

19-3.3-101. LEGISLATIVE DECLARATION

(1) The general assembly finds and declares that:

- (a)** Child abuse and neglect is a serious and reprehensible problem in society;
- (b)** The protection of children from abuse and neglect by applying prevention measures and observing best practices in treating children who are abused and neglected must be one of Colorado's highest public policy priorities;
- (c)** The child protection system must protect and serve Colorado's children in a manner that keeps them safe and healthy and promotes their well-being;
- (d)** The children and families served by the child protection system, as well as the public, must have a high level of confidence that the system will act in a child's best interests and will respond to the child's needs in a timely and professional manner;
- (e)** To engender this high level of confidence in the child protection system, it is important that children and families who become involved in the system, mandatory reporters, and the general public have a well-publicized, easily accessible, and transparent grievance process for voicing concerns regarding the child protection system along with the expectation that those concerns, once voiced, will be heard and addressed in a timely and appropriate manner; and
- (f)** To improve child protection outcomes and to foster best practices, there must be effective accountability mechanisms, including the review and evaluation of concerns voiced by children and families, mandatory reporters, persons involved in the child protection system, and members of the general public, that provide policymakers with the information necessary to formulate systemic changes, where appropriate.

(2) The general assembly further finds and declares that the establishment of the office of the child protection ombudsman will:

- (a)** Improve accountability and transparency in the child protection system and promote better outcomes for children and families involved in the child protection system; and
- (b)** Allow families, concerned citizens, mandatory reporters, employees of the state department and county departments, and other professionals who work with children and families to voice their concerns, without fear of reprisal, about the response by the child protection system to children experiencing, or at risk of experiencing, child maltreatment.

19-3.3-102. OFFICE OF THE CHILD PROTECTION OMBUDSMAN ESTABLISHED - CHILD PROTECTION OMBUDSMAN ADVISORY BOARD - QUALIFICATIONS OF OMBUDSMAN - DUTIES

(1)

(a) On or before January 1, 2016, the independent office of the child protection ombudsman, referred to in this article as the "office", is established in the judicial department as an independent agency for the purpose of ensuring the greatest protections for the children of Colorado.

(a.5) The office and the judicial department shall operate pursuant to a memorandum of understanding between the two entities. The memorandum of understanding contains, at a minimum:

- (I)** A requirement that the office has its own personnel rules;
- (II)** A requirement that the ombudsman has independent hiring and termination authority over office employees;

(III) A requirement that the office must follow judicial fiscal rules;
(IV) A requirement that the office of the state court administrator shall offer the office of the child protection ombudsman limited support with respect to:

- (A) Personnel matters;
- (B) Recruitment;
- (C) Payroll;
- (D) Benefits;
- (E) Budget submission, as needed;
- (F) Accounting; and
- (G) Office space, facilities, and technical support limited to the building that houses the office of the state court administrator; and

(V) Any other provisions regarding administrative support that will help maintain the independence of the office.

(b) The office and the related child protection ombudsman board, established in subsection (2) of this section, shall operate with full independence. The board and office have complete autonomy, control, and authority over operations, budget, and personnel decisions related to the office, board, and ombudsman.

(c) The office shall work cooperatively with the child protection ombudsman board established in subsection (2) of this section, the department of human services and other child welfare organizations, as appropriate, to form a partnership between those entities and persons, parents, and the state for the purpose of ensuring the greatest protections for the children of Colorado.

(2)

(a) There is established an independent, nonpartisan child protection ombudsman board, referred to in this article as the "board". The membership of the board must not exceed twelve members and, to the extent practicable, must include persons from throughout the state and persons with disabilities and must reflect the ethnic diversity of the state. All members must have child welfare policy or system expertise or experience.

(b) The board members must be appointed on or before August 1, 2015, as follows:

(I) The chief justice of the Colorado supreme court shall appoint:

- (A) An individual with experience as a respondent parents' counsel;
- (B) An individual with experience defending juveniles in court proceedings;
- (C) An individual with legal experience in dependency and neglect cases; and
- (D) An individual with experience in criminal justice involving children and youth.

(II) The governor shall appoint:

- (A) An individual with previous professional experience with a rural county human or social services agency or a rural private child welfare advocacy agency;
- (B) An individual with previous professional experience with the department of human services;
- (C) An individual with previous professional experience with an urban human or social services agency or an urban private child welfare agency; and
- (D) An individual with experience in primary or secondary education.

