

# HOUSE . . . . . No. 4310

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## The Commonwealth of Massachusetts

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OFFICE OF THE GOVERNOR  
COMMONWEALTH OF MASSACHUSETTS  
. , MA

CHARLES D. BAKER  
GOVERNOR

KARYN POLITO  
LIEUTENANT GOVERNOR

*March 14, 2018*

To the Honorable House of Representatives,

I am pleased to submit for your consideration “An Act to Enhance the Background Record Check Procedures of the Department of Early Education and Care.”

This legislation is necessary to meet new federal regulations governing the Commonwealth’s receipt of Child Care Development Block Grant (“CCDBG”) funding. The Department of Early Education and Care (“EEC”) receives approximately \$277 million annually in CCDBG funding for subsidized high-quality child care for low-income and at-risk families and related services. That amount constitutes more than one-half of EEC’s annual operating budget. To remain eligible for that funding, Massachusetts must update its background record check process relied upon by child care providers by September 30, 2018. A new IT system for EEC is near completion, streamlining business processes and increasing capacity to meet these additional requirements.

Under the existing framework, license-exempt programs and summer camps supported by CCDBG funding are not subject to EEC’s background record checks, and only individuals who have unsupervised contact with children in EEC-licensed programs must complete a background record check. This bill, to comply with the federal mandate, will expand the background record check processes to all licensed child care programs and programs that receive CCDBG funds, and to all individuals working and present in these programs regardless of whether they have unsupervised access to children.

According to current law, individuals who pass record checks of Massachusetts state criminal offender record information, Massachusetts state sex offender record information, and the Department of Children and Families Registry of Alleged Perpetrators can have unsupervised contact with children in a licensed EEC program while fingerprint-based checks of national and state criminal history databases are pending. This legislation permits supervised provisional employment only upon the completion of fingerprint-based checks, as required by CCDBG, and sex offender checks. EEC currently receives only Level 2 and Level 3 sex offender record information. Consistent with CCDBG authorization, this proposal grants EEC access also to Level 1 sex offender record information, providing an additional resource to protect children in child care programs.

To ensure consistent practices relating to the safety of the Commonwealth's children, this legislation allows for the extension of these federal safeguards beyond child care programs to EEC-licensed residential programs and adoption and foster placement agencies by September 30, 2020. It further permits EEC to delegate its responsibilities for processing certain background record checks directly to the adoption and foster placement agencies. EEC presently receives relevant information from the Department of Criminal Justice Information Services and, as permitted by statute, passes along that information to the placement agencies without additional review. This bill would eliminate that unnecessary intermediate step.

This legislation satisfies new federal mandates tied to critical funding and provides additional measures for protecting the Commonwealth's children in our state licensed and funded child care programs. I urge your prompt enactment.

Sincerely,

Charles D. Baker,  
*Governor*

# The Commonwealth of Massachusetts

**In the One Hundred and Ninentieth General Court  
(2017-2018)**

## An Act to enhance the Department of Early Education and Care's background record check procedures.

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to protect forthwith children, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety.

*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. Subsection (a)(13) of section 172 of chapter 6 of the General Laws, as  
2 appearing in the 2016 Official Edition, is hereby amended by inserting after the word “care”, in  
3 line 102, the following words:- and adoption and foster placement agencies that it licenses.

4 SECTION 2. Section 172F of said chapter 6, as so appearing, is hereby amended by  
5 striking out, in line 5, the words "non-relative, in-home".

6 SECTION 3. Said section 172F of said chapter 6, as so appearing, is hereby further  
7 amended by inserting after the word “provider”, in line 6, the following words:- or program  
8 exempt from licensure under said chapter 15D.

9 SECTION 4. Said section 172F of said chapter 6, as so appearing, is hereby further  
10 amended by inserting after the first sentence the following sentence:- The same information shall

11 be available, upon request, to adoption and foster placement agencies licensed by the department  
12 of early education and care for purposes of evaluating prospective or current adoptive or foster  
13 parents and their household members aged 15 and older.

14 SECTION 5. Said section 172F of said chapter 6, as so appearing, is hereby further  
15 amended by inserting after the word “care”, in line 9, the following words:- and adoption and  
16 foster placement agencies that it licenses in receipt of such data.

17 SECTION 6. Subsection (2)(a) of section 178K of said chapter 6, as so appearing, is  
18 hereby amended by inserting after the word “probation,” in line 119, the following words:- ,the  
19 department of early education and care.

