

# **HOUSE . . . . . No. 4327**

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, July 21, 2014.

The committee on Ways and Means, to whom was referred the Bill to require national background checks (House, No. 4125), reports recommending that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 4327).

For the committee,

BRIAN S. DEMPSEY.

The Commonwealth of Massachusetts

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In the Year Two Thousand Fourteen  
\_\_\_\_\_

An Act to require national background checks.

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

1 SECTION 1. Chapter 19B of the General Laws, as appearing in the 2012 Official  
2 Edition, is hereby amended by adding the following 2 sections:-

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

17 (b) As part of the department’s licensing and background record check process, the  
18 department shall conduct fingerprint-based checks of the state and national criminal history  
19 databases, as authorized by Public Law 92-544, to determine the suitability of all current and  
20 prospective employees, who have the potential for unsupervised contact with persons with an  
21 intellectual or developmental disability in any department-licensed or funded program. For the  
22 purpose of this section, employees shall include any apprentice, intern, transportation provider,  
23 volunteer or sub-contractor who may have direct and unmonitored contact with a person with an  
24 intellectual or developmental disability. The fingerprint-based checks shall also be required to

25 determine the suitability of any individual who provides transportation services on behalf of any  
26 department-licensed or funded program. Authorized department staff may receive all criminal  
27 offender record information and the results of checks of state and national criminal history  
28 databases under said Public Law 92-544. When the department obtains the results of checks of  
29 state and national criminal history databases, it shall treat the information according to sections  
30 167 to 178, inclusive, of chapter 6 and the regulations thereunder regarding criminal offender  
31 record information.

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

46 Section 20. (a) Each person providing residential or support services with the potential  
47 for unsupervised contact with persons with an intellectual or developmental disability in any  
48 department program or its contracted agency vendor programs, as well as any household  
49 members, age 15 or older, or persons regularly on the premises of residential facilities, age 15 or  
50 older, shall be subject to a criminal offender record information check pursuant to Public Law  
51 92-544. All applicants for a department issued license and all current and prospective employees,  
52 interns and volunteers in any department-licensed, department- funded or department-approved  
53 program shall be subject to a fingerprint-based check of the state and national criminal history  
54 databases pursuant to Public Law 92-544.

55 (b) Fingerprints, as referenced in of section 19, shall be submitted to the identification  
56 section of the department of state police for a state criminal history check and forwarded to the  
57 Federal Bureau of Investigation for a national criminal history check, according to the policies  
58 and procedures established by the state identification section and by the department of criminal  
59 justice information services. Fingerprint submissions may be retained by the Federal Bureau of  
60 Investigation, the state identification section and the department of criminal justice information  
61 services to assist the department in its review of suitability for initial or continued employment,  
62 licensure, certification, or approval. The department of criminal justice information services may  
63 disseminate the results of a state and national criminal history check to the department of to

64 determine the suitability of: (i) all current and prospective employees in any department program  
65 or any department contracted agency vendor programs, who have the potential for unsupervised  
66 contact with persons with an intellectual or developmental disability; (ii) all household members,  
67 age 15 or older, or all persons regularly on the premises, age 15 or older, of current residential  
68 care providers that are funded by DDS or its contracted agency vendor programs; (iii) all sub-  
69 contractors, interns, volunteers, or any other individual employed or retained by the department  
70 or its contracted agency vendor programs, that has the potential for unsupervised contact with  
71 persons with an intellectual or developmental disability; (iv) any individual who provides  
72 transportation services on behalf of the department or its contracted agency vendor programs;  
73 and (v) any applicant seeking a license from the department for a residential or day care facility  
74 that serves the department's population. If the department receives information from a  
75 fingerprint-based check that does not include any final disposition or is otherwise incomplete, the  
76 department may request that an applicant, either new or renewing, provide additional information  
77 to assist the department in determining the suitability of the individual for licensure, certification,  
78 approval, funding or employment.

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

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

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

91 (d) The department of criminal justice information services shall disseminate the results  
92 of the criminal background check to the department. The department of criminal justice  
93 information services shall only disseminate information under this section that would otherwise  
94 be available to requesting entities under sections 167 through 178, inclusive, of chapter 6 and the  
95 regulations thereto regarding criminal offender record information.

