

ASSEMBLY, No. 4584

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED AUGUST 25, 2020

Sponsored by:

Assemblywoman ANGELICA M. JIMENEZ

District 32 (Bergen and Hudson)

SYNOPSIS

Requires criminal history record background checks for public employees handling vital records.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** requiring criminal history record background checks for
2 public employees handling vital records, supplementing Title 26
3 of the Revised Statutes and amending P.L.1997, c.100.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. (New section) As used in this act:

9 "Applicant" means an applicant for employment as a vital
10 records employee.

11 "Commissioner" means the Commissioner of Health.

12 "Current employee" means a person employed as a vital records
13 employee on the effective date of this act.

14 "Employer" means a prospective or actual employer of a vital
15 records employee.

16 "Vital records" means the birth, death, fetal death, marriage and
17 domestic partnership records from which vital statistics are
18 produced, including all paper records, indices, forms, data, data
19 systems and related documents or information collected or stored in
20 the registration of vital statistics.

21 "Vital records employee" means a person who is employed,
22 whether on a full-time, part-time, permanent, temporary or
23 consulting basis, at a State, county or municipal government
24 agency, and who is authorized, as part of that person's employment
25 responsibilities, to be involved with the registration, issuance,
26 processing, storage, dissemination or confidential destruction of
27 vital records.

28 "Vital statistics" means statistics concerning births, deaths, fetal
29 deaths, marriages and domestic partnerships.

30
31 2. (New section) a. (1) An employer shall not hire an
32 applicant unless the employer first determines, consistent with the
33 requirements of this act, that no criminal history record information
34 exists on file in the Federal Bureau of Investigation, Identification
35 Division, or in the State Bureau of Identification in the Division of
36 State Police, which may disqualify the person from being employed
37 as a vital records employee.

38 (2) An employer shall require that each current employee
39 undergo a criminal history record background check no later than
40 the 90th day after the effective date of this act, as a condition of
41 retaining that person's position as a vital records employee, in the
42 same manner and for the same purpose as that provided for an
43 applicant pursuant to this section.

44 b. An applicant or current employee shall be disqualified from
45 being employed as a vital records employee if that person's criminal

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 history record background check reveals a record of conviction of
2 any of the following crimes and offenses:

3 (1) in New Jersey, any crime or disorderly persons offense:

4 (a) involving theft as set forth in chapter 20 of Title 2C of the
5 New Jersey Statutes;

6 (b) involving forgery or fraudulent practices as set forth in
7 chapter 21 of Title 2C of the New Jersey Statutes; or

8 (c) involving any controlled dangerous substance or controlled
9 substance analog as set forth in chapter 35 of Title 2C of the New
10 Jersey Statutes except paragraph (4) of subsection a. of
11 N.J.S.2C:35-10; or

12 (2) in any other state or jurisdiction, of conduct which, if
13 committed in New Jersey, would constitute any of the crimes or
14 disorderly persons offenses described in paragraph (1) of this
15 subsection.

16 c. Notwithstanding the provisions of subsection b. of this
17 section to the contrary, no applicant or current employee shall be
18 disqualified from employment as a vital records employee on the
19 basis of any conviction disclosed by a criminal history record
20 background check performed pursuant to this act if that person has
21 affirmatively demonstrated clear and convincing evidence of the
22 person's rehabilitation to the Commissioner of Health. In
23 determining whether an applicant or current employee has
24 affirmatively demonstrated rehabilitation, the following factors
25 shall be considered:

26 (1) the nature and responsibility of the position which the
27 applicant would hold, has held or currently holds, as the case may
28 be;

29 (2) the nature and seriousness of the offense;

30 (3) the circumstances under which the offense occurred;

31 (4) the date of the offense;

32 (5) the age of the applicant when the offense was committed;

33 (6) whether the offense was an isolated or repeated incident;

34 (7) any social conditions which may have contributed to the
35 offense; and

36 (8) any evidence of rehabilitation, including good conduct in
37 prison or in the community, counseling or psychiatric treatment
38 received, acquisition of additional academic or vocational
39 schooling, successful participation in correctional work-release
40 programs, or the recommendation of those who have had the
41 applicant or current employee under their supervision.

42 d. (1) If an applicant refuses to consent to, or cooperate in, the
43 securing of a criminal history record background check, the
44 employer shall not hire that person as a vital records employee.

45 (2) If a current employee refuses to consent to, or cooperate in,
46 the securing of a criminal history record background check, the
47 employer shall terminate that person's employment as a vital
48 records employee but shall make a reasonable effort to retain that

1 person as an employee in another position within the agency that is
2 not involved with the registration, issuance, processing, storage,
3 dissemination or confidential destruction of vital records, and for
4 which the current employee is qualified.

