



COVID-19 PANDEMIC FBI BACKGROUND CHECK EXTENSION

**Prepared by the PSEA Legal Division
May 11, 2020**

On March 6, 2020, Governor Wolf declared a disaster emergency in order to help contain, prevent the spread of, and address the effects of COVID-19, the novel coronavirus that was ultimately declared by the World Health Organization to be a global pandemic. As part of the Commonwealth's response, Governor Wolf has signed into law Act 18 of 2020.

Act 18 of 2020 amended the Child Protective Services Law (CPS Law) to, among other things, add a new Section 6387, entitled "Pandemic of 2020," providing emergency relief to those individuals required to obtain FBI background check recertification under Section 6344.4 of the CPS Law, including school employees.

What does the new law do?

Section 6387 of the CPS Law grants certain individuals who would otherwise be required to obtain an FBI background check recertification during the period of the COVID-19 disaster emergency *an extension of time until December 31, 2020, to obtain the recertification.*

Which employees are covered by the new law?

Under Section 6344 of the CPS Law and Section 111 of the Public School Code, all public and private school employees who have direct contact with children must complete background checks upon their initial employment. Those checks include a child abuse clearance obtained from the Department of Human Services (DHS), a State Police criminal history record information check, and an FBI criminal history report. All three checks must be renewed every five years, within five years of the oldest dated background check.

A large number of school employees obtained background checks in 2015 and are now due to renew or recertify all three checks. New Section 6387 applies to individuals who are required to obtain FBI background check recertification during the period of the COVID-19 disaster emergency.

Why was this relief needed?

Under current practice of the Pennsylvania Department of Education (PDE), all fingerprinting necessary for the FBI background checks must be performed at Identogo facilities. However, many Identogo facilities have been closed or have reduced their operating hours due to the

COVID-19 emergency. These service reductions have made it difficult, if not impossible, for school employees to obtain their FBI background check recertifications in a timely manner.

Does new Section 6387 affect the recertifications of the State Police criminal background check and the DHS child abuse clearance?

No. New Section 6387 requires individuals who need recertifications of their State Police criminal background checks or their DHS child abuse clearances to do so within 60 months of their previous certifications, even if that deadline falls within the period of the COVID-19 disaster emergency. Both the State Police criminal background check and DHS child abuse clearance may be completed online. School employees needing to renew those two checks should do so now.

When will future recertifications be due?

Section 6387 provides that individuals who take advantage of the extension afforded for the FBI criminal background checks must obtain their next FBI criminal background check recertification within 60 months of the delayed recertification. However, because the State Police criminal background check and DHS child abuse clearance recertifications were not delayed due to COVID-19, individuals requiring these recertifications should obtain them within 60 months of their most recent recertifications. This could result in different due dates for each of the three required recertifications. ***It is important that individuals working in a school setting be aware of and comply with the background check requirements set forth in local policies of the school entities where they work.*** PSEA will monitor whether the Department of Education or DHS issues any guidance for employees and school entities on how to comply with new Section 6387.

How does new Section 6387 affect initial applicants for employment in a school setting?

Initial applicants for employment in a school setting are not impacted by new Section 6387. The new law allows some individuals to begin employment without obtaining the FBI background check if certain conditions apply, but this does not apply to school employees. Note, however, that the Public School Code's existing provisional employment rule still applies. Under Section 111(i) of the Public School Code, a school administrator may employ in-state applicants for up to 30 days and out-of-state applicants for up to 90 days when the applicant has applied for all of the required background checks, the administrator knows of nothing that would disqualify the applicant, the applicant swears or affirms in writing that he or she is not disqualified from employment, and the applicant does not work alone with children during the provisional period.

When did new Section 6387 take effect?

New Section 6387 took effect when the Governor signed Act 18 into law on May 8, 2020, but the portion of the new law that permits delayed recertification of an FBI criminal background check applies retroactively to March 6, 2020, the day on which Governor Wolf declared the COVID-19 disaster emergency.