

40A:12A-22.1

LEGISLATIVE HISTORY CHECKLIST

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(Criminal background check--public housing authorities)

NJSA: 40A:12A-22.1

LAWS OF: 1997 CHAPTER: 265

BILL NO: S51

SPONSOR(S): O'Connor

DATE INTRODUCED: January 11, 1996

COMMITTEE: ASSEMBLY: Housing

SENATE: Law & Public Safety

AMENDED DURING PASSAGE: Yes Amendments denoted by
Third reprint enacted superscript numbers

DATE OF PASSAGE: ASSEMBLY: June 23, 1997

SENATE: February 26, 1996

DATE OF APPROVAL: December 22, 1997

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

KBP:pp

P.L. 1997, CHAPTER 265, *approved December 22, 1997*
Senate No. 51 (*Third Reprint*)

1 AN ACT concerning criminal history record background checks for
2 prospective employees of certain housing authorities, ³and³
3 supplementing Chapter ¹[14A of Title 55] 12A of Title 40A¹ ³[and
4 Chapter 1 of Title 53 of the Revised Statutes and making an
5 appropriation therefor] of the New Jersey Statutes³.
6

7 **BE IT ENACTED** by the Senate and General Assembly of the State
8 of New Jersey:
9

10 1. As used in this act:

11 ¹["Authority" means a local housing authority under the supervision
12 of the Commissioner of Community Affairs.

13 "Commissioner" means the Commissioner of Community Affairs.]¹

14 "Applicant" means a person 18 years of age or older who is being
15 considered for employment for at least seven hours a week by an
16 authority.

17 ¹"Authority" means a local housing authority ²created pursuant to
18 the Local Redevelopment and Housing Law, P.L.1992, c.79
19 (40A:12A-1 et seq.)².

20 "Superintendent" means the Superintendent of State Police.¹
21

22 2. a. An authority may perform criminal history background
23 checks on applicants for employment, according to the provisions of
24 this act. An authority which elects to comply with this act shall not
25 hire an applicant unless it determines that no criminal record
26 information exists on file in the Federal Bureau of Investigation,
27 Identification Division, or in the State Bureau of Identification in the
28 Division of State Police which would disqualify the individual from
29 being employed pursuant to the provisions of this act. An applicant
30 shall be disqualified from employment if the criminal history record

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate floor amendments adopted February 5, 1996.

² Assembly AHO committee amendments adopted May 2, 1996.

³ Assembly floor amendments adopted September 26, 1996.

1 check reveals his conviction:

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

3 (a) Involving danger to the person pursuant to

4 N.J.S.2C:11-1 et seq., N.J.S.2C:12-1 et seq., N.J.S.2C:13-1 et seq.,

5 N.J.S.2C:14-1 et seq. or N.J.S.2C:15-1 et seq.; or

6 (b) Against the family, children or incompetents, pursuant to

7 N.J.S.2C:24-1 et seq.; or

8 (2) In any other state or jurisdiction, for conduct which, if
9 committed in New Jersey, would constitute any of the crimes or
10 offenses included in paragraph (1) of this subsection.

11 b. Notwithstanding the provisions of subsection a. of this section
12 to the contrary, an applicant shall not be disqualified from
13 consideration for employment under this act on the basis of any
14 conviction disclosed by a criminal history record check if the individual
15 has affirmatively demonstrated to the authority clear and convincing
16 evidence of his rehabilitation. In determining whether an individual
17 has affirmatively demonstrated rehabilitation, an authority shall
18 consider:

19 (1) The nature and responsibility of the applicant's prospective
20 position;

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

22 (3) The circumstances under which the offense occurred;

23 (4) The date of the offense;

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

25 (6) Whether the offense was repeated;

26 (7) Social conditions which may have contributed to the offense;

27 and

28 (8) Any evidence of rehabilitation, including good conduct in
29 prison or in the community, counseling or psychiatric treatment
30 received, acquisition of additional academic or vocational education,
31 successful participation in correctional work-release programs, or the
32 recommendation of persons who have supervised the applicant.

