

MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 2012

H. P. 1551

House of Representatives, January 24, 1972

The Committee on State Government suggested.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Martin of Eagle Lake.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-TWO

**AN ACT Implementing the Reorganization of the Department of Human
Services.**

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

Sec. 1. R. S., T. 2, § 6, sub-§ 1, amended. The 2nd and 3rd lines from the end of subsection 1 of section 6 of Title 2 of the Revised Statutes are repealed and the following enacted in place thereof:

Commissioner of Human Services;

Sec. 2. R. S., T. 5, § 3501, repealed. Section 3501 of Title 5 of the Revised Statutes, as enacted by chapter 493 of the public laws of 1971, is repealed.

Sec. 3. R. S., T. 22, § 1, repealed and replaced. Section 1 of Title 22 of the Revised Statutes, as amended, is repealed and the following enacted in place thereof:

§ 1. Department; organization

There is created and established the Department of Human Services, hereinafter in this Title and Title 34 called the "department," to maximize the human capabilities of people of the State of Maine by developing, organizing, applying the health, medical and social services for prevention or amelioration of conditions, disadvantageous to the achievement of individual, group or community potential.

The department shall consist of the previous Departments of Health and Welfare, the Department of Mental Health and Corrections, the Committee on Children and Youth, the Governor's Advisory Council on the Status of

Women and the Committee on Aging and such other departments and agencies as may be assigned to the department by the Legislature from time to time. The department shall be under the control and supervision of a Commissioner of Human Services, hereinafter in this Title and Title 34 called the "commissioner," who shall be appointed by the Governor with the advice and consent of the Council for a term coterminous with the Governor and until his successor is appointed and qualified. The commissioner may be removed only for cause by the Governor, with the advice and consent of the Council, after due notice and hearing.

The commissioner may appoint a deputy commissioner and such other deputies, bureau heads and directors, including regional directors, as may be necessary to carry out the work of the department, subject to the Personnel Law, except that for the purposes of transfers, demotions or dismissals, such persons shall be treated as being in the unclassified service. Any vacancies shall be filled by appointment as above for a like term.

The commissioner may employ such division heads, assistants, employees and clerks, subject to the Personnel Law, as may be necessary to carry out the work of the department. Such deputy commissioner, deputies, bureau heads, regional directors, directors, division heads, assistants, employees and clerks shall have such duties and responsibilities as are assigned to them by the commissioner.

In the event of a vacancy in the office of commissioner because of death, resignation, removal or other cause, the deputy commissioner and the various deputies, bureau chiefs, directors, division heads, assistants, employees and clerks in said department shall continue in office and perform such duties as have been prescribed for or assigned to them.

The commissioner shall be responsible to the Governor. He shall be the chief executive and administrative officer of the department with full responsibility and authority for planning, coordinating, directing and administering the functions vested in the department.

The commissioner shall organize the department into such bureaus, divisions, regions and other administrative units as in his judgment are consistent with sound principles of management and with meeting the needs of those served by the department. He shall have authority to organize, reorganize, transfer or abolish bureaus, divisions, staff functions or other administrative units within the department.

The commissioner shall cooperate with the appropriate federal agencies, and shall have the full power and authority to do all acts or things necessary or required to be done to receive and administer federal funds in support of programs within the department. The department is designated as the sole agency for administering and supervising such federal funds.

During the absence or disability of the commissioner, or in case of vacancy in the office of commissioner, the deputy commissioner shall have such duties and have the same powers as provided by law for the commissioner.

Sec. 4. R. S., T. 22, § 6, amended. Section 6 of Title 22 of the Revised Statutes is amended to read as follows:

§ 6. Distribution of functions.

The commissioner shall have the power to distribute the functions and duties outlined in ~~this Title~~ the Revised Statutes applicable to the department among the various bureaus, regions, divisions and other administrative units created by him or persons designated by him so as to integrate the work properly and to promote the most economical and efficient administration of the department.

