

MAINE STATE LEGISLATURE

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DATE: 4/10/2000

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EDUCATION AND CULTURAL AFFAIRS

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**STATE OF MAINE
SENATE
119TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "B" to S.P. 987, L.D. 2540, Bill, "An Act Concerning Fingerprinting and Background Checks for School Employees"

Amend the bill by striking out everything after the enacting clause and inserting in its place the following:

Sec. 1. 20-A MRSA §6101, sub-§2, ¶B, as amended by PL 1995, c. 547, §4, is further amended to read:

B. Except as provided in paragraph A, information in any form relating to an employee or applicant for employment, or to the employee's immediate family, must be kept confidential if it relates to the following:

- (1) All information, working papers and examinations used in the examination or evaluation of all applicants for employment;
- (2) Medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;
- (3) Performance evaluations, personal references and other reports and evaluations reflecting on the quality or adequacy of the employee's work or general character compiled and maintained for employment purposes;
- (4) Credit information;

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- 2 (5) Except as provided by subsection 1, the personal history, general character or conduct of the employee or any member of the employee's immediate family;
- 4
- 6 (6) Complaints, charges of misconduct, replies to complaints and charges of misconduct and memoranda and other materials pertaining to disciplinary action;
- 8
- 10 (7) Social security number;
- 12
- 14 (8) The teacher action plan and support system documents and reports maintained for certification purposes; and
- 16 (9) Criminal history record information obtained pursuant to section ~~6103~~ 6103-A.

18 **Sec. 2. 20-A MRSA §6103**, as amended by PL 1999, c. 110, §§1 and 2, is repealed.

20 **Sec. 3. 20-A MRSA §6103-A** is enacted to read:

22 **§6103-A. Criminal history record information conviction data**

24 This section applies to state and federal criminal history record checks and maintenance of criminal history record information and conviction data for applicants for certification, authorization or approval under chapter 501 or 502 and for applicants for educational personnel positions in schools.

30 1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

32 A. "Applicant" means:

34 (1) A person who applies for certification, authorization or approval under chapter 501 or 502;

36 (2) A person who applies for a position that requires certification, authorization or approval under chapter 501 or 502;

38 (3) A person who applies for a position that requires certification or authorization and who holds a valid credential from another state, including a state that is a party state to an interstate agreement on qualifications of educational personnel under chapter 511; or

2 (4) A person whose certificate, authorization or
3 approval has lapsed for more than 2 years as of the
4 date of application for renewal subject to chapter 501
5 or 502 and who the department determines is an
6 applicant.

7 For purposes of this section, "applicant" does not include a
8 person who holds a valid certification, authorization or
9 approval under chapter 501 or 502 and who was employed by a
10 school prior to August 1, 2000, unless that person
11 subsequently applies for a position with another school
12 administrative unit in the State.

13 B. "Authorized agency" means a division or office of a
14 state designated by a state to report, receive or
15 disseminate criminal history record information.

16 C. "Bureau" means the State Bureau of Identification within
17 the Department of Public Safety.

18 D. "School" means a public school in this State or a
19 private school approved for attendance purposes under
20 section 2902 that enrolls 60% or more publicly funded
21 students.

22 E. "Superintendent" means the person in a school
23 administrative unit or school union appointed and having the
24 authority and responsibility under this Title and other
25 applicable statutes. For the purposes of this section,
26 "superintendent" includes the chief executive officer of a
27 private school approved for attendance purposes under
28 section 2902 that enrolls 60% or more publicly funded
29 students.

30 2. Authorized agency; review of conviction data. The
31 Department of Public Safety is designated as the authorized
32 agency for the purpose of reporting, receiving or disseminating
33 state and federal criminal history records.

34 3. Applicants for positions requiring certification and
35 authorization. Beginning August 1, 2000, applicants for
36 positions requiring certification and authorization under chapter
37 501 or 502 are subject to the provisions of this section.
38 Fingerprinting of immediately affected applicants for
39 certification and authorization, conduct of the needed state and
40 federal criminal history record checks by the bureau and
41 forwarding of the results by the bureau to the department must
42 begin on September 1, 2000.

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2 4. Applicants for positions requiring approval. Beginning
3 August 1, 2000, applicants for positions requiring approval under
4 chapter 502 are subject to the provisions of this section.
5 Fingerprinting of applicants for positions requiring initial
6 approval prior to being hired or placed under contract, conduct
7 of the needed state and federal criminal history record checks by
8 the bureau and forwarding of the results by the bureau to the
9 department must begin on September 1, 2000.

