

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST SPECIAL SESSION-2023

Legislative Document

No. 1788

S.P. 713

In Senate, April 25, 2023

An Act to Establish the Office of the Inspector General of Child Protection

Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator BALDACCI of Penobscot.
Cosponsored by Senators: BAILEY of York, BEEBE-CENTER of Knox, HICKMAN of Kennebec, NANGLE of Cumberland.

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

2 **Sec. 1. 2 MRSA §6, sub-§1**, as amended by PL 2011, c. 657, Pt. Y, §1, is further
3 amended to read:

4 **1. Range 91.** The salaries of the following state officials and employees are within
5 salary range 91:

- 6 Commissioner of Transportation;
- 7 Commissioner of Agriculture, Conservation and Forestry;
- 8 Commissioner of Administrative and Financial Services;
- 9 Commissioner of Education;
- 10 Commissioner of Environmental Protection;
- 11 Executive Director of Dirigo Health;
- 12 Commissioner of Public Safety;
- 13 Commissioner of Professional and Financial Regulation;
- 14 Commissioner of Labor;
- 15 Commissioner of Inland Fisheries and Wildlife;
- 16 Commissioner of Marine Resources;
- 17 Commissioner of Corrections;
- 18 Commissioner of Economic and Community Development;
- 19 Commissioner of Defense, Veterans and Emergency Management; ~~and~~
- 20 Executive Director, Workers' Compensation Board; and
- 21 Inspector General, Office of the Inspector General.

22 **Sec. 2. 22 MRSA §4087-A, sub-§6**, as repealed and replaced by PL 2005, c. 410,
23 §2, is amended to read:

24 **6. Confidentiality of records.** Information held by or records or case-specific reports
25 maintained by the program are confidential. Disclosure may be made to the inspector
26 general under Title 22-B and as allowed or required in accordance with the provisions of
27 section 4008, subsections 2 and 3. Unlawful dissemination is subject to the provisions of
28 section 4008, subsection 4.

29 **Sec. 3. 22 MRSA §4087-A, sub-§13** is enacted to read:

30 **13. Coordination with the inspector general.** The ombudsman program shall consult
31 and cooperate with the inspector general established under Title 22-B, including sharing
32 information and conducting joint activities in furtherance of the protection of children in
33 the State from death, serious injury or abuse or neglect.

34 **Sec. 4. 22-B MRSA** is enacted to read:

35 **TITLE 22-B**

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CHILD AND FAMILY SERVICES

SUBTITLE 1

OFFICE OF THE INSPECTOR GENERAL

CHAPTER 1

DEPARTMENTAL ORGANIZATION AND OPERATION

SUBCHAPTER 1

GENERAL PROVISIONS

§101. Short title

This subtitle may be known and cited as "the Inspector General of Child Protection Act."

§102. Definitions

As used in this Title, unless the context otherwise indicates, the following terms have the following meanings.

1. Abuse or neglect. "Abuse or neglect" has the same meaning as in Title 22, section 4002, subsection 1.

2. Administration of juvenile justice. "Administration of juvenile justice" has the same meaning as in Title 15, section 3003, subsection 1-A.

3. Child. "Child" means any individual who has not attained 18 years of age.

4. Child advocacy center. "Child advocacy center" has the same meaning as in Title 22, section 4019, subsection 1, paragraph B.

5. Child protection proceeding. "Child protection proceeding" has the same meaning as in Title 22, section 4002, subsection 3.

6. Children's home. "Children's home" has the same meaning as in Title 22, section 8101, subsection 1.

7. Children's residential care facility. "Children's residential care facility" has the same meaning as in Title 22, section 8101, subsection 4.

8. Children's residential treatment facility with secure capacity. "Children's residential treatment facility with secure capacity" has the same meaning as in Title 22, section 8101, subsection 4-B.

9. Child welfare services. "Child welfare services" means any services provided by a person to a child who is the subject of a child protection proceeding.

10. Custodian. "Custodian" has the same meaning as in Title 22, section 4002, subsection 5.

11. Department. "Department" means the Department of Health and Human Services.

1 12. Detention facility. "Detention facility" has the same meaning as in Title 34-A,
2 section 1001, subsection 8-A.

