

HOUSE BILL NO. 472

INTRODUCED BY T. JACOBSON, G. HERTZ, D. JONES

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO THE OFFICE OF THE CHILD AND

5 FAMILY OMBUDSMAN; PERMANENTLY ESTABLISHING THE OFFICE OF THE CHILD AND FAMILY

6 OMBUDSMAN; PROVIDING POWERS, DUTIES, AND INVESTIGATIVE PROCEDURES OF THE

7 OMBUDSMAN; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO PROVIDE

8 THE OMBUDSMAN WITH CERTAIN REPORTS; PROVIDING ~~IMMUNITY~~ PRIVILEGE; TRANSFERRING

9 APPROPRIATION AUTHORITY; AMENDING SECTIONS 41-3-205 AND 41-3-208, MCA; AND PROVIDING AN

10 EFFECTIVE DATE."

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

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14 NEW SECTION. Section 1. Office of child and family ombudsman established. (1) There is an office

15 of the child and family ombudsman within the department of justice provided for in 2-15-2001.

16 (2) The attorney general shall appoint a person who is a resident of this state and is qualified by training

17 and experience to perform the duties of the ombudsman.

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19 NEW SECTION. Section 2. Purpose and intent. The legislature finds that an independent, impartial,

20 and confidential ombudsman serves:

- 21 (1) to protect the interests and rights of Montana's children and families; and
- 22 (2) to strengthen child and family services by working in collaboration with the department AND WITH
- 23 APPROPRIATE COUNTY ATTORNEYS IN CASES UNDER REVIEW.

24

25 NEW SECTION. Section 3. Definitions. For the purposes of [sections 1 through 6], the following

26 definitions apply:

- 27 (1) "Administrative act" means a department action, omission, decision, rule, interpretation,
- 28 recommendation, policy, practice, or procedure relating to child and family services.
- 29 (2) "Child and family services" means services provided by the department under this chapter.
- 30 (3) "Ombudsman" means the person holding the position of the child and family ombudsman.

1 (4) "Request for assistance" means a request by a person asking the ombudsman for assistance in  
2 protecting the rights or interests of a child or family in this state.

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4 **NEW SECTION. Section 4. Powers and duties.** The powers and duties of the ombudsman are:

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

7 (2) to investigate circumstances surrounding reports that are provided to the ombudsman pursuant to  
8 [section 7];

9 (3) to inspect, copy, or subpoena records as needed to perform the ombudsman's duties under [sections  
10 1 through 6];

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

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

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

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

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

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

24 (10) to report annually to the attorney general AND THE CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES  
25 INTERIM COMMITTEE. The report must be public and may contain recommendations from the ombudsman regarding  
26 systematic improvements for the department.

27

28 **NEW SECTION. Section 5. Investigations -- discretion -- procedure.** (1) The ombudsman ~~may~~  
29 ~~decide not to~~ SHALL investigate a request for assistance ~~because~~ UNLESS:

30 (a) the request for assistance could reasonably be addressed by another remedy or channel;

- 1 (b) the request for assistance is trivial, frivolous, vexatious, or not made in good faith;
- 2 (c) the request for assistance is too delayed to justify an investigation;
- 3 (d) the person requesting assistance is not personally aggrieved by the subject matter of the request; OR
- 4 (e) the request for assistance has been previously investigated; BY THE OMBUDSMAN.
- 5 (f) resources are insufficient to perform an adequate investigation; or
- 6 ~~(g) other requests for assistance are more urgent.~~

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

9 (b) At the ombudsman's request, the department shall inform the ombudsman in a timely manner about  
 10 any action taken to address or any reasons for not addressing the ombudsman's findings, conclusions, and  
 11 recommendations.

12  
 13 NEW SECTION. Section 6. Immunity -- privileges PRIVILEGE. ~~(1) The ombudsman is entitled to the~~  
 14 ~~same immunities as a member of the judiciary as provided in 2-9-112.~~

15 ~~(2) The substantive content of any finding, conclusion, or recommendation of the ombudsman may not~~  
 16 ~~be reviewed in any court.~~

17 ~~(3) The ombudsman may be not BE compelled to testify or produce evidence in any judicial or~~  
 18 ~~administrative proceeding with respect to any matter involving the exercise of the ombudsman's official duties,~~  
 19 ~~except as necessary to enforce the provisions of [sections 1 through 6].~~

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 21 NEW SECTION. Section 7. Reports to office of child and family ombudsman. The department shall  
 22 report to the office of the child and family ombudsman:

