

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1793

H.P. 1338

House of Representatives, May 8, 2001

Resolve, to Establish the Commission to Review the Child Protective System.

(EMERGENCY)

Reported by Representative LAVERDIERE for the Joint Standing Committee on Judiciary pursuant to Joint Order 2001, H.P. 1303.

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

2 **Emergency preamble. Whereas,** Acts and resolves of the
Legislature do not become effective until 90 days after
adjournment unless enacted as emergencies; and

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6 **Whereas,** there is tremendous concern that the existing child
protective laws and system are not adequately and consistently
protecting the children they were designed to serve; and

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10 **Whereas,** families and other participants in the system
believe their rights and interests are not adequately and
consistently taken into account; and

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14 **Whereas,** a study must be initiated before the 90-day period
expires in order that the study may be completed and a report
submitted in time for submission to the next legislative session;
and

18 **Whereas,** in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
Maine and require the following legislation as immediately
necessary for the preservation of the public peace, health and
safety; now, therefore, be it

24 **Sec. 1. Commission established. Resolved:** That the Commission
to Review the Child Protective System, referred to in this
resolve as the "commission," is established; and be it further

28 **Sec. 2. Commission membership. Resolved:** That the commission
consists of the following 11 members:

30 1. Two members of the Senate, appointed by the President of
the Senate;

34 2. Three members of the House of Representatives, appointed
by the Speaker of the House of Representatives;

36 3. An attorney who has experience representing parents in
child protective cases, appointed by the President of the Senate;

40 4. An attorney who has experience serving as a guardian ad
litem in child protective cases, appointed by the Speaker of the
House of Representatives;

44 5. An advocate for children, appointed by the President of
the Senate;

46 6. A current or former foster parent, appointed by the
48 Speaker of the House of Representatives;

2 7. A court appointed special advocate volunteer, appointed
by the President of the Senate; and

4 8. A caseworker or supervisor employed by the Department
of Human Services, appointed by the Commissioner of Human
6 Services.

8 The Chief Justice of the Supreme Judicial Court is requested
to designate a District Court Judge to participate with the
10 commission; and be it further

12 **Sec. 3. Chairs. Resolved:** That the first named Senate member
is the Senate chair of the commission and the first named House
14 of Representatives member is the House chair of the commission;
and be it further

16 **Sec. 4. Appointments; meetings. Resolved:** That all
18 appointments must be made no later than 30 days following the
effective date of this resolve. The Executive Director of the
20 Legislative Council must be notified by all appointing
authorities once the selections have been made. When the
22 appointment of all members has been completed, the chairs of the
commission shall call and convene the first meeting of the
24 commission no later than September 15, 2001; and be it further

26 **Sec. 5. Duties. Resolved:** That the commission shall study the
child protective system and make recommendations for changes in
28 laws, rules and procedures.

30 1. In conducting the study, the commission shall examine
the following issues:

32 A. Information about rights and future proceedings that
34 should be given to parents at every stage of the child
protective process;

36 B. The availability of information in the possession of the
38 Department of Human Services to parents and their attorneys,
and the timing and extent of discovery;

40 C. The accurate preservation of interviews involving
42 employees of the Department of Human Services,
communications with employees of the Department of Human
44 Services and communications involving parents, including the
reliability of the preservation and appropriate use of the
46 communications;

48 D. The appropriate role of intervenors; who, if anyone,
should have automatic intervenor status; who should be
50 permitted to apply for intervenor status; and what criteria

2 the court should use in determining whether to grant
intervenor status;

4 E. The determination of the best interest of the child,
while balancing the child's safety and privacy interests
6 with the public's interest in openness in governmental
actions and records, particularly with regard to termination
8 of parental rights hearings;

10 F. The appropriate standard of proof that the State must
bear at each stage of child protection proceedings;

12 G. The role of and requirements that apply to guardians ad
14 litem and the extent to which guardians ad litem are
fulfilling their responsibilities;

16 H. The liability of the State, the Department of Human
18 Services and employees of the Department of Human Services,
either as a governmental entity or personally, for removal
20 of children from their homes or other actions when such
actions are overturned by the court as erroneous or
22 unnecessary;

