

SENATE No. 312

The Commonwealth of Massachusetts

PRESENTED BY:

Joan B. Lovely

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 stopping harm inflicted by the exploitation of life and development.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Joan B. Lovely</i>	<i>Second Essex</i>	
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>	<i>1/28/2019</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>1/29/2019</i>
<i>Ryan C. Fattman</i>	<i>Worcester and Norfolk</i>	<i>1/30/2019</i>
<i>Peter J. Durant</i>	<i>6th Worcester</i>	<i>1/30/2019</i>
<i>Andres X. Vargas</i>	<i>3rd Essex</i>	<i>1/31/2019</i>
<i>Elizabeth A. Poirier</i>	<i>14th Bristol</i>	<i>1/31/2019</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>2/1/2019</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>2/1/2019</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>2/1/2019</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>2/4/2019</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>2/4/2019</i>

SENATE No. 312

By Ms. Lovely, a petition (accompanied by bill, Senate, No. 312) of Joan B. Lovely, Bradley H. Jones, Jr., Patrick M. O'Connor, Ryan C. Fattman and other members of the General Court for legislation to prevent the sexual abuse of children and youth. Education.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 295 OF 2017-2018.]

The Commonwealth of Massachusetts

—————
**In the One Hundred and Ninety-First General Court
(2019-2020)**
—————

An Act stopping harm inflicted by the exploitation of life and development.

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. This act shall be known as the SHIELD Act.

2 SECTION 2. The General Laws, as appearing in the 2016 Official Edition, are hereby
3 amended by inserting after chapter 119A the following chapter:-

4 CHAPTER 119 B. CHILD SEXUAL ABUSE PREVENTION

5 Section 1. For the purposes of this chapter, the following words and phrases shall have
6 the following meanings:-

7 "Abuse" means an act involving a child or student that constitutes a sexual offense under
8 the laws of the Commonwealth or any sexual misconduct between an adult and a child or student
9 under the care of that individual.

10 “Abuse prevention policy” means a policy adopted by a school or youth-serving
11 organization that supports the prevention of sexual abuse by outlining a code of conduct for
12 employees that identifies inappropriate or boundary violating behaviors between a teacher and a
13 student.

14 “Age-appropriate” means topics, messages, and teaching methods suitable to particular
15 ages or age groups of children and adolescents, based on developing cognitive, emotional, and
16 behavioral capacity typical for the age or age group

17 “Boundary violating behaviors” means a range of verbal, non-verbal, written or
18 electronic communications, or physical activities that the school or youth-serving organization
19 has deemed inappropriate between an employee and student or youth, regardless of whether the
20 behaviors are sexually motivated.

21 “Child” means a student or other individual under the age of 18.

22 "Direct contact with children" means the possibility of care, supervision, guidance or
23 control of children or routine interaction with children.

24 “Employee” means any person defined as such in section 148B of chapter 149.

25 “Job performance” includes, but is not limited to, abilities, attendance, attitude, awards,
26 demotions, disciplinary actions, duties, effort, knowledge, promotions, skills, and. in the case of
27 a former school employee, the reasons for separation.

28 “Mandated reporter” means any person defined as such in section 21 of chapter 119.

29 "School" means a Massachusetts public school or public school district, and includes a
30 collaborative school, charter school, virtual school or innovation school; or a Massachusetts

31 private day or residential school, including a special education school program approved under
32 chapter 71B; or a Massachusetts independent or parochial school.

33 "Sexual misconduct" means any act, including, but not limited to, any verbal, nonverbal,
34 written or electronic communication or physical activity, directed toward or with a child,
35 regardless of the age of the child, that is designed to promote a romantic or sexual relationship
36 with the child. Such acts include, but are not limited to:

37 (a) Sexual or romantic invitation

38 (b) Dating or soliciting dates

39 (c) Engaging in sexualized or romantic dialogue

40 (d) Making sexually suggestive comments

41 (e) Self-disclosure or physical exposure of a sexual, romantic or erotic nature

42 (f) Any sexual, indecent, romantic or erotic contact with a child or student.

43 "Student" means an individual under the age of 19 who has not received a high school
44 diploma, general educational development certificate or equivalent document and is served by a
45 school; or an individual under the age of 22 who has special needs under chapter 71B and has not
46 received a high school diploma, general educational development certificate or equivalent
47 document, and is served by a school.

48 "Youth-serving organization" means an entity with the mission of providing activities
49 and socialization for minors.

50 Section 2. Abuse Prevention Policies

51 (a) Every school and youth-serving organization shall adopt an abuse prevention policy
52 that supports the prevention of sexual abuse by outlining a code of conduct for employees that
53 identifies inappropriate or boundary violating behaviors for teachers and students. The policy
54 shall also detail the institution's procedures for meeting its obligations under section 51A of
55 chapter 119.

