

Maine

CHILD WELFARE SERVICES
OMBUDSMAN

5TH ANNUAL REPORT • 2007





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I am honored to present the 5th Annual Report of the Maine Child Welfare Services Ombudsman. The Maine Children's Alliance is pleased to manage the Ombudsman Program, as we believe it to be a critical part of establishing a more effective system for children and their families.

As the Ombudsman, my work with families and children in the child welfare system enables me to understand the needs of these clients in other state systems, such as children's behavioral health care and education. For that reason, I have participated in several state policy groups whose work impacts child welfare clients. I have been asked to:

- Join the *Stakeholders Group to Study Adverse Effect* in its work to assure that special education services remain available when needed for children in the child welfare system
- Participate on the *Governor's Task Force to Engage Maine Youth* as it worked to revise Maine's education law to assure that children and youth in state custody maintain school credits when they transfer to different schools
- Work with the *Subcommittee to Study Early Childhood Special Education* as it developed its recommendations to assure that the Child Development Services system is able to serve all children in an integrated fashion

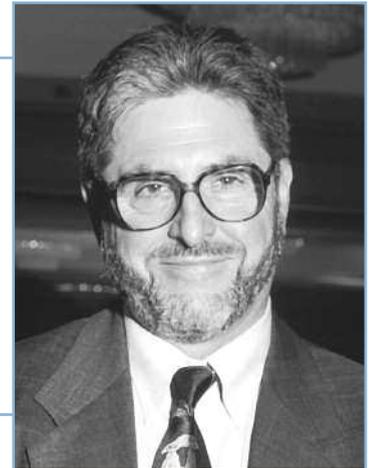
The work of these policy groups highlights that there are many children, youth and their families trying to make the various state systems that serve children work for them while struggling with the same safety issues and physical and behavioral health care needs as families involved with the child welfare system. For that reason, I am recommending that ombudsman services be made available to families involved with the children's behavioral health care system.

The Ombudsman continues to enjoy the cooperation of the Governor's Office, the Department of Health and Human Services, the other child serving agencies of the Children's Cabinet, and the Joint Standing Committee on Health and Human Services. We are pleased to be part of an ongoing child welfare reform process that allows more children to remain at home safely, decreases reliance on restrictive residential programs, reduces children's length of stay in care, and partners with many more relatives providing kinship care.

Yours truly,



G. Dean Crocker, *Child Welfare Services Ombudsman*



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WHAT IS *the Maine Child Welfare Services Ombudsman?*

Maine's Child Welfare Services Ombudsman is contracted directly with the Governor's Office and is overseen by the Department of Administrative and Financial Services.

The Ombudsman is authorized by 22 M.R.S.A. §4087-A to provide information and referrals to individuals requesting assistance and to set priorities for opening cases for review when an individual calls with a complaint regarding child welfare services in the Maine Department of Health and Human Services.

The Ombudsman may open cases for review based on the following:

1. The involvement of the Ombudsman is expected to benefit the child or children who are the subject of an inquiry or complaint in some demonstrable way.
2. The complaint appears to contain a policy or practice issue the resolution of which may benefit other children and families.

The Ombudsman will not open a case for review when:

1. The complaint is about a child welfare case that is in Due Process (Court or Department Administrative Review or Hearing). The Ombudsman will provide information, if requested, to the caller.
2. The complaint is about a Court Order.
3. The complaint is about a Department staff person and no specific child is alleged to have been harmed by the staff person's action or inaction.
4. The primary problem is a custody dispute between parents.
5. The caller is seeking redress for grievances that will not benefit the child.

MERRIAM-WEBSTER ONLINE
defines an *Ombudsman* as:

- 1: a government official (as in Sweden or New Zealand) appointed to receive and investigate complaints made by individuals against abuses or capricious acts of public officials
- 2: someone who investigates reported complaints (as from students or consumers), reports findings, and helps to achieve equitable settlements

More information about the Ombudsman may be found at
<http://www.mainechildrensalliance.org/am/publish/ombudsman.shtml>

POLICIES AND PRACTICES

within Maine Child Welfare Services

The Child Welfare Services Ombudsman identified several child welfare services policies and practices within the Department of Health and Human Services, Division of Child Welfare Services, that require further development. As a result, the Ombudsman made recommendations to the Department in the following topic areas: child safety and treatment needs, rights of children and youth in state custody, transition of children and youth in state custody, psychological evaluation and case planning, placement of children with non-relatives, and individualization of children in case records.

