

LEGISLATIVE HISTORY CHECKLIST

NJSA: 30: 4-3.4 to 30: 4-3.10

(Criminal History  
Background  
checks--Human  
Services  
Facilities  
Employees)

LAWS OF: 1988

CHAPTER: 45

Bill No: A328

Sponsor(s): Frelinghuysen

Date Introduced: Pre-filed

Committee: Assembly: Health & Human Resources

Senate: Institutions, Health & Welfare

Amended during passage: Yes

Date of Passage: Assembly: January 25, 1988

Senate: May 16, 1988

Date of Approval: June 28, 1988

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

Senate: Yes

Fiscal Note: No

Veto Message: No

Message on signing: No

Following were printed:

Reports: No

Hearings: No

See newspaper clipping--attached  
"Criminal background checks clear for state hospital workers, hirees." 6-29-88 Star  
Ledger

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§§ 1-7  
C. 30:4-3.4 to  
30:4-3.10  
§ 8 - C. 53:1-20.8  
§ 9 - Approp.  
§ 10 - Note to  
all sections

P.L. 1988, CHAPTER 45, *approved June 28, 1988*  
1988 Assembly No. 328 (*First Reprint*)

1 AN ACT concerning criminal history record background checks  
for certain State employees <sup>1</sup>[and] <sup>1</sup>,<sup>1</sup> supplementing Titles 30  
3 and 53 of the Revised Statutes, and making an appropriation  
therefor.

5

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

1. As used in this act:

9 a. "Employee" means any individual 18 years of age or older  
who is employed at a facility and works at the facility for the  
11 equivalent of at least one seven hour day per week. Employee  
includes but is not limited to the facility's director or principal  
13 administrator, teaching, social service, dietary, clerical and  
maintenance staff and the driver of a motor vehicle used to  
15 transport persons to and from the facility.

b. "Facility" means a State <sup>1</sup>[Institution] institution<sup>1</sup> or  
17 facility for the mentally ill or the developmentally disabled.

<sup>1</sup>[c. "Operator" means any person who sponsors, owns, or  
19 operates a facility which is subject to the provisions of this  
act.]<sup>1</sup>

21 2. a. <sup>1</sup>[No] A<sup>1</sup> facility shall <sup>1</sup>not<sup>1</sup> employ <sup>1</sup>[or contract for  
the services of]<sup>1</sup> any <sup>1</sup>[operator or employee] individual<sup>1</sup> unless  
23 the Commissioner of the Department of Human Services has  
first determined, consistent with the requirements and standards  
25 of this act, that no criminal history record information exists on  
file in the Federal Bureau of Investigation, Identification  
27 Division, or in the State Bureau of Identification in the Division  
of State Police, which would disqualify <sup>1</sup>[the] that<sup>1</sup> individual  
29 <sup>1</sup>[operator or employee]<sup>1</sup> from being employed <sup>1</sup>[or utilized in  
such capacity or position] at the facility<sup>1</sup>. An individual shall be

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.

Matter enclosed in superscript numerals has been adopted as follows:  
<sup>1</sup> Assembly AHH committee amendments adopted January 21, 1988.

1 disqualified from employment <sup>1</sup>[or service]<sup>1</sup> under this act if  
that individual's criminal history record check reveals a record  
3 of conviction of any of the following crimes and offenses:

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

5 (a) Involving danger to the person, meaning those  
crimes and disorderly persons offenses set forth in N.J.S.  
7 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

9 (b) Against the family, children or incompetents,  
meaning those crimes and disorderly persons offenses set  
11 forth in N.J.S. 2C:24-1 et seq.; or

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

b. Notwithstanding the provisions of subsection a. of this  
17 section, no individual shall be disqualified from employment <sup>1</sup>[or  
service]<sup>1</sup> under this act on the basis of any conviction disclosed  
19 by a criminal history record check performed pursuant to this  
act if the individual has affirmatively demonstrated to the  
21 Commissioner <sup>1</sup>of Human Services<sup>1</sup> clear and convincing  
evidence of his rehabilitation. In determining whether an  
23 individual has affirmatively demonstrated rehabilitation, the  
following factors shall be considered:

25 (1) The nature and responsibility of the position which the  
convicted individual would hold;

27 (2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

29 (4) The date of the offense;

(5) The age of the individual when the offense was committed;

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

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

(8) Any evidence of rehabilitation, including good conduct in  
35 prison or in the community, counseling or psychiatric treatment  
received, acquisition of additional academic or vocational

1 schooling, successful participation in correctional work-release  
2 programs, or the recommendation of persons who have had the  
3 individual under their supervision.

4 <sup>1</sup>[c. If the principal administrator of a facility does not  
5 provide the bureau with the information necessary to conduct  
6 the criminal history record background checks on the facility's  
7 employees, the commissioner may deny, suspend, revoke or  
8 refuse to renew the facility's contract, as the case may be.]<sup>1</sup>

9 <sup>1</sup>[d.] c.<sup>1</sup> If a prospective employee of a facility refuses to  
10 consent to, or cooperate in, the securing of a criminal history  
11 record background check, the commissioner shall direct the  
12 principal administrator not to consider the person for  
13 employment at the facility. The prospective employee shall,  
14 however, retain any available right of review by the Merit  
15 System Board <sup>1</sup>in the Department of Personnel<sup>1</sup>.

