

## **IC 4-13-19**

### **Chapter 19. Department of Child Services Ombudsman**

#### **IC 4-13-19-1**

##### **"Child"**

Sec. 1. As used in this chapter, "child" means a person who:

- (1) is less than eighteen (18) years of age;
- (2) is at least eighteen (18) years of age at the time a complaint is made but was less than eighteen (18) years of age at the time of the alleged act or omission that is the subject of the complaint; or
- (3) is at least eighteen (18) years of age but has been under the continuing jurisdiction of a juvenile court based upon an informal adjustment, child in need of services action under IC 31-34, or termination of parental rights action under IC 31-35 since becoming eighteen (18) years of age.

*As added by P.L.182-2009(ss), SEC.55.*

#### **IC 4-13-19-2**

##### **"Ombudsman"**

Sec. 2. As used in this chapter, "ombudsman" means:

- (1) the person appointed by the governor to serve as ombudsman; or
- (2) an employee or other individual approved by the office of the department of child services ombudsman to act in the capacity of ombudsman;

to receive, investigate, and resolve complaints that allege the department of child services, by an action or omission, failed to protect the physical or mental health or safety of any child or failed to follow specific laws, rules, or written policies.

*As added by P.L.182-2009(ss), SEC.55.*

#### **IC 4-13-19-3**

##### **Establishment of office of department of child services ombudsman**

Sec. 3. The office of department of child services ombudsman is established as a separate bureau within the department. The ombudsman appointed by the governor shall report directly to the commissioner. The ombudsman appointed by the governor must be an attorney licensed to practice law in Indiana or a social worker with at least a master's degree. The ombudsman appointed by the governor must have significant experience or education in child development and child advocacy, including at least two (2) years experience working with child abuse and neglect.

*As added by P.L.182-2009(ss), SEC.55.*

#### **IC 4-13-19-4**

##### **Appointment of ombudsman; authority to hire employees**

Sec. 4. (a) The governor shall appoint the ombudsman. The

ombudsman serves at the pleasure of the governor. An individual may not be appointed as ombudsman if the individual has been employed by the department of child services at any time during the preceding twelve (12) months. The governor shall appoint a successor ombudsman not later than thirty (30) days after a vacancy occurs in the position of the ombudsman.

(b) The office of the department of child services ombudsman:

- (1) shall employ at least two (2) full time employees to assist the ombudsman with receiving, investigating, and attempting to resolve complaints described in section 5 of this chapter; and
- (2) may employ technical experts and other employees to carry out the purposes of this chapter.

(c) The office of the department of child services ombudsman may not hire an individual to serve as an ombudsman if the individual has been employed by the department of child services during the preceding twelve (12) months.

(d) The ombudsman and any other person employed or authorized by the ombudsman:

- (1) are subject to the same criminal history and background checks, to be performed by the department of child services, that are required for department of child services family case managers; and
- (2) are subject to the same disqualification for employment criteria as department of child services family case managers.

*As added by P.L.182-2009(ss), SEC.55. Amended by P.L.48-2012, SEC.1.*

#### **IC 4-13-19-5**

##### **Powers of ombudsman**

Sec. 5. (a) The office of the department of child services ombudsman may receive, investigate, and attempt to resolve a complaint alleging that the department of child services, by an action or omission occurring on or after January 11, 2005, failed to protect the physical or mental health or safety of any child or failed to follow specific laws, rules, or written policies.

(b) The office of the department of child services ombudsman may also do the following:

- (1) Take action, including the establishing of a program of public education, to secure and ensure the legal rights of children.
- (2) Periodically review relevant policies and procedures with a view toward the safety and welfare of children.
- (3) When appropriate, refer a person making a report of child abuse or neglect to the department of child services and, if appropriate, to an appropriate law enforcement agency.
- (4) Recommend changes in procedures for investigating reports of abuse and neglect and overseeing the welfare of children who are under the jurisdiction of a juvenile court.

(5) Make the public aware of the services of the ombudsman, the purpose of the office, and information concerning contacting the office.

(6) Examine policies and procedures and evaluate the effectiveness of the child protection system, specifically the respective roles of the department of child services, the court, the medical community, service providers, guardians ad litem, court appointed special advocates, and law enforcement agencies.

(7) Review and make recommendations concerning investigative procedures and emergency responses contained in the report prepared under section 10 of this chapter.

(c) Upon request of the office of the department of child services ombudsman, the local child protection team shall assist the office of the department of child services ombudsman by investigating and making recommendations on a matter. If a local child protection team was involved in an initial investigation, a different local child protection team may assist in the investigation under this subsection.

(d) At the end of an investigation of a complaint, the office of the department of child services ombudsman shall provide an appropriate report as follows:

(1) If the complainant is a parent, guardian, custodian, court appointed special advocate, guardian ad litem, or court, the ombudsman may provide the same report to the complainant and the department of child services.

(2) If the complainant is not a person described in subdivision (1), the ombudsman shall provide a redacted version of its findings to the complainant stating in general terms that the actions of the department of child services were or were not appropriate.