RECOMMENDATIONS

CHILD SAFETY AND TREATMENT NEEDS

Balancing the safety and permanency needs of children in state custody and their need for treatment can be an issue for child welfare caseworkers and for treatment providers. When a child can be safely returned to the custody of his or her parents or when another permanency option has been determined to be appropriate, the state is required to ask the court for a disposition that will accomplish this. This means that a child cannot remain in state custody solely because the child still requires treatment. Instead, when the custody of the child is given to either a parent or to another responsible adult, that adult then becomes responsible for the child's treatment needs. There are a number of options parents and other responsible adults have for meeting a child's treatment needs, including the state's systems for providing eligible children with physical and behavioral healthcare.

The Ombudsman recommends that the Department clarify in policy and through training for caseworkers and for treatment providers how treatment services will be provided to children once the child is no longer in state custody.

THE DEPARTMENT'S RESPONSE:

The Department is utilizing an integrated systems approach to supporting families regardless of the Division under which they are served by the Office of Child and Family Services. The Department is accessing the utilization review services of nurses from the Division of Children's Behavioral Health to meet with families when a child with physical or behavioral healthcare treatment needs is leaving care through adoption, guardianship, or reunification. The intent of this meeting is to fully inform the family of the range of services available and the methods of accessing those services. The statewide meeting of Child Welfare supervisors was recently the venue for training on the Prior Authorization/Utilization Review process for children with mental healthcare needs. There is frequent communication with both staff and

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community providers that the Child Welfare system is not the appropriate place for addressing mental healthcare needs that can better be met in the context of the family. Children's treatment needs should not be a reason to separate a child from his or her family.

RIGHTS OF CHILDREN AND YOUTH IN STATE CUSTODY

Protecting the rights of children and youth in state custody has become an important issue for the Department. There are times when caseworkers must balance their responsibility for making decisions on behalf of children in state custody and for advocating for the rights of those children. In an effort to ease the conflict that can sometimes arise for the caseworker in the role of decision maker and of advocate, the Department has established a task force to develop a bill of rights for children in state custody.

The Ombudsman recommends that:

1. The Department consider as a model for establishing rights for children in state custody the *Rights of Recipients of Mental Health Services Who Are Children in Need of Treatment*. This document presents the rules of general applicability and specific rights for children who are receiving mental health services from the state. Included in this document is a section that covers rights in inpatient and residential settings. It also includes policies on informed consent to treatment, and on free association and communication.
2. The Department should set forth standards and/or principles for how children in its custody will participate in treatment planning appropriate for their age and condition, and with whom they will be allowed association and communication.
3. The Department should include training for caseworkers in how these standards or principles will be applied and how conflicts will be resolved when they arise in their work.

THE DEPARTMENT'S RESPONSE:

In 2006, the members of the Youth Leadership Advisory Team and other youth in care presented their thoughts, concerns, and recommendations for improving services for older youth in care to a panel that included the First Lady, Karen Baldacci; Office of Child and Family Services Director, Jim Beougher; and others. Significant among those recommendations was the request to develop a Youth Bill of Rights. There were several meetings with youth, Department representatives, and other community stakeholders.

From brainstorming and idea development, a former youth in care who is working in an internship with the Muskie School of Public Service has developed a draft Bill of Rights that youth are now reviewing. The draft clearly references the handbook, Rights of Recipients of Mental Health Services Who are Children in Need of Treatment. The Department

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believes strongly that in order for this document to have meaning for the youth in care it truly needs to be "their" document. This draft document, in fact, sets forth standards and principles for how children and youth in care can participate in treatment planning and standards for contact and normalization of their life.

Once this document is finalized, it is expected that there will be training in its application, beginning with the Youth Permanency Summit, scheduled for February 2008.

TRANSITION OF CHILDREN AND YOUTH IN STATE CUSTODY

The Department recognizes that multiple moves for children in state custody are not beneficial to their well-being. Unfortunately, there have been many times when caseworkers have moved children from homes or placements that met their needs without efforts to preserve the placements and without demonstrating to the children how problem resolution can take place. Abrupt moves without adequate planning may take the children from appropriate homes, and maybe from siblings, leaving the children in limbo in temporary placements too long, or resulting in a number of temporary placements. This could place the children under significant and unnecessary stress, increase their lack of trust, and decrease their ability to set roots and establish relationships.

The Ombudsman recommends that the Department assure that policy expectations are clear that children should not be abruptly removed from placements unless it is necessary to assure the best interests of the child, that placements should be preserved when possible, and that appropriate transitions should be made. When policy is clarified, staff training should take place.

THE DEPARTMENT'S RESPONSE:

Policy is clear that efforts should be made to reduce the number of moves a child has in foster care and all efforts should be made to preserve the placement when possible. There is current proposed policy on hold pending the completion of the Transitions Workgroup, which is developing recommendations to facilitate full planning in any situation where a child is having a placement move, that will clearly state that a move should not occur if there are no safety or treatment issues and that a mandatory Family Team Meeting is required.

