

CERTIFICATION PRACTICES OF
OKLAHOMA TEACHER APPLICANTS
WITH CRIMINAL RECORDS

By

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CHAPTER I

INTRODUCTION

“I have always assumed that if a certificate was issued, the Department of Education had conducted a background check for a criminal record. Do you mean that the State Department of Education doesn’t conduct a background check on all teachers before they issue a certificate?”

(Conference Attendee, 2005)

Introduction

One of the worst fears a school administrator can realize is that, upon opening the morning newspaper, she sees the front page headline: “Teacher Arrested for Sexually Molesting Student.” As she begins reading the article, she recognizes this teacher is one of her own. The reporter reveals the teacher’s arrest for inappropriate conduct with students at her previous school. The thoughts going through this administrator’s mind hopefully will be, first, the welfare of the student and, secondly, the liability issues that the school might be facing and whether or not everything was done to protect the student from the accused. She will be asking herself, “How could we have prevented this?” Or, perhaps the administrator will be thinking, “Maybe we should have conducted a background check or more thorough reference checks before we hired him; but, since he holds a valid teaching credential, the State Department of Education must have checked him out.”

The researcher works for the Oklahoma State Department of Education (OSDE) as the Director of School Personnel Records (August 1999 to present), and was the Office Manager/Certification Specialist in the Professional Standards Office (teacher certification) for five years (August 1994 – July 1999) prior to his current assignment; combined he has 12 years of service with the state agency in these two offices. A primary duty he has held since 1995 has been as manager and investigator for the Criminal History Program. Among the position duties are: (a) working closely with local school districts in conducting criminal history background checks for employment purposes, (b) reviewing positive criminal history background checks on certified teachers or persons applying for certification, and (c) making recommendations to the OSDE legal counsel and the Oklahoma State Board of Education (OSBE) as to revocation issues for teachers who have been convicted of criminal acts. This position provides for an in-depth understanding into the history, laws, policies, and operational processes of teacher certification and employment of teachers with criminal records.

During the 2005 Oklahoma School Administrators' Summer Leadership Conference, a session was presented on school personnel issues and criminal history background checks. At the end of the session an unscientific survey was conducted by asking the attendees (approximately 100 school superintendents and principals) several questions regarding their understanding of criminal history background checks. First, the attendees were asked how many conducted criminal history background checks for employment purposes. Surprisingly, less than ten of the attendees acknowledged that they conducted background checks for employment purposes. The attendees were then asked whether or not the issuance of a teaching credential by the OSDE meant that the teacher

had passed a criminal history background check. Most attendees acknowledged with a showing of hands that it did, which would be in line with a recent law that mandated fingerprint-based criminal history background checks on first-time applicants for an Oklahoma teaching credential. A follow-up question was asked regarding persons who were renewing their credentials. Again, most persons in attendance thought that the issuance of a teaching credential by the OSDE meant that the applicant had been cleared of any criminal wrongdoing.

The reason the attendees at the workshop may have believed the OSDE conducted criminal history checks prior to issuing a credential is easily explained by reviewing Oklahoma statute, Title 70 § 3-104.1:

No person shall receive a certificate for [an] instructional, supervisory or administrative position in an accredited school of this state who has been convicted of a felony, any crime involving moral turpitude or a felony violation of the narcotic laws of the United States or the State of Oklahoma, provided the conviction was entered within the preceding ten year period.

By being familiar with this law, school administrators could easily assume the OSDE conducted criminal background checks; otherwise, the agency would not be in compliance with the law. However, drawing this assumption and not taking appropriate protective measures regarding the hiring of staff could spell disaster for the school district.

Problem Statement

Although laws have been enacted across the nation requiring fingerprint-based criminal history background checks on new applicants for a teaching license, no research

exists to show if the implementation of these laws has made a significant impact in keeping undesirable persons out of the nation's classrooms. Sexual abuse of students by employees is not the only type of crime in schools. Although most of the nation's attention is directed towards the school employee who is a sexual offender, others in the school system may have been charged and convicted of other types of crimes. School administrators must be alert for employees, particularly those with unsupervised contact with children, who manufacture methamphetamines, sell and/or use drugs including marijuana, and drive regular bus routes and activity buses while drunk. Additionally, administrators must deal with employees who are charged with assault and battery or even murder, embezzlement, and other types of theft. The list of crimes goes on and on.

Hendrie (1998) writes, "If there's anything worse than a school employee who sexually abuses students, it's a school that doesn't care." She quoted Robert Billinger whose daughter was abused by a teacher, "You've got to do something to get their attention . . . if it takes a lawsuit, then so be it. You just can't let this keep happening to these kids" (Hendrie, 1998, Cost is high when schools ignore abuse, ¶¶ 1, 3).

This apparent lack of concern can be extended to other entities that have responsibility for the success and safety of the students in the educational system. Not excluded from this responsibility are the roles that the state and federal departments of education have regarding certification and employment practices. To fully appreciate the seriousness and complexity of certifying teachers with criminal records, it is necessary to understand the entire system in which the schools operate and the role assumed by each entity within the system. Specifically, what impact have Oklahoma's statutes enacted by

the legislative suprasystem regarding certification applicants' criminal histories had on the screening process of first-time teacher license/certification applicants?

Statement of Purpose

The purpose of this study was to determine what impact the provisions of various teacher certification laws, policies, and procedures have on the screening process of first-time teacher applicants in Oklahoma. Specifically studied were two laws, 70 O.S. 2001, § 6-190 (B)(6) and 70 O.S. Supplement 2004, § 6-190 (D), enacted in November 2001 and July 2004, respectively, and the decisions made by persons in leadership positions within the OSDE regarding the implementation of these and other laws relative to criminal history background checks for teacher credentialing purposes. These laws mandate the collection of specific information relative to criminal history background checks:

Beginning November 1, 2001, [the applicant] has on file with the [State] Board [of Education] a current Oklahoma criminal history record from the Oklahoma State Bureau of Investigation as well as a national fingerprint-based criminal history record provided by the Federal Bureau of Investigation. (70 O.S. 2001, § 6-190[B][6])

Beginning July 1, 2004, any person applying for initial Oklahoma certification who has not applied for and received an Oklahoma teacher license shall have on file with the [State] Board [of Education] a current Oklahoma criminal history record from the Oklahoma State Bureau of Investigation as well as a national criminal history record check as defined in Section 150.9 of Title 74 (National criminal history record with fingerprint analysis) of the Oklahoma Statutes. (70 O.S. 2004, § 6-190[D])

These laws were enacted with the purpose of identifying teachers with criminal records prior to their being issued a credential allowing them to teach, thus preventing their employability as a certified teacher within a school system. Prior to these two laws being enacted, no sure mechanism existed to prevent teachers with criminal records from becoming certified or from being employed in Oklahoma schools. Nor, do these laws affect the OSDE's interpretation and application of the current laws, rules, and policies regarding the issuance of teaching credentials to applicants with criminal records. It is possible that teachers with criminal records are still being certified, thereby, having the opportunity to teach in Oklahoma's school systems and cause harm to the school children. However, no information exists to show whether or not these laws positively impacted the certification process to prevent teachers with criminal records from being certified.

Research into the effectiveness of criminal history background checks as a means of controlling access to the teaching profession is nearly nonexistent. Although several studies have been conducted regarding sexual abuse of children in the public school systems, and many journal and news articles written recommending criminal history background checks as a tool to protect the children and employees in a school (or business), none of these studies or journal articles cite solid research to prove the worth of these criminal background checks. This lack of research is supported in the United States Department of Education's study titled, "Educator Sexual Misconduct: A Synthesis of Existing Literature" (Shakeshaft, 2004). She writes that very little research exists on the effectiveness of conducting criminal history background checks as a means of protecting students, employees, and/or the school district.

Regarding laws on fingerprinting, Shakeshaft (2004), addressing the Policy and Programs Studies Services in her synthesis of the literature concerning educator sexual misconduct, wrote that “many states have passed fingerprinting laws for teachers and other educational professionals. However, there is no data about the effectiveness of such legislation for preventing or detecting sexual abusers” (p. 41). Concerning the limitations of state laws, Shakeshaft “found no reports that codify educator sexual misconduct statutes by state. Neither did I find studies on convictions of educators nor that examined the impact on students’ behavior” (p. 40). Additionally, she found “no formal studies of licensure revocation in cases of educator sexual misconduct, although there are newspaper accounts that document local or state instances” (p. 40). In spite of her research and commentary, some data concerning revocation and denial of educator credentials are maintained by the National Association of State Directors of Teacher Education and Certification (NASDTEC). And, the OSBE reported 120 revocations and/or denials between 1984 and 2005 (Appendix B1); however, supporting Shakeshaft’s comments, NASDTEC’s data are proprietary and approval from the organization’s leadership must be granted before the information is released.

The NASDTEC Professional Practices Commission annually estimates only two or three percent of the teachers in the United States are criminals, but these two or three percent can cause irreparable damage to a child and to the school system (NASDTEC, Professional Practices Institute, 1997). Where does this estimate come from? No published quantifiable data are available to support those figures. It is possible this estimate was obtained from the data maintained by NASDTEC; however, attempts by this researcher to obtain the data were not granted.

The common opinion shared by the authors of the many articles written regarding protecting businesses, to include public schools, is that fingerprint-based and other criminal background checks are an accepted practice for identifying and preventing criminals from becoming employees of businesses and schools (Edwards and Kleiner, 2002; Thomas, 2002; Lam and Kleiner, 2001; Connerley, Arvey and Bernardy, 2001). With 46 of the 50 states and Washington D.C. now requiring fingerprinting for either licensure or employment, the opinion of these authors seems to be supported and accepted by lawmakers.

Just (1996) studied the training of school administrators in the prevention of child sexual abuse in the school setting focusing on ways the school administrator could prevent child sexual abuse. She listed the lack of research in the areas related to child sexual abuse as being the “failure to recognize pedophile behaviors, failure to do background checks before hiring, failure to adequately supervise employees in school settings, failure to follow appropriate investigation procedures and failure to provide training to school administrators in child sexual abuse issues” (p. 12).

In addition to recent interest and legislation that require criminal history background checks for licensure or employment purposes, the decisions made by the credential issuing authorities become an important factor in whether or not an applicant will be issued a credential to teach. The interpretation of these laws and the policies that are developed to enforce them is an area that also impacts the effectiveness of the legislation. Although a law may exist, the local, state, and/or national agency entrusted to apply and enforce the law may interpret the law differently from what the lawmakers had

intended, thus, having a significant positive or negative impact upon the success of the law.

In Oklahoma, prior to enactment of the 2001 and 2004 laws, there were two very specific laws addressing the issuance of a teaching credential to an applicant with a criminal record. The first law (70 O.S. § 3-104.1) addresses those applicants who have a felony or moral turpitude criminal conviction that occurred within a ten-year period of time from the date of the application. The second law (70 O.S. § 3-104 [9][a]) addresses applicants convicted of a crime of a specific sexual nature and for which no time limit is assigned. Supporting this second law, the legislature enacted two other laws prohibiting a person registered as a sexual offender from working on school premises while children are present (70 O.S. § 6-101.48 & 57 O.S. § 589).

Research Questions

The existing problem is even with legislation and policies forbidding teacher applicants with criminal records from receiving a teaching credential, there are possibly many persons with criminal records obtaining a teaching credential, thus, becoming eligible to teach in Oklahoma's schools. The primary research question being studied is: "How have the November 2001 and July 2004 laws mandating fingerprint-based criminal history background checks on first-time applicants for an Oklahoma teaching credential impacted the process of identifying teacher licensure applicants with criminal records, thus, preventing their being issued an Oklahoma teaching credential?" More specifically:

1. What is the impact of the November 2001 law requiring criminal history background checks for teacher licensure on new teacher licensure applicants within Oklahoma?

2. How has the July 2004 law requiring criminal history background checks for teacher credentialing purposes on out-of-state applicants impacted these applicants ability to obtain an Oklahoma teaching credential?
3. Which policies and procedures used by the OSDE in determining whether or not an applicant with a criminal record should be issued a teaching credential are consistent with state law?
4. What impact do the decisions made by the OSDE on teacher licensure/certification applicants with criminal records have on local school district hiring practices?
5. What trends exist in the methods (traditional, alternative, or out-of-state) used to obtain an Oklahoma teacher credential that might suggest one group of individuals is more likely to have a criminal record over another group of individuals?
6. How do the number of teacher applicants found with criminal records in Oklahoma compare with the data provided by NASDTEC?

Theoretical Framework

Bush (2003) states that “systems theories emphasize the unity and integrity of the organization and focus on the interaction between its component parts, and with the external environment. These models stress the unity and *coherence* of the organization” (p. 41). Banathy (1968) generalized that systems can be defined as “deliberately designed synthetic organisms, comprised of interrelated and interacting components which are employed to function in an integrated fashion to attain predetermined purposes” (p. 2). Banathy also writes: “the best way to identify a system is to reveal its specific purpose”

(p. 3). Using the purpose as outlined in *The No Child Left Behind Act of 2001*, the purpose of an educational system is to “ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging State academic achievement standards and state academic assessments” (p. 18).

Heylighen and Joslyn (1992) define systems theory as “the transdisciplinary study of the abstract organization of phenomena, independent of the substance, type, or spatial or temporal scale of existence. It investigates both the principles common to all complex entities, and the (usually mathematical) models which can be use to describe them” (Principia Cybernetica Web, ¶ 1). In discussing systems theory, Capra (1996) stated, “the first criterion is a shift from viewing systems in parts to viewing them as wholes” (p. 36). He concluded that systems when viewed as a whole were unique and specifically defined; however, when taken apart, their unique properties were lost (Capra, p. 36).

De Rosnay (1997) compared the analytic and systemic approaches for studying an entity. He writes: “the analytic approach seeks to reduce a system to its elementary elements in order to study in detail and understand the types of interaction that exist between them. . . . By modifying one variable at a time, it tries to infer general laws that will enable one to predict the properties of a system under very different conditions” (Principia Cybernetica Web, Analytic vs. Systemic Approaches (n.d.), ¶ 1). Regarding the systemic approach, de Rosnay writes:

These systems must be approached by new methods. . . . The purpose of the new methods is to consider a system in its totality, its complexity, and its own dynamics. Through simulation one can ‘animate’ a system and observe in real

time the effects of the different kinds of interactions among its elements. The study of this behavior leads in time to the determination of rules that can modify the system or design other systems.

De Rosnay developed a table that compares the traits of the analytic and systemic approaches (See Appendix C1). He admits there are numerous other points of comparison that deserve to be mentioned. However, he chose to only compare these two approaches that compliment one another.

Checkland (2002) identified four classes of systems. The first is the natural system comprised of physical systems that make up the universe. This system ranges “from the subatomic system of atomic nuclei as described in physics, through the physical framework of this and other planets and the living systems observed on earth, to galactic systems at the other extreme” (p. 110). The second class is the “designed physical system” which are “man made systems whose entities could be something other than they are and designed for human purpose and exists to serve mankind” (p. 110). The third class of system as described by Checkland is the “designed abstract system which consists of mathematics, literature, and philosophy and represents the ordered conscious product of the human mind” (p. 110). Checkland’s fourth system is that of human activity. He states this system is less tangible than others but is observable from various viewpoints, depending on the activity being observed” (p. 110-111). Regarding Checkland’s four classes of systems, Miller (2005) states that in business, the system of human activity is the one “with which most have an immediate interaction and the one that may be more adept to change” (p. 75).

The need for change is very important within the educational system. The interaction between each entity within the system is vital for change to be successful. Although each component of the education suprasystem is singularly capable of accomplishing its goals, the concept of synergy within the system will undoubtedly increase the potential for success. Miller (2005) describes synergy as “the value or ability of the whole [being] greater than the sum of its individual parts” (p. 76). If each level and division of the educational system will work together, then the likelihood of all entities succeeding will be far greater. Miller writes, “individually, each member might be seen as having different goals and ideals, but together, they formed an almost unbeatable alliance” (p. 76). Senge (1990) stated “individual effort, instead of group efforts, are a waste of energy, however when the players focused their energies, a commonality developed that harnessed the individual energy into a type of group energy” (p. 234).

Banathy (1968) was a pioneer in the systems theory of organizational operations, writing a comprehensive definition of the term “system” as being:

Assemblages of parts that are designed and built by man into organized wholes for the attainment of specific purposes. The purpose of a system is realized through processes in which interacting components of the system engage in order to produce a predetermined output. Purpose determines the process required, and the process will imply the kinds of components that will make up the system. A system receives its purpose, its input, its resources, and its constraints from its suprasystem. In order to maintain itself, a system has to produce an output which satisfies the suprasystem. (p. 12)

In describing the social systems of an organization, Owens (2004) states “the organization (the system) as existing in an environment (the suprasystem) and having within it a subsystem (the administrative apparatus of the organization)” (p. 123). Systems theory addresses how various parts and entities influence each other and those assume responsibility for collectively achieving a mission, goal, or purpose. When the suprasystem (legislature, courts) pass or make a ruling on a law, the system (state educational agency) is responsible for interpreting and implementing the law. It is implemented in the subsystem (local school system). However, if the suprasystem (legislature) enacts a law and the system (state education agency) fails to interpret and implement as intended, the subsystem (local school district) can act improperly (no background check) and children may be harmed by child molesters.

The Education Suprasystem

Owens (2004) states that a suprasystem is the entire environment in which an entity operates. It takes into account all factors that contribute to the operation of the entity. The suprasystem is comprised of subsystems that work in cooperation with each other to reach a common objective. Depending upon the perspective taken, the suprasystem will be comprised of different levels of input by subsystem entities. The boundaries of the subsystem, system, and suprasystem entities “are permeable, permitting interaction between the systems and their environment” (p. 123).

Applied to this study, the specific purpose that Banathy identified in his definition was the ultimate problem of how to keep teachers with criminal records out of the classroom. The interrelated and interacting components of Banathy’s systems definition are made up of: (a) state and federal legislative bodies through the laws they enact; the

state and federal judicial systems in their legal decisions and the established precedence set by their judgments, along with subsystems of the judicial system such as district attorneys; and the U.S. Department of Education in its policies and decisions (suprasystem); (b) the OSDE through its interpretation of the law and implementation of programs and policies (system); and (c) the actions of the local community, elected school board, and the school district administrators through their established human resources management policies and hiring decisions (subsystem). Each of the entities of the suprasystem, system, and subsystem are responsible for a piece of the “education suprasystem” to keep undesirable teachers out of the classroom. Additionally, other entities (e.g., other federal and state agencies, teacher unions, and education organizations) outside the formal education suprasystem have input into the educational system through their lobbying powers.

The Legislative Suprasystem. Legislative systems at the state and federal levels enact laws that govern the operations of a school system. In Oklahoma, the basis for the establishment of public schools is the State Constitution. The Oklahoma Constitution, Article XIII, section 1, states, “The Legislature shall establish and maintain a system of free public schools wherein all the children of the State may be educated.” In addition to the establishment of a free public school system, the Oklahoma constitution stipulates compulsory education for all children between the ages of eight and sixteen years of age (Article XIII, § 4). The statutes add to these constitutional provisions stating what schools must follow in their day-to-day operations and how the schools will be funded.

The Judicial Suprasystem. The judicial system, consisting of the federal and state courts, prosecutorial entities, and law enforcement, takes actions against citizens who

violate criminal and civil laws. As a part of the court system, the state attorney general provides opinions to clarify laws when needed. Additionally, district attorneys provide enforcement of laws through the court system when a citizen commits a crime. The local police departments are an intricate part of the court's system because this body provides the investigation of criminal acts and for the arrest of criminals. Ensuring the entire judicial entity operates within the law is a responsibility of each component and the appellate courts at the state and federal levels.

The Education Agency System. The responsibility for overseeing the state's public school system ultimately falls upon the OSBE and its operative agency, the OSDE led by the elected State Superintendent of Public Instruction. This elected official also serves as the President of the OSBE (Oklahoma Constitution, Article XIII, Section 5). Local school districts obtain guidance for operations through the OSDE's policies, procedures, and support of legislation. The OSDE solicits support from the legislature to either enact or rescind laws that will guide schools in their operation.

The Community Subsystem. The community is the immediate system in which the local school district is located and must operate. Members of the community are elected as school board members; therefore, their power to rule is held in check by the members of the community. This is done through various state laws such as the Open Meetings Act which disallows board members from deciding any action or voting on school business outside the parameters of the open school board meeting. (Title 25 O.S. § 306)

The Local School Board of Education Subsystem. In Oklahoma, the school district is managed by an elected school board that is comprised of members of the community. These individuals possess the power to act upon recommendations to hire

and dismiss employees at all levels. Among the school board's duties is the responsibility to establish policies under which the school district must function. Among these policies are whether or not to conduct criminal history background checks on potential and existing employees, and to what extent they are willing to hire a person with a criminal past. To assist the board members in their roles as the school district's managers are the state and federal laws, the legal precedence set by the courts, and the rules established by the state agencies.

The Local School Subsystem. The local school system is responsible for the day-to-day education of the community's children, and is responsible to the local school board. The local school system assumes legal responsibility for the care and welfare of the students attending their schools. It is at this level of the educational system that persons with criminal records will most likely attempt to work.

Other Entities within the Suprasystem, System, and Subsystem. The above systems are the major components within the education suprasystem, but other entities not directly involved in the rule making and legislative processes for education at all levels have significant roles that influence the dynamics of education. Entities such as the State Office of Personnel Management, the OSBI and the FBI have laws and rules that must be followed in conducting background checks for licensure and employment purposes. Recognizing the important role these entities have in the education process is vital to the success of the school's mission. Additionally, teacher unions and education organizations have a primary responsibility to support their membership. As such, these entities are powerful lobbyist for rights and benefits that will affect their members.

Each of the above entities has its own responsibility to education. If each entity within a system works separately a great amount of energy will be wasted as cited by Capra (1998, p. 36). However, if each of these elements will join together for the common cause of educating and protecting the children within their scope of responsibility, their successes as a whole, should increase significantly.

Definitions

Bad Apples. This is a colloquial term given to teachers who are either grossly ineffective as teachers or have broken the trust provided them as a professional by committing a crime either against the school district assets or the children within their care.

Certification Area. These areas correspond with a teacher's degree or are those in which the applicant has passed a competency test or completed an academic program of study. The applicant has the area added to his or her teaching certificate (e.g., Mathematics, Science, Special Education, Health and Physical Education, Trade and Industry).

Credential. The term credential is used as a generic term for any class of a teaching license or certificate issued by the OSDE. In Oklahoma, both terms, License and Certificate, are used to denote a document issued by the OSDE which allows the person to legally teach in Oklahoma. For the purpose of this study, the word "credential" is used throughout unless the passage is specifically referring to a license or certificate. For clarification purposes, the general classes of credentials issued by Oklahoma are:

License. A one-year license is issued to a person who does not have previous teaching experience and who is required to participate in the Resident Year Program. This mentorship program is guided by the Resident Year Committee: the licensee teacher, a mentor teacher, and a professor in a teacher education

program. The license can be renewed each year until the teacher completes the Resident Year Program.

Certificate. The holder of a certificate denotes a person who is not subject to the Resident Year Program because of previous teaching experience or graduation from a teacher education program prior to implementation of the Resident Year Program in 1982. Depending upon the level of the certificate, the validity period can be for one, two, or five years.

Alternative Certificate. A person who obtains a four-year degree in an area other than education is eligible for an Alternative certificate. However, the degree area must be an area in which Oklahoma offers certification such as English, history, business, or foreign language. This person has not completed student teaching in the area of certification.

Career Technology Certificate. This certificate is issued based upon recommendation from the State Department of Career and Technology Education. The certificate can be issued based upon specialized knowledge and experience in a given field. Trade and Industry instructors do not have to possess a conferred bachelor's degree, but must have a plan of study to obtain the degree. The ODCTE must verify that the applicant has completed the appropriate coursework and other requirements before the OSDE can issue a certificate with a Career Technology teaching field.

Out-of-State Certificate. This certificate is issued based upon the applicant holding a valid certificate from another state in a teaching area in which Oklahoma offers certification. The certificate is normally provided through a

reciprocity agreement between Oklahoma and the other state. Certain conditions, such as testing or one year of successful teaching experience in an Oklahoma school, may be required before the teacher is issued a Standard certificate.

Provisional Certificate. The Provisional certificate is issued to an applicant who has conditions that must be met before a Standard certificate can be issued. For example, a person who obtains an Oklahoma certificate based upon holding a valid credential in another state would be issued a Provisional certificate to allow him or her time to take the Oklahoma certification tests, if needed. The Provisional certificate is valid for either one or two years for a nonCareer and Technology applicant. The Career and Technology Provisional certificate is normally issued to a person with specific work knowledge and experience who does not have a bachelor's degree and has a plan of study on file to obtain the degree.

Standard Certificate. A Standard certificate is issued without any attached conditions such as those required for the Provisional certificate or License. All testing, experience, and Resident Teacher Program requirements have been met. This certificate must be renewed every five years.

Certification, Traditional. A person who has completed a university approved course of study in a field of education and has had a bachelors degree conferred. This person has completed at least one semester of student teaching.

Criminal History Background Check, Fingerprint-based. A fingerprint-based criminal history background check is conducted through the OSBI and the FBI and is based upon submission of the applicant's fingerprints. This search provides information for crimes

that have occurred in any of the 50 states, the District of Columbia, and other contributing agencies (e.g., Canadian Provinces and Scotland Yard). The reliability of this information is considered very high since it is based on the unique fingerprint patterns of the applicant.

Criminal History Background Check, Name-based. A criminal history background check is one that is conducted through the OSBI based upon submission of the applicant/employee's name, date of birth, and social security number. This type of search provides criminal information only for crimes that have occurred in Oklahoma. There is no assurance that the person listed on the application is indeed the person on whom the search is being conducted due to issues such as identity theft and fraud. The reliability of this type search is low unless additional verification procedures are used.

Mobile Molester. This is a person who moves from one school district to another in an attempt to gain access to children for the sole purpose of sexual gratification. This person is often the most popular employee in the school system and has gained the support of other teachers, administrators, parents, and the community.

National Association of State Directors of Teacher Education and Certification (NASDTEC). NASDTEC is an organization comprised of representatives from the state departments of education in each state of the United States, the United States Territories, and Canadian Provinces. The purpose of the organization is to strengthen the teacher education and certification standards, to provide for reciprocity between member states/provinces, and to provide a forum to discuss best practices for preventing teacher misconduct.

NASDTEC, Professional Practices Commission. A subdivision of the NASDTEC organization, the Professional Practices Commission specializes in the best practices to identify and prevent persons who might injure a child or participate in other illegal activities from entering the education profession. This organization manages a national database known as the “Clearinghouse” where states’ departments of education can report invalidations and denials of teacher credentials. This information is available to all member states and becomes an alerting system to identify undesirable teachers who attempt to cross state lines.

Negligence. Negligence is the failure to exercise a standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly, or willfully disregarding of others’ rights. The term denotes culpable carelessness (Garner, 2004, p. 1061).

Negligent Hiring. An employer’s lack of care in selecting an employee who the employer knew or should have known was unfit for the position, thereby creating an unreasonable risk that another person would be harmed (Garner, 2004, p. 1063).

Passing-the-Trash. A colloquial term frequently used to describe the activity of allowing an undesirable employee to depart a school district quietly without any negative consequences. Often, school boards and administrators agree to give these persons positive recommendations if they agree to resign and leave quietly.

Positive Criminal History. A positive criminal history is when the subject of the criminal background check has criminal activity identified on the RAP sheet. This criminal activity could be an arrest, filed charges, and/or court actions as a disposition of the case.

A positive criminal history does not necessarily prevent a person from being issued a teaching credential.

RAP Sheet. The documents provided by a criminal history records repository and provided to a requestor for criminal records. Rap is a slang term referring to a criminal charge or a criminal conviction. (Garner, 2004, p. 1288)

Reciprocity Agreement. An agreement between state departments of education to allow a holder of a credential in one state to obtain a credential in another state based upon the applicant's holding a valid credential from the first state. Exemption from certain certification requirements may be warranted.

School Year: A traditional school year is considered to be from July 1 of one year through June 30 of the following year; for example, the 2004-2005 school year began July 1, 2004 and ended June 30, 2005.

Teacher Number. The teacher number is a unique six digit numeric or alpha-numeric number that is issued to every person who applies for and qualifies for an Oklahoma teaching credential. This number coupled with a teaching area allows the person to legally teach in Oklahoma.

Significance

It is becoming more commonplace to open the daily newspaper and see an article about a school employee being arrested for committing a crime. A check of the Internet in January 2005, revealed 8734 articles identified using a key word search for "teacher" and "arrested" listed in the archives of central Oklahoma's newspaper, *The Oklahoman*. Multiply this figure with the number of metropolitan areas in the United States and the number of news articles about teachers being arrested would be staggering;

understandably, the need for this research should be clear. With the mobility of today's society, the ease of obtaining a teaching credential in another state based upon reciprocity agreements, and the high cost of liability to a school district if a student or staff member is harmed, the need to conduct criminal history background checks on applicants for licensure and potential employees has never been more necessary or important.

Although many news and journal articles have been published about teachers molesting students, and to a lesser degree, teachers who are involved in other criminal activity such as drugs and/or theft, very little research has been conducted regarding the effectiveness of criminal history background checks or the decisions made by entities within the education suprasystem pass or enforce laws or the OSDE to deny credentials to, or to revoke credentials of, applicants with criminal records. This is virtually an unstudied area of research.

It is hoped this research will be used by legislators to strengthen the laws in their respective states, by the OSDE to tighten its policies and practices, thereby, stopping the issuance of credentials to persons with disqualifying criminal activity, and by other entities to identify and remove persons with criminal records from the school system who could possibly cause harm to students and school districts. Additionally, once completed, this research should be shared with member states of the NASDTEC's Professional Practices Section so a deeper investigation into the laws and decisions that affect individual state's certification practices can be conducted.

Since this area has been researched little, the opportunity for additional research to build upon the foundation established by this research study should be heightened.

Many articles have been written making various claims about the effectiveness of criminal background checks; however, these claims such as “two to three percent of teachers have criminal records,” (NASDTEC, 1997) or Shakeshaft’s (2004) “up to 10 percent of students have been molested” have not been substantiated. Where are the statistical data to support these claims?

Summary

The researcher studied the existing data of the laws, policies, practices, and criminal history background information on certified school employees for the five-year period from January 2000 to December 2004 to determine the impact, or lack thereof, of recent legislation to mandate criminal history background checks for all new applicants for teacher certification in Oklahoma. The researcher posited that the findings would clearly show that criminal history background checks are an important aspect of the licensure process by preventing applicants with criminal records from obtaining credentials to teach. The literature is reviewed in chapter 2. Chapter 3 is a description of the methodology and analysis. This research study investigated teacher certification practices and the various laws impacting said certification. Chapter 4 provides an in-depth examination into the historical records of criminal background checks that are maintained at the OSDE. Demographic information on persons who have criminal records was gathered; however, no attempt was made to conduct statistical analyses of this information with state and national crime statistics as the information gathered by each entity was originally collected in different categories as to make comparisons of these data unusable. However, basic data are provided for informational purposes only.

Chapter 5 provides a summary, conclusions, and recommendations for practice and future research.

No attempt was made to describe and study local districts' hiring practices, particularly those practices that might serve as an additional screen to keep criminals or those with criminal intent from being employed. Nor was there any attempt to design a way to encourage districts to not "pass the trash."

This study focused on conducting criminal history background checks for first-time applicants for an Oklahoma teaching credential. Several related research areas, e.g., employment policies, reference checking, negligent hiring and retention issues, and passing-the-trash are discussed briefly to highlight the importance of conducting criminal history background checks on teachers. No attempts were made by the researcher to conduct an exhaustive review of the literature for these related areas, nor were these areas studied.

CHAPTER II

REVIEW OF LITERATURE

“If there’s anything worse than a school employee who sexually abuses students, it’s a school that doesn’t care.” Robert Billinger, whose daughter was abused by a teacher stated, “you’ve got to do something to get their attention . . . if it takes a lawsuit, then so be it. You just can’t let this keep happening to these kids.”

(Hendrie, 1998, Cost is high when schools ignore abuse, ¶¶ 1, 3)

The purpose of this study was to determine what impact the provisions of various teacher certification laws, policies, and procedures have on the screening process of first-time teacher applicants. Specifically studied were two laws, 70 O.S. 2001, § 6-190 (B)(6) and 70 O.S. Supplement 2004, § 6-190 (D), enacted in November 2001 and July 2004, respectively, and the decisions made by persons in leadership positions within the OSDE regarding the implementation of these and other laws relative to criminal history background checks for teacher credentialing purposes.

Introduction to the research

The protection of children in any school system should be of paramount concern to school administrators at all levels. However, it seems that a week does not go by that one does not hear or read of an occurrence where a school staff member has had an inappropriate relationship with a student, has been arrested for distribution or use of drugs, or has committed some other crime which can diminish his or her ability to teach effectively, because of lowered public trust. It is believed that many of these teachers

entered the school system already possessing a criminal record, or were convicted of a crime after they received their certificate, but the crime has gone undetected by the OSDE and the employee's school district administrators.