33

34 3. An applicant shall submit to the authority his ²or her² name,
35 address, ²and² fingerprints ²[, and his written consent for the
36 background check to be performed] taken on standard fingerprint
37 cards by a State or municipal law enforcement agency². ²[The
38 authority shall submit this documentation to the ¹[commissioner]
39 superintendent¹, who shall coordinate the criminal history background
40 check.]² An applicant who refuses to consent to, or cooperate in, the
41 securing of a criminal history record background check shall not be
42 considered for employment by the authority. The ¹[commissioner]
43 ²[superintendent¹].authority² is authorized to exchange fingerprint data
44 with and receive criminal history record information from the Federal
45 Bureau of Investigation, Identification Section ¹[and the Division of
46 State Police, Bureau of Identification]¹ ²and the Division of State

1 Police, Bureau of Identification² for use in making the determinations
 2 provided for in section 2 of P.L. , c. (C.) (now pending before
 3 the Legislature as this bill). ²No criminal history record check shall be
 4 performed pursuant to this act unless the applicant shall have furnished
 5 his or her written consent to such check. The applicant shall bear the
 6 cost for the criminal history record check.²

7 ²[4. The ¹[Department of Community Affairs]Division of State
 8 Police¹ shall act as a clearinghouse for the collection and dissemination
 9 of information obtained as a result of conducting a criminal history
 10 record background check pursuant to this act. The ¹[department]
 11 division¹ shall promptly advise an authority of the information received
 12 concerning an applicant.]²

13
 14 ²[5. The ¹[department] division¹ shall assume the cost of all
 15 criminal history record background checks conducted on authority
 16 applicants.]²

17
 18 ²[6.]² a. Upon receipt of an applicant's criminal history record
 19 information, an authority shall notify the applicant, in writing, as to
 20 whether he is qualified or disqualified for employment pursuant to this
 21 act. If the applicant is disqualified for employment, the conviction or
 22 convictions which constitute the basis for the disqualification shall be
 23 identified in the written notice.

24 b. ¹[The] An¹ applicant ²[¹ of] to² a housing authority which is
 25 subject to the provisions of Title 11A of the New Jersey Statutes¹ shall
 26 have ²[30]20² days from the date of written notice of disqualification
 27 to ¹[petition the commissioner] file an appeal with the Department of
 28 Personnel¹ for a ²[hearing] review² on the accuracy of the criminal
 29 history record information or to establish his ²or her² rehabilitation
 30 under subsection b. of section 2 of P.L. , c. (C.) (now pending
 31 before the Legislature as this bill) ¹[. The commissioner shall by
 32 regulation establish a process for the hearing and adjudication of
 33 applicant appeals. The commissioner may refer any case arising
 34 hereunder to the Office of Administrative Law for administrative
 35 proceedings pursuant to P.L.1978, c.67 (C.52:14F-1 et seq.)]
 36 pursuant to regulations promulgated by the ²[Commissioner of
 37 Personnel] Merit System Board² .¹

38 c. The ¹[commissioner] Department of Personnel¹ or an authority
 39 shall not maintain an applicant's criminal history record information or
 40 evidence of rehabilitation submitted under this section for more than
 41 six months from the date the applicant is hired or the date of the final
 42 disposition of the applicant's disqualification, as the case may be.

43 ²This section shall not prohibit the Department of Personnel from

1 maintaining a copy of the decision on the applicant's appeal, or the
2 entire record in the case of a judicial appeal.²

3

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

7

8 ¹[8.] ²[7.¹ The Division of State Police in the Department of Law
9 and Public Safety, upon the request of ¹[the commissioner] an
10 authority¹, shall conduct a criminal history record background check
11 which includes a name and fingerprint identification check of an
12 applicant in order to ascertain whether the person has a record of
13 criminal history, pursuant to P.L. , c. (C.) (now pending before
14 the Legislature as this bill). The division shall conduct the background
15 check only upon receipt of the applicant's written consent to conduct
16 the background check.

17 For the purpose of conducting the criminal history record
18 background check, the division shall examine its own files and arrange
19 for a similar examination by federal authorities. The division shall
20 forward the information obtained as a result of conducting the check
21 to the ¹[commissioner] authority¹.]²

22

23 ¹[9.] ²[8.¹ There is appropriated \$95,000 from the General Fund
24 to the ¹[Department of Community Affairs] Division of State Police¹
25 to effectuate the purposes of this act.]²

26

27 ¹[10.] ²[9.¹ 5.² This act shall take effect on the first day of the
28 seventh month after enactment ¹[, except that section 7 shall take
29 effect immediately]¹.

