

HOUSE No. 1471

The Commonwealth of Massachusetts

PRESENTED BY:

Natalie M. Blais

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing employee screening requirements in schools to prevent child sexual abuse.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Natalie M. Blais</i>	<i>1st Franklin</i>	<i>2/18/2021</i>
<i>Steven G. Xiarhos</i>	<i>5th Barnstable</i>	<i>2/24/2021</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/25/2021</i>
<i>Kate Lipper-Garabedian</i>	<i>32nd Middlesex</i>	<i>2/26/2021</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>2/26/2021</i>
<i>Christina A. Minicucci</i>	<i>14th Essex</i>	<i>2/26/2021</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>	<i>2/26/2021</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>2/26/2021</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>2/26/2021</i>
<i>Richard M. Haggerty</i>	<i>30th Middlesex</i>	<i>2/26/2021</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>	<i>2/26/2021</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>2/26/2021</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>3/31/2021</i>

HOUSE No. 1471

By Ms. Blais of Sunderland, a petition (accompanied by bill, House, No. 1471) of Natalie M. Blais and others relative to screening of prospective school employees for prior investigations into child abuse or sexual misconduct. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act establishing employee screening requirements in schools to prevent child sexual abuse.

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 the 2014 Official Edition,
2 is hereby amended

3 by inserting after Section 38R the following new section:-

4 Section 38R1/2. Screening of prospective school employees for prior investigations into
5 child abuse or
6 sexual misconduct.

7 For the purposes of this section, the following definitions shall apply:-

8 “Child abuse” means the non-accidental commission of any act by a caregiver which
9 causes or creates a

10 substantial risk of physical or emotional injury or sexual abuse of a child or student; or
11 the victimization

12 of a child or student through sexual exploitation, regardless if the person responsible is a
13 caretaker.

14 “Sexual misconduct” means any verbal, nonverbal, written, or electronic communication,
15 or any other

16 act directed toward or with a student that is designed to establish a sexual relationship
17 with the student,

18 including a sexual invitation, dating or soliciting a date, engaging in sexual dialogue,
19 making sexually

20 suggestive comments, self-disclosure or physical exposure of a sexual or erotic nature,
21 and any other

22 sexual, indecent or erotic contact with a student.

23 (A) A school district, charter school, nonpublic school, or contracted service provider
24 holding a contract

25 with a school district, charter school, or nonpublic school may not offer employment to
26 an applicant

27 who would be employed by or work in a school in a position which involves direct or
28 regular contact

29 with students, unless the school district, charter school, nonpublic school, or contracted
30 service provider

31 requires the applicant to provide:

32 (1) A list, including name, address, telephone number and other relevant contact
33 information of

34 the applicant, including:

35 (i) Current employer;

36 (ii) All former employers that were school entities;

37 (iii) All former employers if the applicant was employed in positions that involved direct
38 contact with children.

39 (2) A written authorization that consents to and authorizes disclosure by the applicant's
40 current and former employers.

41 (3) A written statement of whether the applicant:

42 (i) has been the subject of (1) an abuse or sexual misconduct investigation by any
43 employer, State licensing agency, law enforcement agency, unless the investigation resulted in a
44 finding that the allegations were false or inconclusive; or (2) an investigation of abuse under
45 section 51A of chapter 119 in which the allegations of abuse against the applicant were
46 substantiated by the department of children and families and not subsequently unsubstantiated or
47 overturned on appeal;

48 (ii) has ever been disciplined, discharged, non-renewed, asked to resign from
49 employment, resigned from or otherwise separated from any employment (1) while allegations
50 of abuse or sexual misconduct were pending or under investigation, unless the investigation
51 resulted in a finding that the allegations were false or inconclusive, or in the case of section 51A
52 of chapter 119, unsubstantiated; or (2) due to an adjudication or findings of abuse or sexual
53 misconduct.; or

54 (iii) has ever had a license, professional license or certificate suspended, surrendered or
55 revoked (1) while allegations of abuse or sexual misconduct were pending or under investigation,
56 unless the investigation resulted in a finding that the allegations were false or inconclusive, or in
57 the case of section 51A of chapter 119, unsubstantiated; or (2) due to adjudicated findings of
58 abuse or sexual misconduct.

