

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 1425

H.P. 1024

House of Representatives, May 2, 1989

Submitted by the Department of Human Services pursuant to Joint Rule 24.
Reference to the Committee on Human Resources suggested and ordered printed.

Ed Pert

EDWIN H. PERT, Clerk

Presented by Representative FOSS of Yarmouth.

Cosponsored by Senator HOLLOWAY of Lincoln, Senator BRANNIGAN of
Cumberland and Representative HALE of Sanford.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-NINE

**An Act to Establish the Child Welfare Advisory Committee and to
Redesignate the Bureau of Social Services as the Bureau of Child and
Family Services.**



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

3 **Sec. 1.** 5 MRSA §940, sub-§1, ¶C, as enacted by PL 1983, c.
729, §4, is amended to read:

5 C. Director, Bureau of ~~Seeial~~ Child and Family Services;

7 **Sec. 2.** 5 MRSA §12004-I, sub-§37-A is enacted to read:

9 37-A. Human Child Welfare Expenses Only 22 MRSA
11 Services: Child Advisory Committee §4088
13 and Family Services

15 **Sec. 3.** 22 MRSA §1, 3rd ¶, as amended by PL 1985, c. 785, Pt.
B, §82, is further amended to read:

17 The commissioner may employ any bureau and division heads,
19 deputies, assistants and employees who may be necessary to carry
out the work of the department. All personnel of the department
21 shall be under the immediate supervision, direction and control of
the commissioner. These personnel shall be employed subject to the
Civil Service Law, except the: Deputy Commissioner; Director,
23 Bureau of ~~Seeial~~ Child and Family Services; Director, Bureau of
Maine's Elderly; Director, Bureau of Health; Director, Bureau of
25 Rehabilitation; Director, Bureau of Income Maintenance; Director,
State Health Planning and Development Agency; Director, Bureau of
27 Medical Services; and Assistant Deputy Commissioners.

29 **Sec. 4.** 22 MRSA §9, sub-§2, as repealed and replaced by PL
1983, c. 292, is amended to read:

31 2. **Sliding fee scale.** The department may establish a
33 sliding fee scale for the provision of community-based purchased
services administered by the Bureau of ~~Seeial~~ Child and Family
35 Services.

37 A. The sliding fee scale shall be based on gross family
income and family size.

39 B. Any fees charged as a result of implementing this
41 subsection shall be paid to the provider of the service and
shall be used by the provider for additional services of the
43 same or related type for which the fees were paid.

45 **Sec. 5.** 22 MRSA §3291, sub-§§1 and 4, as enacted by PL 1987, c.
714, §2, are amended to read:

47 1. **Bureau.** "Bureau" means the Bureau of ~~Seeial~~ Child and
49 Family Services with respect to chapters 958-A and 1071, and the
Bureau of ~~Seeial~~ Child and Family Services or the Bureau of
51 Medical Services with respect to section 7703.

1 4. Director. "Director" means the Director of the Bureau of
2 Soeial Child and Family Services with respect to confidential
3 information derived from chapters 958-A and 1071, and the Director
4 of the Bureau of Medical Services or the Director of the Bureau of
5 Soeial Child and Family Services with respect to confidential
6 information derived from section 7703.

7
8 **Sec. 6. 22 MRSA c. 1071, sub-c. X, as enacted by PL 1987, c. 511,**
9 Pt. A, §4 is repealed.

11 **Sec. 7. 22 MRSA c. 1071, sub-c. X-A is enacted to read:**

13 SUBCHAPTER X-A

15 CHILD WELFARE SERVICES

17 §4087. Child welfare services ombudsman

19 1. Office established. The Office of Child Welfare Services
20 Ombudsman is established within the Executive Department and is
21 autonomous from any other state agency. Its purpose is to
22 represent the best interests of individuals involved in the
23 State's child welfare system as a class and to investigate and
24 resolve complaints against state agencies that may be infringing
25 on the rights of individuals involved in the State's child welfare
26 system.

27
28 2. Appointment of child welfare services ombudsman. The
29 child welfare services ombudsman shall be appointed by the
30 Governor, subject to review by the joint standing committee of the
31 Legislature having jurisdiction over human resource matters and to
32 confirmation by the Legislature and shall serve at the pleasure of
33 the Governor. Any vacancy shall be filled by similar appointment.

