

MAINE STATE LEGISLATURE

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House of Representatives
One Hundred and Twenty-First Legislature
State of Maine

Volume II

First Regular Session

May 27, 2003 – June 14, 2003

First Special Session

August 21, 2003 – August 23, 2003

Second Regular Session

January 7, 2004 - January 30, 2004

Second Special Session

February 3, 2004 - April 7, 2004

Pages 777-1562

ROLL CALL NO. 178

YEA - Adams, Blanchette, Bliss, Brannigan, Breault, Bull, Bunker, Canavan, Clark, Craven, Cummings, Dudley, Dunlap, Duplessie, Duprey G, Earle, Eder, Faircloth, Finch, Gerzofsky, Hatch, Hutton, Jackson, Jennings, Kane, Koffman, Landry, Laverriere-Boucher, Lerman, Lessard, Mailhot, Makas, Marley, McGlocklin, McKee, Mills S, Norbert, Norton, O'Neil, Paradis, Patrick, Pellon, Percy, Perry A, Pineau, Pingree, Piotti, Rines, Sampson, Simpson, Smith N, Smith W, Sullivan, Suslovic, Thomas, Thompson, Twomey, Usher, Walcott, Watson, Wheeler, Wotton, Mr. Speaker.

NAY - Annis, Austin, Barstow, Bennett, Berry, Berube, Bierman, Bowen, Brown R, Browne W, Bruno, Campbell, Carr, Churchill E, Churchill J, Clough, Collins, Courtney, Cressey, Curley, Davis, Dugay, Duprey B, Fischer, Fletcher, Gagne-Friel, Glynn, Greeley, Heidrich, Honey, Hotham, Jacobsen, Jodrey, Joy, Kaelin, Ledwin, Lemoine, Lewin, Lundeen, McCormick, McGowan, McNeil, Millett, Mills J, Moody, Murphy, Muse, Nutting, O'Brien J, Rector, Richardson E, Richardson J, Richardson M, Rogers, Rosen, Saviello, Sherman, Shields, Snowe-Mello, Stone, Sukeforth, Sykes, Tobin D, Tobin J, Trahan, Treadwell, Vaughan, Woodbury, Young.

ABSENT - Andrews, Ash, Bowles, Bryant-Deschenes, Cowger, Crosthwaite, Daigle, Goodwin, Grose, Ketterer, Maietta, Marraché, McKenney, McLaughlin, Moore, O'Brien L, Peavey-Haskell, Perry J, Tardy.

Yes, 63; No, 69; Absent, 19; Excused, 0.

63 having voted in the affirmative and 69 voted in the negative, with 19 being absent, and accordingly the Majority **Ought to Pass as Amended Report was NOT ACCEPTED.**

Representative RICHARDSON of Brunswick moved that the House **RECONSIDER** its action whereby the Majority **Ought to Pass as Amended Report was NOT ACCEPTED.**

On further motion of the same Representative, **TABLED** pending his motion to **RECONSIDER** whereby the Majority **Ought to Pass as Amended Report was NOT ACCEPTED** and later today assigned.

The following item was taken up out of order by unanimous consent:

REPORTS OF COMMITTEE

Divided Report

Majority Report of the Committee on **EDUCATION AND CULTURAL AFFAIRS** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-520)** on Bill "An Act To Restrict Fingerprinting of Educational Personnel to New Hires"

(H.P. 667) (L.D. 890)

Signed:

Senator:

DOUGLASS of Androscoggin

Representatives:

GAGNE-FRIEL of Buckfield

DAVIS of Falmouth

FINCH of Fairfield

CUMMINGS of Portland

NORTON of Bangor

MURPHY of Kennebunk

THOMAS of Orono

FISCHER of Presque Isle

Minority Report of the same Committee reporting **Ought Not to Pass** on same Bill.

Signed:

Senators:

MITCHELL of Penobscot

BRENNAN of Cumberland

Representatives:

LEDWIN of Holden

ANDREWS of York

READ.

Representative CUMMINGS of Portland moved that the House **ACCEPT** the Majority **Ought to Pass as Amended Report.**

The SPEAKER: The Chair recognizes the Representative from Holden, Representative Ledwin.

Representative LEDWIN: Mr. Speaker, Ladies and Gentlemen of the House. I just would like you to notice that I am on the other side of this. I would like to give my reasons why. There are only one-fifth of the school personnel who will still be fingerprinted. Four-fifths of the school personnel in Maine have already gone through fingerprinting and those people did it willingly knowing that they were helping protect the children.

It seems to me that we are not giving them very much respect when we cancel what we have and do just new hires. I would like you to know that 41 states have an active legislation requiring fingerprinting. The fingerprinting has become the national standard. Fingerprinting provides the most accurate, least costly method of conducting both Maine and interstate criminal records. Without fingerprinting, a background check is typically conducted with a name and date of birth. This method allows for inaccuracies because it is dependent on the information supplied by the applicant. Interstate checks are costly and time consuming because it involves contacting each state to determine whether a conviction history exists. This method also allows for possible inaccuracies. Before you vote for this, I would just like you to think about the history of the fingerprinting bill as we know it and remember those who have already gone before us and complied. Thank you.

The SPEAKER: The Chair recognizes the Representative from Portland, Representative Cummings.

