

HOUSE BILL No. 2586

By Committee on Children and Seniors

2-7

1 AN ACT concerning parents of children in the custody of the department
2 for children and families; establishing the office of the ombudsman
3 concerning child abuse; amending K.S.A. 2013 Supp. 38-2211 and
4 repealing the existing section.
5

6 *Be it enacted by the Legislature of the State of Kansas:*

7 New Section 1. The provisions of sections 1 through 14, and
8 amendments thereto, shall be known and may be cited as the state
9 ombudsman concerning child abuse act.

10 New Sec. 2. (a) The office of the state ombudsman concerning child
11 abuse is hereby attached to the office of the attorney general. The office of
12 the state ombudsman concerning child abuse shall be in Topeka, Kansas.
13 The attorney general shall provide such technical assistance and advice as
14 the attorney general deems reasonable and necessary to assist the state
15 ombudsman concerning child abuse office to function as an independent
16 state agency. The attorney general shall have no authority over the state
17 ombudsman concerning child abuse, any regional ombudsman concerning
18 child abuse, any other ombudsman, including any volunteer ombudsman,
19 or any other officer, employee or volunteer of the office of the state
20 ombudsman concerning child abuse with respect to the performance of any
21 power, duty or function of the office or the exercise of any other authority
22 of the office or the state ombudsman concerning child abuse.

23 (b) For the fiscal year ending June 30, 2015, and for each fiscal year
24 thereafter, the attorney general shall include the budget estimate of the
25 office of the state ombudsman concerning child abuse, as prepared and
26 approved by the state ombudsman concerning child abuse, along with the
27 budget estimate prepared and submitted to the division of the budget for
28 the office of the attorney general under K.S.A. 75-3717, and amendments
29 thereto. The budget estimate of the office of the state ombudsman
30 concerning child abuse for each such fiscal year shall be prepared at the
31 direction and under the supervision of the state ombudsman concerning
32 child abuse. Expenditures from appropriations to the office of the attorney
33 general for the office of the state ombudsman concerning child abuse,
34 made pursuant to budget estimates for the office, shall be made on
35 vouchers approved by the state ombudsman concerning child abuse or the
36 state ombudsman's concerning child abuse designee. All vouchers for

1 expenditures and all payrolls of the office of the state ombudsman
2 concerning child abuse shall be approved by the state ombudsman
3 concerning child abuse or the state ombudsman's concerning child abuse
4 designee.

5 New Sec. 3. (a) The attorney general and the state ombudsman
6 concerning child abuse shall enter into agreements for the provision of
7 financial assistance to the office by the attorney general from available
8 state and federal funds of the attorney general. This financial assistance
9 shall be to assist the office of the state ombudsman concerning child abuse
10 to provide ombudsman services in accordance with the state ombudsman
11 concerning child abuse act, applicable federal programs and the provisions
12 of this section.

13 (b) Subject to the provisions of appropriation acts, the attorney
14 general shall continue to provide financial assistance for the office of the
15 state ombudsman concerning child abuse in an aggregate amount of not
16 less than the aggregate of the amounts provided during the fiscal year
17 ending June 30, 2016, appropriately adjusted for increases attributable to
18 inflation and other applicable factors.

19 (c) For the fiscal year ending June 30, 2016, and for each fiscal year
20 thereafter, the attorney general shall include in the budget estimate
21 prepared and submitted to the division of the budget for the office of the
22 attorney general under K.S.A. 75-3717, and amendments thereto, in
23 addition to other amounts included in such budget estimate for the office
24 of the attorney general, amounts to be provided to the office of the state
25 ombudsman concerning child abuse during such fiscal year pursuant to
26 this section. The amounts included in each such budget estimate to be
27 provided to the office of the state ombudsman concerning child abuse shall
28 include amounts to be appropriated from moneys provided under any
29 federal programs for the children or from other moneys of the office of the
30 attorney general. The aggregate amounts included in each such budget
31 estimate of the office of attorney general, that are to be provided to the
32 office of the state ombudsman concerning child abuse, shall be adjusted
33 appropriately for increases attributable to inflation and other applicable
34 factors.

