

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-SIX

—
H.P. 1264 - L.D. 1893

An Act to Establish an Independent Office of the Child Advocate

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

Sec. 1. 2 MRSA §6, sub-§5, as amended by PL 2019, c. 343, Pt. 000, §1, is further amended to read:

5. Range 86. The salaries of the following state officials and employees are within salary range 86:

State Archivist;

Director, Division of Land Use Planning, Permitting and Compliance;

Chair, Maine Unemployment Insurance Commission;

~~Child Welfare Services Ombudsman~~ Advocate; and

Director of the Maine Drug Enforcement Agency.

Sec. 2. 5 MRSA §12004-G, sub-§5-B is enacted to read:

5-B.

Children's Services Advisory Committee to the Not Authorized 5 MRSA c. 641
Child Advocate

Sec. 3. 5 MRSA Pt. 32 is enacted to read:

PART 32

CHILD ADVOCATE

CHAPTER 641

OFFICE OF THE CHILD ADVOCATE

§26201. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Advisory committee. "Advisory committee" means the Advisory Committee to the Child Advocate under section 26209.

2. Child. "Child" means a person who is under 18 years of age who is in the custody of or receiving services from or arranged through a state agency, or is qualified to receive such services, or in the past 3 years has been in such custody or received such services. "Child" also means a person who is under 18 years of age and is in custody or detention in any Department of Corrections juvenile correctional facility.

3. Child Advocate. "Child Advocate" means the individual appointed by the Governor and confirmed by the Legislature pursuant to section 26204 to serve as the administrator of the Office of the Child Advocate and to perform all other duties as assigned in this chapter.

4. Office. "Office" means the Office of the Child Advocate established in section 26202.

5. Oversight. "Oversight" means reviewing, monitoring and recommending changes to a state agency's implementation of laws and rules and all contracted programs, providers, services and activities of that state agency as well as that state agency's policies, procedures and practices.

6. Record. "Record" means information created, received, possessed or controlled by or on behalf of a state agency.

7. Safety science. "Safety science" means the systematic application of evidence-based methods of incident review that recognize human error not as cause, but consequence and symptom of conditions of the system in which decisions are made. A process grounded in safety science takes into account all the influencing factors on decision making to determine the adequacy of the infrastructure that supports decisions and influences outcomes.

8. Services. "Services" means residential or home and community-based children's behavioral health services or child welfare services provided directly by the Department of Health and Human Services or indirectly through a private provider or services provided by the Department of Corrections in a secure facility for children involved in the juvenile justice system. "Services" does not include standard juvenile correctional security practices.

9. State agency. "State agency" means a department, bureau or office of the State, including any public or private child service agency providing services under contract or agreement with a state agency to a child.

§26202. Office of the Child Advocate established; fund

1. Office established; purposes. The Office of the Child Advocate is established as an independent agency to provide independent oversight of state agencies and promote the best interests of children and ensure that children receive timely, safe and effective services in accordance with state and federal law. The office, notwithstanding any provision of law to the contrary, shall operate with full independence from any state official or state agency.

The office is established within the Department of Administrative and Financial Services for administrative purposes only.

2. Fund. A fund is established within the Department of Administrative and Financial Services to support the operation of the office. Any unexpended balance remaining in the fund at the end of the fiscal year does not lapse and must be carried forward to the next fiscal year.

§26203. Powers and duties of office

1. Complaints. The office shall review complaints and determine if the office considers it necessary to:

A. Investigate the actions of a state agency and make recommendations to address concerns;

B. Identify whether a complaint raises a systemic issue that must be addressed and make recommendations to a state agency that is implicated; and

C. Make recommendations to a state agency related to specific complaints.

2. Case-specific reviews. The office may complete a case-specific review on the receipt of a complaint or on the office's own initiative. When coordinating a case-specific review, the office shall coordinate efforts with the state agencies involved to minimize the impact and trauma to the child, family and department personnel involved.

A. In a child welfare case, if there is a pending criminal investigation or prosecution in state or federal court identified prior to or during a case-specific review, the office may consult with the Attorney General before proceeding with the review. The consultation with the Attorney General does not halt or delay the case-specific review.