20 SECTION 7. Subsection (a)(i) of section 7 of chapter 15D, as so appearing, is hereby  
21 amended by inserting after the word “information,” in line 13, the following words:- , including  
22 all registration forms and documents maintained by the sex offender registry board deemed  
23 necessary by the department to investigate background record checks or licensing violations.,

24 SECTION 8. Said subsection (a)(i) of said section 7 of said chapter 15D, as so  
25 appearing, is hereby further amended by inserting after the word “any”, as it first appears in line  
26 17, the following words:- current holder of or.

27 SECTION 9. Said subsection (a)(i) of said section 7 of said chapter 15D, as so  
28 appearing is hereby further amended by inserting after the word “any”, as it last appears in line  
29 17, the following words:- current holder of or.

30 SECTION 10. Said subsection (a)(i) of said section 7 of said chapter 15D, as so  
31 appearing, is hereby further amended by striking out, in lines 23-24, the words “in-home

32 nonrelative department funded caregivers" and inserting in place there of the following words:-  
33 caregivers or programs in receipt of federal funding pursuant to section 9858 of Title 42 of the  
34 United States Code, consistent with the federal requirements at section 9858f of Title 42 of the  
35 United States Code, and department regulations or policies consistent with federal and state law.

36 SECTION 11. Said subsection (a)(i) of said section 7 of said chapter 15D, as so  
37 appearing, is hereby further amended by adding the following sentence:- Additionally, the  
38 department shall obtain all available criminal offender record information through the  
39 department of criminal justice information services consistent with subsection 172(a)(13) of  
40 chapter 6 and section 172F of chapter 6, and all supported findings and pending investigations of  
41 abuse or neglect available through the department of children and families consistent with  
42 sections 51B, 51E, and 51F of chapter 119.

43 SECTION 12. Said section 7 of said chapter 15D, as so appearing, is hereby further  
44 amended by striking out subsection (a)(ii) and inserting in place thereof the following  
45 subsection:-

46 (ii) As part of the department's licensing and background record check process, the  
47 department or an agency authorized by the department shall conduct fingerprint-based checks of  
48 the state and national criminal history databases, as authorized by Public Law 92-544, to  
49 determine the suitability of all current and prospective candidates for employment, internships  
50 and volunteer positions, whether or not such candidates have unsupervised access to children,  
51 and any additional individuals with unsupervised access to children in department-licensed or  
52 funded programs, unless specifically exempt within department regulations or policies. Such  
53 requirements also apply to individuals with unsupervised access to children in funded programs

54 subject to federal requirements of section 9858f of Title 42 of the United States Code. The  
55 department shall outline in its regulations or policies the circumstances under which candidates  
56 within department-licensed and funded programs must complete a background record check  
57 through the department regardless of his or her unsupervised access to children. The fingerprint-  
58 based checks shall also be required to determine the suitability of any individual who provides  
59 transportation services on behalf of any department-licensed or funded program. Authorized  
60 department staff may receive all criminal offender record information and the results of checks  
61 of state and national criminal history databases pursuant to Public Law 92-544. When the  
62 department obtains the results of checks of state and national criminal history databases, it shall  
63 treat the information according to sections 167 to 178, inclusive, of chapter 6 and the regulations  
64 thereunder regarding criminal offender record information.

65 SECTION 13. Subsection (a)(iii) of said section 7 of said chapter 15D, as so appearing, is  
66 hereby amended by inserting after the word “department”, in line 50, the following words:- or  
67 adoptive or foster placement agency that it licenses.

68 SECTION 14. Subsection (a)(iii) of said section 7 of said chapter 15D, as so appearing, is  
69 hereby amended by inserting after the word “staff”, in line 55, the following words:- or staff  
70 within an authorized adoptive or foster placement agency that it licenses.

71 SECTION 15. Said subsection (a)(iii) of said section 7 of said chapter 15D, as so  
72 appearing, is hereby further amended by inserting after the word “department”, in line 58, the  
73 following words:- or an authorized adoptive or foster placement agency.

74           SECTION 16. Subsection (b) of said section 7 of said chapter 15D, as so appearing, is  
75   hereby amended by striking out the second paragraph and inserting in place thereof the following  
76   paragraph:-

77           As part of the department's approval process, the department or an agency authorized by  
78   the department, prior to issuing any approval, shall: (1) obtain from the sex offender registry  
79   board all available sex offender registry information, including all registration forms and  
80   documents maintained by the sex offender registry board deemed necessary by the department to  
81   investigate background record checks or licensing violations, associated with the address of the  
82   center, home or facility; and (2) conduct fingerprint-based checks of the state and national  
83   criminal history databases, pursuant to Public Law 92-544, that are required under this  
84   subsection.

