

CHAPTER 297
HB 637-FN - FINAL VERSION

27Feb2019... 0047h
05/30/2019 1965s
05/30/2019 2361s

2019 SESSION

19-0744
04/03

HOUSE BILL ***637-FN***

AN ACT relative to criminal history background checks by employers and public agencies.

SPONSORS: Rep. Hennessey, Graf. 1; Rep. Massimilla, Graf. 1; Sen. Giuda, Dist 2

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill requires the division of state police to maintain an electronic database containing public criminal history record information which would be accessible to an individual, and to a state agency to obtain public criminal history record information about applicants for positions or as a condition for occupational licensure. The bill also removes the notarization requirement for requesting a criminal history records check for purposes of employment and occupational licensing.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struckthrough.]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in
regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nineteen

AN ACT relative to criminal history background checks by employers and public agencies.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 297:1 The State Police; Definitions. RSA 106-B:1 is repealed and reenacted to read as
2 follows:

3 106-B:1 Definitions. As used in this chapter:

4 I. "Commissioner" shall mean the commissioner of the department of safety.

5 II. "Confidential criminal history record information" means criminal history
6 record information of the following types:

7 (a) Unless the person remains a fugitive from justice, summons and arrest
8 information without disposition.

9 (b) Information disclosing that a criminal proceeding has been postponed or
10 dismissed because the person charged is found by the court to be mentally incompetent
11 to stand trial or to be sentenced.

12 (c) Information disclosing that a criminal charge has been filed.

13 (d) Information disclosing that a criminal charge has been dismissed by a
14 court with prejudice or dismissed with finality by a prosecutor.

15 (e) Information disclosing that a person has been acquitted of a criminal
16 charge. A verdict or accepted plea of not criminally responsible by reason of insanity, or
17 its equivalent, is not an acquittal of the criminal charge but shall be considered
18 confidential pursuant to subparagraph (b).

19 (f) Information disclosing that a criminal proceeding has terminated in a
20 mistrial with or without prejudice.

21 (g) Information disclosing that a criminal proceeding has terminated based
22 on lack of subject matter jurisdiction.

23 (h) Information disclosing that a criminal proceeding has been terminated
24 because the court lacked jurisdiction over the defendant.

25 (i) Information disclosing that a person has petitioned for and been granted a
26 full and free pardon or an annulment.

27 III. "Criminal history record information" means information pertaining to
28 natural persons collected by criminal justice agencies that provide individual

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1 identification of record subjects together with notations relating to such persons'
2 involvement in the criminal justice system as alleged or convicted offenders. The term
3 includes information relating to arrests, pretrial detention or release, formal documents
4 setting out criminal charges, dispositions, post-trial release, sentences, correctional pre-
5 sentence investigations, probation and parole status and conditions, parole or probation
6 violations, warrants, court scheduling orders, transport orders, and hearing notices.
7 The term shall also include juvenile protective orders issued pursuant to RSA 169-C:16,
8 I(d)(1) or RSA 169-C:19, II(a)(1), domestic violence protective orders issued pursuant to
9 RSA 173-B, restraining orders issued pursuant to RSA 458:16, I(a), (b), (c), or (d), and
10 stalking orders issued pursuant to RSA 633:3-a. The term "criminal history record
11 information" shall not include:

12 (a) Information relating to juveniles other than those who are charged as
13 adults.

14 (b) Information contained in intelligence and investigative record
15 information as defined in RSA 651-F, law enforcement work product record files, or law
16 enforcement work product records used solely for law enforcement investigation
17 purposes.

18 (c) Fingerprints or other biometric data taken for noncriminal purposes.

19 IV. "Criminal justice agency" means a federal or state or government agency or
20 any unit of a government agency at any governmental level that performs the
21 administration of criminal justice pursuant to a statute or executive order. "Criminal
22 justice agency" includes federal courts, New Hampshire courts, courts in any other state,
23 the department of justice, county attorneys' offices, and the equivalent departments or
24 offices in any federal or state jurisdiction. "Criminal justice agency" also includes any
25 equivalent agency at any level of the government of any federally recognized Indian
26 tribe.

27 V. "Disposition" means information disclosing that criminal proceedings have
28 concluded, and the nature of the termination. The term includes, but is not limited to,
29 the following types of terminations: dismissal, nolle prosequi, acquittal, guilty plea,
30 mistrial, not guilty by reason of insanity, a finding of incompetency to stand trial,
31 pardon, commutation, probation, or parole, as well as information that a law
32 enforcement agency has elected not to refer a matter for prosecution, that a prosecutor
33 has elected not to pursue criminal charges, or that the proceedings have been
34 indefinitely postponed and the reason therefor.

35 VI. "Dissemination" means the transmission of information by any means, in
36 writing or electronically.

37 VII. "Division" means the department of safety, division of state police.

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1 VIII. "Employee" means any employee of the division of state police.

2 IX. "Person" shall have the same meaning as in RSA 21:9.

3 X. "Police employee" means any employee who is assigned to police work.

4 XI. "Public criminal history record information" means New Hampshire state
5 criminal history record information that is not confidential criminal history record
6 information. "Public criminal history record information" shall not include violations of
7 RSA 638:13, relating to the use and possession of slugs; RSA 644:8-f, relating to
8 transporting dogs in pickup trucks; RSA 644:16-a, relating to the sale or use of stink
9 bombs; RSA 644:16-b, relating to the sale or use of smoke bombs; or RSA 635:3, relating to
10 trespassing stock or domestic fowl.

11 297:2 The State Police; Criminal Records. Amend RSA 106-B:14, I and I-a to read as
12 follows:

13 I. With the approval of the commissioner of safety, the director shall adopt rules
14 under RSA 541-A as may be necessary to secure records and other information relative
15 to persons who have been convicted of a felony, misdemeanor, or violation within the
16 state, or who are known to be habitual criminals, or who have been placed under arrest
17 in criminal proceedings. The term "violation" as used in this section shall apply only to
18 violations committed under title LXII. ***The division shall maintain public criminal***
19 ***history record information in an electronic database.*** Notwithstanding RSA 91-A,
20 records and other information secured by the director under this section, including but
21 not limited to dissemination logs, shall not be disclosed to any individual or public or
22 private agency except as follows:

23 (a) Law enforcement personnel may request and receive any information
24 documenting an individual's contact with the criminal justice system, including data
25 regarding identification, arrest or citation, arraignment, judicial disposition, custody,
26 and supervision.

27 (b) Any individual may request and receive, for a fee, a copy of his or her own
28 criminal ~~[conviction and arrest records and related]~~ ***history record*** information.

29 ~~(c)(1) [Except as provided in subparagraph (f), any individual or any public or~~
30 ~~private agency may request and receive a copy of the criminal conviction record of~~
31 ~~another who has provided authorization in writing, duly signed and notarized,~~
32 ~~explicitly allowing the requestor to receive such information]~~ ***Any person may, for a fee,***
33 ***obtain the public criminal history record information on another person.***

34 ***(2) A person who is authorized by statute may, for a fee, obtain criminal***
35 ***history record information for the purpose of complying with such statute.***

36 ***(3) The division shall not require notarization on any form prior to the***
37 ***release of public criminal history record information under subparagraph (c)(1).***

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(d) An employee of or person under contract to the state of New Hampshire to whom such disclosure of information is necessary in connection with the processing, storage, and transmission of such information, or the programming, repair, maintenance, testing, or procurement of equipment used to process, store, or transmit such information may have access to such information.

(e) A consumer reporting agency subject to and complying with the requirements of 15 U.S.C. section 1681, et seq., conducting employment screening services, including the screening of independent contractors, may request and receive a copy of the state criminal conviction record for a felony, misdemeanor, or violation of a candidate being screened for employment purposes or as an independent contractor.

(f) A court may request and receive a copy of the ~~[criminal conviction record]~~ **public criminal history record information** of a proposed guardian and any household member, in conjunction with a petition for guardianship of a minor pursuant to RSA 463 or a petition for guardianship of an incapacitated person pursuant to RSA 464-A, who has provided a signed authorization electronically or otherwise under the penalty of perjury and the authorization document is accompanied by a statement under the electronic signature stating "the penalty for perjury may include a fine or imprisonment or both."

