

CHAPTER 59

CRIMINAL HISTORY RECORD BACKGROUND CHECKS FOR NON-CRIMINAL MATTERS

Authority

N.J.S.A. 53:1-20.5, 53:1-20.6 and 53:1-20.7 (L. 1985, c.69).

Source and Effective Date

R.1990 d.425, effective July 30, 1990.
See: 22 N.J.R. 1869(a), 22 N.J.R. 2530(b).

Executive Order No. 66(1978) Expiration Date

Chapter 59, Criminal History Record Background Checks for Non-Criminal Matters, expires on July 30, 1995.

Chapter Historical Note

Chapter 59, Criminal History Record Background Checks for Non-Criminal Matters, became effective September 16, 1985. See: 17 N.J.R. 1743(a), 17 N.J.R. 2282(b). Pursuant to Executive Order No. 66(1978), Chapter 59 was readopted as R.1990 d.425. See: Source and Effective Date.

See section annotations for specific rulemaking activity.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. USER FEES

- 13:59-1.1 Definitions
- 13:59-1.2 Additional dissemination authorized by this chapter
- 13:59-1.3 Fees
- 13:59-1.4 Prescribed forms
- 13:59-1.5 Rejection and resubmission procedures
- 13:59-1.6 Limitations on access and use of Criminal History Record Information (CHRI)

SUBCHAPTER 1. USER FEES

13:59-1.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

“Access” means to instruct, communicate with, store data in, gain entry into, retrieve data from, disseminate, or otherwise make use of any computer, computer system or computer network.

“Administration of criminal justice or criminal justice purpose” includes:

1. The detection, apprehension, detention, pretrial and post-trial release, prosecution, adjudication, correction, supervision or rehabilitation of accused persons or criminal offenders;

2. The hiring of persons for employment by criminal justice agencies; and

3. Criminal identification activities, including the accessing of the New Jersey Criminal Justice Information System, the National Law Enforcement Telecommunications System (NLETS) or other states’ computerized repositories containing criminal history record information, by criminal justice agencies for the purposes set forth in paragraphs 1 and 2 of this definition.

“Attorney General” includes the Attorney General of New Jersey and, when authorized by the Attorney General to access Criminal History Record Information, his or her Assistants and Deputies.

“Authorized requester” means any person, agency or entity, including national requesters, authorized by Federal or State statute, rule or regulation, executive order, administrative code, local ordinance, resolution or by this chapter, to obtain dissemination of Criminal History Record Information accessed from the computerized databases of the New Jersey Criminal Justice Information System, the National Law Enforcement Telecommunications System (NLETS) or other states’ computerized repositories containing criminal history record information for non-criminal justice purposes, including licensing and/or employment.

“Criminal History Record Information” or “CHRI” means information collected by criminal justice agencies concerning persons and stored in the computerized databases of the New Jersey State Police SBI Criminal History Information System, the National Law Enforcement Telecommunications System (NLETS) or other states’ computerized repositories containing criminal history record information consisting of identifiable descriptions and notations of arrests, indictments, or other formal criminal charges, and any dispositions arising therefrom, including convictions, dismissals, acquittals, sentencing, correctional supervision and release.

“Criminal justice agency” means:

1. The courts of the State of New Jersey; and
2. A governmental entity of the State of New Jersey which performs functions pertaining to the administration of criminal justice pursuant to statute, ordinance, resolution or regulation, and which allocates a substantial portion of its budget to the administration of criminal justice.

“Dissemination of Criminal History Record Information” means the process whereby the State Bureau of Identification accesses the criminal history record databases of the New Jersey State Police SBI Criminal Justice Information System, the National Law Enforcement Telecommunications System (NLETS) or other states’ computerized repositories containing criminal history record information to compare

sets of classified fingerprints or to conduct name search requests to determine if New Jersey, Federal or out-of-State criminal history record information exists for persons identified by authorized requesters, and includes:

1. The dissemination by the State Bureau of Identification to authorized requesters, other than national requesters, of all records of convictions in New Jersey State courts and all records of pending arrests and charges for violations of New Jersey laws, regardless of their age, unless such records have been expunged pursuant to law; or

2. The dissemination by the State Bureau of Identification to authorized national requesters of all criminal history record information from the databases of the New Jersey State Police SBI Criminal Justice Information System, the National Law Enforcement Telecommunications System (NLETS) or other states' computerized repositories containing criminal history record information, unless such records have been expunged by law.

"Fee" means that cost established by law for processing all criminal history record requests for authorized requesters for noncriminal justice purposes, including licensing and/or employment.

"Governmental entities" include the State, any office, department, division, bureau, board, commission or agency of the State, and any county, municipality, district, public authority, public agency and any other political subdivision or public body within the State.

