

1 HB48
2 164404-1
3 By Representative McCutcheon
4 RFD: Public Safety and Homeland Security
5 First Read: 03-MAR-15
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8 SYNOPSIS: This bill would establish the Office of the
9 Ombudsman For Child Welfare. The bill would provide
10 for the State Advisory Committee to the ombudsman
11 that would appoint the ombudsman. The bill would
12 provide for the duties and powers of the ombudsman.
13 The bill would prohibit discrimination or
14 retaliation against persons filing complaints with
15 the ombudsman and would provide criminal penalties
16 for violations. The bill would also require
17 protocols and require the presiding circuit judge
18 to establish a protocol committee to recommend
19 protocols for the investigation and prosecution of
20 alleged cases of child abuse.

21 Amendment 621 of the Constitution of Alabama
22 of 1901, now appearing as Section 111.05 of the
23 Official Recompilation of the Constitution of
24 Alabama of 1901, as amended, prohibits a general
25 law whose purpose or effect would be to require a
26 new or increased expenditure of local funds from
27 becoming effective with regard to a local

1 governmental entity without enactment by a 2/3 vote
2 unless: it comes within one of a number of
3 specified exceptions; it is approved by the
4 affected entity; or the Legislature appropriates
5 funds, or provides a local source of revenue, to
6 the entity for the purpose.

7 The purpose or effect of this bill would be
8 to require a new or increased expenditure of local
9 funds within the meaning of the amendment. However,
10 the bill does not require approval of a local
11 governmental entity or enactment by a 2/3 vote to
12 become effective because it comes within one of the
13 specified exceptions contained in the amendment.

14
15 A BILL
16 TO BE ENTITLED
17 AN ACT
18

19 To establish the Office of the Ombudsman For Child
20 Welfare; to provide for the Statewide Advisory Committee to
21 the Ombudsman; to provide for the appointment of the ombudsman
22 and the powers and duties of the ombudsman; to prohibit
23 discrimination or retaliation for complaints and to provide
24 criminal penalties for violations; to provide for a protocol
25 committee in each county for the investigation and prosecution
26 of alleged cases of child abuse; and in connection therewith
27 would have as its purpose or effect the requirement of a new

1 or increased expenditure of local funds within the meaning of
2 Amendment 621 of the Constitution of Alabama of 1901, now
3 appearing as Section 111.05 of the Official Recompilation of
4 the Constitution of Alabama of 1901, as amended.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. For the purposes of this act, the
7 following words have the following meanings:

8 (1) DEPARTMENT. The Department of Human Resources.

9 (2) OMBUDSMAN. The director or agent of the Director
10 for the Office of the Ombudsman for Child Welfare charged with
11 carrying out the duties and responsibilities in this act.

12 Section 2. (a) There is created the Office of the
13 Ombudsman for Child Welfare, referred to in this act as the
14 ombudsman. The ombudsman shall be located within the
15 Department of Children's Affairs for administrative and
16 budgetary purposes.

17 (b) The ombudsman shall be a licensed attorney of
18 this state and shall have knowledge of the child welfare
19 system and the juvenile justice system and shall be qualified
20 to perform the duties of the office as set forth in this act.

21 (c) The ombudsman shall act independently of any
22 state official, department, or agency in the performance of
23 his or her duties.

24 (d) The ombudsman or his or her designee shall be a
25 member of the State Child Death Review Team.

26 Section 3. The purpose of the ombudsman is to
27 conduct an independent and neutral investigation of any

1 complaint that an action or failure to act has adversely
2 affected the health, safety, or welfare of a child or the
3 reunification of families and seek a resolution of the
4 complaint. The ombudsman shall perform the following duties:

5 (1) Receive complaints concerning any action,
6 inaction, or decision of a department or any contractor or
7 agent thereof or any provider that receives public monies that
8 may adversely affect the health, safety, or welfare of
9 children or reunification of families.

