

HOUSE No. 1495

By Mr. Jones of North Reading, petition of Bradley H. Jones, Jr., and others relative to criminal history background checks for teacher licensure applicants. The Judiciary.

The Commonwealth of Massachusetts

PETITION OF:

Bradley H. Jones, Jr.	Elizabeth A. Poirier
Mary S. Rogeness	Karyn E. Polito
George N. Peterson, Jr.	Richard J. Ross
John A. Lepper	Susan Williams Gifford
Viriato Manuel deMacedo	Jeffrey Davis Perry
Paul K. Frost	Donald F. Humason, Jr.
Robert S. Hargraves	Todd M. Smola

In the Year Two Thousand and Seven.

AN ACT RELATIVE TO ENSURING QUALITY FOR TEACHER LICENSURE APPLICANTS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 71 of the General Laws, as appearing in
2 the 2004 Official Edition, is hereby amended by inserting, after
3 section 38G, the following section:—

4 Section 38G½. State and National Criminal History Back-
5 ground Check for Teacher Licensure Applicants and Other School
6 Personnel

7 (a) For the purposes of this section, the following words shall
8 have the following meanings:—

9 “Applicant”, an individual who: applies for an initial educator
10 license, as defined in section 38G; who applies for a recertifica-
11 tion of an educator license, as defined in section 38G, after the
12 effective date of this act; or who applies for any full-time or part-
13 time employment in a local school department that will expose the
14 individual to unsupervised access to children in an educational
15 setting.

16 “Department”, the department of education, as defined in
17 section 1 of chapter 15.

18 “Educational setting”, any vehicle, building, structure, location
19 or other area, whether public or private property, utilized for or
20 involved in the education, training, instruction, or supervision of
21 children by a local, regional or charter school district, or the trans-
22 portation of children to, from or in connection with any such
23 activity.

24 “Unbecoming behavior”, an offense established in sections
25 13B, 13H, 13J, 22A, 23, 24B, 26A, and 27A of chapter 265 or,
26 sections 4, 4A and 29A-29C, inclusive, of chapter 272. “State and
27 national criminal history background check”, an investigation of
28 the criminal record of an applicant, based on the criminal history
29 record systems maintained by the Massachusetts state police and
30 the Federal Bureau of Investigation and based on fingerprint iden-
31 tification or any other method of positive identification.

32 “Satisfactorily pass a state and national criminal history back-
33 ground check”, a situation where the results or information gener-
34 ated by a state and national criminal history background check of
35 an applicant do not indicate that the applicant has been convicted
36 of a violent crime, a sex crime other than a sex crime classified as
37 a misdemeanor or unbecoming behavior, as defined in
38 subsection (a), or under a similar law of another state or the
39 United States.

40 (b) (1) Beginning January 1, 2006 the department, or the super-
41 intendent of a school district where an applicant seeks any
42 employment position in an educational setting, shall conduct a
43 state and national criminal history background check on all appli-
44 cants, as defined in this section. Each applicant shall provide
45 written consent authorizing the release of any criminal history
46 background information to the department or superintendent, as
47 applicable. The department or superintendent, as applicable, shall
48 receive the results of the state and national criminal history back-
49 ground check and use those results to comply with subsections (c)
50 and (d) of this section.

51 (2) All fingerprints requested under this section shall be on an
52 applicant fingerprint card provided by the Massachusetts state
53 police. The fingerprint cards shall be forwarded to the Federal
54 Bureau of Investigation by the Massachusetts state police after a

55 state criminal background check is conducted. The results of
56 the state and federal background check shall be sent to the
57 department.

58 (c) (1) No superintendent shall employ, in any part-time or full-
59 time employment position in the district, any person who fails to
60 satisfactorily pass a state and national criminal history back-
61 ground check.

62 (2) Upon receiving a certified copy of a conviction showing
63 that any district employee in an educational setting has been
64 convicted of a violent crime, sex crime other than a sex crime
65 classified as a misdemeanor or unbecoming behavior, as defined
66 in subsection (a), or under a similar law of another state or the
67 United States, the superintendent shall immediately discharge the
68 district employee from his position of employment.

