

# MAINE STATE LEGISLATURE

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AMS

L.D. 528

DATE: 4-6-00

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HEALTH AND HUMAN SERVICES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
119TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 397, L.D. 528, Bill, "An Act to Implement the Recommendations of the Task Force to Study the Need for an Ombudsman for the Department of Human Services and the Department of Mental Health, Mental Retardation and Substance Abuse Services Relating to the Department of Mental Health, Mental Retardation and Substance Abuse Services"

Amend the bill by striking out the title and substituting the following:

'An Act to Establish the Child Ombudsman Office and Improve Child Protective Procedures'

Further amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

'Sec. 1. 22 MRSA §4087, as enacted by PL 1989, c. 400, §§7 and 14, is repealed.

Sec. 2. 22 MRSA §4087-A is enacted to read:

§4087-A. Child Ombudsman Office

1. Office established. The Child Ombudsman Office is established as an independent office to provide ombudsman services to the people of the State regarding all matters in which a child is receiving or requesting services from a state agency. The office shall consider and promote the best interests of children and their families, answer inquiries and investigate, advise and work toward resolution of complaints against state agencies that may be infringing on the rights of individuals.

COMMITTEE AMENDMENT

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

6            A. "Agency" means a department or agency of the State, a  
7            person or entity providing services under a contract with a  
8            state department or agency, or a school administrative  
9            unit. "Agency" does not include private individuals,  
10           companies or organizations; federal, county or municipal  
11           governments; institutions of higher education; elected  
12           officials or representatives; or the Judicial Department.

14           B. "Office" means the Child Ombudsman Office established  
15           under this section.

16           C. "Ombudsman" means the director of the office and persons  
17           employed or volunteering to perform the work of the office.

20           3. Contracted services. The office must operate by  
21           contract with a nonprofit organization that the Community  
22           Services Center, established in section 6-C, determines to be  
23           free of potential conflict of interest and best able to provide  
24           the services on a statewide basis.

26           4. Services. The ombudsman shall provide services directly  
27           or under contract and may set priorities for service among the  
28           types of inquiries and complaints. The ombudsman may:

30           A. Provide information to the public about the services of  
31           the office through a comprehensive outreach program and a  
32           toll-free telephone number;

34           B. Answer inquiries and investigate and work toward  
35           resolution of complaints regarding the performance and  
36           services of agencies with regard to services to children and  
37           participate in conferences, meetings and studies that may  
38           improve the performance of agencies;

40           C. Provide services to persons to assist them in protecting  
41           the rights of children and families;

42           D. Inform persons of the means of obtaining services from  
43           agencies;

46           E. Consider and promote the interests of children and their  
47           families, including participating in mediation and  
48           representation of families in legal actions;

2 F. Provide information and referral services for children  
and families;

4 G. Provide training and technical assistance to guardians ad  
litem, special advocates and others interested in the rights  
6 of children and families;

8 H. Analyze and provide opinions and recommendations to  
agencies, the Governor and the Legislature on programs,  
10 rules, policies and laws regarding children and families;

12 I. Determine what types of complaints and inquiries will  
be accepted for action by the office and adopt policies and  
14 procedures regarding communication with persons making  
inquiries or complaints and agencies about which inquiries  
16 and complaints are made;

18 J. Apply for and utilize grants, gifts and funds for the  
purpose of performing the duties of the office; and

20 K. Collect and analyze records and data relevant to the  
22 duties and activities of the office and make reports as  
required by law or determined to be appropriate.

24 5. Access to persons, files and records. The ombudsman has  
26 access to the child who is the subject of an inquiry or complaint  
if the parents or legal guardian consents; to agency files and  
28 records, without fee; and to the personnel of an agency for the  
purposes of investigation of the inquiry or complaint. The  
30 ombudsman may also enter the premises of an agency for the  
purposes of investigation of the inquiry or complaint without  
32 prior notice. The ombudsman shall maintain the confidentiality  
of all information or records obtained under this subsection.

