

Frequently Asked Questions Regarding Background Checks Law

An Act Relative to Background Checks (Chapter 459 of the Acts of 2012)

Frequently Asked Questions (FAQ)

<http://www.mass.gov/edu/2013newsupdates/frequently-asked-questions-regarding-background-checks.html>

Governor Patrick recently signed Chapter 459 of the Acts of 2012, “An Act Relative to Background Checks.” <http://www.malegislature.gov/Laws/SessionLaws/Acts/2012/Chapter459> This new law expands what public, private, and parochial schools, including approved private special education schools and child care facilities, already do in conducting state CORI checks on all employees at least once every three years. It creates a national criminal database check for all school employees and contractor employees. All **newly hired** school employees, including educators, maintenance staff, cafeteria workers, bus drivers, and employees of contractors who work in the schools and may have direct and unmonitored contact with children are currently required to complete the new national background check for the 2013-2014 school year. Volunteers at schools will continue to be required to submit to state CORI checks at least once every three years, as currently required by statute, but will not be required to submit fingerprints for the national checks.

For all **current** K-12 school employees and early educators, the law directs the Board of Early Education and Care and the Board of Elementary and Secondary Education to adopt regulations that phase in national background checks over three years. Unlike state CORI checks that have no associated fee, individuals will pay a fee to comply with this requirement that ranges from up to \$35 for non-licensed employees to up to \$55 for license-holders. The Executive Office of Public Safety and Security (EOPSS) will design the system to meet this new national background check requirement.

EOPSS is meeting regularly with the Executive Office of Education, the Department of Early Education and Care, and the Department of Elementary and Secondary Education to plan for the full implementation of this new law. In the course of those meetings, EOPSS is evaluating the feasibility of implementing the law on its current schedule, taking into account the requirements of the state procurement process and the administrative and structural changes necessitated by the new law. If EOPSS and the other affected agencies conclude that the current statutory

timeline for implementation is unworkable, they will evaluate all their options, including seeking an extension from the Legislature. Please continue to monitor this FAQ for updates on the law and its implementation.

GENERAL BACKGROUND

Q: What is the new law on background checks for educators?

On January 10, 2013, Governor Patrick signed into law H. 4307, *An act relative to background checks*. The bill was sponsored by the Co-Chairperson of the Joint Committee on Education, Representative Alice Peisch (D-Wellesley). The new law requires all public and private K-12 school employees in Massachusetts, as well as early educators, to submit to state and national fingerprint-based criminal background checks.

Q: Why is this law necessary?

Prior to the enactment of the new law, Massachusetts required all public and private K-12 school employees, as well as early educators, to submit to a state Criminal Offender Record Information (CORI) background check at least once every three years. The CORI check, while intended to protect the children of the Commonwealth, leaves a major loophole because it only includes an individual's criminal history for Massachusetts; it is not a nationwide criminal history check. Moreover, before this new law was passed by the Legislature and signed into law by Governor Patrick, Massachusetts was the only state in the nation that was not conducting national fingerprint-based criminal history checks of K-12 school employees through the FBI's national criminal history database, and Massachusetts was one of a small handful of states not conducting national fingerprint-based criminal history checks of early educators. The new law closes those loopholes and aligns Massachusetts with the rest of the nation.

Q: Who must submit fingerprints under the new law?

Under the new law, all school-related personnel with the potential for unsupervised contact with children, including all public and private K-12 school employees (including employees at special education day and residential school programs under Chapter 71B), as well as subcontractors/laborers commissioned by schools to perform work on school grounds, individuals who regularly provide school-related transportation to children, and anyone providing child care or support services licensed by the Department of Early Education and Care will be subject to fingerprint-based state and national background checks. School

volunteers do not need to submit their fingerprints for the national checks, but they must continue to submit to state CORI checks.

FEES

Q: What is the cost of these national criminal history background checks, and who will pay it?

The fee charged for running the national checks will be up to \$55 for school employees licensed under Section 38G (licensed educators and specialists) and up to \$35 for all others (i.e., school secretaries, cafeteria workers, janitors, bus drivers, etc.) and early educators. As is the case in almost every other state that conducts fingerprint-based national criminal history checks, the fee will be paid by the individual employee or educator.

Q: Why is there a fee for conducting the national checks?

Unlike state CORI checks, the fingerprint-based national criminal history checks are more complex and require participation by multiple law enforcement agencies. All fingerprints must be submitted to the Federal Bureau of Investigation (FBI) to produce a national criminal history report. The FBI charges a fee to produce those reports. In addition, the Massachusetts Executive Office of Public Safety and Security (EOPSS), the Massachusetts Department of Criminal Justice Information Services, and the Massachusetts State Police must review, prepare, and produce the FBI reports to school districts and licensing agencies in a form that is legally consistent with the Commonwealth's CORI statute. There will be administrative costs associated with that process. The fees will support the FBI fee, as well as state administrative costs. All fees paid for these national checks will be deposited in a state trust fund and will be available only for the support of this system of national criminal history checks.