59 (b) Before a school or contracted service provider may offer employment to an applicant
60 who would be employed by or work in a school in a position involving direct or regular contact
61 with children, the school or contracted service provider shall conduct a review of the
62 employment history of the applicant by contacting those employers listed by the applicant and
63 requesting the following information:

64 (1) The dates of employment of the applicant.

65 (2) A statement as to whether the applicant:

66 (i) was the subject of (1) an abuse or sexual misconduct investigation by any employer,
67 State licensing agency, law enforcement agency, unless such investigation resulted in a finding
68 that the allegations were false or inconclusive; or (2) an investigation of abuse under section 51A
69 of chapter 119 in which the allegations of abuse against the applicant were substantiated by the

70 department of children and families and not subsequently unsubstantiated or overturned on
71 appeal. (ii) was disciplined, discharged, non-renewed, asked to resign from employment,
72 resigned from or otherwise separated from any employment (1) while allegations of abuse or
73 sexual misconduct were pending or under investigation, unless the investigation resulted in a
74 finding that the allegations were false or inconclusive or, in the case of section 51A of chapter
75 119, unsubstantiated; or (2) due to an adjudication or findings of abuse or sexual misconduct; or
76 (iii) has ever had a license, professional license or certificate suspended, surrendered or revoked
77 while allegations of abuse or sexual misconduct were pending or under investigation, or due to
78 adjudicated findings of abuse or sexual misconduct.

79 (c) Before a school or contracted service provider may offer employment to an applicant
80 who
81 would be employed by or in a school entity in a position involving regular contact with
82 children,
83 the school entity or contracted service provider shall check the eligibility for employment
84 or
85 certification status of the applicant to determine whether the applicant holds valid and
86 active
87 certification appropriate for the position and is otherwise eligible for employment and
88 whether
89 the applicant has been the subject of professional discipline.

90 (d) An applicant who provides false information or willfully fails to disclose material
91 required information shall be subject to discipline up to, and including, termination or denial of
92 employment and may be subject to professional discipline.

93 (e) No later than 120 days after receiving a request for information under subsection (b),
94 an employer that has or had an employment relationship with the applicant shall disclose the
95 information requested. The employer shall disclose the information on a standardized form
96 developed by the department of elementary and secondary education.

97 (f)(1) After reviewing the information initially disclosed under subsection (a)(2) and
98 finding an affirmative response to subsection (a)(2)(i), (ii) or (iii), or disclosed under section (b)
99 and finding an affirmative response to subsection (b)(2)(i), (ii) or (iii), where the prospective
100 employing school or contractor makes a determination to consider the applicant for employment,
101 the school or contractor shall request that former employers provide any additional material
102 information about the matters disclosed. The applicant shall provide written authorization that
103 consents to and authorizes disclosure by the applicant's current and former employers of said
104 additional material information.

105 (2) Former employers shall provide the additional information requested no later than 90
106 days after the prospective employer's request under this paragraph.

107 (3) Information received under this section shall not be deemed a public record for the
108 purposes of section 10 of chapter 66.

109 (4) A school that receives the information under this subsection shall use the information
110 solely for the purpose of evaluating an applicant's fitness to be hired or for continued
111 employment.

112 (g) A school or independent contractor may hire an applicant on a provisional basis for
113 no more than 90 days pending the school entity's or independent contractor's review of
114 information and records received under this section, provided that all of the following are
115 satisfied:

116 (1) the applicant has provided all of the information and supporting documentation
117 required;

118 (2) the school administrator has no knowledge of information pertaining to the applicant
119 that would disqualify the applicant from employment; and

120 (3) the applicant swears or affirms that the applicant is not disqualified from employment.

