

# MAINE STATE LEGISLATURE

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L.D. 1090

DATE: June 13, 2001

(Filing No. S-347)

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STATE OF MAINE  
SENATE  
120TH LEGISLATURE  
FIRST REGULAR SESSION

SENATE AMENDMENT "A" 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:**

RMS

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  
8           to the employee's immediate family, must be kept  
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  
26                   history, general character or conduct of the employee  
or any member of the employee's immediate family;

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

32                   (7) Social security number;

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

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

42       **Sec. 2. 20-A MRSA §6103**, as amended by PL 1999, c. 791, §§1  
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  
50       record checks and maintenance of criminal history record  
information and conviction data for applicants for certification,

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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.

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

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

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

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

**8. Expenses of criminal history record check.** The department or the superintendent that requests a criminal history record check shall pay the expenses of the criminal history record check. Except for any portion of the payment that constitutes the processing fee charged by the Federal Bureau of 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:

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

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

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

B. From the commissioner:

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

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

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

(4) The aggregate number that represents the number of educational personnel applicants who have been fingerprinted; and the aggregate number that represents the sum total of educational personnel applicants for 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.

14. Rules. The commissioner shall adopt or amend rules necessary to carry out this section. These rules must include a 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.

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



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

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

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

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

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

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

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

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

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

34 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.

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**Fingerprint and Background Information - State Expense**

All Other 232,750 232,750

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

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

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

**FISCAL NOTE**

**2001-02 2002-03**

**APPROPRIATIONS/ALLOCATIONS**

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

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

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 program within the Department of Public Safety to cover the costs of processing background checks and fingerprinting of new school employees. The future costs of processing background checks and fingerprinting for certified individuals currently employed as teachers and for certain contracted service providers can not be determined at this time.

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 existing budgeted resources.

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

8 **SUMMARY**

10 This amendment replaces the bill. It restricts application  
12 of the fingerprinting and background check requirements to newly  
14 hired educational personnel. This amendment authorizes the Maine  
16 State Police and the Commissioner of Education to release certain  
18 general information relating to the fingerprinting and criminal  
20 history record checks of educational personnel. It also adds an  
22 appropriation section and an emergency preamble and clause to the  
24 bill.

20 SPONSORED BY:

22 (Senator EDMONDS)

24 COUNTY: Cumberland

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