

**Senator Parley G. Hellewell** proposes the following substitute bill:

**RESTRUCTURING DIVISION OF CHILD AND**

**FAMILY SERVICES**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: Parley G. Hellewell**

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**LONG TITLE**

**General Description:**

This bill provides for a Child and Family Services ombudsman and directs the efforts of this position.

**Highlighted Provisions:**

This bill:

- ▶ changes the name and responsibilities of an ombudsman in the Department of Human Services;
- ▶ grants oversight of the ombudsman to the governor;
- ▶ amends investigation requirements and the ombudsman's duties;
- ▶ requires the ombudsman to issue recommendations;
- ▶ details specific protections for the ombudsman; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:



62A-4a-208, as enacted by Chapter 274, Laws of Utah 1998

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section 62A-4a-208 is amended to read:

**62A-4a-208. Child and family ombudsman -- Responsibility -- Authority.**

(1) As used in this section:

(a) "Complainant" means a person who initiates a complaint with the ombudsman.

(b) "Ombudsman" means the ~~[child protection]~~ child and family ombudsman appointed pursuant to this section.

(2) (a) There is created ~~[within]~~, independent of the department, the position of ~~[child protection]~~ child and family ombudsman~~[- The ombudsman shall be appointed by and serve at the pleasure of the executive director.]~~ who shall:

(i) represent the majority of the people; and

(ii) investigate, document, and report to the entities listed in Subsection (4)(e) any violation of statutes, rules, policies, or other instances of resulting in any undue negative impact on a child or family.

(b) The ombudsman shall be:

(i) appointed by a majority vote of the Child Welfare Legislative Oversight Panel;

~~[(i)]~~ (ii) an individual of recognized executive and administrative capacity;

~~[(ii)]~~ (iii) selected solely with regard to qualifications [and fitness] of political or agenda neutrality to discharge the duties of ombudsman; [and]  
~~[(iii) have experience in child welfare, and in state laws and policies governing abused, neglected, and dependent children.]~~

(iv) an individual that has experience with child welfare laws, rules, policies, and process; and

(v) serve for a four-year term and may be reappointed by the panel for consecutive terms.

(c) The ombudsman shall devote full time to the duties of office.

(d) The ombudsman shall serve until the end of the appointed term and cannot be terminated except for just cause.

(e) In the event the ombudsman resigns or becomes unable to fulfill the ombudsman

57 duties, the Deputy Ombudsman, as appointed by the ombudsman, shall serve as ombudsman  
58 until the Child Welfare Legislative Oversight Panel appoints a replacement.

59 (3) (a) Except as provided in Subsection (3)(b), the ombudsman shall, upon receipt of a  
60 complaint from any person, investigate whether an act or omission of the division with respect  
61 to a particular child or family case:

62 (i) is contrary to statute, rule, or policy;

63 (ii) places a child's health or safety at risk;

64 (iii) is made without an adequate statement of reason; ~~[or]~~

65 (iv) is based on irrelevant, immaterial, or erroneous grounds.

66 (v) is based on mistaken facts or irrelevant considerations;

67 (vi) is unsupported or unsubstantiated by an adequate statement of reasons;

68 (vii) is unreasonable or otherwise objectionable, even though in accordance with  
69 statutes, rules, or policies; or

70 (viii) is otherwise erroneous.

71 (b) The ombudsman may decline to investigate ~~[any complaint. If the ombudsman~~  
72 ~~declines to investigate a complaint or continue an investigation, the ombudsman shall notify~~  
73 ~~the complainant and the division of the decision and of the reasons for that decision.]~~ a case if:

74 (i) the complainant could reasonably be expected to use another remedy;

75 (ii) the complaint is trivial, frivolous, vexatious, or not made in good faith;

76 (iii) the complaint is too outdated to justify present examination; or

77 (iv) the complainant is not personally aggrieved by the subject matter of the complaint.

78 (c) If an investigation is declined, the ombudsman shall respond to the complaint in  
79 writing with the reasons why the investigation is declined.

80 (d) If, after making preliminary inquiries, the ombudsman decides to investigate, the  
81 ombudsman shall inform the division unless the ombudsman reasonably believes that advance  
82 notice will unduly hinder the investigation or make it ineffectual. The ombudsman may inform  
83 the division verbally or in writing.

84 ~~[(e)]~~ (e) The ombudsman may conduct an investigation on his own initiative.

85 (f) If after initiating an investigation or making preliminary inquiries with the agency,  
86 the office of the ombudsman finds an increased level of intensity or act of retaliation against  
87 the complainant, the ombudsman shall immediately file a retaliation alert with the entities

88 listed in Subsection (4)(e).