PSYCHOLOGICAL EVALUATION AND CASE PLANNING

The Department recognizes that evaluations need to be strength-based and family-centered and is clearly in support of family-centered policies. However, there are still instances when caseworkers reference the use of psychological evaluations in case plans using phrases that are prescriptive, such as “Mrs. Smith will see Dr. Jones for assessment and will follow all of his recommendations.”

The Ombudsman recommends that the Department provide guidance for caseworkers in the appropriate role of assessment in treatment planning to support the family, the caseworker, and the team in developing an understanding of the family’s strengths and challenges.

THE DEPARTMENT’S RESPONSE:

The Department has just developed policy on evaluations that provides better guidance for caseworkers in the appropriate role of assessment in treatment planning to support the family and to assure that the right evaluation or treatment is provided to meet the specific needs of the individual. In any assessment it is an expectation that child and family strengths will be documented, along with specific individual and family needs and safety issues.

This policy provides guidelines and a protocol for making decisions about referrals of children and families for psychosocial, psychological, or psychiatric evaluations. This policy also emphasizes the client’s right to choice in treatment providers and the requirement to provide an array of options and avoid being prescriptive in recommending treatment options.

PLACEMENT OF CHILDREN WITH NON-RELATIVES

When a child comes into state custody, the Department is expected to make a placement for the child that is in the child’s best interest. State law requires that the Department consider giving preference to an adult relative over a non-related caregiver as long as the related caregiver meets all relevant state child protection standards (22 M.R.S.A. §4062 (4)). However, there are instances when a child who comes into custody has established a family-like relationship and bond with someone who is not a relative, and placement with this individual is in the child’s best interest. For caseworkers this situation can create a conflict between placing a child with relatives who don’t have an established relationship with the child but who meet all relevant state child protection standards, and placing the child with non-relatives who have a family-like relationship with the child and who also meet all relevant state child protection standards.

The Ombudsman recommends that the Department clarify in policy that the strength of the relationship or bond with non-relatives may make custody to, or placement with, the non-relative in the best interests of the child.

THE DEPARTMENT'S RESPONSE:

The Law Court has held several times that placement with a relative is required only when the court first finds that it is in the child's best interest. In other words, the law does not require that the Department place a child with a relative if the placement is not in the child's best interest.

Determining the child's best interest, however, is often difficult when there is a relationship or bond with a non-relative and then a relative becomes known and placement consideration is given to the relative. It must be noted that federal legislation is very clear on the preference for relative placement. Relative placement often can provide the best opportunity for children and youth if, as part of the placement plan, there is a facilitated, ongoing permanency connection with the non-relative. Through Family Team Meetings and other venues, caseworkers strive to support the best decision on placement that is going to best meet the needs of the child for a lifetime. Staff have been directed to seek out "fictive-kin" (non-relatives with whom children have a relationship or bond) and have added the definition of "fictive kin" to policy. This recognizes that a child or youth may have a prevailing relationship that is significant and enduring and which should be respected. The Department supports child and youth choice in preferences for placement, including placement with non-relatives.

INDIVIDUALIZATION OF CHILDREN IN CASE RECORDS

Often, children involved in child protective cases also have siblings involved in the same case, and they are frequently referenced in the same case record. However, in order to protect children's confidentiality and to formulate plans for their individual treatment needs, children need to be addressed individually in the case record upon coming into state custody.

The Ombudsman recommends that the Department train caseworkers in the preparation of case records that individualize siblings who have come into custody together.

THE DEPARTMENT'S RESPONSE:

The Department agrees that it is a disservice to the individuality of the child to merely repeat an entry in the case narrative for each sibling. Each child is a unique entity and should be given this respect through individualized documentation in their case record. Efforts will be made to educate caseworkers in developing a better style of case narrative that captures the individual needs, personality, and plan for each child.

POSITIVE FINDINGS

In addition to identifying child welfare policies and procedures that need further development, the Ombudsman incorporates “positive findings” into the case reports that are sent to Program Administrators and to Central Office senior management staff after a case review. Positive findings are the actions of caseworkers who demonstrate outstanding work with families. These actions are indicative of the level of dedication that caseworkers exhibit, as well as how the focus of casework at the Department of Health and Human Services continues to shift to a more strengths-based, family-centered approach.

The following are the top six positive findings identified during case reviews completed in the past year.

