

**HOUSE . . . . . No. 04003**

---

---

The Commonwealth of Massachusetts

\_\_\_\_\_  
PRESENTED BY:

*Alice Hanlon Peisch*

\_\_\_\_\_

*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 bill:

An Act to protect children .

\_\_\_\_\_  
PETITION OF:

NAME:

*Alice Hanlon Peisch*

DISTRICT/ADDRESS:

*14th Norfolk*

# HOUSE . . . . . No. 04003

By Ms. Peisch of Wellesley, a petition (subject to Joint Rule 12) of Alice Hanlon Peisch relative to the protection of children. Education.

## The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act to protect children .

*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. Subsection (a) of section 7 of chapter 15D of the General Laws, as appearing in the  
2 2010 Official Edition, is hereby amended by inserting at the end thereof the following  
3 paragraph:-  
4 As part of the department’s licensure and Background Record Check process, the department  
5 shall conduct fingerprint-based checks of the state and national criminal history databases,  
6 pursuant to section 16962 of chapter 42 of the United States Code, before issuing any license.  
7 Said fingerprint-based checks shall be conducted on any applicant for a family child care, small  
8 group and school age, large group and school age, residential and placement license or family  
9 child care assistant certificate. In addition, said fingerprint based checks shall be conducted for  
10 all applicants for employment, who have the potential for unsupervised contact with children, in  
11 any department licensed or funded program and for all household members or persons regularly  
12 on the premises, aged 15 and older, of applicants for family child care licensure. Such

13 fingerprint-based checks shall also be required for all in-home non-relative department funded  
14 caregivers, and for all applicants to be adoptive or foster parents. Authorized department staff  
15 may receive and appropriately disseminate all criminal offender record information and the  
16 results of checks of state and national criminal information databases, pursuant to section 16962  
17 of chapter 42 of the United States Code, in accordance with the law.

18 SECTION 2. Subsection (b) of section 7 of said chapter 15D of the General Laws, as so  
19 appearing, is hereby amended by inserting at the end thereof the following paragraph:-

20 As part of the department's approval process, the department shall conduct fingerprint-based  
21 checks of the national crime information databases pursuant to section 16962 of chapter 42 of the  
22 United States Code before issuing any approval. Said fingerprint based checks shall be  
23 conducted for all applicants for employment, who have the potential for unsupervised contact  
24 with children, in any department approved program. Authorized department staff may receive  
25 and appropriately disseminate all criminal offender record information and the results of checks  
26 of state and national criminal information databases, pursuant to section 16962 of chapter 42 of  
27 the United States Code, in accordance with the law.

28 SECTION 3. Subsection (b) of section 8 of said chapter 15D of the General Laws, as so  
29 appearing, is hereby amended by inserting after the word "fees", in line 35, the following words:-  
30 "which shall incorporate all fees associated with conducting fingerprint-based checks of the state  
31 and national criminal history databases, pursuant to section 16962 of chapter 42 of the United  
32 States Code, as set by the department,"

33 SECTION 4. Subsection (d) of section 8 of said chapter 15D of the General Laws, as so  
34 appearing, is hereby amended by inserting after the word "check", in line 55, the following

35 words:- “and fingerprint-based checks of the state and national criminal history databases  
36 pursuant to section 16962 of chapter 42 of the United States Code.”

37 SECTION 5. Section 8 of said chapter 15D of the General Laws, as so appearing, is hereby  
38 amended by inserting at the end thereof the following new subsection:-

39 (j) Fingerprints, as referenced in subsections (a) and (b) of section 7 and subsections (b) and (d)  
40 of section 8 of chapter 15D will be submitted to the identification section of the department of  
41 state police for a state criminal history check and forwarded to the Federal Bureau of  
42 Investigation for a national criminal history check, according to the policies and procedures  
43 established by the identification section and by the department of criminal justice information  
44 services. Fingerprint submissions may be retained for the purpose of ensuring the continued  
45 suitability for licensure, certification, approval or employment of those individuals.

46 The department of criminal justice information services shall disseminate the results of the  
47 criminal background check to the department. The department shall retain information obtained  
48 under this section according to the policies and procedures established by the department of  
49 criminal justice information services and shall not disseminate the information except as  
50 authorized by law.

51 The department, with approval from the board, shall amend its Background Record Check  
52 regulations in a manner necessary to carry out the provisions of this section.