16 <sup>1</sup>[e.] d.<sup>1</sup> If a current employee of a facility refuses to consent  
17 to, or cooperate in, the securing of a criminal history record  
18 background check, the commissioner shall direct the principal  
19 administrator to immediately remove the person from his  
20 position at the facility and to terminate the person's  
21 employment at the facility. The employee shall, however,  
22 retain any available right of review by the Merit System Board  
23 <sup>1</sup>in the Department of Personnel<sup>1</sup>.

24 3. An applicant for employment or <sup>1</sup>[service in any of the  
25 positions covered by this act] a current employee<sup>1</sup> shall submit  
26 to the Commissioner <sup>1</sup>of Human Services<sup>1</sup> his name, address and  
27 fingerprints taken on standard fingerprint cards by a State or  
28 municipal law enforcement agency. The <sup>1</sup>[Commissioner]  
29 commissioner<sup>1</sup> is authorized to exchange fingerprint data with  
30 and receive criminal history record information from the  
31 Federal Bureau of Investigation and the Division of State Police  
32 for use in making the determinations required by this act. No  
33 criminal history record check shall be performed pursuant to  
34 this act unless the applicant shall have furnished his <sup>1</sup>[or her]<sup>1</sup>  
35 written consent to the check.

36 4. a. Upon receipt of the criminal history record information  
37 for an applicant from the Federal Bureau of Investigation and  
38 the Division of State Police, the <sup>1</sup>[Commissioner] commissioner<sup>1</sup>  
39 shall notify the applicant <sup>1</sup>or employee<sup>1</sup>, in writing, of the

1 applicant's <sup>1</sup>or employee's<sup>1</sup> qualification or disqualification for  
employment <sup>1</sup>[or service]<sup>1</sup> under this act. If the applicant <sup>1</sup>or  
3 employee<sup>1</sup> is disqualified, the conviction or convictions which  
constitute the basis for the disqualification shall be identified in  
5 the written notice.

b. The applicant <sup>1</sup>or employee<sup>1</sup> shall have 30 days from the  
7 date of written notice of disqualification to petition the  
<sup>1</sup>[Commissioner] commissioner<sup>1</sup> for a hearing on the accuracy of  
9 the criminal history record information or to establish his <sup>1</sup>[or  
her]<sup>1</sup> rehabilitation under subsection b. of section 2 of this act.  
11 The <sup>1</sup>[Commissioner] commissioner<sup>1</sup> may refer any case arising  
hereunder to the Office of Administrative Law for  
13 administrative proceedings pursuant to P.L. 1978, c. 67  
(C.52:14F-1 et seq.).

c. The <sup>1</sup>[Commissioner] commissioner<sup>1</sup> shall not maintain any  
15 individual's criminal history record information or evidence of  
17 rehabilitation submitted under <sup>1</sup>this<sup>1</sup> section <sup>1</sup>[4 of this act]<sup>1</sup>  
for more than six months from the date of a final determination  
19 by the <sup>1</sup>[Commissioner] commissioner<sup>1</sup> as to the individual's  
qualification or disqualification to be an <sup>1</sup>[operator or]<sup>1</sup>  
21 employee pursuant to this act.

<sup>1</sup>d. The Commissioner of Human Services shall initiate a  
23 criminal history record background check on all current  
employees no later than 120 days after the effective date of this  
25 act.<sup>1</sup>

<sup>1</sup>[5. a. As a condition of the Department of Human Services'  
27 initial licensure or operation of a facility after the operative  
date of this act, the Commissioner of Human Services shall  
29 require that a criminal history record background check be  
conducted on a person who applies to become an operator of a  
31 facility prior to the person's assuming the position of operator  
of the facility.

b. Within 120 days after the operative date of this act, the  
33 commissioner shall initiate a criminal history record background  
35 check on any person operating a facility who, on or after the  
effective date of this act, was an operator of a facility.

c. If the information from the criminal history record  
37 background check discloses that a prospective or current  
operator of a facility has a record of criminal history, the  
39

1 commissioner shall review the information with respect to the  
2 type and date of the criminal offense in accordance with the  
3 provisions of section 2 of this act, to determine if the person is  
fit to serve or continue to serve as an operator of the facility.

5 d. The commissioner shall not permit a person determined to  
6 be unfit pursuant to this section to serve as an operator of a  
7 facility, nor shall the commissioner license or employ the person  
as an operator of a facility, except that the person shall retain  
9 any available right of review by the Merit System Board.]<sup>1</sup>

11 <sup>1</sup>[6.] 5.<sup>1</sup> The Commissioner of Human Services shall report to  
the Governor and the Legislature no later than three years from  
13 the effective date of this act on the effectiveness of the  
criminal history record background checks in screening out  
15 prospective or current employees <sup>1</sup>[and operators]<sup>1</sup> of facilities  
who have criminal history records which render them unfit for  
17 employment <sup>1</sup>[or licensure]<sup>1</sup>. The commissioner shall include in  
the report any recommendations for modifying the provisions of  
this act.

