

# MAINE STATE LEGISLATURE

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# 130th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2022

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Legislative Document

No. 1755

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S.P. 615

In Senate, December 2, 2021

### An Act To Enhance the Child Welfare Ombudsman Program

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Secretary of the Senate on November 30, 2021. Referred to the Committee on Health and Human Services pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator CURRY of Waldo.

Cosponsored by Senators: BAILEY of York, BALDACCI of Penobscot, CARNEY of Cumberland, CLAXTON of Androscoggin, DIAMOND of Cumberland, MOORE of Washington, Representatives: CRAVEN of Lewiston, HARNETT of Gardiner.

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

2 **Sec. 1. 22 MRSA §4004, sub-§1, ¶E**, as amended by PL 2017, c. 473, §1, is further  
3 amended to read:

4 E. Establishing a child death and serious injury review panel for reviewing deaths and  
5 serious injuries to children. The panel consists of the following members: the Chief  
6 Medical Examiner, a pediatrician, a public health nurse, forensic and community  
7 mental health clinicians, law enforcement officers, departmental child welfare staff,  
8 district attorneys ~~and~~ criminal or civil assistant attorneys general and the ombudsman  
9 appointed pursuant to section 4087-A or a designee of the ombudsman.

10 The purpose of the panel is to recommend to state and local agencies methods of  
11 improving the child protection system, including modifications of statutes, rules,  
12 policies and procedures. Beginning January 1, 2023 and every 2 years thereafter, the  
13 department shall submit a report to the joint standing committee of the Legislature  
14 having jurisdiction over health and human services matters on the panel's  
15 recommendations for improving the child protection system;

16 **Sec. 2. 22 MRSA §4008, sub-§3-A**, as enacted by PL 1993, c. 294, §4, is amended  
17 to read:

18 **3-A. Confidentiality.** The proceedings and records of the child death and serious  
19 injury review panel created in accordance with section 4004, subsection 1, paragraph E are  
20 confidential and are not subject to subpoena, discovery or introduction into evidence in a  
21 civil or criminal action. The commissioner shall disclose conclusions of the review panel  
22 upon request and pursuant to section 4004, subsection 1, paragraph E, but may not disclose  
23 data that is otherwise classified as confidential.

24 **Sec. 3. 22 MRSA §4087-A, sub-§2**, as enacted by PL 2001, c. 439, Pt. X, §5 and  
25 amended by PL 2003, c. 689, Pt. B, §6, is further amended to read:

26 **2. Program established.** The ombudsman program is established as an independent  
27 program ~~within the Executive Department~~ to provide ombudsman services to the children  
28 and families of the State regarding child welfare services provided by the Department of  
29 Health and Human Services. The program shall consider and promote the best interests of  
30 the child involved, answer inquiries and investigate, advise and work toward resolution of  
31 complaints of infringement of the rights of the child and family involved. The program  
32 shall provide oversight of child welfare practice and policy to ensure the rights and safety  
33 of children and their families. The program must be staffed, ~~under contract, by a full-time~~  
34 ombudsman and 2 full-time associate ombudsmen, and those positions must be filled by an  
35 attorney or a master's level social worker who must have experience in with experience in  
36 child welfare and child development and advocacy, and support staff as determined to be  
37 necessary. The program must be supported by a full-time administrative assistant. The  
38 program shall function through the staff of the program and volunteers recruited and trained  
39 to assist in the duties of the program. Office space must be included in funds budgeted to  
40 the program.

41 **Sec. 4. 22 MRSA §4087-A, sub-§3**, as enacted by PL 2001, c. 439, Pt. X, §5, is  
42 amended to read:

1           **3. ~~Contracted services~~ Appointment.** The program shall operate ~~by contract with~~ as  
2 a nonprofit organization that ~~the Executive Department determines to be~~ is free of potential  
3 conflict of interest and best able to provide ~~the~~ investigative, oversight and advocacy  
4 services on a statewide basis. The Governor shall appoint the ombudsman, subject to  
5 review by the joint standing committee of the Legislature having jurisdiction over health  
6 and human services matters and to confirmation by the Legislature. The ombudsman serves  
7 a 5-year term of office. The program functions with a nonprofit structure. The ombudsman  
8 shall submit the ombudsman's budget recommendations, using a format prescribed by the  
9 State Budget Officer, as part of the unified current services budget legislation in accordance  
10 with Title 5, sections 1663 to 1666. Funds appropriated or allocated to the program must  
11 be expended at the discretion of the ombudsman. Full-time employees of the program must  
12 have access to health insurance benefits provided to state employees, including health  
13 insurance benefits for family members, and retirement benefits provided to state  
14 employees. The ombudsman and staff are not considered state employees, but employees  
15 of the nonprofit organization. The ombudsman may not be actively involved in state-level  
16 political party activities or publicly endorse, solicit funds for or make contributions to  
17 political parties on the state level or candidates for statewide elective office. The  
18 ombudsman may not be a candidate for or hold any statewide elective or appointive public  
19 office.

