



Executive Office of Education

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Frequently Asked Questions Regarding Background Checks Law

An Act Relative to Background Checks (Chapter 459 of the Acts of 2012, as amended by Chapter 77 of the Acts of 2013)

Frequently Asked Questions (FAQ)

UPDATED: March 31, 2014

In January 2013, Governor Patrick signed Chapter 459 of the Acts of 2012, "An Act Relative to Background Checks."

(<http://www.malegislature.gov/Laws/SessionLaws/Acts/2012/Chapter459>) This new law expands what public, private, and parochial schools, including approved private special education schools and child care facilities, already do in conducting state Criminal Offender Record Information (CORI) checks on all employees at least once every three years. It requires a fingerprint-based state and national criminal record check for all school employees and contractor employees. All **newly hired** school employees, including educators, student teachers, maintenance staff, cafeteria workers, and bus drivers, who work in the schools and may have direct and unmonitored contact with children are now required to complete the new fingerprint-based state and national background check for the 2013-2014 school year. Volunteers at schools will continue to be required to submit to state CORI checks at least once every three years, as currently required by statute, but the decision to require the submission of fingerprints by volunteers for the fingerprint-based state and national checks will be made locally, by schools or districts.

For all **current** K-12 school employees and early educators, the law directs the Board of Early Education and Care and the Board of Elementary and Secondary Education to adopt regulations that phase in fingerprint-based state and national background checks prior to September 1, 2016. Unlike most state CORI checks that have no associated fee, individuals will pay a fee to comply with this requirement that ranges from \$35 for non-licensed employees to \$55 for individuals licensed under G.L. Chapter 71, Section 38G (licensed educators and specialists). The Executive Office of Public Safety and Security (EOPSS) has designed the system to meet this new national background check requirement.

NOTE: The Statewide Applicant Fingerprint Identification Services (SAFIS) program was launched on February 4, 2014. Newly hired employees for the 2013-14 school year, as well as applicants for licensure by the Department of Early Education and Care (EEC), will schedule appointments to submit their fingerprints, pursuant to the new law. In the meantime, schools, programs, and providers will continue to run CORI (and, if required, DCF) checks on school employees and EEC licensees, as required under current state statutes.

Please continue to monitor this FAQ for updates on the law and its implementation.

If you have questions about background checks that are specific to the Department of Early Education and Care, please check out <http://www.mass.gov/edu/birth-grade-12/early-education-and-care/laws-regulations-and-policies/background-records-check-regulations-and-policies/>.

GENERAL BACKGROUND

Q: What is the new law on background checks for educators?

On January 10, 2013, Governor Patrick signed into law H. 4307, *An act relative to background checks*. The bill was sponsored by the Co-Chairperson of the Joint Committee on Education, Representative Alice Peisch (D-Wellesley). The new law requires all public and private K-12 school employees in Massachusetts, as well as early educators, to submit to fingerprint-based state and national criminal background checks. On September 3, 2013, Governor Patrick signed follow-up legislation that made several technical corrections to the existing law at the request of the FBI so that the FBI could begin processing submitted fingerprints under the new law.

Q: Why is this law necessary?

Prior to the enactment of the new law, Massachusetts required all public and private K-12 schools and early education programs and providers to conduct state Criminal Offender Record Information (CORI) background checks on their employees at least once every three years. The CORI check, while intended to protect the children of the Commonwealth, includes only an individual's criminal history for Massachusetts; it is not a nationwide criminal history check. Moreover, before this new law was passed by the Legislature and signed into law by Governor Patrick, Massachusetts was the only state in the nation that was not conducting fingerprint-based state and national criminal history checks of K-12 school employees through the FBI's national criminal history database, and Massachusetts was one of a small handful of states not conducting fingerprint-based criminal history checks of early educators. The new law closes those loopholes and aligns Massachusetts with the rest of the nation.

Q: Who must submit fingerprints under the new law?

(including employees at special education day and residential school programs under Chapter 71B), as well as individuals who regularly provide school-related transportation to children, and anyone providing child care or support services licensed by the Department of Early Education and Care, will be subject to fingerprint-based state and national background checks. Student teachers are also subject to the checks. School volunteers and subcontractors/laborers commissioned by schools to perform work on school grounds, may need to submit their fingerprints for the state national checks if asked to do so, and they must continue to submit to state CORI checks. At the discretion of the school employer, subcontractors or laborers commissioned by schools to perform work on school grounds may be required to submit both a CORI check and fingerprint-based state and national background checks.

FEES

Q: What is the cost of these fingerprint-based state and national criminal history background checks, and who will pay it?

