

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 1198

S.P. 404

In Senate, March 6, 2003

An Act Regarding the Criminal History Record Check of School Employees

(EMERGENCY)

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

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator MAYO of Sagadahoc.
Cosponsored by Representative MURPHY of Kennebunk and
Senators: DAVIS of Piscataquis, DOUGLASS of Androscoggin, EDMONDS of Cumberland,
Representatives: COWGER of Hallowell, CUMMINGS of Portland, DAVIS of Falmouth,
HUTTON of Bowdoinham, TRAHAN of Waldoboro.

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

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

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

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

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

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

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

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

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

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

40 (4) Credit information;

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

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

50

2 (7) Social security number;

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

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

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

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

14 **§6103-A. Criminal history record information conviction data**

16 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.

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

20 A. "Applicant" means:

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

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

26 (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

28 (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.

30 For purposes of this section, "applicant" does not include a person who holds a valid certification, authorization or

2 approval under chapter 501 or 502 and who was employed by a
3 school prior to August 15, 2003, unless that person
4 subsequently applies for a position with another school
5 administrative unit or private school in the State and the
6 person is one to whom the superintendent intends to extend
7 an offer of employment.

8 B. "Bureau" means the State Bureau of Identification within
9 the Department of Public Safety, Bureau of State Police.

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

14 D. "Superintendent" has the same meaning as in section 1,
15 subsection 39. For the purposes of this section,
16 "superintendent" includes the chief executive officer of a
17 private school approved for attendance purposes under
18 section 2902 that enrolls 60% or more publicly funded
19 students.

20
21 **2. Applicants for positions requiring certification and**
22 **authorization.** Beginning August 15, 2003, applicants for
23 positions requiring certification and authorization under chapter
24 501 or 502 are subject to the provisions of this section.
25 Fingerprinting of immediately affected applicants for
26 certification and authorization, conducting the needed state and
27 federal criminal history record checks by the bureau pursuant to
28 subsection 4, paragraph A and forwarding the results by the
29 bureau to the department must begin on August 15, 2003.

30
31 **3. Applicants for positions requiring approval.** Beginning
32 August 15, 2003, applicants for positions requiring approval
33 under chapter 502 are subject to the provisions of this section.
34 Fingerprinting of applicants for positions requiring initial
35 approval prior to being hired or placed under contract,
36 conducting the needed state and federal criminal history record
37 checks by the bureau pursuant to subsection 4, paragraph A and
38 forwarding the results by the bureau to the department must begin
39 on August 15, 2003.

40
41 **4. Criminal history record information.** Criminal history
42 record information is obtained as follows:

43 A. The department shall request that for each applicant the
44 bureau conduct a criminal history record check. The
45 criminal history record check must include a check of the
46 criminal history record information maintained by the Maine
47 Criminal Justice Information System and by the Federal
48 Criminal Justice Information System and by the Federal
49 Criminal Justice Information System and by the Federal
50 Criminal Justice Information System and by the Federal

2 Bureau of Investigation. The bureau shall provide the
4 criminal history record information obtained from the Maine
6 Criminal Justice Information System and the Federal Bureau
8 of Investigation to the department. For purposes of this
paragraph, "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, 2003; or

10 B. When an applicant who holds a valid certification,
12 authorization or approval under chapter 501 or 502 and was
14 employed by a school prior to August 15, 2003 subsequently
16 applies for a position with another school administrative
18 unit or private school, the superintendent of the school
20 administrative unit or private school to which the applicant
22 applies may request criminal history record information on
24 that applicant only if the governing body for that school
26 administrative unit or private school has decided to obtain
28 the same criminal history record information for all such
30 applicants seeking employment in that school administrative
32 unit or private school. Upon the request of that
34 superintendent, the department shall request that the bureau
36 obtain a criminal history record check. The criminal
38 history record check must include a check of the criminal
40 history record information maintained by the Maine Criminal
42 Justice Information System and by the Federal Bureau of
44 Investigation. The bureau shall provide the criminal
46 history record information obtained from the Maine Criminal
48 Justice Information System and the Federal Bureau of
50 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.

52 5. Use of criminal history record. State and federal
54 criminal history record information may be used for the purpose
56 of screening educational personnel applicants by the department
58 in order to determine whether certification, authorization or
60 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.

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

8 7. Confidentiality. Except as provided in subsection 13,
9 any criminal history record information obtained under subsection
10 4 is confidential.

12 8. Expenses of criminal history record check. The
13 department or the superintendent that requests a criminal history
14 record check shall pay the expenses of the criminal history
15 record check. Except for any portion of the payment that
16 constitutes the processing fee charged by the Federal Bureau of
17 Investigation, all money received by the Maine State Police for
18 purposes of this section must be paid to the Treasurer of State.
19 The money must be applied to the expenses of administration
20 incurred by the Department of Public Safety.

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

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

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

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

48 A. Persons other than those for whom certification or
49 authorization is required who are placed under contract by a
50

2 school and who are subject to the requirements of this
3 section must meet these requirements by July 1, 2004.

