

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 764

H.P. 609

House of Representatives, February 13, 2001

An Act to Establish an Ombudsman for the Department of Human Services.

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

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

Presented by Representative LAVERRIERE-BOUCHER of Biddeford.
Cosponsored by Senator TURNER of Cumberland and
Representatives: BOWLES of Sanford, DUDLEY of Portland, KANE of Saco,
McGLOCKLIN of Embden, SHERMAN of Hodgdon, TESSIER of Fairfield, Senators:
BROMLEY of Cumberland, McALEVEY of York.

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

4 **Sec. 1. 22 MRSA §4002, sub-§3-A,** as enacted by PL 1987, c.
5 511, Pt. A, §2, is repealed.

6 **Sec. 2. 22 MRSA §4008, sub-§3, ¶D,** as amended by PL 1987, c.
7 511, Pt. A, §3, is further amended to read:

8
9 D. An appropriate state executive or legislative official
10 with responsibility for child protection services ~~or the~~
11 ~~Child Welfare Services Ombudsman in carrying out his~~
12 ~~official functions,~~ provided that no personally identifying
13 information may be made available unless necessary to his
14 that official's functions;

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

17 **SUBCHAPTER X-A**

18 **OMBUDSMAN SERVICES**

19
20
21 **Sec. 4. 22 MRSA §4087,** as enacted by PL 1989, c. 400, §§7 and
22 14, is repealed.

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

24 **§4087-A. Ombudsman Office**

25
26 **1. Definitions.** As used in this section, unless the
27 context otherwise indicates, the following terms have the
28 following meanings.

29 **A. "Office"** means the Ombudsman Office established under
30 this section.

31 **B. "Ombudsman"** means the director of the office and persons
32 employed or volunteering to perform the work of the office.

33
34 **2. Office established.** The Ombudsman Office is established
35 as an independent office within the Executive Department to
36 provide ombudsman services to the people of the State regarding
37 all matters in which a person is receiving or requesting services
38 from the department. The office shall consider and promote the
39 best interests of the people involved, answer inquiries and
40 investigate, advise and work toward resolution of complaints
41 against the department that may be infringing on the rights of
42 individuals.

2 3. Contracted services. The office shall operate by
3 contract with a nonprofit organization that the Executive
4 Department determines to be free of potential conflict of
5 interest and best able to provide the services on a statewide
6 basis.

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

10 A. Provide information to the public about the services of
11 the office through a comprehensive outreach program and a
12 toll-free telephone number;

13 B. Answer inquiries and investigate and work toward
14 resolution of complaints regarding the performance and
15 services of the department with regard to services to
16 individuals and participate in conferences, meetings and
17 studies that may improve the performance of the department;

18 C. Provide services to persons to assist them in protecting
19 their rights;

20 D. Inform persons of the means of obtaining services from
21 the department;

22 E. Provide information and referral services;

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

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

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

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

35 5. Access to persons, files and records. The ombudsman has
36 access to the department files and records, without fee; and to
37 the personnel of the department for the purposes of investigation
38 of the inquiry or complaint. The ombudsman may also enter the
39 premises of the department for the purposes of investigation of
40 the inquiry or complaint without prior notice. The ombudsman
41 may also interview any person who is available to the
42 ombudsman for the purposes of investigation of the inquiry or
43 complaint.

2 shall maintain the confidentiality of all information or records
3 obtained under this subsection.

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

10
11 **7. Immunity.** Any person who in good faith submits a
12 complaint or inquiry to the office pursuant to this section or in
13 good faith investigates that complaint or inquiry as an employee
14 or volunteer of the office is immune from any civil or criminal
15 liability that otherwise might result from these actions. For the
16 purpose of any civil or criminal proceedings, there is a
17 rebuttable presumption that any person acting pursuant to this
18 section did so in good faith. The ombudsman is not immune from
19 liability for acts of gross negligence or intentional wrongful
20 acts or omissions.

21
22 **8. Report.** The ombudsman shall report to the Governor, the
23 department and the Legislature by January 1st each year on the
24 activities and services of the office, priorities among types of
25 inquiries and complaints that may have been set by the office,
26 waiting lists for services and recommendations for changes in
27 policy, rule or law to improve the provision of services.

28
29 **9. Oversight.** The joint standing committee of the
30 Legislature having jurisdiction over health and human services
31 matters shall review the operations of the office and may make
32 recommendations to the Governor regarding the contract for
33 services under this section. The committee may submit legislation
34 that it determines necessary to amend or repeal this section.

35 **Sec. 6. 22 MRSA §4089, sub-§1, ¶E,** as enacted by PL 1989, c.
36 819, §6, is repealed.
37

40 SUMMARY

41
42 This bill repeals the statute that establishes the unfunded
43 Child Welfare Services Ombudsman in the Department of Human
44 Services. It establishes the Ombudsman Office to provide
45 ombudsman services through a contract with a nonprofit
46 organization. The office may answer inquiries and investigate
47 and work toward resolution of complaints regarding state services
48 and programs, may provide information, assistance and legal
49 representation services, may provide an outreach program, may
50 collect and analyze information and shall report annually to the

2 joint standing committee of the Legislature having jurisdiction
over health and human services matters. The bill provides for
4 access to records, confidentiality of those records and immunity
from civil and criminal liability.