69 (3) This section shall apply to every teacher, teacher candidate,
70 trade, vocational, temporary substitute teacher, exchange teacher,
71 regionally-licensed or certified teacher, teaching administrative
72 intern, and other full-time or part-time employee of any school
73 district in an educational setting.

74 (d) The commissioner of education shall not issue an educator
75 license, as defined in section 38G, or recertify any such educator
76 license, as defined in section 38G, to any applicant, and a superin-
77 tendent shall not hire an applicant for any full-time or part-time
78 employment position in an educational setting in the district,
79 unless and until the applicant satisfactorily passes a state and
80 national criminal history background check.

81 (e) (1) All criminal history background information received by
82 the department shall be confidential and marked as such and not
83 further disclosed or made available for public inspection.

84 (2) Any reports and other information generated by state and
85 national criminal history background checks under this section
86 shall not be classified as public records and shall not be subject to
87 the provisions of chapter 66.

88 (3) Notwithstanding subdivisions (1) and (2) of this subsection,
89 the following actions shall not be considered violations of this
90 section: (A) disclosing reports and other information generated by
91 a state and national criminal background check to the applicant or
92 his representative, to give that applicant an opportunity to ques-
93 tion and challenge the results of that background check;

94 (B) releasing reports and other information generated by a state
95 and national criminal background check to a court of this com-
96 monwealth in litigation pending before that court brought by the
97 applicant to challenge the results of the state and national criminal
98 background check; (C) use of reports and information generated
99 by a state and national criminal background check for the prepara-
100 tion, investigation, and presentation of administrative proceedings
101 involving the denial of certification or a restriction on unsuper-
102 vised access to children in an educational setting.

103 (4) The commissioner shall promulgate regulations for a
104 process to appeal a decision of the department to deny certifica-
105 tion of an applicant or to restrict unsupervised access to children
106 in an educational setting for an applicant due to the results of a
107 state and national criminal background check conducted according
108 to this section.

109 (f) The fee for the state and national criminal background check
110 shall be paid by the applicant and shall not be greater than the
111 actual cost of processing the request and conducting the state and
112 national criminal background check. The fee may be included in
113 the cost of the teacher licensure application charged by the depart-
114 ment.

115 (g) A school committee shall report to the department when any
116 teacher, employee or administrator in its district is discharged
117 under subdivision (2) or resigns from employment after a charge
118 is filed with the school board for unbecoming behavior, or after
119 charges are filed that are grounds for discharge under section
120 subsection (a) or when a teacher, employee or administrator is
121 suspended or resigns while an investigation is pending for
122 unbecoming behavior under subsection (a). The report must be
123 made to the department within 10 days of the discharge, suspen-
124 sion, or resignation has occurred. In the case of a teacher, upon
125 receiving such a report the department shall immediately revoke
126 the individual's license to teach.

1 SECTION 2. Section 38G of chapter 71, as so appearing, is
2 amended by inserting in line 58, after the word "application" the
3 following:— and satisfactory completion of the state and national
4 criminal history background check, as established in
5 section 38G½.

1 SECTION 3. Said section 38G of chapter 71 as so appearing is
2 amended by striking out, in lines 71 and 72, the words “(3) be of
3 sound moral character” and inserting in place thereof the
4 following:— (3) pass a state and national criminal history back-
5 ground check as established by section 38G½”.

1 SECTION 4. Said section 38G of chapter 71 as so appearing is
2 amended by striking out, in line 155, the words “(4) is of sound
3 moral character” and inserting in place thereof the following:—
4 (4) pass a state and national criminal history background check, as
5 established by section 38G½”.

1 SECTION 5. Said section 38G of chapter 71 is amended by
2 inserting, in line 205, after the word “responsibilities” the
3 following:— , including the fee for the national and state criminal
4 history background check as established in section 38G½ of this
5 chapter.

1 SECTION 6. Said section 38G of chapter 71 is amended by
2 inserting in line 221, after the words “employment” the
3 following:— and has satisfactorily completed state and national
4 criminal history background checks.

1 SECTION 7. Section 38R of chapter 71 is repealed.