53 Any and all persons required to undergo the fingerprinting process described in this chapter,  
54 including but not limited to any applicant for department licensure or for employment at a  
55 department licensed or funded program, or any household member or person regularly on the  
56 premises, aged fifteen and above in a family child care program, any prospective foster or

57 adoptive parent, and any in-home non-relative caregiver, shall pay a fee, to be established by the  
58 department in consultation with the secretary of public safety and security, to offset the costs of  
59 operating and administering a fingerprint-based criminal background check system. The  
60 department licensed or funded programs may reimburse applicants for employment for all or part  
61 of the fee on grounds of financial hardship. The fee shall be deposited into the Fingerprint-  
62 Based Background Check Trust Fund established under section 2CCCC of chapter 29, provided,  
63 however, that 10 percent of the fee may be retained by the commissioner to fund the  
64 investigations unit.

65 SECTION 6. Section 9 of said chapter 15D of the General Laws, as so appearing, is hereby  
66 amended by inserting at the end thereof the following new subsections:-

67 (d) In addition to the power of the department set forth in sections 7, 8 and 9 of chapter 15D,  
68 the department shall investigate any and all alleged violations of law or regulation under the  
69 authority of this chapter as necessary for the protection of children. At any stage of an  
70 investigation or proceeding occasioned by an allegation of any violation of this chapter and the  
71 regulations promulgated thereunder, the commissioner may issue a subpoena or a subpoena  
72 duces tecum to summon a witness or compel the production of documents. An individual who  
73 holds a department license or works in a department licensed program is deemed to have  
74 sufficient contacts with Massachusetts to confer jurisdiction pursuant to section 3 of chapter  
75 223A. Department staff conducting such investigations may receive and appropriately  
76 disseminate criminal offender record information and the results of finger-print based checks of  
77 the state and national criminal information databases, pursuant to section 16962 of chapter 42 of  
78 the United States Code, in accordance with the law.

79 (e) No person who files a complaint, reports alleged wrongdoing or provides information about  
80 a licensee, applicant or any other person described in sections 7, 8 and 9 of this chapter, or who  
81 assists the department, at its request, in discharging its duties and functions, shall be liable in any  
82 cause of action arising out of the provision of such information or assistance if the person acted  
83 in good faith and without malice.

84 SECTION 7. Chapter 29 of the General Laws is hereby amended by inserting after section  
85 2BBBB the following section: -

86 Section 2CCCC. There is hereby established and set up on the books of the commonwealth a  
87 separate fund to be known as the Fingerprint-Based Background Check Trust Fund. Amounts  
88 credited to such fund shall be available, without further appropriation, to the executive office of  
89 public safety and security to carry out fingerprint-based state and national background criminal  
90 checks for the purposes of employment, professional licensure and other non-criminal justice  
91 purposes.

92 The fund shall be utilized for the sole purpose of carrying out state and national criminal  
93 background checks and verifications, including, but not limited to, obtaining or contracting to  
94 obtain fingerprints and fees from subjects, making payments charged by the Federal Bureau of  
95 Investigation or other entity, staffing the department of state police and the department of  
96 criminal justice information services to submit fingerprints and to obtain, verify and disseminate  
97 the results of background checks, and maintaining the public safety information systems used to  
98 obtain access to fingerprint-based state and national criminal background information.

99 SECTION 8. Section 1A of chapter 69 of the General Laws, as appearing in the 2010 Official  
100 Edition, is hereby amended by inserting after the second paragraph the following paragraph:-

101 The commissioner may appoint a chief of investigations and other investigators, who shall be  
102 exempt from chapter thirty-one and who may investigate alleged violations of law or regulation  
103 under the authority of the commissioner as necessary for the protection of children. Investigators  
104 may receive and appropriately disseminate all criminal offender record information and the  
105 results of checks of national crime information databases, pursuant to section 16962 of chapter  
106 42 of the United States Code, in accordance with the law.

107 SECTION 9. Section 38G of chapter 71 of the General Laws, as appearing in the 2010 Official  
108 Edition, is hereby amended by inserting after the 15th paragraph the following paragraphs:-

109 At any stage of an investigation or proceeding occasioned by an allegation of misconduct by a  
110 licensed educator or an applicant for licensure, pursuant to this chapter and the regulations  
111 promulgated hereunder, the commissioner may request and shall receive from school districts  
112 and any public or private school in the Commonwealth, including a chapter 71B approved  
113 special education program, any and all information and documents relating to any individual,  
114 including the educator's complete personnel record, as defined in section 52C of chapter 149 and  
115 including the results of checks of state and national criminal information databases. At any stage  
116 of an investigation or proceeding occasioned by an allegation of misconduct by a licensed  
117 educator or an applicant for licensure, pursuant to this chapter and the regulations promulgated  
118 hereunder, the commissioner or his designee may issue a subpoena or a subpoena duces tecum to  
119 summon a witness or compel the production of documents. An individual who holds teacher  
120 certification pursuant to this section is deemed to have sufficient contacts with Massachusetts to  
121 confer jurisdiction pursuant to section 3 of chapter 223A.