10 (2) Investigate any complaint that he or she deems
11 necessary and seek resolution of the complaint by appropriate
12 action, which may include, but is not limited to, referring
13 the complaint to the appropriate department, contractor,
14 agent, provider, or law enforcement agency and making
15 recommendations as needed for any action to resolve the
16 complaint.

17 (3) Periodically review the facilities and
18 procedures of any and all public or private institutions and
19 residences where a juvenile has been placed by the juvenile
20 court or the department.

21 (4) Review findings and recommendations by the State
22 Advisory Committee to the ombudsman and the county protocol
23 committees.

24 (5) Prepare a written annual report to the Governor,
25 the Legislature, and the public on the summary of the actions
26 taken by the ombudsman during the previous year.

1 (6) Establish policies and procedures for the Office
2 of the Ombudsman for Child Welfare to accomplish the purposes
3 of this act.

4 Section 4. The ombudsman shall have all of the
5 following powers:

6 (1) To communicate privately, in writing or orally,
7 with any child, parent, guardian of a child, or legal
8 custodian.

9 (2) To have access to any department records
10 relating to the care or custody of a child, and to have
11 access, including the right to inspect, copy, and subpoena
12 records held by clerks of the various courts, law enforcement
13 agencies, service providers, including medical and mental
14 health, and institutions, public or private, with which a
15 particular child has been either voluntarily or otherwise
16 placed for care or which provided treatment to the child in
17 this state. All records obtained by the ombudsman shall be
18 confidential, except disclosures may be permitted if the
19 ombudsman deems it necessary to enable the ombudsman to
20 perform his or her duties and to support any recommendations
21 resulting from an investigation. Anyone wishing to obtain
22 records held by the ombudsman shall petition the original
23 source where the records are kept.

24 (3) To enter and inspect any and all public
25 institutions, facilities, and residences where a child has
26 been placed by a court or the department and where the child
27 is currently residing.

1 (4) To interview any employee of a department or any
2 employee of an agency and contractor thereof.

3 (5) To apply to the Governor to bring legal action
4 to require a department or contractor or agent thereof to take
5 or refrain from taking any action required or prohibited by
6 law involving the protection of children.

7 (6) To apply for and accept grants, gifts, and
8 bequests of funds from other states, federal and interstate
9 agencies, independent authorities, private firms, individuals,
10 and foundations for the purpose of carrying out the lawful
11 responsibilities of the ombudsman.

12 (7) When less formal means of resolution do not
13 achieve appropriate results, to pursue remedies provided by
14 this act on behalf of children for the purpose of effectively
15 carrying out this act.

16 (8) To recommend changes that would promote the
17 child's best interest by amendment or addition to a
18 department's administrative code or policies and to the
19 Legislature.

20 (9) To provide education relating to the protection
21 of children and the reunification of families.

22 Section 5. (a) No person shall discriminate or
23 retaliate in any manner against any child, parent, guardian,
24 or legal custodian of a child, employee of a facility, agency,
25 institution, or other type of provider, or any other person
26 because of the making of a complaint or providing of
27 information in good faith to the ombudsman or willfully

1 interfere with the ombudsman in the performance of his or her
2 official duties.

3 (b) Any person violating this section shall be
4 guilty of a Class C misdemeanor.

5 Section 6. (a) There is established the State
6 Advisory Committee to the Ombudsman. The advisory committee
7 shall consist of the following members: One attorney appointed
8 by the Alabama State Bar Association; one juvenile court judge
9 appointed by the Chief Justice of the Supreme Court; one
10 pediatrician with expertise in child and adolescent treatment
11 or child abuse and neglect appointed by the Medical
12 Association of the State of Alabama; one psychologist with
13 expertise in child and adolescent treatment appointed by the
14 Alabama Psychological Association; one licensed independent
15 clinical social worker appointed by the Alabama State Board of
16 Social Work Examiners; one psychiatrist with expertise in
17 child and adolescent treatment appointed by the Medical
18 Association of the State of Alabama; and three members, one of
19 whom is a parent or a person who as a child was formerly
20 involved in the state child welfare system appointed by the
21 child advocate.

