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For Details, Contact:

Jeff Derouen
Phone (502) 573-0050
Fax (502) 573-0067
Pager (888) 222-5670
Email: jeff.derouen@auditor.ky.gov

Crit Luallen
Auditor of Public Accounts
105 Sea Hero Ste. 2
Frankfort, KY 40601
<http://www.auditor.ky.gov>

News from State Auditor Crit Luallen's Office

AUDITOR'S ALERT ISSUED CONCERNING CRIMINAL BACKGROUND CHECKS FOR EMPLOYEES

Luallen calls for passage of National Crime Prevention and Privacy Compact during 2005 Legislative Session

Frankfort, KY (July 22, 2004) State Auditor Crit Luallen today released the findings of a review of the state's use of criminal background checks and specific recommendations to improve their effectiveness. An analysis by the Auditor's Office identified the need for clear and consistent policies related to such checks in the employment process.

The findings were presented in the form of an Audit Alert sent to Cabinet Secretary Allyson Handley. Audit Alerts are issued by the Auditor's Office and offer recommendations in order to improve efficiency and efficacy of state or local governments.

The review, based upon a survey sent to twelve state agencies, was "conducted to ensure that employees entrusted with the safety of the general public and daily care of our most vulnerable citizens have been properly screened and deemed qualified to hold such trust" Luallen said.

Ms. Luallen added, "Every citizen of the Commonwealth has a right to expect that state government employees and contract employees are qualified to provide the best possible services to safeguard public health and safety. By conducting thorough and

consistent criminal background checks on employees in positions of trust, the Commonwealth will be able to more closely meet this expectation."

Several recommendations were made by Ms. Luallen's office, the main one being that the General Assembly enact the National Crime Prevention and Privacy Compact during the 2005 Legislative session. Congress passed the compact in 1998 and 21 states have ratified it to date. The Compact organizes an electronic sharing system among the federal government and the states to exchange criminal history records for all authorized non – criminal justice purposes. The compact allows states to retain control over their own records and includes felonies and misdemeanor records from across the country. Luallen plans to push for ratification in the coming session.

The review also found that Kentucky state government needs to review employment requirements to determine which positions need background checks. Currently no such written policy exists. The Auditor's Office recommends pre-employment background checks for all employees who have contact with vulnerable populations, such as children and the elderly, those who work in fields of public health and safety, and those involved with homeland security. Also, the review found that state government has no policy or procedure in place to update background checks once an employee is hired.

The alert also recommends a full audit by the Auditor's Office to determine the validity and completeness of the criminal background information found on the databases currently in use. These sources typically include databases controlled by the Administrative Office of the Courts and Kentucky State Police.

NOTE: The Audit Alert accompanies below and the survey and survey summary are attached.

AUDITOR'S ALERT

July 22, 2004

Allyson Handley, Secretary
Executive Cabinet
Governor's Office
700 Capitol Avenue
Frankfort, Kentucky 40601

Dear Secretary Handley,

As you will recall, I initiated a review of the Commonwealth's use of criminal background checks to determine eligibility for state government employment. This review was conducted to ensure that employees entrusted with the safety of the general public and the daily care of our most vulnerable citizens have been properly screened and deemed qualified to hold such trust. It is our hope that the Fletcher administration will find this auditor's alert helpful as it reviews personnel policies to promote uniform and consistent personnel practices across state government. Auditor alerts are issued by the Auditor's Office to offer recommendations in order to improve efficiency and efficacy of state and local governments.

The main focus of this review was based on a survey developed by this office (Attachment A) and sent to twelve (12) state agencies. The agencies were asked to identify all of their programs and personnel classifications that require criminal background checks of potential employees. Background check requirements for contract employees were also included in this survey, because these employees are used extensively to provide services for vulnerable populations such as the elderly, developmentally disabled adults, and children. The auditors also conducted an independent review of the Kentucky statutes and regulations requiring background checks to be completed prior to employment.

