

# MAINE STATE LEGISLATURE

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**HEALTH AND HUMAN SERVICES**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
120TH LEGISLATURE  
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 609, L.D. 764, Bill, "An Act to Establish an Ombudsman for the Department of Human Services"

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

**'An Act to Establish an Ombudsman for Children and Families'**

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 §4002, sub-§3-A**, as enacted by PL 1987, c. 511, Pt. A, §2, is repealed.

**Sec. 2. 22 MRSA §4008, sub-§3, ¶D**, as amended by PL 1987, c. 511, Pt. A, §3, is further amended to read:

D. An appropriate state executive or legislative official with responsibility for child protection services ~~ex--the Child--Welfare--Services--Ombudsman--in--carrying--out--his official--functions~~, provided that no personally identifying information may be made available unless necessary to his that official's functions;

**Sec. 3. 22 MRSA c. 1071, sub-c. X-A** is amended by repealing the subchapter headnote and enacting the following in its place:

**SUBCHAPTER X-A**

**OMBUDSMAN SERVICES**

**COMMITTEE AMENDMENT**

2           **Sec. 4. 22 MRSA §4087**, as enacted by PL 1989, c. 400, §§7 and  
14, is repealed.

4           **Sec. 5. 22 MRSA §4087-A** is enacted to read:

6           **§4087-A. Ombudsman Office**

8           **1. Definitions.** As used in this section, unless the  
10 context otherwise indicates, the following terms have the  
following meanings.

12           A. "Office" means the Ombudsman Office established under  
14 this section.

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

20           **2. Office established.** The Ombudsman Office is established  
as an independent office within the Executive Department to  
22 provide ombudsman services to the children and families of the  
State regarding all matters in which a child is receiving or  
24 requesting services from the department, the Department of Mental  
Health, Mental Retardation and Substance Abuse Services or the  
26 child development services system established pursuant to Title  
20-A, chapter 307-A. The office shall consider and promote the  
28 best interests of the child involved, answer inquiries and  
investigate, advise and work toward resolution of complaints of  
infringement of the rights of the child involved.

30           **3. Contracted services.** The office shall operate by  
32 contract with a nonprofit organization that the Executive  
Department determines to be free of potential conflict of  
34 interest and best able to provide the services on a statewide  
basis. The ombudsman may not be actively involved in state-level  
36 political party activities or publicly endorse, solicit funds for  
or make contributions to political parties on the state level or  
38 candidates for statewide elective office. The ombudsman may not  
be a candidate for or hold any statewide elective or appointive  
40 public office.

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

46           A. Provide information to the public about the services of  
the office through a comprehensive outreach program. The  
48 ombudsman shall provide information through a toll-free  
telephone number or numbers;

2           B. Answer inquiries, investigate and work toward resolution  
4           of complaints regarding the performance and services of the  
6           department, the Department of Mental Health, Mental  
8           Retardation and Substance Abuse Services or the child  
10           development services system under the Department of  
12           Education with regard to services to children and  
          participate in conferences, meetings and studies that may  
          improve the performance of the department, the Department of  
          Mental Health, Mental Retardation and Substance Abuse  
          Services or the child development services system under the  
          Department of Education;

14           C. Provide services to persons to assist them in protecting  
16           their rights;

18           D. Inform persons of the means of obtaining services from  
20           the department, the Department of Mental Health, Mental  
22           Retardation and Substance Abuse Services or the child  
          development services system under the Department of  
          Education;

24           E. Provide information and referral services;

26           F. Analyze and provide opinions and recommendations to  
28           agencies, the Governor and the Legislature on state  
          programs, rules, policies and laws;

30           G. Determine what types of complaints and inquiries will be  
32           accepted for action by the office and adopt policies and  
          procedures regarding communication with persons making  
          inquiries or complaints and the relevant department;

34           H. Apply for and utilize grants, gifts and funds for the  
36           purpose of performing the duties of the office; and

38           I. Collect and analyze records and data relevant to the  
40           duties and activities of the office and make reports as  
          required by law or determined to be appropriate.

42           5. Access to persons, files and records. As necessary for  
44           the duties of the ombudsman, the ombudsman has access to the  
46           files and records of state agencies, without fee, and to the  
48           personnel of state agencies for the purposes of investigation of  
          an inquiry or complaint. The ombudsman may also enter the  
          premises of state agencies for the purposes of investigation of  
          an inquiry or complaint without prior notice. The ombudsman  
          shall maintain the confidentiality of all information or records  
          obtained under this subsection.

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

8  
10           **7. Liability.** Any person who in good faith submits a  
          complaint or inquiry to the office pursuant to this section is  
12           immune from any civil or criminal liability. For the purpose of  
          any civil or criminal proceedings, there is a rebuttable  
14           presumption that any person acting pursuant to this section did  
          so in good faith. The ombudsman and employees and volunteers in  
16           the office are employees of the State for the purposes of the  
          Maine Tort Claims Act.

18           **8. Penalties.** A person who intentionally obstructs or  
          hinders the lawful exercise of the ombudsman in the performance  
20           of the ombudsman's duties commits a Class E crime. A person who  
          penalizes or imposes a restriction on a person who makes a  
22           complaint or inquiry to the ombudsman as a result of that  
          complaint or inquiry commits a Class E crime. The Attorney  
24           General shall enforce this subsection under Title 5, section 191.