24 I. The mandatory reporting laws concerning child and adult
abuse and neglect; the consequences of failing to report;
26 and the State's role in educating the public about reporting
child abuse and neglect; and

28 J. Any other issues the commission determines appropriate.

30 2. In examining these issues, the commission may:

32 A. Hold a public hearing;

34 B. Hold informational sessions for discussions with
36 knowledgeable persons;

38 C. Review laws, procedures and activities in other
40 jurisdictions; and

42 D. Carry out other activities relevant to the purposes of
the study; and be it further

44 **Sec. 6. Staff assistance. Resolved:** That, upon approval of the
Legislative Council, the Office of Policy and Legal Analysis
46 shall provide necessary staffing services to the commission; and
be it further

48 **Sec. 7. Compensation. Resolved:** That the members of the
50 commission who are Legislators are entitled to the legislative

per diem, as defined in the Maine Revised Statutes, Title 3, section 2, and reimbursement for necessary expenses incurred for their attendance at authorized meetings of the commission. Other members of the commission who are not otherwise compensated by their employers or other entities that they represent are entitled to receive reimbursement of necessary expenses incurred for their attendance at authorized meetings; and be it further

Sec. 8. Report. Resolved: That the commission shall submit its report, together with any necessary implementing legislation, to the Joint Standing Committee on Judiciary no later than December 15, 2001. The Joint Standing Committee on Judiciary may introduce legislation related to the report to the Second Regular Session of the 120th Legislature. If the commission requires a limited extension of time to conclude its work, it may apply to the Legislative Council, which may grant the extension; and be it further

Sec. 9. Budget. Resolved: That the chairs of the commission, with assistance from the commission staff, shall administer the commission's budget. Within 10 days after its first meeting, the commission shall present a work plan and proposed budget to the Legislative Council for approval. The commission may not incur expenses that would result in the commission's exceeding its approved budget. Upon request from the commission, the Executive Director of the Legislative Council shall promptly provide the commission chairs and staff with a status report on the commission's budget, expenditures incurred and paid and available funds; and be it further

Sec. 10. Appropriation. Resolved: That the following funds are appropriated from the General Fund to carry out the purposes of this resolve.

2001-02

LEGISLATURE

Commission to Review the Child Protective System

Personal Services	\$1,650
All Other	5,800

Provides funds for the per diem and expenses of legislative members and other eligible members of the Commission to Review the Child Protective System, to hold a public hearing and informational sessions and to print the required report.

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**LEGISLATURE
TOTAL**

\$7,450

Emergency clause. In view of the emergency cited in the preamble, this resolve takes effect when approved.

FISCAL NOTE

2001-02

APPROPRIATIONS/ALLOCATIONS

General Fund \$7,450

This bill includes a General Fund appropriation of \$7,450 in fiscal year 2001-02 for the per diem and expenses of legislative members and other eligible members of the Commission to Review the Child Protective System, to hold a public hearing and informational sessions and to print the required report.

The additional costs associated with providing staffing assistance to the commission during the interim between legislative sessions can be absorbed by the Legislature utilizing existing budgeted resources. If an extension of the reporting deadline is granted and the commission requires staffing assistance during the legislative session, the Legislature may require an additional General Fund appropriation to contract for staff services.

The additional costs associated with participating in the review of the child protective system can be absorbed by the Department of Human Services and the Judicial Department utilizing existing budgeted resources.

SUMMARY

This resolve creates a study commission to examine many factors about the child protective system. The commission consists of 11 members, appointed by the President of the Senate and the Speaker of the House of Representatives, with the exception of a child protective caseworker who will be appointed by the Commissioner of Human Services. The Chief Justice of the Supreme Judicial Court is requested to appoint a District Court Judge to participate with the commission.

The commission's duties include reviewing the issues raised by the many bills introduced into the First Regular Session of the 120th Legislature and to review and investigate specific

2 problems and questions in the child protective system. These
duties focus mainly on the legal rights and duties of parents,
4 guardians ad litem, the Department of Human Services and other
participants in the child protective legal system. The
6 commission is charged with making recommendations for changes in
laws, rules and procedures and to report back to the Joint
Standing Committee on Judiciary no later than December 15, 2001.
8 The committee may report out legislation related to the report.