

HOUSE No.

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

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1495 OF 2007-2008.]

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 hereby
2 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
15 or 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
24 of an applicant do not indicate that the applicant has been convicted of a violent crime, a sex
25 crime other than a sex crime classified as a misdemeanor or unbecoming behavior, as defined
26 in 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
29 state and national criminal history background check on all applicants, as defined in this
30 section. Each applicant shall provide written consent authorizing the release of any criminal
31 history background information to the department or superintendent, as applicable. The

32 department or superintendent, as applicable, shall receive the results of the state and national
33 criminal history background check and use those results to comply with subsections (c) and (d)
34 of this section.

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

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

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

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

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

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

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

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

72 proceedings involving the denial of certification or a restriction on unsupervised access to
73 children in an educational setting.

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

78 (f) The fee for the state and national criminal background check shall be paid by the applicant
79 and shall not be greater than the actual cost of processing the request and conducting the state
80 and national criminal background check. The fee may be included in the cost of the teacher
81 licensure application charged by the department.

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

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

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

97 SECTION 4. Said section 38G of chapter 71 as so appearing is amended by striking out, in line
98 155, the words "(4) is of sound moral character" and inserting in place thereof the following:-
99 (4) pass a state and national criminal history background check, as established by section
100 38G1/2.

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

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

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