

MAINE STATE LEGISLATURE

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DATE: 6-11-01

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
120TH LEGISLATURE
FIRST REGULAR SESSION

HOUSE AMENDMENT "B" to S.P. 322, L.D. 1090, Bill, "An Act to Repeal the Requirement that School Employees be Fingerprinted"

Amend the bill by striking out the title and substituting the following:

'An Act to Amend the Requirement that School Employees be Fingerprinted'

Further amend the bill by striking out everything after the title and before the summary and inserting in its place the following:

'Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, under this legislation, background checks and fingerprinting are required only for newly hired educational personnel; and

Whereas, it is imperative that this change be effectuated prior to the beginning of the new school year; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

HOUSE AMENDMENT

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

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

10 (1) All information, working papers and examinations
used in the examination or evaluation of all applicants
for employment;

12 (2) Medical information of any kind, including
14 information pertaining to diagnosis or treatment of
mental or emotional disorders;

16 (3) Performance evaluations, personal references and
18 other reports and evaluations reflecting on the quality
or adequacy of the employee's work or general character
20 compiled and maintained for employment purposes;

22 (4) Credit information;

24 (5) Except as provided by subsection 1, the personal
history, general character or conduct of the employee
26 or any member of the employee's immediate family;

28 (6) Complaints, charges of misconduct, replies to
complaints and charges of misconduct and memoranda and
30 other materials pertaining to disciplinary action;

32 (7) Social security number;

34 (8) The teacher action plan and support system
documents and reports maintained for certification
36 purposes; and

38 (9) Criminal history record information obtained
pursuant to section ~~6103~~ 6103-A.

40 **Sec. 2. 20-A MRSA §6103,** as amended by PL 1999, c. 791, §§1
42 to 4, is repealed.

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

46 **§6103-A. Criminal history record information conviction data**

48 This section applies to state and federal criminal history
record checks and maintenance of criminal history record
50 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.

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

A. "Applicant" means:

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

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

(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

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

For purposes of this section, "applicant" does not include a person who holds a valid certification, authorization or approval under chapter 501 or 502 and who was employed by a school prior to August 15, 2001, unless that person subsequently applies for a position with another school administrative unit or private school in the State and the person is one to whom the superintendent intends to extend an offer of employment.

B. "Bureau" means the State Bureau of Identification within the Department of Public Safety.

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

D. "Superintendent" means the person in a school administrative unit or school union appointed and having the authority and responsibility under this Title and other applicable statutes. For the purposes of this section,

2 "superintendent" includes the chief executive officer of a
3 private school approved for attendance purposes under
4 section 2902 that enrolls 60% or more publicly funded
5 students.

6 2. Applicants for positions requiring certification and
7 authorization. Beginning August 15, 2001, applicants for
8 positions requiring certification and authorization under chapter
9 501 or 502 are subject to the provisions of this section.
10 Fingerprinting of immediately affected applicants for
11 certification and authorization, conducting of the needed state
12 and federal criminal history record checks by the bureau and
13 forwarding of the results by the bureau to the department must
14 begin on August 15, 2001.

15 3. Applicants for positions requiring approval. Beginning
16 August 15, 2001, applicants for positions requiring approval
17 under chapter 502 are subject to the provisions of this section.
18 Fingerprinting of applicants for positions requiring initial
19 approval prior to being hired or placed under contract,
20 conducting of the needed state and federal criminal history
21 record checks by the bureau and forwarding of the results by the
22 bureau to the department must begin on August 15, 2001.

23 4. Criminal history record information. Criminal history
24 record information is obtained as follows:

25 A. The department shall request that for each applicant the
26 Department of Public Safety conduct a criminal history
27 record check. The criminal history record check must
28 include a check of the criminal history record information
29 maintained by the Maine Criminal Justice Information System
30 and by the Federal Bureau of Investigation. The Department
31 of Public Safety shall provide the criminal history record
32 information obtained from the Maine Criminal Justice
33 Information System and the Federal Bureau of Investigation
34 to the department. For purposes of this paragraph,
35 "applicant" does not include a person who holds a valid
36 certification, authorization or approval under chapter 501
37 or 502 and who was employed by a school prior to August 15,
38 2001; or

39 B. When an applicant who holds a valid certification,
40 authorization or approval under chapter 501 or 502 and was
41 employed by a school prior to August 15, 2001 subsequently
42 applies for a position with another school administrative
43 unit or private school, the superintendent of the school
44 administrative unit or private school to which the applicant
45 applies may request criminal history record information on
46 that applicant only if the governing body for that school
47 requests it.