Wherever in ~~this Title~~ the Revised Statutes powers and duties are given to the department these may be and shall be assumed and carried out by such ~~of the persons or~~ bureaus, regions, divisions or other administrative units as the commissioner shall designate and create from time to time, and these powers and duties so delegated may in turn be delegated to subordinates by the said ~~persons or bureau, region, division or other unit directors~~ heads with the approval of the commissioner.

Sec. 5. R. S., T. 34, § 1, amended. The first, 2nd and 5th paragraphs of section 1 of Title 34 of the Revised Statutes, as amended, are further amended to read as follows:

The Department of ~~Mental Health and Corrections~~ Human Services, as heretofore established in Title 22, hereinafter in this Title called the "department," shall have general supervision, management and control of the research and planning, grounds, buildings and property, officers and employees, and patients and inmates of all of the following state institutions: The hospitals for the mentally ill, Pineland Hospital and Training Center, the State Prison, the Men's Correctional Center and the Women's Correctional Center, the juvenile institutions, ~~the Governor Baxter State School for the Deaf~~ the Military and Naval Children's Home and such other charitable and correctional state institutions as may be created from time to time. All orders of commitment, medical and administrative records in the department are held to be confidential. Such records may be subpoenaed by a court of record.

The department shall be under the control and supervision of a Commissioner of Mental Health and Corrections, as heretofore appointed and hereinafter in this Title called the "commissioner," who shall be appointed by the Governor with the advice and consent of the Council; said appointment shall be for 3 years and until his successor is appointed and qualified, or during the pleasure of the Governor and Council. Any vacancy shall be filled by appointment for a like term. The commissioner shall be a person experienced in institutional administration, either as a superintendent, chief medical officer or business manager, or who has had other satisfactory experience in the direction of work of a comparable nature. Said The commissioner of Human Services, hereinafter in this Title called the "commissioner", shall have the power to appoint institutional heads as shall be necessary for the proper performance of the duties of said department; ~~such~~. Such appointments shall be subject to the Personnel Law, except as otherwise provided in this Title. ~~He may appoint such other employees as may be necessary;~~

~~such other appointments shall be subject to the Personnel Law, except as otherwise provided in this Title.~~ The heads or superintendents of the several said institutions under the department shall report directly to the said commissioner or his designee. Each institutional head shall be experienced in the management of the particular type of institution to which he is assigned.

~~Wherever in this Title powers and duties are given to the department these may be and shall be assumed and carried out by such of the institutional or bureau heads as the commissioner may designate from time to time, and these powers and duties so delegated may in turn be delegated by the said institutional or bureau heads with the approval of the commissioner.~~

Sec. 6. R. S., T. 34, § 525, amended. Section 525 of Title 34 of the Revised Statutes, as enacted by chapter 20 of the public laws of 1967 and as amended by section 66 of chapter 590 of the public laws of 1969, is further amended to read as follows:

§ 525. Establishment; purposes

~~The Bureau of Corrections, as heretofore established within the department~~ shall be responsible for the direction and general administrative supervision of the correctional programs within the Maine State Prison, the Men's Correctional Center, the Women's Correctional Center and the Juvenile Training Centers.

Sec. 7. R. S., T. 34, § 526, repealed. Section 526 of Title 34 of the Revised Statutes, as enacted by chapter 20 of the public laws of 1967, is repealed.

Sec. 8. R. S., T. 34, § 1591, amended. Section 1591 of Title 34 of the Revised Statutes, as repealed and replaced by section 3 of chapter 319 of the public laws of 1969 and as amended by section 4 of chapter 528 of the public laws of 1971, is further amended to read as follows:

§ 1591. Division of Probation and Parole

~~The Division of Probation and Parole within the Bureau of Corrections of the Department of Mental Health and Corrections~~ department shall be charged with the administration of probation and parole services within the State. ~~The division~~ It shall consist of ~~field probation and parole officers and~~ of such other administrative employees as may be necessary in carrying out its functions.

