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Legislative Document

No. 1263

S.P. 414

In Senate, March 29, 2021

**An Act To Create a Separate Department of Child and Family
Services**

Received by the Secretary of the Senate on March 25, 2021. Referred to the Committee on Health and Human Services pursuant to Joint Rule 308.2 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 DIAMOND of Cumberland.

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

2 **PART A**

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

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

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

23 **Sec. A-2. 22-B MRSA** is enacted to read:

24 **TITLE 22-B**

25 **CHILD AND FAMILY SERVICES**

26 **SUBTITLE 1**

27 **DEPARTMENT OF CHILD AND FAMILY SERVICES**

28 **CHAPTER 1**

29 **DEPARTMENTAL ORGANIZATION AND OPERATION**

30 **SUBCHAPTER 1**

1 **GENERAL PROVISIONS**

2 **§101. Definitions**

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

5 **1. Commissioner.** "Commissioner" means the Commissioner of Child and Family
6 Services.

7 **2. Department.** "Department" means the Department of Child and Family Services.

8 **SUBCHAPTER 2**

9 **ORGANIZATION**

10 **§201. Department established**

11 **1. Establishment.** The Department of Child and Family Services is established as a
12 cabinet-level department.

13 **2. Departmental responsibilities.** The department has responsibility for child and
14 family services, including but not limited to child welfare, children's behavioral health and
15 early childhood services.

16 **§202. Programs and services of department**

17 **1. Services for children and families.** Within available funds, the department shall
18 provide supportive, preventive, protective, public health and intervention services to
19 children and their families. The department shall endeavor to assist families in providing
20 for the developmental health and safety needs of their children, while respecting the rights
21 and preferences of the children and their families. The department shall provide the
22 programs and services as specified in this section and otherwise by law:

23 A. Child welfare services;

24 B. Head Start and child care services;

25 C. Maternal and child health services, including home visiting programs;

26 D. Parentage establishment and child support enforcement services; and

27 E. Residential and long-term care services for children with disabilities.

28 **2. Delivery of programs and services.** The department shall deliver programs and
29 services through a coordinated and efficient administrative structure and an integrated
30 delivery system that focuses on meeting the needs of individuals and families. The
31 department shall use a combination of state employees and contracts with private agencies
32 to deliver programs and services.

33 **3. Pilot projects.** The department shall develop pilot projects and demonstration
34 projects required by law and shall apply for any authorization necessary to undertake such
35 projects.

36 **§203. Commissioner**

1 The department is under the control and supervision of the Commissioner of Child and
2 Family Services, who reports directly to the Governor.

3 **1. Appointment.** The Governor shall appoint the commissioner, subject to review by
4 the joint standing committee of the Legislature having jurisdiction over child welfare
5 matters and confirmation by the Senate. The commissioner serves at the pleasure of the
6 Governor.

7 **2. Vacancy; deputy commissioner.** A vacancy in the office of the commissioner
8 must be filled as follows.

9 A. Any vacancy of the commissioner's position must be filled in accordance with Title
10 5, section 1.

11 B. The commissioner shall appoint one of the department's deputy commissioners to
12 perform the duties of the commissioner, in addition to the duties of that deputy
13 commissioner, during the commissioner's temporary absence or disability.

14 **§204. Powers and duties of commissioner**

15 The commissioner has all of the powers and duties necessary to carry out the mission
16 and responsibilities of the department. The commissioner has the power to distribute the
17 functions and duties given to the commissioner under this Title, Title 22 and Title 34-B
18 among the various offices of the department so as to integrate the work properly and to
19 promote the most effective and efficient administration of the department. Wherever in
20 this Title, Title 5, Title 22 or Title 34-B powers and duties are given to the commissioner
21 or the department, these must be assumed and carried out by the offices that the
22 commissioner designates, and these powers and duties may in turn be delegated to
23 subordinates by those office directors with the approval of the commissioner.

24 **1. Administration.** The commissioner shall administer the department in accordance
25 with the requirements of this Title and shall fulfill the duties prescribed to the commissioner
26 by state and federal law.

