



## AN ACT RELATIVE TO BACKGROUND CHECKS

### Questions & Answers

(Last updated 8/20/2014)

The Board of Elementary and Secondary Education voted on December 17, 2013, to adopt final regulations regarding “An Act Relative to Background Checks.” The questions and answers below will answer many of members’ questions about this change in the law. Members are invited to check this Q&A for updates. Links to additional information are included at the end of this document.

#### **1. What does “An Act Relative to Background Checks” require?**

The law requires all public and private preK-12 school employees in Massachusetts, as well as early childhood educators, to submit to fingerprint-based national and state criminal background checks. Specifically, all school-related personnel with the potential for direct and unmonitored contact with children will be subject to national and state fingerprint-based criminal background checks.

#### **2. I remember hearing that a similar law was signed in January 2013. Is this law different? What has changed?**

After the governor signed the initial Massachusetts law on January 10, 2013, requiring fingerprint-based national and state criminal background checks for school employees and others (Chapter 459 of *The Acts of 2012*), the FBI notified state public safety agencies that certain technical corrections had to be made to the law before it could be implemented. Allowances also had to be made for the fact that the fingerprinting system would not be up and running by the beginning of the 2013-14 school year. The Massachusetts Legislature passed the corrective legislation, and on September 3, 2013, the governor signed into law “An Act Relative to Background Checks” (Chapter 77 of *The Acts of 2013*).

#### **3. Who needs to have this national criminal background check done?**

The law requires all public and private preK-12 school employees, as well as early-childhood educators, to submit to fingerprint-based national and state criminal background checks. All school-related personnel with the potential for direct and unmonitored contact with children must submit to fingerprint-based background checks.

#### **4. How is this different from the state background check that my school district has already done?**

The criminal background check already done in Massachusetts is a “CORI (Criminal Offender Record Information) check,” which relies on one’s reported name(s) and reveals criminal background information that has been entered in the courts of Massachusetts only. The new law requires checks of national and state criminal background databases based on one’s fingerprints. Both the national component and the reliance on fingerprints are new for school employees in Massachusetts, though similar laws exist in most other states.

#### **5. When do I have to submit to a fingerprint check?**

School employees and others (who might have direct and unmonitored contact with children) who began service for their school employer prior to July 1, 2013, shall submit fingerprints for national and state criminal background checks before the start of the 2016-2017 school year, on a phased-in basis and according to a schedule established by DESE.

Individuals who have begun service for their school employer on or after July 1, 2013, are being required to submit their fingerprints for national and state criminal background checks according to the process created by the Commonwealth and according to the schedule established by the Department of Elementary and Secondary Education. CORI checks continue to be required at least once every three years for current or prospective school employees who might have direct and unmonitored contact with children.

## 6. Who will be taking my fingerprints?

The Massachusetts Executive Office of Public Safety and Security (EOPSS) selected as the vendor Billerica, Mass.-based MorphoTrust, which has experience in scheduling, taking and processing of fingerprints for various purposes. MorphoTrust is collecting the fingerprints at sites around the state and transmitting the fingerprints electronically to the FBI and the Massachusetts State Police.

## 7. Who will be performing this background check?

The FBI will be performing the national criminal background check and the Massachusetts State Police will be performing the statewide criminal background check. The results will be transmitted to the Massachusetts Department of Criminal Justice Information Services (DCJIS). DCJIS will be responsible for ensuring that any information contained in the record is consistent with Massachusetts Criminal Offender Record Information (CORI) requirements and for sending the results to school employers.

## 8. Where will the fingerprinting take place?

Fingerprinting is occurring at sites around the state. Fingerprinting locations can be found at [www.identogo.com/FP/Massachusetts.aspx](http://www.identogo.com/FP/Massachusetts.aspx).

## 9. Is there a cost for this?

Yes. The law states that the charge is to offset the costs of operating and administering the fingerprint-based criminal background check system.

## 10. How much does it cost?

The law provides that the fee shall be \$55 for employees who are certified pursuant to Massachusetts General Laws, Chapter 71, section 38G, and shall be \$35 for employees who are not certified pursuant to section 38G. The law provides that the secretary of administration and finance, in consultation with the secretary of public safety and security and the commissioner of education, may increase the fee accordingly if the FBI increases the fee for its fingerprint background check service.