~~The Division of Probation and Parole shall be under the direction of the Director of Probation and Parole, in this chapter called the "director," who shall be appointed by the Director of Corrections, subject to the Personnel Law.~~

~~The Division of Probation and Parole~~ department may provide necessary specialized services and procedures for the constructive rehabilitation of juveniles. The ~~division~~ department in the exercise of its administration may obtain psychiatric, psychological and other necessary services. The ~~division~~ department shall provide necessary investigation of any criminal case or matter including presentence investigation when requested by the court having jurisdiction, and shall provide investigation when requested by the board.

Sec. 9. R. S., T. 34, § 1592, amended. Section 1592 of Title 34 of the Revised Statutes, as repealed and replaced by section 4 of chapter 319 of the public laws of 1969 and as amended, is further amended to read as follows:

§ 1592. Powers and duties of the director

The ~~director~~ **commissioner or his designee** shall:

1. **Standards and policies.** Establish and administer standards, policies and procedures for the field probation and parole service and institutional parole officers;

2. **Appointees.** Appoint, subject to the Personnel Law, ~~district probation and parole supervisors, field probation and parole officers and such other~~ employees as may be required to carry out adequate supervision of all probationers, and of all parolees from the penal and correctional institutions, and prescribe their powers and duties;

3. **Cooperation.** Cooperate closely with the board ~~and the criminal and juvenile courts the institutional heads and other institutional personnel~~;

4. **Recommendations; regions.** Make recommendations to the board in cases of violation of the conditions of parole, issue warrants for the arrest of parole violators; notify the superintendents of the institutions of determinations made by the board. The ~~director commissioner or his designee~~ shall divide the State into administrative ~~districts~~ regions and shall staff such ~~districts~~ regions. He shall provide instruction and training courses for ~~probation and parole officers~~ employees charged with probation and parole functions. The ~~director commissioner or his designee~~ shall be the executive officer and secretary of the board, and shall have the authority to sign documents, including warrants and extradition papers for the board, when so instructed by the board.

Sec. 10. R. S., T. 34, § 1593, repealed. Section 1593 of Title 34 of the Revised Statutes, as enacted by section 1 of chapter 326 of the public laws of 1969, is repealed.

Sec. 11. R. S., T. 34, § 2001, amended. Section 2001 of Title 34 of the Revised Statutes is amended to read as follows:

§ 2001. Creation; purpose

The ~~Bureau of Mental Health, as heretofore created within the Department of Mental Health and Corrections~~ department shall be responsible for the direction of the mental health programs in the institutions within the department and shall be responsible for the promotion and guidance of mental health programs within the several communities of the State.

Sec. 12. R. S., T. 34, § 2002, repealed. Section 2002 of Title 34 of the Revised Statutes is repealed.

Sec. 13. R. S., T. 34, § 2061, amended. Section 2061 of Title 34 of the Revised Statutes, as enacted by section 1 of chapter 535 of the public laws of 1969, is amended to read as follows:

§ 2061. Bureau of Mental Retardation

The ~~Department of Mental Health and Corrections~~ department shall be responsible for the direction of mental retardation programs in the institutions of the department and shall be responsible for the planning, promotion, coordination and development of a complete and integrated state-wide program for the mentally retarded and shall serve as liaison, coordinator and consultant to the several state departments in accomplishing the provision of such comprehensive services. ~~There is created within the department a Bureau of Mental Retardation to carry out these responsibilities.~~

Sec. 14. R. S., T. 34, § 2062, repealed. Section 2062 of Title 34 of the Revised Statutes, as enacted by section 1 of chapter 535 of the public laws of 1967, is repealed.

Sec. 15. R. S., T. 34, § 2104, amended. The first paragraph of section 2104 of Title 34 of the Revised Statutes is amended to read as follows:

In every state institution, to which a mentally ill, feeble-minded or epileptic person may be committed, the department shall appoint a physician experienced in the care and treatment of such persons, and the necessary assistants to such physician ~~and shall organize and administer under his direction a Bureau for Community Service in the district served by the institution.~~ The duties of said ~~Bureau~~ department shall be:

Sec. 16. R. S., T. 34, § 2104, sub-§ 4, amended. The last sentence of subsection 4 of section 2104 of Title 34 of the Revised Statutes is amended to read as follows:

In this work the ~~bureau~~ department may cooperate with local authorities, schools and social agencies.

