

**HOUSE . . . . . No. 1471**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

*Natalie M. Blais*

*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 establishing employee screening requirements in schools to prevent child sexual abuse.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Natalie M. Blais</i>	<i>1st Franklin</i>	<i>2/18/2021</i>
<i>Steven G. Xiarhos</i>	<i>5th Barnstable</i>	<i>2/24/2021</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/25/2021</i>
<i>Kate Lipper-Garabedian</i>	<i>32nd Middlesex</i>	<i>2/26/2021</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>2/26/2021</i>
<i>Christina A. Minicucci</i>	<i>14th Essex</i>	<i>2/26/2021</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>	<i>2/26/2021</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>2/26/2021</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>2/26/2021</i>
<i>Richard M. Haggerty</i>	<i>30th Middlesex</i>	<i>2/26/2021</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>	<i>2/26/2021</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>2/26/2021</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>3/31/2021</i>
<i>Mindy Domb</i>	<i>3rd Hampshire</i>	<i>5/18/2021</i>
<i>Susannah M. Whipps</i>	<i>2nd Franklin</i>	<i>5/19/2021</i>
<i>Tram T. Nguyen</i>	<i>18th Essex</i>	<i>5/19/2021</i>
<i>Patricia A. Duffy</i>	<i>5th Hampden</i>	<i>5/19/2021</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>	<i>5/19/2021</i>

<i>Steven C. Owens</i>	<i>29th Middlesex</i>	<i>5/19/2021</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>	<i>5/20/2021</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>	<i>5/20/2021</i>
<i>Carol A. Doherty</i>	<i>3rd Bristol</i>	<i>5/20/2021</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>5/28/2021</i>
<i>Jacob R. Oliveira</i>	<i>7th Hampden</i>	<i>6/14/2021</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>	<i>6/16/2021</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>	<i>9/3/2021</i>

**HOUSE . . . . . No. 1471**

By Ms. Blais of Sunderland, a petition (accompanied by bill, House, No. 1471) of Natalie M. Blais and others relative to screening of prospective school employees for prior investigations into child abuse or sexual misconduct. The Judiciary.

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninety-Second General Court  
(2021-2022)**

An Act establishing employee screening requirements in schools to prevent child sexual abuse.

*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 2014 Official Edition,  
2 is hereby amended

3 by inserting after Section 38R the following new section:-

4 Section 38R1/2. Screening of prospective school employees for prior investigations into  
5 child abuse or  
6 sexual misconduct.

7 For the purposes of this section, the following definitions shall apply:-

8 “Child abuse” means the non-accidental commission of any act by a caregiver which  
9 causes or creates a

10 substantial risk of physical or emotional injury or sexual abuse of a child or student; or  
11 the victimization

12 of a child or student through sexual exploitation, regardless if the person responsible is a  
13 caretaker.

14 “Sexual misconduct” means any verbal, nonverbal, written, or electronic communication,  
15 or any other

16 act directed toward or with a student that is designed to establish a sexual relationship  
17 with the student,

18 including a sexual invitation, dating or soliciting a date, engaging in sexual dialogue,  
19 making sexually

20 suggestive comments, self-disclosure or physical exposure of a sexual or erotic nature,  
21 and any other

22 sexual, indecent or erotic contact with a student.

23 (A) A school district, charter school, nonpublic school, or contracted service provider  
24 holding a contract

25 with a school district, charter school, or nonpublic school may not offer employment to  
26 an applicant

27 who would be employed by or work in a school in a position which involves direct or  
28 regular contact

29 with students, unless the school district, charter school, nonpublic school, or contracted  
30 service provider

31 requires the applicant to provide:

32 (1) A list, including name, address, telephone number and other relevant contact  
33 information of

34 the applicant, including:

35 (i) Current employer;

36 (ii) All former employers that were school entities;

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

39 (2) A written authorization that consents to and authorizes disclosure by the applicant's  
40 current and former employers.

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

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

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

54 (iii) has ever had a license, professional license or certificate suspended, surrendered or  
55 revoked (1) while allegations of abuse or sexual misconduct were pending or under investigation,  
56 unless the investigation resulted in a finding that the allegations were false or inconclusive, or in  
57 the case of section 51A of chapter 119, unsubstantiated; or (2) due to adjudicated findings of  
58 abuse or sexual misconduct.