(III) The president and minority leader of the senate shall appoint:

- (A) An individual who was formerly a child in the foster care system; and

- (B) An individual with professional experience as a county and community child protection advocate; and
 - (IV) The speaker and the minority leader of the house of representatives shall appoint:
 - (A) A current or former foster parent; and
 - (B) A health care professional with previous experience with child abuse and neglect cases.
 - (c) Board members shall serve for terms of four years; except that, of the members first appointed, two members appointed pursuant to subparagraphs (I), (II), and (III) of paragraph (b) of this subsection (2) and one member appointed pursuant to subparagraph (IV) of paragraph (b) of this subsection (2), as designated by the appointing officials, shall serve initial terms of two years. The appointing officials shall fill any vacancies on the board for the remainder of any unexpired term.
 - (d) The board shall meet a minimum of two times per year and additionally as needed. At least one meeting per year must be held outside of the Denver metropolitan area.
 - (e) Board members shall serve without compensation but may be reimbursed for actual and reasonable expenses incurred in the performance of their duties.
 - (f) Expenses incurred for the board must be paid from the general operating budget of the office of the child protection ombudsman.
- (3) The board has the following duties and responsibilities:
 - (a) To oversee the following personnel decisions related to the ombudsman:
 - (I) On or before December 1, 2015, and as necessary thereafter, appointing a person to serve as the child protection ombudsman and director of the office, referred to in this article as the “ombudsman”. The ombudsman appointed by the board on or before December 1, 2015, shall assume his or her position on the effective date of the memorandum of understanding between the judicial department and the office. The board may also discharge an acting ombudsman for cause. A two-thirds majority vote is required to hire or discharge the ombudsman. The general assembly shall set the ombudsman’s compensation, and such compensation may not be reduced during the term of the ombudsman’s appointment.
 - (II) Filling a vacancy in the ombudsman position;
 - (III) Evaluating the ombudsman’s performance as determined necessary based on feedback received related to the ombudsman; and
 - (IV) Developing a public complaint process related to the ombudsman’s performance;
 - (b) To oversee and advise the ombudsman on the strategic direction of the office and its mission and to help promote the use, engagement, and access to the office;
 - (c) To work cooperatively with the ombudsman to provide fiscal oversight of the general operating budget of the office and ensure that the office operates in compliance with the provisions of this article, the memorandum of understanding, and state and federal laws relating to the child welfare system;
 - (d) to (g) (Deleted by amendment, L. 2016.)
 - (h) To promote the mission of the office to the public; and
 - (i) To provide assistance, as practicable and as requested by the ombudsman, to facilitate the statutory intent of this article.
- (4) Meetings of the board are subject to the provisions of section 24-6-402, C.R.S., except for executive personnel actions or meetings requiring the protection of confidentiality for children’s or parents’

personal data pursuant to the federal “Child Abuse Prevention and Treatment Act”, Pub.L. 93-247, and state privacy laws.

(5) The records of the board and the office are subject to the provisions of part 2 of article 72 of title 24, C.R.S.

19-3.3-103. OFFICE OF THE CHILD PROTECTION OMBUDSMAN - POWERS AND DUTIES - ACCESS TO INFORMATION - CONFIDENTIALITY - TESTIMONY - JUDICIAL REVIEW

(1) The ombudsman has the following duties, at a minimum:

(a)

(i)

(A) To receive complaints concerning child protection services. For the purposes of this section, “complaint” means any report or complaint made by or on behalf of a child relating to any action, inaction, or decision of any public agency or any provider that receives public money that may adversely affect the safety, permanency, or well-being of the child. The ombudsman may, independently and impartially, investigate a complaint, which may include complaints about an incident of egregious abuse or neglect or near fatality, as described in section 26-1-139, or fatality of a child, as described in part 20.5 of Title 25 and section 26-1-139. The Ombudsman may seek resolution of a complaint, which may include but need not be limited to referring a complaint to the state department or appropriate agency or entity and making a recommendation for action relating to a complaint.

(B) The ombudsman shall treat all complaints received pursuant to subsection (1)(a)(i)(A) of this section as confidential, including the identities of complainants and individuals from whom information is acquired; except that disclosures may be permitted if the ombudsman deems it necessary to enable the ombudsman to perform the Ombudsman’s duties and to support any recommendations resulting from an investigation. Records relating to complaints received by the office and the investigation of complaints are exempt from public disclosure pursuant to article 72 of title 24.

(C) The Ombudsman and any employee or person acting on behalf of the ombudsman shall not be compelled to provide oral and written testimony in a civil or criminal proceeding in which the ombudsman is not a legal party. Information, records, or documents requested and reviewed by the Ombudsman pursuant to this section are not subject to a subpoena issued to the ombudsman, discovery from the ombudsman, or introducing into evidence through the ombudsman in a civil or criminal proceeding in which the ombudsman is not a legal party. Nothing in this subsection (1)(a)(i)(C) restricts or limits the right to discover or use in a civil or criminal action evidence that is discoverable independent of the proceedings of the Ombudsman.