Representative CUMMINGS: Mr. Speaker, Ladies and Gentlemen of the House. As we approach somewhat trepidatiously this long and arduous debate, let me just briefly explain the rational for the overwhelming majority of the Education Committee members who believe that Maine teachers are not criminals. They ought to. We believe that we ought to have applied a more thoughtful and intelligent method of making our children safe. If we had done so, we wouldn't have been in this quagmire that we are now in.

At the fundamental core of this debate is a very ill founded assumption that the less free we are, the more safe we are. Let me tell you, ladies and gentlemen, I strongly believe that our safety in this country emanates out of our freedom in this country. What you have in front of you is an intelligent thoughtful approach to the problem. It balances what has become a statewide insult to some of Maine's best employees with a need to appropriately secure safety for our children. This bill says that if you are a new applicant to the Maine teaching profession, you will be screened. You will be fingerprinted if you are a new applicant, whether you are from out of state or in state. Suspicionless fingerprinting of those who have proven year after year after year that they are not only worthy to be with Maine kids, but they have proven excellence in being with Maine kids, those individuals will be free. You might argue, as Representative Ledwin has argued, that many Maine teachers have been fingerprinted. In fact, several thousand have not been, about 20 percent have not been fingerprinted at this time.

This is an opportunity for this Legislature to make an important statement to Maine teachers, Maine school employees, that we respect their work, we trust their work and more importantly, if they had violated the trust, then let the people who directly supervise them, their local communities, their administrators, be the one to make the decision about whether or not they have violated that trust. Let us not create a society in which we have to assume that everyone must be tracked by data, not based on what they are worth, their integrity, their character, but instead they must be tracked on an automatic suspicion. We have done great damage in this state. You have an opportunity to switch something around.

If you care about child abuse, then fingerprint stepparents. That is where 90 percent of our child sexual abuse occurs from parents, stepparents and friends of the family. In fact, Maine teachers who may be under 1 percent of the problem are the most likely profession to report potential child abuse. If you want to do something smart, let's think about where we have inappropriately implemented a policy that has become a statewide insult and time for us, no matter how late, for us to change it.

The SPEAKER: The Chair recognizes the Representative from Falmouth, Representative Davis.

Representative DAVIS: Mr. Speaker, Ladies and Gentlemen of the House. This is a compromise bill. I have a bill to completely abolish it, but this is a compromise. This gives background checks to new hires. I agree with everything Representative Cummings has said. I won't repeat that. It has cost a lot of money, \$3 million. We have a financial crisis. It gives a false sense of security, but at least this way it is a compromise. The people coming in, new to the system, will be fingerprinted. I don't think that makes kids any safer, but nevertheless it was a compromise. Eventually down the road you will have everybody fingerprinted if that is your desire. This gives the teachers and the bus drivers and the people who work in the cafeteria a little bit of light. I really believe, as Representative Cummings has said, this has been an insult to the people who work for the public school system. If you do new hires, you will have everybody eventually. Let's at least compromise. We couldn't settle this in the 119th Legislature. Thank you very much.

The SPEAKER: The Chair recognizes the Representative from Frenchville, Representative Paradis.

Representative PARADIS: Mr. Speaker, Men and Women of the House. As Yogi Berra once said, "It is deja vu all over again." We apparently are back to square one, almost exactly where we were two years ago. The only major difference is the number of school personnel who have already been fingerprinted. Two years is enough time to weigh the pros and cons of this controversial fingerprinting law. It is time to submit the fingerprinting law to a scorecard to be assessed by solid multiple criteria. The law was enacted to prevent pedophiles from working with children, focusing especially on teachers because they have daily opportunities to abuse children. How many of these pedophiles has fingerprinting detected? We don't know, because of the secrecy clause in the statute. Only the Commissioner of Education and certain Department of Education personnel know. I suspect that any discovered sexual abuse, if any, are few in number. No more than the .5 of 1 percent that existed before the law was passed. The fact that DOE unilaterally expanded the list of past abuses or infractions leaves me to conclude that the Department is not finding too many cases of child abuse and has to justify its comprehensive fingerprinting program by adding on street violations, protesting

or violating a city curfew some 25 years ago. The department's disingenuous interpretation of the fingerprinting statute gives it its first failing grade. The cost of this misguided and misapplied statute, the costs are considerable. Besides the \$3 million plus already expended in fingerprinting school personnel, the state has suffered the following losses.

First, over 70 teachers, most of them experienced, and among the very best, including the Teacher of the Year whose only crime was strong belief in their constitutional rights and their revulsion of statute that would deprive them of those rights.

The second loss, the high quality of education that these teachers would have provided to their students. I heard that expressed by school boards across the state.

Third loss, the trust between teacher and students that is essential for effective teaching. This was allowed to be eroded by putting a cloud of suspicion on school personnel.

Fourth loss, the loss of innocent teachers whose reputation is ruined by unscrupulous accusers and held by this statute. Just in the last year, two young men were falsely accused and later to be found innocent, but their reputation is tarnished and probably destroyed.

Fifth loss, the reputation and good standing of the teaching profession, clouded by an assumption of sexual abuse of students, reversing the most revered abilities of the judicial system, innocent until proven guilty.

Sixth loss, the reputation and credibility of the Department of Education itself, now considered an arm of the law enforcement agencies and the Attorney General's Office by a growing number of teachers.

