

HOUSE No. 04307

The Commonwealth of Massachusetts

HOUSE, July 24, 2012

The committee on Education, to whom was referred the petition (accompanied by bill, Senate, No. 176) of Steven A. Baddour and Kay Khan for legislation to ensure the safety of children, the petition (accompanied by bill, House, No. 1936) of Bradley H. Jones, Jr. and others relative to background checks for teacher licensure applicants, and the petition (accompanied by bill, House, No. 4003) of Alice Hanlon Peisch relative to the protection of children, reports recommending that the accompanying bill (House, No. 4307) ought to pass.

For the committee,

ALICE HANLON PEISCH.

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act relative to background checks.

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. Subsection (a) of section 7 of chapter 15D of the General Laws, as appearing in the
2 2010 Official Edition, is hereby amended by inserting at the end thereof the following
3 paragraph:-

4 As part of the department’s licensure and Background Record Check process, the department
5 shall conduct fingerprint-based checks of the state and national criminal history databases,
6 pursuant to section 16962 of chapter 42 of the United States Code, before issuing any license.

7 Said fingerprint-based checks shall be conducted on any applicant for a family child care, small
8 group and school age, large group and school age, residential and placement license or family
9 child care assistant certificate. In addition, said fingerprint based checks shall be conducted for

10 all applicants for employment, who have the potential for unsupervised contact with children, in
11 any department licensed or funded program and for all household members or persons regularly
12 on the premises, aged 15 and older, of applicants for family child care licensure. Such

13 fingerprint-based checks shall also be required for all in-home non-relative department funded
14 caregivers, and for all applicants to be adoptive or foster parents. Authorized department staff

15 may receive and appropriately disseminate all criminal offender record information and the
16 results of checks of state and national criminal information databases, pursuant to section 16962
17 of chapter 42 of the United States Code, in accordance with the law. When the department
18 obtains the results of checks of state and national criminal information databases, it shall treat
19 such information in keeping with the provisions of sections 167 through 178, inclusive, of
20 chapter 6 and the regulations thereto, regarding criminal offender record information.

21 SECTION 2. Subsection (b) of section 7 of said chapter 15D of the General Laws, as so
22 appearing, is hereby amended by inserting at the end thereof the following paragraph:-

23 As part of the department's approval process, the department shall conduct fingerprint-based
24 checks of the national crime information databases pursuant to section 16962 of chapter 42 of the
25 United States Code before issuing any approval. Said fingerprint based checks shall be
26 conducted for all applicants for employment, who have the potential for unsupervised contact
27 with children, in any department approved program. Authorized department staff may receive
28 and appropriately disseminate all criminal offender record information and the results of checks
29 of state and national criminal information databases, pursuant to section 16962 of chapter 42 of
30 the United States Code, in accordance with the law. When the department obtains the results of
31 checks of state and national criminal information databases, it shall treat such information in
32 keeping with the provisions of sections 167 through 178, inclusive, of chapter 6 and the
33 regulations thereto, regarding criminal offender record information.

34 SECTION 3. Subsection (b) of section 8 of said chapter 15D of the General Laws, as so
35 appearing, is hereby amended by inserting after the word "fees", in line 35, the following words:-
36 "which shall incorporate all fees associated with conducting fingerprint-based checks of the state

37 and national criminal history databases, pursuant to section 16962 of chapter 42 of the United
38 States Code, as set by the department,”

39 SECTION 4. Subsection (d) of section 8 of said chapter 15D of the General Laws, as so
40 appearing, is hereby amended by inserting after the word “check”, in line 55, the following
41 words:- “and fingerprint-based checks of the state and national criminal history databases
42 pursuant to section 16962 of chapter 42 of the United States Code.”

43 SECTION 5. Section 8 of said chapter 15D of the General Laws, as so appearing, is hereby
44 amended by inserting at the end thereof the following new subsection:-

45 (j) Fingerprints, as referenced in subsections (a) and (b) of section 7 and subsections (b) and (d)
46 of section 8 of chapter 15D will be submitted to the identification section of the department of
47 state police for a state criminal history check and forwarded to the Federal Bureau of
48 Investigation for a national criminal history check, according to the policies and procedures
49 established by the identification section and by the department of criminal justice information
50 services. Fingerprint submissions and national criminal history checks may be retained by the
51 department of criminal justice information services for the purposes of ensuring the continued
52 suitability for licensure, certification, approval or employment of those individuals, provided that
53 said department is authorized to disseminate the results of a national criminal history check to
54 the department of early education and care for the purpose of determining the suitability of
55 current and prospective employees in any department licensed or funded program and for all
56 household members or persons regularly on the premises, aged 15 or older, of applicants for
57 family child care licensure, all in-home non-relative department funded caregivers, and for all
58 applicants to be adoptive or foster parents.