19 <sup>1</sup>[7.] 6.<sup>1</sup> <sup>1</sup>[Prior to the 180th day after enactment of this act,  
and in] In<sup>1</sup> accordance with the "Administrative Procedure  
21 Act," P.L. 1968, c. 410 (C.52:14B-1 et seq.), the Commissioner  
of Human Services shall adopt rules and regulations necessary to  
23 implement the provisions of this act.

25 <sup>1</sup>[8.] 7.<sup>1</sup> The Department of Human Services shall assume the  
cost of all criminal history record background checks conducted  
on current and prospective <sup>1</sup>[operators and]<sup>1</sup> employees <sup>1</sup>[of  
27 facilities]<sup>1</sup>.

29 <sup>1</sup>[9.] 8.<sup>1</sup> The Division of State Police in the Department of  
Law and Public Safety shall conduct a criminal history record  
background check which includes a name and fingerprint  
31 identification check of each current and prospective <sup>1</sup>[operator  
and]<sup>1</sup> employee of a facility to ascertain whether the person has  
33 a record of criminal history<sup>1</sup>, pursuant to P.L. ...., c. .... (C.  
.....) (now pending before the Legislature as this bill)<sup>1</sup>. The  
35 division shall conduct the background check only upon receipt of  
the person's written consent to conduct the background check.

37 For the purpose of conducting the criminal history record  
background check, the division shall examine its own files and

1 arrange for a similar examination by federal authorities. The  
2 division shall forward the information obtained as a result of  
3 conducting the check to the <sup>1</sup>[Department] Commissioner<sup>1</sup> of  
Human Services.

5 <sup>1</sup>[10.] 9.<sup>1</sup> There is appropriated from the General Fund  
<sup>1</sup>[\$100,000.00] \$95,000.00<sup>1</sup> to the Department of Human  
7 Services to effectuate the purposes of this act.

<sup>1</sup>[11.] 10.<sup>1</sup> This act shall take effect <sup>1</sup>[immediately but shall  
9 remain inoperative until] on<sup>1</sup> the 180th day after enactment,  
except that section <sup>1</sup>[7] 6<sup>1</sup> shall <sup>1</sup>[be operative] take effect<sup>1</sup>  
11 immediately <sup>1</sup>[upon enactment]<sup>1</sup>.

13

#### PUBLIC EMPLOYEES AND PERSONNEL

15

##### Criminal Investigation and Arrest

17 Requires State and federal criminal history record background  
checks for all employees of human services facilities and  
19 appropriates \$95,000.

ASSEMBLY, No. 328

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1988 SESSION

By Assemblyman FRELINGHUYSEN

1 AN ACT concerning criminal history record background checks  
2 for certain State employees and supplementing Titles 30 and  
3 53 of the Revised Statutes, and making an appropriation  
therefor.

5

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

1. As used in this act:

9 a. "Employee" means any individual 18 years of age or older  
who is employed at a facility and works at the facility for the  
11 equivalent of at least one seven hour day per week. Employee  
includes but is not limited to the facility's director or principal  
13 administrator, teaching, social service, dietary, clerical and  
maintenance staff and the driver of a motor vehicle used to  
15 transport persons to and from the facility.

b. "Facility" means a State Institution or facility for the  
17 mentally ill or the developmentally disabled.

c. "Operator" means any person who sponsors, owns, or  
19 operates a facility which is subject to the provisions of this act.

2. a. No facility shall employ or contract for the services of  
21 any operator or employee unless the Commissioner of the  
Department of Human Services has first determined, consistent  
23 with the requirements and standards of this act, that no criminal  
history record information exists on file in the Federal Bureau  
25 of investigation, Identification Division, or in the State Bureau  
of Identification in the Division of State Police, which would  
27 disqualify the individual operator or employee from being  
employed or utilized in such capacity or position. An individual  
29 shall be disqualified from employment or service under this act  
if that individual's criminal history record check reveals a  
31 record of conviction of any of the following crimes and offenses:

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

1           (a) Involving danger to the person, meaning those  
3 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

5           (b) Against the family, children or incompetents,  
7 meaning those crimes and disorderly persons offenses set  
forth in N.J.S. 2C:24-1 et seq.; or

9           (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  
11 subsection.

