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The committee on Ways and Means, to whom was referred the Senate Bill relative to the protection of children (Senate, No. 1136); reports, recommending that the same ought to pass with an amendment substituting a new draft entitled "An Act relative to background checks" (Senate, No. 1839)

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The Commonwealth of Massachusetts

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**In the Year Two Thousand Thirteen**  
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An Act relative to 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. Section 167A of chapter 6 of the General Laws, as appearing in the 2012  
2 Official Edition, is hereby amended by striking out, in line 68, the word “and” and inserting in  
3 place thereof the following words:- (iii) the collection, storage, access, dissemination, content  
4 organization and use of fingerprint-based checks of the state and national criminal history  
5 databases; and (iv).

6           SECTION 2. Section 7 of chapter 15D of the General Laws, is hereby amended by  
7 striking out subsections (a) and (b), as most recently amended by section 29 of chapter 38 of the  
8 acts of 2013, and inserting in place thereof the following subsection:-

9           (a) The department shall issue and may renew a license to any person other than a  
10 department, agency or institution of the commonwealth or any political subdivision thereof, who  
11 meets applicable standards and requirements to establish and maintain or to assist in the  
12 establishment and maintenance of a school-aged child care program, a child care center, a family

13 child care home, a placement agency, a large family child care home or family foster care which  
14 is not supervised and approved by a placement agency, group care facility or temporary shelter  
15 facility.

16 (i) As part of the department's licensure and background record check process,  
17 the department, prior to issuing any license, shall: (1) obtain from the sex offender registry board  
18 all available sex offender registry information associated with the address of the program, center,  
19 facility or home; and (2) conduct fingerprint-based checks of the state and national criminal  
20 history databases, as authorized by Public Law 92-544. The fingerprint-based checks shall be  
21 conducted on any applicant for a family child care assistant certificate or any applicant seeking a  
22 license for: family child care; small group and school age child care; large group and school age  
23 child care; a residential program; or a placement agency. The fingerprint-based checks shall also  
24 be required for any household member, age 15 or older, or any person regularly on the premises,  
25 age 15 or older, of applicants for family child care licensure and for all in-home nonrelative  
26 department funded caregivers. Authorized department staff may receive all criminal offender  
27 record information and the results of checks of state and national criminal history databases  
28 under said Public Law 92-544. When the department obtains the results of checks of state and  
29 national criminal history databases, it shall treat the information according to sections 167 to  
30 178, inclusive, of chapter 6 and the regulations thereunder regarding criminal offender record  
31 information.

32 (ii) As part of the department's licensing and background record check process,  
33 the department shall conduct fingerprint-based checks of the state and national criminal history  
34 databases, as authorized by Public Law 92-544, to determine the suitability of all applicants for  
35 employment, interns and volunteers who have the potential for unsupervised contact with

36 children in any department-licensed or funded program. The fingerprint-based checks shall also  
37 be required to determine the suitability of any individual who provides transportation services on  
38 behalf of any department-licensed or funded program. Authorized department staff may receive  
39 all criminal offender record information and the results of checks of state and national criminal  
40 history databases under said Public Law 92-544. When the department obtains the results of  
41 checks of state and national criminal history databases, it shall treat the information according to  
42 sections 167 to 178, inclusive, of chapter 6 and the regulations thereunder regarding criminal  
43 offender record information.

44 (iii) As part of the department's licensing and background record check process,  
45 the department shall conduct fingerprint-based checks of the state and national criminal history  
46 databases, as authorized by 42 U.S.C. section 16962, for all applicants to be adoptive or foster  
47 parents and their household members age 15 or older. Authorized department staff may receive  
48 all criminal offender record information and the results of checks of state and national criminal  
49 history databases, under said 42 U.S.C. section 16962. When the department obtains the results  
50 of checks of state and national criminal history databases, it shall treat the information according  
51 to sections 167 to 178, inclusive, of chapter 6 and the regulations thereunder regarding criminal  
52 offender record information.

