

National Criminal Background Check Bill

Massachusetts HB.1674

Summary

Under current law, those hired to work with people with developmental disabilities are required to have a state criminal background check, but not a national check, meaning that people with criminal records outside Massachusetts can unknowingly be hired to work directly with people with developmental disabilities in the Baystate.

Our Coalition

We are grateful to have the support of the Mass Advocates Standing Strong (MASS), the Disability Law Center (DLC), the Arc of Massachusetts and the Association of Developmental Disabilities Providers (ADDP). We also have been meeting with leaders from key government agencies who have expressed support of this bill including the Department of Developmental Services (DDS), Department of Public Safety (DPS), Executive Office of Health & Human Services (EOHHS), Executive Office of Public Safety & Security (EOPPS), Disabled Persons Protection Committee (DPPC), and the Massachusetts Developmental Disabilities Council (MDDC). We also have the support of 64 legislative co-sponsors.

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 under this section 15, the department, prior to issuing any license, shall: (1) obtain from the sex offender registry board all available sex offender registry information associated with the address of the program, center, facility or home; and (2) 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 for a facility which offers to the public residential or day care services, or any other agency covered under this section. 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 services 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 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 the department's regulations 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 applicants for employment, interns and volunteers who have the potential for unsupervised contact with persons with an intellectual or developmental disability in any department-licensed or funded 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-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 the department's regulations regarding criminal offender record information.

As part of the department's approval process, the department, prior to issuing any approval, shall: (1) obtain from the sex offender registry board all available sex offender registry information associated with the address of the center, home or facility; and (2) 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 the department's regulations 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 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 applicants for employment, 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 department shall also adopt regulations establishing that the following individuals shall be subject to a sexual offender registry information check under sections 178I and 178J of chapter 6: each person providing care or support services with the potential for unsupervised contact with persons with an intellectual or developmental disability in any program or facility licensed, funded or approved by the department; any persons regularly on the premises of a residential home that serves persons with an intellectual or developmental disability; any department funded caregivers; and any individual who provides transportation services on behalf of any department licensed, funded or approved program. The regulations shall also establish the conditions upon which the department may deny an application for a license, a license renewal or approval, employment or department funding and upon which the department may deny prospective employees based upon the information obtained from the sex offender registry search. The department shall also adopt regulations establishing an address search of the sex offender registry for the purposes of licensing and license renewal or approval of residential facilities, day habilitation programs, or any other program or service of DDS or its contracted agency vendor programs that is not supervised and approved by a placement agency, group care facilities or temporary shelter facilities, including the conditions in which the department may deny an application for a license, license renewal or approval based upon the information obtained from the address search of the sex offender registry.

SECTION 3. Said section 19 of said chapter 19B, as so appearing, is hereby further amended by the addition of subsection (b):-

(b) Fingerprints, as referenced in subsections (h) of section 15 and subsection (a) of this section, 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 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 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 an intellectual or developmental disability; (iv) any individual who provides transportation services on behalf of DDS or its contracted agency vendor programs. 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.

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 in limited circumstances, as provided by the board of early education and care.

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. If a program or transportation provider seeks to hire a conditional employee, the program or transportation provider may request that the individual provide additional information regarding the individual’s history of criminal convictions, if any, to assist the program or transportation provider in determining the individual’s suitability for unsupervised contact with persons with an intellectual or developmental disability; provided however, that no unsupervised contact with persons with an intellectual or developmental disability shall occur prior to the program or transportation provider obtaining the results of a sexual offender registry information check under sections 178I and 178J of chapter 6.

The department of criminal justice information services shall disseminate the results of the criminal background check to the department or DDS-contractor agency vendor programs. 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.

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, 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 set 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.