3 13. Emergency children's shelter. "Emergency children's shelter" has the same
4 meaning as in Title 22, section 8101, subsection 2.

5 14. Foster home. "Foster home" has the same meaning as "family foster home" as
6 defined in Title 22, section 8101, subsection 3 or "Indian foster family home" as defined in
7 Title 22, section 8101, subsection 3-A.

8 15. Foster parent. "Foster parent" has the same meaning as in Title 22, section 4002,
9 subsection 5-A.

10 16. Long Creek Youth Development Center. "Long Creek Youth Development
11 Center" means the facility established under Title 34-A, section 3801.

12 17. Malfeasance. "Malfeasance" means a wrongful act that the person has no legal
13 right to do or any wrongful conduct that affects, interrupts or interferes with performance
14 of an official duty.

15 18. Misfeasance. "Misfeasance" means the improper performance of some act that a
16 person may lawfully do.

17 19. Office. "Office" means the Office of the Inspector General.

18 20. Person. "Person" means an individual, corporation, facility, institution or agency,
19 public or private.

20 21. Qualified residential treatment program. "Qualified residential treatment
21 program" has the same meaning as in Title 22, section 4002, subsection 6-C.

22 22. Serious injury. "Serious injury" has the same meaning as in Title 22, section 4002,
23 subsection 11.

24 23. Shelter for homeless children. "Shelter for homeless children" has the same
25 meaning as in Title 22, section 8101, subsection 4-A.

26 24. Specialized children's home. "Specialized children's home" has the same
27 meaning as in Title 22, section 8101, subsection 5.

28 25. State agency client. "State agency client" has the same meaning as in Title 20-A,
29 section 1, subsection 34-A.

30 26. Suspicious child death. "Suspicious child death" has the same meaning as in Title
31 22, section 4002, subsection 12.

32 27. Temporary holding resource. "Temporary holding resource" has the same
33 meaning as in Title 15, section 3003, subsection 26.

34 **SUBCHAPTER 2**

35 **ORGANIZATION**

36 **§201. Office established**

37 1. Establishment. The Office of the Inspector General is established as a body
38 corporate and politic and a public instrumentality of the State.

1 **2. Departmental responsibilities.** The department has responsibility for investigating
2 matters relating to the child protection system and other individuals or agencies with
3 responsibility for the care and protection of children in the State.

4 **§202. Inspector general**

5 The office is under the control and supervision of the inspector general.

6 **1. Appointment.** The Governor shall appoint the inspector general, subject to review
7 by the joint standing committee of the Legislature having jurisdiction over child welfare
8 matters and confirmation by the Senate. In appointing the inspector general, the Governor
9 shall select an individual:

10 A. Without regard to political affiliation;

11 B. On the basis of integrity and capability for strong leadership;

12 C. With demonstrated ability in law, management analysis, public administration,
13 investigation, criminal justice administration or other closely related fields; and

14 D. Who has not served within the department within the past 5 years.

15 **2. Term of office; reappointment.** The inspector general serves for 5 years and may
16 be reappointed, except that the inspector general may not serve for more than 10 years
17 without approval of the Legislature.

18 **3. Vacancy.** A vacancy of the inspector general position must be filled in accordance
19 with Title 5, section 1. The inspector general shall appoint one of the office's deputy
20 inspectors general to perform the duties of the inspector general, in addition to the duties
21 of that deputy, during the inspector general's temporary absence or disability.

22 **4. Removal.** The Governor may remove the inspector general for just cause.

23 **§203. Restriction on political activity**

24 The inspector general may not engage in political activity.

25 **§204. Powers and duties of inspector general**

26 **1. Administration.** The inspector general shall administer the office in accordance
27 with the requirements of this Title and shall fulfill the duties prescribed to the inspector
28 general by state and federal law.

29 **2. Rulemaking.** The inspector general shall adopt rules to implement this Title. Rules
30 adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter
31 375, subchapter 2-A, unless otherwise specified.

32 **3. Employees.** The inspector general may employ personnel as necessary to carry out
33 the work of the office. All personnel of the office are under the immediate supervision,
34 direction and control of the inspector general.

