

The committee on Judiciary, to whom was referred the House Bill relative to the protection of persons with intellectual disabilities (Senate, No. 1136); reports, recommending that the same ought to pass with an amendment substituting a new draft entitled "An Act relative to background checks" (HB 1674)
The Commonwealth of Massachusetts

In the Year Two Thousand Fourteen

An Act relative to 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:

SECTION 1. Chapter 19B, section 15 of the General Laws, is hereby amended by the addition of subsection (h) :-

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

(ii) As part of the department's licensing and background record check process, the department shall conduct fingerprint-based checks of the state and national criminal history databases, as authorized by Public Law 92-544, to determine the suitability of all current and prospective employees, who have the potential for unsupervised contact with persons with an intellectual or developmental disability in any department-licensed or funded program. For the purpose of this section, employees shall include any apprentice, intern, transportation provider, volunteer or sub-contractor who may have direct and unmonitored contact with a person with an intellectual or developmental disability. The fingerprint-based checks shall also be required to determine the suitability of any individual who provides transportation services on behalf of any department-licensed or funded program. Authorized department staff may receive all criminal offender record information and the results of checks of state and national criminal history databases

under said Public Law 92-544. When the department obtains the results of checks of state and national criminal history databases, it shall treat the information according to sections 167 to 178, inclusive, of chapter 6 and the regulations thereunder regarding criminal offender record information.

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

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

(a) The Department of Developmental Services shall in a manner provided by law and in accordance with this section, shall promulgate regulations necessary to carry out this section. The regulations shall provide that: each person providing residential or support services with the potential for unsupervised contact with persons with an intellectual or developmental disability in any DDS program or its contracted agency vendor programs, as well as any household members or persons regularly on the premises of residential facilities shall be subject to a criminal offender record information check under Public Law 92-544; and all applicants for a department issued license, and all current and prospective employees , interns and volunteers in any department-licensed, department-funded or department-approved program shall be subject to a fingerprint-based check of the state and national criminal history databases under Public Law 92-544. The regulations may reflect a phased-in schedule for the fingerprint-based background checks of individuals whose employment or service began prior to July 1, 2015.

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

Section 19. (b). Fingerprints, as referenced in subsections (h) of section 15 shall be submitted to the identification section of the department of state police for a state criminal history check and forwarded to the Federal Bureau of Investigation for a

national criminal history check, according to the policies and procedures established by the state identification section and by the department of criminal justice information services. Fingerprint submissions may be retained by the Federal Bureau of Investigation, the state identification section and the department of criminal justice information services to assist the department in its review of suitability for initial or continued employment, licensure, certification, or approval. The department of criminal justice information services may disseminate the results of a state and national criminal history check to the department of Developmental Services to determine the suitability of: (i) all current and prospective employees in any DDS program or any DDS contracted agency vendor programs, who have the potential for unsupervised contact with persons with an intellectual or developmental disability; (ii) all household members, age 15 or older, or all persons regularly on the premises, age 15 or older, of current residential care providers that are funded by DDS or its contracted agency vendor programs, (iii) all sub-contractors , interns, volunteers, or any other individual employed or retained by DDS or its contracted agency vendor program, that has the potential for unsupervised contact with persons with a n intellectual or developmental disability ; (iv) any individual who provides transportation services on behalf of DDS or its contracted agency vendor programs, (v.) any applicant seeking a license from the department for a residential or day care facility that serves the department's population. If the department receives information from a fingerprint-based check that does not include any final disposition or is otherwise incomplete, the department may request that an applicant, either new or renewing, provide additional information to assist the department in determining the suitability of the individual for licensure, certification, approval, funding or employment.

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

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

For the purposes of this subsection, "conditional employee" shall mean an individual who has the potential for unsupervised contact with persons with an intellectual or developmental disability and who is part of a department-licensed, funded or approved program or a provider of transportation services on behalf of any department-licensed, funded or approved program and was hired prior to the obtaining of the results of a state and national fingerprint-based criminal history check because the employer determined that hiring the individual was necessary.

The department of criminal justice information services shall disseminate the results of the criminal background check to the department. The department of criminal justice information services shall only disseminate information under this section that would

otherwise be available to requesting entities under sections 167 through 178, inclusive, of chapter 6 and the regulations thereto regarding criminal offender record information.

(d). All persons required to submit fingerprints under this chapter, including but not limited to: (i) all current and prospective employees, interns, sub-contractors and volunteers in any DDS program, or any DDS contracted agency vendor program, who have the potential for unsupervised contact with persons with an intellectual or developmental disability; (ii) All household members age 15 or older, or all persons regularly on the premises, age 15 or older, of current residential care providers that are funded by DDS or any its contracted vendor agency programs (iii) any individual who provides transportation services on behalf of any department-licensed, funded or approved program, (iv) any applicant seeking a license from the department for a residential or day care facility that serves the department's client population shall pay a fee, to be established by the secretary of administration and finance in consultation with the secretary of public safety and security and the commissioner, to offset the costs of operating and administering a fingerprint-based criminal background check system. The fee shall not exceed \$45 per person. The secretary of administration and finance, in consultation with the secretary of public safety and security and the commissioner, may increase the fee accordingly if the Federal Bureau of Investigation increases its fingerprint background check service fee. The department-licensed, funded or approved programs may reimburse applicants for employment, internship or volunteer positions, for all or part of the fee on the grounds of financial hardship. Any fees collected from fingerprinting activity under this chapter shall be deposited into the Fingerprint-Based Background Check Trust Fund, established in section 2HHHH of chapter 29 of the General Laws.

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

SECTION 4. Subsection (h) of section 15 of chapter 19B of the General Laws, as amended by section 1, and section 19 of chapter 19B of the General laws as added by section 2 shall apply to all new applicants for licensure, certification or approval, to any facility which offers to the public residential or day care services to a person with an intellectual disability or any other applicant licensed or regulated by the department under said section 15 of chapter 19B of the General Laws, whose applications are submitted on or after July 1, 2015.

All programs or agencies who are currently licensed, certified or approved by the department of developmental services, licensed or regulated by said section 15 of chapter 19B of the General Laws, shall comply with the requirements of this act upon renewal of licensure, certification, approval or funding, but not later than July 1, 2018.

Section 19 of Chapter 19B of the General laws as added by section 2, shall also apply to prospective employees in any Department of Developmental Services program or any of its contracted agency vendor program who have the potential for unsupervised contact with persons with an intellectual or developmental disability, including those providing transportation services on behalf of any department-licensed, funded or approved program, hired to begin employment on or after July 1, 2015.

Employees in any Department of Developmental Services program or any of its contracted agency vendor programs who have the potential for unsupervised contact with persons with an intellectual or developmental disability, including those providing transportation services on behalf of any DDS or its contracted agency vendor program hired to begin employment prior to July 1, 2015 shall submit fingerprints for state and national criminal history checks not later than July 1, 2018.

SECTION 5. Section 19 of chapter 19B of the General Laws shall apply to all individuals working with persons with an intellectual or developmental disability whose employment or service for DDS or one of its contracted vendor agency program begins after July 1, 2015. Individuals working with persons with an intellectual or developmental disability whose employment or service began before July 1, 2015 shall submit fingerprints for state and national criminal history checks on a phased-in basis prior to the beginning of July 1, 2018.