

criminal record checks

Sec. 11. 16 V.S.A § 251 is amended to read:

§ 251. Policy

(a) It is the policy of the State of Vermont to use criminal record checks to deter abuse and exploitation of school children and to do so in a manner that protects, as much as is practicable, the privacy of those subject to such checks. Accordingly, every person who has contact with students in (1) a public school, (2) an approved or recognized independent school, or (3) a prekindergarten program, whether as an operator, employee, or contractor, will undergo a fingerprint supported FBI criminal record check prior to having any unsupervised contact with children.

(b) With respect to licensed teachers in any setting, the Agency of Education will conduct a record check at the time the person is licensed to teach in the State of Vermont and at the time the person's license is renewed following the requirements in section 251a of this title.

(c) With respect to kindergarten through high school and notwithstanding any other provision of law, the fingerprint supported criminal record check shall be initiated as follows:

(1) If the person is not a Vermont licensed teacher but is employed by or under contract to a public school the superintendent of the district will conduct the record check at the time of hire pursuant to sections 251a and 255 of this title.

(2) If the person is not a Vermont licensed teacher and is employed by or under contract to an approved or recognized independent school, the headmaster of that school will conduct the record check pursuant to sections 251a and 255 of this title.

(d) With respect to prekindergarten programs prequalified pursuant to section 829 of this title or in partnership pursuant to section 829(e)(1) of this title, the fingerprint supported criminal record check shall be initiated as follows:

(1) If the person is not a Vermont licensed teacher but is employed by or under contract to a public school, with the exception of contractors covered in subparagraphs (2) and (3) below, the superintendent of the district will conduct the record check pursuant to sections 251a and 255 of this title.

(2) If the person is not a Vermont licensed teacher but is employed by or under contract to a recognized or approved independent school, the headmaster will conduct the record check pursuant to sections 251a and 255 of this title.

(3) If the person is not a Vermont licensed teacher and is not employed by or under contract to a recognized or approved independent school and is employed by a private program registered or licensed by the Child Development Division, the Department for Children and Families will conduct the record check pursuant to 33 V.S.A. §152 and rules adopted by the Department for Children and Families.

(e) The Agency of Education, Department for Children and Families, superintendents and headmasters shall maintain a registry accessible only to the other parties named in this subsection for the purpose of sharing information ~~about~~including the person's name and social security number, whether a person has a qualifying criminal record check clearance, the date of the clearance, and whether the person was cleared pursuant to a waiver section 251a(c) of this title. Each of the parties named in this subsection shall accept qualifying criminal background

Comment [BM1]: Superintendents are required to do the checks if the program is operated by the district, but is not required to do the check for private program employees – even if the district is sending public dollars to those private programs pursuant to Act 166. If this language doesn't say that clearly enough, please suggest different language.

check clearances from the other named parties. Nothing in this section, however, shall require a superintendent or headmaster to hire a person who has been cleared or prohibit a superintendent or headmaster from requiring a fingerprint supported criminal record check as a condition of hiring or, if the superintendent or headmaster has cause to believe the person may have committed a crime, at any time during the person’s employment. -In cases where a person has received clearance pursuant to a waiver, a superintendent or headmaster shall be entitled to information regarding what crime was waived by the entity that conducted the criminal record check.

Comment [BM2]: This can include crimes not on the list for denying clearance - the example of a drivers’ education teacher and DUI. It could be left more open – simply “in the discretion of the superintendent or headmaster”, but one purpose of the legislation is to eliminate duplication so if there is going to be duplicate checks, it might be good to limit it to instances where there is a reason that can be articulated.

(f) An individual required to submit to a criminal record check by the Agency of Education, Child Development Division of the Department for Children and Families, superintendent or headmaster shall not be required to undergo fingerprinting for a criminal record check if the individual underwent a qualifying background check pursuant to this section within the preceding five years, subject to the limitations in section 251a(d) of this title.

Comment [BM3]: Leslie, the other party would not have access to the entire record check so let us know whether you think this limited additional information could be shared, consistent with the prohibition of secondary sharing.