B. If a review requires the office to interview a child receiving services from the Department of Health and Human Services, the office shall consult with the Attorney General. An interview must be conducted using trauma-informed and developmentally sensitive interview techniques.

C. If a review requires the office to interview a child in the custody of the Department of Corrections, the prosecuting attorney, the defense attorney for the child and the Attorney General must all agree to the interview, including any specific terms of the interview. An interview must be conducted using trauma-informed and developmentally sensitive interview techniques.

3. Systems-wide or periodic review; recommendations. The office may complete systems-wide or periodic review of policies, programs, rules, procedures or services offered to children and provide recommendations to address systemic concerns in order to improve the quality of care in order to provide children with the opportunity to live full and productive lives.

4. Consultation. The Child Advocate shall regularly consult with state agencies and the advisory committee and participate in conferences, meetings and studies aimed at improving the performance of state agencies.

5. Information and referral services. The office shall provide information and referral assistance to families and the public to assist families and the public in navigating and accessing services available through state agencies and to promote the child's best

interest. The provision of information under this subsection does not constitute legal representation of a child or parent. A family may seek and must receive information regardless of whether the family is represented by legal counsel. The information must be provided free of charge. Failure to provide information under this subsection does not create a cause of action or have any effect on a child protective proceeding.

6. Outreach and advocacy. The office shall perform educational outreach and advocacy initiatives as part of the mission and responsibilities of the office and in coordination with other relevant advocacy organizations. The office shall provide information through a toll-free telephone number and a publicly accessible website.

§26204. Child Advocate; term; appointment; removal

1. Appointment. The Governor shall appoint the Child Advocate to supervise the office, serve as the office's administrator and perform all other duties as assigned by this chapter. The appointment must be made on the recommendation of the advisory committee from the list provided pursuant to section 26209, subsection 4, paragraph A and is subject to review by the joint standing committee of the Legislature having jurisdiction over health and human services matters and to confirmation by the Legislature. No later than 8 weeks after receiving the list of candidates from the advisory committee, the Governor shall designate a candidate for Child Advocate from among those recommended by the advisory committee and submit the appointment for approval by the Legislature. If a candidate withdraws from consideration prior to approval by the Legislature, the Governor shall designate another candidate from among the remaining candidates recommended by the advisory committee to the Governor. If the Governor fails to designate a candidate within 8 weeks after receiving the recommendations of the advisory committee, the candidate ranked first by the advisory committee is deemed appointed and submitted for approval by the Legislature. The position of Child Advocate is a full-time, unclassified position.

2. Term. The Child Advocate serves a term of 5 years and until a successor is appointed and approved. A vacancy in the position of Child Advocate must be filled in the same manner as the original appointment was made for the remainder of the unexpired term. The Child Advocate's term may be renewed as described in subsection 3.

3. Reappointment. The advisory committee may recommend reappointment of the Child Advocate by providing notice to the Governor. If the Governor does not respond to the recommendation for reappointment within 8 weeks after receiving the recommendation from the advisory committee, the Child Advocate's reappointment must be referred to the Legislature for approval.

4. Qualifications. A person appointed to the position of Child Advocate must be selected without regard to political affiliation and on the basis of integrity and demonstrated ability and must possess a professional graduate degree in law, health care, public health, social work or a related field and be qualified by education, experience and expertise to perform the duties of the position. The appointee must have knowledge of safety science and juvenile correctional practices or be willing to undergo training as determined by industry standards for safety science-based system and juvenile correctional practices.

5. Removal. The Child Advocate may be removed from office for cause by the Governor with approval by a 2/3 vote of the Senate. As used in this subsection, "cause" includes, but is not limited to, substantial neglect of duty, gross misconduct or conviction of a crime. The cause for removal of the Child Advocate must be stated in writing, and

that document must be sent to the Secretary of the Senate and the Clerk of the House of Representatives and is a public document.

