

# COMMITTEE REPORT

## MADAM PRESIDENT:

**The Senate Committee on Judiciary, to which was referred House Bill No. 1602, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:**

- 1           Page 3, line 34, delete "bureau".
- 2           Page 3, line 38, delete "Bureau".
- 3           Page 3, delete lines 39 through 41, begin a new paragraph and
- 4           insert:
- 5           **"Sec. 1. As used in this chapter, "child" means a person who:**
- 6                 **(1) is less than eighteen (18) years of age;**
- 7                 **(2) is at least eighteen (18) years of age at the time the**
- 8                 **complaint is made but was less than eighteen (18) years of age**
- 9                 **at the time of the alleged act or omission that is the subject of**
- 10                **the complaint; or**
- 11                **(3) is at least eighteen (18) years of age but has been under the**
- 12                **continuing jurisdiction of a juvenile court based upon an**
- 13                **informal adjustment, child in need of services action under**
- 14                **IC 31-34, or termination of parental rights action under**
- 15                **IC 31-35 since becoming eighteen (18) years of age."**
- 16           Page 3, line 42, delete "means" and insert "means:
- 17                 **(1) the person appointed by the governor to serve as**
- 18                 **ombudsman; or**
- 19                 **(2)".**
- 20           Page 3, line 42, after "an" insert "**employee or other individual**
- 21           **approved by the office of the department of child services**

1 **ombudsman to act in the capacity of ombudsman;**  
 2 **to investigate and resolve complaints that allege the department of**  
 3 **child services failed to protect the health and safety of any child or**  
 4 **failed to follow specific laws, rules, or written policies."**

5 Page 4, delete lines 1 through 6.

6 Page 4, line 7, after "The" insert "**office of**".

7 Page 4, line 7, delete "bureau".

8 Page 4, line 8, delete "Indiana".

9 Page 4, line 8, delete "of" and insert "**. The ombudsman appointed**  
 10 **by the governor shall report directly to the commissioner. The**  
 11 **ombudsman appointed by the governor must be an attorney**  
 12 **licensed to practice law in Indiana or a social worker with at least**  
 13 **a master's degree. The ombudsman appointed by the governor**  
 14 **must have significant experience or education in child development**  
 15 **and child advocacy, including at least two (2) years experience**  
 16 **working with child abuse and neglect."**

17 Page 4, delete lines 9 through 42, begin a new paragraph and insert:

18 "**Sec. 4. (a) The governor shall appoint the ombudsman. The**  
 19 **ombudsman serves at the pleasure of the governor. An individual**  
 20 **may not be appointed as ombudsman if the individual has been**  
 21 **employed by the department of child services at any time during**  
 22 **the preceding twelve (12) months. The governor shall appoint a**  
 23 **successor ombudsman not later than thirty (30) days after a**  
 24 **vacancy occurs in the position of the ombudsman.**

25 **(b) The office of the department of child services ombudsman**  
 26 **may employ technical experts and other employees to carry out the**  
 27 **purposes of this chapter. However, the office of the department of**  
 28 **child services ombudsman may not hire an individual to serve as**  
 29 **an ombudsman if the individual has been employed by the**  
 30 **department of child services during the preceding twelve (12)**  
 31 **months.**

32 **(c) The ombudsman and any other person employed or**  
 33 **authorized by the ombudsman:**

34 **(1) are subject to the same criminal history and background**  
 35 **checks, to be performed by the department of child services,**  
 36 **that are required for department of child services family case**  
 37 **managers; and**

38 **(2) are subject to the same disqualification for employment**

1           **criteria as department of child services family case managers.**

2           **Sec. 5. (a) The office of the department of child services**  
3 **ombudsman may receive, investigate, and attempt to resolve a**  
4 **complaint alleging that the department of child services, by an**  
5 **action or omission occurring on or after January 11, 2005, failed**  
6 **to follow a specific law, rule, or department written policy and**  
7 **thereby failed to protect the health or safety of any child.**

8           **(b) The office of the department of child services ombudsman**  
9 **may also do the following:**

10           **(1) Take action, including the establishing of a program of**  
11 **public education, to secure and ensure the legal rights of**  
12 **children.**