85           SECTION 17. Subsection (b) of said section 7 of said chapter 15D, as so appearing, is  
86   hereby further amended by adding the following paragraph:-

87           The fingerprint-based checks of the state and national criminal history databases shall be  
88   conducted, pursuant to Public Law 92-544, to determine the suitability of all current or  
89   prospective candidates for employment, internships and volunteer positions, whether or not such  
90   candidates have unsupervised access to children, and any additional individuals with  
91   unsupervised access to children in department-approved programs, unless specifically exempt  
92   within department regulations or policies. Such requirements also apply to individuals with  
93   unsupervised access to children in funded programs subject to federal requirements of section  
94   9858f of Title 42 of the United States Code. The fingerprint-based checks shall also be required  
95   to determine the suitability of any individual who provides transportation services on behalf of

96 any department-approved program. Authorized department staff may receive all criminal  
97 offender record information and the results of checks of state and national criminal history  
98 information databases pursuant to Public Law 92-544. When the department obtains the results  
99 of checks of state and national criminal information databases, it shall treat the information  
100 according to sections 167 to 178, inclusive, of chapter 6 and the regulations thereunder regarding  
101 criminal offender record information.

102 SECTION 18. Said section 7 of said chapter 15D, as so appearing, is hereby further  
103 amended by inserting after subsection (b) the following subsection:-

104 (c) With respect to department-licensed, approved and funded child care programs and  
105 any other program subject to federal requirements of section 9858 of Title 42 of the United  
106 States Code, additional background record checks shall be required by the department's  
107 regulations or policies consistent with federal and state law.

108 SECTION 19. Said section 7 of said chapter 15D, as so appearing, is hereby further  
109 amended by striking out, in line 90, the word "(c)" and inserting in place thereof the following  
110 word:- (d).

111 SECTION 20. Subsection (b) of section 8 of said chapter 15D, as so appearing, is hereby  
112 amended by striking out, in lines 28-29, the words "licensure or approval" and inserting in place  
113 thereof the following words:- department- licensure, approval or funding.

114 SECTION 21. Subsection (d) of section 8 of said chapter 15D, as so appearing, is hereby  
115 further amended by inserting after the word "(d)", in line 53, the following words:- The timing,  
116 scope and nature of the department's background record check process shall be established by  
117 the department in its regulations or policies consistent with federal and state law.

118           SECTION 22. Said section 8 of said chapter 15D, as so appearing, is hereby further  
119       amended by striking out subsection (d)(i) and inserting in place thereof the following  
120       subsection:-

121           (i) a person providing child care or support services or with unsupervised access to  
122       children in any program or facility licensed, approved or funded by the department and any  
123       household members, age 15 or older, or persons regularly on the premises, age 15 or older, of  
124       family child care and large family child care homes shall be subject to a background record  
125       check at least every 3 years in accordance with regulations established by the department;  
126       provided, however, that a candidate for employment in a department-licensed, approved or  
127       funded program who is subject to a fingerprint-based check of the state and national criminal  
128       history databases for the same employer that is approved pursuant to chapters 19B or 71B shall  
129       submit to a fingerprint-based check under regulations established by the department; provided  
130       further, that no person who is considered suitable by the department shall be subject to more than  
131       1 fingerprint-based check every 3 years to maintain employment with the same employer that is  
132       department-licensed, approved or funded pursuant to this chapter and is subject to said chapters  
133       19B or 71B and shall not be subject to duplicative fingerprint-based checks for the same  
134       employer when fingerprinted for the department first unless an exception described in the  
135       regulations or policies of the department applies or an increased frequency is required by state or  
136       federal law; and provided further, that the department shall only determine whether an applicant  
137       is suitable for affiliation with a department-licensed, approved or funded program;;

138           SECTION 23. Subsection (d)(iii) of said section 8 of said chapter 15D, as so appearing,  
139       is hereby amended by striking out the first paragraph and inserting in place thereof the following  
140       paragraph:-

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142                   (iii) an applicant for a department-issued license, approval or funding and a candidate for  
143 employment, internship or volunteer position in a department-licensed, approved or funded  
144 program shall be subject to a fingerprint-based check of the state and national criminal history  
145 databases pursuant to Public Law 92-544.