96 (e) All persons required to submit fingerprints under this chapter, including but not  
97 limited to: (i) all current and prospective employees, interns, sub-contractors and volunteers in  
98 any department program, or any department contracted agency vendor program, who have the  
99 potential for unsupervised contact with persons with an intellectual or developmental disability;  
100 (ii) all household members, age 15 or older, or all persons regularly on the premises, age 15 or

101 older, of current residential care providers that are funded by the department or any of its  
102 contracted vendor agency programs; (iii) any individual who provides transportation services on  
103 behalf of any department-licensed, funded or approved program, and (iv) any applicant seeking a  
104 license from the department for a residential or day care facility that serves the department's  
105 client population, shall pay a fee to be established by the secretary of administration and finance,  
106 in consultation with the secretary of public safety and security and the commissioner, to offset  
107 the costs of operating and administering a fingerprint-based criminal background check system.  
108 The fee shall not exceed \$45 per person. The secretary of administration and finance, in  
109 consultation with the secretary of public safety and security and the commissioner, may increase  
110 the fee accordingly if the Federal Bureau of Investigation increases its fingerprint background  
111 check service fee. The department-licensed, funded or approved programs may reimburse  
112 applicants for employment, internship or volunteer positions, for all or part of the fee on the  
113 grounds of financial hardship. Any fees collected from fingerprinting activity under this chapter  
114 shall be deposited into the Fingerprint-Based Background Check Trust Fund, established in  
115 section 2HHHH of chapter 29.

116 (f) When the Department receives the results of the national criminal background checks,  
117 it shall treat the information according to the department's regulations regarding criminal  
118 offender record information. Notwithstanding subsections 9 and 9 ½ of section 4 of chapter  
119 151B, the department of criminal justice information services shall only disseminate information  
120 under this section that would otherwise be available to requesting entities under the department's  
121 regulations thereunder regarding criminal offender record information. The employing agency,  
122 program, or organization shall notify the commissioner of any criminal record information  
123 relevant to the fitness for employment of any applicant for employment with persons with an  
124 intellectual or developmental disability.

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

126 SECTION 2. The first paragraph of section 2HHHH of chapter 29 of the General Laws,  
127 as appearing in section 6 of chapter 77 of the acts of 2013, is hereby amended by striking out the  
128 words "and section 38R of chapter 71" and inserting in place thereof the following words:- ,  
129 section 38R of chapter 71 and section 20 of chapter 19B.

130 SECTION 3. The second paragraph of section 2HHHH of chapter 29, as so appearing, is  
131 hereby amended by striking out the words "and said section 38R of said chapter 71" and  
132 inserting in place thereof the following words:- , section 38R of chapter 71 and section 20 of  
133 chapter 19B.

134 SECTION 4. Sections 19 and 20 of chapter 19B of the General Laws, as added by  
135 section 1, shall apply to all new applicants for licensure, certification or approval, to any facility  
136 which offers to the public residential or day care services to a person with an intellectual  
137 disability or any other applicant licensed or regulated by the department of developmental

138 services under section 15 of said chapter 19B, whose applications are submitted on or after  
139 January 1, 2016.

140 All programs or agencies who are currently licensed, certified or approved by the  
141 department of developmental services, licensed or regulated by said section 15 of said chapter  
142 19B, shall comply with the requirements of this act upon renewal of licensure, certification,  
143 approval or funding, on or before January 1, 2019.

144 Section 20 of chapter 19B of the General laws, as added by section 1, shall apply to  
145 prospective employees in any department of developmental services program or any of its  
146 contracted agency vendor programs who have the potential for unsupervised contact with  
147 persons with an intellectual or developmental disability, including those providing transportation  
148 services on behalf of any department-licensed, funded or approved program, hired to begin  
149 employment on or after January 1, 2016.

150 Employees in any department of developmental services program or any of its contracted  
151 agency vendor programs who have the potential for unsupervised contact with persons with an  
152 intellectual or developmental disability, including those providing transportation services on  
153 behalf of any department program or its contracted agency vendor programs hired to begin  
154 employment prior to January 1, 2016, shall submit fingerprints for state and national criminal  
155 history checks on or before January 1, 2019, on a phased-in schedule developed by the  
156 department of developmental services through regulation.