

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 21-0506.02 Alana Rosen x2606

HOUSE BILL 21-1272

HOUSE SPONSORSHIP

Cutter,

SENATE SPONSORSHIP

(None),

House Committees

Public & Behavioral Health & Human Services

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING ENHANCING SUPPORTS TO THE OFFICE OF THE CHILD**
102 **PROTECTION OMBUDSMAN IN ITS ROLE CONCERNING CHILD**
103 **PROTECTIONS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill exempts an employee or person acting on behalf of the office of the child protection ombudsman (ombudsman) from testifying in a civil or criminal proceeding in which the ombudsman is not a legal party. The bill prohibits information, documents, and reports requested and reviewed by the ombudsman from being subpoenaed in a civil or

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

criminal proceeding in which the ombudsman is not a legal party.

The bill authorizes the ombudsman to receive information, records, or documents related to a critical incident, incident of egregious abuse or neglect, near fatality, or fatality of a child during the course of an investigation of a complaint. The department of public health and environment's child fatality prevention review team shall provide the ombudsman the nonidentifying case review findings and recommendations related to an investigation of a complaint. The department of human services' child fatality review team shall provide the ombudsman the final confidential, case-specific review report related to an investigation of a complaint. The bill also requires the department of human services' division of youth services to provide the ombudsman information, records, and documents related to a critical incident. If electronic copies are not available, the ombudsman shall access, review, and receive copies of documents without cost to the ombudsman.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 19-3.3-103, **amend**
3 (1)(a)(I), (1)(a)(II), (2)(d), and (2)(e); and **add** (2)(f) as follows:

4 **19-3.3-103. Office of the child protection ombudsman - powers**
5 **and duties - access to information - confidentiality - testimony -**
6 **judicial review - definition.** (1) The ombudsman has the following
7 duties, at a minimum:

8 (a) (I) (A) To receive complaints concerning child protection
9 services. FOR THE PURPOSES OF THIS SECTION, "COMPLAINT" MEANS ANY
10 REPORT OR COMPLAINT made by or on behalf of a child relating to any
11 action, inaction, or decision of any public agency or any provider that
12 receives public ~~moneys~~ MONEY that may adversely affect the safety,
13 permanency, or well-being of the child. The ombudsman may,
14 independently and impartially, investigate ~~and seek resolution of such~~
15 ~~complaints, which resolution may include, but need not be limited to,~~
16 ~~referring a complaint to the state department or appropriate agency or~~
17 ~~entity and making a recommendation for action relating to a complaint.~~

1 A COMPLAINT, WHICH MAY INCLUDE A CRITICAL INCIDENT, AS DEFINED IN
2 SECTION 19-1-304 (8), OR AN INCIDENT OF EGREGIOUS ABUSE OR NEGLECT
3 OR NEAR FATALITY, AS DESCRIBED IN SECTION 26-1-139, OR FATALITY OF
4 A CHILD, AS DESCRIBED IN PART 20.5 OF TITLE 25 AND SECTION 26-1-139.
5 THE OMBUDSMAN MAY SEEK RESOLUTION OF A COMPLAINT, WHICH MAY
6 INCLUDE BUT NEED NOT BE LIMITED TO REFERRING A COMPLAINT TO THE
7 STATE DEPARTMENT OR APPROPRIATE AGENCY OR ENTITY AND MAKING A
8 RECOMMENDATION FOR ACTION RELATING TO A COMPLAINT.

9 (B) The ombudsman shall treat all complaints received pursuant
10 to ~~sub-subparagraph (A) of this subparagraph (F)~~ SUBSECTION (1)(a)(I)(A)
11 OF THIS SECTION as confidential, including the identities of complainants
12 and individuals from whom information is acquired; except that
13 disclosures may be permitted if the ombudsman deems it necessary to
14 enable the ombudsman to perform ~~his or her~~ THE OMBUDSMAN'S duties
15 and to support any recommendations resulting from an investigation.
16 Records relating to complaints received by the office and the
17 investigation of complaints are exempt from public disclosure pursuant
18 to article 72 of title 24. ~~C.R.S.~~

