule of court to an opposing
3-75 party in litigation.

3-76 (F) Scientific and technological secrets and the security plans of military and law
3-77 enforcement agencies, the disclosure of which would endanger the public welfare and security.

3-78 (G) Any records which disclose the identity of the contributor of a bona fide and lawful
3-79 charitable contribution to the public body whenever public anonymity has been requested of the
3-80 public body with respect to the contribution by the contributor.

3-81 (H) Reports and statements of strategy or negotiation involving labor negotiations or
3-82 collective bargaining.

3-83 (I) Reports and statements of strategy or negotiation with respect to the investment or
3-84 borrowing of public funds, until such time as those transactions are entered into.

3-85 (J) Any minutes of a meeting of a public body which are not required to be disclosed
3-86 pursuant to chapter 46 of title 42.

3-87 (K) Preliminary drafts, notes, impressions, memoranda, working papers, and work
3-88 products; provided, however, any documents submitted at a public meeting of a public body shall
4-1 be deemed public.

4-2 (L) Test questions, scoring keys, and other examination data used to administer a
4-3 licensing examination, examination for employment or promotion, or academic examinations;
4-4 provided, however, that a person shall have the right to review the results of his or her
4-5 examination.

4-6 (M) Correspondence of or to elected officials with or relating to those they represent and
4-7 correspondence of or to elected officials in their official capacities.

4-8 (N) The contents of real estate appraisals, engineering, or feasibility estimates and
4-9 evaluations made for or by an agency relative to the acquisition of property or to prospective
4-10 public supply and construction contracts, until such time as all of the property has been acquired
4-11 or all proceedings or transactions have been terminated or abandoned; provided the law of
4-12 eminent domain shall not be affected by this provision.

4-13 (O) All tax returns.

4-14 (P) All investigatory records of public bodies, with the exception of law enforcement
4-15 agencies, pertaining to possible violations of statute, rule, or regulation other than records of final
4-16 actions taken provided that all records prior to formal notification of violations or noncompliance
4-17 shall not be deemed to be public.

4-18 (Q) Records of individual test scores on professional certification and licensing
4-19 examinations; provided, however, that a person shall have the right to review the results of his or
4-20 her examination.

4-21 (R) Requests for advisory opinions until such time as the public body issues its opinion.

4-22 (S) Records, reports, opinions, information, and statements required to be kept
4-23 confidential by federal law or regulation or state law, or rule of court.

4-24 (T) Judicial bodies are included in the definition only in respect to their administrative
4-25 function provided that records kept pursuant to the provisions of chapter 16 of title 8 are exempt
4-26 from the operation of this chapter.

4-27 (U) Library records which by themselves or when examined with other public records,
4-28 would reveal the identity of the library user requesting, checking out, or using any library
4-29 materials.

4-30 (V) Printouts from TELE – TEXT devices used by people who are deaf or hard of
4-31 hearing or speech impaired.

4-32 (W) All records received by the insurance division of the department of business
4-33 regulation from other states, either directly or through the National Association of Insurance
4-34 Commissioners, if those records are accorded confidential treatment in that state. Nothing
5-1 contained in this title or any other provision of law shall prevent or be construed as prohibiting
5-2 the commissioner of insurance from disclosing otherwise confidential information to the
5-3 insurance department of this or any other state or country, at any time, so long as the agency or
5-4 office receiving the records agrees in writing to hold it confidential in a manner consistent with
5-5 the laws of this state.

5-6 (X) Credit card account numbers in the possession of state or local government are
5-7 confidential and shall not be deemed public records.

5-8 (Y) Any documentary material, answers to written interrogatories, or oral testimony
5-9 provided under any subpoena issued under Rhode Island general law section 9-1.1-6.

5-10 (ii) However, any reasonably segregable portion of a public record excluded by this
5-11 section shall be available for public inspections after the deletion of the information which is the
5-12 basis of the exclusion, if disclosure of the segregable portion does not violate the intent of this
5-13 section.

5-14 ~~(6) "Supervisor of the regulatory body" means the chief or head of a section having~~
5-15 ~~enforcement responsibility for a particular statute or set of rules and regulations within a~~
5-16 ~~regulatory agency.~~

5-17 **38-2-3. Right to inspect and copy records – Duty to maintain minutes of meetings –**
5-18 **Procedures for access.** – (a) Except as provided in section 38-2-2(~~5~~)(6), all records maintained
5-19 or kept on file by any public body, whether or not those records are required by any law or by any
5-20 rule or regulation, shall be public records and every person or entity shall have the right to inspect
5-21 and/or copy those records at such reasonable time as may be determined by the custodian thereof.

5-22 (b) Each public body shall make, keep, and maintain written or recorded minutes of all
5-23 meetings.