This review of the literature was accomplished through the use of traditional means such as the public and university library systems, as well as the Internet. The search for literature involved a review of many different fields of study including education, management, criminal justice, and human resources. Published and unpublished materials were reviewed, as were peer-reviewed scholarly journal articles and non-peer-reviewed articles. Internet search engines, such as *Google*, *Yahoo*, *AskJeeves*, and *Dogpile* were used in the search for information. The same approach was used with the various data bases *EBSCO*, *ERIC*, *Pro Quest*, *Lexis Nexis*, and others that are available through the Internet. The use of different search engines and data bases increased the possibility of discovering relevant information.

Organization of the Literature

The review of pertinent literature was accomplished from a systemic point of view. The researcher believed that a simple review of the applicable laws and policies for teacher licensure and the state agency's reaction to those laws through the policies they develop would be inadequate. Therefore, a deeper investigation into these laws and policies was conducted with the hope of providing a clear picture of the problems involved in issuing a license to teach to persons who might not have the best interest of the students or the school district in mind. The decision to issue a license to teach is much more complex than rubber-stamping an application. To understand this complex process better, the review of literature focused on the following:

1. Authority of the OSBE and its operative agency, the OSDE; and the agency's responsibility as the gatekeeper to protect children in the public school system;
2. Oklahoma laws, rules, policies, and practices concerning teachers with criminal history backgrounds;
3. A review of the teacher certification laws and practices of other state jurisdictions;
4. The relationship between teacher certification and school employment;
5. Entities within the education suprasystem and their contributions and/or failures;
6. Nationwide phenomena: Passing-the-Trash and Mobile Molester;
7. Countering the phenomena;
8. Criminology issues; and
9. Human Resources Management.

The Authority of the State Board of Education and State Department of Education

The responsibility for overseeing Oklahoma's public and technology education school systems ultimately falls upon the OSBE and its operative agency, the OSDE for the public K-12 schools, and the OBCTE and its operative agency, the ODCTE for the Career Technology Centers. The OSBE and the OSDE is led by an elected state superintendent of public instruction. This elected official also serves as the President of the OSBE (Article XIII, Oklahoma Constitution § 5) and serves as an ex officio voting member on the OBCTE (Title 70 O.S. 2001, § 14-101[A]).

Local school districts obtain guidance for operations through the OSDE and the ODCTE. This guidance is accomplished through each state agency's established policies, procedures, and support of legislation. These state agencies solicit support from the legislature to either enact or rescind laws that will improve the guidance of the schools.

Article XIII, Section 4 of the Oklahoma Constitution mandates compulsory education for all children in the State who are between the ages of eight and sixteen years. Additionally, Title 70, Section 10-105 of the Oklahoma Statutes provides for the attendance in school for all children between the ages of six and 18, with some exceptions provided in state law. Failure to have children between these ages attend school is unlawful and could result in the parent(s) being charged with a misdemeanor crime, and if found guilty, penalized a monetary fine. With this requirement for a child to attend school, does a school district or the governing body of all school districts have a duty to act when such a law exists? Black's law dictionary defines duty to act as "a duty to take some action to prevent harm to another, and for the failure of which one may be liable depending on the relationship of the parties and the circumstances" (Garner, p. 544). This duty requires a district to ensure applicants for teaching credentials do not have a propensity to do harm to children. Does this put the local school district at risk for hiring an individual without first conducting a criminal history background check or reference checks? And, what about the school administrator who fails to give a truthful reference when asked by a hiring district? Does not every level of the educational system, the principal, the superintendent, the local school board, and the OSDE have an affirmative duty to all children required to attend school to ensure they will have a safe environment for learning, free from sexual predators and drug dealers?

In Loco Parentis is a legal term given for a situation where another person acts as a temporary guardian or caretaker of a child, taking on all or some of the responsibilities of the parent (Garner, 2004, p. 803). The United States Supreme Court has ruled in *Vernonia School District v. Acton*, 55 U.S. 646, 115 S.Ct. 2386 (1995) that during the school day the teacher or administrator may act *in loco parentis*. When acting *in loco parentis*, does the school district take on a liability should a student become harmed in the course of the school day?

Title 51 O.S. § 152 provides direction for government tort issues in Oklahoma. A tort is a “civil wrong, other than breach of contract, for which a remedy may be obtained usually in the form of damages” (Garner, p. 1526). Garner defines government tort as, “a tort committed by the government through an employee, agent, or instrumentality under its control. The tort may or may not be actionable, depending on whether the government is entitled to sovereign immunity” (p. 1526). Section 152 of Title 51 of the Oklahoma statutes provides that an employee of a government agency is “a person who is authorized to act in behalf of a political subdivision or the state whether that person is acting on a permanent or temporary basis, with or without being compensated or on a full-time or part-time basis.” The same statute identifies a “political subdivision” as including a school district. Sovereign immunity is defined as “a government’s immunity from being sued in its own courts without its consent” (Garner, 2004, p. 766). The State of Oklahoma has adopted into law sovereign immunity for itself, its political subdivisions, and all of their employees acting within the scope of their employment, whether performing governmental or proprietary functions. It gives up this immunity “only to the extent and in the manner provided by law, and waives its immunity and that of its political

subdivisions. In so waiving immunity, it is not the intent of the state to waive any rights under the Eleventh Amendment to the United States Constitution” (51 O.S. § 152.1).

Oklahoma Laws, Rules, Policies, and Practices Concerning Teachers with Criminal History Backgrounds

Laws, Rules, and Policies for Credentialing. Enforcing the laws of Oklahoma regarding providing a teaching credential to an applicant who has a criminal past is a serious responsibility. Since 1979, the Oklahoma legislature has recognized a need to identify persons with criminal pasts that might cause harm to a child within a school by enacting a law forbidding the issuance of a teaching credential to an applicant who has been convicted of any crime of moral turpitude (misdemeanor or felony) or any other felony from obtaining a teaching credential. Title 70 O.S. § 3-104.1 reads:

No person shall receive a certificate for instructional, supervisory or administrative position in an accredited school of this state who has been convicted of a felony, any crime involving moral turpitude or a felony violation of the narcotic laws of the United States or the State of Oklahoma, provided the conviction was entered within the preceding ten year period.

In light of this law, the OSBE approved several administrative rules that provide detailed information as to what actions will be taken against an educator who is convicted of a crime or that falsifies the application for certification. These adopted rules are located in Oklahoma Administrative Code 210:20-9-98:

1. Refusal of certification. No certificate/license will be issued unless all requirements for the certificate/license in question are fully met. In addition,

no certificate/license will be issued if the attempt to become certified is based on misrepresentation, forgery, or fraud.

2. Grounds for cancellation of certificates. Any certificate/license, credential, or endorsement obtained by misrepresentation, forgery, fraud, or issued by error will be cancelled. Upon written request the holder must surrender the certificate/license in question to the State Department of Education.
3. Felony as grounds for noncertification. No person shall receive an Oklahoma certificate/license who has been convicted of a felony, any crime involving moral turpitude, or a felony violation of the narcotics laws of the United States or the State of Oklahoma, provided the conviction was entered within the ten (10) year period immediately preceding application for teacher certification.
4. Revocation of teaching certificate. Teaching certificates/licenses issued by authority of the Oklahoma State Board of Education may be revoked by the board for willful violation of any rule or regulation of the board or any federal or state law or other proper cause. A certificate/license will be revoked only after a sufficient hearing has been given to the teacher before the State Board of Education.

(1) No person whose certificate/license has been revoked in Oklahoma or any other state shall be issued an Oklahoma certificate/license unless the revoked certificate/license has been fully reinstated by the revoking state and grounds for the revocation do not conflict with Oklahoma law.

(2) A person who has either voluntarily surrendered a teaching certificate in another state, been denied certification/licensure in another

state or has had a certificate suspended in another state is not eligible for Oklahoma certification until an investigation has resolved the issues surrounding the surrender, denial, or suspension of certification. (p. 198-199)

In addition to these rules, the OSDE started asking two criminal history disclosure questions on all applications for licensure or certification. These two questions simply restated the law in interrogative form and required a “yes” or “no” response:

1. During the preceding ten-year period, have you been convicted of a felony?
2. During the preceding ten-year period, have you been convicted of a crime involving moral turpitude?

If an applicant responded “yes,” then a representative of the OSDE would request details about the criminal act from the applicant. Normally, the applicant would be asked to provide official court documents that showed the disposition of the charges. The specialist would then review the court documents to determine whether or not issuance of the credential would be allowable according to state laws and the OSDE’s rules. However, if the applicant answered “no” on the application, then the certification specialist would assume the applicant was telling the truth and a credential would be issued. Natale (1993) quoted Carey Ferrell, associate superintendent for business and administration for the Orange County, California, schools:

“It’s amazing how many [applicants] we’ve found who do lie on the application. We’ve found [through fingerprint checks] convicted murderers, someone who’d embezzled \$200,000 from [his] employer, armed robbers. (sic) We had one

[applicant] who had a rap sheet two and a half feet long, and he'd said he'd never been convicted" (p. 20).

Prater and Kiser (2002) studied applicants that lie on job applications. They reported that 76 percent of the employers surveyed (n=93) stated they had "caught applicants in a lie" (p. 13). Koehn (1999) found that one-third of all executives "lie about past degrees, jobs, and responsibilities" (p. 30). Welch (1999) stated that "67% of 18-to-25-year-olds and half of 56-65-year-olds admit to telling lies on their CV [curriculum vitas] to appear better qualified than they actually are" (p. R4). Koehn, (1999) writes that the reason people lie, falsify, or omit information is they know they will not get caught because the "human resource people will have neither the time nor the incentive to do a thorough background check" (Koehn, October 1999, *Rewriting history: Resume falsification...*, ¶ 5).

The second question being asked on the application required a response of yes if the applicant had been convicted of a crime involving moral turpitude regardless of whether the crime was filed as a misdemeanor or felony. According to Black's Law Dictionary, moral turpitude is defined as: "conduct that is contrary to justice, honesty, or morality" (Garner, p. 1030). A misdemeanor crime is one that is less serious than a felony and is usually punished with a fine or brief confinement in the local jail facilities versus the state penitentiary (Garner, p. 1020). Because misdemeanors are indeed less serious than felonies, the OSDE policy is to take no action against any cases that are filed or pled down to misdemeanors regardless of the type of crime. (Internal OSDE document)

In light of what seemed to be an epidemic of sexual molestation and abuse cases involving teachers and students across the nation and in Oklahoma, the Oklahoma

legislature in 1998 added new language to Title 70 O.S. § 3-104. This new section of law forbade the issuance of a teaching credential to anyone who had been convicted of a crime sexual in nature, or, if the crime occurred in another state, the applicant received a deferred sentence or actual conviction for a sex-related crime:

The State Department of Education shall not issue a certificate to and shall revoke the certificate of any person who has been convicted, whether upon a verdict or plea of guilty or upon a plea of nolo contendere, or received a suspended sentence or any probationary term for a crime or an attempt to commit a crime provided for in Section 7115 of Title 10 of the Oklahoma Statutes if the offense involved sexual abuse or sexual exploitation as those terms are defined in Section 7102 of Title 10 of the Oklahoma Statutes, Section 741, 843.1, if the offense included sexual abuse or sexual exploitation, 865 et seq., 885, 888, 891, 1021, 1021.2, 1021.3, 1040.13a, 1040.51, 1087, 1088, 111.1, 1114, or 1123 of Title 21 of the Oklahoma Statutes or who enters this state and who has been convicted, received a suspended sentence or received a deferred judgment for a crime or attempted crime which, if committed or attempted in this state, would be a crime or an attempt to commit a crime provide for in any of said laws.

See Appendix B, Table B2 for a brief description of each of the above laws.

In addition to specifying certain criminal acts which would prevent a person from obtaining a teaching credential in Oklahoma, the State legislature enacted a prohibition against persons who were registered pursuant to the Oklahoma Sex Offenders Registration Act from working with or providing services to children or to work on school premises. Title 57 O. S. § 589 reads in applicable part:

A. It is unlawful for any person registered pursuant to the Oklahoma Sex Offenders Registration Act or the Mary Rippy Violent Crime Offenders Registration Act to work with or provide services to children or to work on school premises, or for any person or business which contracts for work to be performed on school premises to knowingly and willfully allow any employee to work with children or to work on school premises who is registered pursuant to the Oklahoma Sex Offenders Registration Act or the Mary Rippy Violent Crime Offenders Registration Act. Upon conviction for any violation of the provisions of this subsection, the violator shall be guilty of a misdemeanor punishable by a fine not to exceed One Thousand Dollars (\$1,000.00). In addition, the violator may be liable for civil damages.

B. A person or business who [sic] offers or provides services shall ensure compliance with subsection A of this section as provided by Section 6-101.48 of Title 70 of the Oklahoma Statutes.

The OSDE's reactions to these new laws were to add two questions to the application for licensure/certification that were specific to this new language in these laws (questions 3 and 4). Also, three other questions (numbers 5, 6, and 7) were added as a result of recommendations from the NASDTEC Professional Practices Institute. These last three questions are proactive in nature and attempt to discover actions that the applicant may have faced that were not necessarily criminal in nature or criminal actions that might be pending. Additionally, the last four questions had a phrase added that widened the scope of the question to include all jurisdictions, regardless of where they

are located. The questions added to the application for licensure/certification in 1998 were:

3. Have you ever been convicted in Oklahoma, whether upon a verdict or plea of guilty or upon a plea of nolo contendere (no contest), or received a suspended sentence for a crime or an attempt to commit a crime which is considered sexually related in nature?
4. Have you ever been convicted, received a suspended sentence, or received a deferred judgment for a crime or attempted crime which was considered sexually related in nature in any other state or jurisdiction?
5. Have you ever had adverse action taken against any educator certificate or license in Oklahoma or any other state or jurisdiction?
6. Is any action now pending against you for alleged misconduct in any school district, court, or before any educator licensing agency in Oklahoma or any other state or jurisdiction?
7. Do you currently have any outstanding criminal charges or warrants of arrest pending against you in Oklahoma or in any other state or jurisdiction?

See Appendix C, Figures C2 and C3, for a copy of the front and back of the licensure application form.

The OSDE's reaction to the applicant's responses to these new questions was the same as it had been for the 1979 law. A "yes" response required an investigation into the facts, and a "no" response was processed without further question or review.

The application for licensure advises the applicant that if any question is answered "yes," for them to submit with the application an explanation of the nature of the charges

and in what court or jurisdiction they were charged/convicted. Additionally, the applicant is now advised that falsification of any information on the application can result in denial, withdrawal, or revocation of the Oklahoma teaching credentials.

Although the 1979 law concerning issuing a credential to a person with a criminal conviction specifically stated the OSDE would not issue a credential to anyone convicted of a felony or moral turpitude crime, with the exception of applicants for Alternative Placement certification, no attempt by the OSDE was made to check for criminal records of teacher applicants until November 2001. The lone exception was in July 2001 when the Competency Review Panel who is responsible for recommending licensure for applicants applying under the provisions of the Alternative Placement Program started requiring applicants to provide a copy of a recent OSBI criminal history report before the applicant could meet the panel. This requirement was superseded in November 2001 by Title 70 O.S. § 6-190(B)(6).

The OSDE started conducting criminal history background checks on all applicants for a new Oklahoma license as a routine procedure after a new law was passed during the 2001 legislative session. Title 70, § 6-190(B)(6) of the Oklahoma statutes went into effect November 1, 2001, requiring all first-time applicants for a teaching license in Oklahoma to undergo a fingerprint-based criminal history background check prior to receiving a credential to teach. Excluded from the mandated criminal history background check were all applicants renewing credentials who had been issued prior to November 1, 2001, and new applicants who held valid certificates from other states since they would be receiving a certificate and not a license. The law reads:

Beginning November 1, 2001, [the applicant] has on file with the [State] Board [of Education] a current Oklahoma criminal history record from the Oklahoma State Bureau of Investigation as well as a national criminal history record check as defined in Section 150.9 of Title 74 of the Oklahoma Statutes. Upon receipt of the Oklahoma criminal history record, the Board may issue a temporary license which shall be effective until receipt of the national fingerprint-based criminal history record. The person applying for a license shall be responsible for the cost of the criminal history records.

In 2004, new language went into effect related to the fingerprinting law. Title 70 O.S. 2004, § 6-190(D) mandated persons applying for their first Oklahoma credential under reciprocity agreements with other states to also submit to a national criminal history background check prior to being issued a credential:

Beginning July 1, 2004, any person applying for initial Oklahoma certification who has not applied for and received an Oklahoma teacher license shall have on file with the [State] Board [of Education] a current Oklahoma criminal history record from the Oklahoma State Bureau of Investigation as well as a national criminal history record check as defined in Section 150.9 of Title 74 of the Oklahoma Statutes. Upon receipt of the Oklahoma criminal history record, the Board may issue a temporary certificate which shall be effective until receipt of the national fingerprint-based criminal history record. The person applying for a certificate shall be responsible for the cost of the criminal history records.

Prior to November 2001, other than trusting the applicant to self-disclose a criminal record on the certification application, which is rarely done by the applicant

either because of misunderstanding the question or blatant misrepresentation, the only other mechanisms that the OSDE had to identify a person with a criminal record was when an article would be published in one of the state's two major metropolitan newspapers; the happenstance catching of a news broadcast on the television or radio; an anonymous telephone call was received from a concerned citizen; or a local school district conducted a criminal history background check on an applicant for employment purposes and the request was processed through the OSDE.

In an attempt to identify persons associated with a school system who were charged with a criminal act, the Oklahoma legislature enacted 70 O.S. § 5-144 in July 1999, and amended it during the 2005 legislative session. This law requires district attorneys, who file an information or indictment on a student or employee of a school district to notify the superintendent of the district, if the district attorney is aware of the person's status as a student or employee of a school district. No law exists that requires the district attorney or the school superintendent to notify the OSDE of adverse information regarding a school employee.

When a teacher or other certified school employee is convicted of a felony or any act of moral turpitude, his or her teaching credentials become subject to revocation or denial by the OSBE. As of June 2005, the OSBE had revoked or denied 120 teacher credentials, with 75% of these revocations and denials occurring since July 1995. Conviction of sex-related offenses made up the largest percentage of acts that caused teaching credentials to be revoked, representing 54% of all revocations and denials. Drug related offenses (use and distribution) and theft made up the second and third highest single areas, at 14% and 10%, respectively. Driving Under the Influence and violent

crimes rounded out the reasons for revocation and denial of teaching credentials. A category for “other” was used to list cases that did not fit into one of the primary areas against which the OSBE took action. These other reasons were for such things as falsifying the licensure application by not disclosing a criminal or State Board action in another state. (Appendix B, Table B1 illustrates the revocation and denial of teaching credentials actions in which the OSDE has taken against educators since records have been kept.) The OSDE reported the negative actions on these 120 individuals to the NASDTEC Clearinghouse, a nation-wide database listing persons that have had actions taken against their teaching credentials.

Laws, Rules, and Policies for Employment. In July 1985, the Oklahoma legislature enacted Title 70 §§ 5-142 and 5-142.1 (2001) allowing local school district administrators to conduct criminal history background checks on potential or existing employees. These background checks can be state searches conducted through the OSBI based on the employee’s name, social security number, and date of birth or national searches through the FBI based on fingerprints. Section 5-142 pertains to school districts that have an average daily membership (number of students) of 30,000 or less. The law provides that school districts may conduct criminal history background checks on potential or existing employees at the school district’s pleasure. The only mandatory aspects of this law are that the school district must have a policy for conducting criminal history background checks and that the school district must reimburse employees for the cost of the search if they were already on staff or if the employees were hired pending the results of the search. The law is cited below:

A. The provisions of this section shall apply to a school district with an average daily membership of thirty thousand (30,000) students or less. For purposes of employment, a local board of education may request in writing from the State Board of Education information concerning any felony offense conviction of any employee of the school or any person seeking employment with the school. The request shall specify whether the felony record search is to be based only on the name submitted by the employee or prospective employee or on the basis of fingerprints to be required of the employee or prospective employee. The request shall further specify whether the search is to be a state or national search. If a national search is requested, the search shall be based on fingerprints, and the Oklahoma State Bureau of Investigation shall obtain fingerprints of the employee or prospective employee and require that said person pay a search fee not to exceed Fifty Dollars (\$50.00) or the cost of the search, whichever is the lesser amount. The fees shall be deposited in the OSBI Revolving Fund. School districts are hereby authorized to reimburse employees for the cost of the search. The State Board of Education shall contact the Oklahoma State Bureau of Investigation for any felony record of said person within fourteen (14) working days of receiving a written request from the board of education.

B. The Oklahoma State Bureau of Investigation shall provide the felony record requested by the State Board of Education within fourteen (14) working days from the receipt of said request. The Bureau may contact the Federal Bureau of Investigation as regards the information requested, to obtain any felony convictions of the person involved. The felony record provided by the Oklahoma

State Bureau of Investigation shall include the name of the person, whether or not said person has been convicted of any felony offense, a list of any felony convictions, and the dates of such convictions.

C. The State Board of Education shall provide the information received from the Oklahoma State Bureau of Investigation to the local board of education within fourteen (14) days from the receipt of said information.

D. For the purpose of this section, “board of education” includes both public and private boards of education within or outside this state.

E. Each public board of education within this state shall promulgate a statement of that school district’s policy regarding felony record searches. If the policy requires felony record searches, the policy may permit employment for not to exceed sixty (60) days pending receipt of results of felony search requests. If the policy requires a search based on fingerprints, prospective employees shall be notified of the requirement, the fee and the reimbursement policy when first interviewed concerning employment. The school district’s reimbursement policy shall provide, at the minimum, that employees shall be promptly reimbursed in full for the fee if employed by the district at the time the felony search request is made unless the person was employed pending receipt of results as set forth above.

F. Any person applying for employment as a substitute teacher shall only be required to have one such felony record search for the school year. Upon request of the substitute teacher, that felony record search may be sent to any other school district in which the substitute teacher is applying to teach.

Title 70, Section 142.1 reads basically the same as Section 142 with the exception that the law provides that school districts with an average daily membership (number of students) in excess of 30,000 may submit their requests for criminal history records directly to the OSBI, whereas, Section 142 mandated those schools with less than 30,000 average daily membership to process their requests for criminal history records through the OSDE. The reason for the difference in procedures based upon size of the school district is unknown; however, it is assumed that the reason had to do with the workload imposed on the OSDE for processing the large number of checks coming from the state's two largest school districts that would fit into this category.

Internal State Department of Education Policies. There are several OSDE policies that are seemingly inconsistent with current legislative mandates. In 1979, the Oklahoma legislature passed into law, Title 70 O.S. § 3-104.1, forbidding the OSDE from issuing a credential to anyone with a felony conviction, misdemeanor or felony conviction for moral turpitude, or for a felony conviction of United States or Oklahoma drug laws, if the conviction occurred within the previous ten years. However, until November 1, 2001,

- Every applicant for an Oklahoma teaching credential was issued a license or certificate without any attempt, other than self-disclosure on the application, to determine whether or not the applicant had been convicted of a crime that would fall into one or more of the three categories listed in the law.
- Every applicant for an Oklahoma teaching credential was issued a license or certificate, if his/her conviction was a misdemeanor crime without any regard to the issue of moral turpitude.

- Every applicant holding a valid Oklahoma teaching credential prior to November 1, 2001, is able to renew his or her credential on a yearly or five year basis without any type of criminal history background check being conducted.

Certification laws and policies of states bordering Oklahoma

Oklahoma. As a review of previously stated information for comparison purposes, Oklahoma has seven criminal history disclosure questions on its application for teacher licensure. These questions require a yes or no response to the following areas: (a) conviction of a felony; (b) conviction of a misdemeanor or felony moral turpitude crime; (c) conviction of a sexual-related crime in Oklahoma; (d) conviction or deferred adjudication of a sexual-related crime in any other state or jurisdiction; (e) adverse actions against an educator certificate or license in Oklahoma or any other state or jurisdiction; (f) pending actions for alleged misconduct in any school district, court, or before any educator licensing agency in Oklahoma or any other state or jurisdiction; and (g) any pending criminal charges or warrants of arrest in Oklahoma or in any other state or jurisdiction.

Oklahoma has allowed fingerprint-based criminal background checks for employment purposes since 1979. However, conducting mandatory criminal background checks for licensure purposes was not implemented until November 2001. Oklahoma has no provisions for conducting criminal background checks on existing teachers when they renew their Oklahoma credentials.

Oklahoma laws and rules forbid issuance of a teaching credential to any person that has a felony conviction or a misdemeanor/felony conviction for moral turpitude.

Additionally, persons subject to the Oklahoma Sex Offenders' Registry are forbidden from obtaining a credential and from working on school grounds when children are present. Other laws and rules allow for the denial or revocation of the Oklahoma teaching credential for criminal convictions, misrepresentation, and fraudulent actions to obtain a teaching credential. If an applicant has an adverse action against him in another state, then he is not eligible for an Oklahoma credential until an investigation reveals that issuance of the Oklahoma license would not be a violation of Oklahoma laws or rules. For comparison purposes, Appendix B, Table B3 illustrates the information required by Oklahoma and the seven states it borders regarding information required to be disclosed by an applicant for teacher licensure and fingerprinting requirements; following are specific laws and policies of each of these seven states.

Arkansas. The Arkansas license application has two criminal history disclosure statements that are similar to those asked by the other states in this eight state region.

Their questions ask:

1. Have you ever had a license revoked in any state?
2. Have you ever been convicted of a crime?

Both questions require a yes or no response, and the second question asks for disclosure of the type of crime and date of conviction, if the response was yes. The Arkansas application, obtained from their Web site, does not have an affidavit area where the applicant swears to the truthfulness of the information provided.

Effective July 1, 1996, the Arkansas State Board of Education (ASBE) authorized criminal history background checks through their state police and the FBI for each first-time applicant for an Arkansas license. In July 1997, the background check law was

amended to require a criminal background check for renewal of the Arkansas credential. Additional background check laws forbid school districts from hiring a certified employee without first obtaining a criminal background check done by the Arkansas State Police and FBI. The ASBE is authorized to issue a six-month, non-renewable letter of provisional eligibility for licensure to a first-time applicant pending the results of the criminal records check (Arkansas Department of Education rules, 172.4.01, May 24, 2004)

Arkansas rules stipulate that a school superintendent must report to the ASBE the name of any person holding a license issued by the ASBE and currently employed, or employed during the previous two school years, by the local school district who has pleaded guilty, nolo contendere, or has been found guilty of a felony, who holds such license obtained by fraudulent means, who has had a similar license revoked in another state, who has intentionally compromised the validity or security of any student test or testing program administered or required by the Arkansas Department of Education, or has submitted falsified information requested or required by the ADE (Arkansas Department of Education rules, 172.6.01, May 24, 2004).

Colorado. Colorado has an oath and consent form as part of its application for teacher licensure and asks three questions:

1. Have you ever been convicted of a felony or misdemeanor (other than a misdemeanor traffic offense or traffic infraction)?
2. Have you ever had a teacher, principal, administrator or special services license, certificate or authorization or any other occupational permit, license, credential or equivalent document subjected to any disciplinary proceedings,

including, but not limited to, annulment, denial, reprimand/admonishment, suspension or revocation, or have you ever voluntarily surrendered such a document in Colorado or any other state or place, or are you currently under investigation by any licensing or credentialing agency or organization?

3. Have you ever been dismissed or discharged, or have you resigned in order to avoid discipline or discharge, by an employer?

The applicant is required to sign the form attesting to the truthfulness and correctness of the information provided. Additionally, he/she must provide documentation to clarify any yes answers to these questions. (Colorado Department of Education, 1 Colorado Code of Regulations, 301-37)

The Colorado legislature initiated fingerprint-based background checks for initial licensure beginning in January 1991. The law was amended effective March 1, 2004, to require all applicants for a Colorado educator license, to include the renewal of a license to submit to a fingerprint-based criminal history background check unless the applicant had previously done so under the January 1991 law. (Colorado Department of Education, Colorado Code Regulations 301-37, 2260.5-R-2.04)

The Colorado rules for the administration of educator licensing have 19 reasons a certificate holder could have his/her credential revoked, suspended, or denied. Many of the reasons are similar to those in other states such as misrepresentation on the application; pleads nolo contendere to or receives a deferred sentence for a violation of any Colorado law that involves contributing to the delinquency of a minor; domestic violence; sexual assault; unlawful sexual conduct; misdemeanor child abuse; misdemeanor sexual exploitation of children; illegal sale of controlled substances; or any

felony conviction. Reasons that seem to be unique when compared with the other states in this region are mental incompetence, professionally incompetent, and failure to protect student data (Colorado Department of Education, Colorado Code Regulations 301-37, 2260.5-R-15.00 [1] through [5]).

Kansas. There are eight “professional conduct” criminal history disclosure statements on the Kansas application for teacher licensure:

1. Have you ever been convicted of a felony?
2. Have you ever been convicted of ANY crime involving theft, drugs, or a child?
3. Have you entered into a criminal diversion agreement after being charged with any offense described in question 8a or 8b? [numbers 1 and 2 above]
4. Are criminal charges pending against you in any state involving any of the offenses described in question 8a or 8b? [numbers 1 and 2 above]
5. Have you had a teacher’s or school administrator’s certificate or license denied, suspended or revoked in any state?
6. Is disciplinary action pending against you in any state regarding a teacher’s or administrator’s certificate or license?
7. Have you ever been terminated, suspended, or otherwise disciplined by a local Board of Education for falsifying or altering student tests or student test scores?
8. Have you ever falsified or altered assessment data, documents, or test score reports required for licensure?

Applicants are asked to provide supporting documentation for any affirmative response and to certify that their responses are true and complete to the best of their knowledge.

Other applicable Kansas statutes read:

The board of education of a school district in Kansas shall require, as a condition of initial employment by the district, that an applicant be subjected to a statewide and nationwide criminal history records check by the Kansas Bureau of Investigation which conforms to applicable federal standards and includes the taking of the applicant's fingerprints. The board of education of the school district shall pay the costs of criminal history records checks required by this subsection. An applicant for employment by a school district in a position that requires a certificate issued by the state board of education shall authorize release of the results of the criminal history records check to the state board and an applicant for employment by a school district in a classified position shall authorize release of the results of the criminal history records check to the board of education of the school district. The board of education of a school district may offer provisional employment to an applicant pending receipt of the results of the criminal history records check required by subsection (a). For the purposes of this section, the term "applicant" means any person who has applied for employment by a school district, has been offered a position of employment by the school district, and has not had a fixed and continuous residence in this state for at least 10 years immediately preceding submission of an application for employment by the school district.

Any license issued by the state board of education or institutions under the state board of regents may be canceled by the state board of education in the manner provided by law, on the grounds of immorality, gross neglect of duty, annulling of written contracts with boards of education without the consent of the board which is a party to the contract, or for any cause that would have justified the withholding thereof when the same was granted. (Kansas State Department of Education, Cancellation of teachers' certificates, grounds, Chapter 72, Article 13)

Louisiana. Louisiana asks five “professional conduct” criminal history disclosure statements on its teacher certification application.

1. Have you ever had any professional license/certificate denied, suspended, revoked, or voluntarily surrendered?
2. Are you currently being reviewed or investigated for purposes of such action as stated in #1 or is such action pending?
3. Have you ever been convicted of any felony offense, been found guilty or entered a plea of nolo contendere (no contest), even if adjudication was withheld?
4. Have you ever been convicted of a misdemeanor offense that involves any of the following: (a) Sexual or physical abuse of a minor child or other illegal conduct with a minor child; and (b) The possession, use, or distribution of any illegal drug as defined by Louisiana or federal law.
5. Have you ever been granted a pardon for any offense as stated in #3 or #4?

The applicant is asked to provide certified copies of court documents and proceedings for each separate incident. Additionally, the applicant must sign a declaration that all

information is true and correct and that misrepresentation of facts, by omission or addition, may result in criminal prosecution and/or the denial or revocation of the teaching certificate.

The Louisiana Child Protection Act (La. R.S. 15:587.1 § 5) provides that any employer or others responsible for the actions of one or more persons who have been given or have applied to be considered for a position of supervisory or disciplinary authority over children shall request in writing that the bureau of criminal identification and information supply information to ascertain whether that person or persons have been convicted of, or pled nolo contendere to, any one or more of the crimes listed in the law. (Provisions of Information to Protect Children, Section 5 A[1]). In addition the Louisiana Bureau of Identification and Investigation must make a simultaneous request to the FBI for similar information from other jurisdictions (Provisions of Information to Protect Children, Section 5 B[2]). The cost of the records check is the responsibility of the requesting agency of government. The applicable crimes include: homicide, rape and sexual battery, kidnapping and false imprisonment, sex offenses affecting the family, criminal abandonment, sexual offenses affecting minors, offenses concerning prostitution, crimes against nature, offenses affecting health and morals of minors, offenses affecting health and safety of the infirm, offenses affecting the general peace and order, offenses affecting public morals, and drug offenses (Louisiana Child Protection Act, List of charges enumerated in La. R.S. 15:587.1).

Louisiana state law forbids a person that has been convicted or pled nolo contendere of certain crimes (Provision of information to protect children, La R.S. 15:587.1) from being employed in a public or private school system as a teacher,

substitute teacher, bus driver, substitute bus driver, janitor, or a school employee who might reasonably be expected to be placed in a position of supervisory or disciplinary authority over school children unless approved in writing by a district judge of the parish and the district attorney” (La. R.S. 17:15 A [1]). Louisiana law requires the superintendent of a school that dismisses an employee pursuant to being convicted or pleading nolo contendere to specific crimes must notify the state superintendent of education of the employee’s dismissal not later than 30 days after such dismissal.

