

HOUSE No. 4125

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, May 28, 2014.

The committee on the Judiciary to whom was referred the petition (accompanied by bill, House, No. 1674) of Martin J. Walsh, John A. Hart and others relative to national criminal offender record information checks for persons working with individuals served by the Department of Mental Retardation, reports recommending that the accompanying bill (House, No. 4125) ought to pass.

For the committee,

CHRISTOPHER M. MARKEY.

HOUSE No. 4125

The Commonwealth of Massachusetts

In the Year Two Thousand Fourteen

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. Chapter 19B, section 15 of the General Laws, is hereby amended by the
2 addition of subsection (h) :-

3 (h)(i) As part of the department’s licensure and background record check process, the
4 department, prior to issuing any license, shall conduct fingerprint-based checks of the state and
5 national criminal history databases, as authorized by Public Law 92-544. The fingerprint-based
6 checks shall be conducted on any applicant seeking a license for a facility which offers to the
7 department’s client population residential or day care services, or any other agency covered
8 under this section that is licensed or funded by the department and serves the department’s client
9 population. The fingerprint-based checks shall also be required for any household member, age
10 15 or older, or any person regularly on the premises, age 15 or older, of applicants for residential
11 care service licensure whether or not they are department-funded caregivers. Authorized
12 department staff may receive all criminal offender record information and the results of checks
13 of state and national criminal history databases under Public Law 92-544. When the department
14 obtains the results of checks of state and national criminal history databases, it shall treat the
15 information according to sections 167 to 178, inclusive, of chapter 6 and the regulations
16 thereunder regarding criminal offender record information.

17 (ii) As part of the department’s licensing and background record check process, the
18 department shall conduct fingerprint-based checks of the state and national criminal history
19 databases, as authorized by Public Law 92-544, to determine the suitability of all current and
20 prospective employees, who have the potential for unsupervised contact with persons with an
21 intellectual or developmental disability in any department-licensed or funded program. For the
22 purpose of this section, employees shall include any apprentice, intern, transportation provider,
23 volunteer or sub-contractor who may have direct and unmonitored contact with a person with an

24 intellectual or developmental disability. The fingerprint-based checks shall also be required to
25 determine the suitability of any individual who provides transportation services on behalf of any
26 department-licensed or funded program. Authorized department staff may receive all criminal
27 offender record information and the results of checks of state and national criminal history
28 databases under said Public Law 92-544. When the department obtains the results of checks of
29 state and national criminal history databases, it shall treat the information according to sections
30 167 to 178, inclusive, of chapter 6 and the regulations thereunder regarding criminal offender
31 record information.

32 (iii) As part of the department's approval process, the department, prior to issuing any
33 approval, shall conduct fingerprint-based checks of the state and national criminal history
34 databases, under Public Law 92-544, that are required under this subsection. The fingerprint-
35 based checks of the state and national criminal history databases shall be conducted, under said
36 Public Law 92- 544, to determine the suitability of all applicants for employment, interns and
37 volunteers who have the potential for unsupervised contact with persons with an intellectual or
38 developmental disability in any department-approved program. The fingerprint-based checks
39 shall also be required to determine the suitability of any individual who provides transportation
40 services on behalf of any department-approved program. Authorized department staff may
41 receive all criminal offender record information and the results of checks of state and national
42 criminal history information databases under said Public Law 92-544. When the department
43 obtains the results of checks of state and national criminal information databases, it shall treat the
44 information according to sections 167 to 178, inclusive, of chapter 6 and the regulations
45 thereunder regarding criminal offender record information.

46

47 SECTION 2. Chapter 19B of the General Laws, as so appearing, is hereby amended by
48 the addition of section 19 "National Background Check":-

49 (a) The Department of Developmental Services shall in a manner provided by law and in
50 accordance with this section, shall promulgate regulations necessary to carry out this section.
51 The regulations shall provide that: each person providing residential or support services with the
52 potential for unsupervised contact with persons with an intellectual or developmental disability
53 in any DDS program or its contracted agency vendor programs, as well as any household
54 members or persons regularly on the premises of residential facilities shall be subject to a
55 criminal offender record information check under Public Law 92-544; and all applicants for a
56 department issued license, and all current and prospective employees , interns and volunteers in
57 any department-licensed, department- funded or department-approved program shall be subject
58 to a fingerprint-based check of the state and national criminal history databases under Public
59 Law 92-544. The regulations may reflect a phased-in schedule for the fingerprint-based
60 background checks of individuals whose employment or service began prior to July 1, 2016.

61 SECTION 3. Chapter 19B of the General Laws is hereby amended by inserting after
62 section 19 the following section:-

63 Section 19. (b). Fingerprints, as referenced in subsections (h) of section 15 shall be
64 submitted to the identification section of the department of state police for a state criminal
65 history check and forwarded to the Federal Bureau of Investigation for a national criminal
66 history check, according to the policies and procedures established by the state identification
67 section and by the department of criminal justice information services. Fingerprint submissions
68 may be retained by the Federal Bureau of Investigation, the state identification section and the
69 department of criminal justice information services to assist the department in its review of
70 suitability for initial or continued employment, licensure, certification, or approval. The
71 department of criminal justice information services may disseminate the results of a state and
72 national criminal history check to the department of Developmental Services to determine the
73 suitability of: (i) all current and prospective employees in any DDS program or any DDS
74 contracted agency vendor programs, who have the potential for unsupervised contact with
75 persons with an intellectual or developmental disability; (ii) all household members, age 15 or
76 older, or all persons regularly on the premises, age 15 or older, of current residential care
77 providers that are funded by DDS or its contracted agency vendor programs, (iii) all sub-
78 contractors , interns, volunteers, or any other individual employed or retained by DDS or its
79 contracted agency vendor program, that has the potential for unsupervised contact with persons
80 with a n intellectual or developmental disability ; (iv) any individual who provides transportation
81 services on behalf of DDS or its contracted agency vendor programs, (v.) any applicant seeking a
82 license from the department for a residential or day care facility that serves the department's
83 population. If the department receives information from a fingerprint-based check that does not
84 include any final disposition or is otherwise incomplete, the department may request that an
85 applicant, either new or renewing, provide additional information to assist the department in
86 determining the suitability of the individual for licensure, certification, approval, funding or
87 employment.