146                   SECTION 24. Said subsection (d)(iii) of said section 8 of said chapter 15D, as so  
147 appearing, is hereby further amended by striking out the second paragraph and inserting in place  
148 thereof the following paragraph:-

149                   The board shall also adopt regulations establishing that the following individuals shall be  
150 subject to a sex offender registry information check pursuant to sections 178I and 178J of  
151 chapter 6: (1) each person defined as a candidate of a department-licensed, approved or funded  
152 program; (2) individuals who are providing child care or support services with unsupervised  
153 access to children in any program or facility licensed, approved or funded by the department  
154 when mandated by department regulations or policies consistent with federal and state law; (3)  
155 any household members, age 15 or older, or persons regularly on the premises, age 15 or older,  
156 of family child care and large family child care homes; (4) any prospective adoptive and foster  
157 parents and their household members age 15 or older, with the exception of those applicants and  
158 household members subject to said section 26A of said chapter 119; (5) any department-funded  
159 caregivers or candidates within programs in receipt of federal funding pursuant to section 9858  
160 of Title 42 of the United States Code, consistent with department regulations or policies; and (6)  
161 any individual who provides transportation services on behalf of any department-licensed,  
162 funded or approved program. The regulations shall also establish the conditions upon which the

163 department may deny an application for a license, a license renewal or approval, employment or  
164 department funding and upon which the department may deny prospective adoptive and foster  
165 parents based upon the information obtained from the sex offender registry search. The board  
166 shall also adopt regulations establishing an address search of the sex offender registry for the  
167 purposes of licensing and license renewal or approval of school-aged child care programs, child  
168 care centers, family child care homes, placement agencies or large family child care homes,  
169 family foster care that is not supervised and approved by a placement agency, group care  
170 facilities or temporary shelter facilities, including the conditions in which the department may  
171 deny an application for a license, license renewal, approval or funding based upon the  
172 information obtained from the address search of the sex offender registry.

173 SECTION 25. Subsection (j) of said section 8 of said chapter 15D, as so appearing, is  
174 hereby amended by striking out the first paragraph and inserting in place thereof the following  
175 paragraph:-

176 (j) Fingerprints, as referenced in subsections (a) and (b) of section 7 and subsection (d) of  
177 this section, shall be submitted to the identification section of the department of state police for a  
178 state criminal history check and forwarded to the Federal Bureau of Investigation for a national  
179 criminal history check, according to the policies and procedures established by the identification  
180 section and by the department of criminal justice information services. Fingerprint submissions  
181 may be retained by the Federal Bureau of Investigation, the state identification section and the  
182 department of criminal justice information services to assist the department in its review of  
183 suitability for initial or continued licensure, certification, approval or funding. The department of  
184 criminal justice information services may disseminate the results of a state and national criminal  
185 history check to the department of early education and care to determine the suitability of: (1)

186 any current holder of or applicant for a family child care, small group and school age, large  
187 group and school age, and residential and placement license, or family child care assistant  
188 certificate; (2) current and prospective candidates for employment, internships and volunteer  
189 positions in any department-licensed, approved or funded program consistent with department  
190 regulations or policies and with federal and state law; (3) all household members, age 15 or  
191 older, or all persons, regularly on the premises, age 15 or older, of current family child care  
192 providers and applicants for family child care licensure; (4) all department-funded caregivers or  
193 candidates within programs in receipt of federal funding pursuant to section 9858 of Title 42 of  
194 the United States Code, consistent with department regulations or policies; and (5) any  
195 prospective or existing individual who provides transportation services on behalf of or has  
196 unsupervised access to children in any department-licensed, approved or funded program  
197 consistent with department regulations or policies. If the department receives information from a  
198 background record check that does not include any final disposition or is otherwise incomplete,  
199 the department may request that a candidate, either new or renewing, provide additional  
200 information to assist the department in determining the suitability of the individual for licensure,  
201 certification, approval, funding or employment. Additionally, the department of criminal justice  
202 information services may disseminate the results of a state and national criminal history check to  
203 the adoption and foster placement agencies licensed by the department for purposes of evaluating  
204 all adoptive or foster parent applicants and their household members age 15 or older, with the  
205 exception of those applicants and household members subject to said section 26A of said chapter  
206 119.

207 SECTION 26. Said subsection (j) of said section 8 of said chapter 15D, as so appearing,  
208 is hereby amended by striking out the second paragraph.

209            SECTION 27. Said subsection (j) of said section 8 of said chapter 15D, as so appearing,  
210    is hereby amended by striking out the third paragraph and inserting in place thereof the following  
211    paragraph:-

212            The board of early education and care shall, in a manner provided by law and under this  
213    chapter, promulgate regulations necessary to carry out this subsection. The regulations shall  
214    address the circumstances under which a licensed, approved or funded program may hire an  
215    individual in “provisional status” consistent with this section, the department’s regulations or  
216    policies and the federal requirements of section 9858f of Title 42 of the United States Code.

