

MAINE STATE LEGISLATURE

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knocked down, but I think, in honor of our elderly, we ought to make the fight.

On motion by Senator **PINGREE** of Knox, supported by a Division of at least one-fifth of the members present and voting, a Roll Call was ordered.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#379)

YEAS: Senators: BERUBE, CAREY, CATHCART, DAGGETT, DOUGLASS, FERGUSON, GOLDTHWAIT, KILKELLY, KONTOS, LAFOUNTAIN, LAWRENCE, LONGLEY, MICHAUD, MILLS, NUTTING, O'GARA, PARADIS, PENDLETON, PINGREE, RAND, RUHLIN, TREAT, THE PRESIDENT PRO-TEM - ROBERT E. MURRAY, JR.

NAYS: Senators: ABROMSON, AMERO, BENNETT, CASSIDY, DAVIS, HARRIMAN, LIBBY, MITCHELL, SMALL

ABSENT: Senators: BENOIT, KIEFFER, MACKINNON

23 Senators having voted in the affirmative and 9 Senators having voted in the negative, with 3 Senators being absent, the motion by Senator **PARADIS** of Aroostook to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-686)** Report, **PREVAILED**.

READ ONCE.

Committee Amendment "A" (S-686) **READ** and **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-686)**.

Sent down for concurrence.

Under suspension of the Rules, all matters thus acted upon were ordered sent down forthwith for concurrence.

On motion by Senator **LAWRENCE** of York, **RECESSED** until 1:50 in the afternoon.

After Recess

Senate called to order by the President.

ORDERS OF THE DAY

The Chair laid before the Senate the following Tabled and Later Today Assigned matter:

SENATE REPORTS - from the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act Concerning Fingerprinting and Background Checks for School Employees"
S.P. 987 L.D. 2540

Report "A" - **Ought to Pass as Amended by Committee Amendment "A" (S-691)** (11 members)

Report "B" - **Ought to Pass as Amended by Committee Amendment "B" (S-692)** (1 member)

Report "C" - **Ought to Pass as Amended by Committee Amendment "C" (S-693)** (1 member)

Tabled - April 11, 2000, by Senator **PINGREE** of Knox.

Pending - motion by Senator **BERUBE** of Androscoggin to **ACCEPT** Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-691)**

(In Senate, April 11, 2000, Reports **READ**.)

Senator **MURRAY** of Penobscot requested a Division.

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Murray.

Senator **MURRAY:** Thank you Mr. President. Men and women of the Senate, let me begin by first thanking you for your indulgence. I want to confess to you, in my 8 years of legislative service, this is the first time that I have taken out a Minority Report where I am the sole person taking out that report. It's not something I do. It's not something I've ever done. The reason I do that is because I think this issue is of such significance. My concern about the Majority Report was strong enough so that I felt it was something I had to do. The reason I think this issue has been very difficult is because of the passion involved with the issue that we're talking about. It's the issue of abuse against the children, the minors, in our school systems and elsewhere, quite frankly, and the passion involved when we talk about the nature of the offenses that are involved against these children. I had the privilege the last few days, as you well know, to share my 2 children with you in this Senate chamber as pages. Believe me, if I felt that the Majority Report addressed the issue of child safety for children, such as my own, who are in the public school system, adequately, clearly, in a way that was effective, I would support that approach without hesitation. My concern is that is not the way that we should go forward. That's not the approach to take to address the issue of child safety and the fingerprinting over 65,000 of our fellow citizens. That's basically what we're talking about here, ladies and gentlemen of the Senate. We're talking about the choice of whether we implement a measure that would require that over 65,000 of our fellow citizens submit themselves to a process that, in my opinion at least, doesn't get us where we need to go. If the Majority Report truly protected the children of our schools throughout the state as it purports to do, I would be supportive. There are a few reasons why I don't think that gets us where we need to be. I want to share those with you. The Majority Report, which basically reflects current law, submits