Missouri. Missouri has four criminal history disclosure statements on its teacher licensure application that each applicant must respond with either yes or no. Additionally, applicants must sign an affidavit attesting to the truthfulness of their responses. The questions read:

1. Have you ever been charged with, convicted or entered a plea, including a plea of nolo contendere, to any felony or misdemeanor whether or not sentence was imposed or suspended, except minor traffic violations?
2. Have you ever been denied a professional license, certificate, permit, credential, endorsement, or registration?
3. Has your professional license (except for driver’s license), certificate, permit, credential, endorsement, or registration ever been disciplined, suspended, revoked, reprimanded, restricted, curtailed or voluntarily surrendered or do you have any pending complaints before any regulatory board or agency or is there any investigation or adverse action now pending against you?
4. Have you ever resigned, been restricted, disciplined, or discharged from any position, including the armed forces, while under suspicion of having engaged

in criminal, immoral, unethical behavior or unprofessional conduct, or are you under investigation for any such charge?

Applicants are asked to provide a written statement regarding any answers where the response was yes.

Missouri law (Mo. Statute 168.133) requires local school districts to conduct a fingerprint-based criminal history background check on any person employed after January 1, 2005, who is authorized to have contact with students. The check must be completed before the employee has access to children. Missouri law identifies the classes of employees that must have background checks as including, but are not limited to, administrators, teachers, aides, paraprofessionals, assistants, secretaries, custodians, cooks, nurses, and school bus drivers. The applicant is required to pay the fees for the criminal history records searches conducted through the Missouri state police and the FBI. The school district is required to notify the department of elementary and secondary education if any background check reveals a certified teacher has pled guilty or nolo contendere to, or been found guilty of a crime or offense listed in Missouri statute 168.071, or a similar crime or offense committed in another state, the United States, or any other country, regardless of imposition of sentence. The law also makes harmless to civil liability any school official making a report to the department of elementary and secondary education in conformity with the law.

The Missouri State Board of Education may refuse to issue or renew a certificate, or may, upon hearing, discipline the holder of a certificate of license to teach for the following causes:

- (1) A certificate holder or applicant for a certificate has pleaded to or been found guilty of a felony or crime involving moral turpitude under the laws of this state, any other state, of the United States, or any other country, whether or not sentence is imposed;
- (2) The certification was obtained through use of fraud, deception, misrepresentation or bribery;
- (3) There is evidence of incompetence, immorality, or neglect of duty by the certificate holder;
- (4) A certificate holder has been subject to disciplinary action relating to certification issued by another state, territory, federal agency, or country upon grounds for which a certificate holder has been subject to disciplinary action relating to certification issued by another state, territory, federal agency, or country upon grounds for which discipline is authorized in this section; or
- (5) If charges are filed by the local board of education, based upon the annulling of a written contract with the local board of education, for reasons other than election to the general assembly, without the consent of the majority of the members of the board that is a party to the contract. (Mo. Statute 168.071)

New Mexico. The New Mexico application for teacher licensure is a four page document with two pages reserved for obtaining character and fitness information. This portion of the application requires a yes or no response to 11 disclosure statements and an oath swearing that the information provided is truthful, correct, and complete.

1. Have you ever had adverse action taken against any certificate or license in New Mexico or any other state? (Adverse action includes: letters of warning,

reprimand, denial, suspension, revocation, voluntary surrender or cancellation.)

2. Have you ever had an application for a license, permit, credential, or other document authorizing school service or teaching denied or rejected for disciplinary reasons in New Mexico or any other state?
3. Have you ever been disciplined, reprimanded, suspended, or discharged, from any employment because of allegations of misconduct?
4. Have you ever resigned, entered into a settlement agreement, or otherwise left employment following an allegation of misconduct?
5. Is any action now pending against you for alleged misconduct, including application discrepancies, in any school district, court, or before any educator-licensing agency?
6. Have you ever failed to fulfill the terms of a teaching or administrative contract? (Resigning from employment, if proper notice was given, does not constitute failure to fulfill a contract.)
7. Do you currently have any outstanding criminal charges, warrants of arrest, or conditions of probation pending against you in New Mexico or in any other state?
8. Have you ever been fingerprinted as a result of any arrest or detainment for any crime or violation of law?
9. Have you ever pled guilty to, or been convicted of, any crime or violation of law, including entering a plea of nolo contendere or received a deferred or suspended sentence? (For purposes of this application, minor traffic citations

should not be reported. Convictions for driving while intoxicated (DWI) or driving under the influence of alcohol or other drugs (DUI), however, must be reported.)

10. Are you currently delinquent in payment of court-ordered child support?

11. Have you ever had a court-ordered screening for alcohol or drug dependence?

The applicant is asked to provide written documentation to any question in which he/she responds in the affirmative.

In June 1998, New Mexico passed into law the requirement for all teachers applying for initial standard, alternative, or substitute licensure to be fingerprinted and for a criminal history background check to be conducted through the New Mexico Department of Public Safety (NMDPS) and the FBI. (NMAC 4.2.4.8.5 & A). Title 6, Chapter 60, Part 8.8 provides for the dissemination of the results pursuant to NMDPS and FBI guidelines for one-year after completion of the check. The applicant is required to pay the fees for the background check. (NMAC 6.60.8.8 – Rn, 6; NMAC 4.2.4.8.8 & A). New Mexico requires school district officials, who in the course of their background checks for employment purposes, discover that that a licensed applicant or applicant pending a license has a conviction of a felony or misdemeanor of moral turpitude that results in any kind of action against that individual, must share the information with the Licensure Unit of the SDE. If the applicant has a teaching license, the SDE must notify the license holder, and his/her current school employer, if known, of the conviction(s). (NMAC 6.60.8.9 and NMAC 6.68.3. 8 C [1] and [2]).

New Mexico Administrative Code 6.68.3.8 B provides the grounds for suspension, revocation or other disciplinary action against a license. The New Mexico

Department of Education may suspend, revoke or take other disciplinary action against a license or certificate held by a licensed school instructor, administrator or any other of the individuals enumerated in Section 22-10A-3A, NMSA 1978, for incompetency, immorality or any other good and just cause. "Other good and just cause" may include, but shall not be limited to, any of the following:

- (1) a material misstatement of fact by an applicant for licensure in connection with the initial licensure application process or the continuing licensure application process; or
- (2) the denial of an application for licensure or the suspension or revocation of an applicant's educational or other relevant professional certificate(s) or license(s) by the certification or licensing authorities of this or any other state or by a national licensing board or bureau; or
- (3) material noncompliance with any provision(s) of department regulations prescribing the terms and conditions of employment contracts for licensed school personnel in New Mexico at a time when the licensee was subject to those regulations; or
- (4) a willful violation of any department regulation prescribing standards of conduct for licensed school personnel at a time when the licensee was subject to such requirement; or
- (5) a conviction of any felony or a misdemeanor involving moral turpitude, subject to the further provisions of the Criminal Offender Employment Act, Section 28-2-1, et seq., NMSA 1978; or

- (6) a failure to comply with a judgment and order for support pursuant to the Parental Responsibility Act, Section 40-5A-1, et seq., NMSA 1978; or
- (7) the intentional alteration of any college transcripts or any license issued by the department in connection with any private or public employment or in any dealings with the department;
- (8) knowingly permitting the continued employment of an individual without a valid license or waiver from the department for a public school position requiring a license by the School Personnel Act, Section 22-10A-3, NMSA 1978; or
- (9) failing to meet level III-A competencies where a local superintendent recommends to the secretary that the teacher's level III-A license be suspended in accordance with 6.69.4 NMAC. (NMAC, Title 6, Chapter 68, Part 3. 8 A, B [1] – [9]).

Texas. All applications for Texas teacher licensure are now completed online.

Each applicant is asked two criminal history disclosure questions.

1. Have you ever been the subject of an arrest that has resulted in deferred adjudication, probation or a conviction?
2. Have you ever had a teaching certificate revoked, denied, suspended or subject to any sanctions in Texas or any other state?

Both questions require a yes or no response. If the applicant responds “yes” to either question, then another computer screen becomes available and the file is forwarded to the investigative unit for review. Additionally, the application requires the person to acknowledge on an affidavit giving permission for the Texas State Board of Education

(SBEC) to request information from other entities and absolves the SBEC and those entities that provide information of any liability that might arise.

Beginning October 1, 2003, Texas has required applicants for an initial credential, including a standard certificate, probationary certificate, educational aides, one-year certificate, or temporary teaching certificate to submit to a fingerprint-based national criminal history background check. If the result of the fingerprint processing reflects any criminal records or if the applicant reports a record on their application for a Texas educator certificate or permit, the file is referred to the SBEC Office of Professional Discipline for review.

Texas has adopted into its administrative rules 22 standards of conduct for teachers and school employees to follow. Their statement of purpose reads:

The Texas educator shall comply with standard practices and ethical conduct toward students, professional colleagues, school officials, parents, and members of the community and shall safeguard academic freedom. The Texas educator, in maintaining the dignity of the profession, shall respect and obey the law, demonstrate personal integrity, and exemplify honesty. The Texas educator, in exemplifying ethical relations with colleagues, shall extend just and equitable treatment to all members of the profession. The Texas educator, in accepting a position of public trust, shall measure success by the progress of each student toward realization of his or her potential as an effective citizen. The Texas educator, in fulfilling responsibilities in the community, shall cooperate with parents and others to improve the public schools of the community.

These enforceable standards are subdivided into three main categories (1) Professional Ethical Conduct, Practices and Performance, (2) Ethical Conduct Toward Professional Colleagues, and (3) Ethical Conduct Toward Students (TAC, Title 19, Part 7, Chapter 247, Rule 247.2.)

The Texas Administrative Code, Title 19, Part 7, Chapter 249, has 56 separate rules regarding the professional conduct and discipline of school personnel. Subchapter B, rule 249.16, Eligibility of Persons with Criminal Convictions for a Certificate, reads:

(a) Pursuant to Articles 6252-13c and 6252-13d, Revised Civil Statutes, and Subchapter C, Chapter 22, Education Code, the board may suspend or revoke an existing valid certificate, deny an applicant a certificate, or bar a person from being assessed or examined for a certificate because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of the education profession.

(b) Subsection (a) of this section applies to a crime that: indicates a threat to the health, safety, or welfare of a student, parent of a student, fellow employee, or professional colleague; interferes with the orderly, efficient, or safe operation of a school district, campus, or activity; or indicates impaired ability or misrepresentation of qualifications to perform the functions of an educator.

Crimes considered relating directly to the duties and responsibilities of the education profession include:

- (1) the crime involves moral turpitude;
- (2) the crime involves any form of sexual or physical abuse of a minor or student or other illegal conduct with a minor or student;

- (3) the facts underlying the crime would support a felony conviction for possession, transfer, sale, distribution, or conspiracy to possess, transfer, sell, or distribute any controlled substance defined in Chapter 481, Health and Safety Code;
- (4) the crime involves school property or funds;
- (5) the crime involves any attempt by fraudulent or unauthorized means to obtain or alter any certificate or permit that would entitle any person to hold or obtain a position as an educator;
- (6) the crime occurs wholly or in part on school property or at a school-sponsored activity; or
- (7) two or more crimes are committed within any 12-month period that involve public intoxication, operating a motor vehicle while under the influence of alcohol, or disorderly conduct. (Texas Education Agency, State Board of Educator Certification Internet Application)

The relationship between teacher certification and school employment.

Just as doctors and lawyers are required to hold licenses to practice in their professions so do teachers and school administrators. School districts are forbidden by law from hiring a person for a teaching position who does not have a valid credential issued by the OSDE. Hiring a person for a certified position who does not possess a credential could result in financial penalties being assessed against the school district.

Oklahoma statute 70 O.S. § 6-190 provides the qualifications for teacher employment, licensure and certification. This law reads:

A. The board of education of each school district shall employ and contract in writing, as required in Section 6-101 of this title, only with persons certified or licensed to teach by the State Board of Education in accordance with the Oklahoma Teacher Preparation Act, except as otherwise provided for by Section 6-101 of this title and by other law.

B. The [State] Board [of Education] shall issue a license to teach to any person who:

1. Has successfully completed the teacher education program required by the State Board of Education prior to July 1, 1997, and the Oklahoma Commission for Teacher Preparation beginning July 1, 1997;
2. Has graduated from an accredited institution of higher education that has approval or accreditation for teacher education;
3. Has met all other requirements as may be established by the [State] Board [of Education];
4. Has made the necessary application and paid the competency examination fee in an amount and as prescribed by the Commission;
5. Has successfully completed the competency examination required in Section 6-187 of this title; and
6. Beginning November 1, 2001, has on file with the [State] Board [of Education] a current Oklahoma criminal history record from the Oklahoma State Bureau of Investigation as well as a national criminal history record check as defined in Section 150.9 of Title 74 of the Oklahoma Statutes. Upon receipt of the Oklahoma criminal history record, the [State] Board [of

Education] may issue a temporary license which shall be effective until receipt of the national fingerprint-based criminal history record. The person applying for a license shall be responsible for the cost of the criminal history records.

C. The [State] Board [of Education] shall issue a certificate to teach to any person who:

1. a. Holds a license to teach in accordance with the Oklahoma Teacher Preparation Act,

b. has served a minimum of one (1) school year as a resident teacher,

c. has made the necessary application and paid the certification fee as prescribed by the [State] Board [of Education], and

d. has been recommended for certification by the residency committee;

2. Holds an out-of-state certificate and meets standards set by the [State] Board [of Education]; or

3. Holds certification from the National Board for Professional Teaching Standards.

D. Beginning July 1, 2004, any person applying for initial Oklahoma certification who has not applied for and received an Oklahoma teacher license shall have on file with the [State] Board [of Education] a current Oklahoma criminal history record from the Oklahoma State Bureau of Investigation as well as a national criminal history record check as defined in Section 150.9 of Title 74 of the Oklahoma Statutes. Upon receipt of the Oklahoma criminal history record, the [State] Board [of Education] may issue a temporary certificate which shall be

effective until receipt of the national fingerprint-based criminal history record.

The person applying for a certificate shall be responsible for the cost of the criminal history records.

E. If a resident teacher is a graduate of an out-of-state institution of higher education, the recommendation of the residency committee shall be made to the State Board of Education.

F. Any person holding a valid certificate, issued prior to January 1, 1997, shall be a certified teacher for purposes of the Oklahoma Teacher Preparation Act, subject to any professional development requirements prescribed by the Oklahoma Teacher Preparation Act or by the State Board of Education.

When the OSDE accepts a potential teacher's application to teach, a thorough review of that person's education, testing, and criminal history background check information is conducted. If each of these facets of the certification process passes the review, then the applicant is issued a credential which allows him or her to teach in Oklahoma. This credential lists several key pieces of information that the school administrator must pay attention to prior to offering employment. Among these are the validity dates and subjects authorized to teach on the credential. Title 70 § 6-101 (B) states: "no [local] board of education shall have authority to enter into any written contract with a teacher who does not hold a valid certificate issued or recognized by the State Board of Education authorizing said teacher to teach the grades or subject matter for which the teacher is employed." Title 70 §§ 6-107 and 6-108 have similar language that forbids a person without a valid Oklahoma teaching credential from working in a certified position. A person could easily apply for employment using a credential that has

expired, and is thus no longer valid, or a valid credential from another state. The school board members authorizing payment to the teacher not holding a valid Oklahoma certificate could be adjudged of fraudulent expenditure of public funds (Title 70 § 6-101[B]) and could be jointly held accountable and be required to repay these funds. The school superintendent is required by law to certify with the treasurer of the contracting district the names of the teachers holding valid certificates with whom contracts have been made and the names of substitute teachers employed in accordance with the law. As a result, the treasurer will not issue a warrant [pay check] to any teacher whose name is not included in the list provided by the superintendent. However, if the treasurer does issue a warrant to a teacher that is not listed then he/she shall be liable on the official bond for the treasurer for the amount of the warrant (Title 70 § 6-101[C]).

During the 2005 legislative session, the Oklahoma legislature enacted provisions that allow a local school board to enter into a contract with a teacher that does not hold a valid certificate; however, the contract becomes null and void if the potential employee does not have a valid contract prior to the first day of school. In such an instance the teacher is not allowed to enter into the classroom and be paid as a certified teacher until the Oklahoma credential has been issued by the OSDE. This measure was taken to allow local school superintendents the opportunity to offer jobs to potential teachers that were expected to have an Oklahoma credential before the beginning of the next school year, e.g., a student teacher from a local university or a teacher moving in from another state (Title 70 § 6-101[J]).

Oklahoma statute Title 70 6-187(E) provides exceptions to the above requirements for a teacher to possess a valid credential to legally teach within the school

system. This statute allows for the issuance of an emergency certificate provided the requesting school district can provide documentation to shows substantial efforts were made to employ a teacher who holds a provisional or standard certificate or who is licensed in the teaching area.

Education Suprasystem

Lunenberg and Ornstein (1991) utilize a simple figure of a basic systems model in their explanation of how an education system works. A system has three broad categories. These categories are “inputs,” “transformation process,” and “outputs.” These three elements of a system are encapsulated within the overall organization, which is surrounded by the environment in which it operates. Figure C4 (Appendix C) illustrates this model. In schools the inputs all the components which make up a school: the students, teachers, administrators, and the elements such as the buildings, finances, and books. The interaction of these inputs to the systems model provides the second element, the transformation process of educating the students. The third element is the output. In the case of a school system; the desired output is an educated student who is prepared to assume his or her role in a productive society. This can be measured through student achievement, school-community relations, student attitudes toward school, and employer job satisfaction. Impacting this systems transformation process and the organization where it lives are the components of the external environment. These contributors to the school system’s operation are federal, state, and other government entities, the local community, private educational and lobbying organizations, and others. (See Appendix C, Figure C5) (Lunenberg & Ornstein, 1991).

Hansen (2003) illustrates the social system of a school entity by subdividing the school setting into three main categories of student, teacher, and classroom. Within each of these primary segments are the layers of influence to that segment. Hansen identifies the student group as being composed of the student, the student's peer group, and the overall student body. The teacher group is subdivided in teacher, colleague group, and teachers' association [union]. The third group, classroom, is influenced by the department and administrative structure. Each of these three segments of the educational social system is influenced by three external entities: the school district, community, and state (Hansen, p. 51). (See Appendix C, Figure C6) These entities are all significant parts of the education suprasystem.

Federal Government. It is quite simple, if states desire federal funding for their programs, then compliance with the federal laws associated with those programs is required. Turk (1997) studied school crime in Texas. One aspect of this study was the discussion of the history of the American public school. Turk addressed the federal government's need for education early in its existence. The authors of the Ordinance for the Government of the Territory of the United States, North-West of the River Ohio, commonly known as the Northwest Ordinance, which was passed on July 13, 1787, under the Articles of Confederation, wrote, "Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." (Section 14, Article 3). Regarding this ordinance, Turk writes,

even though education was encouraged at the national level by the Northwest Ordinance, the Constitution is silent on the subject and so, according to the Tenth

Amendment, that function, if it were to be engaged in, is left to the several states.

(p. 7)

Federal and State Court Systems. The United States Supreme Court and its lower level federal courts and the court systems of the individual states have made legal decisions that impact education at all levels. One decision by the U.S. Supreme Court, *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002), dealt with Internet child pornography. The U.S. Supreme Court's decision basically stated the definitions used in the Child Pornography Prevention Act of 1996, were "overbroad and vague and, thus, restrain works otherwise protected by the First Amendment. This decision caused criminal cases of child pornography to be dismissed if the prosecution could not prove beyond a reasonable doubt that the portrayed child was a real individual, or that the person was not of legal age of consent (18) and the image was "morphed" to make the person appear to be under 18.

Oklahoma State Legislature. The Oklahoma State Legislature has passed several laws to help protect children. Title 10 §§ 7102 and 7103 of the *Oklahoma Child Abuse Reporting and Prevention Act*, specifically addresses many aspects of the obligation to report child abuse. In this law, abuse is defined as "harm or threatened harm to a child's health, safety, or welfare by a person responsible for the child's health, safety or welfare including sexual abuse and sexual exploitation." The law requires every person, under penalty of law, to include teachers of any child under the age of eighteen years, to report their suspicions of abuse or neglect to the Department of Human Services. Additionally, Title 70 § 7105, protects any person that reports abuse of a child in good faith from any liability, civil or criminal, that might otherwise be incurred or imposed.

Two studies that emphasize the need for reporting child abuse, one by Hamilton (1996) and the other by Neyra (1997), examined issues of teachers' knowledge in reporting child abuse. Both individuals surveyed teachers from their specific regions of California about various aspects of reporting child abuse. In the Hamilton study, elementary and middle school teachers were the respondents. Hamilton reported that 40% of the respondents in her study had reported child abuse to the appropriate agencies; of these reported cases, four were reported by elementary teachers and 19 cases were reported by teachers at the middle school level. Hamilton reported that 37.5% of the reported cases were for physical abuse, while negligence and sexual abuse were each reported in 25% of the cases. The remaining cases were identified as 'all the above' and 'neglect and emotional abuse' (p. 28). In instances where the abuse was not reported, Hamilton asked for a reason why it was not reported. The most common reason, at nearly 30%, was a fear of being wrong.

Neyra's (1997) study was limited to elementary level teachers; however, the results are similar to Hamilton's. One half of the respondents in Neyra's survey had reported that they had contacted the authorities in regards to abuse of a child. The largest number of abuse cases reported by Neyra was physical abuse at 50% of the respondents agreeing that they had reported this type of abuse which makes sense as physical abuse is more apt to display outward signs. The second highest abuse was sexual in nature; 22.7% of the respondents reported having notified the authorities of this type of abuse. The third highest reported type of abuse was neglect with 20.5% of the cases reported.

The Oklahoma legislature has attempted to address the issue of reporting child abuse and neglect. In Title 40 § 61, the legislature allows employers to disclose

information on current or previous employees; however, the employer must have the employee's consent for such release of information. Additionally, the law provides for immunity to the employer when the information given is done so with good faith. The law reads in applicable part:

An employer may disclose information about a current or former employee's job performance to a prospective employer of the current or former employee upon request of the prospective employer and with consent of the current or former employee, or upon request of the current or former employee. . . . The current or former employer shall be immune from civil liability for the disclosure or any consequences of such disclosure unless the presumption of good faith is rebutted upon a showing that the information disclosed by the current or former employer was false and the employer providing the information had knowledge of its falsity or acted with malice or reckless disregard for the truth. (Title 40 § 61)

Local School District and Community. A local school district is not a lone entity. The dynamics of each school district is unique in its own way, being influenced by several players in its own system. These players include the community where the school is located and the local school board made up from individuals within the community, each with their own political agendas. These board members make the policies that the local school system must follow. Along with these board members, other persons influence the personality of the school district. The superintendent of schools is hired by the school board and contributes his or her leadership to the district. This person is instrumental in advising the local school board in its policy making and decisions. At the individual school level, the principals of the schools with their managerial and leadership

styles; the motivation, desires, and integrity of the teachers and other employees within each school building; and of course the children attending the school all contribute to the successes or failures of their schools. Sergiovanni (1994) expressed the importance for school administrators to keep reminding themselves of the bond that should exist between the community and the school. He wrote, “schools must be considered legitimate in the eyes of their relevant publics” (p. 2).

Roden and Cardina (1996) studied factors which contribute to school administrators’ hiring decisions. School administrators’ were asked to gauge their satisfaction and/or dissatisfaction with (a) the preparation of new teachers, (b) to identify qualities deemed important when making a hiring decision, and (c) to determine what skills were seen as important for teachers in the next five years (p. 263). The respondents selected from 14 identified teacher qualities and identified their satisfaction with the preparation of new teachers in the following areas: “ability to model positive attitudes and behaviors, level of content knowledge, reliable and professional work habits, verbal skills, and general knowledge” (p. 264). Five areas where administrators were dissatisfied with the preparation of new teachers were the teacher’s ability to (a) work with exceptional children, (b) manage conflicts, (c) work with the community, (d) use different teaching styles, and (e) use assessment techniques effectively. The final section of the survey asked the respondents to identify what qualities they would look for in a teaching candidate. Of the 15 listed qualities, none were for a candidate with a clear criminal record; however, the administrators did show a preference for strong letters of recommendation. (p. 265) Roden and Cardina cited in their conclusions that “working

with the community” was one area where school administrators saw room for improvement (p. 267).

Unions and Other Support Organizations. Labor unions have existed for many years. The forerunners to the National Education Association began in the 1860s. Oklahoma’s teachers’ union efforts expanded greatly with the passage of a collective bargaining law in 1972. Today, there are three teachers’ organizations: the Oklahoma Education Association, the Association of Professional Oklahoma Educators, and the American Federation of Teachers. Baas (1990) expressed the feeling of unions in his article on conducting background checks on school personnel. He wrote, “The National Education Association, for instance, has a policy asserting ‘the right to be free from fingerprinting as a condition of employment.’ Also of high concern is the worry that a person ‘not be punished twice for the same crime.’” (p. 1) Clowes (2000) reported that “teacher unions in Illinois forced the State Board of Education to drop a plan to require teachers to answer ten criminal history background questions as part of the process of exchanging their existing state teaching certificates for a new five-year certificate” (p. 42). These questions asked whether or not the teacher had been convicted of various crimes such as drugs or sex-related charges. Adams (1999) wrote, “an increasing number of reports indicate that the NEA routinely goes to bat for educators who have been proven grossly incompetent and even criminal” (What about the children?, Dictating America’s Educational Decline, ¶ 12). Adams continues,

The NEA has made getting rid of bad teachers virtually impossible. In New York and Illinois it costs school districts an average of \$70,000 to \$112,000 and as much as a year of litigation to remove tenured teachers guilty of poor

performance and/or criminal behavior. (Adams, 1999, What about the children?, Dictating America's Educational Decline, ¶ 13).

Hendrie's article on sexual abuse of students by teachers mentioned very little concerning conducting criminal history background checks as a tool to fight the problem of sexual predators in schools. She simply cited the NASDTEC numbers showing how many states conduct criminal background checks (1998). However, in April 2003, Hendrie wrote of the fight to stop teacher-student sexual relationships. She noted how Maine has consistently pushed for strong laws to prevent such relationships including fingerprint-based background checks on school employees. Noted in the article was a comment by Rob Walker, president of the 20,000-member National Education Association affiliate in Maine: "Not all our members are as worried about this issue [fingerprinting], but a significant number of our members are, and they just view it as an invasion of privacy" (Hendrie, April 30, 2003, States Target Sexual Abuse by Educators, Battles Persist, ¶ 7). Walker predicted the best the union could do was hope that the legislature passed a law limiting the fingerprinting to new hires. The union also opposed releasing aggregate figures that would show the number of positive background checks that have been identified each year since the fingerprinting law was passed (Hendrie, 2003).

Dunlap (2004), a guest speaker from the Kansas National Education Association commented at the 2004 NASDTEC Professional Practices Institute held in Kansas City, Missouri, that the teacher union was not against keeping child sex molesters out of the schools, but they would stand behind members charged with such crimes to ensure they had proper legal representation. (NASDTEC, 2004, PPI). However, apparently not all

teacher unions are against laws that would help protect children. Hendrie reported that the Indiana State Department of Education and the largest teachers' union in that state joined together to fight for a law that would "clarify that all school system employees, not just instructional personnel, are prohibited from having sex with students under 18. The age of consent is 16 in Indiana" (Hendrie, April 30, 2003, States Target Sexual Abuse by Educators, Very Clear Message, ¶ 2).

In addition to these teacher unions, there are many other support organizations in Oklahoma providing direction in the form of legal advice, policy recommendations, and training programs regarding criminal history background checks and actions to take in the case where an existing employee is found to have a criminal record or commits a crime.

Among these organizations are: Cooperative Council for Oklahoma School Administration (CCOSA); Oklahoma Association of School Administrators (OASA); Oklahoma Association of School Business Officials (OASBO); Oklahoma Schools Advisory Council (OSAC); Oklahoma State School Boards Association (OSSBA); Organization of Rural Oklahoma Schools (OROS); and the Oklahoma Center for School Business Management (OCSBM). (2005-2006 Oklahoma Directory of Education, pp. 167-172)

Contributions of NASDTEC. NASDTEC, as an organization, and its member jurisdictions have worked to simplify the certification process for teachers wanting to teach in states other than where they earned their degrees and initial certification. However, as a result of the simplification of the certification processes among states, teachers considered "bad apples" have found an easy route to continue their educational professions away from the school district that discovered their lack of teaching ability,

lack of adherence to standards of conduct, or even their criminal acts. With this ease of obtaining certification of all teachers, including ones that should be excluded from the profession, NASDTEC realized the need to warn other states of these bad apples, thus protecting the education and safety of the children (NASDTEC Critical Issues Paper, Number 1, February 2000, p. 1).

The NASDTEC manual (2004) contains a wealth of information about the certification policies of the states and other member jurisdictions. Section “J” of the manual identifies specific information concerning the Professional Practices policies of each state. Educatory discipline, clearance checks, and certification issues are among the data shown. Table J-1 (NASDTEC, 2004, p. J-3) shows what information applicants must reveal about their past prior to obtaining a credential to teach. Each of the 50 states has a requirement for all applicants to disclose on their application for licensure/certification (or other disclosure documents) any prior invalidation of a teaching credential and whether or not the applicant has a criminal conviction. Approximately two-thirds of the states require the applicant to disclose a prior dismissal and if they have been arrested for moral turpitude. All but six jurisdictions require some type of criminal background check prior to licensure (p. J-3). For comparison purposes, Table B3 (Appendix B) illustrates the disclosure information that Oklahoma and the seven states it borders requires from applicants for a state credential concerning their past.

The requirement for an applicant for certification or employment to submit to a fingerprint-based criminal history background check is shown in Table J-2 of the NASDTEC manual (2004, p. J-5). As of the 2004, 30 states required fingerprinting for certification, 34 for employment, and 17 had requirements for both. In Oklahoma, the

fingerprinting law was passed in November 2001; however, the authority for local school districts to require employees or potential employees to submit to a criminal history background check was optional for the school district. Table B4 (Appendix B) illustrates the criminal history background check requirements of the states that immediately border Oklahoma.

At the 1961 annual meeting of NASDTEC, participants concerned about the safety of children in the school setting adopted a resolution calling for all members to report when their state department of education took adverse actions against an educator's credentials. What started as an after-hours meeting of education officials from states in the Northwest region of the United States soon blossomed into the Professional Practices component of NASDTEC. The Professional Practices Commission's charter was to discuss this new problem of mobile molesters, ways of detecting undesirable educators, and to find a way to share information between states when official action was taken against a teacher (Professional Practices Institute, October 2004). Sixteen years later an electronic system known as the NASDTEC Educator Identification Clearinghouse was placed into operation. The Clearinghouse serves all 50 states, the District of Columbia, the U.S. Department of Defense Educational Activity schools, British Columbia and Ontario, Guam, New Zealand, Puerto Rico, and American Samoa. (NASDTEC Critical Issues Paper, Number 1, February 2000, p. 1) The Clearinghouse "assists member jurisdictions to protect school-aged children by providing the names and other identifying data of professionally certificated/licensed educators found unfit to practice." "As a participating Clearinghouse member, each jurisdiction reports the names, birthdates, and other identifying information for individuals who have had their

professional educator certificates/licenses annulled, denied, suspended, revoked, or otherwise invalidated” (NASDTEC Critical Issues Paper, Number 1, February 2000, p. 1). Reporting of actions taken against an educator’s credentials is one of the duties required when becoming a full member of NASDTEC and agreeing to the interstate contract (NASDTEC Interstate Contract, Adopted May 22, 1997, p. 4).

The Professional Practices Commission was also charged with developing a way for education officials to network among themselves to allow discussion of common practices that states had adopted to help protect their children and school staff from harm. With this objective came the Professional Practices Institute, a yearly meeting of education officials dedicated to the protection of school children and staff members and the removal of undesirables from the teaching profession. This yearly conference was designed specifically for professional practices issues. One of the most popular sessions at the annual meeting is the one on best practices. This session allows for the sharing of practices that states have implemented to make their schools safer. Among the topics discussed at these sessions are new legislation, state board of education actions, special processes and programs that members have implemented to improve their programs, and the best ways of identifying educators who abuse children (NASDTEC Critical Issues Paper, Number 1, February 2000, p. 1).

The Professional Practices Commission recommends each member jurisdiction adopt three recommended best practices for safeguarding schools. First is mandatory reporting of information. NASDTEC recommends that each state adopt laws and rules that require prosecutors, courts, employers, and other state agencies to report any form of misconduct by certified educators. Second is for all jurisdictions to pass laws that require

fingerprint-based background checks on all certified educators before they receive their credential to teach and on noncertified employees of schools before they start work. And third, NASDTEC recommends laws to disallow expungement (removal of a conviction from a person's criminal record; Garner, p. 621) of criminal records for any person who works with children in our nation's schools (NASDTEC Critical Issues Paper, Number 1, February 2000, p. 2).