121 (h) A school or contractor may not enter into a collective bargaining agreement, an
122 employment contract, an agreement for resignation or termination, a severance agreement or any
123 other contract or agreement or take any action that interferes with the operation of section 51A of
124 chapter 119 or appropriate criminal authority. Any provision of an employment contract or
125 agreement for resignation or termination or a severance agreement that is executed, amended or
126 entered into after the effective date of this section and that is contrary to this section shall be
127 void.

128 (i)(1) For substitute employees, the employment history review required by this section
129 shall be required only prior to the initial hiring of a substitute or placement on the school entity's
130 approved substitute list and shall remain valid as long as the substitute continues to be employed
131 by the same school entity or remains on the school entity's approved substitute list.

132 (2) A substitute seeking to be added to another school entity's substitute list shall undergo
133 a new employment history review. The appearance of a substitute on one school entity's
134 substitute list does not relieve another school entity from compliance with this section.

135 (3) An employment history review conducted upon initial hiring of a substitute employee
136 by an contracted service provider, intermediate unit or any other entity that furnishes substitute
137 staffing services to school entities shall satisfy the requirements of this section for all school
138 entities using the services of that independent contractor, intermediate unit or other entity.

139 (4) A contracted service provider, intermediate unit or any other entity furnishing
140 substitute staffing services to school entities shall comply with the provisions of this Act.

141 (5) For purposes of this subsection, "substitute employee" shall not mean school bus
142 drivers employed by a contracted service provider.

143 (j)(1) For employees of contracted service providers, the employment history review
144 required

145 by this section shall be performed either at the time of the initial hiring of the employee
146 or prior

147 to the assignment of an existing employee to perform work for a school entity in a
148 position

149 involving regular contact with children. The review shall remain valid as long as the
150 employee

151 remains employed by that same contractor even though assigned to perform work

152 for other school entities.

153 (2) A contracted service provider shall maintain records documenting employment
154 history

155 reviews for all employees as required by this section and, upon request, shall provide a
156 school

157 entity for which an employee is assigned to perform work access to the records pertaining
158 to that

159 employee.

160 (3) Prior to assigning an employee to perform work for a school in a position involving

161 regular contact with children, the contracted service provider shall inform the school of
162 any instance

163 known to the contractor in which the employee:

164 (i) was the subject of any abuse or sexual misconduct investigation by any employer,

165 State licensing agency, law enforcement authority or child protective services agency,

166 unless

167 such investigation resulted in a finding that allegations are false;

168 (ii) has ever been disciplined, discharged, non-renewed, removed from a substitute list,

169 asked to resign from employment, resigned from or otherwise separated from any

170 employment

171 while allegations of abuse or sexual misconduct as described in subparagraph (i) were
172 pending or
173 under investigation, or due to an adjudication or findings of abuse or sexual misconduct;
174 or
175 (iii) has ever had a license, professional license or certificate suspended, surrendered or
176 revoked while allegations of abuse or sexual misconduct were pending or under
177 investigation, or
178 due to an adjudication or findings of abuse or sexual misconduct.

179 (4) The independent contractor may not assign the employee to perform work for the
180 school in a position involving direct contact with children where the school objects to the
181 assignment after being informed of an instance of abuse or sexual misconduct.

182 (5) An applicant who has once undergone the employment history review required and
183 seeks to transfer to or provide services to another school in the same district, diocese or
184 religious
185 judicatory or established and supervised by the same organization shall not be required to
186 obtain
187 additional reports before making such transfer.

188 (k)(1) An employer, school, school administrator or independent contractor who in good

189 faith provides information or records including personnel records about a current or
190 former
191 employee's job performance and professional conduct to a prospective school employer
192 or to the
193 department of elementary and secondary education shall be immune from criminal and
194 civil
195 liability for the disclosure or any consequences of the disclosure, unless the information
196 or
197 records were provided with the knowledge that they were false or misleading. Such
198 immunity
199 shall be in addition to and not in limitation of any other immunity provided by law or any
200 absolute or conditional privileges applicable to such disclosures by virtue of the
201 circumstances or
202 the applicant's consent thereto.