Again, the fingerprinting statute gets a failing grade, resulting in serious, negative consequences. The fingerprinting statute has seriously compromised the future of education in Maine. Combined with the demands of the learning results and the further imposition of the federal program, No Child Left Behind, the teaching profession cannot afford to have competent teachers resign or retire early or have potential great teachers never get to teach because of the onerous legislation that demeans and devalues the work of educators.

The fingerprinting statute gets another failing grade for its impact on the future of education in Maine. The fingerprinting statute was born in a climate of criminalization and erroneous thinking that existed before 9-11. I think it went like this. If one pedophile exists, then many more must be lurking out there ready to find some innocent children, somewhat like the weapons of mass destruction that we are looking for in Iraq. We are spending a lot of money on very little substantial evidence.

The strongest argument that fingerprinting advocates can muster is, if the law prevents one child from being abused, then it is worth all the money and a tax on a whole group of people and the dilution of their constitutional rights.

I am not by any means demeaning the severity of sexual abuse on children. If we use the same argument in other areas, we would take most drivers off the road, enact stringent gun laws that would erode responsible hunter's rights, restrict TV to Walt Disney Productions or public TV offerings on and on, for there in lies the potential of physical and mental abuse.

Furthermore, we would install monitoring devices, 1984, to spy on all parents and relatives for the sexual deviation of the few. Some have said today that to stop fingerprinting now would be unfair to those school personnel who have already been fingerprinted. This is like keeping the war going out of fairness to those who have already been killed or wounded, no matter how many lives could be saved by ending an unjust war.

Twice in the last few years this Legislature has voted overwhelmingly in true bipartisan fashion to curb the

fingerprinting of school personnel, only to have our efforts thwarted by the veto of the Chief Executive. Is that any reason to give up the fight because of failed and unjust policy? No. It is time to do what is right. Vote out or limit this most divisive and unproductive of statutes. Vote for the right of children to have teachers who believe in our constitutional rights and who have the courage to speak out against abuse. Vote for this fair compromise vote for LD 890. Thank you.

The SPEAKER: The Chair recognizes the Representative from Old Town, Representative Dunlap.

Representative **DUNLAP**: Mr. Speaker, May I pose a question through the Chair?

The SPEAKER: The Representative may pose his question.

Representative **DUNLAP**: Thank you Mr. Speaker. My first question is, I heard some discussion about the fiscal cost of fingerprinting of school personnel. If we have 20 percent of our school personnel who have not yet been fingerprinted, my question would be, what would be the state's fiscal liability if even one of those 20 percent turned out to be a violent sexual predator who could have been thwarted by a statute such as this that we are talking about repealing? We are not talking about repealing. We are talking about amending, which leads me to my second question. If the current statute so horrifically delimits and exfoliates the tree of liberty, then why is it okay for new hires?

The SPEAKER: The Representative from Old Town, Representative Dunlap has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Waldoboro, Representative Trahan.

Representative **TRAHAN**: Mr. Speaker, Men and Women of the House. I will speak to the second question first. No, I won't. I remember the Speaker once saying to me, "Please don't help me." I guess I am not going to help you on this occasion.

I would like to address this issue just for a moment and why I have always been opposed to his policy. Across our history when a group of people have been fingerprinted, the courts have ruled that it is reasonable to fingerprint someone in a business like real estate or brokers. The reason why it is constitutional and it is reasonable is because it is at the time of hire. Our history has shown that at the time of hire our courts uphold that. This is a different case. This is a state government saying to an entire group of people, 50,000 people, that you are going to be fingerprinted or you are going to lose your job. That is where I believe government overstepped its responsibilities. I think it is reasonable to say to someone when you go to work for somebody, especially with children, that it is reasonable to have a fingerprint and background check. I don't believe it is reasonable to say to someone who has served in the education system for 20 years that you are going to give up your 20 years in the school system or be fingerprinted. That is exactly what this policy does. That is why I have always had a problem with it. That is why I hope that we, today, make a statement for those people who resisted this infringement and amend this law. Mr. Speaker, when the vote is taken, I request a roll call.

Representative **TRAHAN** of Waldoboro **REQUESTED** a roll call on the motion to **ACCEPT** the Majority **Ought to Pass as Amended** Report.

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

The SPEAKER: The Chair recognizes the Representative from Orono, Representative Thomas.

Representative **THOMAS**: Mr. Speaker, Men and Women of the House. I want to actually address a point that was made first thing in this debate. It was made by the good Representative from Holden, Representative Ledwin. I want to do that by telling you a little bit, briefly, about myself. Six years ago I was a

freshman at the University of Maine. I wanted to be a teacher. I wanted to teach somewhere in Maine. I wanted to teach Spanish. I only lasted two years in the College of Education. I would be lying if I stood here and told you that the reason I am not a teacher today is because of the fingerprinting law. I would be lying just as much if I said it wasn't a factor. It was one of many factors, but it was a factor.

I made that choice not to teach. The problem is so many other teachers in the middle of their careers or at the end of their careers, wherever they may have been, weren't given that choice. They weren't given the information ahead of time. I think that is where the fundamental difference lies. I guess the point of all this is that we are not like other states. We are actually more restrictive than other states. We require current personnel to be fingerprinted. As you will see, I don't have it before me, but on a piece of paper that was distributed by the good Representative from Portland, Representative Cummings, we are more restrictive than any state in the northeast. Even if this were to pass we are still at least as restrictive because we have already fingerprinted 80 percent of our current personnel.