Members of the Professional Practices Commission estimate that the number of certified school staff with a criminal record is very small. Their presumption is that only two to three percent of the entire teaching population in the United States has a criminal record (Professional Practices Institute, October 1997 & October 2004). However, research has not been conducted in this area to verify this assumption. NASDTEC reports that, since inception of the Clearinghouse, and between 1987 and 2001, there have been 17,492 total actions reported. Of these, 8,254 cases were for criminal convictions; 2,075 cases were self-surrender; and 7,163 cases were for professional misconduct. Regarding the criminal conviction category, the greatest number of these in an identified category was for sexual misconduct with a child at 3,098 instances. The second highest number of criminal convictions was for substance abuse at 1,029 occurrences (NASDTEC, 2004, p. J-2). See Table B5 (Appendix B) for the NASDTEC information.

Nationwide phenomena: Passing-the-Trash and Mobile Molester.

Two phenomena sweeping across the United States affecting school systems at all levels are "passing-the-trash" and the "mobile molester." These phenomena allow undesirable employees to move about school systems unabated, predominantly through negligent personnel practices.

Passing-the-Trash. Natale (1993) addressed school issues where criminal charges are not filed against an employee as an “intangible issue of inappropriate behavior for which there has been no conviction” (pp. 18 and 19) for which most cases of passing the trash can be classified. She acknowledges that the practice of letting an undesirable employee depart is known by educators as “passing-the-trash,” an action where “a school district that is anxious to rid itself of a problem employee and avoid a possible costly lawsuit urges the employee to resign, sometimes agreeing not to investigate and not to reveal the trouble to prospective employers who inquire” (p. 19). “Most employers don’t know the law and mistakenly fear that they’re liable for an unfavorable report about a past employee. Some routinely give good references to get rid of unsatisfactory employees. Insiders commonly call this process passing-the-trash” (Natale, 1993, Global Information Network, p. 2).

Dowling-Sendor (2000) cited a case in Colorado where a school district entered into a negotiated agreement with the superintendent of the school district after allegations of sexual harassment were found to have basis. As part of the agreement, the school district board and the superintendent agreed to several terms that are commonly associated with instances of passing the trash: (1) resignation for personal reasons, which allows the departing person to save face; (2) a buyout of the existing contract; (3) agreement to give a good recommendation for future job applications; and (4) no public statements that conflicted with the departing employee’s reason. (Dowling-Sendor, January 2000, *The Trouble With Buyouts*, ¶ 5). Dowling-Sendor’s conclusion to the article echoes the sentiments of the members of NASDTEC’s Professional Practices Commission:

As a matter of politics and governance, I question the wisdom of entering into expensive buyout agreements when well-founded allegations of serious employee misconduct have been made. And, in my view, confidentiality provisions generally are not prudent – especially when a board also agrees to give the employee a good recommendation for future job applications. While sexual harassment litigation can be very painful and costly for all involved, it’s generally better policy to disclose well-founded allegations and the employee’s response in a lawful and dignified manner and in a proper forum – as long as state law does not forbid such disclosure – with the faith that the truth probably will emerge from a fairly conducted inquiry. Also, recognize that you’re getting into hot moral and possibly legal water if you give a good job recommendation to an employee whose resignation you seek because of credible sexual harassment complaints. (Dowling-Sendor, January 2000, *The Trouble With Buyouts, What the Finding Means*, ¶¶ 2, 3, 4)

The fallacy of passing-the-trash should be obvious. In March 2002, the OSBE heard a case regarding a teacher that had sexually molested a student. The teacher had been working in School District A for almost nine years when he resigned before the end of the school year. The next year, he obtained a teaching position in School District B, fewer than ten miles from District A. After two years in District B, he left on the condition that he agreed not to fight the termination. District B agreed to not report the alleged sexual contact with a student if he left quietly. He was hired in School District C the next year after receiving a positive recommendation from District B, per agreement. However, District C never called District A. Had District C called District A, the latter

could have advised the former that the individual was dismissed for inappropriately touching a student. In District C, he was formally charged and convicted of sexual assault of a minor after he molested a student. This individual's teaching certificate was revoked by the OSBE and his name and social security number were reported to the NASDTEC Clearinghouse, thereby, effectively preventing him from gaining future employment as a certified teacher in the United States and Canada (OSBE, Meeting Minutes, March 2002).

During the 2002 Oklahoma legislative session, Senator Kathleen Wilcoxson and Representative Carolyn Coleman proposed bills that would prevent school districts from passing the trash. Wilcoxson and Coleman (2002) stated their goal was to "protect Oklahoma students from child abusers who move from district to district." (Oklahoma State Senate, Press Release, October 14, 2002, ¶ 1) Wilcoxson stated:

The problem is that many school districts don't know a prospective employee has a history of child abuse or inappropriate sexual conduct. That's because their (sic) former employer may have been advised to simply accept their (sic) resignation in exchange for keeping quiet about inappropriate behavior. It's a nationwide problem known as "passing the trash" that allows child abusers to move from district to district. But, whether it is fear of lawsuits or not knowing how to handle these situations, the bottom line is kids are being hurt when it could have been prevented. (Oklahoma State Senate Press Release, October 14, 2002, ¶ ¶ 1, 2)

Both measures failed. Representative Coleman stated, "There were concerns by professional associations about former employers passing along unproven, inaccurate or simply untrue information that could prevent a teacher or others from obtaining work in a

school district. That's a concern we want to address with the legislation we're working on" (Oklahoma State Senate Press Release, October 14, 2002, ¶ 7)

The problem of passing-the-trash is equally likely in the public school setting as in industry and couples with the second phenomena – the mobile molester. The Global Information Network article, "Stop Passing the Trash," illustrates the joining of the two phenomena:

A few years back, a superintendent of schools had to face three sets of parents of third-grade boys who had been molested by a recently hired music teacher. When asked if he'd run a background check on the teacher, the super said "Sort of. At that time, general belief was giving referrals will get you sued, so we shouldn't expect one. We asked anyway and got a neutral referral. We were happy to fill the job." Unknown to the superintendent, the music teacher faced similar unproved allegations at his previous place of employment. His former employer gave a neutral referral in exchange for a resignation and a promise to leave the district.

The trash got passed. (Global Information Network, 2005, p. 7)

Hendrie also ties passing-the-trash with the mobile molester. She writes:

Sexual abuse of students is rarely a passing fancy, and for some schoolhouse predators, it becomes a way of life. Left unchecked, they may leave a trail of molestation that stretches across many years and countless students' lives. . . . It is no secret in education circles that these itinerant abusers, often called "mobile molesters" are abetted by school officials who let them quietly slip away when allegations arise. This practice of "passing the trash" has attracted rising criticism in recent years from politicians, other policymakers, the public and the press.

When a case involves crimes by someone accused of similar acts elsewhere, hard questions are likely to arise about how and why that history was suppressed or overlooked. (Hendrie, December 9, 1998, *Passing the Trash, Mobile Molesters*, ¶¶ 1, 3, and 4).

Schemo (2002) illustrated a case that involved both passing-the-trash and mobile molester. She told of a Utah high school football coach hired by Clark County, Nevada recruiters and subsequently placed in a school for troubled youth. Schemo reported that within a year the coach was accused of repeatedly exposing himself and groping a 13-year old girl. Only then did the Nevada school administrators learn of the reason the coach departed his job in Utah: accusations by school officials that he had impregnated a student there in her senior year. An inquiry into the Utah case revealed that the coach's Utah teaching certificate had been revoked. Schemo writes that the Nevada experience is hardly unique, when teachers are accused of sexual abuse, educators and law enforcement authorities say, districts often rid themselves of the problem by agreeing to keep quiet if the teacher moves on, sometimes even offering him/her a financial settlement. The reason school districts settle these cases are to avoid protracted disciplinary proceedings and the difficulties of criminal prosecution. (*New York Times*, June 18, 2002, *Silently Shifting Teachers in Sex Abuse Cases*, ¶¶ 1–5)

The mobile molester. “Although most parents regard schools as sanctuaries where their children will be safe from harm, manipulation, and seduction, hundreds of educators across the country have betrayed that trust, preying sexually on their innocent student wards” (Clowes, 1999, *Reporting the Unthinkable: Sex Between Teachers and Students, When Teachers Betray Their Trust*, ¶ 2). The less common of the two phenomena, but,

the one that may have the greater impact on a school district and its patrons is the sexual predator known as the mobile molester. According to Hendrie (1998), no one keeps track of how often educators and other school employees cross the line of sexually abusing their students, “but at a minimum, hundreds of cases involving sexual abuse of students are unfolding publicly at any given time around the nation” (Hendrie, December 2, 1998, *Sex with Students*, Introduction, ¶ 4). Hendrie goes on to state that interviews with police investigators, researchers, and educators reveal far more misconduct than is ever reported.

Hendrie (1998) reported that data on the perpetrators is scarce. However, in the cases examined by *Education Week* (1998):

. . . the suspects ranged from 21 to 75 years old, with an average age of 28. More than seven out of 10 were teachers, but principals, janitors, bus drivers, and librarians were also among the accused. While most were men, 20 percent were women. The students ranged from kindergarteners to high school seniors. Two-thirds of the cases involved female students; about a third involved boys. And in only two of the cases had authorities ultimately concluded that students had fabricated claims (Hendrie, December 2, 1998, *Sex With Students*, Data on Problem Scarce, ¶¶ 2, 3 and 4).

Timmerman (2003) studied sexual harassment committed by peers and school staff in secondary schools. She acknowledged the lack of research that explicitly focuses on sexual harassment of students by teachers. Timmerman believes the reason for this lack of research is “due to schools being reluctant to participate in surveys on the sexual misconduct of teachers” (*Sexual harassment of adolescents*, introductory paragraph, ¶ 3).

Lee, Croninger, Linn, and Chen (1996) reported rates of sexual harassment perpetrated by teachers were 20% for girls and eight percent for boys. Timmerman's study reflects that one in four girls versus one in 10 boys have experienced unwanted sexual behavior at school. Regarding the status of the offender, Timmerman's findings revealed that 27% of sexually harassed students were harassed by adult school employees. Of this 27%, teachers comprised 81% of the offending group with the remaining occurrences being committed by tutors (12%), school doctors (1%), principals (2%), and janitors (4%). (Lee, Croninger, Linn, & Chen, 1996, *The Culture of Sexual Harassment, Sexual Harassment of Adolescents, Results*, ¶¶ 2, 4). Shakeshaft and Cohan (1995) characterize the sexually abused student as follows:

Targets. Of those students who reported being sexually abused, 22% were male, and 78% were female. Males were more likely to be sexually abused in elementary school than in high school, and females were about equally likely to be sexually abused at all levels.

These students, particularly the ones targeted by pedophiles, were often vulnerable, needy students who came from homes where little affection was shown or where there was little semblance of a family. Several of the female victims were reported by the superintendents to be living with alcoholic and sexually abusive fathers (Shakeshaft & Cohan, 1995, *Sexual Abuse of Students by School Personnel, Abusers and Their Targets*, ¶¶ 5 and 6).

Oftentimes, the public hears of a situation where an adult sexually molests a child and thinks that the molester is a "pedophile." Hendrie (1998) quotes Matthews, a psychologist who specializes in sex offenders, as clarifying the term, "very few people

qualify as a pedophile. But anytime there's a child involved, people use it" (Hendrie, December 2, 1998, Labels Like 'Pedophile' Don't Explain The Many Faces of Child Sexual Abuse, ¶ 3). Hudson (2002) supports the opinion of Matthews, "passions are running high in response to the daily revelations of sexual misconduct by Catholic priests. I purposely avoid the word "pedophilia" because, in the rush to judgment, most of the instances of "sexual abuse" are being reported incorrectly as pedophilia" (Hudson, 2002, A Time for Caution, ¶ 1). The American Psychiatric Association discusses the traits of pedophilia in the Diagnostic and Statistical Manual of Mental Disorders (1994) (*DSM-IV*).

The paraphiliac focus of Pedophilia involves sexual activity with a prepubescent child (generally age 13 years or younger). ... Some individuals prefer males, others females, and some are aroused by both males and females. Those attracted to females usually prefer 8- to 10-year-olds, whereas those attracted to males usually prefer slightly older children. ... Individuals with Pedophilia who act on their urges with children may limit their activity to undressing the child and looking, exposing themselves, masturbating in the presence of the child, or gently touching and fondling of the child. ... The frequency of pedophiliac behavior often fluctuates with psychosocial stress. ... The recidivism rate for individuals with Pedophilia involving a preference for males is roughly twice that for those who prefer females. (*DSM-IV*, pp. 527 & 528).

Hudson (2002) differentiates pedophilia, sexual contact with a child who has not yet reached puberty, with hebophilia or ephebophilia, which is sexual contact with older adolescents past puberty (Hudson, 2002, A time for caution, ¶ 2). Shakeshaft and Cohan

(1995) classify molesters into two categories. The first is the pedophile. According to Shakeshaft and Cohan, this person is “sexually attracted to children and many have chosen to work in schools so that they can be close to children. Their victims are primarily students in elementary and middle schools. Often the victims are among the most vulnerable children . . .” (Shakesaft & Cohan, 1995, Sexual abuse of students by school personnel, Abusers and their targets, ¶ 2). The other group is described as “romantic bad judgment abusers.” Shakeshaft and Cohan identify the romantic/bad judgment abuser as one who “did not have an obsession about sex with children and usually targeted older female middle and high school students. These abusers saw their actions as either harmless or romantic” (Shakeshaft & Cohan, 1995, Sexual Abuse of Students by School Personnel, Abusers and Their Targets, ¶ 4).

Mobile molesters gain the trust of their prey through a process called grooming. Weber (n.d.) writes:

A predator will identify and engage his victim. He’ll gain the child’s trust, break down his defenses, and manipulate him into performing or permitting the desired sex act. If necessary, the predator will gain access to the child by employing the same techniques with the child’s parent or adult caretaker. (Weber, n.d.,

Grooming Children for Sexual Molestation, ¶ 7)

Weber (n.d.) states that grooming is a process that begins when the predator chooses a target area such as schools, shopping malls, playgrounds, and parks and may work or volunteers at these places that cater to children. (Weber, n.d., Grooming Children for Sexual Molestation, Here’s What the Predators are up to, ¶ 1) Weber discusses the victims of child molesters as not being “prototypical,” “any child may be victimized.” He

states that predators often target children with obvious vulnerabilities such as the child that feels unloved or unpopular as these children will “soak up adult attention like a sponge.” Other likely targets are children with family problems, who spend time alone and unsupervised, or those who lack confidence and self-esteem. (Weber, n.d., Grooming Children for Sexual Molestation, Here’s What the Predators are up to, ¶ 2)

Gado (2002) states that “molesters engage in sex with children for a variety of reasons and sometimes these reasons have little to do with sexual gratification” (Gado, 2002, Pedophilies and Child Molesters, Child Molestation, ¶ 3). He classifies the sexual molester into two categories. The first is the situational child molester, a person who does not have a genuine sexual preference for children. The motivational factors for these persons are criminal in nature. In some cases, the offender’s sexual abuse of young people is a natural outgrowth of other forms of abuse in his own life.

The second category, the preferential child molester, is the one into which most school employees fall. According to Gado (2002), the preferential child molesters are the offenders who “have a sexual preference for children and will usually maintain these desires throughout their lives” (Gado, 2002, Pedophilies and Child Molesters, Child Molestation, ¶ 4). “Preferential child molesters may have an astounding number of victims and these crimes may remain undiscovered for many years” (Gado, 2002, Pedophilies and Child Molesters, Child Molestation, ¶ 4). Gado cited a case in Texas:

In 1995, a child molestation case in Texas caused a national uproar when the suspect was due to be released from prison after serving a six-year sentence for the rape of a 6 year-old boy. He told the police that he got away with abusing over 240 children before getting caught for molesting a single child and if released,

would do it again. (Gado, 2002, Pedophilies and Child Molesters, Child Molestation, ¶ 4)

The preferential child molester “will seduce children by buying gifts and appealing to their emotional weakness. This requires the offender to develop a friendship with the child” The preferential child molester is a pedophile who has carried his fantasies and desires into reality (Gado, 2002, Pedophilies and Child Molesters, Child Molestation, ¶ 5).

In the cases that have been reviewed, statements from the victims and other findings indicate that the would-be molester purchases his or her victims clothing, compact discs, or other items in an attempt to win their favor. The victim considers the teacher to be “cool.” Additionally, the teacher is often very popular with all the students and is thought of positively by the parents and members of the school community. The molester will do whatever he must to gain his prey’s confidence and the acceptance of the parents and school authorities.

Oklahoma has encountered several mobile molesters in the recent past. One person in particular moved to Oklahoma after receiving a deferred adjudication in Texas for assault of minors. This teacher became friendly with the students of his choice by grooming them. He purchased clothing, video games, and other items for the intended victims until he had them in his confidence. Once the students were “hooked,” he reeled them into his trap. In this instance, the teacher invited the students, troubled 13 and 14 year old males, to his apartment to watch videos and play video games. The students’ parents had no objections to this as the teacher was being a “big brother” and might help the young boys straighten out their lives. After a period of time, the teacher provided the

boys with alcohol and started showing them pornographic videos of a homosexual nature. He was finally caught when one student reported that the teacher attempted to conduct oral sodomy on him while he pretended to sleep. (Dallas Police Department records, Voluntary Statement, May 13, 1992; Dallas Police Department Offense Incident Report, May 13, 1992) This teacher, through legal manipulations, was able to get the charges reduced from sexual assault of a minor to simple assault. He received a deferred sentence for the crime. (State of Texas, County of Dallas, court records, June 3, 2002) At the time of this case, a deferred sentence was not considered a conviction, nor did a statute exist forbidding the issuance of a certificate to a person with a deferred sex crime, therefore, the OSDE was not able to deny his application based on a criminal conviction (OSDE internal records, August 7, 2000).

Countering the Phenomena

Articles written about violations of trust emphasize the need for conducting criminal history background checks to help protect school children; however, as Shakeshaft (2004) reported, “many states have passed fingerprinting laws for teachers and other educational professionals. However, there is no data about the effectiveness of such legislation for preventing or detecting sexual abusers” (p. 41).

The United States Department of Education commissioned Shakeshaft to conduct a study of the literature on educator sexual misconduct. In her synthesis of the data, she reported that teachers are the most likely persons in a school system to sexually assault a student, and, of these teachers, in most cases, it is a teacher who has the opportunity to be alone with an individual student (p. 22). Willmsen and O’Hagan (2003) found that teachers who also coach were “three times more likely to be investigated by the state for

sexual misconduct than non-coaching teachers” (p. 22). Other characteristics of the offenders Shakeshaft studied included sex and age of the offender, and same-sex offenders (Shakeshaft, 2004).

Shakeshaft reported on the consequences of allegations of educator sexual misconduct in the same report. She reported on a 1994 study in New York to determine the consequences that 225 educators received after being accused of sexual abuse of a student. All admitted to having sexually abused a student; however, only one percent lost their license to teach (p. 44). More recent studies show that the practice of passing-the-trash is common place. Willmsen and O’Hagen (2003) studied 159 Washington state coaches “who were reprimanded, warned, or let go in the past decade because of sexual misconduct ... at least 98 of them continued coaching or teaching afterwards.” (Dec. 15, 2003)

When passing-the-trash occurs, an agreement is reached between the school district and the employee for the latter to leave the school district quietly, thus often ignoring the state law that requires reporting child abuse. In most cases, these agreements include a mutual agreement not to put derogatory information in the employee’s personnel file and to give the employee a positive recommendation if a potential employer calls for a reference check. (Shoeman, Stava-Hicklin, & Wolin, 2002)

Former Ontario Court of Appeals Judge Sydney Robins recently released a report on sexual misconduct in schools, warning that “the sexual abuse of students at the hands of teachers, although rare, is more prevalent than many people would like to believe.” In

his Executive Summary to the Ministry of the Attorney General in Ontario, Canada, on protecting children, Robins summarized the scope of child abuse by teachers:

There are abusive teachers who, like DeLuca, are “opportunistic” sexual predators motivated by power, control and sexual gratification. Some are pedophiles who prefer to have sex with children and have chosen to work in schools so they can better access their targets. Others have “romantic/bad judgment” relationships with students, believing that their conduct is either harmless or is acceptable because the students are said to be doing what they want to do. Still others engage in sexual harassment or insensitive and inappropriate, though not necessarily criminal conduct. The unhappy reality is that cases of sexual misconduct are more prevalent than the public and the teaching profession may believe. (Robins, 2000, Chapter 1, Background, ¶ 7)

In the report, Robins identified several problems that enabled a sexual predator in the Sault Ste. Marie school district to continue his rampage. “Chief among the problems is a practice known as ‘passing the trash,’ in which bad teachers are bounced from school to school rather than being reported to the child-welfare agencies, fired, or otherwise disciplined” (p. 2). Among Judge Robin’s 101 recommendations to identify and prevent sexual misconduct are clear policies on:

1. The legal obligation of educators to report concerns to child-welfare officials if they have reasonable grounds to suspect children are being abused.
2. The right to report suspicions without notifying the suspect person in writing, as many teachers mistakenly believe they are required to do.

3. Record-keeping related to complaints of sexual misconduct, including concerns not serious enough to trigger notification of child-welfare officials.
 4. Internal investigations and protocols when allegations fall short of the threshold of evidence for mandatory reporting.
 5. The provision of “full and frank” references when teachers are moved.
- (Robins, 2000)

Many employers have policies that do not allow sharing of employee information. They choose to only confirm or deny that the person was an employee. Therefore, it is not recommended that the potential employer take this response as a “do not hire” recommendation. In all situations the previous employer should be asked if the person is “eligible for rehire with the company.” Quite often a response will be given to this question. If the answer is “no,” then the hiring administrator would be wise to avoid hiring the potential employee until a more thorough investigation into the employee’s past can be conducted. In cases such as this, a visit or telephone call to the county courthouse and/or district attorney’s office for the county in which the person worked and resided is in order.

Many articles have been written regarding the abuse and sexual molestation of children by the persons entrusted with their safety (Ackerman, Newton, McPherson, Jones, and Dykman, 1998; Asdigian, Finkelhor and Hotaling, 1995; Basta and Peterson, 1990; Berliner and Conte, 1990; Briere and Runtz, 1989; Budin and Johnson, 1989; Cohen, Mannarino, and Knudsen, 2005; Conte, Wolf, and Smith, 1989; Faller, 1989; Fassler, Amodeo, Griffin, Clay, and Ellis, 2005; Gorey and Leslie, 1997; Greenwald, Leitenberg, Cado, and Tarran, 1990; Kinard, 2001; Trudell and Whatley, 1988; Wurtele,

Kast, and Melzer, 1992). Shakeshaft's (2004) synthesis of existing literature on educator sexual misconduct has an extensive listing of newspaper, news wire, broadcast and online media articles, as well as surveys and studies on child sexual abuse. Shakeshaft states that very little quantifiable research can be found investigating the practices that the various state agencies take to prevent undesirable persons from entering the profession. She has categorized the surveys and studies by the name of the study, description, and relevancy to educatory sexual misconduct. Interestingly, of the 55 surveys and studies listed, Shakeshaft stated that none had relevant data to the synthesis of data she was providing to the U.S. Department of Education. Additionally, the document contains a 49-page, single-spaced, bibliography of applicable citations regarding educator sexual misconduct.

Freeman (2003) looked at the ethical dimensions of the superintendency in handling allegations of sexual misconduct. She reviewed the ethical perspectives of superintendents in applying the Texas Code of Ethics and Texas statutory reporting requirements in cases of sexual misconduct. She discussed conducting criminal background checks as part of the Texas State Board for Educator Certification's (SBEC) efforts to identify sexual predators. Two qualitative research questions dealing with criminal background checks were part of her study of eight Texas school district superintendents' ethical decisions in handling allegations of sexual misconduct in their schools. The first question asked the superintendents about their knowledge of the law that requires the Texas SBEC to "conduct criminal background checks of educators or applicants for certification" (p. 95). Freeman reported that the superintendents "were not clear on whether this was a requirement or whether it was discretionary, and they did not reference their district's ability to run such a check" (p. 95). However, she summarized

through the comments made during her interviews some, but not all, of the superintendents (3 of 8) did know that the state agency had the capability to obtain criminal information on teachers. One superintendent expressed his concern to her regarding the state agency's role in identifying persons with criminal records. This superintendent stated, "SBEC should catch those with criminal histories when they apply for certification" (p. 96).

Freeman's second question was designed to ascertain whether or not the superintendents had knowledge of the ability for the local school district to obtain criminal history information on educators. One respondent from a larger school district, affirmed that she was aware of the opportunity and that her school district had implemented policies to require applicants to disclose any prior criminal background information on the employment questionnaire. A superintendent of a smaller district stated he conducted criminal background checks on a "case-by-case basis," and, when he did conduct one, "he preferred going to the local police department and having them do the search in lieu of conducting a formal request through the state police" (p. 97). Two other superintendents acknowledged that their districts asked whether or not the applicant had a criminal record, and were aware of the ability to conduct checks, but surprisingly were unaware whether or not their districts actually did checks. The remaining four superintendents made no reference as to whether or not they were aware of the law or whether or not their districts conducted criminal background checks. (p. 99)

Smith (2003) studied Kansas school districts concerning reference checks. Although this study concerned criminal background checks and not reference checks from previous employers, the researcher would be remiss to neglect mentioning that

reference checks are an important HR screening tool when considering new employees. According to Smith (2003), “legally, a closed-mouthed policy would appear to be sound reasoning for employers and school district to avoid lawsuits, but this type of policy creates a disservice to both employers and employees” (p. 2). However, Smith writes, “unfortunately, if school districts refuse to give information about former employees, the sexual abuser, child molester, or thief is just as employable as the highly qualified teacher” (p. 2). Smith’s study provides reference to numerous studies and journal articles regarding this process (Camacho, 1993; Crebs and Rush, 1996; Jansen, 1994; Terpsta, Kethley, Foley, and Limpaphayom, 2000). Lohnas (1994) identified results of a reference checking survey of seven Northeastern states:

1. Only 10 percent of school districts had policies specifying what information their employees may give to another employer who contacts them for reference information.
2. Factual information was more likely to be given than the more subjective information.
3. When employees left a district, only 5 out of 368 districts required individuals to sign an authorization to permit the employer to release information to a prospective employer.
4. The larger the district, the greater the chance it had a policy specifying what information may be given to another employer.
5. Smaller districts (<500) tended to verify factual data more often than larger districts.

6. Smaller districts used face-to-face verification more frequently than large districts.
7. Large districts used mailed written forms more frequently than smaller districts.
8. Smaller districts had a higher percentage of districts that used liability waivers than other districts. (Lohnas, 1994)

Criminology Issues

The Oklahoma legislature has enacted several laws that specifically address crimes against children. Most of these laws involve sex crimes. When committee meetings were occurring during the 2001 legislative session, recommendations were made to disallow the possibility of deferred sentencing for teachers that commit sex crimes. Representatives of the teachers' union fought against the need for such legislation believing a law already existed that forbade a judge from deferring a sentence for a sex crime. (OSDE, 2001) However, a slight omission concerning deferred adjudication was intentionally or unintentionally made by the union lobbyist against the law. Title 21 O.S. Sections 21-886 (Sodomy), 21-888 (Forcible Sodomy), and 21-1123 (Child Molestation-Sexual Battery), all have provisions for sentencing; however, the prohibition for the court to hand out a deferred sentence does not apply unless the crime is the second offense. Therefore, the possibility for a teacher that commits a sexually related offense against a student to receive a deferred sentence is a viable one, thus, allowing the teacher to retain his or her teaching credential as he or she has not technically been convicted of a crime. (These laws can be located in Appendix B, Table B2.)

In 2001, the Oklahoma legislature strengthened the Oklahoma statutes by criminalizing sexual acts between a student and an employee of the same school system. Prior to this law, it was not a criminal offense if the student was at least 16 years of age and consented to the relationship. The law, Title 21 O.S. § 1111 reads, in applicable part:

Rape is an act of sexual intercourse involving vaginal or anal penetration accomplished with a male or female who is not the spouse of the perpetrator and who may be of the same or the opposite sex as the perpetrator under any of the following circumstances: . . . Where the victim is at least sixteen (16) years of age and is less than eighteen (18) years of age and is a student, or under the legal custody or supervision of any public or private elementary or secondary school, junior high or high school, or public vocational school, and engages in sexual intercourse with a person who is eighteen (18) years of age or older and is an employee of the same school system.

The U.S. Department of Justice established a guide for city, county, state, tribal, and federal law enforcement agencies to classify and report crimes to the Uniform Crime Reporting system. The purpose of this classification system was to make the reporting from each of these jurisdictions uniform for collection purposes. The National Incident-Based Reporting System (NIBRS) collects data on each incident and arrest within 22 offense categories made up of 46 specific crimes called “Group A” offenses. For each incident known to police within these categories, law enforcement collects offense, administrative, victim, property, offender, and arrestee information. In addition to the Group A offenses, there are 11 “Group B” offenses for which only arrest data are

collected (Uniform Crime Reporting Handbook, 2004, p. 3). According to information in the handbook, the reason for gathering such information is to provide:

An efficient record-keeping system makes possible these tabulations and studies and permits close supervision and corrective administrative action where necessary. Law enforcement officials can also readily present a clear picture of the crime situation in their jurisdictions and of the positive steps taken to meet the conditions. (p. 5)

The offenses are reported on a prioritization basis from the most to the least serious. Each main grouping is subdivided into additional groups so the crime information can be classified better. The primary categorization of the Group A offenses are:

1. Criminal Homicide
2. Forcible Rape
3. Robbery
4. Aggravated Assault
5. Burglary
6. Larceny-theft (except motor vehicle theft)
7. Motor Vehicle Theft
8. Arson

The Group B offenses are not reported in as great of detail as are the Group A offenses.

The crimes that fall into this category are:

9. Other Assaults
10. Forgery and Counterfeiting

11. Fraud
12. Embezzlement
13. Stolen Property: Buying, Receiving, Possessing
14. Vandalism
15. Weapons: Carrying, Possessing, etc.
16. Prostitution and Commercialized Vice
17. Sex Offenses
18. Drug Abuse Violations
19. Gambling
20. Offenses Against the Family and Children
21. Driving Under the Influence
22. Liquor Laws
23. Drunkenness
24. Disorderly Conduct
25. Vagrancy
26. All Other Offenses
27. Suspicion
28. Curfew and Loitering Laws – (Persons under 18)
29. Runaways – (Persons under 18)

The reason for listing the crimes in a hierarchical order is to allow the law enforcement agency to properly classify, score, and report the crime. If several offenses are committed at the same time and place by a person or a group of persons, only the most serious crime would be reported; however, the reporting to NIBRS does not impact

the number of charges for which the defendant may be prosecuted in the courts. As an example, two women broke into a new car dealership after closing hours. They took the cash from the dealership's office safe and two new automobiles from the garage.

Applying the hierarchy rule to crime reporting: the women committed three crimes: (1) burglary – forcible entry (category 5), (2) Larceny – theft (category 6), and (3) motor vehicle theft (category 7). The highest crime according to the rule is burglary – forcible entry; therefore, the only crime scored and reported to the NIBRS would be the burglary crime.

The NASDTEC Clearinghouse has a similar reporting system. When a state's board of education takes action against the teaching credentials of an educator that action is reported to the Clearinghouse. This information is then available to all member states. The categories listed by NASDTEC take on a different significance than those categories reported to the NIBRS. The categories used by NASDTEC are:

1. Criminal Conviction - Violent Felonies
2. Criminal Conviction - Sexual Misconduct (Child)
3. Criminal Conviction - Sexual Misconduct (Adult)
4. Criminal Conviction - Substance Abuse (Child)
5. Criminal Conviction - Substance Abuse (Sale or Use)
6. Sexual Misconduct (no conviction – child)
7. Sexual Misconduct (no conviction)
8. Substance Abuse (no conviction)
9. All Other Actions (May or may not have resulted in criminal conviction.)

Note: In late 2005, the NASDTEC organization revamped the reporting fields for the Clearinghouse to better collect and report information on reported actions. The main criminal categories are now grouped as: sex, child, violence, illegal substances, and theft. Non-criminal actions that are now collected include: test fraud, misuse of school computers or other equipment, fiscal impropriety, employment contract violations, failure to repay debt owed that is covered by the state (e.g., child support and student loans), and actions taken because of revocation/denial/suspension in another jurisdiction.

Demographic information collected now includes the type of license (administrator; administrator/teacher; classroom teacher; classroom teacher of core area; classroom teacher of art, music, PE, or drama; special education, career technology, pupil personnel services; and librarian). The grade range that the teacher worked is also reported by the name of the range: elementary, middle school/junior high, high school, junior high/high school, and kindergarten-12. Previously, the system had a field for typing in this information which was problematic as each jurisdiction might classify a person differently. The new system allows for a better compilation of data for statistical purposes. (NASDTEC Clearinghouse Webpage, April 2006)

The Oklahoma Department of Corrections regularly reports criminal statistics for many fields of information. In Oklahoma, the top five categories of crimes for which persons were incarcerated and the total number incarcerated as of the end of December 2004 include:

1. Distributing Controlled Dangerous Substances (4,514)
2. Possession/Obtaining Drugs (2,683)
3. Robbery (1711)

4. Murder I (1,593)
5. Assault (1,589)
6. Rape (1,475)
7. Larceny (1,384)
8. Sex - not Rape (1,294)
9. Burglary II (1,211)
10. Alcohol Related (966)
- 11 – 26. Bogus check/card (146); Forgery (569); Fraud (330); Embezzlement (53); Unauthorized use of a Motor Vehicle (337); Escape (432); Burglary I (402); Murder II (409); Manslaughter (378); Kidnapping (166); Arson (152); Explosives (50); Weapons (659); Miscellaneous, Non-violent (401); Miscellaneous, Violent (300); and Unclassified (285).

