



**TESTIMONY OF JOSEPH RICCI, CAE
EXECUTIVE DIRECTOR**

**NATIONAL ASSOCIATION OF SECURITY COMPANIES
(NASCO)**

**Before the
US HOUSE OF REPRESENTATIVES
COMMITTEE ON EDUCATION AND LABOR**

**Hearing On
“H.R. 2703”**

February 26, 2008

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NATIONAL ASSOCIATION OF SECURITY COMPANIES (NASCO)
FEBRUARY 26, 2008
HOUSE COMMITTEE ON EDUCATION AND LABOR SUBCOMMITTEE ON HEALTH,
EMPLOYMENT, LABOR AND PENSIONS**

**HEARING ON "H.R. 2703, THE PRIVATE SECURITY OFFICER EMPLOYMENT
AUTHORIZATION ACT OF 2007"**

Chairman Andrews, Ranking Member Kline, and members of the Committee, my name is Joseph Ricci, and I am the Executive Director of the National Association of Security Companies (NASCO). NASCO is the nation's only organization dedicated to representing private contract security companies, and NASCO member companies employ nearly 500,000 highly trained security guards serving throughout the government and commercial sector. NASCO is committed to initiating and supporting efforts at the federal, state and local levels to raise standards for the licensing of private contract security firms and the registration, screening and training of security guards.

In 2004, Congress passed the Private Security Officer Employment Authorization Act (PSOEAA) which authorized contract security companies to obtain FBI Criminal History Records Checks (CHRI) through the states for screening private security guards in every state.¹ While some states were already conducting these checks pursuant to state statutes, most were not. Unfortunately, now three years after the passage of the PSOEAA and two years after the implementing regulations were published by the Department of Justice (DOJ), the situation remains relatively unchanged. NASCO knows of no states facilitating contract security company access to FBI CHRI checks for the screening of private security guards pursuant to the PSOEAA. Given public policy and the compelling reasons for passing the PSOEAA, conducting criminal records checks for security guards can no longer continued to be ignored.²

NASCO welcomes the congressional attention to this problem, and we are particularly grateful to Chairman Andrews for his continuing interest in improving the background screening of security guards and H.R. 2703 is one attempt to solve this problem. NASCO supports all efforts that

¹ Pub. L. No. 108-458 § 6402 (2004), 28 USC § 534

² The term "check" and "screen" are used interchangeably. Both denote a party -- such as a state agency or a DOJ designated entity -- obtaining a person's complete FBI CHRI or "rap sheet" and then screening or checking the rap sheet for arrests and/or convictions that may or not under applicable law disqualify the person from employment or a license or may or may not have to be reported to an employer. This screening/checking process is also referred to as a "fitness determination". It is also important to note, that under pre-existing federal law that authorized states to access FBI CHRI for certain types of employees including security officers, and also under the PSOEAA, a security officer employer is never allowed to be given the FBI "rap sheet." Thus any state currently doing FBI checks on security guards obtains the rap sheet and then uses it as a part of a fitness determination (e.g. licensing application decision). Any new state doing an FBI check pursuant to the PSOEAA would also have to get the FBI rap sheet and then review it against any employment or licensing standards the state may have, or if the state did not have such standards, then against the reportable offense standard in the PSOEAA. The administrative burden and cost of making fitness determinations is cited in several sources as major reasons why states are not and will not do security officer FBI background checks.

improve the facilitation of FBI CHRI checks including legislation, education and dialogue. NASCO and its members look forward to working with Rep. Andrews and other concerned legislators pursue activities to improve the facilitation of these checks including amending the PSOEAA to access checks through a third-party DOJ authorized entity (“channeler”) to process FBI CDHRI checks in states without established processes pursuant to the PSOEAA. Employers of private security guards will be able to utilize a “channeler” to access and screen employees based on existing state screening (“fitness determination”) standards or in absence of such standards pursuant to the federal standards in the PSOEAA.³

