



The Commonwealth of Massachusetts Executive Office of Public Safety & Security

One Ashburton Place, Room 2133
Boston, Massachusetts 02108

Tel: (617) 727-7775

TTY Tel: (617) 727-6618

Fax: (617) 727-4764

www.mass.gov/eops

Deval L. Patrick
Governor

Timothy P. Murray
Lieutenant Governor

Andrea J. Cabral
Secretary

Informational Bulletin

Chapter 459 of the Acts of 2012 – Civil Fingerprinting for Educators and Other Individuals Working With/Around Children

What is the new law requiring fingerprint-based state and national criminal history record checks on all school employees and other individuals involved in child care services?

On January 10, 2013, Governor Patrick signed into law Chapter 459 of the Acts of 2012, “An Act relative to Background Checks.” This law requires fingerprint-based national criminal history checks for all employees and certain other individuals working in public and private schools and child care facilities in Massachusetts. The Executive Office of Public Safety and Security (EOPSS) the Department of Criminal Justice Information Services (DCJIS) and the Massachusetts State Police are currently working with the Executive Office of Education (EOE), the Department of Elementary and Secondary Education (ESE), and the Department of Early Education and Care (EEC) to implement this law, including information on when and how required individuals will need to submit their fingerprints for these background checks.

Who must submit fingerprints under the new law?

Under Chapter 459 of the Acts of 2012, all school-related and childcare provider personnel with the potential for unsupervised contact with children must submit to state and national fingerprint-based criminal history checks. This includes: all public and private PreK-12 school employees (administrators, educators, substitute teachers, maintenance staff, cafeteria workers, bus drivers, and all subcontractors/laborers working on school grounds); employees at special education day and residential school programs; anyone providing child care or support services licensed by the Department of Early Education and Care.

The law applies to all new hires, as well as all existing employees and educators. Given the scope of this law, EOPSS anticipates thousands of fingerprint submissions will need to be captured, processed, reviewed and disseminated annually, in accordance with Federal Law and Massachusetts CORI laws.

Is the fingerprinting of school employees and childcare providers authorized under M.G.L. c. 6 §172B ½ (the CORI Reform statute allowing for municipal state and national fingerprint-based criminal record checks of license applicants).

No. Fingerprint-based state and national criminal history checks as authorized by CORI Reform under M.G.L. c. 6 s. 172B ½ are wholly separate and distinct from fingerprint-based criminal record checks for educators and others required under Chapter 459 of the Acts of 2012. The FBI Access Integrity Unit (the agency responsible for approving all state statutes and ordinances allowing for national criminal history checks) has very strict guidelines regarding the federal authority applicable to states for purposes of conducting national checks. Each fingerprint submission to the FBI must have only one legitimate purpose for conducting the check, as authorized by applicable federal law and prescribed by a state statute.

For national criminal background checks related to municipal licensing, M.G.L. c. 6 §172B ½ is the state statute authorizing municipal officials to enact an ordinance requiring fingerprint-based criminal history checks of certain license applicants. “Any ordinance drafted for such a purpose must be approved by the Massachusetts Attorney General’s Office and the FBI.”

This process only applies to municipalities and license applicants under that specific statute for the sole purpose of license approval by the governing municipality. Additionally M.G.L. c. 6 §172B ½ is the statute required to be used when performing background checks on ice cream vendors. A municipal bylaw must be enacted prior to submission for a state and federal background check.

Chapter 459 of the Acts of 2012 is significantly more complex in its scope and its governing federal authority for fingerprint-based criminal record checks of educators and school employees. Unlike municipal license fingerprinting, submissions under Chapter 459 fall under several different purposes, spanning across multiple state agencies, and requiring different sources of federal authority in order to be in compliance with FBI policies and procedures.

If a city or town were to draft an ordinance allowing local police to fingerprint school employees and others under Chapter 459, the FBI would not accept the fingerprint submissions because the statute for fingerprinting school employees does not allow for fingerprint-based checks using the same laws and procedures required under, M.G.L. c. 6 s. 172B ½.

What Will Be The Process for Submitting Fingerprints Under Chapter 459?

Massachusetts will engage a vendor to capture and process all applicant fingerprints under this new law. This decision is based on national best practices in which most states have established a contract with a vendor to schedule, capture, and submit applicant fingerprints to the State and FBI. EOE, ESE, and EEC project hundreds of thousands of

individuals will need to submit their applicant fingerprints over the next several years to be in compliance with the law.

Educators and others impacted by this law expect they will be able to schedule a time for fingerprint capture and submission that works with their schedule and that will involve a quick and easy process with minimal wait times. Most states use vendors who provide on-line scheduling applications and payment processing specific to each state's governing statute and business requirements. Mobile services are also offered as a convenience to the customer. Applicant prints will be processed by the vendor and electronically submitted to the State Police Identification Section and onto the FBI.

Results from the national criminal history check will be processed by DCJIS. The statute explicitly requires that all national criminal history returned must be treated in accordance with CORI law. All results where there is a "hit" will be reviewed and if applicable redacted by the DCJIS before disseminating to the proper state entities. Additionally, missing dispositions from the national criminal history file (estimated at nearly 50 percent) may need to be tracked down by DCJIS. The FBI also requires DCJIS to implement and manage a training and audit program for all non-criminal justice agencies that receive Criminal History Record Information (CHRI), similar to the program in place for law enforcement users of CJIS/NCIC and III.

For additional information, please click on the following link to review Frequently Asked Questions related to the Chapter 459 of the Acts of 2012 (An Act Relative to Background Checks). **Please continue to monitor this site for updates on the law and its implementation.**

<http://www.mass.gov/edu/2013newsupdates/frequently-asked-questions-regarding-background-checks.html>

If you should have any further questions, please contact:

Laura Weierman
Assistant General Counsel
Massachusetts Department of Criminal Justice Information Services
617.660.4681
laura.weierman@state.ma.us