22 (b) No member of the advisory committee shall be a
23 person who is a volunteer for, a board member of, or is
24 employed by or contractor of, any entity or agency subject to
25 the review of, or evaluation or monitoring by the ombudsman,
26 or who lobbies on behalf of any entity or agency subject to
27 the review of, or evaluation or monitoring by, the ombudsman.

1 (c) Each member of the advisory committee shall
2 serve a term of five years and may be reappointed at the
3 conclusion of the term. All initial appointments to the
4 advisory committee shall be made no later than October 1,
5 2015. Any vacancy in the membership of the committee shall be
6 filled by the appointing authority for the unexpired portion
7 of the term. The committee shall elect from among the members
8 a chair and a vice chair.

9 (d) It shall be the duty of the advisory committee
10 to provide advice and support to the ombudsman related to the
11 duties described in this act. The committee's duties include,
12 but are not limited to, the following:

13 (1) To establish a regular meeting schedule and form
14 subcommittees as may be appropriate.

15 (2) To meet with the ombudsman and staff to review
16 and assess patterns of treatment and services, policy
17 implications, and necessary systemic improvements.

18 (3) To provide an annual report on its activities
19 and recommendations in conjunction with the ombudsman, and
20 submit the report to the Governor, the President of the
21 Senate, and the Speaker of the House of Representatives, on or
22 by December 31, 2016, and annually thereafter.

23 (e) The advisory committee shall maintain
24 confidentiality of any personal information obtained by the
25 committee.

1 Section 7. (a) Each county shall establish a
2 protocol for the investigation and prosecution of alleged
3 cases of child abuse.

4 (b) The chief judge of the circuit in which the
5 county is located shall establish a protocol committee as
6 provided in subsection (c) and shall appoint an interim chair
7 who shall preside over the first meeting. The chief judge
8 shall appoint persons to fill any vacancies on the protocol
9 committee. The protocol committee shall thereafter elect a
10 chair from its membership. The protocol committee shall be
11 charged with developing local protocols for the investigation
12 and prosecution of alleged cases of child abuse.

13 (c) Each of the following individuals, agencies, and
14 entities shall designate a representative to serve on the
15 protocol committee in each county:

- 16 (1) The sheriff.
- 17 (2) The county Department of Human Resources.
- 18 (3) The district attorney.
- 19 (4) The juvenile court judge.
- 20 (5) The county board of education.
- 21 (6) The county mental health organization.
- 22 (7) The chief of police of the largest municipality
23 in the county.
- 24 (8) The county public health department.
- 25 (9) The coroner or county medical examiner.
- 26 (10) Any other person the chief judge deems
27 necessary to achieve the duties as set forth in this section.

1 (d) If any designated agency fails to carry out its
2 duties relating to participation on the protocol committee,
3 the chief circuit court judge of the circuit may issue an
4 order requiring the participation of the agency. Failure to
5 comply with the order shall be cause for punishment as
6 contempt of court.

7 (e) The protocol committee in a county shall elect a
8 chair who shall be responsible for ensuring that written
9 protocol procedures are followed by all agencies. The person
10 appointed may be independent of agencies listed in subsection
11 (c). The protocol committee may appoint additional members as
12 necessary and proper to accomplish the purposes of the
13 protocol committee.

14 (f) The protocol committee shall adopt a written
15 protocol which shall be filed with the department, a copy of
16 which shall be furnished to each agency in the county handling
17 the cases of abused children. The protocol shall be a written
18 document outlining in detail the procedures to be used in
19 investigation and prosecuting cases arising from alleged child
20 abuse and the methods to be used in coordinating treatment
21 programs for the perpetrator, the family, and the child. The
22 protocol shall also outline procedures to be used when child
23 abuse occurs in a household where there is violence between
24 past or present spouses, persons who are parents of the same
25 child, parents and children, stepparents and stepchildren,
26 foster parents and foster children, or other persons living or
27 formerly living in the same household. The protocol adopted

1 shall not be inconsistent with the policies and procedures of
2 the department.