- 23 (1) within 1 business day, a death of a child who, within the last 12 months:
- 24 (a) had been the subject of a report of abuse or neglect;
- 25 (b) had been the subject of an investigation of alleged abuse or neglect;
- 26 (c) was in out-of-home care at the time of the child's death; or
- 27 (d) had received services from the department under a voluntary protective services agreement;
- 28 (2) within 5 business days:
- 29 ~~(a) any criminal act by a substitute care provider;~~
- 30 (A) ANY CRIMINAL ACT CONCERNING THE ABUSE OR NEGLECT OF A CHILD;

1 (b) any critical incident, including but not limited to elopement, a suicide attempt, rape, nonroutine  
2 hospitalizations, and neglect or abuse by a substitute care provider, involving a child who is receiving services  
3 from the department pursuant to this chapter; or

4 (c) a third report received within the last 12 months about a child at risk of or who is suspected of being  
5 abused or neglected.

6

7 **Section 8.** Section 41-3-205, MCA, is amended to read:

8 **"41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department and its  
9 local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken  
10 under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except  
11 as provided by this section. Except as provided in subsections (8) and (9), a person who purposely or knowingly  
12 permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

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

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

20 (a) a department, agency, [ombudsman,] or organization, including a federal agency, military enclave,  
21 or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or  
22 neglect and that otherwise meets the disclosure criteria contained in this section;

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

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

29 (d) a parent, grandparent, aunt, uncle, brother, sister, guardian, mandatory reporter provided for in  
30 41-3-201(2) and (5), or person designated by a parent or guardian of the child who is the subject of a report in

- 1 the records or other person responsible for the child's welfare, without disclosure of the identity of any person who  
2 reported or provided information on the alleged child abuse or neglect incident contained in the records;
- 3 (e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or  
4 legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the  
5 court to represent a child in a pending case;
- 6 (f) the state protection and advocacy program as authorized by 42 U.S.C. 15043(a)(2);
- 7 (g) approved foster and adoptive parents who are or may be providing care for a child;
- 8 (h) a person about whom a report has been made and that person's attorney, with respect to the relevant  
9 records pertaining to that person only and without disclosing the identity of the reporter or any other person whose  
10 safety may be endangered;
- 11 (i) an agency, including a probation or parole agency, that is legally responsible for the supervision of  
12 an alleged perpetrator of child abuse or neglect;
- 13 (j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and  
14 that is authorized by the department to conduct the research or evaluation;
- 15 (k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family  
16 group decisionmaking meeting for the purposes of assessing the needs of the child and family, formulating a  
17 treatment plan, and monitoring the plan;
- 18 (l) the coroner or medical examiner when determining the cause of death of a child;
- 19 (m) a child fatality review team recognized by the department;
- 20 (n) a department or agency investigating an applicant for a license or registration that is required to  
21 operate a youth care facility, day-care facility, or child-placing agency;
- 22 (o) a person or entity who is carrying out background, employment-related, or volunteer-related  
23 screening of current or prospective employees or volunteers who have or may have unsupervised contact with  
24 children through employment or volunteer activities. A request for information under this subsection (3)(o) must  
25 be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children,  
26 persons with developmental disabilities, or older persons posed by the person about whom the information is  
27 sought, as determined by the department.
- 28 (p) the news media, a member of the United States congress, or a state legislator, if disclosure is limited  
29 to confirmation of factual information regarding how the case was handled and if disclosure does not violate the  
30 privacy rights of the child or the child's parent or guardian, as determined by the department;

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

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

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

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

9 (u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review  
10 board established under Title 41, chapter 3, part 10;

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

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

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

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

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

19 (4) (a) The records described in subsection (3) must be promptly released to any of the following  
20 individuals upon a written request by the individual to the department or the department's designee:

21 (i) the attorney general;

22 (ii) a county attorney or deputy county attorney of the county in which the alleged abuse or neglect  
23 occurred; ~~or~~

24 (iii) a peace officer, as defined in 45-2-101, in the jurisdiction in which the alleged abuse or neglect  
25 occurred; or

26 (iv) the office of the child and family ombudsman.

27 (b) The records described in subsection (3) must be promptly disclosed by the department to an  
28 appropriate individual described in subsection (4)(a) or to a county interdisciplinary child information and school  
29 safety team established pursuant to 52-2-211 upon the department's receipt of a report indicating that any of the  
30 following has occurred:

1 (i) the death of the child as a result of child abuse or neglect;  
2 (ii) a sexual offense, as defined in 46-23-502, against the child;  
3 (iii) exposure of the child to an actual and not a simulated violent offense as defined in 46-23-502; or  
4 (iv) child abuse or neglect, as defined in 41-3-102, due to exposure of the child to circumstances  
5 constituting the criminal manufacture or distribution of dangerous drugs.