1. The most frequently identified positive finding in 2007 was **THOROUGH CASE WORK AND INVESTIGATION**. Caseworkers made exceptional efforts to manage all aspects of cases, and to investigate and assess situations thoroughly in the best interests of children.
2. The second most frequently identified positive finding was **EXCEPTIONAL REUNIFICATION EFFORTS** by caseworkers. Caseworkers moved forward with reunification to the benefit of children and parents even when faced with situations that in the recent past would have prevented reunification efforts.
3. The third most frequently identified positive finding was caseworkers’ **PROFESSIONAL CASE WORK AND POSITIVE ATTITUDES**. Caseworkers exhibited and maintained competent, respectful, and positive attitudes towards clients even when faced with exceptionally difficult or inappropriate statements, attitudes, or actions.
4. The fourth most frequently identified positive finding was **EXCEPTIONAL KINSHIP CARE WORK AND SERVICES**. Caseworkers provided services to kinship families and worked extensively with family members in order to ensure that children were placed with and maintained in the homes of relatives.
5. The fifth most frequently identified positive finding was related to **FAMILY TEAM MEETINGS**. Caseworkers used family team meetings to bring together family members and service providers to address issues that were preventing family members from working together in the best interests of the children.
6. Lastly, caseworkers made **EXCEPTIONAL ATTEMPTS TO PREVENT REMOVAL OF CHILDREN** from their families. Caseworkers utilized a variety of approaches and services to assist families in reaching safe solutions to problems in an effort to avoid having to take children into state custody.

CASE EXAMPLES

of the Child Welfare Services Ombudsman

RIGHTS OF CHILDREN AND YOUTH IN STATE CUSTODY

The Ombudsman received a call from a foster parent who was concerned about how the case of a sixteen year old boy placed in his home was being handled by the Department of Health and Human Services and the contracted foster home provider. While the Ombudsman's initial review focused on the foster father's complaint, other issues were brought to light.

In reviewing the case, the Ombudsman noted that the treatment team for the young man, which included the Department's caseworker, the contracted foster home provider, the guardian ad litem, and service providers, was having trouble agreeing on how to manage his treatment needs. The case record is clear that the treatment team had failed after several weeks to develop a behavior plan for the boy stating that he refused to cooperate with anything the team might develop. The Ombudsman discovered that the team had not asked the young man to participate in team meetings and to have input on his treatment plan.

The young man was ultimately removed from the foster home and placed with an aunt and uncle. For a short period after this move, the young man, who wanted contact, was not allowed contact with the foster father by his treatment team. Fortunately, management staff for the Department acted quickly to reinstate the young man's contact with his former foster father.

THIS CASE HIGHLIGHTS the need for the Department to consider establishing rights for children in state custody, and possibly using as a model the *Rights of Recipients of Mental Health Services Who Are Children in Need of Treatment*. The document should set forth standards and/or principles for how children in state custody will participate in treatment planning appropriate for their age and condition, and with whom they will be allowed association and communication.

TRANSITION OF CHILDREN AND YOUTH IN STATE CUSTODY

The Ombudsman received a call from a foster father concerned about the removal of his fourteen year old foster son from his foster placement. The young boy is a high needs child and the foster father is concerned that the removal was not in the child's best interest.

The Ombudsman reviewed the case and found that the boy did have significant behavior issues, and that he was frequently unhappy with any effort to establish structure and limits on behavior. The Department's record indicates that the boy would at times complain bitterly about the rules but maintained that he

wanted to remain in his foster home. The record indicates that there were some difficulties between the foster father and the Department, but there is no indication in the record that these difficulties were related to the foster father's parenting.

THIS CASE HIGHLIGHTS the need for the Department to assure that policy expectations are clear that a child should not be abruptly removed from a placement unless it is necessary to assure the best interest of the child, the placement should be preserved when possible, and that appropriate transitions should be made. When policy is clarified, staff training should take place.

PLACEMENT OF CHILDREN WITH NON-RELATIVES

The Ombudsman received a complaint from a gentleman who identified himself as the maternal grandfather of his two and a half year old granddaughter. The child had come to live with him and his wife when she was removed from her mother's custody at birth. At the time the baby girl was removed from her mother, the baby's father was going to prison.

Two years later, the child's father was released from prison. Shortly thereafter, the Department placed the child in a trial placement with her father. During this same time, a paternity test revealed that the maternal grandfather was, in fact, not a blood relative of the child. Subsequently, when the trial placement with the father failed, the child was placed with her paternal grandparents instead of being returned to the man who had been believed to be the maternal grandfather with whom she had lived for the first two years of her life and with whom she had developed a bond.

THIS CASE HIGHLIGHTS the need for the Department to clarify in policy that the strength of the relationship or bond with non-relatives may make custody to, or placement with, the non-relative in the best interests of the child.

