

HOUSE No. 1780

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act to require national background checks..

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

1 SECTION 1. Section 172 of chapter 6 of the General Laws is amended by inserting the
2 following new section 172J as follows:-

3 Notwithstanding any other provision of law, any person seeking employment or a
4 position as a regular volunteer or trainee to provide services for, or, on behalf of the Department
5 of Mental Retardation or its vendor agency programs where such employment or position
6 involves potential unsupervised contact with individuals with mental retardation shall be
7 required to have a national criminal background check prior to assuming said employment or
8 position. Said criminal background check will be determined by using the Integrated Automated
9 Fingerprint Identification System maintained by the Federal Bureau of Investigation’s Criminal
10 Justice Information Services Division.

11 It shall be the responsibility of the Commonwealth to ensure that said criminal
12 background checks are processed for review prior to such time that an individual seeking
13 employment or a position as a volunteer or trainee assumes said employment or position.

14 Any person who willfully requests, obtains or seeks to obtain criminal offender record
15 information or the equivalent from other jurisdictions under false pretenses, or who willfully
16 communicates or seeks to communicate criminal offender record information or the equivalent
17 from other jurisdictions to any agency or person except in accordance with the provisions of
18 sections one hundred and sixty-eight to one hundred and seventy-five, inclusive, or any member,
19 officer, employee or agency of the board or any participating agency, or any person connected
20 with any authorized research program, who willfully falsifies criminal offender record
21 information, or the equivalent from other jurisdictions, or any records relating thereto, shall be in
22 violation of this provision.

23 The Criminal History Systems Board, the Disabled Persons Protection Commission, and
24 the State Police has cooperate and supervise the participation by all Department of Mental
25 Retardation providers in any interstate system for the exchange of criminal offender record
26 information or the equivalent from other jurisdictions and shall be responsible to assure the
27 consistency of such participation including redacting information so that criminal offender
28 record information or the equivalent from other jurisdictions is limited to convictions and open
29 cases, and, that juvenile records are not made available.

30 Any provider of services to individuals pursuant to a contract with the Department that
31 hires, retains or supervises an employee, volunteer or trainee whom the provider knows or should
32 know, will potentially come into unsupervised contact with such individuals, and, because of a
33 criminal conviction or pending criminal charge of a nature that would pose a unacceptable risk of
34 physical harm to or financial exploitation of such individuals shall be in violation of this
35 provision. The hiring authority shall use, when making a determination of unacceptable risk, the
36 guidelines as provided by existing Department of Mental Retardation regulations.

37 The Board shall afford an individual who may be wrongly associated with a record or
38 whose record may contain errors, the opportunity to contest the accuracy of an out-of-state
39 record. Each individual shall have the right to inspect, and if practicable, copy, criminal offender
40 record information or the equivalent from other jurisdictions which refers to him. If an individual
41 believes such information to be inaccurate or incomplete, the Criminal Systems History Board
42 shall notify the state whose record is contested and assist the individual in following the process
43 for correcting inaccuracies in that state, as well as notify the agency to whom the record was
44 disseminated that the record is being contested and that no adverse action can be taken by that
45 agency pending a resolution of the dispute. This matter should be resolved as soon as practicable
46 but no later than 30 days after notification. Agencies at which criminal offender records or the
47 equivalent from other jurisdictions are sought to be inspected shall prescribe reasonable hours
48 and places of inspection, and shall impose such additional restrictions as may be approved by the
49 board, as are reasonably necessary both to assure the record's security and to verify the identities
50 of those who seek to inspect them.