35 3. Powers and duties. The ombudsman may:

37 A. Provide ombudsman services to individual citizens in
38 matters relating to those child welfare services provided by
39 and under the jurisdiction of the State;

41 B. Advise, consult and assist the executive and legislative
42 branches of State Government, especially the Governor, on
43 activities of State Government related to child welfare. The
44 ombudsman shall be solely advisory in nature, shall not be
45 delegated any administrative authority or responsibility nor
46 supplant existing avenues for recourse or appeals. The
47 ombudsman may make recommendations regarding any function
48 intended to improve the quality of child welfare services in
49 State Government. If findings, comments or recommendations
50 of the ombudsman vary from, or are in addition to, those of
51 the bureau, department or other state agency, the statements
of the ombudsman shall be sent to the

1 respective branches of State Government as attachments to
2 those submitted by the bureau, department or other state
3 agency. Recommendations may take the form of proposed
4 budgetary, legislative or policy actions;

5
6 C. Review and evaluate, on a continuing basis, state and
7 federal policies and programs relating to the provision of
8 child welfare services conducted or assisted by any state
9 departments or agencies for the purpose of determining the
10 value and impact on individuals involved in the State's
11 welfare system;

12
13 D. Receive and address inquiries, complaints, problems or
14 requests for information and assistance regarding the State's
15 child welfare services;

16
17 E. Conduct research, gather facts and evaluate procedures
18 and policies regarding the State's child welfare services;

19
20 F. Consult with and advise state agencies on operational and
21 management issues or specific or special situations regarding
22 child welfare services and recommend remedial actions when
23 necessary through direct oral communication, memoranda,
24 reports or meetings;

25
26 G. Serve as a coordinator of communication and cooperation
27 for all components of the State's child welfare services
28 system, especially among state agencies, whenever desirable
29 or necessary;

30
31 H. Make referrals for service to relevant state agencies
32 when appropriate;

33
34 I. Set priorities to effectively carry out the purposes of
35 this subchapter; and

36
37 J. Inform the public to encourage a better public
38 understanding of the current status of the State's child
39 welfare system by collecting and disseminating information,
40 conducting or commissioning studies and publishing the
41 results, and by issuing publications and reports.

42
43 4. Confidentiality of records. No information or records
44 maintained by the office relating to a complaint or investigation
45 may be disclosed unless the ombudsman authorizes the disclosure
46 and the disclosure is otherwise permitted pursuant to section
47 4008. The ombudsman shall not disclose the identity of any
48 complainant unless:

49
50 A. The complainant or a legal representative consents in
51 writing to the disclosure; or

1 B. A court orders the disclosure.

3 A complainant or a legal representative, in providing the consent,
5 may specify to whom the identity may be disclosed and for what
 purposes, in which event no other disclosure is authorized.

7 5. Administration. The ombudsman shall administer, in
 accordance with current fiscal and accounting rules of the State
9 and in accordance with the philosophy, objectives and authority of
 this subchapter, any funds appropriated for expenditure by the
11 ombudsman or any grants or gifts which may become available,
 accepted and received by the ombudsman; make an annual report
13 which shall be submitted directly to the commissioner, the
 Governor and the joint standing committee of the Legislature
15 having jurisdiction over human resource matters, not later than
 March 1st of each year, concerning its work, recommendations and
17 interests of the previous fiscal year and future plans; and make
 such interim reports as the ombudsman deems advisable. Copies of
19 these reports shall be available to all Legislators and other
 state agencies upon request.

21 6. Expenses of ombudsman. The ombudsman, within established
23 budgetary limits and as allowed by law, shall authorize and
 approve travel, subsistence and related necessary expenses of the
25 ombudsman or members of the office, incurred while traveling on
 official business.

27 7. Information from state agencies. State agencies shall
29 provide to the ombudsman copies of all reports and other
 information required for the fulfillment of this chapter pursuant
31 to section 4008, subsection 3, paragraph D.

33 8. Legal services. The Department of the Attorney General
 shall provide legal services as the ombudsman deems necessary to
35 carry out the purposes of this subchapter.

37 9. Location. Office space shall be made available for the
 ombudsman within the Capitol Complex.

39 10. Review. This office shall be reviewed 2 years after the
41 effective date of this section by the joint standing committee of
 the Legislature having jurisdiction over human resource matters
43 and the joint standing committee of the Legislature having
 jurisdiction over audit and program review matters.

