

Attachment 1

Revised Background Screening Policy for Proposed Guardians of Incapacitated Adults

**New Jersey Judiciary Background Screening Policy
for Proposed Guardians of Incapacitated Adults (Revised)**

I. Authority

N.J.S.A. 3B:12-25; R. 4:86; National Probate Court Standard 3.3.12;
N.J.A.C. 13:59-1.1 et seq.; 28 C.F.R. part 20

II. Applicability

This policy is applicable to all proposed guardians of incapacitated adults in matters adjudicated in the New Jersey Superior Court, Chancery Division, Probate Part, except the following:

- A. Individuals who are the parents in a parent and child relationship with an alleged incapacitated person, as “parent and child relationship” is defined by the New Jersey Parentage Act, N.J.S.A. 9:17-39, or who were appointed legal guardians of an alleged incapacitated person prior to their reaching majority pursuant to an order of the Superior Court, Chancery Division, Family Part;
- B. Individuals who are married to an alleged incapacitated person in accordance with N.J.S.A. 37:1-29 et seq., in a civil union with an alleged incapacitated person as defined by N.J.S.A. 37:1-29, or in a domestic partnership with an alleged incapacitated person as defined by N.J.S.A. 26:8A-3;
- C. Pendente lite temporary guardians appointed pursuant to N.J.S.A. 3B:12-24.1(c);
- D. Agencies authorized to act pursuant to P.L.1985, c. 298 (C.52:27G-20 et seq.), P.L.1985, c. 145 (C.30:6D-23 et seq.), P.L.1965, c. 59 (C.30:4-165.1 et seq.) and P.L.1970, c. 289 (C.30:4-165.7 et seq.);
- E. Public officials appointed as limited guardians of the person for medical purposes for individuals in psychiatric facilities listed in R.S.30:1-7;

New Jersey Judiciary Background Screening Policy
for Proposed Guardians of Incapacitated Adults (Revised) (Corrected)

Promulgated April 14, 2023 by Directive #06-23

Page 1 of 11

- F. Banks, trust companies, credit unions, savings and loan associations, or other financial institutions duly licensed or authorized to conduct business under applicable state or federal laws; and
- G. Attorneys admitted to practice law and in good standing in the State of New Jersey who are appointed by the court in their professional capacity.
- H. Notwithstanding the above provisions (A) through (G), the court may require any proposed guardian to undergo background screening as a prerequisite to appointment based on the individual facts of the case, including but not limited to the value of the guardianship estate.

III. Scope

These procedures establish guidelines governing screening of proposed permanent guardians, substitute guardians, and successor guardians of incapacitated adults in matters adjudicated in the New Jersey Superior Court, Chancery Division, Probate Part. These include proposed general and limited guardians of the person; of the estate; and of the person and estate. These do not include special medical guardianships adjudicated in the New Jersey Superior Court, Chancery Division, General Equity.

IV. Policy and Procedures

- A. All proposed guardians will be provided with a copy of the Judiciary's Background Screening Policy for Proposed Guardians of Incapacitated Adults by the Surrogate. The proposed guardians must complete, sign, and return to the Surrogate an acknowledgment of receipt of the policy within five (5) business days of receipt. The acknowledgment form shall be filed as part of the court record.
- B. Personal identifiers provided with the acknowledgment form will be used only for the background screening and not for any other purpose.
- C. All proposed guardians except those who are exempt from the policy pursuant to provisions II.(C) through (H) above must attach a

New Jersey Judiciary Background Screening Policy
for Proposed Guardians of Incapacitated Adults (Revised) (Corrected)

Certification of Criminal and Civil Judgment History to their complaint. The Certification of Criminal and Civil Judgment History shall be in such form as promulgated by the Administrative Director of the Courts. The certification may be supplemented at any time up to the time of qualification and acceptance of appointment. If no proposed guardian has been identified at the time of the filing of the complaint, the certification shall be filed no later than prior to the entry of judgment of legal incapacity and appointment of guardian. Under N.J.S.A. 2C:52-27, expunged criminal records are deemed not to have occurred and shall not be disclosed.

