

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## FIRST SPECIAL SESSION-1997

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Legislative Document

No. 1750

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H.P. 1233


House of Representatives, April 7, 1997

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**An Act Concerning the Rights of Children with Special Needs.**

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

  
JOSEPH W. MAYO, Clerk

Presented by Representative MITCHELL of Portland.  
Cosponsored by Representative LOVETT of Scarborough.

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

4 Sec. 1. 34-B MRSA c. 6, sub-c. I-A is enacted to read:

6 SUBCHAPTER I-A

8 RIGHTS OF CHILDREN WITH SPECIAL NEEDS

10 §6101. Principles of operation

12 The department, in developing and delivering services to  
14 children with special needs, shall operate cooperatively with the  
16 Department of Human Services, the Department of Education and the  
18 Department of Corrections according to the following principles.

20 1. Adequate services. Children with special needs and  
22 their parents are entitled to adequate services to meet their  
24 needs.

26 2. Cohesive system of allocation of services. Children  
28 with special needs and their parents are entitled to a cohesive  
30 system of allocation of publicly funded services and resources  
32 that is prompt, decisive and collaborative across all  
34 governmental divisions that serve the child.

36 3. Primary and central focus. A child with special needs  
38 is entitled to be the primary and central focus of all  
40 governmental efforts undertaken in that child's behalf and may  
42 not be defined by bureaucratic or governmental entities that  
44 serve the child.

46 4. Preservation of child in family home. Children with  
48 special needs and their parents are entitled to services when the  
50 primary goal is to preserve the child in the family home.

5. Delivery of services. Delivery of services to the child  
and the child's parents may never be contingent upon the parents  
having to relinquish custody of the child to the State.

6. Lack of resources. State protective services may not be  
used to divest custody of children from their parents when,  
because of a lack of resources, parents can not provide for the  
special needs of the child.

§6102. Assessment

The department shall provide an assessment biennially to any  
parent or guardian of a child who is under 18 years of age and  
who has treatment needs related to mental illness, mental  
retardation, autism, developmental disabilities, substance abuse

2 or emotional or behavioral needs. The assessment must identify  
4 the service needs of the child being assessed and the resources  
6 necessary to meet the needs of each child. The needs must be  
8 identified without regard to whether resources are presently  
10 available to meet those needs.

12 **§6103. Report to the Legislature**

14 At least annually, the commissioner shall report to the  
16 joint standing committee of the Legislature having jurisdiction  
18 over children with special needs. The report must contain at a  
20 minimum the compilation of all individual assessments completed  
22 pursuant to section 6102 with a delineation of needs that have  
24 been identified and the estimated costs required to meet those  
26 needs.

28 **§6104. Interdepartmental Children's Ombudsman**

30 1. Definitions. As used in this section, unless the  
32 context otherwise indicates, the following terms have the  
34 following meanings.

36 A. "Commissioners" means the Commissioner of Corrections,  
38 the Commissioner of Education, the Commissioner of  
40 Education, the Commissioner of Human Services and the  
42 Commissioner of Mental Health, Mental Retardation and  
44 Substance Abuse Services.

46 B. "Departments" means the Department of Corrections, the  
48 Department of Education, the Department of Human Services  
50 and the Department of Mental Health, Mental Retardation and  
Substance Abuse services.

2. Establishment; jurisdiction. There is established the  
Interdepartmental Children's Ombudsman, referred to in this  
section as the "ombudsman," which consists of at least 3  
ombudsmen with jurisdiction as follows:

A. One ombudsman is responsible for York County and  
Cumberland County;

B. One ombudsman is responsible for Androscoggin, Oxford,  
Franklin, Kennebec, Somerset, Sagadahoc, Lincoln, Knox and  
Waldo counties; and

C. One ombudsman is responsible for Aroostook, Penobscot,  
Piscataquis, Washington and Hancock counties.

3. Duties. The ombudsmen shall:

- 2           A. Advocate for the rights and dignity of children with  
special needs;
- 4           B. Receive complaints of alleged violations of the  
principles of operation set forth in section 6101;
- 6
- 8           C. Work to resolve disputes between state departments,  
school systems and local service providers so as to maximize  
10 the efficient delivery of services to children with special  
needs;
- 12           D. Make recommendations to the commissioners pertaining to  
the allocation of resources among the departments in  
14 individual cases; and
- 16           E. Act as information sources pertaining to services  
available to children with special needs.
- 18
- 20           4. Hiring. The ombudsmen must be hired jointly by and  
shall report to the commissioners, or the designees of the  
commissioners. The hiring process must also include at least one  
22 parent of a child with special needs as a full and equal partner  
in the hiring process.
- 24
- 26           5. Access to files and records. The ombudsmen have access  
to files, records and personnel of any state department providing  
services or otherwise involved with a child with special needs.
- 28
- 30           6. Annual report to Legislature. The ombudsmen shall  
report at least annually to the joint standing committee of the  
Legislature having jurisdiction over health and human services  
32 matters. The ombudsmen may make recommendations for changes in  
the system of care for children with special needs.
- 34
- 36           7. Status. The ombudsmen are classified as state  
employees. The ombudsmen may not be disciplined for carrying out  
the duties assigned to the ombudsman by this section.
- 38
- 40           8. Clerical and logistical support. The departments shall  
jointly be responsible for providing sufficient clerical and  
logistical support to the ombudsmen that the ombudsman may  
42 adequately carry out their duties.

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**SUMMARY**

48           The purpose of this bill is to address the issue posed in In  
Re: Shawn H., 667 A. 2d 1377 (Me. 1995), in which a parent of a  
50           child with special needs who does not have the resources to meet  
those needs may be forced to relinquish custody of the child to

2 the State even though the parent was not unfit. In addition,  
3 this bill seeks to bring together in one place in State  
4 Government the identified needs of children with special needs,  
5 so as to provide a better perspective on the totality of all  
6 needs, both met and unmet, and thus gives the Legislature the  
7 opportunity to allocate resources more efficiently. This bill  
8 outlines principles of operation that the Department of Mental  
9 Health, Mental Retardation and Substance Abuse Services, in  
10 cooperation with the Department of Human Services, the Department  
11 of Education and the Department of Corrections, must adhere to in  
12 developing and delivering services to children with special  
13 needs. The bill requires the department biennially to provide an  
14 assessment to the parent or guardian of a child with special  
15 needs identifying that child's special needs and the resources  
16 necessary to meet those needs. The bill requires the  
17 Commissioner of Mental Health, Mental Retardation and Substance  
18 Abuse Services to report annually to the Legislature on the  
19 individual assessments performed, the needs identified and the  
20 estimated costs to meet those needs.

21  
22 This bill also establishes the Interdepartmental Children's  
23 Ombudsmen who are hired by and report to the Commissioner of  
24 Mental Health, Mental Retardation and Substance Abuse Services,  
25 the Commissioner of Education and the Commissioner of Human  
26 Services. The ombudsmen are directed to advocate for the rights  
27 and dignity of children with special needs, receive complaints,  
28 resolve disputes and act as information sources and to make  
recommendations.