

1 HB377  
2 175353-1  
3 By Representatives Beckman, Farley, Ledbetter, Hanes, Harper,  
4 Rich, Pettus, Williams (JW), Shedd, Sessions, Gaston, Wilcox,  
5 Davis, Faust, Nordgren, Fridy, McCutcheon, Patterson, Ball,  
6 Whorton (R), Pringle, Boothe, Greer, Williams (JD), Sells,  
7 Lee, Shiver, Johnson (R), Millican, Tuggle, Hurst, Brown,  
8 Butler, Beech and Wood  
9 RFD: Public Safety and Homeland Security  
10 First Read: 08-MAR-16

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8 SYNOPSIS: This bill would establish the Office of the  
9 Ombudsman for Child Welfare. The bill would provide  
10 for the duties and powers of the ombudsman. The  
11 bill would prohibit discrimination or retaliation  
12 against persons filing complaints with the  
13 ombudsman.

14  
15 A BILL  
16 TO BE ENTITLED  
17 AN ACT

18  
19 To establish the Office of the Ombudsman for Child  
20 Welfare; to provide for the Statewide Advisory Committee to  
21 the Ombudsman; to provide for the appointment of the ombudsman  
22 and the powers and duties of the ombudsman; and to prohibit  
23 discrimination or retaliation for complaints.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. For the purposes of this act, the  
26 following words have the following meanings:

27 (1) DEPARTMENT. The Department of Human Resources.

1                   (2) OFFICE OF THE OMBUDSMAN. The Office of the  
2 Ombudsman for Child Welfare.

3                   (3) OMBUDSMAN. The director or agent for the Office  
4 of the Ombudsman for Child Welfare charged with carrying out  
5 the duties and responsibilities in this act.

6                   Section 2. (a) There is created the Office of the  
7 Ombudsman for Child Welfare. The Office of the Ombudsman shall  
8 be located within the Department of Early Childhood Education  
9 for administrative and budgetary purposes.

10                  (b) The Director of the Office of the Ombudsman  
11 shall be a licensed attorney of this state and shall have  
12 knowledge of the child welfare system and the juvenile justice  
13 system and shall be qualified to perform the duties of the  
14 office as set forth in this act.

15                  (c) There is hereby created an Ombudsman Selection  
16 Committee for the purpose of appointment of the Director of  
17 the Office of the Ombudsman. The committee shall be comprised  
18 of the following members:

19                   (1) The Chair of the Department of Human Resources  
20 Task Force.

21                   (2) The Speaker of the House of Representatives.

22                   (3) The President of the Senate.

23                   (4) The Chair of the Senate Committee for Education  
24 and Youth Affairs, or its successor committee.

25                   (5) The Chair of the House Committee for Children  
26 and Senior Advocacy, or its successor committee.

1 (d) Within 60 days from the effective date of this  
2 act, the committee shall meet and set policies and procedures  
3 for the selection of the Director of the Office of the  
4 Ombudsman.

5 (e) If the position of the Director of the Office of  
6 the Ombudsman becomes vacant for any reason, the Governor  
7 shall appoint an interim ombudsman until a new ombudsman has  
8 been appointed for a full term by the Ombudsman Selection  
9 Committee.

10 (f) The ombudsman shall act independently of any  
11 state official, department, or agency in the performance of  
12 his or her duties.

13 (g) The Governor shall provide office space for the  
14 use of the ombudsman and staff, which shall not be located  
15 within the Department of Human Resources. The ombudsman may  
16 employ and secure the necessary staff, supplies, and materials  
17 to carry out this act, and the staff shall be employed as  
18 unclassified service state employees.

19 (h) Employees of the Office of the Ombudsman shall  
20 serve at the pleasure of the director.

21 (i) Each employee in the Office of the Ombudsman  
22 shall be entitled to the same benefits as any person in the  
23 classified service.

24 (j) The ombudsman shall have the authority to  
25 contract with experts in fields including, but not limited to,  
26 medicine, psychology, education, child development, juvenile  
27 justice, mental health, and child welfare as needed to support

1 the work of the ombudsman, utilizing funds appropriated for  
2 the purposes of the ombudsman.

3 (k) The ombudsman, or his or her designee, shall be  
4 a member of the State Child Death Review Team.

