

***MASSACHUSETTS
DOWN SYNDROME CONGRESS
STATE LEGISLATIVE PRIORITIES***



For the 187th Session of the General Court
2011/2012

*Recommended by the
MDSC Legislative Advocacy Task Force*

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Massachusetts Down Syndrome Congress Priority Bills

HB523: An Act to require national background checks Lead Sponsor: Representative Marty Walsh

Fact Sheet:

CURRENT LAW: Individuals who apply for employment within Massachusetts to work with persons served by the Massachusetts Department of Developmental Services (DDS) must undergo a Criminal Offense Registry Information (CORI) check. The CORI database is limited to a person's criminal history within Massachusetts.

There is no statutory or regulatory requirement that DDS or any of its vendor agencies conduct any systematic national criminal background checks of potential employees. As such, potential employees with a criminal history documented beyond the border of Massachusetts have worked with some of our state's most vulnerable residents. This will continue to happen until this loophole is closed.

WHAT THE BILL WOULD DO: This bill will require a national check of candidates who apply for positions working with individuals served by DDS. Criminal background verification will be determined by cross-referencing fingerprint data with The Integrated Automated Fingerprint Identification System, more commonly known as IAFIS, a national fingerprint and criminal history system maintained by the Federal Bureau of Investigation's Criminal Justice Information Services (CJIS) Division. The IAFIS provides automated fingerprint search capabilities, latent searching capability, electronic image storage, and electronic exchange of fingerprints and responses, 24 hours a day, 365 days a year. Before an individual is hired to work with a person served by DMR, they must undergo this screening. Any employer who does not follow this law and DDS guidelines in implementation would be held in violation. This bill has been revised to be consistent with CORI reform efforts.

REASON FOR THIS LEGISLATION: Without the capacity to conduct interstate scrutiny of criminal history, it is very easy for individuals to move from state to state to obtain employment. With the current entry-level salary of approximately \$10 per hour, agencies are under pressure to fill positions. An agency may hire an individual without having the means to make an informed decision based upon access to an applicant's comprehensive criminal history. This legislation would remedy the danger this situation would pose to people served by DDS. It would also expedite the current system and provide clear verification data. *This bill would not modify or adjust the current guidelines in how results are interpreted or implemented.* Similar legislation has already been successfully implemented in other states including New York and Idaho.

COST: \$25.00 per IAFIS check. There are roughly 26,500 persons employed in the DDS system (including state/private, entry-level and supervisory). Assuming 5,000 staff are hired on a yearly basis (hypothetical), the annual cost would be \$125,000. Machines necessary for processing these types of scans are approximately \$15,000.

Bill Text

SECTION 1. [Section 172 of chapter 6](#) of the General Laws, as appearing in the 2008 Official Edition, is amended by inserting the following new section 172J as follows:-

Notwithstanding any other provision of law, any person seeking employment or a position as a regular volunteer or trainee to provide services for, or, on behalf of the Department of Developmental Services or its vendor agency programs where such employment or position involves potential unsupervised contact with individuals with an intellectual disability (or other individuals determined to be eligible clients of the Department of Developmental Services) shall be required to have a national criminal background check prior to assuming said employment or position. Said criminal background check will be determined by using the Integrated Automated Fingerprint Identification System maintained by the Federal Bureau of Investigations Criminal Justice Information Services Division.

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

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

The Criminal History Systems Board, the Disabled Persons Protection Commission, and the State Police shall collaborate and jointly oversee the participation by all Department of Developmental Services providers in any interstate system for the exchange of criminal offender record information or the equivalent from other jurisdictions and shall be responsible to assure the consistency of such participation including redacting information so that criminal offender record information or the equivalent from other jurisdictions is limited to convictions and open cases, and, that juvenile records are not made available.

Any provider of services to individuals pursuant to a contract with the Department that hires, retains or supervises an employee, volunteer or trainee whom the provider knows or should know, will potentially come into unsupervised contact with such individuals, and, because of a criminal conviction or pending criminal charge of a nature that would pose a unacceptable risk of physical harm to or financial exploitation of such individuals shall be in violation of this provision. The hiring authority shall use, when making a determination of unacceptable risk, the guidelines as provided by existing Department of Developmental Services regulations.

