

MAINE STATE LEGISLATURE

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(EMERGENCY)
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1436

H.P. 1061 House of Representatives, May 6, 1987
Reported by Representative ROLDE from the Committee on
Audit and Program Review pursuant to the Maine Revised
Statutes Annotated, Title 3, section 501.

Reference to the Joint Standing Committee on Audit and
Program Review suggested and printing ordered under Joint Rule
18.

EDWIN H. PERT, Clerk

STATE OF MAINE

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

1 AN ACT Relating to Periodic Justification of
2 State Government Programs under the
3 Maine Sunset Laws.
4

5 Emergency preamble. Whereas, Acts of the Legis-
6 lature do not become effective until 90 days after
7 adjournment unless enacted as emergencies; and

8 Whereas, the 90-day period may not terminate un-
9 til after the beginning of the next fiscal year; and

10 Whereas, certain obligations and expenses inci-
11 dent to the operation of departments and agencies
12 will become due and payable on or immediately after
13 July 1, 1986; and

1 Whereas, in the judgment of the Legislature,
2 these facts create an emergency within the meaning of
3 the Constitution of Maine and require the following
4 legislation as immediately necessary for the preser-
5 vation of the public peace, health and safety; now,
6 therefore,

7 Be it enacted by the People of the State of Maine as
8 follows:

9 PART A

10 Sec. 1. 2 MRSA §6, sub-§5, as repealed and re-
11 placed by PL 1985, c. 785, Pt. B, §3, is amended to
12 read:

13 5. Range 86. The salaries of the following
14 state officials and employees shall be within salary
15 range 86:

16 Director of Labor Standards;

17 Deputy Chief of the State Police;

18 Director of State Lotteries;

19 State Archivist;

20 Director of Maine Geological Survey;

21 Executive Director, Maine Land Use Regulation
22 Commission;

23 Director of the Risk Management Division;

24 Chairman, Maine Unemployment Insurance Commis-
25 sion; and

26 Director of the Bureau of State Employee Health;
27 and

28 Child Welfare Services Ombudsman.

29 Sec. 2. 22 MRSA §4002, sub-§3-A is enacted to
30 read:

1 3-A. Child Welfare Services Ombudsman. "Child
2 Welfare Services Ombudsman" means a public official
3 appointed to receive and investigate citizens' com-
4 plaints against state agencies which provide child
5 welfare services and which may be infringing on the
6 rights of individuals and, when deemed necessary,
7 propose remedial action.

8 Sec. 3. 22 MRSA §4008, sub-§3, ¶D, as amended by
9 PL 1985, c. 506, §43, is further amended to read:

10 D. An appropriate state executive or legislative
11 official with responsibility for child protection
12 services or the Child Welfare Services Ombudsman
13 in carrying out his official functions, provided
14 that no personally identifying information may be
15 made available unless necessary to his functions;

16 Sec. 4. 22 MRSA c. 1071, sub-c. X is enacted to
17 read:

18 SUBCHAPTER X

19 CHILD WELFARE SERVICES OMBUDSMAN

20 §5001. Child Welfare Services Ombudsman

21 1. Office established. The Office of Child Wel-
22 fare Services Ombudsman is established within the Ex-
23 ecutive Department and is autonomous from any other
24 state agency. Its purpose is to represent the best
25 interests of individuals involved in the State's
26 child welfare system as a class and to investigate
27 and resolve complaints against State Government agen-
28 cies that may be infringing on the rights of individ-
29 uals involved in the State's child welfare system.

30 2. Appointment of the Child Welfare Services
31 Ombudsman. The Child Welfare Services Ombudsman
32 shall be appointed by the Governor, subject to review
33 by the joint standing committee of the Legislature
34 having jurisdiction over human resources and to con-
35 firmation by the Legislature and shall serve at the
36 pleasure of the Governor. Any vacancy shall be
37 filled by similar appointment.