26           **9. Information.** Beginning July 1, 2002, information about  
          the services of the ombudsman and any applicable grievance and  
28           appeal procedures must be given to all children and families  
          requesting or receiving services from the department, the  
30           Department of Mental Health, Mental Retardation and Substance  
          Abuse Services or the child development services system under the  
32           Department of Education. The requirements of this subsection  
          apply to all persons and entities contracting with the department  
34           or the Department of Mental Health, Mental Retardation and  
          Substance Abuse Services for the provision of services to  
36           children and families and to providers of child development  
          services through the Department of Education.

38           **10. Report.** The ombudsman shall report to the Governor,  
40           the department, the Department of Mental Health, Mental  
          Retardation and Substance Abuse Services, the Department of  
42           Education and the Legislature by January 1st each year on the  
          activities and services of the office, priorities among types of  
44           inquiries and complaints that may have been set by the office,  
          waiting lists for services, the provision of outreach services  
46           and recommendations for changes in policy, rule or law to improve  
          the provision of services.

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50           **11. Oversight.** The joint standing committee of the  
          Legislature having jurisdiction over health and human services

# COMMITTEE AMENDMENT

matters shall review the operations of the office and may make recommendations to the Governor regarding the contract for services under this section. The committee may submit legislation that it determines necessary to amend or repeal this section.

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

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

**Sec. 7. Report.** By January 31, 2003, the director of the Ombudsman Office, within the Executive Department, established in the Maine Revised Statutes, Title 22, section 4087-A, shall report to the joint standing committee of the Legislature having jurisdiction over health and human services matters on the feasibility of and any action required for transferring authority for child ombudsman and advocacy services and programs and the funding associated with those services and programs on July 1, 2003. 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 Department of Corrections, Office of Advocacy; the Department of Mental Health, Mental Retardation and Substance Abuse Services, Office of Advocacy and Consumer Affairs; the Department of Education; the Department of Human Services; the Department of Corrections; the Department of Human Services, Bureau of Elder and Adult Services; 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 121st Legislature to transfer authority over child ombudsman and advocacy services and programs and the funding associated with those services and programs to the Ombudsman Office.

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

	2001-02	2002-03
<b>EXECUTIVE DEPARTMENT</b>		
<b>Ombudsman Office</b>		
All Other	\$144,375	\$180,750
Provides funds to contract		

with a nonprofit organization to operate an ombudsman Office. Funding is included for the salary and fringe benefits of an ombudsman position and two support staff positions, operating costs and one-time start-up costs.'

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

**FISCAL NOTE**

	<b>2001-02</b>	<b>2002-03</b>
<b>APPROPRIATIONS/ALLOCATIONS</b>		
General Fund	\$144,375	\$180,750

The Executive Department will require additional General Fund appropriations of \$144,375 and \$180,750 in fiscal years 2001-02 and 2002-03, respectively, to contract with a nonprofit organization to operate a Ombudsman Office. This estimate includes funding for 3 staff persons, operating costs and one-time costs related to work space and computer stations. Additional General Fund appropriations may be required depending on the number of inquiries and complaints requiring investigations and if the toll-free telephone number requires staffing.

The additional costs associated with establishing an ombudsman for the Department of Human Services can be absorbed by the Department of the Attorney General utilizing existing budgeted resources.

This bill may increase prosecutions for Class E crimes. If a jail sentence is imposed, the additional costs to the counties are estimated to be \$83.36 per day per prisoner. The number of prosecutions that may result in a jail sentence and the resulting costs to the county jail system are expected to be insignificant.

The additional workload and administrative costs associated with the minimal number of new cases filed in the court system can be absorbed within the budgeted resources of the Judicial Department. The collection of additional fines may increase General Fund revenue by minor amounts.'

**SUMMARY**

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4 This amendment replaces the bill. It combines the  
6 provisions of LD 159, LD 764 and LD 1300. It does the following.

8 1. It repeals the child welfare services ombudsman, a  
10 position in the Department of Human Services that has not been  
12 funded in years.

14 2. It establishes an Ombudsman Office within the Executive  
16 Department through contract with an independent nonprofit  
18 organization.

20 3. It clarifies that the duties of the ombudsman include  
22 serving the children and families of the State with regard to a  
24 child requesting or receiving services from the Department of  
26 Human Services, the Department of Mental Health, Mental  
28 Retardation and Substance Abuse Services or the child development  
30 services system within the Department of Education.

32 4. It provides for penalties for persons who intentionally  
interfere with the performance of the ombudsman's duties and for  
persons who penalize or impose restrictions on a person who makes  
a complaint or inquiry to the ombudsman. It requires a report in  
January 2003 regarding combining other advocacy and ombudsman  
functions within the Department of Education, the Department of  
Human Services, the Department of Mental Health, Mental  
Retardation and Substance Abuse Services, the Department of  
Corrections and the Disability Rights Center.

5. It also adds an appropriation section and a fiscal note  
to the bill.