(ii)

(A) In investigating a complaint, the ombudsman has the authority to request, access, and review any information, records, or documents, including records of third parties, that the ombudsman deems necessary to conduct a thorough and independent review of a complaint so long as either the state department or a

county department would be entitled to access or receive such information, records, or documents.

(B) In the course of investigating a complaint pursuant to subsection (1)(a)(I)(A) of this section that is related to a child fatality, near fatality, or incident of egregious abuse or neglect against a child, as defined in section 26-1-139(2), upon request, the state department of human services' child fatality review team, pursuant to section 26-1-139(5)(e), shall provide the ombudsman the final confidential, case-specific review report.

(C) In the course of investigating a complaint pursuant to subsection (1)(a)(I)(A) of this section that is related to a child fatality, upon request, the department of public health and environment's child fatality prevention review team, pursuant to section 25-20.5-405, shall provide the ombudsman with the nonidentifying case review findings and recommendations.

(D) The Ombudsman must have access to all information, records, or documents described in subsection (1)(a)(II)(A) of this section created in an investigation of an event or incident described in subsection (1)(a)(II)(A), (1)(a)(II)(B), or (1)(a)(II)(C) of this section occurring in the state from an entity, including but not limited to a coroner's office, law enforcement agency, hospital, court the office of state registrar of vital statistics described in section 25-2-103, and a state-licensed out-of-home placement provider, as defined in section 26-6-102.

(E) The Ombudsman shall request, review, and receive copies of records as described in subsection (1)(a)(II)(A), (1)(a)(II)(B), and (1)(a)(II)(C) of this section without cost if electronic records are not available.

(F) Nothing in the provisions of subsection (1)(a)(II)(A), (1)(a)(II)(B), or (1)(a)(II)(C) of this section grants subpoena power to the ombudsman for purposes of investigating a complaint pursuant to subsection (1)(a)(II)(A), (1)(a)(II)(B), or (1)(a)(II)(C) of this section.

(III) The ombudsman shall refer any complaints relating to the judicial department and judicial proceedings, including but not limited to complaints concerning the conduct of judicial officers or attorneys of record, judicial determinations, and court processes and procedures to the appropriate entity or agency within the judicial department.

(a.5)

(I) Notwithstanding any provisions of this section to the contrary, the Ombudsman may self-initiate an independent and impartial investigation and ongoing review of the safety and well-being of an unaccompanied immigrant child who lives in a state-licensed residential child care facility, as defined in section 26-6-102, and who is in the custody of the office of refugee resettlement of the federal department of health and human services as set forth in 8 U.S.C. SEC. 1232 Et SEQ. The Ombudsman may seek resolution of such investigation and ongoing review, which may include, but need not be limited to, referring an investigation and ongoing review to the state department or appropriate agency or entity and making a recommendation for action relating to an investigation and ongoing review.

(II)

(A) In self-initiating an investigation and ongoing review of the safety and well-being of an unaccompanied immigrant child who lives in a state-licensed residential child care facility, the ombudsman has the authority to request, review, and receive copies of any information, records, or documents, including records of third parties, that the ombudsman deems necessary to conduct a

thorough and independent investigation and ongoing review as described in subsection (1)(a.5)(I) of this section, without cost to the ombudsman.

(B) A state-licensed residential child care facility shall notify the ombudsman and the state department within three days after the arrival of an unaccompanied immigrant child.

(C) The ombudsman may create and distribute outreach materials to a state-licensed residential child care facility and to individuals who may have regular contact with an unaccompanied immigrant child.

(III) As used in this subsection (1)(a.5), “unaccompanied immigrant child” means a child under the age of eighteen years, without lawful immigration status in the United States, who has been designated an unaccompanied child and transferred to the custody of the Office of Refugee Resettlement of the Federal Department of Health and Human Services pursuant to federal law.

(b) To evaluate and make a recommendation to the executive director and any appropriate agency or entity for the creation of a statewide grievance policy that is accessible by children and families within the child protection system and that is transparent and accountable;

(c) To report, as required by the provisions of section 19-3.3-108, concerning the actions of the ombudsman related to the goals and duties of the office;

(d) To review the memorandum of understanding between the office and the judicial department and renegotiate such memorandum of understanding at any time as the office and the judicial department mutually deem appropriate;

(e) To act on behalf of the office and serve as signator for the office;

(f) To ensure accountability and consistency in the operating policies and procedures, including reasonable rules to administer the provisions of this article and any other standards of conduct and reporting requirements as provided by law; and

(g) To serve or designate a person to serve on the youth restraint and seclusion working group pursuant to section 26-20-110 (1)(i).