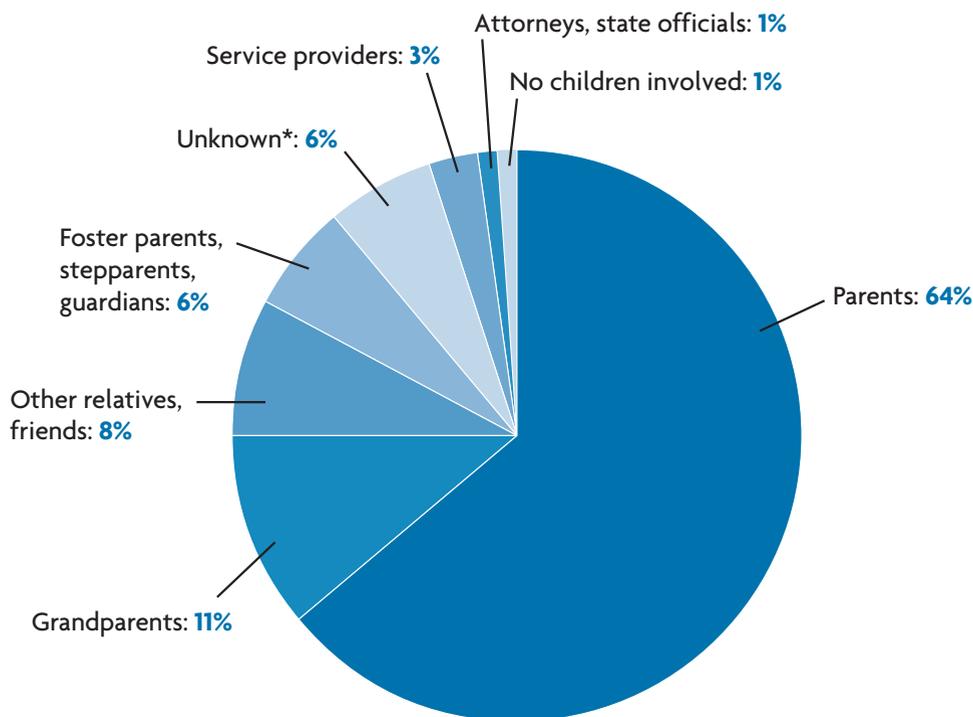
DATA

from the Child Welfare Services Ombudsman

The data in this section of the annual report are from the Child Welfare Services Ombudsman database and provide information about the individuals who contacted the Ombudsman, the complaints they had about the Department of Health and Human Services, the children who are the subject of those complaints, and how complaints were resolved during the reporting period from October 1, 2006 through September 30, 2007.

WHO CONTACTED THE OMBUDSMAN?

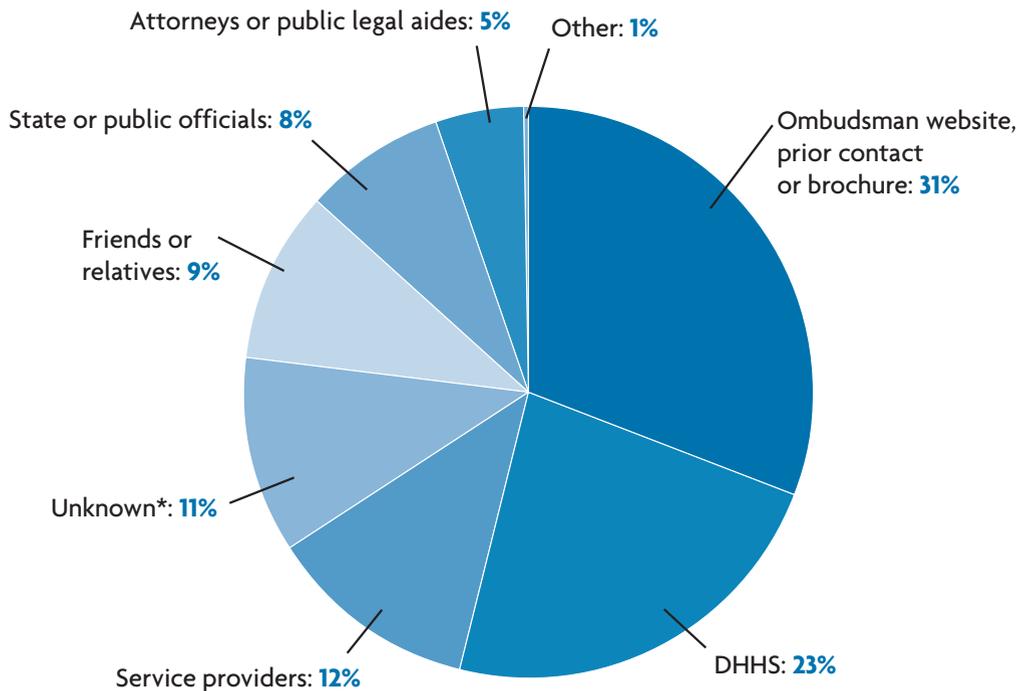
During the reporting period, a total of 292 individuals contacted the Ombudsman. The majority of these contacts (75%) were the parents and grandparents of children.