13           b. Notwithstanding the provisions of subsection a. of this  
section, no individual shall be disqualified from employment or  
15 service under this act on the basis of any conviction disclosed by  
a criminal history record check performed pursuant to this act if  
17 the individual has affirmatively demonstrated to the  
Commissioner clear and convincing evidence of his  
rehabilitation. In determining whether an individual has  
19 affirmatively demonstrated rehabilitation, the following factors  
shall be considered:

21           (1) The nature and responsibility of the position which the  
convicted individual would hold;

23           (2) The nature and seriousness of the offense;

            (3) The circumstances under which the offense occurred;

25           (4) The date of the offense;

            (5) The age of the individual when the offense was committed;

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

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

            (8) Any evidence of rehabilitation, including good conduct in  
31 prison or in the community, counseling or psychiatric treatment  
received, acquisition of additional academic or vocational  
33 schooling, successful participation in correctional work-release  
programs, or the recommendation of persons who have had the  
35 individual under their supervision.

37           c. If the principal administrator of a facility does not provide  
the bureau with the information necessary to conduct the

1 criminal history record background checks on the facility's  
2 employees, the commissioner may deny, suspend, revoke or  
3 refuse to renew the facility's contract, as the case may be.

4 d. If a prospective employee of a facility refuses to consent  
5 to, or cooperate in, the securing of a criminal history record  
6 background check, the commissioner shall direct the principal  
7 administrator not to consider the person for employment at the  
8 facility. The prospective employee shall, however, retain any  
9 available right of review by the Merit System Board.

10 e. If a current employee of a facility refuses to consent to, or  
11 cooperate in, the securing of a criminal history record  
12 background check, the commissioner shall direct the principal  
13 administrator to immediately remove the person from his  
14 position at the facility and to terminate the person's  
15 employment at the facility. The employee shall, however,  
16 retain any available right of review by the Merit System Board.

17 3. An applicant for employment or service in any of the  
18 positions covered by this act shall submit to the Commissioner  
19 his name, address and fingerprints taken on standard fingerprint  
20 cards by a State or municipal law enforcement agency. The  
21 Commissioner is authorized to exchange fingerprint data with  
22 and receive criminal history record information from the  
23 Federal Bureau of Investigation and the Division of State Police  
24 for use in making the determinations required by this act. No  
25 criminal history record check shall be performed pursuant to  
26 this act unless the applicant shall have furnished his or her  
27 written consent to the check.

28 4. a. Upon receipt of the criminal history record information  
29 for an applicant from the Federal Bureau of Investigation and  
30 the Division of State Police, the Commissioner shall notify the  
31 applicant, in writing, of the applicant's qualification or  
32 disqualification for employment or service under this act. If the  
33 applicant is disqualified, the conviction or convictions which  
34 constitute the basis for the disqualification shall be identified in  
35 the written notice.

36 b. The applicant shall have 30 days from the date of written  
37 notice of disqualification to petition the Commissioner for a  
hearing on the accuracy of the criminal history record

1 information or to establish his or her rehabilitation under  
2 subsection b. of section 2 of this act. The Commissioner may  
3 refer any case arising hereunder to the Office of Administrative  
4 Law for administrative proceedings pursuant to P.L. 1978, c. 67  
5 (C.52:14F-1 et seq.).

6 c. The Commissioner shall not maintain any individual's  
7 criminal history record information or evidence of rehabilitation  
8 submitted under section 4 of this act for more than six months  
9 from the date of a final determination by the Commissioner as  
10 to the individual's qualification or disqualification to be an  
11 operator or employee pursuant to this act.

12 5. a. As a condition of the Department of Human Services'  
13 initial licensure or operation of a facility after the operative  
14 date of this act, the Commissioner of Human Services shall  
15 require that a criminal history record background check be  
16 conducted on a person who applies to become an operator of a  
17 facility prior to the person's assuming the position of operator  
18 of the facility.

19 b. Within 120 days after the operative date of this act, the  
20 commissioner shall initiate a criminal history record background  
21 check on any person operating a facility who, on or after the  
22 effective date of this act, was an operator of a facility.

23 c. If the information from the criminal history record  
24 background check discloses that a prospective or current  
25 operator of a facility has a record of criminal history, the  
26 commissioner shall review the information with respect to the  
27 the and date of the criminal offense in accordance with the  
28 provisions of section 2 of this act, to determine if the person is  
29 fit to serve or continue to serve as an operator of the facility.

30 d. The commissioner shall not permit a person determined to  
31 be unfit pursuant to this section to serve as an operator of a  
32 facility, nor shall the commissioner license or employ the person  
33 as an operator of a facility, except that the person shall retain  
34 any available right of review by the Merit System Board.

35 6. The Commissioner of Human Services shall report to the  
36 Governor and the Legislature no later than three years from the  
37 effective date of this act on the effectiveness of the criminal  
38 history record background checks in screening out prospective or

1 current employees and operators of facilities who have criminal  
2 history records which render them unfit for employment or  
3 licensure. The commissioner shall include in the report any  
4 recommendations for modifying the provisions of this act.

5 7. Prior to the 180th day after enactment of this act, and in  
6 accordance with the "Administrative Procedure Act," P.L. 1968,  
7 c. 410 (C.52:14B-1 et seq.), the Commissioner of Human  
8 Services shall adopt rules and regulations necessary to  
9 implement the provisions of this act.