10 5. Conviction data obtained. The department shall obtain
11 criminal history record information containing a record of
12 conviction data from the Maine Criminal Justice Information
13 System for an applicant. Upon the request of a superintendent,
14 the department shall provide conviction data to the
15 superintendent.

16 6. Criminal history record information. Criminal history
17 record information is obtained as follows:

18 A. The department shall request that for each applicant the
19 Department of Public Safety obtain a criminal history record
20 check from the Federal Bureau of Investigation. The
21 Department of Public Safety shall obtain the criminal
22 history record information from the Federal Bureau of
23 Investigation and provide the criminal record history
24 information to the department. For purposes of this
25 paragraph, "applicant" does not include a person who holds a
26 valid certification, authorization or approval under chapter
27 501 or 502 and who was employed by a school prior to August
28 1, 2000; or

29 B. When an applicant who holds a valid certification,
30 authorization or approval under chapter 501 or 502 and was
31 employed by a school prior to August 1, 2000 subsequently
32 applies for a position with another school administrative
33 unit, the superintendent of the school administrative
34 unit to which the applicant applies may request criminal history
35 record information on that applicant. Upon the request of
36 that superintendent, the department shall request that the
37 Department of Public Safety obtain a criminal history record
38 check for the applicant from the Federal Bureau of
39 Investigation. The Department of Public Safety shall obtain
40 the criminal history record information from the Federal
41 Bureau of Investigation and provide the criminal history
42 record information to the department. The department shall
43 review the criminal history record information and
44 communicate to the superintendent the department's
45 determination concerning the approval or disapproval of the
46 applicant.

2 7. Use of criminal history record. State and federal
3 criminal history record information may be used for the purpose
4 of screening educational personnel applicants by the department
5 in order to determine whether certification, authorization or
6 approval should be granted. State and federal criminal history
7 record information also may be reviewed by the department at the
8 request of a superintendent pursuant to subsection 6 for the
9 purpose of screening a person who is not currently employed in
10 that superintendent's school administrative unit and who is an
11 applicant for a position in that superintendent's school
12 administrative unit.

13 8. Issuance restriction. Issuance of a certificate,
14 authorization, approval or renewal to a person whose criminal
15 history record information includes a criminal conviction is
16 subject to the provisions of Title 5, chapter 341 and section
17 13020.

18 9. Confidentiality. Any criminal history record
19 information obtained under subsection 6 is confidential.

20 10. Expenses of criminal history record check. The
21 department or the superintendent that requests a criminal history
22 record check shall pay the expenses of the criminal history
23 record check. Except for any portion of the payment that
24 constitutes the processing fee charged by the Federal Bureau of
25 Investigation, all money received by the Maine State Police for
26 purposes of this section must be paid to the Treasurer of State.
27 The money must be applied to the expenses of administration
28 incurred by the Department of Public Safety.

29 11. Fingerprinting. An applicant shall submit to having
30 fingerprints taken. The Maine State Police, upon payment by the
31 department or the superintendent, shall take or cause to be taken
32 the applicant's fingerprints and shall forward the fingerprints
33 to the bureau so that the bureau can conduct state and federal
34 criminal history record checks.

35 12. Applicant's access to criminal history record check.
36 The subject of a Federal Bureau of Investigation criminal history
37 record check may receive a copy of a criminal history record
38 check by following the procedures outlined in 28 Code of Federal
39 Regulations, Sections 16.32 and 16.33. The subject of a state
40 criminal record check may inspect and review criminal record
41 information pursuant to Title 16, section 620.

42 13. Applicant's right to have fingerprints removed from
43 state repository upon retirement or career change. Teachers or
44 educational personnel whose certification, authorization or
45 approval has expired may request in writing that the bureau
46 remove their fingerprints from the state repository.

2 remove their fingerprints from the bureau's fingerprint file. In
3 response to a written request, the bureau shall remove the
4 requester's fingerprints from the fingerprint file and provide
5 written confirmation of that removal to the requester.

6 14. Implementation. The requirements of this section must
7 be implemented as follows.

8
9 A. Persons other than those for whom certification or
10 authorization is required who are placed under contract by a
11 school and who are subject to the requirements of this
12 section shall meet these requirements by July 1, 2002.

13 B. Persons subject to the requirements of this section who
14 begin work in a school after August 1, 2000 shall meet these
15 requirements prior to their 20th day of work.

16
17 15. Rules. The commissioner shall adopt or amend rules
18 necessary to carry out this section. These rules must include a
19 listing of all positions that are subject to this section. Rules
20 adopted pursuant to this section are routine technical rules
21 pursuant to Title 5, chapter 375, subchapter II-A.