6 (5) A school or school district may disclose, without consent, personally identifiable information from the  
7 education records of a pupil to the department, the court, a review board, [the office of the child and family  
8 ombudsman provided for in 41-3-1201,] and the child's assigned attorney, guardian ad litem, or special advocate.

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

12 (7) The confidentiality provisions of this section must be construed to allow a court of this state to share  
13 information with other courts of this state or of another state when necessary to expedite the interstate placement  
14 of children.

15 (8) A person who is authorized to receive records under this section shall maintain the confidentiality of  
16 the records and may not disclose information in the records to anyone other than the persons described in  
17 subsections (3)(a) and (4). However, this subsection may not be construed to compel a family member to keep  
18 the proceedings confidential.

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

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

24 (11) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this  
25 section that are provided to the parent, grandparent, aunt, uncle, brother, sister, guardian, or parent's or  
26 guardian's attorney must be provided without cost. (Bracketed language in subsections (3)(a) and (5) terminates  
27 June 30, 2015--sec. 12, Ch. 333, L. 2013.)"

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29 **Section 9.** Section 41-3-208, MCA, is amended to read:

30 **"41-3-208. Rulemaking authority.** (1) The department of public health and human services shall adopt

1 rules to govern the procedures used by department personnel in preparing and processing reports and in making  
2 investigations authorized by this chapter.

3 (2) The department may adopt rules to govern the disclosure of case records containing reports of child  
4 abuse and neglect.

5 (3) The department shall adopt a rule specifying the procedure to be used for the release and disclosure  
6 of records as provided in 41-3-205(4). In adopting the rule, the department shall collaborate with the attorney  
7 general, the office of the child and family ombudsman, and appropriate county attorneys, law enforcement  
8 agencies, and county interdisciplinary child information and school safety teams established pursuant to  
9 52-2-211."

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11 NEW SECTION. Section 10. Codification instruction. (1) [Sections 1 through 6] are intended to be  
12 codified as an integral part of Title 41, chapter 3, part 12, and the provisions of Title 41, chapter 3, part 12, apply  
13 to [sections 1 through 6].

14 (2) [Section 7] is intended to be codified as an integral part of Title 41, chapter 3, part 2, and the  
15 provisions of Title 41, chapter 3, part 2, apply to [section 7].

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17 ~~NEW SECTION. Section 11. Two-thirds vote required.~~ Because [section 6] limits governmental  
18 liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each  
19 house of the legislature for passage.

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21 COORDINATION SECTION. SECTION 11. COORDINATION INSTRUCTION. (1) IF BOTH HOUSE BILL NO. 2 AND  
22 [THIS ACT] ARE PASSED AND APPROVED AND HOUSE BILL NO. 2 CONTAINS A GENERAL FUND APPROPRIATION THAT WOULD  
23 ALLOW THE DEPARTMENT OF JUSTICE TO INCREASE THE STAFF OF THE OFFICE OF THE CHILD AND FAMILY OMBUDSMAN,  
24 THEN THE APPROPRIATION IN HOUSE BILL NO. 2 MUST BE REDUCED BY \$85,741 IN EACH YEAR OF THE BIENNIUM AND  
25 \$85,741 IN GENERAL FUND MUST BE TRANSFERRED IN EACH YEAR OF THE BIENNIUM FROM THE DEPARTMENT OF PUBLIC  
26 HEALTH AND HUMAN SERVICES TO THE DEPARTMENT OF JUSTICE TO INCREASE THE STAFF OF THE OMBUDSMAN OFFICE.

27 (2) IF BOTH HOUSE BILL NO. 2 AND [THIS ACT] ARE PASSED AND APPROVED AND HOUSE BILL NO. 2 DOES NOT  
28 CONTAIN AN APPROPRIATION TO INCREASE THE STAFF OF THE OFFICE OF THE CHILD AND FAMILY OMBUDSMAN, THEN  
29 \$85,741 IN GENERAL FUND MUST BE TRANSFERRED FROM THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES  
30 TO THE DEPARTMENT OF JUSTICE IN EACH YEAR OF THE BIENNIUM TO INCREASE THE STAFF FOR THE OFFICE.

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2           NEW SECTION. **Section 12. Effective date.** [This act] is effective July 1, 2015.

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