

SB 159-FN - AS INTRODUCED

2021 SESSION

21-0971

05/08

SENATE BILL ***159-FN***

AN ACT establishing the department of children's services and juvenile justice.

SPONSORS: Sen. Carson, Dist 14

COMMITTEE: Health and Human Services

ANALYSIS

This bill establishes the department of children's services and juvenile justice and transfers the powers and duties of the department of health and human services, division for children youth and families to the new department.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struckthrough]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

In the Year of Our Lord Two Thousand Twenty One

Be it Enacted by the Senate and House of Representatives in General Court convened:

- (1) Administration support, including program certification, rate setting, rate review, and quality assurance.

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(2) Child protection, including adoption, foster care, and child day care licensing.

(3) Juvenile justice and children in need of services.

(4) Residential services, including secure facilities and residential care programs.

(b) Administration and oversight of the juvenile parole board pursuant to RSA 170-H, the child welfare advisory board, the interstate compact for juveniles, pursuant to RSA 169-A, the interstate compact on the placement of children pursuant to RSA 170-A, and the compact for hard to place children, pursuant to RSA 126-D.

21-W:4 Commissioner; Compensation.

I. The commissioner of the department of children's services and juvenile justice shall be appointed by the governor, with the consent of the council, and shall serve a term of 4 years. The commissioner shall be qualified to hold the position by reason of education and experience. Any vacancy shall be filled for the unexpired term.

II. The compensation of the commissioner shall be as specified in RSA 94:1-a.

21-W:5 Powers and Duties of the Commissioner. In addition to the powers, duties, and functions otherwise vested by law, the commissioner of the department of children's services and juvenile justice shall:

I. Establish clear, comprehensive, and unified departmental objectives, including the development and implementation of a departmental mission statement, promoting the efficient statewide delivery of programs and services to children and youths.

II. Represent the public interest and the best interest of the children and youths served in the administration of the programs and services within the department of children's services and juvenile justice, and be responsible to the governor, the general court, the public, and the children and youths being served through such administration.

III. Represent the interests of the department by serving on boards, commissions, committees, and professional associations, or specify a designee.

IV. Have the authority, subject to the approval of the governor and council, to accept gifts, contributions, and bequests of funds from individuals, foundations, corporations, institutions, and other organizations for the purpose of furthering the mission of the department of children's services and juvenile justice.

V. Have the authority to apply for, receive, and expend federal funding, grants, subsidies, or other moneys on a department-wide basis.

VI. Have general supervision of all neglected or dependent children and see that they receive suitable education, training, and support; assist in the enforcement of all laws for the protection of children and investigate charges that may be brought to the department's attention, and if a crime allegedly has been committed, report to the county attorney.

VII. Supervise all foster family homes and child placing agencies.

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VIII. Develop a broad range of social and related services aimed at preventing dependency and family breakdown, promoting child development and child care, protecting vulnerable children and enabling them to live in their own homes or foster homes rather than in institutions, assisting individuals to attain and maintain self-support and strengthen family life, develop and operate social service programs within the department of children's services and juvenile justice, receive and distribute such federal funds which are allocated specifically to the state for day care for children and adults, and purchase or contract with other agencies or individuals to provide direct grants from sums appropriated for such purpose to other agencies upon submission of approvable plans within the objectives of this paragraph.

IX. Review annually the rates established for the purchase of child day care services on behalf of eligible persons. This annual review shall consider the effects of the established rates on current costs, quality, and availability of services.

X. Adopt rules, pursuant to RSA 541-A, implementing procedures for state registry and criminal background investigations of all new department staff who have regular contact with children, according to the provisions of RSA 170-G:8-c.