the educational personnel to these fingerprinting and background checks. But the information that is provided is limited to information that will tell us what the convictions, if they exist, are for those same individuals. It doesn't tell us anything else but conviction information, if there have been prior convictions for that individual submitted to this requirement. Why is that significant? Well, just by way of example, in the last few weeks, where the news has documented reports of a case in Portland involving a teacher at the high school there and another case involving an educational personnel person from Thomaston or South Thomaston. Those two examples, the most recent that I can recall, point out one of the most serious flaws with the approach. Namely that neither of those circumstances involved prior convictions. So had this law, that the Majority Report proposes, been in place previously, at that time, these same two individuals would not have come us as a violation, or as an issue, because the focus is merely on convictions alone. The other concern I have with the Majority Report, that requires all educational personnel to submit to these kinds of background checks, is that there is a significant number, I can't tell you what that number is or will be, but there is a significant number of educational personnel who have taken the heartfelt position, perhaps it's the right position and perhaps it's the wrong position, but it's a sincere and heartfelt position that they will not submit themselves to this kind of a background check under these circumstances. What's that tell us? Well, my initial reaction to that is well that's their decision, let them do what they want. But when you actually reflect on that a little more and recognize that is not just a bravado statement, but really a sincere belief on the part of some individuals at least, I think a significant number. It's a number of individuals who have taught within our systems and worked within the educational systems for a number of years. Those individuals are no longer going to be on the front lines of our schools. Those are the same individuals who the statistics tell us are the best source for reporting the kinds of abuse that we're trying to prevent. That's why the Majority Report is so flawed, in addition to the reason I stated previously. If we implement a system that, by its nature, has the effect of moving a significant number of personnel out of our schools, the same personnel who are going to be the ones most likely, as a mandatory reporter, to address the issues of abuse when they see it, how does that move us forward in protecting our children within the schools? I would argue it does not and, in fact, creates a serious potential harm. It's been said, in the arguments and testimony we've heard, that the proposal of the majority is an unconstitutional infringement. Well, I don't think it's an unconstitutional infringement from a legal aspect looking at it, but I do think it turns on our heads the ideas of process and procedure that we have held dear and continue to hold dear in this state. There is something unusual, to say the least, to require as a means for finding out some information, and I say some information because it's the conviction information only that we're asking to find. We're not finding out everything we want to know. But for that piece of information, we are saying the best way to do it is to require that 65,000 individuals in our educational system submit themselves to fingerprinting and background checks. It stands our process on its head. Ladies and gentlemen of the Senate, the focus of the Minority Report, that I hope we have an opportunity to deal with as an alternative to the pending motion and the Majority Report, focuses instead on where I think our resources need to be devoted, namely on the individuals within our educational system that we know the least about. There is a difference, in my mind, with the individual,

whether it's a teacher, or a cafeteria worker, or anybody else who has worked and devoted their lives, 15, 25, however many number of years in that system. That individual is different from the individual who is brand new, coming into our community as a new teacher, as a new individual employee, or as an individual employee going from one school district to another one. There is no history that the community or the school knows about that individual. It's more appropriate, in my opinion, that's the type of individual we need to focus our attention on. It's more appropriate for us as a legislative body and the State of Maine to say, that's the individual that we want to get as much information about as we can in making the decisions we need to make in this area of employment and background checks. So the report that I am proposing for your consideration does just that. It says that any new individual who is, for the first time, being subject to certification or approval or authorization by the department must submit to this background check procedure. It also says that those individuals who are first coming into a new school district as a new hire, whether they previously worked in a school somewhere else or not, when they come into that new school district the local school superintendent, or the local school hiring entity, has the right to submit that person to the same kind of background check so that the new school district can have information about whether or not there is a criminal history involved with this person. It doesn't fingerprint everyone, there's no question about that. But what it does is focus the attention and the resources where it is most appropriate to do so. It comes down to that quite simply. Obviously by doing so, the Minority Report has a far less ongoing cost, since the number involved would be far less than the 65,000 individuals that the Majority Report would impose this requirement on. Both reports fully fund the proposal, in that they both require that those who have already been subjected to this procedure be reimbursed. Both use the same standard, for those who would be subjected to this process, with regard to the criminal background check that will occur and the information that will be the basis for decision-making. The difference is, quite simply, that the Minority Report recognizes and respects the years of ongoing service that those who engage in our school and work in our schools have given to our communities. It focuses the attention where it needs to be focused, on those individuals where we know the least and need the information the most. For all these reasons, I would urge you to join with me in opposing the pending motion so that we can move on to address the Minority Report.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Harriman.

Senator **HARRIMAN:** Thank you very much Mr. President. Good afternoon ladies and gentlemen of the Senate, I rise to join my good friend from Penobscot, Senator Murray, in asking you to defeat the pending motion. I want to share with you the rationale that I've used to come to this conclusion. First, I want to say that, in the last few months, we've seen many notorious headlines exclaiming the intrusions, if you will, of people in the education system who conducted acts we all would agree were unacceptable with our children. And if this law was in effect before the headlines you have read about recently, not one of these cases you've read about would have been brought to light by the background checks or the fingerprinting. I would also suggest, Mr. President, that there are teachers who have been our system who are no longer working in a school. Maybe they've left education. Maybe they're in another educational

setting. Or maybe who, through mutual consent to resign or not renew their contract, are now teaching somewhere else. They would not have been affected if this law was in effect. I guess I'd like to go back to the belief that virtually everyone who is in the educational system today is there because they are a professional, because they deeply believe in what they're offering the future of our country by the education they offer our students. I believe that school boards and superintendents are perfectly capable of deciding who are the best people to hire, including talking with references, former employers and former colleagues. But above all that, Mr. President, I'm going to vote to defeat the pending motion on behalf of the teachers who are still teaching the in Yarmouth High school system. Ken Roberts, Becky Clifford, Doug Pride, and many others who I could go on and name, who are teaching in the Yarmouth High School system today, who are the very people who taught me, that have enabled me to have the honor of sitting in a seat in such a hallow chamber as this. And to vote for a law like this is an insult to them and I don't intend to be part of it. Thank you, Mr. President.