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

30 **3. Employees.** The commissioner may employ personnel as necessary to carry out the
31 work of the department. All personnel of the department are under the immediate
32 supervision, direction and control of the commissioner. Department personnel must be
33 employed subject to the Civil Service Law, except for positions subject to appointment by
34 the commissioner under subsection 4.

35 **4. Appointments.** All deputy commissioners and office directors are appointed by
36 the commissioner and serve at the pleasure of the commissioner. Deputy commissioners
37 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.

40 **5. Grievance procedures.** The commissioner shall establish procedures for hearing
41 grievances of children who receive behavioral health services. The procedures must
42 include the opportunity for a timely hearing before a state hearing examiner or an
43 independent hearing examiner. The commissioner may contract for the services of the

1 hearing examiner, who shall conduct adjudicatory proceedings pursuant to the Maine
2 Administrative Procedure Act.

3 **6. Children's residential care facilities.** The commissioner shall approve all
4 programs for the provision of behavioral health services to children's residential care
5 facilities, as defined in Title 22, section 8101, subsection 4, and shall participate in licensure
6 of these programs in accordance with Title 22, section 8104.

7 **§205. Federal funds and commodities**

8 The commissioner, with the consent and approval of the Governor, is authorized and
9 empowered to accept any allotments of federal funds and commodities, to manage and
10 dispose of the same in whatever manner required by federal law and put into effect the
11 United States Social Security Act and any amendments of that act and of other federal acts
12 relating to public welfare.

13 **Sec. A-3. Effective date.** This Part takes effect July 1, 2022.

14 **PART B**

15 **Sec. B-1. Transition.** Notwithstanding the Maine Revised Statutes, Titles 22, 22-A
16 and 34-B, the following provisions apply to the reassignment of the duties and
17 responsibilities related to child and family services and child welfare within the Department
18 of Health and Human Services to the Department of Child and Family Services.

19 1. The Department of Child and Family Services is created and established by law.
20 All references to, responsibilities of and authority conferred upon the Department of Health
21 and Human Services related to child and family services and child welfare are deemed to
22 refer to and vest in the Department of Child and Family Services created by this Act. The
23 Department of Child and Family Services is the successor in every way to the powers,
24 duties and functions related to child and family services and child welfare as assigned in
25 Titles 22, 22-A and 34-B to the Department of Health and Human Services as they pertain
26 to services provided to adults, children and families under this Act.

27 2. Notwithstanding the provisions of Title 5, all accrued expenditures, assets,
28 liabilities, balances of appropriations, allocations, transfers, revenues or other available
29 funds in an account or subdivision of an account of the Department of Health and Human
30 Services that pertain to the duties of the Department of Child and Family Services as set
31 forth in this Act must be transferred to the proper accounts of the Department of Child and
32 Family Services by the State Controller or by financial order upon the request of the State
33 Budget Officer and with the approval of the Governor.

34 3. All rules of the Department of Health and Human Services as they pertain to the
35 duties of the Department of Child and Family Services as set forth in this Act that are in
36 effect on the effective date of this Act remain in effect until rescinded, revised or amended.

37 4. All contracts, agreements and compacts of the Department of Health and Human
38 Services as they pertain to the duties set forth in this Act that are in effect on the effective
39 date of this Act remain in effect until they expire or are altered by the parties involved in
40 the contracts or agreements. The Department of Child and Family Services is the successor
41 agency for all federal block grants and programs administered under the United States
42 Social Security Act, as amended, and any other federal programs, grants and contracts that
43 relate to child and family services and child welfare.

1 5. All records of the Department of Health and Human Services as they pertain to the
2 duties set forth in this Act must be transferred to the Department of Child and Family
3 Services as necessary to implement this Act.

4 6. All property and equipment of the Office of Child and Family Services within the
5 Department of Health and Human Services pertaining to the duties set forth in this Act are
6 transferred to the Department of Child and Family Services as necessary to implement this
7 Act.