The Board shall afford an individual who may be wrongly associated with a record or whose record may contain errors, the opportunity to contest the accuracy of an out-of-state record. Each individual shall have the right to inspect, and if practicable, copy, criminal offender record information or the equivalent from other jurisdictions which refers to him. If an individual believes such information to be inaccurate or incomplete, the Criminal Systems History Board shall notify the state whose record is contested and assist the individual in following the process for correcting inaccuracies in that state, as well as notify the agency to whom the record was disseminated that the record is being contested and that no adverse action can be taken by that agency pending a resolution of the dispute. This matter should be resolved as soon as practicable but no later than 30 days after notification. Agencies at which criminal offender records or the equivalent from other jurisdictions are sought to be inspected shall prescribe reasonable hours and places of inspection, and shall impose such additional restrictions as may be approved by the board, as are reasonably necessary both to assure the records security and to verify the identities of those who seek to inspect them.

HB1528: An Act relative to Down Syndrome genetic test results

Lead Sponsor: Representative Tom Sannicandro

Bill Text

SECTION 1. [Chapter 111](#) of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after section 70G the following section:-

Section 70H.

(a) For the purposes of this section, the term Down syndrome shall mean a chromosomal condition caused by an error in cell division that results in the presence of an extra whole or partial copy of chromosome 21. Any facility, as defined in section 70E, physician, health care provider, nurse midwife or genetic counselor who renders prenatal care, postnatal care or genetic counseling, upon receipt of a positive test result from a test for Down syndrome, shall be able to provide the expectant or new parent with information provided by the department under subsection (b).

(b) the department shall make available to any person who renders prenatal care, postnatal care or genetic counseling of parents who receive a prenatal or postnatal diagnosis of Down syndrome the following: (1) up-to-date, evidence-based, written information about Down syndrome that has been reviewed by medical experts and national Down syndrome organizations. The written information should include physical, developmental, educational, and psychosocial outcomes, life expectancy, clinical course, and intellectual and functional development and treatment options; and (2) contact information regarding First Call programs and support services, including information hotlines specific to Down syndrome, resource centers or clearinghouses, national and local Down syndrome organizations such as the Massachusetts Down Syndrome Congress, and other education and support programs. The department may also make such information available to any other person who has received a positive test result from a test for Down syndrome.

(c) Information provided under this section shall be culturally and linguistically appropriate as needed by women receiving a positive prenatal diagnosis or the family of a child receiving a postnatal diagnosis of Down syndrome;.

(d) Nothing in this section shall limit the rights of any person under section 70G.

Massachusetts Down Syndrome Congress Support Bills

House Bills

HB51: An Act relative to the health disparities council

Lead Sponsor: Representative James Dwyer

Fact Sheet:

People with disabilities are recorded with health care disparities equal to or greater than ethnic and racial minorities; PWD who are in a racial or ethnic minority are impacted even more. Current policy frameworks exclude gathering data or being concerned about disabilities in the context of disparities.

Bill Text:

SECTION 1. [Section 16O of Chapter 6A](#) of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by adding after “HIV/AIDS” in line 8, the following: “disabilities”

HB76: An Act for creating a means for tracking the unmet needs of individuals with developmental disabilities in the Commonwealth of MA

Lead Sponsor: Representative Tom Sannicandro

Fact Sheet:

This bill will establish an electronic system to track the unmet service needs of individuals with developmental disabilities. The bill requires the system to be operated and maintained by the Office of Disabilities and community Services at the Executive Office of Health and Human services, while the data will be prepared on an annual basis by agencies such as: the Massachusetts Department of Developmental Services, the Massachusetts Rehabilitation Commission, the Massachusetts Commission for the Blind and the Massachusetts Commission for the Deaf and Hard of Hearing.

These agencies will submit their data using a standard reporting form which will include statistics on the number of individuals with developmental disabilities who are applying for, receiving, or have unsuccessfully applied for services with each agency.

Bill Text:

There is hereby established a system of tracking the unmet service needs of individuals with developmental disabilities in Massachusetts. The system will consist of a central electronic database, using open-source software, operated and maintained by The Office of Disabilities and Community Services at the Executive Office of Health and Human Services. The content of the database will consist of data prepared by the following agencies, including but not limited to: the Massachusetts Department of Mental Retardation, the Massachusetts Rehabilitation Commission, the Massachusetts Commission for the Blind and the Massachusetts Commission for the Deaf and Hard of Hearing. Each of the agencies required to submit data will do so annually by means of a standard reporting form which will include statistics regarding the number of individuals with developmental disabilities who apply for services with said agencies, the number of individuals with developmental disabilities receiving services, and the number of individuals with developmental disabilities who apply for services with said agencies and are unsuccessful in receiving services. The Office of Disabilities and Community Services will enter the standard report form content into the electronic database and generate annual reports to be made available on-line to the public.