* *Unknown* represents those individuals who initiated contact with the Ombudsman, but who then did not complete the intake process for receiving services.

HOW DID INDIVIDUALS LEARN ABOUT THE OMBUDSMAN?

Individuals learned about the Ombudsman from a variety of sources. Just under one-third (31%) of the 292 individuals who contacted the Ombudsman learned about the program from prior contact with the Ombudsman or from the Ombudsman website or brochure. Another 35% of individuals who contacted the Ombudsman learned about the program from the Department or from a service provider with whom they were working.



* *Unknown* represents those individuals who initiated contact with the Ombudsman, but who then did not complete the intake process for receiving services.

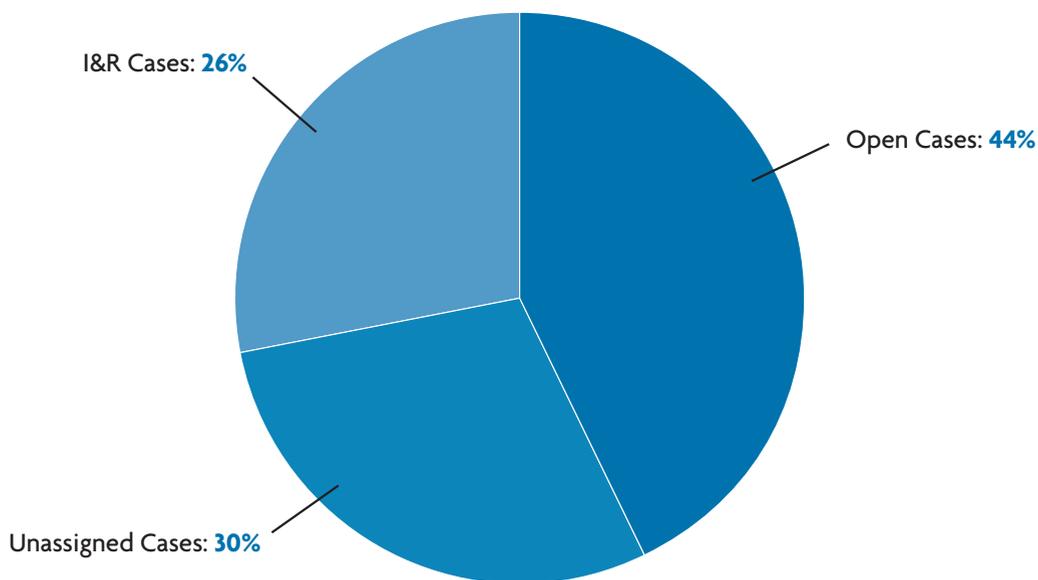
HOW DOES THE OMBUDSMAN CATEGORIZE CASES?

The Ombudsman assigns cases to one of three categories: Open, Information and Referral (I&R), or Unassigned. Initially, all cases are Unassigned while the Ombudsman is gathering information about the inquiry or complaint. Sometimes an individual's case will remain categorized as Unassigned because the individual does not complete the intake process for receiving services, or the individual determines that they do not need ombudsman services or want information and/or a referral.

Once the information related to the inquiry or complaint has been gathered from an individual, the case is re-categorized as I&R or Open. An I&R case is one in which the individual is seeking information and/or referrals to other agencies.

Cases are categorized as Open when the Ombudsman determines that reviewing a child welfare case will benefit the well-being of the child or children who are the subject of the complaint, or will benefit other children or families. These cases may have several complaints and may involve a Child Protective Services Unit, a Children's Services Unit, or an Adoption Unit of the Division of Child Welfare Services within the Department's Office of Child and Family Services.

During the reporting period, the Ombudsman opened 130 cases for review. Of those 130 cases, four involved individuals who contacted the Ombudsman during the previous reporting period. Additionally, 78 individuals who contacted the Ombudsman were provided with information and/or referrals, and the cases of 88 individuals were categorized as Unassigned at the end of the reporting period.