5 Section 3. The purpose of the ombudsman is to  
6 conduct an independent and neutral investigation of any  
7 complaint that an action or failure to act has adversely  
8 affected the health, safety, or welfare of a child or the  
9 reunification of families and seek a resolution of the  
10 complaint. The ombudsman shall perform the following duties:

11 (1) Receive complaints concerning any action,  
12 inaction, or decision of the department or any contractor or  
13 agent thereof or any provider that receives public monies that  
14 may adversely affect the health, safety, or welfare of  
15 children or reunification of families.

16 (2) Investigate a complaint the ombudsman deems  
17 necessary and seek resolution of the complaint by appropriate  
18 action, which may include, but is not limited to, referring  
19 the complaint to the appropriate department, contractor,  
20 agent, provider, or law enforcement agency and making  
21 recommendations as needed for any action to resolve the  
22 complaint.

23 (3) Review findings and recommendations by the State  
24 Advisory Committee to the ombudsman.

25 (4) Periodically review the facilities and  
26 procedures of any and all public or private institutions and

1 residences where a juvenile has been placed by the juvenile  
2 court or the department.

3 (5) Prepare a written annual report to the Governor  
4 and the Legislature on the summary of the actions taken by the  
5 ombudsman during the previous year.

6 (6) Receive complaints regarding violations of the  
7 Foster Parents Bill of Rights, as provided by in Section  
8 38-12A-2, Code of Alabama 1975, to ensure compliance by the  
9 department.

10 (7) Promote best practices and effective programs  
11 relating to the child protection system and to work  
12 collaboratively with the state and county departments of human  
13 resources regarding improvement of policies.

14 (8) Promote cooperation between all agencies  
15 involved in cases handled by the department so as to increase  
16 the efficiency of all agencies involved, and to encourage  
17 agencies to proactively prevent abuse and neglect.

18 (9) Establish policies and procedures for the Office  
19 of the Ombudsman to accomplish the purposes of this act.

20 Section 4. (a) The ombudsman shall have all of the  
21 following powers:

22 (1) To conduct whatever investigation he or she  
23 deems necessary, including an investigation on his or her own  
24 initiative.

25 (2) To make such inquiries and obtain such  
26 assistance and information from the department or persons  
27 related to the duties of the ombudsman. Communications

1 pursuant to this subdivision shall be confidential and shall  
2 not be subject to disclosure except to carry out the duties  
3 and responsibilities of the ombudsman.

4 (3) To have access to, including the right to  
5 inspect and copy, any records necessary to carry out the  
6 responsibilities of the ombudsman. All records obtained by the  
7 ombudsman shall be confidential, except disclosures may be  
8 permitted if the ombudsman deems it necessary to enable the  
9 ombudsman to perform his or her duties and to support any  
10 recommendations resulting from an investigation. Anyone  
11 wishing to obtain records held by the ombudsman shall petition  
12 the original source where the records are kept.

13 (4) To apply to the Governor to bring legal action  
14 to require a department or contractor or agent thereof to take  
15 or refrain from taking any action required or prohibited by  
16 law involving the protection of children.

17 (5) To apply for and accept grants, gifts, and  
18 bequests of funds from other states, federal and interstate  
19 agencies, independent authorities, private firms, individuals,  
20 and foundations for the purpose of carrying out the lawful  
21 responsibilities of the ombudsman.

22 (6) To recommend changes that would promote the  
23 child's best interest by amendment or addition to the  
24 department's administrative code or policies and to the  
25 Legislature.

26 (7) When less formal means of resolution do not  
27 achieve appropriate results, to pursue remedies provided by

1 this act on behalf of children for the purpose of effectively  
2 carrying out this act.

3 (8) To provide education relating to the protection  
4 of children and the reunification of families.

5 (9) To establish policies and procedures for the  
6 Office of the Ombudsman to accomplish the purposes of this  
7 act.

8 (10) To mediate and resolve disputes between the  
9 department and other participants in the juvenile system.

10 (11) If the ombudsman believes that any department  
11 official or employee has acted in a manner warranting criminal  
12 or disciplinary proceedings, to refer the matter to the  
13 appropriate authorities without notice to that person.

14 (b) Nothing in this act shall be construed to allow  
15 the ombudsman to interfere with a criminal investigation.

16 Section 5. (a) Before formally releasing a  
17 conclusion or recommendation that is significantly critical or  
18 adverse to the department, the ombudsman shall have consulted  
19 with the department and permitted the department reasonable  
20 opportunity to reply. If the ombudsman makes a conclusion or  
21 recommendation available to the department to facilitate a  
22 reply, the conclusion or recommendation is confidential and  
23 may not be disclosed by the department unless the ombudsman  
24 releases it.

