

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 1621

S.P. 572

In Senate, May 21, 2003

An Act To Amend the Structure of the Office of Advocacy

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

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator BRENNAN of Cumberland. (GOVERNOR'S BILL)
Cosponsored by Representative KANE of Saco and
Senator: WESTON of Waldo, Representatives: CAMPBELL of Newfield, CURLEY of
Scarborough, EARLE of Damariscotta, LAVERRIERE-BOUCHER of Biddeford, LEWIN of
Eliot, SHIELDS of Auburn, WALCOTT of Lewiston.

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

4 **Sec. 1. 34-B MRSA §1204, sub-§2, ¶C,** as amended by PL 2001, c.
493, §3, is further amended to read:

6 C. The commissioner shall appoint the following officials
to serve at the commissioner's pleasure:

- 8 (1) Associate Commissioners;
- 10 (2) Superintendent, Augusta Mental Health Institute;
- 12 (3) Superintendent, Bangor Mental Health Institute;
- 14 (6) Director, Elizabeth Levinson Center;
- 16 (8) Assistant to the Commissioner;
- 18 (10) Regional Directors, who shall report to the
20 Associate Commissioner of Systems Operations;
- 22 (11) Director, Office of Substance Abuse, who shall
report directly to the commissioner; and
- 24 (12) Deputy Commissioner; and
- 26 (13) Director of the Office of Advocacy and Adult
28 Protective Services.

30 **Sec. 2. 34-B MRSA §1205,** as amended by PL 1995, c. 560, Pt.
K, §18, is further amended to read:

32 **§1205. Office of Advocacy and Adult Protective Services**

34 **1. Establishment.** The Office of Advocacy and Adult
36 Protective Services is established within the ~~Office of Advocacy~~
~~and Consumer Affairs of the~~ department solely to investigate the
38 claims and grievances of clients of the department, to
investigate with the Department of Human Services, as
40 appropriate, all allegations of adult and child abuse in state
institutions and to advocate on behalf of clients for compliance
42 by any institution, other facility or agency administered,
licensed or funded by the department with all laws,
44 administrative rules and institutional and other policies
relating to the rights and dignity of clients.

46 ~~2. Chief advocate. A chief advocate shall direct and~~
48 ~~coordinate the program of the office.~~

2 ~~A. The chief advocate shall report administratively to the~~
3 ~~commissioner and advise, consult with and inform the~~
4 ~~commissioner on the issues described in this section.~~

5 ~~B. The chief advocate shall select other advocates needed~~
6 ~~to carry out the intent of this section who shall report~~
7 ~~only to the chief advocate.~~

8 ~~C. Both the chief advocate and all other advocates shall be~~
9 ~~classified state employees.~~

10 **2-A. Office administration.** The Office of Advocacy and
11 Adult Protective Services and its staff are directly managed and
12 supervised by a director. The director selects advocates and
13 adult protective investigators to carry out the purposes of this
14 section.

15 A. The director is appointed by the commissioner and is a
16 confidential, unclassified state employee. The director is
17 responsible for and has full authority for providing general
18 supervision to all employees of the office; establishing
19 performance standards for all employees of the office;
20 creating and maintaining policies, procedures, protocols and
21 case tracking and closure systems; and providing regular
22 reports about the activities of the office to the
23 commissioner, the Consumer Advisory Board, the Legislature
24 and the public. The director may assign such supervisory
25 duties to an advocate or an adult protective investigator as
26 the director determines necessary for the effective
27 functioning of the office.

28 B. Five advocacy positions are primarily responsible for
29 adult protective investigations. The remaining positions
30 are devoted to advocacy services. All advocates and adult
31 protective investigators are classified state employees.
32 The commissioner has the ability to move positions from one
33 responsibility to the other in order to create the
34 appropriate balance between adult protective and advocacy
35 services.

36 **3. Duties.** The Office of Advocacy and Adult Protective
37 Services, through the chief advocate and the other director,
38 advocates and adult protective investigators, shall:

39 A. Receive or refer complaints made by clients of the
40 department and represent the interests of clients in any
41 matter pertaining to the rights and dignity of clients;

42 B. Intercede on behalf of these clients with officials of
43 the institutions, facilities and agencies administered,

2 licensed or funded by the department, except that the Office
of Advocacy and Adult Protective Services may refuse to take
4 action on any complaint which that it deems considers to be
trivial or moot or for which there is clearly another remedy
6 available;

8 C. Assist clients in any hearing or grievance proceeding of
the department;

10 D. Refer clients to other agencies or entities for the
purpose of advocating for the rights and dignity of these
12 persons;

14 E. Act as an information source regarding the rights of all
clients, keeping itself informed about all laws,
16 administrative rules and institutional and other policies
relating to the rights and dignity of the clients and about
18 relevant legal decisions and other developments related to
the field of mental health and mental retardation, both in
20 this State and in other parts of the country;