HB77: An Act Relative to the Humane Treatment of Disabled Persons

Lead Sponsor: Representative Tom Sannicandro

Fact Sheet:

The bill bans aversive therapy in Massachusetts. It prohibits the use of corporeal punishment, including shocking and pinching, for the purpose of changing the behavior of persons with physical or mental disabilities by any program funded, operated, licensed or approved by the Commonwealth.

HB158: An Act for Improving Outcomes for High School Students with Disabilities

Lead Sponsor: Representative Tom Sannicandro

Fact Sheet:

This bill ensures that special education teachers and rehabilitation counselors can receive advanced training regarding transition planning and services. Requires the Board of Education to revise regulations for educator licensure to provide a specialist teacher license in Transition Services. Special education transition services, which are required by federal law, are critical to facilitate a student's movement to post-school activities, including post-secondary education, vocational education, integrated employment, continuing and adult education, adult services, independent living, and community participation. Although schools rely heavily on special education teachers to implement and manage transition planning and services, current licensure requirements inadequately address this critical area. Thousands of children with disabilities, ages 14-22, will directly benefit from this legislation.

HB159: An Act to Promote the Successful Transition of Students with Disabilities to Post-Secondary Education, Employment, and Independent Living

Lead Sponsor: Representative Tom Sannicandro

FACT SHEET:

This bill will help ensure that existing dollars are spent in a more effective manner, assisting older students with disabilities to receive essential special education transition planning and services necessary to prepare for post-secondary education, employment, and independent living. The legislation requires the Board of Education to revise regulations for educator licensure to provide a mechanism for current special education teachers and rehabilitation counselors to obtain a Specialist Teacher License in Transition Services. Although schools rely heavily on special education teachers to implement and manage transition planning and services, current licensure requirements inadequately address this critical area. Thousands of children with disabilities, ages 14-22, will directly benefit from this legislation. The bill will also help reduce litigation costs, by providing school districts with trained personnel necessary to fully implement the transition requirements of federal special education law.

Bill Text:

SECTION 1. [Chapter 71](#) , [section 38G](#) , of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after the definition of temporary certificate the following definition:-

Transition Services, as defined in 20 USC 1401 (34)

SECTION 2 [Section 38G of said chapter 71](#) of the General Laws is hereby amended by adding the following paragraph:-

The board of education shall provide a specialist teacher license in transition services which shall include both coursework and field experience for previously licensed special

education teachers and rehabilitation counselors to develop the competence necessary to serve as transition coordinators to facilitate provision of a coordinated set of activities to adequately prepare students with disabilities to achieve successful transition to post-school activities including further education, competitive employment, and independent living. The requirements for the specialist teacher license in transition services, as promulgated by the board, can also be used to satisfy the requirements for a professional license.

HB596: An Act Relative to Eliminating Health Disparities for Individuals with Intellectual and Developmental Disabilities

Lead Sponsor: Representative Peter J. Koutoujian (previously)

Fact Sheet:

The bill calls for the Executive Office of Health & Human Services, Department of Public Health, and Office of Medicaid to improve access to high-quality health care and eliminate health care disparities among disability populations. Areas of focus will include care coordination, disability education requirements and cultural competence for professional licensure and renewal.

Efforts will include consultation with advocacy groups and families, as well as outreach to hospitals, health care practices, community health centers, professional associations, insurers, and others. Bill was developed to tackle health care disparities identified by The Arc in its health care report.

HB984: An Act to ensure responsibility, cost effectiveness, and meaningful lives for individuals with disabilities

Lead Sponsor: Representative Tom Sannicandro

Fact Sheet:

This bill requires no new funding. It redirects the way funds are appropriated for individuals with intellectual and developmental disabilities to develop a support system that both increases quality and on average reduces costs whenever possible.