XI.(a) Upon request, publicly disclose the information in subparagraphs (c)(3)-(c)(12) regarding the abuse or neglect of a child, if there has been a fatality or near fatality resulting from abuse or neglect of a child. Information included in subparagraphs (c)(1) and (c)(2) shall also be disclosed if it is determined that such disclosure shall not be contrary to the best interests of the child, the child's siblings, or other children in the household and there has been a fatality or near fatality resulting from abuse or neglect of a child. In addition, the same disclosure shall be made when there has been a fatality, to include suicide, or near fatality of a child under the legal supervision or legal custody of the department. In determining whether disclosure will be contrary to the best interests of the child, the child's siblings, or other children in the household, the commissioner shall consider the privacy interests of the child and the child's family and the effects which disclosure may have on efforts to reunite and provide services for the family. If the commissioner determines not to release the information, the commissioner shall provide written findings in support of the decision to the requestor. As used in this section, "near fatality" means an act or event that places a child in serious or critical condition as certified by a physician.

(b) Information may be disclosed as follows:

(1) Information released prior to the completion of the investigation of a report shall be limited to a statement that a report is "under investigation."

(2) When there has been a prior disclosure pursuant to subparagraph (b)(1), information released in a case in which the report has been unfounded shall be limited to the statement that "the investigation has been completed, and the report has been determined unfounded."

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1 (3) If the report has been founded, then information may be released pursuant to
2 subparagraph (c).

3 (c) For the purposes of this paragraph, the following information shall be disclosed:

4 (1) The name of the abused or neglected child, provided that the name shall not be
5 disclosed in a case of a near fatality unless the name has otherwise previously been disclosed.

6 (2) The name of the parent or other person legally responsible for the child or the
7 foster family home, group home, child care institution, or child placing agency where the child is
8 placed.

9 (3) The date of any report to the department of suspected abuse or neglect, to include
10 any prior reports on file, provided that the identity of the person making the report shall not be
11 made public.

12 (4) The statutory basis and supporting allegations of any such report, provided that
13 the identity of the person making the report shall not be made public.

14 (5) Whether any such report was referred to the department for assessment and, if
15 so, the priority assigned by the department.

16 (6) The date any such report was referred to the department for assessment.

17 (7) For each report, the date and means by which the department made contact with
18 the family regarding the assessment.

19 (8) For each report, the date and means of any collateral contact made as part of the
20 investigation provided that the identity of an individual so contacted shall not be made public.

21 (9) For each report, the date the assessment was completed.

22 (10) For each report, the fact that the department's investigation resulted in a
23 finding of either abuse or neglect and the basis for the finding.

24 (11) Identification of services and actions taken, if any, by the department regarding
25 the child named in the report and his or her family or substitute caregiver as a result of any such
26 report or reports.

27 (12) Any extraordinary or pertinent information concerning the circumstances of the
28 abuse or maltreatment of the child and the investigation of such abuse or maltreatment, where the
29 commissioner determines such disclosure is consistent with the public interest.

30 (d) Any disclosure of information pursuant to this paragraph shall be consistent with the
31 provisions of subparagraph (c). Such disclosure shall not identify or provide an identifying
32 description of the source of the report, and shall not identify the name of the abused or neglected
33 child's siblings, or any other members of the child's household, other than the subject of the report.

34 XII. Establish a quality early learning opportunity initiative which shall be available on a
35 first-come, first-served basis to families whose income is between 190 percent and 250 percent of the
36 federal poverty guidelines, and whose children are enrolled in a child care program licensed under
37 RSA 170-E, and who otherwise meet all other eligibility requirements for child care assistance. The

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1 amount of support provided to eligible families shall be calculated annually by the department and
2 shall reflect the estimated average difference between the cost of licensed child care and unlicensed
3 child care.

4 21-W:6 Rulemaking.