35 New Sec. 4. As used in the state ombudsman concerning child abuse
36 act:

37 (a) "Conflict of interest" means: (1) Having a pecuniary or other
38 interest in a facility, but not including interests that result only from having
39 a relative who is a resident or from being the guardian of a resident; (2)
40 being actively employed or otherwise having active involvement in
41 representation of or advocacy for any facility or group of facilities,
42 whether or not such representation or advocacy is individual or through an
43 association or other entity, but not including any such active involvement

1 that results only from having a relative who is a resident or from being the
2 guardian of a resident; or (3) being employed by or having an active
3 association with any entity that represents any resident or group of
4 residents, but not including any such active association that results only
5 from having a relative who is a resident or from being the guardian of a
6 resident.

7 (b) "Office" means the office of the state ombudsman concerning
8 child abuse.

9 (c) "Ombudsman" means the state ombudsman concerning child
10 abuse, any regional ombudsman concerning child abuse or any individual
11 designated as an ombudsman under subsection (h) of section 7, and
12 amendments thereto, who has received the training required under
13 subsection (f) of section 7, and amendments thereto, and who has been
14 designated by the state ombudsman concerning child abuse to carry out the
15 powers, duties and functions of the office of the state ombudsman
16 concerning child abuse. The term "ombudsman" shall not include a
17 volunteer ombudsman.

18 (d) "Regional ombudsman concerning child abuse" means an
19 individual appointed by the state ombudsman concerning child abuse.

20 (e) "Resident" means a child in a children and families residential
21 facility or foster care.

22 (f) "State ombudsman concerning child abuse" means the individual
23 appointed by the attorney general to administer the office of the state
24 ombudsman concerning child abuse.

25 (g) "Volunteer ombudsman" means an individual who has
26 satisfactorily completed the training prescribed by the state ombudsman
27 concerning child abuse under subsection (f) of section 7, and amendments
28 thereto, who is a volunteer assisting in providing ombudsman services and
29 who receives no payment for such service other than reimbursement for
30 expenses incurred in accordance with guidelines adopted by the state
31 ombudsman concerning child abuse.

32 (h) "Youth residential facility" means the same as defined in
33 subsection (hh) of K.S.A. 2013 Supp. 38-2202, and amendments thereto.

34 New Sec. 5. (a) There is hereby established the office of the state
35 ombudsman concerning child abuse, the head of which shall be the state
36 ombudsman concerning child abuse. In performance of the powers, duties
37 and functions prescribed by law, the office shall be an independent state
38 agency. The state ombudsman concerning child abuse shall be an attorney
39 appointed by the state attorney general. The term of office of the first
40 person appointed as the state ombudsman concerning child abuse on or
41 after the effective date of this act shall expire on January 15, 2017, and
42 such state ombudsman concerning child abuse shall serve until a successor
43 is appointed and confirmed. Thereafter, each person appointed as the state

1 ombudsman concerning child abuse shall have a term of office of four
2 years and shall serve until a successor is appointed and confirmed.

3 (b) The state ombudsman concerning child abuse shall appoint each
4 regional ombudsman concerning child abuse and all officers and
5 employees of the office of state ombudsman concerning child abuse. Each
6 regional ombudsman concerning child abuse and all such officers and
7 employees shall be within the classified service under the Kansas civil
8 service act.

9 (c) In accordance with the provisions of this act, the state ombudsman
10 concerning child abuse shall administer the office of the state ombudsman
11 concerning child abuse.

12 (d) No person shall be eligible to be appointed to, or to hold, the
13 office of state ombudsman concerning child abuse if such person is subject
14 to a conflict of interest. No person shall be eligible for appointment as the
15 state ombudsman concerning child abuse unless such person has:

- 16 (1) A juris doctorate degree from an accredited university;
- 17 (2) demonstrated abilities to analyze problems of law, administration
18 and public policy; and
- 19 (3) experience in investigation and conflict resolution procedures.

20 New Sec. 6. (a) The state ombudsman concerning child abuse shall
21 ensure that:

22 (1) No individual involved in the authorization of any individual to
23 represent the office as an ombudsman or a volunteer ombudsman is subject
24 to a conflict of interest;

25 (2) no officer, employee or other representative of the office is subject
26 to a conflict of interest;

27 (3) policies and procedures are in place to identify and remedy all
28 conflicts of interest specified under paragraphs (1) and (2);

29 (4) legal counsel is available to the office for advice and consultation
30 and that legal representation is provided to any ombudsman against whom
31 a suit or other legal action is brought in connection with the performance
32 of the ombudsman's official duties; and

33 (5) the office has the ability to pursue administrative, legal and other
34 appropriate remedies on behalf of parents of children who are in the
35 custody of the secretary for children and families.