It requires that the Executive Office of Human Services working in conjunction with MassHealth and Department of Developmental Services will implement a new home and community based services program through HCBS State plan, 1115 waiver or 1915C waiver to allow public funds to be used as flexibly as possible by the individual for the following goals:

- A place to call home with control over anyone who comes to the front door or otherwise provides any services or supports with freely chosen assistance when necessary
- Community membership with real connections to citizens and memberships in vital community organizations
- Close friends, family and other significant relationships and receive assistance to develop or maintain these relationships
- Economic self- sufficiency through supports or funds as needed provided through jobs, self-employment and active or passive pursuit of private dollars

There are incentives to use funds in a cost effective manner with savings to be placed in a reserve pool that can be used by other individuals if needs increase or circumstances change.

Bill Text:

I. Preamble

It is known:

- there are more than 400,000 identified individuals across the nation on waiting lists for agencies that serve individuals with developmental and intellectual disabilities within the Medicaid program.
- more individuals with developmental disabilities live at home with an aging caregiver than are presently served in 24 hour services and supports.
- Massachusetts and other states continue to fail to meet the needs of our citizens due to the limitations placed on flexibility or choice of services
- a growing number of adults with intellectual and developmental disabilities will require assistance to live in the community
- people with disabilities have the same rights and responsibilities as others and we should use public dollars to assist them to realize those rights and exercise those responsibilities as contributing members of our communities.
- too often services isolate individuals with disabilities in their homes or segregated settings, engaging them in inadequate activities with no or few quality outcomes. -- - regarding personal choices, satisfaction, social integration and increased learning that may lead to rewarding occupations

Demographics pose the greatest challenge to the Medicaid system of supports for individuals with developmental disabilities. Too many people are not receiving the assistance they need. The public Medicaid system is reeling from cost pressures. The time has come for individuals with disabilities, families, advocates and providers to work

together with policy makers in the administration and legislature in crafting a support system that both increases quality and on average reduces costs whenever possible.

Therefore, let Massachusetts implement a new program of services which will be focused in improving the lives of individuals with intellectual and developmental disabilities in the community including economic self-sufficiency whenever possible and to ensure meaningful occupation during the day and social interaction throughout their lives.

This program of services should encourage efficient use of public dollars and be flexible so that individuals may use the funds to live a typical life and budget in creative fashion within a targeted amount of dollars.

The Executive Office of Human Services working in conjunction with MassHealth and Department of Developmental Services will implement a new home and community based services program through HCBS State plan, 1115 waiver or 1915C waiver or other method to implement the following program of supports for individuals with intellectual and developmental disabilities.

II. Goals for the individual

These goals are the quality foundation and planning and budgeting underpinning of the program of services that each person should enjoy:

A place to call home with control over anyone who comes to the front door or otherwise provides any services or supports with freely chosen assistance when necessary

Community membership with real connections to citizens and memberships in vital community organizations

Close friends, family and other significant relationships and receive assistance to develop or maintain these relationships

Economic self sufficiency through supports or funds as needed provided through jobs, self employment and active or passive pursuit of private dollars

III. Implementation

A. Individuals will be deemed eligible and receive prioritization for services in a transparent manner. There will be four major categories for spending available to ensure adequate dollars for supports in addition to social security and medical insurance. The program of services will include the full range of people identified with disabilities including those with complex medical or behavioral conditions and those with profound intellectual impairments. The funding for individuals will be defined through cost corridors as defined in the waiver or state plan based on the functional needs of the individual. The number of cost corridors will total a minimum of three to a maximum of five corridors.

B. Funds will be provided through individual service allocations from EOHHS or the state agency. Dollars are tied to the individual so that they can be utilized as needed for generic community resources, supports or other activities.

C. The categories for supports through all sources of income will be prioritized around the four self-determination domains. These are a place to call home, real community memberships, support for existing or sought after long term relationships, and the development of private income whenever possible. The Plan of Care (POC_ and the Individual Supports Plan (ISP) will be designed around the four goals identified in Section II.

D. Individuals may purchase supports through services that are presently possible to purchase both within and outside the present human service system in any of the present waivers. All services will be marked by self direction and individual rather than congregate services and will include but not be limited to the following:

Individual Support Community Habilitation, Supported Employment Day Habilitation Supplement, Family Support Navigation, Individualized Day Supports, Transportation Day Supports, Homemaker, Individualized Home Supports, Broker services, Live-in Caregiver, Respite, Adult Companion, Assistive Technology, Behavioral Supports and Consultation, Chore, Community Family Training, Community Peer Support, Home Modifications and Adaptations Stabilization, Vehicle Modification, Residential Habilitation, Individual Goods and Services, Occupational Therapy, Integrated work and volunteer services, Individualized Day Supports, Physical Therapy, Speech Therapy Residential Family Training, Residential Peer Support, Self-Directed 24 Hour Supports, Recreation\Leisure, Additional Health Supports, Stabilization, Transitional Assistance Services, and Self-advocacy.

