

HOUSE BILL NO. 657

INTRODUCED BY G. PARRY, S. KERNS, M. BINKLEY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO THE OFFICE OF THE CHILD AND FAMILY OMBUDSMAN; ALLOWING A PARENT, FAMILY MEMBER, OR FOSTER PARENT TO SUBMIT A REQUEST FOR ASSISTANCE TO THE OFFICE OF THE CHILD AND FAMILY OMBUDSMAN FOR RETALIATORY ACTION BY A CHILD PROTECTIVE SERVICES EMPLOYEE OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; AUTHORIZING THE OFFICE OF THE CHILD AND FAMILY OMBUDSMAN TO INVESTIGATE REPORTS OF RETALIATORY ACTION; REQUIRING THAT COURTS BE NOTIFIED OF FINDINGS OF THE OFFICE OF THE CHILD AND FAMILY OMBUDSMAN; AND AMENDING SECTIONS 41-3-1209, 41-3-1211, 41-3-1212, 41-3-1213, AND 41-3-1215, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Retaliatory actions by department -- reports to office of child and family ombudsman. (1) A parent, family member, or foster parent may file a request for assistance with the office of the child and family ombudsman if the parent, family member, or foster parent believes that a department employee has retaliated against or in any other manner discriminated against the parent, family member, or foster parent because:

(a) the parent, family member, or foster parent submitted a request for assistance to the office of the child and family ombudsman, made a complaint to the office of the attorney general or a law enforcement agency, or cooperated in the investigation of such a complaint made by another;

(b) the parent, family member, or foster parent has discussed, consulted on, testified regarding, or otherwise made public information about treatment of the parent, family member, foster parent, or a child by child protective services;

(c) the parent, family member, or foster parent has advocated for services on behalf of a child; or

(d) the parent, family member, or foster parent has discussed or consulted with anyone concerning the parent, family member, or foster parent's rights under this chapter.

1 (2) The ombudsman shall investigate the allegations of retaliation. The ombudsman must be
 2 granted access to all relevant information and resources held by or within the department by which to conduct
 3 the investigation. After concluding its investigation, the ombudsman shall provide its findings, including whether
 4 an employee of the department engaged in an adverse retaliatory action, in a written report to the department,
 5 the parent, foster parent, or legal guardian, and the district courts pursuant to 41-3-1213.

6 (3) If the ombudsman concludes that an employee of the department took an adverse retaliatory
 7 action, the parent, family member, or foster parent may, within 2 years of the date of receipt of the report,
 8 commence a civil action based on the report of the ombudsman, subject to the limitations on governmental
 9 liability for damages in tort in 2-9-108.

10 (4) The cause of action in subsection (3) is not exclusive and does not preclude a parent, family
 11 member, or foster parent from seeking legal action in the absence of a report from the ombudsman finding that
 12 retaliatory actions occurred.

13

14 **Section 2.** Section 41-3-1209, MCA, is amended to read:

15 **"41-3-1209. Purpose and intent.** The legislature finds that an independent, impartial, and confidential
 16 ombudsman serves:

- 17 (1) to promote and protect the best interests and rights of Montana's children and families; and
- 18 (2) to strengthen child and family services by working in consultation with the department and with
- 19 appropriate county attorneys in cases under review."

20

21 **Section 3.** Section 41-3-1211, MCA, is amended to read:

22 **"41-3-1211. Powers and duties.** The powers and duties of the ombudsman are:

- 23 (1) to respond to requests for assistance regarding administrative acts and to investigate
- 24 administrative acts;
- 25 (2) to investigate circumstances surrounding reports that are provided to the ombudsman pursuant
- 26 to 41-3-209;
- 27 (3) to investigate complaints of retaliatory action filed by a parent, family member, or foster parent
- 28 pursuant to [section 1].

1 ~~(3)~~(4) to inspect, copy, or subpoena records as needed to perform the ombudsman's duties under
2 this part;

3 ~~(4)~~(5) to take appropriate steps to ensure that persons are made aware of the purpose, services, and
4 procedures of the ombudsman and how to contact the ombudsman;

5 ~~(5)~~(6) to share relevant findings related to an investigation, subject to disclosure restrictions and
6 confidentiality requirements, with individuals or entities legally authorized to receive, inspect, or investigate
7 reports of child abuse or neglect;

8 ~~(6)~~(7) based on the investigations conducted, to provide oversight of the department's systems and
9 policies for handling abuse and neglect cases;

10 ~~(7)~~(8) to periodically review department procedures and promote best practices and effective
11 programs by working in consultation with the department to improve procedures, practices, and programs;

12 ~~(8)~~(9) to undertake, participate in, and consult with persons and the department in activities, including
13 but not limited to conferences, inquiries, panels, meetings, or studies, that serve to improve the manner in
14 which the department functions;

15 ~~(9)~~(10) to provide education on the legal rights of children;

16 ~~(10)~~(11) to apply for and accept grants, gifts, contributions, and bequests of funds for the purpose of
17 carrying out the ombudsman's responsibilities; ~~and~~

18 ~~(11)~~(12) to report annually to the attorney general and the children, families, health, and human
19 services interim committee in accordance with 5-11-210. The report must be public and may contain
20 recommendations from the ombudsman regarding systemic improvements for the department; and

21 (13) to work toward resolution of complaints of infringement on the rights of the child and family
22 involved."

