

CHAPTER 59
CRIMINAL HISTORY RECORD
BACKGROUND CHECKS

Authority

N.J.S.A. 53:1-12 through 20.7.

Source and Effective Date

R.2000 d.429, effective October 16, 2000.
See: 32 N.J.R. 2213(a), 32 N.J.R. 2976(a), 32 N.J.R. 3860(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 59, Criminal History Record Background Checks, expires on April 14, 2006. See: 37 N.J.R. 4384(a).

Chapter Historical Note

Chapter 59, Criminal History Record Background Checks for Non-Criminal Matters, was adopted as R.1985 d.481, 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, Criminal History Record Background Checks for Non-Criminal Matters, was readopted as R.1990 d.425, effective July 30, 1990. See: 22 N.J.R. 1869(a), 22 N.J.R. 2530(b).

Pursuant to Executive Order No. 66(1978), Chapter 59, Criminal History Record Background Checks for Non-Criminal Matters, was readopted as R.1995 d.463, effective July 28, 1995. See: 27 N.J.R. 2103(a), 27 N.J.R. 3201(b). Pursuant to Executive Order No. 66(1978), Chapter 59 expired on July 28, 2000.

Chapter 59, Criminal History Record Background Checks for Non-Criminal Matters, was adopted as new rules by R.2000 d.429, effective October 16, 2000. See: Source and Effective Date.

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SUBCHAPTER 1. NONCRIMINAL JUSTICE PURPOSES

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, computer network, or other element of a central repository.

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

1. The detection, apprehension, detention, pretrial and post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of accused persons or criminal offenders;
2. The hiring of persons for employment by criminal justice agencies or the granting of access to a criminal justice facility; or
3. Criminal identification activities, including the accessing of the New Jersey Criminal Justice Information System, the National Law Enforcement Telecommunications System (NLETS), National Crime Information Center (NCIC) 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” means 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.

“Criminal history record information” or “CHRI” means information collected by criminal justice agencies concerning persons and stored in the central repository of the New Jersey State Police SBI, the National Crime Information Center (NCIC) 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, pending court actions, dismissals, acquittals, sentencing, correctional supervision and release.

“Criminal justice agency” means:

1. The courts of the State of New Jersey, any other state or the Federal government; or
2. A governmental entity of the State of New Jersey, any other state or the Federal government 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 and distributes information from the central repository of the New Jersey State Police SBI, the National Law Enforcement Telecommunications System (NLETS), National Crime Information Center (NCIC) or other states’

computerized repositories containing criminal history record information.

“FBI” means the Federal Bureau of Investigation in the United States Department of Justice.

“Fee” means that cost established for performing services authorized by this chapter, as set forth in N.J.A.C. 13:59-1.3.

“Governmental entities” means the Federal government or any state, any office, department, division, bureau, board, commission or agency of the Federal government or a state, and any county, municipality, district, public authority, public agency and any other political subdivision or public body within a state.

“National requesters” means persons, agencies or entities who are requesters authorized by a Federal statute or a state statute approved by the FBI, to obtain for a noncriminal justice purpose dissemination of New Jersey, Federal and out-of-State criminal history record information accessed by the State Bureau of Identification from the central repository of the New Jersey State Police SBI, the National Crime Information Center (NCIC) and other states’ computerized repositories containing criminal history record information.

“New Jersey Criminal Justice Information System” means a computerized network which is under the management and control of the New Jersey State Police.

“New Jersey Criminal Justice Information System Users Agreement” means an agreement signed by a criminal justice agency, the Division of State Police and the Office of Information Technology permitting the criminal justice agency to directly access the computerized databases of the New Jersey Criminal Justice Information System, or NCIC or other states’ repositories of computerized CHRI for the performance of administration of criminal justice purposes.

“Noncriminal justice purpose” means any purpose, other than administration of criminal justice or criminal justice purpose.

“Nonprofit youth serving organization” means a corporation, association or other organization established pursuant to Title 15 of the Revised Statute, Title 15A of the New Jersey Statutes or other law of this State, but excluding public and nonprofit schools, and which provides recreational, cultural, charitable, social or other activities or services for persons younger than 18 years of age, and is exempt from Federal income taxes.