Please note that the fees established in the new law are reasonable and in line with the fees other states charge for similar national criminal history checks.

Q: If I am a school employee or early educator, is there a hardship exception to paying the fee?

Yes. The law explicitly states that a school committee, superintendent, or principal, as well as a program licensed or funded by the Department of Early Education and Care, may reimburse applicants all or part of the fee on the grounds of financial hardship.

PEOPLE COVERED BY THE NEW BACKGROUND CHECKS LAW

Q: Does the new background checks law apply to public and private institutions of higher education in Massachusetts?

Generally, no. The new law concerns only public and private K-12 schools in the Commonwealth, including special education programs approved under Chapter 71B, as well as early educators and child care providers. If a Massachusetts institution of higher education runs a program for school-aged children or an early child care center, then it would be subject to the new law, but only for those individuals employed through those particular programs.

Q: If am a substitute teacher at a local public or private school, will I need to submit my fingerprints for the new state and national background checks?

Yes. Substitute teachers are school employees under the new law and, therefore, must submit their fingerprints for the state and national checks. If substitute teachers hold educator licenses issued under G.L. c. 71, § 38G, they will pay a fee up to \$55; otherwise, they will pay a fee up to \$35.

Due to the time that it will take to acquire an individual's fingerprints, run the prints through the FBI database, review and analyze the information received from the FBI, and prepare a report for the employer, schools and districts are encouraged to contact prospective substitute teachers several months before the start of the school year to begin the background check process. For purposes of the new law, substitute teachers who worked in the district the prior school year will be considered current or existing employees, while all other substitute teachers will be considered newly hired school employees.

Q: If I volunteer at my local public school, do I need to submit my fingerprints under the new background checks law?

Under the new law, school districts are not required to fingerprint volunteers. Under Massachusetts law, school volunteers must continue to submit to state CORI checks. There is no fee for CORI checks.

Q: If I am employed at a nonpublic K-12 school, such as a parochial school or independent school, do I need to submit my fingerprints for national criminal background checks?

Yes. The new law requires all employees of public and private schools, including special education school programs approved under Chapter 71B, to submit fingerprints for the

national background checks, which is consistent with their existing obligations under the CORI statute.

Q: Are all school contractors and their employees required to obtain criminal background checks?

Yes. All independent contractors and their employees who may have direct and unmonitored contact with children on a particular school project must obtain the required state and federal background check reports prior to working in that position. The school or district is required to review all reports to determine the fitness of the applicant to work in a position in which they may have contact with children.

If an independent contractor adds a new employee to the workforce, the state and federal background checks must be conducted prior to the employee being assigned to any work that would bring the employee into direct contact with children.

TIMELINE FOR SUBMITTING FINGERPRINTS

Q: If I am a school employee or early educator, when must I submit my fingerprints for the state and national criminal history checks?

Under the new law, all *newly hired* school and early education employees are currently required to submit their fingerprints for state and national criminal history checks for the **2013-2014** school year. All *current or existing* school and early education employees are currently required to submit to fingerprint-based background checks on a phased-in schedule leading up to the beginning of the **2016-17** school year. EOPSS, along with the Department of Early Education and Care and the Department of Elementary and Secondary Education, will be producing more information shortly regarding the timeline for existing school and early education employees to submit their fingerprints for the state and national criminal history checks, as well as additional information about the timeline for newly hired employees to submit fingerprints.

EOPSS is in the process of evaluating the feasibility of implementing the law on its current schedule, taking into account the requirements of the state procurement process and the administrative and structural changes necessitated by the new law. If EOPSS and the other affected agencies conclude that the current statutory timeline for implementation is not feasible, they will evaluate all their options, including seeking an extension from the

Legislature. Please continue to monitor this FAQ for updates on the law and its implementation.

Q: If I started employment in the winter or spring of 2013, am I considered a newly hired employee for purposes of the law?

No. For the purposes of the law, newly hired school and early education employees are those who are hired prior to the start of the 2013-14 school year for purposes of beginning employment in that school year, e.g., as of September 2013.

Q: If I have been teaching for five years but I will be starting employment in a new school district in 2013-14, am I considered a new employee for purposes of the law?

Yes. If you are a new hire in any school district for the 2013-14 school year, you are a new employee for purposes of this law.

Q: If I have been teaching in a school district for several years and I will be starting a teaching assignment at a different school within that district for the 2013-14 school year, am I considered a new employee for purposes of the law?

No. You are not a new hire for that district. Rather, you are an in-district transfer. You are not a new employee for purposes of this law.

PROCESS FOR SUBMITTING FINGERPRINTS

Q: If I am a school employee or early educator, where do I go to submit my fingerprints for the state and national criminal history checks?

