



THE 188<sup>TH</sup> GENERAL COURT OF

THE COMMONWEALTH OF MASSACHUSETTS

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Chapter 459

AN ACT RELATIVE TO BACKGROUND CHECKS.

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Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. Subsection (a) of [section 7 of chapter 15D of the General Laws](#), as appearing in the 2010 Official Edition, is hereby amended by adding the following paragraph: -

As part of the department’s licensure and background record check process, the department shall conduct fingerprint-based checks of the state and national criminal history databases, under 42 U.S.C. section 16962, before issuing any license. The fingerprint-based checks shall be conducted on any applicant for a family child care, small group and school age, large group and school age, residential and placement license or family child care assistant certificate. The fingerprint-based checks shall be conducted for all applicants for employment, who have the potential for unsupervised contact with children, in any department licensed or funded program and for all household members or persons regularly on the premises, age 15 or older, of applicants for family child care licensure. The fingerprint-based checks shall also be required for all in-home non-relative department funded caregivers and for all applicants to be adoptive or foster parents. Authorized department staff may receive and appropriately disseminate all criminal offender record information and the results of checks of state and national criminal information databases, under 42 U.S.C. section 16962, in accordance with the law. When the department obtains the results of checks of state and national criminal information databases, it shall treat the information according to sections 167 through 178, inclusive, of chapter 6 and the regulations thereto regarding criminal offender record information.

SECTION 2. Subsection (b) of said [section 7 of said chapter 15D](#), as so appearing, is hereby amended by adding the following paragraph: -

As part of the department’s approval process, the department shall conduct fingerprint-based

checks of the national crime information databases, under 42 U.S.C. section 16962, before issuing any approval. The fingerprint-based checks shall be conducted for all applicants for employment who have the potential for unsupervised contact with children in any department approved program. Authorized department staff may receive and appropriately disseminate all criminal offender record information and the results of checks of state and national criminal information databases, under 42 U.S.C. section 16962, in accordance with the law. When the department obtains the results of checks of state and national criminal information databases, it shall treat the information according to sections 167 through 178, inclusive, of chapter 6 and the regulations thereto regarding criminal offender record information.

SECTION 3. Subsection (b) of [section 8 of said chapter 15D](#), as so appearing, is hereby amended by inserting after the word "fees", in line 35, the following words: - , which shall incorporate all fees associated with conducting fingerprint-based checks of the state and national criminal history databases, under 42 U.S.C. section 16962, as set by the department.

SECTION 4. Subsection (d) of said [section 8 of said chapter 15D](#), as so appearing, is hereby amended by inserting after the word "check", in line 55, the following words: - and fingerprint-based checks of the state and national criminal history databases, under 42 U.S.C. section 16962.

SECTION 5. Said [section 8 of said chapter 15D](#), as so appearing, is hereby further amended by adding the following subsection: -

(j) Fingerprints, as referenced in subsections (a) and (b) of section 7 and subsections (b) and (d) of this section, shall be submitted to the identification section of the department of state police for a state criminal history check and forwarded to the Federal Bureau of Investigation for a national criminal history check, according to the policies and procedures established by the identification section and by the department of criminal justice information services. Fingerprint submissions and national criminal history checks may be retained by the department of criminal justice information services to ensure the continued suitability for licensure, certification, approval or employment of those individuals. The department may disseminate the results of a national criminal history check to the department of early education and care to determine the suitability of: (i) current and prospective employees in any department licensed or funded program; (ii) all household members or persons regularly on the premises, age 15 or older, of applicants for family child care licensure; (iii) all in-home non-relative department funded caregivers; and (iv) all adoptive or foster parent applicants.

The department of criminal justice information services shall disseminate the results of the criminal background check to the department. The department of criminal justice information services shall only disseminate information under this section that would otherwise be available to requesting entities under sections 167 through 178, inclusive, of chapter 6 and the regulations thereto regarding criminal offender record information.