- D. A criminal history background screening check will be performed upon all proposed guardians who are subject to the policy prior to qualification and acceptance of the appointment. The background check will be in the form of a fingerprint check performed by the county sheriff's department for the vicinages. The fingerprint check may be conducted in the county of venue, or in any other New Jersey county if travel or other factors make fingerprinting in the county of venue prohibitive.
- E. The fingerprint check should be conducted within sixty (60) days of the date of filing of the complaint. Failure to do so will result in automatic disqualification of the proposed guardian(s) absent exigent circumstances.
- F. In the event that a proposed guardian is not available to submit to a fingerprint in New Jersey because he/she resides outside of the State, a Computerized Criminal History (CCH) check will be used as a screening tool.
- G. Electronic Reception of the Fingerprint Reports
 - 1. The vicinage Human Resources Division Manager or his/her designee may receive the electronically transmitted copy of the fingerprint reports.
 - 2. Hard copies of the fingerprint reports may be made and

New Jersey Judiciary Background Screening Policy
for Proposed Guardians of Incapacitated Adults (Revised) (Corrected)

Promulgated April 14, 2023 by Directive #06-23

Page 3 of 11

confidentially shared with the Probate Part judge, the Surrogate, and/or his/her designee, as well as with counsel for the alleged incapacitated person.

3. Hard copies of the fingerprint reports may also be made and confidentially shared with Counsel to the Administrative Director at the Administrative Office of the Courts and/or his/her designee.
4. No electronic copies of fingerprint reports may be made and/or distributed.
5. Pursuant to federal regulations, the Judiciary may **not** share the results of an individual's fingerprint report with that individual.

H. Any questions or concerns regarding an item that appears on a fingerprint report or a CCH check shall be directed to Counsel to the Administrative Director at the Administrative Office of the Courts.

I. Destruction of the Fingerprint Reports

1. All copies and the original of the fingerprint reports must be destroyed immediately upon decision-making.
2. Destruction of fingerprint reports shall be in the form of shredding.
3. The vicinage Human Resources Division Manager is responsible for ensuring that all such records are shredded.

J. All proposed guardians who are subject to the policy will also be screened using the following Judiciary systems: (1) the Automated Traffic System (ATS), (2) Promis-Gavel, (3) the Judiciary's Children-in-Court (CIC) Documents Application, which will access limited areas of the Domestic Violence Central Registry through the Family Automated Case Tracking System (FACTS), Promis-Gavel, and the Automated Complaint System (ACS), and (4) the Civil Judgment and Order Docket (CJOD). No other internal Judiciary program may be

New Jersey Judiciary Background Screening Policy
for Proposed Guardians of Incapacitated Adults (Revised) (Corrected)

searched. The Probate Part judge or his/her designee will conduct this prior court history search. If any adverse information is obtained by such search, the Probate Part judge or his/her designee will consult with the relevant Family/Criminal/Municipal Division Manager to ensure appropriate interpretation of the data. In addition, a certified judgment search may be conducted for proposed guardians in the discretion of the Probate Part judge based on factors including but not limited to the value of the guardianship estate, with costs to be paid by the proposed guardian. Results of these database searches may be confidentially shared with counsel for the alleged incapacitated person.

1. If the proposed guardian's name appears on one of these database searches, the information will be reviewed by the Probate Part judge for a determination as to whether the person should be precluded from appointment as guardian.
2. Records from the CIC Document Search must be destroyed immediately upon decision-making. Destruction of the records shall be in the form of shredding. The vicinage Human Resources Division Manager or designated staff is responsible for ensuring that all such records are shredded.

K. Evaluating Criminal History Background and Screening Information

1. The following factors may be considered in determining whether the criminal history background information and/or the screening information discovered through the search of Judiciary systems adversely relates to the proposed guardian's ability to perform the duties and responsibilities of guardianship in the best interests of the incapacitated person or estate:
 - a. The nature and seriousness of the offense or misconduct;
 - b. The circumstances under which the offense or misconduct occurred;
 - c. The date of the offense or misconduct and the age of the proposed guardian when the offense or misconduct was committed;

New Jersey Judiciary Background Screening Policy
for Proposed Guardians of Incapacitated Adults (Revised) (Corrected)