10 8. The Department of Human Services shall assume the cost  
11 of all criminal history record background checks conducted on  
12 current and prospective operators and employees of facilities.

13 9. The Division of State Police in the Department of Law and  
14 Public Safety shall conduct a criminal history record background  
15 check which includes a name and fingerprint identification  
16 check of each current and prospective operator and employee of  
17 a facility to ascertain whether the person has a record of  
18 criminal history. The division shall conduct the background  
19 check only upon receipt of the person's written consent to  
20 conduct the background check.

21 For the purpose of conducting the criminal history record  
22 background check, the division shall examine its own files and  
23 arrange for a similar examination by federal authorities. The  
24 division shall forward the information obtained as a result of  
25 conducting the check to the Department of Human Services.

26 10. There is appropriated from the General Fund \$100,000.00  
27 to the Department of Human Services to effectuate the  
28 purposes of this act.

29 11. This act shall take effect immediately but shall remain  
30 inoperative until the 180th day after enactment, except that  
31 section 7 shall be operative immediately upon enactment.

33

#### STATEMENT

35

36 This bill requires every current and prospective employee and  
37 operator of a State institution for the mentally ill or  
developmentally disabled to undergo a State and federal

1 criminal history record background check as a condition of  
employment at the institution. The bill appropriates  
3 \$100,000.00 to the Department of Human Services to carry out  
the background checks and provides that the department shall  
5 assume the cost of the checks for all current and prospective  
employees. The Division of State Police shall conduct the State  
7 criminal history record background check, which includes a  
name and fingerprint identification check, by examining its own  
9 files and shall arrange for a similar examination by the Federal  
Bureau of Investigation, Identification Division.

11 The bill provides that a person who has committed a crime of  
violence, homicide, assault, kidnapping, robbery, a sexual  
13 offense or an offense against the family, children or  
incompetents shall be disqualified from employment at the  
15 institution. A person with such a conviction record, however,  
may demonstrate his rehabilitation to the Commissioner of  
17 Human Services, according to criteria in the bill. A person who  
is disqualified from employment may, within 30 days of  
19 receiving the notice of disqualification, petition the  
Commissioner of Human Services for a hearing on the accuracy  
21 of the criminal history record information, or to establish his  
rehabilitation.

23 The Commissioner of Human Services must report to the  
Governor and the Legislature within three years on the  
25 effectiveness of the criminal history record background checks  
in screening out prospective or current employees who have  
27 criminal history records which render them unfit for  
employment at the institutions and to provide any  
29 recommendations for modifying the provisions of the bill.

31

#### PUBLIC EMPLOYEES AND PERSONNEL

33

##### Criminal Investigation and Arrest

35 Requires State and federal criminal history record background  
checks for all employees and operators of human services  
37 facilities; appropriates \$100,000.

ASSEMBLY HEALTH AND HUMAN RESOURCES COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 328**

with Assembly committee amendments

**STATE OF NEW JERSEY**

DATED: January 21, 1988

The Assembly Health and Human Resources Committee favorably reports Assembly Bill No. 328 with committee amendments.

As amended by the committee, this bill requires all applicants for employment at, and all current employees of, any State institution or facility serving mentally ill or developmentally disabled persons to undergo criminal history record background checks to determine their suitability for employment at the institution or facility.

Specifically, the amended bill provides for the following:

(1) All applicants for employment, regardless of what position they will hold at the institution or facility, shall undergo a State and federal criminal history record background check prior to beginning employment;

(2) All current employees, regardless of what position they hold at the institution or facility, shall undergo a State and federal criminal history record background check, which shall be initiated no later than 120 days after the effective date of this bill;

(3) The Commissioner of Human Services is authorized to exchange fingerprint data with, and receive information from, the Division of State Police (for State criminal history information) and the Federal Bureau of Investigation (for federal and other states' criminal history information);

(4) The Commissioner of Human Services is directed to disqualify from employment any person convicted of crimes such as homicide, assault, kidnapping, sexual offenses, robbery, and crimes against the family, children or incompetents; however, an applicant or employee with a criminal history may demonstrate his rehabilitation under certain conditions in order to qualify for employment at an institution or facility;

(5) The Commissioner of Human Services shall notify in writing an applicant or employee of the person's suitability for employment, identifying in the notice any convictions which constitute a basis for disqualification; and, if the applicant or employee is disqualified, he may petition the commissioner for a hearing on the accuracy of the criminal history record information or to establish his rehabilitation; in addition to which the employee would have any available right to review by the Merit System Board in the Department of Personnel.

(6) The Department of Human Services will assume the cost of the criminal history record background checks; and

(7) The Commissioner of Human Services shall report to the Governor and the Legislature no later than three years after the effective date of the bill on the effectiveness of the criminal history record background checks in improving hiring practices and patient care conditions at the State institutions.

The amended bill appropriates \$95,000 to the Department of Human Services for the cost of conducting the screening and background checks and takes effect on the 180th day after its enactment.