5 I. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to the
6 administration and enforcement of the following:

- 7 (a) The interstate compact for juveniles under RSA 169-A.
- 8 (b) Delinquent children under RSA 169-B.
- 9 (c) Child protection under RSA 169-C.
- 10 (d) Children in need of services under RSA 169-D.
- 11 (e) Missing children under RSA 169-E.
- 12 (f) Court ordered placements under RSA 169-F.
- 13 (g) Review of dispositional orders in juvenile cases under RSA 169-G.
- 14 (h) The interstate compact on the placement of children under RSA 170-A.
- 15 (i) Adoption under RSA 170-B.
- 16 (j) Termination of parental rights under RSA 170-C.
- 17 (k) Child day care, residential care, and child-placing agencies under RSA 170-E.
- 18 (l) Services for children, youth, and families under RSA 170-G.
- 19 (m) Parole of delinquents under RSA 170-H.
- 20 (n) The compact for hard to place children under RSA 126-D.
- 21 (o) Family support services under RSA 126-G.
- 22 (p) Educationally disabled children at the youth development center, the state prisons,
23 county correctional facilities, and the youth services center under RSA 186-C:19-a.
- 24 (q) Special education programs of the youth services center under RSA 186-C:20.
- 25 (r) The youth development center under RSA 621.
- 26 (s) The youth services center under RSA 621-A.

27 II. Upon the abolition of each agency, department, division, bureau, or other administrative
28 unit whose functions, powers, and duties are transferred in accordance with this chapter, the
29 existing rules of such agency, department, division, bureau, or other administrative unit shall
30 continue in full effect, without interruption, as the rules of the department of children's services and
31 juvenile justice. Rules so continued shall be effective for the remainder of the period established
32 under RSA 541-A:17, II.

33 III. The commissioner shall send copies of all rules proposed under this section to the
34 chairperson of the house children and family law committee and the chairperson of the senate health
35 and human services committee, or their successor committees, for review.

36 3 Transfer of Authority from the Department of Health and Human Services, Division for
37 Children, Youth and Families to the Department for Children's Services and Juvenile Justice.

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I. The department of health and human services, division for children, youth and families is hereby abolished and all of the functions, powers, and duties, and responsibilities of the division and the officials of that division, are hereby transferred to the department of children's services and juvenile justice established in section 2 of this act.

II. The transfer provided for in paragraph I of this section shall include all of the personnel, books, papers, records, equipment, unexpended appropriations or other funds, actions, and other property or obligations of any kind of the division for children, youth and families.

III. The state employees of the division for children, youth and families shall be transferred to the department of children's services and juvenile justice when the duties, functions, and responsibilities of the division for children, youth and families are transferred to the department. Any person employed in such a position at the time of such transfer or at any subsequent time thereto shall be deemed an employee of the department. All classified employees of the department shall be classified employees of the state of New Hampshire within the meaning of RSA 21-I:49 and shall be subject to all requirements, and be entitled to all benefits and emoluments, of the state personnel system. Nothing in this paragraph shall preclude the general court from increasing or decreasing the number of positions within the department.

4 Office of the Child Advocate; Reference Change. RSA 21-V:1, V is repealed and reenacted to read as follows:

V. "Department" means the department of children's services and juvenile justice.

5 Office of the Child Advocate; Reference Change. Amend RSA 21-V:2, III(a) to read as follows:

(a) Investigate the actions of any agency and make appropriate referrals; provided that department of ~~[health and human services specific complaints shall be handled by the ombudsman pursuant to RSA 126-A:4, III]~~ **children's services and juvenile justice specific complaints shall be handled by that agency.**

6 Department of Health and Human Services; Educational Expenses; Liability Amended. Amend RSA 126-A:39, II to read as follows:

II. Rates for private providers of special education services shall be set as provided in RSA 186-C:7, III, by the departments of ~~[health and human services]~~ **children's services and juvenile justice**, education, and administrative services.

7 Department of Health and Human Services; Child Welfare Services Amended. Amend RSA 161:2, II to read as follows:

II. Child Welfare Services. Develop and administer state responsibilities for child welfare, and may administer directly such child welfare activities. Child welfare activities shall include: ~~[Protection and care of homeless, dependent and neglected children, and children in danger of becoming delinquent; cooperation with any court and with state and other institutions for children, including investigation and follow-up services; services and care of children in foster homes; and all other child welfare activities authorized by law]~~ **administration and enforcement of child**

1 **support as defined in this section, administration of federal and state family support and**
2 **assistance programs pursuant to RSA 167, and assistance to developmentally disabled**
3 **children pursuant to RSA 171-A;** provided, however, that nothing in this chapter or RSA 167 shall
4 be construed as authorizing any public official, agent, or representative, in carrying out any of the
5 provisions of this chapter or RSA 167 to take charge of any child over the objection of either of the
6 parents of such child, or of the person standing in loco parentis to such child, except pursuant to a
7 proper court order.