45 Sec. 8. 22 MRSA c. 1071, sub-c. XI, as enacted by PL 1987, c.
47 511, Pt. B, §2, is repealed.

49 Sec. 9. 22 MRSA c. 1071, sub-c. XI-A is enacted to read:

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SUBCHAPTER XI-A

OUT-OF-HOME ABUSE AND NEGLECT

INVESTIGATING TEAM

§4088. Out-of-home abuse and neglect investigating team

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

A. "Bureau" means the Bureau of Child and Family Services within the Department of Human Services.

B. "Department" means the Department of Human Services.

C. "License" shall be defined in accordance with Title 5, section 8002, and shall include approval and registration.

D. "Out-of-home abuse and neglect" means abuse and neglect of a child which occurs in a facility or by a person subject to licensure or inspection by this department, the Department of Educational and Cultural Services, the Department of Corrections and the Department of Mental Health and Mental Retardation or in a facility operated by these departments.

E. "Team" means the out-of-home abuse and neglect investigating team.

1-A. Applicability of other definitions. Any terms defined or used in subchapter II, section 4002, have the same meaning when used in this subchapter.

2. Team established. The out-of-home abuse and neglect investigating team is established to investigate reports of suspected abuse and neglect of children by persons or in facilities subject to licensure pursuant to this Title. The team is also authorized to assist other persons or agencies to investigate suspected abuse and neglect by persons or in facilities providing services to children that are subject to licensure pursuant to other Titles and to assist in investigations of suspected abuse and neglect in state-operated facilities providing services for children.

3. Authority and responsibility. The team shall have the following authority and responsibilities regarding investigation of out-of-home abuse and neglect. The team:

A. Shall receive all reports of out-of-home abuse and neglect;

B. Shall investigate all reports received by the department regarding alleged out-of-home abuse and neglect occurring in

1 facilities or by persons subject to licensure by the
2 department;

3
4 C. Shall conduct a single investigation sufficient to
5 determine not only if abuse or neglect have occurred but also
6 to determine whether a licensing violation has occurred in
7 order to protect children from further harm and establish a
8 basis upon which to take licensing action. This procedure
9 minimizes duplicative or redundant investigations to the
10 extent possible in response to the same or related
11 allegations of out-of-home abuse or neglect in facilities or
12 by persons subject to licensure by the department;

13
14 D. Shall coordinate and consult with the bureau staff
15 performing general licensing functions to eliminate
16 duplicative or redundant investigations to the extent
17 possible and to prevent, correct or eliminate the abuse or
18 neglect or threat of abuse or neglect in out-of-home settings;

19
20 E. Shall provide the results of the investigation to the
21 bureau's licensing staff for appropriate action;

22
23 F. Shall include relevant professionals outside the
24 department as members of the team for all investigations of
25 residential treatment centers, group homes or day care
26 centers mandated by this subchapter and for other child care
27 facilities as warranted;

28
29 G. When a report alleges out-of-home abuse and neglect in
30 facilities or by persons not subject to licensure by the
31 department, shall immediately refer the report to the agency
32 or department charged with the responsibility to investigate
33 such a report or, if applicable, to the state department
34 operating the facility;

35
36 H. With respect to reports described in paragraph G, may, on
37 its own initiative or upon request of another department or
38 agency charged with the responsibility to investigate,
39 participate in the out-of-home abuse and neglect
40 investigation of persons or facilities subject to licensure
41 or operated by the Department of Educational and Cultural
42 Services, the Department of Corrections or the Department of
43 Mental Health and Mental Retardation;

44
45 I. Shall refer to the office of the district attorney or
46 office of the Attorney General, when appropriate, any case in
47 which criminal activity is alleged and shall coordinate its
48 investigation with that office to minimize the trauma to the
49 children involved; and

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51 J. Shall consult and train law enforcement personnel,
advocates and others in the identification, reporting,

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B. The committee shall consist of not fewer than 10 nor more than 30 members.

C. The commissioner shall designate one member as chair of the committee.

D. The commissioner shall appoint members of the committee for terms of 3 years, except that:

(1) Of the first members appointed, 1/3 shall be appointed for terms of 3 years, 1/3 for terms of 2 years and 1/3 for terms of one year; and

(2) Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the predecessor was appointed shall be appointed only for the remainder of the term.

