

# MAINE STATE LEGISLATURE

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L.D. 1765

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DATE: 6-21-01

(Filing No. H-752)

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

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HOUSE AMENDMENT "C" to H.P. 1295, L.D. 1765, Bill, "An Act  
to Authorize Release of Certain Information Pertaining to the  
Certification, Authorization and Approval of Educational  
Personnel"

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

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

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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:

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

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

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(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;

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- (4) Credit information;
- (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;
- (6) Complaints, charges of misconduct, replies to complaints and charges of misconduct and memoranda and other materials pertaining to disciplinary action;
- (7) Social security number;
- (8) The teacher action plan and support system documents and reports maintained for certification purposes; and
- (9) Criminal history record information obtained pursuant to section 6103 6103-A.

Sec. 2. 20-A MRSA §6103, as amended by PL 1999, c. 791, §§1 to 4, is repealed.

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

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

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.

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

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2 is a party state to an interstate agreement on  
3 qualifications of educational personnel under chapter  
4 511; or

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

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

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

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

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

32 2. Applicants for positions requiring certification and  
33 authorization. Beginning August 15, 2001, applicants for  
34 positions requiring certification and authorization under chapter  
35 501 or 502 are subject to the provisions of this section.  
36 Fingerprinting of immediately affected applicants for  
37 certification and authorization, conducting of the needed state  
38 and federal criminal history record checks by the bureau and  
39 forwarding of the results by the bureau to the department must  
40 begin on August 15, 2001.

41 3. Applicants for positions requiring approval. Beginning  
42 August 15, 2001, applicants for positions requiring approval  
43 under chapter 502 are subject to the provisions of this section.  
44 Fingerprinting of applicants for positions requiring initial  
45 certification and authorization must begin on August 15, 2001.

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2 approval prior to being hired or placed under contract,  
3 conducting of the needed state and federal criminal history  
4 record checks by the bureau and forwarding of the results by the  
5 bureau to the department must begin on August 15, 2001.

6 **4. Criminal history record information.** Criminal history  
7 record information is obtained as follows:

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10 A. The department shall request that for each applicant the  
11 Department of Public Safety conduct a criminal history  
12 record check. The criminal history record check must  
13 include a check of the criminal history record information  
14 maintained by the Maine Criminal Justice Information System  
15 and by the Federal Bureau of Investigation. The Department  
16 of Public Safety shall provide the criminal history record  
17 information obtained from the Maine Criminal Justice  
18 Information System and the Federal Bureau of Investigation  
19 to the department. For purposes of this paragraph,  
20 "applicant" does not include a person who holds a valid  
21 certification, authorization or approval under chapter 501  
22 or 502 and who was employed by a school prior to August 15,  
23 2001; or

24 B. When an applicant who holds a valid certification,  
25 authorization or approval under chapter 501 or 502 and was  
26 employed by a school prior to August 15, 2001 subsequently  
27 applies for a position with another school administrative  
28 unit or private school, the superintendent of the school  
29 administrative unit or private school to which the applicant  
30 applies may request criminal history record information on  
31 that applicant only if the governing body for that school  
32 administrative unit or private school has decided to obtain  
33 the same criminal history record information for all such  
34 applicants seeking employment in that school administrative  
35 unit or private school. Upon the request of that  
36 superintendent, the department shall request that the  
37 Department of Public Safety obtain a criminal history record  
38 check. The criminal history record check must include a  
39 check of the criminal history record information maintained  
40 by the Maine Criminal Justice Information System and by the  
41 Federal Bureau of Investigation. The Department of Public  
42 Safety shall provide the criminal history record information  
43 obtained from the Maine Criminal Justice Information System  
44 and the Federal Bureau of Investigation to the department.  
45 The department shall review the criminal history record  
46 information and communicate to the superintendent the  
47 department's determination concerning the approval or  
48 disapproval of the applicant. The department shall indicate  
49 approval for an applicant unless the applicant would be

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2           subject to denial, revocation, suspension or nonrenewal  
3           under section 13020, subsection 3-A.

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

16           **6. Issuance restriction.** Issuance of a certificate,  
17           authorization, approval or renewal to a person whose criminal  
18           history record information includes a criminal conviction is  
19           subject to the provisions of section 13020 and Title 5, chapter  
20           341.

21           **7. Confidentiality.** Except as provided in subsection 13,  
22           any criminal history record information obtained under subsection  
23           4 is confidential.

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

33           **9. Fingerprinting.** An applicant shall submit to having  
34           fingerprints taken. The Maine State Police, upon payment by the  
35           department or the superintendent, shall take or cause to be taken  
36           the applicant's fingerprints and shall forward the fingerprints  
37           to the bureau so that the bureau can conduct state and federal  
38           criminal history record checks.