22 F. Make and publish reports necessary to the performance of
the duties described in this section. The ~~chief-advocate~~
24 director may report findings of the office to groups outside
the department, such as legislative bodies, advisory
26 committees, commissions, law enforcement agencies and the
press, and may authorize the advocates in the Office of
28 Advocacy and Adult Protective Services to so communicate.
At least annually, the ~~chief-advocate~~ director shall report
30 both in person and in writing to the joint standing
committee of the Legislature having jurisdiction over mental
32 health and mental retardation matters; and

34 G. Negotiate joint working agreements with the Department
of Human Services concerning procedures and respective
36 responsibilities for conducting investigations in state
institutions of allegations of abuse pursuant to the Child
38 and Family Services and Child Protection Act, Title 22,
chapter 1071; and

40 H. Provide adult protective services as described in Title
42 22, section 3473.

44 **4. Access to files and records.** The Office of Advocacy,
~~through the chief-advocate and the other-advocates,~~ and Adult
46 Protective Services has access, limited only by the law, to the
files, records and personnel of any institution, facility or
48 agency administered, licensed or funded by the department. All
persons with knowledge about an incident related to client care,
50 including client-to-client assault, staff-to-client assault,

2 client-to-staff assault, excessive use of seclusion or mechanical
3 or chemical restraint, incidents stemming from questionable
4 psychiatric and medical practice or any other alleged abuse or
5 neglect, shall immediately report the details of that incident to
6 the Office of Advocacy and Adult Protective Services. A copy of
7 any incident report shall must be provided to the Office of
8 Advocacy and Adult Protective Services by the person making the
report.

10 4-A. Subpoenas; obtaining criminal history record. The
11 director may:

12 A. Issue a subpoena requiring a person to disclose or
13 provide to the Office of Advocacy and Adult Protective
14 Services information or records in that person's possession
15 that are necessary and relevant to an investigation of a
16 report of suspected rights violations of a serious nature.

17
18 (1) The Office of the Attorney General may apply to
19 the District Court to enforce a subpoena.

20
21 (2) A person who complies with a subpoena is immune
22 from civil or criminal liability that might otherwise
23 result from the act of turning over or providing
24 information or records to the Office of Advocacy and
25 Adult Protective Services; and

26
27 B. Obtain nonconviction data and other criminal history
28 record information under Title 16, chapter 3, subchapter 8
29 that the director determines relevant to an investigation of
30 a report of suspected rights violations of a serious nature.

31
32 The confidentiality of information or records obtained by
33 subpoena must be treated in accordance with this section.

34
35 **5. Confidentiality.** Requests for action shall must be
36 treated confidentially as follows.

37
38 A. Any client request for action by the office and all
39 written records or accounts related to the request shall
40 must be confidential as to the identity of the client.

41
42 B. The records and accounts may be released only as
43 provided by law.

44
45 **6. Definition.** For the purposes of this section, "client"
46 means a person included in the definition of client under section
47 1001, subsection 2, and a person seeking or requesting services
48 as a client.

50

2 **7. Protection for advocates.** Advocates may not be
disciplined or sanctioned for any actions taken on behalf of
clients. This protection does not apply to issues or problems
4 with meeting performance or management standards established by
the director.

6
8 **8. Budget.** When submitting any budget request to the
Legislature, the department and the Governor shall provide that
any funds for the Office of Advocacy and Adult Protective
10 Services be listed in a separate account.

12 **Sec. 3. 34-B MRSA §1207, sub-§5, ¶D,** as amended by PL 1995, c.
560, Pt. K, §19, is further amended to read:

14
16 D. By September 1, 1994, the department shall adopt rules
to implement this subsection. The rules must include, but
are not limited to, an appeal process for persons who are
18 denied access to information under paragraph B. The appeal
process must determine whether the person requesting
20 information is a person who lives with or provides direct
care to a client, whether disclosure of the information is
22 in the best interest of the client and whether denial of
access to the information will result in significant
24 deterioration in the client's daily functioning. The
commissioner shall appoint an advisory committee pursuant to
26 Title 5, section 12002, subsection 1, paragraph A to assist
the department in the development of the rules. The members
28 of the advisory committee are not entitled to reimbursement
for expenses or legislative per diem. The advisory
30 committee must include, but is not limited to, proportionate
representation from each of the following:

32 (1) Consumers nominated by the Director of the Office
34 of Advocacy and ~~Consumer--Affairs~~ Adult Protective
Services;

36 (2) Members of the statewide alliance for the mentally
38 ill;

40 (3) Mental health service providers; and

42 (4) The protection and advocacy agency designated
pursuant to Title 5, section 19502.