The fee charged for running the national checks will be \$55 for school employees licensed by the Commissioner of Elementary and Secondary Education under G.L. Chapter 71, Section 38G (licensed educators and specialists) and \$35 for all others (e.g., school secretaries, cafeteria workers, janitors, bus drivers, etc.), as well as EEC-licensed early educators and childcare providers. As is the case in almost every other state that conducts fingerprint-based state and national criminal history checks, the fee will be paid by the individual employee or educator/provider.

Q: Why is there a fee for conducting the fingerprint-based state and national checks?

Unlike state CORI checks, the fingerprint-based state and national criminal history checks are more complex and require participation by multiple law enforcement agencies. All fingerprints must be submitted to the Federal Bureau of Investigation (FBI) to produce a national criminal history report. The FBI charges a fee to produce each report. In addition, the Massachusetts Executive Office of Public Safety and Security (EOPSS), the Massachusetts Department of Criminal Justice Information Services (DCJIS), and the Massachusetts State Police must review, prepare, and produce the FBI reports to school districts and licensing agencies in a form that is legally consistent with the safeguards provided by the Commonwealth's CORI laws. There will be administrative costs associated with that process. The fees will support the FBI fee, as well as all state administrative costs. All fees paid for these checks will be deposited in a state trust fund and will be available only for the support of this system of fingerprint-based state and national criminal history checks.

Please note that the fees established in the new law are reasonable, reflect the costs of implementation, and are in line with the fees other states charge for similar national criminal history checks.

Q: If I am a school employee or work in an early education program, is there a hardship exception to paying the fee?

Yes. The law explicitly states that a school committee, superintendent, or principal, as well as a program licensed or funded by the Department of Early Education and Care, may reimburse individuals all or part of the fee on the grounds of financial hardship.

Q: Can I use my background check from another state or from another background check conducted in Massachusetts (e.g., firearms license)?

Under federal and state law, fingerprint-based criminal history records obtained for one purpose/under one authority (i.e., for a firearms license or for a record check in another state) cannot be disseminated outside the original receiving entity. This includes not only any criminal history information but also the actual fingerprints themselves. Everyone must undergo a new fingerprint-based background check for each agency that requires you to do so.

PEOPLE COVERED BY THE NEW BACKGROUND CHECKS LAW

Q: Does the new background checks law apply to public and private institutions of higher education in Massachusetts?

Generally, no. The new law concerns only public and private pre-K-12 schools in the Commonwealth, including special education programs approved under Chapter 71B, as well as early educators and child care providers. If a Massachusetts institution of higher education runs a program for school-aged children or an early child care center, then it would be subject to the new law, but only for those individuals employed through those particular programs.

Q: If I am a substitute teacher at a local public or private school, will I need to submit my fingerprints for the new state and national background checks?

Yes. Substitute teachers are school employees under the new law and, therefore, must submit their fingerprints for the state and national checks. If substitute teachers hold educator licenses issued under G.L. c. 71, § 38G, they will pay a fee of \$55; otherwise, they will pay a fee of \$35.

Due to the time that it will take to acquire an individual's fingerprints, run the prints through the state and FBI databases, review and analyze the information received from the State Identification Section of the Massachusetts State Police and the FBI, and prepare a report for the employer, schools and districts are encouraged to contact prospective substitute teachers several months before the start of the school year to begin the background check process. For purposes of the new law, substitute teachers who worked in the district in the prior school year will be considered current or existing employees, while all other substitute teachers will be considered newly hired school employees.

Under Massachusetts law, schools are required to run state CORI checks on all volunteers, but there is no requirement that they run the fingerprint-based checks on volunteers. However, a volunteer who may have direct and unmonitored contact with children may be asked to submit their fingerprints for the state and national checks if doing so is a requirement of the school or district.

Q: If I am employed at a nonpublic K-12 school, such as a parochial school or independent school, do I need to submit my fingerprints for state and national criminal background checks?

Yes. The new law requires all employees of public and private schools, including special education school programs approved under Chapter 71B, to submit fingerprints for the state and national background checks, which is consistent with their existing obligations under the CORI statute.

Q: Are all school contractors and their employees required to submit to fingerprint-based criminal background checks?

Yes, but only if the school district contracting for their services requires them to do so. As under the CORI law, independent contractors and their employees who may have direct and unmonitored contact with children on a particular school project may be asked to submit to state and national background checks prior to working in that position. The school or district would review the reports to determine the fitness of the applicant to work in a position in which they may have contact with children.

If an independent contractor adds a new employee to the workforce, the state and national background checks would be conducted by the school prior to the employee being assigned to any work that would bring the employee into direct contact with children, provided the school district requires such checks.