The regulation and licensing of private security guards has traditionally been the domain of the states, and as mentioned, for many years states -- pursuant to state statutes passed after a 1972 federal law authorizing state use of FBI CHRI for employment regulation -- have been conducting FBI checks on security guards as part of that state’s security guard licensing process.⁴ However, when the PSOEAA was being considered by the House of Representative in 2004, it was reported that approximately half the states were not conducting FBI criminal record checks for private security guards. While 40 States were licensing private security officers, only 31 of those states permitted or required an applicant to undergo a FBI fingerprint check for prior criminal history, and in seven of those states, an FBI check was done only when a person was applying for an armed guard position.⁵ More recent estimates have put the number of states that offer FBI checks for security guards at 16.⁶

Regardless of the exact number of states that are currently conducting FBI checks on security guards, it is abundantly clear that at this moment --- despite the pre-PSOEAA authority states possessed to conduct FBI checks on security guards, and despite the enactment of PSOEAA directing states to facilitate these checks --- the majority of states do NOT conduct these checks.

As mentioned, NASCO supports amending the PSOEAA so that employers of security guard could alternatively use a “channeler” to obtain FBI criminal history checks in states not doing check. Furthermore, NASCO believes such legislation is strongly justified by Congress’ passage of the PSEOAA, public policy, and current federal and state background check practices and realities.

The PSOEAA and Public Policy

³ NASCO “Background Screening Resolution” October 17, 2007 APPENDIX 1

⁴ PL 92-544

⁵ Prepared Statement of Mr. Don Walker, Chairman, Securitas Services USA, “Legislative Hearing on S.1743 the “Private Security Officer Employment Authorization Act of 2003,” Before the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security , 108th Cong., Serial No. 108-89 (March 30, 2004).
<http://judiciary.house.gov/HearingTestimony.aspx?ID=59>

⁶ January 30, 2008 Letter to Attorney General Michael Mukasey from Senators Joseph Lieberman, Carl Levin, Lamar Alexander, and Representative Steve Cohen.

First, and foremost, when Congress passed the PSOEAA in 2004, the purpose of the law was clear - to provide the authority for security guard employers in states not doing FBI checks to get these checks per request. At the time, directing employers to go through state identification bureaus made sense since many of the states not conducting FBI checks were regulating security guards and states were already familiar with and conducting FBI checks on other classes of employees. However, for a variety of reasons, it is now very apparent that processing the FBI checks through the state identification bureau is not sufficient or workable.

In trying to find a solution to the current FBI check “processing” problem, it is very important not to lose sight of the urgent national security and public safety concerns that lead to the passage of the PSOEAA and NASCO is hopeful a solution can be fashioned as soon as possible.

Today, nearly two million people are employed in private security domestically compared to less than 700,000 law enforcement personnel. Security officers are on duty protecting businesses, public offices, schools, hospitals, nursing homes, day care centers, shopping centers and housing communities. In addition, private security officers are stationed at many of the nation’s critical infrastructure sites and facilities including nuclear plants, public utilities, oil pipelines, ports, bridges, tunnels and many other places.

Recent estimates indicate that 85% of the nation’s infrastructure is owned and operated by private industry and private security officers protect the vast majority of these assets. Similarly, the overwhelming majority of “first responders”, who are first on the scene in the case of an attack or other emergency situation in our manufacturing plants, office buildings, banks, public utilities, shopping malls, are, more often than not, private security officers.

In addition to the policy arguments much empirical evidence was also provided to Congress on why FBI screening was needed for security guards during the consideration of the PSOEAA. Here are three examples provided at the 2004 House hearing on the PSOEAA.

