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HEALTH AND HUMAN SERVICES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
129TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT " " to H.P. 1274, L.D. 1792, Bill, "An Act To Ensure Compliance with Federal Family First Prevention Services Legislation"

Amend the bill by striking out everything after the enacting clause and inserting the following:

'Sec. 1. 22 MRSA §8110 is enacted to read:

§8110. Criminal history record checks for employees of children's residential care facilities

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

A. "Federal Bureau of Investigation" means the United States Department of Justice, Federal Bureau of Investigation.

B. "State Police" means the Department of Public Safety, Bureau of State Police.

2. Criminal history; information about criminal records and data obtained. The department shall obtain, in print or electronic format, criminal history record information containing a record of public criminal history record information as defined in Title 16, section 703, subsection 8, from the Maine Criminal Justice Information System, established pursuant to Title 16, section 631, and the Federal Bureau of Investigation, for any staff member of a children's residential care facility in order to comply with the federal family first prevention services legislation. For purposes of this section, "staff member" means an individual who is employed by, or has applied for and may be offered employment at, a children's residential care facility, including a contract employee or self-employed individual, whether or not the individual has direct contact with children. "Staff member" does not include a contractor performing maintenance or repairs at the children's residential care facility who does not have unsupervised access to children at the facility.

3. Fingerprint-based criminal history obtained. A staff member shall consent to and have the staff member's fingerprints taken. The State Police shall take or cause to be

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1 taken the fingerprints of a staff member who has consented under this subsection and  
2 shall forward the fingerprints to the Department of Public Safety so that the Department  
3 of Public Safety may conduct a state and national criminal history record check on the  
4 person. The Department of Public Safety shall forward the results obtained to the  
5 department. The State Police shall assess a fee set annually by the Department of Public  
6 Safety to be paid by the children's residential care facility or the staff member for each  
7 criminal history record check required to be performed under this section. Except for the  
8 portion of the payment that constitutes the processing fee charged by the Federal Bureau  
9 of Investigation, all money received by the State Police under this subsection must be  
10 paid to the Treasurer of State, who shall apply the money to the expenses of  
11 administration of this section by the Department of Public Safety.

12 **4. Updates to information.** The department may request a subsequent criminal  
13 history record check under subsection 3 on a staff member as the department determines  
14 appropriate, including continuous notifications of updated criminal history record  
15 information if a service providing notifications of updated criminal history record  
16 information becomes available.

17 **5. Confidentiality.** Information obtained pursuant to this section is confidential and  
18 may not be disseminated for purposes other than as provided in subsections 6 and 7.

19 **6. Use of information obtained.** Criminal history record information obtained  
20 pursuant to this section may be used by the department for employment purposes to  
21 screen a staff member. The subject of any criminal history record check under subsection  
22 3 may contest any negative decision made by the department based upon the information  
23 received pursuant to the criminal history record check.

24 **7. Person's access to information obtained.** A person subject to a criminal history  
25 record check pursuant to subsection 3 must be notified each time a criminal history record  
26 check is performed on the person. A person subject to a criminal history record check  
27 under subsection 3 may inspect and review the criminal history record information  
28 pursuant to Title 16, section 709 and obtain federal information obtained pursuant to the  
29 criminal history record check by following the procedures outlined in 28 Code of Federal  
30 Regulations, Sections 16.32 and 16.33.

31 **8. Right of subject to remove fingerprints from record.** Upon request from a  
32 person subject to a criminal history record check pursuant to subsection 3, the  
33 Department of Public Safety shall remove the person's fingerprints from the Department  
34 of Public Safety's records and provide written confirmation of the removal to the person.

35 **Sec. 2. 25 MRSA §1542-A, sub-§1, ¶P,** as enacted by PL 2017, c. 452, §25 and  
36 c. 457, §13, is repealed and the following enacted in its place:

37 P. Who is licensed under Title 32, chapter 36 and has applied for an expedited  
38 license under Title 32, section 18506;

39 **Sec. 3. 25 MRSA §1542-A, sub-§1, ¶¶Q and R,** as enacted by PL 2017, c. 457,  
40 §13, are amended to read:

41 Q. Who is an applicant for licensure with the State Board of Nursing as required  
42 under Title 32, section 2111, subsection 1; or

1 R. Who is required to have a criminal background check under Title 22, section  
2 8302-A or 8302-B;

3 **Sec. 4. 25 MRSA §1542-A, sub-§1, ¶¶S and T** are enacted to read:

4 S. Who is required to have a criminal history record check under Title 22, section  
5 2425-A, subsection 3-A; or

6 T. Who is required to have a criminal history record check under Title 22, section  
7 8110.

8 **Sec. 5. 25 MRSA §1542-A, sub-§3, ¶O**, as enacted by PL 2017, c. 452, §26 and  
9 c. 457, §15, is repealed and the following enacted in its place:

10 O. The State Police shall take or cause to be taken the fingerprints of the person  
11 named in subsection 1, paragraph P at the request of that person and upon payment of  
12 the expenses by that person as required by Title 32, section 2571-A.