THE PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Small.

Senator SMALL: Thank you Mr. President. Men and women of the Senate, I want to explain to you a little bit about how we got where we are today. For some, this seemed to be something that sprung out of nowhere, didn't know it was coming, didn't know they voted on it. The beginnings of this legislation were in 1995 when we had a Bill "An Act to Provide for Record Checks for Elementary and Secondary Education Employees" and that came to the Education Committee. That one did more than just this Bill. It would have allowed background checks on teachers. It would have allowed the releasing of information the Department of Human Services had on allegations that had come before them on charges that were brought up on teachers. It would have given this information back to the local superintendents back home. The MEA came in and opposed this. We had people come in favor of it. We had people in this chamber who were cosponsors of it. What we did was we put it out to study and we got all of the interested groups which would be effected by this. We got the teachers. We had the administrators, the school board representatives, the Attorney General's Office, Department of Human Services. They got together and we told them to try to work something out so that we could try to protect children, but we would not infringe upon the rights of teachers as greatly as that Bill did. They came back the next session and they came up with a proposal that is basically what you see before us now, a fingerprinting Bill that only dealt with conviction data not unsubstantiated charges that were made against teachers. It also required the fingerprinting for teachers because that was the only way that you could get a national search on the background of teachers, through the fingerprinting. I have to say, that if we do accept the amendment, we will not be able to do a voluntary background check on local districts, case by case, because the FBI will not do background checks unless it's required by the state. They will not do voluntary background checks. So the only thing they could do is new hires. You can forget the idea that they are going to be able to do it in districts when teachers move from district to district. So we came up with the legislation and it has gone through a number of changes, transitions. We've attempted to fund it. We've put in some language that's tighten up the law. But it's been a long process, it's been since 1995, and we've voted on it time and time again,

unanimously. It has been through the Education Committee three different times and then finally, it came through us again, not even in a Bill. We just had an open piece of legislation that said, do what you want. This is what we came up with. We came up with an 11 to 1 to 1 report; 11 to keep the existing law, 1 to repeal it entirely, and 1 to do only new hires. This has been a tough decision for me, as I know it was for the good gentleman from Penobscot, Senator Murray, because we all have to try to balance the needs of our children against the infringement that this will cause to our teachers and our other personnel staff at the schools. Believe me, with a child in middle school and a child in high school, this has not been an easy decision. I understand the concerns about teachers that are going to leave. My daughter has 2 teachers that have said they will resign if they have to be fingerprinted, and they are both good teachers, one I actually had. So this has been a very, very difficult decision. So it basically comes down to, what good will this law do? No, it would not have done anything in the Malia case in Chevrus. But that case does point out that it's not new hires only that we have to be concerned about because nobody has suspected that person had been perpetrating those crimes against children for that length of time. This Bill would not have prevented that, but it does show us that it's not only new hires that we have to be concerned about. It could be someone that you have known for your whole lifetime. I don't know what a child molester looks like. I don't know what they act like. I'm not sure that anyone else does either and that would be, I think, foolish to say, well, I've known them for a long while, they couldn't possibly be. As far as forcing people to submit to this, it is difficult and, again, it's a choice that we have to weigh. But I think of all the other issues that we've had here where we've had to weigh the rights of an individual against the rights of a group. I think of Bills that we pass here routinely that take away property rights from individuals because we see some general good in protecting the environment or protecting the neighbors' rights. I think of the rights of businesses not to allow smoking, or forcing businesses not to allow smoking, or not to allow any other number of practices that go on. Because we weigh that and we decide whether that taking away of privilege, or rights, outweighs, or will compensate, for what the good will be by passing that legislation. I don't always go one way or the other on that. I have to weigh each of these issues, whether it's the seat belt law, or its environmental laws, or it's any other number of laws that we have. So, basically, I, like all of you, was faced with the decision, do I incur the wrath of my teachers back home, do risk losing some very good teachers from my school system in order to protect the children who are out there. I had to look at the numbers, the figures that we have found out so far, and weigh them in my mind. And everyone says this law really won't do any good. Well, nobody will know. But in the past 10 years, without any criminal background check, through what they call dumb luck, that's the only word you can use for it dumb luck, they have found 42 teachers and support staff and administrators who would have been disqualified from holding a license in our public schools. It's through someone reporting them, someone reading a newspaper article about a conviction out-of-state. Of those 42 individuals, 27 individuals had convictions for sexual abuse, or sexual contact with a minor child, and of those, three-quarters were long time employees of the school system. The result of those people were assaults on over 50 children. Now this is over 10 years and this is just what we've been able to find through, as we said, dumb luck. There was no process set up in order to find the out-of-state convictions, but through people telling, through

