

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FOURTH LEGISLATURE

Legislative Document

No. 1382

H. P. 1051

House of Representatives, March 12, 1969

Referred to Committee on State Government. Sent up for concurrence and 1,000 ordered printed.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Ouellette of South Portland by request.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-NINE

AN ACT to Establish a State Department of Family Relations.

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

R. S., T. 19, c. 17, additional. Title 19 of the Revised Statutes is amended by adding a new chapter 17, to read as follows:

CHAPTER 17

DEPARTMENT OF FAMILY RELATIONS

§ 801. Department

The Department of Family Relations is created and shall be located in Augusta. The department shall function as an administrative department under the executive branch of the Government of this State. It is vested with complete power to adopt rules and regulations and has both initial and final jurisdiction on all matters pertaining to and affecting family relations. All matters contained in this chapter relating to family relations and the administration of the laws pertaining thereto shall be removed from the courts of the judicial department of the State Government. Family relations centers shall be established in 6 strategic locations called districts with respect to serving readily both the populated and rural areas. These offices shall be located by the Board of Directors of the Department of Family Relations as one of their first official duties.

The following objectives are adopted to be followed by the board of directors in the conduct of their official duties. When there is a judicial or administrative uncertainty as to interpretation of any law or code it must be resolved within the spirit of the objectives set forth below:

1. To reconcile families in difficulty whenever possible and to reduce divorce rates;
2. To promote stability of marriage;
3. To eliminate adversary proceedings in divorce;
4. To reduce the crime rate as caused by broken homes;
5. To limit divorces to those marriages where disharmony cannot be cured after application of trained reconciliation services;
6. To provide education, both pre-marital and marital, to reduce marital problems and divorces;
7. To conduct research in better techniques, organization, methods, and better trained services to carry out the above objectives.

§ 802. Board of directors

The Department of Family Relations shall be under the supervision, direction, and jurisdiction of a state board of directors, consisting of 6 members. The state board of directors shall be appointed by the Governor, with the advice and consent of the Council to serve until their successors are appointed. Prior to the Council making a recommendation, statewide and nationwide, if deemed necessary, advertising shall be conducted for the positions with clearly specified job requirements and salary. These members shall consist of one each in the following fields selected on the basis of experience and educational qualifications: Sociology, psychology or psychiatry, theology, education, marriage counselling, and accounting or budgeting.

The state board of directors shall serve a term of 3 years. The first appointments of directors shall run the full term. The director's second term shall be staggered to expire 2 at the end of each year; the director of sociology and psychology or psychiatry to expire the first year; the director of theology and education to expire the 2nd year; the director of marriage counselling and accounting or budgeting to expire the 3rd year.

The directors can apply to continue in office and may be retained or replaced by the Governor upon recommendation of the Council.

At the beginning of each year after the first board is appointed, one member shall be elected chairman of the board. A new chairman shall be elected each year.

The board of directors shall be nonpartisan.

§ 803. —education; duties

A director must have 5 solid years experience in the field of specialization plus a master's or higher degree from an accredited university or college in the field which he represents on the board, except that a bachelor's degree and 5 years experience shall qualify for the accounting or budgeting position. However, a bachelor's degree shall satisfy the educational requirements in the field of sociology, psychology or psychiatry, theology, education, and

marriage counselling, provided that the director has completed 10 solid years of experience in his field of specialization.

The board of directors shall have broad overall direction, supervision and determination of general policies. They shall be responsible for carrying out the objectives of this department. They shall, when sitting as a board of review, make final determinations on all matters relating to this department which may be referred to them by each family relations center.

The duties of the directors shall be to meet regularly to establish policy, organization, methods, standards, rules and regulations necessary to implement this chapter which are not in conflict with law, and to rule on and resolve problems with the Department of Family Relations. The general procedure to be followed in the department shall be formulated under the direction of the state board of directors.

A manual of procedure shall be prepared and supplied to each district of the department and to all government agencies interested in the administration of the work of the department.

Directors may be employed full time if necessary, come from other state agencies on a part time basis, come from universities or colleges, or from private practice.