E. The individual will engage in a contract with the state office or agency which will be based upon a plan that identifies the supports to be developed and how funds will support the major self-determination domains and goals listed herein as Section II. The planning and budgeting process shall be melded with the assistance of an unbiased circle of support including the help of an independent broker (to be freely chosen by the individual including size or composition). Using the targeted amount of dollars individuals will be free to utilize them in any helpful fashion within the four domains and specifically include within these plans provisions for health and safety. This new system will provide fiscal incentives for individuals and families to save in return for maximum flexibility in planning and budgeting. Initial funding allocations will be determined at a lesser percentage than traditional services.

F. Any dollars saved for the individual will be dealt with in the following ways:

a. Year one, 50% of savings will be applied to one-time only expenses as identified by the individual; the rest will return to the funding agency to be spent on other individuals for that fiscal year. The savings in year one will be placed in a reserve fund in year two to assure that all needs of the individual are being met. Negotiations will be made with the

individual regarding the adequacy of the allocation and some or all of the savings may be transferred to a reserve fund pool for all individuals.

b. In year 2, 50% of any savings will be added to the individual reserve account in case they are needed for unforeseen circumstances; If not spent in year 2, funding will revert in that year to the reserve fund pool to be used for other qualified individuals.

c. In year 3 a new budget will be finalized based on costs for the coming year.

d. If due to unanticipated events or the need for more supports, the individual allocation is inadequate, the individual will be able to negotiate for additional resources from the reserve fund pool.

e. If the individuals' needs change significantly in either direction, negotiations should take place between the individual and designated authority to move to a different allocation corridor.

G. The individual or the guardian and the individual will be able to utilize resources or types of services as he/she/they sees fit. They will be assisted by state designated or other fiscal intermediaries. They also will have access to independent support brokers to assist in the development of a plan. Provider organizations may be engaged to help organize his/her services/supports upon payment of a negotiated fee but in no way may this arrangement infringe on the authority of the individual outlined above.

H. The individual or guardian and the individual shall have the sole authority over which services or providers are qualified and selected and shall be able to terminate a service agreement with a thirty day notice allowing for purchase of service from another qualified provider of their choice both from within and without the current human service system. The state will develop a random and limited audit to evaluate the services and develop a quality review system based upon the four goals in Section II.

HB1950: An Act to Promote the Inclusive Transition Programs for Students with Severe Disabilities

Lead Sponsor: Representative Tom Sannicandro

Fact Sheet:

The bill provides an inclusive concurrent enrollment discretionary grant program to meet the transition needs of students with severe disabilities by developing the capacity of school districts, working in partnership with institutes of higher education, to support college success, participation in student life of the college community, competitive employment, and provision of a free appropriate public education in the least restrictive environment. Building on the success of the Commonwealth's inclusive concurrent enrollment pilot program, students with severe disabilities will be able to participate with chronologically age appropriate peers in public college courses, rather than face increasing isolation.

HB168: An Act Relative to Equal Educational Opportunities for Students with Disabilities

Lead Sponsor: Representative Speliotis

Fact Sheet:

The bill addresses the impact of a Rehnquist decision by the US Supreme Court (Buckhannon, 2001) which has effectively created a two-tier system, barring many low and middle-income families from accessing special education rights and services. This bill would reinstate parents' rights to recover attorneys' fees as previously available prior to 2001. This is critical to encourage prompt resolution and settlement of disputes, reduce litigation costs for families and school districts, reduce lengthy delays which had children deprived of essential services for months and sometimes years, and help ensure that children of all income levels receive equal educational opportunities.

Senate Bill

SB193: An Act to maintain short term objectives for students with disabilities

Lead Sponsor: Senator Creem

Fact Sheet:

The bill would require school districts to continue the current practice of including and maintaining short term objectives in the IEP's of students with disabilities. A recent change in federal law removed this requirement and this bill would ensure the continuation of requiring short term objectives by codifying it in the State law. The inclusion of short term objectives in IEP's is important to assist in measuring the student's progress, and ensure accountability, which is critically important for all students with disabilities.