All persons required to submit fingerprints pursuant to this chapter, including, but not limited

to: (i) any applicant for department licensure or for employment at a department licensed or funded program; (ii) any household member or person regularly on the premises, age 15 or older, in a family child care program; (iii) any prospective foster or adoptive parent; and (iv) any in-home non-relative caregiver, shall pay a fee, to be established by the department in consultation with the secretary of public safety and security, to offset the costs of operating and administering a fingerprint-based criminal background check system. The fee shall not exceed \$35 per person. The fee may increase accordingly if the Federal Bureau of Investigation increases its fingerprint background check service fee. The department licensed or funded programs may reimburse applicants for employment for all or part of the fee on the grounds of financial hardship. The fee shall be deposited into the Fingerprint-Based Background Check Trust Fund, established under [section 2HHHH of chapter 29](#).

SECTION 6. [Chapter 29 of the General Laws](#) is hereby amended by inserting after section 2GGGG the following section: -

Section 2HHHH. There shall be established and set up on the books of the commonwealth a separate fund to be known as the Fingerprint-Based Background Check Trust Fund. The fund shall be credited any appropriations or other monies authorized by the general court and specifically designated to be credited thereto and any additional funds designated for deposit into the fund, including any private donations made available for deposit into the fund. Amounts credited to the fund shall be available, without further appropriation, to the executive office of public safety and security to carry out fingerprint-based state and national background criminal checks for the purposes of employment, professional licensure and other non-criminal justice purposes.

The fund shall be utilized for the sole purpose of carrying out state and national criminal background checks and verifications, including, but not limited to, obtaining or contracting to obtain fingerprints and fees from subjects, making payments charged by the Federal Bureau of Investigation or other entity, staffing the department of state police and the department of criminal justice information services to submit fingerprints and to obtain, verify and disseminate the results of background checks and maintaining the public safety information systems used to obtain access to fingerprint-based state and national criminal background information.

The department of criminal justice information services shall report annually to the house and senate committees on ways and means and the joint committee on education on the cost of operating and administering the fingerprint-based criminal background check system, including the amount and purpose of expenditures from the fund.

SECTION 7. [Chapter 71 of the General Laws](#) is hereby amended by striking out section 38R, as appearing in the 2010 Official Edition, and inserting in place thereof the following section: -

Section 38R. In a manner prescribed by the board of elementary and secondary education, the school committee and superintendent of any city, town or regional school district and the principal or other administrator, by whatever title the position be known, of a public or private school, including a special education school program approved under [chapter 71B](#),

shall obtain periodically, but not less than every 3 years, from the department of criminal justice information services all available criminal offender record information for any current or prospective employee or volunteer within the school district or for any subcontractor or laborer commissioned by the school committee or school to perform work on school grounds, who may have direct and unmonitored contact with children, including any individual who regularly provides school related transportation to children.

The school committee, superintendent of any city, town or regional school district or the principal or other administrator, by whatever title the position be known, of a public or private school, including a special education school program approved under [chapter 71B](#), shall also obtain a state and national fingerprint-based criminal background check, as authorized by Public Law 92-544, to determine the suitability of current and prospective employees of the school department who may have direct and unmonitored contact with children. The school committee shall only obtain a state and national fingerprint-based criminal background check for current and prospective employees for whom the school committee has direct hiring authority. The superintendent, principal or other administrator shall also obtain a state and national fingerprint-based criminal background check for any individual who regularly provides school related transportation to children and any subcontractor or laborer commissioned by the school committee or school to perform work on school grounds who may have direct and unmonitored contact with children. Fingerprints shall be submitted to the identification section of the department of state police for a state criminal history check and forwarded to the Federal Bureau of Investigation for a national criminal history check, according to the policies and procedures established by the identification section and by the department of criminal justice information services. Fingerprint submissions and national criminal history checks may be retained by the department of criminal justice information services to ensure the continued suitability of those individuals. The department may disseminate the results of a national criminal history check to: a school committee, superintendent, principal or their designees, to determine the suitability of current and prospective employees of the school department; and to the department of elementary and secondary education to determine the suitability of applicants for licensure and licensed educators who may have direct and unmonitored contact with children. The department of criminal justice information services may disseminate to school committees only those results for current and prospective employees for whom the school committee has direct hiring authority.