2 administrative unit or private school has decided to obtain
3 the same criminal history record information for all such
4 applicants seeking employment in that school administrative
5 unit or private school. Upon the request of that
6 superintendent, the department shall request that the
7 Department of Public Safety obtain a criminal history record
8 check. The criminal history record check must include a
9 check of the criminal history record information maintained
10 by the Maine Criminal Justice Information System and by the
11 Federal Bureau of Investigation. The Department of Public
12 Safety shall provide the criminal history record information
13 obtained from the Maine Criminal Justice Information System
14 and the Federal Bureau of Investigation to the department.
15 The department shall review the criminal history record
16 information and communicate to the superintendent the
17 department's determination concerning the approval or
18 disapproval of the applicant. The department shall indicate
19 approval for an applicant unless the applicant would be
20 subject to denial, revocation, suspension or nonrenewal
21 under section 13020, subsection 3-A.

22 5. Use of criminal history record. State and federal
23 criminal history record information may be used for the purpose
24 of screening educational personnel applicants by the department
25 in order to determine whether certification, authorization or
26 approval should be granted. State and federal criminal history
27 record information also may be reviewed by the department at the
28 request of a superintendent pursuant to subsection 4 for the
29 purpose of screening a person who is not currently employed in
30 that superintendent's school administrative unit and who is an
31 applicant for a position in that superintendent's school
32 administrative unit. Criminal history record information may
33 also be used in accordance with subsection 13.

34 6. Issuance restriction. Issuance of a certificate,
35 authorization, approval or renewal to a person whose criminal
36 history record information includes a criminal conviction is
37 subject to the provisions of section 13020 and Title 5, chapter
38 341.

39 7. Confidentiality. Except as provided in subsection 13,
40 any criminal history record information obtained under subsection
41 4 is confidential.

42 8. Expenses of criminal history record check. The
43 department or the superintendent that requests a criminal history
44 record check shall pay the expenses of the criminal history
45 record check. Except for any portion of the payment that
46 constitutes the processing fee charged by the Federal Bureau of
47 Investigation, all money received by the Maine State Police for
48 Investigation, all money received by the Maine State Police for
49 Investigation, all money received by the Maine State Police for
50 Investigation, all money received by the Maine State Police for

2 purposes of this section must be paid to the Treasurer of State.
3 The money must be applied to the expenses of administration
4 incurred by the Department of Public Safety.

6 9. Fingerprinting. An applicant shall submit to having
7 fingerprints taken. The Maine State Police, upon payment by the
8 department or the superintendent, shall take or cause to be taken
9 the applicant's fingerprints and shall forward the fingerprints
10 to the bureau so that the bureau can conduct state and federal
11 criminal history record checks.

12 10. Applicant's access to criminal history record check.
13 The subject of a Federal Bureau of Investigation criminal history
14 record check may receive a copy of a criminal history record
15 check by following the procedures outlined in 28 Code of Federal
16 Regulations, Sections 16.32 and 16.33. The subject of a state
17 criminal record check may inspect and review criminal record
18 information pursuant to Title 16, section 620.

20 11. Applicant's right to have fingerprints removed from
21 state repository upon retirement or career change. Teachers or
22 educational personnel whose certification, authorization or
23 approval has expired may request in writing that the bureau
24 remove their fingerprints from the bureau's fingerprint file. In
25 response to a written request, the bureau shall remove the
26 requester's fingerprints from the fingerprint file and provide
27 written confirmation of that removal to the requester.

28 12. Implementation. The requirements of this section must
29 be implemented as follows.

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

36 B. Persons subject to the requirements of this section who
37 begin work in a school after August 15, 2001 shall meet
38 these requirements prior to their 20th day of work.