“Processing criminal history record checks” means the process whereby the SBI compares a set of fingerprints or conducts a name search request with those in its files for a

determination as to the criminal history of the person identified by the request.

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

“Requester” means any person, agency or entity authorized by Federal or state statute, rule or regulation, executive order, administrative code, local ordinance, resolution or by N.J.A.C. 13:59-1.2 to obtain dissemination of CHRI from the central repository of the New Jersey State Police SBI for a noncriminal justice purpose in accordance with this chapter.

“Securing applicant fingerprint images” means the procedure used by a law enforcement agency to obtain an applicant’s fingerprints on a New Jersey and/or FBI fingerprint card and demographic data for submission to the SBI for processing criminal history record checks.

“SBI” means the State Bureau of Identification created by N.J.S.A. 53:1-12 as a bureau within the Division of State Police.

“SBI Number Flag” means an electronic note entered on or attached to a specific SBI number in the New Jersey Computerized Criminal History System (CCH) indicating that a request has been made for a service authorized by N.J.A.C. 13:59-1.8.

“SBI Number” means the identification number assigned to the criminal history record file of the State Bureau of Identification for a particular individual as identified by fingerprints.

“Superintendent” means the Superintendent of the New Jersey Division of State Police (N.J.S.A. 53:1-2).

“Volunteer” means any individual who is applying for or performing tasks in an unpaid position for a nonprofit youth serving organization, a qualified entity, as that term is defined by the National Child Protection Act of 1993 or an entity that has been qualified by the Internal Revenue Service as exempt from Federal income tax pursuant to 26 U.S.C. § 501(c)(3).

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).

Amended by R.2001 d.142, effective May 7, 2001.

See: 33 N.J.R. 172(a), 33 N.J.R. 1411(b).
Rewrote the section.

13:59-1.2 Dissemination for noncriminal justice purposes

(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 New Jersey criminal history record information from the central repository of SBI for noncriminal justice purposes 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 any state, that seeks to directly engage the services of the subject of the record, for purposes of determining the subject's qualifications for employment, volunteer work or other performance of services;
3. Attorneys-at-law licensed by any state for use in any contested matters docketed in any state or Federal courts or administrative agencies of any state;
4. Private detectives licensed by the New Jersey 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; and
5. A named individual as prescribed pursuant to N.J.A.C. 13:59-1.7.

(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 and New Jersey 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 arrests pending court actions 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).

(d) With the submission of New Jersey and FBI fingerprint cards pursuant to N.J.A.C. 13:59-1.4, national requesters may obtain from the SBI and FBI all criminal history record information retained on the subject and accessed by the SBI, including all criminal history record information from the central repository of the New Jersey State Police SBI, the National Crime Information Center (NCIC) or other states' computerized repositories containing criminal history record information, unless such records have been expunged by law.

New Rule, R.1994 d.601, effective December 5, 1994.
See: 26 N.J.R. 3595(a), 26 N.J.R. 4782(a).
Amended by R.2001 d.142, effective May 7, 2001.
See: 33 N.J.R. 172(a), 33 N.J.R. 1411(b).

In (a), inserted "New Jersey criminal history record information from the central repository of SBI for noncriminal justice purposes" preceding "records of convictions" in the introductory paragraph; in (a)2, inserted ", that seeks to directly engage the services of the subject of the record," following "any state" and substituted "the subject's" for "a person's"; added (a)5; in (c)3, deleted "pending" following "for any" and inserted "pending court actions" preceding "or charges"; added (d).

13:59-1.3 Fees

(a) A fee of \$30.00 shall be collected by the SBI for the purpose of processing New Jersey criminal history fingerprint record checks and checking them against the information in the central repository of the New Jersey State Police SBI. This fee shall be \$18.00 for processing New Jersey criminal history fingerprint record checks on:

1. Any person who volunteers with a qualified entity, as that term is defined by the National Child Protection Act of 1993, 42 U.S.C. §§ 5119, 5119c;
2. Any person who volunteers his or her services to an entity that has been qualified by the Internal Revenue System as exempt from Federal income tax pursuant to 26 U.S.C. § 501(c)(3); or
3. Any volunteer of a nonprofit youth serving organization.