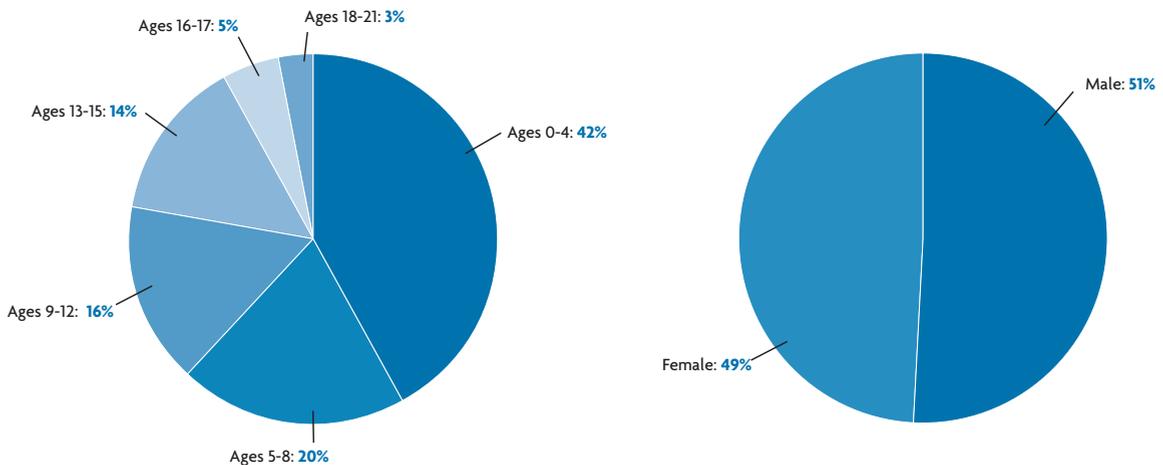
HOW MANY CASES WERE OPENED IN EACH OF THE DEPARTMENT'S DISTRICTS?

Within the Division of Child Welfare Services, there are eight districts. Each district has at least one office and some have two or three. During the reporting period, the number of cases in each district varied from a low of 9 in District 2 to a high of 28 in District 3.

DISTRICT #	OFFICE	CASES	DISTRICT		CHILDREN	
			NUMBER	% OF TOTAL	NUMBER	% OF TOTAL
1	Biddeford	9	15	11%	26	11%
	Sanford	6				
2	Portland	9	9	7%	18	8%
3	Lewiston	28	28	22%	59	25%
4	Augusta	16	16	12%	27	11%
5	Rockland	6	18	14%	36	15%
	Skowhegan	12				
6	Bangor	17	17	13%	25	10%
7	Ellsworth	7	17	13%	28	12%
	Machias	10				
8	Caribou	2	10	8%	18	8%
	Houlton	5				
	Fort Kent	3				
TOTAL			130	100%	237	100%

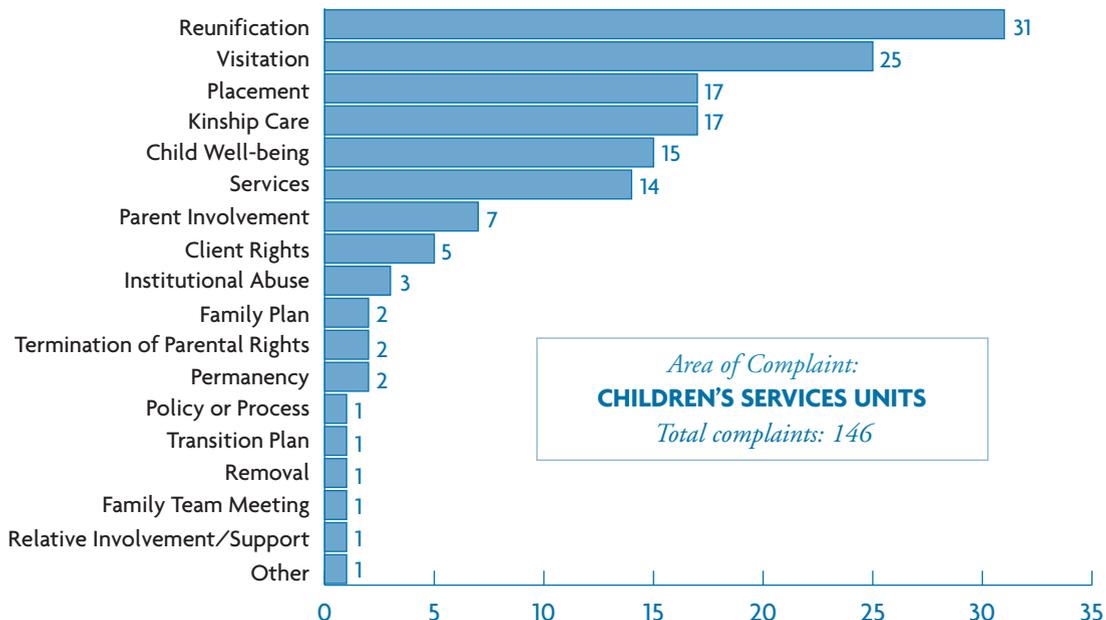
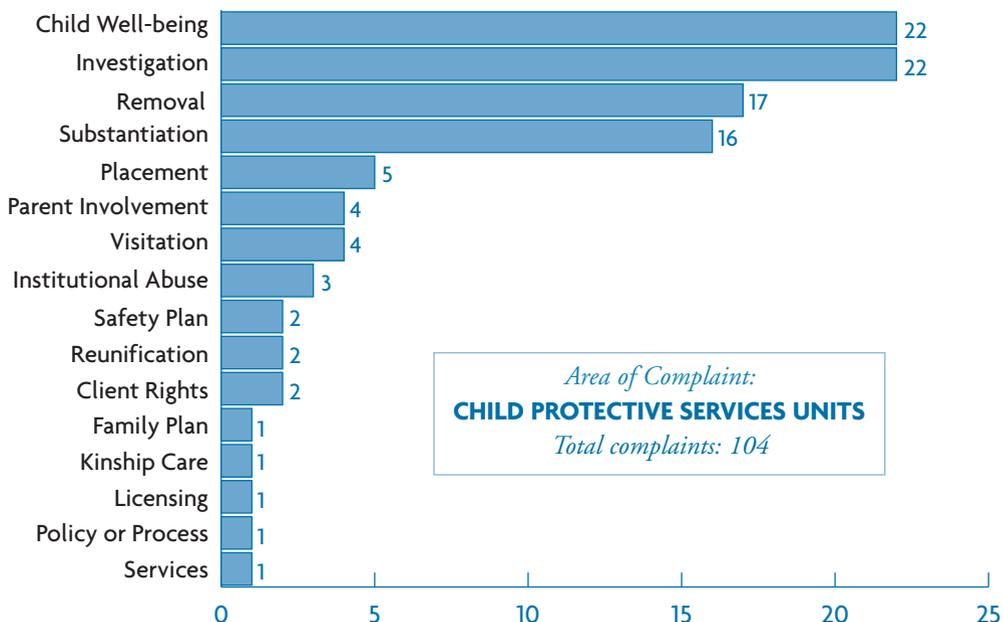
WHAT ARE THE AGES AND GENDER OF CHILDREN INVOLVED IN OPEN CASES?