The committee amended the bill to:

(1) delete references to "operators" of institutions or facilities, since this term is inappropriate in referring to the State institutions and facilities affected by this bill;

(2) require the Commissioner of Human Services to initiate a criminal history record background check on all current employees no later than 120 days after the effective date of the bill; and

(3) reduce the appropriation provided in the bill from \$100,000 to \$95,000.

In addition, the committee made various technical amendments to clarify the provisions of the bill.

As reported by the committee, this bill is similar to Assembly Bill No. 1843 2OCR of 1986 (Frelinghuysen). The committee favorably reported Assembly Bill No. 1843 with committee amendments on May 5, 1986.

This bill was pre-filed for introduction in the 1988 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

SENATE INSTITUTIONS, HEALTH AND WELFARE COMMITTEE  
STATEMENT TO

ASSEMBLY No. 328 1R  
STATE OF NEW JERSEY

DATED: FEBRUARY 18, 1988

The Senate Institutions, Health and Welfare Committee favorably reports Assembly Bill No. 328 1R.

This bill requires all applicants for employment at, and all current employees of, any State institution or facility serving mentally ill or developmentally disabled persons to undergo criminal history record background checks to determine their suitability for employment at the institution or facility.

Specifically, the provides for the following:

(1) All applicants for employment, regardless of what position they will hold at the institution or facility, shall undergo a State and federal criminal history record background check prior to beginning employment;

(2) All current employees, regardless of what position they hold at the institution or facility, shall undergo a State and federal criminal history record background check, which shall be initiated no later than 120 days after the effective date of this bill;

(3) The Commissioner of Human Services is authorized to exchange fingerprint data with, and receive information from, the Division of State Police (for State criminal history information) and the Federal Bureau of Investigation (for federal and other states' criminal history information);

(4) The Commissioner of Human Services is directed to disqualify from employment any person convicted of crimes such as homicide, assault, kidnapping, sexual offenses, robbery, and crimes against the family, children or incompetents; however, an applicant or employee with a criminal history may demonstrate his rehabilitation under certain conditions in order to qualify for employment at an institution or facility;

(5) The Commissioner of Human Services shall notify in writing an applicant or employee of the person's suitability or unsuitability for employment, identifying in the notice any convictions which constitute a basis for disqualification. If the applicant or employee is disqualified, the bill provides that he may petition the commissioner for a hearing on the accuracy of the criminal history record information or to establish his rehabilitation. In addition, the employee would have any available right to review by the Merit System Board in the Department of Personnel.

(6) The Department of Human Services will assume the cost of the criminal history record background checks; and

(7) The Commissioner of Human Services shall report to the Governor and the Legislature no later than three years after the effective date of the bill on the effectiveness of the criminal history record background checks in improving hiring practices and patient care conditions at the State institutions.

The bill appropriates \$95,000 to the Department of Human Services for the cost of conducting the background checks and takes effect on the 180th day after its enactment.

[FIRST REPRINT]  
ASSEMBLY, No. 328

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1988 SESSION

By Assemblyman FRELINGHUYSEN

1 AN ACT concerning criminal history record background checks  
for certain State employees <sup>1</sup>[and] <sup>1</sup> supplementing Titles 30  
3 and 53 of the Revised Statutes, and making an appropriation  
therefor.

5

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

1. As used in this act:

9 a. "Employee" means any individual 18 years of age or older  
who is employed at a facility and works at the facility for the  
11 equivalent of at least one seven hour day per week. Employee  
includes but is not limited to the facility's director or principal  
13 administrator, teaching, social service, dietary, clerical and  
maintenance staff and the driver of a motor vehicle used to  
15 transport persons to and from the facility.

b. "Facility" means a State <sup>1</sup>[Institution] institution<sup>1</sup> or  
17 facility for the mentally ill or the developmentally disabled.

<sup>1</sup>[c. "Operator" means any person who sponsors, owns, or  
19 operates a facility which is subject to the provisions of this  
act.]<sup>1</sup>

21 2. a. <sup>1</sup>[No] A<sup>1</sup> facility shall <sup>1</sup>not<sup>1</sup> employ <sup>1</sup>[or contract for  
the services of]<sup>1</sup> any <sup>1</sup>[operator or employee] individual<sup>1</sup> unless  
23 the Commissioner of the Department of Human Services has  
first determined, consistent with the requirements and standards  
25 of this act, that no criminal history record information exists on  
file in the Federal Bureau of Investigation, Identification  
27 Division, or in the State Bureau of Identification in the Division  
of State Police, which would disqualify <sup>1</sup>[the] that<sup>1</sup> individual  
29 <sup>1</sup>[operator or employee]<sup>1</sup> from being employed <sup>1</sup>[or utilized in  
such capacity or position] at the facility<sup>1</sup>. An individual shall be

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.

Matter enclosed in superscript numerals has been adopted as follows:  
<sup>1</sup> Assembly AHH committee amendments adopted January 21, 1988.

