

1 **HB4327 (Chapter 234 of 2014) - House Ways and Means - An Act to require**  
2 national background checks

**Last Action:** 8/5/14 - Signed by the Governor

3 Be it enacted by the Senate and House of Representatives in General Court  
4 assembled, and by the authority of the same as follows:

5 SECTION 1. Chapter 19B of the General Laws is hereby amended by adding the  
6 following 2 sections:-

7 Section 19. (a) As part of the departments licensure and background record check  
8 process, the department, prior to issuing any license, shall conduct fingerprint-based  
9 checks of the state and national criminal history databases, as authorized by 28 CFR  
10 20.33 and Public Law 92-544. The fingerprint-based checks shall be conducted on any  
11 applicant seeking a license for a facility which offers to the departments client  
12 population residential or day care services or any other agency covered pursuant to  
13 section 15 that is licensed or funded by the department and serves the departments  
14 client population. The fingerprint-based checks shall also be required for any household  
15 member, age 15 or older, or any person regularly on the premises, age 15 or older, of  
16 applicants for residential care service licensure, whether or not they are department-  
17 funded caregivers. Authorized department staff may receive all criminal offender record  
18 information and the results of checks of state and national criminal history databases  
19 under said Public Law 92-544. When the department obtains the results of checks of  
20 state and national criminal history databases, it shall treat the information according to  
21 sections 167 to 178, inclusive, of chapter 6 and the regulations thereunder regarding  
22 criminal offender record information.

23 (b) As part of the departments licensing and background record check process, the  
24 department shall conduct fingerprint-based checks of the state and national criminal  
25 history databases, as authorized by 28 CFR 20.33 and Public Law 92-544, to determine  
26 the suitability of all current and prospective employees, who have the potential for  
27 unsupervised contact with persons with an intellectual or developmental disability in any  
28 department-licensed or funded program. For the purpose of this section, employees  
29 shall include any apprentice, intern, transportation provider, volunteer or sub-contractor  
30 who may have direct and unmonitored contact with a person with an intellectual or  
31 developmental disability. The fingerprint-based checks shall also be required to  
32 determine the suitability of any individual who provides transportation services on behalf  
33 of any department-licensed or funded program. Authorized department staff may  
34 receive all criminal offender record information and the results of checks of state and  
35 national criminal history databases under said Public Law 92-544. When the department  
36 obtains the results of checks of state and national criminal history databases, it shall  
37 treat the information according to sections 167 to 178, inclusive, of chapter 6 and the  
38 regulations thereunder regarding criminal offender record information.

39 (c) As part of the departments approval process, the department, prior to issuing  
40 any approval, shall conduct fingerprint-based checks of the state and national criminal  
41 history databases, authorized by 28 CFR 20.33 and Public Law 92-544, that are  
42 required under this subsection. The fingerprint-based checks of the state and national  
43 criminal history databases shall be conducted, under said Public Law 92-544, to  
44 determine the suitability of all applicants for employment, interns and volunteers who  
45 have the potential for unsupervised contact with persons with an intellectual or  
46 developmental disability in any department-approved program. The fingerprint-based  
47 checks shall also be required to determine the suitability of any individual who provides  
48 transportation services on behalf of any department-approved program. Authorized  
49 department staff may receive all criminal offender record information and the results of  
50 checks of state and national criminal history information databases under said Public  
51 Law 92-544. When the department obtains the results of checks of state and national  
52 criminal information databases, it shall treat the information according to sections 167 to  
53 178, inclusive, of chapter 6 and the regulations thereunder regarding criminal offender  
54 record information.

55 Section 20. (a) Each person providing residential or support services with the  
56 potential for unsupervised contact with persons with an intellectual or developmental  
57 disability in any department program or its contracted agency vendor programs, as well  
58 as any household members, age 15 or older, or persons regularly on the premises of  
59 residential facilities, age 15 or older, shall be subject to a criminal offender record  
60 information check pursuant to 28 CFR 20.33 and Public Law 92-544. All applicants for a  
61 department issued license and all current and prospective employees, interns and  
62 volunteers in any department-licensed, department-funded or department-approved  
63 program shall be subject to a fingerprint-based check of the state and national criminal  
64 history databases pursuant to said Public Law 92-544.

65 (b) Fingerprints, as referenced in section 19, shall be submitted to the identification  
66 section of the department of state police for a state criminal history check and forwarded  
67 to the Federal Bureau of Investigation for a national criminal history check, according to  
68 the policies and procedures established by the state identification section and by the  
69 department of criminal justice information services. Fingerprint submissions may be  
70 retained by the Federal Bureau of Investigation, the state identification section and the  
71 department of criminal justice information services to assist the department in its review  
72 of suitability for initial or continued employment, licensure, certification or approval. The  
73 department of criminal justice information services may disseminate the results of a  
74 state and national criminal history check to the department to determine the suitability  
75 of: (i) all current and prospective employees in any department program or any  
76 department contracted agency vendor programs, who have the potential for  
77 unsupervised contact with persons with an intellectual or developmental disability; (ii) all  
78 household members, age 15 or older, or all persons regularly on the premises, age 15  
79 or older, of current residential care providers that are funded by the department or its  
80 contracted agency vendor programs; (iii) all sub-contractors, interns, volunteers or any  
81 other individual employed or retained by the department or its contracted agency vendor  
82 programs who has the potential for unsupervised contact with persons with an