6. Associate Child Advocate hire; other personnel. The Child Advocate shall hire an Associate Child Advocate, who must meet the same qualifications required of the Child Advocate as specified in subsection 4. The Child Advocate may, subject to available appropriations, hire such other personnel as the Child Advocate considers necessary for the efficient management of the office. The duties of the personnel must be performed under the supervision of the Child Advocate. If a vacancy occurs in the position of Child Advocate and until such time as a candidate has been appointed by the Governor and approved by the Legislature, the Associate Child Advocate shall serve as the acting Child Advocate and is entitled to the compensation and privileges of and exercises the powers of the Child Advocate.

§26205. Access to personnel, files, records and facilities; confidentiality

When necessary to fulfill its duties as described in this chapter, the office has access to files, records, personnel and facilities as described in this section.

1. Access to Department of Health and Human Services and certain facilities and residential programs. Access by the office to the Department of Health and Human Services and facilities and residential programs serving children is governed by this subsection.

A. The office has access, for which a fee may not be imposed, to files and records of the Department of Health and Human Services and to the personnel of the department for the purposes of an investigation of a complaint or for a case-specific review. The office may also enter the premises of the department for the purposes of investigation of a complaint or case-specific review without prior notice.

B. The office may visit facilities and residential programs serving children.

C. Information obtained by the office under this subsection is confidential. Disclosure may be made as allowed or required in accordance with the provisions of Title 22, section 4008, subsections 2 and 3. Unlawful dissemination is subject to the provisions of Title 22, section 4008, subsection 4.

2. Access to Department of Corrections. Access by the office to the Department of Corrections is governed by this subsection.

A. The Child Advocate has access, for which a fee may not be imposed, to information regarding juveniles, subject to the limitations specified in Title 34-A, section 1216, held by the Department of Corrections, except that juvenile intelligence and investigative record information remains subject to Title 15, section 3308-A and personnel records remain subject to section 7070. The Child Advocate may also enter the premises of the department for the purposes of investigation of an inquiry or complaint without prior notice as long as such entry does not create a safety and security concern.

B. Information obtained under this subsection is confidential. Disclosure may be made as allowed under Title 34-A, section 1216 and Title 15, section 3308-A. Unlawful dissemination is subject to the provisions of Title 34-A, section 1216, subsection 3.

§26206. Confidentiality of records

1. Confidentiality; disclosure. A record held by or created by the office is confidential and may be disclosed only as described in subsection 2 and section 26205.

2. Disclosure of investigation findings. Notwithstanding any provision of law to the contrary, if the Child Advocate determines that the health, safety or welfare of a child is at risk, the office may disclose to the relevant entity only those details of investigation findings necessary to address the issue, subject to the following limitations.

A. The name, address or other identifying information of an individual who is the subject of a confidential proceeding or that is subject to a statutory confidentiality provision may not be released by the relevant entity to the public.

B. Unless agreed to by the Department of Health and Human Services, the Department of Corrections and the Office of the Attorney General, investigation findings may not be released by the relevant entity if there is a pending child protection action, a pending criminal investigation, a pending prosecution or a pending proceeding under the Maine Juvenile Code.

3. Exception to archive laws. Notwithstanding section 95-C, subsection 1, paragraph C, any records held by or created by the Child Advocate must remain confidential until the relevant records have been in existence for 100 years.

§26207. Notification of child death

The Department of Health and Human Services shall notify the Child Advocate of a death of a child if:

1. Child welfare involvement. The child was involved with child welfare services at any time; or

2. Abuse or neglect. The fatality is suspected of being the result of abuse or neglect as defined in Title 22, section 4002, subsection 1.

Notification under this section must occur within 48 hours of a determination by the department that this section applies to the child death. The notification may be provided by oral or electronic communication.

§26208. Reporting and oversight

1. Annual report. Beginning in 2028, the Child Advocate shall report annually by January 15th to the Governor, the joint standing committee of the Legislature having jurisdiction over health and human services matters, the joint standing committee of the Legislature having jurisdiction over juvenile justice matters and the advisory committee on the activities of the office. The report must include an account of complaints received, case-specific reviews conducted, systems-wide recommendations, information and referral services, outreach and advocacy and any obstacles to carrying out the requirements of the office. The report is a public record.