56 (b) The department of elementary and secondary education, in consultation with the
57 office of the child advocate and other agencies the department deems relevant, including, but not
58 limited to, the department of children and families, the department of early education and care,
59 the Children's Trust Fund, and Massachusetts Citizens for Children, shall create a model abuse
60 prevention policy that schools and youth-serving organizations shall use.

61 (c) The department shall review the model abuse prevention policy at least once every
62 five years to ensure it includes up-to-date information and best practices.

63 Section 3. Employee Sexual Abuse Prevention Education

64 (a) All mandated reporters employed by (1) any school that serves early childhood, pre-
65 kindergarten, kindergarten, elementary and secondary school students; (2) any state-operated or
66 state-licensed program that provides educational services to early childhood, pre-kindergarten
67 and kindergarten to grade 12 students; and (3) any youth-serving organization maintained by
68 non-profit or for-profit entities, shall receive instruction biennially on the prevention,
69 identification, and reporting of child sexual abuse. This instruction shall include comprehensive
70 training and information to help schools, state-licensed programs, and youth-serving
71 organizations and their personnel:

72 (1) recognize, appropriately respond to, and prevent behaviors violating the school or
73 youth-serving organization's abuse prevention policy, and recognize when such behaviors
74 provide reasonable cause to believe that a child is being abused;

75 (2) recognize, appropriately respond to, and prevent sexually inappropriate, coercive, or
76 abusive behaviors between children and youth served by schools, programs, and youth-serving
77 organizations;

78 (3) identify the ways in which the behavioral and verbal cues for sexual abuse differ from
79 those of other abuse and neglect;

80 (4) support the healthy development of students and children, and the building of
81 protective factors, to mitigate against their sexual victimization by adults or by other children;

82 (5) respond to disclosures of sexual abuse or reports of behaviors violating the abuse
83 prevention policy of adults or children in a supportive and appropriate manner that meets
84 mandated reporting requirements under section 51A of chapter 119;

85 (6) seek out community resources available to assist schools, programs, and youth-
86 serving organizations in the prevention, identification, reporting and referral to treatment of cases
87 involving the sexual abuse or exploitation of children or youth.

88 (b) Employees identified in this section shall complete the required training biennially.
89 Employees required to undergo continuing professional education shall receive credit toward the
90 continuing professional education requirements if the department of elementary and secondary
91 education has approved the training program.

92 (c) School boards, state agencies operating or licensing programs that serve children and
93 youth, and the boards of directors of youth-serving organizations, shall use tested, research-based
94 instructional materials that meet the requirements of subsection (a) and that the department of
95 elementary and secondary education has approved. The mode of delivery for the trainings may
96 include in-person or e-learning instruction.

97 (d) The department of elementary and secondary education and the department of early
98 education and care, in consultation with the office of the child advocate and other agencies the
99 commissioner deems relevant, including, but not limited to, the department of children and
100 families, the Children's Trust Fund, Massachusetts Citizens for Children, the Massachusetts
101 District Attorneys Association, the Massachusetts chapter of the National Association of Social
102 Workers, the Massachusetts Medical Society, the Massachusetts Teachers' Association, and the
103 American Federation of Teachers, shall adapt, implement and maintain an existing evidence-
104 based online or in-person training course to satisfy the requirements of subsection (c); provided,
105 however, that if the department cannot find an existing program to adapt to this purpose, then the
106 department shall create, implement, maintain and update such a training program; provided
107 further, that such training program shall be provided to schools and youth-serving organizations
108 at no cost.

109 (e) For each training required under this section, each school, state-operated or state-
110 licensed program, or youth-serving organization shall maintain, until at least the third
111 anniversary of the training, records that include the names of the individuals within their school,
112 program, or organization who participated in the training during that year.

113 (f) School boards, state agencies or licensing programs that serve children and youth, and
114 the boards of directors of youth-serving organizations, shall make information on such education
115 and training available to parents, legal guardians, and other interested persons upon request.

116 Section 4. Youth Sexual Abuse Education

117 (a) Every school that serves elementary and secondary school students, every state-
118 operated or state-licensed program serving children and youth, and every youth-serving
119 organization maintained by non-profit or for-profit entities shall provide age-appropriate
120 instruction to help students and children served by such schools, programs, or youth-serving
121 organizations:

122 (1) Recognize and report boundary-violating behaviors in adults that might indicate they
123 pose a sexual risk to children and youth;

124 (2) Recognize and report boundary-violating behaviors in other children that might
125 indicate they pose a sexual risk to children and youth;

126 (3) Learn how to develop healthy and respectful interpersonal relationships, including
127 appropriate body boundaries and privacy rules;

128 (4) Learn how to communicate effectively to trusted adults any concerns they have about
129 body boundaries or privacy violations;

130 (5) Learn about available school and community resources to prevent and respond to
131 sexual abuse; and

132 (6) Recognize and understand the consequences of false, inaccurate, or exaggerated
133 reports and the importance of children reporting honestly to the best of their ability.