In recognition of the fact that our religious leaders are vitally concerned with marriage, family relations, spiritual development, moral teachings and the betterment of the lives of the people of our State, the department shall consult with and seek the assistance, advice and help of such religious leaders in carrying on the activities of this department.

Direct payment for services and expenses shall be provided. The department shall provide aid and assistance to religious organizations in carrying out programs in the communities.

The members of the state board of directors, if already state employees, shall receive no added compensation for services as a member of the board of directors. If not state employees, they shall be paid a salary based on a scale already being paid by the State. The per diem rate paid for part-time directors will be based on the yearly salary scale paid by the State. They shall be allowed customary expenses as allowed by other state officials in the performance of official duties.

§ 804. Executive secretary

The state board of directors shall appoint an executive secretary, who shall have broad knowledge of administrative management with some knowledge and experience in human relations and government procedures. He shall carry out the administrative functions of the department, occupying the position of secretary to the board of directors, supervise the work of formulating and issuing directives and procedures, act as liaison officer between the board and other government agencies, and perform other duties necessary to carry out the program of the department as formulated by the board.

The executive secretary shall appoint and employ, subject to the Personnel Law, clerical and custodial personnel necessary to carry out the work of the department in the 6 regional districts.

The executive secretary shall continue in office until he resigns or is removed by a majority vote of the board of directors.

His salary shall be set by the state board of directors. He shall be allowed customary expenses as allowed by other state officials in the performance of official duties.

§ 805. Family relations centers

Each district family relations center shall have supervision and direction of the work of the department in its district. Each center shall be governed by a board of directors, which shall also be known as the arbitration board of the family relations center. These directors shall be appointed by a majority vote of the state board of directors from qualified applicants apply for such positions. All applications shall be in writing giving their qualifications in detail together with supporting credentials. Each board shall annually, select one of their number as chairman. One each of the classifications of; sociology, psychology or psychiatry, theology, education, marriage counselling, and accounting or budgeting shall be represented.

The qualifications for each classification shall be 5 years experience in the field of specialization plus a bachelor's degree from an accredited university or college in the field which he represents on the board. In addition, thereto, at least 2 years experience in social welfare work or related fields, knowledge of local conditions, interest and dedication toward establishing better family relations, and ability to work with others in the district, shall be required.

Members of the district board of directors shall be appointed for an indefinite term and may be removed and replaced by a majority vote of the state board of directors.

District family relations centers shall operate under the rules and regulations of the state board of directors. They will decide each case presented to it by the referees and associate referees on its own merits, strictly in terms of each family's own particular background and need.

Salaries will be paid on a scale already set by the State. They shall be allowed customary expenses as allowed by other state officials in the performance of official duties. Findings of the directors of the family relations centers may be appealed to the state board of directors for final determination on all matters relating to this department.

§ 806. District board of directors

The board of directors shall carry out the functions and govern the administration of the family relations centers. It shall sit as a board of arbitration and shall have initial jurisdiction to decide all domestic relations matters which are properly presented to them. Each director shall act in the capacity of referee in making inquiry and supervising the investigation of cases from

applications it has received. When acting in the capacity of referee, a director shall conduct hearings and shall have the power to issue subpoenas and such orders as may be necessary to carry out their investigation. A referee or associate referee after completing his investigation shall submit his report and recommendations to the arbitration board. The board of arbitration shall render a decision in the case either on the basis of the report of the referee or associate referee or it may conduct a hearing before making its decision. The board of arbitration shall have available to it all law enforcement agencies as if acting as a court of law.

Associate referee shall be appointed and attached to each family relations center as the case load shall justify. The associate referees shall be selected by the state board of directors from applicants having the same qualifications as members of the district board of directors. Selections of associate referees shall be from among those qualified in the professional fields from which the district board of directors were selected with representation in each field as nearly equal as possible. Salaries will be paid on a scale already set by the State. They shall be allowed customary expenses as allowed by other state officials in its performance of official duties.