13 **Sec. 6. 25 MRSA §1542-A, sub-§3, ¶¶R and S** are enacted to read:

14 R. The State Police shall take or cause to be taken the fingerprints of the person  
15 named in subsection 1, paragraph S at the request of that person or the Department of  
16 Administrative and Financial Services under Title 22, section 2425-A, subsection  
17 3-A.

18 S. The State Police shall take or cause to be taken the fingerprints of the person  
19 named in subsection 1, paragraph T at the request of that person or the Department of  
20 Health and Human Services pursuant to Title 22, section 8110.

21 **Sec. 7. 25 MRSA §1542-A, sub-§4**, as amended by PL 2017, c. 452, §27 and c.  
22 457, §16, is repealed and the following enacted in its place:

23 **4. Duty to submit to State Bureau of Identification.** It is the duty of the law  
24 enforcement agency taking the fingerprints as required by subsection 3, paragraphs A, B  
25 and G to transmit immediately to the State Bureau of Identification the criminal  
26 fingerprint record. Fingerprints taken pursuant to subsection 1, paragraph C, D, E or F or  
27 pursuant to subsection 5 may not be submitted to the State Bureau of Identification unless  
28 an express request is made by the commanding officer of the State Bureau of  
29 Identification. Fingerprints taken pursuant to subsection 1, paragraph G must be  
30 transmitted immediately to the State Bureau of Identification to enable the bureau to  
31 conduct state and national criminal history record checks for the Department of  
32 Education. The bureau may not use the fingerprints for any purpose other than that  
33 provided for under Title 20-A, section 6103. The bureau shall retain the fingerprints,  
34 except as provided under Title 20-A, section 6103, subsection 9. Fingerprints taken  
35 pursuant to subsection 1, paragraph I and subsection 3, paragraph I must be transmitted  
36 immediately to the State Bureau of Identification to enable the bureau to conduct state  
37 and national criminal history record checks for the court and the Department of Public  
38 Safety, Gambling Control Board, respectively. Fingerprints taken pursuant to subsection  
39 1, paragraph J, K, L or S must be transmitted immediately to the State Bureau of  
40 Identification to enable the bureau to conduct state and national criminal history record  
41 checks for the Department of Administrative and Financial Services. Fingerprints taken  
42 pursuant to subsection 1, paragraph P must be transmitted immediately to the State

1 Bureau of Identification to enable the bureau to conduct state and national criminal  
2 history record checks for the Board of Osteopathic Licensure, established in Title 32,  
3 chapter 36. Fingerprints taken pursuant to subsection 1, paragraph N must be transmitted  
4 immediately to the State Bureau of Identification to enable the bureau to conduct state  
5 and national criminal history record checks for the Board of Licensure in Medicine,  
6 established in Title 32, chapter 48. Fingerprints taken pursuant to subsection 1, paragraph  
7 Q must be transmitted immediately to the State Bureau of Identification to enable the  
8 bureau to conduct state and national criminal history record checks for the State Board of  
9 Nursing, established in Title 32, chapter 31. Fingerprints taken pursuant to subsection 1,  
10 paragraph O must be transmitted immediately to the State Bureau of Identification to  
11 enable the bureau to conduct state and national criminal history record checks under Title  
12 28-B, section 204. Fingerprints taken pursuant to subsection 1, paragraph R or T must be  
13 transmitted immediately to the State Bureau of Identification to enable the bureau to  
14 conduct state and national criminal history record checks for the Department of Health  
15 and Human Services.'

16

### SUMMARY

17 This amendment strikes and replaces the bill to be consistent with criminal history  
18 record check practices. It incorporates provisions that address existing technical conflicts  
19 in the criminal history record check statutes. It also defines "staff member" to allow  
20 fingerprinting of applicants for employment as well as employees of children's residential  
21 care facilities.

22

### FISCAL NOTE REQUIRED

23

(See attached)