

## Explanation of Criminal Record Check Proposal

**Background:** Act 166 (16 V.S.A § 829) expanded publicly funded education to prekindergarten and directs the school district of residence, at the parent's option, to enroll the student in a program it operates or pay tuition to a prequalified private provider or a public school outside the district. This expansion has resulted in multiple fingerprinting and criminal background check requirements for individuals working with children in a prekindergarten setting.

Superintendents are required by 16 V.S.A § 255 to request criminal record information for any person directly under contract to school district who may have unsupervised contact with school children. This request to the Vermont Crime Information Center must be accompanied by a set of the person's fingerprints. Parents may choose a private kindergarten provider whose employees are not employed by the district. If the district has a contract with a provider, all employees of the provider must pass such a criminal record check. Until this is done, a pre-kindergarten provider is not eligible for tuition payments. Moreover, a prekindergarten program that receives students from multiple districts must undergo each district's record check.

At the same time the Child Development Division of the Agency of Human Services (CDD) licenses child care providers and is required by a new federal law to perform fingerprint-supported criminal background checks of child care providers. Federal law does not allow the full background check to be shared with third parties. However, CDD may consistent with federal law verify to superintendents the names of employees who have been cleared and that all employees of a particular pre-kindergarten program have been cleared.

Finally, Act 77, enacted in 2013, provides for flexible pathways to high school graduation. These pathways include early college enrollment and job placement. This raised the question of what responsibilities superintendents have for initiating fingerprint supported background checks with respect to their flexible pathways partners.

In addition to the fact that there are multiple and competing fingerprinting requirements, the standards for requesting criminal record checks and making decisions based on record check results vary across the different educational settings.

**Proposal:** The goal is to eliminate overlapping requirements for fingerprint supported background checks and standardize the criminal record check process across all school settings not just prekindergarten. To that end, the Agencies of Education and Human Services have worked on this language that proposes a three-prong approach which clarifies which agency, department, etc. is responsible for fingerprinting different groups of individuals:

- (1) AOE is responsible for fingerprinting and criminal checks for all teacher licensed to teach in the State of Vermont;
- (2) Superintendents and headmasters are responsible for fingerprinting and criminal record checks of all public and independent school employees and contractors except for licensed teacher and private prekindergarten providers;
- (3) DCF/CDD is responsible for fingerprinting and criminal checks for all private prekindergarten providers. The same standard for will be used by all entities. That standard is what DCF must follow in order to comply with the federal Child Care and Development Block Grant Act of 2014 and CDD rules.

The intended benefits of this approach include alleviating the burden on individuals who have to undergo multiple checks and on agencies who spend time and resources duplicating efforts.

Also all entities responsible for the background checks will use the same standard and process - the proscriptive standard that DCF/CDD must follow in order to maintain compliance with the federal Child Care and Development Block Grant Act of 2014 and CDD rules. Adopting a uniform and clear standard to be used across all child care and education settings provides for greater protection for Vermont children.

### **Summary of Proposed Legislation by Section**

#### **Sec. 1. Amends 16 V.S.A. §251.**

- (a) outlines an overarching policy to ensure that every person working in a school setting, including preK, will have a fingerprint supported criminal record check prior to having unsupervised access to children
- (b) assigns responsibility for fingerprinting all licensed teaching staff to AOE
- (c) for K – 12, assigns responsibility for fingerprinting employees and contractors to superintendents and headmasters (with the exception of licensed teachers)
- (d) for preK programs,
  - (1) superintendents are assigned responsibility for all public school employees and contractors (with the exception of licensed teachers and contracted private preK employees)
  - (2) headmasters are assigned responsibility for all recognized and approved independent school employees and contractors (with the exception of licensed teachers)
  - (3) – DCF is assigned responsibility for fingerprinting private preK providers (with the exception of licensed teachers and recognized and approved independent school employees)

- (e) provides that AOE, superintendents, headmasters and DCF/CDD will share criminal record check information about whether a person has been cleared among and between each other and that each named party will accept the others' record checks
- (f) provides that individuals subject to record check requirements will not be required to undergo fingerprinting more often than every five years
- (g) provides an exception to fingerprinting requirements for students participating in flexible pathways programs

**Sec. 2. Proposes a new section 251a in title 16 to detail standard for AOE, superintendents and headmasters to follow in requesting and processing record checks – this is the same standard that DCF/CDD follows for requesting and processing fingerprint supported criminal and other record checks for all licensed and registered child care providers.**

- (a) Outlines requirements for AOE, superintendents and headmasters for checking criminal and other registries to include a fingerprinted supported national Vermont Crime Information Center criminal record check, national sex offender registry check, check of the Vermont child protection and adult abuse registries and a search of the sex offender and child abuse and neglect registries in each State where the person has lived in the past five years. These are the same requirements that CDD has with respect to all registered and licensed child care providers, including private preK providers, as part of its compliance with the federal Child Development and Block Grant Act of 2014 and CDD rules.
- (b) Provides proscriptive detail about processing criminal record check results and lists specific convictions and findings that would result in a person being denied licensure as a teacher or employment in a school setting
- (c) Provides a discretionary and limited waiver process for certain listed convictions and offenses
- (d) Reiterates that a person with a qualifying criminal record check clearance will not be required to be fingerprinted again for five years
- (e) Provides that record checks must be requested before a person begins working in a school setting and that until cleared, the person must be supervised at all times
- (f) Provides that AOE and superintendents/headmasters should strive to complete requested record checks within 45 days
- (g) Prohibits the public release of personally identifiable criminal record check information. AOE/DCF/superintendents/headmasters may share record check clearance information among each other.
- (h) Provides for an appeal process to challenge the accuracy of a criminal record check

**Sec. 3. Amends 16 V.S.A. §255, which is the section in current law that provides more detailed procedural requirements for superintendents and headmasters to follow in requesting criminal record checks.**

- (a) Aligns the division of responsibility for criminal records checks in schools with §251
- (b) Provides a cross-reference to the proposed new §251a
- (g) Proposes to delete language related to secondary dissemination of record check information that is prohibited by federal law
- (h) Proposes to delete language requiring Vermont child protection and adult abuse registry checks as these requirements are now found in §251a
- (i) Proposes to delete language requiring Vermont sex offender registry checks as this requirement is now found in §251a
- (j) Provides a cross-reference to §251a related to criminal record checks of headmasters of recognized or approved independent schools
- (k) Create express exception to fingerprinting requirements for students participating in flexible pathways programs

**Sec. 4. Proposes amendments to 33 V.S.A. §152 to conform DCF/CDD process with Title 16 process for requesting and process criminal record checks.**

- (c) Clarifies in state law the prohibition in federal law that CDD may not share actual criminal record check information with the employer provider, but rather may only share whether a person has been cleared
- (f) Proposes new paragraph to require DCF Commissioner to accept AOE, superintendent and headmaster clearance information

**Sec. 5. Effective date**