122 No person who files a complaint, reports alleged wrongdoing or provides information about a  
123 licensed educator or administrator or an applicant for licensure pursuant to this section or who  
124 assists the commissioner at his request in discharging his duties and functions shall be liable in  
125 any cause of action arising out of the provision of such information or assistance if the person  
126 acted in good faith and without malice.

127 SECTION 10. Section 38R of said chapter 71 of the General Laws, as so appearing, is hereby  
128 amended by striking out the first and second paragraphs and inserting in place thereof the  
129 following paragraphs:-

130 In a manner prescribed by the board of elementary and secondary education, the school  
131 committee and superintendent of any city, town or regional school district and the principal or  
132 other administrator, by whatever title the position be known, of a public or private school,  
133 including a chapter 71B approved special education school program, shall obtain periodically,  
134 but not less than every 3 years, from the department of criminal justice information services all  
135 available criminal offender record information for any current or prospective employee or  
136 volunteer of the school district, or for any subcontractor or laborer commissioned by the school  
137 committee or school to perform work on school grounds, who may have direct and unmonitored  
138 contact with children, including any individual who regularly provides school related  
139 transportation to children.

140 Said school committee, superintendent or principal shall also obtain a state and national  
141 fingerprint-based criminal background check, as authorized by Public Law 92-544, for the  
142 purpose of determining the suitability of current and prospective employees of the school  
143 department who may have direct and unmonitored contact with children. Said school committee,

144 superintendent or principal shall also obtain such a check for any individual who regularly  
145 provides school related transportation to children and any subcontractor or laborer commissioned  
146 by the school committee or school to perform work on school grounds who may have direct and  
147 unmonitored contact with children. Fingerprints will be submitted to the identification section of  
148 the department of state police for a state criminal history check and forwarded to the Federal  
149 Bureau of Investigation for a national criminal history check, according to the policies and  
150 procedures established by the identification section and by the department of criminal justice  
151 information services. Fingerprint submissions may be retained for the purpose of ensuring the  
152 continued suitability of those individuals.

153 The department of criminal justice information services shall disseminate the results of the  
154 criminal background check to the school committee, superintendent or principal or the designee  
155 of the school committee, superintendent or principal. The school committee, superintendent or  
156 principal shall retain information obtained under this section according to the policies and  
157 procedures established by the department of criminal justice information services and shall not  
158 disseminate the information except as authorized by law. Said school committee, superintendent  
159 or principal shall notify the commissioner of any criminal record information relevant to the  
160 fitness for licensure of any holder of, or applicant for, a Massachusetts educator's license.

161 The board shall in a manner provided by law and in accordance with sections 167 to 168,  
162 inclusive of chapter 6, promulgate regulations necessary to carry out this section. The  
163 regulations shall provide for the confidentiality of criminal offender record information and the  
164 results of finger-print based checks of the state and national criminal history databases, pursuant  
165 to section 16962 of chapter 42 of the United States Code, obtained pursuant to this section.

166 The applicant shall pay a fee, to be established by the secretary of administration and finance in  
167 consultation with the secretary of public safety and security and the commissioner, to offset the  
168 costs of operating and administering a fingerprint-based criminal background check system. The  
169 school committee, superintendent or principal may reimburse applicants all or part of the fee on  
170 grounds of financial hardship. The fee shall be deposited into the Fingerprint-Based Background  
171 Check Trust Fund established under section 2CCCC of chapter 29, provided, however, that 10  
172 percent of the fee may be retained by the commissioner to fund the investigations unit.

173 SECTION 11. Subsection (l) of section 51B of chapter 119 of the General Laws, as appearing in  
174 the 2010 Official Edition, is hereby amended by inserting after the word “part,” in line 124, the  
175 following words: -“or was committed by an individual the department has reason to believe was  
176 licensed”; and further amended by inserting after the words “youth services”, in line 127, the  
177 following words: - “, or was employed at a facility approved or licensed by the department of  
178 early education and care”.

179 SECTION 12. Section 10 of this act shall take effect on May 4, 2012.