"National requesters" shall mean persons, agencies or entities authorized by Federal or State statute to obtain dissemination of Federal and out-of-State criminal history record information accessed by the State Bureau of Identification from the computerized databases of the New Jersey State Police SBI Criminal Justice Information System, the National Law Enforcement Telecommunications System (NLETS) and other states' computerized repositories containing criminal history record information.

"Non-criminal justice purpose" means any purpose, other than administration of criminal justice or criminal justice purpose, including employment and licensing, for which applicant fingerprints or name search requests are submitted by authorized requesters, as required or permitted by a Federal or State statute, rule or regulation, executive order, administrative code provision, local ordinance, resolution or by this chapter, to the State Bureau of Identification for the dissemination of criminal history record information.

"Public servant" means any officer or employee of State government or of any political subdivision or public body of the State, including any advisor or consultant retained by government to perform a governmental function.

"State Bureau of Identification, (S.B.I.))" means the State Bureau of Identification created by P.L. 1930, c.65 as a bureau within the Division of State Police.

"Superintendent" shall mean the Superintendent of the New Jersey Division of State Police (P.L. 1984, c.439, § 7).

Amended by R.1990 d.425, effective August 20, 1990.

See: 22 N.J.R. 1869(a), 22 N.J.R. 2530(b).

Amended "authorized agency" and "licensing and/or employment purpose."

Amended by R.1992 d.308, effective August 3, 1992.

See: 24 N.J.R. 1963(a), 24 N.J.R. 2735(a).

Amended by R.1994 d.601, effective December 5, 1994.

See: 26 N.J.R. 3595(a), 26 N.J.R. 4782(a).

13:59-1.2 Additional dissemination authorized by this chapter

(a) In addition to any other Federal or State laws, regulations, executive orders, ordinances or resolutions authorizing the dissemination of criminal history record information, the following requesters are authorized to obtain from the SBI all records of convictions in New Jersey State courts and, regardless of their age, all records of pending arrests and charges for violations of New Jersey laws, unless such records have been expunged pursuant to law:

1. Governmental entities of this State, the Federal government or any other state for any official governmental purposes, including, but not limited to, employment, licensing and the procurement of services;

2. A person or non-governmental entity of this State for purposes of determining a person's qualifications for employment, volunteer work or other performance of services;

3. Attorneys-at-law licensed by the State of New Jersey for use in any contested matters docketed in any State or Federal courts or administrative agencies of this State; and

4. Private detectives licensed by the Division of State Police pursuant to N.J.S.A. 45:19-8 et seq., for purposes of obtaining information in furtherance of the performance of their statutorily authorized functions, as specifically enumerated by N.J.S.A. 45:19-9(a)1 to 9.

(b) Requesters authorized by (a)1 and 2 above to obtain criminal history record information shall, on the completed forms or fingerprint cards prescribed pursuant to N.J.A.C. 13:59-1.4, obtain the signatures of the subjects of the requests. Requesters authorized by (a)1 and 2 and (a)4 above shall sign certifications on the forms prescribed by the Division of State Police. The signed certifications shall specify that:

1. The requesters are authorized to receive criminal history record information in conformity with (a) above;

2. That such records shall be used by the requesters solely for the purposes enumerated by the relevant provision of (a) above;

3. That such records will not be disseminated to persons for unauthorized purposes; and

4. That the requesters will otherwise comply with the provisions of N.J.A.C. 13:59-1.6(a).

(c) Except in cases of attorneys-at-law of this State and licensed private detectives proceeding under (a)3 and 4 above, requesters authorized by (a) above to obtain criminal history record information shall sign certifications on the forms prescribed by the Division of State Police certifying:

1. They will furnish the subjects of their inquiries with adequate notice to complete or challenge the accuracy of the records provided by the SBI;

2. If requested by the subjects of the inquiries, they will provide them with a reasonable period of time to correct or complete any records provided by the SBI;

3. They will not presume guilt for any pending arrests or charges indicated on records received from the SBI; and

4. That they will otherwise comply with the provisions of N.J.A.C. 13:59-1.6(b).

New Rule, R.1994 d.601, effective December 5, 1994.
See: 26 N.J.R. 3595(a), 26 N.J.R. 4782(a).

13:59-1.3 Fees

(a) A fee of \$25.00 shall be collected by the SBI for the purpose of processing fingerprint identification checks.

(b) A fee of \$15.00 shall be collected by the SBI for the purpose of processing criminal history name search identification checks.

(c) In addition to the fees collected in (a) and (b) above, a non-refundable fee shall be collected from each applicant to pay for the cost of securing and processing of national criminal record checks for non-criminal justice purposes where such checks are authorized by law.