(g) The requirements of this section shall not apply with respect to a school district’s partners in any program authorized or student placement created by Subchapter 2 of Chapter 23 of Title 16. It is provided, however, that superintendents are not prohibited from requiring a fingerprinted supported record check pursuant to district policy with respect to its partners in such programs.

Comment [BM4]: Superintendents suggested that this exemption is too broad. It was suggested by AOE because requiring fingerprint supported background checks of all partners in a flexible pathways job placement or dual enrollment placement would significantly limit options – and therefore would be inconsistent with another legislative initiative. Does this language achieve a workable balance between AOE and Districts concerns?

Sec. 12. 16 V.S.A. § 251a is added to read:

§251a Background checks and access to records

(a) Pursuant to section 251 of this title, criminal background record checks conducted by the Agency of Education, superintendents and headmasters shall include:

(1) A fingerprint supported Vermont Crime Information Center and FBI criminal record check;

(2) A search of the National Sex Offender Registry established under the Adam Walsh Child Protection and Safety Act of 2006;

(3) A search of the Vermont Child Protection Registry; and

(4) A search of the Vermont Adult Abuse Registry;

In addition, a criminal record check conducted by the Agency of Education, superintendents and headmasters may include;

(5) A search of the child abuse and neglect registries, repositories, or databases, if available, in in each State where the person resided during the preceding five years;

and

(6) A search of the Vermont Case Access System.

(b) The Agency of Education shall deny licensure and superintendents and headmasters shall deny employment or refuse to contract with a person who:

(1) is required to complete a background check and who refuses or knowingly makes a materially false statement in connection with such background check;

(2) is registered, or is required to be registered, on a state sex offender registry or repository or the National Sex Offender Registry;

(3) is convicted of a felony involving:

(A) Murder,

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Comment [BM5]: Superintendents had strong concern that districts cannot adhere to this requirement. CDD believes this is mandatory under federal law.

Comment [BM6]: Superintendents do not currently have access to this system. CDD is trying to remedy this. This is not a federal requirements, but would provide information about CHINS (children in need of care and supervision) proceedings.

(B) Child abuse or neglect,

(C) A crime against children, including sexual activity or child pornography,

(D) Spousal abuse,

(E) A crime involving rape or sexual assault,

(F) Kidnapping,

(G) Arson,

(H) Physical assault or battery, or

(I) A drug related offense committed during the preceding five (5) years;

(4) is convicted of a misdemeanor offense against a child or another person involving:

(A) Violence,

(B) Child abuse or neglect,

(C) Child Endangerment,

(D) Sexual assault or activity,

(E) Child pornography, or

(F) Other violent bodily injury;

(5) is convicted of fraud;

(6) is convicted of embezzlement;

(7) is has been found by a court to have abused, neglected or mistreated a child, elderly or disabled person, or animal,

(8) has had a report of abuse or neglect substantiated against them under Chapters 49 or 69 of Title 33; or

(9) has had a report of child abuse or neglect that is substantiated against them in another State.

(c) The Agency of Education, superintendents and headmasters, in their sole discretion, may allow for a waiver of the disqualifying convictions and findings listed in this subparagraph. The burden of proof shall be on the person requesting the waiver to prove rehabilitation and that he or she is suitable for licensure or employment.

(1) felony convictions for drug-related offenses under subparagraph (b)(3)(I),

(2) misdemeanor convictions of bodily injury under subparagraph (b)(4)(F), or

(3) convictions of fraud under subparagraph (b)(5); or

(4) convictions of embezzlement under subparagraph (B)(6).

(d) A person subject to a fingerprinting ~~and supported background record~~ checks by a superintendent or headmaster, or by the Child Development Division of the Department for Children and Families pursuant to section 251 of this title, shall not be required to submit to a ~~fingerprint~~ criminal record check if the person underwent a qualifying background check pursuant to section 251 of this title within the preceding five years and the person has not been separated from employment by a public school, private school or a private child care provider licensed by the Child Development Division in Vermont for more than 180 consecutive days since the previous qualifying criminal record check, ~~except as provided in section 251(e) of this title.~~

(e) ~~Fingerprint supported Criminal record background~~ checks required to be initiated by a superintendent or headmaster must be requested before a person begins working in a public or private school and ~~until the person is cleared, the person~~ must be supervised ~~at all times~~ by

an individual ~~with~~ who has cleared a qualifying background check ~~until the person has been~~ cleared whenever the person is in the presence of children during the school day.