anonymous reporting, they were able to come up with those. But you have to wonder, did we get them all? Were there only 42 out there in the State of Maine? Or are there more and this is just, maybe, what we were able to catch through dumb luck. I understand that for many giving fingerprints is considered a violation. It's hard for me to understand that because I really don't have any problem with that. But I do recognize that some people have deeply held beliefs on this and I respect those. But I have to weigh the moment of time that it would take, the 15 minutes, the half-hour, the hour, that it might take to do this versus the trauma and the tragedy of a lifetime of suffering that a child might go through because of the results of a few individuals who are out there that this Bill might have a chance to take out of our school system. That's why I came to the decision I did, to stay with the other 11 members of our committee, members who are former educators, former teachers, former administrators on our committee who have been in the trenches, really wrestled with this issue as well. But they, also, with all the testimony they heard, with all the data they received, felt that, in their hearts, this was the decision that they had to make. Now each of you have to make that decision for yourselves and I will respect that decision because I know that it is an intensely personal decision and it's a very difficult one. Just as we make those decisions on gun control and on environmental laws, each of us has to weigh what the good would be versus the harm. That's how I made my decision on this. In the end, I would have loved to have had a compromise that we could have come out with unanimity in the committee that would have had the support of the teachers. But, in the end, I had to go; I guess where my conscience was. I just want to read you remarks from the 1997 testimony of the MEA legal counsel who appeared before our committee and his remarks, I will take a portion, "...where federal record checks are necessary and appropriate if the department is to carry out its existing duty to screen certification candidates for criminal convictions which may disqualify them"...and it goes on, ".....we also recognize that it is reasonable for any school employee who has access to children to be subject to the same record checks." Nothing that I've heard or seen has changed my mind from that. I understand that, perhaps, you've heard other instances of other cases. But for me, when the time came to make that decision, I just had to lean a little more on the side of children. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Piscataquis, Senator Davis.

Senator **DAVIS:** Thank you very much Mr. President. Men and women of the Senate, I rise this afternoon to support the good Senator from Penobscot, Senator Murray, on this amendment. As you all know, I had a long career in law enforcement and dealt with every aspect of law enforcement that I believe is possible. I must tell you, when I first learned of this proposal, it was from a teacher who called me and was concerned. I really thought somebody was pulling a joke on me. I honestly did, I didn't think that it was true, what they were proposing to do. Again, I would say that and remind you I do come from law enforcement, I have some idea how many cases are solved by using fingerprints. I really felt that to do this was an awful overreach and awful long shot to catching people who were doing things that they shouldn't be doing with children. I wanted to be fair so I decided I'd learn a little bit about it. I do want to tell you one other thing. I spent a good part of my life on a school board, helping children in a poor district. I have two children. I've got two granddaughters; I've got

a picture of the youngest one right here. Nobody here better tell me that she isn't cute because she is.

Another little story, Mr. President. I have a car phone and yesterday, when we got out of here, I got in my car and I pushed the buttons to see if I had any messages. This little voice came on, they call me "Bumpa", and the little voice said, "Bumpa, at my school we're having a hopathon". Well I'm not familiar with a hopathon, but it was for MS. I learned how her uncle, Skip, had offered her penny a hop, but she kind of felt that she loved her Bumpa so much that maybe there'd be \$5 in store for her from Bumpa. Well, she was right, there was.

At any rate, Mr. President, to give this all a fair evaluation, I decided to see what information I could find. One figure that stuck out of all the papers that come across the desks here, because it was on both sides, was the fact that 1,290 convictions occurred from 1987 to 1994 of people who were applying for first time teaching jobs. That's nationwide. If you do the math, you will find that it's 8/10ths of one person for the State of Maine per year. Well, the good Senator from Penobscot's amendment will cover that, because this is for new hires. It'll take care of that. In a report compiled by the United States Department of Health and Human Services, they're saying that 75% of the perpetrators of child abuse are the parents, we certainly wouldn't fingerprint them, 10% are relatives, 8% are unknown, 5% are non-care givers, less than 1% are care givers, 1/2% are foster parents and less than 3/10% are faculty staff. Which of course isn't all of the people who are going to be fingerprinted because we have bus drivers and cooks and janitors and everybody else who will be fingerprinted if this Bill stands. So I felt, after learning that probably it was a real small amount of people involved here anyway. Then I thought about the imposition of it all on teachers. Initially the complaints that I received were because they had to pay \$49 and I didn't have a lot of sympathy for that. That's how it happens all the time, people in professional life have to pay increased fees and everything. But then some people pointed out that they felt that it was a civil rights violation. As the good Senator from Penobscot said earlier, so eloquently, that he didn't believe it was a civil rights violation and I didn't either, but I do think it's quite an imposition on the people who have taught 20 to 30 years in places to come and in fingerprint them and do criminal background checks on them. For new people, to have to pay the fee, I don't know how it is in some districts, but in our district, we can only pay about \$20,000 a year. That allows them to get the lousiest apartment in town usually and they usually get to drive around in an old car. We're going to make them spend their money. I just didn't think it was right to do that. Lastly, Mr. President, was the cost that was going to cost the state itself. If my figures are right, from what I've learned, it was going to be about \$2 million. I really think that, perhaps, there are other places where we could spend \$2 million. I've got all kinds of suggestions, but I think we can if we really try. I just don't think that this legislation is going to do what people think or want it to do. Thank you very much.