13           **(2) Periodically review relevant policies and procedures with**  
14 **a view toward the safety and welfare of children.**

15           **(3) When appropriate, refer a person making a report of child**  
16 **abuse or neglect to the department of child services and, if**  
17 **appropriate, to an appropriate law enforcement agency.**

18           **(4) Recommend changes in procedures for investigating**  
19 **reports of abuse and neglect and overseeing the welfare of**  
20 **children who are under the jurisdiction of a juvenile court.**

21           **(5) Make the public aware of the services of the ombudsman,**  
22 **the purpose of the office, and information concerning**  
23 **contacting the office.**

24           **(6) Examine policies and procedures and evaluate the**  
25 **effectiveness of the child protection system, specifically the**  
26 **respective roles of the department of child services, the court,**  
27 **the medical community, service providers, guardians ad litem,**  
28 **court appointed special advocates, and law enforcement**  
29 **agencies.**

30           **(7) Review and make recommendations concerning**  
31 **investigative procedures and emergency responses contained**  
32 **in the report prepared under section 10 of this chapter.**

33           **(c) Upon request of the office of the department of child services**  
34 **ombudsman, the local child protection team shall assist the office**  
35 **of the department of child services ombudsman by:**

36           **(1) investigating and making recommendations on a matter;**  
37 **or**

38           **(2) redacting or revising any report to be prepared for the**

1           complainant so that confidentiality laws are maintained.  
2       **If a local child protection team was involved in an initial**  
3       **investigation, a different local child protection team may assist in**  
4       **the investigation under this subsection.**

5           **(d) At the end of an investigation of a complaint, the office of the**  
6       **department of child services ombudsman shall provide an**  
7       **appropriate report as follows:**

8           **(1) If the complainant is a parent, guardian, custodian, court**  
9       **appointed special advocate, guardian ad litem, or court, the**  
10       **ombudsman may provide the same report to the complainant**  
11       **and the department of child services.**

12           **(2) If the complainant is not a person described in subdivision**  
13       **(1), the ombudsman shall provide a redacted version of its**  
14       **findings to the complainant stating in general terms that the**  
15       **actions of the department of child services were or were not**  
16       **appropriate.**

17           **(e) The department of child services ombudsman shall provide**  
18       **a copy of the report and recommendations to the department of**  
19       **child services. The office of the department of child services**  
20       **ombudsman may not disclose to:**

21           **(1) a complainant;**

22           **(2) another person who is not a parent, guardian, or custodian**  
23       **of the child who was subject of the department of child**  
24       **services' action or omission; or**

25           **(3) the court, court appointed special advocate, or guardian**  
26       **ad litem of the child in a case that was filed as a child in need**  
27       **of services or a termination of parental rights action;**

28       **any information that the department of child services could not, by**  
29       **law, reveal to the complainant, parent, guardian, custodian,**  
30       **person, court, court appointed special advocate, or guardian ad**  
31       **litem.**

32           **(f) If, after reviewing a complaint or conducting an investigation**  
33       **and considering the response of an agency, facility, or program and**  
34       **any other pertinent material, the office of the department of child**  
35       **services ombudsman determines that the complaint has merit or**  
36       **the investigation reveals a problem, the ombudsman may**  
37       **recommend that the agency, facility, or program:**

38           **(1) consider the matter further;**

- 1           (2) modify or cancel its actions;
- 2           (3) alter a rule, order, or internal policy; or
- 3           (4) explain more fully the action in question.

4           (g) At the office of the department of child services  
5           ombudsman's request, the agency, facility, or program shall,  
6           within a reasonable time, inform the office of the department of  
7           child services ombudsman about the action taken on the  
8           recommendation or the reasons for not complying with it.

9           (h) The office of the department of child services ombudsman  
10          may not investigate the following:

11          (1) A complaint from an employee of the department of child  
12          services that relates to the employee's employment  
13          relationship with the department of child services.

14          (2) A complaint concerning a matter that is currently the  
15          subject of a pending administrative review procedure before  
16          the exhaustion of administrative remedies provided by law,  
17          rule, or written policy. Investigation of any such complaint  
18          received shall be stayed until the administrative remedy has  
19          been exhausted. However, if the administrative process is not  
20          completed within six (6) months after initiation of the  
21          administrative process, the office of child services  
22          ombudsman may proceed with its investigation.