The department of criminal justice information services shall disseminate the results of the criminal background check to the school committee, superintendent, principal or the designee of the school committee, superintendent or principal, provided, however, that the department of criminal justice information services shall disseminate to a school committee only results for current and prospective employees for whom the school committee has direct hiring authority. Entities that receive the results of national criminal background checks shall treat the information in accordance with sections 167 through 178, inclusive, of chapter 6 and the regulations thereto regarding criminal offender record information. The department of criminal justice information services shall only disseminate information under this section that

would otherwise be available to requesting entities under sections 167 through 178, inclusive, of chapter 6 and the regulations thereto regarding criminal offender record information. The school committee, superintendent or principal shall notify the commissioner of any criminal record information relevant to the fitness for licensure of any holder of, or applicant for, an educator's license in the commonwealth.

The board of early education and care shall in a manner provided by law and in accordance with this section and sections 167 through 178, inclusive, of chapter 6 and the regulations thereto, promulgate regulations necessary to carry out this section. The regulations shall provide for the confidentiality of criminal offender record information and the results of fingerprint-based checks of the state and national criminal history databases, under 42 U.S.C. section 16962, obtained under this section. The regulations may address how fingerprint-based background checks shall be conducted for student teacher candidates and may reflect a phased-in schedule for the fingerprint-based background checks.

The applicant shall pay a fee, to be established by the secretary of administration and finance in consultation with the secretary of public safety and security and the commissioner, to offset the costs of operating and administering a fingerprint-based criminal background check system. The fee shall not exceed \$55 for employees who are certified pursuant to section 38G and shall not exceed \$35 for employees who are not certified pursuant to section 38G. The fee may increase accordingly if the Federal Bureau of Investigation increases the fee for its fingerprint background check service. The school committee, superintendent or principal may reimburse applicants all or part of the fee on the grounds of financial hardship. The fee shall be deposited into the Fingerprint-Based Background Check Trust Fund established under [section 2HHHH of chapter 29](#).

SECTION 8. Subsection (l) of [section 51B of chapter 119 of the General Laws](#), as so appearing, is hereby amended by inserting after the word "part," in line 124, the following words: - or was committed by an individual the department has reason to believe was licensed.

SECTION 8A. Said subsection (l) of said [section 51B of said chapter 119](#), as so appearing, is hereby further amended by inserting after the first paragraph the following paragraph: -

If the department substantiates a report alleging that abuse or neglect was committed by an individual who was employed at a facility approved or licensed by the department of early education and care, then the department shall notify the office of the child advocate and the department of early education and care, in writing, by transmitting a copy of the report filed under section 51A and the department's written evaluation and written determination.

SECTION 8B. The department of early education and care, with approval from the board of early education and care, shall amend its background record check regulations in a manner necessary to carry out [section 8 of chapter 15D of the General Laws](#). The regulations may reflect a phased-in schedule for the fingerprint-based background checks, provided, however, that the phase-in shall not begin prior to September 1, 2013.

SECTION 8C. The phase-in of the board of elementary and secondary education’s regulations under [section 38R of chapter 71 of the General Laws](#) shall not begin prior to September 1, 2013.

SECTION 9. Sections 1, 2 and 7 of this act shall apply to new employees hired for the 2013-2014 school year. Employees hired before that time shall submit fingerprints for federal background checks prior to the beginning of the 2016-2017 school year. If an individual subject to section 1, 2 or 7 applies to work with another school district or department of early education and care licensed facility and previously submitted a fingerprint-based background check, then the employer shall be authorized to access the individual’s original background check from the department of criminal justice information services in order to determine the applicant’s suitability for employment.

*Approved, January 10, 2013.*

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