§ 807. —executive secretary

Each district board of directors shall appoint an executive secretary who shall have sufficient education, background and experience in social welfare or human relations, in the opinion of the board, to perform the duties of this position. The executive secretary, under the direction of the board, shall function as secretary to the board of directors, receive and submit to the board all matters which are for its consideration and action, be responsible for maintaining and keeping records, and perform such other duties as may be assigned to him by the board. He shall employ personnel, subject to the Personnel Law, clerical and custodial personnel necessary to carry out the work for the district.

The executive secretary shall be employed for an indefinite term and may be removed by a vote of the majority of the district board of directors.

His salary shall be set by the district board of directors. He shall be allowed customary expenses as allowed by other state officials in the performance of official duties.

§ 808. Facilities

Building and office facilities necessary to carry on the work at the state and district levels shall be furnished from existing state facilities where available. If proper facilities are not available they may be acquired by lease or purchase. Provision shall be made for securing necessary equipment and supplies for carrying on the work at the State and District levels.

§ 809. Appropriation

The Legislature shall appropriate annually the funds necessary to carry on the functions of the Department of Family Relations. For the period commencing with the appointment of the initial state board of directors, and end-

ing when this chapter becomes fully operative pursuant to section 827 the sum of \$400,000, or as much thereof as may be needed, is appropriated to the department.

§ 810. Fees

Three fees shall be charged consisting of marriage license \$25, fact-finding and reconciliation \$25 and divorce proceedings \$25.

On application made to the department for consideration of a family relations case, a filing fee of \$25 shall be required. If, upon completion of the reconciliation endeavor, the marital problems are still not resolved to the satisfaction of all parties and the Department of Family Relations, the divorce proceedings can commence.

On all petitions for divorce, annulment or separate maintenance, there shall be a filing fee of \$25. Costs and investigation fees shall be assessed against both parties in conformance with an established schedule.

All fees collected shall be credited to the General Fund.

§ 811. Duties

1. Duties. The Department of Family Relations shall, in respect to marriage and family life:

A. Establish programs of an educational, vocational and social nature for both individuals and married couples to aid and assist families. The programs shall deal with the problems and needs which are common to families. All educational, religious, vocational and social facilities available in the communities shall be utilized and encouraged to assist in these programs.

B. Special reconciliation units in the department shall be established to carry out work in connection with reconciling couples where the marriage is in difficulty and threatened with dissolution. After investigations are completed, before any formal action can be instituted to dissolve the marriage, the matter shall be referred to the reconciliation unit for consideration and report.

C. Programs to aid and assist children and juveniles shall be formed and promoted. All agencies in the communities which are engaged in this type of work shall be given aid and assistance. Concrete recommendations for youth programs shall be made and assistance in carrying out such programs shall be given. Clubs and youth centers shall be encouraged and plans for establishing them shall be furnished. Facilities for counseling and giving aid, advice, and assistance to both parents and children shall be established.

D. Existing laws pertaining to marriage and the requirements for issuance of a marriage license shall be reviewed, and where advisable, changes will be proposed to the legislature.

E. Programs in premarital training and in the distribution of information relative to establishing sound and lasting marriages shall be formulated.

F. The Department of Education shall be requested to establish in all public schools a one-year course in family relations which shall cover family economics, budgeting, social activities, welfare of children, obligations and responsibilities of parenthood, community of interests and practical information relative to family life and marriage problems. This course shall be required of all high school students and shall be taken in either the junior or senior year.

§ 812. Jurisdiction

The Department of Family Relations shall have exclusive initial jurisdiction over divorce, annulment, custody and separate maintenance for all cases initiated on or after the effective date of this Act. The department shall set up the necessary administrative procedure. The procedure shall permit parties involved to represent themselves at all stages or they may be represented by persons authorized by the parties as agents or advocates who may appear to assist them. It shall not be required that the agent or advocate be an attorney at law. Any charges made for services as an agent or advocate shall be approved by the hearing agency. In carrying out procedure at any stage, reasonable requirements for furnishing and giving information and testimony shall be adopted but technical rules shall not be applied. The main and primary object shall be to follow principles of equity and justice, and case law or judicial holdings of courts of law shall not be controlling. All hearings shall be public and the records thereto shall be a matter of public record. Decisions made by the department of any of its subordinate agencies need not follow the rules of evidence, and review by the courts of any such decisions shall be limited to matters of law.

