

114TH CONGRESS  
1ST SESSION

# S. 856

To amend the Elementary and Secondary Education Act of 1965 to require criminal background checks for school employees.

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## IN THE SENATE OF THE UNITED STATES

MARCH 24, 2015

Mr. ALEXANDER (for himself, Mr. KIRK, Mr. ROUNDS, Ms. MURKOWSKI, Mr. ISAKSON, and Mr. TILLIS) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To amend the Elementary and Secondary Education Act of 1965 to require criminal background checks for school employees.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Stop Sexual Abuse  
5 by School Personnel Act of 2015”.

6 **SEC. 2. CRIMINAL BACKGROUND CHECKS FOR SCHOOL EM-**  
7 **PLOYEES.**

8 (a) IN GENERAL.—Subpart 2 of part E of title IX  
9 of the Elementary and Secondary Education Act of 1965

1 (20 U.S.C. 7901 et seq.) is amended by adding at the end  
 2 the following:

3 **“SEC. 9537. CRIMINAL BACKGROUND CHECKS FOR SCHOOL**  
 4 **EMPLOYEES.**

5 “(a) CRIMINAL BACKGROUND CHECK REQUIRE-  
 6 MENTS.—

7 “(1) IN GENERAL.—Each State educational  
 8 agency and local educational agency that receives  
 9 funds under this Act shall have in effect policies and  
 10 procedures that require a criminal background check  
 11 for each school employee in each covered school  
 12 served by such State educational agency and local  
 13 educational agency.

14 “(2) REQUIREMENTS.—A background check re-  
 15 quired under paragraph (1) shall be conducted and  
 16 administered by—

17 “(A) the State;

18 “(B) the State educational agency; or

19 “(C) the local educational agency.

20 “(b) STATE AND LOCAL USES OF FUNDS.—A State,  
 21 State educational agency, or local educational agency that  
 22 receives funds under this Act may use such funds to estab-  
 23 lish, implement, or improve policies and procedures on  
 24 background checks for school employees required under  
 25 subsection (a) to—

1           “(1) expand the registries or repositories  
2 searched when conducting background checks, such  
3 as—

4           “(A) the State criminal registry or reposi-  
5 tory of the State in which the school employee  
6 resides;

7           “(B) the State-based child abuse and ne-  
8 glect registries and databases of the State in  
9 which the school employee resides;

10           “(C) the Federal Bureau of Investigation  
11 fingerprint check using the Integrated Auto-  
12 mated Fingerprint Identification System; and

13           “(D) the National Sex Offender Registry  
14 established under section 119 of the Adam  
15 Walsh Child Protection and Safety Act of 2006  
16 (42 U.S.C. 16919);

17           “(2) provide school employees with training and  
18 professional development on how to recognize, re-  
19 spond to, and prevent child abuse;

20           “(3) develop, implement, or improve mecha-  
21 nisms to assist covered local educational agencies  
22 and covered schools in effectively recognizing and  
23 quickly responding to incidents of child abuse by  
24 school employees;

1           “(4) develop and disseminate information on  
2 best practices and Federal, State, and local re-  
3 sources available to assist local educational agencies  
4 and schools in preventing and responding to inci-  
5 dents of child abuse by school employees;

6           “(5) develop professional standards and codes  
7 of conduct for the appropriate behavior of school  
8 employees;

9           “(6) establish, implement, or improve policies  
10 and procedures for covered State educational agen-  
11 cies, covered local educational agencies, or covered  
12 schools to provide the results of background checks  
13 to—

14           “(A) individuals subject to the background  
15 checks in a statement that indicates whether  
16 the individual is ineligible for such employment  
17 due to the background check and includes infor-  
18 mation related to each disqualifying crime;

19           “(B) the employer in a statement that in-  
20 dicates whether a school employee is eligible or  
21 ineligible for employment, without revealing any  
22 disqualifying crime or other related information  
23 regarding the individual;

24           “(C) another employer in the same State  
25 or another State, as permitted under State law,

1 without revealing any disqualifying crime or  
2 other related information regarding the indi-  
3 vidual; and

4 “(D) another local educational agency in  
5 the same State or another State that is consid-  
6 ering such school employee for employment, as  
7 permitted under State law, without revealing  
8 any disqualifying crime or other related infor-  
9 mation regarding the individual;

10 “(7) establish, implement, or improve proce-  
11 dures that include periodic background checks,  
12 which also allows for an appeals process as described  
13 in paragraph (8), for school employees in accordance  
14 with State policies or the policies of covered local  
15 educational agencies served by the covered State  
16 educational agency;