53 (b) The department shall issue approval to a department, agency, or institution of the  
54 commonwealth or any political subdivision thereof which it determines meets the applicable  
55 standards and requirements to establish and maintain a child care center, family child care home  
56 or large family child care home, placement agency, group care facility or temporary shelter  
57 facility.

58           As part of the department’s approval process, the department, prior to issuing any  
59 approval, shall: (1) obtain from the sex offender registry board all available sex offender registry  
60 information associated with the address of the center, home or facility; and (2) conduct  
61 fingerprint-based checks of the state and national criminal history databases, under Public Law  
62 92-544, that are required under this subsection. The fingerprint-based checks of the state and  
63 national criminal history databases shall be conducted, under said Public Law 92-544, to  
64 determine the suitability of all applicants for employment, interns and volunteers who have the  
65 potential for unsupervised contact with children in any department-approved program. The  
66 fingerprint-based checks shall also be required to determine the suitability of any individual who  
67 provides transportation services on behalf of any department-approved program. Authorized  
68 department staff may receive all criminal offender record information and the results of checks  
69 of state and national criminal history information databases under said Public Law 92-544. When  
70 the department obtains the results of checks of state and national criminal information databases,  
71 it shall treat the information according to sections 167 to 178, inclusive, of chapter 6 and the  
72 regulations thereunder regarding criminal offender record information.

73           SECTION 3. Subsection (b) of section 8 of said chapter 15D, as appearing in the 2012  
74 Official Edition, is hereby amended by striking out, in lines 35 to 37, inclusive, the following  
75 words “, which shall incorporate all fees associated with conducting fingerprint-based checks of  
76 the state and national criminal history databases, under 42 U.S.C. section 16962, as set by the  
77 department”.

78           SECTION 4. Said section 8 of said chapter 15D, as so appearing, is hereby amended by  
79 striking out subsection (d) and inserting in place thereof the following subsection:-

80 (d) The regulations shall provide that: each person providing child care or support  
81 services with the potential for unsupervised contact with children in any program or facility  
82 licensed or funded by the department, as well as any household members or persons regularly on  
83 the premises of family child care and large family child care homes shall be subject to a criminal  
84 offender record information check; potential adoptive and foster parents and their household  
85 members age 15 or older shall be subject to a fingerprint-based check of the state and national  
86 criminal history databases under 42 U.S.C. section 16962; and all applicants for a department  
87 issued license, and applicants for employment, interns and volunteers in any department-  
88 licensed, department-funded or department-approved program shall be subject to a fingerprint-  
89 based check of the state and national criminal history databases under Public Law 92-544.

90 The board shall also adopt regulations establishing that the following individuals shall be  
91 subject to a sexual offender registry information check under sections 178I and 178J of chapter  
92 6: each person providing child care or support services with the potential for unsupervised  
93 contact with children in any program or facility licensed, funded or approved by the department;  
94 any household members or persons regularly on the premises of family child care and large  
95 family child care homes; any prospective adoptive and foster parents and their household  
96 members; any department funded caregivers; and any individual who provides transportation  
97 services on behalf of any department licensed, funded or approved program. The regulations  
98 shall also establish the conditions upon which the department may deny an application for a  
99 license, a license renewal or approval, employment or department funding and upon which the  
100 department may deny prospective adoptive and foster parents based upon the information  
101 obtained from the sex offender registry search. The board shall also adopt regulations  
102 establishing an address search of the sex offender registry for the purposes of licensing and

103 license renewal or approval of school-aged child care programs, child care centers, family child  
104 care homes, placement agencies or large family child care homes, family foster care that is not  
105 supervised and approved by a placement agency, group care facilities or temporary shelter  
106 facilities, including the conditions in which the department may deny an application for a license,  
107 license renewal or approval based upon the information obtained from the address search of the  
108 sex offender registry.

