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

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

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

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

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

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

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

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

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

(a) "Conflict of interest" means: (1) Having a pecuniary or other interest in a facility, but not including interests that result only from having a relative who is a resident or from being the guardian of a resident; (2) being actively employed or otherwise having active involvement in representation of or advocacy for any facility or group of facilities, whether or not such representation or advocacy is individual or through an association or other entity, but not including any such active involvement
that results only from having a relative who is a resident or from being the
guardian of a resident; or (3) being employed by or having an active
association with any entity that represents any resident or group of
residents, but not including any such active association that results only
from having a relative who is a resident or from being the guardian of a
resident.
(b) "Office" means the office of the state ombudsman concerning
child abuse.
(c) "Ombudsman" means the state ombudsman concerning child
abuse, any regional ombudsman concerning child abuse or any individual
designated as an ombudsman under subsection (h) of section 7, and
amendments thereto, who has received the training required under
subsection (f) of section 7, and amendments thereto, and who has been
designated by the state ombudsman concerning child abuse to carry out the
powers, duties and functions of the office of the state ombudsman
concerning child abuse. The term "ombudsman" shall not include a
volunteer ombudsman.
(d) "Regional ombudsman concerning child abuse" means an
individual appointed by the state ombudsman concerning child abuse.
(e) "Resident" means a child in a children and families residential
facility or foster care.
(f) "State ombudsman concerning child abuse" means the individual
appointed by the attorney general to administer the office of the state
ombudsman concerning child abuse.
(g) "Volunteer ombudsman" means an individual who has
satisfactorily completed the training prescribed by the state ombudsman
concerning child abuse under subsection (f) of section 7, and amendments
thereto, who is a volunteer assisting in providing ombudsman services and
who receives no payment for such service other than reimbursement for
expenses incurred in accordance with guidelines adopted by the state
ombudsman concerning child abuse.
(h) "Youth residential facility" means the same as defined in

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

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

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

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

1. A juris doctorate degree from an accredited university;
2. Demonstrated abilities to analyze problems of law, administration
and public policy; and
3. Experience in investigation and conflict resolution procedures.

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

1. No individual involved in the authorization of any individual to
represent the office as an ombudsman or a volunteer ombudsman is subject
to a conflict of interest;
2. No officer, employee or other representative of the office is subject
to a conflict of interest;
3. Policies and procedures are in place to identify and remedy all
conflicts of interest specified under paragraphs (1) and (2);
4. Legal counsel is available to the office for advice and consultation
and that legal representation is provided to any ombudsman against whom
a suit or other legal action is brought in connection with the performance
of the ombudsman's official duties; and
5. The office has the ability to pursue administrative, legal and other
appropriate remedies on behalf of parents of children who are in the
custody of the secretary for children and families.

(b) The state ombudsman concerning child abuse may enter into
contracts with service providers to provide investigative, legal, public
education, training or other services as may be required to assist the state
ombudsman concerning child abuse in providing ombudsman services to
parents of children in the secretary's of children and families care or as
otherwise required to carry out the powers, duties and functions of the
office. Contracts entered into under this subsection shall not be subject to
the competitive bidding requirements of K.S.A. 75-3739, and amendments
thereto. No contract may be entered into by the state ombudsman concerning child abuse to privatize the office or to otherwise provide that all or substantially all of the ombudsman services or functions of the office are to be performed by one or more service providers.

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

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

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

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

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

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

(e) provide information and recommendations directly to news media representatives, public agencies, legislators and others, as deemed
necessary by the office, regarding the problems and concerns of children in youth residential facilities, foster care, including, recommendations related thereto, except that the state ombudsman concerning child abuse shall give the information or recommendations to any directly affected parties or their representatives before providing such information or recommendations to news media representatives;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

New Sec. 11. All information, records and reports received by or developed by an ombudsman or a volunteer ombudsman which relate to a resident of a youth residential facility or foster care home, including written material identifying a resident or other complainant, are confidential and not subject to the provisions of K.S.A. 45-215 to 45-226, inclusive, and amendments thereto, and shall not be disclosed or released by an ombudsman or a volunteer ombudsman, either by name of the resident or other complainant or of facts which allow the identity of the resident or other complainant to be inferred, except upon the order of a court or unless the resident or the resident's legal representative or other complainant consents in writing to such disclosure or release by an
ombudsman or a volunteer ombudsman, except the state ombudsman concerning child abuse shall forward to the secretary for children and families copies of reports received by the state ombudsman concerning child abuse relating to the health and safety of children in the secretary's custody.

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

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

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

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

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

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

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

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

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

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

(2) The parties to the proceedings and their attorneys.
(3) The guardian ad litem for a child who is the subject of the proceeding.

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

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

(6) A citizen review board.

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

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

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

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

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

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

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

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

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

(5) A citizen review board.

(6) The secretary.

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

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

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

(c) Preservation of records. The Kansas state historical society shall be allowed to take possession for preservation in the state archives of any court records related to proceedings under the Kansas code for care of
children whenever such records otherwise would be destroyed. No such records in the custody of the Kansas state historical society shall be disclosed directly or indirectly to anyone for 70 years after creation of the records, except as provided in subsections (a) and (b). Pursuant to subsections (a)(8) and (b)(8), a judge of the district court may allow inspection for research purposes of any court records in the custody of the Kansas state historical society related to proceedings under the Kansas code for care of children.

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

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