Updating your Criminal History Check Policy under SEA410, the library law of 2020

Learning session for Indiana’s public libraries
Historic Lesson: SB64 from 2019

In 2019, the **SB64, Criminal Background Checks**, as introduced, would have required all libraries to conduct criminal history checks on all employees, volunteers, program leaders and performers.

With ILF’s leadership SB64 was amended to require background checks for libraries employees and volunteers whose scope of work is contact with children under 14.

The bill had strong support with 3 Senate authors, 3 co-authors, and 3 House sponsors and **passed the Senate 38-11**.

SB64 did not receive a hearing in the House. However, language was amended into SB436 (a nurse interstate compact bill) and eventually died.

During this session, ILF met with IN Dept. of Education (IDOE), IN State Police, and legislators to reach understanding about ways to address possible issues with existing language, to align with IDOE learnings, and to balance goals of safety and fair chance hiring practices.
From idea to a bill in 2020

In response to SB64 from 2019, Indiana Library Federation (ILF) worked with its members, state agency personnel, and lawmakers to assess concerns and to **identify legislative language to address the legislative intent of SB64 while balancing with best practices and fair chance hiring to develop SB410.**

ILF surveyed its members to identify how many libraries already required criminal history checks, for what type of positions, and how they were used. ILF also identified issue of cost for smaller libraries, which mid-size and larger libraries indicated they would continue using third-party payroll vendor for more expanded background check.
Senate Bill 410, Libraries, to Public Law 88

The Indiana General Assembly passed SB410 unanimously at every committee and floor vote.

- Senate Local Government Committee passed SB410, 10-0, on 1/30
- Senate passed 49-0 on 2/4
- House Local Government Committee passed SB410, 13-0, on 2/24
- House passed 89-0 on 3/2

The Governor signed SEA410 into law on 3/18/2020. SEA410 is now Public Law 88. The law becomes effective 7/1/2020. The criminal history check requirement must be in place by 12/31/2020.
Key provisions of SEA410

1. Clarifies the threshold calculation on the cash balance of total tax-supported funds as a percentage of budget based on certified numbers in Gateway.

2. requires criminal history check policies by 12/31/2020 and adds libraries to the list of entities allowed to use Indiana State Police.

3. Adds a child receiving foster care services to the list of nonresident individuals for whom a library may provide a library card.

Other provisions requested by ISL and DLGF

4. Changes term library to library territory.

5. Requires the library to report its adopting fiscal body by October of 2020 and again if the library district or fiscal body changes.

See http://iga.in.gov/legislative/2020/bills/senate/410
BACKGROUND VS CRIMINAL HISTORY CHECKS

Most common background checks

• Prior Employment Verification
• Education Verification
• Reference Check
• Criminal History Check
• Drug Screening
• Sexual Offender Registry Check
• Credit Background Check
• Social Media & Internet Check
DEFINITIONS

• “Limited Criminal History Report” – searched only felonies and misdemeanor arrests within the State of Indiana. A Limited Criminal History search is based upon a subject’s name, date of birth, race, and gender, and if needed, Social Security Number and place of birth. This report does not give the most comprehensive information, as it does not include criminal history information from other states and counties are not required to participate.

• “Expanded Criminal History Check” (IC 20-26-2-1.5) – Does a search of several databases including consumer credit reporting agencies, court records, sex offender registries in all 50 states, multi-state criminal data bases, as well as verifying applicant’s identity, all names associated with applicant, county records and other government units.

• “Expanded Child Protection Index Check” (IC 20-26-2-1.3) – Does a search to determine if the individual has been the subject of a substantiated report of child abuse or neglect since age of 18 or if the individual has had a teaching license suspended or revoked.
KEY IDEAS FROM IN STATE POLICE

• The term “Criminal History Check” is preferred over “Criminal Background Check”

• Three types of checks
  1. Limited criminal history check – IN is one of 23 states that still allows this type of name and Date of birth check. This type of check frequently has false positives because of names.
  2. Expanded criminal history check is established in Indiana Code (IC) and is “public record based” with every jurisdiction where a person lived since age 18. Payroll and third-party vendors offer this.
  3. National Criminal History Check – ISP recommends because it requires fingerprints and is most thorough. Cost is about $50 per check.
KEY IDEAS FROM IN DEPT. OF EDUCATION

- July 1, 2017 marked a major overhaul of teacher criminal history checks.
- IDOE uses both.
  - Statute requires criminal history check is done within 30 days of hire (not prior to) because schools were having such a hard time finding employees and teachers.
  - The Expanded Child Protection Index Check is required within 60 days after hire.
  - Applies to everyone who works in the school who is likely to have “direct and ongoing contact with children” (janitors, bus drivers, food service) every 5 years. Schools usually pay for the checks for employees.
  - Indiana Code (IC) requirement for schools does not include volunteers. Volunteer checks are up to local policy. Most schools have a policy requirement for volunteers with “regular and ongoing contact” with children.
- IDOE suggests that local policy should be specific in practical application and that a criminal history should NOT automatically disqualify a candidate. See IDOE’s FAQ at https://www.doe.in.gov/sites/default/files/legaffairs/faq_expanded-criminal-history-and-ecpi-checks-updated-52017final.pdf
DEVELOPING YOUR POLICY AND PROCEDURES
WHAT DOES THE PUBLIC LAW 88 REQUIRE?

A public library shall adopt a policy, not later than December 31, 2020, regarding conducting criminal history checks for individuals who are more than eighteen (18) years of age and who:

(1) Apply to the public library for employment or volunteer work; or

(2) Are employed by the public library or perform volunteer work for the public library.