83 intellectual or developmental disability; (iv) any individual who provides transportation  
84 services on behalf of the department or its contracted agency vendor programs; and (v)  
85 any applicant seeking a license from the department for a residential or day care facility  
86 that serves the departments population. If the department receives information from a  
87 fingerprint-based check that does not include any final disposition or is otherwise  
88 incomplete, the department may request that an applicant, either new or renewing,  
89 provide additional information to assist the department in determining the suitability of  
90 the individual for licensure, certification, approval, funding or employment.

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

95 The department shall promulgate regulations necessary to carry out this subsection.  
96 The regulations shall address the circumstances under which a program or  
97 transportation provider may hire a conditional employee.

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

105 (d) The department of criminal justice information services shall disseminate the  
106 results of the criminal background check to the department. The department of criminal  
107 justice information services shall only disseminate information under this section that  
108 would otherwise be available to requesting entities under sections 167 to 178, inclusive,  
109 of chapter 6 and the regulations thereunder regarding criminal offender record  
110 information.

111 (e) All persons required to submit fingerprints under this section, including but not  
112 limited to: (i) all current and prospective employees, interns, sub-contractors and  
113 volunteers in any department program or any department contracted agency vendor  
114 program who have the potential for unsupervised contact with persons with an  
115 intellectual or developmental disability; (ii) all household members, age 15 or older, or  
116 all persons regularly on the premises, age 15 or older, of current residential care  
117 providers that are funded by the department or any of its contracted vendor agency  
118 programs; (iii) any individual who provides transportation services on behalf of any  
119 department-licensed, funded or approved program; and (iv) any applicant seeking a  
120 license from the department for a residential or day care facility that serves the  
121 departments client population, shall pay a fee to be established by the secretary of  
122 administration and finance, in consultation with the secretary of public safety and the  
123 commissioner of developmental services, to offset the costs of operating and

124 administering a fingerprint-based criminal background check system. The fee shall not  
125 exceed \$45 per person. The secretary of administration and finance, in consultation  
126 with the secretary of public safety and the commissioner of developmental services,  
127 may increase the fee accordingly if the Federal Bureau of Investigation increases its  
128 fingerprint background check service fee. The department-licensed, funded or  
129 approved programs may reimburse applicants for employment, internship or volunteer  
130 positions, for all or part of the fee on the grounds of financial hardship. Any fees  
131 collected from fingerprinting activity under this chapter shall be deposited into the  
132 Fingerprint-Based Background Check Trust Fund, established in section 2HHHH of  
133 chapter 29.

134 (f) When the department receives the results of the national criminal background  
135 checks, it shall treat the information according to the departments regulations regarding  
136 criminal offender record information. Notwithstanding subsections 9 and 9 ½ of section  
137 4 of chapter 151B, the department of criminal justice information services shall only  
138 disseminate information under this section that would otherwise be available to  
139 requesting entities under the departments regulations related to criminal offender record  
140 information. The employing agency, program or organization shall notify the  
141 commissioner of developmental services of any criminal record information relevant to  
142 the fitness for employment of any applicant for employment with persons with an  
143 intellectual or developmental disability.

144 (g) The department shall promulgate regulations necessary to carry out this section.

145 SECTION 2. Sections 19 and 20 of chapter 19B of the General Laws shall apply to  
146 all new applicants for licensure, certification or approval, to any facility which offers to  
147 the public residential or day care services to a person with an intellectual disability or  
148 any other applicant licensed or regulated by the department of developmental services  
149 under section 15 of said chapter 19B, whose applications are submitted on or after  
150 January 1, 2016.

151 SECTION 3. Section 20 of chapter 19B of the General Laws shall apply to  
152 prospective employees in any department of developmental services program or any of  
153 its contracted agency vendor programs who have the potential for unsupervised contact  
154 with persons with an intellectual or developmental disability, including those providing  
155 transportation services on behalf of any department-licensed, funded or approved  
156 program, hired to begin employment on or after January 1, 2016.

157 SECTION 4. All programs or agencies who are currently licensed, certified or  
158 approved by the department of developmental services, licensed or regulated by section  
159 15 of chapter 19B of the General Laws, shall comply with the requirements of this act  
160 upon renewal of licensure, certification, approval or funding, on or before January 1,  
161 2019.

162 SECTION 5. Employees in any department of developmental services program or  
163 any of its contracted agency vendor programs who have the potential for unsupervised

164 contact with persons with an intellectual or developmental disability, including those  
165 providing transportation services on behalf of any department program or its contracted  
166 agency vendor programs hired to begin employment prior to January 1, 2016, shall  
167 submit fingerprints for state and national criminal history checks on or before January 1,  
168 2019, on a phased-in schedule developed by the department of developmental services  
169 through regulation.

170 Approved, August 5, 2014

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