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

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

15 A. From the Maine State Police:

16 (1) Information explaining the process used by the
17 Maine State Police and the bureau in conducting
18 fingerprinting and state and national criminal history
19 record checks;

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

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

28 B. From the commissioner:

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

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

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

2 (4) The aggregate number of educational personnel
4 applicants who have been fingerprinted and the sum
6 total of educational personnel applicants for whom the
8 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.

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

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

18 E. Certify or authorize personnel who provide early
20 childhood educational programs or developmental therapy to
22 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

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

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

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

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

40 **Sec. 7. 20-A MRSA §13011, sub-§8,** as enacted by PL 1997, c.
42 452, §7, is amended to read:

44 **8. Criminal history record checks.** Criminal history record
46 checks of an applicant for certification, authorization, approval
48 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 ~~mine~~
 routine technical rules in accordance with Title 5, chapter 375,
 subchapter II-A 2-A.

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

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

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

22 **3-A. Grounds for denial, revocation, suspension or**
23 **nonrenewal.** Grounds for denial of a certificate, authorization
24 or approval related to criminal offenses, fraud or gross
25 incompetence may be established by the state board in its rules
26 in accordance with Title 5, chapter 341. Except as provided in
27 this section and Title 5, chapter 341, consideration of prior
28 criminal convictions as an element of fitness to be certified,
29 authorized, approved or renewed is appropriate within 3 years of
30 the applicant's final discharge from a correctional system.
31 Beyond the 3 years, an applicant with a prior criminal conviction
32 who applies for certification, authorization or approval with no
33 additional convictions must be considered in the same manner as
34 an applicant for certification, authorization or approval who has
35 no prior criminal convictions for the purposes of certification,
36 authorization, approval or renewal decisions.

37 The following are grounds for revocation, suspension or
38 nonrenewal:

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

43 B. A conviction that is excepted by statute to which Title
44 5, chapter 341 does not apply; or

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

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

8
9 **Sec. 10. 20-A MRSA §13020, sub-§4,** as enacted by PL 1983, c.
10 845, §4, is amended to read:

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

17
18 A. Notwithstanding Title 5, chapter 341, no a certificate,
19 authorization or approval revoked for reasons of child abuse
20 or exploitation may not be reinstated within 5 years of the
21 revocation and in no case less than 3 years from the
22 expiration of probation or parole or discharge from
23 imprisonment for a criminal conviction involving child abuse
24 or exploitation.

25
26 B. In determining whether a certificate, authorization or
27 approval may be reinstated, the commissioner shall determine
28 whether the applicant has been sufficiently rehabilitated to
29 warrant the public trust. The applicant shall--be is
30 required to demonstrate sufficient evidence of
31 rehabilitation, notwithstanding Title 5, chapter 341, and
32 the commissioner shall state in writing the basis for any
33 decision which that denies reinstatement of a certificate,
34 authorization or approval.

35
36 C. Denial of reinstatement pursuant to paragraph B may be
37 appealed to the Superior Court.

38
39 **Sec. 11. 25 MRSA §1541, sub-§8,** as enacted by PL 1999, c. 791,
40 §6, is repealed.

41
42 **Sec. 12. 25 MRSA §1542-A, sub-§1, ¶G,** as amended by PL 2001,
43 c. 52, §4, is further amended to read:

44
45 G. Who is a teacher or educational personnel applicant
46 subject to Title 20-A, section ~~6103~~ 6103-A;

47
48 **Sec. 13. 25 MRSA §1542-A, sub-§3, ¶F,** as enacted by PL 1999,
49 c. 110, §7, is amended to read:

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

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

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

30
31 **Sec. 15. Removal of applicant's fingerprints from state repository.**
32 Within 90 days of the effective date of this Act, the Department
33 of Public Safety, Bureau of State Police, State Bureau of
34 Identification shall remove the fingerprints collected from those
35 educational personnel who were subject to the requirements of the
36 Maine Revised Statutes, Title 20-A, former section 6103 but are
37 not subject to the requirements of Title 20-A, section 6103-A.
38 In response to a written request, the State Bureau of
39 Identification shall provide written confirmation to any such
40 educational personnel that their fingerprints have been removed
41 from the state repository.

42
43 **Sec. 16. Reinstatement of certification.** Upon application by the
44 person, and after successful completion of any reference and
45 background checks that might otherwise be conducted, the
46 Commissioner of Education shall reinstate the certification,
47 authorization, approval or renewal under the Maine Revised
48 Statutes, Title 20-A, chapter 501 or 502 that was denied to a
49 person solely on the basis of that person's refusal to comply

2 with the requirements of Title 20-A, former section 6103 due to a
3 sincerely held philosophical belief against the fingerprinting
4 and criminal history record check requirement.

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

8
9
10 **SUMMARY**

11 This bill provides that, beginning with the 2003-2004 school
12 year, only newly hired school employees will be subject to the
13 fingerprinting and criminal history record check requirements.
14 The bill also provides that former school employees who left a
15 school administrative unit in the State due to a sincerely held
16 philosophical belief against the fingerprinting and criminal
17 history record check requirement, and who subsequently return to
18 school employment, will be exempted from the criminal history
19 record check requirement for newly hired school employees. The
20 bill also authorizes the Maine State Police and the Commissioner
21 of Education to release certain general information relating to
22 the fingerprinting and criminal history record checks of
educational personnel.