38 3. Powers and duties. The ombudsman may:

1 A. Provide ombudsman services to individual cit-
2 izens in matters relating to those child welfare
3 services provided by and under the jurisdiction
4 of State Government;

5 B. Advise, consult and assist the Executive
6 Branch and Legislative Branch of State Govern-
7 ment, especially the Governor, on activities of
8 State Government related to child welfare. The
9 ombudsman shall be solely advisory in nature,
10 shall not be delegated any administrative author-
11 ity or responsibility nor supplant existing ave-
12 nués for recourse or appeals. The ombudsman may
13 make recommendations regarding any function in-
14 tended to improve the quality of child welfare
15 services in State Government. If findings, com-
16 ments or recommendations of the ombudsman vary
17 from, or are in addition to, those of the bureau,
18 department or other state agency, the statements
19 of the ombudsman shall be sent to the respective
20 branches of State Government as attachments to
21 those submitted by the bureau, department or oth-
22 er state agency. Recommendations may take the
23 form of proposed budgetary, legislative or policy
24 actions;

25 C. Review and evaluate, on a continuing basis,
26 state and federal policies and programs relating
27 to the provision of child welfare services con-
28 ducted or assisted by any state departments or
29 agencies for the purpose of determining the value
30 and impact on individuals involved in the State's
31 welfare system;

32 D. Receive and address inquiries, complaints,
33 problems or requests for information and assist-
34 ance regarding the State's child welfare ser-
35 vices;

36 E. Conduct research, gather facts and evaluate
37 procedures and policies regarding the State's
38 child welfare services;

39 F. Consult with and advise state agencies on op-
40 erational and management issues or specific or
41 special situations regarding child welfare ser-
42 vices and recommend remedial actions when neces-

1 sary through direct oral communication, memoran-
2 da, reports or meetings;

3 G. Serve as a coordinator of communication and
4 cooperation for all components of the State's
5 child welfare services system, especially among
6 state agencies, whenever desirable or necessary;

7 H. Make referrals for service to relevant state
8 agencies when appropriate;

9 I. Set priorities in order to effectively carry
10 out the purposes of this subchapter; and

11 J. Inform the public to encourage a better pub-
12 lic understanding of the current status of the
13 State's child welfare system by collecting and
14 disseminating information, conducting or commis-
15 sioning studies and publishing the results and by
16 issuing publications and reports.

17 4. Confidentiality of records. No information
18 or records maintained by the office relating to a
19 complaint or investigation may be disclosed unless
20 the ombudsman authorizes the disclosure. The
21 ombudsman shall not disclose the identity of any com-
22 plainant unless:

23 A. The complainant or his legal representative
24 consents in writing to the disclosure with re-
25 spect to that complainant; or

26 B. A court orders the disclosure.

27 A complainant or his legal representative, in provid-
28 ing the consent, may specify to whom the identity may
29 be disclosed and for what purposes, in which event no
30 other disclosure is authorized.

31 5. Administration. The ombudsman shall adminis-
32 ter, in accordance with current fiscal and accounting
33 rules of the State and in accordance with the
34 philosophy, objectives and authority of this subchap-
35 ter, any funds appropriated for expenditure by the
36 ombudsman or any grants or gifts which may become
37 available, accepted and received by the ombudsman;
38 make an annual report which shall be submitted di-

1 rectly to the commissioner, the Governor and the
2 joint standing committee of the Legislature having
3 jurisdiction over human resources, not later than
4 March 1st of each year, concerning its work, recom-
5 mendations and interests of the previous fiscal year
6 and future plans; and shall make such interim reports
7 as the ombudsman deems advisable. Copies of these
8 reports shall be available to all Legislators and
9 other state agencies upon request.

10 6. Expenses of the ombudsman. The ombudsman,
11 within established budgetary limits and as allowed by
12 law, shall authorize and approve travel, subsistence
13 and related necessary expenses of the ombudsman or
14 members of the office, incurred while traveling on
15 official business.

16 7. Information from state agencies. State agen-
17 cies shall provide to the ombudsman copies of all re-
18 ports and other information required for the fulfill-
19 ment of the purposes of this chapter pursuant to sec-
20 tion 4008, subsection 3, paragraph D.

21 8. Legal services. The Department of the Attor-
22 ney General shall provide legal services as the
23 ombudsman deems necessary in order to carry out the
24 purposes of this subchapter.

25 9. Location. Office space shall be made availa-
26 ble for the ombudsman within the Capitol Complex.

27 10. Review. This office shall be reviewed 2
28 years after the effective date of this section by the
29 joint standing committee of the Legislature having
30 jurisdiction over human resources and the joint
31 standing committee of the Legislature having juris-
32 isdiction over audit and program review.