89 (4) The ombudsman shall:

90 (a) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,  
91 make rules that govern the following:

92 (i) receiving and processing complaints;

93 (ii) notifying complainants and ~~[the division]~~ all departments, agencies, or entities  
94 related to the case regarding a decision to investigate or to decline to investigate a complaint;

95 (iii) prioritizing workload;

96 (iv) maximum time within which investigations shall be completed;

97 (v) the time in which the departments, agencies, or entities shall reply to the  
98 ombudsman's inquiries;

99 ~~[(v)]~~ (vi) conducting investigations;

100 ~~[(vi)]~~ (vii) notifying complainants and ~~[the division]~~ all entities involved in the  
101 complaint regarding the results of investigations; ~~[and]~~

102 ~~[(vii)]~~ (viii) making recommendations based on the findings and results of  
103 recommendations; **§ AND**

104 ~~[(ix) the time in which the division shall reply to the ombudsman's inquiries; and~~

105 ~~———(x)]~~ (ix) § the time in which the departments, agencies, or entities shall respond to the record  
106 requests;

107 (b) report findings and recommendations in writing to the complainant and ~~[the~~  
108 ~~division]~~ all entities involved in the complaint, in accordance with the provisions of this  
109 section;

110 (c) ~~[within appropriations from the Legislature,]~~ employ staff as may be necessary to  
111 carry out the ombudsman's duties under this part with the continued level of funds currently  
112 being allocated through the Department of Human Services;

113 (d) provide information regarding the role, duties, and functions of the ombudsman to  
114 public agencies, private entities, and individuals;

115 (e) annually report to the:

116 (i) Child Welfare Legislative Oversight Panel;

117 (ii) governor;

118 (iii) Board of Child and Family Services;

(iv) executive director of the department; and

(v) director of the division; and

(f) as appropriate, make recommendations to ~~[the division regarding]~~ all entities involved in individual cases[, and] regarding the rules, policies, and operations of [the division] those entities.

(5) (a) Upon rendering a decision to investigate a complaint, the ombudsman shall notify the complainant and ~~[the division]~~ relevant entities of that decision.

(b) The ombudsman may advise a complainant to pursue all administrative remedies or channels of complaint before pursuing a complaint with the ombudsman. Subsequent to processing a complaint, the ombudsman may conduct further investigations upon the request of the complainant or upon the ombudsman's own initiative. Nothing in this subsection precludes a complainant from making a complaint directly to the ombudsman before pursuing an administrative remedy.

(c) If the ombudsman finds that an individual's act or omission violates state or federal criminal law, the ombudsman shall immediately report that finding to the appropriate county or district attorney or to the attorney general.

(d) If the ombudsman finds that an individual's act or omission violates the rules or policies of a specific department or agency, the ombudsman shall immediately report that finding to the appropriate director of that department or agency.

~~[(d)]~~ (e) The ombudsman shall immediately notify the division if the ombudsman finds that a child needs protective custody, as that term is defined in Section 78-3a-103.

~~[(e)]~~ (f) The ombudsman shall immediately comply with Part 4, Child Abuse or Neglect Reporting Requirements.

(6) (a) All records of the ombudsman regarding individual cases shall be classified in accordance with federal law and the provisions of Title 63, Chapter 2, Government Records Access and Management Act. The ombudsman may make public a report prepared pursuant to this section in accordance with the provisions of Title 63, Chapter 2, Government Records Access and Management Act.

(b) The ombudsman shall have **\$ [f] access to all of the department's written and electronic records and databases, including those regarding individual cases [the power to] , AND MAY § subpoena all records from any entity related to the individual cases, and may rely on the Child Welfare**

Legislative Oversight Panel's subpoena powers for necessary access to testimony. In accordance with Title 63, Chapter 2, Government Records Access and Management Act, all documents and information received by the ombudsman shall maintain the same classification that was designated by the department.

(c) Upon request by the ombudsman, any involved entity shall:

(i) grant the ombudsman or his designee access to all relevant information, records, and documents in its possession that the ombudsman considers necessary in the investigation;

(ii) assist the ombudsman to obtain the necessary releases of those documents that are specifically restricted; and

(iii) provide the ombudsman with progress reports concerning the administrative process of a complaint and responses to complaints filed with the entity.

~~[(7)(a) The ombudsman shall prepare a written report of the findings and recommendations, if any, of each investigation.]~~

~~[(b) The ombudsman shall make recommendations to the division if the ombudsman finds that:]~~

~~[(i) a matter should be further considered by the division;]~~

~~[(ii) an administrative act should be addressed, modified, or canceled;]~~

~~[(iii) action should be taken by the division with regard to one of its employees; or]~~

~~[(iv) any other action should be taken by the division.]~~

(7) (a) The ombudsman shall state any conclusions, recommendations, and reasons to the appropriate entities, if, after investigation, the ombudsman finds that the entity should:

(i) consider the matter further;

(ii) modify, rectify, or cancel the act or ruling;

(iii) take action with regard to one of its employees;

(iv) alter a rule or policy;

(v) explain in more detail the act, ruling, or omission in question; or

(vi) take another action.

(b) If the ombudsman so requests, the division shall, within the time provided in Subsection (4)(a)(v), inform the ombudsman about the action taken on recommendations or the reason for not complying with them.

(c) After a reasonable period of time has elapsed beyond the provisions in Subsection

181 (7)(a), the ombudsman shall issue recommendations to the department, the division, the Child  
182 Welfare Legislative Oversight Panel, the governor, the public, a grand jury, or any other  
183 appropriate authority.

184 (d) The ombudsman shall provide to the complainant the findings of the investigation  
185 with the necessary deletions or omissions in compliance with Title 63, Chapter 2, Government  
186 Records Access and Management Act or any other state or federal information protection  
187 statutes.

188 (8) (a) The substantive content of any finding, conclusion, recommendation, or report  
189 of the ombudsman or member of the ombudsman's staff is not admissible in court.

190 (b) The ombudsman may appeal to the Child Welfare Legislative Oversight Panel, to  
191 use its authority and budget for the purposes of obtaining professional assistance pursuant to  
192 Subsection 62A-4a-207(10)(b).