- d. The disposition of the offense or misconduct;
 - e. Whether the offense or misconduct was an isolated event;
 - f. Evidence of rehabilitation;
 - g. Whether the offense or misconduct is relevant to the responsibilities of a guardian;
 - h. The vulnerability of the incapacitated person; and
 - i. Whether appointing the proposed guardian diminishes the public trust in the Judiciary.
2. All Probate Part judges and designees who review criminal history background and screening information need to be mindful of the presumption of innocence with respect to pending criminal charges. Review of pending criminal charges is a fact-sensitive exercise and will depend on the seriousness of the offense charged and the extent to which it touches upon the proposed guardian's prospective duties.
 3. Review of data from criminal background checks and searches of Judiciary systems will be strictly limited to the Probate Part judge and/or his/her designee.
 4. The decision to appoint or preclude appointment of a guardian based on criminal background check or screening data lies with the Probate Part judge.
 5. A proposed guardian whose appointment may be precluded based on the results of a criminal background check or screening must be provided notice and an opportunity to be heard on the record as to why the conviction or search result would not adversely affect the proposed guardian's ability to perform the duties and responsibilities of guardianship in the best interests of the incapacitated person or estate before the court decides to appoint or preclude appointment of the guardian.
 - a. Proposed guardians who may be precluded from appointment based on data contained in a fingerprint report or screening data will be afforded an opportunity to

New Jersey Judiciary Background Screening Policy
for Proposed Guardians of Incapacitated Adults (Revised) (Corrected)

Promulgated April 14, 2023 by Directive #06-23

Page 6 of 11

challenge any alleged inaccuracy or incompleteness of the information within the report. Proposed guardians will be provided with an appropriate “Notice of Rights” in such form as attached to this policy. Pursuant to 28 C.F.R. 16.30-34, the “Notice of Rights (Fingerprinting)” sets forth the procedures that must be followed to challenge any alleged inaccuracies or incompleteness with a proposed guardian’s fingerprint report. The proposed guardian shall be afforded a reasonable period of time to correct or complete any information contained in their fingerprint report.

b. A guardian background screening hearing shall be conducted in open court unless the underlying matter identified through the criminal background check or screening was a closed proceeding. The record of the guardian background screening hearing shall not be sealed unless the record of the underlying matter was sealed. However, the Probate Part judge retains discretion to seal the record of the guardian background screening hearing upon request for good cause shown.

L. At qualification and acceptance of the appointment of guardianship, the guardian’s acceptance shall include an acknowledgment of compliance with this policy.

M. Guardians ordered to file periodic reports pursuant to N.J.S.A. 3B:12-42 shall have an ongoing duty to comply with this policy by disclosing any changes to their criminal or civil judgment history in such reports.

**New Jersey Judiciary Background Screening Policy
for Proposed Guardians of Incapacitated Adults Acknowledgment Form**

As part of the process of appointing a guardian of an incapacitated adult, the New Jersey Judiciary requires background checks for certain proposed guardians prior to qualification and acceptance of the appointment. The background check is one way that the court obtains information that is relevant to determining whether a person should be appointed as guardian. The process is designed to help the court in doing what is best for the person who is subject to the guardianship.

The Judiciary recognizes that good people make mistakes, or can be subject to unfortunate circumstances outside of their control. These facts will not disqualify them from being considered as a guardian. Rather, the court will take that information into consideration – along with information provided by the person who is offering to serve as guardian – and will make a decision based on all of the facts available, including the expressed preference of the alleged incapacitated person.

Proposed guardians must file a Certification of Criminal and Civil Judgment History with the complaint. The certification may be supplemented at any time up to the time of qualification and acceptance of appointment. If no proposed guardian has been identified when the complaint is filed, the certification must be filed no later than prior to the entry of judgment of legal incapacity and appointment of guardian. The proposed guardians will be fingerprinted and a criminal history check will be performed. These background checks access the National Crime Information Center’s (NCIC) database of criminal arrests, criminal convictions, disorderly persons convictions, as well as any convictions that have been expunged.

The Judiciary also screens proposed guardians through a search of the following Judiciary systems: (1) the Automated Traffic System (ATS), (2) Promis-Gavel, (3) the Judiciary’s Children-in-Court (CIC) Documents Application, which will access limited areas of the Domestic Violence Central Registry through the Family Automated Case Tracking System (FACTS), Promis-Gavel, and the Automated Complaint System (ACS), and (4) the Civil Judgment and Order Docket (CJOD). No other internal Judiciary program may be searched. In addition, the court may require that a certified judgment search be conducted for proposed guardians based on factors including but not limited to the value of the guardianship estate, with costs to be paid by the proposed guardian.