88 (c) Department-licensed, funded or approved programs and providers of transportation
89 services on behalf of any department-licensed, funded or approved program may hire individuals
90 without first obtaining the results of a state and national fingerprint-based criminal history check.

91 The Department of Developmental Services shall, in a manner provided by law and under
92 chapter 19B, promulgate regulations necessary to carry out this subsection. The regulations shall
93 address the circumstances under which a program or transportation provider may hire a
94 conditional employee.

95 For the purposes of this subsection, "conditional employee" shall mean an individual who
96 has the potential for unsupervised contact with persons with an intellectual or developmental
97 disability and who is part of a department-licensed, funded or approved program or a provider of
98 transportation services on behalf of any department-licensed, funded or approved program and

99 was hired prior to the obtaining of the results of a state and national fingerprint-based criminal
100 history check because the employer determined that hiring the individual was necessary.

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

106 (d). All persons required to submit fingerprints under this chapter, including but not
107 limited to: (i) all current and prospective employees, interns, sub-contractors and volunteers in
108 any DDS program, or any DDS contracted agency vendor program, who have the potential for
109 unsupervised contact with persons with an intellectual or developmental disability; (ii) All
110 household members age 15 or older, or all persons regularly on the premises, age 15 or older, of
111 current residential care providers that are funded by DDS or any of its contracted vendor agency
112 programs

113 (iii) any individual who provides transportation services on behalf of any department-
114 licensed, funded or approved program, (iv) any applicant seeking a license from the department
115 for a residential or day care facility that serves the department's client population shall pay a fee,
116 to be established by the secretary of administration and finance in consultation with the secretary
117 of public safety and security and the commissioner, to offset the costs of operating and
118 administering a fingerprint-based criminal background check system. The fee shall not exceed
119 \$45 per person. The secretary of administration and finance, in consultation with the secretary of
120 public safety and security and the commissioner, may increase the fee accordingly if the Federal
121 Bureau of Investigation increases its fingerprint background check service fee. The department-
122 licensed, funded or approved programs may reimburse applicants for employment, internship or
123 volunteer positions, for all or part of the fee on the grounds of financial hardship. Any fees
124 collected from fingerprinting activity under this chapter shall be deposited into the Fingerprint-
125 Based Background Check Trust Fund, established in section 2HHHH of chapter 29 of the
126 General Laws.

127 When the Department receives the results of the national criminal background checks, it
128 shall treat the information according to the department's regulations regarding criminal offender
129 record information. Notwithstanding subsections 9 and 9 ½ of section 4 of chapter 151B, the
130 department of criminal justice information services shall only disseminate information under this
131 section that would otherwise be available to requesting entities under the department's
132 regulations thereunder regarding criminal offender record information. The employing agency,
133 program, or organization shall notify the commissioner of any criminal record information
134 relevant to the fitness for employment of any applicant for employment with persons with an
135 intellectual or developmental disability.

136 SECTION 4. Subsection (h) of section 15 of chapter 19B of the General Laws, as
137 amended by section 1, and section 19 of chapter 19B of the General laws as added by section 2
138 shall apply to all new applicants for licensure, certification or approval, to any facility which
139 offers to the public residential or day care services to a person with an intellectual disability or
140 any other applicant licensed or regulated by the department under said section 15 of chapter 19B
141 of the General Laws, whose applications are submitted on or after January 1, 2016.

142 All programs or agencies who are currently licensed, certified or approved by the
143 department of developmental services, licensed or regulated by said section 15 of chapter 19B of
144 the General Laws, shall comply with the requirements of this act upon renewal of licensure,
145 certification, approval or funding, but not later than January 1, 2019.

146 Section 19 of Chapter 19B of the General laws as added by section 2, shall also apply to
147 prospective employees in any Department of Developmental Services program or any of its
148 contracted agency vendor program who have the potential for unsupervised contact with persons
149 with an intellectual or developmental disability, including those providing transportation services
150 on behalf of any department-licensed, funded or approved program, hired to begin employment
151 on or after January 1, 2016.

152 Employees in any Department of Developmental Services program or any of its
153 contracted agency vendor programs who have the potential for unsupervised contact with
154 persons with an intellectual or developmental disability, including those providing transportation
155 services on behalf of any DDS or its contracted agency vendor program hired to begin
156 employment prior to January 1, 2016 shall submit fingerprints for state and national criminal
157 history checks not later than January 1, 2019.

158 SECTION 5. Section 19 of chapter 19B of the General Laws shall apply to all individuals
159 working with persons with an intellectual or developmental disability whose employment or
160 service for DDS or one of its contracted vendor agency program begins after January 1, 2016.
161 Individuals working with persons with an intellectual or developmental disability whose
162 employment or service began before January 1, 2016 shall submit fingerprints for state and
163 national criminal history checks on a phased-in basis prior to the beginning of January 1, 2019.