

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 890

H.P. 667

House of Representatives, February 20, 2003

An Act To Restrict Fingerprinting of Educational Personnel to New Hires

Reference to the Committee on Education and Cultural Affairs suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative TRAHAN of Waldoboro.

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

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

6 B. Except as provided in paragraph A, information in any
7 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
11 used in the examination or evaluation of all applicants
12 for employment;

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

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

24 (4) Credit information;

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

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

34 (7) Social security number;

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

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

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43 to 4, is repealed.

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

48 **§6103-A. Criminal history record information conviction data**

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

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

10 A. "Applicant" means:

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

13 (2) A person who applies for a position that requires
14 certification, authorization or approval under chapter
15 501 or 502;

16 (3) A person who applies for a position that requires
17 certification or authorization and who holds a valid
18 credential from another state, including a state that
19 is a party state to an interstate agreement on
20 qualifications of educational personnel under chapter
21 511; or

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

27 For purposes of this section, "applicant" does not include a
28 person who holds a valid certification, authorization or
29 approval under chapter 501 or 502 and who was employed by a
30 school prior to August 15, 2003, unless that person
31 subsequently applies for a position with another school
32 administrative unit or private school in the State and the
33 person is one to whom the superintendent intends to extend
34 an offer of employment.

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

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

2 D. "Superintendent" has the same meaning as in section 1,
3 subsection 39. For the purposes of this section,
4 "superintendent" includes the chief executive officer of a
5 private school approved for attendance purposes under
6 section 2902 that enrolls 60% or more publicly funded
7 students.

8 2. Applicants for positions requiring certification and
9 authorization. Beginning August 15, 2003, applicants for
10 positions requiring certification and authorization under chapter
11 501 or 502 are subject to the provisions of this section.
12 Fingerprinting of immediately affected applicants for
13 certification and authorization, conducting of the needed state
14 and federal criminal history record checks by the bureau pursuant
15 to subsection 4, paragraph A and forwarding of the results by the
16 bureau to the department must begin on August 15, 2003.

17 3. Applicants for positions requiring approval. Beginning
18 August 15, 2003, applicants for positions requiring approval
19 under chapter 502 are subject to the provisions of this section.
20 Fingerprinting of applicants for positions requiring initial
21 approval prior to being hired or placed under contract,
22 conducting of the needed state and federal criminal history
23 record checks by the bureau pursuant to subsection 4, paragraph A
24 and forwarding of the results by the bureau to the department
25 must begin on August 15, 2003.

26 4. Criminal history record information. Criminal history
27 record information is obtained as follows:

28 A. The department shall request that for each applicant the
29 bureau conduct a criminal history record check. The
30 criminal history record check must include a check of the
31 criminal history record information maintained by the Maine
32 Criminal Justice Information System and by the Federal
33 Bureau of Investigation. The bureau shall provide the
34 criminal history record information obtained from the Maine
35 Criminal Justice Information System and the Federal Bureau
36 of Investigation to the department. For purposes of this
37 paragraph, "applicant" does not include a person who holds a
38 valid certification, authorization or approval under chapter
39 501 or 502 and who was employed by a school prior to August
40 15, 2003; or

41 B. When an applicant who holds a valid certification,
42 authorization or approval under chapter 501 or 502 and was
43 employed by a school prior to August 15, 2003 subsequently
44 applies for a position with another school administrative
45 unit or private school, the superintendent of the school
46 administrative unit or private school to which the applicant
47 applies for a position with another school administrative
48 unit or private school, the superintendent of the school
49 administrative unit or private school to which the applicant
50 applies for a position with another school administrative

2 applies may request criminal history record information on
4 that applicant only if the governing body for that school
6 administrative unit or private school has decided to obtain
8 the same criminal history record information for all such
10 applicants seeking employment in that school administrative
12 unit or private school. Upon the request of that
14 superintendent, the department shall request that the bureau
16 obtain a criminal history record check. The criminal
18 history record check must include a check of the criminal
20 history record information maintained by the Maine Criminal
22 Justice Information System and by the Federal Bureau of
Investigation. The bureau 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.

24 **5. Use of criminal history record.** State and federal
26 criminal history record information may be used for the purpose
28 of screening educational personnel applicants by the department
30 in order to determine whether certification, authorization or
32 approval should be granted. State and federal criminal history
34 record information also may be reviewed by the department at the
36 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.

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

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

48 **8. Expenses of criminal history record check.** The
50 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

2 constitutes the processing fee charged by the Federal Bureau of
4 Investigation, all money received by the Maine State Police for
6 purposes of this section must be paid to the Treasurer of State.
8 The money must be applied to the expenses of administration
10 incurred by the Department of Public Safety.

12 9. Fingerprinting. An applicant shall submit to having
14 fingerprints taken. The Maine State Police, upon payment by the
16 department or the superintendent, shall take or cause to be taken
18 the applicant's fingerprints and shall forward the fingerprints
20 to the bureau so that the bureau can conduct state and federal
22 criminal history record checks.

24 10. Applicant's access to criminal history record check.
26 The subject of a Federal Bureau of Investigation criminal history
28 record check may receive a copy of a criminal history record
30 check by following the procedures outlined in 28 Code of Federal
32 Regulations, Sections 16.32 and 16.33. The subject of a state
34 criminal record check may inspect and review criminal record
36 information pursuant to Title 16, section 620.

