

Psychiatric Facilities—Employees—Criminal History Record Background Checks—N.J. Stat. Ann. §§ 30:4-3.4 to 3.10; 53:1-20.8 (West Supp. 1989).

The Act mandates that criminal history record background checks will be performed on employees of state institutions or facilities that deal with mentally ill or developmentally disabled persons.¹ A person will not be hired, or be allowed to continue employment until the Commissioner of the Department of Human Services has determined that he does not have a criminal history which would disqualify him as a competent employee.² The crimes and disorderly persons offenses which render an employee incompetent are those which involve danger to the person;³ are against family, children, or incompetents;⁴ or which would be a crime or disorderly persons offense under New Jersey law, even though committed in another jurisdiction.⁵

A person will not be disqualified from employment as long as he has demonstrated, by clear and convincing evidence, that he has been rehabilitated for the crimes which are disclosed by the background check.⁶ The standards used for determining rehabilitation include: the nature and responsibility of the position to be held by the individual;⁷ the nature and seriousness of the offense;⁸ the circumstances of the offense;⁹ the date of the offense;¹⁰ the age of the individual;¹¹ the frequency of the offense;¹² the social conditions which could have influenced the occurrence;¹³ and any evidence that the individual has been rehabilitated.¹⁴

The criminal history record background check will be con-

¹ N.J. STAT. ANN. § 30:4-3.5(a).

² *Id.*

³ *Id.* § 30:4-3.5(a)(1)(a).

⁴ *Id.* § 30:4-3.5(a)(1)(b).

⁵ *Id.* § 30:4-3.5(a)(2).

⁶ *Id.* § 30:4-3.5(b).

⁷ *Id.* § 30:4-3.5(b)(1).

⁸ *Id.* § 30:4-3.5(b)(2).

⁹ *Id.* § 30:4-3.5(b)(3).

¹⁰ *Id.* § 30:4-3.5(b)(4).

¹¹ *Id.* § 30:4-3.5(b)(5).

¹² *Id.* § 30:4-3.5(b)(6).

¹³ *Id.* § 30:4-3.5(b)(7).

¹⁴ *Id.* § 30:4-3.5(b)(8).

ducted by the Division of State Police in the Department of Law and Public Safety.¹⁵ The background check requires that a name and fingerprint identification be executed for all present and prospective employees.¹⁶ The procedure is performed on both state and federal levels and the information is forwarded to the Commissioner of Human Services.¹⁷

Although a criminal history record background check must be performed before the person may be hired, the Commissioner will not conduct the background check without express written authorization from the applicant.¹⁸ The applicant must submit his name, address and fingerprints to the Commissioner of Human Services.¹⁹ A present or prospective employee who refuses to consent to or cooperate in the background check, will either be denied or removed from employment.²⁰ The individual will retain a right to a review of the decision by the Merit System Board.²¹

After the Commissioner of Human Services receives the background report, the individual will be accepted or denied as a qualified employee.²² The applicant or employee has thirty days in which to petition the Commissioner for a hearing on the accuracy of the report, or to offer proof of rehabilitation.²³

The Act requires that criminal history record background checks be performed on all current employees no later than 120 days after the effective date of the Act.²⁴ The Commissioner of Human Services must report to the Governor and legislature within three years describing the effectiveness of the criminal history record background checks in screening out unfit employees.²⁵

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¹⁵ *Id.* § 53:1-20.8.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* § 30:4-3.6.

¹⁹ *Id.*

²⁰ *Id.* § 30:4-3.5(c)-(d).

²¹ *Id.*

²² *Id.* § 30:4-3.7(a).

²³ *Id.* § 30:4-3.7(b).

²⁴ *Id.* § 30:4-3.7(d).

²⁵ *Id.* § 30:4-3.8.