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Informational Bulletin
Civil Fingerprinting – Chapter 256 of the Acts of 2010
Effective May 4, 2012

What is the new law that permits municipal officials to conduct fingerprint based state and national criminal history records checks on license applicants?

On August 6, 2010, the Governor signed into law Chapter 256 of the Acts of 2010, “An Act Reforming the Administrative Procedures Relative to Criminal Offender Record Information and Pre- and Post-Trial Supervised Release.” Section 23 of this new law, ***which takes effect on May 4, 2012, adds c. 6, §172B ½ to the Massachusetts General Laws and creates an umbrella statute under which municipal officials may enact ordinances to require state and national criminal history record checks of applicants for licenses in specified occupations.***

This new section provides:

Municipalities may, by local ordinance, require applicants for licenses in specified occupations to submit a full set of fingerprints for the purpose of conducting a state and national criminal history records check pursuant to sections 168 and 172 and 28 U.S.C. §534. Fingerprint submissions may be submitted by the licensing authority to the identification unit within the department of state police through the criminal history systems board, or its successor, for a state criminal records check and to the Federal Bureau of Investigation for a state and national criminal records check.

Municipalities may, by local ordinance, establish the appropriate fee charged to applicants for administering a fingerprinting system. For the purposes of section 2LLL of chapter 29, \$30 of the fee shall be deposited into the Firearms Fingerprint Identity Verification Trust Fund and the remainder of the fee may be retained by the licensing authority for costs associated with the administration of the system.¹

¹ While Chapter 256 of the Acts of 2010 refers only to “ordinances,” the Massachusetts General Laws define “ordinance” as a term synonymous with “bylaw.” G.L. c. 4, §7, cl. Twenty second. Thus, for the purposes of M.G.L. c. 6, §172B ½, both cities and towns may avail themselves of these statutory provisions to establish a state and nation criminal history records check for civil fingerprinting for designated municipal licenses.



What are the requirements for a municipal ordinance that authorizes fingerprint based state and national criminal history records checks on municipal license applicants?

The FBI will not permit municipalities access to the national criminal history records database unless the municipality has an ordinance or by-law that meets the following requirements:

- The ordinance must reference the authorizing statute, Mass. Gen. Laws c. 6, § 172B½.
- The ordinance must require fingerprinting of a licensing applicant.
- The ordinance must authorize the use of FBI records to conduct state and national criminal history records checks.
- The ordinance must identify specific categories of licensing applicants to be screened and may not be overly broad in its scope.
- The ordinance must clearly state that FBI criminal history will not be disseminated to unauthorized entities.

Once the FBI AIU has approved a municipal ordinance, how does a municipality conduct fingerprint based state and national criminal history records checks on license applicants?

- The ordinance must be forwarded to the State Identification Section of the Massachusetts State Police (SIS) and copied to the Massachusetts Department of Criminal Justice Information Services Office of the General Counsel (DCJIS OGC). SIS will submit the ordinance for approval by the FBI Access Integrity Unit (AIU). Once approved, the FBI will add the ordinance to the FBI Massachusetts Approved Statute List. SIS will also maintain a Massachusetts Approved Ordinance List.
- Once the municipal ordinance has been approved by the FBI AIU, the municipality must contact both the SIS and DCJIS OGC to establish the business processes required for the implementation of a state and national criminal records check system, including the assignment of an Originating Agency Identifier (ORI). Contact information for both agencies appears below.
- Once these business processes have been established, a licensing applicant may be fingerprinted at the police department of the municipality in which he or she is seeking a municipal license.
- The police department will forward the applicant's fingerprints either electronically or manually to the SIS which will submit them to the FBI. All fingerprint submissions must contain the ordinance number or correct city code citation in the "Reason Fingerprinted" block of the fingerprint submission form.
- The results of the state and national criminal history records will be returned directly to the live scan fingerprint device of the submitting department and/or a designated secure website managed by DCJIS.
- It is the responsibility of the submitting department to review the results of the criminal history check and determine suitability of the license applicant. For results that are returned without a disposition to a charge, the submitting department is responsible for gathering the missing disposition(s). The CJIS may be used to contact out-of-state agencies using the International Justice and Public Safety (Nlets) message keys.

Once the municipal licensing authorities receive the state and national criminal history records check results, what are their responsibilities?

- Any non-law enforcement municipal employee who as a result of this process receives and reviews, or maintains state and national criminal history records check results must first complete DCJIS's information security/identification verification training, as well as DCJIS CORI training.
- Municipal officials responsible for determining suitability for licensing must provide the applicant with the opportunity to challenge the accuracy or completeness of the FBI criminal history.

- Municipal officials should not deny an applicant the license based on information in the record until the applicant has been afforded a reasonable time to correct or complete the information, or has declined to do so.
- If the applicant wants to challenge the accuracy or completeness of the record, municipal officials must advise the applicant that the procedures to change, correct, or update the record are set forth in Title 28 CFR 16.34.

How much will obtaining a fingerprint based state and national criminal history records check cost?

- Pursuant to M.G.L. c. 6, §172B½, each municipality can set its own state and national criminal records check fee structure by ordinance. The new law requires that municipalities deposit \$30.00 of this fee into the Commonwealth's Firearms Fingerprint Identity Verification Trust Fund. DCJIS and the SIS will establish a payment system through which police departments make these deposits. Municipal licensing authorities may keep the remainder of the fees for costs associated with the administration of its state and national criminal history records check system.

What other requirements for conducting fingerprint based state and national criminal history records check do municipalities need to know about?

- The state and national criminal history check results may only be used for the purpose requested, that is, screening for specific licenses.
- A state and national criminal history records background check for civil licensing purposes may only be conducted based on a fingerprint check as authorized by a municipal ordinance and may not be conducted based on name and date of birth.
- A federal background check may not be conducted for municipal employment applicants unless such employment involves a position requiring a license issued by the municipality.
- All municipal entities that conduct fingerprint based state and national criminal history checks will be subject to audit by the DCJIS.
- Each municipal entity will be required to develop and maintain written policies and procedures for its fingerprint based national criminal history records check system.

Once an ordinance for civil fingerprinting has passed, who should a municipality contact?

Once a municipality passes a civil fingerprinting ordinance, it should contact the following:

Commanding Officer
Massachusetts State Police
State Identification Section
59 Horse Pond Rd.
Sudbury, Ma 01776.
(508) 358-3170

Additionally, a copy of the ordinance or by law must be sent to the DCJIS OGC by email at dcjisprints@state.ma.us. The State Identification Section will respond with detailed instructions and the next steps required for implementing a state and nation criminal history record check system.²

² Please note, all proposed by-laws or ordinances must still be approved by the Massachusetts Attorney General's Office Municipal Law Division.

NOTE:

Municipalities are not allowed to submit any state or national fingerprint checks until authorized by the DCJIS and the SIS. The DCJIS and the SIS will publish guidelines and detailed processes prior to commencement of this program.

Federal law prohibits police departments from conducting name and date of birth national criminal history records check for non-criminal justice purposes (i.e., licensing).