Sec. 17. R. S., T. 34, § 2421, sub-§ 2, repealed and replaced. Subsection 2 of section 2421 of Title 34 of the Revised Statutes is repealed and the following enacted in place thereof:

2. **Determination of settlement.** If the department shall determine that neither the proposed patient nor any person liable for support under section 2512 is able to pay expenses of examination and commitment, it shall determine whether the proposed patient has a legal settlement within the State. If it is determined that the proposed patient has a legal settlement within the State, the department shall seek reimbursement from the municipality of legal settlement.

Sec. 18. Amendatory clause. Wherever in the Revised Statutes or laws there is a reference to the "department", "Department of Mental Health and Corrections", "Department of Health and Welfare", "Health and Welfare", "Department of Health and Welfare of the State of Maine", "State Department of Health and Welfare", "Bureau of Health in the Department of Health and Welfare", "State Division of Probation and Parole", "Division of Probation and Parole", "Probation and Parole Division under the Bureau of Corrections", "Bureau of Mental Health", "Bureau of Corrections", "Division of Corrections", "Bureau of Health", "State Bureau of Health", "Bureau

of Social Welfare", or to a "division" or "bureau" of any, or the "Division of Eye Care", or to action through any of these divisions or bureaus, the words shall mean the Department of Human Services.

Sec. 19. Amendatory clause. Wherever in the Revised Statutes or laws there is a reference to the "Commissioner of Mental Health and Corrections", "Commissioner of Health and Welfare", "Commissioner", "State Director of Probation and Parole", "office of the director of the Division of Probation and Parole", "Director of Probation and Parole", "Director of Corrections", "Commissioner of Corrections", "Director of the Bureau of Mental Retardation", "Director of the Division of Eye Care", the "Director of Health", "Director of the Bureau of Health", "Director of the Division of Sanitary Engineering of the Bureau of Health", or the "Director of the Division of Sanitary Engineering", those words shall mean the Commissioner of Human Services or his designee.

Sec. 20. Amendatory clause. Wherever in the Revised Statutes or laws there is a reference to the "Division of Child Welfare", or to action, "through the Bureau of Social Welfare", "through its Bureau of Social Welfare", or "through the Bureau of Health" or reference to the "Director of Corrections" or to action "with the advice of the Director of Health", those words shall be read to mean the Commissioner of Human Services or his designee.

Sec. 21. Amendatory clause. Wherever in the Revised Statutes or laws there is a reference to action by the Commissioner of the Department of Health and Welfare with the advice and consent of the Director of Health or to action by the Director of the Bureau of Health, the Commissioner of the Department of Human Services may take the action without the advice or consent of said director, by himself or through his designee.

Wherever there is a reference in the Revised Statutes or laws to the "State Mental Health Authority", that reference shall be read to mean the Department of Human Services.

Wherever there is a reference in the Revised Statutes or laws to the "Head of the State Welfare Agency", that reference shall be read to mean the Commissioner of the Department of Human Services.

Sec. 22. Transitional provisions.

1. Effect of transfer of powers, duties and functions. The Department of Human Services shall be the successor in every way to the powers, duties and functions of the former Departments of Health and Welfare and Mental Health and Corrections, or any of their administrative units, except as otherwise provided in this Act. Whenever the Department of Health and Welfare or the Department of Mental Health and Corrections or any of their bureaus, divisions, institutions, other units or officers thereof are mentioned, referred to or designated in or by any law, contract or other document, such mention shall be deemed to refer to the Department of Human Services, the bureau, institution, division, other unit or officer thereof, in which the powers, duties and functions of such department, bureau, division, institution, other unit or officer thereof are vested pursuant to or under the authority of this

Act. Every person presently subject to laws administered by the Departments of Health and Welfare and Mental Health and Corrections or any bureau, division, institution, administrative unit or officer thereof shall be subject to the same obligations and duties and have the same rights as if such statutes were administered by the said Departments of Health and Welfare and Mental Health and Corrections or any bureau, division, institution, administrative unit or officer thereof. Every person shall be subject to the same penalty or penalties, civil or criminal, for failure to perform any obligation or duty or for doing a prohibited act, as if such obligation or duty arose from or such act were prohibited by the exercise of such right, function or duty by the Departments of Health and Welfare, or Mental Health and Corrections, or bureaus, divisions, institutions, administrative units or officers thereof.

