

## Legal Q&A: *Background Checks*

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### *Should our library require background checks as part of our Personnel Policy?*

Background checks of library staff, volunteers, and program presenters are a hot topic right now. Understandably, library trustees want to be sure that the people they trust with their patrons, particularly their young patrons, can be trusted to act appropriately.

New Hampshire law on background checks is sparse. The only real instances of where a background check would be required for anyone working or volunteering at libraries is when the library is at a school. That requirement is found within RSA 189:13-a, which requires a background check for anyone working or volunteering at a school. Library trustees are not subject to background checks; as elected officials, their qualifications are set by statute. However, should a library trustee wish to volunteer with the library, they would have to undergo a background check pursuant to the policy adopted by the trustees as a whole.

While there is no legal requirement that other libraries obtain background checks on anyone, however, it is possible for a library's board of trustees to adopt a policy pursuant to RSA 202-A:11 which does require that background checks be performed on all library staff, volunteers, and program presenters. It's important that the trustees outline the background check requirements in their policies clearly. There's nothing worse for staff than trying to explain a policy which is not clearly written and does not seem to apply to everyone equally.

Part of that policy must include who is responsible for paying for the background check. There is not a New Hampshire law which dictates that it must be the library or the potential employee or volunteer. (It is probably good practice for the library to pay the background checks. Few volunteers will be willing to pay to volunteer).

Background checks should be conducted through the New Hampshire Department of Safety. Although there are numerous private companies offering background check services, none of those private companies have a strict mandate to ensure that the records are accurate, unlike the Department of Safety. In addition, there are innumerable stories of private background check companies erroneously listing people with common names as having criminal convictions when they did not. Therefore, only the Department of Safety should be used to obtain background checks on potential employees and volunteers.

The Department of Safety does have a fee for its background check process, known as a "criminal records check." There are two separate forms of which libraries should be aware. The first is the Criminal Record Release Authorization Form, also known as the DSSP 256. This is the standard "background check form." However, there is a separate form, the Reduced Fee Request Form, which is authorized under New Hampshire Administrative Rule Saf-C 5703.07, and allows volunteers for public (and non-profit) entities, who will work with the elderly, disabled, or children, to pay the reduced fee for the background check. That form will reduce the cost to \$10 from \$25.

Note that there are rules about background checks obtained from the Department of Safety. Administrative Rule Saf-C 5704.06 dictates that the entity or person receiving the information, i.e. the library director, must maintain the confidentiality of any criminal history records that it receives from the Department of Safety. The record must be destroyed within 60 days if a criminal record exists and immediately if no such record exists. Criminal records checks cannot be kept in personnel files and it is best practice to note in the personnel file that a criminal records check was conducted and that it was destroyed pursuant to New Hampshire Rule Saf-C 5704.06 on a particular date, so that there is no confusion at a later time about whether a criminal records report was destroyed.

The decision to adopt a background check policy is something that is entirely up to the individual boards of trustees for libraries. It is important to remember, however, that any policy should be comprehensive and apply fairly and equally. Trustees should not attempt to adopt a policy which targets presenters on specific topics or volunteers who only come in on weekdays. Trustees should keep in mind that equal treatment is key to ensuring that these policies are both lawful and acceptable by their community's standards. □