59 The department of criminal justice information services shall disseminate the results of the
60 criminal background check to the department. Said department of criminal justice information
61 services shall only disseminate information under this section that would otherwise be available
62 to requesting entities under the provisions of sections 167 through 178, inclusive, of chapter 6
63 and the regulations thereto, regarding criminal offender record information.

64 The department, with approval from the board, shall amend its Background Record Check
65 regulations in a manner necessary to carry out the provisions of this section, provided that the
66 regulations may reflect a phased-in schedule for the fingerprint-based background checks,
67 provided, however, that such phase-in shall not begin prior to September 1, 2013.

68 Any and all persons required to undergo the fingerprinting process described in this chapter,
69 including but not limited to any applicant for department licensure or for employment at a
70 department licensed or funded program, or any household member or person regularly on the
71 premises, aged fifteen and above in a family child care program, any prospective foster or
72 adoptive parent, and any in-home non-relative caregiver, shall pay a fee, to be established by the
73 department in consultation with the secretary of public safety and security, to offset the costs of
74 operating and administering a fingerprint-based criminal background check system, provided
75 that said fee shall not exceed 35 dollars per person; provided, further, that the fee may increase
76 accordingly if the federal bureau of investigation increases its fees for fingerprint background
77 checks services. The department licensed or funded programs may reimburse applicants for
78 employment for all or part of the fee on grounds of financial hardship. The fee shall be
79 deposited into the Fingerprint-Based Background Check Trust Fund established under section
80 2FFFF of chapter 29.

81 SECTION 6. Chapter 29 of the General Laws is hereby amended by inserting after section
82 2EEEE the following section: -

83 Section 2FFFF. There is hereby established and set up on the books of the commonwealth a
84 separate fund to be known as the Fingerprint-Based Background Check Trust Fund to which
85 shall be credited any appropriations or other monies authorized by the general court and
86 specifically designated to be credited thereto, and any additional funds designated for deposit
87 into the fund, including any private donations made available for deposit into the fund. Amounts
88 credited to such fund shall be available, without further appropriation, to the executive office of
89 public safety and security to carry out fingerprint-based state and national background criminal
90 checks for the purposes of employment, professional licensure and other non-criminal justice
91 purposes.

92 The fund shall be utilized for the sole purpose of carrying out state and national criminal
93 background checks and verifications, including, but not limited to, obtaining or contracting to
94 obtain fingerprints and fees from subjects, making payments charged by the Federal Bureau of
95 Investigation or other entity, staffing the department of state police and the department of
96 criminal justice information services to submit fingerprints and to obtain, verify and disseminate
97 the results of background checks, and maintaining the public safety information systems used to
98 obtain access to fingerprint-based state and national criminal background information.

99 The department of criminal justice information services shall report annually to the house and
100 senate committees on ways and means and the joint committee on education on the cost of
101 operating and administering the fingerprint-based criminal background check system, including
102 expenditures from the fund and their purposes.

103 SECTION 7. Section 38R of said chapter 71 of the General Laws, as so appearing, is hereby
104 amended by striking out the first and second paragraphs and inserting in place thereof the
105 following paragraphs:-

106 In a manner prescribed by the board of elementary and secondary education, the school
107 committee and superintendent of any city, town or regional school district and the principal or
108 other administrator, by whatever title the position be known, of a public or private school,
109 including a chapter 71B approved special education school program, shall obtain periodically,
110 but not less than every 3 years, from the department of criminal justice information services all
111 available criminal offender record information for any current or prospective employee or
112 volunteer of the school district, or for any subcontractor or laborer commissioned by the school
113 committee or school to perform work on school grounds, who may have direct and unmonitored
114 contact with children, including any individual who regularly provides school related
115 transportation to children.

