

CHAPTER 97

AN ACT concerning criminal history record background checks and amending P.L.1999, c.358.

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

1. Section 1 of P.L.1999, c.358 (C.30:6D-63) is amended to read as follows:

C.30:6D-63 Definitions relative to criminal history background checks for community agency employees.

1. As used in this act:
 - a. "Commissioner" means the Commissioner of Human Services.
 - b. "Community agency employee" means any individual 18 years of age or older who is employed by a public or private agency under contract with the department to provide services to department clients who have developmental disabilities and includes all personnel working or residing at an agency who may come into direct contact with clients.
 - c. "Community agency head" means the person responsible for the overall operation of the agency under contract with the department.
 - d. "Department" means the Department of Human Services.
 - e. "Community agency" means a public or private agency under contract with the department to provide services to department clients who have developmental disabilities.
 - f. "Community agency board" means the board of directors of a community agency.

2. Section 2 of P.L.1999, c.358 (C.30:6D-64) is amended to read as follows:

C.30:6D-64 Contract with community agency.

2. a. The department shall not contract with any community agency for the provision of services unless it has first been determined, consistent with the requirement and standards 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 would disqualify the community agency head or the community agency employees from such employment. The determination shall be made by the community agency board with regard to the agency head and the determination shall be made by the agency head with regard to all agency employees.

A criminal history record background check shall be conducted at least once every two years for a community agency head and community agency employees; except that the department, in lieu of conducting criminal history record background checks every two years, may determine whether an individual has been convicted of a crime or disorderly persons offense which would disqualify that person from employment by an alternative means, including, but not limited to, a match of a person's Social Security number or other identifying information with records of criminal proceedings in this and other states. If the department elects to implement an alternative means of determining whether an individual has been convicted of a crime or disorderly persons offense which would disqualify that individual from employment, the department shall report to the Governor and the Legislature prior to its implementation on the projected costs and procedures to be followed with respect to its implementation and setting forth the rationale therefor.

b. An individual shall be disqualified from employment under this act if that individual's criminal history record 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 danger to the person, meaning those crimes and disorderly persons offenses set forth in N.J.S.2C:11-1 et seq., N.J.S.2C:12-1 et seq., N.J.S.2C:13-1 et seq., N.J.S.2C:14-1 et seq. or N.J.S.2C:15-1 et seq.; or
 - (b) Against the family, children or incompetents, meaning those crimes and disorderly persons offenses set forth in N.J.S.2C:24-1 et seq.; or
 - (c) A crime or offense involving the manufacture, transportation, sale, possession, or habitual use of a controlled dangerous substance as defined in the "New Jersey Controlled Dangerous Substances Act," P.L.1970, c.226 (C.24:21-1 et seq.).
- (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. If a prospective employee refuses to consent to, or cooperate in, securing of a criminal history record background check, the person shall not be considered for employment.

d. If a current employee refuses to consent to, or cooperate in, the securing of a criminal history record background check, the person shall be immediately removed from his position and the person's employment shall be terminated.

e. Notwithstanding the provisions of subsection b. of this section to the contrary, provisional employment of an individual is authorized for a period not to exceed six months if the individual submits to the appointing authority a sworn statement attesting that the individual has not been convicted of any crime or disorderly persons offense as described in this act, pending a determination that no criminal history record background information which would disqualify the individual exists on file in the State Bureau of Identification in the Division of State Police or in the Federal Bureau of Investigation, Identification Division. An individual who is provisionally employed pursuant to this subsection shall perform his duties under the supervision of a superior who acts in a supervisory capacity over that individual until the determination concerning the federal and State information is complete, where possible.

f. Notwithstanding the provisions of subsection b. of this section to the contrary, no individual shall be disqualified from employment on the basis of any conviction disclosed by a criminal history record background check performed pursuant to sections 2 through 7 of P.L.1999, c.358 (C.30:6D-64 through 69) if the individual has affirmatively demonstrated to the community agency head, or the community agency board if the individual is the community agency head, clear and convincing evidence of the individual's rehabilitation. In determining whether an individual has affirmatively demonstrated rehabilitation, the following factors shall be considered:

(1) the nature and responsibility of the position which the convicted individual 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 individual 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 individual under their supervision.

3. Section 3 of P.L.1999, c.358 (C.30:6D-65) is amended to read as follows:

C.30:6D-65 Authorization to exchange data.

3. 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 by this act. The Division of State Police shall also promptly notify the department in the event an individual who was the subject of a criminal history record background check conducted pursuant to sections 2 through 7 of P.L.1999, c.358 (C.30:6D-64 through 69), is convicted of a crime or offense in this State after the date that the criminal history record background check was performed. Upon receipt of such notification, the community agency head, or community agency board if the individual is the community agency head, shall make a determination regarding the employment of the individual. No criminal history record check shall be performed pursuant to this act unless the applicant or employee shall have furnished his written consent to the check. All applicants or current employees shall have their fingerprints taken on standard fingerprint cards by a State or municipal law enforcement agency, a personnel unit of the department or a community agency designated by the department.

4. Section 4 of P.L. 1999, c.358 (C.30:6D-66) is amended to read as follows:

C.30:6D-66 Written notice to applicant, employee of record information.

4. Upon receipt of the criminal history record information from the Federal Bureau of Investigation and the Division of State Police, written notice shall be provided to the applicant or employee as follows:

a. In the case of a community agency head, the community agency board shall notify the person in writing of his qualification or disqualification for employment under this act; and

b. In the case of a community agency applicant or employee, the community agency head shall notify the person of his qualification or disqualification for employment under this act. If the applicant or employee is disqualified, the conviction or convictions which constitute the basis for the disqualification shall be identified in the written notice.

5. Section 5 of P.L.1999, c. 358 (C.30:6D-67) is amended to read as follows:

C.30:6D-67 Petition for hearing.

5. The applicant or employee shall have 30 days from the date of receipt of the written notice of disqualification to petition for a hearing on the accuracy of the criminal history record information. In the case of a community agency head, the petition shall be to the community agency board and the agency board shall make the determination. The community agency board shall provide notice to the community agency head that appeal of the determination is to the New Jersey Superior Court. In the case of a community agency applicant or employee, the petition shall be to the community agency head and the agency head shall make the determination. The community agency head shall provide notice that further appeal is to the New Jersey Superior Court.

6. Section 6 of P.L.1999, c.358 (C.30:6D-68) is amended to read as follows:

C.30:6D-68 Maintenance of information.

6. The community agency board shall maintain all criminal history record information submitted under this act in accordance with rules and regulations which the commissioner shall adopt to implement the provisions of this act.

7. Section 7 of P.L.1999, c.358 (C.30:6D-69) is amended to read as follows:

C.30:6D-69 Initiation of background check.

In accordance with this act, the community agency boards and community agency heads shall initiate a criminal history record background check on all applicants and current employees.

8. This act shall take effect immediately.

Approved August 29, 2000.