

## CHAPTER 254

**AN ACT** concerning criminal history records for certain persons working with children and amending P.L.1988, c.45 and P.L.1999, c.358.

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

1. Section 2 of P.L.1988, c.45 (C.30:4-3.5) is amended to read as follows:

C.30:4-3.5 Criminal history record checks.

2. a. A facility shall not employ any individual unless the Commissioner of Human Services has first determined, consistent with the requirements 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 that individual from being employed at the facility. A criminal history record background check shall be conducted at least once every two years for an individual employed at the facility. An individual shall be disqualified from employment under this act if that individual'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 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

(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.

b. Notwithstanding the provisions of subsection a. of this section, no individual shall be disqualified from employment under this act on the basis of any conviction disclosed by a criminal history record background check performed pursuant to this act if the individual has affirmatively demonstrated to the Commissioner of Human Services clear and convincing evidence of his 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;

(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 persons who have had the individual under their supervision.

c. If a prospective employee of a facility refuses to consent to, or cooperate in, the securing of a criminal history record background check, the commissioner shall direct the principal administrator not to consider the person for employment at the facility. The

prospective employee shall, however, retain any available right of review by the Civil Service Commission in the Department of Labor and Workforce Development.

d. If a current employee of a facility refuses to consent to, or cooperate in, the securing of a criminal history record background check, the commissioner shall direct the principal administrator to immediately remove the person from his position at the facility and to terminate the person's employment at the facility. The employee shall, however, retain any available right of review by the Civil Service Commission in the Department of Labor and Workforce Development.

e. Notwithstanding the provisions of subsection a. of this section to the contrary, a facility may provisionally employ an individual for a period not to exceed six months if that individual's State Bureau of Identification criminal history record background check does not contain any information that would disqualify the individual from employment at the facility and if the individual submits to the commissioner 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 Federal Bureau of Investigation, Identification Division. An individual who is provisionally employed pursuant to this subsection shall perform his duties at the facility under the direct supervision of a superior who acts in a supervisory capacity over that individual until the determination concerning the federal information is complete.

f. A conviction of a crime or disorderly persons offense against children as set forth in N.J.S.2C:24-4 adversely relates to a position in a facility that involves or would involve working directly with a person under 18 years of age. Individuals convicted of such crimes or disorderly persons offenses are permanently disqualified from such employment at a facility.

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 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 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.

g. A conviction of a crime or disorderly persons offense against children as set forth in N.J.S.2C:24-4 adversely relates to a position in a community agency that involves or would involve working directly with a person under 18 years of age. Individuals convicted of such crimes or disorderly persons offenses are permanently disqualified from such employment at a community agency.

3. This act shall take effect immediately.

Approved January 17, 2010.