109 SECTION 5. Said section 8 of said chapter 15D, as so appearing, is hereby further  
110 amended by striking out subsection (j) and inserting in place thereof the following subsection:-

111 (j) Fingerprints, as referenced in subsections (a) and (b) of section 7 and subsection (d) of  
112 this section, shall be submitted to the identification section of the department of state police for a  
113 state criminal history check and forwarded to the Federal Bureau of Investigation for a national  
114 criminal history check, according to the policies and procedures established by the identification  
115 section and by the department of criminal justice information services. Fingerprint submissions  
116 may be retained by the Federal Bureau of Investigation, the state identification section and the  
117 department of criminal justice information services to assist the department in its review of  
118 suitability for initial or continued licensure, certification or approval. The department of criminal  
119 justice information services may disseminate the results of a state and national criminal history  
120 check to the department of early education and care to determine the suitability of: (i) any current  
121 holder of or applicant for a family child care, small group and school age, large group and school  
122 age, and residential and placement license, or family child care assistant certificate; (ii) all  
123 current and prospective employees in any department licensed, funded or approved program,  
124 who have the potential for unsupervised contact with children; (iii) all household members, age  
125 15 or older, or all persons regularly on the premises, age 15 or older, of current family child care

126 providers and applicants for family child care licensure; (iv) all in-home nonrelative department-  
127 funded caregivers; (v) all adoptive or foster parent applicants and their household members age  
128 15 or older; and (vi) any individual who provides transportation services on behalf of any  
129 department licensed, funded or approved program. If the department receives information from a  
130 fingerprint-based check that does not include any final disposition or is otherwise incomplete, the  
131 department may request that an applicant, either new or renewing, provide additional information  
132 to assist the department in determining the suitability of the individual for licensure, certification,  
133 approval, funding or employment.

134 Department-licensed, funded or approved programs and providers of transportation  
135 services on behalf of any department-licensed, funded or approved program may hire individuals  
136 without first obtaining the results of a state and national fingerprint-based criminal history check  
137 in limited circumstances, as provided by the board of early education and care.

138 The board of early education and care shall, in a manner provided by law and under  
139 chapter 15D, promulgate regulations necessary to carry out this subsection. The regulations shall  
140 address the circumstances under which a program or transportation provider may hire a  
141 conditional employee.

142 For the purposes of this subsection, “conditional employee” shall mean an individual who  
143 has the potential for unsupervised contact with children and who is part of a department-licensed,  
144 funded or approved program or a provider of transportation services on behalf of any  
145 department-licensed, funded or approved program and was hired prior to the obtaining of the  
146 results of a state and national fingerprint-based criminal history check because the employer  
147 determined that hiring the individual was necessary. If a program or transportation provider

148 seeks to hire a conditional employee, the program or transportation provider may request that the  
149 individual provide additional information regarding the individual's history of criminal  
150 convictions, if any, to assist the program or transportation provider in determining the  
151 individual's suitability for unsupervised contact with children; provided however, that no  
152 unsupervised contact with children shall occur prior to the program or transportation provider  
153 obtaining the results of a sexual offender registry information check under sections 178I and  
154 178J of chapter 6.

155           The department of criminal justice information services shall disseminate the results of  
156 the criminal background check to the department. The department of criminal justice information  
157 services shall only disseminate information under this section that would otherwise be available  
158 to requesting entities under sections 167 through 178, inclusive, of chapter 6 and the regulations  
159 thereto regarding criminal offender record information.