36 (b) The state ombudsman concerning child abuse may enter into
37 contracts with service providers to provide investigative, legal, public
38 education, training or other services as may be required to assist the state
39 ombudsman concerning child abuse in providing ombudsman services to
40 parents of children in the secretary's of children and families care or as
41 otherwise required to carry out the powers, duties and functions of the
42 office. Contracts entered into under this subsection shall not be subject to
43 the competitive bidding requirements of K.S.A. 75-3739, and amendments

1 thereto. No contract may be entered into by the state ombudsman
2 concerning child abuse to privatize the office or to otherwise provide that
3 all or substantially all of the ombudsman services or functions of the office
4 are to be performed by one or more service providers.

5 (c) For the purposes of carrying out the powers and duties of the
6 office of the state ombudsman concerning child abuse, the state
7 ombudsman concerning child abuse may request and accept a grant or
8 donation from any person, firm, association or corporation or from any
9 federal, state or local governmental agency and may enter into contracts or
10 other transactions with any such person or entity in connection with the
11 grant or donation.

12 New Sec. 7. The state ombudsman concerning child abuse shall be an
13 advocate, but not a legal representative of parents of children in the care of
14 the secretary for children and families, including children in foster care
15 throughout the state. The state ombudsman concerning child abuse shall:

16 (a) Investigate and resolve complaints made by or on behalf of the
17 parent of a child in foster care relating to action, inaction or decisions of
18 the secretary for children and families, foster parents or youth residential
19 facilities for children in the secretary's custody, or all;

20 (b) develop continuing programs to inform parents, their family
21 members or other persons responsible for children in the custody of the
22 secretary for children and families regarding the rights and responsibilities
23 of children in the custody of the secretary for children and families;

24 (c) provide the legislature and the governor with an annual report
25 containing data, findings and outcomes regarding the types of problems
26 experienced and complaints received by or on behalf of children in the
27 custody of the secretary for children and families and containing policy,
28 regulatory and legislative recommendations to solve such problems,
29 resolve such complaints and improve the quality of care and life in youth
30 residential facilities and foster care and shall present such report and other
31 appropriate information and recommendations to the senate committee on
32 public health and welfare, the senate committee on ways and means, the
33 house of representatives committee on health and human services and the
34 house of representatives committee on appropriations during each regular
35 session of the legislature;

36 (d) analyze and monitor the development and implementation of
37 federal, state and local government laws, rules and regulations, resolutions,
38 ordinances and policies with respect to youth residential facilities, foster
39 care and services provided in this state, and recommend any changes in
40 such laws, rules and regulations, resolutions, ordinances and policies
41 deemed by the office to be appropriate;

42 (e) provide information and recommendations directly to news media
43 representatives, public agencies, legislators and others, as deemed

1 necessary by the office, regarding the problems and concerns of children in
2 youth residential facilities, foster care, including, recommendations related
3 thereto, except that the state ombudsman concerning child abuse shall give
4 the information or recommendations to any directly affected parties or
5 their representatives before providing such information or
6 recommendations to news media representatives;

7 (f) prescribe and provide for the training of each regional ombudsman
8 concerning child abuse and any individual designated as an ombudsman
9 under subsection (h) of this section, and any individual who is an
10 ombudsman volunteer in: (1) Federal, state and local laws, rules and
11 regulations, resolutions, ordinances and policies with respect to facilities
12 located in Kansas; (2) investigative techniques; and (3) such other matters
13 as the state ombudsman concerning child abuse deems appropriate;

14 (g) coordinate ombudsman services provided by the office with the
15 protection and advocacy systems for parents of children in the custody of
16 the department for children and families;

17 (h) authorize an individual, who is an employee of the office and who
18 has satisfactorily completed the training prescribed by the state
19 ombudsman concerning child abuse under subsection (f), to be an
20 ombudsman or a volunteer ombudsman and to be a representative of the
21 office and such an authorized individual shall be deemed to be a
22 representative of the office for the purposes of and subject to the
23 provisions of the state ombudsman concerning child abuse act;