2. Oversight. The joint standing committee of the Legislature having jurisdiction over health and human services matters shall review the operations of the office and may make recommendations to the Governor regarding the operations and administration of the office. The joint standing committee may report out legislation related to the annual report under subsection 1.

§26209. Advisory Committee to the Child Advocate

1. Membership. The Advisory Committee to the Child Advocate, as established in section 12004-G, subsection 5-B, consists of the following members:

- A. A member of the Senate appointed by the President of the Senate;
- B. A member of the House of Representatives appointed by the Speaker of the House;
- C. Two members with lived experience with children's services administered by a state agency, including child protection, juvenile justice and developmental or educational services, as a child or family member, one of whom is appointed by the President of the Senate and one of whom is appointed by the Speaker of the House;
- D. One member with expertise in special education appointed by the President of the Senate;
- E. One member with expertise in mental health and substance use disorder treatment appointed by the Speaker of the House;
- F. One member with expertise in juvenile justice systems and restorative justice appointed by the President of the Senate;
- G. One member with policy expertise in children's behavioral health services or child welfare appointed by the Speaker of the House;
- H. One member representing the Maine Chapter of the American Academy of Pediatrics or a successor organization appointed by the Governor;
- I. One member with expertise in standards that apply in juvenile correctional facilities appointed by the Governor; and
- J. A member of the public appointed by the Governor.

The advisory committee members shall elect a chair at the beginning of each calendar year. The chair may be reelected by the advisory committee.

2. Designees. A member of the advisory committee may appoint a designee to represent the member on the advisory committee. A designee, once appointed, qualifies as a full voting member of the advisory committee with all the rights and privileges of full membership on the advisory committee.

3. Terms of members. Legislative members of the advisory committee serve a term coterminous with their term in office. All other members serve 3-year terms. Members may be reappointed. Any vacancy on the advisory committee must be filled in the same manner as the original appointment, but for the unexpired term.

4. Duties. The advisory committee shall:

- A. Recommend at least 3 qualified candidates to the Governor, ranked in order by qualifications, for appointment to the position of Child Advocate, except that, at the conclusion of the Child Advocate's 5-year term and upon receipt of a request from the Child Advocate to be considered for reappointment, the advisory committee shall determine whether to recommend reappointment;
- B. Evaluate the Child Advocate's performance as determined necessary based on feedback received related to the Child Advocate;
- C. Annually recommend whether the Child Advocate should receive a cost-of-living increase, salary increase or both in accordance with performance evaluations and

request that the Governor include the necessary appropriation in the next biennial or supplemental budget;

D. Advise the Child Advocate on the strategic direction of the office and its mission and help promote the use of, engagement in and access to the office;

E. Work cooperatively with the Child Advocate to provide fiscal oversight of the general operating budget of the office and ensure that the office operates in compliance with the provisions of this chapter and state and federal laws relating to children's services; and

F. Provide consultation to the office in its effort to promote an effective, comprehensive and coordinated system of services and programs for children and families.

5. Quorum; meetings. Six members of the advisory committee constitute a quorum for a meeting. The advisory committee may meet as often as necessary but no less than 3 times a year.

§26210. Rules

The office shall adopt rules to carry out this chapter. The rules must include, but are not limited to, procedures and processes related to the complaint system, case-specific reviews and coordination with other entities with overlapping jurisdiction and during co-occurring investigations or reviews, including state agencies; child advocacy centers established pursuant to Title 22, section 4019; the child death and serious injury review panel established pursuant to Title 22, section 4004, subsection 1, paragraph E; and criminal justice agencies as defined in Title 16, section 803, subsection 4 with responsibility for juvenile justice records collected pursuant to Title 15, sections 3308-A and 3308-B. Rules adopted pursuant to this section are routine technical rules as defined in chapter 375, subchapter 2-A.