1 disqualified from employment <sup>1</sup>[or service]<sup>1</sup> under this act if  
that individual's criminal history record check reveals a record  
3 of conviction of any of the following crimes and offenses:

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

5 (a) Involving danger to the person, meaning those  
crimes and disorderly persons offenses set forth in N.J.S.  
7 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

9 (b) Against the family, children or incompetents,  
meaning those crimes and disorderly persons offenses set  
11 forth in N.J.S. 2C:24-1 et seq.; or

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

b. Notwithstanding the provisions of subsection a. of this  
17 section, no individual shall be disqualified from employment <sup>1</sup>[or  
service]<sup>1</sup> under this act on the basis of any conviction disclosed  
19 by a criminal history record check performed pursuant to this  
act if the individual has affirmatively demonstrated to the  
21 Commissioner <sup>1</sup>of Human Services<sup>1</sup> clear and convincing  
evidence of his rehabilitation. In determining whether an  
23 individual has affirmatively demonstrated rehabilitation, the  
following factors shall be considered:

25 (1) The nature and responsibility of the position which the  
convicted individual would hold;

27 (2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

29 (4) The date of the offense;

(5) The age of the individual when the offense was committed;

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

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

(8) Any evidence of rehabilitation, including good conduct in  
35 prison or in the community, counseling or psychiatric treatment  
received, acquisition of additional academic or vocational

1 schooling, successful participation in correctional work-release  
2 programs, or the recommendation of persons who have had the  
3 individual under their supervision.

4 <sup>1</sup>[c. If the principal administrator of a facility does not  
5 provide the bureau with the information necessary to conduct  
6 the criminal history record background checks on the facility's  
7 employees, the commissioner may deny, suspend, revoke or  
8 refuse to renew the facility's contract, as the case may be.]<sup>1</sup>

9 <sup>1</sup>[d.] c.<sup>1</sup> If a prospective employee of a facility refuses to  
10 consent to, or cooperate in, the securing of a criminal history  
11 record background check, the commissioner shall direct the  
12 principal administrator not to consider the person for  
13 employment at the facility. The prospective employee shall,  
14 however, retain any available right of review by the Merit  
15 System Board <sup>1</sup>in the Department of Personnel<sup>1</sup>.

16 <sup>1</sup>[e.] d.<sup>1</sup> If a current employee of a facility refuses to consent  
17 to, or cooperate in, the securing of a criminal history record  
18 background check, the commissioner shall direct the principal  
19 administrator to immediately remove the person from his  
20 position at the facility and to terminate the person's  
21 employment at the facility. The employee shall, however,  
22 retain any available right of review by the Merit System Board  
23 <sup>1</sup>in the Department of Personnel<sup>1</sup>.

24 3. An applicant for employment or <sup>1</sup>[service in any of the  
25 positions covered by this act] a current employee<sup>1</sup> shall submit  
26 to the Commissioner <sup>1</sup>of Human Services<sup>1</sup> his name, address and  
27 fingerprints taken on standard fingerprint cards by a State or  
28 municipal law enforcement agency. The <sup>1</sup>[Commissioner]  
29 commissioner<sup>1</sup> is authorized to exchange fingerprint data with  
30 and receive criminal history record information from the  
31 Federal Bureau of Investigation and the Division of State Police  
32 for use in making the determinations required by this act. No  
33 criminal history record check shall be performed pursuant to  
34 this act unless the applicant shall have furnished his <sup>1</sup>[or her]<sup>1</sup>  
35 written consent to the check.

36 4. a. Upon receipt of the criminal history record information  
37 for an applicant from the Federal Bureau of Investigation and  
38 the Division of State Police, the <sup>1</sup>[Commissioner] commissioner<sup>1</sup>  
39 shall notify the applicant <sup>1</sup>or employee<sup>1</sup>, in writing, of the

1 applicant's <sup>1</sup>or employee's<sup>1</sup> qualification or disqualification for  
 2 employment <sup>1</sup>[or service]<sup>1</sup> under this act. If the applicant <sup>1</sup>or  
 3 employee<sup>1</sup> is disqualified, the conviction or convictions which  
 4 constitute the basis for the disqualification shall be identified in  
 5 the written notice.

6 b. The applicant <sup>1</sup>or employee<sup>1</sup> shall have 30 days from the  
 7 date of written notice of disqualification to petition the  
 8 <sup>1</sup>[Commissioner] commissioner<sup>1</sup> for a hearing on the accuracy of  
 9 the criminal history record information or to establish his <sup>1</sup>[or  
 10 her]<sup>1</sup> rehabilitation under subsection b. of section 2 of this act.  
 11 The <sup>1</sup>[Commissioner] commissioner<sup>1</sup> may refer any case arising  
 12 hereunder to the Office of Administrative Law for  
 13 administrative proceedings pursuant to P.L. 1978, c. 67  
 14 (C.52:14F-1 et seq.).