§ 813. Divorce

A divorce may be obtained only when the department, through its established procedures, determines as follows: That the marriage is unworkable; That it is the desire of one or both parties that it be terminated; That it is to the best interests of both parties, and to the best interests of society, that it be terminated.

There shall be no finding on the basis of guilt or innocence of either husband or wife, and the order issued shall be in terms of termination of the marriage contract. There shall be no interlocutory period and the order terminating the marriage contract shall be effective immediately.

§ 814. Proceedings

Every divorce action filed and pending in the courts prior to the effective date of this Act shall continue in the jurisdiction of the court in which filed unless one of the parties files a written motion with the Department requesting that the case be transferred to the Family Relations Department. In such event the department shall decide whether or not to take jurisdiction. Its decision in such cases shall be binding on the court and all parties. If the case is continued in the court, the provisions of this chapter shall control any inconsistent provisions of the law in respect to any orders or decrees issued by such court after this chapter take effect. If the Family Relations Department

assumes jurisdiction of the divorce action, the clerk of courts shall, within 5 days, transmit the complete file to the department and thereafter all proceedings shall be conducted in the department. Jurisdiction of orders for child custody and for all support payment orders shall be transferred to the Department of Family Relations, and jurisdiction of same shall be removed from the court.

Prior to any divorce case being assigned to the divorce proceedings stage, there must be a signed certificate by both of the parties and the head of the section responsible for the following stages, that all requirements and proceedings of that section have been complied with and the marital problems remain unresolved. The required section certificates are:

1. Factfinding—cooling off section: Normally 90 days unless both parties stipulate to a longer period or sign a reconciliation agreement.
2. Reconciliation section: Normally 6 months unless both parties stipulate to a longer period or sign a reconciliation agreement.
3. No divorce proceedings may be had by petition of a party who has failed to perform responsibilities and duties agreed to under the reconciliation agreement.
4. Where one party persistently refuses to cooperate and comply with the proceedings and requirements of the factfinding section and the reconciliation section, or has persistently failed to comply with the articles of an agreed reconciliation agreement, then, on petition of the other party with certified approval of factfinding and reconciliation, and the payment of an added \$25 fee, the case shall be transferred to the divorce proceeding stage.

During proceedings in factfinding, reconciliation and divorce proceedings, all written statements taken, such as marital history forms, factfinding forms and stipulations, shall be verified under penalty of perjury.

A stenographer, or recorder, may be used to record oral proceedings in the factfinding or reconciliation phase. Litigants with important oral statements may reduce these statements to writing, and upon verification, file the statements.

All oral proceedings in divorce proceedings shall be tape recorded. Either party can later have the tape played back, and upon request, have a stenographer make a certified transcript of the tape, the cost of the transcript chargeable to the requesting party. This certified transcript shall be usable as a reporter transcript.

All interviews in factfinding and reconciliation, and all pages filed in these sections, as well as all reports and records prepared by child custody section, shall be confidential and closed to the public to protect the interests of the children and to favor the chances of reconciliation.

All proceedings in divorce proceedings shall be public, except that use of confidential records shall be done with the conference room closed to the public.

A divorce may be granted by the department only on the signed petition of one party, and certification by factfinding and reconciliation sections, that all proceedings are completed, all rules and requirements have been complied with and the marital problems have not been resolved to the point where the marriage can reasonably work.

After conferences, and the granting of the divorce, there shall be a 90-day appeal period during which either party can appeal to the District Court or the Superior Court. After passage of the appeal period without filing of an appeal, an additional 90-day period shall pass, after which either party can apply for and receive a final judgment of divorce.