160           All persons required to submit fingerprints under this chapter, including but not limited  
161 to: (i) any current holder of or applicant for a family child care, small group and school age, large  
162 group and school age, and residential and placement license, or family child care assistant  
163 certificate; (ii) all current and prospective employees, interns and volunteers in any department-  
164 licensed, funded or approved program, who have the potential for unsupervised contact with  
165 children; (iii) all household members, age 15 or older, or persons regularly on the premises, age  
166 15 or older, of current family child care providers and applicants for family child care licensure;  
167 (iv) all in-home nonrelative department funded caregivers; (v) all adoptive or foster parent  
168 applicants and their household members age 15 or older; and (vi) any individual who provides  
169 transportation services on behalf of any department-licensed, funded or approved program, shall  
170 pay a fee, to be established by the secretary of administration and finance in consultation with



171 the secretary of public safety and security and the commissioner, to offset the costs of operating  
172 and administering a fingerprint-based criminal background check system. The fee shall not  
173 exceed \$35 per person. The secretary of administration and finance, in consultation with the  
174 secretary of public safety and security and the commissioner, may increase the fee accordingly if  
175 the Federal Bureau of Investigation increases its fingerprint background check service fee. The  
176 department-licensed, funded or approved programs may reimburse applicants for employment,  
177 internship or volunteer positions, for all or part of the fee on the grounds of financial hardship.  
178 Any fees collected from fingerprinting activity under this chapter shall be deposited into the  
179 Fingerprint-Based Background Check Trust Fund, established in section 2HHHH of chapter 29.

180 SECTION 6. Section 2HHHH of chapter 29 of the General Laws, as so appearing, is  
181 hereby amended by striking out the first paragraph and inserting in place thereof the following 2  
182 paragraphs:-

183 There shall be established and set up on the books of the commonwealth a separate fund  
184 to be known as the Fingerprint-Based Background Check Trust Fund, which shall consist of all  
185 fees collected for the purposes enumerated in sections 7 and 8 of chapter 15D and section 38R of  
186 chapter 71. Amounts credited to the fund shall be available, without further appropriation, to the  
187 executive office of public safety and security to carry out fingerprint-based state and national  
188 criminal background checks for the purposes of employment, professional licensure and other  
189 noncriminal justice purposes.

190 For the purpose of accommodating discrepancies between the receipt of revenue and  
191 related expenditures for implementing fingerprint-based checks of the state and national criminal  
192 history databases, as authorized in said sections 7 and 8 of said chapter 15D and said section 38R

193 of said chapter 71, the executive office of public safety and security may incur expenses and the  
194 comptroller may certify for payment amounts not to exceed the most recent revenue estimate;  
195 provided, however, that the fund shall be in balance by the end of the fiscal year. Revenues  
196 deposited in the fund that are unexpended at the end of a fiscal year shall not revert to the  
197 General Fund and shall be available for expenditure in the following fiscal year.

198 SECTION 7. Chapter 71 of the General Laws is hereby amended by striking out section  
199 38R and inserting in place thereof the following section:-

200 Section 38R. In a manner prescribed by the board of elementary and secondary  
201 education, the school committee and superintendent of any city, town or regional school district  
202 and the principal or other administrator, by whatever title the position may be known, of a public  
203 or private school, including a special education school program approved under chapter 71B,  
204 shall obtain periodically, but not less frequently than every 3 years, from the department of  
205 criminal justice information services all available criminal offender record information for any  
206 current or prospective employee or volunteer within the school district who may have direct and  
207 unmonitored contact with children, including any individual who regularly provides school  
208 related transportation to children. Said school committee, superintendent or principal or other  
209 administrator shall also have access to and may obtain all criminal offender record information  
210 for any subcontractor or laborer commissioned by the school committee or school or employed  
211 by the city or town to perform work on school grounds, who may have direct and unmonitored  
212 contact with children.

213 The school committee, superintendent of any city, town or regional school district or the  
214 principal or other administrator, by whatever title the position may be known, of a public or