3 (g) The purpose of the protocol shall be to ensure
4 coordination and cooperation between all agencies involved in
5 a child abuse case so as to increase the efficiency of all
6 agencies handling the cases, to minimize the stress created
7 for the allegedly abused child by the legal and investigatory
8 process, and to ensure that more effective treatment is
9 provided for the perpetrator, the family, and the child,
10 including counseling.

11 (h) Upon adoption in writing of the protocol, the
12 protocol committee shall continue in existence and shall meet
13 at least semiannually for the purpose of evaluating the
14 effectiveness of the protocol and appropriately modifying and
15 updating the same.

16 (i) Each protocol committee shall adopt or amend its
17 written protocol to specify the circumstances under which law
18 enforcement officers are required or are not required to
19 accompany investigators from the county department of human
20 resources when the investigators investigate reports of child
21 abuse. In determining when law enforcement officers accompany
22 investigators, the protocol committee shall consider the need
23 to protect the alleged victim and the need to preserve the
24 confidentiality of the report. Each protocol committee shall
25 establish joint work efforts between the law enforcement and
26 investigative agencies in child abuse investigations. The
27 adoption or amendment of the protocol shall also describe

1 measures which may be taken within the county to prevent child
2 abuse and shall be filed with and furnished to the same
3 entities with or to which an original protocol is required to
4 be filed or furnished. The protocol shall be further amended
5 to specify procedures to be adopted by the protocol committee
6 to ensure that written protocol procedures are followed.

7 (j) The protocol committee shall issue a report no
8 later than the first day of July each year. The report shall
9 evaluate the extent to which investigations of child abuse
10 during the 12 months prior to the report have complied with
11 the protocols of the protocol committee, recommend measures to
12 improve compliance, and describe which measures taken within
13 the county to prevent child abuse have been successful. The
14 report shall be transmitted to the county governing authority,
15 the Office of the Ombudsman for Child Welfare, and the chief
16 circuit judge.

17 (k) The protocol committee shall adopt a written
18 sexual abuse and sexual exploitation protocol which shall be
19 filed with the department and the Office of the Ombudsman for
20 Child Welfare, a copy of which shall be furnished to each
21 agency in the county handling the cases of sexually abused or
22 exploited children. The sexual abuse and sexual exploitation
23 protocol shall be a written document outlining in detail the
24 procedures to be used in investigating and prosecuting cases
25 arising from alleged sexual abuse and sexual exploitation and
26 the procedures to be followed concerning the obtainment of and
27 payment for sexual assault examinations. Each protocol

1 committee shall adopt or amend its written sexual abuse and
2 sexual exploitation protocol. The sexual abuse and sexual
3 exploitation protocol adopted shall be consistent with the
4 policies and procedures of the department. A sexual abuse and
5 sexual exploitation protocol is not intended to, and does not
6 and may not be relied upon to create any rights, substantive
7 or procedural, enforceable at law by any party in any matter
8 civil or criminal. The protocol shall not limit or otherwise
9 restrict a prosecuting attorney in the exercise of his or her
10 discretion nor in the exercise of any otherwise lawful legal
11 actions.

12 Section 8. Although this bill would have as its
13 purpose or effect the requirement of a new or increased
14 expenditure of local funds, the bill is excluded from further
15 requirements and application under Amendment 621, now
16 appearing as Section 111.05 of the Official Recompilation of
17 the Constitution of Alabama of 1901, as amended, because the
18 bill defines a new crime or amends the definition of an
19 existing crime.

20 Section 9. All laws or parts of laws which conflict
21 with this act are repealed.

22 Section 10. This act shall become effective on the
23 first day of the third month following its passage and
24 approval by the Governor, or its otherwise becoming law.