(d) Unless otherwise provided by law, all fees collected for accessing and disseminating criminal history record information shall be deposited in the "Criminal History Record Information Fund".

(e) New Jersey State governmental entities may submit a "Memo Processed Certificate of Debit and Credit" for the applicable amount with each group of submissions to the State Bureau of Identification.

(f) Payment shall be made by cashiers check, certified check, money order or ordinary business check. Requesters who conduct large volumes of transactions may maintain prepaid accounts with the approval of the Superintendent. Any form of payment other than that specified in this section shall be first approved by the Superintendent. Checks or money orders shall be made payable to "Division of State Police—SBI."

Amended by R.1992 d.308, effective August 3, 1992.
See: 24 N.J.R. 1963(a), 24 N.J.R. 2735(a).

Added (d).
Recodified from 13:59-1.2 and amended by R.1994 d.601, effective December 5, 1994.

See: 26 N.J.R. 3595(a), 26 N.J.R. 4782(a).
Prior text at 13:59-1.3, Separation of fees, repealed.

13:59-1.4 Prescribed forms

(a) Requests for Criminal History Record Information by authorized requesters shall be on forms as prescribed by this section, except that attorneys-at-law of the State of New Jersey may obtain criminal history record information pursuant to N.J.A.C. 13:59-1.2(a)3 upon the payment of the fees prescribed by N.J.A.C. 13:59-1.3 by the lawful issuance of subpoenas. Such subpoenas shall be issued in accordance with applicable rules of court and administrative procedure and shall be on notice to all parties required to receive same.

(b) The prescribed forms shall be used to access Criminal History Record Information for any requests from authorized requesters for non-criminal justice purposes, including licensing and/or employment.

(c) For fingerprint identification purposes an "Applicant" fingerprint card must be used. The exception to this rule will be for a firearms application which requires a "Firearms Application" card.

1. Fingerprint card SBI-19 or SBI-19A: The fee as prescribed in this chapter, if in the form of a check, or money order, must be stapled to the lower left corner of the "Applicant" fingerprint card SBI-19 or "Firearms Application" fingerprint card SBI-19A and submitted to the State Bureau of Identification for processing.

2. For authorized requesters submitting fingerprint cards pursuant to the provisions of N.J.A.C. 13:59-1.2(a)1 and 2, the card shall be accompanied by "Request for Criminal History Record Information" form SBI-212B which must be completed in its entirety.

(d) For name search identification purposes, a "Request for Criminal History Record Information" form SBI-212 or SBI-212A must be used. In cases of name search identification requests pursuant to 13:59-1.2(a)(1), (2) and (4), a "Request for Criminal History Record Information" form SBI-212B must be used.

1. "Request for Criminal History Record Information Forms" (SBI-212, SBI-212A, or SBI-212B): These forms shall be completed in their entirety and shall contain all the information required to complete the check, including the name of the subject, the date of the birth of the subject and, when authorized pursuant to (d)2 above, the social security number of the subject. SBI forms submitted by private detectives and subpoenas issued by the attorneys-at-law of this State pursuant to N.J.A.C. 13:59-1.2(a)3 and 4, shall recite the name of the subject and the subject's date of birth.

2. Pursuant to the Privacy Act of 1974 (P.L. 93-579), the forms prescribed by this subsection shall advise the subjects of name searches that the furnishing of their social security numbers is voluntary and that their social security numbers will only be used for purposes of processing requests for criminal history record information.

3. The fee as prescribed in this chapter, if in the form of a check, or money order must be stapled to the front of each SBI-212, SBI-212A or SBI-212B form submitted to the State Bureau of Identification for processing.

Amended by R.1990 d.425, effective August 20, 1990.

See: 22 N.J.R. 1869(a), 22 N.J.R. 2530(b).

In (d), added SBI-212A.

Amended by R.1992 d.308, effective August 3, 1992.

See: 24 N.J.R. 1963(a), 24 N.J.R. 2735(a).

Revised (a)-(b).

Amended by R.1994 d.601, effective December 5, 1994.

See: 26 N.J.R. 3595(a), 26 N.J.R. 4782(a).

13:59-1.5 Rejection and resubmission procedures

(a) Any fingerprint card or Request for Criminal History Record Information form which is rejected will be returned with the submitted fee to the authorized requester. The procedure as set forth at N.J.A.C. 13:59-1.4 will be utilized for resubmissions with the following exceptions.