24 (i) establish and maintain a system to recruit and train individuals to
25 become volunteer ombudsmen;

26 (j) develop and implement procedures for authorizing and for
27 withdrawing the authorization of individuals to be ombudsmen or
28 volunteer ombudsmen to represent the office in providing ombudsmen
29 services;

30 (k) provide services to parents of children in the custody of the
31 department for children and families throughout the state directly or
32 through service providers to meet needs for ombudsmen services;

33 (l) collaborate with the department for children and families to
34 establish a statewide system to collect and analyze information on
35 complaints and conditions in youth residential facilities and foster care;
36 and

37 (m) perform such other duties and functions as may be provided by
38 law.

39 New Sec. 8. No individual shall investigate any complaint filed with
40 the office of the state ombudsman concerning child abuse unless the
41 individual has received the training required under subsection (f) of
42 section 7, and amendments thereto, and has been designated by the state
43 ombudsman concerning child abuse as an ombudsman or a voluntary

1 ombudsman qualified to investigate such complaints.

2 New Sec. 9. (a) An ombudsman or a volunteer ombudsman is hereby
3 authorized to enter any facility and any area within such facility at any
4 time with or without prior notice and shall have access to the residents of a
5 facility at all times.

6 (b) An ombudsman or a volunteer ombudsman shall notify
7 immediately the person in charge of a facility upon arrival and shall
8 present appropriate identification.

9 (c) Parents of residents shall have the right to request, deny or
10 terminate visits with an ombudsman or a volunteer ombudsman.

11 New Sec. 10. (a) With the consent of the parent of a resident, as
12 defined in section 4, and amendments thereto, a resident of the facility,
13 guardian of the resident or next of kin of a deceased resident, an
14 ombudsman shall have access to all records and documents kept for or
15 concerning the resident.

16 (b) An ombudsman shall have access to all records and documents
17 kept for or concerning a resident in a case in which: (1) Access to the
18 records and documents is necessary to investigate a complaint; (2) the
19 resident is unable to consent and the guardian of the resident refuses to
20 give permission for such access; (3) the investigating ombudsman has
21 reasonable cause to believe that the guardian is not acting in the best
22 interests of the resident; and (4) the state ombudsman concerning child
23 abuse has approved such access by the investigating ombudsman.

24 (c) In addition, in assisting a resident of a youth residential facility, an
25 ombudsman shall have access to all records and documents of the facility
26 which are relevant to such assistance to the extent necessary to carry out
27 the provisions of the ombudsman concerning child abuse act.

28 (d) A volunteer ombudsman shall have access to the plan of care and
29 other records or documents kept for or concerning the resident to the same
30 extent and under the same circumstances as an ombudsman under this
31 section, including, with the consent of the parent, medical records of the
32 child who is the subject of the investigation.

33 New Sec. 11. All information, records and reports received by or
34 developed by an ombudsman or a volunteer ombudsman which relate to a
35 resident of a youth residential facility or foster care home, including
36 written material identifying a resident or other complainant, are
37 confidential and not subject to the provisions of K.S.A. 45-215 to 45-226,
38 inclusive, and amendments thereto, and shall not be disclosed or released
39 by an ombudsman or a volunteer ombudsman, either by name of the
40 resident or other complainant or of facts which allow the identity of the
41 resident or other complainant to be inferred, except upon the order of a
42 court or unless the resident or the resident's legal representative or other
43 complainant consents in writing to such disclosure or release by an

1 ombudsman or a volunteer ombudsman, except the state ombudsman
2 concerning child abuse shall forward to the secretary for children and
3 families copies of reports received by the state ombudsman concerning
4 child abuse relating to the health and safety of children in the secretary's
5 custody.

6 New Sec. 12. An ombudsman shall have access to all records and
7 documents kept by the department of health and environment and the
8 department for children and families which relate to facilities and concern
9 the following matters: (a) Licensure of facilities; (b) certification of
10 facilities; (c) public funding reimbursement for care of residents of
11 facilities; (d) utilization and medical review records; and (e) complaints
12 regarding care of residents of facilities. The provisions of this section shall
13 not apply to a volunteer ombudsman.

14 New Sec. 13. No ombudsman or volunteer ombudsman shall be liable
15 for the good faith performance of official duties.