25 (b) The ombudsman shall not disclose any conclusion  
26 or recommendation that involves an active criminal



1 investigation or case until the conclusion of the  
2 investigation or case.

3 Section 6. Upon the opening of a case by the  
4 department, the department shall provide the child and his or  
5 her parent, legal custodian, or guardian with the contact  
6 information for the ombudsman and an explanation of purpose of  
7 the ombudsman.

8 Section 7. (a) The substantive content of any  
9 finding, conclusion, recommendation, or report of the  
10 ombudsman or member of the ombudsman's staff shall not be  
11 reviewable in any court.

12 (b) The ombudsman shall have the same immunities  
13 from civil and criminal liabilities as a judge of this state.

14 (c) The ombudsman shall not be compelled to testify  
15 or produce evidence in any judicial or administrative  
16 proceeding with respect to any matter involving the exercise  
17 of his or her official duties except as may be necessary to  
18 enforce this act.

19 Section 8. No person shall discriminate or retaliate  
20 in any manner against any child, parent, guardian, or legal  
21 custodian of a child, employee of a facility, agency,  
22 institution, or other type of provider, or any other person  
23 because of the making of a complaint or providing of  
24 information in good faith to the ombudsman or willfully  
25 interfere with the ombudsman in the performance of his or her  
26 official duties.

1                   Section 9. (a) There is established the State  
2                   Advisory Committee to the Ombudsman. The advisory committee  
3                   shall consist of the following members: One attorney appointed  
4                   by the Alabama State Bar Association; one district attorney  
5                   appointed by the Director of the Office of Prosecution  
6                   Services; one sheriff appointed by the Alabama Sheriff's  
7                   Association; one juvenile court judge appointed by the Chief  
8                   Justice of the Alabama Supreme Court; one pediatrician with  
9                   expertise in child and adolescent treatment or child abuse and  
10                  neglect appointed by the Medical Association of the State of  
11                  Alabama; one psychologist with expertise in child and  
12                  adolescent treatment appointed by the Alabama Psychological  
13                  Association; one licensed independent clinical social worker  
14                  appointed by the Alabama State Board of Social Work Examiners;  
15                  one psychiatrist with expertise in child and adolescent  
16                  treatment appointed by the Medical Association of the State of  
17                  Alabama; one person appointed by the Governor; one person  
18                  appointed by the Speaker of the House of Representatives; one  
19                  person appointed by the President of the Senate; and three  
20                  members, one of whom is a parent or a person who as a child  
21                  was formerly involved in the state child welfare system,  
22                  appointed by the ombudsman.

23                  (b) No member of the advisory committee shall be a  
24                  person who is a volunteer for, a board member of, or is  
25                  employed by or contractor of, any entity or agency subject to  
26                  the review of, or evaluation or monitoring by the ombudsman,

1 or who lobbies on behalf of any entity or agency subject to  
2 the review of, or evaluation or monitoring by, the ombudsman.

3 (c) Each member of the advisory committee shall  
4 serve a term of three years and may be reappointed at the  
5 conclusion of the term. All initial appointments to the  
6 advisory committee shall be made no later than October 1,  
7 2016. Any vacancy in the membership of the committee shall be  
8 filled by the appointing authority for the unexpired portion  
9 of the term. The committee shall elect from among the members  
10 a chair and a vice chair.

11 (d) It shall be the duty of the advisory committee  
12 to provide advice and support to the ombudsman related to the  
13 duties described in this act. The committee's duties include,  
14 but are not limited to, the following:

15 (1) To establish a regular meeting schedule and form  
16 subcommittees as may be appropriate.

17 (2) To meet with the ombudsman and staff to review  
18 and assess patterns of treatment and services, policy  
19 implications, and necessary systemic improvements.

20 (3) To provide an annual report on its activities  
21 and recommendations in conjunction with the ombudsman, and  
22 submit the report to the Governor, the President of the  
23 Senate, and the Speaker of the House of Representatives, by  
24 December 31, 2017, and annually thereafter.

25 (e) The advisory committee shall maintain  
26 confidentiality of any personal information obtained by the  
27 committee.

1                   Section 10. All laws or parts of laws which conflict  
2 with this act are repealed.

3                   Section 11. This act shall be operative upon funding  
4 by the Legislature.

5                   Section 12. This act shall become effective on the  
6 first day of the third month following its passage and  
7 approval by the Governor, or its otherwise becoming law.