I keep hearing, think about the children. I am thinking about the children. I am thinking when we don't fingerprint those several thousand people who have yet to be fingerprinted, we should use whatever money or time that we save, whatever trivial amount that is and go after the real problem here, which is the 99.5 percent of the other sexual abuses that happen and not waste a million dollars a year going after this one. Thank you.

The SPEAKER: The Chair recognizes the Representative from Biddeford, Representative Sullivan.

Representative **SULLIVAN**: Mr. Speaker, Men and Women of the House. Here we go again. Those of you that are here for your third term, third time to vote on this and discuss this. Nothing has changed for me. We just did a bill earlier about shortage of teachers in certain areas. Let me give you some quick reasons why you may not want to be a teacher here. We changed the retirement system in 1993. You now must, even though all of the statistics say you will make about five different career choices in your life, stay until you are 62 in classroom. I suggest you try visiting a classroom at the age of 54 and you will find that those eight years seem a long ways away. It says that if you retire early you will take a 6 percent penalty. Fifty-five is an age that a lot of people let you retire. Fifty-five to 62 is seven years times 6 percent, even though math wasn't my major, I would say that is 42 percent of your retirement lost forever, because you chose to retire at 55. On top of that, you will never get a COLA, cost of living increase, because of this.

On **POINT OF ORDER**, Representative **MUSE** of Fryeburg asked the Chair if the remarks of Representative **SULLIVAN** of Biddeford were germane to the pending question.

The Chair reminded Representative **SULLIVAN** of Biddeford to stay as close as possible to the pending question.

Representative **SULLIVAN**: Thank you Mr. Speaker. I certainly will Mr. Speaker. I am just unsure why talking about fingerprinting is not part of this. I do not understand that, except maybe the good Representative from Fryeburg didn't hear me.

Here we are three terms later and the reason we say, why can't we get teachers to stay here? Why do we have to change the standards? You can go along with the retirement system, the lack of pay raises because there is no money in the state and there is no money at the local level either. No child left behind, 1,200 paid examples for us and we are the largest social agency going within the schools. On top of that we say to teachers now, you are guilty until proven innocent. That turns us right back on why we are sitting here. It is the exact opposite of why we are sitting here. We were promised that there was the technology

available and they would only be looking for domestic abuse and child molestation. No, we have some teachers in small communities, because when they were in college they actually dared to protest government, the Vietnam War in fact. They dared to protest. They ended up being reported back that they probably aren't fit to teach, because our technology was not we was promised. I know that for a fact.

In the past few weeks we talked about privacy. We shouldn't give our social security number out. Let me tell you about privacy. Privacy is standing here or being in a classroom and teaching the Constitution and finding out that those teachers are insulted by having to prove that they are innocent. That is wrong. Because it has happened for 80 percent, it doesn't make the last 20 percent okay. Because something has happened for five years, doesn't make it okay. In fact, the United States of America decided that was true when we went to Iraq. It is not okay just because we have done it so let's continue.

You want democracy, let's start in our classroom with teachers. You want privacy, let's let fingerprints for either all Americans, they were when I was a child, or for those who know about it before they are hired. For many people in this room it is obvious that this is not important. I question if there is even a quorum here. It is boring without a doubt, but to the teachers who teach your children and your lack of support and interest in this sends messages. It is really sad that the democracy here cannot work because we do not believe you are innocent until proven guilty. Thank you.

The SPEAKER: The Chair recognizes the Representative from Topsham, Representative Lessard.

Representative LESSARD: Mr. Speaker, Ladies and Gentlemen of the House. I am not going to try and convince any one to vote either way on this. I have heard the rhetoric involving a stigma because you are being fingerprinted. Well, let's face it, the only positive identification you have is your fingerprints. If you are going to run a background check on an individual, you need their fingerprints. I can show you ways of how people can get out of things showing up on their record. I was in administrative in the police department for a long time. All were fingerprinted at one time when they became police officers. Some went through the polygraph, psychological examinations. Every once in a while you would have an opening in the department and when you wish to fill that opening with perhaps a qualified individual, time and time again qualified police officers already on someone's payroll would apply. After their first interview, I would indicate that all members here will be polygraphed. Needless to say not many showed up again. Why is that? We are all human. We are all susceptible to things in our lives that nobody knows about. Policemen are no different than teachers. I hold the highest esteem for the teachers in our society. They work long hours, short pay, but my concern is that if you are going to do a background investigation, then do it correctly.

I asked the administration what they thought about this fingerprinting. He indicated to me that the school board told me to oppose it. I asked him personally what he felt about it? He said that as an administrator if I have to check the people that work here, includes custodians, cafeteria workers, teachers, everybody connected with the school system, my first responsibility is to those parents of those children that are going to be attending here and to make sure that I do the background and the investigation correctly. That means a set of fingerprints. Any time a record check goes in for an inquiry, lacking fingerprints, they can't tell you if this individual has got a record or not. He indicated to me that I do my homework on it and now the school board has told me to back off. My indication to him was ,

of course my kids are all out of school, but I do have grandkids, the first thing I would look for with an individual who has committed an act in school, why wasn't the investigation complete and done correctly? That includes a set of fingerprints. Lacking that, I have recourse from the legal system. I have recourse. That individual did not take the time to do it correctly. No, we hold our teachers in the highest esteem, but all of a sudden this is something that has been placed on a pedestal. Why not a policeman? Why are our military people placed on pedestals? We are all human, but what is in their background? You don't know that until you check it out. That is the only way you are going to check it out.