19 (C) THE OMBUDSMAN AND ANY EMPLOYEE OR PERSON ACTING ON
20 BEHALF OF THE OMBUDSMAN SHALL NOT BE COMPELLED TO PROVIDE ORAL
21 AND WRITTEN TESTIMONY IN A CIVIL OR CRIMINAL PROCEEDING IN WHICH
22 THE OMBUDSMAN IS NOT A LEGAL PARTY. INFORMATION, RECORDS, OR
23 DOCUMENTS REQUESTED AND REVIEWED BY THE OMBUDSMAN PURSUANT
24 TO THIS SECTION ARE NOT SUBJECT TO A SUBPOENA ISSUED TO THE
25 OMBUDSMAN, DISCOVERY FROM THE OMBUDSMAN, OR INTRODUCTION
26 INTO EVIDENCE THROUGH THE OMBUDSMAN IN A CIVIL OR CRIMINAL
27 PROCEEDING IN WHICH THE OMBUDSMAN IS NOT A LEGAL PARTY. NOTHING

1 IN THIS SUBSECTION (1)(a)(I)(C) RESTRICTS OR LIMITS THE RIGHT TO
2 DISCOVER OR USE IN A CIVIL OR CRIMINAL ACTION EVIDENCE THAT IS
3 DISCOVERABLE INDEPENDENT OF THE PROCEEDINGS OF THE OMBUDSMAN.

4 (II) (A) In investigating a complaint, the ombudsman ~~shall have~~
5 HAS the authority to request, ACCESS, and review any information,
6 records, or documents, including records of third parties, that the
7 ombudsman deems necessary to conduct a thorough and independent
8 review of a complaint so long as either the state department or a county
9 department would be entitled to access or receive such information,
10 records, or documents.

11 (B) IN THE COURSE OF INVESTIGATING A COMPLAINT PURSUANT TO
12 SUBSECTION (1)(a)(I)(A) OF THIS SECTION THAT IS RELATED TO A CRITICAL
13 INCIDENT, AS DEFINED IN SECTION 19-1-304 (8), UPON REQUEST, THE
14 STATE DEPARTMENT OF HUMAN SERVICES' DIVISION OF YOUTH SERVICES
15 SHALL NOTIFY THE OMBUDSMAN AND GIVE ACCESS ELECTRONICALLY TO
16 ALL INFORMATION, RECORDS, OR DOCUMENTS DESCRIBED IN SUBSECTION
17 (1)(a)(II)(A) OF THIS SECTION AS THEY ARE CREATED OR RECEIVED.

18 (C) IN THE COURSE OF INVESTIGATING A COMPLAINT PURSUANT TO
19 SUBSECTION (1)(a)(I)(A) OF THIS SECTION THAT IS RELATED TO A CHILD
20 FATALITY, NEAR FATALITY, OR INCIDENT OF EGREGIOUS ABUSE OR
21 NEGLECT AGAINST A CHILD, AS DEFINED IN SECTION 26-1-139 (2), UPON
22 REQUEST, THE STATE DEPARTMENT OF HUMAN SERVICES' CHILD FATALITY
23 REVIEW TEAM, PURSUANT TO SECTION 26-1-139 (5)(e), SHALL PROVIDE
24 THE OMBUDSMAN THE FINAL CONFIDENTIAL, CASE-SPECIFIC REVIEW
25 REPORT.

26 (D) IN THE COURSE OF INVESTIGATING A COMPLAINT PURSUANT TO
27 SUBSECTION (1)(a)(I)(A) OF THIS SECTION THAT IS RELATED TO A CHILD

1 FATALITY, UPON REQUEST, THE DEPARTMENT OF PUBLIC HEALTH AND
2 ENVIRONMENT'S CHILD FATALITY PREVENTION REVIEW TEAM, PURSUANT
3 TO SECTION 25-20.5-405, SHALL PROVIDE THE OMBUDSMAN WITH THE
4 NONIDENTIFYING CASE REVIEW FINDINGS AND RECOMMENDATIONS.

5 (E) THE OMBUDSMAN MUST HAVE ACCESS TO ALL INFORMATION,
6 RECORDS, OR DOCUMENTS DESCRIBED IN SUBSECTION (1)(a)(II)(A) OF THIS
7 SECTION CREATED IN AN INVESTIGATION OF AN EVENT OR INCIDENT
8 DESCRIBED IN SUBSECTION (1)(a)(II)(A), (1)(a)(II)(B), (1)(a)(II)(C), OR
9 (1)(a)(II)(D) OF THIS SECTION OCCURRING IN THE STATE FROM ANY
10 ENTITY, INCLUDING BUT NOT LIMITED TO A CORONER'S OFFICE, LAW
11 ENFORCEMENT AGENCY, HOSPITAL, COURT, THE OFFICE OF STATE
12 REGISTRAR OF VITAL STATISTICS DESCRIBED IN SECTION 25-2-103, AND A
13 STATE-LICENSED OUT-OF-HOME PLACEMENT PROVIDER, AS DEFINED IN
14 SECTION 26-6-102.