16 New Sec. 14. (a) No person shall willfully interfere with any lawful
17 action or activity of an ombudsman or a volunteer ombudsman, including
18 the request for immediate entry into a facility.

19 (b) No person shall take any discriminatory, disciplinary or retaliatory
20 action against any officer or employee of a youth residential facility or
21 against any resident or any guardian or family member for any
22 communication by any such individual with an ombudsman or a volunteer
23 ombudsman or for any information given or disclosed by such individual
24 in good faith to aid the office in carrying out its duties and responsibilities.

25 (c) Any person that violates the provisions of subsection (a) or the
26 provisions of subsection (b) shall be guilty of a class C misdemeanor.

27 (d) If evidence is found that any person working at a youth residential
28 facility or foster care home has abused a child, a report shall be turned
29 over to the county or district attorney by the ombudsman concerning child
30 abuse for prosecution under the Kansas criminal code.

31 (e) An ombudsman, except a volunteer ombudsman, shall inform the
32 complainant as to whether proper procedure has been followed by the
33 department for children and families or if the case has been turned over to
34 the county or district attorney

35 Sec. 15. The state ombudsman shall implement sections 1 through 15,
36 and amendments thereto, by adopting rules and regulations.

37 Sec. 16. K.S.A. 2013 Supp. 38-2211 is hereby amended to read as
38 follows: 38-2211. (a) *Access to the official file*. The following persons or
39 entities shall have access to the official file of a child in need of care
40 proceeding pursuant to this code:

41 (1) The court having jurisdiction over the proceedings, including the
42 presiding judge and any court personnel designated by the judge.

43 (2) The parties to the proceedings and their attorneys.

1 (3) The guardian ad litem for a child who is the subject of the
2 proceeding.

3 (4) A court appointed special advocate for a child who is the subject
4 of the proceeding or a paid staff member of a court appointed special
5 advocate program.

6 (5) Any individual, or any public or private agency or institution,
7 having custody of the child under court order or providing educational,
8 medical or mental health services to the child or any placement provider or
9 potential placement provider as determined by the secretary or court
10 services officer.

11 (6) A citizen review board.

12 (7) The commissioner of juvenile justice or any agents designated by
13 the commissioner.

14 (8) Any other person when authorized by a court order, subject to any
15 conditions imposed by the order.

16 (9) The commission on judicial performance in the discharge of the
17 commission's duties pursuant to article 32 of chapter 20 of the Kansas
18 Statutes Annotated, and amendments thereto.

19 (10) *An ombudsman from the office of the ombudsman concerning*
20 *child abuse.*

21 (b) *Access to the social file.* The following persons or entities shall
22 have access to the social file of a child in need of care proceeding pursuant
23 to this code:

24 (1) The court having jurisdiction over the proceeding, including the
25 presiding judge and any court personnel designated by the judge.

26 (2) The attorney for a party to the proceeding or the person or persons
27 designated by an Indian tribe that is a party.

28 (3) The guardian ad litem for a child who is the subject of the
29 proceeding.

30 (4) A court appointed special advocate for a child who is the subject
31 of the proceeding or a paid staff member of a court appointed special
32 advocate program.

33 (5) A citizen review board.

34 (6) The secretary.

35 (7) The commissioner of juvenile justice or any agents designated by
36 the commissioner.

37 (8) Any other person when authorized by a court order, subject to any
38 conditions imposed by the order.

39 (9) *An ombudsman from the office of the ombudsman concerning*
40 *child abuse.*

41 (c) *Preservation of records.* The Kansas state historical society shall
42 be allowed to take possession for preservation in the state archives of any
43 court records related to proceedings under the Kansas code for care of

1 children whenever such records otherwise would be destroyed. No such
2 records in the custody of the Kansas state historical society shall be
3 disclosed directly or indirectly to anyone for 70 years after creation of the
4 records, except as provided in subsections (a) and (b). Pursuant to
5 subsections (a)(8) and (b)(8), a judge of the district court may allow
6 inspection for research purposes of any court records in the custody of the
7 Kansas state historical society related to proceedings under the Kansas
8 code for care of children.

9 Sec. 17. K.S.A. 2013 Supp. 38-2211 is hereby repealed.

10 Sec. 18. This act shall take effect and be in force from and after its
11 publication in the statute book.