Other data reported by the ODOC for the December 2004 information shows that males make up 89.8% of the prison population. Caucasians make up the largest number in Oklahoma prisons at 57.9%. African Americans are the second largest group at 28.2%. Indian, Hispanic, and others make up the remaining 13.9%. (Oklahoma Department of Corrections, December 2004, Inmate Profile for End of Month Population for December 2004)

Human Resources Management

The school superintendent is responsible for the hiring of faculty and other staff members that will provide the necessary human element for the school to achieve its educational goals. Hiring of staff is not as easy as it may sound. The many state and federal statutes in the human resources field must be considered when recruiting and

selecting employees in an effort to avoid possible discrimination or negligent hiring lawsuits.

The field of human resources management is rapidly expanding from being a step-child within an organization to one equal in importance to other divisions such as finance, operations, and research and evaluation. French (1998) writes that, in the past, the personnel management aspect of an organization had a strong functional focus. The personnel specialists were concerned with the administration of specific employee-related functions such as hiring, training, wage setting, and disciplinary actions. He goes on to write that “a more modern view of the personnel functions of an organization is that all personnel functions are interrelated, that is, each function affects the others” (p. 5).

A significant part of the employee screening process is to verify the person’s eligibility to work. All applicants must be legally eligible to work in the United States as outlined by the United States Immigration Reform and Control Act (IRCA) of 1986. Simply stated, the IRCA requires employers to ensure all employees are authorized to work in the United States, either through citizenship or by receiving a permit to work. Hiring of unauthorized workers could subject the employer to legal ramifications and heavy fines.

Additionally, applicants for a teaching or professional position within a school system must be certified in the area they will work. Oklahoma statutes 70 O.S. §§ 6-101 (B) and 6-108 require a certified staff member to hold a valid Oklahoma credential for the position in which he or she will be working. In the Career and Technology Education system, the teacher must hold a credential if he or she serves students in grades 6 through 12. Positions that do not require some type of teaching or professional credential are

considered support positions. Among these types of positions are administrative assistants, custodians, drivers, and cafeteria workers.

Public school staffing issues are not unlike those in private industry. It is extremely important for a manager to obtain the best possible employee for each available position. Guion and Gibson (1988), identify personnel selection as: “a process culminating in a decision to hire one or more applicants for employment and not to hire others. The decision to hire is one of a family of personnel decisions, including promotions and terminations that should not be made without foundation” (p. 349).

Brown (1993) conducted a study of employment practices in the secondary schools of Arkansas. He states that a hiring mistake is in reality two mistakes, first the wrong person was hired and second the right person was not hired (p. 41). Brown investigated the attitudes of selected educators toward hiring practices and concluded that the secondary school administrators understood the importance of checking references, credentials, and backgrounds regarding child abuse. (p. 83) Cascio (2003) supports Brown’s comments about hiring the right person. He highlights the need for a “fit between the intended strategy of an enterprise and the characteristics of the people who are expected to implement it” (p. 238).

Negligent Hiring. Kondrasuk, Moore, and Wang (2001) wrote that negligent hiring was “emerging as a contributing source of employer liability for violence” (p. 185). They cite statistics from the National Crime Victimization Survey conducted in 1998 and covering a period of time between 1992 through 1996, identifying federal, state, and local government workers as being more susceptible to workplace violence than their non-governmental worker counterparts. The survey reports that, although government

workers make up approximately 16% of the total U.S. workforce, they make up 37% of the victims of violence. Their study showed that crime victimization in the workplace costs employers about 1,750,100 lost workdays each year. They reported the cost in wages for these lost workdays was more than \$55 million (p. 187).

According to Edwards and Kleiner (2002) there are several opinions and myths as to why employers do not conduct reference checks on potential employees. They stated one reason is because employers think they cannot check references or that they will encounter sources that refuse to co-operate with the process (p. 137). Other reasons are the fear of litigation and the perceived myth that the previous employer will not talk to the potential employer, other than just confirming that the person did work for the organization between certain dates, therefore, wasting their time to do the checks (p. 137).

Edwards and Kleiner (2002) state “that rapid change in legislation and litigation have put special importance on the careful and effective performance of reference checking” (p. 136). They cited statistics gathered from a Society of Human Resources Management survey in which these myths seem to be debunked: “65 to 85 percent of the respondents stated that they always check references of candidates for executive, professional, administrative, technical, or skilled labour (sic) jobs” (p. 136). Seventy-three percent of the respondents to the SHRM survey stated they believe reference checking is more important today than in the past; 94% of these stated they do provide references when asked (p. 136). Regarding negligent hiring, Edwards and Kleiner (2002) state:

A company can be liable if it fails to uncover an applicant's incompetence or unfitness by a diligent search of references, criminal background or even general background. This liability is incurred by a failure to be made aware of an applicant's unfitness for employment or for subsequent failure to take corrective action in the form of training, discharge or transfer. This is especially the case for companies that have contact with the public, patients or children; . . . (p. 137)

Scheele (1997) conducted a research study on administrator liability for negligent employment practices. Although her research was focused toward university campus recreation, her discussion of negligent hiring, negligent retention and entrustment, and negligent supervision, is very thorough and applicable in the public school setting.

Scheele concluded that education administrators must find ways to limit their employment practices liability:

The first step in avoiding liability issues is to recognize that the potential exists for injury to others in this context. The best way to avoid litigation from negligent hiring, retention, entrustment, and/or supervision was to carefully screen and conduct complete background checks on all employees, which encompass the duty and breach of duty elements of a negligence cause of action. (p. 116)

Wells (2004) studied employer liability for negligent hiring, retention, and referral of certified public school employees who were involved in sexual misconduct with students. His research study reviewed historical data in North Carolina schools and addressed the tort issues that school districts might face if they are guilty or accused of negligent hiring, negligent retention, or negligent referral. Hopes of preventing these negligent acts are the primary reasons that schools should conduct reference and criminal

background checks. Two issues in direct support of this research are self-disclosure and criminal background checks. Although he touched on each topic only briefly, the information is vital to the entire study of the HR field of knowledge.

Wells (2004) wrote about the self-disclosures of criminal activity on the application for teacher licensure that the staff attorney's office would review. These self-disclosures consisted of minor offenses in most cases, such as shoplifting, bad checks, traffic tickets, underage possession of alcohol, simple possession of marijuana, and disorderly conduct. He wrote that occasionally an applicant would disclose a serious crime such as embezzlement or assault with a deadly weapon. However, he noted that no one ever self-disclosed convictions for indecent liberties or similar sex crimes. Once criminal history background checks were allowed in North Carolina schools "a dramatic increase in reviewable cases occurred," notes Wells. He reported that, since 2002, of the 271 reviewable cases, 24 were related to sexual misconduct issues (p. 65). His assumption is that the background checks have been effective where simple self-disclosure was not. In the closing of his two paragraphs on criminal background checks, he states, "(t)his clearly demonstrates the troublesome nature of this criminal trend among North Carolina public school employees" (p. 66). Wells recommended 12 points that every school district should adopt to help protect its students, staff, and financial security from tort liability. These are:

1. Check all applications for periods of unemployment for which there is no explanation.
2. Include a statement in the pre-employment interview explaining the local board of education policy on sexual conduct.

3. Conduct a criminal background check.
4. Bring to closure every allegation or rumor involving past or present sexual misconduct by an employee.
5. Adopt a policy prohibiting sexual conduct by teachers with students.
6. Reflect complaints and document investigations regarding sexual misconduct in the employee's evaluation.
7. Draft a confidential settlement agreement as though it will be disclosed to the local media.
8. Report suspected sexual abuse of students and comply with the law.
9. Investigate all allegations of teacher's sexual conduct with students.
10. Establish a clear policy on employee references, including whether its philosophy is full-disclosure or non-disclosure.
11. Provide reference information only to those with a legitimate right and need to know.
12. Retain competent legal counsel and regularly consult with the board attorney on matters of teacher sexual misconduct with students. (pp. 83 – 88)

Employment Discrimination. Within the field of education, additional areas of employment concerns must be considered. Finch and McGough (1982), express the need to consider the community in which the school is associated when making employment decisions. They write that the personnel administrator normally narrows the field of candidates to a final few. Information about these persons is forwarded to the chief administrative officer, who reviews the applicants' credentials and may refer their materials to a hiring committee for review. A major part of the potential employee's

application package is a copy of all necessary credentials and the results of any and all reference and background checks that have been completed. During this entire process it is critical that the personnel administrator ensures all applicable recruitment and selection laws are followed. (p. 232)

McCarthy, Cambron-McCabe, and Thomas (1998) state, “most, but not all, forms of employment discrimination violate either federal or state law. Foremost among these mandates are the Fourteenth Amendment and Title VII of the Civil Rights Act of 1964” (p. 311). Section one of the Fourteenth Amendment to the United States Constitution provides for the status of citizen of the United States and each individual State whether the person was born in the United States or became a naturalized citizen. Additionally, the Fourteenth Amendment forbids individual States from making or enforcing laws that would limit or take away the privileges of each citizen’s rights to life, liberty, or property, without due process of law. Nor, would any citizen be denied the equal protection of the laws. Title VII, Civil Rights Act of 1964, bans employment discrimination for protected classes of individuals based on race, color, religion, sex, or national origin. When Title VII was enacted, it did not extend to discriminatory employment practices in educational institutions; however, in 1972, the law was amended, thus eliminating this exemption. Additional amendments to Title VII were age and disability as protected classes. These civil rights laws form a solid foundation for employment decisions. Administrators must keep the federal and state statutes in mind when transitioning through the hiring process.

Criminal History Background and Reference Checks. Two resources that employers have at their disposal to help prevent occurrences of negligent hiring in their workplace are criminal history background and reference checks. Contributing authors to

publications such as *HRManagement* sponsored by organizations such as the Society for Human Resources Management have discussed the need for conducting criminal history background checks on potential employees. These checks are to lessen the risks of harm to employees and customers by another employee, and subsequently to lessen the financial liability that the organization faces from civil lawsuits when an employee is harmed by another. However, very little mention of this human resource employment tool has crossed over into the field of education.

Edwards and Kleiner (2002) recommend checking criminal records as one of the more important areas of applicant information and one of the most strictly limited (p. 140). They cited information from a Web-based publication, “Checking Employment References” published by SOHO. [Note: During the literature review, attempts to locate a reference known as SOHO were not successful; however, an organization doing business as CCH has developed a toolkit for small business owners; it appears to be the same as the one referenced by Edwards and Kleiner and provides information for all aspects of operating a business to include the human resources field and specifically, conducting criminal history background checks.] The authors of the *Toolkit for Small Business Owners* recommend protecting businesses from liability by conducting criminal background checks on applicants who will:

1. be bonded because of access to money or valuables;
2. carry a weapon;
3. drive a company vehicle;
4. have access to drugs or explosives;
5. have access to master keys;

6. have a great deal of contact with the public, patients, or children; and/or
7. be filling a position that requires a criminal record check under state law.

Edwards and Kleiner (2002) also discussed several restrictions on checking criminal records cautioning against “violating subtle federal and state laws” (p. 140). This information recommends that employers ask themselves:

1. If there is an adverse impact on minority applicants?
2. If there is an adverse impact, is the record check related to the performance of the job or some other business necessity?
3. If there is a business necessity, is there another way to investigate the applicant's background to get around the adverse impact? (pp. 140 – 141)

In a Society of Human Resources Management White Paper, Elzey (2002) wrote about the value and availability of criminal background information. She stated, “criminal background checks are a selection device that is becoming more and more common as a result of increased access to information and increased liability for failure to tap into that information.” Ten reasons are identified why an employer would want to conduct a background check on a potential employee:

1. Reduce theft and embezzlement.
2. Limit legal exposure for negligent hiring and retention.
3. Increase applicant quality.
4. Check for potential discipline problems.
 - a. Most employers want to know this type of information regarding potential employees as it has a bearing on employee success and organizational liability.

- b. This type of information is particularly hard to get from past employers due to fear of defamation lawsuits.
5. Verify application information. Asking and verifying such information is a simple and inexpensive integrity and honesty indicator.
6. Decrease insurance costs. Some insurance companies will give discounts to organizations that conduct background checks or drug screening.
7. Discover drug/alcohol problems in applicant.
8. Decrease workplace violence.
9. Discourage applicants with something to hide.
10. Limit uncertainty in hiring process.

Connerley, Arvey, and Bernardy (2001) expressed the need to conduct background checks among municipal agencies: “although interest in protecting one’s organization or public agency from negligent hiring lawsuits is growing, little is known about what government agencies are doing related to criminal background checks on new hires and current employees” (p. 173). Connerley, et al., continue:

As employers are expending great efforts to recruit and select among applicants, they must not overlook the importance of conducting comprehensive selection processes, including criminal background checks when appropriate. Organizations that fail to recognize the risk of hiring into certain positions an individual who has a previous history of violent or inappropriate behavior, and to reduce that risk by checking the individual’s background, could find themselves liable for the actions of that individual. (p. 173)

Connerley, et al, (2001) cited information about the types of employment checks that private sector corporations use during the hiring process: “Anywhere from 80 percent to 95 percent of U. S. corporations employ some form of background checks” (p. 175). Of the companies that conduct pre-employment background checks, 81% verify education, 79% check previous employment, 59% check references, 50% conduct drug testing, 37% of all private sector organizations conduct an examination of criminal records on their potential employees, and 21% check motor vehicle records (p. 175). Connerley, et al, surveyed 114 local government agencies to determine their practices regarding criminal background checks. They reported that all responding government agencies conducted criminal background checks on some if not all potential employees. Companies that did not conduct checks on all employees acknowledged conducting criminal checks on employees in positions that:

1. were of a sensitive nature;
2. involved public safety activities;
3. had responsibility for handling money;
4. had significant fiduciary responsibilities;
5. had access to confidential data; or
6. worked with vulnerable adults. (Connerley, et al, 2001, p. 175)

Some studies have briefly touched on the use of criminal background checks as an employee screening tool. However, none of these studies concentrated on the impact of these checks as a means of keeping potential employees with a criminal record out of the organization. Additionally, most research projects and journal articles focus solely on sexual abuse of children, suggesting that this is the only crime committed against the

youth in our society that warrants action against the employee. The study conducted by Connerley, et al, in 2001, did involve various aspects of conducting criminal history background checks by governmental agencies; however, their study and subsequent article did not address the need or use of this type of employment check in the public school setting. They did conclude that organizations having caregivers for children or vulnerable adults should be checked. (p. 180)

Jamison (1987) studied factors that influence the hiring decisions of teachers by Oklahoma public school administrators. A study conducted by the Association for School, College and University Staffing (1978) entitled, “What Employers Consider Important in Hiring Teachers” (p. 16), identified 16 characteristics that a school administrator would look for in a potential teacher. The nearest characteristic to criminal background checks was “past employers” (p. 18). Only four years later a second study mimicked the 1978 study with the closest criterion being the employer’s preference for “letters of reference” (p. 21). The 1982 study reported that the majority of school administrators (54.1% of those responding) always check with reference writers before hiring a teacher while another 38.1% stated that they usually check references (p. 22).

What do school administrators, as the hiring officials, look for from the potential employees? According to Jamison (1987) they use “transcripts, resumes, completed application forms, placement credentials, completed questionnaires, and skills tests” as sources of their information (p. 68). Although the law allowing school employers the option to conduct criminal history background checks on potential employees had been in place for two years when Jamison completed his study, nowhere among the list was

anything close to conducting a criminal background check to determine if the teacher had a criminal past.

Conducting reference and criminal history background checks is a proactive step to help ensure trustworthy employees are hired. According to Cascio, (2003), “recommendations and reference checks are commonly used to screen outside job applicants” (p. 244). He adds that background checks can provide four kinds of information about a job applicant: (a) education and employment history, (b) character and interpersonal competence, (c) ability to perform the job, and (d) the willingness of the past or current employer to rehire the applicant” (p. 244). Cascio adds that a reference check is meaningful only if the person giving the reference is completely candid (p. 244, 245). Guion and Gibson (1988) discussed background information on an employee in their article on personnel selection and placement. They stated that “seeking background information about applicants is a search for behavioral consistency . . . background information may identify risks of antisocial behavior at the work place, quite important in the light of the legal liability an organization has for the actions of its employees. A reasonable aim is to avoid hiring those who may be likely to harm either fellow employees or other people” (p. 365).

Limitations of Literature

According to Shakeshaft (November, 2004), very little research is available concerning the effectiveness of conducting criminal history background checks on school employees. The researcher’s attempt to locate such research supports Shakeshaft’s findings. A significant amount of research on child sexual molestation was located, but only a few dissertations (Brown, 1993; Freeman, 2003; Jamison, 1987; Scheele, 1997;

Smith, 2003; and Wells, 2004) discussed reference or criminal history background checks were found, and none that specifically studied or mentioned quantifiable data regarding the impact of criminal background checks. Also, there have been many articles published on sexual misconduct (Anderson and Levine, 1999; Broussard and Wagner, 1988; Chaffin, Wherry, and Dykman, 1997; Kleemeier, Webb, and Hazzard, 1988; and Taal and Edelaar, 1997); however, very little quantifiable data is reflected in these articles.

Additionally, very little research can be found that discusses the responsibilities the state education agency has to the students within that state's school systems, nor the decisions being made by these state agencies in regards to allowing a person with a criminal record to be issued or maintain a teaching credential. Conducting research for issues related to the Human Resources Management field will undoubtedly supply a significant amount of information; however, when crosschecking for Human Resources information in relationship to public school administration, the information is sparse.

Conclusion

This review of existing literature included several topics that relate to the impact of criminal history background checks as a means of protecting the interests of school districts. Among the topics reviewed are: (a) the authority of the state education agency to apply and enforce the laws; (b) the existing Oklahoma laws which relate to criminal background checks, licensure of persons with criminal records, and employment of those teachers; (c) two nationwide phenomena and ways to counter the practices of the people classified within these two groups; (d) the overall system within which school districts must operate; and (e) human resources issues as they relate to schools. Unfortunately, literature specific to the field of education regarding conducting criminal background

checks is extremely limited. However, some information in the field of Human Resources Management exists which could easily be applied that will support the hiring practices of school administrators.

The OSDE, like its counterparts in each state, is responsible for the issuance of credentials to teacher applicants. With this authority comes a responsibility to ensure only those persons who have fulfilled all mandated requirements are issued a credential. Interpretation and implementation of the laws and policies is a part of this responsibility that, if done haphazardly or with agendas other than the welfare of the school district and the children in mind, might allow issuance of credentials to persons that should otherwise be kept out of the teaching profession. Oklahoma's laws forbid the issuance of a credential to any person that has a felony conviction or a misdemeanor or felony conviction for a crime that is classified as moral turpitude. The OSDE leadership's interpretation of this and other laws are important for ensuring only those persons without disqualifying crimes are issued a certificate to teach.

A review of the certification practices of the states that immediately border Oklahoma was also conducted. For the most part, each state, Arkansas, Colorado, Kansas, Louisiana, Missouri, New Mexico, and Texas, have laws similar to those of Oklahoma which prevents the issuance of a credential to a person with certain types of criminal convictions. The states also have criminal history disclosure statements on their licensure applications which require the applicant to identify specific types of information that might disqualify the applicant for a credential in that state.

Two very serious phenomena were reviewed. These phenomena, passing-the-trash and mobile molester, are two colloquial terms representing persons who have

characteristics making them less than desirable candidates for working in a school setting. Passing-the-trash is the lesser of the two evils. These persons might just be ineffective teachers, but within the scope of this study, this term is more often used to classify teachers or other school employees who have done some type of harm to a child or staff member. The second term, mobile molester, is as serious as the name implies. These persons purposely move from school district to school district, town to town, and state to state for the sole purpose of sexually abusing children. These persons often work in many schools before they are caught and turned over to law enforcement authorities, some cases told of mobile molesters that sexually abused students for over 20 years before finally being caught. Often times these mobile molesters were allowed to leave the school district through the passing-the-trash phenomenon. The literature suggests the only ways to counter these persons are for school districts to stop allowing bad employees to quietly resign their positions in exchange for a positive or neutral letter of reference, to provide honest referrals to questioning potential employers, and for those future employers to conduct thorough reference and criminal history background checks.

The literature review and research project were conducted from a systems theory perspective. As such, each entity that supports education was reviewed. The suprasystem for education was identified as the federal and state legislative and court systems and the U.S. Department of Education. The OSDE made up the system, and the local education agencies (local school districts) comprised the subsystem. Each level supports education through the laws, rules, and policies developed. Additionally, correct implementation of these laws and policies is important for success at each level. NASDTEC, a major contributor within the education system, supports programs and legislation which

contributes to the ease of mobility of educators across state lines through reciprocity programs. Unfortunately, mobile molesters and other undesirable teachers also take advantage of the programs supported by NASDTEC. A critical element in stopping the mobile molesters and other undesirable persons from moving from state to state is the NASDTEC Clearinghouse, a nationwide (includes Canadian Provinces and U.S. territories) database that consists of the names and other identifying information of persons who have had adverse actions taken against a credential holder by the state issuing authority.

An abundance of literature from the field of Personnel Management discusses issues such as negligent hiring, negligent retention, reference checking and terminations; however, this literature does not mention its effectiveness within the field of education to any great extent. The literature was practically silent concerning criminal history background checks until recently when private companies started conducting searches of court documents on the Internet and reporting their findings as criminal history background checks. However, as the literature revealed, the checks by these private companies are conducted using the Fair Credit Reporting Act laws and are not conducted through the state and federal police records repositories (OSBI and FBI), as the private companies would like for their clients to believe.

Although no significant number of quantitative or qualitative research studies have been conducted in the area of criminal background checks or related fields of this study, several articles have been published that make recommendations which support reference and criminal background checks. The works of Shakeshaft and Hendrie appear to be the most extensive, however, even they commented on the lack of research that

support the recommendations by themselves and other authors. Many of the other authors cited in this review of the literature have discussed the value of conducting reference and criminal history background checks as a means of minimizing the possibility of negligent hiring cases within the school district. Research on the value of conducting criminal history background checks appears to be practically nonexistent; therefore, the topic seems to be wide open for study, as are the credentialing practices of state education agencies and the laws allowing a person with a criminal record to obtain credentials to teach.

Lastly, researchers and authors have been estimating for years that the percentage of teachers who have criminal records is low, ranging anywhere from two to ten percent. These persons state that even though the numbers are small, the damage caused by this small percentage of bad teachers is extensive. What is the correct percentage? Is it two percent? Or, is it ten percent? When put into the context of a rural Oklahoma school district, this percentage might be only one or two teachers, but when applied to a larger school district such as Oklahoma City with 2300 certified staff, this number can range from a low of 46 to a high of 230 certified staff.

CHAPTER III

RESEARCH METHODOLOGY

Introduction

The purpose of this study was to determine what impact the provisions of various teacher certification laws, policies, and procedures have on the screening process of first-time teacher applicants. Specifically studied were two laws, 70 O.S. 2001, § 6-190 (B)(6) and 70 O.S. Supplement 2004, § 6-190 (D), enacted in November 2001 and July 2004, respectively, and the decisions made by persons in leadership positions within the OSDE regarding the implementation of these and other laws relative to criminal history background checks for teacher credentialing purposes.

Document Analysis

This study was conducted by reviewing Oklahoma laws concerning teacher licensure, OSDE rules and policies, and existing data regarding teacher certification and criminal history background checks on file at the OSDE. The demographic, certification, and criminal history data on teachers and teacher licensure applicants with criminal records identified between January 1, 2000, and December 31, 2004, was entered into an Excel spreadsheet in 24 different categories (Appendix A). Analyses of the teacher certification and criminal history background check data were conducted to provide both descriptive and inferential statistical information.

Theoretical Framework

This study was conducted in the context of Systems Theory to determine the impact of the suprasystem (laws and court decisions) on the system (Oklahoma State Department of Education) which in turn, affected the subsystem (Local Education Agency) through their interpretation and implementation of the laws and court decisions of the suprasystem. A quantitative analysis of existing data about criminal history background checks processed through the OSDE between January 1, 2000 and December 31, 2004, was used to determine the impact of laws enacted in November 2001 and July 2004 for identifying potential teachers with criminal backgrounds. Comparisons of these data against the policies and practices of the OSDE were conducted to determine the extent to which the laws were impacted by the existing policies and practices.

Research Participants

Since this was a study of existing data there were no actual research participants. The data provided by the OSDE consisted of case histories of criminal cases and staff distribution and certification information provided by the Data Services Section of the OSDE. This consisted of information concerning the subjects' (persons for which a criminal record was disclosed) race, gender, age, credentialing, and employment history; however, all identifying data such as each person's name, social security number, and criminal case number were removed to protect the identity of the subjects.

The researcher collected existing data on all criminal history background checks conducted by and through the OSDE between January 1, 2000 and December 31, 2004, which were returned by either the OSBI or the FBI with a positive criminal record for the participant. These checks included data for both employment background checks

conducted by local school districts and processed through the OSDE between January 1, 2000 and December 31, 2004, and checks accomplished for licensure purposes by the OSDE between November 1, 2001 and December 31, 2004. Data gathered prior to January 1, 2000, were excluded from this study.

The population was all certified teachers employed in the state for the entire period of time covered by the research study and for all applicants for initial licensure on or after November 1, 2001, or for an initial certificate after July 1, 2004 (approximately 88,000). For this study, the sample population was limited to (a) those teachers applying for an initial teaching license in Oklahoma on or after November 1, 2001, (b) out-of-state applicants applying for their initial Oklahoma license or credential after July 1, 2004, (c) those individuals having a criminal history background check conducted for employment purposes processed through the OSDE between January 1, 2000 and December 31, 2004, and (d) individuals with an open investigation because of information obtained by the OSDE between these same dates. The subjects with a positive criminal history record were assigned to the sample populations by the reason for the criminal background check (a, b, c, or d above). Some subjects identified as support employees or paraprofessionals were deleted, as these persons did not receive credentials to teach, thus, were not required to have a criminal background check conducted under the two laws being studied. Other subjects were omitted if the data gathered were missing significant pieces of information or if the descriptive analyses identified errors in the data which could not be corrected by a review of the original spreadsheets.

It is possible that duplications may exist in the data. A teacher who had a background check under the licensure laws may also have had a background check

conducted for employment purposes by a local school district. The number of duplications was estimated as fewer than 25. Additionally, a few subjects may have been duplicated if they had a background check conducted for employment purposes or an investigation opened prior to January 2002, and another background check or investigation on or after January 2002, as these data were not merged by the OSDE. The number of duplicates of this type was estimated to be fewer than ten.

Data Collection

Data concerning criminal history background checks have been maintained by the OSDE since 1995. These data consisted of personal, educational, and criminal history background information on every person for which a criminal background check was processed through the OSDE between January 1995 and December 2004, resulting in disclosure of a criminal record. Data maintained for the years prior to 2000 were not used as part of this study because of gaps, inconsistencies, and changes in the data collection method used by the OSDE.

Originally, the data collected for this study consisted of education, certification, employment, and criminal history. These data were collected on a spreadsheet with 24 different columns of information provided for each subject (Appendix A). Each subject was given an identification number which corresponded with the spreadsheet row. For the purposes of this study, the employment history information on each subject was not transferred to the spreadsheet as statistical analyses were not planned for these data during this study; however, the employment histories were used to confirm certification dates for some subjects. Some columns of information were collected as a means to check for accuracy in the data entry and verification of the original spreadsheet

information provided by the OSDE. For example, the column for “reason for background check” should match with the information entered on “how the crime was identified.” If the two did not match, the researcher reviewed the original spreadsheet to determine if the problem was a Scribner’s error or if a problem existed with the original data.

Corrections were made for all Scribner’s errors. If the problems were with the original data, a review was made of all data to determine what the correct information should be. If the correct information could not be discerned, the subject was deleted from the population.

Demographic Information.

The collected demographic information was the applicant’s year of birth, gender, and race. This information was the same as gathered on the annual personnel reports collected by the OSDE from each of the state’s school districts. The OSDE investigator compared the collected information from the personnel reports with the demographic data reported on the OSBI or FBI RAP sheet for each individual prior to entering the information onto the spreadsheet. A comparison of these data to criminal records was not conducted for this study; however, the numbers were reported for informational purposes.

Certification Information.

Education information included the route to certification used by the applicant (traditional, alternative, or out-of-state), when the first Oklahoma credential was issued, and the primary certification area held by the applicant. The month and year of the issuance of the first credential were easy to determine for all credentials issued on or after July 1, 1986, as the original issue date was printed on the information provided the researcher. However, during June 1986, the OSDE’s Professional Standards office

conducted a conversion of teacher certification files. All credentials issued prior to July 1986 were given an original certification date of June 1986. In the instances where a subject's original issuance date was reflected as June 1986, the researcher reviewed the person's employment history data to determine if an earlier issue date was appropriate. If employment data were not available, the June 1986 date was used as the original issue date. However, if these data were available, then the researcher used July 1 of the first year employed as the original issue date. It is possible the credential was issued prior to the first year employed, however, since this study is concerned about decisions made for certification on or after the year 2000, the differences should be nonexistent.

For the purpose of this data collection and study, similar certification areas were grouped together. For instance, all areas in which a person could obtain certification in science were grouped together as science instead of individually listing several subject areas such as chemistry, biology, and Earth science. All classifications for administration and professional staff (superintendent, principal, counselor, librarian, etc.) were grouped together as professional staff. Where the applicant was credentialed in one area only, the field for the second area was identified as "none." If the applicant had two or more certification areas, then a decision was made to apply the first area as the area identified as the applicant's major educational area as shown on the OSDE transmittal, and the second was the person's minor or subsequent area of certification, also shown on the transmittal. If there were more than two areas of certification, the first was identified as described above and the second area chosen was one that would lend to a person having the opportunity to commit a crime against either the school or a student. For example, if the person's second and third certification areas were mathematics and school counselor,

the code for school counselor would be selected as representing the second certification area. This was done because the school counselor position provides for a greater opportunity for the employee to be alone with a student.

Criminal History Information.

The criminal history background check information consisted of the date the crime was committed, whether the crime was committed in Oklahoma or out-of-state, the classification of the crime (traffic, misdemeanor, or felony), and the court decision for the crime. In cases where the subject had more than one crime, the information was collected for each. Lastly, information was gathered concerning the OSDE's decision whether or not to allow certification, and, if allowed, what reason was used. Some gaps exist in the above information; however, these gaps were not considered significant enough to impact the outcome of the study. For example, if crimes were committed prior to 1989, the court documents may not have been requested since Oklahoma law allows for the certification of a person if ten years has passed since the conviction date; therefore, the court actions would not be known and a code for "unknown" was used.

Data Analysis

To determine whether or not the two laws had an impact on identifying teachers with criminal records, the results of criminal history background checks conducted after implementation of the aforementioned laws were compared to the number of checks and results of those checks conducted prior to November 2001 under the purview of the employment background check laws. Additionally, an examination of the positive criminal background checks was conducted to determine if the OSDE's decision to issue

or deny a teaching credential was based on established Oklahoma law, or if a licensure decision was made contrary to Oklahoma law.

The researcher investigated existing data of criminal history background checks collected by the OSDE over a five-year period between January 2000 and December 2004. Descriptive statistics of personal and professional data of the applicants with criminal records were reviewed and reported regarding the subject's sex, race, age, and certification areas held by the subject. This information was compared with national and state criminal justice information to determine if the trends for teachers coincide with the trends across the nation in non-education groups; however, no attempt was made to infer conclusions based upon this information due to inconsistencies in the categorization of information by the different entities within the criminal justice system. Additionally, the researcher examined the method the person took to obtain an Oklahoma teaching credential (college education program, reciprocity/out-of-state credential, or alternative certification) to determine if trends existed in these data.

An analysis was conducted on all criminal history records checks conducted for employment and licensure purposes between January 1, 2000 and December 31, 2004, to identify the percentage of checks that returned with a criminal record. Additional analyses were conducted between criminal history information collected for employment purposes from January 1, 2000 to November 1, 2001, November 1, 2001 to July 1, 2004, and the data collected from July 1, 2004 to December 31, 2004, to determine trends that might exist regarding applicants with out-of-state credentials. All analyses focused on whether or not Oklahoma's mandated fingerprint-based background check laws have positively impacted the identification of applicants with criminal backgrounds in

relationship to the number of positive criminal background checks identified through other avenues such as employment checks, media (newspaper, television, radio), and concerned citizens.

Various methods were used to examine the existing data from a quantitative perspective. The population to be analyzed was the positive criminal history background checks disclosed between January 2000 and December 2004, by all means of detection (primarily employment and licensure background checks, but news articles, nation-wide database information, and concerned citizen notifications were also included). Separate analyses were conducted of criminal history data collected after the two laws were enacted in 2001 and 2004, mandating fingerprint-based criminal history background checks for credentialing purposes. These analyses were conducted to determine the impact of criminal history background checks on the ability of an applicant for teacher licensure to obtain a credential, and the need for the laws that require fingerprint-based criminal history searches.