(f) The Agency of Education, superintendents and headmasters shall take all steps necessary to ~~complete~~ initiate criminal record checks within 45 days after a request has been submitted.

(g) Criminal record check results for any person shall not be publicly released, except that aggregated data by crime from background check results may be released as long as such data is not personally identifiable. Pursuant to section 251(e), the Agency of Education, Department for Children and Families, superintendents and headmasters shall share among each other criminal record check clearance information, only if necessary for the requesting entity to perform its lawful duties. The subject of the background check is entitled to a copy of the background check.

(h) Any person subject to a criminal record check pursuant to this section may challenge the accuracy of the record by appealing to the Vermont Crime Information Center pursuant to rules adopted by the Commissioner of Public Safety.

Sec. 13. 16 V.S.A § 255 is amended to read:

§ 255. Public and independent school employees; contractors

(a) Superintendents, headmasters of recognized or approved independent schools, and their contractors shall request criminal record information for the following:

Comment [BM7]: Under §251(e), the registry shall contain the person's name, social security #, fact of clearance and whether clearance was the result of waiver. The registry could be simply a spreadsheet – the idea was to have it available to the other parties at all times so that, one entities timeline would not be affected by not being able to get the right person on the phone.

(1) ~~the~~ any person, other than a teacher licensed under Chapter 51 of Title 16 or a person cleared by Department of Children and Families pursuant to section 251 of this title, a superintendent or headmaster is prepared to employ or recommend for any full-time, part-time, or temporary employment;

(2) any person, other than a teacher licensed under Chapter 51 of Title 16 or a person cleared by Department of Children and Families pursuant to section 251 of this title directly under contract to an independent school or school district who may have unsupervised contact with school children;

(3) any employee of a contractor under contract to an independent school or school district, other than a teacher licensed under Chapter 51 of Title 16 or a person cleared by Department of Children and Families pursuant to section 251 of this title who is in a position that may result in unsupervised contact with school children;

(4) any student working toward a degree in teaching who is a student teacher in a school within the superintendent's or headmaster's jurisdiction.

(b) After signing a user agreement, a superintendent or a headmaster shall make a request directly to the Vermont Crime Information Center pursuant to section 251a of this title. A contractor shall make a request through a superintendent or headmaster.

(c) A request made under subsection (b) of this section shall be accompanied by a set of the person's fingerprints and a fee established by the Vermont Crime Information Center that shall reflect the cost of obtaining the record from the FBI. The fee shall be paid in accordance with adopted school board policy.

(d)(1) Upon completion of a criminal record check, the Vermont Crime Information Center shall send to the superintendent a notice that no record exists or, if a record exists, a copy of any criminal record.

(2) Upon completion of a criminal record check, the Vermont Crime Information Center shall send to the headmaster a notice that no record exists or, if a record exists:

(A) A copy of Vermont criminal convictions.

(B) A notice of any criminal record that is located in either another state repository or FBI records, but not a record of the specific convictions. However, if there is a record ~~relating to any crimes of a sexual nature involving children~~, the Vermont Crime Information Center shall send this record to the Secretary who shall notify the headmaster in writing, with a copy to the person about whom the request was made, that the record includes one or more convictions for a crime ~~of a sexual nature involving children~~ specified in 16 V.S.A. § 251a(b) or includes a report as specified in that section.

(e) Information received by a superintendent or headmaster under subsection (d) of this section shall be forwarded as follows:

(1) In the case of a request other than one made on behalf of a contractor, the superintendent or headmaster shall forward a copy of the information to the person about whom the request was made.

(2) In the case of a request made on behalf of a contractor, the superintendent or headmaster shall inform the contractor in writing either that no record exists or that a

record does exist but shall not reveal the content of the record to the contractor. The contractor shall then forward a copy of the information received to the person about whom the request was made.