5
6 3. (New section) a. An applicant or current employee who is
7 required to undergo a criminal history record background check
8 pursuant to section 2 of this act shall submit to the commissioner
9 that individual's name, address and fingerprints taken by a State or
10 municipal law enforcement agency or by a private entity under
11 contract with the State. The commissioner is authorized to
12 exchange fingerprint data with and receive criminal history record
13 information from the Federal Bureau of Investigation and the
14 Division of State Police for use in making the determinations
15 required pursuant to this act.

16 b. Upon receipt of the criminal history record information for
17 an applicant from the Federal Bureau of Investigation or the
18 Division of State Police, the commissioner shall immediately notify
19 the employer, who shall immediately notify the applicant or current
20 employee in writing. If the applicant or current employee is
21 disqualified from employment as a vital records employee on the
22 basis of any conviction disclosed by the criminal history record
23 background check, the conviction or convictions that constitute the
24 basis for the disqualification shall be identified in the notice to that
25 individual.

26 c. The applicant or current employee shall have 30 days from
27 the date of the written notice of disqualification to petition the
28 commissioner for a hearing on the accuracy of the applicant's or
29 current employee's criminal history record information or to
30 establish the applicant's or current employee's rehabilitation under
31 subsection c. of section 2 of this act. Upon the issuance of a final
32 decision on a petition to the commissioner, pursuant to this
33 subsection, the commissioner shall notify the applicant or current
34 employee as to whether that individual remains disqualified.

35 d. If a current employee is disqualified from employment as a
36 vital records employee on the basis of any conviction disclosed by
37 the criminal history record background check, the employer shall
38 terminate that person's employment as a vital records employee but
39 shall make a reasonable effort to retain that person as an employee
40 in another position within the agency that is not involved with the
41 registration, issuance, processing, storage, dissemination or
42 confidential destruction of vital records, and for which the current
43 employee is qualified.

44
45 4. (New section) An applicant or current employee shall be
46 required to assume the cost of the criminal history record
47 background check, unless the applicant's prospective employer or

1 current employee's employer elects to assume the cost of the
2 criminal history record background check.

3
4 5. The commissioner, pursuant to the "Administrative
5 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt
6 rules and regulations to effectuate the purposes of this act.

7
8 6. Section 14 of P.L.1997, c.100 (C.53:1-20.9a) is amended to
9 read as follows:

10 14. a. In accordance with the provisions of sections 2 through 6
11 and sections 7 through 13 of P.L.1997, c.100 (C.26:2H-83 through
12 87 and C.45:11-24.3 through 24.9) **and**, P.L.2002, c.104 (C.45:1-
13 28 et al.) and P.L. _____, c. _____ (C. _____) (pending before the
14 Legislature as this bill), the Division of State Police in the
15 Department of Law and Public Safety shall conduct a criminal
16 history record background check, including a name and fingerprint
17 identification check, of:

18 (1) each applicant for nurse aide or personal care assistant
19 certification submitted to the Department of Health **and Senior**
20 **Services** and of each applicant for homemaker-home health aide
21 certification submitted to the New Jersey Board of Nursing in the
22 Division of Consumer Affairs;

23 (2) each nurse aide or personal care assistant certified by the
24 Department of Health **and Senior Services** and each homemaker-
25 home health aide certified by the New Jersey Board of Nursing, as
26 required pursuant to P.L.1997, c.100 (C.26:2H-83 et al.); **and**

27 (3) each applicant for licensure or other authorization to engage
28 in a health care profession who is required to undergo a criminal
29 history record background check pursuant to P.L.2002, c.104
30 (C.45:1-28 et al.); and

31 (4) each applicant for employment as a vital records employee
32 and each vital records employee who is required to undergo a
33 criminal history record background check pursuant to P.L. _____,
34 c. _____ (C. _____) (pending before the Legislature as this bill).

35 b. For the purpose of conducting a criminal history record
36 background check pursuant to subsection a. of this section, the
37 Division of State Police shall examine its own files and arrange for
38 a similar examination by federal authorities. The division shall
39 immediately forward the information obtained as a result of
40 conducting the check to:

41 (1) the Commissioner of Health **and Senior Services**, in the
42 case of an applicant for nurse aide or personal care assistant
43 certification or a certified nurse aide or personal care assistant;

44 (2) the New Jersey Board of Nursing in the Division of
45 Consumer Affairs in the Department of Law and Public Safety, in
46 the case of an applicant for homemaker-home health aide
47 certification or a certified homemaker-home health aide; **and**

(3) the Director of the Division of Consumer Affairs in the Department of Law and Public Safety, in the case of an applicant for licensure or other authorization to practice as a health care professional as defined in section 1 of P.L.2002, c.104 (C.45:1-28); and

(4) the Commissioner of Health, in the case of an applicant for employment as a vital records employee or a current employee as defined in section 1 of P.L. , c. (C.) (pending before the Legislature as this bill).

