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Governor Patrick Signs Mandatory Fingerprint-Based Background Check Law

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On January 10, 2013, Governor Patrick signed “An Act Relative to Background Checks” (H.4307) into law. This law implements a wide reaching requirement for mandatory state and national fingerprint-based criminal background checks for public and private elementary and secondary educational institutions, Department of Early Education and Care licensed and/or funded child care facilities/programs, and applicants to be adoptive or foster parents.

To Whom Does This Law Apply?

Public and Private Schools:

The school committee and superintendent of any city, town or regional school district and the principals or school administrators of both public and private schools, as well as Chapter 71B special educational programs, must conduct fingerprint-based background checks – in addition to a more general criminal offender record information (CORI) background check – on all current and prospective employees over whom they have direct hiring authority and who have the potential for direct and unmonitored contact with children, persons who provide regular school related transportation to children, and laborers and subcontractors commissioned by the school to perform work on school grounds and who may have direct and unmonitored contact with children.

Department Early Education and Care Certified Facilities:

The Department of Early Education and Care is required to conduct fingerprint-based criminal background checks before issuing any license. The law also specifies that a fingerprint-based background check must be performed on applicants for a family child care, small group and school age, large group and school age, residential and placement license or family child care assistant certificate. The law further mandates that fingerprint-based checks be conducted on all applicants for employment in Department of Early Education and Care licensed or funded programs who have the potential for unsupervised contact with children, as well as all household members, or persons regularly on the premises, over the age of 15 of applicants for family child care licensure, all in-home non-relative department funded caregivers, and all applicants to be adoptive or foster parents.

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When Do the Requirements Go Into Effect?

The law applies to new employees for the 2013-2014 school year. Current employees must submit fingerprints for a state and national background check prior to the start of the 2016-2017 school year. The Department of Early Education and Care and the Board of Elementary and Secondary Education will issue regulations further implementing the law. The regulations may reflect a phased-in schedule for the fingerprint-based checks, but such phase-in shall not begin prior to September 1, 2013.

How Does the Process Work?

For public and private schools, the new law requires that fingerprints be submitted to the Identification Section of the State Police, which will forward them to the Federal Bureau of Investigation in accordance with policies and procedures established by the State Police and the Department of Criminal Justice Information Services (DCJIS). Submitted fingerprints and national background checks may be maintained on file by the DCJIS. DCJIS will disseminate the results of the fingerprint check to the appropriate authority at the school, in accordance with Chapter 6 of the General Laws and corresponding DCJIS regulations relating to criminal offender record information background checks (“CORI law and regulations”). DCJIS may disseminate to school committees only those results from individuals over whom the school committee has direct hiring authority.

For facilities licensed or funded by the Department of Early Education and Care, the new law also requires that fingerprints be submitted to the State Police and the Federal Bureau of Investigation. Submitted fingerprints and national background checks may be maintained on file by the DCJIS. DCJIS will disseminate the results of the fingerprint analysis to the Department of Early Education and Care, and may disseminate information to the employer/licensee in accordance with CORI law and regulations.

If an applicant has previously submitted a fingerprint-based background check and applies to work for another school or Department of Early Education and Care program, the employer will have access to this background check for the purpose of determining the suitability for employment. For both schools and those programs licensed or funded by the Department of Early Education and Care, it is important to maintain the results of fingerprint-based background checks in accordance with CORI law and regulations.

Future regulations will further clarify and supplement the process.



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Who Pays For These Checks?

The general rule is that persons required to undergo a fingerprinting background check under this law must pay a fee – for schools, not to exceed \$35 for persons not certified under section 38G of Chapter 71 of the General Laws and \$55 for those persons who are certified, and not to exceed \$35 per person for Department of Early Education and Care programs¹ – which will be deposited into a Fingerprint-Based Background Check Trust Fund. Applicants and employees may be reimbursed by the school or program on the grounds of financial hardship.

Where Can I Get More Information?

The Department of Early Education and Care and the Board of Elementary and Secondary Education are responsible for promulgating regulations on the new law.

*If you have any questions about this issue, or are interested in discussing this issue further,
please contact the attorney responsible for your account,
or call (617) 479-5000.*

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¹ Caps may be raised if the Federal Bureau of Investigation increases its fee for fingerprint-based background checks.