

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2001

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Legislative Document

No. 159

H.P. 148

House of Representatives, January 16, 2001

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**An Act to Establish a Child Ombudsman Office.**

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

*Millicent M. MacFarland*

MILLICENT M. MacFARLAND, Clerk

Presented by Representative FULLER of Manchester.  
Cosponsored by Representatives: BAKER of Bangor, BROOKS of Winterport, DUGAY of Cherryfield, LOVETT of Scarborough, McLAUGHLIN of Cape Elizabeth, O'BRIEN of Augusta, WATSON of Farmingdale, Senator: LONGLEY of Waldo.

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

4 **Sec. 1. 22 MRSA c. 1071, sub-c. X-A,** is amended by repealing the  
subchapter headnote and enacting the following in its place:

6 **SUBCHAPTER X-A**

8 **CHILD OMBUDSMAN OFFICE**

10 **Sec. 2. 22 MRSA §4087,** as enacted by PL 1989, c. 400, §§7 and  
12 14, is repealed.

14 **Sec. 3. 22 MRSA §4087-A** is enacted to read:

16 **§4087-A. Child Ombudsman Office**

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

26 **2. Definitions.** As used in this section, unless the  
28 context otherwise indicates, the following terms have the  
following meanings.

30 **A. "Agency" means a department or agency of the State, a**  
32 **person or entity providing services under a contract with a**  
34 **state department or agency, or a school administrative**  
36 **unit. "Agency" does not include private individuals,**  
**companies or organizations; federal, county or municipal**  
**governments; institutions of higher education; elected**  
**officials or representatives; or the Judicial Department.**

38 **B. "Office" means the Child Ombudsman Office established**  
40 **under this section.**

42 **C. "Ombudsman" means the director of the office and persons**  
44 **employed or volunteering to perform the work of the office.**

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

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

6           A. Provide information to the public about the services of  
7 the office through a comprehensive outreach program and a  
8 toll-free telephone number;

10          B. Answer inquiries and investigate and work toward  
11 resolution of complaints regarding the performance and  
12 services of agencies with regard to services to children and  
13 participate in conferences, meetings and studies that may  
14 improve the performance of agencies;

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

18          D. Inform persons of the means of obtaining services from  
19 agencies;

22          E. Consider and promote the interests of children and their  
23 families, including participating in mediation and  
24 representation of families in legal actions;

26          F. Provide information and referral services for children  
27 and families;

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

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

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

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

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

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

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

18           **7. Immunity.** Any person who in good faith submits a  
complaint or inquiry to the office pursuant to this section or in  
20           good faith investigates that complaint or inquiry as an employee  
or volunteer of the office is immune from any civil or criminal  
22           liability that otherwise might result from these actions. For the  
purpose of any civil or criminal proceedings, there is a  
24           rebuttable presumption that any person acting pursuant to this  
section did so in good faith. The ombudsman is not immune from  
26           liability for acts of gross negligence or intentional wrongful  
acts or omissions.

28           **8. Report.** Beginning in 2003, the ombudsman shall report  
30           to the Governor, the department, the Department of Education, the  
Department of Corrections, the Department of Mental Health,  
32           Mental Retardation and Substance Abuse Services and the  
Legislature by January 1st each year on the activities and  
34           services of the office, priorities among types of inquiries and  
complaints that may have been established by the office, waiting  
36           lists for services and recommendations for changes in policy,  
rule or law to improve the provision of services to children and  
38           families.

40           **9. Oversight.** The joint standing committee of the  
Legislature having jurisdiction over health and human services  
42           matters shall review the operations of the office and may make  
recommendations to the commissioner and the Community Services  
44           Center regarding the contract for services under this section.  
The committee may submit legislation to amend or repeal this  
46           section that it determines necessary.

48           **10. Information.** Beginning July 1, 2002, all contracts for  
services to children and families entered into by the department,  
50           the Department of Corrections, the Department of Education and

2 the Department of Mental Health, Mental Retardation and Substance  
4 Abuse Services must include a requirement that the provider of  
6 services under the contract give written notice to children and  
8 families served by the provider or applying for service from the  
10 provider that the child or family may use the services of the  
12 ombudsman and may use the grievance and appeal procedures of the  
14 appropriate state department.

16 **Sec. 4. 22 MRSA §4089, sub-§1, ¶E,** as enacted by PL 1989, c.  
18 819, §6, is amended to read:

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

28 **Sec. 5. Report.** By January 15, 2002, the director of the  
30 Child Ombudsman Office established in the Maine Revised Statutes,  
32 Title 22, section 4087-A shall report to the joint standing  
34 committee of the Legislature having jurisdiction over health and  
36 human services matters on the feasibility of and any action  
38 required to transfer authority for child ombudsman and advocacy  
services and programs and the funding associated with those  
services and programs on July 1, 2002. In compiling this report,  
the director shall consider the services provided directly or  
indirectly by the Department of Mental Health, Mental Retardation  
and Substance Abuse Services, the Office of Advocacy within the  
Department of Corrections, the Office of Advocacy and Consumer  
Affairs within the Department of Mental Health, Mental  
Retardation and Substance Abuse Services, the Department of  
Education, the Department of Human Services, the Department of  
Corrections and the Disability Rights Center and such other  
agencies as the director determines to be appropriate. The joint  
standing committee of the Legislature having jurisdiction over  
health and human services matters may 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.

40 **Sec. 6. Effective date.** This Act takes effect January 1, 2002.

## 42 SUMMARY

44 This bill contains the following provisions.

46 1. It repeals the statute that establishes the unfunded  
48 Child Welfare Services Ombudsman within the Department of Human  
Services.

2           2. It establishes the Child Ombudsman Office within the  
3 Department of Human Services to provide ombudsman services to  
4 children and families through a contract with a nonprofit  
5 organization. The office may answer inquiries and investigate  
6 and work toward resolution of complaints regarding services and  
7 programs for children and families, may provide information,  
8 assistance and legal representation services, may provide an  
9 outreach program, may collect and analyze information and shall  
10 report annually to the joint standing committee of the  
11 Legislature having jurisdiction over health and human services  
12 matters.

14           3. It provides for access to records, confidentiality of  
15 those records and immunity from civil and criminal liability.

16           4. Beginning July 1, 2002, it requires all contracts for  
17 services to children and families entered into by the Department  
18 of Human Services, the Department of Corrections, the Department  
19 of Education and the Department of Mental Health, Mental  
20 Retardation and Substance Abuse Services to include a requirement  
21 that the provider of services under the contract give written  
22 notice to children and families served by the provider or  
23 applying for service from the provider that the child or family  
24 may use the services of the ombudsman and may use the grievance  
25 and appeal procedures of the appropriate state department.

28           5. It provides an effective date of January 1, 2002.

30           6. It requires a report by January 15, 2002 on transferring  
31 to the Child Ombudsman Office authority for other child ombudsman  
32 and advocacy programs and services and the funding associated  
33 with those programs and services. It allows the joint standing  
34 committee of the Legislature having jurisdiction over health and  
35 human services matters to submit legislation to the 120th  
36 Legislature transferring funding and authority for services to  
37 the Child Ombudsman Office.

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