In most states that currently run fingerprint-based criminal history checks on educators, independent vendors are authorized by the state to collect the fingerprints electronically and submit them to the state. In those states, the vendors are selected through a competitive bidding process. Once an experienced vendor is selected, a process will be established for required individuals to submit their fingerprints.

EOPSS is just beginning the process of issuing a Request for Responses (RFR) for this endeavor. We will post more information on this process when the procurement has been completed. In the meantime, please know that it is the Commonwealth's goal to make this process as efficient and user-friendly as possible, and EOPSS will keep that goal in mind as it reviews and evaluates proposals from vendors.

Q: If I am covered by the new background checks law, may I go to my local police station to submit my fingerprints for the state and national criminal history checks?

No. In most states that currently run fingerprint-based criminal history checks on educators, individuals submit their fingerprints through independent vendors authorized by the state. Given that hundreds of thousands of individuals in Massachusetts are expected to submit their fingerprints for these national criminal history checks over the next several years, local police departments could not handle that volume and continue to provide standard law enforcement services to their communities.

Q: If I am covered by the new background checks law, how many times during my career will I have to submit to the fingerprint-based state and national criminal history checks?

Under the new law, it is anticipated that an individual would need to submit his/her fingerprints only once. EOPSS expects that the FBI will bring into operation a new “Rap Back” service in the next two to three years. That service would allow authorized agencies to receive notification of subsequent criminal activity reported to the FBI based on previously submitted fingerprints. If that system is brought online as expected in the next two to three years, then EOPSS expects that fingerprints would need to be collected only once per individual.

As in the past, employees will be required to submit to state CORI checks (which are not fingerprint-based) at least once every three years. There is no fee for CORI checks.

FORM OF THE NATIONAL BACKGROUND CHECK REPORTS

Q: What is contained in the Federal Criminal History Record Information (CHRI) Report?

An FBI Identification Record is a listing of certain information taken from fingerprint submissions retained by the FBI in connection with arrests and, in some instances, federal employment, naturalization, or military service. If the fingerprints are related to an arrest, the Identification Record includes the name of the agency that submitted the fingerprints to the FBI, the date of arrest, the arrest charge, and the disposition of the arrest, if known to the FBI. All arrest data included in an Identification Record is obtained from fingerprint submissions, disposition reports, and other reports submitted by agencies having criminal justice responsibilities.

Q: What information will the national criminal background checks provide that was not included in the CORI checks?

CORI checks include criminal history information only for Massachusetts, and they do not include criminal history information from any other state. Because national criminal background checks are processed through the FBI, they would include criminal history information for an individual from every state in the nation.

CONSISTENCY WITH STATE CORI LAW

Q: Will the criminal history reports derived from fingerprint-based state and national criminal history checks be consistent with reforms made to the Commonwealth's CORI law in 2010 (Chapter 256 of the Acts of 2010)?

The new background checks law explicitly states that any information received from state and national criminal background checks must be treated in accordance with the revised CORI law enacted in 2010, G.L. c. 6, §§ 167-178. For example, under the revised CORI law and pursuant to the language in the new background checks law, Massachusetts public safety officials are required to delete any sealed or juvenile offenses from criminal history reports before sending them to school districts.

Q: When a school district or licensing agency receives the new criminal history reports, which will include both state and national criminal history information, are there guidelines for how those reports are to be reviewed and analyzed?

Under the existing Massachusetts CORI law, the employer or licensing agency has discretion with respect to how to review and analyze the reports. Under the new background checks law, discretion remains with the employer or licensing agency. The new background checks law will provide *more* information to hiring and licensing authorities, but it does not change how those authorities *review and analyze* the information. The law also requires a K-12 employer to notify the Commissioner of Elementary and Secondary Education of any criminal record information relevant to the fitness for licensure of license holders and applicants.

Q: Will schools, as well as early education and child care providers, continue to run CORI checks in addition to the fingerprint-based national criminal background checks?

Yes. Schools and early education providers will continue to run CORI checks on applicants and existing employees. Those CORI checks will continue to be run at no cost to applicants or existing employees. Under Massachusetts law, the CORI checks must be done at least once every three years, while the collection of fingerprints for the national background checks are intended to be done only once and updated on a regular basis once the FBI's "Rap Back" service is online.

OTHER QUESTIONS

Q: Where can I go to find more information about the new law?

Watch this space. This FAQ is intended to be the primary place for dissemination of information about the new law. As we learn more information about the process and timing, we will continually update this FAQ. So, if your question has not been answered by this FAQ, it will probably be answered here eventually, as we get more information to share with you.

Q: I still have additional questions; whom should I contact?

For questions specific to early education and care, please contact the Department of Early Education and Care at (617) 988-6600.

For questions specific to elementary and secondary education, please contact the Department of Elementary and Secondary Education at expandedbackgroundchecks@doe.mass.edu.

For general questions about the new law, please call the Executive Office of Education at (617) 979-8340.