(1) In California, in 2003 there were over 69,000 “Guard Card” applicants. Of those applicants, almost 18,000 had an FBI “rap” sheet indicating some sort of a prior criminal history. Thanks largely to a new law that went into effect in California in 2003, over 9,000 or 51% of those applicants with a rap sheet were denied a guard card., The three most common reasons for denial were for sex related offenses, burglary/robbery and battery convictions. Other data also showed that registered sex offenders frequently attempted to obtain a guard card in California.⁷

(2) In Illinois, a 2004 review showed that the FBI criminal history records check eliminated four times as many applicants as the Illinois State Police check for crimes committed within the State. Put another way, Illinois State Police clear 87% of all applicants while the FBI check clears only 64%--a 23% difference.⁸

⁷ See Footnote 2, Statement of Don Walker, Chairman Securitas Services USA.

⁸ Ibid.

(3) Rep. Shelia Jackson-Lee asked one of the witnesses, Westchester DA Jeanine Pirro, “Has there been difficulty in hiring private security officers and finding that they have criminal backgrounds?” Ms. Pirro replied, “It is difficult to identify those individuals who have a criminal history from another State in New York. That is the problem and just recently in Westchester there were several security guards that my office indicted for sexual assault of students who had criminal histories in other States that we had no way of knowing and that the schools had no way of knowing.”⁹

Given the importance of private security to protecting our nation’s critical infrastructure, as well as people and property, and given the implicit trust that people have, and should have, in private security guards, it made complete sense when Congress passed the PSOEEA in order to better ensure that persons who are convicted of serious crimes are identified and prevented from employment in these positions of trust. It also makes sense now that Congress pursues opportunities to facilitate these FBI CHRI checks as authorized in PSOEEA.

Background Check Developments and Realities

While the Department of Justice and the FBI can best describe the processes necessary to set up a system for facilitating FBI CHRI checks through an authorized entity or channeler, the use of a private entity or a “channeler” to facilitate criminal background checks is a well developed concept. In 2006, pursuant to a request from Congress, DOJ produced a comprehensive “Report on Background Checks” that specifically addressed the issue of employers getting FBI checks from non-state parties, and the use of private third party channelers was recommended.¹⁰

NASCO has specifically discussed the PSOEEA checks problems with DOJ officials and we have not received any indication that, if authorized by Congress, the use of private parties or channelers to conduct PSOEEA FBI checks on security guards would not work. Furthermore, the DOJ Report states that “there already exist standards to govern management of records” by channelers.¹¹

Of course, such a screening entity or “channeler” would be fully governed by applicable laws and regulations regarding the handling of FBI records. In fact, the use of private channelers to obtain FBI CHRI is already authorized and regulated by DOJ.

In the DOJ Background Report, it is recommended that “existing private sector infrastructure for background screening” (such as a “consumer reporting agency”) be used to obtain FBI checks in state not conducting such checks. As mentioned in Footnote 1, if a state is not regulating an industry, there are a variety of reasons complicating any efforts to facilitate these checks and

⁹ Legislative Hearing on S.1743 the “Private Security Officer Employment Authorization Act of 2003,” Before the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security, 108th Cong., Serial No. 108-89 (March 30, 2004). Transcript at Page 68.
http://commdocs.house.gov/committees/judiciary/hju92829.000/hju92829_of.htm

¹⁰ U.S. Department of Justice Office of the Attorney General “THE ATTORNEY GENERAL’S REPORT ON CRIMINAL HISTORY BACKGROUND CHECKS” June 2006.

¹¹ Ibid at 102

prompting states to not want to conduct FBI checks, screening or fitness determinations for employee in that industry. When a state is not willing to do FBI checks on certain employees, DOJ recommends that the FBI be able to send the CHRI; (1) directly to an authorized employer (direct access is currently not legal for security guard employers under the PSOEAA or other statutes and is a much bigger issue) or, (2) to a third party who could do the required state or federal screening for the employer.