5-24 (c) Each public body shall establish written procedures regarding access to public records
5-25 but shall not require written requests for public information available pursuant to R.I.G.L. section
5-26 42-35-2 or for other documents prepared for or readily available to the public. These written
5-27 procedures must include, but need not be limited to, the identification of a designated public
5-28 records officer or unit, how to make a public record request, and where a public record request
5-29 should be made, and a copy of these procedures shall be posted on the public body's website if
5-30 such a website is maintained and be made otherwise readily available to the public. The
5-31 unavailability of a designated public records officer shall not be deemed good cause for failure to
5-32 timely comply with a request to inspect and/or copy public records. A written request for public
5-33 records need not be made on a form established by a public body provided the request is
5-34 otherwise readily identifiable as a request for public records.

6-1 (d) If a public record is in active use or in storage and, therefore, not available at the time
6-2 a person requests access, the custodian shall so inform the person and make an appointment for
6-3 the citizen to examine such records as expeditiously as they may be made available.

6-4 (e) Any person or entity requesting copies of public records may elect to obtain them in
6-5 any and all media in which the public agency is capable of providing them. Any public body
6-6 which maintains its records in a computer storage system shall provide any data properly
6-7 identified in a printout or other reasonable format, as requested.

6-8 (f) Nothing in this section shall be construed as requiring a public body to reorganize,
6-9 consolidate, or compile data not maintained by the public body in the form requested at the time
6-10 the request to inspect the public records was made except to the extent that such records are in an
6-11 electronic format and the public body would not be unduly burdened in providing such data.

6-12 (g) Nothing in this section is intended to affect the public record status of information
6-13 merely because it is stored in a computer.

6-14 (h) No public records shall be withheld based on the purpose for which the records are
6-15 sought, nor shall a public body require, as a condition of fulfilling a public records request, that a
6-16 person or entity provide a reason for the request or provide personally identifiable information
6-17 about him/herself.

6-18 (i) At the election of the person or entity requesting the public records, the public body
6-19 shall provide copies of the public records electronically, by facsimile, or by mail in accordance
6-20 with the requesting person or entity's choice, unless complying with that preference would be
6-21 unduly burdensome due to the volume of records requested. The person requesting delivery shall
6-22 be responsible for the actual cost of delivery, if any.

6-23 **38-2-4. Cost.** – (a) Subject to the provisions of section 38-2-3, a public body must allow
6-24 copies to be made or provide copies of public records. The cost per copied page of written
6-25 documents provided to the public shall not exceed fifteen cents (\$.15) per page for documents
6-26 copyable on common business or legal size paper. A public body may not charge more than the
6-27 reasonable actual cost for providing electronic records or retrieving records from storage where
6-28 the public body is assessed a retrieval fee.

6-29 (b) A reasonable charge may be made for the search or retrieval of documents. Hourly
6-30 costs for a search and retrieval shall not exceed fifteen dollars (\$15.00) per hour and no costs
6-31 shall be charged for the first hour of a search or retrieval. For purposes of this subsection any
6-32 person or entity submitting multiple requests to the same public body within a thirty (30) day time
6-33 period shall be counted as one request.

7-34 (c) Copies of documents shall be provided and the search and retrieval of documents
7-35 accomplished within a reasonable time after a request. A public body upon request shall provide
7-36 an estimate of the costs of a request for documents prior to providing copies.

7-37 (d) Upon request, the public body shall provide a detailed itemization of the costs
7-38 charged for search and retrieval.

7-39 (e) A court may reduce or waive the fees for costs charged for search or retrieval if it
7-40 determines that the information requested is in the public interest because it is likely to contribute
7-41 significantly to public understanding of the operations or activities of the government and is not
7-42 primarily in the commercial interest of the requester.

7-43 **38-2-7. Denial of access.** – (a) Any denial of the right to inspect or copy records, in
7-44 whole or in part, provided for under this chapter shall be made to the person or entity requesting
7-45 the right ~~by the public body official who has custody or control of the public record~~ in writing
7-46 giving the specific reasons for the denial within ten (10) business days of the request and
7-47 indicating the procedures for appealing the denial. Except for good cause shown, any reason not
7-48 specifically set forth in the denial shall be deemed waived by the public body.

7-49 (b) Failure to comply with a request to inspect or copy the public record within the ten
7-50 (10) business day period shall be deemed to be a denial. Except that for good cause, this limit
7-51 may be extended for a period not to exceed thirty (30) business days. If the volume of a request
7-52 is such that search and retrieval is reasonably expected to exceed thirty (30) business days, a
7-53 public body may apply to a justice of the superior court to further extend the time to comply. All
7-54 copying and search and retrieval fees shall be waived if a public body fails to produce requested
7-55 records in a timely manner; provided, however, that the production of records shall not be
7-56 deemed untimely if the public body is awaiting receipt of payment for costs properly charged
7-57 under section 38-2-4.

