# 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.

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

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

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

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

"Commissioner" means the Commissioner of Health and Senior Services.

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

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

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

"Vital records employee" means 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.

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

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

(2) An employer shall require that each current employee undergo a criminal history record background check no later than the 90th day after the effective date of this act, 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 pursuant to this section.

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 <u>thus</u> is new matter.**

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:

(1) 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;

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

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

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

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

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

(2) the nature and seriousness of the offense;

(3) the circumstances under which the offense occurred;

(4) the date of the offense;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) the New Jersey Board of Nursing in the Division of Consumer Affairs in the Department of Law and Public Safety, in the case of an applicant for homemaker-home health aide 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 and Senior Services, 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 and Senior Services 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;

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

21 of Title 2C of the New Jersey Statutes; or

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

-- in any other state or jurisdiction, of conduct which, if committed in New Jersey, would constitute any of these crimes or disorderly persons offenses.

- No applicant or current employee is to be disqualified from employment as a vital records employee on the basis of any conviction disclosed by a criminal history record background check performed pursuant to the bill if that person has affirmatively demonstrated clear and convincing evidence of the person's rehabilitation to the Commissioner of Health and Senior Services, based upon the factors enumerated in the bill.

- If an applicant refuses to consent to, or cooperate in, the securing of a criminal history record background check, the employer is not to hire that person as a vital records employee; and, if a current employee refuses to consent to, or cooperate in, the securing of a criminal history record background check, the employer is to terminate that person's employment as a vital records employee but is to make a reasonable effort to retain that person as an employee in another position within the agency that is not involved with the registration, issuance, processing, storage, dissemination or confidential destruction of vital records, and for which the current employee is qualified.

- An applicant or current employee who is required to undergo a criminal history record background check is to submit to the commissioner that individual's name, address and fingerprints taken by a State or municipal law enforcement agency or by a private entity under contract with the State. The commissioner is authorized to exchange fingerprint data with and receive criminal history record information from the FBI and the Division of State Police for use in making the determinations required pursuant to the bill.

- Upon receipt of the criminal history record information for an applicant from the FBI or the Division of State Police, the commissioner is to immediately notify the employer, who is to immediately notify the applicant or current employee in writing. If the applicant or current employee is disqualified from employment as a vital records employee on the basis of any conviction disclosed by the criminal history record background check, the conviction or convictions that constitute the basis for the disqualification is to be identified in the notice to that individual.

- The applicant or current employee is to have 30 days from the date of the written notice of disqualification to petition the commissioner for a hearing on the accuracy of the applicant's or current employee's criminal history record information or to

establish the applicant's or current employee's rehabilitation. Upon the issuance of a final decision on a petition to the commissioner, the commissioner is to notify the applicant or current employee as to whether that individual remains disqualified.

- If a current employee is disqualified from employment as a vital records employee on the basis of any conviction disclosed by the criminal history record background check, the employer is to terminate that person's employment as a vital records employee but is to make a reasonable effort to retain the person as an employee in another position within the agency that is not involved with the registration, issuance, processing, storage, dissemination or confidential destruction of vital records, and for which the current employee is qualified.
- An applicant or current employee is required to assume the cost of the criminal history record background check, unless the employer elects to assume the cost.
- The bill takes effect on the 180th day after enactment, but authorizes the Commissioner of Health and Senior Services to take anticipatory administrative action in advance as necessary for its implementation.