

Unofficial Draft Copy

As of: August 15, 2012 (4:44pm)

LCCF04

**** Bill No. ****

Introduced By *****

By Request of the Children, Families, Health, and Human Services
Interim Committee

A Bill for an Act entitled: "An Act creating an independent office of the child and family ombudsman; describing the duties and powers of the office; establishing a special revenue account for the receipt of grants, gifts, and bequests to the office; amending section 41-3-205, MCA; providing an appropriation; and providing an effective date."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Office of child and family ombudsman to be established.** (1) There is an office of the child and family ombudsman.

(2) As used in this part, "ombudsman" means the office of the child and family ombudsman.

(3) The ombudsman is allocated to the department of justice for administrative purposes only as prescribed in 2-15-121.

NEW SECTION. **Section 2. Purpose and intent.** The legislature finds that:

(1) an independent, impartial, and confidential ombudsman can serve to protect the interests and rights of Montana's children and families; and

(2) an independent, impartial, and knowledgeable ombudsman can work collaboratively with the department and together strengthen the department's child and family services.

NEW SECTION. **Section 3. Appointment -- term.** (1) The governor, with the consent of the senate, shall appoint an individual who is a resident of this state and is qualified by training and experience to perform the duties of the ombudsman as provided in [section 6].

(2) The appointment must be made from a list of at least three persons prepared and submitted by a committee consisting of:

- (a) two attorneys appointed by the Montana bar association;
 - (b) two district court judges appointed by the chief justice of the Montana supreme court;
 - (c) one medical doctor appointed by the Montana medical association;
 - (d) one psychologist appointed by the Montana psychological association;
 - (e) one social worker appointed by the Montana chapter of the national association of social workers;
 - (f) one person appointed by the governor as a representative of private children's agencies;
 - (g) one person appointed by the governor as a representative of the general public; and
 - (h) one person appointed by the director of the department.
- (3) The ombudsman holds office for a term of 5 years and

continues to hold office until a successor is appointed.

NEW SECTION. **Section 4. Staff.** The ombudsman may select, and the department of justice shall hire as provided in 2-15-121, necessary staff to carry out the provisions of [sections 1 through 8]. Staff must be under the supervision of the ombudsman.

NEW SECTION. **Section 5. Independence.** The ombudsman acts independently of the department of public health and human services in the performance of the duties of the office.

NEW SECTION. **Section 6. Duties.** The duties of the ombudsman are to:

(1) ensure that each child under the jurisdiction of the department, and in proper cases an individual interested in the child's welfare, is apprised of the child's rights under the law;

(2) take all possible action, including but not limited to programs of public education and advocacy, to secure and ensure the legal, civil, and special protections of children;

(3) help interested parties obtain any information pertaining to the case work and procedures of the department that they are entitled to under the law;

(4) review complaints and investigate, in accordance with the powers provided for in [section 7] and with procedures adopted and made publicly available by the ombudsman, those complaints that indicate, in the opinion of the ombudsman, that a

child might be in need of assistance from the ombudsman;

(5) investigate, in accordance with the powers provided for in [section 7] and with procedures adopted and made publicly available by the ombudsman, the circumstances relating to the death of any child who has received services from the division;

(6) when the ombudsman's investigation related to a complaint or a death appears to warrant it, share the relevant findings, subject to the disclosure restrictions and confidentiality requirements provided in [section 7], with individuals or entities that are legally authorized to receive, inspect, or investigate reports of child abuse or neglect;

(7) provide training and technical assistance to guardians ad litem and special advocates appointed by a district court to represent children in proceedings before that court;

(8) periodically review the procedures used by the department with a view toward the rights of children;

(9) recommend to the department changes in its procedures and support the division's implementation of the changes with appropriate training or technical assistance; and

(10) annually submit to the governor and the legislature a detailed report analyzing the work of the ombudsman and any recommendations resulting from it.