38 11. Applicant's right to have fingerprints removed from
40 state repository upon retirement or career change. Teachers or
42 educational personnel whose certification, authorization or
44 approval has expired may request in writing that the bureau
46 remove their fingerprints from the bureau's fingerprint file. In
48 response to a written request, the bureau shall remove the
50 requester's fingerprints from the fingerprint file and provide
written confirmation of that removal to the requester.

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

A. Persons other than those for whom certification or
authorization is required who are placed under contract by a
school and who are subject to the requirements of this
section must meet these requirements by July 1, 2004.

B. Persons subject to the requirements of this section who
begin work in a school after August 15, 2003 shall meet
these requirements prior to their 20th day of work.

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

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A. From the Maine State Police:

- (1) Information explaining the process used by the Maine State Police and the bureau in conducting fingerprinting and state and national criminal history record checks;
- (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 of educational personnel applicants who have been fingerprinted; and 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 2-A.

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

2 E. Certify or authorize personnel who provide early
4 childhood educational programs or developmental therapy to
6 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

8 **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
10 its place:

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

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

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

24 **Sec. 7. 20-A MRSA §13011, sub-§8**, as enacted by PL 1997, c.
26 452, §7, is amended to read:

28 **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,
30 section ~~6103~~ 6103-A and pursuant to rules adopted by the state
board. Rules adopted pursuant to this subsection are minor
32 technical rules in accordance with Title 5, chapter 375,
subchapter ~~II-A~~ 2-A.

34 **Sec. 8. 20-A MRSA §13020, sub-§3**, as enacted by PL 1983, c.
36 845, §4, is amended to read:

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

2 Title 5, chapter 341, the commissioner ~~shall-be~~ is entitled to
3 consider all records of prior criminal convictions involving
4 child abuse or exploitation in determining an applicant's
5 eligibility for a certificate, authorization or approval.

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

8 **3-A. Grounds for denial, revocation, suspension or**
9 **nonrenewal.** Grounds for denial of a certificate, authorization
10 or approval related to criminal offenses, fraud or gross
11 incompetence may be established by the state board in its rules
12 in accordance with Title 5, chapter 341. Except as provided in
13 this section and Title 5, chapter 341, consideration of prior
14 criminal convictions as an element of fitness to be certified,
15 authorized, approved or renewed is appropriate within 3 years of
16 the applicant's final discharge from a correctional system.
17 Beyond the 3 years, an applicant with a prior criminal conviction
18 who applies for certification, authorization or approval with no
19 additional convictions must be considered in the same manner as
20 an applicant for certification, authorization or approval who has
21 no prior criminal convictions for the purposes of certification,
22 authorization, approval or renewal decisions.

23 The following are grounds for revocation, suspension or
24 nonrenewal:

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

29 B. A conviction that is excepted by statute to which Title
30 5, chapter 341 does not apply; or

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

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

37 **Sec. 10. 20-A MRSA §13020, sub-§4,** as enacted by PL 1983, c.
38 845, §4, is amended to read:

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

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

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

22 C. Denial of reinstatement pursuant to paragraph B may be
24 appealed to the Superior Court.

26 **Sec. 11. 25 MRSA §1541, sub-§8,** as enacted by PL 1999, c. 791,
§6, is repealed.

28 **Sec. 12. 25 MRSA §1542-A, sub-§1, ¶G,** as amended by PL 2001,
c. 52, §4, is further amended to read:

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

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

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

42 **Sec. 14. 25 MRSA §1542-A, sub-§4,** as amended by PL 2001, c.
44 52, §8, is further amended to read:

46 **4. Duty to submit to State Bureau of Identification.** It is
the duty of the law enforcement agency taking the fingerprints as
48 required by subsection 3, paragraphs A, B and G to transmit
immediately to the State Bureau of Identification the criminal
50 fingerprint record. Fingerprints taken pursuant to subsection 1,

2 paragraph C, D, E or F or pursuant to subsection 5 may not be
submitted to the State Bureau of Identification unless an express
4 request is made by the commanding officer of the State Bureau of
Identification. Fingerprints taken pursuant to subsection 1,
6 paragraph G must be transmitted immediately to the State Bureau
of Identification to enable the bureau to conduct state and
8 national criminal history record checks for the Department of
Education. The bureau may not use the fingerprints for any
purpose other than that provided for under Title 20-A, section
10 ~~6103~~ 6103-A. The bureau shall retain the fingerprints, except as
provided under Title 20-A, section ~~6103~~ 6103-A, subsection --9-
12 11. Fingerprints taken pursuant to subsection 1, paragraph I
must be transmitted immediately to the State Bureau of
14 Identification to enable the bureau to conduct state and national
criminal history record checks for the court.

16 **Sec. 15. Removal of applicant's fingerprints from state repository.**

18 Within 90 days of the effective date of this Act, the Department
of Public Safety, State Bureau of Identification shall remove the
20 fingerprints collected from those educational personnel who were
subject to the requirements of the Maine Revised Statutes, Title
22 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,
24 the State Bureau of Identification shall provide written
confirmation to any such educational personnel that their
26 fingerprints have been removed from the state repository.

28 **SUMMARY**

30 This bill restricts application of the fingerprinting and
32 background check requirements to newly hired educational
personnel. This bill authorizes the Maine State Police and the
34 Commissioner of Education to release certain general information
relating to the fingerprinting and criminal history record checks
36 of educational personnel.