



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:

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.

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

(4) The cause of action in subsection (3) is not exclusive and does not preclude a parent, family member, or foster parent from seeking legal action in the absence of a report from the child and family ombudsman.

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

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

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

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

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

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

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

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

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

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

~~(8)~~(9) to provide education on the legal rights of children;

~~(9)(10)~~ to apply for and accept grants, gifts, contributions, and bequests of funds for the purpose of carrying out the ombudsman's responsibilities; and

~~(10)(11)~~ to report annually to the attorney general and the children, families, health, and human services interim committee. The report must be public and may contain recommendations from the ombudsman regarding systematic improvements for the department."

Section 3. Appropriation. There is appropriated \$166,934.22 from the general fund to the department of justice for the biennium beginning July 1, 2019, to fund a staff position for investigation of complaints made pursuant to [section 1]. The appropriation is to be considered as part of the ongoing base for the next legislative session. Any unexpended portion of this appropriation reverts to the general fund.

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 41, chapter 3, part 2, and the provisions of Title 41, chapter 3, part 2, apply to [section 1].

Section 5. Effective date. [This act] is effective July 1, 2019.

- END -

I hereby certify that the within bill,
HB 0753, originated in the House.

Speaker of the House

Signed this _____ day
of _____, 2019.

Chief Clerk of the House

President of the Senate

Signed this _____ day
of _____, 2019.

HOUSE BILL NO. 753
INTRODUCED BY D. LENZ

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.