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Cathcart.

Senator **CATHCART:** Thank you Mr. President. Mr. President, men and women of the Senate, I rise in opposition to the Majority Report on this legislation. I want to express my gratitude to the Senator from Penobscot, Senator Murray, for his courage in being a Minority Report of one. I also served on the Education Committee when this legislation was passed. I remember being

a lone voice questioning it and saying, why would we fingerprint all the teachers in the State of Maine just because there may be a few who abuse children. And I was told by other members of the committee that I was mistaken, that nobody was against it, the teachers weren't fighting it, the Department of Education strongly supported it and the State Police supported it. I didn't have the courage to be a minority of one and bring out my own report. I went along with the other 12 members of my committee and I've felt guilty about that. I've had calls from teachers, some of whom are close friends, others are teachers who I have met when I've visited their schools, and I've learned to respect them. They have described what it was like for them to go through this experience. They have felt like criminals. They have felt degraded. One of the teachers, from Lincoln, called me the day that she was fingerprinted. It was a crises call. I did hot-line for a battered women project for 10 years and this was a woman in crises who was describing a feeling of being violated, of being abused. This was a former regional teacher of the year recipient, a wonderful teacher. So, it's a hard question. Is it worth it? Obviously, child abuse is abhorrent to all of us and we need strong laws and we do in this state put good policy in place and put our money where our mouth is to try to protect our children. If this is important enough to be worth it and it's really going to save our children, absolutely, we should be paying for it. We owe it to our children. But, I just cannot believe that it is going to have the effect that the people on the Majority Report think it will. I'm not sure that it will save even one child, from what I've been able to learn. And is it really worth it to put 65,000 people through this kind of experience and require this fingerprinting for them? That's just one group. If we're going to do that, are teachers any more likely to abuse children than little league coaches, Boy Scout leaders, Girl Scout leaders, childcare workers? Most of those people, we all know, are good people who would never abuse a child. In any profession, there are going to be a few bad actors. I don't think this legislation is going to catch all of those people. So I really don't think it is worth it to put these people through this experience that they are describing to me that is so degrading to them. We don't respect our teachers enough. We don't pay them well. The pay is terrible. Most teachers go into the profession because they love children. They want to do good things for children and help them to grow up and live happy and productive lives and be good citizens. Yes, there are a few people who get into it because they are attracted to children and want to abuse them. We should do everything we can to catch those people and prosecute them. Unfortunately, we don't succeed very often, as the recent cases in this state have shown. But I still do not think it is worth it, to put the teachers through this. I've had calls from teachers in the past years, since I've been in public service, that have called me because they couldn't get the state to do anything to protect a child. I remember a call from one teacher's aide and she said, "we're really concerned here at the school and we've reported this several times to DHS, this little girl won't get on the school bus to go home. She clings to the teachers. She cries and she sobs. She's afraid to go home. We know the mother is not at home. The mother is at work. We know that there is a man living in the household and we know that this little child has been abused in the past. Will you please help us, Senator, to get the state to do something to protect this girl?" That's the way I see our teachers. I see them as people trying to protect our children, people who love our children. I want to honor teachers today. I'm going to support the Minority Report that does this for new hires only because I

think that way is a better way that we might protect our children. Thank you, Mr. President.

THE PRESIDENT: The Chair recognizes the Senator from Hancock, Senator Goldthwait.

