

HOUSE No. 00523

The Commonwealth of Massachusetts

PRESENTED BY:

Martin J. Walsh

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 require national background checks.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Martin J. Walsh</i>	<i>13th Suffolk</i>
<i>Jason M. Lewis</i>	<i>31st Middlesex</i>
<i>James J. Dwyer</i>	<i>30th Middlesex</i>
<i>John D. Keenan</i>	<i>7th Essex</i>
<i>Jay Kaufman</i>	<i>15th Middlesex</i>
<i>John P. Fresolo</i>	<i>16th Worcester</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>
<i>Joyce A. Spiliotis</i>	<i>12th Essex</i>

HOUSE No. 00523

By Mr. Martin J. Walsh of Boston, petition (accompanied by bill, House, No. 00523) of Jay Kaufman and others relative to national criminal offender record information checks for persons working with individuals served by the Department of Mental Retardation. Joint Committee on the Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ HOUSE
□ , NO. 1780 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act to require national background checks.

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 172 of chapter 6 of the General Laws, as appearing in the 2008 Official
2 Edition, is amended by inserting the following new section 172J as follows:-

3 Notwithstanding any other provision of law, any person seeking employment or a position as a
4 regular volunteer or trainee to provide services for, or, on behalf of the Department of
5 Developmental Services or its vendor agency programs where such employment or position
6 involves potential unsupervised contact with individuals with an intellectual disability (or other
7 individuals determined to be eligible clients of the Department of Developmental Services) shall
8 be required to have a national criminal background check prior to assuming said employment or

9 position. Said criminal background check will be determined by using the Integrated Automated
10 Fingerprint Identification System maintained by the Federal Bureau of Investigation's Criminal
11 Justice Information Services Division.

12 It shall be the responsibility of the Commonwealth to ensure that said criminal background
13 checks are processed for review prior to such time that an individual seeking employment or a
14 position as a volunteer or trainee assumes said employment or position.

15 Any person who willfully requests, obtains or seeks to obtain criminal offender record
16 information or the equivalent from other jurisdictions under false pretenses, or who willfully
17 communicates or seeks to communicate criminal offender record information or the equivalent
18 from other jurisdictions to any agency or person except in accordance with the provisions of
19 sections one hundred and sixty-eight to one hundred and seventy-five, inclusive, or any member,
20 officer, employee or agency of the board or any participating agency, or any person connected
21 with any authorized research program, who willfully falsifies criminal offender record
22 information, or the equivalent from other jurisdictions, or any records relating thereto, shall be in
23 violation of this provision.

24 The Criminal History Systems Board, the Disabled Persons Protection Commission, and the
25 State Police shall collaborate and jointly oversee the participation by all Department of
26 Developmental Services providers in any interstate system for the exchange of criminal offender
27 record information or the equivalent from other jurisdictions and shall be responsible to assure
28 the consistency of such participation including redacting information so that criminal offender
29 record information or the equivalent from other jurisdictions is limited to convictions and open
30 cases, and, that juvenile records are not made available. Any provider of services to individuals

31 pursuant to a contract with the Department that hires, retains or supervises an employee,
32 volunteer or trainee whom the provider knows or should know, will potentially come into
33 unsupervised contact with such individuals, and, because of a criminal conviction or pending
34 criminal charge of a nature that would pose a unacceptable risk of physical harm to or financial
35 exploitation of such individuals shall be in violation of this provision. The hiring authority shall
36 use, when making a determination of unacceptable risk, the guidelines as provided by existing
37 Department of Developmental Services regulations.

38 The Board shall afford an individual who may be wrongly associated with a record or whose
39 record may contain errors, the opportunity to contest the accuracy of an out-of-state record. Each
40 individual shall have the right to inspect, and if practicable, copy, criminal offender record
41 information or the equivalent from other jurisdictions which refers to him. If an individual
42 believes such information to be inaccurate or incomplete, the Criminal Systems History Board
43 shall notify the state whose record is contested and assist the individual in following the process
44 for correcting inaccuracies in that state, as well as notify the agency to whom the record was
45 disseminated that the record is being contested and that no adverse action can be taken by that
46 agency pending a resolution of the dispute. This matter should be resolved as soon as practicable
47 but no later than 30 days after notification. Agencies at which criminal offender records or the
48 equivalent from other jurisdictions are sought to be inspected shall prescribe reasonable hours
49 and

50 places of inspection, and shall impose such additional restrictions as may be approved by the
51 board, as are reasonably necessary both to assure the record's security and to verify the identities
52 of those who seek to inspect them.