116 Said school committee, superintendent of any city, town or regional school district or the
117 principal or other administrator, by whatever title the position be known, of a public or private
118 school, including a chapter 71B approved special education school program, shall also obtain a
119 state and national fingerprint-based criminal background check, as authorized by Public Law 92-
120 544, for the purpose of determining the suitability of current and prospective employees of the
121 school department who may have direct and unmonitored contact with children, provided,
122 however, that school committees shall only obtain a state and national fingerprint-based criminal
123 background check for current and prospective employees for whom they have direct hiring
124 authority. Said superintendent, principal or other administrator shall also obtain such a check for
125 any individual who regularly provides school related transportation to children and any

126 subcontractor or laborer commissioned by the school committee or school to perform work on
127 school grounds who may have direct and unmonitored contact with children. Fingerprints will
128 be submitted to the identification section of the department of state police for a state criminal
129 history check and forwarded to the Federal Bureau of Investigation for a national criminal
130 history check, according to the policies and procedures established by the identification section
131 and by the department of criminal justice information services. Fingerprint submissions and
132 national criminal history checks may be retained by the department of criminal justice
133 information services for the purpose of ensuring the continued suitability of those individuals,
134 provided that said department is authorized to disseminate the results of a national criminal
135 history check to a school committee, superintendent or principal, or their designees, for the
136 purpose of determining the suitability of current and prospective employees of the school
137 department, and to the department of elementary and secondary education for the purpose of
138 determining the suitability of applicants for licensure and licensed educators who may have
139 direct and unmonitored contact with children; provided, however, that the department of criminal
140 justice information services is authorized to disseminate to school committees only those results
141 for current and prospective employees for whom they have direct hiring authority.

142 The department of criminal justice information services shall disseminate the results of the
143 criminal background check to the school committee, superintendent or principal or the designee
144 of the school committee, superintendent or principal, provided, however, that said department of
145 criminal justice information services shall disseminate to school committees only those results
146 for current and prospective employees for whom they have direct hiring authority. Entities that
147 receive the results of national criminal background checks shall treat such information in keeping
148 with the provisions of sections 167 through 178, inclusive, of chapter 6 and the regulations

149 thereto, regarding criminal offender record information. Said department of criminal justice
150 information services shall only disseminate information under this section that would otherwise
151 be available to requesting entities under the provisions of sections 167 through 178, inclusive, of
152 chapter 6 and the regulations thereto regarding criminal offender record information. Said
153 school committee, superintendent or principal shall notify the commissioner of any criminal
154 record information relevant to the fitness for licensure of any holder of, or applicant for, a
155 Massachusetts educator's license.

156 The board shall in a manner provided by law and in accordance with this section and sections
157 167 through 178, inclusive, of chapter 6 and the regulations thereto, promulgate regulations
158 necessary to carry out this section. The regulations shall provide for the confidentiality of
159 criminal offender record information and the results of finger-print based checks of the state and
160 national criminal history databases, pursuant to section 16962 of chapter 42 of the United States
161 Code, obtained pursuant to this section. The regulations may also address how fingerprint based
162 background checks shall be conducted for student teacher candidates, and may reflect a phased-
163 in schedule for the fingerprint-based background checks, provided, however, that such phase-in
164 shall not begin prior to September 1, 2013.

165 The applicant shall pay a fee, to be established by the secretary of administration and finance in
166 consultation with the secretary of public safety and security and the commissioner, to offset the
167 costs of operating and administering a fingerprint-based criminal background check system,
168 provided that the fee shall not exceed 55 dollars for employees who are certified pursuant to
169 section 38G and shall not exceed 35 dollars for employees who are not certified pursuant to
170 section 38G, provided further, that said fee may increase accordingly if the federal bureau of
171 investigations increases its fee for fingerprint background check services. The school committee,

172 superintendent or principal may reimburse applicants all or part of the fee on grounds of
173 financial hardship. The fee shall be deposited into the Fingerprint-Based Background Check
174 Trust Fund established under section 2FFFF of chapter 29.

175 SECTION 8. Subsection (l) of section 51B of chapter 119 of the General Laws, as appearing in
176 the 2010 Official Edition, is hereby amended by inserting after the word “part,” in line 124, the
177 following words: -“or was committed by an individual the department has reason to believe was
178 licensed”; and further amended by inserting after the words “youth services”, in line 127, the
179 following words: - “, or was employed at a facility approved or licensed by the department of
180 early education and care”.

181 SECTION 9. Sections 1, 2 and 7 of this act shall take effect for the 2013-2014 school year for
182 new employees, provided that employees hired before that time shall submit fingerprints for
183 federal background checks within 3 years. If an individual subject to section 1, 2 or 7 applies to
184 work with another school district or Department of Early Education and Care licensed facility
185 and has previously submitted a fingerprint based background check, the employer shall be
186 authorized to access the individual’s original background check from the department of criminal
187 justice information services in order to determine the applicant’s suitability for employment.