

HEA 1462 Expanded Criminal History Checks Frequently Asked Questions

- 1. Does the requirement for an expanded criminal history (ECH) apply to all job applicants or just those who are recommended for hiring?** Only those applicants who are “finalists” for a position need an expanded criminal history check.
- 2. Does the ECH requirement apply to just new hires or to current employees?** Governing bodies must have in place a policy that requires expanded criminal history checks for new hires after July 1, 2009, although the governing body may adopt a policy that addresses expanded criminal history checks for current employees as well.
- 3. Information was sent out about L-1 Identity Solutions, including applicant cost and registration for fingerprinting and how school employers can register to obtain ECH results online. Are school employers required to use L-1 Identity Solutions?** No. There are several vendors that provide ECH services. Because the Indiana State Police (ISP) has an existing contractual relationship with L-1 identity Solutions, school employers may utilize L-1 as well.
- 4. Does the ECH have to include fingerprinting?** No. There are several vendors that provide expanded criminal history checks that are not based on fingerprints. If a school employer wants to use L-1 Identity Solutions, that service is based on searches of the Indiana State Police Automated Fingerprint Identification System (AFIS) and the FBI’s Integrated Automated Fingerprint Identification System (IAFIS). For information about IAFIS go to <http://www.fbi.gov/hq/cjisd/iafis.htm>
- 5. Does the ECH check using L-1 Identity Solutions fingerprinting service and the Indiana State Police AFIS and IAFIS searches fulfill the requirements of the HEA 1462?** The L-1 /ISP searches will likely pick up sex offender convictions in other states, but it does **not** specifically search the national sex offender registry or the sex offender registries of all 50 states. If you use the L-1 Solution you should also check the Indiana Sex/Violent Offender Registries at <http://www.insor.org/insasoweb/> and the National Sex Offender Registry at <http://www.fbi.gov/hq/cid/cac/registry.htm> in order to fully comply with HEA 1462. Access to these websites is free.
- 6. Can the governing body adopt a policy requiring ECH for current employees?** A governing body has the authority to adopt a policy that addresses expanded criminal history checks for current employees as well as new hires.
- 7. Does the expanded criminal history check apply to all employees or just teachers?** The requirement applies to all new hires after July 1, 2009 “who are likely to have direct, ongoing contact with children within the scope of their employment,” regardless of whether the individuals are certified or noncertified.
- 8. What should I do if an ECH check discloses an arrest and/or conviction?** You should follow your local policy concerning what kinds of incidents and/or convictions disqualify an applicant from employment. In addition, you are encouraged to contact the Department of Education’s Office of Legal Affairs if you believe that an incident reported on an expanded criminal history check is grounds for revocation or suspension of a license, or is evidence of immorality, misconduct in office, incompetency, or willful neglect of duty so we may undertake further investigation.

9. Who is responsible for the cost of the ECH check? The law states “the applicant is responsible for all costs associated with obtaining the expanded criminal history check. An applicant may not be required by a school corporation, charter school, or accredited nonpublic school to obtain an expanded criminal history check more than one (1) time during a five (5) year period.” IC 20-26-5-10(b).

10. What are the elements of “Expanded Criminal History Check?” The definition of “expanded criminal history check” is found at IC 20-26-2-1.5, which is included below:

Sec. 1.5. "Expanded criminal history check" means a criminal history background check of an individual that includes:

(1) a:

(A) search of the records maintained by all counties in Indiana in which the individual who is the subject of the background check resided;

(B) search of the records maintained by all counties or similar governmental units in another state, if the individual who is the subject of the background check resided in another state; and

(C) check of:

(i) sex offender registries in all fifty (50) states; or

(ii) the national sex offender registry maintained by the United States Department of Justice;

OR

(2) a:

(A) national criminal history background check (as defined in IC 10-13-3-12); and

(B) check of:

(i) sex offender registries in all fifty (50) states; or

(ii) the national sex offender registry maintained by the United States Department of Justice.

The check described in (1) (a) above is a service provided by a private company. The check described in (2)(a)(A) above is obtained through the Indiana State Police by using L-1 Identity Solutions or submitting a paper fingerprint card obtained at a local police department. (2)(a)(B) can be done by school administrators online at <http://www.fbi.gov/hq/cid/cac/registry.htm>.