34 6. Confidentiality of records. Information or records  
36 maintained by the ombudsman relating to a complaint or inquiry  
are confidential and may not be disclosed unless the disclosure  
38 is permitted by law and consented to by the ombudsman or ordered  
by court. Records maintained by the ombudsman are not public  
40 records as defined in Title 1, chapter 13.

42 7. Immunity. Any person who in good faith submits a  
44 complaint or inquiry to the office pursuant to this section or in  
good faith investigates that complaint or inquiry as an employee  
46 or volunteer of the office is immune from any civil or criminal  
liability that otherwise might result from these actions. For the  
48 purpose of any civil or criminal proceedings, there is a  
rebuttable presumption that any person acting pursuant to this  
section did so in good faith. The ombudsman is not immune from

2 liability for acts of gross negligence or intentional wrongful  
3 acts or omissions.

4 8. Report. The ombudsman shall report to the Governor, the  
5 department, the Department of Education, the Department of  
6 Corrections, the Department of Mental Health, Mental Retardation  
7 and Substance Abuse Services and the Legislature by January 1st  
8 each year on the activities and services of the office,  
9 priorities among types of inquiries and complaints that may have  
10 been set by the office, waiting lists for services and  
11 recommendations for changes in policy, rule or law to improve the  
12 provision of services to children and families.

14 9. Oversight. The joint standing committee of the  
15 Legislature having jurisdiction over health and human services  
16 matters shall review the operations of the office and may make  
17 recommendations to the commissioner and the Community Services  
18 Center regarding the contract for services under this section.  
19 The committee may submit legislation that it determines necessary  
20 to amend or repeal this section.

22 **Sec. 3. 22 MRSA §4089, sub-§1, ¶E,** as enacted by PL 1989, c.  
23 819, §6, is amended to read:

24 E. ~~The child--welfare--services--ombudsman,--appointed--in~~  
25 ~~accordance--with--section--4087,~~ Director of the Child  
26 Ombudsman Office established in section 4087-A shall serve  
27 as a permanent member.

30 **Sec. 4. Report.** By January 1, 2001, the Director of the Child  
31 Ombudsman Office established in the Maine Revised Statutes, Title  
32 22, section 4087-A, shall report to the joint standing committee  
33 of the Legislature having jurisdiction over health and human  
34 services matters on the feasibility of and any action required to  
35 transfer authority for child ombudsman and advocacy services and  
36 programs and the funding associated with those services and  
37 programs on July 1, 2001. In compiling this report, the director  
38 shall consider the services provided directly or indirectly by  
39 the Department of Mental Health, Mental Retardation and Substance  
40 Abuse Services, the Office of Advocacy within the Department of  
41 Corrections, the office of consumer affairs within the Department  
42 of Mental Health, Mental Retardation and Substance Abuse  
43 Services, the Department of Education, the Department of Human  
44 Services, the Department of Corrections and the Disability Rights  
45 Center and such other agencies as the director determines to be  
46 appropriate. The joint standing committee of the Legislature  
47 having jurisdiction over health and human services matters may  
48 submit legislation to the 120th Legislature to transfer authority  
over child ombudsman programs and services and the funding

associated with those services and programs to the Child Ombudsman Office.

**Sec. 5. Review of child protective policy; rules.** By September 30, 2000, the Department of Human Services, Bureau of Child and Family Services shall review all policies governing child protective services for the purpose of determining those portions appropriate for adopting rules under the Maine Revised Statutes, Title 5, chapter 375. In conducting this review and determining the portions appropriate for rulemaking, the bureau shall consult with advocates for families and other interested persons. The bureau shall report to the joint standing committee of the Legislature having jurisdiction over health and human services matters on the results of the review. The bureau shall conclude this review and adopt the appropriate rules by June 30, 2001. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

**Sec. 6. Comprehensive information.** By September 30, 2000, the Department of Human Services shall publish a comprehensive pamphlet describing the child protective process and the rights and responsibilities of parents in the child protective system. This pamphlet must be provided to parents in the beginning of the child protective assessment and must include a list of support services available to families to help them reduce risk to children in the home. The pamphlet must be revised and modified as changes are made in policy, rule and law.