23

24 **Section 4.** Section 41-3-1212, MCA, is amended to read:

25 **"41-3-1212. Investigations -- discretion -- procedure.** (1) The ombudsman shall investigate a
26 request for assistance unless:

27 (a) the request for assistance is trivial, frivolous, vexatious, or not made in good faith;

28 (b) the request for assistance is too delayed to justify an investigation;

1 (c) the person requesting assistance is not personally aggrieved by the subject matter of the
2 request; or

3 (d) the request for assistance has been previously investigated by the ombudsman.

4 (2) The ombudsman may investigate a request for assistance in a matter that is being or may
5 reasonably be addressed by another remedy or channel, including a matter that is before a court.

6 (3) (a) After an investigation is completed, the ombudsman shall provide to the department any
7 findings, conclusions, and recommendations.

8 (b) The department shall inform the ombudsman no later than 60 days after receipt of the report on
9 the actions the department is taking to resolve or correct any problems identified by the ombudsman. If the
10 department has not resolved or corrected a problem, the department shall inform the ombudsman of any
11 reasons for not addressing the ombudsman's findings, conclusions, and recommendations.

12 (c) The ombudsman shall include the following information in the report required under 41-3-1211:

13 (i) the number of findings reports made to the department;

14 (ii) the nature of the problems identified by the ombudsman;

15 (iii) the actions taken by the department to resolve or correct the problems; and

16 (iv) the problems that have not been resolved or corrected by the department, as well as the
17 department's reasons for not addressing the ombudsman's findings, conclusions, and recommendations.

18 (d) (i) The ombudsman shall report any findings, including findings of retaliatory action as provided
19 in [section 1], to the attorney general to be distributed to all district courts in the state.

20 (ii) If the ombudsman prepares a findings report involving a child who is the subject of an abuse or
21 neglect petition filed pursuant to Title 41, chapter 3, part 4, the ombudsman shall provide the report to the court
22 having jurisdiction in the case to be included in the record and distributed to all parties.

23 (iii) If the information contained in the findings report affects any action taken in an open case, the
24 court shall reconsider those actions.

25 (iv) If the court determines that any person has acted in bad faith or with malicious purpose or
26 provided information knowing the information to be false, the offender shall be held in contempt of court in
27 violation of 41-3-203.

28 (e) If the action of any person resulted in harm to a child, the ombudsman shall report the

1 responsible party to local law enforcement."

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3 **Section 5.** Section 41-3-1213, MCA, is amended to read:

4 **"41-3-1213. Privilege.** The ombudsman may not be compelled to testify ~~or produce evidence~~ in any
5 judicial or administrative proceeding with respect to any matter involving the exercise of the ombudsman's
6 official duties, except as necessary to enforce the provisions of this part. Any findings made by the ombudsman
7 must be made available to the court and considered part of the record as provided in 41-3-1212."

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9 **Section 6.** Section 41-3-1215, MCA, is amended to read:

10 **"41-3-1215. Systemic oversight of child protective services activities.** (1) The office of the child
11 and family ombudsman shall provide oversight of the child protective services provided by the department to
12 identify and report on trends in the handling of the cases and make recommendations on ways to improve the
13 child protective services system.

14 (2) The office shall analyze information received, reviewed, and compiled by the ombudsman,
15 including but not limited to:

- 16 (a) the reports provided pursuant to 41-3-209;
- 17 (b) the requests for assistance received by the office;
- 18 (c) policies and procedures used by the department in responding to and investigating reports of
19 child abuse and neglect;
- 20 (d) findings relating to ombudsman investigations; and
- 21 (e) best practices for the handling of child abuse and neglect cases and the degree to which the
22 department is using those practices.

23 (3) Based on the analysis, the ombudsman shall provide systemic and trend recommendations
24 twice each calendar year to the department. The department shall respond to the recommendations within 60
25 days of receiving the report unless the department has requested in writing and received an extension of the
26 deadline for response. The response must include a description of how it will implement the recommendations
27 or justification as to why the department is not implementing the recommendations at that time.

28 (4) If the department fails to respond to the recommendations as required or provides justification

1 as to why it is not implementing the recommendations, the ombudsman shall send the report to the governor,
2 the director of the department, and the children, families, health, and human services interim committee.

3 (5) The ombudsman may carry out the oversight duties provided for in this section independently
4 or in conjunction with other governmental bodies or nongovernmental research organizations, consistent with
5 the disclosure and confidentiality provisions of 41-3-1211~~(5)~~(6)."

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7 **NEW SECTION. Section 7. Notification to tribal governments.** The secretary of state shall send a
8 copy of [this act] to each federally recognized tribal government in Montana.

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10 **NEW SECTION. Section 8. Codification instruction.** [Section 1] is intended to be codified as an
11 integral part of Title 41, chapter 3, part 12, and the provisions of Title 41, chapter 3, part 12, apply to [section 1].

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