Vote your conscience. I will be voting against this bill. The system is going to work. It makes you wonder why some people have not been rehired the second year round after being fingerprinted for whatever reason. Some people have not been rehired. Remember that. I am not going to go into it any further. Please think about the parents, think about the kids. We are responsible for them. Those school people there are responsible for them also. Thank you Mr. Speaker.'

The SPEAKER: The Chair recognizes the Representative from Falmouth, Representative Davis.

Representative DAVIS: Mr. Speaker, Men and Women of the House. I would like to respond just briefly to my friend from Old Town. I have been hearing from the teachers here and I think I feel this way, I taught 36 years at Portland High School that when I started there was a covenant between myself and the community. I didn't violate it. I think if any group of the state is to be trusted it was teachers. There was very, very little abuse in the State of Maine. We have a great record. I agree with Representative Sullivan from Biddeford that it is an ex post facto law. You have taught 20 or 25 years, now prove you are not a pedophile. What I fear about all else is we are going to fingerprint everybody and have more pedophiles in the school. It gives a very false sense of security when it is not there. Constant vigilance is the price of having a good school system. The due process was violated. Prove you are not a pedophile over and over and over again. That is why I urge you to vote for this compromise bill. You have proven you are not a pedophile once, that should be enough. They are including other things in this as I understand.

I think for the veteran teachers who are still out there teaching out there day in and day out, you have violated a covenant and they feel violated. If we can do anything at all, let's vote for this bill and get this behind us. Thank you.

The SPEAKER: The Chair recognizes the Representative from Waterboro, Representative Jacobsen.

Representative JACOBSEN: Mr. Speaker, Ladies and Gentlemen of the House. I have worked for a school district for 20 years. I don't mind being fingerprinted. I don't care if they take my fingerprints. I have a clear conscience. Every day I have gone to work I have had a clear conscience. I can tell you one thing, one of the best secrets in my school district is when there is a problem. If you walk down the street and ask somebody if there has been a problem in SAD 57, they would say no. I can tell you that not only in SAD 57, but other districts in my area have had numerous problems, numerous lawsuits, numerous disgrace, and numerous children hurt. If fingerprinting is going to make you lower your head so you can't look at people and you feel unwanted or disgraced, there is something else wrong, especially if you are a teacher. You should be a leader. You should be able to give a little, stand high and look everybody in the face and say, I am clean. I don't have a problem. If there is a problem in my district, I want it found. Thank you.

The SPEAKER: The Chair recognizes the Representative from Portland, Representative Dudley.

Representative DUDLEY: Mr. Speaker, May I pose a question through the Chair?

The SPEAKER: The Representative may pose his question.

Representative DUDLEY: Thank you Mr. Speaker. The Representative from Portland, Representative Cummings, made reference to the fact that this bill would only delay or do away with fingerprinting for 20 percent of teachers, existing teachers that have yet to be fingerprinted. I was wondering what we have found from the 80 percent that have been fingerprinted? What percentage of them have we found problems with and what types of problems were there?

The SPEAKER: The Chair recognizes the Representative from Buckfield, Representative Gagne-Friel.

Representative GAGNE-FRIEL: Mr. Speaker, Ladies and Gentlemen of the House. We have an opportunity here and yes, I will answer the question. This already began within four terms since I was here. I want to review that a little bit. In the 118th when I first came here, I was brand new and this bill came through like April or May and all the way through it was bang, bang, bang and nobody thought anything about it. Even the MEA hadn't talked to the teachers about it. I thought that was astounding and I was a new legislator and I hadn't heard it and presently teaching at that time. When they finally heard that summer, you want to believe they were wild. By the 119th we tried to appease them by paying for it. In the 120th, which is the last one, we did pass the new hires bill and that would have been at least 50 percent would have gotten that way. Here we come this year and now I am on the Education Committee so I had the opportunity to ask a lot of questions and that question did come up that you asked. Unfortunately they will not tell us. There is no way that we can get the answer. There is no way that we will ever get the answer because it is supposed to be private. Considering the fact that just two people who basically know this, the ones who get the information back from the police and they may share this with the commissioner. That is about it. No one will ever know. We won't know. The public won't know. The only other one who will find out is the person's whose file they will have returned an answer to and say, no, you are not going to be rehired. There haven't been a slew of cases about it. This is the real thing. They won't even give us a percentage or a general figure. They won't tell us nothing about whether this is working or not. Here we have, finally, an opportunity, at least, to say to the teachers out there and to the personnel that we work with that maybe we do not feel that that is the situation, but if you change your, go to another district, then you get fingerprinted. If you quit teaching because you didn't want to get fingerprinted, but you would like to come back, you have to get fingerprinted.

We are not doing anyone any major favors here. We are finally, maybe, giving some of them the view that we up here in Augusta have heard how you have felt and here is the opportunity now to give you a positive response by just passing this bill and saying new hires. Yes, of those 80 percent, we don't know.