Senator **GOLDTHWAIT:** Thank you Mr. President. Ladies and gentlemen of the Senate, first I want to thank the many people in my district who took a lot of time helping me think through this issue. I want to apologize to them for taking so long to think about this, leaving them suspended as to what I was going to do; how I was going to vote today. But here we are. First, I want to comment on the reasons I don't think are good reasons to be promoting fingerprinting of people who work at schools. The argument that it's unconstitutional, I think that's been overturned or ruled on by courts in several states and I don't think that's an issue. The argument that good teachers will quit their jobs if we do this, that is their decision. They are free to make the choice to refuse to comply with this state law. They know what the consequences are and that's their choice to make that decision. And the fact that we are supposedly accusing all educators of being pedophiles if we do this. We're not accusing anybody of anything at all. I work in a nursery and infants are kidnapped. I wouldn't feel like people were accusing me of being a kidnapper if they said, for the safety of these babies, we want you to be fingerprinted. So, to me, none of those are the issue. The numbers from my district are not the issue, although I will say that out of 302 people that contacted me regarding this issue, of those that said yes, go ahead and fingerprint everybody, there were 3. Of those who said do new hires only, there were 16. Those who said educators and others who work in school should not be fingerprinted under any circumstances, there were 283. And yet, that's not what persuaded me to oppose the pending motion. When you're dealing with the forces of evil, and I would put anyone into that category who would have, in any way, any intention of doing harm to a child. I think you have to weigh the potential danger about what you have to give up to be safe. I would give up a lot for the safety of children, a whole lot. In fact, it gets hard to think about what one wouldn't give up for the safety of children. So, when I look at the possible efficacy of this proposal to fingerprint all school employees, as I understand it, there are two things we would learn from fingerprinting: One is that the person is actually who they say they are and the other is that they have not, or that they have had, a criminal conviction related to child abuse in the past. So those are the two things that we learn from fingerprinting school employees. My concern is that for that gain, for those cases where a person is misrepresenting their identify, or for a person who has lied on their employment application and actually does have a prior criminal conviction. I'm not sure those numbers would be very large. I think the much larger numbers have to do with a different problem. That problem goes something like this. There are probably few of us, unfortunately, who have never heard a rumor in our communities about a teacher who was allegedly posing a risk to children, or some other school employee, not just teachers. Those rumors, unfortunately, float around from time to time in our communities. There are allegations. There are suspicions. We have created a very high bar for how we deal with those rumors, allegations, and suspicions, and that's very appropriate. We don't want to be convicting people on the basis of a rumor. So it is necessary to substantiate those rumors or suspicions. That comes with the possibility of exposing a young victim, an alleged victim, to public scrutiny, public debate. It also

brings the likelihood of costly and lengthy litigation for the school unit. So it is true that in some cases something happens. Some conversation happens somewhere, that causes that school employee to simply resign and go away. Possibly to another school system. And that is a tragedy. Does it mean that our school administrators are not doing their job? Absolutely not. Probably none of you know Howard Colter. He's the superintendent in my area. You're not going to find a better man. If Howard Colter thought that anyone in his school was mistreating a child, he's a man who would be awake at night. He's a man who would have that eat him up until it was resolved. But, unfortunately, the way our legal system is structured, these things are very difficult to substantiate and sometimes that trouble gets passed from one school system to another. We have given our administrators a limited ability to deal with this situation. I don't think we've got it right in this Bill. The Department of Education, the Education Committee, teachers, parents, students, I don't think any of those groups think we have it right. I think every one of those groups is divided about what we should be doing about this. So the question for me is, given that we are willing to allocate resources to the protection of our children and that we have established a pool of resources to do that, are we getting the best benefit for those dollars by this proposal? I'm not sure that we are, because I think we are going after the smaller problem, that's a lot more black and white, rather than after the bigger problem which brings with it a lot more tough questions that we don't know how to resolve yet. So I would urge you to think about allocating our resources to the place where it's likely to do the most good for the most kids. We have to have the courage now to make a course correction. Yes, we got into this in good faith. Yes, we had the consent of the Teachers Association when this all started up until implementation time began. But it's time for a course correction. Just because we've already fingerprinted 1,200 people doesn't mean that if we think it's the wrong approach, not the most efficient approach, not the most effective approach, we should just continue because we already started it. I intend to vote against the pending motion and any other motions that require fingerprinting of school employees. I hope that you will too and that we can use these dollars to solve the bigger problem. Thank you.

On motion by Senator **MURRAY** of Penobscot, supported by a Division of at least one-fifth of the members present and voting, a Roll Call was ordered.

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Mitchell.

Senator **MITCHELL:** Thank you Mr. President. Ladies and gentlemen of the Senate, in listening to the debate here today, I'm really a little concerned about why we're not listening to the people who have worked with this and who have advised us that this is the best way to do it. Our Department of Safety, our Department of Education, our Commissioners of both of these Departments, their administrative staff, our superintendents, our principals; they are all giving us a message that fingerprinting and background checks, the way the law currently exists, we should follow that guidance. The first one to be fingerprinted, I believe was our Commissioner of Education. How many children do we have currently that were all fingerprinted back when they were in grade school? How many of the existing people today have been fingerprinted. What is the big deal of putting your

finger on an ink pad if you can save even one child from being succumbed by a pedophile? Why aren't we listening to the people we are paying a substantial amount of money for their wisdom, for their guidance, on decisions to help us put the right policy into effect. We have a law in effect. Everyone supported that law at that particular time. Now, because it came to us that it was not a funded mandate and we decided to adhere to the requests of our people and fund that mandate, all of a sudden because a few teachers decided well, we don't want to be fingerprinted, they want to turn the whole thing around on a motion. We're not listening to the guidance of our commissioners, our superintendents, and principals who are telling us, "hey, we got the law we need. We don't need to have these people coming in from out of state. We don't need to be one of those minority states that do not have a law for fingerprinting." I think we should think about this strongly before we go against the guidance of all of the people who are most closely related to this, and who made a decision a few years ago, and stick to the Report of Ought to Pass as Amended.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Androscoggin, Senator Berube to Accept the Majority Ought to Pass as Amended by Committee Amendment "A" (S-691) Report. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#380)