8 8 Parole of Delinquents; Purpose of Juvenile Parole Amended. Amend RSA 170-H:1 to read as
9 follows:

10 170-H:1 Purpose of Juvenile Parole. It is the intent of the general court that the juvenile parole
11 system provide a means of rehabilitating delinquents who have been committed to the custody of the
12 department of ~~[health and human services]~~ **children's services and juvenile justice**, without
13 continued incarceration. It is also the intent of the general court that the juvenile parole board and
14 the department of ~~[health and human services]~~ **children's services and juvenile justice**, when
15 administering this system, demonstrate recognition of the need to protect the public from criminal
16 acts by juvenile parolees.

17 9 State-County Finance Commission. Amend RSA 28-B:3, II to read as follows:

18 II. Review and provide recommendations **prior to any rate setting and adjustments**,
19 regarding:

20 (a) Department of health and human services rate setting and adjustments including,
21 but not limited to, those for long-term care services for elderly and adult clients by the division of
22 elderly and adult services, ~~[court-ordered and volunteer services by the division for children, youth,~~
23 ~~and families, and the division of juvenile justice services, prior to any rate setting or adjustments]~~.

24 (b) **Department of children's services and juvenile justice rate setting and**
25 **adjustments, including those for court-ordered and volunteer services.**

26 10 Department of Health and Human Services; Memorandum. Amend RSA 126-A:5, XXI(a) to
27 read as follows:

28 XXI.(a) The commissioners of the departments of health and human services, **children's**
29 **services and juvenile justice**, and corrections, and the attorney general shall enter into a
30 memorandum of understanding establishing an inter-departmental team, to address responsibilities
31 associated with the most challenging cases of individuals 18 years of age or older with developmental
32 disabilities or acquired brain disorders who present a substantial risk to community safety as
33 determined by a comprehensive risk assessment appropriate to the individual. The memorandum of
34 understanding shall include a requirement for participation by: the department of health and human
35 services, including the bureau of developmental services, the bureau of behavioral health, ~~[the~~
36 ~~division for children, youth and families,]~~ the bureau of drug and alcohol services, the New
37 Hampshire hospital, the department of justice, **the department of children's services and**

1 *juvenile justice*, and the department of corrections. The purpose of the memorandum of
2 understanding is to promote collaboration and cooperation across all services systems to determine
3 and recommend system responsibility for providing and/or funding specific services and supports to
4 effectively meet the needs of the individual and the public safety of the community in accordance
5 with the rules of the respective departments.

6 11 Surrogate Parents. Amend RSA 186-C:14, III(a) to read as follows:

7 (a) When a child with a disability, as defined in RSA 186-C:2, needs special education
8 and the parent or guardian of the child is unknown or after reasonable efforts cannot be located, or
9 the child is in the legal custody of ~~[the division of children, youth, and families]~~ ***the department of***
10 ***children's services and juvenile justice***, the commissioner, or designee, may appoint a surrogate
11 parent who shall represent the child in the educational decision-making process, provided that for a
12 child in the legal custody of the ~~[division of children, youth, and families]~~ ***department of children's***
13 ***services and juvenile justice***, a judge overseeing the child's case pursuant to the Individuals With
14 Disabilities Education Act, 20 U.S.C. section 1415(b)(2)(A)(i), may appoint a surrogate parent.

15 12 Tuition Waiver for Children in State Foster Care or Guardianship. Amend RSA 187-A:20-b,
16 III(b) to read as follows:

17 (b) Beginning November 1, 2008, and no later than November 1 each year thereafter, the
18 ~~[division of children, youth, and families]~~ ***department of children's services and juvenile justice***
19 shall submit a report to the health and human services oversight committee, established in RSA 126-
20 A:13, and the house children and family law committee, or their successor committees, detailing the
21 status of the tuition waiver program.

