

By Mr. Walsh of Boston, petition of Martin J. Walsh, Thomas Sannicandro and others relative to national criminal offender record information checks for persons working with individuals served by the Department of Mental Retardation. Children, Families and Persons with Disabilities.

The Commonwealth of Massachusetts

PETITION OF:

Martin J. Walsh
Tom Sannicandro
Joyce A. Spiliotis
David Paul Linsky
Stephen M. Brewer
Robert K. Coughlin
Frank I. Smizik
Karyn E. Polito
James E. Vallee
Anne M. Gobi
Steven J. D'Amico

Lewis G. Evangelidis
Harold P. Naughton, Jr.
Susan C. Tucker
Barbara A. L'Italien
Alice Hanlon Peisch
David B. Sullivan
Louis L. Kafka
Peter J. Koutoujian
Charles A. Murphy
Richard T. Moore
Cleon H. Turner

In the Year Two Thousand and Seven.

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 172 of chapter 6 of the General Laws is amended by
- 2 inserting the following new section 172J as follows:—
- 3 Notwithstanding any other provision of law, any person seeking
- 4 employment or a position as a regular volunteer or trainee to pro-
- 5 vide services for, or, on behalf of the Department of Mental Retar-
- 6 dation or its vendor agency programs where such employment or
- 7 position involves potential unsupervised contact with individuals
- 8 with mental retardation shall be required to have a national crim-
- 9 inal background check prior to assuming said employment or
- 10 position. Said criminal background check will be determined by
- 11 using the Integrated Automated Fingerprint Identification System

12 maintained by the Federal Bureau of Investigation's Criminal Jus-
13 tice Information Services Division.

14 It shall be the responsibility of the Commonwealth to ensure
15 that said criminal background checks are processed for review
16 prior to such time that an individual seeking employment or a
17 position as a volunteer or trainee assumes said employment or
18 position.

19 Any person who willfully requests, obtains or seeks to obtain
20 criminal offender record information or the equivalent from other
21 jurisdictions under false pretenses, or who willfully communicates
22 or seeks to communicate criminal offender record information or
23 the equivalent from other jurisdictions to any agency or person
24 except in accordance with the provisions of sections one hundred
25 and sixty-eight to one hundred and seventy-five, inclusive, or any
26 member, officer, employee or agency of the board or any partici-
27 pating agency, or any person connected with any authorized
28 research program, who willfully falsifies criminal offender record
29 information, or the equivalent from other jurisdictions, or any
30 records relating thereto, shall be in violation of this provision.

31 The Criminal History Systems Board, the Disabled Persons
32 Protection Commission, and the State Police has cooperate and
33 supervise the participation by all Department of Mental Retarda-
34 tion providers in any interstate system for the exchange of crim-
35 inal offender record information or the equivalent from other
36 jurisdictions and shall be responsible to assure the consistency of
37 such participation including redacting information so that criminal
38 offender record information or the equivalent from other jurisdic-
39 tions is limited to convictions and open cases, and, that juvenile
40 records are not made available.

41 Any provider of services to individuals pursuant to a contract
42 with the Department that hires, retains or supervises an employee,
43 volunteer or trainee whom the provider knows or should know,
44 will potentially come into unsupervised contact with such individ-
45 uals, and, because of a criminal conviction or pending criminal
46 charge of a nature that would pose a unacceptable risk of physical
47 harm to or financial exploitation of such individuals shall be in
48 violation of this provision. The hiring authority shall use, when
49 making a determination of unacceptable risk, the guidelines as
50 provided by existing Department of Mental Retardation regula-
51 tions.

52 The Board shall afford an individual who may be wrongly asso-
53 ciated with a record or whose record may contain errors, the
54 opportunity to contest the accuracy of an out-of-state record. Each
55 individual shall have the right to inspect, and if practicable, copy,
56 criminal offender record information or the equivalent from other
57 jurisdictions which refers to him. If an individual believes such
58 information to be inaccurate or incomplete, the Criminal Systems
59 History Board shall notify the state whose record is contested and
60 assist the individual in following the process for correcting inac-
61 curacies in that state, as well as notify the agency to whom the
62 record was disseminated that the record is being contested and
63 that no adverse action can be taken by that agency pending a reso-
64 lution of the dispute. This matter should be resolved as soon as
65 practicable but no later than 30 days after notification. Agencies at
66 which criminal offender records or the equivalent from other juris-
67 dictions are sought to be inspected shall prescribe reasonable
68 hours and places of inspection, and shall impose such additional
69 restrictions as may be approved by the board, as are reasonably
70 necessary both to assure the record's security and to verify the
71 identities of those who seek to inspect them.