40 13. Statistical information. Statistics and other
41 information described in this subsection are public information.
42 Dissemination of statistics and other information pursuant to
43 this subsection must be made in a manner that preserves the
44 confidentiality of the information contained in the criminal
45 history records provided to the commissioner from which these
46 statistics are drawn. Statistics and information may be
47 disseminated as follows:

50 A. From the Maine State Police:

2 (1) Information explaining the process used by the
4 Maine State Police in conducting fingerprinting and
 state and national criminal history record checks for
 the department;

6 (2) The number of fingerprints and criminal history
8 record checks projected to be processed by the Maine
 State Police; and

10 (3) The number of educational personnel applicants who
12 have been fingerprinted, the number of criminal history
14 record checks completed by the Maine State Police and
 the number of criminal history record checks being
 processed by the Maine State Police; and

16 B. From the commissioner:

18 (1) Information explaining the process used by the
20 commissioner in reviewing criminal history record
22 checks, in applying the statutory standards for
 potential disqualification and in determining
 appropriate agency action;

24 (2) The number of applications for certification,
26 authorization and approval processed by or pending with
 the department;

28 (3) The number of applications for certification,
30 authorization and approval projected to be processed by
 the department; and

32 (4) The aggregate number that represents the number of
34 educational personnel applicants who have been
36 fingerprinted; and the aggregate number that represents
38 the sum total of educational personnel applicants for
40 whom the commissioner denied, revoked or suspended a
 certificate, authorization or approval or whom the
 commissioner determined to be ineligible for employment
 based on the results of a criminal history record check.

42 14. Rules. The commissioner shall adopt or amend rules
44 necessary to carry out this section. These rules must include a
46 listing of all positions that are subject to this section. Rules
 adopted pursuant to this section are routine technical rules
 pursuant to Title 5, chapter 375, subchapter II-A.

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

2 E. Certify or authorize personnel who provide early
3 childhood educational programs or developmental therapy to
4 children with disabilities from birth to under 9 years of
5 age in the home, in community-based special purpose and
6 integrated programs and in public schools; and

7 **Sec. 5. 20-A MRSA §13011, sub-§1, ¶F**, as repealed and replaced
8 by PL 1999, c. 791, §5, is repealed and the following enacted in
9 its place:

10 F. Approve persons for whom certification or authorization
11 is not required prior to being hired or being placed under
12 contract by a public school; and

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

14 G. Approve persons for whom certification or authorization
15 is not required prior to being hired or being placed under
16 contract by a private school approved for tuition purposes
17 under section 2902 that enrolls 60% or more publicly funded
18 students.

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

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

28 **Sec. 8. 20-A MRSA §13020, sub-§3**, as enacted by PL 1983, c.
29 845, §4, is amended to read:

30 **3. Denial of certificate, authorization or approval for**
31 **prior immoral conduct.** Evidence that an applicant for initial
32 certification, authorization or approval or for a renewal has
33 injured the health or welfare of a child through physical or
34 sexual abuse or exploitation is grounds for a denial of a
35 certificate, authorization or approval. Notwithstanding Title 5,
36 chapter 341, every a person, who, within 5 years of the
37 application for initial certification, authorization or approval
38 or renewal, has been convicted in any state or federal court of a
39 criminal offense involving the physical or sexual abuse or
40 exploitation of a child, may be presumed by the commissioner to
41 lack good moral character for the purposes of this chapter. This
42 presumption ~~shall-be~~ is a rebuttable presumption. Notwithstanding
43 Title 5, chapter 341, the commissioner ~~shall-be~~ is entitled to

consider all records of prior criminal convictions involving child abuse or exploitation in determining an applicant's eligibility for a certificate, authorization or approval.

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

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

The following are grounds for revocation, suspension or nonrenewal:

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 final discharge from the sentence is within the time frame permitted by Title 5, chapter 341;

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

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

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

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

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

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

10 B. In determining whether a certificate, authorization or
11 approval may be reinstated, the commissioner shall determine
12 whether the applicant has been sufficiently rehabilitated to
13 warrant the public trust. The applicant ~~shall--be~~ is
14 required to demonstrate sufficient evidence of
15 rehabilitation, notwithstanding Title 5, chapter 341, and
16 the commissioner shall state in writing the basis for any
17 decision which that denies reinstatement of a certificate,
18 authorization or approval.