Ethical Considerations

The information used for this research is available to the general public through Oklahoma's Open Records laws. Therefore, no proprietary information is disclosed in this study. Although the information in this study is subject to the Oklahoma Open Records Act, all identifying information such as names, social security numbers, and case numbers were removed to protect the privacy of the parties involved. The names of specific school districts were also changed to eliminate any possibility that readers might be able to identify a scenario being discussed.

Trustworthiness of the Data

The data are supported by detailed documentation in every instance where a background check revealed that a teacher or an applicant for a teaching credential had a criminal record. Also, every instance during the past ten years where the manager of the Criminal History Program requested advice from the OSDE's legal counsel is documented to include counsel's recommended actions. Additionally, a system of checks and balances was built into the spreadsheet designed for this research to disclose erroneously entered data. For example, if the reason for conducting a check was for licensure, then the method of discovery of the crime must be either licensure or licensure, out-of-state. If it were discovered that some other data were entered, then a review of the original spreadsheets was done to determine and correct the error. Descriptive analyses were conducted and reviewed for obvious errors that occurred during data entry. Third-party reviewers were also used to help ensure the trustworthiness and validity of the information.

Limitations of the Study

The amount of data gathered by the researcher regarding teachers with criminal backgrounds is extensive and could have easily become unmanageable. Therefore, the researcher chose to limit the research to the effectiveness of the 2001 and 2004 laws mandating fingerprint-based criminal history background checks for new teacher licensure applicants and the policies and procedures that the state agency implemented in support of those laws. The information gathered after the effective date of these laws was compared with the information gathered under the previous laws for conducting criminal background checks for employment purposes and the 2001 law that did not require out-

of-state applicants in possession of a valid credential from another state to submit to a background check. The employment-based information was limited to that obtained after January 1, 2000, since the information prior to that date did not include some information necessary for the study.

The research was limited to individuals applying for their initial teaching credentials issued by the OSDE, certified employees where the employing school district conducted a criminal background check, and other certified personnel that had an investigation opened during the timeframe the study covered. Among these individuals are teachers, administrators, and other professionals within the school setting. Since this study is based on the impact of the two laws for licensure purposes, and employment of support personnel is a local district option, this group of school employees was excluded from this research. The only mention of support personnel in this study is in Table B6 showing the total number of searches and total number of positives identified each year. The numbers of certified staff who had employment-based criminal history background checks was gleaned from these aggregated figures.

It is entirely possible that the number of persons with criminal records could be higher than the number identified by the researcher. When the November 2001 law became effective, the director of the Professional Standards (teacher certification) office decided to issue licenses to persons who had criminal records that were misdemeanors, received deferred adjudication, or were over ten years old from the conviction date as reported on the RAP sheet. These files were not sent to the investigator's office for review. Applicants not having criminal records are included in the total number of

licenses issued; therefore, this number would not increase based upon the actions of the supervisor in the certification office.

Approval from the OSDE (Appendix C, Figure C7) was gained granting permission to use the OSDE data. An Oklahoma State University Institutional Review Board request was submitted and approved for this study. Due to the sensitive nature of the material in this study, the IRB requested reassurance that the researcher could not trace back to the subject and make identification between the subject and the crime committed (Appendix C, Figure C8).

CHAPTER IV

PRESENTATION AND ANALYSIS OF DATA

Introduction

The purpose of this study was to determine what impact the provisions of various teacher certification laws, policies, and procedures have on the screening process of first-time teacher applicants. Specifically studied were two laws, 70 O.S. 2001, § 6-190 (B)(6) and 70 O.S. Supplement 2004, § 6-190 (D), enacted in November 2001 and July 2004, respectively, and the decisions made by persons in leadership positions within the OSDE regarding the implementation of these and other laws relative to criminal history background checks for teacher credentialing purposes.

A literature review was conducted to determine the extent to which research has been conducted into the effectiveness of criminal history background checks as a tool to keep undesirable applicants out of the teaching profession. Articles were discovered for several topics related to the subject. However, other than recommending criminal history background checks as a one of the methods to select future employees, no literature or research studies were discovered that showed whether or not these checks served a positive impact.

Demographic, teacher certification, and criminal history data were collected for applicants for teacher certification or employment as a teacher. Comparisons were made

between those in the teaching profession in Oklahoma and those with criminal records as identified through criminal history background checks or other means of disclosure.

Subsets of the total population were also compared to obtain other useful demographic, certification, and criminal history data. Additionally, comparisons were made between the various fields of data collected on the persons with criminal records in an attempt to discover trends that may exist.

Initially, 1148 teacher licensure applicants or teachers applying for employment with criminal records were identified. This number was reduced to 999 by deleting subjects who should not have been included in the initial gathering of information such as the subjects who were identified as support or paraprofessional employees. Other subjects removed were persons with felony records who had telephoned the OSDE to inquire about certification and persons who were reported to the NASDTEC Clearinghouse for noncriminal reasons such as contract abandonment or denial of a credential based on low grade point average.

Background Data

Demographic information

Demographic data were collected for race and gender for informational purposes. Additionally, age for each subject was collected; however, it was not used as a part of this study. The numbers of teachers employed annually have been averaged to provide a simple picture of these data. The demographic information of teachers with criminal records was compared with the annual staff distribution reports from the OSDE to determine percentages in each category. Where differences existed in the categories of collected data, the data collected for the teachers with criminal records were adjusted to

match the demographics listed on the OSDE reports. For example, on the OSDE reports, race is collected in the following categories: African American, Indian, Spanish American, Oriental, and Caucasian/other. Therefore, to have the data match, the collected race category of “other” was joined with Caucasian.

Gender and Race. Table 1, below, shows the numbers by the subject’s gender and race.

Table 1

Gender and Race of Employed Teachers in Oklahoma

	<u>Male</u>	<u>Female</u>
African American	526	1,389
Caucasian/Other	10,599	32,996
Hispanic	106	253
Indian	537	1,296
Asian	38	100
Total	11,807	36,034

Source: OSDE Staff Distribution Records

Female subjects outnumber males employed as certified teachers in Oklahoma’s schools by over 3 to 1. There was an average of 36,034 females to 11,807 males working each year of the study. However, of the 999 criminal cases reviewed, the number of males with a criminal record represented almost two-thirds of the population sample; 617 subjects were male and 376 were female (62% to 38%). One subject’s gender was not identified. This is consistent with the numbers reported by the ODOC for the population of criminals who are incarcerated. The percentage of females with criminal records taken

from the averaged yearly employed population was 1.04%, whereas, 5.22% of the employed males had a criminal record.

Race was categorized on the collected data of criminals as: Asian, African American, Caucasian, Hispanic, Indian, other, and unknown. There are 22.75 times more Caucasians/other working as certified employees in Oklahoma's school districts than the second most populated group, African Americans. Caucasians/others represented the largest group at 74.3%. African Americans made up the second largest identified class at 9.2%. Indians and Asians made up the third and fourth sized groups at 2.7% and 1.8%, respectively. Hispanics closed out the Race category at 1.1%. It should be noted, the number of Hispanics could be reported low as Hispanics are now classified by the U.S. government as an ethnic group under the Caucasian category and not as a race. One hundred eight subjects did not have a gender or race identified.

Certification information

Applicants pursue one of the three main routes to certification: traditional (completion of a teacher education program and student teaching), alternative (bachelor's degree or higher in an area other than education), and out-of-state (applicant used a valid teaching credential from another state to obtain an Oklahoma credential through a reciprocity agreement). The route each applicant used to obtain teacher certification was studied and is shown in Table 2. This information is discussed in detail under the subheading "Research Question 5" in this chapter.

Table 2

Method of Obtaining Credential; Population and Crime Totals and Percentages

	<u>Total Population</u>	<u>Criminal Record</u>	<u>Percentage</u>
Traditional	11,198	620	5.53
Alternative	1,587	211	13.29
Out-of-State	3,552	143	4.14 ¹
Total	16,337	974	5.96

OSDE data

Note: There were 27 missing values; total subjects were 999.

¹Note: Table 8 (p. 153) shows that applicants with out-of-state credentials have a much higher likelihood of being identified with a criminal record than those applicants represented by the traditional and alternative applicants. During the six-month period when all out-of-state applicants had criminal background checks conducted, over 27 percent of the applicants were identified with a criminal record.

The month and year the person was first certified in Oklahoma was compiled to determine which criminal history background check law (pre-November 2001 employment laws, November 2001 licensure law, or July 2004 licensure law for out-of-state applicants) applied, if any. It is possible for the numbers of each category to vary a small degree due to the actual date the application was filed versus the date the credential was issued. For example, if a person applied for an Oklahoma teaching credential in October 2001, but the credential was not issued until November 2001, this person's information would be classified under the November 2001 law requiring a background check; however, in actuality, the applicant was not required to submit to a background

check because this first law went into effect between graduation dates for universities (normally May, July, and December of each year), the number of teachers being categorized incorrectly should be relatively small. However, regarding the July 2004 law, which applied to out-of-state applicants, the number could be somewhat higher.

The primary certification area of each subject was collected for informational purposes and use in future studies. The top three certification areas represented by teachers with criminal records are Elementary/Early Childhood, Physical Education, and Social Studies. Appendix B, Table B7 identifies the number of teachers with criminal records by certification area.

Criminal history information

The data collected regarding the criminal history on an applicant for certification or for a teaching position included several areas where validation of the information could be checked. For example, the reason for the criminal history check of licensure, employment, or other reasons could be cross checked with how the criminal history information was discovered: reasons of licensure check, employment check, news report, anonymous notification, NASDTEC, self-disclosure, and other. All subjects with a background check reason of “licensure” should have also been identified as “licensure check;” if not, a review of the original data would be conducted in an attempt to discover the discrepancy. Corrections were made where possible; however, if it was impossible to determine the proper information, the subject would be classified as unknown or other. The type of crime was collected primarily using the same categories as used by NASDTEC with some slight modifications so a clearer picture could be developed as to the types of crimes committed by teachers in Oklahoma schools.

Table 3 shows the yearly figures of teachers or teacher applicants identified with a criminal record.

Table 3

Number of Teachers Identified with a Criminal Record by Year of Background Check

<u>Pre2000</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>Unknown</u>	<u>Omitted</u>	<u>Total</u>
60	57	163	206	213	274	21	5	994

OSDE data

In 2000, when the only means of identifying teachers with criminal records were employment background checks, relying on reports from other sources, and self-disclosure on the licensure application, only 57 teachers were identified with criminal records out of an employed teacher population of 47,877. Starting with the July 2001 Teacher Review Panel session, a policy was implemented by the Oklahoma Commission for Teacher Preparation and the Teacher Review Panel for the Alternative Certification Program which required applicants to obtain a name-based criminal history background check through the OSBI prior to meeting the panel. In November 2001, background checks were mandated for licensure purposes for all teachers seeking their initial Oklahoma license. This law did not include applicants applying for their first Oklahoma credential who possessed a valid credential from another state as they would receive a “certificate” and not a “license” as stipulated in the November 2001 law. With the implementation of this policy and law in 2001, the number of teachers identified with criminal records tripled to 163, although the law had been in effect for only two months. It should be noted that 19 these 163 identified subjects were applicants for the Alternative Placement Program between July 1 and October 31, 2001, and needed only an OSBI

search. The number of teachers identified with criminal records since the licensure requirements were in place for a full year (2002 and 2003) is four times higher than in the year 2000; 206 persons with criminal records were identified in 2002 and 213 in 2003. In July 2004, a law was enacted which mandated a fingerprint-based background check on all persons applying for their initial teaching credential in Oklahoma, regardless of whether it was a license or a certificate. This law closed the loophole which allowed out-of-state applicants with a valid credential from another state to bypass the background check requirement. A total of 274 persons were identified with criminal records in 2004, which is almost five times higher than in 2000. There were 60 persons investigated during the five year timeframe of this study who had had a criminal background check conducted prior to the year 2000. There were a total of 21 subjects whose year of background check was unknown. Another five subjects were omitted from the population because of missing data.

Table 4 identifies the number and percentage of subjects discovered with a criminal record because of the licensure check laws enacted in November 2001 and July 2004, employment checks by local school districts, or for other reasons. By removing the “other reasons” category from the equation, which is naturally high and skews the percentages, a truer representation of the population of teachers with criminal records is obtained. When only the licensure and employment checks are combined the overall population of teachers with criminal records becomes 3.76%.

Table 4

Percentages Based Upon Population and Number of Teachers with Criminal Records

	<u>Number of Background Checks</u>	<u>Number of Criminal Records</u>	<u>Percentage of Population</u>
Licensure	11,364	377	3.31
Employment	8,535	372	4.35
Other Reasons ¹	269	176	65.42
Unknown ²	-	74	-
Total Population	20,168	999	4.92

Data Source: OSDE

1. The percentage of population for the “Other Reasons” category is naturally high as these checks are conducted based on notification of criminal activity for the subject from sources such as NASDTEC, media, anonymous callers/letters, etc.
2. Seventy-four subjects did not have a reason for the check being conducted identified.

There were 377 criminals discovered because of the licensure check laws enacted in November 2001 and July 2004; 372 criminals were identified through employment background checks conducted by local school districts during the entire five-year period covered by this study and another 176 were discovered by other means, leaving 74 checks as unknown for the reason a check was conducted on the teacher.

The percentage identified between the numbers of criminals discovered in relationship to the population searched appears to be close as shown in Table 4. However, for the licensure checks, 11,364 represents 100 percent of the possible population; whereas, 8,535 represents only the population that were submitted for an employment

criminal history background check. The average yearly number of certified employees during the five years of the study was 47,840 persons. Had this total population been used versus the population searched the number reported with criminal records would be significantly less. Or, taken from a different perspective, instead of 372 teachers being identified with a criminal record from the employed population, there are possibly 2081 ($47,840 \times .0435$) teachers in Oklahoma schools with criminal records that have not been identified.

Research Question Findings

Research Question 1

What is the impact of the November 2001 law requiring criminal history background checks for teacher licensure on new teacher licensure applicants within Oklahoma?

The first research question focused on the first law that was enacted requiring a fingerprint-based background check for all new applicants for a teacher license and what impact this law has had on these applicants. The new law, Title 70 O.S. 2001, § 6-190(B)(6), was instrumental in identifying applicants with criminal records that might have otherwise gone undetected using the previous methods of employment searches and self-disclosure on the application for an Oklahoma teaching credential.

As shown in Table 4, out of the 11,364 subjects that applied for a first-time Oklahoma license between November 1, 2001, and December 31, 2004, 377 individuals were identified with criminal records. This represents 3.31% of the total population of new applicants for a license. However, as stated earlier in this study, this percentage

would probably be higher had the director of the teacher certification office forwarded all files for applicants with criminal records to the investigator.

Table 5 shows the number of teachers discovered with criminal records by the location of the crime, either in Oklahoma or out-of-state.

Table 5

Number of Teachers with Oklahoma and/or Out-of-State Crimes

Total Teachers Without Criminal Records	10,987
Total Teachers Identified by Licensure Laws	377
Crimes in Oklahoma	249
Crimes in Another State or Jurisdiction	128

Data Source: OSDE

For the majority of the applicants (96.7%) for their first Oklahoma teaching license who were subject to this law, there were no other concerns other than the inconveniences of obtaining useable fingerprint cards and the cost associated with obtaining and processing the fingerprint cards. For those applicants with a criminal record, the OSDE investigator's review of their RAP sheet and application package was necessary. Two hundred forty-nine subjects have committed crimes in Oklahoma; another 128 licensure applicants, one-third, were found to have a criminal record in another state, for a total of 377 applicants identified under the provisions of the November 2001 and July 2004 laws.

If the subject's RAP sheet showed the disposition of the charge and this charge was filed as a misdemeanor, the conviction was deferred, or the conviction was over 10 years old, then a certificate was processed without additional delay based on current

OSDE policies. However, if a disposition was not shown, the investigator would request court documents showing the final disposition of the charge and case. This step would normally add an additional month or more to the processing time of the application.

The types of crimes committed, number of subjects with a criminal record, and number of subjects who were applicants for a teaching license are shown in Table 6.

Table 6

Types and Number of Crimes Committed by Teacher Applicants

<u>Type of Crime</u>	<u>All Checks</u>	<u>Teacher Applicants</u>
Sex with a Child	96	1
Sex with an Adult	25	5
Drugs/Possession	97	39
Drugs/Distribution	49	14
Violent Crimes	21	7
Assault and Battery	66	37
Driving Under the Influence	296	148
Theft/Minor (Misdemeanor)	69	49
Theft/Major (Felony)	139	46
Other/Unknown	141	31
Total	999	377

Data Source: OSDE

The top three types of crimes committed by first time applicants for a license were driving under the influence (148 instances), minor theft (49 cases), and use or possession of drugs (39 cases). The most serious of crimes, violent (7), distribution of drugs (14),

sex with a child (1), and sex with an adult victim (5), made up the least occurring crimes for this group of applicants. The OSDE issued a credential to all but three of these 377 individuals. Additionally, three of the persons who were issued a credential ultimately had that credential revoked due to being charged with, and convicted of, a subsequent criminal act.

The November 2001 law mandating fingerprint-based criminal history background checks has been effective in identifying applicants who might otherwise have gone undetected using employment background checks and self-disclosure on the application for an Oklahoma teaching license. The 377 persons identified represent a small percentage of the total population (3.3%) who applied for an initial license. However, approximately one-third of these 377 applicants, were discovered to have criminal records outside Oklahoma.

Research question 2

How has the July 2004 law requiring criminal history background checks for teacher credentialing purposes on out-of-state applicants impacted these applicants ability to obtain an Oklahoma teaching credential?

The ease with which a teaching certificate can be obtained in another state through reciprocity agreements has added to the mobility of teachers across state lines. Table 7 identifies the number of teachers applying for an Oklahoma certificate with a valid certificate from another state.

Table 7

Out-of-State Applicants with Criminal Records by Background Check Law

<u>Law</u>	<u>Number of Applicants</u>	<u>Criminals Identified</u>	<u>Percentage Identified</u>
Pre November 2001 ¹	3,106	35	1.12
Nov 2001 – Jun 2004	347	81	23.34
Jul 2004 – Dec 2004	99	27	27.27
Total (Jan 2000 – Dec 2004)	3,552	143	4.02

Data Source: OSDE

1. All checks conducted prior to November 2001 were done under the auspices of employment background check laws.

For the five year period of this study, a total of 3,552 persons applied for an Oklahoma credential based upon possessing a credential from another state. One hundred forty-three of these individuals had a criminal record for an overall percentage of 4.02. Between November 2001 and this law going into effect in July 2004, 948 persons applied for an Oklahoma credential with an out-of-state certificate. Of these 948 persons, 347 were required to submit their fingerprints for a national criminal history background check. Eighty-one of the overall population of 948 had a criminal record for 8.54%; however, these 81 positive background checks make up 23.34% of the actual population checked. Between July 1, and December 31, 2004, 99 persons applied with out-of-state credentials. In the six months of this study in which this law was in effect, 27 persons were discovered to have a criminal record for a 27.27% of the actual population checked.

The July 2004 law which mandated fingerprint-based criminal history background checks for all persons applying with a credential from another state is very successful in identifying persons with a criminal record. When viewed in comparison with the actual populations searched pre-November 2001, to the population checked post-July 2004, the percentage of applicants with criminal records jumped from just over one percent to over 27%. These applicants have similar inconveniences as those persons applying within Oklahoma without a valid out-of-state credential. If everything is in order, persons from each population group must wait an average of six to eight weeks to have a credential issued. However, if the applicants have difficulty obtaining passable fingerprints or if their record reflects criminal activity, one or more months of processing time is added to the period they must wait to have a credential issued. This additional processing time places these applicants at a disadvantage for finding jobs when compared to the applicants without a criminal record.

Research question 3

Which policies and procedures used by the OSDE in determining whether or not an applicant with a criminal record should be issued a teaching credential are consistent with state law?

The decision of whether or not to issue a teaching credential to an applicant with a criminal record is based upon various laws and the interpretation/application of those laws by the OSDE. Oklahoma law identifies two primary areas when an applicant shall not be issued a teaching credential. The first law disallows persons with a felony conviction or a conviction of a misdemeanor or felony moral turpitude crime from receiving a credential to teach if the convictions were within the previous 10 year period

of time. The second classification of criminals who shall not receive a teaching credential are persons who are required to register as sex offenders. Other than these two groups of applicants, anyone who meets the education and testing requirements are eligible to receive a credential.

Table 8 shows the revocation and denial actions taken during the five year period of this study.

Table 8

Revocations and Denial Actions from January 2000 - December 2004

<u>Crime</u>	<u>Revocations</u>	<u>Denials</u>
Sex Crime, Child Victim	42	12
Sex Crime, Adult Victim	1	2
Distribution of Drugs	4	1
Violent Crimes	4	0
Major Theft (Felony)	0	6
Total	51	21

OSDE data

At issue is how the OSDE interprets and applies that interpretation regarding the various criminal background check laws. Each year the OSDE renews credentials for existing teachers without regard as to whether or not the applicants were convicted of a crime within the validity period of the expiring credential. The OSDE relies on the applicant to truthfully respond to the criminal history disclosure statements on the application. Additionally, the OSDE consistently takes no action against any teacher whose crime is as a misdemeanor “moral turpitude.” (OSDE internal documents)

Two hundred sixty-seven of the 999 subjects identified with a criminal history were identified as having been charged with the most serious of the crimes that this study reviewed: sex with a child victim, sex with an adult victim, distribution of drugs, violent crimes, and felony-level theft (Table 7). The OSDE denied or revoked the teaching credentials for 72 of these 267 individuals (27%). Of the 72 persons who had a credential denied or revoked, 42 were revoked and 12 denied for a sex crime with a child victim; one was revoked and two denied for a sex crime involving an adult victim; four were revoked and one denied for distribution of drugs; four were revoked for violent crimes; and six were denied a credential for major theft.

It is important to distinguish between a revocation and a denial. A revocation represents an action taken by the OSBE against a teacher who already holds a valid teaching credential; whereas, a denial action by the OSDE represents the refusal to issue a credential to an applicant for a teaching credential based upon application of law. A conclusion is that, had it not been for the success of the new laws requiring fingerprint-based background checks, the majority, if not all, of the persons denied a credential (identified above) would have been issued a credential to teach in Oklahoma. Therefore, they would have gained access to children, including the 12 applicants with convictions for sexual molestation of children. As part of the suprasystem, the legislature provided a successful contribution by enacting these laws.

The actions taken by the OSDE in the above cases represents only seven percent of the persons identified with crimes during the five year period covered by this study. There were 270 persons with misdemeanor crimes issued a teaching credential without any regard as to whether or not the crime should be classified as moral turpitude. The

OSDE policy of not taking action against a crime that was classified or pled down to a misdemeanor resulted in four persons with misdemeanor convictions for sex crimes receiving teaching certificates. Additionally, four drug dealers, one person with a violent crime, and two persons with major theft convictions also received credentials to teach. In each of these cases involving felony charges, the resulting misdemeanor conviction was through a plea bargain. The 11 teachers listed above, who agreed to plead guilty to their felony as a lower misdemeanor charge, could possibly have been identified as being against societal norms as moral turpitude is commonly defined and denied a certificate. The lack of action by the OSDE against persons with crimes which could be classified “moral turpitude” has resulted in quite a few convicted criminals obtaining certificates to teach in Oklahoma, thereby, diminishing the intent and success of the laws.

A deferred sentence provides that the accused is guilty of the crime to which he/she is charged, but, adjudication is withheld by the court. If the person obeys the law and follows the conditions set forth by the court for the probation, then he/she may petition the court to have the plea of guilty removed and all charges dropped. The OSDE certified 167 persons who had entered into such agreements during the duration of this study, including two individuals who were given deferred sentences in cases that involved sex crimes against children. Interpretation of the law is that persons convicted of a crime cannot receive a credential and, technically, a deferred sentence means the persons have not been convicted, even though they may have admitted to being guilty of the crime to receive the deferred sentence. Issuance of the credential to a person with a deferred sentence is legal. However, when the judicial system allows persons accused of

such crimes to keep their teaching credentials, it could be considered a failure of the judicial system to protect children.

Oklahoma law allows a person whose conviction is more than ten-years old to receive a credential to teach. No exceptions were included in the law to prevent persons convicted of certain crimes from ever receiving a teaching certificate. Consequently, a person with a felony conviction for murder or a person who was convicted of a sex crime against a child before November 1, 1989, when the law was passed for placing these offenders on a database (sex offenders' registry) could receive a teaching credential once 10 years had passed from the conviction date. The OSDE operates fully within the scope of this portion of the law as evidenced by all 241 persons in this study whose crimes over 10 years old were issued a credential, even though some of them had been convicted of serious crimes (sex-related, distribution of drugs, violent, and felony-level theft). Failure to close these holes in the law provides avenues for undesirable teachers to gain access to the classroom.

The probable OSDE action for a specific classification of crime is shown in Table 9. When reviewing Table 9, an inconsistency becomes apparent. If a sex crime is committed in Oklahoma and is filed as a misdemeanor or if the accused receives a deferred adjudication from the court system, the person can, and probably will, receive an Oklahoma teaching credential. However, if the same crime is committed in another state, the person cannot receive a credential to teach. (See Appendix B, Table B1 for the applicable sex-related crimes.)

Table 9

Probable OSDE Actions Based Upon Law and Precedence

<u>Classification of Crime/Conviction</u>	<u>Type of Crime</u>	<u>Date of Crime/Conviction to Application for Licensure</u>	<u>Issue or Deny/Revoke</u>
Felony	Any	< 10 Years Old	Deny/Revoke
Felony	Non-Sex	> 10 Years Old	Issue
Felony	Sex Crime	Any	Deny/Revoke
Misdemeanor	Any, Non-Sex	Any	Issue
Misdemeanor	Oklahoma, Sex	Any	Issue
Misdemeanor	Out-of-State, Sex	Any	Deny/Revoke
Traffic	Any	Any	Issue
Deferred (Non Conviction)	Any	Any	Issue
Deferred (Non Conviction)	Oklahoma, Sex	Any	Issue
Deferred (Non Conviction)	Out-of-State, Sex	Any	Deny/Revoke

Data Source: OSDE internal documents

During the 2001 legislative session, two legislators considered sponsoring legislation to mandate fingerprinting for teacher licensure applicants held a meeting to which were invited representatives from the OSDE, OSBI, and Oklahoma Education Association (OEA). The researcher, a participant/observer and representative from the OSDE, recommended two other groups of applicants be fingerprinted before they could obtain a credential to teach and also emphasized the seriousness of mobile molesters and the need to all applicants in an attempt to identify this group of applicants. The first group

included all Oklahoma teachers renewing their credentials. Opposition was vigorous from the OEA representatives. Such opposition was not the case when the suggestion was made for the second group which included all persons applying for an Oklahoma credential who held a valid credential from another state. Instead of the OEA representatives, other OSDE representatives in attendance commented that undesirable teachers from other states would have been reported to the NASDTEC Clearinghouse, thus, providing a warning to Oklahoma before a credential would be issued. During this meeting the OEA representatives also implied that state law prohibited state courts from issuing deferred sentencing in sex-related cases, therefore, the recommendation to conduct fingerprinting to identify sexual molesters of children was not needed. Subsequently, the two legislators sponsored legislation requiring applicants for their first Oklahoma License to submit to a fingerprint-based criminal history background check. The legislation did not include applicants for renewal of their Oklahoma credential, applicants with deferred adjudication for sex crimes that happened in Oklahoma, or all out-of-state applicants possessing valid credentials from another state. However, out-of-state deferred sentences for sex-related crimes were specifically addressed in the law. The OEA agreed with fingerprinting as long as it did not involve anyone who already held a certificate to teach. (Bennett, 2001)

Table 10 illustrates a small sample of the cases where a certificate was issued to an applicant who had a “moral turpitude” type crime.

Table 10

Moral Turpitude Crimes Committed by Oklahoma Teachers and Teacher Applicants Who Received a Credential to Teach

<u>Law or Policy</u>	<u>Crime</u>
Deferred Adjudication	Manufacturing Controlled Dangerous Substance (CDS); Trafficking and Possession of CDS; Larceny, Destruction of Records by Officer, False Claims, and CDS; Embezzlement by Clerk or Servant; Assault with a Dangerous Weapon & Stalking and Trespassing
Over Ten Years	Sex Offense Against a Child; Lewd Molestation, DUI, & Manslaughter; Attempt to Commit Homicide; Homicide; Armed Robbery; Fraud to Obtain Aid; Injury to a Child; Manufacturing of CDS & Possession of CD
Misdemeanor Convictions	Bomb Threat, Threat with Intent to Kill, & Harassment; Aggravated Assault with a Deadly Weapon & DWI; Contributing to the Delinquency of a Minor; Possession of CDS; Engaging in Lewd Acts; Prostitution

Data Source: OSDE files

During the five year period under study, the OSDE issued teaching credentials to many individuals charged with misdemeanor and felony crimes. The vast majority was either convicted of the crimes or received deferred adjudication of their guilt. Many of these individuals had crimes that could be classified as “moral turpitude,” while others

were legitimately issued credentials based upon the crime being over 10 years old or having the judgment deferred by the courts.

Research question 4

What impact do the decisions made by the OSDE on teacher licensure/certification applicants with criminal records have on local school district hiring practices?

School administrators have assumed incorrectly for years and probably continue to assume that, if the applicant holds a valid Oklahoma teaching certificate, then the OSDE has cleared the person of any crime which would prevent employment in a school system. Before November 1, 2001, the OSDE did not require a person to undergo a criminal history background check prior to having a credential issued. As a result, approximately 88,000 persons, on whom a criminal background check was never conducted, were eligible to apply for employment at any school in Oklahoma. Even with the knowledge that the OSDE is now conducting background checks, administrators may still mistakenly believe that checks are conducted on their employees when they apply to renew their credentials.

When the Oklahoma law forbidding issuance of a credential to a person with a felony conviction or a misdemeanor or felony conviction for a crime or moral turpitude was passed in 1979, the OSBE approved rules to cover instances when a person would be ineligible for a credential. These rules not only restated the law, but also added instances when a credential would be cancelled or recalled, such as when the credential was obtained through misrepresentation or fraud (OSBE Meeting Minutes, July 1979). Of the 120 persons who have had their Oklahoma teaching credential revoked, five were for

falsifying the application in an attempt to hide a criminal past and one was for submitting fraudulent and forged documents to receive a credential.

The OSDE’s interpretation and implementation of some aspects of the law seem to be in direct violation of the law. For example, the law that states a person shall not receive a credential to teach if he or she has been convicted of a misdemeanor crime of moral turpitude. Referring to Table 9 above, since the current OSDE policy allows a person with a misdemeanor to receive a credential, no attempt has been made to deny or revoke the credential of the person convicted of a misdemeanor moral turpitude crime. The OSDE’s policy of not taking action against a crime that was classified or pled down to a misdemeanor resulted in four persons with misdemeanor convictions for sex crimes receiving credentials to teach in Oklahoma. Additionally, four drug dealers, a person with a violent crime, and two persons with a major theft conviction have also received teaching credentials. In each of these felony cases, the resulting misdemeanor conviction was through a plea bargain.

Table 11 illustrates the numbers of credentials issued and a breakdown of the reasons for the background checks to be conducted.

Table 11

Number of Credentials Issued and Background Checks Conducted by Type

<u>Credentials Issued</u>	<u>Total Background Conducted</u>	<u>Licensure Checks</u>	<u>Employment Checks</u>	<u>Other Checks</u>
49,595	20,168	11,364	8,535	269

Data Source: OSDE

Between January 2000 and the end of December 2004, 49,595 credentials were issued by the OSDE. Of these, a total of 20,168 criminal history background checks were

conducted on certified personnel for licensure, employment, and other reasons. Applicants for teacher licensure represented 11,364 of these background checks; 8,535 checks were conducted for employment purposes by local school districts; and 269 checks were conducted for OSDE purposes due to NASDTEC Clearinghouse reports, anonymous notifications, or news reports. The remaining 29,427 applications were not submitted for a background check as the applicants already held an Oklahoma credential and were either renewing their credential, adding a teaching area, having a different class of credential issued, or were working for, or applying to work for, a school district that did not conduct criminal history background checks on employees or potential employees. Put into context, there are 29,427 persons who have not had a criminal background check conducted prior to issuance of a credential; therefore, creating a possible false sense of security by school administrators during the hiring process.

After the OSDE started conducting criminal history checks in 2001, many of the applicants with a criminal record were issued a credential because the crime was classified as a misdemeanor, the conviction was deferred, or the crime was over 10 years old. As shown in the response to the previous three research questions and Table 10, many persons with criminal records possess an Oklahoma teaching credential, and some of these are persons with serious crimes such as sexual molestation, distribution of drugs, and violence.

Research question 5

What trends exist in the methods (traditional, alternative, or out-of-state) used to obtain an Oklahoma teacher credential that might suggest one group of individuals is more likely to have a criminal record over another group of individuals?