YEAS: Senators: **ABROMSON, AMERO, LAFOUNTAIN, LONGLEY, MILLS, MITCHELL, O'GARA, SMALL**

NAYS: Senators: **BENNETT, BERUBE, CAREY, CASSIDY, CATHCART, DAGGETT, DAVIS, DOUGLASS, FERGUSON, GOLDTHWAIT, HARRIMAN, KILKELLY, KONTOS, LIBBY, MICHAUD, MURRAY, NUTTING, PARADIS, PENDLETON, PINGREE, RAND, RUHLIN, TREAT, THE PRESIDENT - MARK W. LAWRENCE**

ABSENT: Senators: **BENOIT, KIEFFER, MACKINNON**

8 Senators having voted in the affirmative and 24 Senators having voted in the negative, with 3 Senators being absent, the motion by Senator **BERUBE** of Androscoggin to **ACCEPT** Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-691), FAILED.**

Senator **MURRAY** of Penobscot moved the Senate **ACCEPT** Report "B", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (S-692).**

THE PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Small.

Senator **SMALL:** Thank you Mr. President. Men and women of the Senate, since that amendment is not able to be carried out by the FBI, or at least a portion of that, should we table so that we could amend it in second reading. There are portions of that that

are not applicable to the FBI regulations for fingerprinting and I just wanted to correct that before the Bill gets too far.

On motion by Senator **GOLDTHWAIT** of Hancock, supported by a Division of at least one-fifth of the members present and voting, a Roll Call was ordered.

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Murray.

Senator **MURRAY:** Thank you Mr. President. Men and women of the Senate, the issue, I believe, the good Senator from Sagadahoc, Senator Small, raises is one that was addressed by the policy analysts in drafting this question of allowing the local school administrative districts to request the department to undertake these checks. They undertook research involving the federal rules and regulations. He was persuaded that this approach is one that is authorized under federal law. When the issue was raised with me, again, today, I certainly suggested that if, in fact, those questions exist to point them out to me. I'd be happy to look at them. Tell me why they wouldn't work. It hasn't been suggested to me or demonstrated to me that that isn't capable of being done. I suggest we move forward with this process and if there is information that can be clarified, we can do that. But as far as the analysts and the support we have from that professional staff, that's a question they addressed and were comfortable with.

THE PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Small.

Senator **SMALL:** Mr. President, I did not make the motion to table. So, I don't know whether that's what the Roll Call is in answer to.

THE PRESIDENT: The pending question is the motion of the Senator from Penobscot, Senator Murray, to accept Report "B", Ought to Pass as Amended by Committee Amendment B.

THE PRESIDENT: The Chair recognizes the Senator from York, Senator Libby.

Senator **LIBBY:** Thank you Mr. President. Men and women of the Senate, a question through the Chair to anyone who could respond please. I believe that this amendment, that's in front of us, continues the confidentiality clause that requires the state to hang on to the information that they receive about the criminal background check and that information would not be forwarded to the school districts. I want to know if I'm correct in making that statement.

THE PRESIDENT: The Senator from York, Senator Libby, poses a question through the Chair to anyone who may be able to answer. The Chair recognizes the Senator from Penobscot, Senator Murray.

Senator **MURRAY:** Thank you Mr. President. Men and women of the Senate, your understanding is correct. The information on the national background check, that would be flowing to the department, would be confidential and remain confidential. The information that a local district can now get without the fingerprinting, which is limited to state information, is information

they still could obtain themselves. But the information they'd be gaining from the fingerprint and the national background check would remain confidential.

THE PRESIDENT: The Chair recognizes the Senator from York, Senator Libby.

Senator **LIBBY:** Thank you Mr. President. Men and women of the Senate, this is, I think, a better alternative than the first one that we looked at. That's why I voted the way I did. I'm wondering if the questions of confidentiality are the same as in the prior Report "A" that we just looked at? For example, if fingerprinting is conducted for these new employees, or potential employees, who are trying to be certified, what is it that we should think about in making the decision to prevent that information from being forwarded to a superintendent, for example, or a school board, as a part of that employee's file. I'm wondering why we need the confidentiality provision? If we're not making this retroactive, which I think that probably played a role in the last debate, I don't know. But if we're just from here on, from this point on, going to conduct fingerprinting for brand new people who are applying to get their certification, then why not take the next step and put the information that we find from that into the employee file? I wonder if anyone can respond to that?

THE PRESIDENT: The Senator from York, Senator Libby, poses a question through the Chair to anyone who may be able to answer. The Chair recognizes the Senator from Penobscot, Senator Murray.