17 “(8) establish, implement, or improve a process  
18 by which a school employee may appeal the results  
19 of a background check, which process is completed  
20 in a timely manner, gives each school employee no-  
21 tice of an opportunity to appeal, and instructions on  
22 how to complete the appeals process;

23 “(9) establish, implement, or improve a review  
24 process through which the covered State educational  
25 agency or covered local educational agency may de-

1        termine that a school employee disqualified due to a  
2        crime is eligible for employment due to mitigating  
3        circumstances as determined by a covered local edu-  
4        cational agency or a covered State educational agen-  
5        cy;

6            “(10) establish, implement, or improve policies  
7        and procedures intended to ensure a covered State  
8        educational agency or covered local educational  
9        agency does not knowingly transfer or facilitate the  
10       transfer of a school employee if the agency knows  
11       that employee has engaged in sexual misconduct, as  
12       defined by State law, with an elementary school or  
13       secondary school student;

14           “(11) provide that policies and procedures are  
15       published on the website of the covered State edu-  
16       cational agency and the website of each covered local  
17       educational agency served by the covered State edu-  
18       cational agency;

19           “(12) provide school employees with training re-  
20       garding the appropriate reporting of incidents of  
21       child abuse under section 106(b)(2)(B)(i) of the  
22       Child Abuse Prevention and Treatment Act (42  
23       U.S.C. 5106a(b)(2)(B)(i)); and

24           “(13) support any other activities determined  
25       by the State to protect student safety or improve the

1       comprehensiveness, coordination, and transparency  
2       of policies and procedures on criminal background  
3       checks for school employees in the State.

4       “(c) NO PRIVATE RIGHT OF ACTION.—Nothing in  
5 this section shall be construed to create a private right  
6 of action if a State, covered State educational agency, cov-  
7 ered local educational agency, or covered school is in com-  
8 pliance with State regulations and requirements con-  
9 cerning background checks.

10       “(d) BACKGROUND CHECK FEES.—Nothing in this  
11 section shall be construed as prohibiting States or local  
12 educational agencies from charging school employees for  
13 the costs of processing applications and administering a  
14 background check as required by State law, provided that  
15 the fees charged to school employees do not exceed the  
16 actual costs to the State or local educational agency for  
17 the processing and administration of the background  
18 check.

19       “(e) STATE AND LOCAL PLAN REQUIREMENTS.—  
20 Each plan submitted by a State or local educational agen-  
21 cy under title I shall include—

22               “(1) an assurance that the State and local edu-  
23               cational agency has in effect policies and procedures  
24               that meet the requirements of this section; and

1           “(2) a description of laws, regulations, or poli-  
2           cies and procedures in effect in the State for con-  
3           ducting background checks for school employees de-  
4           signed to—

5                   “(A) terminate individuals in violation of  
6                   State background check requirements;

7                   “(B) improve the reporting of violations of  
8                   the background check requirements in the  
9                   State;

10                  “(C) reduce the instance of school em-  
11                  ployee transfers following a substantiated viola-  
12                  tion of the State background check require-  
13                  ments by a school employee;

14                  “(D) provide for a timely process by which  
15                  a school employee may appeal the results of a  
16                  criminal background check;

17                  “(E) provide each school employee, upon  
18                  request, with a copy of the results of the crimi-  
19                  nal background check, including a description  
20                  of the disqualifying item or items, if applicable;

21                  “(F) provide the results of the criminal  
22                  background check to the employer in a state-  
23                  ment that indicates whether a school employee  
24                  is eligible or ineligible for employment, without

1 revealing any disqualifying crime or other re-  
2 lated information regarding the individual; and

3 “(G) provide for the public availability of  
4 the policies and procedures for conducting back-  
5 ground checks.

6 “(f) TECHNICAL ASSISTANCE TO STATES, SCHOOL  
7 DISTRICTS, AND SCHOOLS.—The Secretary, in collabora-  
8 tion with the Secretary of Health and Human Services  
9 and the Attorney General, shall provide technical assist-  
10 ance and support to States, local educational agencies, and  
11 schools, which shall include, at a minimum—

12 “(1) developing and disseminating a com-  
13 prehensive package of materials for States, State  
14 educational agencies, local educational agencies, and  
15 schools that outlines steps that can be taken to pre-  
16 vent and respond to child sexual abuse by school  
17 personnel;

18 “(2) determining the most cost-effective way to  
19 disseminate Federal information so that relevant  
20 State educational agencies and local educational  
21 agencies, child welfare agencies, and criminal justice  
22 entities are aware of such information and have ac-  
23 cess to it; and

24 “(3) identifying mechanisms to better track and  
25 analyze the prevalence of child sexual abuse by

1 school personnel through existing Federal data col-  
2 lection systems, such as the School Survey on Crime  
3 and Safety, the National Child Abuse and Neglect  
4 Data System, and the National Crime Victimization  
5 Survey.