217            SECTION 28. Said subsection (j) of said section 8 of said chapter 15D, as so appearing,  
218    is hereby amended by striking out the fourth paragraph and inserting in place thereof the  
219    following paragraph:-

220            For the purposes of this subsection, “provisional status” shall mean the standing of a  
221    candidate for employment, internships or volunteer positions with a department-licensed,  
222    approved or funded program, or a candidate who has access to children in such programs who  
223    the department preliminarily approves to have supervised access to children after obtaining the  
224    results of a state and national fingerprint-based criminal history check and required sex offender  
225    checks consistent with the department’s regulations or policies and federal and state law. A  
226    candidate may be hired by the employer in “provisional status” if the employer determines that  
227    hiring the candidate is necessary and authorized by department regulations or policies.  
228    Candidates in “provisional status” must adhere to the requirements described in department  
229    regulations or policies. If a program or transportation provider seeks to hire a candidate in  
230    “provisional status”, the department may request that the candidate provide additional

231 information regarding the individual's history of criminal convictions, if any, to assist the  
232 department in determining the individual's suitability for "provisional status"; provided,  
233 however, that no access to children shall occur prior to the program or transportation provider  
234 obtaining the results of a fingerprint-based state and national criminal check and all sex offender  
235 registry information checks pursuant to sections 178I and 178J of chapter 6 and mandated by  
236 section 9858f of Title 42 of the United States Code and consistent with department regulations  
237 and policies and federal and state law.

238 SECTION 29. Subsection (k) of said section 8 of chapter 15D, as so appearing, is hereby  
239 further amended by striking out the second paragraph and inserting in place thereof the following  
240 paragraph:-

241 All persons required to submit fingerprints under this chapter, including but not limited  
242 to: (1) any current holder of or applicant for a family child care, small group and school age,  
243 large group and school age, and residential and placement license, or family child care assistant  
244 certificate; (2) all current and prospective candidates for employment, internships and volunteer  
245 positions in any department-licensed, approved or funded programs consistent with department  
246 regulations or policies; (3) all household members, age 15 or older, or persons, age 15 or older,  
247 regularly on the premises of current family child care providers and applicants for family child  
248 care licensure; (4) all department-funded caregivers or candidates within programs in receipt of  
249 federal funding pursuant to section 9858 of Title 42 of the United States Code, consistent with  
250 department regulations or policies; (5) all adoptive or foster parent applicants and their  
251 household members age 15 or older, with the exception of those applicants and household  
252 members subject to said section 26A of said chapter 119; and (6) any current or prospective  
253 candidate who provides transportation services on behalf of or has unsupervised access to

254 children in any department-licensed, approved or funded program consistent with department  
255 regulations or policies, shall pay a fee, to be established by the secretary of administration and  
256 finance in consultation with the secretary of public safety and security and the commissioner, to  
257 offset the costs of operating and administering a fingerprint-based criminal background check  
258 system. The fee shall not exceed \$35 per person. The secretary of administration and finance, in  
259 consultation with the secretary of public safety and security and the commissioner, may increase  
260 the fee accordingly if the Federal Bureau of Investigation increases its fingerprint background  
261 check service fee. The department-licensed, approved or funded programs may reimburse  
262 candidates for employment, internships or volunteer positions, for all or part of the fee on the  
263 grounds of financial hardship. Any fees collected from fingerprinting activity pursuant to this  
264 chapter shall be deposited into the Fingerprint-Based Background Check Trust Fund, established  
265 by section 2HHHH of chapter 29.

266 SECTION 30. Sections 11, 19, 21 and 30-32 shall take effect immediately.

267 SECTION 31. Sections 1-3, 5-7, 13-16, 20 and 22-24 shall take effect when the  
268 department's revised background record check regulations at 606 CMR 14.00 addressing the  
269 requirements at section 9858f of Title 42 of the United States Code are promulgated or  
270 September 30, 2018, whichever is sooner.

271 SECTION 32. Sections 4, 8-10, 12, 17-18 and 25-29 shall apply to all applicants and  
272 candidates as described within each section with the exception of residential and placement  
273 agencies, as well as adoptive and foster parents and their household member age 15 and older  
274 when applicable, whose applications are submitted on or after the date the department's amended  
275 background record check regulations at 606 CMR 14.00 are promulgated or September 30, 2018,

276 whichever is sooner. When such regulations are promulgated, all new applicants and candidates  
277 as well as those who are currently licensed, certified, approved or funded by the department of  
278 early education and care, with the exception of residential and placement agency candidates,  
279 shall comply with the requirements of this act upon submission of request for renewal of  
280 licensure, certification, approval or funding or when mandated by the department, but not later  
281 than September 30, 2020. Such requirements must be implemented for candidates for licensure,  
282 approval, employment, internships, and volunteer positions for residential programs and  
283 placement agencies on or before September 30, 2020.