The Commissioner of Human Services shall be the successor in every way to the powers, duties, functions and responsibilities of the former commissioners of the Departments of Health and Welfare and Mental Health and Corrections.

Whenever reports or notices are now required to be made or given, or papers or documents furnished or served by any person to or upon any department, bureau, division, administrative unit, institution or officer abolished or amended by this Act, or whose duties with relation to the subject matter of such reports, notices, papers or documents have, by this Act, been transferred to another department, bureau, division, unit, institution or officer, the same shall be made, given, furnished or served in the same manner to or upon the department, bureau, division, institution, administrative unit or officer created by or under the authority of this Act and every penalty for failure to do so shall continue in effect. The authority of agents, employees and officers of the department, who are transferred by this Act, to enforce applicable laws, shall continue in effect.

2. Actions, suits or proceedings not to abate by reorganization; maintenance by or against successors. No suit, action or other proceeding, judicial or administrative, lawfully commenced, or which could have been lawfully commenced, by or against the Departments of Health and Welfare and Mental Health and Corrections or any bureau, division, institution, administrative unit or officer thereof shall abate by reason of the enactment of this Act or action taken pursuant to its authority. The courts may allow the suit, action or other proceeding to be maintained by or against the successor of any department, bureau, division, institution, administrative unit or officer affected by this Act.

No criminal action commenced or which could have been commenced by the State shall abate by the taking effect of this Act.

3. Commitments, imprisonment, parole, release or discharge of prisoners or inmates. Nothing in this Act is intended or shall be construed to alter or in any way or any manner affect the validity of the commitment, imprisonment, probation, parole, release or discharge of any and all prisoners, inmates or persons to, by or of any of the departments, bureaus, divisions, in-

stitutions, other administrative units or officers affected by this Act, or to alter the rules and regulations thereof, except as specifically provided in this Act. Persons committed to custody of any official, officer or employee of the former Departments of Health and Welfare and Mental Health and Corrections shall be deemed committed to the Commissioner of the Department of Human Services or his designee. In the event it is determined necessary to recommit any person, the Commissioner of Human Services, or his designee, shall have the authority to do and perform all acts necessary to secure such recommitment.

4. Rules, regulations and procedures. All existing regulations in effect, in operation, or promulgated in or by the Departments of Health and Welfare and Mental Health and Corrections, or in or by any bureau, division, institution, administrative unit or officer thereof are hereby declared lawful and in effect and shall continue in effect until rescinded, revised or amended or changed by the Commissioner of Human Services or his designee.

"Regulation" shall include but is not limited to any regulation, rule, order, administrative procedure, policy, determination, directive, authorization, permit, license, privilege, requirement, designation or agreement.

5. Contracts, agreements, compacts. All existing contracts, agreements and compacts currently in effect in the Departments of Health and Welfare and Mental Health and Corrections or of any bureau, division, institution, administrative unit or officer thereof shall continue in effect.

6. Personnel. All employees and officials of the former Departments of Health and Welfare and Mental Health and Corrections are transferred to the Department of Human Services and shall continue in their employment or office after the effective date of this Act, without interruption of their state service, unless such employment or office is terminated or abolished or the method of appointment or employment is altered or changed by the provisions of this Act.

The status position and rights of such transferred persons shall not be affected by their transfer except that the Commissioner may assign and reassign them during the transitional period, without regard to the Personnel Law, but no such assignment or reassignment shall result in any decrease in salary level, require a period of probation or be considered a demotion, and the employee shall retain all of the rights and all of the benefits to which he may be entitled as a classified employee.