22 13 Guardian Ad Litem Board; Membership; Reference Change. Amend RSA 490-C:2, I(f) to read
23 as follows:

24 (f) One member representing the ~~[division of children, youth, and families]~~ ***department***
25 ***of children's services or juvenile justice***, or Casey family services, or another child protection
26 agency in the state, appointed by the governor.

27 14 Release of a Defendant Pending Trial; Reference Change. Amend RSA 597:2, II to read as
28 follows:

29 II. The court or justice shall order the prearrestment or pretrial release of the person on
30 his or her personal recognizance, or upon execution of an unsecured appearance bond in an amount
31 specified by the court, subject to the condition that the person not commit a crime during the period
32 of his or her release, and subject to such further condition or combination of conditions that the court
33 may require, unless the court determines that such release will not reasonably assure the
34 appearance of the person as required or will endanger the safety of the person or of any other person
35 or the community. The court may also consider as a factor in its determination under this
36 paragraph or paragraph III that a person who is detained as a result of his or her inability to meet
37 the required conditions or post the required bond is the parent and sole caretaker of a child and

whether, as a result, such child would become the responsibility of the ~~[division of children, youth, and families]~~ **department of children's services and juvenile justice**.

15 Trust and Agency Funds; Reference Change. Amend RSA 6:12-c, II(c) to read as follows:

(c) The Matthew Elliot memorial trust fund of the ~~[division of juvenile justice services,]~~ department of health and human services.

16 Duties of the Juvenile Justice Advisory Board. Amend RSA 621-A:11, I-I-b to read as follows:

I. The advisory board shall act in an advisory capacity to assist the commissioner of the department of ~~[health and human services]~~ **children's services and juvenile justice** relative to juvenile justice programs and services provided to children at the youth development center and other juvenile justice facilities. The board may also provide advice and input on fiscal and budgetary matters related to such facilities, the availability of state and federal grants, business partnerships, and other funding sources available to the department for such facilities.

I-a. The board shall seek information from ~~[the director of the division of juvenile justice services in]~~ the department of ~~[health and human services]~~ **children's services and juvenile justice** concerning the successes and challenges relative to the state's juvenile justice programs and services.

I-b. The board shall be available to address emergent issues identified by the commissioner of ~~[health and human services]~~ **children's services and juvenile justice**, ~~[the director of the division of juvenile justice services,]~~ the ~~[chair]~~ **chairperson** of the advisory board, or any board member. In furtherance of this paragraph, the board may solicit comments from the public or any other entities as it deems appropriate.

17 Interbranch Criminal and Juvenile Justice Council. Amend RSA 651-E:2, I(i) to read as follows:

(i) The ~~[director of the division of juvenile justice services,]~~ **commissioner of the** department of ~~[health and human services]~~ **children's services and juvenile justice**, or designee.

18 Powers of City Councils; Group Homes; Reference Change. Amend RSA 47:11-b to read as follows:

47:11-b Group Homes. The city councils may appropriate money to support or aid group homes. For the purposes of this section, a group home is an institution or home which is supervised and licensed pursuant to the provisions of RSA ~~[161:2, IV]~~ **21-W**, and provides residential and counseling services to persons under the age of 21.

19 Services for Children, Youth and Families; Powers and Duties of the Department. Amend RSA 170-G:4, XIII to read as follows:

XIII. Assume and administer all the responsibilities and duties of the department of ~~[health and human services]~~ **children's services and juvenile justice** relative to child welfare services provided under ~~[RSA 161:2, II and XII relative to child welfare services funded through the social~~

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~~services block grant; 167:43; 167:51-167:53] RSA 21-W; 169-C; 170-A; 170-B; and 170-C[-170-F; and 463 and provided under Title IV-B and Title IV-E of the Social Security Act].~~

20 Reference Changes. Amend the following RSA provisions by replacing "commissioner of health and human services" or "commissioner of the department of health and human services" with "commissioner of the department of children's services and juvenile justice": RSA 169-B:20; 169-D:18-a, I; 170-G:1, V; 170-G:3, IV; 170-G:4, VI, X, and XVIII; 170-G:4-a, I; 170-G:5; 170-H:2, IV-a; 186-C:3-b; 186-C:7-a, I; 621:3, II-a; and 621-A:1.