As mentioned, there are already standards in place that would safeguard the FBI CHRI when received by a channeler, and the authorization for third parties to conduct FBI screening when a state is not doing it as DOJ recommends, is precisely what security guard employers need from Congress in legislation to address the current problem with implementation of the PSOEAA. This solution is especially needed to facilitate checks in those ten states where there are no regulations governing security guards. The DOJ Report explains why FBI records should go to non-state parties;

“...(t)he FBI should be authorized to disseminate FBI-maintained criminal history records directly to employers or entities authorized to request a criminal history background check, or consumer reporting agencies acting on their behalf, subject to screening and training requirements and other conditions for access and use of the information established by law and Attorney General regulations behalf, subject to screening and training requirements and other conditions for access and use of the information established by law and Attorney General regulations. EXPLANATION: A major limitation in the background check scheme under Public Law 92-544 is the requirement that the records be disseminated only to a governmental agency that applies suitability criteria and provides the results of its fitness determination – qualified or not qualified – to the employer or entity involved. This makes sense when the state is affirmatively regulating employment in a particular area and a government agency is designated as responsible for reviewing the records and making suitability determinations according to specified criteria. This model does not necessarily make sense in industries where employment is not being regulated by the government. Requiring suitability screening by a government agency when there is no regulation generally has meant that the screening does not get done. This has been the true in the case of the NCPA/VCA. Notwithstanding the authority provided under those statutes, most states have not created means for the screening of employees or volunteers for entities providing services to children, the elderly, and disabled persons.¹²

DOJ has made it clear, and state agencies have confirmed, that unless a state is already conducting fitness determinations or suitability screening for employers as part of a licensing or regulatory regime for a particular class of employees, it is not likely that states will affirmatively undertake setting up a process to conduct further checks or screening -- despite federal legislation such as the PSOEAA authorizing and encouraging such checks. For states to start doing new FBI checks, it will involve the need for additional state resource and administrative support, and such a system cannot be set up simply because there is also authority to collect user fees. In fact, in those states where there is no regulation of security guards, it has been suggested that state legislation would be necessary to set up an FBI check system pursuant to the

¹² Ibid at 90.

PSOEAA, thus putting security guard employers in the same difficult situation they were in before the passage of the PSOEAA.

NASCO will continue to work state agencies and organizations, state representatives and support all efforts to improve the facilitation of FBI CHRI checks pursuant to the implementation of the PSOEAA. However, given the inaction of the past several years, the observations of DOJ on such situations and state level budget and administrative hurdles, NASCO clearly believes congressional authorization to use third parties to obtain FBI checks is a solution definitely worth pursuing.

Regardless of the process to conduct these checks, NASCO recognizes and supports the authority of states to regulate the security guard industry. If Congress allows third parties to conduct FBI checks for employees in states where such checks are not available, NASCO fully supports the DOJ Report's recommendation "that the law of the state of employment should be applied in the screening" when an FBI check is done for an employee in a that state.¹³ NASCO is very concerned about any implication, which could be received negatively by the states, that legislation to facilitate FBI checks for security officers in every state will permit federal screening standards to supersede existing state standards.

Comments on H.R. 2703

NASCO has reviewed H.R. 2703 and looks forward to the opportunity to discuss the legislation in detail with the drafters and Committee staff. As noted, NASCO supports the primary element of H.R. 2703 which authorizes the use of a non-state "entity designated by DOJ" to conduct PSOEAA checks for security guard employers when a state is not doing such checks. NASCO believes this notion should be the foundation of any legislative effort to address to the current situation.

There are some elements of H.R. 2703 which raise issues that require more clarification and discussion including the structure and processes for the DOJ authorized entity, the list of disqualifying offenses, mandatory checks and temporary hires, as well as clarification regarding application of standards for fitness determinations and safeguards to prevent superseding of state authority to regulate private security.

Conclusion

Thank you for holding today's hearing and bringing attention to the problem associated with the lack of FBI CHRI checks for private security guards pursuant to the implementation of PSOEAA. We believe these checks, combined with NASCO's continued efforts to raise standards at the federal, state and local level for the licensing of private security companies and the registration, screening and training of private security guards, is vital to our national security and an issue of public safety and protection. We look forward to working with you to find a solution to this problem.

¹³ Ibid at 120.