(2) The ombudsman has the following powers, at a minimum:

(a) To review issues raised by members of the community relating to child protection policies or procedures and make recommendations to the appropriate agency or entity concerning those issues;

(b) To review and evaluate the effectiveness and efficiency of any existing grievance resolution mechanisms and to make recommendations to the general assembly, executive director, and any appropriate agency or entity for the improvement of the grievance resolution mechanisms;

(c) To help educate the public concerning child maltreatment and the role of the community in strengthening families and keeping children safe;

(d) To promote best practices and effective programs relating to a publicly funded child protection system and to work collaboratively with county departments, when appropriate, regarding improvement of processes;

(e) To recommend to the general assembly, the executive director, and any appropriate agency or entity statutory, budgetary, regulatory, and administrative changes, including systemic changes, to improve the safety of and promote better outcomes for children and families receiving child protection services in Colorado; and

(f) To request, access, and review information, records, or documents received pursuant to subsection (1)(a)(II) of this section.

(3) The ombudsman, employees of the office, and any persons acting on behalf of the office shall comply with all state and federal confidentiality laws that govern the state department or a county department with respect to the treatment of confidential information or records and the disclosure of such information and records.

(4) Nothing in this article shall be construed to direct or authorize the ombudsman to intervene in any criminal or civil judicial proceeding or to interfere in a criminal investigation.

(5) In the performance of his or her duties, the ombudsman shall act independently of the divisions within the state department that are responsible for child welfare, youth services, or child care, of the county departments of human or social services, and of all judicial agencies, including, but not limited to, the office of the child's representative, the office of the respondent parents' counsel, the office of state public defender, the office of alternate defense counsel, and the office of attorney regulation counsel. Any recommendations made by the ombudsman or positions taken by the ombudsman do not reflect those of the state department, judicial department, or of the county departments of human or social services.

19-3.3-104. QUALIFIED IMMUNITY

The ombudsman and employees or persons acting on behalf of the office are immune from suit and liability, either personally or in their official capacities, for any claim for damage to or loss of property, or for personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred within the scope of employment, duties, or responsibilities pertaining to the office, including but not limited to issuing reports or recommendations; except that nothing in this section shall be construed to protect such persons from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of that person.

19-3.3-105. ADVISORY WORK GROUP - DEVELOPMENT OF PLAN FOR AUTONOMY AND ACCOUNTABILITY - REPEAL. (REPEALED)

19-3.3-106. AWARD OF CONTRACT - EXTENSION - REPEAL. (REPEALED)

19-3.3-107. CHILD PROTECTION OMBUDSMAN PROGRAM FUND - CREATED - REPEAL. (REPEALED)

19-3.3-108. OFFICE OF THE CHILD PROTECTION OMBUDSMAN - ANNUAL REPORT

(1) On or before September 1 of each year, commencing with the September 1 following the first fiscal year in which the office was established, the ombudsman shall prepare a written report that must include, but need not be limited to, information from the preceding fiscal year and any recommendations concerning the following:

- (a)** Actions taken by the ombudsman relating to the duties of the office set forth in section 19-3.3-103;
- (b)** Statutory, regulatory, budgetary, or administrative changes relating to child protection, including systemic changes, to improve the safety of and promote better outcomes for children and families receiving child welfare services in Colorado.

(c) Results of the ombudsman's self-initiated investigation and ongoing review of the safety and well-being of an unaccompanied immigrant child who is housed in a state-licensed residential child care facility, as described in section 19-3.3-103.

(2) Notwithstanding section 24-1-136 (11)(a)(I), the ombudsman shall distribute the written report to the governor, the chief justice, the board, and the general assembly. The ombudsman shall present the report to the health and human services committees of the house of representatives and of the senate, or any successor committees.

(3) The ombudsman shall post the annual report on the office of the child protection ombudsman's website and the general assembly's website.

(4) The ombudsman shall present or communicate quarterly updates to the board on the activities of the office.

19-3.3-109. REVIEW BY THE STATE AUDITOR'S OFFICE

At the discretion of the legislative audit committee, the state auditor shall conduct or cause to be conducted a performance and fiscal audit of the office.

19-3.3-110. FUNDING RECOMMENDATIONS

The ombudsman shall make funding recommendations to the joint budget committee of the general assembly for the operation of the office of the child protection ombudsman. The general assembly shall make annual appropriations, in such amount and form as the general assembly determines appropriate, for the operation of the office.