21 Reference Changes. Amend the following RSA provisions by replacing "department of health and human services" with "department of children's services and juvenile justice": RSA 21-V:7, I; 21-V:10, III(e); 169-B:2, II and III-a; 169-B:2-a, I(b); 169-B:5-a; 169-B:6-a; 169-B:11, III; 169-B:14, I(c) and I(e); 169-B:15-a; 169-B:16, III; 169-B:19, I, III-a(a), III-a(c), and VI; 169-B:20; 169-B:31; 169-B:32; 169-B:40, I(a) and I(f); 169-C:3, XII; the introductory paragraph of 169-C:3-a; 169-C:8-a; 169-C:12-b; 169-C:16, III; the introductory paragraph of 169-C:19; 169-c:20-a, I; 169-C:27, I(a); the section heading of 169-C:34; 169-C:34-a, I; 169-C:38-a; 169-C:39-k, I(e); 169-D:2, V; 169-D:4-a; 169-D:5-a; 169-D:10, II(c); 169-D:13, I(c); 169-D:14, III; 169-D:17, I; 169-D:18-a, I; 169-D:29, I(a) 169-F:2; 169-F:3; 169-F:4; 169-G:2; 169-G:6; 170-A:3; 170-A:4; 170-A:6, I; 170-B:2, VI and VIII; 170-B:32, III; 170-C:2, VII; 170-C:9, I; 170-C:11, II, IV, and VI; 170-C:13; 170-C:14, III; 170-E:2, IV(h), V, and VII; the introductory paragraph of 170-E:5-a; 170-E:5-b, II(c)(4), III(a), and III(c); 170-E:6-a, I and II; 170-E:21-a; 170-E:25, V, VII, and X; 170-E:44; 170-E:50; 170-G:1, I, and IV, 170-G:2; 170-G:5-a; 170-G:6-a, 170-G:8-a, I; 170-G:8-c, VI; 170-G:14; the introductory paragraph of 170-G:16 and 170-G:16, V; 170-H:2, V-a; 170-H:7; 170-H:13, I, II(a), and III; 186-C:3-b; 186-C:19-a, 186-C:19-b, I(a); 186-C:20; 621:1; 621:3; 621:8; 621:10; 621:19; 621:22; 621-A:1; 621-A:9; and 621-A:11.

22 Reference Changes. Amend the following RSA provisions by replacing "division" with "department": RSA 21-V:1, III and IV; 21-V:2, III; 21-V:4, II; 21-V:7; and 21-V:10, I(h).

23 Repeal. The following are repealed:

I. RSA 126-A:5, XI and XII, relative to duties of the department of health and human services transferred to the department of children's services and juvenile justice.

II. RSA 161:2, III, relative to general supervision of all neglected or dependent children by the department of health and human services.

III. RSA 161:2, IV, relative to supervision and licensing of foster family homes and child placing agencies by the department of health and human services.

IV. RSA 161:2, XII, relative to social service programs for children and families.

V. RSA 161:2, XVII, relative to review of rates for child day care services by the department of health and human services.

VI. RSA 161:4-a, III, relative to rulemaking authority of the department of health and human services under RSA 161:2, XII.

24 Effective Date. This act shall take effect January 1, 2022.

LBA
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2/8/21

**SB 159-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT establishing the department of children's services and juvenile justice.

FISCAL IMPACT:

The Office of Legislative Budget Assistant is unable to complete a fiscal note for this bill, as introduced, as it is awaiting information from the Department of Administrative Services. When completed, the fiscal note will be forwarded to the Senate Clerk's Office.

AGENCIES CONTACTED:

Department of Health and Human Services and Department of Administrative Services