(cf: P.L.2002, c.104, s.5)

7. This act shall take effect on the 180th day after enactment, but the Commissioner of Health may take such anticipatory administrative action in advance as shall be necessary for the implementation of the act.

STATEMENT

This bill provides for criminal history record background checks for public employees handling vital records as a condition of their employment, who are termed "vital records employees" in the bill.

The bill defines "vital records employee" to mean a person who is employed, whether on a full-time, part-time, permanent, temporary or consulting basis, at a State, county or municipal government agency, and who is authorized, as part of that person's employment responsibilities, to be involved with the registration, issuance, processing, storage, dissemination or confidential destruction of vital records.

Specifically, the bill provides as follows:

- An employer (i.e., a State, county or municipal government agency) is prohibited from hiring an applicant for employment as a vital records employee without first determining that no criminal history record information exists on file in the Federal Bureau of Investigation (FBI) or the Division of State Police which may disqualify the person from employment as a vital records employee; and an employer must ensure that each current employee undergo a criminal history record background check no later than the 90th day after the effective date of the bill, as a condition of retaining that person's position as a vital records employee, in the same manner and for the same purpose as that provided for an applicant.

- An applicant or current employee is to be disqualified from being employed as a vital records employee if that person's criminal history record background check reveals a record of conviction of any of the following crimes and offenses:

-- in New Jersey, any crime or disorderly persons offense:

(a) involving theft as set forth in chapter 20 of Title 2C of the New Jersey Statutes;

- 1 (b) involving forgery or fraudulent practices as set forth in chapter
2 21 of Title 2C of the New Jersey Statutes; or
- 3 (c) involving any controlled dangerous substance or controlled
4 substance analog as set forth in chapter 35 of Title 2C of the New
5 Jersey Statutes except paragraph (4) of subsection a. of
6 N.J.S.A.2C:35-10; or
- 7 -- in any other state or jurisdiction, of conduct which, if committed
8 in New Jersey, would constitute any of these crimes or disorderly
9 persons offenses.
- 10 • No applicant or current employee is to be disqualified from
11 employment as a vital records employee on the basis of any
12 conviction disclosed by a criminal history record background check
13 performed pursuant to the bill if that person has affirmatively
14 demonstrated clear and convincing evidence of the person's
15 rehabilitation to the Commissioner of Health, based upon the
16 factors enumerated in the bill.
- 17 • If an applicant refuses to consent to, or cooperate in, the
18 securing of a criminal history record background check, the
19 employer is not to hire that person as a vital records employee; and,
20 if a current employee refuses to consent to, or cooperate in, the
21 securing of a criminal history record background check, the
22 employer is to terminate that person's employment as a vital records
23 employee but is to make a reasonable effort to retain that person as
24 an employee in another position within the agency that is not
25 involved with the registration, issuance, processing, storage,
26 dissemination or confidential destruction of vital records, and for
27 which the current employee is qualified.
- 28 • An applicant or current employee who is required to undergo
29 a criminal history record background check is to submit to the
30 commissioner that individual's name, address and fingerprints taken
31 by a State or municipal law enforcement agency or by a private
32 entity under contract with the State. The commissioner is
33 authorized to exchange fingerprint data with and receive criminal
34 history record information from the FBI and the Division of State
35 Police for use in making the determinations required pursuant to the
36 bill.
- 37 • Upon receipt of the criminal history record information for
38 an applicant from the FBI or the Division of State Police, the
39 commissioner is to immediately notify the employer, who is to
40 immediately notify the applicant or current employee in writing. If
41 the applicant or current employee is disqualified from employment
42 as a vital records employee on the basis of any conviction disclosed
43 by the criminal history record background check, the conviction or
44 convictions that constitute the basis for the disqualification is to be
45 identified in the notice to that individual.
- 46 • The applicant or current employee is to have 30 days from
47 the date of the written notice of disqualification to petition the
48 commissioner for a hearing on the accuracy of the applicant's or

1 current employee's criminal history record information or to
2 establish the applicant's or current employee's rehabilitation. Upon
3 the issuance of a final decision on a petition to the commissioner,
4 the commissioner is to notify the applicant or current employee as
5 to whether that individual remains disqualified.

6 • If a current employee is disqualified from employment as a
7 vital records employee on the basis of any conviction disclosed by
8 the criminal history record background check, the employer is to
9 terminate that person's employment as a vital records employee but
10 is to make a reasonable effort to retain the person as an employee in
11 another position within the agency that is not involved with the
12 registration, issuance, processing, storage, dissemination or
13 confidential destruction of vital records, and for which the current
14 employee is qualified.

15 • An applicant or current employee is required to assume the
16 cost of the criminal history record background check, unless the
17 employer elects to assume the cost.

18 • The bill takes effect on the 180th day after enactment, but
19 authorizes the Commissioner of Health to take anticipatory
20 administrative action in advance as necessary for its implementation.