

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 73

H.P. 81

House of Representatives, January 16, 2003

An Act to Make the Children's Ombudsman Program an Independent Office

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 BRYANT of Oxford and
Representatives: DUDLEY of Portland, KANE of Saco, MARLEY of Portland, MARRACHÉ
of Waterville, SULLIVAN of Biddeford.

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

2 **Sec. 1. 22 MRSA §4087-A**, as amended by PL 2001, c. 696, §36,
4 is further amended to read:

6 **§4087-A. Ombudsman program**

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

12 A. "Ombudsman" means the director of the program and
14 persons employed or volunteering to perform the work of the
program.

16 B. "Program" means the ombudsman program established under
this section.

18 **2. Program established.** The ombudsman program is
20 established as an independent program ~~within--the--Executive~~
22 ~~Department~~ to provide ombudsman services to the children and
families of the State regarding child welfare services provided
24 by the ~~Department--of--Human--Services~~ department. The program
shall consider and promote the best interests of the child
26 involved, answer inquiries and investigate, advise and work
toward resolution of complaints of infringement of the rights of
the child and family involved. The program must be staffed,
28 under contract, by an attorney or a master's level social worker
who must have experience in child development and advocacy, and
30 support staff as determined to be necessary. The program shall
function through the staff of the program and volunteers
32 recruited and trained to assist in the duties of the program.

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

46 **4. Services.** The program shall provide services ~~directly~~
~~ex--under--contract~~ and may set priorities for service among the
48 types of inquiries and complaints. The program may:

- 2 A. Provide information to the public about the services of
the program through a comprehensive outreach program. The
4 ombudsman shall provide information through a toll-free
telephone number or numbers;
- 6 B. Answer inquiries, investigate and work toward resolution
of complaints regarding the performance and services of the
8 department and participate in conferences, meetings and
studies that may improve the performance of the department;
- 10 C. Provide services to persons to assist them in protecting
12 their rights;
- 14 D. Inform persons of the means of obtaining services from
the department;
- 16 E. Provide information and referral services;
- 18 F. Analyze and provide opinions and recommendations to
20 agencies, the Governor and the Legislature on state
programs, rules, policies and laws;
- 22 G. Determine what types of complaints and inquiries will be
24 accepted for action by the program and adopt policies and
procedures regarding communication with persons making
26 inquiries or complaints and the department;
- 28 H. Apply for and utilize grants, gifts and funds for the
purpose of performing the duties of the program, including
30 accepting funding from the General Fund; and
- 32 I. Collect and analyze records and data relevant to the
duties and activities of the program and make reports as
34 required by law or determined to be appropriate.

36 **4-A. Information for parents in child protective cases.**
The program, in consultation with appropriate interested parties,
38 shall provide information about child protection laws and
procedures to parents whose children are the subject of child
40 protective investigations and cases under this chapter. The
providing of the information under this subsection does not
42 constitute representation of parents. Parents may seek and
receive information regardless of whether they are represented by
44 legal counsel. The information must be provided free of charge
to parents.

46
The program shall report annually to the joint standing committee
48 of the Legislature having jurisdiction over judiciary matters,
starting February 1, 2003 2004, on the provision of information
50 required by this subsection.

2 This subsection does not create new rights or obligations
concerning the provision of legal advice or representation of
4 parents. Failure to provide information under this subsection
does not create a cause of action or have any effect on a child
6 protective proceeding.

8 **5. Access to persons, files and records.** As necessary for
the duties of the program and as pertinent to a particular
10 complaint or inquiry, the ombudsman has access to the files and
records of the department, without fee, and to the personnel of
12 the department for the purposes of investigation of an inquiry or
complaint. ~~The ombudsman may also enter the premises of the~~
14 ~~department for the purposes of investigation of an inquiry or~~
~~complaint without prior notice.~~ The program shall maintain the
16 confidentiality of all information or records obtained under this
subsection.

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

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

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

42 **9. Information.** Beginning January 1, 2002, information
44 about the services of the program and any applicable grievance
and appeal procedures must be given to all children and families
46 receiving child welfare services from the department and from all
persons and entities contracting with the department for the
48 provision of child welfare services.

10. Report. The program shall report to the Governor, the department and the Legislature before January 1st each year on the activities and services of the program, priorities among types of inquiries and complaints that may have been set by the program, waiting lists for services, the provision of outreach services and recommendations for changes in policy, rule or law to improve the provision of services.

11. Oversight. The joint standing committee of the Legislature having jurisdiction over health and human services matters shall review the operations of the program 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.

SUMMARY

This bill removes from the Executive Department the ombudsman program that handles child welfare inquiries and complaints. The bill maintains the current duties of the ombudsman program.