If a conviction is revealed, or if a proposed guardian's name appears on any of these database searches, the information will be reviewed for a determination as to whether the proposed guardian should be precluded from appointment as a guardian. Again, a conviction or an appearance in the search results will not automatically disqualify a proposed guardian from appointment. Rather, the court will consider whether the conviction or search result adversely affects the proposed guardian's ability to perform the duties and responsibilities of guardianship in the best interests of the incapacitated person or estate.

A proposed guardian whose appointment may be precluded based on criminal background check or screening data shall be provided notice and an opportunity to be heard on the record as to why the data would not adversely affect the proposed guardian's ability to perform the duties and responsibilities of guardianship in the best interests of the incapacitated person or estate before a decision on appointment is made. The proposed guardian will be given a "Notice of Rights," which sets forth procedures to challenge any alleged inaccuracies or incompleteness with a proposed guardian's fingerprint report, and an opportunity to challenge any alleged inaccuracy or incompleteness of the data. The proposed guardian shall also be afforded a reasonable period of time to correct or complete any information contained in their fingerprint report.

At qualification and acceptance of the appointment of guardianship, the guardian's acceptance shall include an acknowledgment of compliance with this policy.

Guardians ordered to file periodic reports pursuant to N.J.S.A. 3B:12-42 shall have an ongoing duty to comply with this policy by disclosing any changes to their criminal or civil judgment history in such reports.

THE INFORMATION BELOW IS REQUIRED TO PROCESS THE GUARDIANSHIP APPLICATION. YOU MUST COMPLETE AND SIGN THIS PAGE, AND RETURN IT WITHIN FIVE (5) BUSINESS DAYS TO:

_____ COUNTY SURROGATE COURT
ADDRESS
CITY, STATE ZIP

PLEASE KEEP A COPY OF THIS PAGE FOR YOUR RECORDS.

I acknowledge that I have received a copy of New Jersey Judiciary Background Screening Policy for Proposed Guardians of Incapacitated Adults.

I understand that the confidential personal identifiers that I provide below will be used only for the background screening, and not for any other purpose.

_____ County

_____ Docket Number

_____ Name of Proposed Guardian
(Last, First, Middle)

_____ Alias, if any

_____ Date of Birth

_____ Social Security Number

_____ Street Address

_____ City, State ZIP

_____ Telephone Number

_____ Email Address

_____ Signature

_____ Date

Records of guardianship proceedings are excluded from public access pursuant to N.J. Court Rule 1:38-3(e). Confidential personal identifiers may be submitted on this form pursuant to Rule 1:38-7(b). This form shall be maintained as an administrative record excluded from public access pursuant to Rule 1:38-5(a).

New Jersey Judiciary Background Screening Policy
for Proposed Guardians of Incapacitated Adults (Revised) (Corrected)

Notice of Rights (Fingerprinting)

Please be advised that information in your background check may preclude you from being appointed as guardian of an incapacitated adult. You have the right to challenge this information and to present corrected or additional information to the court. You may obtain a copy of your identification record by submitting a written request via the U.S. mails directly to the F.B.I., Criminal Justice Information Services (CJIS) Division, ATTN: SCU, Mod. D-2, 1000 Custer Hollow Road, Clarksburg, WV 26306. Such a request must be accompanied by satisfactory proof of identity. Your request must also be accompanied by the applicable fee in the form of a certified check or money order, payable to the Treasury of the United States.

If, after reviewing your identification record, you believe that it is incorrect or incomplete in any respect, you may make application directly to the agency that contributed the questioned information or direct your challenge to the F.B.I., Criminal Justice Information Services (CJIS) Division, ATTN: SCU, Mod. D-2, 1000 Custer Hollow Road, Clarksburg, WV 26306. The F.B.I. will then forward the challenge to the agency which submitted the data requesting that agency to verify or correct the challenged entry.

Notice of Rights (Judiciary System Check)

Please be advised that information in your background check may preclude you from being appointed as guardian of an incapacitated adult. You have the right to challenge this information and to present corrected or additional information to the court. Pursuant to the current Background Screening Policy for Proposed Guardians of Incapacitated Adults, candidates are also screened using Judiciary computer systems. Please note that your presumptive preclusion was based upon information revealed after a check of these Judiciary computer systems.