HOUSE . . . . . No. 2762

By Mr. Jones of North Reading, petition of Bradley H. Jones, Jr. and other members of the House relative to requiring criminal history background checks for teaching applicants. Education, Arts and Humanities.

The Commonwealth of Massachusetts

In the Year Two Thousand and Three.

AN ACT 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:

SECTION 1. Chapter 79 of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by inserting after section 38G the following section:—

Section 38G1/2. State and National Criminal History Background Check for Teacher Licensure Applicants and Other School Personnel

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

"Applicant", an individual who applies for an initial educator license, as defined in section 38G of chapter 71; who applies for the first recertification of an educator license, as defined in section 38G of chapter 71, after the effective date of this act; or who applies for any full-time or part-time employment in a local school department that will expose the individual to unsupervised access to children in an educational setting.

"Department", the department of education, as defined in section 1 of chapter 15.

"Educational setting", any vehicle, building, structure, location or other area, whether public or private property, utilized for or involved in the education, training, instruction, or supervision of children by a local, regional or charter school district, or the transportation of children to, from or in connection with any such activity.

24 "Unbecoming behavior", an offense established in
25 sections 13B, 13H, 13J, 22A, 23, 24B, 26A, and 27A of chapter
26 265 of the General Laws, sections 4, 4A and 29A-29C, inclusive,
27 of chapter 272 of the General Laws.
28 "State and national criminal history background check", an
29 investigation of the criminal record of an applicant, based on the
30 criminal history record systems maintained by the Massachusetts
31 state police and the Federal Bureau of Investigation and based on
32 fingerprint identification or any other method of positive identifi-
33 cation.
34 "Satisfactorily pass a state and national criminal history back-
35 ground check", a situation where the results or information gener-
36 ated by a state and national criminal history background check of
37 an applicant do not indicate that the applicant has been convicted
38 of a violent crime, sex crime (other than a sex crime classified as
39 a misdemeanor) or unbecoming behavior, as defined in
40 subsection (a), or under a similar law of another state or the
41 United States.
42 (b) (1) Beginning January 1, 2003 the department, or the super-
43 intendent of a school district where an applicant seeks any
44 employment position in an educational setting, shall conduct a
45 state and national criminal history background check on all appli-
46 cants, as defined in this section. Each applicant shall provide
47 written consent authorizing the release of any criminal history
48 background information to the department or superintendent, as
49 applicable. The department or superintendent, as applicable, shall
50 receive the results of the state and national criminal history back-
51 ground check and use those results to comply with subsections (c)
52 and (d) of this section.
53 (2) All fingerprints requested under this section shall be on an
54 applicant fingerprint card provided by the Massachusetts state
55 police. The fingerprint cards shall be forwarded to the Federal
56 Bureau of Investigation by the Massachusetts state police after a
57 state criminal background check is conducted. The results of the
58 state and federal background check shall be sent to the depart-
59 ment.
60 (c) (1) No superintendent shall employ, in any part-time or full-
61 time employment position in the district, any person who fails to
62 satisfactorily pass a state and national criminal history back-
63 ground check.

64 (2) Upon receiving a certified copy of a conviction showing
65 that any district employee in an educational setting has been con-
66 victed of a violent crime, sex crime (other than a sex crime classi-
67 fied as a misdemeanor) or unbecoming behavior, as defined in
68 subsection (a), or under a similar law of another state or the
69 United States, the superintendent shall immediately discharge the
70 district employee from his position of employment.
71 (3) This section shall apply to every teacher, teacher candidate,
72 trade, vocational, temporary substitute teacher, exchange teacher,
73 regionally-licensed or certified teacher, teaching administrative
74 intern, and other full-time or part-time employee of any school
75 district in an educational setting.
76 (d) The commissioner of education shall not issue any educator
77 license, as defined in section 38G of this chapter, or recertify any
78 such educator license, as defined in section 38G of this chapter, to
79 any applicant, and a superintendent shall not hire an applicant for
80 any full-time or part-time employment position in an educational
81 setting in the district, unless and until the applicant satisfactorily
82 passes a state and national criminal history background check.
83 (e) (1) All criminal history background information received by
84 the department shall be confidential and marked as such and not
85 further disclosed or made available for public inspection.
86 (2) Any reports and other information generated by state and
87 national criminal history background checks under this section
88 will not be classified as public records and shall not be subject to
89 the provisions of chapter 66 of the General Laws.
90 (3) Notwithstanding subdivisions (1) and (2) of this subsection,
91 the following actions shall not be considered violations of this
92 section: (A) disclosing reports and other information generated by
93 a state and national criminal background check to the applicant or
94 his representative, to give that applicant an opportunity to ques-
95 tion and challenge the results of that background check;
96 (B) releasing reports and other information generated by a state
97 and national criminal background check to a court of this com-
98 monwealth in litigation pending before that court brought by the
99 applicant to challenge the results of the state and national criminal
100 background check; (C) use of reports and information generated
101 by a state and national criminal background check for the prepara-
102 tion, investigation, and presentation of administrative proceedings

103 involving the denial of certification or a restriction on unsuper-
104 vised access to children in an educational setting.
105 (4) The commissioner shall promulgate regulations for a
106 process to appeal a decision of the department to deny certifica-
107 tion of an applicant or to restrict unsupervised access to children
108 in an educational setting for an applicant due to the results of a
109 state and national criminal background check conducted according
110 to this section.
111 (f) The fee for the state and national criminal background check
112 shall be paid by the applicant and shall not be greater than the
113 actual cost of processing the request and conducting the state and
114 national criminal background check. The fee may be included in
115 the cost of the teacher licensure application charged by the depart-
116 ment.
117 (g) A school committee shall report to the department when any
118 teacher or administrator in its district is discharged under subsec-
119 tion c(2) or resigns from employment after a charge is filed with
120 the school board for unbecoming behavior, as defined in subsec-
121 tion (a) or after charges are filed that are grounds for discharge
122 under subsection (a) or when a teacher or administrator is sus-
123 pended or resigns while an investigation is pending for unbe-
124 coming behavior under subsection (a). The report must be made to
125 the department within 10 days after the discharge, suspension, or
126 resignation has occurred. In the case of a teacher, upon receiving
127 such a report the department shall immediately revoke the
128 teacher's license to teach.

1 SECTION 2. Section 38G of Chapter 71, as appearing in the
2 2000 Official Edition, is amended by inserting in line 58, after the
3 word "application" the following:— "and satisfactory completion
4 of the state and national criminal history background check, as
5 established in section 38G1/2 of this chapter.".

1 SECTION 3. Said section 38G of chapter 71 is amended by
2 striking out, in lines 71 and 72, the words "(3) be of sound moral
3 character" and inserting in place thereof the following:— "(3)
4 pass a state and national criminal history background check as
5 established by section 38G1/2".

1 SECTION 4. Said section 38G of chapter 71 is amended by
2 striking out, in line 155, the words "(4) is of sound moral char-
3 acter" and inserting in place thereof the following:— "(4) pass a
4 state and national criminal history background check, as estab-
5 lished by section 38G1/2".

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 crim-
4 inal history background check as established in section 38G1/2 of
5 this chapter,".

1 SECTION 6. Said section 38G1/2 of chapter 71 is amended by
2 inserting in line 221, after the word "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.