§ 815. Annulment

A marriage may be annulled by the Department of Family Relations if reasonable proof is submitted by either party to the effect that the marriage was void from the beginning. The annulment shall have no bearing on the legitimacy of any children born to the union. The action shall be effective immediately.

§ 816. Separate maintenance

A decree for separate maintenance may be granted by the Department of Family Relations on application of either party on showing of good cause. It shall not be effective for more than 6 months unless agreed to by both parties.

§ 817. Alimony

No alimony shall be allowed to either party in a divorce proceeding, except as provided in section 818.

§ 818. Support

If either party is unable to support himself, because of physical or mental disability, to the extent that even with rehabilitation training that party cannot be self supporting, which is conclusively established, and the other party is able to furnish support, provision therefor shall be made. The support payments, in this event, shall be in keeping with the ability of the party to supply the support, the need of the other party for such support, and a positive finding shall be made that the party asking for the support has no other means of support other than that which might be secured through state welfare or other welfare agencies. If either party is unable to support himself, he shall be eligible for state sponsored retraining programs.

The support decree shall not be effective for more than 6 months unless agreed to by both parties.

§ 819. Property

If it is determined that it is to the best interests of all parties concerned to terminate the marriage contract, the personal and real property of the parties shall be equitably divided between the parties. In carrying out this objective, the parties may agree between themselves as to such division, subject to

review and final determination under the rules established by the department. In arriving at such division, consideration shall be given to the amount, value and kind of property each party may have owned when the marriage was entered into. Consideration shall be given as to how property acquired after marriage was obtained. In all such consideration, principles of equity shall be followed and in making the final determination with reference to such division, established legal concept shall not be controlling.

§ 820. Custody of children

Custody of children shall be determined by a custody investigation and a confidential report prepared by the custody section of the Department of Family Relations for each case where there is a disagreement between husband and wife over custody and visitation. This report will be prepared on the basis of the following considered factors:

1. Desire of the parents for custody and visitation;
2. Mutual love and affection between child and parent;
3. Ability to supervise, assist, and control the child;
4. Home environment of the parent seeking custody;
5. Financial ability of the parent seeking custody to support himself or herself and educate the children;
6. Willingness of the parent to help the religious growth of the children;
7. Which parent is best qualified physically, morally, mentally, and emotionally to provide proper care of the child or children.

The following rule of custody shall apply if both parties appear approximately equally qualified to have custody of the child.

“The mother shall have custody while the child is in grade school and the father shall have custody upon the child graduating from grade school.”

The following rule of visitation shall apply regardless of which parent has custody. The noncustodial parent has the following visitation rights or physical possession rights if he so desired:

1. The right to physical possession during summer vacation from school;
2. The right to physical possession during Christmas or Easter vacations at the option of the noncustodial parent;
3. The right to one four hour visit during the school week;
4. The right to weekend possession from Friday 4 p.m. to Sunday 8 p.m. on alternate weekends.

The custody section shall make every effort for a 30-day period after filing of the custody report to reach a written stipulation regarding custody and visitation by arbitration, compromise and discussion between the 2 parties.

Provision for continuing supervision and control shall be maintained under the department procedure. Such matters as visitation rights, temporary custody, vacations and similar matters shall be kept under close supervision under the regulations of the department. Procedure shall provide that each parent shall be afforded the opportunity to participate in the control and fulfillment of their children's lives irrespective of which parent may have legal custody.

If it is determined that neither parent is suitable to have custody, the department, through its regulations and procedures, shall have complete custody and control of the child until it reaches its majority. The parents shall be required to contribute to the cost of its support in accordance with their respective abilities.

§ 821. Support of children

The basic concept to be followed shall be that the parent who is given custody shall have the primary obligation to support the child or children. The parent who does not have custody shall be required to contribute to the support of the children, if conclusive proof is furnished that the parent with custody needs financial help. The Department of Family Relations shall determine the amount each parent shall pay toward such support, taking into consideration the following factors:

1. The ability of the parent to contribute;
2. Financial position and income of each parent;
3. The necessities for livelihood of each parent;
4. The current needs in each case;
5. Other support obligations with preference given to younger children. The requirements of his or her new family, if any, shall be given first consideration. The relative financial position of the former wife as compared to that of the former husband shall be subject to continuing review, and the case shall be under continued control of the department, and may be reviewed and modified on request of either party or by direct action of the department itself.