134 (b) School boards, state agencies operating or licensing programs that serve children and
135 youth, and the boards of directors of youth-serving organizations shall use tested, research-based
136 instructional materials that meet the requirements of subsection (a) and that have been
137 demonstrated to increase the prevention knowledge and skills of those trained. The mode of
138 delivery for the trainings may include in-person or e-learning instruction.

139 (c) For each training required under this section, each school, state-operated or state-
140 licensed program, or youth-serving organization shall maintain, until at least the third
141 anniversary of the training, records that include the name of the individuals within their school,
142 program, or organization who participated in the training during that year.

143 (d) School boards, state agencies or licensing programs that serve children and youth, and
144 the Boards of Directors of youth-serving organizations shall make information on such education
145 and training available to parents, legal guardians, and other interested persons upon request.

146 Section 5. Sexual Abuse Prevention Hiring Requirements

147 (a) Notwithstanding section 38R of chapter 71, before a school or independent contractor
148 may offer employment to an applicant who would be employed by or work in a school in a
149 position involving direct contact with children, the school or independent contractor shall require
150 the applicant to provide:

151 (1) A list, including name, address, telephone number and other relevant contact
152 information of the applicant, including:

153 (i) Current employer

154 (ii) All former employers that were school entities

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

157 (2) A written authorization that consents to and authorizes disclosure by the applicant's
158 current and former employers in subparagraph (1) of the information requested under subsection
159 (b).

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

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

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

173 (iii) has ever had a license, professional license or certificate suspended, surrendered or
174 revoked (1) while allegations of abuse or sexual misconduct were pending or under investigation,
175 unless the investigation resulted in a finding that the allegations were false or inconclusive, or in

176 the case of section 51A of chapter 119, unsubstantiated; or (2) due to adjudicated findings of
177 abuse or sexual misconduct.

178 Material required information shall include all of an applicant's conduct that is known by
179 the previous employer, regardless of whether the conduct occurred before, on or after the date of
180 the passage of this law.

181 (b) Before a school or independent contractor may offer employment to an applicant who
182 would be employed by or work in a school in a position involving contact with children, the
183 school or independent contractor shall conduct a review of the employment history of the
184 applicant by contacting those employers listed by the applicant and requesting the following
185 information:

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

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

188 (i) was the subject of (1) an abuse or sexual misconduct investigation by any employer,
189 State licensing agency, law enforcement agency, unless such investigation resulted in a finding
190 that the allegations were false or inconclusive; or (2) an investigation of abuse under section 51A
191 of chapter 119 in which the allegations of abuse against the applicant were substantiated by the
192 department of children and families and not subsequently unsubstantiated or overturned on
193 appeal.

194 (ii) was disciplined, discharged, non-renewed, asked to resign from employment,
195 resigned from or otherwise separated from any employment (1) while allegations of abuse or
196 sexual misconduct were pending or under investigation, unless the investigation resulted in a

197 finding that the allegations were false or inconclusive or, in the case of section 51A of chapter
198 119, unsubstantiated; or (2) due to an adjudication or findings of abuse or sexual misconduct; or

199 (iii) has ever had a license, professional license or certificate suspended, surrendered or
200 revoked while allegations of abuse or sexual misconduct were pending or under investigation, or
201 due to adjudicated findings of abuse or sexual misconduct.

202 (c) Before a school or independent contractor may offer employment to an applicant who
203 would be employed by or in a school entity in a position involving direct contact with children,
204 the school entity or independent contractor shall check the eligibility for employment or
205 certification status of the applicant to determine whether the applicant holds valid and active
206 certification appropriate for the position and is otherwise eligible for employment and whether
207 the applicant has been the subject of professional discipline.

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

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

215 (f)(1) After reviewing the information initially disclosed under subsection (a)(2) and
216 finding an affirmative response to subsection (a)(2)(i), (ii) or (iii), or disclosed under section (b)
217 and finding an affirmative response to subsection (b)(2)(i), (ii) or (iii), where the prospective
218 employing school or contractor makes a determination to consider the applicant for employment,

219 the school or contractor shall request that former employers provide any additional material
220 information about the matters disclosed. The applicant shall provide written authorization that
221 consents to and authorizes disclosure by the applicant's current and former employers of said
222 additional material information.

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

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

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

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

234 (1) the applicant has provided all of the information and supporting documentation
235 required;

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

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

239 (h) A school or independent contractor may not enter into a collective bargaining
240 agreement, an employment contract, an agreement for resignation or termination, a severance
241 agreement or any other contract or agreement or take any action that interferes with the operation
242 of section 51A of chapter 119 or appropriate criminal authority. Any provision of an
243 employment contract or agreement for resignation or termination or a severance agreement that
244 is executed, amended or entered into after the effective date of this section and that is contrary to
245 this section shall be void.