(b) A fee of \$18.00 shall be collected by the SBI for the purpose of processing criminal history name search identification checks. This fee shall be \$10.00 for processing a name search on:

1. Any person who volunteers with a qualified entity, as that term is defined by the National Child Protection Act of 1993, 42 U.S.C. §§ 5119, 5119c;
2. Any person who volunteers his or her services to an entity that has been qualified by the Internal Revenue System as exempt from Federal income tax pursuant to 26 U.S.C. § 501(c)(3); or
3. Any volunteer of a nonprofit youth serving organization.

(c) In addition to the processing fee established in (a) above, a non-refundable fee in an amount established by the FBI shall be collected from each national requester to pay for the cost of processing of national fingerprint checks of criminal history record information stored in the NCIC or other states' repositories of computerized CHRI for non-criminal justice purposes.

(d) A \$10.00 fee shall be collected for the service authorized by N.J.A.C. 13:59-1.8.

(e) 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".

(f) 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.

(g) Payment shall be made by cashiers check, certified check, money order or ordinary business check. Requesters and national requesters who conduct large volumes of transactions may maintain prepaid accounts with the approval of the Superintendent. Any form or method of payment other than that specified in this section shall be first approved by the Superintendent. A single check or money order shall be drafted to cover all applicable fees prescribed by this chapter and shall be made payable to "Division of State Police—SBI."

(h) A fee may be collected by a law enforcement agency when it performs the procedure of securing applicant fingerprint images. The law enforcement agency's municipal governing body may assess and retain a fee to an applicant for the performance of this service pursuant to its authority under N.J.S.A. 40:48-1 et seq. to make, amend, repeal and enforce ordinances to fix the fees of any officer, or employee of the municipality for any service rendered in connection with his or her office or position for which no specific fee or compensation is provided.

(i) Upon authorization of the Superintendent, the procedure of securing applicant fingerprint images may be performed by a private entity under contract with the State and the applicant shall be assessed a fee which has been established under the contract between the private entity and the State.

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.

Amended by R.2001 d.142, effective May 7, 2001.

See: 33 N.J.R. 172(a), 33 N.J.R. 1411(b).

Rewrote the section.

Amended by R.2003 d.494, effective December 15, 2003.

See: 35 N.J.R. 4180(a), 35 N.J.R. 5547(b).

In (a), substituted "\$ 30.00" for "\$ 25.00" in the introductory paragraph; in (b), substituted "\$ 18.00" for "\$ 15.00" in the introductory paragraph.

Case Notes

Existing regulation implementing statute authorizing State Police to charge fee for criminal history background check was sufficiently broad to encompass authority to charge same fee for Brady Act check. *Bullet Hole, Inc. v. Dunbar*, 335 N.J.Super. 562 (A.D. 2001).

13:59-1.4 Prescribed forms

(a) Requesters and national requesters shall submit requests for criminal history record information on forms as prescribed by this section and the directions contained in the manual entitled "Guidelines for Preparation and Submission of Fingerprint Cards and Other Documents to the State Bureau of Identification (SBI)," New Jersey State Police, August, 1997, as amended and supplemented from time to time. The manual and forms are issued to criminal justice agencies by the SBI. Attorneys-at-law 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) For New Jersey fingerprint identification purposes, an "Applicant" fingerprint card SBI-19 shall be used. The SBI-19 form shall be signed by the individual whose fingerprints are on the card.

(c) A Federal fingerprint card FD-258 shall be submitted by national requesters for information contained in NCIC or other states' computerized repositories of CHRI. The FD-258 shall be signed by the individual whose prints are on the card.

(d) For name search identification a requester, other than a New Jersey licensed private detective meeting the SBI requirements of 400 submissions per month for bulk, name search identification submissions via facsimile, shall submit a "Request for Criminal History Record Information" form SBI-212.