

SENATE No. 1091

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 relative to enhancing hiring practices to prevent sexual abuse.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Joan B. Lovely</i>	<i>Second Essex</i>	
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>2/26/2021</i>
<i>Steven G. Xiarhos</i>	<i>5th Barnstable</i>	<i>2/26/2021</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>3/8/2021</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>3/31/2021</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>	<i>5/3/2021</i>

SENATE No. 1091

By Ms. Lovely, a petition (accompanied by bill, Senate, No. 1091) of Joan B. Lovely, Kay Khan, Steven G. Xiarhos, Michael O. Moore and others for legislation to enhance hiring practices at schools to prevent sexual abuse. The Judiciary.

The Commonwealth of Massachusetts

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

An Act relative to enhancing hiring practices to prevent 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 is hereby amended by inserting, after
2 section 38R, the following new section:-

3 Section 38S. Sexual Abuse Prevention Hiring Requirements

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

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

10 (i) Current employer

11 (ii) All former employers that were school entities

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

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

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

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

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

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

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

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

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

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

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

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

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

54 finding that the allegations were false or inconclusive or, in the case of section 51A of chapter
55 119, unsubstantiated; or (2) due to an adjudication or findings of abuse or sexual misconduct; or

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

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

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

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

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

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

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

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

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

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

91 (1) the applicant has provided all of the information and supporting documentation
92 required;

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

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

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

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

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

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

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

116 (j)(1) For employees of independent contractors, the employment history review required
117 by this section shall be performed either at the time of the initial hiring of the employee or prior

118 to the assignment of an existing employee to perform work for a school entity in a position
119 involving direct contact with children. The review shall remain valid as long as the employee
120 remains employed by that same independent contractor even though assigned to perform work
121 for other school entities.

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

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

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

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

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

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

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

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

155 (2) Except where the laws of other states prevent the release of the information or
156 records requested, or disclosure is restricted by the terms of a contract entered into prior to the
157 effective date of this section, the willful failure of a former employer, school entity, school
158 administrator or independent contractor to respond or provide the information and records as
159 requested may result in civil penalties, and professional discipline where appropriate.

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

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

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

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

171 (2) To relieve a school, school administrator or independent contractor of its legal
172 responsibility to report suspected incidents of abuse in accordance with the provisions of section
173 51A of chapter 119 or misconduct by a licensed educator in accordance with the reporting
174 requirements of the department of elementary and secondary education.

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

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

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

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

192 Section 6. The board of education may promulgate regulations for implementation and
193 enforcement of this chapter. Upon release of the proposed regulations, the board shall file a copy
194 of the regulations with the clerks of the house of representatives and the senate, who shall
195 forward the regulations to the joint committee on education. Within 30 days of the filing, the
196 committee may hold a public hearing and issue a report on the regulations and file the report
197 with the board. The board, pursuant to applicable law, may adopt final regulations making
198 revisions to the proposed regulations as it deems appropriate after consideration of the report and
199 shall file a copy of the final regulations with the chairpersons of the joint committee on education

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

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

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

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