33 **PART B**

34 **Sec. 1. 22 MRSA c. 1071, sub-c. XI is enacted to**
35 **read:**

36 **SUBCHAPTER XI**

37 **OUT-OF-HOME ABUSE AND NEGLECT**
38 **INVESTIGATING TEAM**

1 §5005. Out-of-home abuse and neglect investigating
2 team

3 1. Definitions. As used in this subchapter, un-
4 less the context indicates otherwise, the following
5 terms have the following meanings.

6 A. "Bureau" means the Bureau of Social Services
7 within the Department of Human Services.

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

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

13 D. "Out-of-home abuse and neglect" means abuse
14 and neglect of a child which occurs in a facility
15 or by a person subject to licensure or inspection
16 by this department, the Department of Educational
17 and Cultural Services, the Department of Correc-
18 tions and the Department of Mental Health and
19 Mental Retardation or in a facility operated by
20 these departments.

21 E. "Team" means the out-of-home abuse and ne-
22 glect investigating team.

23 2. Team established. The team is established to
24 investigate reports of suspected abuse and neglect of
25 children by persons or in facilities subject to li-
26 cence pursuant to this Title. The team is also au-
27 thorized to assist other persons or agencies charged
28 with the duty to investigate suspected abuse and ne-
29 glect by persons or in facilities providing services
30 to children that are subject to licensure pursuant to
31 other titles and to assist in investigations of sus-
32 pected abuse and neglect in state-operated facilities
33 providing services for children.

34 3. Authority and responsibility. The team shall
35 have the following authority and responsibilities re-
36 garding investigation of out-of-home abuse and ne-
37 glect. The team:

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

1 B. Shall investigate all reports received by the
2 department regarding alleged out-of-home abuse
3 and neglect occurring in facilities or by persons
4 subject to licensure by the department;

5 C. Shall conduct a single investigation suffi-
6 cient to determine not only if abuse or neglect
7 have occurred but also to determine whether a li-
8 censing violation has occurred in order to pro-
9 tect children from further harm and establish a
10 basis upon which to take licensing action. This
11 procedure minimizes duplicative or redundant in-
12 vestigations to the extent possible in response
13 to the same or related allegations of out-of-home
14 abuse or neglect in facilities or by persons sub-
15 ject to licensure by the department;

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

22 E. Shall provide the results of the investiga-
23 tion to the bureau's licensing staff for appro-
24 priate action;

25 F. Shall include relevant professionals outside
26 the department as members of the team for all in-
27 vestigations of residential treatment centers,
28 group homes or day care centers mandated by this
29 subchapter and for other child care facilities as
30 warranted;

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

38 H. With respect to reports described in para-
39 graph G, may, on its own initiative or upon re-
40 quest of another department or agency charged
41 with the responsibility to investigate, partici-

1 pate in the out-of-home abuse and neglect inves-
2 tigation of persons or facilities subject to li-
3 censure or operated by the Department of Educa-
4 tional and Cultural Services, the Department of
5 Corrections or the Department of Mental Health
6 and Mental Retardation;

7 I. Shall refer to office of the district attor-
8 ney or office of the Attorney General, when ap-
9 propriate, any case in which criminal activity is
10 alleged and shall coordinate its investigation
11 with that office in order to minimize the trauma
12 to the children involved; and

13 J. Shall consult and train law enforcement per-
14 sonnel, advocates and others in the identifica-
15 tion, reporting, prevention and investigation of
16 out-of-home abuse and neglect as time allows.

17 4. Training. The team shall be trained in tech-
18 niques of investigating out-of-home abuse and neglect
19 of children, as well as child development; identifi-
20 cation of abuse and neglect; interview techniques;
21 treatment alternatives for perpetrators, victims and
22 their families; licensing regulations applicable to
23 facilities or persons licensed pursuant to Subtitle
24 6; and other statutory and regulatory remedies avail-
25 able to prevent, correct or eliminate abuse and ne-
26 glect in out-of-home settings.

27 5. Records; confidentiality; disclosure.
28 Records created pursuant to this subchapter shall be
29 maintained in accordance with section 4008 and shall
30 not be disclosed except as provided by that section
31 or by section 7703, subsections 2 to 4.

32 6. Assistance. Staff performing general licens-
33 ing functions may assist the team in conducting
34 out-of-home investigations upon the request of the
35 Director of the Bureau of Social Services, provided
36 that the licensing staff member has neither currently
37 licensed nor monitored for compliance the subject of
38 the investigation.

