

**RESTRUCTURING DIVISION OF CHILD AND
FAMILY SERVICES**

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Parley G. Hellewell

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



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 Services 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 Services ombudsman appointed pursuant to this section.

(2) (a) There is created within the department the position of ~~[child protection]~~ Child and Family Services ombudsman. The ombudsman shall be appointed by and serve at the pleasure of the ~~[executive director]~~ governor.

(b) The ombudsman shall be:

(i) an individual of recognized executive and administrative capacity; and

(ii) selected solely with regard to qualifications and fitness 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.]~~

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

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

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

~~[(ii) places a child's health or safety at risk;]~~

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

~~[(iv) is based on irrelevant, immaterial, or erroneous grounds.]~~

(ii) is based on mistaken facts or irrelevant considerations;

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

(iv) is performed in an inefficient manner;

(v) is unreasonable, unfair, or otherwise objectionable, even though in accordance with statutes, rules, or policies; or

(vi) otherwise erroneous.

(b) The ombudsman may ~~[decline]~~ decide not to investigate any complaint~~[- If] if the~~
~~[ombudsman declines to investigate a complaint or continue an investigation, the ombudsman~~
~~shall notify the complainant and the division of the decision and of the reasons for that~~
~~decision.]~~ complaint:

(i) could reasonably be expected to use another remedy;
(ii) is trivial, frivolous, vexatious, or not made in good faith;
(iii) is too outdated to justify present examination; or
(iv) does not show that the person filing the complaint is personally aggrieved by the
subject matter of the complaint.

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

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

(4) The ombudsman shall:

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

(i) receiving and processing complaints;
(ii) notifying complainants and the division regarding a decision to investigate or to
decline to investigate a complaint;
(iii) prioritizing workload;
(iv) maximum time within which investigations shall be completed;
(v) conducting investigations;
(vi) notifying complainants and the division regarding the results of investigations;

~~[and]~~

(vii) making recommendations based on the findings and results of recommendations;
(viii) the time in which the division shall reply to the ombudsman's inquiries; and
(ix) the time in which the division shall respond to the record requests;

(b) report findings and recommendations in writing to the complainant and the
division, in accordance with the provisions of this section;

(c) within appropriations from the Legislature, employ staff as may be necessary to

90 carry out the ombudsman's duties under this part;

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

93 (e) annually report to the:

94 (i) Child Welfare Legislative Oversight Panel;

95 (ii) governor;

96 (iii) Board of Child and Family Services;

97 (iv) executive director of the department; and

98 (v) director of the division; and

99 (f) as appropriate, make recommendations to the division regarding individual cases,
100 and the rules, policies, and operations of the division.

101 (5) (a) Upon rendering a decision to investigate a complaint, the ombudsman shall
102 notify the complainant and the division of that decision.

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

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

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

114 (e) The ombudsman shall immediately comply with Part 4, Child Abuse or Neglect
115 Reporting Requirements.

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

(b) The ombudsman shall have access to all of the department's written and electronic records and databases, including those regarding individual cases. 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, the department shall:

(i) grant the ombudsman or his designee access to all relevant information, records, and documents in the possession of the department or child placing agency that the ombudsman considers necessary;

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

(iii) provide the ombudsman with progress reports concerning the administrative process of a complaint, and responses to any complaints filed with the department; and

(iv) grant access to department employee files to ensure that documented corrective action has taken place where employees have breached statutes, rules, or policies in the child welfare process.

~~[(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 division, if, after investigation, the ombudsman finds that the division 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

152 (vi) take another action.

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

156 (c) After a reasonable period of time has elapsed beyond the provisions in Subsection
157 (7)(a), the ombudsman shall issue recommendations to the department, the division, the Child
158 Welfare Legislative Oversight Panel, the governor, the public, a grand jury, or any other
159 appropriate authority.

160 (d) The ombudsman shall provide the complainant with copies of all transactions that
161 arise from the complaint process, including final conclusions, reports, and recommendations.

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

164 (b) The ombudsman and the ombudsman's staff may not be compelled to testify or
165 produce evidence in any judicial or administrative proceeding with respect to any matter
166 involving the exercise of their official duties.

Legislative Review Note

as of 2-3-04 11:33 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel