

HOUSE No. 4594

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, June 13, 2018.

The committee on the Judiciary to whom was referred the message from His Excellency the Governor recommending legislation relative to enhancing the department of early education and care's background record check procedures (House, No. 4310), reports recommending that the accompanying bill (House, No. 4594) ought to pass.

For the committee,

CLAIRE D. CRONIN.

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The Commonwealth of Massachusetts

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

An Act to Enhance the Background Record Check Procedures of the Department of Early Education and Care.

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. Said subsection (a)(iii) of said section 7 of said chapter 15D, as so
69 appearing, is hereby amended by inserting after the word “staff”, in line 55, the following words-
70 : or staff 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 board in its regulations or policies consistent with federal and state law. Nothing in this

118 section shall prevent the department from completing the background record check process in a
119 shorter amount of time than required by federal or state law.

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

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

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

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

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

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

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

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

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

185 criminal justice information services may disseminate the results of a state and national criminal
186 history check to the department of early education and care to determine the suitability of: (1)
187 any current holder of or applicant for a family child care, small group and school age, large
188 group and school age, and residential and placement license, or family child care assistant
189 certificate; (2) current and prospective candidates for employment, internships and volunteer
190 positions in any department-licensed, approved or funded program consistent with department
191 regulations or policies and with federal and state law; (3) all household members, age 15 or
192 older, or all persons, regularly on the premises, age 15 or older, of current family child care
193 providers and applicants for family child care licensure; (4) all department-funded caregivers or
194 candidates within programs in receipt of federal funding pursuant to section 9858 of Title 42 of
195 the United States Code, consistent with department regulations or policies; and (5) any
196 prospective or existing individual who provides transportation services on behalf of or has
197 unsupervised access to children in any department-licensed, approved or funded program
198 consistent with department regulations or policies. If the department receives information from a
199 background record check that does not include any final disposition or is otherwise incomplete,
200 the department may request that a candidate, either new or renewing, provide additional
201 information to assist the department in determining the suitability of the individual for licensure,
202 certification, approval, funding or employment. Additionally, the department of criminal justice
203 information services may disseminate the results of a state and national criminal history check to
204 the adoption and foster placement agencies licensed by the department for purposes of evaluating
205 all adoptive or foster parent applicants and their household members age 15 or older, with the
206 exception of those applicants and household members subject to said section 26A of said chapter
207 119.

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

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

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

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

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

229 Candidates in “provisional status” must adhere to the requirements described in department

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

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

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

253 members subject to said section 26A of said chapter 119; and (6) any current or prospective
254 candidate who provides transportation services on behalf of or has unsupervised access to
255 children in any department-licensed, approved or funded program consistent with department
256 regulations or policies, shall pay a fee, to be established by the secretary of administration and
257 finance in consultation with the secretary of public safety and security and the commissioner, to
258 offset the costs of operating and administering a fingerprint-based criminal background check
259 system. The fee shall not exceed \$35 per person. The secretary of administration and finance, in
260 consultation with the secretary of public safety and security and the commissioner, may increase
261 the fee accordingly if the Federal Bureau of Investigation increases its fingerprint background
262 check service fee. The department-licensed, approved or funded programs may reimburse
263 candidates for employment, internships or volunteer positions, for all or part of the fee on the
264 grounds of financial hardship. Any fees collected from fingerprinting activity pursuant to this
265 chapter shall be deposited into the Fingerprint-Based Background Check Trust Fund, established
266 by section 2HHHH of chapter 29.

267 SECTION 30. Said section 8 of chapter 15D, as so appearing, is hereby amended by
268 adding the following subsection:-

269 (m) The department's review process into a person's presumptive and discretionary
270 disqualifications shall include an opportunity for the person to address department personnel, if
271 requested by the person, about any disqualifications. Upon such request, it shall be the discretion
272 of the department to conduct a telephone interview, or in-person interview, or accept a written
273 statement by the person in order to make a final suitability determination.

274 SECTION 31. Sections 11, 19, 21 and 30-32 shall take effect immediately.

275 SECTION 32. Sections 1-3, 5-7, 13-16, 20 and 22-24 shall take effect when the
276 department's revised background record check regulations at 606 CMR 14.00 addressing the
277 requirements at section 9858f of Title 42 of the United States Code are promulgated or
278 September 30, 2018, whichever is sooner.

279 SECTION 33. Sections 4, 8-10, 12, 17-18 and 25-29 shall apply to all applicants and
280 candidates as described within each section with the exception of residential and placement
281 agencies, as well as adoptive and foster parents and their household member age 15 and older
282 when applicable, whose applications are submitted on or after the date the department's amended
283 background record check regulations at 606 CMR 14.00 are promulgated or September 30, 2018,
284 whichever is sooner. When such regulations are promulgated, all new applicants and candidates
285 as well as those who are currently licensed, certified, approved or funded by the department of
286 early education and care, with the exception of residential and placement agency candidates,
287 shall comply with the requirements of this act upon submission of request for renewal of
288 licensure, certification, approval or funding or when mandated by the department, but not later
289 than September 30, 2020. Such requirements must be implemented for candidates for licensure,
290 approval, employment, internships, and volunteer positions for residential programs and
291 placement agencies on or before September 30, 2020.