

HOUSE No. 1433

By Mr. Jones of North Reading, a petition (accompanied by bill, House, No. 1433) of Viriato Manuel deMacedo and others relative to criminal history background checks for teacher licensure applicants. The Judiciary.

The Commonwealth of Massachusetts

PRESENTED BY:

Bradley H. Jones, Jr.

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 passage of the accompanying bill:

An Act relative to ensuring quality for teacher licensure applicants.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Viriato Manuel deMacedo	1st Plymouth
Bradley H. Jones, Jr.	20th Middlesex
George N. Peterson, Jr.	9th Worcester
Elizabeth Poirier	14th Bristol
F. Jay Barrows	1st Bristol
Lewis G. Evangelidis	1st Worcester
Paul K. Frost	7th Worcester
Susan Williams Gifford	2nd Plymouth
Bradford R. Hill	4th Essex
Richard J. Ross	9th Norfolk
Todd M. Smola	1st Hampden
William C. Galvin	6th Norfolk
Robert S. Hargraves	1st Middlesex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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 the 2006 Official Edition, is
2 hereby amended by inserting, after section 38G, the following section:-

3 Section 38G 1/2. State and National Criminal History Background Check for Teacher Licensure
4 Applicants and Other School Personnel

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

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

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

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

16 "Unbecoming behavior", an offense established in sections 13B, 13H, 13J, 22A, 23, 24B, 26A,
17 and 27A of chapter 265 or, sections 4, 4A and 29A-29C, inclusive, of chapter 272. "State and
18 national criminal history background check", an investigation of the criminal record of an
19 applicant, based on the criminal history record systems maintained by the Massachusetts state
20 police and the Federal Bureau of Investigation and based on fingerprint identification or any
21 other method of positive identification.

22 "Satisfactorily pass a state and national criminal history background check", a situation where
23 the results or information generated by a state and national criminal history background check of
24 an applicant do not indicate that the applicant has been convicted of a violent crime, a sex crime
25 other than a sex crime classified as a misdemeanor or unbecoming behavior, as defined in
26 subsection (a), or under a similar law of another state or the United States.

27 (b) (1) Beginning January 1, 2010 the department, or the superintendent of a school district
28 where an applicant seeks any employment position in an educational setting, shall conduct a state
29 and national criminal history background check on all applicants, as defined in this section.
30 Each applicant shall provide written consent authorizing the release of any criminal history
31 background information to the department or superintendent, as applicable. The department or
32 superintendent, as applicable, shall receive the results of the state and national criminal history
33 background check and use those results to comply with subsections (c) and (d) of this section.

34 (2) All fingerprints requested under this section shall be on an applicant fingerprint card
35 provided by the Massachusetts state police. The fingerprint cards shall be forwarded to the
36 Federal Bureau of Investigation by the Massachusetts state police after a state criminal
37 background check is conducted. The results of the state and federal background check shall be
38 sent to the department.

39 (c) (1) No superintendent shall employ, in any part-time or full-time employment position in the
40 district, any person who fails to satisfactorily pass a state and national criminal history
41 background check.

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

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

51 (d) The commissioner of education shall not issue an educator license, as defined in section
52 38G, or recertify any such educator license, as defined in section 38G, to any applicant, and a
53 superintendent shall not hire an applicant for any full-time or part-time employment position in
54 an educational setting in the district, unless and until the applicant satisfactorily passes a state
55 and national criminal history background check.

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

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

62 (3) Notwithstanding subdivisions (1) and (2) of this subsection, the following actions shall not be
63 considered violations of this section: (A) disclosing reports and other information generated by a
64 state and national criminal background check to the applicant or his representative, to give that
65 applicant an opportunity to question and challenge the results of that background check; (B)
66 releasing reports and other information generated by a state and national criminal background
67 check to a court of this commonwealth in litigation pending before that court brought by the
68 applicant to challenge the results of the state and national criminal background check; (C) use of
69 reports and information generated by a state and national criminal background check for the
70 preparation, investigation, and presentation of administrative proceedings involving the denial of
71 certification or a restriction on unsupervised access to children in an educational setting.

72 (4) The commissioner shall promulgate regulations for a process to appeal a decision of the
73 department to deny certification of an applicant or to restrict unsupervised access to children in
74 an educational setting for an applicant due to the results of a state and national criminal
75 background check conducted according to this section.

76 (f) The fee for the state and national criminal background check shall be paid by the applicant
77 and shall not be greater than the actual cost of processing the request and conducting the state

78 and national criminal background check. The fee may be included in the cost of the teacher
79 licensure application charged by the department.

80 (g) A school committee shall report to the department when any teacher, employee or
81 administrator in its district is discharged under subdivision (2) or resigns from employment after
82 a charge is filed with the school board for unbecoming behavior, or after charges are filed that
83 are grounds for discharge under section subsection (a) or when a teacher, employee or
84 administrator is suspended or resigns while an investigation is pending for unbecoming behavior
85 under subsection (a). The report must be made to the department within 10 days of the
86 discharge, suspension, or resignation has occurred. In the case of a teacher, upon receiving such
87 a report the department shall immediately revoke the individual's license to teach.

88 SECTION 2. Section 38G of chapter 71, as so appearing, is amended by inserting in line 58,
89 after the word "application" the following :- and satisfactory completion of the state and national
90 criminal history background check, as established in section 38G1/2.

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

95 SECTION 4. Said section 38G of chapter 71 as so appearing is amended by striking out, in line
96 155, the words "(4) is of sound moral character" and inserting in place thereof the following:- (4)
97 pass a state and national criminal history background check, as established by section 38G1/2.

98 SECTION 5. Said section 38G of chapter 71 is amended by inserting, in line 205, after the word
99 "responsibilities" the following:-, including the fee for the national and state criminal history
100 background check as established in section 38G1/2 of this chapter.

101 SECTION 6. Said section 38G of chapter 71 is amended by inserting in line 221, after the words
102 "employment" the following:- and has satisfactorily completed state and national criminal
103 history background checks.

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