35 **4. Appointments.** All deputy inspectors general and office directors are appointed by
36 the inspector general and serve at the pleasure of the inspector general. Deputy inspectors
37 general and office directors appointed pursuant to this subsection must have educational
38 qualifications and professional experience directly related to the functions of and services
39 provided by the relevant unit or office.

1 **5. National certification.** No later than 2 years after the date of confirmation, the
2 inspector general shall obtain certification from a nationally recognized association of
3 inspectors general that provides and sponsors educational programs and establishes
4 professional qualifications, certifications and licensing for inspectors general.

5 **6. Investigations.** The office shall conduct investigations in accordance with
6 subchapter 3.

7 **SUBCHAPTER 3**

8 **INVESTIGATIONS**

9 **§301. Authority to investigate**

10 This section governs the authority of the office to investigate matters relating to child
11 welfare or juvenile justice services.

12 **1. Investigations.** The office shall investigate:

13 A. Allegations or incidents of misconduct, misfeasance, malfeasance or violations of
14 statutes, rules or written protocols by:

15 (1) The department, employees of the department or a person under contract with
16 the department;

17 (2) A child care facility licensed under Title 22, section 8301-A, subsection 2 or a
18 family child care provider licensed under Title 22, section 8301-A, subsection 3;

19 (3) A children's home, children's residential care facility, children's residential
20 treatment facility with secure capacity, emergency children's shelter, qualified
21 residential treatment program, shelter for homeless children or specialized
22 children's home;

23 (4) The Long Creek Youth Development Center, a detention facility or a temporary
24 holding resource, employees of the Long Creek Youth Development Center, the
25 detention facility or the temporary holding resource or a person under contract with
26 the Long Creek Youth Development Center, the detention facility or the temporary
27 holding resource;

28 (5) A foster parent; and

29 (6) Any other provider of child welfare services or the administration of juvenile
30 justice; or

31 B. A suspicious child death or serious injury of a child, as determined by the office:

32 (1) In a child care facility licensed under Title 22, section 8301-A, subsection 2 or
33 a family child care provider licensed under Title 22, section 8301-A, subsection 3;

34 (2) In a children's home, children's residential care facility, children's residential
35 treatment facility with secure capacity, emergency children's shelter, qualified
36 residential treatment program, shelter for homeless children or specialized
37 children's home;

38 (3) In a foster home;

1 (4) In the Long Creek Youth Development Center, a detention facility or a
2 temporary holding resource;

3 (5) By employees of the Long Creek Youth Development Center, the detention
4 facility or the temporary holding resource or a person under contract with the Long
5 Creek Youth Development Center, the detention facility or the temporary holding
6 resource;

7 (6) In any case in which a child or the child's custodian receives child welfare
8 services or the administration of juvenile justice; or

9 (7) In any case involving an investigation under the Child and Family Services
10 and Child Protection Act that has been open for one year or less.

11 **§302. Required reporting**

12 This section governs required reporting to the office regarding a suspicious child death
13 or serious injury of a child.

14 **1. Death or serious injury.** The department shall report to the office all cases of
15 suspicious child death or serious injury of a child that occurs:

16 A. In a foster home;

17 B. In a child care facility licensed under Title 22, section 8301-A, subsection 2 or a
18 family child care provider licensed under Title 22, section 8301-A, subsection 3;

19 C. In a children's home, children's residential care facility, children's residential
20 treatment facility with secure capacity, emergency children's shelter, qualified
21 residential treatment program, shelter for homeless children or specialized children's
22 home; or

23 D. By any other provider of child welfare services.

24 **2. Sexual abuse in state care or custody.** The department, the Long Creek Youth
25 Development Center, a detention facility or a temporary holding resource shall report to
26 the office all cases of suspected sexual abuse of a state agency client.

27 **3. Types of conduct.** The department shall report to the office allegations of any of the
28 following types of conduct that occurs by or to a child in a foster home, the Long Creek
29 Youth Development Center, a detention facility or a temporary holding resource:

30 A. Assault;

31 B. Escape;

32 C. Attempted suicide or self-harm;

33 D. Deliberate property damage;

34 E. The use of mechanical restraints; or

35 F. A significant medical event.

36 The office shall adopt rules to clarify the reporting requirements pursuant to this subsection,
37 if requested by the department.