8 7. Employees of the Department of Child and Family Services who were employees of
9 the Department of Health and Human Services immediately prior to the effective date of
10 this Act retain all their employee rights, privileges and benefits, including sick leave,
11 vacation and seniority, provided under the Civil Service Law or collective bargaining
12 agreements. The Department of Administrative and Financial Services, Bureau of Human
13 Resources shall provide assistance to the affected departments and shall assist with the
14 orderly implementation of this subsection.

15 8. By January 31, 2022, the Commissioner of Child and Family Services shall submit
16 a report, including recommendations and any necessary legislation, to the Governor and
17 the joint standing committee of the Legislature having jurisdiction over child welfare
18 matters regarding the establishment and implementation of the Department of Child and
19 Family Services.

20 **Sec. B-2. Conflicts and inconsistencies.** If the Commissioner of Child and Family
21 Services finds a conflict or inconsistency between provisions in the Maine Revised Statutes,
22 Titles 22, 22-A and 34-B or rules adopted under those titles, the commissioner shall attempt
23 to resolve that conflict or inconsistency by interpreting the laws or rules together to give
24 effect to the intent of the Legislature or agency, as the case may be. If the commissioner
25 determines rulemaking is required to resolve a conflict or inconsistency, the commissioner
26 may adopt rules as authorized under Title 22-B, section 204, subsection 2. In adopting
27 rules under this section, the commissioner has sole discretion to determine whether an
28 emergency exists. The commissioner shall notify the members of the joint standing
29 committee of the Legislature having jurisdiction over child welfare matters prior to
30 adopting any emergency rule under this section.

31 **Sec. B-3. Legislation; schedule.** The Commissioner of Child and Family Services,
32 and designees selected by the commissioner, shall work with the joint standing committee
33 of the Legislature having jurisdiction over child welfare matters and staff from the Office
34 of Policy and Legal Analysis and the Office of the Revisor of Statutes to review those parts
35 of the Maine Revised Statutes governing the Department of Health and Human Services,
36 including but not limited to Titles 22, 22-A, 22-B and 34-B. The purpose of the review is
37 to develop legislation to consolidate existing law into Title 22-B, to update Title 22-B and
38 to correct any errors and inconsistencies in law that result from this Act. By November 30,
39 2022, the commissioner and the committee shall agree on the format and organization of
40 Title 22-B. By November 30, 2022, the commissioner shall submit the legislation
41 developed pursuant to this section to the First Regular Session of the 131st Legislature.

42 **Sec. B-4. Interim meetings; authorized.** The joint standing committee of the
43 Legislature having jurisdiction over child welfare matters is authorized to meet as needed,
44 but shall meet at least 3 times, during the 2021 legislative interim to carry out its
45 responsibilities to oversee planning, service delivery and implementation issues related to

1 the establishment of the Department of Child and Family Services. At these meetings, the
2 Commissioner of Child and Family Services shall brief the committee on planning issues,
3 progress, challenges and the timeline for implementation. The committee shall provide
4 opportunities for consumers, providers and advocates to speak to the committee. The
5 committee may submit legislation to the Second Regular Session of the 130th Legislature
6 based on these meetings.

7 **Sec. B-5. Budget.** The Department of Administrative and Financial Services, Bureau
8 of the Budget shall work with employees of the Department of Health and Human Services
9 with regard to the duties transferred to the Department of Child and Family Services as set
10 forth in this Act to develop the budget for the Department of Child and Family Services.

11 **Sec. B-6. Federal approval.** If the Commissioner of Child and Family Services
12 determines that federal approval will not be obtained for any part of this Act that requires
13 federal approval, the commissioner shall notify the joint standing committee of the
14 Legislature having jurisdiction over child welfare matters, the joint standing committee of
15 the Legislature having jurisdiction over appropriations and financial affairs and the
16 Executive Director of the Legislative Council.

17 SUMMARY

18 This bill creates a new Department of Child and Family Services by transferring the
19 functions of the Department of Health and Human Services that relate to child and family
20 services and child welfare to the new department. The Department of Child and Family
21 Services will have a commissioner appointed by the Governor and confirmed by the
22 Legislature as is the current Commissioner of Health and Human Services. The bill also
23 establishes provisions for transferring functions to the new department.