11. An applicant may not be required to obtain an ECH check more than one (1) time during a five (5) year period, but can the school employer obtain a limited criminal history and/or an ECH check during the intervening 4 years? Yes. There is no prohibition against the school employer obtaining, or requiring an applicant to obtain, a **limited criminal history** at any time. Further, a school employer may obtain an ECH check on an applicant through a vendor at any time as long as the ECH check can be completed without effort or cost by the applicant, unless five (5) years have passed since the applicant’s previous ECH. If five (5) years have passed since the applicant’s previous ECH, then the applicant can be required to obtain and pay for an updated ECH.

12. Does the ECH take the place of checking references prior to employment? No. The ECH check should only be one element of your pre-employment check. You should still check an applicant’s references and speak with former employers in the course of exercising due diligence.

13. Does the ECH requirement apply to substitute teachers, teachers on temporary contracts, food service workers, office staff, janitorial and maintenance staff, etc? The requirement applies to all new hires after July 1, 2009 “who are likely to have direct, ongoing contact with children within the scope of their employment,” regardless of whether the individuals are certified or noncertified.

14. Will a teacher still be required to submit an LCH to obtain an initial license or to renew or professionalize a license? Not after July 1, 2009.

15. In addition to new hires made by the school employer, does this new ECH requirement apply to other entities? Indiana Code 20-26-5-10(a), as amended by HEA 1462, requires that a school corporation, including a charter school and an accredited nonpublic school, shall adopt a policy concerning criminal history information for individuals who:

- 1) apply for employment with the school corporation; or apply for employment with an entity with which the school corporation contracts for services; or
- 2) seek to enter into a contract to provide services to the school corporation or are employed by an entity that seeks to enter into a contract to provide services to the school corporation,

if the individuals are likely to have direct, ongoing contact with children within the scope of their employment.

IC 20-26-5-10(b) goes on to specify the timing of the background checks relative to employment and some particulars concerning the administration of the local policy. Further, it states “the applicant is responsible for all costs associated with obtaining the expanded criminal history check. An applicant may not be required by a school corporation, charter school, or accredited nonpublic schools to obtain an expanded criminal history check more than one (1) time during a five (5) year period.”

To read the entire HEA 1462 you may go the Indiana General Assembly home page and click on the link for Laws and Administrative Rules and enter HEA 1462. The bill adds and amends several areas of the Indiana Code that impact local school policy and operation that will be of interest to you.

16. How does this requirement apply to volunteers and coaches? You should continue to follow your local governing body policy relative to background checks for volunteers, volunteer coaches and other unpaid community “helpers” in your schools or at school sponsored activities. If the governing body wishes to apply the expanded criminal history check requirement to those individuals as well, the governing body has the authority to change its local policy accordingly.

17. How does this new requirement for ECH checks for new hires after July 1 impact teacher candidates from colleges and universities who are placed in schools for student teaching, observations, and other clinical experiences? There is no state requirement related to criminal history checks prior to clinical experience placements for teacher candidates. Those requirements are determined by partnership agreements between P-12 schools and institutions of higher education. This is a good time, however, for institutions of higher education and their P-12 school partners to revisit and mutually agree upon requirements/expectations in their partnership agreements for field experiences.

18. HEA 1462 provides that an ECH must be obtained either before or not later than three (3) months after the applicant’s employment. What if an applicant has already been hired and the ECH check is returned with a “dirty” or “not qualified” result? The Department of Education strongly encourages you to have an ECH in hand prior to recommending an applicant for employment. However, an applicant can also be hired pending successful fulfillment of all pre-employment conditions, which would include a “clean” or “qualified” ECH result. If, after hiring, the ECH check disqualifies the applicant/new employee then the employment relationship can be terminated without further process as long as such is consistent with local policies.

19. How do we reconcile the statutory language stating the applicant is responsible for the cost of the ECH if we use a vendor who charges us a flat rate for the year? The OELD has communicated with the State Board of Accounts concerning whether school employers may pay for an ECH through a vendor when the statutory language states that the applicant is responsible for all costs associated with obtaining the ECH check. According to State Board of Accounts, a school employer using a vendor for ECH checks that charges a flat contract fee regardless of volume should look at the number of ECH and LCH (limited criminal history) checks obtained in prior years, if possible, and estimate the number of ECH checks to be run in the future and come up with a reasonable “per background check” cost based on the flat fee paid to the vendor. That amount should be charged by the school employer to each employee for whom an ECH check is run by the school employer’s ECH vendor. A school employer paying a vendor a “per ECH” cost or using a vendor on an individual ECH basis should charge the employee the cost of the ECH. For school employers using the fingerprint-based check through L-1 Identity Solutions and the Indiana State Police, the applicant pays the cost during online registration or at the time of fingerprinting.