



**LOUISIANA STATE LAW INSTITUTE**

PAUL M. HEBERT LAW CENTER, ROOM W127

UNIVERSITY STATION

BATON ROUGE, LA 70803-1016

OFFICE OF  
THE DIRECTOR  
(225) 578-0200

FAX: (225) 578-0211

EMAIL: LAWINSTITUTE@LSLI.ORG

January 14, 2013

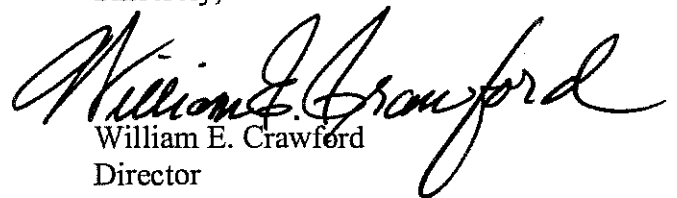
Representative Chuck Kleckley  
Speaker of the House of Representatives  
P.O. Box 94062  
Baton Rouge, Louisiana 70804-9062

RE: HR NO. 69 of 2011

Dear Mr. Speaker:

The Louisiana State Law Institute respectfully submits herewith its report to the legislature in response to 2011 House Resolution No. 69, relative to criminal history background checks for individuals who provide personal care or other health-related services to adults.

Sincerely,

  
William E. Crawford  
Director

WEC/lr

Enclosure

email cc: David R. Poynter Legislative Research Library  
[drplibrary@legis.state.la.us](mailto:drplibrary@legis.state.la.us)

**LOUISIANA STATE LAW INSTITUTE**

**REPORT IN RESPONSE TO HR 69  
OF THE 2011 REGULAR LEGISLATIVE SESSION**

**Criminal Background Checks for  
Direct Service Workers for Adults**

**Emilia Salas, Facilitator  
Lynette Roberson, Staff Attorney**

**1-15-13**

**CRIMINAL BACKGROUND CHECKS SUBCOMMITTEE OF THE  
CRIMINAL CODE AND CODE OF CRIMINAL PROCEDURE REVISION  
COMMITTEE**

Barron Burmaster, Gretna

Lisa Comeaux, Denham Springs

Cecile Castello, Baton Rouge

Karen Contrenchis, Crown Point

John Di Giulio, Baton Rouge

Joseph A. Donchess, Baton Rouge

Ricky Edwards, Baton Rouge

Hugh Eley, Baton Rouge

Warren Hebert, Lafayette

Kimberly Humbles, Baton Rouge

Erin Rabalais, Baton Rouge

Robert Wertz, Baton Rouge

Brenda Wood, Denham Springs

\* \* \*

Emilia Salas, Facilitator

Lynette Roberson, Staff Attorney

1 **INTRODUCTION**

2  
3 House Resolution 69 of the 2011 Regular Legislative Session directed the Law  
4 Institute to "study and make recommendations for the revision of laws regarding criminal  
5 history background checks for individuals who provide personal care or other health-  
6 related services to adults". A copy of HR 69 is attached.

7  
8 A subcommittee of the Code of Criminal Procedure Revision Committee held  
9 several meetings in order to prepare its proposal in response to HR 69 of 2011. The  
10 following report was approved as presented by the Code of Criminal Procedure  
11 Revision Committee and, on January 12, 2013, by the Law Institute Council.

12  
13 Those in attendance at the subcommittee meetings included those participating  
14 per HR 69 directives and others who had indicated a desire to participate. After a great  
15 deal of discussion, the subcommittee recommends no revision in the law at this time.

## REPORT ON HR 69 OF 2011

1  
2  
3           House Resolution 69 of the 2011 Regular Legislative Session directed the Law  
4 Institute to "study and make recommendations for the revision of laws regarding criminal  
5 history background checks for individuals who provide personal care or other health-  
6 related services to adults." The Institute enlisted representation and input from the  
7 entities provided for in the Resolution: the Louisiana Department of Health and  
8 Hospitals, the Louisiana Assisted Living Association, the Louisiana Nursing Home  
9 Association, Leading Age Gulf States (formerly "the Gulf State Association of Homes  
10 and Services for the Aging"), the Homecare Association of Louisiana, the Louisiana  
11 District Attorneys Association, the Louisiana Public Defender Board, the Louisiana  
12 Sheriffs' Association, the Louisiana State Police, the Louisiana Commission of Law  
13 Enforcement and the Administration of Criminal Justice, and others who expressed  
14 interest in participating. The Institute formed this group as a subcommittee to the  
15 Institute's Code of Criminal Procedure Revision Committee.