23          (i) If the office of the department of child services ombudsman  
24          does not investigate a complaint, the office of the department of  
25          child services ombudsman shall notify the complainant of the  
26          decision not to investigate and the reasons for the decision.

27          Sec. 6. (a) The office of the department of child services  
28          ombudsman shall be given appropriate access to department of  
29          child services records of a child who is the subject of a complaint  
30          that is filed under this chapter.

31          (b) A state or local government agency or entity that has records  
32          that are relevant to a complaint or an investigation conducted by  
33          an ombudsman shall provide the ombudsman with access to the  
34          records.

35          (c) A person is immune from:

- 36               (1) civil or criminal liability; and
- 37               (2) actions taken under:

38               (A) a professional disciplinary procedure; or

1           **(B) procedures related to the termination or imposition of**  
2           **penalties under a contract dealing with an employee or**  
3           **contractor of the department of child services;**  
4       **for the release or disclosure of records to the ombudsman under**  
5       **this chapter, unless the release or disclosure constitutes gross**  
6       **negligence or willful or wanton misconduct.**

7           **(d) Information or records of a state or local government agency**  
8           **provided to the office of the department of child services**  
9           **ombudsman may not be disclosed to the complainant or others if**  
10          **confidential under laws, rules, or regulations governing the state**  
11          **or local government agency that provided the information or**  
12          **records.**

13          **Sec. 7. (a) The office of the department of child services**  
14          **ombudsman shall do the following:**

15               **(1) Establish procedures to receive and investigate complaints.**  
16               **(2) Establish physical, technological, and administrative**  
17               **access controls for all information maintained by the office of**  
18               **the department of child services ombudsman.**  
19               **(3) Except as necessary to investigate and resolve a complaint,**  
20               **ensure that the identity of a complainant will not be disclosed**  
21               **without:**

22                       **(A) the complainant's written consent; or**  
23                       **(B) a court order.**

24               **(b) Records created and received by the office of the department**  
25               **of child services ombudsman concerning a specific child's case are**  
26               **confidential, and a communication by the ombudsman concerning**  
27               **a specific child's case is a privileged communication.**

28          **Sec. 8. The office of the department of child services**  
29          **ombudsman may adopt rules under IC 4-22-2 necessary to carry**  
30          **out this chapter.**

31          **Sec. 9. An ombudsman is not personally liable for the good faith**  
32          **performance of the ombudsman's official duties.**

33          **Sec. 10. (a) The office of the department of child services**  
34          **ombudsman shall prepare a report each year on the operations of**  
35          **the office.**

36               **(b) The office of the department of child services ombudsman**  
37               **shall include the following information in the annual report**  
38               **required under subsection (a):**

- 1           **(1) The office of the department of child services**  
 2           **ombudsman's activities.**
- 3           **(2) The general status of children in Indiana, including:**  
 4               **(A) the health and education of children; and**  
 5               **(B) the administration or implementation of programs for**  
 6               **children; and**
- 7           **(3) any other issues, concerns, or information concerning**  
 8           **children.**
- 9           **(c) A copy of the report shall be provided to the following:**
- 10           **(1) The governor.**  
 11           **(2) The legislative council.**  
 12           **(3) The Indiana department of administration.**  
 13           **(4) The department of child services.**

14           **A report provided under this subsection to the legislative council**  
 15           **must be in an electronic format under IC 5-14-6.**

16           **(d) A copy of the report shall be posted on the department of**  
 17           **child services' Internet web site and on any Internet web site**  
 18           **maintained by the office of the department of child services**  
 19           **ombudsman.**

20           **Sec. 11. (a) A person who:**

- 21               **(1) except as provided in subsection (b), intentionally**  
 22               **interferes with or prevents the completion of the work of an**  
 23               **ombudsman;**
- 24               **(2) knowingly offers compensation to an ombudsman in an**  
 25               **effort to affect the outcome of an investigation or a potential**  
 26               **investigation;**
- 27               **(3) knowingly or intentionally retaliates against another**  
 28               **person who provides information to an ombudsman; or**
- 29               **(4) knowingly or intentionally threatens an ombudsman, a**  
 30               **person who has filed a complaint, or a person who provides**  
 31               **information to an ombudsman, because of an investigation or**  
 32               **potential investigation;**

33           **commits interference with the office of the department of child**  
 34           **services ombudsman, a Class A misdemeanor.**

35           **(b) Expungement of records held by the department of child**  
 36           **services that occurs by statutory mandate, judicial order or decree,**  
 37           **administrative review or process, automatic operation of the**  
 38           **Indiana Child Welfare Information System (ICWIS) computer**

1 system, or in the normal course of business shall not be considered  
2 intentional interference or prevention for the purposes of  
3 subsection (a).