SECTION 4.Said section 19 of said Chapter 19B of the General Laws as so appearing, is hereby further amended by the addition of subsection (c):-

(c). In a manner prescribed by the Department of Developmental Services, any DDS program or any DDS contracted agency vendor program, shall obtain periodically, but not less frequently than every 3 years, from the department of criminal justice information services all available criminal offender record information for any current or prospective employee or volunteer within their organization who may have direct and unmonitored contact with persons with an intellectual or developmental disability, including any individual who regularly provides transportation to said persons with an intellectual or developmental disability. Said DDS program or DDS contracted agency vendor program shall also have access to and may obtain all criminal offender record information for any subcontractor or laborer commissioned by the DDS program or contracted agency vendor program to perform work on the grounds of the program, who may have direct and unmonitored contact with persons with an intellectual or developmental disabilities.

The DDS program, or its contracted agency vendor program, shall also obtain a state and national fingerprint-based criminal background check, under Public Law 92-544 to determine the suitability of current and prospective employees who may have direct and unmonitored contact with persons with an intellectual or developmental disability. For the purpose of this section, employees shall include any apprentice, intern or sub-contractor who may have direct and unmonitored contact with a person with an intellectual or developmental disability. DDS or its contracted agency vendor program shall only obtain a state and national fingerprint-based criminal background check for current and prospective employees for whom the agency, program, or organization has direct hiring authority. agency, program, or organization shall also obtain a state and national fingerprint-based criminal background check for any individual who regularly provides transportation to persons with an intellectual or developmental disability. The agency, program, or organization may obtain a state and national fingerprint-based criminal background check under Public Law 92-544 for any volunteer, subcontractor or laborer commissioned by the agency, program, or organization to perform work on program grounds, who may have direct and unmonitored contact with persons with an intellectual or developmental disability.

Fingerprints 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 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

employers authorized under this chapter to ensure the continued suitability of those individuals. The department of criminal justice information services may disseminate the results of the state and national criminal background checks to: DDS or its contracted agency provider programs, to determine the suitability of current and prospective employees of the employer; and to the department of developmental services to determine the suitability of applicants for license who may have direct and unmonitored contact with persons with an intellectual or developmental disability. However, the department of criminal justice information services shall only disseminate to DDS or its contracted agency provider programs results for current and prospective employees for whom DDS or said programs has direct hiring authority.

Entities that receive the results of national criminal background checks 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, if DDS or its contracted agency vendor program employer receives criminal record information from the state or national fingerprint-based criminal background checks that includes no disposition or is otherwise incomplete, the employing agency, program, or organization may request that an individual provide additional information regarding the results of the criminal background checks to assist the employer in determining the applicant's suitability for direct and unmonitored contact with persons with an intellectual or developmental disability. 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.

The Department of Developmental Services shall in a manner provided by law and in accordance with this section the department shall promulgate regulations necessary to carry out this section. The regulations shall provide for the confidentiality of criminal offender record information and the results of fingerprint-based checks of the state and national criminal history databases, under and Public Law 92-544, obtained under this section. The regulations may reflect a phased-in schedule for the fingerprint-based background checks of individuals whose employment or service began prior to January 1, 2015.

The applicant 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. 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 the fee for its fingerprint background check service. DDS or its contracted agency vendor programs may waive all or part of the fee on the grounds of applicant's financial hardship. Any fees collected from fingerprinting activity under this chapter shall be deposited into the Fingerprint-Based Background Check Trust Fund established under section 2HHHH of chapter 29.

SECTION 5. For the purposes of this section, "conditional employee" shall mean an individual who may have direct and unmonitored contact with persons with an intellectual or developmental disability without first obtaining the results of a state and national fingerprint-based criminal history check because the employer determines that hiring the individual is necessary.

Until the commonwealth has fully implemented a system for forwarding fingerprints to the Federal Bureau of Investigation for a national criminal history check and providing the results of those checks to DDS, or

its contracted agency vendor programs employers, Those employers may hire individuals without first obtaining the results of a state and national fingerprint-based criminal history check if the agency, program, or organization has obtained from the Massachusetts department of criminal justice information services all available criminal offender record information on such individuals.

