HOUSE DOCKET, NO. 2421 FILED ON: 1/20/2011

HOUSE . . . . . No. 1936

The Commonwealth of Massachusetts

PRESENTED BY:

Bradley H. Jones, Jr.

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act Relative to Ensuring Teacher Quality for Teacher Licensure Applicants.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Bradley H. Jones, Jr.	*20th Middlesex*
Donald F. Humason, Jr.	*4th Hampden*
Angelo L. D'Emilia	*8th Plymouth*
Geoff Diehl	*7th Plymouth*
F. Jay Barrows	*1st Bristol*
Shaunna O'Connell	*3rd Bristol*
Susan Williams Gifford	*2nd Plymouth*
George T. Ross	*2nd Bristol*
Donald H. Wong	*9th Essex*
Todd M. Smola	*1st Hampden*
Kevin J. Kuros	*8th Worcester*
Sheila C. Harrington	*1st Middlesex*
Matthew A. Beaton	*11th Worcester*
Steven L. Levy	*4th Middlesex*
Bruce E. Tarr	*[District]*
Paul K. Frost	*7th Worcester*
George N. Peterson, Jr.	*9th Worcester*
Bradford Hill	*4th Essex*

Elizabeth A. Poirier	*14th Bristol*
Viriato Manuel deMacedo	*1st Plymouth*

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HOUSE . . . . . No. 1936

By Mr. Jones of North Reading, a petition (accompanied by bill, House, No. 1936) of Bradley H. Jones, Jr. and others relative to background checks for teacher licensure applicants . Education.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act Relative to Ensuring Teacher Quality for Teacher Licensure Applicants.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 71 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting, after section 38G, the following section:-

Section 38G 1/2. State and National Criminal History Background Check for Teacher Licensure Applicants and Other School Personnel

(a) For the purposes of this section, the following words shall have the following meanings:-

"Applicant", an individual who: applies for an initial educator license, as defined in section 38G; who applies for a recertification of an educator license, as defined in section 38G, after the effective date of this act; or who applies for any full-time or part-time employment in a local school department that will expose the individual to unsupervised access to children in an educational setting.

"Department", the department of education, as defined in section 1 of chapter 15.

"Educational setting", any vehicle, building, structure, location or other area, whether public or private property, utilized for or involved in the education, training, instruction, or supervision of children by a local, regional or charter school district, or the transportation of children to, from or in connection with any such activity.

"Unbecoming behavior", an offense established in sections 13B, 13H, 13J, 22A, 23, 24B, 26A, and 27A of chapter 265 or, sections 4, 4A and 29A-29C, inclusive, of chapter 272. “State and national criminal history background check”, an investigation of the criminal record of an applicant, based on the criminal history record systems maintained by the Massachusetts state

21 police and the Federal Bureau of Investigation and based on fingerprint identification or any
22 other method of positive identification.

23 "Satisfactorily pass a state and national criminal history background check", a situation
24 where the results or information generated by a state and national criminal history background
25 check of an applicant do not indicate that the applicant has been convicted of a violent crime, a
26 sex crime other than a sex crime classified as a misdemeanor or unbecoming behavior, as defined
27 in subsection (a), or under a similar law of another state or the United States.

28 (b) (1) Beginning January 1, 2013 the department, or the superintendent of a school
29 district where an applicant seeks any employment position in an educational setting, shall
30 conduct a state and national criminal history background check on all applicants, as defined in
31 this section. Each applicant shall provide written consent authorizing the release of any criminal
32 history background information to the department or superintendent, as applicable. The
33 department or superintendent, as applicable, shall receive the results of the state and national
34 criminal history background check and use those results to comply with subsections (c) and (d)
35 of this section.

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

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

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

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

53 (d) The commissioner of education shall not issue an educator license, as defined in
54 section 38G, or recertify any such educator license, as defined in section 38G, to any applicant,
55 and a superintendent shall not hire an applicant for any full-time or part-time employment

56 position in an educational setting in the district, unless and until the applicant satisfactorily
57 passes a state and national criminal history background check.

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

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

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

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

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

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

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

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

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

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

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

108 SECTION 7. Section 38R of chapter 71, as most recently amended by Section 62 of
109 Chapter 256 of the Acts of 2010, is repealed.