NEW SECTION. **Section 7. Powers of ombudsman.** (1) The ombudsman has, subject to subsection (2), the following powers:

(a) to communicate privately with any child under the jurisdiction of the department;

Unofficial Draft Copy

As of: August 15, 2012 (4:44pm)

LCCF04

(b) to inspect, copy, or subpoena, to all department records, including case notes, correspondence, evaluations, videotapes, and interviews pertaining to any child under the jurisdiction of the department who is alleged to be abused or neglected;

(c) to request that individuals or entities outside the department that are legally authorized to receive, inspect, or investigate reports of child abuse or neglect provide information related to a complaint or death that the ombudsman is investigating;

(d) to file amicus curiae briefs on behalf of a parent or child;

(e) to take appropriate steps to see that persons are made aware of the services and procedures of the office of the child and family ombudsman, its purpose, and how it can be contacted; and

(f) to apply for and accept grants, gifts, and bequests of funds from other states, federal and interstate agencies and independent authorities, and private firms, individuals, and foundations for the purpose of carrying out the duties of the ombudsman.

(2) The ombudsman is subject to the disclosure restrictions and confidentiality requirements provided in 41-3-205.

NEW SECTION. **Section 8. Special revenue account.** (1) There is a child and family ombudsman account in the state special revenue fund established pursuant to 17-2-102.

Unofficial Draft Copy

As of: August 15, 2012 (4:44pm)

LCCF04

(2) Funds received pursuant to [section 7(1)(f)] must be deposited into this special revenue account and expended in accordance with the provisions of the grant, gift, or bequest.

Section 9. Section 41-3-205, MCA, is amended to read:

"41-3-205. Confidentiality - disclosure exceptions. (1) The case records of the department and its local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (7) and (8), a person who purposely or knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, ombudsman, or organization, including a federal agency, military enclave, or Indian tribal

Unofficial Draft Copy

As of: August 15, 2012 (4:44pm)

LCCF04

organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 15043(a) (2);

(g) approved foster and adoptive parents who are or may be providing care for a child;

Unofficial Draft Copy

As of: August 15, 2012 (4:44pm)

LCCF04

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family group decisionmaking meeting for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or

Unofficial Draft Copy

As of: August 15, 2012 (4:44pm)

LCCF04

volunteer activities. A request for information under this subsection (3) (o) must be made in writing. Disclosure under this subsection (3) (o) is limited to information that indicates a risk to children, persons with developmental disabilities, or older persons posed by the person about whom the information is sought, as determined by the department.

(p) the news media, a member of the United States congress, or a state legislator, if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a juvenile probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) a county attorney, peace officer, or attorney who is hired by or represents the department if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review board established

Unofficial Draft Copy

As of: August 15, 2012 (4:44pm)

LCCF04

under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer, as provided in 41-3-202;

(w) a member of a county interdisciplinary child information team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203;

(y) a member of a youth placement committee formed under the provisions of 41-5-121; or

(z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.

(4) A school or school district may disclose, without consent, personally identifiable information from the education records of a pupil to the department, the court, a review board, the office of the child and family ombudsman, and the child's assigned attorney, guardian ad litem, or special advocate.

(5) Information that identifies a person as a participant in or recipient of substance abuse treatment services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent provisions of the law.

(6) The confidentiality provisions of this section must be construed to allow a court of this state to share information with other courts of this state or of another state when

Unofficial Draft Copy

As of: August 15, 2012 (4:44pm)

LCCF04

necessary to expedite the interstate placement of children.

(7) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3) (a). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(8) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (7) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(9) This section is not intended to affect the confidentiality of criminal court records, records of law enforcement agencies, or medical records covered by state or federal disclosure limitations.

(10) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, the guardian, or the parent or guardian's attorney must be provided without cost."

{*Internal References to 41-3-205:*

41-3-115 X 41-3-202 X 41-3-203 X 41-3-1008 X
41-3-1010 X 41-3-1010 X 41-3-1012 X 52-2-203 X
52-2-211 X }

NEW SECTION. **Section 10. Appropriation.** (1) There is appropriated from the general fund to the department of justice

Unofficial Draft Copy

As of: August 15, 2012 (4:44pm)

LCCF04

\$250,000 for the biennium beginning July, 1 2013.

(2) The appropriation must be used to pay for the purposes described in [sections 1 through 9].

NEW SECTION. **Section 11. {standard} Codification**

instruction. [Sections 1 through 8] are intended to be codified as an integral part of Title 52, chapter 2, and the provisions of Title 52, chapter 2, apply to [sections 1 through 8].

NEW SECTION. **Section 12. {standard} Effective date.** [This act] is effective July 1, 2013.

- END -

{Name : Casey A. Barrs
Title : Legislative Researcher
Agency: Legislative Services Division
Phone : 3957
E-Mail: cbarrs@mt.gov}