Sec. 4. 18-C MRSA §5-127, sub-§4, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by PL 2019, c. 417, Pt. B, §14, is amended by amending the first blocked paragraph to read:

The organization shall maintain records on the training and background checks of agents, including the content and dates of training and full transcripts of background checks, for a period of not less than 5 years after the minor attains 18 years of age. The organization shall make the records available to a parent or guardian executing a power of attorney under this section and to the ~~ombudsman~~ Office of the Child Advocate under Title 22 ~~5, section 4087-A~~ chapter 641 and any local, state or federal authority conducting an investigation involving the agent, the parent or guardian or the minor.

Sec. 5. 22 MRSA §4004, sub-§1, ¶E, as amended by PL 2023, c. 261, §1, is further amended to read:

E. Establishing a child death and serious injury review panel for reviewing deaths and serious injuries to children. The panel consists of the following members: the Chief Medical Examiner, a pediatrician, a public health nurse, forensic and community mental health clinicians, law enforcement officers, departmental child welfare staff, district attorneys, criminal or civil assistant attorneys general and the ~~ombudsman~~

~~pursuant to section 4087-A~~ Child Advocate or a designee of the ~~ombudsman~~ Child Advocate.

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

The panel shall submit a report to the joint standing committee of the Legislature having jurisdiction over health and human services matters at least every 3 months. The panel may submit a combined report with the child welfare advisory panel established in section 4010-D or any judicial branch task force or panel with a focus on the child welfare system or child protective proceedings. Any presentation of the report to the committee must be presented by the citizen members of the panels to the extent possible. Each quarterly report must contain, at a minimum, the following:

- (1) A summary of generalized and anonymized observations in the prior 3-month period regarding efforts by the Office of Child and Family Services to improve the child welfare system;
- (2) A summary of the collaboration between the child welfare advisory panel and the child death and serious injury review panel as well as any judicial branch task force or panel with a focus on the child welfare system or child protective proceedings; and
- (3) Any recommendations on how to further protect the State's children through department policy and rulemaking and through legislation;

Sec. 6. 22 MRSA c. 1071, sub-c. 10-A, as amended, is repealed.

Sec. 7. Funds transferred. Notwithstanding the Maine Revised Statutes, Title 5, sections 1585 and 1586, all accrued expenditures, assets, liabilities, balances or allocations, transfers, revenues or other available funds in any account or subdivision of an account of the Department of Health and Human Services or the Executive Department and authorized for use by the child welfare services ombudsman program under Title 22, section 4087-A must be reallocated to the Department of Administrative and Financial Services, Office of the Child Advocate under Title 5, chapter 641 on October 1, 2026.

Sec. 8. Personnel transfer. As of October 1, 2026, 3 personnel from the child welfare services ombudsman program employed under the contract on the effective date of this Act are transferred to the Office of the Child Advocate at their existing budgeted compensation until such time as the Legislature has confirmed the Child Advocate. As authorized by the Maine Revised Statutes, Title 5, section 26204, subsection 6, the Child Advocate confirmed by the Legislature shall hire an Associate Child Advocate and any staff necessary for the efficient management of the Office of the Child Advocate. The Child Advocate may hire any of the staff transferred to the office during the interim period. All personnel employed by the Office of the Child Advocate are state employees with all the rights and privileges of state employees.

Sec. 9. Interim Child Advocate. The Governor shall appoint an interim Child Advocate no later than October 1, 2026 to serve until a Child Advocate is appointed according to the Maine Revised Statutes, Title 5, chapter 641, giving preference to the child

welfare services ombudsman contracted under Title 22, section 4087-A. The Governor shall appoint a Child Advocate no later than July 15, 2027.

Sec. 10. Implementation resource needs assessment. Prior to the Governor's appointment of the Child Advocate, the interim Child Advocate shall prepare an in-depth report of resource needs, including but not limited to staffing, equipment, travel, consultancies, access to records and any other requirements for implementing the requirements of the Maine Revised Statutes, Title 5, chapter 641. The report must be submitted to the joint standing committee of the Legislature having jurisdiction over health and human services matters no later than February 15, 2027. The joint standing committee may report out legislation to the 133rd Legislature in 2027 to make any necessary adjustments to the Office of the Child Advocate related to the report.