38 **4. Leadership changes.** The department shall notify the office of any leadership
39 changes within the department and within any children's home, children's residential care
40 facility, children's residential treatment facility with secure capacity, emergency children's

1 shelter, qualified residential treatment program, shelter for homeless children or specialized
2 children's home.

3 **5. Misconduct of employee.** The department shall notify the office of potential
4 misconduct, misfeasance, malfeasance or violations of statutes, rules or written protocols
5 by a department employee.

6 **§303. Complaints**

7 This section governs complaints of misconduct, misfeasance, malfeasance or violations
8 of statutes, rules or written protocols.

9 **1. Form.** Complaints to the office may be made in writing or through a toll-free
10 telephone line established by the office.

11 **2. Evaluation.** The office shall evaluate complaints to determine whether a full
12 investigation is warranted.

13 **3. Investigation.** The office shall conduct an investigation of a complaint if:

14 A. It contains an allegation of misconduct, misfeasance, malfeasance or violations of
15 statutes, rules or written protocols;

16 B. It is against a person within the jurisdiction of the office; and

17 C. The allegation can be independently verified by the office through an investigation.

18 **§304. Independent investigation**

19 The inspector general shall conduct an investigation under this subchapter independent
20 of and separate from an investigation pursuant to any other provision of law.

21 **§305. Procedures**

22 This section governs procedures relating to investigations by the office.

23 **1. Determination.** Within 14 days after receipt of a complaint under section 303, the
24 office shall determine whether it will conduct an investigation. The inspector general is
25 not required to investigate all complaints. The inspector general, with input from the Office
26 of the Attorney General, shall prioritize and select investigations that further the intent of
27 this Act and assist in legislative oversight of the Child and Family Services and Child
28 Protection Act and the administration of juvenile justice. If the inspector general does not
29 investigate a complaint the inspector general may recommend an alternative means to
30 resolve the issues in the complaint.

31 **2. Retrieval of records; unannounced visits.** The office shall retrieve relevant
32 records through request, subpoena or unannounced visit and review those records. If the
33 office makes an unannounced visit to a foster home or a provider of child welfare services
34 or administration of juvenile justice services, or a Department of Corrections facility, the
35 office may request a statement signed by a person responsible for the records or a
36 supervisor that includes:

37 A. Validation of the integrity and security of the records;

38 B. A statement that the person conducted a diligent search for the records; and

39 C. A statement that the person agrees to immediately provide to the office any relevant
40 records received, located or generated after the visit with the names of the persons who

1 had access to the records since the records were secured and whether any of the records
2 were removed from or added to the records since the records were secured.

3 A person may make photocopies of the original records provided in response to an
4 unannounced visit in the presence of a representative of the office for the purposes of
5 creating a working record in a manner that ensures confidentiality.

6 The office shall provide to a person responsible for the records or a supervisor a copy of
7 the request, including the date and the titles of the records received pursuant to that request.

8 If the office receives original records in response to a request, the office shall return the
9 original records as soon as practicable and not later than 10 working days after the records
10 were received.

11 **3. Interviews.** The office shall interview all relevant individuals in a manner that
12 respects the dignity and human rights of the individual and in a manner that does not disrupt
13 providers of child welfare services. If advance notice to a foster parent or a supervisor of
14 a provider of child welfare services is not provided, a representative of the office shall,
15 upon arrival at the location of the interview, request that an on-site employee notify the
16 supervisor of the representative's arrival.

17 **4. Preservation of evidence.** The office shall conduct all investigations in a manner
18 designed to ensure the preservation of evidence for possible use in a criminal prosecution.

19 **5. Court review.** A report prepared by the inspector general and other work product
20 of the office is not reviewable by a court. The inspector general or any deputy inspector
21 general, office director or employee of the office may not be required to testify or produce
22 evidence in a judicial or administrative proceeding, except in a proceeding brought to
23 enforce this Act or by order of a court of competent jurisdiction.

24 **6. Licensing referrals.** If a complaint received by the office or a report prepared by
25 the inspector general contains allegations that could be a basis for discipline under an
26 individual's license, the office shall report the facts to the appropriate licensing board.