The SPEAKER: The Chair recognizes the Representative from Portland, Representative Cummings.

Representative CUMMINGS: Mr. Speaker, Ladies and Gentlemen of the House. To respond the Representative Dudley's question, let me just say that it would take a very interesting person to know that they had child perpetration on their record and are convicted and walk in and put their fingerprint down. If they were stupid enough to do that, quite frankly, on that reason alone I wouldn't want them near my kids.

Therefore, the whole issue of aggregate data and can we find the numbers and who did what and is it the bus drivers, maintenance workers, is it an OUI, forgery, domestic violence? Those are not the issues. The issue is, can we create safety and still respect Maine teachers? I believe this bill is the best we have seen on doing that. If we had done that five years ago, we would be having supper now.

The SPEAKER: The Chair recognizes the Representative from Wayne, Representative McKee.

Representative MCKEE: Mr. Speaker, Men and Women of the House. I hope we will end this debate very quickly. The real issue is to come. The real issue is whether approve of fingerprinting or not. Let's face it, if we enact new hires in 10 years I am a veteran teacher who was a new hire who has shown my community that I am an outstanding citizen. New hires are going to go on to become veterans like the good Representative from Kennebunk, Buckfield and the many teachers who are here who are known in their community as upstanding citizens who don't need to be fingerprinted. This new hires is simply a ruse. We may as well not even talk about it. The real issue is, do we fingerprint or do we not?

My brother in South Carolina owns a chain of daycare centers. In South Carolina every daycare worker has to be fingerprinted. South Carolina has been rapidly growing. The population has been growing and daycare centers are everywhere. I can tell you every parent I talk to that came through one day when I was visiting was very happy to know that those daycare workers had been fingerprinted. I can tell you today that Maine is no longer an outpost of America. It is part of mainstream America and people are moving in and out of this state as we speak. It must give school boards comfort to know that all the people who are working for them are being fingerprinted.

My son who went to Oregon got a job immediately because he had been working at Dover-Foxcroft and had been fingerprinted. He was a good teacher. He had taught there for five years. He had a job within a very few weeks thanks to the fact that he had been fingerprinted. My other son is a lawyer and my son-in-law is a lawyer. They are married to lawyers. They have all been fingerprinted. My husband is a military veteran. He has been fingerprinted. Yet, I stand here to say that I respect privacy too. I will be voting against new hires. I will be voting to continue the program that we have begun. As I said at the outset of this, the rank and file that I know, maybe they are not the ones you know, I can only speak for my district, have not opposed fingerprinting. What they did oppose was the \$49 they had to pay initially. We clarified that. We paid for that. I think it is time to move on.

In my own district we have had problems. I would hate to think that if there were convictions and these people went on to other places to work in other parts of America that someone there would know what had happened in our district. I think it is a common sense approach to a new America. I hope that you will reject this new hires. How can people stand here and say they are opposed to fingerprinting, but this is a compromise. I respect the person who is opposed to fingerprinting. I hope that you respect me. Let's get on to that issue. This compromise is simply not the way to go. Thank you.

The SPEAKER: The Chair recognizes the Representative from Poland, Representative Snowe-Mello.

Representative SNOWE-MELLO: Mr. Speaker, Ladies and Gentlemen of the House. I really believe that LD 890 regarding fingerprinting for our educational personnel and teachers is really the way to go. I believe that fingerprinting only those teachers who are new employees and for personnel and new hires is fair.

It is very fair. I have always thought that. It really, really, truly bothers me that we take good teachers who have taught our children, have been dedicated to our children, who have helped our children and have really devoted their entire lives to our kids. We put our trust and our faith into these teachers and we hope and we pray that they will be good and that they will do the right thing.

My sister and my sister-in-law and one of my best friends are teachers. I have many friends who work in the school system. I know that my sister and my sister-in-law are great teachers. I do take this a little personally. I know how much they dedicate their lives to children.

I believe that our teachers and those that work in our schools devote much of their time in ensuring that our children have the necessary tools in life to prepare them for the future. Why do we always seem to craft laws around those few people who are truly bad actors? They are pedophiles. We also mandate at the same time that our teachers, who have taught our children, who are innocent, must suffer under the same law. I ask that you rectify the situation and please vote in favor of LD 890. Thank you.

The SPEAKER: The Chair recognizes the Representative from Bangor, Representative Norton.

Representative **NORTON**: Mr. Speaker, Ladies and Gentlemen of the House. I truly was not going to rise on this issue. However, I must because of my good friend, Representative McKee from Wayne. I simply want to make sure where she seemed to be speaking for rank and file. Being a member of the rank and file for 38 years, you do need to know that I do not feel the way she does. In fact, we got some information on our desk today about Maine placing in among the best public schools in the country and yet we have the most invasive personnel policy. Of the New England schools, Maine is the only one that has fingerprinted current personnel. The other New England states either don't require it or have laws around new hires only.

I also want to make sure that you do ponder the fact that teachers are the ones who most report problems, pedophile problems. We are the ones who most report the number of kids who are abused and I feel that I am personally insulted that, although I have reported pedophiles in my life, now I am, in my mind, treated as one.