See [http://iga.in.gov/legislative/2020/bills/senate/410#document-86f0c419](http://iga.in.gov/legislative/2020/bills/senate/410#document-86f0c419)
DEVELOPING YOUR POLICY AND PROCEDURES

The Law requires that you have a criminal history check policy, but does not specify policy.

INCLUDE IN POLICY
• WHO - Who is subject to check?
• WHEN – When does a check occur?

INCLUDE IN PROCEDURES

• A different WHO? Who runs the check? Who has access to the information? Where is the information kept?
• WHAT? What types of offenses might disqualify one from employment/volunteering for what types of positions?
• WHEN? When do you re-run checks?
• HOW? What service do you use to conduct the check? How do you pay for it?
OTHER CONSIDERATIONS

- **New Policies**— Write simply. Consider how you will implement for existing staff. (place all on a #-year cycle so that you may phase in)

- **Inability to share criminal history check information**— Many library staff already complete checks through schools. Entities are not permitted to share criminal history checks with each other.

- **Minors**— Criminal history information is not available for minors under 18. Then what happens after turns 18?

- **Directors** — If a Library Board is seeking to hire a director, consider how the check will be run and reported for the director. (i.e., may authorize 1 person on staff to run the check and report to 1 person on the Board)

- **Fair Credit Reporting Act**— If you use checks in pre-hire process and disqualify someone for what is found in a check, you must inform the candidates and allow opportunity for them to dispute/correct.
LAKE COUNTY PUBLIC LIBRARY

• Has had a practice/procedure for about 5 years; in the process of creating a policy.

• HR director runs criminal history checks on all new employees over 18 immediately after hire. If a criminal history is found, it is handled on a case-by-case basis with the Director. Considerations are given to type of position, type and severity of crime, how long ago, etc.

• LCPL uses its payroll provider, which offers an expanded limited criminal history check. Additional types of checks may be added in an a la carte manner.
Lake County Public Library may order a background check on you in connection with your continuing employment, employment consideration or volunteer application. The Library may order additional background reports for employment purposes, to the maximum extent permitted by applicable law. The employee, candidate or volunteer will fill out a background check authorization form and return it to the Human Resources Department. The Human Resources Manager will order the background check upon receipt of the signed release form and will be the company’s representative to review the results. In instances where negative or incomplete information is obtained, the Human Resources Manager and the Director will assess the potential risks and liabilities related to the job's requirements and the length of time since any negative information. If a decision is adversely made based on the results of a background check, there may be certain additional Fair Credit Reporting Act (FCRA) requirements that will be handled by Human Resources in conjunction with the employment screening service (if applicable). Background check information will be maintained in a file separate from employees' personnel files. The Lake County Public Library reserves the right to modify this policy at any time without notice.
HAMILTON EAST PUBLIC LIBRARY

- Has had background check requirement for employees prior to final hiring for at least a decade, for volunteers the past two years.
- HR Manager handles all communication with prospective employee/volunteer and with Safe Hiring Solutions (vendor)
- Our chosen screening level ($35—library pays) includes:
  - Social Security verification
  - Address history
  - National criminal history database search
  - National sex offender registry search
  - County criminal check (up to 3 counties of residence)
HEPL Policy and Practice

DRAFT Policy

Criminal history background checks are required for all current and prospective library staff and volunteers more than 18 years of age prior to performing any work or activity on behalf of the Library.
HEPL Policy and Practice

Current Board Approved Staff Handbook Language:
HEPL reserves the right to require applicants for all positions to submit to a background check upon the extension of a conditional offer of employment. An employee’s first day of work must not be prior to the satisfactory completion of the background check.

If an applicant attempts to withhold information or falsify information pertaining to his or her background, previous convictions, etc., he or she will be disqualified from further employment consideration. If, after hire, an employee is found to have withheld or falsified information regarding his or her background, he or she may be subject to disciplinary action and/or termination.
HEPL Policy and Practice

• We do not automatically disqualify applicants with "hits"
• Like LCPL, HR consults with Director and assesses information before a decision is made. Legal counsel may be consulted if warranted.
• HR maintains the background check information in secure personnel and applicant files.
LA PORTE COUNTY PUBLIC LIBRARY

- Has done background checks for 20 plus years
- The current policy reads "**Criminal and driver's license background checks will be conducted as required by the Library's insurance and allowed by law.**" (Yes....that is it....one sentence)
- Background checks are limited to those staff who had financial duties, worked primarily with youth or held department head positions
- In 2014 the Board of Trustees adopted a policy to allow for background checks on volunteers over the age of 18
- Since 2016 we have used Validity Screening Solutions. The cost is less than $20 per individual. They also handle all mandatory notifications to the
  - Social Security verification
    - Address history
    - National criminal history database search
    - National sex offender registry search
LA PORTE COUNTY PUBLIC LIBRARY

• Kept Board and the Library legal counsel informed through SB410. Concerns included:
  • Equity in determining which staff had background checks.
  • Process if a background check finds information which may be used to disqualify job applicants.
• Result: **newly drafted four (4) page policy**. The new policy begins "La Porte County Public Library ("LPCPL") is committed to ensuring that its missions and purposes are supported by qualified staff and that its facilities are safe. LPCPL is also committed to taking meaningful actions to protect its finances, property, and other assets. This policy sets forth LPCPL’s procedures for conducting pre-employment background checks for all employees and adult volunteers."

• Benefits of a more detailed policy with procedures:
  • Defines terms and explains procedures
  • Helps HR staff conducting interviews and communicating to current and prospective staff about background check requirements
  • Provides clear guidance to all about how decisions will be handled.

*LPCPL does also plan to conduct background checks on staff who did not have a check done at the time of hire.*
BEST PRACTICE LEARNINGS
YOUR NEXT STEPS

Assess best options (policy and practice) for your library

Draft policy (and practice) for your library

Board adopt criminal history check policy no later than 12/31/2020.