59 (b) Before a school or contracted service provider may offer employment to an applicant  
60 who would be employed by or work in a school in a position involving direct or regular contact  
61 with children, the school or contracted service provider shall conduct a review of the  
62 employment history of the applicant by contacting those employers listed by the applicant and  
63 requesting the following information:

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

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

66 (i) was the subject of (1) an abuse or sexual misconduct investigation by any employer,  
67 State licensing agency, law enforcement agency, unless such investigation resulted in a finding  
68 that the allegations were false or inconclusive; or (2) an investigation of abuse under section 51A  
69 of chapter 119 in which the allegations of abuse against the applicant were substantiated by the

70 department of children and families and not subsequently unsubstantiated or overturned on  
71 appeal. (ii) was disciplined, discharged, non-renewed, asked to resign from employment,  
72 resigned from or otherwise separated from any employment (1) while allegations of abuse or  
73 sexual misconduct were pending or under investigation, unless the investigation resulted in a  
74 finding that the allegations were false or inconclusive or, in the case of section 51A of chapter  
75 119, unsubstantiated; or (2) due to an adjudication or findings of abuse or sexual misconduct; or  
76 (iii) has ever had a license, professional license or certificate suspended, surrendered or revoked  
77 while allegations of abuse or sexual misconduct were pending or under investigation, or due to  
78 adjudicated findings of abuse or sexual misconduct.

79 (c) Before a school or contracted service provider may offer employment to an applicant  
80 who

81 would be employed by or in a school entity in a position involving regular contact with  
82 children,

83 the school entity or contracted service provider shall check the eligibility for employment  
84 or

85 certification status of the applicant to determine whether the applicant holds valid and  
86 active

87 certification appropriate for the position and is otherwise eligible for employment and  
88 whether

89 the applicant has been the subject of professional discipline.

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

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

97 (f)(1) After reviewing the information initially disclosed under subsection (a)(2) and  
98 finding an affirmative response to subsection (a)(2)(i), (ii) or (iii), or disclosed under section (b)  
99 and finding an affirmative response to subsection (b)(2)(i), (ii) or (iii), where the prospective  
100 employing school or contractor makes a determination to consider the applicant for employment,  
101 the school or contractor shall request that former employers provide any additional material  
102 information about the matters disclosed. The applicant shall provide written authorization that  
103 consents to and authorizes disclosure by the applicant's current and former employers of said  
104 additional material information.

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

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

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



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

116 (1) the applicant has provided all of the information and supporting documentation  
117 required;

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

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

121 (h) A school or contractor may not enter into a collective bargaining agreement, an  
122 employment contract, an agreement for resignation or termination, a severance agreement or any  
123 other contract or agreement or take any action that interferes with the operation of section 51A of  
124 chapter 119 or appropriate criminal authority. Any provision of an employment contract or  
125 agreement for resignation or termination or a severance agreement that is executed, amended or  
126 entered into after the effective date of this section and that is contrary to this section shall be  
127 void.

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

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

135 (3) An employment history review conducted upon initial hiring of a substitute employee  
136 by an contracted service provider, intermediate unit or any other entity that furnishes substitute  
137 staffing services to school entities shall satisfy the requirements of this section for all school  
138 entities using the services of that independent contractor, intermediate unit or other entity.

139 (4) A contracted service provider, intermediate unit or any other entity furnishing  
140 substitute staffing services to school entities shall comply with the provisions of this Act.

141 (5) For purposes of this subsection, "substitute employee" shall not mean school bus  
142 drivers employed by a contracted service provider.

143 (j)(1) For employees of contracted service providers, the employment history review  
144 required

145 by this section shall be performed either at the time of the initial hiring of the employee  
146 or prior

147 to the assignment of an existing employee to perform work for a school entity in a  
148 position

149 involving regular contact with children. The review shall remain valid as long as the  
150 employee

151 remains employed by that same contractor even though assigned to perform work

152 for other school entities.