Senator **MURRAY:** Thank you Mr. President. Again, men and women of the Senate, I think the reason why we don't need to do that, in that circumstance, is because if someone undergoes the background check under these circumstances and the information comes back that there is a criminal conviction, that person would then be susceptible, under current law, to have their certification revoked for one of these convictions. If, in fact, that happens, that's far more effective than the information being passed along or not passed along because they wouldn't be able to teach anyway.

THE PRESIDENT: The Senator from York, Senator Libby, requests unanimous consent of the Senate to address the Senate a third time on this matter. The Senator may proceed.

Senator **LIBBY:** Thank you Mr. President. Men and women of the Senate, I'm just trying to understand this in my own mind. So, for example, I guess, according to the last response to my question, what you're saying is that there are criminal convictions that would, at least by my understanding of this, not prevent somebody from being re-certified. And that's what I'm talking about, Mr. President. I'm wondering if there are convictions that will not prevent an applicant from being re-certified? If we're going to start from this day forward, why not share that information with the school system because, maybe, there's a conviction that is not a criminal conviction that would have an impact on the certification, but maybe it would play a role in the hiring decision. I'm not sure of that. If some of the legal scholars could help me with that, Mr. President. I've always been uncomfortable with this confidentiality provision anyway, but now, at this point, since we've gotten to this point where we've decided we're only going to go with possibly fingerprinting new hires, I'm

just wondering why wouldn't that information be shared with the school district, given the fact that it depends on the conviction.

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Murray.

Senator **MURRAY:** Thank you Mr. President. Men and women of the Senate, let me try to address the question, I think. On both the Majority and Minority Reports, current law spells out the type of conviction that will be relevant for the purposes of this kind of evaluation, whether it be for purposes of renewal, issuance, or revocation of a certification or approval. It spells it out fairly clearly in both reports and in this amendment. I think that's appropriate. I think it would be unusual to require information that falls outside of that type of a conviction from being shared with anybody else. If its not even relevant to the issue of certification, why would we be interested in passing the information along to anyone else? I think the Bill, in both versions; quite frankly, focuses appropriately on the type of conviction that is relevant and appropriate for consideration and that ought to be all we're all concerned about, in my opinion.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Senator Murray of Penobscot to Accept Report "B", Ought to Pass as Amended by Committee Amendment "B" (S-692). A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#381)

YEAS: Senators: ABROMSON, AMERO, BENNETT, BERUBE, CAREY, CASSIDY, CATHCART, DAGGETT, DAVIS, DOUGLASS, FERGUSON, HARRIMAN, KILKELLY, KONTOS, LAFOUNTAIN, LIBBY, MILLS, MURRAY, NUTTING, O'GARA, PARADIS, PENDLETON, PINGREE, RUHLIN, THE PRESIDENT - MARK W. LAWRENCE

NAYS: Senators: GOLDTHWAIT, LONGLEY, MICHAUD, MITCHELL, RAND, SMALL, TREAT

ABSENT: Senators: BENOIT, KIEFFER, MACKINNON

25 Senators having voted in the affirmative and 7 Senators having voted in the negative, with 3 Senators being absent, the motion by Senator **MURRAY** of Penobscot to **ACCEPT** Report "B", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (S-692), PREVAILED.**

READ ONCE.

Committee Amendment "B" (S-692) **READ** and **ADOPTED.**

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (S-692).**

Under suspension of the Rules, ordered sent down forthwith for concurrence.

Off Record Remarks

Senator **HARRIMAN** of Cumberland was granted unanimous consent to address the Senate off the Record.

Out of order and under suspension of the Rules, the Senate considered the following:

PAPERS FROM THE HOUSE

Non-Concurrent Matter

SENATE REPORTS - from the Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** on Bill "An Act to Prohibit Hunting Animals in Enclosed Areas"

S.P. 457 L.D. 1332
(S "B" S-681 to C "A" S-655)

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-655)** (7 members)

Minority - **Ought to Pass as Amended by Committee Amendment "B" (S-656)** (6 members)

In Senate, April 8, 2000, the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-655)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-655) AS AMENDED BY SENATE AMENDMENT "B" (S-681)** thereto.

Comes from the House, Reports **READ** and Bill and accompanying papers **INDEFINITELY POSTPONED**, in **NON-CONCURRENCE.**

On motion by Senator **NUTTING** of Androscoggin, **TABLED** until Later in Today's Session, pending **FURTHER CONSIDERATION.**

Non-Concurrent Matter

SENATE REPORTS - from the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** on Bill "An Act to Support Maine's Only Representative to the Nation's Capital Bicentennial Celebration" (EMERGENCY)

S.P. 1042 L.D. 2630
(C "A" S-605)

Majority - **Ought Not to Pass** (8 members)

Minority - **Ought to Pass as Amended by Committee Amendment "A" (S-605)** (5 members)