In order to provide for an orderly and uninterrupted transition of the functions of the former departments into the Department of Human Services, the commissioner is empowered to appoint temporary deputies, heads of bureaus, divisions, regions and such other officials or employees and to create such temporary bureaus, divisions, regions or other administrative units as he deems necessary to exercise the powers and duties of the department. Such temporary appointments shall not extend beyond one year. Such temporary appointments shall be made from personnel of the former departments. During the term of such temporary appointment such appointees shall be paid

salaries to be determined by the commissioner not to exceed those received by the appointee at his former position. In the event an employee in the classified service is appointed on a temporary basis, he shall retain all the status and rights and all of the retirement benefits to which he may be entitled as a classified employee so long as he serves as a temporary employee.

Such temporary appointment may be terminated at any time by the commissioner. If such temporary official or employee is appointed to a permanent position, his state service shall be considered to be uninterrupted.

The present Commissioner of the Department of Mental Health and Corrections shall serve as the first Deputy Commissioner of the Department of Human Services.

The appointments of persons under the provisions of the Revised Statutes by any former commissioners or officers of the Departments of Health and Welfare and Mental Health and Corrections, which persons are not considered employees of the State of Maine or appointed subject to the Personnel Law, shall continue in effect and such appointees shall serve out the terms for which they were appointed.

7. Creation of administrative units. In carrying out his duties to create the administrative structure of the Department of Human Services, the commissioner shall cooperate with the Federal Government in furtherance of the purposes of applicable federal statutes and is authorized to adopt such methods of administration as are found by the Federal Government to be necessary for the proper and efficient operation of agreements and to comply with other conditions as may be necessary to secure the full benefits of such federal statutes.

The various bureaus, regions, divisions and such other units as may be designated by the commissioner shall be considered the major administrative units within the department and, in addition, a central services staff unit, or its equivalent, shall be considered equal in administrative level to a bureau or region.

A bureau, division, region or other administrative unit or office or position shall be deemed established on the date designated by the commissioner.

8. Records, property, equipment and appropriations. All records, property, equipment and unencumbered and unexpended funds or appropriations previously belonging to or appropriated to or allocated for the use of the Departments of Health and Welfare or Mental Health and Corrections shall become, on the effective day of this Act, part of the property of and appropriated to the Department of Human Services. The Commissioner of Human Services may administer all encumbered funds and properties previously administered by the Departments of Health and Welfare and Mental Health and Corrections.

9. Conflicts. All acts or parts of acts and rules inconsistent with this Act are repealed or amended to conform hereto.

10. Construction. The provisions of this Act shall be liberally construed to carry out its purposes.

11. Legislative intention. It is the intention of the Legislature that the organization of the Department of Human Services be accomplished in substantial conformity with a plan for basic organization of the department submitted to the Joint-Select Special Committee of the Legislature on Governmental Reorganization which contemplates that the programs operated by the former Departments of Health and Welfare and Mental Health and Corrections will be operated by several regional offices of the new Department of Human Services. It is the intention of the Legislature that the functions of the new department be decentralized in order to expedite the business of the State when decentralization is consistent with proper fiscal management and the provision of efficient and effective services for the citizens of the State of Maine.

12. Effective date; transitional period. This legislation shall become effective on September 1, 1972, except that for the purpose of the appointment of a Commissioner of Human Services, Section 3 of this Act shall be effective on July 1, 1972. The transitional period shall be from September 1, 1972 to September 1, 1973.

Sec. 23. Funds and equipment transferred. Notwithstanding the Revised Statutes, Title 5, section 1585, all accrued expenditures, assets, liabilities, balances of appropriations, transfers, revenues or other available funds in any account, or subdivision of an account, of any agency to be reallocated to another department strictly as a result of the reorganization effort, shall be transferred to the proper place in the new structure by the State Controller, upon recommendation of the department head, the State Budget Officer and upon approval by the Governor and Executive Council.

STATEMENT OF FACT

The legislation implements the reorganization of the Departments of Health and Welfare and Mental Health and Corrections into a Department of Human Services.