15 c. The <sup>1</sup>[Commissioner] commissioner<sup>1</sup> shall not maintain any  
 16 individual's criminal history record information or evidence of  
 17 rehabilitation submitted under <sup>1</sup>this<sup>1</sup> section <sup>1</sup>[4 of this act]<sup>1</sup>  
 18 for more than six months from the date of a final determination  
 19 by the <sup>1</sup>[Commissioner] commissioner<sup>1</sup> as to the individual's  
 20 qualification or disqualification to be an <sup>1</sup>[operator or]<sup>1</sup>  
 21 employee pursuant to this act.

22 <sup>1</sup>d. The Commissioner of Human Services shall initiate a  
 23 criminal history record background check on all current  
 24 employees no later than 120 days after the effective date of this  
 25 act.<sup>1</sup>

26 <sup>1</sup>[5. a. As a condition of the Department of Human Services'  
 27 initial licensure or operation of a facility after the operative  
 28 date of this act, the Commissioner of Human Services shall  
 29 require that a criminal history record background check be  
 30 conducted on a person who applies to become an operator of a  
 31 facility prior to the person's assuming the position of operator  
 32 of the facility.

33 b. Within 120 days after the operative date of this act, the  
 34 commissioner shall initiate a criminal history record background  
 35 check on any person operating a facility who, on or after the  
 36 effective date of this act, was an operator of a facility.

37 c. If the information from the criminal history record  
 38 background check discloses that a prospective or current  
 39 operator of a facility has a record of criminal history, the

1 commissioner shall review the information with respect to the  
 2 type and date of the criminal offense in accordance with the  
 3 provisions of section 2 of this act, to determine if the person is  
 fit to serve or continue to serve as an operator of the facility.

5 d. The commissioner shall not permit a person determined to  
 be unfit pursuant to this section to serve as an operator of a  
 7 facility, nor shall the commissioner license or employ the person  
 as an operator of a facility, except that the person shall retain  
 9 any available right of review by the Merit System Board.]<sup>1</sup>

11 <sup>1</sup>[6.] 5.<sup>1</sup> The Commissioner of Human Services shall report to  
 the Governor and the Legislature no later than three years from  
 the effective date of this act on the effectiveness of the  
 13 criminal history record background checks in screening out  
 prospective or current employees <sup>1</sup>[and operators]<sup>1</sup> of facilities  
 15 who have criminal history records which render them unfit for  
 employment <sup>1</sup>[or licensure]<sup>1</sup>. The commissioner shall include in  
 17 the report any recommendations for modifying the provisions of  
 this act.

19 <sup>1</sup>[7.] 6.<sup>1</sup> <sup>1</sup>[Prior to the 180th day after enactment of this act,  
 and in] In<sup>1</sup> accordance with the "Administrative Procedure  
 21 Act," P.L. 1968, c. 410 (C.52:14B-1 et seq.), the Commissioner  
 of Human Services shall adopt rules and regulations necessary to  
 23 implement the provisions of this act.

25 <sup>1</sup>[8.] 7.<sup>1</sup> The Department of Human Services shall assume the  
 cost of all criminal history record background checks conducted  
 on current and prospective <sup>1</sup>[operators and]<sup>1</sup> employees <sup>1</sup>[of  
 27 facilities]<sup>1</sup>.

29 <sup>1</sup>[9.] 8.<sup>1</sup> The Division of State Police in the Department of  
 Law and Public Safety shall conduct a criminal history record  
 background check which includes a name and fingerprint  
 31 identification check of each current and prospective <sup>1</sup>[operator  
 and]<sup>1</sup> employee of a facility to ascertain whether the person has  
 33 a record of criminal history<sup>1</sup>, pursuant to P.L. ...., c. .... (C.  
 ..... ) (now pending before the Legislature as this bill)<sup>1</sup>. The  
 35 division shall conduct the background check only upon receipt of  
 the person's written consent to conduct the background check.

37 For the purpose of conducting the criminal history record  
 background check, the division shall examine its own files and

1 arrange for a similar examination by federal authorities. The  
division shall forward the information obtained as a result of  
3 conducting the check to the <sup>1</sup>[Department] Commissioner<sup>1</sup> of  
Human Services.

5 <sup>1</sup>[10.] 9.<sup>1</sup> There is appropriated from the General Fund  
<sup>1</sup>[\$100,000.00] \$95,000.00<sup>1</sup> to the Department of Human  
7 Services to effectuate the purposes of this act.

<sup>1</sup>[11.] 10.<sup>1</sup> This act shall take effect <sup>1</sup>[immediately but shall  
9 remain inoperative until] on<sup>1</sup> the 180th day after enactment,  
except that section <sup>1</sup>[7] 6<sup>1</sup> shall <sup>1</sup>[be operative] take effect<sup>1</sup>  
11 immediately <sup>1</sup>[upon enactment]<sup>1</sup>.

13

#### PUBLIC EMPLOYEES AND PERSONNEL

15

##### Criminal Investigation and Arrest

17 Requires State and federal criminal history record background  
checks for all employees of human services facilities and  
19 appropriates \$95,000.