203 (2) Except where the laws of other states prevent the release of the information or records
204 requested, or disclosure is restricted by the terms of a contract entered into prior to the
205 effective
206 date of this section, the willful failure of a former employer, school entity, school
207 administrator

208 or independent contractor to respond or provide the information and records as requested
209 may
210 result in civil penalties, and professional discipline where appropriate.

211 (3) Notwithstanding any provision of law to the contrary, an employer, school, school
212 administrator, independent contractor or applicant shall report and disclose in accordance
213 with
214 this section all relevant information, records and documentation that may otherwise be
215 confidential under section 10 of chapter 66.

216 (4) A school or independent contractor may not hire an applicant who does not provide
217 the information required under subsection (a)(2) for a position involving contact with
218 children.

219 (1) Nothing in this section shall be construed:

220 (1) To prevent a prospective employer from conducting further investigations of
221 prospective employees or from requiring applicants to provide additional background
222 information or authorizations beyond what is required under this section, nor to prevent a
223 former
224 employer from disclosing more information than what is required under this section.

225 (2) To relieve a school, school administrator or independent contractor of its legal

226 responsibility to report suspected incidents of abuse in accordance with the provisions of
227 section
228 51A of chapter 119 or misconduct by a licensed educator in accordance with the
229 reporting
230 requirements of the department of elementary and secondary education.

231 (3) To relieve a school, school administrator or independent contractor of its legal
232 responsibility to report suspected incidents of professional misconduct in accordance with
233 chapter 119, section 51A or misconduct by a licensed educator in accordance with the
234 reporting
235 requirements of the department of elementary and secondary education.

236 (4) To prohibit the right of the exclusive representative pursuant to chapter 150E to
237 challenge the validity of an employee's termination or discipline under a collective
238 bargaining
239 agreement or any relevant statute

240 (m)(1) The office of the attorney general shall have jurisdiction to determine willful
241 violations of this section and may, following a hearing, assess a civil penalty not to exceed ten
242 thousand dollars (\$10,000). School entities shall be barred from contracting with an independent
243 contractor who is found to have willfully violated the provisions of this section. Willful
244 violations of the provisions of this section shall be reported to the relevant licensing authority.

245 (2) Notwithstanding any other provision of law to the contrary, the department of
246 elementary and secondary education shall report all willful violations of the provisions of
247 these
248 sections to the National Association of State Directors of Teacher Education and
249 Certification
250 Clearinghouse or any national databases serving the same purpose, all information
251 required for
252 participation in such a clearinghouse.

253 (3) The Department of Education shall notify each school district and school about the
254 provisions of this act to ensure applicants and employers are aware of their respective rights and
255 responsibilities under this act. The department shall develop standardized forms for applicants
256 and employers to use to comply with the requirements of subsection (A) of this act, as well as
257 any other informational materials that may assist applicants and employers in the implementation
258 of and compliance with this act.

259 (4) The board of education may promulgate regulations for implementation and
260 enforcement of this chapter. Upon release of the proposed regulations, the board shall file
261 a copy
262 of the regulations with the clerks of the house of representatives and the senate, who shall
263 forward the regulations to the joint committee on education. Within 30 days of the filing,
264 the

265 committee may hold a public hearing and issue a report on the regulations and file the
266 report

267 with the board. The board, pursuant to applicable law, may adopt final regulations
268 making

269 revisions to the proposed regulations as it deems appropriate after consideration of the
270 report and

271 shall file a copy of the final regulations with the chairpersons of the joint committee on
272 education

273 and, not earlier than 30 days after the filing, the board shall file the final regulations with
274 the

275 state secretary.

276 (5) No employer shall be liable for injury, loss of property, personal injury or death
277 caused by an act or omission of a public employee while acting in the scope of the public
278 employee's employment and arising out of the implementation of this chapter. This chapter shall
279 not be construed as creating or imposing a specific duty of care.