16  
17           The subcommittee discussed HB 300 of the 2011 Regular Legislative Session,  
18 proposed legislation, and other materials prepared by the subcommittee's facilitator.  
19 The materials proposed would have required national, fingerprint-based background  
20 checks, provided by the FBI, for unlicensed direct service workers.

21  
22           The subcommittee deferred discussion of proposed materials to allow them to  
23 analyze the relevant issues and processes. Members studied several topics including  
24 accessibility of the fingerprinting procedure, appropriate use of national fingerprint-  
25 based background checks results, and the increased cost of national checks to  
26 employers. Members also reviewed the background check processes of several other  
27 states.

28  
29           The subcommittee determined that federal regulations prevent private employers  
30 from receiving national background check results from the FBI. There was, as a result,  
31 consensus that national background checks for unlicensed direct service workers would

1 not be feasible. A majority of the members supported the continued use of authorized  
2 agencies to provide criminal history information on applicants, with one member  
3 opposed.

4  
5 A majority of the members recommend that no change in the law be made until  
6 the passage of relevant federal legislation, with one member opposed. Members cited  
7 the continued national debate on this topic, specifically the proposed Patient Safety and  
8 Abuse Prevention Act (U.S. Senate Bill 1577) of the 110<sup>th</sup> Congress. Members also  
9 wished to emphasize the commitment of stakeholders to protecting the state's  
10 residents, noting that Louisiana was the 2<sup>nd</sup> state in the nation to require background  
11 checks for persons providing health-related services to adults.

APPENDIX:

28 C.F.R. § 50.12 - Exchange of FBI identification records (emphasis added)

(a) ***The Federal Bureau of Investigation, hereinafter referred to as the FBI, is authorized to expend funds for the exchange of identification records*** with officials of federally chartered or insured banking institutions to promote or maintain the security of those institutions and, ***if authorized by state statute and approved by the Director of the FBI, acting on behalf of the Attorney General, with officials of state and local governments for purposes of employment and licensing***, pursuant to section 201 of Public Law 92-544, 86 Stat. 1115. Also, pursuant to 15 U.S.C. 78q, 7 U.S.C. 21 (b)(4)(E), and 42 U.S.C. 2169, respectively, such records can be exchanged with certain segments of the securities industry, with registered futures associations, and with nuclear power plants. The records also may be exchanged in other instances as authorized by federal law.

(b) The FBI Director is authorized by 28 CFR 0.85(j) to approve procedures relating to the exchange of identification records. Under this authority, effective September 6, 1990, the FBI Criminal Justice Information Services (CJIS) Division has made all data on identification records available for such purposes. Records obtained under this authority may be used solely for the purpose requested and cannot be disseminated outside the receiving departments, related agencies, or other authorized entities. Officials at the governmental institutions and other entities authorized to submit fingerprints and receive FBI identification records under this authority must notify the individuals fingerprinted that the fingerprints will be used to check the criminal history records of the FBI. The officials making the determination of suitability for licensing or employment shall provide the applicants the opportunity to complete, or challenge the accuracy of, the information contained in the FBI identification record. These officials also must advise the applicants that procedures for obtaining a change, correction, or updating of an FBI identification record are set forth in 28 CFR 16.34. Officials making such determinations should not deny the license or employment based on information in the record until the applicant has been afforded a reasonable time to correct or

complete the record, or has declined to do so. A statement incorporating these use-and-challenge requirements will be placed on all records disseminated under this program. This policy is intended to ensure that all relevant criminal record information is made available to provide for the public safety and, further, to protect the interests of the prospective employee/licensee who may be affected by the information or lack of information in an identification record.