

SENATE, No. 838

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator NELLIE POU

District 35 (Bergen and Passaic)

SYNOPSIS

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

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



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 and Senior
12 Services.

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

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

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

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

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

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

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

45 b. An applicant or current employee shall be disqualified from

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 being employed as a vital records employee if that person's criminal
2 history record background check reveals a record of conviction of
3 any of the following crimes and offenses:

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

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

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

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

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

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

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

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

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

32 (4) the date of the offense;

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

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

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

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

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

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

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

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

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

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

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

45
46 4. (New section) An applicant or current employee shall be
47 required to assume the cost of the criminal history record
48 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 case
42 of an applicant for nurse aide or personal care assistant certification
43 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]**

48 (3) the Director of the Division of Consumer Affairs in the

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

5 (4) the Commissioner of Health and Senior Services, in the case
6 of an applicant for employment as a vital records employee or a
7 current employee as defined in section 1 of P.L. _____, c. _____ (C. _____)
8 (pending before the Legislature as this bill).
9 (cf: P.L.2002, c.104, s.5)

10
11 7. This act shall take effect on the 180th day after enactment,
12 but the Commissioner of Health and Senior Services may take such
13 anticipatory administrative action in advance as shall be necessary
14 for the implementation of the act.

15 16 17 STATEMENT

18
19 This bill provides for criminal history record background checks
20 for public employees handling vital records as a condition of their
21 employment, who are termed "vital records employees" in the bill.

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

29 Specifically, the bill provides as follows:

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

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

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

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

48 (b) involving forgery or fraudulent practices as set forth in chapter

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

- 1 establish the applicant's or current employee's rehabilitation. Upon
2 the issuance of a final decision on a petition to the commissioner,
3 the commissioner is to notify the applicant or current employee as
4 to whether that individual remains disqualified.
- 5 • If a current employee is disqualified from employment as a
6 vital records employee on the basis of any conviction disclosed by
7 the criminal history record background check, the employer is to
8 terminate that person's employment as a vital records employee but
9 is to make a reasonable effort to retain the person as an employee in
10 another position within the agency that is not involved with the
11 registration, issuance, processing, storage, dissemination or
12 confidential destruction of vital records, and for which the current
13 employee is qualified.
- 14 • An applicant or current employee is required to assume the
15 cost of the criminal history record background check, unless the
16 employer elects to assume the cost.
- 17 • The bill takes effect on the 180th day after enactment, but
18 authorizes the Commissioner of Health and Senior Services to take
19 anticipatory administrative action in advance as necessary for its
20 implementation.