I simply want to make sure that you don't think that the entire rank and file think fingerprinting is okay. I don't. I urge you to vote for this bill. I see it as a true compromise. It is plain and simple. It doesn't allow reinstatement of any of the people that have gone out or anything. It is clean and clear and just new hires.

The SPEAKER: The Chair recognizes the Representative from Medway, Representative Duprey.

Representative **DUPREY**: Mr. Speaker, Ladies and Gentlemen of the House. A couple of points to ponder on this particular issue. I know of an individual who had 30 plus years in a school district. Two years ago, a couple of brave junior high girls came forward and released his name. Investigation ensued and this had been going on for several years prior. I ask you, would this fingerprinting have prevented that? I doubt it. Now a question for each and every one of you here in the House, when we were sworn in a few months back, what would your objection have been had we asked to be fingerprinted? Thank you.

The SPEAKER: The Chair recognizes the Representative from Kennebunk, Representative Murphy.

Representative **MURPHY**: Mr. Speaker, Men and Women of the House. When the gentleman from Topsham got up to speak, I listened very carefully. I have a state trooper that sits behind me and I listen very carefully when the good Representative

speaks. He gave the examples of police officers and military. Another Representative that got up that I respect quite a bit talked about lawyers and daycare centers. Indirectly while arguing against this bill, they made a case for the bill. In each and every one of those instances that fingerprinting was done at point of entry, as a new applicant or a new hire.

I don't think the good Representative went to his officers after they had been on the force for 10, 15 or 20 years and said, give me your digits. Let me ink them. I am going to fingerprint you now as you are halfway through your career.

In some of the arguments that we have heard here this afternoon or this early evening are actually, indirectly, arguments in favor of this bill. This has been a long road that we have traveled. I think that many of us in the past originally had worked to repeal it. We felt that it was such a mess and it hadn't started yet that a lot of us very strongly believed that it had to be repealed, step back gather the facts and then look to see if there had to be a modified plan. That is why in the 120th as this program started, several of us worked at a compromise. When we looked beyond the statistics at what was happening in other states, we saw that where that screening occurred, it was at point of entry, when you got our initial certification or when you transferred to this state or when you were a new hire as a non-certified personnel as a bus driver, cafeteria staff or support staff within a school system.

We brought that compromise forward. It passed both chambers with very strong votes. I know the new members are not bound by previous Legislatures. The debate was almost as lengthy as it is this afternoon. The people looked for a compromise. How can we bring reason to this? We came together across party lines and ironically both ends of the hall worked together, but the previous Governor vetoed it. An hour before that veto, Senator Murray and I had met with the Governor. I had tried to make it very clear and Senator Murray was speaking as a spouse of a teacher, that this really is very personal for teachers. It is very personal for the staff involved. Little did we know that the veto message was written already. When it came up 30 minutes after that meeting, there was a paragraph added, different type, strike, that said no way was this veto a reflection upon the profession or any individual. It was there as an afterthought. I think when the two of us were down there, it was probably one of the first times that our previous Governor, previous Chief Executive, had had a face-to-face meeting with people who saw that it was very personal and it was up very close.

This has been a very emotional issue. The last time we debated this, I had indicated that I had had scarlet P on my chest that as far as the law was concerned, I was a pedophile until I proved my innocence. At that meeting I had also told the Governor that probably I was going to retire early. One of those factors was the fingerprinting. I felt very strongly that when laws are passed here, even if you are personally opposed and you have argued time after time, that you need to obey the law. Within weeks of that veto, I went to Bonnie Eagle, waited three hours in line with other teachers and went thought the fingerprinting. I guess because it was so personal for me having been wound up in it for three or four years, he just couldn't get my fingers to work. I was perspiring. I think he thought that we have one here. Look at the palm sweating. Bring the van up. We are going to haul him out of here. Luckily the son of one of our pages, usually assigned to the Governor was there and he came over and reassured me. He took it over and finished it up.

In the hall I had a former student, now an elementary school teacher in Kennebunk come up to me and she had just gotten

finished as well. She said, "I don't know who I am most embarrassed for today, you, me, her?" We both felt that that day.

I listened to the arguments two years ago and I heard arguments that if we don't have any type of screening, then pedophiles are going to flock here from elsewhere. That is why this compromise is before you. If someone has had problems in other states and they apply for certification in the State of Maine, it is just like an initial certification. They have to do the fingerprints and the background check. Someone through the university system deciding to become a teacher, they know that as a condition of certification up front, the fingerprinting and the background check is part of that. In almost every other profession we have heard today, it was with knowledge and at entry or a new applicant, not after you had been at the desk or before the bar or working in daycare 10 or 15 years after the fact.

I think this is a good compromise that has been brought to us. It helps protect our children. It recognizes that we made a mistake.

One other thing that hasn't been discussed here today is that under the current law you have a conditional P on your chest. Once you have gone through the fingerprinting and you have gone through the background check, five years later you have to go through it again and five years later again. It is not only the distress the first time through, but every five year segment that you are up for recertification you have to submit to a background check. You are basically on probation. This new hires repeals that aspect of it as well. I would ask the members of this chamber to come together like your colleagues did in the previous Legislature and send a very positive message in terms of our teaching profession and the men and women who work in our schools.

The SPEAKER: The Chair recognizes the Representative from Holden, Representative Ledwin.