Where minor children are involved an accounting as to the use of child support payments may be required when requested by an interested party. In the event any person subject to a payment order is in arrears for 30 days the matter shall be called to the attention of the Family Relations Board for whatever action may be required to enforce the award, to modify it, or cancel the arrearage in the event circumstances warrant such action. A parent who does not have custody shall not be required to contribute to the support of a child after it reaches his majority, gets married, joins the armed services, or becomes self-supporting.

§ 822. Determinations by department

The determinations made by, and the orders or decrees issued by the Department of Family Relations shall be given the same effect as a decree or

order of a District or Superior Court unless an appeal is filed with a District or Superior Court within 30 days of the time when it becomes a final department decree or order. A departmental decree or order shall be deemed to be final when the parties have exhausted the final process of review prescribed by regulations of the Department of Family Relations.

§ 823. Transfer of cases

Immediate steps shall be taken for the orderly transfer of all cases which are either pending before the courts or which are under the control of the courts on continuing orders for alimony, support or spouse, child support payments, custody, or related matters. In transferring cases to the department, existing orders shall continue in effect unless one of the parties thereto requests that the case be opened. In all existing cases where payments are required, any arrearage shall be cancelled as of the date of transfer to this department, except for any amount which might be due under the 30-day rule set forth in this procedure of the department.

§ 824. Future actions

In any future action which may be started by any party, including agencies of the State, the entire case shall be transferred to the department. On all existing cases in the form of either civil or criminal actions involving alimony, separate maintenance or child support in any court, such action shall be terminated and the case shall be referred to the department. The department shall have exclusive jurisdiction to issue orders for arrest, levy, attachment or garnishment, and no action shall be commenced by any agency or court if divorce, annulment, separate maintenance, child custody, or any matter pertaining to this field is involved.

In order to effect the orderly transfer of cases and files to the department, the cases shall remain in the hands of the existing court or agency until the department issues an order for the transfer. New cases arising in the meantime shall continue to be handled under existing law and procedure until the department signifies to the court or other agency involved that it is ready to proceed with handling the cases. The transfer of cases of all types to this department shall be completed within one year from the effective date of this Act. In enforcing its orders, the department shall have the same powers as a court of law, but no person shall be imprisoned except through legal channels and he shall be given the protection afforded all persons accused of a crime, including such rights as trial by jury, counsel furnished at the expense of the State if they are unable to pay for same, release on their own recognizance or bail, and all other rights guaranteed under the laws and the Constitution of the State.

Either party on request and payment of statutory fees is entitled to a jury trial on any issue of divorce, property, custody or support, after completion of the reconciliation period and while officially in divorce proceedings. As far as possible trial will be conducted using the records of the Department of Family Relations which shall be admissible into the evidence. While attorneys and outside witnesses are allowed, as far as possible, proceedings shall be simplified to conduct trial by the parties themselves.

§ 825. Appeals

Appeals to the courts from findings or administrative agencies of the department shall be taken only after remedies set up for review in the procedure of the department are exhausted.

§ 826. Title

This chapter may be cited as the Family Relations Amendment.

§ 827. Effective date

This chapter shall take effect 90 days after the adjournment of the Legislature. The initial directors shall be appointed by the Governor within 60 days after the date this chapter becomes effective. The department shall have and exercise its authority in respect to all matters covered herein one year from the first of July next after the appointment of the first State Board of Directors of the Department of Family Relations, except that the board shall have all authority necessary to organize and establish procedures for the department immediately upon appointment of all directors.

§ 828. Application

This chapter shall apply only when at least one of the parties applying to the department shall have been a resident of the State for at least one year next preceding the date of application and a resident of the area served by the family center to which application is made for at least 90 days next preceding the date of application.