215 private school, including a special education school program approved under chapter 71B, shall  
216 also obtain a state and national fingerprint-based criminal background check, under 42 U.S.C.  
217 section 16962, to determine the suitability of current and prospective school employees who may  
218 have direct and unmonitored contact with children. For the purpose of this section, employees  
219 shall include any apprentice, intern or student teacher who may have direct and unmonitored  
220 contact with children. The school committee shall only obtain a state and national fingerprint-  
221 based criminal background check for current and prospective employees for whom the school  
222 committee has direct hiring authority. The superintendent, principal or other administrator shall  
223 also obtain a state and national fingerprint-based criminal background check for any individual  
224 who regularly provides school related transportation to children. The school committee,  
225 superintendent or principal or other administrator may obtain a state and national fingerprint-  
226 based criminal background check under 42 U.S.C. section 16962, for any volunteer,  
227 subcontractor or laborer commissioned by the school committee or school or employed by the  
228 city or town to perform work on school grounds, who may have direct and unmonitored contact  
229 with children. Fingerprints shall be submitted to the identification section of the department of  
230 state police for a state criminal history check and forwarded to the Federal Bureau of  
231 Investigation for a national criminal history check, according to the policies and procedures  
232 established by the identification section and by the department of criminal justice information  
233 services. Fingerprint submissions may be retained by the Federal Bureau of Investigation, the  
234 state identification section and the department of criminal justice information services to assist  
235 employers authorized under this chapter to ensure the continued suitability of those individuals.  
236 The department of criminal justice information services may disseminate the results of the state  
237 and national criminal background checks to: a school committee, superintendent, principal or the

238 designee of the school committee, superintendent or principal, to determine the suitability of  
239 current and prospective employees of the school employer; and to the department of elementary  
240 and secondary education to determine the suitability of applicants for license and licensed  
241 educators who may have direct and unmonitored contact with children. However, the department  
242 of criminal justice information services shall only disseminate to a school committee results for  
243 current and prospective employees for whom the school committee has direct hiring authority.

244           Entities that receive the results of national criminal background checks shall treat the  
245 information according to sections 167 to 178, inclusive, of chapter 6 and the regulations  
246 thereunder regarding criminal offender record information. Notwithstanding subsections 9 and 9  
247 ½ of section 4 of chapter 151B, if a school employer receives criminal record information from  
248 the state or national fingerprint-based criminal background checks that includes no disposition or  
249 is otherwise incomplete, the school employer may request that an individual provide additional  
250 information regarding the results of the criminal background checks to assist the school  
251 employer in determining the applicant's suitability for direct and unmonitored contact with  
252 children. The department of criminal justice information services shall only disseminate  
253 information under this section that would otherwise be available to requesting entities under  
254 sections 167 through 178, inclusive, of chapter 6 and the regulations thereunder regarding  
255 criminal offender record information. The school committee, superintendent or principal shall  
256 notify the commissioner of any criminal record information relevant to the fitness for licensure  
257 of any holder of, or applicant for, an educator's license in the commonwealth.

258           The board of elementary and secondary education shall in a manner provided by law and  
259 in accordance with this section and sections 167 to 178, inclusive, of chapter 6 and the  
260 regulations thereunder, promulgate regulations necessary to carry out this section. These

261 regulations shall address the circumstances under which a school employer may rely on a  
262 suitability determination made by a previous Massachusetts school employer or the department  
263 of elementary and secondary education in lieu of obtaining a new state and national criminal  
264 history background check. The factors identified in the regulations shall include, but need not be  
265 limited to: the date of the previous suitability determination; the individual's employment  
266 history; and the individual's states of residence since the previous suitability determination. If an  
267 employer chooses to conduct a new state and national finger-print based criminal history  
268 background check, rather than rely on a previous suitability determination, the employer shall  
269 pay the fees for the new check. The regulations shall provide for the confidentiality of criminal  
270 offender record information and the results of fingerprint-based checks of the state and national  
271 criminal history databases, under 42 U.S.C. section 16962 and Public Law 92-544, obtained  
272 under this section. The regulations may reflect a phased-in schedule for the fingerprint-based  
273 background checks of individuals whose employment or service began prior to the 2013-2014  
274 school year.