27 **7. Criminal or civil violation referrals.** The inspector general shall make, at any time,
28 referrals to local, state or federal authorities with regard to any criminal or civil violation.

29 **8. Notice.** If an investigation is opened on a person that contracts with the State, the
30 office shall give notice of the investigation to the relevant state agency.

31 **9. Coordination with ombudsman program.** The inspector general shall consult and
32 cooperate with the ombudsman program established under Title 22, section 4087-A,
33 including sharing information and conducting joint activities in furtherance of the
34 protection of children in the State from death, serious injury or abuse or neglect.

35 **§306. Access to records**

36 The department and the Department of Corrections shall provide the office with direct
37 computer access to all computerized records, reports and documents maintained by the
38 department in connection with the administration of the Child and Family Services and
39 Child Protection Act and the administration of juvenile justice.

40 **§307. Cooperation required**

41 This section governs cooperation of relevant persons or state agencies with
42 investigations by the inspector general.

1 **1. Cooperation defined.** For purposes of this section, "cooperation" or "cooperate"
2 means, with respect to an investigation under this subchapter:

3 A. Providing full access to and production of information and records to the office;

4 B. Diligently searching for requested records;

5 C. Disclosing all requested records and information fairly and honestly;

6 D. A continuing obligation to immediately provide the office any additional records
7 received, located or generated after the date of the request;

8 E. Encouraging employees to fully comply with requests of the office;

9 F. Prohibiting retaliation by persons supervising employees for producing records or
10 information or making a complaint to the office;

11 G. Not requiring permission of supervisors before providing records or information or
12 making a complaint to the office;

13 H. Providing complete and truthful answers to questions posed by the office; and

14 I. Not interfering with or obstructing the investigation.

15 **2. State agencies; providers.** Notwithstanding any provision of law to the contrary,
16 any state agency or any person under the jurisdiction of the inspector general shall
17 cooperate with the office.

18 **3. Law enforcement agencies; exceptions.** Regardless of whether a criminal
19 investigation or prosecution is pending, a law enforcement agency and prosecuting attorney
20 shall cooperate with an investigation conducted by the inspector general in accordance with
21 this subsection.

22 A. Except as provided in paragraph B, a law enforcement agency and prosecuting
23 attorney shall provide the inspector general with copies of all records or reports relevant
24 to the inspector general's investigation.

25 B. Upon request of a law enforcement agency and prosecuting attorney and if the
26 inspector general and prosecuting attorney determine appropriate, the inspector general
27 may suspend an investigation by the office until the criminal investigation or
28 prosecution is completed or has proceeded to a point that, in the judgment of the
29 inspector general, resuming the investigation will not impede or infringe upon the
30 criminal investigation or prosecution.

31 C. The inspector general may not interview a child who has already been interviewed
32 by a law enforcement agency, the department or a child advocacy center in connection
33 with a relevant ongoing investigation of a law enforcement agency.

34 **4. Office of the Attorney General.** In a case involving a suspicious child death or
35 serious injury of a child, the office may submit a written request to the Office of the
36 Attorney General. The Office of the Attorney General shall provide the requested
37 information to the office within 5 days.

38 **5. Cooperation required.** A person shall cooperate with an investigation by the office.

39 A. The office shall report to the relevant licensing board a person who fails to cooperate
40 with an investigation by the office.

1 B. A person who violates this subsection commits a civil violation for which a fine of
2 not more than \$1,000, plus reasonable costs of prosecution, may be adjudged.

3 (1) The Superior Court has exclusive jurisdiction over proceedings brought
4 pursuant to this subsection.

5 (2) Notwithstanding any provision of law to the contrary, any fines or costs
6 collected under this subsection must be transferred to the General Fund.

7 **§308. Subpoena authority**

8 The inspector general may issue a subpoena, enforceable by an action in court, to
9 compel any person to appear, give sworn testimony or produce reports or other information
10 relevant to an investigation. The inspector general shall provide a person compelled by a
11 subpoena to appear with travel allowances and fees authorized by the District Court. A
12 person compelled by a subpoena may obtain counsel at the person's own expense.