39 Sec. 2. 22 MRSA §7802, sub-§1-A is enacted to
40 read:

1 1-A. Consolidation of functions. All staff per-
 2 forming general licensing functions within the Bureau
 3 of Social Services, including the out-of-home abuse
 4 and neglect investigating team when investigating
 5 pursuant to section 5005, subsection 3, paragraph C,
 6 shall be consolidated as a single organizational
 7 unit.

8 **PART C**

9 **Appropriation.** The following funds are appropri-
 10 ated from the General Fund to carry out the purposes
 11 of this Act.

	<u>1987-88</u>	<u>1988-89</u>
13 <u>EXECUTIVE DEPARTMENT</u>		
14 Office of Child Wel-		
15 fare Services		
16 Ombudsman		
17 Positions	(2)	(2)
18 Personal Services	\$60,432	\$64,045
19 All Other	9,810	8,386
20 Capital Expenditures	1,479	
21 Provides funds for		
22 an ombudsman and		
23 one support posi-		
24 tion to establish		
25 the Office of		
26 Child Welfare Ser-		
27 vices Ombudsman.		
28		
29 Total	<u>\$71,721</u>	<u>\$72,431</u>
30 <u>HUMAN SERVICES, DEPART-</u>		
31 <u>MENT OF</u>		
32 Out-of-home abuse and		
33 neglect investigating		
34 team		
35 Positions	(3)	(3)
36 Personal Services	\$74,350	\$79,965

1	All Other	26,100	26,100
2	Capital Expenditures	1,851	
3	Provides funding		
4	for 2 out-of-home		
5	abuse and neglect		
6	investigators, 1		
7	Assistant Attorney		
8	General to serve		
9	as a full-time		
10	member of the team		
11	and relevant pro-		
12	fessionals outside		
13	the department to		
14	participate on the		
15	team as directed		
16	in this Title.		
17			
18	Total	<u>\$102,301</u>	<u>\$106,065</u>
19	<u>EDUCATIONAL AND CULTURAL</u>		
20	<u>SERVICES, DEPARTMENT OF</u>		
21	Division of Certifica-		
22	tion		
23	Capital Expenditures	\$10,000	
24	Provides funding		
25	for the purchase		
26	of 2 computer work		
27	stations and 1		
28	printer.		
29			
30	TOTAL APPROPRIATION	<u>\$184,022</u>	<u>\$178,496</u>
31	Emergency clause. In view of the emergency cited		
32	in the preamble, this Act shall take effect July 1,		
33	1987.		

1 STATEMENT OF FACT

2 Part A establishes a Child Welfare Services
3 Ombudsman within the Executive Department to repre-
4 sent the best interests of children and others in-
5 volved in the child welfare system by:

6 1. Providing oversight of child welfare services
7 offered by state agencies;

8 2. Increasing accountability of state agencies
9 regarding the provision of child welfare services;
10 and

11 3. Providing an avenue of recourse for people
12 who have problems, issues, concerns or complaints re-
13 garding child welfare services provided by or within
14 the jurisdiction of state agencies.

15 Part B establishes and funds an out-of-home abuse
16 and neglect investigating team and consolidates the 2
17 separate licensing divisions within the Bureau of So-
18 cial Services in order to:

19 1. Efficiently investigate all reports received
20 by the department regarding alleged out-of-home abuse
21 and neglect occurring in facilities or by persons
22 subject to licensure by the department;

23 2. Eliminate the current procedural gap between
24 the licensing functions and the out-of-home abuse in-
25 vestigating functions of the Bureau of Social Ser-
26 vices;

27 3. Minimize duplicate or redundant investiga-
28 tions in response to the same or related allegations
29 of out-of-home abuse or neglect;

30 4. Ensure the full-time participation of an As-
31 sistant Attorney General on the team; and

32 5. Ensure the inclusion of relevant profession-
33 als outside the department for investigations of cer-
34 tain facilities.

35 Part C provides funding for the Office of Child

1 Welfare Services Ombudsman, the out-of-home abuse and
2 neglect investigating team and the purchase of 2 com-
3 puter work stations and one printer for the Division
4 of Certification within the Department of Educational
5 and Cultural Services. Currently, the teacher certi-
6 fication process involves more than 40,000 active
7 files with virtually no in-house computerization.
8 This appropriation for computerization will provide
9 the division with basic word processing capabilities
10 and facilities for linking up with larger interde-
11 partmental and intradepartmental computer systems.

12

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