

HOUSE No. 4104

The Commonwealth of Massachusetts

PRESENTED BY:

Kay Khan

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 background checks by the Department of Youth Services.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|-----------------------------|-----------------------------------|
| <i>Kay Khan</i> | <i>11th Middlesex</i> |
| <i>Brian M. Ashe</i> | <i>2nd Hampden</i> |
| <i>Daniel Cahill</i> | <i>10th Essex</i> |
| <i>James J. Dwyer</i> | <i>30th Middlesex</i> |
| <i>Carolyn C. Dykema</i> | <i>8th Middlesex</i> |
| <i>Kimberly N. Ferguson</i> | <i>1st Worcester</i> |
| <i>Patricia A. Haddad</i> | <i>5th Bristol</i> |
| <i>Hannah Kane</i> | <i>11th Worcester</i> |
| <i>Marc R. Pacheco</i> | <i>First Plymouth and Bristol</i> |
| <i>José F. Tosado</i> | <i>9th Hampden</i> |
| <i>Steven Ultrino</i> | <i>33rd Middlesex</i> |

HOUSE No. 4104

By Ms. Khan of Newton, a petition (subject to Joint Rule 12) of Kay Khan and others relative to background checks by the Department of Youth Services. Children, Families and Persons with Disabilities.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act relative to background checks by the Department of Youth Services.

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. Section 7 of chapter 15D of the General Laws, as appearing in the 2016
2 Official Edition, is hereby amended by inserting after the word “program”, in lines 38 and 41, in
3 each instance, the following words:- other than programs operated by the department of youth
4 services.

5 SECTION 2. Chapter 18A of the General Laws is hereby amended by inserting after
6 section 8 the following section:-

7 Section 8A. (a) Each current or prospective department employee, intern, volunteer or
8 subcontractor providing residential or support services with the potential for unsupervised
9 contact with youths committed to the care or custody of the department shall be subject to a
10 background check that shall include: (i) a fingerprint-based check of the state and national
11 criminal history databases pursuant to Public Law 92-544; (ii) a criminal offender record
12 information check pursuant to section 172 of chapter 6; (iii) a check for supported findings of

13 abuse or neglect pursuant to section 51B of chapter 119; (iv) a sex offender registry information
14 check pursuant to section 178K of chapter said 6; and (v) where relevant to the employee's
15 duties, a registry of motor vehicles information check.

16 (b) Fingerprints shall be submitted to the identification section of the department of state
17 police for a state criminal history check and forwarded to the Federal Bureau of Investigation for
18 a national criminal history check, according to the policies and procedures established by the
19 identification section and by the department of criminal justice information services. Fingerprint
20 submissions may be retained by the Federal Bureau of Investigation, the identification section
21 and the department of criminal justice information services to assist the department in its review
22 of suitability for initial or continued employment, licensure, certification or approval. The
23 department of criminal justice information services may disseminate the results of a state and
24 national criminal history check to authorized staff of the department to determine the suitability
25 of current and prospective employees who have the potential for unsupervised contact with
26 youths committed to the care or custody of the department and subcontractors, interns,
27 volunteers or other individuals employed or retained by the department who have the potential
28 for unsupervised contact with youths committed to the care or custody of the department.

29 Notwithstanding subsections 9 and 9½ of section 4 of chapter 151B, if the department
30 receives information from a fingerprint-based check that does not include a final disposition or is
31 otherwise incomplete, the department may request that an applicant, including new and renewing
32 applicants, provide additional information to assist the department in determining the suitability
33 of the individual for licensure, certification, approval, funding or employment.

34 (c) The department of criminal justice information services shall disseminate the results
35 of the criminal background check to authorized staff of the department. The department of
36 criminal justice information services shall only disseminate information under this section that
37 would otherwise be available to the department by law. When the department receives the results
38 of the national criminal background checks, it shall treat the information according to the
39 department's background check procedures regarding criminal offender record information.

40 (d) A person required to submit fingerprints under this section including, but not limited
41 to, current and prospective employees, interns, subcontractors and volunteers in a department
42 program who have the potential for unsupervised contact with youth committed to the care or
43 custody of the department, may be charged a fee to be established by the secretary of
44 administration and finance, in consultation with the secretary of public safety and the
45 commissioner of youth services, to offset the costs of operating and administering a fingerprint
46 based criminal background check system. The fee shall not exceed \$45 per person. The secretary
47 of administration and finance, in consultation with the secretary of public safety and the
48 commissioner of youth services, may increase the fee accordingly if the Federal Bureau of
49 Investigation increases its fingerprint background check service fee. The department may
50 reimburse employees and applicants for employment, internship or volunteer positions, for all or
51 part of the fee. Fees collected from fingerprinting activity under this chapter shall be deposited
52 into the Fingerprint-Based Background Check Trust Fund established in section 2HHHH of
53 chapter 29.

54 (e) The department shall promulgate regulations necessary to carry out this section.