Sec. 11. Appointments to Advisory Committee to the Child Advocate. Appointments to the Advisory Committee to the Child Advocate, as established in the Maine Revised Statutes, Title 5, section 26209, must be made by the relevant appointing authorities no later than March 15, 2027. Notwithstanding Title 5, section 26209, subsection 3, the members initially appointed pursuant to Title 5, section 26209, subsection 1, paragraphs D, E and J serve for a one-year term and the members initially appointed pursuant to Title 5, section 26209, subsection 1, paragraphs C and H serve for a 2-year term.

Sec. 12. Appropriations and allocations. The following appropriations and allocations are made.

ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF

Office of the Child Advocate N580

Initiative: Establishes one Public Service Coordinator II position and 2 Public Service Coordinator I positions in the Office of the Child Advocate, beginning October 1, 2026.

GENERAL FUND	2025-26	2026-27
POSITIONS - LEGISLATIVE COUNT	0.000	3.000
Personal Services	\$0	\$324,220
All Other	\$0	\$16,326
GENERAL FUND TOTAL	\$0	\$340,546

Office of the Child Advocate N580

Initiative: Provides one-time funding for office needs, staffing needs, contracting services and training during the transition into the Office of the Child Advocate.

GENERAL FUND	2025-26	2026-27
All Other	\$0	\$100,000
GENERAL FUND TOTAL	\$0	\$100,000

Office of the Child Advocate N580

Initiative: Establishes one Public Service Coordinator I position and one Office Associate II position, beginning April 1, 2027.

GENERAL FUND	2025-26	2026-27
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POSITIONS - LEGISLATIVE COUNT	0.000	2.000
Personal Services	\$0	\$55,204
All Other	\$0	\$3,628
GENERAL FUND TOTAL	<u>\$0</u>	<u>\$58,832</u>

ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF DEPARTMENT TOTALS

	2025-26	2026-27
GENERAL FUND	\$0	\$499,378
DEPARTMENT TOTAL - ALL FUNDS	<u>\$0</u>	<u>\$499,378</u>

EXECUTIVE DEPARTMENT

Ombudsman Program 0103

Initiative: Deappropriates and deallocates funding from the contract for the child welfare ombudsman program to be transferred over to the new Office of the Child Advocate, effective October 1, 2026.

	2025-26	2026-27
GENERAL FUND		
All Other	\$0	(\$241,539)
GENERAL FUND TOTAL	<u>\$0</u>	<u>(\$241,539)</u>

FEDERAL EXPENDITURES FUND

	2025-26	2026-27
All Other	\$0	(\$37,150)
FEDERAL EXPENDITURES FUND TOTAL	<u>\$0</u>	<u>(\$37,150)</u>

EXECUTIVE DEPARTMENT DEPARTMENT TOTALS

	2025-26	2026-27
GENERAL FUND	\$0	(\$241,539)
FEDERAL EXPENDITURES FUND	\$0	(\$37,150)
DEPARTMENT TOTAL - ALL FUNDS	<u>\$0</u>	<u>(\$278,689)</u>

LEGISLATURE

Legislature 0081

Initiative: Appropriates funds for the costs of Legislators participating on the Advisory Committee to the Child Advocate.

	2025-26	2026-27
GENERAL FUND		
Personal Services	\$0	\$330
All Other	\$0	\$720

GENERAL FUND TOTAL	\$0	\$1,050
LEGISLATURE		
DEPARTMENT TOTALS	2025-26	2026-27
GENERAL FUND	\$0	\$1,050
DEPARTMENT TOTAL - ALL FUNDS	\$0	\$1,050
SECTION TOTALS	2025-26	2026-27
GENERAL FUND	\$0	\$258,889
FEDERAL EXPENDITURES FUND	\$0	(\$37,150)
SECTION TOTAL - ALL FUNDS	\$0	\$221,739

Sec. 13. Effective date. This Act takes effect October 1, 2026.