## 11. Who pays for it?

The law states that the applicant shall pay the fee, but whether all or a portion of the fee is reimbursed is a matter for collective bargaining. Absent an agreement, the applicant or employee bears the cost. The school committee, superintendent or principal may reimburse applicants all or part of the fee on the grounds of financial hardship.

## 12. If I've had my fingerprints taken before for another job or purpose, do I need to have my fingerprints taken again?

Yes.

## 13. What kind of information will be reported through this background check?

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 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. Because national criminal background checks are processed through the FBI, they can include criminal history information for an individual from every state in the nation, according to DESE.

## 14. Who will have access to the results of my background check?

The regulations specify that the school employer shall review the results of the national and state criminal history checks. School employer is defined as the superintendent of any city, town or regional school district, or the principal

or other administrator of Massachusetts public or private schools, including a special education school program approved under Massachusetts General Laws Chapter 71B. For the purposes of an individual hired directly by a Massachusetts school committee (this includes superintendents, assistant superintendents, school business managers and SPED administrators), the school committee is the school employer. CORI procedures in place in the districts will govern collection and confidentiality of data from the fingerprint-based criminal background checks.

### **15. Is this information confidential?**

Yes. According to the law, “entities that receive the results of national criminal background checks shall treat the information according to sections 167 to 178, inclusive, of Chapter 6 and the regulations thereunder regarding Criminal Offender Record Information.” The regulations provide for the following:

- The employer may not receive an individual’s national criminal history check results unless the individual has authorized the employer to receive the results through a CHRI (Criminal History Record Information) consent form;
- While the employment decisions are pending, the employer shall store the national criminal history check results pursuant to the restrictions regarding CORI storage set forth in 803 CMR 2.11.
- Once employment decisions are complete and the requirements for the reporting of the results to DESE, if applicable, are met, the employer shall destroy national criminal history check results pursuant to the requirements regarding CORI destruction set forth in 803 CMR 2.12.

### **16. Will this information be kept in my personnel file?**

No.

### **17. Will I receive a copy of my background check?**

The regulations require that a school employer, after receiving the CHRI, provide a copy of the CHRI to an employee upon the employee’s request or otherwise to an individual under limited circumstances, i.e., before the employer asks questions of the individual about his or her criminal history, and before, based on the CHRI, taking any adverse action or making a determination that the individual is unsuitable for employment involving direct and unmonitored contact with children.

### **18. If parents or others volunteer in my school, do they need to have these background checks performed?**

It is left to the discretion of school employers whether to require that volunteers who may have direct and unmonitored contact with children undergo the fingerprint-based national and state criminal background checks.

### **19. How can this information be used if I’m already employed by a school district?**

The presence of a criminal matter on the report of your fingerprint-based criminal background check does not necessarily warrant any adverse action against you by the employer. As with CORI results, a school employer has discretion regarding what action, if any, to take based on the information contained in the results. How a school employer responds might depend on a number of factors, such as the nature and disposition of the charge(s), how long ago it was, your employment history, etc. Whatever protection you have under the law and/or your collective bargaining agreement will still apply. There exists the possibility of notice from the employer to DESE for consideration of any action on your license based on information in the CHRI.

### **More information**

More questions and answers on this subject can be obtained from the Massachusetts Executive Office of Education’s website at [www.mass.gov/edu](http://www.mass.gov/edu).

BESE’s final regulations, approved on Dec. 17, 2013, can be found at [www.doe.mass.edu/lawsregs/603cmr51.html?section=all](http://www.doe.mass.edu/lawsregs/603cmr51.html?section=all).

To view “An Act Relative to Background Checks, Chapter 77 of the Acts of 2013,” visit [www.malegislature.gov/Laws/SessionLaws/Acts/2013/Chapter77](http://www.malegislature.gov/Laws/SessionLaws/Acts/2013/Chapter77). The sections that particularly affect our members are Sections 7, 9 and 12.