

PRIVATE SECURITY OFFICER QUALITY ASSURANCE ACT OF
1997

JUNE 26, 1997.—Ordered to be printed

Mr. MCCOLLUM, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany H.R. 103]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 103) to expedite State reviews of criminal records of applicants for private security officer employment, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

H.R. 103, the “Private Security Officer Quality Assurance Act of 1997,” establishes a procedure for expediting background checks of private security officers. The bill requires the Attorney General to designate an association of employers of private security officers to submit applicant fingerprints to the Attorney General for the purpose of background checks. The Attorney General is expected to designate responsibility for conducting the background checks to the Federal Bureau of Investigation.

H.R. 103 further requires the Attorney General to report to the House and Senate Judiciary Committee two years after enactment on the number of inquiries made by the association established under the bill and disposition of those inquiries. The legislation also expresses the sense of Congress that States should participate in the background check system.

BACKGROUND AND NEED FOR THE LEGISLATION

In 1990, there were approximately 2.4 private security employees for every law enforcement employee. That ratio is expected to grow, and it is estimated that by the year 2000, private security officers will outnumber sworn law enforcement nearly 3–1. In some cities,

the ratio will be as high as 4 or 5–1.¹ Total private security employment is expected to increase to 1.9 million by the end of the century. The percent of change in employment from 1980 to 2000 is approximately 193%, and the industry is ever increasing.²

Although most authorities agree that private security did not become a nationwide industry until the 1940's, there are a few private security guard companies, such as Pinkerton's, which have existed in the United States since the civil war era.³ Private security guards are now commonly sighted at shopping malls, parking lots and housing units. Most of these guards are honest and hard-working, even heroic at times. However, background checks for security guards remain spotty, and American citizens remain at risk for harm committed by uniformed persons whom they implicitly trust.

Although over two-thirds of the States and the District of Columbia require some type of background check, many only require checks against criminal history records within that State. States which do require national criminal history checks complain that it takes several months before they receive any information.⁴ Unfortunately, these delays and inconsistencies allow convicted criminals to get jobs as private security officers. There have been numerous instances of security guards who attacked, robbed or sexually assaulted the citizens they were charged with protecting.⁵ In one particularly heinous case, a former security guard was convicted of raping fifteen women in Los Angeles in 1994.⁶ Another tragic example is a security guard convicted in 1995 of molesting two children.⁷

H.R. 103 addresses these problems, by establishing a system for expedited processing of background checks. The Attorney General is directed to designate an association of employers of private security officers to submit applicant fingerprints to the Attorney General for the purpose of background checks. The legislation does not supplant any current State background investigation process for private security officers, it simply creates a new avenue for more efficient investigations of national criminal history files.

HEARINGS

No hearings were held on H.R. 103.

COMMITTEE CONSIDERATION

On June 12, 1997, the Subcommittee on Crime met in open session and ordered reported the bill H.R. 103, without amendment by a voice vote, a quorum being present. On June 18, 1997, the Committee met in open session and ordered reported favorably the bill H.R. 103 without amendment by a voice vote, a quorum being present.

¹William C. Cunningham et al., *The Hallcrest Report II: Private Security Trends 1970–2000*, 229 (1990).

²*Id.* at 233.

³*Id.* at 175.

⁴Del Jones and Ellen Neuborne, "On Guard: Bad Guys Behind Badge Of Honor," *USA Today*, Sept. 12, 1996, at B1.

⁵Robert A. Davis, "Ex-Cons Cleared To Work Security," *Chicago un-Times*, Nov. 17, 1996, at 1.

⁶Maki Becker, "Rapists Sentenced to 700 Years In Prison," *Los Angeles Times*, April 1, 1997 at B3.

⁷Davis, *Supra*, note 5.

VOTE OF THE COMMITTEE

There were no recorded votes.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 103, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 25, 1997.

Hon. HENRY J. HYDE,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 103, the Private Security Officer Quality Assurance Act of 1997.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, Director).

Enclosure.

H.R. 103—Private Security Officer Quality Assurance Act of 1997

CBO estimates that enacting H.R. 103 would not result in any net impact on the federal budget. Because enactment of H.R. 103 would affect offsetting collections and the spending of such collections, pay-as-you-go procedures would apply. The bill does not contain any intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 and would impose no costs on state, local, or tribal governments.

Enacting H.R. 103 would expedite state reviews of criminal records of applicants for private security employment by permitting the Federal Bureau of Investigation (FBI) to conduct background checks on such applicants. The Attorney General would be responsible for the “imposition of fees necessary for the recovery of costs” associated with these background checks. Based on information from the FBI, CBO expects that the Attorney General would set fees at a level sufficient to recover all costs that the government would incur while conducting background checks. The fees collected would be counted as offsetting collections credited to appropriations, as are existing fees for other background checks. The FBI spends such fees in the same year in which they are collected. Thus, CBO estimates that enacting H.R. 103 would not result in any net cost to the federal government. This bill also expresses the sense of the Congress that states should participate in the background check system that would be established under this bill.