4 (c) A complainant who knowingly or intentionally discloses to  
5 the public information about a case before the conclusion of an  
6 investigation and the release of the finding to the department of  
7 child services commits unlawful disclosure of information  
8 concerning a department of child services investigation, a Class A  
9 misdemeanor.

10 **Sec. 12. The Indiana department of administration shall provide**  
11 **and maintain office space for the office of the department of child**  
12 **services ombudsman."**

13 Delete page 5.

14 Page 6, delete lines 1 through 19.

15 Page 6, strike line 24.

16 Page 6, line 25, strike "(2)" and insert "(1)".

17 Page 6, line 26, strike "(3)" and insert "(2)".

18 Page 6, line 33, reset in roman "and".

19 Page 6, line 37, delete "; and" and insert ".".

20 Page 6, delete lines 38 through 39.

21 Page 7, delete lines 3 through 20, begin a new paragraph and insert:

22 **"Sec. 1. As used in this chapter, "ombudsman" refers to the**  
23 **office of the department of child services ombudsman established**  
24 **within the Indiana department of administration by IC 4-13-19-3.**  
25 **The term includes an employee of the office of the department of**  
26 **child services ombudsman or an individual approved by the office**  
27 **of the department of child services ombudsman to investigate and**  
28 **resolve complaints regarding the health and safety of a child.**

29 **Sec. 2. The department and the juvenile court with jurisdiction**  
30 **over a child shall provide the ombudsman with:**

31 (1) appropriate access to all records of the department  
32 concerning the child, excluding adoption records, but  
33 including all records of the department related to vendors and  
34 contractors; and

35 (2) immediate access, without prior notice, to any facility in  
36 which the child is placed or is receiving services funded by the  
37 department."

38 Page 7, line 41, delete "bureau".



- 1 Page 8, line 21, delete "bureau".
- 2 Page 8, line 42, delete "bureau".
- 3 Page 9, line 18, delete "bureau".
- 4 Page 9, line 29, strike "or".
- 5 Page 9, line 30, delete "." and insert "; or
- 6 **(D) the department of child services ombudsman**
- 7 **established by IC 4-13-19-3."**
- 8 Page 9, line 40, delete "bureau".
- 9 Page 10, line 13, delete "bureau".
- 10 Page 14, line 7, delete "bureau".
- 11 Page 14, delete lines 9 through 42.
- 12 Page 15, delete lines 1 through 14.
- 13 Page 15, line 27, delete "bureau".
- 14 Page 16, line 15, after "(12)" insert "**at the discretion of the**
- 15 **department of child services ombudsman,"**.
- 16 Page 16, line 16, delete "bureau".
- 17 Page 17, line 21, delete "bureau".
- 18 Page 17, line 22, delete "unlimited" and insert "**read only**".
- 19 Page 17, line 24, after "(A)" insert "**children who are the subject**
- 20 **of**".
- 21 Page 17, line 26, delete "bureau." and insert ". **The office of the**
- 22 **department of child services ombudsman shall not have access to**
- 23 **any information related to cases or information that involves the**
- 24 **ombudsman or any member of the ombudsman's immediate**
- 25 **family."**
- 26 Page 17, delete lines 27 through 40.
- 27 Page 18, line 8, delete "bureau".

- 1 Page 18, line 18, delete "bureau".
- 2 Page 18, line 32, delete "bureau".
- 3 Renumber all SECTIONS consecutively.  
(Reference is to HB 1602 as reprinted February 24, 2009.)

**and when so amended that said bill be reassigned to the Senate Committee on Appropriations.**

Committee Vote: Yeas 9, Nays 0.

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**Bray**

**Chairperson**