44 **Sec. 4. 34-B MRSA §5605, sub-§13, ¶B,** as amended by PL 2001,
46 c. 245, §1, is further amended to read:

48 B. Treatment programs involving the use of noxious or
painful stimuli or other aversive or severely intrusive
50 techniques may be used only to correct behavior more harmful

2 to the person with mental retardation or autism than is the
treatment program and only:

4 (1) On the recommendation of a physician, psychiatrist
or psychologist; and

6 (2) With the approval, following a case-by-case
8 review, of the chief administrative officer of the
residential facility; a representative of the person's
10 residence, day program or work site; an advocate or
12 adult protective investigator of the department Office
of Advocacy and Adult Protective Services; a
14 representative of the Division of Mental Retardation;
and a representative of the Consumer Advisory Board.

16 **Sec. 5. 34-B MRSA §5605, sub-§14, ¶D-1**, as enacted by PL 2001,
c. 245, §3, is amended to read:

18 D-1. A device whose effect is to reduce or inhibit a
20 person's movement in any way but whose purpose is to
maintain or ensure the safety of the person is not
22 considered behavioral treatment. Such a device may be used
only in conformity with applicable state and federal rules
24 and regulations, when recommended by a qualified
professional after approval of the person's service plan and
26 when use of the device is approved by the chief
administrative officer of the residential care facility; a
28 representative of the person's residence, day program or
work site; an advocate of the department Office of Advocacy
30 and Adult Protective Services; a representative of the
Division of Mental Retardation; and a representative of the
32 Consumer Advisory Board.

34 **Sec. 6. 34-B MRSA §5606, sub-§1**, as amended by PL 1993, c.
326, §10, is further amended to read:

36 **1. Report and investigation.** Any alleged violation of the
38 rights of a person receiving services must be reported
immediately to the Office of Advocacy ~~of the department and to~~
40 ~~the Attorney General's office~~ and Adult Protective Services.

42 A. The Office of Advocacy and Adult Protective Services
shall conduct an investigation of each alleged violation
44 pursuant to section 1205.

46 B. The Office of Advocacy and Adult Protective Services
shall submit a written report of the findings and results of
48 the investigation to the chief administrative officer of the
facility in which the rights of the person receiving
50 services were allegedly violated and to the commissioner

2 within 2 30 working days after the day of the occurrence or
discovery of the alleged incident.

4 **Sec. 7. 34-B MRSA §5608, sub-§2**, as amended by PL 1993, c.
410, Pt. CCC, §42, is further amended to read:

6
8 **2. Duties.** The government of the persons receiving
services shall work closely with the division and the Office of
Advocacy and Adult Protective Services to promote the interests
10 and welfare of all residents in the facility.

12 **Sec. 8. Report.** The Department of Behavioral and
Developmental Services shall study the effectiveness of the
14 organizational structure of the new Office of Advocacy and Adult
Protective Services and submit a report to the Joint Standing
Committee on Health and Human Services on or before July 1,
16 2004. The report must include its recommendations for any
18 necessary additional or amending legislation affecting the
organizational structure of the Office of Advocacy and Adult
20 Protective Services, taking into consideration the anticipated
effects of any legislation proposed by the Department of
22 Behavioral and Developmental Services and the Department of Human
Services to merge. The Department of Behavioral and
24 Developmental Services shall provide a copy of the report to the
Consumer Advisory Board and to the Special Master in the
26 Community Consent Decree case in advance of the report's
submission to the committee.

28 **Sec. 9. Transition provisions.**

30
32 1. The Office of Advocacy and Adult Protective Services
within the Department of Behavioral and Developmental Services is
the successor in every way to the powers, duties and functions of
34 the former Office of Advocacy.

36 2. All existing rules, regulations and procedures in
effect, in operation or promulgated in or by the Office of
38 Advocacy or any of its administrative units or officers are
hereby declared in effect and continue in effect until rescinded,
40 revised or amended by the proper authority.

42 3. All existing contracts, agreements and compacts
currently in effect in the Office of Advocacy continue in effect.

44
46 4. Any positions authorized and allocated subject to the
personnel laws to the former Office of Advocacy are transferred
to the Office of Advocacy and Adult Protective Services and may
48 continue to be authorized.

50 5. All records, property and equipment previously belonging
to or allocated for the use of the former Office of Advocacy

2 become, on the effective date of this Act, part of the property
of the Office of Advocacy and Adult Protective Services.

4 6. All existing forms, licenses, letterheads and similar
items bearing the name of or referring to the Office of Advocacy
6 may be utilized by the Office of Advocacy and Adult Protective
Services until existing supplies of those items are exhausted.
8

10 SUMMARY

12 This bill amends the structure of the Office of Advocacy by
including adult protective services. The bill requires the
14 Office of Advocacy to provide adult protective services as
described in the Maine Revised Statutes, Title 22, section 3473.
16 The bill also requires that the Department of Behavioral and
Developmental Services study the new structure of the Office of
18 Advocacy and Adult Protective Services and submit its
recommendations to the Joint Standing Committee on Health and
20 Human Services by July 1, 2004.