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

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2           11. Applicant's right to have fingerprints removed from  
3 state repository upon retirement or career change. Teachers or  
4 educational personnel whose certification, authorization or  
5 approval has expired may request in writing that the bureau  
6 remove their fingerprints from the bureau's fingerprint file. In  
7 response to a written request, the bureau shall remove the  
8 requester's fingerprints from the fingerprint file and provide  
9 written confirmation of that removal to the requester.

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

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

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

20  
21           13. Statistical information. Statistics and other  
22 information described in this subsection are public information.  
23 Dissemination of statistics and other information pursuant to  
24 this subsection must be made in a manner that preserves the  
25 confidentiality of the information contained in the criminal  
26 history records provided to the commissioner from which these  
27 statistics are drawn. Statistics and information may be  
28 disseminated as follows:

29           A. From the Maine State Police:

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

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

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

42           B. From the commissioner:

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(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

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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

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2 same manner as an applicant for certification, authorization or  
3 approval who has no prior criminal convictions for the purposes  
4 of certification, authorization, approval or renewal decisions.

5 The following are grounds for revocation, suspension or  
6 nonrenewal:

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

11 B. A conviction that is excepted by statute to which Title  
12 5, chapter 341 does not apply; or

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

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

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

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

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

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

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2 C. Denial of reinstatement pursuant to paragraph B may be  
3 appealed to the Superior Court.

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

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

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

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

15 **Sec. 13. 25 MRSA §1542-A, sub-§4,** as amended by PL 2001, c.  
16 52, §8, is further amended to read:

17 **4. Duty to submit to State Bureau of Identification.** It is  
18 the duty of the law enforcement agency taking the fingerprints as  
19 required by subsection 3, paragraphs A, B and G to transmit  
20 forthwith to the State Bureau of Identification the criminal  
21 fingerprint record. Fingerprints taken pursuant to subsection 1,  
22 paragraph C, D, E or F or pursuant to subsection 5 may not be  
23 submitted to the State Bureau of Identification unless an express  
24 request is made by the commanding officer of the State Bureau of  
25 Identification. Fingerprints taken pursuant to subsection 1,  
26 paragraph G must be transmitted forthwith to the State Bureau of  
27 Identification to enable the bureau to conduct state and national  
28 criminal history record checks for the Department of Education.  
29 The bureau shall retain the fingerprints, except as provided  
30 under Title 20-A, section ~~6103~~ 6103-A, subsection ~~--9-~~ 11.  
31 Fingerprints taken pursuant to subsection 1, paragraph I must be  
32 transmitted immediately to the State Bureau of Identification to  
33 enable the bureau to conduct state and national criminal history  
34 record checks for the court.

35 **Sec. 14. Removal of applicant's fingerprints from state repository.**  
36 Within 90 days of the effective date of this Act, the Department  
37 of Public Safety, State Bureau of Identification shall remove the  
38 fingerprints collected from those educational personnel who were  
39 subject to the requirements of the Maine Revised Statutes, Title  
40 20-A, former section 6103 but are not subject to the requirements  
41 of Title 20-A, section 6103-A. In response to a written request,  
42 the State Bureau of Identification

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HOUSE AMENDMENT "C" to H.P. 1295, L.D. 1765

2 shall provide written confirmation to any such educational  
personnel that their fingerprints have been removed from the  
state repository.

4  
6 **Sec. 15. Appropriation.** The following funds are appropriated  
from the General Fund to carry out the purposes of this Act.

8 **2001-02**                      **2002-03**

10 **PUBLIC SAFETY, DEPARTMENT OF**

12 **Fingerprint and Background**  
14 **Information - State Expense**

16 All Other (\$611,000)                      (\$289,000)

18 Deappropriates funds to  
reflect the repeal of the  
20 fingerprinting and background  
checks requirement for  
22 current teachers and  
educational personnel.

24 **Fingerprint and Background**  
26 **Information - State Expense**

28 All Other 232,750                      232,750

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

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

38 **FISCAL NOTE**

40 **2001-02**                      **2002-03**

42 **APPROPRIATIONS/ALLOCATIONS**

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

46  
48 Public Law 2001, chapter 358, the "current services" budget  
includes \$611,000 and \$289,000 in fiscal years 2001-02 and

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HOUSE AMENDMENT <sup>C</sup> to H.P. 1295, L.D. 1765

2 2002-03, respectively, for the Fingerprint and Background  
3 Information - State Expense program within the Department of  
4 Public Safety. This amendment includes General Fund  
5 deappropriations of \$611,000 and \$289,000 in fiscal years 2001-02  
6 and 2002-03, respectively, for the Fingerprint and Background  
7 Information - State Expense program to reflect the repeal of the  
8 fingerprinting requirement for current school employees.

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

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

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

30 **SUMMARY**

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

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42 SPONSORED BY:   
43 (Representative TRAHAN)

44 TOWN: Waldoboro  
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**HOUSE AMENDMENT**