(g) The clerks of the superior and circuit courts, or if there is no clerk the justice thereof, sheriffs, deputy sheriffs, police officers, probation and parole officers, and superintendents of the county departments of corrections shall secure and forward to the director all such information as he or she may direct relative to persons brought before said courts or arrested or in the custody of such officers.

I-a.(a) No individual, or public or private agency receiving **confidential** criminal ~~[conviction]~~ **history** record information from the division shall resell, rent, trade, transfer, make available, or otherwise disclose such information to another person for any purpose~~[- other than to a client of the individual, a defendant in a criminal proceeding or counsel for a defendant in a criminal proceeding, or public or private agency, without permission of the director].~~

(b) The state of New Hampshire and its officials, employees, or agents shall not be liable for the improper use, disclosure, or inaccuracy of conviction record information provided to a requesting individual or public or private agency under the provisions of this section.

(c) The director, after notice and opportunity for hearing, may prohibit any individual or public or private agency from requesting or receiving ~~[state]~~ **confidential** criminal ~~[conviction]~~ **history** information from the division if such individual or public or private agency resells, rents, trades, transfers, makes available, or otherwise discloses

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1 such information to another in violation of this section or any rule adopted thereunder.

2 (d) ~~[Criminal conviction records]~~ **Public criminal history record information**
3 received from the division shall be the official source of certified criminal ~~[conviction]~~
4 history records for employment and licensing purposes.

5 297:3 Powers and Duties of Towns; Background Checks for Certain Vendors. Amend
6 RSA 31:102-b, I to read as follows:

7 I. Any municipality may require persons who go from door to door, place to place
8 within a town, or town to town, who sell, offer to sell, or take orders for merchandise or
9 offer to perform personal services for household repairs or improvements, to submit to a
10 state records check only, or both a federal and state records check. Municipalities that
11 require a ~~[state]~~ **public** criminal history ~~[records]~~ **record information** check shall have
12 such person submit to the municipality a ~~[notarized]~~ **public** criminal history ~~[records~~
13 ~~release]~~ **record information authorization** form, as provided by the division of state
14 police, which authorizes the release of the person's **public** criminal ~~[records]~~ **history**
15 **record information**, if any. To obtain a federal records check, such person shall submit
16 to the municipality a criminal history ~~[records release form]~~ **record authorization form**,
17 as provided by the division of state police, which authorizes the release of the person's
18 criminal ~~[records]~~ **history record information**, if any, and a complete set of fingerprints.

19 297:4 Residential Care and Health Facilities Licensing; Criminal Record Check
20 Required. Amend RSA 151:2-d, II, III, and IV(a) to read as follows:

21 II. For the duration of licensure or certification every individual selected for
22 employment with any facility or entity required to be licensed or certified under this
23 chapter shall submit to the employer a ~~[notarized]~~ **public** criminal ~~[conviction]~~ **history**
24 record ~~[release]~~ **information** authorization form, as provided by the division of state
25 police, which authorizes the release of his or her **public** criminal ~~[conviction]~~ **history**
26 record **information** to the facility pursuant to RSA 106-B:14. This shall apply to any
27 employee, including volunteers, whose scope of employment will involve direct contact
28 with a client, client records or client tissue, body fluids, or other biological material.
29 For the purposes of this paragraph, "volunteers" shall not include any person admitted
30 to a facility or entity required to be licensed or certified under this chapter or who
31 resides in an affiliated corporate entity that is an integral part of the same community.

32 III. The licensee or certificate holder shall submit the ~~[notarized]~~ **public** criminal
33 ~~[conviction]~~ **history** record ~~[release]~~ **information** authorization form to the division of
34 state police after an applicant accepts a conditional offer of employment. The licensee
35 or certificate holder shall review the results of the **public** criminal ~~[conviction record]~~
36 **history record information** check before making a final offer of employment. An
37 employee shall not begin work before the final offer of employment is made.