Based on our analysis of the survey responses and the relevant statutes and regulations, the Auditor of Public Accounts has developed five findings that should be addressed in the near future in order to establish equitable employment standards and safeguard the health and safety of our citizens.

Finding:

Eight of the twelve agencies responded that either the entire agency or at least one of its entities did not utilize criminal background checks prior to hiring state employee

Additionally, eight agencies reported that either the entire agency, or at least one of its entities, did not require contractors to perform criminal background checks of their employees (Attachment B).

Recommendation: *While this office makes no assumptions that these agencies should or should not be using criminal background checks, APA does recommend that all state agencies review the employment requirements for state employees, and all employees of businesses that contract for services with the Commonwealth. The agencies should take into account employee contact with vulnerable populations, potential impact on homeland security, and agency responsibility for general public health and safety.*

Finding:

A limited number of agencies have statutory or regulatory authority to require criminal background checks for employment. Four of the agencies responding to the survey were able to cite specific statutes or regulations that would require checks for potential employees. These agencies were the Department of Military Affairs, the Education Cabinet, the Health and Family Services Cabinet, and the Justice Cabinet. This leads the APA to conclude that many agencies are relying on written and unwritten internal policy as their basis for conducting criminal background checks.

Recommendation: *Once agencies reevaluate their need to conduct criminal background checks for state and contract employees, they should be certain that these requirements are codified into statute or regulation. Agencies should also convert any internal policies that currently require background checks into an administrative regulation.*

Finding:

Most reporting agencies stated that they only conduct criminal background checks just prior to employment with no further follow-up. Only the Health and Family Services Cabinet and the Department of Military Affairs reported that they continue to conduct periodic criminal background checks after an employee has been hired.

Recommendation: *Current agency policies and regulations do not provide for the detection of crimes that may occur after an initial criminal background check is completed. This results in an employee being put on the honor system to notify management of a crime that may ultimately cause them to lose their job. The APA strongly recommends that agencies should reevaluate this policy and update requirements for employment to include periodic criminal background checks that will allow agencies to detect relevant crimes after hiring. While the APA realizes that resources for such an undertaking are limited, this office does believe that every agency needs to balance the issue of resources in a manner that provides for the highest level of protection for Kentucky citizens' health and welfare.*

Finding:

Agencies reported using a variety of sources to obtain criminal background information. The typical sources usually include either the Administrative Office of the Courts, Kentucky State Police, or the FBI. Additional research conducted by the APA has determined that not all of these sources contain the same quantity and/or quality of criminal history records to the point that some could even be considered incomplete.

Recommendation: *The APA has found that the Commonwealth's criminal history databases may not be able to provide consistently complete criminal background information. This situation warrants further review and an audit by the Auditor of Public Accounts to determine the validity and completeness of the criminal background information that is contained in these databases. In the meantime, agencies should conduct a serious review of the criminal background information source that they use and determine if that source provides the information that best suits their purposes.*

The above recommendations should also be incorporated into the statutes and regulations that govern requirements for school district employees, even though they are not considered part of the state government employment system. The Kentucky Department of Education (KDE) has the statutory authority to develop regulations that govern these employees and, therefore, the responsibility to ensure that teachers, school bus drivers, and other school employees are held to the high standards the public expects to protect children.

Finding:

In the aftermath of 9/11, requests for background checks increased tremendously. These newly required checks on various groups such as Commercial Drivers License (CDL) applicants are in addition to the thousands of non-criminal justice background checks that are already being conducted to satisfy the public's demand to know who is caring for their children, the elderly, and the disabled. Due to this rapidly growing volume of background check requests, it is essential that the Commonwealth do everything in its power to maximize the accuracy and efficiency of the process.

The easiest way to accomplish this goal would be to ratify the National Crime Prevention and Privacy Compact. Congress passed this interstate criminal history record sharing agreement in October of 1998, and, to date, it has been ratified by twenty-one (21) states. The Compact organizes an electronic sharing system among the federal government and the states to exchange criminal history records for all authorized non-criminal justice purposes (such as pre-employment background checks). The states retain control over their own records and no longer have to send duplicate information to the FBI's central repository.