15 (F) THE OMBUDSMAN SHALL REQUEST, REVIEW, AND RECEIVE
16 COPIES OF RECORDS AS DESCRIBED IN SUBSECTIONS (1)(a)(II)(A),
17 (1)(a)(II)(B), (1)(a)(II)(C), AND (1)(a)(II)(D) OF THIS SECTION WITHOUT
18 COST IF ELECTRONIC RECORDS ARE NOT AVAILABLE.

19 ~~(B)~~ (G) Nothing in the provisions of ~~sub-subparagraph (A) of this~~
20 ~~subparagraph (H) shall be construed to grant~~ SUBSECTION (1)(a)(II)(A),
21 (1)(a)(II)(B), (1)(a)(II)(C), OR (1)(a)(II)(D) OF THIS SECTION GRANTS
22 subpoena power to the ombudsman for purposes of investigating a
23 complaint pursuant to ~~sub-subparagraph (A) of subparagraph (F) of this~~
24 ~~paragraph (a)~~. SUBSECTION (1)(a)(II)(A), (1)(a)(II)(B), (1)(a)(II)(C), OR
25 (1)(a)(II)(D) OF THIS SECTION.

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

27 (d) To promote best practices and effective programs relating to

1 a publicly funded child protection system and to work collaboratively
2 with county departments, when appropriate, regarding improvement of
3 processes; ~~and~~

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

9 (f) TO REQUEST, ACCESS, AND REVIEW INFORMATION, RECORDS, OR
10 DOCUMENTS RECEIVED PURSUANT TO SUBSECTION (1)(a)(II) OF THIS
11 SECTION.

12 **SECTION 2.** In Colorado Revised Statutes, 19-1-304, **add**
13 (8)(b.5) as follows:

14 **19-1-304. Juvenile delinquency records - division of youth**
15 **services critical incident information - definitions. (8) Division of**
16 **youth services critical incident information. (b.5) UPON REQUEST, THE**
17 **DIVISION OF YOUTH SERVICES SHALL GIVE THE OFFICE OF THE CHILD**
18 **PROTECTION OMBUDSMAN ACCESS ELECTRONICALLY TO ALL**
19 **INFORMATION, RECORDS, OR DOCUMENTS AS THEY ARE RECEIVED OR**
20 **CREATED AS THEY PERTAIN TO AN INVESTIGATION OF A COMPLAINT**
21 **PURSUANT TO SECTION 19-3.3-103. IF ELECTRONIC RECORDS DO NOT**
22 **EXIST, THE DIVISION SHALL NOT CHARGE THE OFFICE OF THE CHILD**
23 **PROTECTION OMBUDSMAN A FEE FOR COPIES OF RECORDS.**

24 **SECTION 3.** In Colorado Revised Statutes, 25-20.5-405, **amend**
25 (2)(d) as follows:

26 **25-20.5-405. Local review teams - duties - authority. (2) With**
27 **respect to each child fatality reviewed, the local or regional review team**

1 shall:

2 (d) Report case review findings, as appropriate, to public and
3 private agencies that have responsibilities for children, INCLUDING THE
4 OFFICE OF THE CHILD PROTECTION OMBUDSMAN PURSUANT TO SECTION
5 19-3.3-103, and make prevention recommendations to these agencies that
6 may help to reduce the number of child fatalities;

7 **SECTION 4.** In Colorado Revised Statutes, 26-1-139, **amend**
8 (5)(e) as follows:

9 **26-1-139. Child fatality and near fatality prevention - process**
10 **- department of human services child fatality review team - reporting**
11 **- rules - legislative declaration - definitions.** (5) (e) The team shall
12 provide the final confidential, case-specific review report to the executive
13 director, the director for any county or community agency referenced in
14 the report, the county board of human services of any county department
15 with previous involvement, as defined in ~~paragraph (c) of subsection (2)~~
16 SUBSECTION (2)(c) of this section, the legislative members of the team
17 appointed pursuant to ~~paragraph (f) of subsection (6)~~ SUBSECTION (6)(f)
18 of this section, ~~and~~ the department of public health and environment, AND
19 THE OFFICE OF THE CHILD PROTECTION OMBUDSMAN PURSUANT TO
20 SECTION 19-3.3-103.

21 **SECTION 5. Safety clause.** The general assembly hereby finds,
22 determines, and declares that this act is necessary for the immediate
23 preservation of the public peace, health, or safety.