The CBO staff contact for this estimate is Susanne S. Mehlman. This estimate was approved by Paul N. Van de Water, Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to rule XI, clause 2(1)(4) of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, section 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS

Section 1 Short Title.—This section states that the short title of the bill is the “Private Security Officer Quality Assurance Act of 1997.”

Sec. 2. Findings.—This section lists Congressional findings regarding employment of private security officers.

Sec. 3. Background Checks.—This section authorizes the Attorney General to designate an association of employers of private security officers to submit applicant fingerprints to the Attorney General for the purpose of background checks. The checks are to be conducted by the Federal Bureau of Investigation.

Sec. 4. Sense of Congress.—This section expresses the sense of Congress that States should participate in the background check system.

Sec. 5. Definitions.—This section defines terms used in the legislation, including “employer,” “employee,” “private security officer” and “security services.”

AGENCY VIEWS

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, June 11, 1997.

Hon. BILL McCOLLUM,
*Chairman, Subcommittee on Crime, Committee on the Judiciary,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The purpose of this letter is to provide you with the views of the Department of Justice concerning various law enforcement related legislative proposals now under consideration by the Subcommittee. We note that certain of these proposals are similar or identical to bills on which the Department submitted written comments in the 104th Congress.

H.R. 103

The "Private Security Officer Quality Assurance Act of 1997" proposes new authority for "associations" of employers of private security officers to submit fingerprints or other forms of "positive identification" directly to the Department of Justice for criminal history records checks. Such an approach would increase the federal role, by bypassing current state records check procedures, in an area historically handled by state and local government—the oversight and regulation of private security officers. We applaud the goal of this bill, enhancing the quality of private security officers. However, we have serious concerns regarding the background check mechanism as proposed and the scope of the term "private security officer" as defined.

The Department opposes any procedure, such as that in section 3 of H.R. 103, that bypasses the initial fingerprint check conducted through state criminal record systems. State authorities handling security officer applicant fingerprint cards should forward to the FBI only those cards for which no disqualifying record or substantive information is identified at the state or local level. The identification of such disqualifying information obviates the need for a national check, thus resulting in the savings of time and expense attributable to redundant FBI processing. FBI criminal history record checks are presently conducted, following such state records checks, for prospective security guards, private patrolmen, and watchmen pursuant to Pub. L. 92-544, and consistent with the Privacy Act, in those states which have enacted appropriate enabling legislation.

In addition to conserving federal resources, conducting state records checks first permits the identification of potentially disqualifying information which may only be reported in state records. An individual's criminal history record at the state level often con-

tains arrests and dispositions that have never been reported to the FBI.

Moreover, state systems tend to be more comprehensive and up-to-date than the federal system, because state courts report to the state system, not the federal system. This is particularly true in the case of non-felony arrests and convictions. While federal criminal records for felony arrests are improving daily, there are many important criminal history details that a prospective private security employer would find important and that are not found in federal data bases. These include: misdemeanor crimes of domestic violence; misdemeanor sex offenses; misdemeanor drug possession offenses; and impaired driving offenses.

Our National Instant Check System—which will make enforcement of the Brady Handgun Control Act even more effective than it is now—will focus on *state*, not federal criminal history systems. Indeed, the states have been the direct beneficiaries of over \$100 million in federal funds for criminal records improvements over the past two years.

In addition to the foregoing concerns, we also believe that the definition of “private security officer” in the bill is overly broad and would reach a wide range of personnel beyond those who are properly viewed as private security officers or guards by the general public. The findings in Section 2 of the bill suggest that private shopping mall and other facility security officers are the intended subjects of this legislation, yet the bill’s definition would encompass, or arguably encompass, even tavern “bouncers,” parking lot attendants, airline gate personnel, ticket-takers at virtually any facility, non-police park rangers, pool life guards, theater ushers, and fire alarm technicians.

“Association of employers of private security officers” is not defined, and would seem to apply even to two affiliated independent contractor private security officers (each of whom is deemed an “employer” pursuant to the definition in Section 5). The combined expansive nature of the “private security officer” and “association” categories could lead to thousands of groups or “associations” of private firms submitting directly to the FBI an extraordinary volume of names of applicants for many types of positions which clearly are not “private security officers” as that term is routinely used in law enforcement. In addition to the resource burdens this would represent for the FBI, the risk of inappropriate inquiries (for reasons other than legitimate applicant screening for covered positions) would increase with the volume of authorized requestors. The widespread dissemination of this kind of information would raise significant privacy concerns.

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Thank you for the opportunity to comment on this matter. The Office of Management and Budget has advised that there is no objection to this report from the standpoint of the Administration’s

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program. Please let us know if we may be of additional assistance in connection with this or any other matter.

Sincerely,

ANDREW FOIS,
Assistant Attorney General.

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