20 C. Denial of reinstatement pursuant to paragraph B may be
21 appealed to the Superior Court.

22 **Sec. 11. 25 MRSA §1542-A, sub-§1, ¶G,** as amended by PL 2001,
23 c. 52, §4, is further amended to read:

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

28 **Sec. 12. 25 MRSA §1542-A, sub-§3, ¶F,** as enacted by PL 1999,
29 c. 110, §7, is amended to read:

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

38 **Sec. 13. 25 MRSA §1542-A, sub-§4,** as amended by PL 2001, c.
39 52, §8, is further amended to read:

40 **4. Duty to submit to State Bureau of Identification.** It is
41 the duty of the law enforcement agency taking the fingerprints as
42 required by subsection 3, paragraphs A, B and G to transmit
43 forthwith to the State Bureau of Identification the criminal
44 fingerprint record. Fingerprints taken pursuant to subsection 1,
45 paragraph C, D, E or F or pursuant to subsection 5 may not be
46 submitted to the State Bureau of Identification unless an express
47 request is made by the commanding officer of the State Bureau of
48 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- 11. Fingerprints taken pursuant to subsection 1, paragraph I must be transmitted immediately to the State Bureau of Identification to enable the bureau to conduct state and national criminal history record checks for the court.

Sec. 14. 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. 15. Reinstatement of certification.

Upon application by the person, and after successful completion of any reference and background checks that might otherwise be conducted, the Commissioner of Education shall reinstate the certification, authorization, approval or renewal under the Maine Revised Statutes, Title 20-A, chapter 501 or 502 that was denied to a person solely on the basis of that person's refusal to comply with the requirements of Title 20-A, former section 6103.

Sec. 16. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	2001-02	2002-03
PUBLIC SAFETY, DEPARTMENT OF		
Fingerprint and Background Information - State Expense		
All Other	(\$611,000)	(\$289,000)
Deappropriates funds to reflect the repeal of the fingerprinting and background checks requirement for current teachers and educational personnel.		

2 **Fingerprint and Background**
4 **Information - State Expense**

6 All Other 232,750 232,750

8 Appropriates funds for the
10 cost of conducting background
checks and fingerprinting for
new school employees.

12 **DEPARTMENT OF PUBLIC SAFETY**
14 **TOTAL** (\$378,250) (\$56,250)

16 **Emergency clause.** In view of the emergency cited in the
preamble, this Act takes effect when approved.'

18 **FISCAL NOTE**

20 2001-02 2002-03

22 **APPROPRIATIONS/ALLOCATIONS**

24 General Fund (\$378,250) (\$56,250)

26
28 Public Law 2001, chapter 358, the "current services" budget
includes \$611,000 and \$289,000 in fiscal years 2001-02 and
2002-03, respectively, for the Fingerprint and Background
30 Information - State Expense program within the Department of
Public Safety. This amendment includes General Fund
32 deappropriations of \$611,000 and \$289,000 in fiscal years 2001-02
and 2002-03, respectively, for the Fingerprint and Background
34 Information - State Expense program to reflect the repeal of the
fingerprinting requirement for current school employees.

36
38 This amendment also includes annual General Fund
appropriations of \$232,750 beginning in fiscal year 2001-02 for
the Fingerprint and Background Information - State Expense
40 program within the Department of Public Safety to cover the costs
of processing background checks and fingerprinting of new school
42 employees. The future costs of processing background checks and
fingerprinting for certified individuals currently employed as
44 teachers and for certain contracted service providers can not be
determined at this time.

46
48 The Department of Education will incur some minor additional
costs to collect certain data pertaining to contracted service
providers. These costs can be absorbed within the department's
50 existing budgeted resources.

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The Department of Public Safety will incur some minor additional costs to submit a required annual report to the Legislature. These costs can be absorbed within the department's existing budgeted resources.

8

SUMMARY

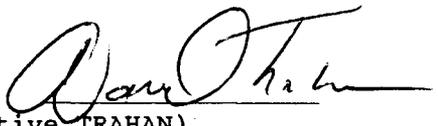
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16

This amendment restricts application of the fingerprinting and background check requirements to newly hired educational personnel. This amendment authorizes the Maine State Police and the Commissioner of Education to release certain general information relating to the fingerprinting and criminal history record checks of educational personnel. It also adds an appropriation section to the bill.

18

20

SPONSORED BY: 
(Representative TRAHAN)

22

TOWN: Waldoboro

24