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 Allows criminal history record background checks for prospective
35 employees of certain public housing authorities.

STATEMENT

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2

3 This bill permits local housing authorities to require criminal history
4 record background checks for prospective employees who would be
5 employed for at least seven hours per week.

6 The background checks would be conducted by the Division of
7 State Police and the Federal Bureau of Investigation, Identification
8 Division. Classes of offenses that would result in disqualification for
9 employment include: homicide, assault, kidnapping, sexual offenses,
10 robbery, and offenses against the family (which includes endangering
11 the welfare of children).

12 The Department of Community Affairs would act as a clearinghouse
13 for the collection and dissemination of information obtained as a result
14 of a background check. Applicants with criminal records would have
15 the opportunity to demonstrate their rehabilitation and avoid
16 disqualification. If disqualified, an applicant could petition the
17 commissioner for a hearing on the accuracy of the criminal history
18 record information.

19 The bill includes a \$95,000 appropriation to the department to
20 cover the cost of the background checks.

21 Housing authority employees often hold positions which place them
22 in contact with tenants, their children and their property. This bill
23 addresses the safety and security concerns of public housing residents.

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28 Allows criminal history record background checks for prospective
29 employees of certain public housing authorities; appropriates \$95,000.

[Passed Both Houses]

[Third Reprint]

SENATE, No. 51

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Senator O'CONNOR

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2 prospective employees of certain housing authorities, ³and³
3 supplementing Chapter ¹[14A of Title 55] 12A of Title 40A¹
4 ³[and Chapter 1 of Title 53 of the Revised Statutes and making an
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16 authority.

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18 the Local Redevelopment and Housing Law," P.L.1992, c.79
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³ Assembly floor amendments adopted September 26, 1996.

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2 being employed pursuant to the provisions of this act. An applicant
3 shall be disqualified from employment if the criminal history record
4 check reveals his conviction:

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6 (a) Involving danger to the person pursuant to

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8 N.J.S.2C:14-1 et seq. or N.J.S.2C:15-1 et seq.; or

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10 N.J.S.2C:24-1 et seq.; or

11 (2) In any other state or jurisdiction, for conduct which, if
12 committed in New Jersey, would constitute any of the crimes or
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14 b. Notwithstanding the provisions of subsection a. of this section
15 to the contrary, an applicant shall not be disqualified from
16 consideration for employment under this act on the basis of any
17 conviction disclosed by a criminal history record check if the individual
18 has affirmatively demonstrated to the authority clear and convincing
19 evidence of his rehabilitation. In determining whether an individual
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23 position;

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32 prison or in the community, counseling or psychiatric treatment
33 received, acquisition of additional academic or vocational education,
34 successful participation in correctional work-release programs, or the
35 recommendation of persons who have supervised the applicant.

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37 3. An applicant shall submit to the authority his ²or her² name,
38 address, ²and² fingerprints ²[, and his written consent for the
39 background check to be performed] taken on standard fingerprint
40 cards by a State or municipal law enforcement agency². ²[The
41 authority shall submit this documentation to the ¹[commissioner]
42 superintendent¹, who shall coordinate the criminal history background
43 check.]² An applicant who refuses to consent to, or cooperate in, the
44 securing of a criminal history record background check shall not be
45 considered for employment by the authority. The ¹[commissioner]
46 ²[superintendent¹] authority² is authorized to exchange fingerprint

1 data with and receive criminal history record information from the
2 Federal Bureau of Investigation, Identification Section ¹ [and the
3 Division of State Police, Bureau of Identification] ¹ ² and the Division
4 of State Police, Bureau of Identification² for use in making the
5 determinations provided for in section 2 of P.L. , c. (C.) (now
6 pending before the Legislature as this bill). ² No criminal history
7 record check shall be performed pursuant to this act unless the
8 applicant shall have furnished his or her written consent to such check.
9 The applicant shall bear the cost for the criminal history record check.²

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27 identified in the written notice.