6 “(g) REPORTING REQUIREMENTS.—

7 “(1) REPORTS TO THE SECRETARY.—A covered  
8 State educational agency or covered local educational  
9 agency that uses funds pursuant to this section shall  
10 report annually to the Secretary on—

11 “(A) the amount of funds used; and

12 “(B) the purpose for which the funds were  
13 used under this section.

14 “(2) SECRETARY’S REPORT CARD.—Not later  
15 than July 1, 2017, and annually thereafter, the Sec-  
16 retary, acting through the Director of the Institute  
17 of Education Sciences, shall transmit to the Com-  
18 mittee on Health, Education, Labor, and Pensions  
19 of the Senate and the Committee on Education and  
20 the Workforce of the House of Representatives a na-  
21 tional report card that includes—

22 “(A) actions taken pursuant to subsection  
23 (f), including any best practices identified under  
24 such subsection; and

1           “(B) incidents of reported child sexual  
2           abuse by school personnel, as reported through  
3           existing Federal data collection systems, such  
4           as the School Survey on Crime and Safety, the  
5           National Child Abuse and Neglect Data Sys-  
6           tem, and the National Crime Victimization Sur-  
7           vey.

8           “(h) RULES OF CONSTRUCTION REGARDING BACK-  
9           GROUND CHECKS.—

10           “(1) NO FEDERAL CONTROL.—Nothing in this  
11           section shall be construed to authorize an officer or  
12           employee of the Federal Government to—

13                   “(A) mandate, direct, or control the back-  
14                   ground check policies or procedures that a  
15                   State or local educational agency develops or  
16                   implements under this section;

17                   “(B) establish any criterion that specifies,  
18                   defines, or prescribes the background check  
19                   policies or procedures that a State or local edu-  
20                   cational agency develops or implements under  
21                   this section; or

22                   “(C) require a State or local educational  
23                   agency to submit such background check poli-  
24                   cies or procedures for approval.

1           “(2) PROHIBITION ON REGULATION.—Nothing  
2 in this section shall be construed to permit the Sec-  
3 retary to establish any criterion that—

4                   “(A) prescribes, or specifies requirements  
5 regarding, background checks for school em-  
6 ployees;

7                   “(B) defines the term ‘background checks’,  
8 as such term is used in this section; or

9                   “(C) requires a State or local educational  
10 agency to report additional data elements or in-  
11 formation to the Secretary not otherwise explic-  
12 itly authorized under this section or any other  
13 Federal law.

14           “(i) DEFINITIONS.—In this section—

15                   “(1) the term ‘covered local educational agency’  
16 means a local educational agency that receives funds  
17 under this Act;

18                   “(2) the term ‘covered school’ means a public  
19 elementary school or public secondary school, includ-  
20 ing a public elementary or secondary charter school,  
21 that receives funds under this Act;

22                   “(3) the term ‘covered State educational agen-  
23 cy’ means a State educational agency that receives  
24 funds under this Act; and

1           “(4) the term ‘school employee’ includes, at a  
2           minimum—

3                   “(A) an employee of, or a person seeking  
4                   employment with, a covered school, covered  
5                   local educational agency, or covered State edu-  
6                   cational agency and who, as a result of such  
7                   employment, has (or, in the case of a person  
8                   seeking employment, will have) a job duty that  
9                   includes unsupervised contact or interaction  
10                  with elementary school or secondary school stu-  
11                  dents; or

12                   “(B) any person, or any employee of any  
13                   person, who has a contract or agreement to  
14                   provide services with a covered school, covered  
15                   local educational agency, or covered State edu-  
16                   cational agency, and such person or employee,  
17                   as a result of such contract or agreement, has  
18                   a job duty that includes unsupervised contact or  
19                   unsupervised interaction with elementary school  
20                   or secondary school students.”.

21           (b) TABLE OF CONTENTS.—The table of contents in  
22           section 2 of the Elementary and Secondary Education Act  
23           of 1965 is amended by inserting after the item relating  
24           to section 9536 the following:

“Sec. 9537. Criminal background checks for school employees.”.