Once the commonwealth has fully implemented a system for forwarding fingerprints to the Federal Bureau of Investigation for a national criminal history check and providing the results of those checks to DDS, or its contracted agency vendor programs shall require employees hired after January 1, 2015 without the results of a state and national fingerprint-based criminal history check to submit fingerprints for a state and national criminal history check within a reasonable period of time.

DDS or its contracted agency vendor programs may hire individuals without first obtaining the results of a state and national fingerprint-based criminal history check in limited circumstances. The Department of Developmental Services shall in a manner provided by law and in accordance with this section, promulgate regulations necessary to carry out this section. These regulations shall address the circumstances under which DDS or its contracted agency vendor program may hire a conditional employee.

Notwithstanding subsections 9 and 9 ½ of section 4 of chapter 151B of the General Laws, if DDS any or its contracted vendor programs seeks to hire a conditional employee, the employer may request that an individual provide additional information regarding the individual's history of criminal convictions to assist the employer in determining the applicant's suitability for direct and unmonitored contact with persons with an intellectual or developmental disability; provided, however, that the information shall not include juvenile or sealed convictions.

SECTION 6. 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 January 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 January 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 January 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 January 1, 2015 shall submit fingerprints for state and national criminal history checks not later than January 1, 2018.

SECTION 7. If a state and national fingerprint-based criminal check is not available through the Department of Developmental Services by January 1, 2015, then all new applications for licensure, certification or approval, under said section 15 of chapter 19B of the General Laws who apply on or after January 1, 2015, shall undergo a state and national fingerprint-based criminal history check as soon it becomes available.

If a state and national fingerprint-based criminal check is not available through the Department of Developmental Services at the time an application for renewal of a department-issued license, certificate, approval or funding request is due, then the applicant for renewal shall undergo a state and national fingerprint-based criminal check as soon it becomes available, but not later than January 1, 2018.

If a state and national fingerprint-based criminal check is not available through the Department of Developmental Services by January 1, 2015, then any prospective employee in any department-licensed, funded or approved program who has 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 on or after January 1, 2015, shall be hired conditionally as set forth in this act.

If a state and national fingerprint-based criminal check is not available through the Department of Developmental Services by January 1, 2015, then any employee in any department-licensed, funded or approved program who has 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 prior to January 1, 2015, who is undergoing a department required periodic criminal offender record information check and a department developmental services record check investigation, may continue employment conditionally as provided in this act, but shall undergo a state and national fingerprint-based criminal check not later than January 1, 2018.

SECTION 8. 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 January 1, 2015. Individuals working with persons with an intellectual or developmental disability whose employment or service began before January 1, 2015 shall submit fingerprints for state and national criminal history checks on a phased-in basis prior to the beginning of January 1, 2018.

SECTION 9. For the purposes of this section, “conditional employee” shall mean an individual who has the potential for unsupervised contact with persons with an intellectual or developmental disability and who is an employee, volunteer or intern of DDS or its contracted agency vendor program or a provider of transportation services on behalf of DDS or one of its contracted agency vendor programs 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.

Notwithstanding chapter 19B of the General Laws, or any other general or special law to the contrary, until the commonwealth has fully implemented a system for forwarding fingerprints to the Federal Bureau of Investigation for a national criminal history check and providing the results of those checks, DDS or its contracted vendor agency programs or the provider of transportation services on behalf of any department-licensed, funded or approved program may hire a conditional employee if the employer has first obtained the results of a criminal offender record information check and a Department of Developmental Services background record check, as required by the department, on the individuals.

All department-licensed, funded or approved programs and all providers of transportation services on

behalf of any department-licensed, funded or approved program, whose employees are subject to a state and national criminal history check under this chapter, shall require such employees hired on or after January 1, 2015 without the results of state and national fingerprint-based criminal history checks to submit fingerprints for state and national criminal history checks within a reasonable period of time.