22
23 **Sec. 4. 20-A MRSA §13011, sub-§1, ¶E,** as amended by PL 1997,
24 c. 452, §5, is further amended to read:

25
26 E. Certify or authorize personnel who provide early
27 childhood educational programs or developmental therapy to
28 children with disabilities from birth to under 9 years of
29 age in the home, in community-based special purpose and
30 integrated programs and in public schools; and

31
32 **Sec. 5. 20-A MRSA §13011, sub-§1, ¶F,** as enacted by PL 1997,
33 c. 452, §6, is repealed and the following enacted in its place:

34
35 F. Approve persons for whom certification or authorization
36 is not required prior to being hired or being placed under
37 contract by a public school; and

38
39 **Sec. 6. 20-A MRSA §13011, sub-§1, ¶G** is enacted to read:

40
41 G. Approve persons for whom certification or authorization
42 is not required prior to being hired or being placed under
43 contract by a private school approved for tuition purposes
44 under section 2902 that enrolls 60% or more publicly funded
45 students.

2 **Sec. 7. 20-A MRSA §13011, sub-§8**, as enacted by PL 1997, c.
452, §7, is amended to read:

4 **8. Criminal history record checks.** Criminal history record
6 checks of an applicant for certification, authorization, approval
or renewal must be conducted in accordance with this section,
8 section ~~6103~~ 6103-A and pursuant to rules adopted by the state
board. Rules adopted pursuant to this subsection are minor
10 technical rules in accordance with Title 5, chapter 375,
subchapter II-A.

12 **Sec. 8. 20-A MRSA §13020, sub-§3**, as enacted by PL 1983, c.
845, §4, is amended to read:

14 **3. Denial of certificate, authorization or approval for**
16 **prior immoral conduct.** Evidence that an applicant for initial
certification, authorization or approval or for a renewal has
18 injured the health or welfare of a child through physical or
sexual abuse or exploitation is grounds for a denial of a
20 certificate, authorization or approval. Notwithstanding Title 5,
chapter 341, every a person, who, within 5 years of the
22 application for initial certification, authorization or approval
or renewal, has been convicted in any state or federal court of a
24 criminal offense involving the physical or sexual abuse or
exploitation of a child, may be presumed by the commissioner to
26 lack good moral character for the purposes of this chapter. This
presumption ~~shall-be~~ is a rebuttable presumption. Notwithstanding
28 Title 5, chapter 341, the commissioner ~~shall-be~~ is entitled to
consider all records of prior criminal convictions involving
30 child abuse or exploitation in determining an applicant's
eligibility for a certificate, authorization or approval.

32 **Sec. 9. 20-A MRSA §13020, sub-§3-A** is enacted to read:

34 **3-A. Grounds for denial, revocation, suspension or**
36 **nonrenewal.** Grounds for denial of a certificate, authorization
or approval related to criminal offenses, fraud or gross
38 incompetence may be established by the state board in its rules
in accordance with Title 5, chapter 341. Except as provided in
40 this section and Title 5, chapter 341, consideration of prior
criminal convictions as an element of fitness to be certified,
42 authorized, approved or renewed is appropriate within 3 years of
the applicant's final discharge, if any, from a correctional
44 system. Beyond the 3 years, an applicant with a prior criminal
conviction who applies for certification, authorization or
46 approval with no additional convictions must be considered in the
same manner as an applicant for certification, authorization or
48 approval who has no prior criminal convictions for the purposes
of certification, authorization, approval or renewal decisions.

2 The following are grounds for revocation, suspension or
nonrenewal:

4 A. A crime punishable by a term of imprisonment of one year
or more as long as the period of time since the applicant's
6 final discharge from the sentence is within the time frame
permitted by Title 5, chapter 341;

8 B. A conviction that is excepted by statute to which Title
10 5, chapter 341 does not apply; or

12 C. A conviction of a crime that relates directly to the
certification, authorization or approval sought by the
14 applicant or that demonstrates conduct that may endanger a
child as determined by the department.

16 The applicant has the burden of proving that the applicant is
18 sufficiently rehabilitated to warrant the public trust.

20 **Sec. 10. 20-A MRSA §13020, sub-§4**, as enacted by PL 1983, c.
22 845, §4, is amended to read:

24 **4. Reinstatement of certificate, authorization or approval.**
Revoked certificates, authorizations or approvals may only be
reinstated in accordance with state board rules. The following
26 provisions govern the reinstatement of any certificate,
authorization or approval revoked for reasons of child abuse or
28 exploitation.