More importantly, since state records usually document misdemeanors and lesser offenses that never make it to the FBI databank, background checks will become increasingly accurate with every state that joins the Compact.

As documented in several responses to the APA survey, potential employees who have lived out of state pose a particular challenge to Kentucky agencies seeking a thorough background check. Ratifying the Compact would allow these employers to receive a more complete criminal record history almost immediately.

The benefits of ratifying the Compact are threefold. First, the process of running background checks for non-criminal justice purposes would be streamlined, thereby reducing the time, paperwork, and costs typically associated with these requests. Second, the state would be able to take control over its own criminal history records rather than surrendering control to the federal government. And third, Compact states stand on equal footing with the federal government in determining policies and procedures for non-criminal justice background checks. For example, Compact states worked closely with the Department of Homeland Security on the issue of background checks for truck drivers seeking hazardous materials licenses. APA contacted the five (5) Compact states of Florida, Georgia, North Carolina, South Carolina, and Tennessee, and every one of them confirmed that their law enforcement agencies are currently experiencing these benefits.

The drawbacks to ratifying the Compact are nonexistent. Since each Compact state continues to enforce its own record distribution laws within its own borders, Kentucky law would govern the release of any criminal history information received from another state. Therefore, Kentucky citizens would not forfeit any privacy rights recognized by our General Assembly. Additionally, there would be eventual cost savings associated with Compact ratification, because the need to send duplicate fingerprint cards and dispositions to the FBI will be completely eliminated.

Recommendation: *Kentucky should ratify the National Crime Prevention and Privacy Compact during the General Assembly's 2005 Regular Session. Twenty-one (21) states have ratified the Compact to date. Becoming the twenty-second state to do so would send a strong message that Kentucky is proactive, rather than reactive, on criminal justice issues. And it would visibly demonstrate Kentucky's commitment to protecting all of its citizens in matters of public safety, health and human services, education, and homeland security.*

The Auditor of Public Accounts believes that every citizen of this Commonwealth has a right to expect that state government employees and contract employees are qualified to provide the best possible services to safeguard public health and safety. By conducting thorough and consistent criminal background checks on employees in positions of trust, the Commonwealth will be able to more closely meet this expectation. We look forward to your interest and support in making the improvements detailed in this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Crit Luallen". The signature is fluid and cursive, with a long horizontal stroke at the end.

Crit Luallen
Auditor of Public Accounts

c: Governor Ernie Fletcher
Lt. Governor Stephen B. Pence
Secretary James W. Holsinger
Secretary Virginia Fox
Secretary Gene Strong
Secretary Jim Host
Secretary LaJuana Wilcher
Secretary Robbie Rudolph
Secretary Maxwell C. Bailey
Adjutant General Major General Donald C. Storm
Budget Director Brad Cowgill
Commissioner Darrell D. Brock, Jr.
Commissioner Bob Ramsey
Robert Sherman, Director, Legislative Research Commission
Senate President David Williams
House Speaker Jody Richards
Sen. Julie Denton, Co-Chair Interim Joint Committee on Health and Welfare
Rep. Tom Burch, Co-Chair Interim Joint Committee on Health and Welfare
Sen. Alice Kerr, Co-Chair Interim Joint Committee on State Government
Rep. Charles Geveden, Co-Chair Interim Joint Committee on State Government
Sen. Robert Stivers, Co-Chair Interim Joint Committee on Judiciary
Rep. Gross Lindsay, Co-Chair Interim Joint Committee on Judiciary
Sen. Lindy Casebier, Co-Chair Interim Joint Committee on Education
Rep. Frank Rasche, Co-Chair Interim Joint Committee on Education
Sen. Dan Seum, Co-Chair Interim Joint Committee on Seniors, Veterans, Military Affairs, and Public Protection
Rep. Mike Weaver, Co-Chair Interim Joint Committee on Seniors, Veterans, Military Affairs, and Public Protection