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1 IV.(a) Upon receipt of a ~~[notarized]~~ **public** criminal ~~[conviction record release]~~
2 **history record information** authorization form from a facility or entity licensed under
3 this chapter, the division of state police shall conduct a **public** criminal ~~[conviction]~~
4 **history record information** check pursuant to RSA 106-B:14 and provide the results to
5 the licensee or certificate holder. ~~[The licensee or certificate holder shall maintain the~~
6 ~~confidentiality of all criminal conviction records received pursuant to this section.]~~

7 297:5 Personal Care Services; Criminal Record Check Required. Amend RSA 161-I:6-
8 a, I, II, and III(a) to read as follows:

9 I. Every applicant selected for employment with an other qualified agency, as
10 defined in RSA 161-I:2, IX, shall submit to the employer a ~~[notarized]~~ **public** criminal
11 ~~[conviction]~~ **history record [release] information** authorization form, as provided by the
12 division of state police, which authorizes the release of his or her **public** criminal
13 ~~[conviction record]~~ **history record information** to the facility pursuant to RSA 106-B:14;
14 provided, that the scope of employment includes the provision of services in a client's
15 home or otherwise involves direct contact with a client.

16 II. The other qualified agency shall submit the ~~[notarized]~~ **public** criminal
17 ~~[conviction record release]~~ **history record information** authorization form to the
18 division of state police after an applicant accepts a conditional offer of employment. The
19 other qualified agency shall review the results of the **public** criminal ~~[conviction record]~~
20 **criminal history record information** check before making a final offer of employment.
21 An employee shall not begin work before the final offer of employment is made.

22 III.(a) Upon receipt of a ~~[notarized]~~ **public** criminal ~~[conviction record release]~~
23 **history record information** authorization form from an other qualified agency, the
24 division of state police shall conduct a **public** criminal ~~[conviction record]~~ **history record**
25 **information** check pursuant to RSA 106-B:14 and provide the results to the other
26 qualified agency. ~~[The other qualified agency shall maintain the confidentiality of all~~
27 ~~criminal conviction records received pursuant to this section.]~~

28 297:6 Home Inspectors; Eligibility Requirements for Licensure. Amend RSA 310-
29 A:190, I(e) to read as follows:

30 (e) Submit to the board a ~~[notarized]~~ **public** criminal history ~~[records release]~~
31 **record information authorization** form as provided by the New Hampshire state police,
32 which authorizes the release of the applicant's **public** criminal ~~[records]~~ **history record**
33 **information**, if any. The applicant shall bear the cost of the **public** criminal ~~[records]~~
34 **history record information** check.

35 297:7 Dentists and Dentistry; Criminal History Record Check. Amend RSA 317-A:8-a,
36 I to read as follows:

37 I. Every applicant for initial permanent licensure or reinstatement shall submit

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1 to the board of dental examiners a [~~notarized~~] criminal history record [~~release~~]
2 ***information authorization*** form, as provided by the New Hampshire division of state
3 police, which authorizes the release of his or her criminal history record ***information***, if
4 any, to the board.

5 297:8 Naturopathic Health Care Practice; Criminal History Record Checks. Amend
6 RSA 328-E:9-a, I to read as follows:

7 I. Every applicant for initial licensure shall submit to the board a [~~notarized~~]
8 criminal history record [~~release~~] ***information authorization*** form, as provided by the
9 New Hampshire division of state police, department of safety, which authorizes the
10 release of his or her criminal history record ***information***, if any, to the board.

11 297:9 Real Estate Practice; Criminal Records Check. Amend RSA 331-A;10-a, I to read
12 as follows:

13 I. All applicants for a new salesperson or broker license shall submit to the New
14 Hampshire department of safety, division of state police, a [~~notarized~~] ***public*** criminal
15 [~~record—release~~] ***history record information*** authorization form, along with the
16 appropriate fee, prior to submitting an application for a real estate license. In addition,
17 the applicant shall submit to the commission a criminal record report from any other
18 jurisdiction in which the applicant has been convicted of a misdemeanor or felony
19 offense.

20 297:10 Effective Date. This act shall take effect July 1, 2019.

Approved: July 29, 2019
Effective Date: July 01, 2019

