

HOUSE BILL NO. 753

INTRODUCED BY D. LENZ

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A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A PARENT, FAMILY MEMBER, OR FOSTER PARENT TO SUBMIT A COMPLAINT 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 COMPLAINTS OF RETALIATORY ACTION; PROVIDING AN APPROPRIATION; AMENDING SECTION 41-3-1211, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Complaints -- retaliatory actions by department -- reports to office of child and family ombudsman.** (1) A parent, family member, or foster parent may file a complaint 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 made a complaint with the office of the child and family ombudsman, 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.

(2) The ombudsman shall investigate the allegations of retaliation. The ombudsman must be granted access to all relevant information and resources held by or within the department by which to conduct the investigation. After concluding its investigation, the ombudsman shall provide its findings in a written report to the department and the parent, family member, or foster parent.

1 (3) The department shall notify the office of the child and family ombudsman in writing, within 30 days
 2 of receiving the ombudsman's findings, of any personnel action taken or to be taken with regard to the department
 3 employee. The office of the child and family ombudsman shall make the notice available to the parent, family
 4 member, or foster parent.

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

9 (5) The cause of action in subsection (4) is not exclusive and does not preclude a parent, family member,
 10 or foster parent from seeking legal action in the absence of a report from the child and family ombudsman.

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12 **Section 2.** Section 41-3-1211, MCA, is amended to read:

13 **"41-3-1211. Powers and duties.** The powers and duties of the ombudsman are:

14 (1) to respond to requests for assistance regarding administrative acts and to investigate administrative
 15 acts;

16 (2) to investigate circumstances surrounding reports that are provided to the ombudsman pursuant to
 17 41-3-209;

18 (3) to investigate complaints of retaliatory action filed by a parent, family member, or foster parent
 19 pursuant to [section 1];

20 ~~(3)~~(4) to inspect, copy, or subpoena records as needed to perform the ombudsman's duties under this
 21 part;

22 ~~(4)~~(5) to take appropriate steps to ensure that persons are made aware of the purpose, services, and
 23 procedures of the ombudsman and how to contact the ombudsman;

24 ~~(5)~~(6) to share relevant findings related to an investigation, subject to disclosure restrictions and
 25 confidentiality requirements, with individuals or entities legally authorized to receive, inspect, or investigate reports
 26 of child abuse or neglect;

27 ~~(6)~~(7) to periodically review department procedures and promote best practices and effective programs
 28 by working collaboratively with the department to improve procedures, practices, and programs;

29 ~~(7)~~(8) to undertake, participate in, and cooperate with persons and the department in activities, including
 30 but not limited to conferences, inquiries, panels, meetings, or studies, that serve to improve the manner in which

1 the department functions;
2 ~~(8)(9)~~ to provide education on the legal rights of children;
3 ~~(9)(10)~~ to apply for and accept grants, gifts, contributions, and bequests of funds for the purpose of
4 carrying out the ombudsman's responsibilities; and
5 ~~(10)(11)~~ to report annually to the attorney general and the children, families, health, and human services
6 interim committee. The report must be public and may contain recommendations from the ombudsman regarding
7 systematic improvements for the department."
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9 NEW SECTION. **Section 3. Appropriation.** There is appropriated \$166,934.22 from the general fund
10 to the department of public health and human services for the biennium beginning July 1, 2019, to fund a staff
11 position for investigation of complaints made pursuant to [section 1]. The appropriation is to be considered as
12 part of the ongoing base for the next legislative session. Any unexpended portion of this appropriation reverts
13 to the general fund.
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15 NEW SECTION. **Section 4. Codification instruction.** [Section 1] is intended to be codified as an
16 integral part of Title 41, chapter 3, part 2, and the provisions of Title 41, chapter 3, part 2, apply to [section 1].
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18 NEW SECTION. **Section 5. Effective date.** [This act] is effective July 1, 2019.
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