**Sec. 7. Review of child protective services.** By September 30, 2000, the Department of Human Services shall convene a multi-disciplinary group that includes representatives of persons involved in the child protective system, including the Child Welfare Advisory Committee, established in the Maine Revised Statutes, Title 22, section 4089, to consider and make recommendations for improvements in the child protective services program. By March 1, 2001, the department shall report the findings and recommendations of the group to the joint standing committee of the Legislature having jurisdiction over health and human services matters and the joint standing committee of the Legislature having jurisdiction over judiciary matters. The report must include, but is not limited to, recommendations for creating fair and appropriate procedures, consistent with due process, for child protective activities of the department prior to filing a petition under Title 22, subchapter IV, including procedures regarding the substantiation of allegations of abuse and the development and review of child protective services plans.

**Sec. 8. Appropriation.** The following funds are appropriated from the General Fund to carry out the purposes of this Act.

4 2000-01

6 **HUMAN SERVICES, DEPARTMENT OF**

8 **Child Ombudsman Office**

10 All Other \$106,626

12 Provides for the appropriation of funds to  
14 establish the Child Ombudsman Office to  
16 provide ombudsman services to children and  
families through a contract with a nonprofit  
organization.

18 **Sec. 9. Effective date.** This Act takes effect October 1, 2000,  
20 except that sections 4 to 7 of this Act take effect July 15,  
2000.'

22 Further amend the bill by inserting at the end before the  
24 summary the following:

26 **FISCAL NOTE**

28 2000-01

30 **APPROPRIATIONS/ALLOCATIONS**

32 General Fund \$106,626

34 This bill includes a General Fund appropriation of \$106,626  
36 in fiscal year 2000-01 for the Department of Human Services to  
38 contract for ombudsman services. The estimated future costs are  
\$105,084 and \$109,285 for fiscal years 2001-02 and 2002-03,  
respectively.

40 The Department of Human Services will incur some minor  
42 additional costs to review child protective policies, services  
and procedures, adopt rules, provide certain information and  
44 submit the required report. These costs can be absorbed within  
the department's existing budgeted resources.

46 The Department of the Attorney General will incur additional  
48 costs to represent the Department of Human Services if legal  
action is brought against the department through the Child  
Ombudsman Office. If legal representation activities associated

with these new cases represent a significant increase in workload, the Department of the Attorney General may require additional future General Fund appropriations.'

## SUMMARY

This amendment replaces the bill. It reflects the work of the Joint Standing Committee on Health and Human Services on children's ombudsman functions. The amendment contains the following provisions.

1. The amendment repeals the statute that establishes the unfunded Child Welfare Services Ombudsman in the Department of Human Services.

2. The amendment establishes the Child Ombudsman Office to provide ombudsman services to children and families through a contract with a nonprofit organization. The office may answer inquiries and investigate and work toward resolution of complaints regarding services and programs for children and families, may provide information, assistance and legal representation services, may provide an outreach program, may collect and analyze information and shall report annually to the joint standing committee of the Legislature having jurisdiction over health and human services matters.

3. The amendment provides for access to records, confidentiality of those records and immunity from civil and criminal liability.

4. The amendment appropriates funds for the contract for the Child Ombudsman Office.

5. The amendment provides an effective date of July 15, 2000 for reviewing child protective services and procedures and October 1, 2000 for the remainder of the bill.

6. The amendment requires a report by January 1, 2001 on transferring to the Child Ombudsman Office authority for other child ombudsman and advocacy programs and services and the funding associated with those programs and services. It allows the joint standing committee of the Legislature having jurisdiction over health and human services matters to submit legislation to the 120th Legislature transferring funding and authority for services to the Child Ombudsman Office.

7. The amendment adds requirements for review of policies in the Department of Human Services, Bureau of Child and Family Services regarding child protective matters, and requires the



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2 provision of information to parents involved in the child  
protective system.

4 8. The amendment adds an appropriation and a fiscal note.