2. Duties. The committee shall have the following duties:

A. To advise the department on the development of policies and programs which affect the well-being of children and their families for whom the department has responsibility under chapter 1071, as well as those programs which prevent the maltreatment of children in the State;

B. To reinforce the department's awareness of the needs of Maine's children and their families;

C. To increase the department's awareness of the impact of its activities on Maine's children and their families; and

D. To assist in communicating the activities and goals of the department to the public.

3. Compensation. Members of the committee shall serve without pay, but shall be reimbursed for expenses incurred in the performance of their duties pursuant to Title 5, chapter 379.

Sec. 11. 22 MRSA §5005, sub-§1, ¶A, as enacted by PL 1987, c. 511, Pt. B, §2, is amended to read:

A. "Bureau" means the Bureau of Social Child and Family Services within the Department of Human Services.

Sec. 12. 22 MRSA §5005, sub-§6, as enacted by PL 1987, c. 511, Pt. B, §2, is amended to read:

6. Assistance. Staff performing general licensing functions may assist the team in conducting out-of-home investigations upon the request of the Director of the Bureau of

1 Social Child and Family Services, provided that the licensing
2 staff member has neither currently licensed nor monitored for
3 compliance the subject of the investigation.

5 **Sec. 13. 22 MRSA §5308, first ¶**, as amended by PL 1981, c. 10,
6 §2, is further amended to read:

7
8 There shall be within the Department of Human Services the
9 Bureau of Social Child and Family Services. It shall be a
10 separate, distinct administrative unit, which shall not be
11 integrated in any way as a part or function of any other
12 administrative unit of the department. It shall be equal in
13 organizational level and status with other major organizational
14 units within the department or its successors. The bureau shall
15 be under the immediate and full supervision of the commissioner
16 or the chief officer of whatsoever unit shall succeed the
17 department.

19 **Sec. 14. 22 MRSA §5311, sub-§1**, as enacted by PL 1985, c. 476,
20 is amended to read:

21 1. **Establishment.** There is established, within the Bureau
22 of Social Child and Family Services, the Office of Child Care
23 Coordination.

25 **Sec. 15. 22 MRSA §7802, sub-§1-A**, as enacted by PL 1987, c.
26 511, Pt. B, §3, is amended to read:

29 1-A. **Consolidation of functions.** All staff performing
30 general licensing functions within the Bureau of Social Child
31 and Family Services, including the out-of-home abuse and neglect
32 investigating team when investigating pursuant to section 5005,
33 subsection 3, paragraph C, shall be consolidated as a single
34 organizational unit.

35 **Sec. 16. Transition provision.** The Bureau of Child and Family
36 Services shall be the successor in every way to the powers,
37 duties and functions of the former Bureau of Social Services and
38 its predecessor, the Bureau of Resource Development.

41 **Sec. 17. Revision clause.** Wherever in the Maine Revised
42 Statutes the words "Bureau of Social Services" appear or
43 reference is made to that name, they shall be amended to read
44 and mean the "Bureau of Child and Family Services."

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48 **STATEMENT OF FACT**

49 This bill establishes a Child Welfare Advisory Committee
50 and redesignates the Bureau of Social Services as the Bureau of
51 Child and Family Services.

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Sections 1, 3, 4, 5, 11, 12, 13 and 14 replace the words "Bureau of Social Services" with "Bureau of Child and Family Services."

Section 2 establishes the Child Welfare Advisory Committee by adding it to the list of advisory boards under the Maine Revised Statutes, Title 5, chapter 379.

Sections 6, 7, 8 and 9 repeal the Maine Revised Statutes, Title 22, chapter 1071, subchapters X and XI and reenact them in their entirety making changes only to resolve conflicts in the numbering of certain sections.

Section 10 establishes the composition of the Child Welfare Advisory Committee and describes its duties to include advising the Department of Human Services on the development of policies and programs affecting the well-being of children and their families, reinforcing the department's awareness of the needs of Maine's children and their families and communicating the activities and goals of the department to the public.

Sections 16 and 17 provide that the Bureau of Child and Family Services succeeds the former Bureau of Social Services in its powers, duties and functions; and that wherever the former name of the bureau appears in the Maine Revised Statutes, it is amended to read and mean the Bureau of Child and Family Services.