13 **§309. Confidentiality of records**

14 Notwithstanding any provision of law to the contrary, all information obtained by the
15 office is confidential and is not subject to subpoena, discovery or introduction into evidence
16 in a civil or criminal action.

17 **SUBCHAPTER 4**

18 **REPORT OF INVESTIGATIONS**

19 **§401. Review; final report**

20 This section governs the review of a report of an investigation by the department,
21 Department of Corrections or other person over which the inspector general has
22 jurisdiction.

23 **1. Initial review by state agency; final report.** The department or Department of
24 Corrections shall, within 15 days of receiving a report, provide a written response to the
25 inspector general accepting, rejecting or requesting a modification to the report, including
26 recommendations or factual errors. The inspector general, in consultation with the
27 Attorney General, shall consider the written response, but is not required to make changes
28 to the report. The report is final within 15 days of receiving the written response from the
29 department or Department of Corrections.

30 **2. Initial review by providers; final report.** A person, other than the department or
31 the Department of Corrections, over which the inspector general has jurisdiction shall,
32 within 30 days of receiving a report, provide a written response to the inspector general
33 accepting, rejecting or requesting a modification to the report, including recommendations
34 or factual errors. The inspector general, in consultation with the Attorney General, shall
35 consider the written response, but is not required to make changes to the report. The person,
36 other than the department or the Department of Corrections, over which the inspector
37 general has jurisdiction may request of the inspector general that all or a part of its written
38 response be appended to the report. The report is final within 15 days of receiving the
39 written response.

40 **§402. Distribution**

1 This section governs the distribution of reports of investigations of the office.

2 **1. General; exceptions.** Reports of investigations may be distributed only to the state
3 agency or provider over which the office has jurisdiction that is the subject of the report,
4 unless the inspector general:

5 A. Consents to distribute the report to another person; or

6 B. In the inspector general's judgment, determines disclosure of the report to a chair of
7 the joint standing committee of the Legislature having jurisdiction over health and
8 human services matters or judiciary matters or the Governor is desirable to inform the
9 chairs or the Governor of important events, issues and developments under the Child
10 and Family Services and Child Protection Act.

11 **2. Redaction; exceptions.** The office shall redact confidential information before
12 distributing a report of an investigation, except when distributing the report to:

13 A. A guardian ad litem;

14 B. An attorney in a proceeding relating to the administration of juvenile justice;

15 C. A chair of the joint standing committee of the Legislature having jurisdiction over
16 health and human services matters or judiciary matters; or

17 D. The Governor.

18 **3. Public distribution.** The inspector general may publicly distribute a summary of a
19 report of an investigation in order to bring awareness to systemic issues:

20 A. After disclosure of the report to a chair of the joint standing committee of the
21 Legislature having jurisdiction over health and human services matters or judiciary
22 matters or the Governor; and

23 B. If the inspector general and the Governor determine that disclosure would be in the
24 best interest of the public.

25 **4. Protection of sources.** The inspector general may withhold the identity of sources
26 of information to protect the sources from retaliation for providing information to the office
27 or making a complaint to the office.

28 **§403. Legislative review**

29 No later than September 15th annually, the inspector general shall provide
30 electronically to the joint standing committees of the Legislature having jurisdiction over
31 health and human services matters and judiciary matters a summary of the reports and
32 investigations made under this Act for the preceding year in accordance with this section.

33 **1. Content.** The summaries must include detailed recommendations and the status of
34 implementing the recommendations, including recommendations on:

35 A. Increasing accountability and legislative oversight of the department with regard to
36 the jurisdiction of the inspector general;

37 B. Increasing accountability and legislative oversight in the administration of juvenile
38 justice; and

39 C. Deterring and identifying fraud, abuse and illegal acts.

1 The summaries must include information about cases that were handled with an alternative
2 response that did not include a child protection proceeding, including examples of best
3 practices in a given situation.

4 **2. Confidential information.** The summaries may not include any confidential or
5 identifying information regarding the subjects of the investigations and reports.

6 **SUMMARY**

7 This bill establishes the Office of the Inspector General to investigate cases of death,
8 serious injury and abuse or neglect of children in state custody or receiving child welfare
9 or juvenile justice services.