30 A. Notwithstanding Title 5, chapter 341, no a certificate,
authorization or approval revoked for reasons of child abuse
32 or exploitation may not be reinstated within 5 years of the
revocation and in no case less than 3 years from the
34 expiration of probation or parole or discharge from
imprisonment for a criminal conviction involving child abuse
36 or exploitation.

38 B. In determining whether a certificate, authorization or
approval may be reinstated, the commissioner shall determine
40 whether the applicant has been sufficiently rehabilitated to
warrant the public trust. The applicant ~~shall~~ is
42 required to demonstrate sufficient evidence of
rehabilitation, notwithstanding Title 5, chapter 341, and
44 the commissioner shall state in writing the basis for any
decision ~~which~~ that denies reinstatement of a certificate,
46 authorization or approval.

48 C. Denial of reinstatement pursuant to paragraph B may be
50 appealed to the Superior Court.

2 **Sec. 11. 25 MRSA §1542-A, sub-§1, ¶G,** as enacted by PL 1999,
c. 110, §6, is amended to read:

4 G. Who is a teacher or educational personnel applicant
6 subject to Title 20-A, section ~~6103~~ 6103-A.

8 **Sec. 12. 25 MRSA §1542-A, sub-§1, ¶G,** as amended by PL 1999,
c. 260, Pt. B, §7 and affected by §18, is further amended to read:

10 G. Who is a teacher or educational personnel applicant
12 subject to Title 20-A, section ~~6103~~ 6103-A; or

14 **Sec. 13. 25 MRSA §1542-A, sub-§3, ¶F,** as enacted by PL 1999,
c. 110, §7, is amended to read:

16 F. The Maine State Police shall take or cause to be taken
18 the fingerprints of the person named in subsection 1,
20 paragraph G, ~~at the request of that person and upon payment~~
~~of the expenses specified under~~ pursuant to Title 20-A,
section ~~6103~~ 6103-A, subsection ~~4~~ 6.

22 **Sec. 14. 25 MRSA §1542-A, sub-§4,** as amended by PL 1999, c.
24 110, §8, is further amended to read:

26 **4. Duty to submit to State Bureau of Identification.** It is
the duty of the law enforcement agency taking the fingerprints as
28 required by subsection 3, paragraphs A and B to transmit
forthwith to the State Bureau of Identification the criminal
30 fingerprint record. Fingerprints taken pursuant to subsection 1,
paragraph C, D, E or F or pursuant to subsection 5 may not be
32 submitted to the State Bureau of Identification unless an express
request is made by the commanding officer of the State Bureau of
34 Identification. Fingerprints taken pursuant to subsection 1,
paragraph G must be transmitted forthwith to the State Bureau of
36 Identification to enable the bureau to conduct state and national
criminal history record checks for the Department of Education.
38 The bureau shall retain the fingerprints, except as provided
under Title 20-A, section ~~6103~~ 6103-A, subsection 9 13.

40 **Sec. 15. 25 MRSA §1542-A, sub-§4,** as amended by PL 1999, c.
42 260, Pt. B, §12 and affected by §18, is further amended to read:

44 **4. Duty to submit to State Bureau of Identification.** It is
the duty of the law enforcement agency taking the fingerprints as
46 required by subsection 3, paragraphs A, B and G to transmit
forthwith to the State Bureau of Identification the criminal
48 fingerprint record. Fingerprints taken pursuant to subsection 1,
paragraph C, D, E or F or pursuant to subsection 5 may not be
submitted to the State Bureau of Identification unless an express

request is made by the commanding officer of the State Bureau of Identification. Fingerprints taken pursuant to subsection 1, paragraph G must be transmitted forthwith to the State Bureau of Identification to enable the bureau to conduct state and national criminal history record checks for the Department of Education. The bureau shall retain the fingerprints, except as provided under Title 20-A, section 6103 6103-A, subsection -9- 13.

Sec. 16. Removal of applicant's fingerprints from state repository.

Within 90 days of the effective date of this Act, the Department of Public Safety, State Bureau of Identification shall remove the fingerprints collected from those educational personnel who were subject to the requirements of the Maine Revised Statutes, Title 20-A, former section 6103 but are not subject to the requirements of Title 20-A, section 6103-A. In response to a written request, the State Bureau of Identification shall provide written confirmation to any such educational personnel that their fingerprints have been removed from the state repository.

Sec. 17. Reimbursement for costs of fingerprinting and criminal history record check.

The Commissioner of Public Safety, upon receipt of proof determined to be adequate by the commissioner, shall reimburse those persons, including contracted services providers, schools and school districts, who during the period of September 1, 1999 to August 1, 2000 have paid for the fingerprinting and conducting of the needed state and federal criminal history record checks by the Department of Public Safety, Bureau of State Police, State Bureau of Identification, as required by the Maine Revised Statutes, Title 20-A, section 6103.