CONDITIONAL HIRING

Q: How should school employers handle employees hired for the 2013-14 school year?

Since the Massachusetts procedure for processing fingerprints of school employees began operation on February 4, 2014 after the start of the 2013-14 school year, school employers needed to hire individuals before receiving the results of the fingerprint-based state and national criminal background checks. Employers should comply with the CORI law and be conducting any mandatory CORI check before hiring. Employers should have let potential employees know that when the Commonwealth's system for processing fingerprint-based state and national background checks became operational, those new hires would need to submit their fingerprints, and the employer would need to make a suitability determination. The employee should have been told that the results of the fingerprint-based state and national background checks could lead to termination of employment. This procedure should be followed for all hiring going forward.

TIMELINE FOR SUBMITTING FINGERPRINTS

Q: If I am a school employee or early educator, when must I submit my fingerprints for the state and national criminal history checks?

Under the new law, all **newly hired** school and early education employees are currently required to submit their fingerprints for state and national criminal history checks during the **2013-2014** school year. All **current or existing** school and early education employees are required to submit to fingerprint-based background checks on a phased-in schedule leading up to the beginning of the **2016-17** school year. For pre-K-12 employees, **current or existing** employees are those hired before July 1, 2013. The Department of Early Education and Care (EEC) and the Department of Elementary and Secondary Education (ESE), working with EOPSS, began a soft-launch of the Statewide Applicant Fingerprint Identification Services (SAFIS) Program on February 4, 2014. Expanded rollout of SAFIS began at the end of March 2014. EEC and ESE will issue communications regarding the timeline for both **new** and **existing** school and early education employees to submit their fingerprints for the state and national criminal history checks.

Q: If I started employment in the winter or spring of 2013, am I considered a newly hired employee for purposes of the law?

No. For the purposes of the law, newly hired school and early education employees are those who began employment in the 2013-14 school year. **Current or existing** employees are those hired before July 1, 2013.

Q: If I have been teaching for five years but I started employment in a new school district in 2013-14, am I considered a new employee for purposes of the law?

Yes. If you were a new hire in any school district for the 2013-14 school year, you are a new employee for purposes of this law.

Q: If I have been teaching in a school district for several years and I started a teaching assignment at a different school within that district for the 2013-14 school year, am I considered a new employee for purposes of the law?

No. You were not a new hire for that district. Rather, you were an in-district transfer. You are not a new employee for purposes of this law.

Q: If I am a school employee or an EEC-licensed early educator or childcare provider, where do I go to submit my fingerprints for the state and national criminal history checks?

Once notified by your Human Resources Department, School Administrator, or the Department of Early Education and Care (EEC) to have your background check completed, you will be required to schedule a fingerprinting appointment through the MorphoTrust USA IdentoGo™ online registration website or by calling the MorphoTrust USA Massachusetts Customer Service Center. Based on the date and time you selected for your fingerprinting appointment, you will go to the selected Morpho Trust USA IdentoGo™ fingerprint enrollment center to have your fingerprints electronically captured using an electronic fingerprint system known as a live-scan device. Your fingerprints are then sent electronically to the Massachusetts State Police (MSP) for a statewide criminal history record check and to the Federal Bureau of Investigation (FBI) for a nationwide criminal record check. The results of both the state and national fingerprint-based criminal history record checks are returned to the MSP and the Department of Criminal Justice Information Services (DCJIS) and disseminated to the authorized entity for review. Please be aware that dissemination of the history record check reports from the MSP and DCJIS to the authorized entity may take a week or more due to the need to review the reports to make them consistent with the Commonwealth's CORI statute.

Q: If I am covered by the new background checks law, may I go to my local police station to submit my fingerprints for the state and national criminal history checks?

No. In most states that currently run fingerprint-based criminal history checks on educators, individuals submit their fingerprints through independent vendors authorized by the state. Given that hundreds of thousands of individuals in Massachusetts are expected to submit their fingerprints for these state and national criminal history checks over the next several years, local police departments could not handle that volume and continue to provide standard law enforcement services to their communities.

Q: If I am covered by the new background checks law, how many times during my career will I have to submit to the fingerprint-based state and national criminal history checks?

Every effort will be made to minimize the need for submitting additional fingerprints. EOPSS expects that the FBI will bring into operation a new "Rap Back" service in the next two to three years. That service would allow authorized agencies to receive notification of subsequent criminal activity reported to the FBI.