275           The applicant shall pay a fee, to be established by the secretary of administration and  
276 finance, in consultation with the secretary of public safety and security and the commissioner, to  
277 offset the costs of operating and administering a fingerprint-based criminal background check  
278 system. The fee shall not exceed \$55 for employees who are certified under section 38G and  
279 shall not exceed \$35 for employees who are not certified under section 38G. The secretary of  
280 administration and finance, in consultation with the secretary of public safety and security and  
281 the commissioner, may increase the fee accordingly if the Federal Bureau of Investigation  
282 increases the fee for its fingerprint background check service. The school committee,  
283 superintendent or principal may reimburse applicants all or part of the fee on the grounds of

284 financial hardship. Any fees collected from fingerprinting activity under this chapter shall be  
285 deposited into the Fingerprint-Based Background Check Trust Fund established under section  
286 2HHHH of chapter 29.

287 SECTION 8. Sections 8C and 9 of chapter 459 of the acts of 2012 are hereby repealed.

288 SECTION 9. For the purposes of this section, “conditional employee” shall mean an  
289 individual who may have direct and unmonitored contact with children who a school employer  
290 hires without first obtaining the results of a state and national fingerprint-based criminal history  
291 check because the employer determines that hiring the individual is necessary.

292 Until the commonwealth has fully implemented a system for forwarding fingerprints to  
293 the Federal Bureau of Investigation for a national criminal history check and providing the  
294 results of those checks to school employers, school employers may hire individuals without first  
295 obtaining the results of a state and national fingerprint-based criminal history check if the school  
296 employer has obtained from the Massachusetts department of criminal justice information  
297 services all available criminal offender record information on such individuals.

298 Once the commonwealth has fully implemented a system for forwarding fingerprints to  
299 the Federal Bureau of Investigation for a national criminal history check and providing the  
300 results of those checks to school employers school employers shall require employees hired for  
301 the 2013-2014 school year or thereafter without the results of a state and national fingerprint-  
302 based criminal history check to submit fingerprints for a state and national criminal history check  
303 within a reasonable period of time.

304 School employers may hire individuals without first obtaining the results of a state and  
305 national fingerprint-based criminal history check in limited circumstances. The board of

306 elementary and secondary education shall in a manner provided by law and in accordance with  
307 this section, promulgate regulations necessary to carry out this section. These regulations shall  
308 address the circumstances under which a school employer may hire a conditional employee.

309         Notwithstanding subsections 9 and 9 ½ of section 4 of chapter 151B of the General Laws,  
310 if a school employer seeks to hire a conditional employee, the school employer may request that  
311 an individual provide additional information regarding the individual's history of criminal  
312 convictions to assist the school employer in determining the applicant's suitability for direct and  
313 unmonitored contact with children; provided, however, that the information shall not include  
314 juvenile or sealed convictions.

315         SECTION 10. Subsections (a) and (b) of section 7 of chapter 15D of the General Laws,  
316 as amended by section 2, shall apply to all new applicants for licensure, certification or approval,  
317 for all household members, age 15 or older, or persons regularly on the premises, age 15 or  
318 older, of applicants for family child care licensure, for all applicants to be adoptive or foster  
319 parents and their household members age 15 or older, and for all in-home non-relative  
320 department funded caregiver applicants, whose applications are submitted on or after September  
321 1, 2013.

322         All individuals who are currently licensed, certified or approved by the department of  
323 early education and care, all household members, age 15 or older, or persons regularly on the  
324 premises, age 15 or older of family child care licensees, as well as all in-home non-relative  
325 department funded caregivers, shall comply with the requirements of this act upon renewal of  
326 licensure, certification, approval or funding, but not later than September 1, 2016.

327 Subsections (a) and (b) of section 7 of chapter 15D of the General Laws, as amended by  
328 section 2, shall also apply to prospective employees in any department of early education and  
329 care licensed, funded or approved program who have the potential for unsupervised contact with  
330 children, including those providing transportation services on behalf of any department-licensed,  
331 funded or approved program, hired to begin employment on or after September 1, 2013.