The Ombudsman collects demographic information on the children involved in cases opened for review, including age and gender. During the reporting period, 62% of these children were ages 8 and under. Of the 237 children involved in cases opened for review, 115 were girls and 122 were boys.



WHAT ARE THE MOST FREQUENTLY IDENTIFIED COMPLAINTS?

During the reporting period, 130 cases were opened with a total of 251 complaints. Each case typically involved more than one complaint. There were 104 complaints regarding Child Protective Services Units, 146 complaints regarding Children’s Services Units, and one complaint regarding Adoption Services Units. The complaint regarding the Adoption Services Unit was related to institutional abuse.



HOW WERE OPEN CASES RESOLVED?

During the reporting period, the Ombudsman closed 133 cases that had been opened for review. Of these cases, 26 were opened during the previous reporting period and 107 were opened during the current reporting period. When closing a case, the Ombudsman determines whether each complaint within the case is Valid/Resolved, Valid/Not Resolved, or Not Valid.

VALID/RESOLVED complaints are those complaints that the Ombudsman has determined have merit, and changes have been or are being made by the Department in the best interests of the child or children involved.

VALID/NOT RESOLVED complaints are those complaints that the Ombudsman has determined have merit, but they have not been resolved for the following reasons:

1. **ACTION CANNOT BE UNDONE:** The issue could not be resolved because it involved an event that had already occurred.
2. **DEPARTMENT DISAGREES WITH OMBUDSMAN:** The Department disagreed with the Ombudsman's recommendations and would not make changes.
3. **CHANGE NOT IN THE CHILD'S BEST INTEREST:** Making a change to correct a policy or practice violation is not in the child's best interest.
4. **LACK OF RESOURCES:** The Department agreed with the Ombudsman's recommendations but could not make a change because no resource was available.

NOT VALID complaints are those that the Ombudsman has reviewed and has determined that the Department was or is following policies and procedures in the best interests of the child or children.

The 133 cases closed during the reporting period included 254 complaints. Of these 254 complaints, the Ombudsman determined that 20 were Valid/Resolved, 12 were Valid/Not Resolved, and 222 were Not Valid.

RESOLUTION	CHILD PROTECTIVE SERVICES UNITS	CHILDREN'S SERVICES UNITS	ADOPTION UNITS	TOTAL
Valid/Resolved	9	11	0	20
Valid/Not Resolved	5	7	0	12
1. Action cannot be undone	4	7	0	11
2. Dept. disagrees with Ombudsman	1	0	0	1
3. Change not in child's best interest	0	0	0	0
4. Lack of resources	0	0	0	0
Not Valid	96	125	1	222
TOTAL	110	143	1	254

ACKNOWLEDGMENTS

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