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

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

253 (3) An employment history review conducted upon initial hiring of a substitute employee
254 by an independent contractor, intermediate unit or any other entity that furnishes substitute
255 staffing services to school entities shall satisfy the requirements of this section for all school
256 entities using the services of that independent contractor, intermediate unit or other entity.

257 (4) An independent contractor, intermediate unit or any other entity furnishing substitute
258 staffing services to school entities shall comply with the provisions of this Act.

259 (5) For purposes of this subsection, "substitute employee" shall not mean school bus
260 drivers employed by an independent contractor.

261 (j)(1) For employees of independent contractors, the employment history review required
262 by this section shall be performed either at the time of the initial hiring of the employee or prior
263 to the assignment of an existing employee to perform work for a school entity in a position
264 involving direct contact with children. The review shall remain valid as long as the employee
265 remains employed by that same independent contractor even though assigned to perform work
266 for other school entities.

267 (2) An independent contractor shall maintain records documenting employment history
268 reviews for all employees as required by this section and, upon request, shall provide a school
269 entity for which an employee is assigned to perform work access to the records pertaining to that
270 employee.

271 (3) Prior to assigning an employee to perform work for a school in a position involving
272 direct contact with children, the independent contractor shall inform the school of any instance
273 known to the independent contractor in which the employee:

274 (i) was the subject of any abuse or sexual misconduct investigation by any employer,
275 State licensing agency, law enforcement authority or child protective services agency, unless
276 such investigation resulted in a finding that allegations are false;

277 (ii) has ever been disciplined, discharged, non-renewed, removed from a substitute list,
278 asked to resign from employment, resigned from or otherwise separated from any employment
279 while allegations of abuse or sexual misconduct as described in subparagraph (i) were pending or
280 under investigation, or due to an adjudication or findings of abuse or sexual misconduct; or

281 (iii) has ever had a license, professional license or certificate suspended, surrendered or
282 revoked while allegations of abuse or sexual misconduct were pending or under investigation, or
283 due to an adjudication or findings of abuse or sexual misconduct.

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

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

291 (k)(1) An employer, school, school administrator or independent contractor who in good
292 faith provides information or records including personnel records about a current or former
293 employee's job performance and professional conduct to a prospective school employer or to the
294 department of elementary and secondary education shall be immune from criminal and civil
295 liability for the disclosure or any consequences of the disclosure, unless the information or
296 records were provided with the knowledge that they were false or misleading. Such immunity
297 shall be in addition to and not in limitation of any other immunity provided by law or any
298 absolute or conditional privileges applicable to such disclosures by virtue of the circumstances or
299 the applicant's consent thereto.

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

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

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

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

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

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

316 (2) To relieve a school, school administrator or independent contractor of its legal
317 responsibility to report suspected incidents of abuse in accordance with the provisions of section
318 51A of chapter 119 or misconduct by a licensed educator in accordance with the reporting
319 requirements of the department of elementary and secondary education.

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

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

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

332 (2) Notwithstanding any other provision of law to the contrary, the department of
333 elementary and secondary education shall report all willful violations of the provisions of this
334 sections to the National Association of State Directors of Teacher Education and Certification
335 Clearinghouse or any national databases serving the same purpose, all information required for
336 participation in such a clearinghouse.

337 Section 6. The board of education may promulgate regulations for implementation and
338 enforcement of this chapter. Upon release of the proposed regulations, the board shall file a copy
339 of the regulations with the clerks of the house of representatives and the senate, who shall
340 forward the regulations to the joint committee on education. Within 30 days of the filing, the
341 committee may hold a public hearing and issue a report on the regulations and file the report
342 with the board. The board, pursuant to applicable law, may adopt final regulations making
343 revisions to the proposed regulations as it deems appropriate after consideration of the report and
344 shall file a copy of the final regulations with the chairpersons of the joint committee on education

345 and, not earlier than 30 days after the filing, the board shall file the final regulations with the
346 state secretary.

347 Section 7. No employer shall be liable for injury, loss of property, personal injury or
348 death caused by an act or omission of a public employee while acting in the scope of the public
349 employee's employment and arising out of the implementation of this chapter. This chapter shall
350 not be construed as creating or imposing a specific duty of care.

351 SECTION 3. Subsection (a) of section 51A of chapter 119 of the General Laws, as
352 appearing in the 2016 Official Edition, shall be amended by inserting after the word "neglect.",
353 in line 19, the following:-

354 A school or mandated reporter who has reasonable cause to believe that a person who is
355 alleged to have sexually abused a child in the past, presently represents a credible threat to a
356 child under the age of eighteen years, shall have the same reporting obligations under this
357 section.