SENATE DOCKET, NO. 1411 FILED ON: 1/16/2025

SENATE . . . . . No. 1166

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:	
Joan B. Lovely	*Second Essex*	
Joanne M. Comerford	*Hampshire, Franklin and Worcester*	*1/22/2025*
Susannah M. Whipps	*2nd Franklin*	*3/5/2025*
Dylan A. Fernandes	*Plymouth and Barnstable*	*3/27/2025*
John F. Keenan	*Norfolk and Plymouth*	*6/30/2025*

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SENATE . . . . . No. 1166

By Ms. Lovely, a petition (accompanied by bill, Senate, No. 1166) of Joan B. Lovely, Joanne M. Comerford and Susannah M. Whipps for legislation to enhance hiring practices at schools to prevent sexual abuse. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *1040* OF 2023-2024.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Fourth General Court
(2025-2026)

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:

SECTION 1. Chapter 71 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by inserting after Section 38R the following new section:-

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

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

"Child abuse" means the non-accidental commission of any act by a caregiver which causes or creates a substantial risk of physical or emotional injury or sexual abuse of a child or student; or the victimization of a child or student through sexual exploitation, regardless if the person responsible is a caretaker.

"Sexual misconduct" means any verbal, nonverbal, written, or electronic communication, or any other act directed toward or with a student that is designed to establish a sexual relationship with the student, including a sexual invitation, dating or soliciting a date, engaging in sexual dialogue, making sexually suggestive comments, self-disclosure or physical exposure of a sexual or erotic nature, and any other sexual, indecent or erotic contact with a student.

(a) A school district, charter school, nonpublic school, or contracted service provider holding a contract with a school district, charter school, or nonpublic school may not offer employment to an applicant who would be employed by or work in a school in a position which involves direct or regular contact with students, unless the school district, charter school, nonpublic school, or contracted service provider requires the applicant to provide:

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

(i) Current employer;

(ii) All former employers that were school entities;

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

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

(3) A written statement of whether the applicant:

(i) has been the subject of (A) an abuse or sexual misconduct investigation by any employer, State licensing agency, law enforcement agency, unless the investigation resulted in a

finding that the allegations were false or inconclusive; or (B) an investigation of abuse under section 51A of chapter 119 in which the allegations of abuse against the applicant were substantiated by the department of children and families and not subsequently unsubstantiated or overturned on appeal;

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

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

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

(1) The dates of employment of the applicant.

(2) A statement as to whether the applicant:

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

(ii) was disciplined, discharged, non-renewed, asked to resign from employment, resigned from or otherwise separated from any employment (A) while allegations of abuse or sexual misconduct were pending or under investigation, unless the investigation resulted in a finding that the allegations were false or inconclusive or, in the case of section 51A of chapter 119, unsubstantiated; or (B) due to an adjudication or findings of abuse or sexual misconduct; or

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

(c) Before a school or contracted service provider may offer employment to an applicant who would be employed by or in a school entity in a position involving regular contact with children, the school entity or contracted service provider shall check the eligibility for employment or certification status of the applicant to determine whether the applicant holds valid and active certification appropriate for the position and is otherwise eligible for employment and whether the applicant has been the subject of professional discipline.

(d) Before a school or contracted service provider may offer employment to an applicant who would be employed by or in a school entity in a position involving regular contact with

children, the school entity or contracted service provider shall check the Central Registry of the department of children and families. A substantiated finding of physical or sexual abuse of a child shall disqualify that applicant from employment.

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

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

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

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

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

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

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

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

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

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

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

(1) Any individual who is a school employee, contractor, or agent, or any State educational agency or local educational agency, shall be prohibited from assisting a school

employee, contractor, or agent in obtaining a new job in another educational agency or school, apart from the routine transmission of administrative and personnel files, if the individual or agency knows, or has probable cause to believe, that such school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of the law.

(2) Exception- The requirements of subsection (a) shall not apply if the information giving rise to probable cause:

(i) has been properly reported to a law enforcement agency with jurisdiction over the alleged misconduct; and has been properly reported to any other authorities as required by Federal, State, or local law, including title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) and the regulations implementing such title under part 106 of title 34, Code of Federal Regulations, or any succeeding regulations; and

(ii) the matter has been officially closed or the prosecutor or police with jurisdiction over the alleged misconduct has investigated the allegations and notified school officials that there is insufficient information to establish probable cause that the school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of the law;

(iii) the school employee, contractor, or agent has been charged with, and acquitted or otherwise exonerated of the alleged misconduct; or

(iv) the case or investigation remains open and there have been no charges filed against, or indictment of, the school employee, contractor, or agent within 4 years of the date on which the information was reported to a law enforcement agency.

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

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

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

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

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

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

(2) A contracted service provider shall maintain records documenting employment history reviews for all employees as required by this section and, upon request, shall provide a school entity for which an employee is assigned to perform work access to the records pertaining to that employee.

(3) Prior to assigning an employee to perform work for a school in a position involving regular contact with children, the contracted service provider shall inform the school of any instance known to the contractor in which the employee:

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

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

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

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

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

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

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

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

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

(l) Nothing in this section shall be construed:

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

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

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

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

(m)(1) The office of the attorney general shall have jurisdiction to determine willful violations of this section and may, following a hearing, assess a civil penalty not to exceed ten thousand dollars ($10,000). School entities shall be barred from contracting with an independent

contractor who is found to have willfully violated the provisions of this section. Willful violations of the provisions of this section shall be reported to the relevant licensing authority.

(2) Notwithstanding any other provision of law to the contrary, the department of education shall gather data on all reports of sexual misconduct and sexual abuse of students by school employees, including details of the allegations of sexual misconduct and sexual abuse; name of the school filing the report; whether an investigation was conducted and, if not, reasons why; the outcome of any investigation, including whether a license was temporarily or permanently revoked or whether the employee surrendered their license in lieu of an investigation. These aggregated data will be reported to the legislature on an annual basis and a report made available to the public and to the National Association of State Directors of Teacher Education and Certification Clearinghouse or any national databases serving the same purpose.

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

4) The board of education may promulgate regulations for implementation and enforcement of this chapter. Upon release of the proposed regulations, the board shall file a copy of the regulations with the clerks of the house of representatives and the senate, who shall forward the regulations to the joint committee on education. Within 30 days of the filing, the committee may hold a public hearing and issue a report on the regulations and file the report

with the board. The board, pursuant to applicable law, may adopt final regulations making revisions to the proposed regulations as it deems appropriate after consideration of the report and shall file a copy of the final regulations with the chairpersons of the joint committee on education and, not earlier than 30 days after the filing, the board shall file the final regulations with the state secretary.

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