7-58 (c) A public body that receives a request to inspect or copy records that do not exist or are
7-59 not within its custody or control shall, in responding to the request in accordance with this
7-60 chapter, certify that a reasonable search has been conducted for the requested records and that it
7-61 does not have or maintain the requested records.

7-62 **38-2-8. Administrative appeals.** – (a) Any person or entity denied the right to inspect a
7-63 record of a public body ~~by the custodian of the record~~ may petition the chief administrative
7-64 officer of that public body for a review of the determinations made by his or her subordinate. The
7-65 chief administrative officer shall make a final determination whether or not to allow public
7-66 inspection within ten (10) business days after the submission of the review petition.

7-67 (b) If the custodian of the records or the chief administrative officer determines that the
7-68 record is not subject to public inspection, the person or entity seeking disclosure may file a

8-1 complaint with the attorney general. The attorney general shall investigate the complaint and if
8-2 the attorney general shall determine that the allegations of the complaint are meritorious, he or
8-3 she may institute proceedings for injunctive or declaratory relief on behalf of the complainant in
8-4 the superior court of the county where the record is maintained. Nothing within this section shall
8-5 prohibit any individual or entity from retaining private counsel for the purpose of instituting
8-6 proceedings for injunctive or declaratory relief in the superior court of the county where the
8-7 record is maintained.

8-8 (c) The attorney general shall consider all complaints filed under this chapter to have also
8-9 been filed pursuant to the provisions of section 42-46-8(a), if applicable.

8-10 (d) Nothing within this section shall prohibit the attorney general from initiating a
8-11 complaint on behalf of the public interest.

8-12 **38-2-9. Jurisdiction of superior court.** – (a) Jurisdiction to hear and determine civil
8-13 actions brought under this chapter is hereby vested in the superior court.

8-14 (b) The court may examine any record which is the subject of a suit in camera to
8-15 determine whether the record or any part thereof may be withheld from public inspection under
8-16 the terms of this chapter.

8-17 (c) Actions brought under this chapter may be advanced on the calendar upon motion of.
8-18 any party, or sua sponte by the court made in accordance with the rules of civil procedure of the
8-19 superior court.

8-20 (d) The court shall impose a civil fine not exceeding ~~one thousand dollars (\$1,000)~~ five
8-21 thousand dollars (\$5,000) against a public body or official found to have committed a knowing
8-22 and willful violation of this chapter, and a civil fine not to exceed two thousand dollars (\$2,000)
8-23 against a public body found to have recklessly violated this chapter and shall award reasonable
8-24 attorney fees and costs to the prevailing plaintiff. The court shall further order a public body
8-25 found to have wrongfully denied access to public records to provide the records at no cost to the
8-26 prevailing party; provided, further, that in the event that the court, having found in favor of the
8-27 defendant, finds further that the plaintiff's case lacked a grounding in fact or in existing law or in
8-28 good faith argument for the extension, modification, or reversal of existing law, the court may
8-29 award attorneys fees and costs to the prevailing defendant.

8-30 SECTION 2. Chapter 38-2 of the General Laws entitled "Access to Public Records" is
8-31 hereby amended by adding thereto the following section:

8-32 **38-2-3.16. Compliance by agencies and public bodies.** – Not later than January 1, 2013,
8-33 and annually thereafter, the chief administrator of each agency and each public body shall certify
8-34 to the attorney general that all officers and employees who have the authority to grant or deny
9-1 persons or entities access to records under this chapter have been provided orientation and
9-2 training regarding this chapter. The attorney general may, in accordance with the provisions of
9-3 chapter 35 of title 42, promulgate rules and regulations necessary to implement the requirements
9-4 of this section.

9-5 SECTION 3. Section 38-2-6 of the General Laws in Chapter 38-2 entitled "Access to
9-6 Public Records" is hereby repealed.

9-7 ~~**38-2-6. Commercial use of public records.** – No person or business entity shall use~~
9-8 ~~information obtained from public records pursuant to this chapter to solicit for commercial~~
9-9 ~~purposes or to obtain a commercial advantage over the party furnishing that information to the~~
9-10 ~~public body. Anyone who knowingly and willfully violates the provision of this section shall, in~~
9-11 ~~addition to any civil liability, be punished by a fine of not more than five hundred dollars (\$500)~~
9-12 ~~and/or imprisonment for no longer than one year.~~

9-13 SECTION 4. This act shall take effect on September 1, 2012.



alarm clock graphic

Adjournment

Linda Ward

11:00



voting check off graphic

MOTION: To adjourn at 11:10 AM.