20           **Sec. 5. 22 MRSA §4087-A, sub-§4,** as amended by PL 2005, c. 410, §1, is further  
21 amended to read:

22           **4. Services.** The program shall provide services directly ~~or under contract to~~  
23 individuals and families and may provide system-wide comment to the department and the  
24 joint standing committee of the Legislature having jurisdiction over health and human  
25 services matters. The first priority in the work of the program and ~~any contract for~~  
26 ~~ombudsman services~~ must be case-specific advocacy services. In performing services  
27 under this section, the program, as it determines to be appropriate, may create and maintain  
28 records and case-specific reports. ~~Any work on systems improvements or lobbying must~~  
29 ~~be adjunctive to case-specific activities. The program may provide relevant oversight of~~  
30 child welfare services as the ombudsman considers important to the rights and safety of  
31 children and families. The program may:

- 32           A. Provide information to the public about the services of the program through a  
33 comprehensive outreach program. The ombudsman shall provide information through  
34 a toll-free telephone number or numbers;
- 35           B. Answer inquiries, investigate and work toward resolution of complaints regarding  
36 the performance and services of the department and participate in conferences; or  
37 meetings ~~and studies~~ that may improve the performance of the department;
- 38           C. Provide services to persons to assist them in protecting their rights;
- 39           D. Inform persons of the means of obtaining services from the department;
- 40           E. Provide information and referral services;
- 41           F. Analyze and provide opinions and recommendations to agencies, the Governor and  
42 the Legislature on current or proposed state programs, rules, policies and laws;

1 G. Determine what types of complaints and inquiries will be accepted for action by  
2 the program and adopt policies and procedures regarding communication with persons  
3 making inquiries or complaints and the department;

4 H. Apply for and utilize grants, gifts and funds for the purpose of performing the duties  
5 of the program; and

6 I. Collect and analyze records and data relevant to the duties and activities of the  
7 program and make reports as required by law or determined to be appropriate.

8 The department or designee of the department shall inform the ombudsman of any  
9 statewide policy or practice changes in child welfare before these changes take effect. The  
10 ombudsman must be allowed to participate in any department trainings, studies or policy  
11 development activities at the ombudsman's request.

12 The ombudsman must have input into training initiatives for personnel in and outside of  
13 the department, including mandated reporter training. The ombudsman must be available  
14 to provide information about child welfare issues on a statewide basis to individuals and  
15 entities outside the department.

16 **Sec. 6. 22 MRSA §4087-A, sub-§6**, as repealed and replaced by PL 2005, c. 410,  
17 §2, is amended to read:

18 **6. Confidentiality of records.** Information held by or records or case-specific reports  
19 maintained by the program are confidential. Disclosure may be made as allowed or  
20 required in accordance with the provisions of section 4008, subsections 2 and 3. The  
21 ombudsman may disclose confidential information, records or case-specific reports to a  
22 joint standing committee, joint select committee or oversight committee of the Legislature  
23 meeting in executive session. Unlawful dissemination is subject to the provisions of section  
24 4008, subsection 4. Except as provided in this subsection, ombudsman communications  
25 with the department are not confidential and are a matter of public record.

26 **Sec. 7. 22 MRSA §4087-A, sub-§11**, as enacted by PL 2001, c. 439, Pt. X, §5, is  
27 amended to read:

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

### 33 SUMMARY

34 This bill makes the following changes to the laws governing the ombudsman program  
35 that provides ombudsman services to the children and families of the State regarding child  
36 welfare services provided by the Department of Health and Human Services.

37 1. It provides that the program is an independent program operated as a nonprofit  
38 organization to provide investigative, oversight and advocacy services on a statewide basis.

39 2. It requires the program to provide oversight of child welfare practice and policy to  
40 ensure the rights and safety of children and their families.

41 3. It specifies staffing for the program.

1           4. It provides that the Governor appoints the ombudsman, subject to review by the joint  
2 standing committee of the Legislature having jurisdiction over health and human services  
3 matters and to confirmation by the Legislature.

4           5. It provides that the ombudsman serves a 5-year term of office.

5           6. It requires the ombudsman to submit the ombudsman's budget recommendations,  
6 using a format prescribed by the State Budget Officer, as part of the unified current services  
7 budget legislation.

8           7. It provides full-time program employees access to health insurance benefits provided  
9 to state employees and retirement benefits provided to state employees.

10          8. It requires the program to provide services directly to individuals and families and  
11 authorizes the program to provide system-wide comment to the department and the joint  
12 standing committee of the Legislature having jurisdiction over health and human services  
13 matters.

14          9. It requires the department to inform the ombudsman of any statewide policy or  
15 practice changes in child welfare before they take effect.

16          10. It allows the ombudsman to participate in trainings, studies or policy development  
17 activities conducted by the department.

18          11. It requires the ombudsman to be available to provide information about child  
19 welfare issues on a statewide basis to individuals and entities outside the department.

20          12. It authorizes the ombudsman to disclose confidential information, records or case-  
21 specific reports to a joint standing committee, joint select committee or oversight  
22 committee of the Legislature meeting in executive session.

23          13. It provides that the joint standing committee of the Legislature having jurisdiction  
24 over government oversight matters along with the joint standing committee of the  
25 Legislature having jurisdiction over health and human services matters, as in current law,  
26 shall review the operations of the ombudsman program and authorizes the committees to  
27 submit legislation.

28          This bill also includes the ombudsman as a member of the child death and serious  
29 injury review panel established by the Department of Health and Human Services and  
30 requires that the panel, beginning January 1, 2023 and every 2 years thereafter, submit a  
31 report on the panel's recommendations to the joint standing committee having jurisdiction  
32 over health and human services matters.