28 b. ¹ [The] An¹ applicant ² [¹ of] to² a housing authority which
29 is subject to the provisions of Title 11A of the New Jersey Statutes¹
30 shall have ² [30] 20² days from the date of written notice of
31 disqualification to ¹ [petition the commissioner] file an appeal with the
32 Department of Personnel¹ for a ² [hearing] review² on the accuracy
33 of the criminal history record information or to establish his ² or her²
34 rehabilitation under subsection b. of section 2 of P.L. , c. (C.)
35 (now pending before the Legislature as this bill) ¹ [. The commissioner
36 shall by regulation establish a process for the hearing and adjudication
37 of applicant appeals. The commissioner may refer any case arising
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42 c. The ¹ [commissioner] Department of Personnel¹ or an authority
43 shall not maintain an applicant's criminal history record information or
44 evidence of rehabilitation submitted under this section for more than
45 six months from the date the applicant is hired or the date of the final

1 disposition of the applicant's disqualification, as the case may be.

2 ²This section shall not prohibit the Department of Personnel
3 from maintaining a copy of the decision on the applicant's appeal, or
4 the entire record in the case of a judicial appeal.²

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7 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and
8 regulations to effectuate the purposes of this act.]¹

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15 criminal history, pursuant to P.L. , c. (C.) (now pending before
16 the Legislature as this bill). The division shall conduct the background
17 check only upon receipt of the applicant's written consent to conduct
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23 to the ¹[commissioner] authority¹.]²

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26 to the ¹[Department of Community Affairs] Division of State Police¹
27 to effectuate the purposes of this act.]²

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36 Allows criminal history record background checks for prospective
37 employees of certain public housing authorities.

ASSEMBLY HOUSING COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 51

with committee amendments

STATE OF NEW JERSEY

DATED: APRIL 22, 1996

The Assembly Housing Committee reports favorably Senate Bill No. 51 **[1R]**, with committee amendments.

This bill, as amended, permits local housing authorities to require criminal history background checks for prospective employees who would work for at least seven hours per week.

The bill provides that an applicant for a position with a housing authority who furnishes his or her written approval for a criminal record background check shall have his or her fingerprints taken by a State or municipal law enforcement agency. The housing authority is authorized to exchange fingerprint data with the FBI and the Bureau of Identification under the State Police. The bill also provides that an applicant to an authority which is subject to the provisions of Title 11A of the New Jersey Statutes and who desires a review of the accuracy of the criminal history information may file an appeal with the Department of Personnel.

The committee amended the bill to provide that the authority may obtain the record check directly with the FBI and the State Police. In addition, the amendments provide that an applicant must provide his or her written consent to the background check, and that the applicant will bear the cost of such a check. The amendments reduce the appeal time for an applicant from 30 days to 20 days, and provide that the Department of Personnel will review the accuracy of the records, rather than provide a formal hearing. They also provide that the Merit System Board shall promulgate regulations on the appeal rights, rather than the Commissioner of Personnel.

The committee amendments also removed an appropriation of \$95,000 from the bill, since the costs of the record checks will be paid by the applicants.

SENATE LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

SENATE, No. 51

STATE OF NEW JERSEY

DATED: JANUARY 22, 1996

The Senate Law and Public Safety Committee favorably reports Senate Bill No. 51.

This bill permits local housing authorities to require criminal history record background checks for prospective employees who would be employed for at least seven hours per week.

The background checks would be conducted by the Division of State Police and the Federal Bureau of Investigation, Identification Division. Classes of offenses that would result in disqualification for employment include: homicide, assault, kidnapping, sexual offenses, robbery, and offenses against the family (which includes endangering the welfare of children).

The Department of Community Affairs would act as a clearinghouse for the collection and dissemination of information obtained as a result of a background check. Applicants with criminal records would have the opportunity to demonstrate their rehabilitation and avoid disqualification. If disqualified, an applicant could petition the commissioner for a hearing on the accuracy of the criminal history record information.

The bill includes a \$95,000 appropriation to the department to cover the cost of the background checks.

Housing authority employees often hold positions which place them in contact with tenants, their children and their property. This bill addresses the safety and security concerns of public housing residents.

This bill was pre-filed for introduction in the 1996-1997 legislative session. As reported, the bill includes the changes required by technical review which has been performed.