School districts in all states are experiencing shortages of qualified applicants for teaching positions. These personnel needs are driving states to be creative in their licensing programs (e.g., alternative certification), and are encouraging school districts to cross state and national borders to recruit teachers. Included in the influx of new teachers are those persons who may have been forced to depart their previous jobs because of ineffectiveness or inappropriate and often criminal conduct. Do the persons applying for alternative credentialing or crossing state lines to find jobs have a higher probability of having criminal records than the traditional applicants who prepared as teachers or who stayed in Oklahoma to work?

Data were collected for three routes to obtain teacher certification in Oklahoma: (a) traditional for persons completing a teacher education program; (b) alternative for persons with a bachelor's degree in a nonteaching area; and (c) applicants from out-of-state possessing another state's valid teaching credential. For those cases where the route taken to certification was not known a fourth category of "unknown" was included. When viewed strictly by the numbers identified, almost two-thirds of the applicants with criminal records applied under traditional routes, with the remaining one-third being divided between Alternative, Out-of-State, and Unknown. These numbers are shown in Table 2. However, when placed into context with the number of total applicants applying under each route a clearer picture emerges.

During the period of this study, 11,198 persons applied for an initial Oklahoma teaching credential as a graduate of a teacher education program at a university. Six hundred twenty of these persons had a criminal record identified on the OSBI or FBI report for 5.53% (620/11,198). There were 1,587 applicants under the Alternative

Placement Program with 211 of these persons identified with a criminal record for 13.3% (211/1,587) of the population. Out-of-state applicants were numbered at 3,552, with 143 having criminal records reported for 4.02% (143/3,552). However, when a comparison is made between the numbers of persons identified with criminal records with the three phases of background check laws for out-of-state applicants (pre-November 2001, November 2001 through June 2004, and July through December 2004) as shown in Table 7, it becomes apparent that the number of out-of-state applicants with criminal records is much higher than shown in Table 2.

Persons applying as traditional college graduates from a teacher education program represented the majority of the subjects at 11,198, who had a criminal background check conducted for either employment or licensure purposes. Out-of-state applicants at 3,552 persons were the second highest group, but at a fraction of the number of traditional students. The applicants using the Alternative Certification program rounded out the teacher with criminal record population at 1,587. Although traditional students make up the majority of the population by more than half, they represent only 5.5% of the population with a criminal record. Over 13% of the alternatively certified applicants have a criminal record which is significant. However, the most significant findings were those concerning out-of-state applicants. When viewed with the entire population of out-of-state applicants who applied only during the five year period of the study, only 4% were identified with a criminal record; but when the portion of the population that did not have a background check conducted prior to November 1, 2001, were removed, and only those persons applying from out-of-state between November 1, 2001 and June 30, 2004, were included, the number of subjects found with a criminal

record increased over five times, from 4% to 23%. In addition, once all applicants with out-of-state credentials had to submit to a background check if they were obtaining their first Oklahoma credential, this number increased to over 27%.

NASDTEC and others have estimated that approximately anywhere from two to 10% of the applicants for a teaching credential have a criminal record. The “accepted” average is four to five percent. This study was the first to investigate a teacher population for criminal records in hopes of determining the percentage of the population with a criminal record. Of the 20,168 criminal background checks conducted for any purpose on certified personnel, 999 or 4.95% revealed teachers or teacher applicants with criminal records. It should be noted, however, the total number of persons with a criminal record is probably higher, but some files were not provided to the investigator by the Professional Standards director because the crimes were classified as either misdemeanor, received a deferred adjudication, or were over 10 years old. It is unknown how many of these cases could exist, but, as noted earlier, adding these cases to the population would only increase the percentages of teacher licensure applicants with a criminal background. It would not decrease the numbers whatsoever.

Research question 6

How do the number of teacher applicants found with criminal records in Oklahoma compare with the data provided by NASDTEC?

NASDTEC has established a central database where state jurisdictions (including Canadian Provinces, U.S. territories, and the District of Columbia) may submit the names and other identifying information of persons against whom their state boards of education take actions such as revocation or denial of a teaching credential. This central repository

is updated daily and is available for member jurisdictions to access to learn about actions taken in other states and jurisdictions. The OSDE has established a system for downloading NASDTEC information to the OSDE's computer mainframe. Once done, this information is electronically cross matched with a list of Oklahoma's certified teachers. A report is then printed, providing an alerting message to the investigator of the adverse actions taken against an educator in another state.

The data collection categories for NASDTEC are different from the categories in this research study; therefore, to obtain useful information to determine if Oklahoma's numbers are similar or different from those reported by other member jurisdictions to NASDTEC, only the matching categories were compared. Table 6 shows the crimes committed by Oklahoma teacher or teacher applicants.

The numbers of persons with violent crimes and substance abuse, identified in this study, are close in percentage to the numbers reported over the years to NASDTEC by Oklahoma and by the other jurisdictions. However, the area for sexual abuse crimes for the research subjects is considerably smaller than for the number previously reported by Oklahoma and other jurisdictions to NASDTEC. The reason for this lower number (Oklahoma's 9.7% during the period of this study compared to the percentages reported to NASDTEC of 48% and 36.3% from Oklahoma and other jurisdictions, respectively) is unknown, but it could be due to the number of applicants who are just entering the workforce and have not had the opportunity to fall into a "romantic/bad judgment" relationship with a student. Most, if not all, of the persons reported to NASDTEC for sexual misconduct were employed teachers.

Even before the first Professional Practices Institute meeting sponsored by NASDTEC in 1997, statements were made by organizational representatives of NASDTEC and researchers such as Hendrie and Shakeshaft that the number of teachers with criminal records was as low as, “around two or three percent” to as high as “up to 10 percent.” However, in related areas of teachers with criminal records, there are no solid data (Hendrie, 1998 and Shakeshaft, 2004).

Between January 1, 2000, and December 31, 2004, 20,198 applications for criminal history background checks were processed through the OSDE. Of these, 11,364 applications were processed for licensure purposes and 8,535 for employment purposes for certified personnel. An additional 269 background checks were conducted for OSDE purposes. Support personnel and paraprofessionals were omitted from the data. Nine hundred ninety-nine persons were identified with criminal records, therefore, identifying 4.9% of the population with a criminal record. Five subjects did not have the method taken to obtain teacher certification or type of crime, making the total subjects 994. The breakdown of the types of crimes committed by the 994 subjects in this study is illustrated in Table 6.

NASDTEC reported actions taken against educators by member jurisdictions in nine different categories as shown in Table 12.

The data provided by NASDTEC in the 2004 edition of the NASDTEC Manual covers a period of 15 years beginning in 1987 and ending in 2001. During this period, 8,254 cases were reported under the heading of “criminal convictions,” even though three of the categories clearly identify the cases as “no conviction.” Two other categories used by NASDTEC to report data are self-surrender and professional misconduct. Since

Oklahoma takes actions against an educator’s credential only for a criminal conviction, this NASDTEC category of criminal convictions was the one used for comparison purposes. The most common reason for a state board action against an educator according to NASDTEC files is sexual misconduct with a child at 3,098 cases. The second most common reason is substance abuse, either use or selling, at 1,020 instances.

Table 12

Invalidation of Teaching Credentials as Reported to the NASDTEC Clearinghouse

<u>Crime</u>	<u>Number Reported</u>	<u>Percentage</u>
Violent Felonies	436	5.1
Sexual Misconduct, Child	3,098	36.3
Sexual Misconduct, Adult	404	5.3
Substance Abuse (Child)	40	0.5
Substance Abuse (Sale or Use)	1,020	12.7
Sexual Misconduct, Adult (no conviction)	103	1.2
Sexual Misconduct, Child (no conviction)	16	2.0
Substance Abuse (no conviction)	9	0.1
All Other Actions	3,128	36.8
Total	8,524	100.0

Source: NASDTEC Manual, 2004

Table 13 shows the four similar categories: Violent Crime; Sexual Misconduct, Child Victim; Sexual Misconduct, Adult Victim; and Substance Abuse Sale or Use (OSDE’s data were joined for comparison purposes) when comparing the OSDE data for

the subjects of this study, and for the cases reported by the OSDE to NASDTEC with those reported by NASDTEC from all contributing jurisdictions.

Table 13

Percentages of Crimes Reported of Oklahoma Teachers with Criminal Records from January 2000 through December 2004, Oklahoma Reporting to NASDTEC for all years, and NASDTEC Nationwide Data

<u>Crime</u>	<u>Oklahoma</u>	<u>OK NASDTEC</u>	<u>NASDTEC</u>
Violent Felonies	2.1	3.0	5.1
Sexual Misconduct, Child	9.7	48.0	36.3
Sexual Misconduct, Adult	2.5	6.0	5.3
Substance Abuse (Sale/Use)	14.7	13.0	12.7

Note: The percentages in this Table do not reflect 100 percent of the cases.

There does not seem to be a pattern in types of crime reported by NASDTEC and the subjects in this study; however, the numbers reported by Oklahoma to NASDTEC for the invalidations taken by the OSBE are consistent. It should be noted, however, that no controls existed in how NASDTEC’s member jurisdictions reported their invalidations.

Summary

The results indicate clearly that the two laws enacted in November 2001 and July 2004 have impacted the identification of applicants with criminal records prior to their receiving a credential to teach. This is more evident for applicants with out-of-state credentials affected by the July 2004 law than for the traditional applicants applying under the November 2001 law. Additionally, it appears that applicants using the Alternative Certification route to receive a credential are more likely to have a criminal

past than those applicants following a traditional route for their credentials. Data seem to indicate that some of the policies implemented by the OSDE regarding whether or not to issue a credential to an applicant may not be thorough enough to identify all of those with questionable histories. A more detailed summary and a discussion of the findings are presented in Chapter 5.

CHAPTER V

SUMMARY, CONCLUSIONS, and RECOMMENDATIONS

Summary

This final chapter begins with a restatement of the research problem and reviews the major parts of the study. The several sections of this chapter review the problem and purpose of the study, as well as the findings and recommendations for future research.

All states in the nation are faced with a dilemma of finding quality teachers for their schools. News articles (Murphy and Novak, 2002) cite sources as stating over 2.4 million new teachers will be needed by 2011. Contrary to the numbers cited by Murphy and Novak, Russell (2005) states the “dire predictions of the past 20 years [regarding teacher shortages] have not come to pass. . . . the National Center for Education Statistics estimates that the number of teachers will increase five percent between 2001 and 2013, adequately meeting expected student enrollment growth” (Russell, May 2005, *The Facts and Fictions About Teacher Shortages, Observations*, ¶ 1). Regardless of the opinions concerning teacher shortages, universities are turning out record numbers of new teachers, and states have adopted programs to entice persons with noneducation type degrees to apply for teacher licensure through alternative means. Additionally, organizations such as NASDTEC have worked diligently to facilitate the mobility of teachers across state lines by coordinating the certification processes of each state and sponsoring reciprocity programs. And, there are job search companies such as “Teachers-

Teachers.com” who are using the Internet to bring teachers and school hiring officials together, thus facilitating the recruitment of teachers in all states.

However, these programs, designed to bring quality teachers and school districts together, also attract criminals and criminally-minded persons, those teachers who move from district to district, city to city, and state to state, to find employers who have not heard about their experiences at previous schools. These unsavory individuals run the spectrum from just being inept in their profession to the child sexual predators looking for their next victims.

Although most states have adopted some type of law requiring background checks on teachers and other persons in positions of trust, schools continue to be plagued by these undesirable teachers. The problem identified is that, even though Oklahoma has enacted legislation to keep certain persons with criminal records out of its public school system, these undesirable teachers may still be certified by the OSDE and hired by the local school districts.

The actions of one part of the education suprasystem can be supported or weakened by the actions of another part. When an Oklahoma lobbying organization succeeded in convincing a legislator to sponsor a bill for stronger laws against criminals in the school system, such as in 1979 when convicted felons and criminals with crimes of moral turpitude were forbidden from obtaining a certificate to teach in Oklahoma, others lobbied successfully to put a limit on the time after the conviction. This weakness or gap in the law provided an avenue for convicted felons to obtain a teaching credential, thus, a failure of the system. Or, regarding the same 1979 law, when the credential issuing agency (system) does not strictly enforce the law by issuing credentials to persons with

convictions for crimes of moral turpitude, another failure of the system occurs and persons are eligible to be hired by a school system (subsystem). In 2001, lobbyist were successful in limiting the scope of the fingerprinting law, thereby, creating a gap in which teacher applicants with criminal records could slip through. This gap was partially closed in 2004 when the legislature enacted a law requiring all out-of-state applicants for an initial Oklahoma credential to submit to a fingerprint-based criminal history background check. However, a partial failure of the legislature (suprasystem) still exists by allowing other groups of teachers to bypass the fingerprint background check or by not requiring other avenues for disclosure of teachers convicted of criminal records. District attorneys (suprasystem) are required to notify the local school superintendent (subsystem) when a teacher is arrested or charged with a crime, but they have no legal obligation to notify the credential issuing authority (system). The judicial system fails the education system each time a plea bargain is offered without putting some stipulations on the teacher's ability to teach. Each of these failures within the education suprasystem diminishes the successes gained by organizations such as NASDTEC and S.E.S.A.M.E. (Stop Educator Sexual Abuse, Misconduct, and Exploitation) to rid schools of undesirable teachers. All of these entities of the education suprasystem should join hands for the common cause of protecting children and schools. As the proverb says, "a chain is only as strong as its weakest link."

More specifically, the purpose of this study was to determine what impact the provisions of various teacher certification laws, policies, and procedures have on the screening process of first-time teacher applicants. Specifically studied were two Oklahoma laws, 70 O.S. 2001, § 6-190 (B)(6) and 70 O.S. Supplement 2004, § 6-190

(D), enacted in November 2001 and July 2004, respectively, and the decisions made by persons in leadership positions within the OSDE regarding the implementation of these and other laws relative to criminal history background checks for teacher credentialing purposes.

This was a study of data maintained by the OSDE on applicants for teacher licensure who have a criminal record to determine the effectiveness of the two laws cited above in identifying these applicants prior to their being issued a credential to teach, and the decisions made by persons in leadership roles at the OSDE regarding issuing a teaching credential to an applicant with a criminal record. The existing data consisted of a database of information which has been maintained by the investigator for the OSDE. This database contained each instance between January 1, 2000, and December 31, 2004, in which the investigator reviewed a criminal record on a teacher or applicant for a teaching license. The data consisted of basic demographic, certification, and criminal history information for each subject. To determine the success of the two laws enacted in November 2001 and July 2004, the researcher studied six research questions designed to study a specific aspect of the purpose statement.

Conclusions

The two laws requiring first-time applicants for an Oklahoma teaching credential have definitely identified more applicants with criminal records than were previously being identified under the laws for employment background checks conducted by local school districts and by self-disclosure on the application. The number of applicants identified after both laws were in effect was over five times greater than those identified before enactment of the laws. Therefore, a conclusion could be made that the two laws

have been successful in identifying persons with criminal records who would otherwise have gone undetected.

An effort was made to determine if any particular group of applicants would have a higher percentage of criminals than the other groups. No previous research studied the percentage of teachers with criminal records. Organizations (e.g., NASDTEC) and researchers (e.g., Shakeshaft and Hendrie) have estimated between two and 10 percent of the teacher population will have a criminal record, with an agreed upon average of four to five percent. However, these estimates were made absent quantifiable data. This study substantiates the estimates by showing that the overall number of teacher applicants with a criminal record is 4.9%. However, this percentage changes dramatically when the overall population is analyzed by the three routes taken to obtain a teaching credential in Oklahoma. The number of criminals using the traditional route of teacher education is 5.53% of the total population while the alternative certification applicants are more than double that at 13.29%.

The most significant numbers come from other state applicants who support the existence of the two phenomena studied: mobile molester and passing-the-trash. Before fingerprint background checks were required for these applicants, their numbers were extremely small at only 1.12% being identified with a criminal record. However, after November 2001, when these applicants from other states had to submit to background checks, the percentage escalated to 23.34%. Once all applicants had to undergo fingerprint-based background checks, over 27% were identified with criminal records. It is safe to infer that teachers who violate laws in one state take advantage of the ease of movement provided by NASDTEC's supported reciprocity agreements to escape one

state and obtain licensure in another. NASDTEC's Clearinghouse database provides some protection to states, but because state board actions and court actions often take several years to finalize, these teachers may be able to become certified and work in another state's school system for two or more years before their past catches up with them. Although not a 100 percent safeguard against criminals obtaining credentials, the two laws have significantly impacted the procedures for identifying applicants with criminal records. Additionally, it is critical to the process to know that mandated fingerprinting is a solid deterrence against persons with serious criminal records from applying to teach in a state.

The positive effects of these laws may be diminished by the OSDE policies and practices regarding whether or not to issue a credential to an applicant with a criminal record. Oklahoma statutes clearly forbid issuance of a teaching credential in specific instances, however, the OSDE policy of not conducting background checks for renewal purposes, and issuing of credentials to persons with identified misdemeanor convictions, which may be classified as moral turpitude, seem to be a violation of these laws.

School administrators for the most part trust the actions of the OSDE as being in their best interest. When an applicant is issued a credential to teach, the administrator blindly puts a level of trust in the validity of that credential. The administrator assumes the applicant has met all academic and testing requirements for the areas in which the teacher has been certified. Additionally, a belief that the applicant has a clear criminal record is often assumed simply because the OSDE has issued a credential. Therefore, the decision is made not to conduct an employment-based background check on the applicant. Unfortunately, by simply believing a person is absent of a criminal history

record because he or she has a credential may be very far from the truth. This is evidenced by almost one-third of the persons identified in this study having committed their crimes after they were first certified. This information supports the need for local school districts to protect themselves by conducting employment-based criminal background checks.

Within the context of systems theory, this research effort identified the suprasystem as the legislative and judicial systems at the federal and state level in addition to professional organizations and lobbyist. The state agency (board of education and department of education) formed the system, while the local school district was the subsystem. As a part of the suprasystem, the legislature passed laws to attempt to solve a problem – criminals receiving teaching credentials. The system (state level agencies) successfully screened some applicants, but not all. Both the suprasystem and the system have kept some criminals from teaching in the school district (subsystem). Because of this partial success and failure, the subsystem is partially benefited. If the system (state agencies) is derelict in its duties, the legislature may need to write more specific laws and the subsystem (local education agencies) may need to implement additional policies to guide their employment practices.

Recommendations

Recommendations for Practice

The protection of students, employees, and the financial resources of school districts should be of as much importance to school administrators as are test scores. Often, there are news reports concerning the violation of a student by a teacher, or of a teacher being arrested for selling narcotics, or of a bus driver being involved in an

accident while under the influence of alcohol. Most states in the nation have accepted criminal history background checks as being the solution to these problems; however, no research had previously been conducted showing a positive impact from these checks. This study shows that criminal background checks make a positive difference in the number of applicants identified with criminal records as compared to employment-based background checks alone.

However, school administrators may easily be lulled into a false sense of security believing their students and staff members are safe from harm because they conducted criminal history background checks on their employees or because the OSDE conducted a background check on a new teacher prior to issuing her a license. Many school employees commit their criminal acts after they have started working. Schools should start conducting national fingerprint-based criminal history checks on all potential employees prior to hiring and on existing employees on a regular basis – perhaps every five years when the teacher renews his or her certificate. School boards are recommended to establish strict policies against inappropriate behavior with students and staff, and should stop passing-their-trash to other school districts by refusing to enter into negotiated agreements to get their bad employee to leave their district; schools should start taking aggressive actions to remove these employees and make it public why the person was removed. Obviously, employees’ rights must be protected but one or two of these cases might help build a buffer around the school district to protect it against the mobile molester from applying at that district. As the proverb states, “an ounce of prevention is worth a pound of cure.”

Education agencies in all states should incorporate proactive measures to remove these employees from the system and report their actions to a national clearinghouse such as that maintained by NASDTEC. A policing system similar to that of the nursing and legal professions should be incorporated in each state instead of relying upon a news medium to report the wrongdoing of a school employee.

Laws should be written that require the reporting of criminal acts by persons holding a license issued by the state to that issuing authority. Additionally, laws should be enacted to require certified school employees to undergo a criminal history background check prior to renewing their teaching credentials. Professional associations should be encouraged to support such efforts. Other national and state entities which make up the educational system should do their part to safeguard schools. Federal and state legislatures should enact laws to stop “passing-the-trash” by minimizing or eliminating the tort liability faced by a previous employer giving a truthful reference to a potential employer. Additional laws should be enacted which focus on the intent of an act, such as computer-generated child pornography, and prohibit these actions. Court systems at all levels should stop giving “get out of jail free” passes through deferred sentencing to persons who cause harm to children – anyone who purposely harms a child should be required to pay the price. Additionally, district attorneys should only agree to plea bargains in criminal cases involving child victims or school resources, if the teacher or employee agrees to surrender his or her teaching credential and to never seek employment in another school system.

Other entities within the education system should work to provide a safer school environment. Children should not be afraid to go to school, nor should the school staff be

afraid of the students. Teacher unions should stop supporting teachers who molest students; to that point, unions should stop supporting teachers who violate standards of conduct. Teacher unions should make it known that they will not support these teachers short of just advising them of their legal rights; in other words, unions should have a disclaimer that, if teachers commit acts criminal in nature or in violation of the standards of conduct, they will not represent them. Instead of fighting against fingerprint-based background checks, unions should support these measures to protect children.

NASDTEC should become more active in lobbying for legislation to support their organizational goals. Additionally, it should help bring awareness to the problems of the mobile molester and passing-the-trash outside the realm of its membership. Sharing the vast amounts of knowledge with researchers might result in better laws being written and a higher awareness of the problems NASDTEC's Professional Practices section works so hard to counter.

Elected officials need to be informed of the serious consequences of having molesters in the schools and for the need to enact legislation to stop trends of "passing the trash." Laws that require criminal history background checks before new teacher applicants can become licensed to teach is a positive step toward safeguarding students and staff within the school system. However, it is only a small step. As indicated, in Oklahoma alone, approximately 88,000 persons were certified to teach between 1961 and 2001 when the requirement for fingerprint-based background checks was passed. How many of these persons slipped through the cracks by never having a criminal records check done for employment purposes, or by never having their arrest shown on the six o'clock news? Measures should be taken to close the loopholes in the laws and to pass

new laws requiring all persons who have unsupervised access to children to submit to a regular criminal history background check.

Better and more thorough public access to criminal records on individuals should be made available, while still protecting the interest of the persons who may have “made one or two minor mistakes” in their lives. Conviction of certain crimes should result in an automatic denial or revocation of a credential without any timeframe allowed for reinstatement, e.g., a person convicted of a sex crime against a child should not be allowed to reapply for a credential ever. Other capital crimes should carry the same consequences. Many people within human rights groups will argue that such laws would be punishing the person repeatedly for the same crime. However, certain people just do not belong in a position of trust with children; there is just too great a liability issue involved.

Oklahoma school law prohibits a person with a deferred adjudication from another state for a sex crime from being issued an Oklahoma teaching credential. However, this same condition does not apply to a person who receives a deferred sentencing in an Oklahoma court. When this law was proposed, the legislators who sponsored the bill were under the impression from a local teachers’ union that it was against the law for an Oklahoma court to give a deferred sentence to an individual found guilty of a sex crime. However, this is not so. This law only applies to subsequent convictions of sex crimes; courts may defer adjudication to the first time offender. During the 2006 legislative session, a bill was proposed and enacted making a second sex crime of a specific nature a death penalty offense.

Many offenders are allowed to enter a plea of guilty or nolo contendere to lesser charges or to plead guilty to the crime as charged in exchange for a deferred sentence. School law should be changed to prohibit persons who plead guilty to certain crimes, regardless of the court actions, from receiving a credential to teach. Additionally, officials with the department of education should voice their concerns to district attorneys before plea bargains are discussed or granted. These concerns could include conditions against the person's ability to work within the school setting if the crime involved children or was of a certain felonious nature.

Each entity within the educational suprasystem should be compelled to do its part to protect a school district's students, staff, and other resources from all persons with criminal intent, just as they hope to protect the students from the sexual predator that seems to command the attention of the media and researchers. Lawmakers should be encouraged to propose legislation to minimize the possibility of passing-the-trash from occurring. The district attorneys should make teachers accountable for their actions by placing the teachers' credentials on the table as a condition to lesser charges or lighter sentence recommendations. Additionally, judges should stop issuing deferred sentences to persons who plead guilty to serious crimes. Instead, the deferred sentence should be used only as a rehabilitative tool in the judicial system for first time offenders of minor crimes. It should not be an instrument to stop prison overcrowding. The OSDE should lobby for stricter laws to keep undesirable teachers out of the field. Finally, local school district administrators and boards should implement policies and practices to stop the acceptance of letters of resignation in place of disciplinary actions. Additionally, school

districts should conduct background checks on their existing staff members, certified and support, on a regular basis.

Recommended Future Research

As noted by Shakeshaft (2004) and Hendrie (1998), very little research has studied the effectiveness of conducting criminal history background checks on potential employees as a way of safeguarding schools. This field of study, safeguarding students, staff, faculty, and the school district's resources from harm is practically a wide-open topic. The following is a brief synopsis of recommended research.

Replication of this study in other states and at a later date in Oklahoma. This study should be replicated in other states to determine if similar conditions exist. Additionally, the portion of this study regarding out-of-state applicants should be redone since the post-law period of time was only six months. This knowledge, coupled with the cooperation among state agencies and sharing of best practices, might provide solutions to improve the effectiveness of legislation and may reduce the possibility of undesirable employees from moving from one state to gain employment in another. As new laws, rules, and policies are enacted, or after changes in leadership at the state government levels, further research, similar to this study, should be conducted into the decisions made by the leadership of the responsible agencies regarding the new laws.

Early detection before a crime is committed. Conducting criminal history background checks does not identify persons who have the propensity to harm children unless they have been previously caught. Research in the field of sexual molestation of children by teachers has shown that many molesters are in the school system for years before they are finally discovered. Research should be conducted to determine if methods

such as personality tests are available to identify these employees before they have the opportunity to harm while not violating their constitutional rights. What legal measures have other types of employee screening (e.g., drug testing) had to pass? Studies should be conducted to determine the processes these types of HR tests had to pass to become law, and possibly apply these standards to tests for predisposition to criminal acts.

Effectiveness and use of employment policies and practices to safeguard schools.

The use of criminal history background checks for school employees has only recently (within the past decade) become a recommended and mandated action by most states for safeguarding schools from persons with criminal intent. States have enacted laws, rules, and policies designed to strengthen their stand against criminals working in schools. Although extensive research has been conducted on sexual molesters in schools, and recommendations have been made based upon private sector HR practices on how to keep these people out of the schools, little is known about whether or not school administrators have implemented those measures, or whether those measures have been effective in preventing criminals from gaining employment in schools. Continued studies should be conducted on the practices of local school districts in areas such as reference checking, reference giving, criminal history background checks, employee terminations, and other policies which are in place to protect their students and employees.

Support employees. Most research has focused solely on the employees who must possess a valid teaching credential. However, persons in support positions such as custodian, bus driver, and teacher's aide often have access to children that even teachers do not have. For example, oftentimes, a bus driver will be on the bus with only one student every day. Or, a teacher's aide or classroom volunteer will normally be the person

who assists a preschool child with toilet needs. Because it is not uncommon for a custodian to be in the restrooms during the school day, what would prevent him or her from taking advantage of the situation when a student enters? Hypothetical situations such as these abound within the school buildings every day. Measures should be taken to protect students from these persons who could potentially do harm to them. Research should be conducted on the frequency that school support employees are identified for misconduct. Additionally, the actions the school district takes to remove the offending person from employment and the steps taken to prevent the person from gaining a position in another school should be studied and reported.

Denial and revocation information for each state. NASDTEC maintains a wealth of information on each member state regarding persons who have had their teaching credentials denied or revoked. This information includes the teacher's birth year, primary certification area, and reason the action was taken against the teacher's credential. NASDTEC should be encouraged to share this information with researchers so state-by-state comparisons could be made and possible trends could be detected. This body of knowledge could possibly improve the actions taken by the states to stop the mobility of unacceptable teachers.

Mobility of bad employees, Intrastate and Interstate. Individuals falling into either or both categories of "passing-the-trash" and the mobile molester phenomena have the opportunity to move to another school district in the same state or to another state. Many times these individuals do not have criminal or state board of education actions taken against them; therefore, criminal history background checks or a review of the NASDTEC Clearinghouse files will not reveal the actions that caused them to be

dismissed from their previous jobs. Also, research has shown that conducting reference checks is not always reliable because of a fear of negligent referral charges. Research should be conducted to determine if any correlation exists between the frequency of employee mobility and termination agreements from school boards or criminal activity. Additionally, a review of best practices to identify these persons, thus, preventing them from gaining employment in another school district within the same state or in another state's school system should be conducted.

School district policies concerning background checks and employment of persons with a criminal record. Oklahoma laws allow school districts to conduct criminal history background checks at their discretion. These same laws mandate school districts to have written policies concerning conducting criminal history background checks. Research should be conducted on each school district's policy concerning these employment checks to determine if some school districts are more susceptible to having trash passed from other districts into their district based upon existing local policies, or a lack thereof.

School district termination policies and actions. The OSDE collects data on teachers who depart from a school district either during or after the school year. "Reason for leaving" and "reason for no return" codes are assigned by local school district administrators to signify why a teacher departed their school district. One such code is for "terminated," others are for various reasons such as accepting employment in another district, moving out-of-state, and changing career fields. Research should be conducted into the employment history of these teachers in an attempt to discover why a person was "terminated" or "allowed to resign" from a district. Additional research could be done to

determine if the use of other departure codes were a guise to hide the real reason the person left employment. Research should be conducted in several HR areas: (a) conditions for the termination of the employee's contract; (b) policies the school board has in place for due process and HR decisions; (c) whether or not the employee has a history of short duration employment during his/her career and, if so, what reason the losing school district gave for the person's departure; and (d) the policies in place for providing information to potential employers regarding the employee's work history.

Job mobility versus violation of standards of conduct. Research should be conducted to determine if frequent changes in job locations are indicators of violations of standards of conduct, poor teaching abilities, or criminal acts. A review of the certificate holder's employment files on cases where the OSBE has taken action could possibly provide information about the practices of "passing-the-trash" and the mobile molester. Of specific interest would be the employment history prior to the year in which the teacher was charged with the crime. Other data that could be analyzed would be those instances where the school has reported a person departing its district and a "reason for leaving" or "reason for no return" code was not identified on the personnel reports submitted to the OSDE. Additionally, a survey could be sent to school administrators asking for information on school district policies and other information regarding actions taken against employees who violate the established standards of conduct.

Affects of abuse on school children. Knowing the physical and psychological effects of abuse by an educator on a child could provide support for new legislation or encourage school districts to conduct criminal history background checks. Therefore, continued research should be conducted on what impact the abuse had on the victim.

Studies of the criminals. In-depth studies of the criminals identified in this and other studies should be conducted. Among the topics should be:

1. Where have they worked?
2. What was their duration on the job?
3. How did they obtain the job?
4. For certified employees, what background checks or other means of identifying criminal or inappropriate behaviors were conducted?
5. How closely were these persons supervised on the job?
6. How did they beat the system?
7. What recommendations would the rehabilitated criminal suggest which might allow school administrators to identify and prevent further occurrences of abuse?

Each entity within the education suprasystem and system must recognize their roles in protecting the integrity of the local school system, the subsystem. This protection should come in the form of new laws (e.g., tort reform, background check requirements, access to criminal data maintained by police agencies, etc.) which protect the integrity of the overall educational system. The state education agencies should become an active lobbyist for laws which will better protect the local school districts and their students and staff. Additionally, the state education agency should review its policies in light of recent legislation to ensure gaps in its policies are closed. The state education agency and local school districts should implement stronger policies against school employees who violate standards of conduct. School administrators should take a stand to forever rid schools of bad teachers and staff members by refusing to pass their trash on to another school

system. Finally, other entities within the overall education system, such as teacher unions, should support initiatives which will help protect children instead of fighting against these measures. Failure of the suprasystem, system, and subsystems to take strong measures to safeguard the students and staff in schools may result in many more front page news articles proclaiming teachers as predators of children.

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Missouri State Department of Education. MO Revised Statute 168.071 & 168.133. Retrieved March 16, 2006, from <http://www.dese.state.mo.us/divteachqual/profconduct/rules-statutes.html>

New Mexico Public Education Department. NMAC, Title 6, Chapter 68, et al. Retrieved March 16, 2006, from <http://www.sde.state.nm.us/div/ais/lic/rules/index.html>

State of Texas, County of Dallas court records, June 3, 2002. [Specific case number omitted to safeguard identity of subject. Information is available from OSDE.]

Texas State Department of Education. Retrieved March 16, 2006, from

[http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac_view=4&ti=19&pt=7
&ch=247&rl=Y](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=19&pt=7&ch=247&rl=Y)

The No Child Left Behind Act of 2001, 20 U.S.C. § 6301 (2002).

Title 10 Oklahoma Statutes 2001, §§ 7102, 7103, 7105, & 7115.

Title 21 Oklahoma Statutes 2001, §§ 741, 843.1, 865, et. seq.

Title 25 Oklahoma Statutes 2001, § 306.

Title 40 Oklahoma Statutes 2001, § 61.

Title 51 Oklahoma Statutes 2001, § 152.