(f) Information sent to a person by the Secretary, a headmaster, a superintendent, or a contractor under subsection (e) of this section shall be accompanied by a written notice of the person's rights under ~~subsection (g) of this section~~ section 251a of this title, a description of the policy regarding maintenance and destruction of records, and the person's right to request that the notice of no record or record be maintained for purposes of using it to comply with future criminal record check requests pursuant to section 256 of this title.

~~(g)(1) Following notice that a headmaster was notified that a criminal record which is located in either another state repository or FBI records exists, a person may:~~

~~(A) sign a form authorizing the Vermont Crime Information Center to release a detailed copy of the criminal record to the person; or~~

~~(B) decline or resign employment.~~

~~(2) Any person subject to a criminal record check pursuant to this section may challenge the accuracy of the record by appealing to the Vermont Crime Information Center pursuant to rules adopted by the Commissioner of Public Safety.~~

~~(h) A superintendent or headmaster shall request and obtain information from the Child Protection Registry maintained by the Department for Children and Families and from the Vulnerable Adult Abuse, Neglect, and Exploitation Registry maintained by the Department of~~

~~Disabilities, Aging, and Independent Living (collectively, the Registries) for any person for whom a criminal record check is required under subsection (a) of this section. The Department for Children and Families and the Department of Disabilities, Aging, and Independent Living shall adopt rules governing the process for obtaining information from the Registries and for disseminating and maintaining records of that information under this subsection.~~

~~(i) A person convicted of a sex offense that requires registration pursuant to 13 V.S.A. chapter 167, subchapter 3 shall not be eligible for employment under this section.~~

(j) The board of trustees of a recognized or approved independent school shall request a criminal record check and a check of the Registries pursuant to the provisions of this section and section 251a of this title prior to offering employment to a headmaster candidate.

(k) The requirements of this section shall not apply with respect to a school district's partners in any program authorized or student placement created by Subchapter 2 of Chapter

23 of Title 16. It is provided, however, that superintendents are not prohibited from requiring a fingerprinted supported record check pursuant to district policy -with respect to its partners in such programs.

Sec. 14. 33 V.S.A. §152 is amended to read:

§ 152. Access to records

(a) The Commissioner may obtain from the Vermont Crime Information Center the record of convictions of any person to the extent required by law or the Commissioner has determined by rule that such information is necessary to regulate a facility or individual subject

Comment [BM8]: Superintendents suggested that this exemption is too broad. It was suggested by AOE because requiring fingerprint supported background checks of all partners in a flexible pathways job placement or dual enrollment placement would significantly limit options – and therefore would be inconsistent with another legislative initiative. Does this language achieve a workable balance between AOE and Districts concerns?

to regulation by the Department or to carry out the Department's child protection obligations under chapters 49-59 of this title. The Commissioner shall first notify the person whose record is being requested.

(b) The owner or operator of a facility licensed or registered by the Department may ask the Commissioner for the record of convictions and the record of substantiated reports of child abuse of a current employee or a person to whom the owner or operator has given a conditional offer of employment. The request shall be in writing and shall be accompanied by a release signed by the current or prospective employee. The owner or operator shall inform the current or prospective employee that he or she has the right to appeal the accuracy and completeness of the record. Upon receiving a request under this subsection, the Commissioner shall ask the Vermont Crime Information Center for the record of convictions of the current or prospective employee.

(c) If the person has a record of convictions, the Commissioner shall provide the owner or operator with a copy of the record, unless otherwise prohibited by law. If the person has a record of substantiated reports of child abuse, the Commissioner shall inform the requesting owner or operator that such record exists.

(d) Information released to an owner or operator under this section shall not be released or disclosed by the owner or operator to any other person. Release or disclosure of such information by an owner or operator may result in the loss of the license or registration.

(e) As used in this section:

(1) "Commissioner" means the Commissioner for Children and Families or the Commissioner's designee.

(2) "Employee" shall include volunteers.

(3) "Substantiated reports of child abuse" means reports of child abuse substantiated under section 4915 of this title.

(4) "Volunteer" means an individual who, without compensation, provides services through a public or private organization.

(f) The Commissioner shall accept clearance of a criminal record checks conducted under sections 251 and 251a of title 16 by the Agency of Education or a superintendent of a school district relating to individuals in facilities licensed or registered by the Department.