Furthermore, regulations from the Department of Elementary and Secondary Education (ESE) and the Department of Early Education and Care (EEC) specify the circumstances in which a school/district or the EEC may rely on a determination of suitability for employment made by a previous school employer or EEC, obviating the need to conduct an additional check. However, any individual who has experienced a significant gap in school employment in Massachusetts will be required to resubmit his/her fingerprints for the state and national criminal history checks, prior to commencing work for a new school employer.

Pre-K-12 employees who continue to work in the same school or district are not required to re-submit to fingerprint-based state and national criminal history checks once their employer has deemed them suitable for employment.

As in the past, employees will be required to submit to state CORI checks (which are not fingerprint-based) at least once every three years.

For reference, the ESE regulations are available here: <http://www.doe.mass.edu/lawsregs/603cmr51.html?section=all>.

The EEC regulations are available here: <http://www.mass.gov/edu/government/departments-and-boards/department-of-early-education-and-care/news-and-updates/2013/new-background-record-check-regulations-.html>.

FORMAT OF THE STATE AND NATIONAL BACKGROUND CHECK REPORTS

Q: What is contained in the National Criminal History Record Information (CHRI) Report?

An FBI Identification Record is a listing of certain information taken from fingerprint submissions retained by the FBI in connection with arrests and, in some instances, federal employment, naturalization, or military service. If the fingerprints are related to an arrest, the Identification Record includes the name of the agency that submitted the fingerprints to the FBI, the date of arrest, the arrest charge, and the disposition of the arrest, if known to the FBI. All arrest data included in an Identification Record is obtained from fingerprint submissions, disposition reports, and other reports submitted by agencies having criminal justice responsibilities.

Q: What information will the national criminal background checks provide that was not included in the CORI checks?

CORI checks include court-based criminal history information only for Massachusetts, and they do not include Massachusetts fingerprint-based criminal history information or criminal history information from any other state. A state fingerprint-based criminal record check will provide all information submitted by law enforcement agencies to the State Identification Section. Because national criminal background checks are processed through the FBI, it should include criminal history information for an individual from every state in the nation.

CONSISTENCY WITH THE STATE CORI LAWS

Commonwealth's CORI laws in 2010 (Chapter 256 of the Acts of 2010)?

The new background checks law that requires fingerprinting explicitly states that any information received from state and national criminal background checks must be treated in accordance with the revised CORI laws enacted in 2010, G.L. c. 6, §§ 167-178. For example, under the revised CORI laws and pursuant to the language in the new background checks law, Massachusetts public safety officials are required to delete any juvenile offenses from criminal history reports before sending them to school districts.

Q: When a school district receives the new criminal history reports, which will include both state and national criminal history information, are there guidelines for how those reports are to be reviewed and analyzed?

Under the existing Massachusetts CORI laws, the school district has discretion with respect to how to review and analyze the reports. Under the new background checks law, discretion remains with the district. The new background checks law will provide *more* information to hiring and licensing authorities, but it does not change how those authorities *review and analyze* the information. The Department of Elementary and Secondary Education and the Department of Early Education and Care will be working with EOPSS to supplement the existing model CORI policy developed by DCJIS to include guidance about the fingerprint-based state and national criminal history background checks. The law also requires a K-12 employer to notify the Commissioner of Elementary and Secondary Education of any criminal record information relevant to the fitness for licensure of license holders and applicants.

Q: Will schools, as well as early education and child care providers, continue to run CORI checks in addition to the fingerprint-based state and national criminal background checks?

Yes. Schools and EEC-licensed programs will continue to run CORI checks on applicants and existing employees. Those CORI checks will continue to be run at no cost to applicants or existing employees. Under Massachusetts law, the CORI checks must be done at least once every three years.

OTHER QUESTIONS

Q: Where can I go to find more information about the new law?

Watch this space. This FAQ is intended to be the primary place for dissemination of information about the new law. As we learn more information about the process and timing, we will continually update this FAQ. If your question has not been answered by this FAQ, it will probably be answered here eventually, as we get more information to share with you. If your question is specific to the Department of Early Education and Care, there is a separate FAQ on background checks available at <http://www.mass.gov/edu/government/departments-and-boards/department-of-early-education-and-care/news-and-updates/2013/updated-information-regarding-background-checks.html>.

Q: I still have additional questions; whom should I contact?

For questions specific to early education and care, please contact the Department of Early Education and Care (EEC) at (617) 988-6600. Alternatively, more information specific to EEC is available at <http://www.mass.gov/edu/birth-grade-12/early-education-and-care/laws-regulations-and-policies/background-records-check-regulations-and-policies/>.

For questions specific to elementary and secondary education, please contact the Department of Elementary and Secondary Education (ESE) at expandedbackgroundchecks@doe.mass.edu or (781) 338-6606.