Title 51 Oklahoma Statutes 2001, § 152.1.

Title 57 Oklahoma Statutes 2001, § 589.

Title 70 Oklahoma Statutes 2001, § 3-104 (9)(a).

Title 70 Oklahoma Statutes 2001, § 3-104.1.

Title 70 Oklahoma Statutes 2001, § 5-142.

Title 70 Oklahoma Statutes 2001, § 5-142.1.

Title 70 Oklahoma Statutes 2001, § 5-144.

Title 70 Oklahoma Statutes 2001, § 6-101 (B).

Title 70 Oklahoma Statutes 2001, § 6-107.

Title 70 Oklahoma Statutes 2001, § 6-108.

Title 70 Oklahoma Statutes 2001, § 6-187 (E).

Title 70 Oklahoma Statutes 2001, § 6-190 (B)(6).

Title 70 Oklahoma Statutes, Supplement 2004, § 6-190 (D).

Title 70 Oklahoma Statutes 2001, § 10-105.

Title 70 Oklahoma Statutes 2001, § 14-101 (A).

Title 74 Oklahoma Statutes 2001, § 150.9.

Vernonia School District v. Acton, 55 U.S. 646, 115 S.Ct. 2386 (1995).

APPENDIXES

The following appendixes consist of various pieces of information such as the different fields of data collected for this study, tables which have been developed to allow the reader a better understanding of the information, and figures taken from other sources.

Appendix A, Spreadsheet Information, Collected Data	206
Appendix B, Tables	209
Appendix C, Figures.....	219

Appendix A

Spreadsheet Information, Collected Data

1. Research Subject Number:
Same number as on the spread sheet
2. Year of Birth:
YYYY
3. Race:
1- Asian
2- Black
3- Caucasian
4- Hispanic
5- Indian
6- Other
7- Unknown
4. Gender:
1- Male
2- Female
3- Unknown
5. First Licensure, Month:
1 – 12- January – December
13- Not Certified
6. First Licensure, Year:
YYYY
7. Method License Obtained:
1- Traditional
2- Alternative
3- Out-of-State
4- Unknown
8. Licensure Area:
1- Early Childhood/Elementary
2- Middle School area
3- Language Arts
4- Mathematics
5- Science
6- Social Studies
7- Special Education
8- Physical Education
9- Music
10- Arts
11- Business Education
12- Career Technology
13- Professional Staff
14- Driver's Education
15- Other
16- Not Certified
9. Licensure Area, Secondary:
Same as Number 8 above.

Appendix A, (continued), Spreadsheet Information, Collected Data

10. Reason for CHBC:

- 1- Licensure
- 2- Employment
- 3- Other

11. Type of CHBC:

- 1- OSBI
- 2- FBI
- 3- Other

12. Month CHBC Received:

- 1 – 12- January – February:

13. Year CHBC Received:

YYYY

14. How Crime was Discovered:

- | | |
|----------------------|--------------|
| 1- Licensure Search | 4- Anonymous |
| 2- Employment Search | 5- NASDTEC |
| 3- News Media | 6- Other |

15. State Board of Education Actions upon Discovery of Crime:

- 1- Certify, Misdemeanor
- 2- Certify, Greater than 10 years since conviction
- 3- Certify, Deferred Adjudication
- 4- Certify, Other
- 5- Revoke Credentials
- 6- Deny Application
- 7- Await Completion of Court Actions
- 8- Other

16. Number of Arrests

Number of separate arrest, not charges on each arrest

17. Year of Primary Crime was Committed:

YYYY

18. Primary Crime in Relation to First Certification:

- 1- Greater than 10 years prior to first credential
- 2- Less than 10 year prior to first credential
- 3- After first credential
- 4- Unknown

Appendix A, (continued), Spreadsheet Information, Collected Data

19. Type of Primary Crime:

- | | |
|-----------------------|----------------------------|
| 1- Sex/Child | 6 - Assault/Battery |
| 2- Sex/Adult | 7- Driving Under Influence |
| 3- Drugs/Use | 8- Theft, Minor |
| 4- Drugs/Distribution | 9- Theft, Major |
| 5- Violent Crime | 10- Other |

20. Classification of Primary Crime:

- | | |
|----------------|------------|
| 1- Traffic | 3- Felony |
| 2- Misdemeanor | 4- Unknown |

21. Location of Primary Crime:

- | | |
|-------------|-----------------|
| 1- Oklahoma | 2- Out-of-State |
|-------------|-----------------|

22. How Primary Crime was Identified:

- 1- Licensure CHBC, Crime identified on OSBI Rap Sheet;
- 2- Licensure CHBC, Crime identified on FBI Rap Sheet;
- 3- Employment, State Search;
- 4- Employment, National Check;
- 5- NASDTEC;
- 6- Media;
- 7- Anonymous;
- 8- Unknown/Other

23. Court Action on Primary Crime:

- | | |
|--------------------------|------------------------------------|
| 1- Innocent | 5- Plea agreement to lesser charge |
| 2- Conviction | 6- Actions pending |
| 3- Conviction | 7- Unknown |
| 4- Deferred Adjudication | 8- Charges Not Filed |

24. Remarks

Appendix B

Tables

Table B1

Revocation/Denial Actions taken by the Oklahoma State Board of Education by School

<u>Year</u>	<u>Total Number Revoked or Denied</u>	<u>Sex - Child</u>	<u>Sex - Adult</u>	<u>DUI</u>	<u>Drugs – Use</u>	<u>Drugs - Deal</u>	<u>Violent Crime</u>	<u>Theft</u>	<u>Other</u>
2005	16	9	1	1	1	1	-	2	1
2004	11	9	-	-	-	1	-	1	-
2003	7	5	-	-	1	-	-	1	-
2002	12	5	1	1	1	2	-	1	1
2001	23	10	1	3	-	4	1	3	1
2000	3	-	1	-	-	-	-	1	1
1999	3	-	-	1	2	-	-	-	-
1998	7	1	-	2	-	-	-	2	2
1997	7	5	-	1	1	-	-	-	-
1996	1	-	1	-	-	-	-	-	-
1995	3	2	-	1	-	-	-	-	-
1994	3	2	1	-	-	-	-	-	-
1993	1	1	-	-	-	-	-	-	-
1992	1	-	-	-	-	-	-	-	1
1991	1	-	-	-	-	-	-	-	1*
1990	3	2	-	-	-	1	-	-	-
1989	5	2	1	-	-	1	1	-	-
1988	1	-	1	-	-	-	-	-	-
1987	3	1	-	-	1	-	1	-	-
1986	3	1	-	-	-	-	1	-	1

Table B1 (*continued*) Revocation/Denial Actions taken by the Oklahoma State Board of Education by School Year

<u>School Year</u>	<u>Total Number Revoked or Denied</u>	<u>Sex - Child</u>	<u>Sex - Adult</u>	<u>DUI</u>	<u>Drugs – Use</u>	<u>Drugs - Deal</u>	<u>Violent Crime</u>	<u>Theft</u>	<u>Other</u>
1985	5	2	-	-	-	-	-	1	2
1984	1	-	-	-	-	-	-	-	1
Totals	120	57	8	10	7	10	4	12	12

* Administrative certificate was revoked; kept teaching credential

Information is raw data maintained by the State Department of Education.

Table B2

Applicable Oklahoma Criminal Statutes of Sex-related Crimes

<u>Title and Section</u>	<u>Description</u>
Title 10 § 7102	Public policy – Protection of children – Definitions
Title 10 § 7115	Child Abuse, Child Neglect, Child Sexual Abuse, Child sexual Exploitation; Enabling and Penalties
Title 21 § 741	Kidnapping
Title 21 § 843.1	Caretakers – Abuse, neglect, sexual abuse or exploitation of charge. (Applicable if the offense included sexual abuse or sexual exploitation)
Title 21 § 865 et seq.	Definitions of child, person, department, and foster home
Title 21 § 885	Incest
Title 21 § 888	Forcible Sodomy
Title 21 § 891	Child Stealing
Title 21 § 1021	Indecent Exposure - Indecent exhibitions – Obscene material or child pornography – solicitation of minors
Title 21 § 1021.2	Minors – Procuring for participation in pornography
Title 21 § 1021.3	Guardians – parents – Custodians – Consent to participation of minors in child pornography
Title 21 § 1040.13a	Facilitating, encouraging, offering or solicitng sexual conduct with a minor
Title 21 § 1040.51	(Repealed by Laws 2000, c. 208, § 24, eff. Nov. 1, 2000)
Title 21 § 1087	Child under 18 years of age – Procuring for prostitution, lewdness or other indecent act – Punishment
Title 21 § 1088	Child under 18 years of age – Inducing, keeping, detaining or restraining for prostitution – Punishment
Title 21 § 1111.1	Rape by Instrumentation

Table B2 (*continued*), Applicable Criminal Statutes of Sex-related Crimes

<u>Title and Section</u>	<u>Description</u>
Title 21 § 1114	Rape in first degree – Second degree
Title 21 § 1123	Lewd or indecent proposals or acts as to child under 16 – Sexual battery

Table of Applicable Criminal Statutes (listed above)

(Oklahoma Statutes 2001, Book 1 Volume 1, Constitution and Titles 1 – 12) Abstracting – Civil Procedure; Book 2 Titles 12A – 21 Commercial Code – Crimes and Punishments; Edited and Published under the Direction of the Justices of the Supreme Court, 2001, West Group, Thomson Company

Table B3

Information Required to be Disclosed by Applicants for Teaching Credentials in
Oklahoma and Bordering States

	Prior <u>Invalidation</u>	Prior <u>Dismissal</u>	Prior <u>Arrest</u>	Prior <u>Conviction</u>	Type of Criminal <u>Background Check</u>
Oklahoma	Yes	Yes	Yes	Yes	State & FBI
Arkansas	Yes	Yes	Yes	Yes	State & FBI
Colorado	Yes	Yes	No	Yes	State & FBI
Kansas	Yes	No	No	Yes	State & FBI
Louisiana	Yes	No	No	Yes	State only
Missouri	Yes	Yes	Yes	Yes	State & FBI
New Mexico	Yes	Yes	Yes	Yes	State & FBI
Texas	Yes	No	Yes	Yes	State & FBI

NASDTEC Manual (2004) Table J-1

Table B4

Requirements for Fingerprint Background Checks in Oklahoma and Bordering States

	<u>Fingerprinting for Certification Purposes</u>	<u>Fingerprinting for Employment Purposes</u>
Oklahoma	Yes, for first time applicants	School District Option
Arkansas	Yes	Yes
Colorado	Yes	No
Kansas	Yes	No
Louisiana	No	Yes
Missouri	Yes	No
New Mexico	Yes	Yes
Texas	Yes, for the initial credential	No

NASDTEC Manual (2004) Table J-2, p. J-5

Table B5

Invalidation of Teaching Credentials as Reported by the NASDTEC Clearinghouse

<u>Crime</u>	<u>Number Reported</u>	<u>Percentage</u>
Violent Felonies	436	5.1
Sexual Misconduct, Child	3098	36.3
Sexual Misconduct, Adult	404	5.3
Substance Abuse (Child)	40	0.5
Substance Abuse (Sale or Use)	1020	12.7
Sexual Misconduct, Adult (no conv.)	103	1.2
Sexual Misconduct, Child (no conv.)	16	2.0
Substance Abuse (no conviction)	9	0.1
All Other Actions	3128	36.8
<hr/>		
Total	8524	100.0
<hr/>		

Source: NASDTEC Manual, 2004

Table B6

Employment-Based Criminal History Background Checks by Year

	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
Number of School Districts	544	543	541	541	540
Number of School Districts Conducting Employment-Based Criminal Background Checks	-	321	292	292	309
Number of School Districts Conducting FBI Searches	-	42	-	-	-
Number of State and FBI Searches Conducted	-	7552	7466	7370	8765
Total Searches with a Criminal Record	-	382	283	282	432
Number of Searches on Certified Personnel	-	1970	160*	1319	2120
Number of Certified Personnel With a Criminal Record	-	88	44	40	77
Total FBI Searches	-	190	614	644	866
Total FBI Searches Returned with A Criminal Record	-	12	22	19	36
Total FBI Positives and State Negatives	-	3	8	11	12

Raw data from OSDE files (2005)

*The number of districts changes due to Consolidation or Annexation of school districts.

** According to OSDE records, 54 of the 188 districts conducting searches during 2001, did not conduct searches prior to November 1, 2001.

Table B7

Certification Areas of Teachers with Criminal Records

<u>Certification Area</u>	<u>Number of Teachers with Criminal Records</u>
Elementary Educ/Early Childhood	224
Physical Education	162
Social Studies	114
Language Arts	76
Special Education	67
Career Technology (Tech Ed)	62
Science	53
Math	45
Business Education	39
Music	24
Art	20
Professional Credential	21
Middle School	3
Drivers' Education	1
Other	8
Not Certified	80
Total	999

OSDE data

Note: The category "Not Certified" represents those persons who were denied certification, did not meet certification standards, or whose application was still being processed on December 31, 2004.

Appendix C

Figures

Figure C1

DeRosnay's Systems Theory, Analytic versus Systemic Approach

<i>Analytic Approach</i>	<i>Systemic Approach</i>
<ul style="list-style-type: none"> • isolates, then concentrates on the elements 	<ul style="list-style-type: none"> • unifies and concentrates on the interaction between elements
<ul style="list-style-type: none"> • studies the nature of interaction 	<ul style="list-style-type: none"> • studies the effects of interactions
<ul style="list-style-type: none"> • emphasizes the precision of details 	<ul style="list-style-type: none"> • emphasizes global perception
<ul style="list-style-type: none"> • modifies one variable at a time 	<ul style="list-style-type: none"> • modifies groups of variables simultaneously
<ul style="list-style-type: none"> • remains independent of duration of time; the phenomena considered are reversible. 	<ul style="list-style-type: none"> • integrates duration of time and irreversibility
<ul style="list-style-type: none"> • validates facts by means of experimental proof within the body of a theory 	<ul style="list-style-type: none"> • validates facts through comparison of the behavior of the model with reality
<ul style="list-style-type: none"> • uses precise and detailed models that are less useful in actual operation (example: econometric models) 	<ul style="list-style-type: none"> • uses models that are insufficiently rigorous to be used as bases of knowledge but are useful in decision and action (example: models of the club of Rome)
<ul style="list-style-type: none"> • has an efficient approach when interactions are linear and weak 	<ul style="list-style-type: none"> • has an efficient approach when interactions are nonlinear and strong
<ul style="list-style-type: none"> • leads to discipline-oriented (juxtadisciplinary) education 	<ul style="list-style-type: none"> • leads to multidisciplinary education
<ul style="list-style-type: none"> • leads to action programmed in detail 	<ul style="list-style-type: none"> • leads to action through objectives
<ul style="list-style-type: none"> • possesses knowledge of details poorly defined goals 	<ul style="list-style-type: none"> • possesses knowledge of goals, fuzzy details

Source: (Principia Cybernetica Web, Analytic vs. Systemic Approaches, ¶ 3).

Figure C2. Copy of Oklahoma Teacher Licensure Application, Front

APPLICATION FOR OKLAHOMA SCHOOL LICENSE							
<p>Name _____ <div style="display: flex; justify-content: space-between; font-size: small; margin-top: -10px;"> Last First Middle Maiden </div> </p> <p>Address _____ <div style="text-align: center; font-size: small; margin-top: -10px;">Street or Rural Route Number</div> </p> <p>_____ City _____ State _____ Zip Code _____</p> <p>() _____ () _____ <div style="display: flex; justify-content: space-around; font-size: small; margin-top: -10px;"> Daytime Telephone Number Evening Telephone Number </div> </p> <p>() _____ <div style="display: flex; justify-content: space-between; font-size: small; margin-top: -10px;"> Other number where you can be reached? Electronic Mail Address </div> </p> <p>Social Security Number: <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/></p> <p>If you are renewing, please check. <input type="checkbox"/></p> <p>If you have an out-of-state license/certificate, please check. <input type="checkbox"/></p> <p>If your name has changed since your last license, please check. <input type="checkbox"/></p>	<p>FEE:</p> <div style="border: 1px solid black; height: 150px; margin-top: 10px;"></div> <p style="text-align: center; font-weight: bold; margin-top: 10px;">LEAVE THIS SPACE BLANK</p>						
<p>PART I: LICENSE AREA(S) REQUESTED</p> <p style="text-align: center; font-size: small;">(Elementary, Mathematics, Library Media Specialist, etc.)</p>							
<p>PART II: TO BE USED FOR CAREER AND TECHNOLOGY EDUCATION CERTIFICATE(S) ONLY Oklahoma Graduates Only</p> <p>Applications for career and technology education licenses must be made through the appropriate state program administrator at the Oklahoma Department of Career and Technology Education. These occupational divisions are:</p> <table style="width: 100%; margin-top: 10px;"> <tr> <td style="width: 50%;">Agricultural Education</td> <td style="width: 50%;">Marketing Education</td> </tr> <tr> <td>Career and Technology Business</td> <td>Health Occupations Education</td> </tr> <tr> <td>Career and Technology Home Economics/ Family and Consumer Sciences</td> <td>Trade and Industrial Education</td> </tr> </table> <p style="text-align: center; font-weight: bold; margin-top: 10px;">Please circle the occupational division for which you are applying.</p>		Agricultural Education	Marketing Education	Career and Technology Business	Health Occupations Education	Career and Technology Home Economics/ Family and Consumer Sciences	Trade and Industrial Education
Agricultural Education	Marketing Education						
Career and Technology Business	Health Occupations Education						
Career and Technology Home Economics/ Family and Consumer Sciences	Trade and Industrial Education						
<p>For Provisional Level I Career and Technology Certificate:</p> <p>Signature _____ Date _____ <div style="text-align: center; font-size: small; margin-top: -10px;">(District Superintendent or Official Representative)</div> </p>							
<p>Signature _____ Date _____ <div style="text-align: center; font-size: small; margin-top: -10px;">(Oklahoma Department of Career and Technology Education State Program Administrator or Representative)</div> </p>							
<p>IMPORTANT</p> <p>Complete educational information and criminal history disclosure statement on reverse.</p>							

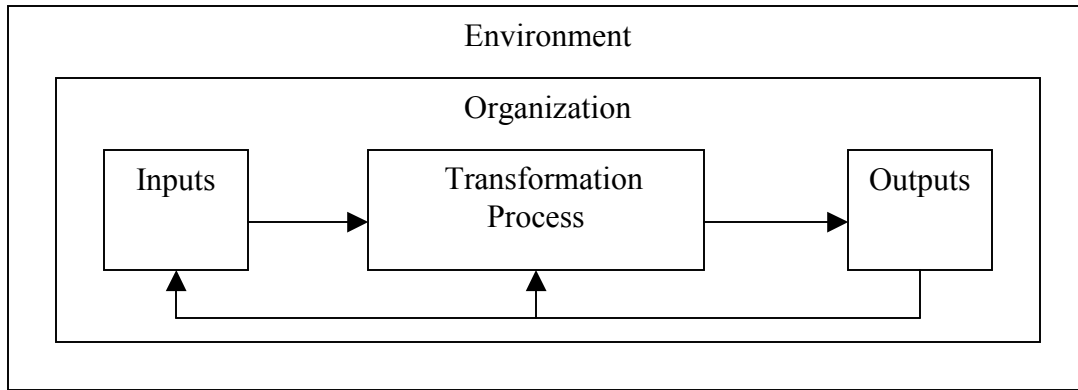
Figure C3. Copy of Oklahoma Teacher Licensure Application, Back

PART III: EDUCATIONAL INFORMATION						
Last College Attended _____				Dates of Last Semester in Attendance _____		
Teaching Experience: If you have teaching experience in an Oklahoma nonpublic school or in an out-of-state school system, request a proof-of-teaching form and a certificate application from the Professional Standards Section or download the forms from the Oklahoma State Department of Education Web site at: <http://sde.state.ok.us>.						
Began		Ended		District	Kind of School Experience	Administrator in Charge
Month	Year	Month	Year			
I hold or have held OKLAHOMA LICENSE(S) or CERTIFICATE(S):						
Type of License or Certificate			Issue Date		Name When Certificate Was Issued	
PART IV: CRIMINAL HISTORY DISCLOSURE STATEMENT						
<p>Pursuant to legislation, 70 O.S. 1991, § 3-104.1, every applicant is required to answer each of the following questions:</p> <ol style="list-style-type: none"> 1. During the preceding ten-year period, have you been convicted of a felony? Yes ___ No ___ 2. During the preceding ten-year period, have you been convicted of a crime involving moral turpitude? Yes ___ No ___ 3. Have you ever been convicted in Oklahoma, whether upon a verdict or plea of guilty or upon a plea of nolo contendere no contest), or received a suspended sentence for a crime or an attempt to commit a crime which is considered sexually related in nature?..... Yes ___ No ___ 4. Have you ever been convicted, received a suspended sentence, or received a deferred judgment for a crime or attempted crime which was considered sexually related in nature in any other state or jurisdiction? Yes ___ No ___ 5. Have you ever had adverse action taken against any educator certificate or license in Oklahoma or any other state or jurisdiction?..... Yes ___ No ___ 6. Is any action now pending against you for alleged misconduct in any school district, court, or before any educator licensing agency in Oklahoma or any other state or jurisdiction? Yes ___ No ___ 7. Do you currently have any outstanding criminal charges or warrants of arrest pending against you in Oklahoma or in any other state or jurisdiction?..... Yes ___ No ___ <p>If the answer to any of the preceding questions is "Yes," state on a separate sheet of paper the nature of the charge and in what court or jurisdiction you were charged/convicted. You may be required to obtain and provide to the Oklahoma State Department of Education, official certified copies of all court and/or police records.</p> <p>The Oklahoma State Department of Education has the authority to require state and national (fingerprint-based) felony background checks on any applicant. If a background check is required, it will be at the applicant's expense.</p> <p>Falsification of any information on this application can result in denial, withdrawal, or revocation of the Oklahoma teaching credentials.</p>						
<div style="background-color: black; color: white; padding: 10px; border: 1px solid black;"> <p style="margin: 0;">◆ IMPORTANT ◆</p> <p style="margin: 0;">Application will not be processed if not signed and dated IN THE PRESENCE OF a Notary!</p> </div>						
Signature of Applicant _____				Date _____		
Subscribed and Sworn before me this _____ day of _____, _____.						
_____ Notary			_____ Commission Number		_____ My Commission Expires	

JUNE 2004

Figure C4

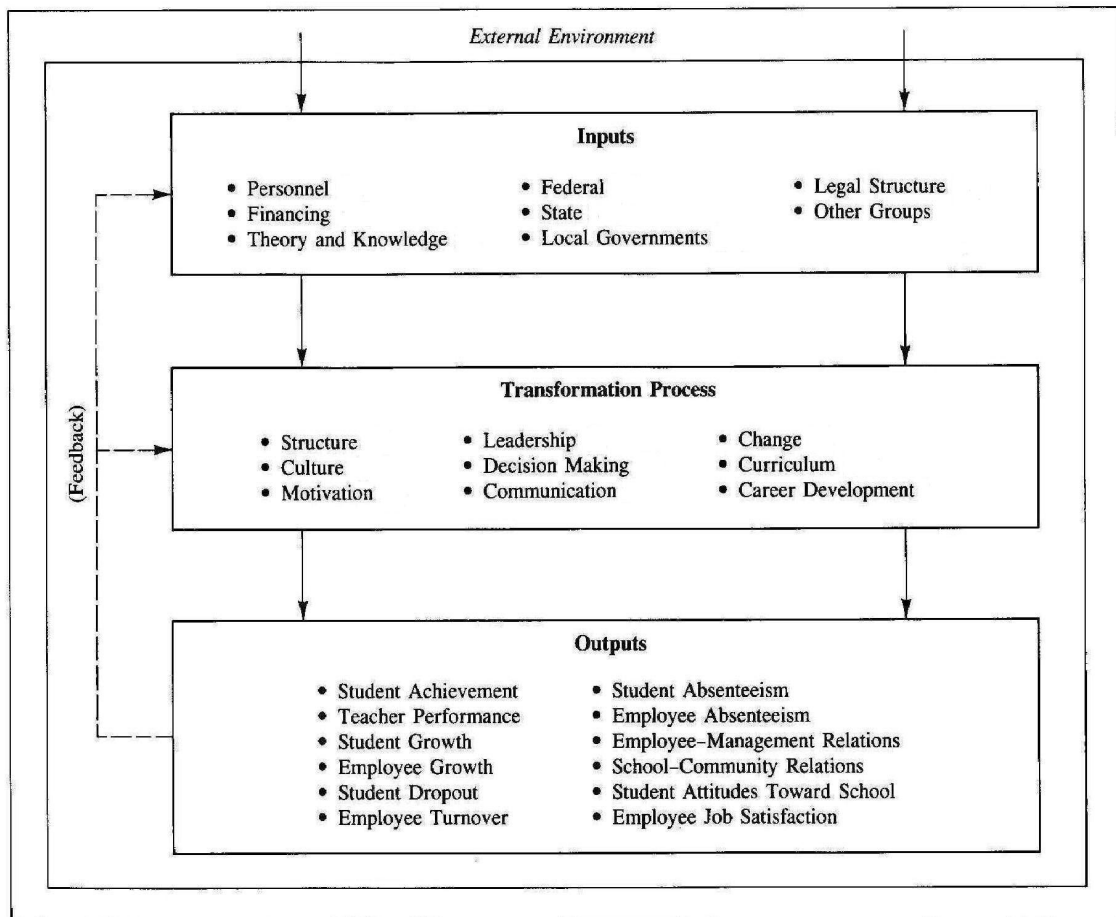
Basic Systems Model



Source: Lunenburg, F. C. and Ornstein, A. C. (1991). Educational Administration Concepts and Practices. Page 18.

Figure C5

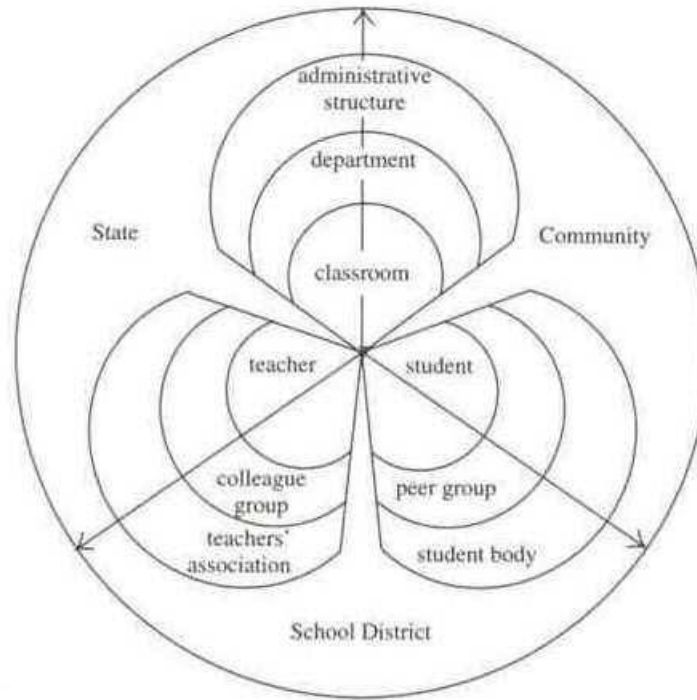
A Systems View of School Administration



Source: Lunenburg, F. C. and Ornstein, A. C. (1991). Educational Administration Concepts and Practices. Page 19.

Figure C6

Educational Subsystems



Source: Hanson, E. M., (2003). Educational Administration and Organizational Behavior (5th ed.). Page 51.

Figure C7

OSDE Approval Letter.



SANDY GARRETT
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
STATE OF OKLAHOMA

TO: Whom It May Concern
Oklahoma State University

FROM: Shawn Hime *SH*
Assistant State Superintendent

DATE: August 31, 2005

SUBJECT: Approval of Research Project

Mr. John Bennett has approached me for approval to conduct a research project as partial completion of the requirements for the Doctorate in Education degree from Oklahoma State University. He has identified the scope of his research project as being a review of the historical data concerning criminal records checks conducted for licensure and employment purposes on teachers and teacher applicants. This data is available from the School Personnel Records section of the State Department of Education.

It is my understanding that no identifying personal information will be reported in the study that might allow someone to trace the information back to the subject.

Acknowledging this, I approve Mr. Bennett's request to conduct a research project using this data.

OKLAHOMA STATE DEPARTMENT OF EDUCATION
2500 NORTH LINCOLN BOULEVARD, OKLAHOMA CITY, OK 73105-4599
(405) 521-3301, FAX: (405) 521-6205
<http://sde.state.ok.us>
FIRST IN THE TWENTY-FIRST
 recycled paper

Figure C8,

Institutional Review Board Approval Letter

Oklahoma State University Institutional Review Board

Date: Thursday, September 22, 2005
IRB Application No ED0630
Proposal Title: Certification Practices of Oklahoma Teacher Applicants With Criminal Records
Reviewed and Processed as: Exempt

Status Recommended by Reviewer(s): Approved Protocol Expires: 9/21/2006

Principal Investigator(s)

John Bennett
14397 Forest Lane
Choctaw, OK 73020

Ken Stern
311 Willard
Stillwater, OK 74078

The IRB application referenced above has been approved. It is the judgment of the reviewers that the rights and welfare of individuals who may be asked to participate in this study will be respected, and that the research will be conducted in a manner consistent with the IRB requirements as outlined in section 45 CFR 46.

The final versions of any printed recruitment, consent and assent documents bearing the IRB approval stamp are attached to this letter. These are the versions that must be used during the study.

As Principal Investigator, it is your responsibility to do the following:

1. Conduct this study exactly as it has been approved. Any modifications to the research protocol must be submitted with the appropriate signatures for IRB approval.
2. Submit a request for continuation if the study extends beyond the approval period of one calendar year. This continuation must receive IRB review and approval before the research can continue.
3. Report any adverse events to the IRB Chair promptly. Adverse events are those which are unanticipated and impact the subjects during the course of this research; and
4. Notify the IRB office in writing when your research project is complete.

Please note that approved protocols are subject to monitoring by the IRB and that the IRB office has the authority to inspect research records associated with this protocol at any time. If you have questions about the IRB procedures or need any assistance from the Board, please contact Beth McTernan in 415 Whitehurst (phone: 405-744-5700, beth.mcternan@okstate.edu).

Sincerely,



Sue C. Jacobs, Chair
Institutional Review Board

VITA

John Edward Bennett

Candidate for the Degree of

Doctor of Education

Thesis: CERTIFICATION PRACTICES OF OKLAHOMA TEACHER APPLICANTS
WITH CRIMINAL RECORDS

Major Field: Educational Leadership

Biographical:

Education: Associate of Applied Sciences Degrees in Industrial Security, 1989 and Personnel Administration, 1992, Community College of the Air Force. B.A., Human Resources Management, 1991, and M.S., Management, 1992, both from Southern Nazarene University, Bethany, Oklahoma; Ed.D. in Educational Leadership, Oklahoma State University, July 2006.

Experience: Twenty-one years in the United States Air Force as a Police Officer, Professional Military Education instructor, director of education, and commandant, and as a base career advisor and personnel superintendent. Director of School Personnel Records and Manager of the Criminal History Program, Oklahoma State Department of Education, 1994-2006.

Professional Memberships: Licensed as an Oklahoma educator in Business Education and as a Superintendent.

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Member, Delta Mu Delta, National Business Honor Society

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Institution: Oklahoma State University Location: Stillwater, Oklahoma

Title of Study: CERTIFICATION PRACTICES OF OKLAHOMA TEACHER
APPLICANTS WITH CRIMINAL RECORDS

Pages in Study: 227

Candidate for the Degree of Doctor of Education

Major Field: Educational Leadership

Scope and Method of Study: This study was to determine the impact of several teacher certification laws, policies, and procedures on the screening process of first-time teacher applicants in Oklahoma. Specifically studied were two laws, 70 O.S. 2001, § 6-190 (B)(6) and 70 O.S. Supplement 2004, § 6-190 (D), enacted in November 2001 and July 2004, respectively, and the decisions made by persons in leadership positions within the OSDE regarding the implementation of these and other laws relative to criminal history background checks for teacher credentialing purposes. Demographic, certification, and criminal history information were studied on the teachers and teacher applicants from January 1, 2000 through December 31, 2004, who had criminal record. Comparisons were made of different subsets of subjects depending upon when they applied for teacher certification to determine the effectiveness of the two aforementioned laws. Additional reviews of the teacher certification decisions by the state department of education were conducted to determine the successes of the laws at keeping undesirable teachers with criminal records from receiving teaching credentials.

Findings and Conclusions: Overall, 4.95 percent of the population had a criminal record (999 of 20,168). A most significant finding was that prior to the fingerprint-based background check laws, only 1.12 percent of out-of-state applicants were discovered with criminal records (through employment-based searches). But, this percentage jumped to 27.27 percent once the second law was enacted requiring all out-of-state applicants to submit to a criminal background check. The two laws were successful in identifying teacher applicants with criminal records who might otherwise have gone undetected through employment background checks and self-disclosure on the application for an Oklahoma teaching license. However, the success of the laws may be diminished by decisions of the state department of education to issue a teaching credential to teacher applicants with a criminal record.

ADVISER'S APPROVAL: _____