332 Employees in any department of early education and care licensed, funded or approved  
333 programs who have the potential for unsupervised contact with children, including those  
334 providing transportation services on behalf of any early education and care department licensed,  
335 funded or approved program hired to begin employment prior to September 1, 2013 shall submit  
336 fingerprints for state and national criminal history checks not later than September 1, 2016.

337 SECTION 11. If a state and national fingerprint-based criminal check is not available  
338 through the department of early education and care by September 1, 2013, then all new  
339 applications for licensure, certification or approval, all household members, age 15 or older, or  
340 persons regularly on the premises, age 15 or older, of applicants for family child care licensure,  
341 all applicants to be adoptive or foster parents and their household members age 15 or older, and  
342 all in-home non-relative department funded caregiver applicants who apply on or after  
343 September 1, 2013, shall undergo a state and national fingerprint-based criminal history check as  
344 soon it becomes available.

345 If a state and national fingerprint-based criminal check is not available through the  
346 department of early education and care at the time an application for renewal of a department-  
347 issued license, certificate, approval or funding request is due, then the applicant for renewal shall



348 undergo a state and national fingerprint-based criminal check as soon it becomes available, but  
349 not later than September 1, 2016.

350           If a state and national fingerprint-based criminal check is not available through the  
351 department of early education and care by September 1, 2013, then any prospective employee in  
352 any department-licensed, funded or approved program who has the potential for unsupervised  
353 contact with children, including those providing transportation services on behalf of any  
354 department-licensed, funded or approved program, hired to begin employment on or after  
355 September 1, 2013, shall be hired conditionally as set forth in this act.

356           If a state and national fingerprint-based criminal check is not available through the  
357 department of early education and care by September 1, 2013, then any employee in any  
358 department-licensed, funded or approved program who has the potential for unsupervised contact  
359 with children, including those providing transportation services on behalf of any department  
360 licensed, funded or approved program, hired to begin employment prior to September 1, 2013,  
361 who is undergoing a department required periodic criminal offender record information check  
362 and a department of children and families background record check investigation, may continue  
363 employment conditionally as provided in this act, but shall undergo a state and national  
364 fingerprint-based criminal check not later than September 1, 2016.

365           SECTION 12. Section 38R of chapter 71 of the General Laws and section 9 of this act  
366 shall apply to all individuals working in kindergarten through twelfth grade education whose  
367 employment or service for a school or district begins during or after the 2013-2014 school year.  
368 Individuals working in kindergarten through twelfth grade education whose employment or

369 service began before the 2013-2014 school year shall submit fingerprints for state and national  
370 criminal history checks on a phased-in basis prior to the beginning of the 2016-2017 school year.

371 SECTION 13. For the purposes of this section, “conditional employee” shall mean an  
372 individual who has the potential for unsupervised contact with children and who is an employee,  
373 volunteer or intern of a department of early education and care licensed, funded or approved  
374 program or a provider of transportation services on behalf of any department of early education  
375 and care licensed, funded or approved program and was hired prior to the obtaining of the results  
376 of a state and national fingerprint-based criminal history check because the employer determined  
377 that hiring the individual was necessary.

378 Notwithstanding chapter 15D of the General Laws, or any other general or special law to  
379 the contrary, until the commonwealth has fully implemented a system for forwarding fingerprints  
380 to the Federal Bureau of Investigation for a national criminal history check and providing the  
381 results of those checks, the department of early education and care, department-licensed,  
382 approved or funded programs or the provider of transportation services on behalf of any  
383 department-licensed, funded or approved program may hire a conditional employee if the  
384 employer has first obtained the results of a criminal offender record information check and a  
385 department of children and families background record check, as required by the department, on  
386 the individuals.

387 All department-licensed, funded or approved programs and all providers of transportation  
388 services on behalf of any department-licensed, funded or approved program, whose employees  
389 are subject to a state and national criminal history check under this chapter, shall require such  
390 employees hired on or after September 1, 2013 without the results of state and national

391 fingerprint-based criminal history checks to submit fingerprints for state and national criminal  
392 history checks within a reasonable period of time.