Sec. 18. Reimbursement.

Any unexpended funds allocated from Other Special Revenue funds in fiscal years 1999-00 and 2000-01 to the Department of Public Safety to carry out the purposes of the Maine Revised Statutes, Title 20-A, section 6103 must be deallocated and used to reimburse persons and schools who paid for criminal history record checks during the period of September 1, 1999 to August 1, 2000.

Sec. 19. Appropriation.

The following funds are appropriated from the General Fund to carry out the purposes of this Act.

2000-01

PUBLIC SAFETY, DEPARTMENT OF

**Fingerprint and Background Information -
State Expense**

COMMITTEE AMENDMENT "B" to S.P. 987, L.D. 2540

All Other \$478,342

Appropriates funds for the costs of conducting background checks and fingerprinting for new school employees and for the cost of providing rebates to those individuals who have already paid for the required background checks.

Sec. 20. Allocation. The following funds are allocated from Other Special Revenue funds to carry out the purposes of this Act.

2000-01

PUBLIC SAFETY, DEPARTMENT OF

Bureau of State Police

All Other (\$392,000)

Deallocates funds that are no longer necessary to reflect the required cost of background checks and fingerprinting for school employees.

Sec. 21. Effective date. Except as otherwise indicated, this Act takes effect August 1, 2000. Sections 17 and 18 of this Act take effect 90 days after adjournment of the Second Regular Session of the 119th Legislature. Those sections of this Act that amend the Maine Revised States, Title 25, section 1542-A, subsection 1, paragraph G, as amended by Public Law 1999, chapter 260, Part B, section 7 and affected by section 18, and Title 25, section 1542-A, subsection 4, as amended by Public Law 1999, chapter 260, Part B, section 12 and affected by section 18, take effect September 1, 2000.'

Further amend the bill by inserting at the end before the summary the following:

FISCAL NOTE

2000-01

APPROPRIATIONS/ALLOCATIONS

General Fund \$478,342
Other Funds (392,000)

2013
Report "B"

SUMMARY

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This amendment is one of 2 minority reports. The amendment does the following.

1. It defines relevant terms.

2. It clarifies that the provisions of the Maine Revised Statutes, Title 20-A, chapter 211, subchapter III regarding criminal history record checks do not apply to a person who has already obtained certification or authorization under Title 20-A, chapter 501 or 502, unless and until that person is seeking employment with another school administrative unit or private school in this State.

3. It clarifies that the criminal history record check provisions apply to initial applicants for any educational personnel position who hold an educational credential from another state and who are seeking employment with a school administrative unit in this State.

4. It allows the Department of Education to treat a person whose credential or approval has lapsed for more than 2 years beyond the renewal date as an initial applicant for the purposes of the criminal history record check provisions.

5. It designates the Department of Public Safety as the authorized agency for the purpose of reporting, receiving and disseminating state and federal criminal history records through the national criminal history background check system. A superintendent may request through the Department of Education that the Department of Public Safety obtain a criminal history record check from the Federal Bureau of Investigation.

6. It directs the Department of Education to obtain criminal history record information containing a record of conviction data from the Maine Criminal Justice Information System for an applicant. Upon the request of a superintendent, the Department of Education shall provide conviction data to the superintendent.

7. It directs the Department of Education to request that the Department of Public Safety obtain a criminal history record check from the Federal Bureau of Investigation. The Department of Public Safety shall obtain the criminal history record check from the Federal Bureau of Investigation and provide the state and federal criminal history records to the Department of Education. Upon the request of a superintendent, the Department of Education shall review the state and federal criminal history

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2 records and communicate its determination concerning the approval
or disapproval of the applicant to the superintendent.

4 8. It requires the State to reimburse individuals or
schools who have paid for fingerprinting and criminal history
6 record checks from September 1, 1999 to August 1, 2000.

8 9. It establishes the procedures and grounds for denial,
revocation, suspension or nonrenewal of certification,
10 authorization or approval of educational personnel. It expands
the authority of the Commissioner of Education to deny, revoke,
12 suspend or not renew the authorization or approval of educational
personnel who are subject to the authorization and approval
14 requirements under Title 20-A, chapters 501 and 502.

16 10. It requires that fingerprints taken from educational
personnel who are grandfathered by this Act must be removed from
18 the files of the bureau.

20 11. It adds an effective date of August 1, 2000 for the new
criminal history record check process.

22 12. It makes cross-reference corrections.

24 13. It adds an appropriation section, an allocation section
26 and a fiscal note.