1. Fingerprint cards that cannot be classified will be rejected and returned to the authorized requesters. The fees which accompanied the fingerprint cards will be retained by the SBI. Upon resubmission, the rejected fingerprint card will be stapled to the newly taken fingerprint card and both cards will be submitted with the original rejection form to the SBI. No additional charges will be assessed for resubmitted fingerprint cards.

Recodified from 13:59-1.7 and amended by R.1994 d.601, effective December 5, 1994.

See: 26 N.J.R. 3595(a), 26 N.J.R. 4782(a).

Prior text at 13:59-1.5, Acceptable form of payment, repealed.

13:59-1.6 Limitations on access and use of Criminal History Record Information (CHRI)

(a) Access to criminal history record information for non-criminal justice purposes, including licensing and employment, is restricted to authorized requesters as defined by this chapter. Such requesters shall limit their use of criminal history record information solely to the authorized purpose for which it was obtained and Criminal History Record Information furnished by the SBI shall not be disseminated by authorized requesters to persons not authorized to receive the records for authorized purposes.

(b) If Criminal History Record Information may be used to disqualify a person from holding any position, employment or license or performing any services, whether compensated or uncompensated, the person acting on behalf of the authorized requester making such determination shall provide the applicant with adequate notice to complete or challenge the accuracy of any information obtained in the Criminal History Record. The applicant shall be afforded a reasonable period of time to correct or complete the record. A person shall not be presumed guilty of any pending charges or arrests for which there are no final dispositions indicated on the record.

(c) The State Bureau of Identification shall prominently display the following on any record disseminated for non-criminal justice purposes, including, employment licensing;

Use of this record is governed by Federal and State regulations. Unless fingerprints accompanied your inquiry, the State Bureau of Identification cannot guarantee this record relates to the person who is the subject of your request. Use of this record shall be limited solely to the authorized purpose for which it was given and it shall not be disseminated to any unauthorized persons. This record shall be destroyed immediately after it has served its intended and authorized purposes. Any person violating Federal or State regulations governing access to Criminal History Record Information may be subject to criminal and/or civil penalties.

If this record may disqualify an applicant for any purpose, the person making the determination shall provide the applicant with an opportunity to complete and challenge the accuracy of the information contained in the Criminal History Record. The applicant shall be afforded a reasonable period of time to correct and complete this record. A person is not presumed guilty of any charges or arrests for which there are no final dispositions indicated on the record. This record is certified as a true copy of the Criminal History Record Information on file for the assigned State identification number.

(d) Criminal justice agencies, for purposes of the administration of criminal justice, may access Criminal History Record Information (CHRI), Computerized Criminal History-Automated Name Index (CCH/ANI) or State Crime Information System data (SCIC) from the databases of the New Jersey State Police SBI Criminal Justice Information System or NLETS or other states' repositories of computerized CHRI. The Attorney General, or his or her designee, may access the databases of the New Jersey Criminal Justice Information System for any official purpose.

(e) Except when authorized as a lawful exercise of official duties in conformity with (d) above, or unless officially authorized for noncriminal justice purposes, no public servant shall access or permit any other person to access Criminal History Record Information (CHRI), the Computerized Criminal History-Automated Name Index (CCH/ANI), State Crime Information Center data (SCIC) stored in the New Jersey State Police SBI Criminal Justice Information System, NLETS or other states' repositories of computerized CHRI. This prohibition shall include use of any computer, computer system or computer network which may access CHRI, CCH/ANI, and SCIC stored in the New Jersey Criminal Justice Information System, NLETS or other states' repositories of computerized CHRI. Access by any public servant to CHRI, CCH/ANI and SCIC stored in the New Jersey State Police SBI Criminal Justice Information System, NLETS or other states' repositories of computerized CHRI shall be in strict conformity with these rules, the Federal regulations (28 CFR § 20.1 et seq.) and any "New Jersey Criminal Justice Information System Users Agreement" entered into by any criminal justice agency and the Division of State Police.

(f) Any criminal justice agency which has executed a "New Jersey Criminal Justice Information System Users Agreement," and which accesses Criminal History Record Information (CHRI), Computerized Criminal History-Automated Name Index (CCH/ANI) State Crime Information System Data (SCIC) stored in the New Jersey State Police SBI Criminal Justice Information System, or NLETS or other states' repositories of computerized CHRI for the

performance of administration of criminal justice functions, shall be provided with the full text of these rules by the State Bureau of Identification.

Amended by R.1992 d.308, effective August 3, 1992.

See: 24 N.J.R. 1963(a), 24 N.J.R. 2735(a).

Recodified from 13:59-1.8 and amended by R.1994 d.601, effective December 5, 1994.

See: 26 N.J.R. 3595(a), 26 N.J.R. 4782(a).

Prior text at 13:59-1.6, Superintendent's waiver provision, repealed.