153 (2) A contracted service provider shall maintain records documenting employment  
154 history

155 reviews for all employees as required by this section and, upon request, shall provide a  
156 school

157 entity for which an employee is assigned to perform work access to the records pertaining  
158 to that

159 employee.

160 (3) Prior to assigning an employee to perform work for a school in a position involving

161 regular contact with children, the contracted service provider shall inform the school of  
162 any instance

163 known to the contractor in which the employee:

164 (i) was the subject of any abuse or sexual misconduct investigation by any employer,

165 State licensing agency, law enforcement authority or child protective services agency,

166 unless

167 such investigation resulted in a finding that allegations are false;

168 (ii) has ever been disciplined, discharged, non-renewed, removed from a substitute list,

169 asked to resign from employment, resigned from or otherwise separated from any

170 employment

171 while allegations of abuse or sexual misconduct as described in subparagraph (i) were  
172 pending or  
173 under investigation, or due to an adjudication or findings of abuse or sexual misconduct;  
174 or  
175 (iii) has ever had a license, professional license or certificate suspended, surrendered or  
176 revoked while allegations of abuse or sexual misconduct were pending or under  
177 investigation, or  
178 due to an adjudication or findings of abuse or sexual misconduct.

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

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

188 (k)(1) An employer, school, school administrator or independent contractor who in good

189 faith provides information or records including personnel records about a current or  
190 former  
191 employee's job performance and professional conduct to a prospective school employer  
192 or to the  
193 department of elementary and secondary education shall be immune from criminal and  
194 civil  
195 liability for the disclosure or any consequences of the disclosure, unless the information  
196 or  
197 records were provided with the knowledge that they were false or misleading. Such  
198 immunity  
199 shall be in addition to and not in limitation of any other immunity provided by law or any  
200 absolute or conditional privileges applicable to such disclosures by virtue of the  
201 circumstances or  
202 the applicant's consent thereto.  
203 (2) Except where the laws of other states prevent the release of the information or records  
204 requested, or disclosure is restricted by the terms of a contract entered into prior to the  
205 effective  
206 date of this section, the willful failure of a former employer, school entity, school  
207 administrator

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

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

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

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

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

225 (2) To relieve a school, school administrator or independent contractor of its legal

226 responsibility to report suspected incidents of abuse in accordance with the provisions of  
227 section  
228 51A of chapter 119 or misconduct by a licensed educator in accordance with the  
229 reporting  
230 requirements of the department of elementary and secondary education.

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

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

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

245 (2) Notwithstanding any other provision of law to the contrary, the department of  
246 elementary and secondary education shall report all willful violations of the provisions of  
247 these  
248 sections to the National Association of State Directors of Teacher Education and  
249 Certification  
250 Clearinghouse or any national databases serving the same purpose, all information  
251 required for  
252 participation in such a clearinghouse.

253 (3) The Department of Education shall notify each school district and school about the  
254 provisions of this act to ensure applicants and employers are aware of their respective rights and  
255 responsibilities under this act. The department shall develop standardized forms for applicants  
256 and employers to use to comply with the requirements of subsection (A) of this act, as well as  
257 any other informational materials that may assist applicants and employers in the implementation  
258 of and compliance with this act.

259 (4) The board of education may promulgate regulations for implementation and  
260 enforcement of this chapter. Upon release of the proposed regulations, the board shall file  
261 a copy  
262 of the regulations with the clerks of the house of representatives and the senate, who shall  
263 forward the regulations to the joint committee on education. Within 30 days of the filing,  
264 the



265 committee may hold a public hearing and issue a report on the regulations and file the  
266 report

267 with the board. The board, pursuant to applicable law, may adopt final regulations  
268 making

269 revisions to the proposed regulations as it deems appropriate after consideration of the  
270 report and

271 shall file a copy of the final regulations with the chairpersons of the joint committee on  
272 education

273 and, not earlier than 30 days after the filing, the board shall file the final regulations with  
274 the

275 state secretary.

276 (5) No employer shall be liable for injury, loss of property, personal injury or death  
277 caused by an act or omission of a public employee while acting in the scope of the public  
278 employee's employment and arising out of the implementation of this chapter. This chapter shall  
279 not be construed as creating or imposing a specific duty of care.