Representative LEDWIN: Mr. Speaker, Ladies and Gentlemen of the House. I would just like to remark on a few things that have been said. The first thing is it has been insinuated because I am on the minority side of this report that I believe that Maine teachers are criminals. I do not believe that Maine teachers are criminals. I have the utmost respect for Maine teachers and teachers in any other part of this country. I am a teacher. I am very proud to be a teacher and I am very upset about that insinuation.

Two, this is not a teacher's bill. It is a school personnel bill. We need to qualify that. This is not just about teachers. It is about school personnel.

Three, the reason we don't have numbers or anything is because in the original statute there is confidentiality. We have tried to have that changed and it just hasn't happened, as we all know.

Four, fingerprinting is not unconstitutional. The Maine Attorney General has researched the constitutionality of the fingerprinting of school personnel and he determined that the constitutional precedent clearly permits preventative measures like fingerprinting and background checks as a condition of licensure. Fingerprinting does not violate the employers or the applicant's right to do process, privacy or protection from unlawful search and seizure. Thank you.

The SPEAKER: A roll call has been ordered. The pending question before the House is acceptance of the Majority Ought to Pass as Amended Report. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 179

YEA - Adams, Annis, Barstow, Bennett, Berry, Bierman, Blanchette, Bliss, Bowen, Breault, Brown R, Canavan, Carr, Churchill J, Clark, Courtney, Craven, Cressey, Cummings, Davis,

Duplessie, Duprey G, Earle, Eder, Faircloth, Finch, Fischer, Gagne-Friel, Gerzofsky, Hatch, Hotham, Hutton, Jackson, Jennings, Joy, Kaelin, Kane, Koffman, Laverriere-Boucher, Makas, Marley, McCormick, McGlocklin, McGowan, McLaughlin, McNeil, Mills J, Murphy, Norton, O'Neil, Paradis, Patrick, Percy, Pineau, Pingree, Piotti, Rector, Richardson E, Richardson J, Rines, Sampson, Saviello, Sherman, Simpson, Smith W, Snowe-Mello, Sullivan, Thomas, Trahan, Walcott, Watson, Wheeler, Woodbury, Wotton, Mr. Speaker.

NAY - Austin, Berube, Bowles, Brannigan, Bull, Bunker, Campbell, Churchill E, Clough, Collins, Curley, Dudley, Dunlap, Duprey B, Fletcher, Glynn, Greeley, Heidrich, Honey, Jacobsen, Jodrey, Landry, Ledwin, Lemoine, Lerman, Lessard, Lewin, Lundeen, Mailhot, McKee, Millett, Mills S, Moody, Muse, Norbert, Nutting, O'Brien J, Perry A, Richardson M, Rogers, Rosen, Shields, Smith N, Stone, Sukeforth, Suslovic, Sykes, Thompson, Tobin D, Tobin J, Twomey, Usher, Vaughan, Young.

ABSENT - Andrews, Ash, Browne W, Bruno, Bryant-Deschenes, Cowger, Crosthwaite, Daigle, Dugay, Goodwin, Grose, Ketterer, Maietta, Marraché, McKenney, Moore, O'Brien L, Peavey-Haskell, Pellon, Perry J, Tardy, Treadwell.

Yes, 75; No, 54; Absent, 22; Excused, 0.

75 having voted in the affirmative and 54 voted in the negative, with 22 being absent, and accordingly the Majority Ought to Pass as Amended Report was ACCEPTED.

The Bill was READ ONCE. Committee Amendment "A" (H-520) was READ by the Clerk and ADOPTED. The Bill was assigned for SECOND READING Wednesday, May 28, 2003.

The following item was taken up out of order by unanimous consent:

UNFINISHED BUSINESS

The following matter, in the consideration of which the House was engaged at the time of adjournment yesterday, had preference in the Orders of the Day and continued with such preference until disposed of as provided by House Rule 502.

HOUSE DIVIDED REPORT - Majority (8) Ought Not to Pass - Minority (5) Ought to Pass as Amended by Committee Amendment "A" (H-481) - Committee on EDUCATION AND CULTURAL AFFAIRS on Bill "An Act To Repeal the Fingerprinting Requirement for Teachers and School Employees" (H.P. 483) (L.D. 653)

TABLED - May 21, 2003 (Till Later Today) by Representative CUMMINGS of Portland.

PENDING - Motion of same Representative to ACCEPT the Majority OUGHT NOT TO PASS Report.

The SPEAKER: The Chair recognizes the Representative from Falmouth, Representative Davis.

Representative DAVIS: Mr. Speaker, Ladies and Gentlemen of the House. I didn't realize this was coming up this evening. I probably should have. This is my bill. I thought that the abolition of it would be the best thing. I still do. However, I do realize that schools may be more trouble than when I first started teaching. If I had my wish, I would make public schools more disciplined, as they used to be. I don't know how to do that for 2003. That is what I would do. This is my bill and I urge you to pass it. I will understand if you don't. This originally was in the 119th and it passed the House. We were going to abolish fingerprinting and the Governor vetoed it. Vote your conscience. Thank you.

The SPEAKER: The Chair recognizes the Representative from Portland, Representative Cummings.

Representative CUMMINGS: Mr. Speaker, Ladies and Gentlemen of the House. The bill, "An Act To Repeal the Fingerprinting Requirement for Teachers and School Employees"