(e) The department of child services ombudsman shall provide a copy of the report and recommendations to the department of child services. The office of the department of child services ombudsman may not disclose to:

(1) a complainant;

(2) another person who is not a parent, guardian, or custodian of the child who was the subject of the department of child services' action or omission; or

(3) the court, court appointed special advocate, or guardian ad litem of the child in a case that was filed as a child in need of services or a termination of parental rights action;

any information that the department of child services could not, by law, reveal to the complainant, parent, guardian, custodian, person, court, court appointed special advocate, or guardian ad litem.

(f) If, after reviewing a complaint or conducting an investigation and considering the response of an agency, facility, or program and any other pertinent material, the office of the department of child services ombudsman determines that the complaint has merit or the

investigation reveals a problem, the ombudsman may recommend that the agency, facility, or program:

- (1) consider the matter further;
- (2) modify or cancel its actions;
- (3) alter a rule, order, or internal policy; or
- (4) explain more fully the action in question.

(g) At the office of the department of child services ombudsman's request, the agency, facility, or program shall, within a reasonable time, inform the office of the department of child services ombudsman about the action taken on the recommendation or the reasons for not complying with it.

(h) The office of the department of child services ombudsman may not investigate the following:

- (1) A complaint from an employee of the department of child services that relates to the employee's employment relationship with the department of child services.
- (2) A complaint challenging a department of child services substantiation of abuse or neglect that is currently the subject of a pending administrative review procedure before the exhaustion of administrative remedies provided by law, rule, or written policy. Investigation of any such complaint received shall be stayed until the administrative remedy has been exhausted. However, if the administrative process is not completed or terminated within six (6) months after initiation of the administrative process, the office of child services ombudsman may proceed with its investigation.

(i) If the office of the department of child services ombudsman does not investigate a complaint, the office of the department of child services ombudsman shall notify the complainant of the decision not to investigate and the reasons for the decision.

*As added by P.L.182-2009(ss), SEC.55. Amended by P.L.128-2012, SEC.2.*

#### **IC 4-13-19-6**

##### **Access to records**

Sec. 6. (a) The office of the department of child services ombudsman shall be given appropriate access to department of child services records of a child who is the subject of a complaint that is filed under this chapter.

(b) A state or local government agency or entity that has records that are relevant to a complaint or an investigation conducted by an ombudsman shall provide the ombudsman with access to the records.

(c) A person is immune from:

- (1) civil or criminal liability; and
- (2) actions taken under:
  - (A) a professional disciplinary procedure; or
  - (B) procedures related to the termination or imposition of penalties under a contract dealing with an employee or

contractor of the department of child services;  
for the release or disclosure of records to the ombudsman under this chapter, unless the release or disclosure constitutes gross negligence or willful or wanton misconduct.

(d) Information or records of a state or local government agency provided to the office of the department of child services ombudsman may not be disclosed to the complainant or others if confidential under laws, rules, or regulations governing the state or local government agency that provided the information or records.

*As added by P.L.182-2009(ss), SEC.55.*

#### **IC 4-13-19-7**

##### **Duties and functions**

Sec. 7. The office of the department of child services ombudsman shall do the following:

- (1) Establish procedures to receive and investigate complaints.
- (2) Establish physical, technological, and administrative access controls for all information maintained by the office of the department of child services ombudsman.
- (3) Except as necessary to investigate and resolve a complaint, ensure that the identity of a complainant will not be disclosed without:
  - (A) the complainant's written consent; or
  - (B) a court order.

*As added by P.L.182-2009(ss), SEC.55.*

#### **IC 4-13-19-8**

##### **Adoption of rules**

Sec. 8. The office of the department of child services ombudsman may adopt rules under IC 4-22-2 necessary to carry out this chapter.

*As added by P.L.182-2009(ss), SEC.55.*

#### **IC 4-13-19-9**

##### **Civil immunity**

Sec. 9. An ombudsman is not personally liable for the good faith performance of the ombudsman's official duties.

*As added by P.L.182-2009(ss), SEC.55.*

#### **IC 4-13-19-10**

##### **Report**

Sec. 10. (a) The office of the department of child services ombudsman shall prepare a report each year on the operations of the office.

(b) The office of the department of child services ombudsman shall include the following information in the annual report required under subsection (a):

- (1) The office of the department of child services ombudsman's activities.

- (2) The general status of children in Indiana, including:
  - (A) the health and education of children; and
  - (B) the administration or implementation of programs for children.
- (3) Any other issues, concerns, or information concerning children.
- (c) A copy of the report shall be provided to the following:
  - (1) The governor.
  - (2) The legislative council.
  - (3) The Indiana department of administration.
  - (4) The department of child services.

A report provided under this subsection to the legislative council must be in an electronic format under IC 5-14-6.

(d) A copy of the report shall be posted on the department of child services' Internet web site and on any Internet web site maintained by the office of the department of child services ombudsman.

*As added by P.L.182-2009(ss), SEC.55. Amended by P.L.13-2013, SEC.6.*

#### **IC 4-13-19-11**

##### **Interference or prevention of completion of work**

Sec. 11. A person who interferes with the ombudsman is subject to criminal prosecution under IC 35-44.2-1-5.

*As added by P.L.182-2009(ss), SEC.55. Amended by P.L.126-2012, SEC.11.*

#### **IC 4-13-19-12**

##### **Provision of office space**

Sec. 12. The Indiana department of administration shall provide and maintain office space for the office of the department of child services ombudsman.

*As added by P.L.182-2009(ss), SEC.55.*