

Introduced by

1 A BILL for an Act to create and enact a new chapter to title 54, relating to the establishment of a
2 family and children's ombudsman program in the governor's office.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** A new chapter to title 54 of the North Dakota Century Code is created and
5 enacted as follows:

6 **Family and children's ombudsman office created - Purpose.** The family and
7 children's ombudsman office is created within the governor's office. The purpose of the family
8 and children's ombudsman office is to promote public awareness and understanding of family
9 and children's services, identify system issues and responses for the governor and the
10 legislative assembly to act upon, and monitor and ensure compliance with administrative acts,
11 relevant statutes, rules, and policies pertaining to family and children's services and the
12 placement, supervision, and treatment of children in the state's care or in state-licensed
13 facilities or residences. The ombudsman shall report directly to the governor and shall exercise
14 powers and duties independently of the department of human services.

15 **Ombudsman - Appointment - Term of office.**

- 16 1. Subject to confirmation by the senate, the governor shall appoint an ombudsman.
17 The individual appointed must be an individual of recognized judgment,
18 independence, objectivity, and integrity, and must be qualified by training or
19 experience, or both, in family and children's services law and policy.
20 2. The individual appointed ombudsman shall hold office for a term of three years and
21 may be reappointed to subsequent terms. The governor may remove the
22 ombudsman only for neglect of duty, misconduct, or inability to perform duties.
23 Any vacancy must be filled by similar appointment for the remainder of the
24 unexpired term.

1 **Duties.** The ombudsman shall:

2 1. Provide information as appropriate on the rights and responsibilities of individuals
3 receiving family and children's services, and on the procedures for providing these
4 services;

5 2. Investigate, upon the ombudsman's initiative or upon receipt of a complaint, an
6 administrative act alleged to be contrary to law, rule, or policy, imposed without an
7 adequate statement of reason, or based on irrelevant, immaterial, or erroneous
8 grounds; however, the ombudsman may decline to investigate any complaint as
9 provided by rules adopted under this chapter;

10 3. Monitor the procedures as established, implemented, and practiced by the
11 department of human services to carry out its responsibilities in delivering family
12 and children's services with a view toward appropriate preservation of families and
13 ensuring children's health and safety;

14 4. Review periodically the facilities and procedures of state institutions and
15 state-licensed facilities or residences that serve children;

16 5. Recommend changes in the procedures for addressing the needs of families and
17 children;

18 6. Submit to the governor by July first an annual report analyzing the work of the
19 office, including recommendations; and

20 7. Adopt rules necessary to implement this chapter.

21 **Confidentiality.** The ombudsman shall treat all matters under investigation, including
22 the identities of service recipients, complainants, and individuals from whom information is
23 acquired, as confidential, except as far as disclosures may be necessary to enable the
24 ombudsman to perform the duties of the office and to support any recommendations resulting
25 from an investigation. Upon receipt of information that by law is confidential or privileged, the
26 ombudsman shall maintain the confidentiality of that information and may not further disclose or
27 disseminate the information, except as provided by applicable state or federal law.

28 Investigative records of the office of the ombudsman are confidential.

29 **Admissibility of evidence - Testimony regarding official duties.**

30 1. Neither the ombudsman nor the ombudsman's staff may be compelled in any
31 judicial or administrative proceeding to testify or to produce evidence regarding the

1 exercise of the official duties of the ombudsman or of the ombudsman's staff. All
2 related memoranda, work product, notes, and case files of the ombudsman's office
3 are confidential, are not subject to discovery, judicial or administrative subpoena,
4 or other method of legal compulsion, and are not admissible in evidence in a
5 judicial or administrative proceeding.

6 2. The privilege described in subsection 1 does not apply when:

7 a. The ombudsman or a member of the ombudsman's staff has direct knowledge
8 of an alleged crime and the testimony, evidence, or discovery sought is
9 relevant to that allegation;

10 b. The ombudsman or a member of the ombudsman's staff has received a threat
11 of, or becomes aware of a risk of, imminent serious harm to any individual,
12 and the testimony, evidence, or discovery sought is relevant to that threat or
13 risk;

14 c. The ombudsman has been asked to provide general information regarding the
15 general operation of, or the general processes employed at, the
16 ombudsman's office; or

17 d. The ombudsman or a member of the ombudsman's staff has direct knowledge
18 of a failure by any person specified in section 50-25.1-03, including the state
19 family and children's ombudsman or any volunteer in the ombudsman's office,
20 to comply with section 50-25.1-03.

21 **Release of identifying information.**

22 1. Identifying information about complainants or witnesses is not subject to any
23 method of legal compulsion, nor may the information be revealed to the governor,
24 except under the following circumstances:

25 a. The complainant or witness waives confidentiality;

26 b. Under a legislative subpoena when there is legislative investigation for neglect
27 of duty or misconduct by the ombudsman or ombudsman's office when the
28 identifying information is necessary to the investigation of the ombudsman's
29 acts; or

1 c. Under an investigation or inquiry by the governor as to neglect of duty or
2 misconduct by the ombudsman or ombudsman's office when the identifying
3 information is necessary to the investigation of the ombudsman's acts.

4 2. For the purposes of this section, "identifying information" includes the
5 complainant's or witness's name, location, telephone number, likeness, social
6 security number or other identification number, or identification of immediate family
7 members.

8 **Liability for good-faith performance - Privileged communications.**

9 1. An employee of the family and children's ombudsman office is not liable for
10 good-faith performance of responsibilities under this chapter.

11 2. No discriminatory, disciplinary, or retaliatory action may be taken against an
12 employee of the department of human services, an employee of a contracting
13 agency of the department of human services, a foster parent, or a recipient of
14 family and children's services for any communication made, or information given or
15 disclosed, to aid the family and children's ombudsman office in carrying out its
16 responsibilities, unless the communication or information is made, given, or
17 disclosed maliciously or without good faith. This subsection is not intended to
18 infringe on the rights of the employer to supervise, discipline, or terminate an
19 employee for other reasons.

20 3. All communications by an ombudsman, if reasonably related to the requirements of
21 that individual's responsibilities under this chapter and done in good faith, are
22 privileged and that privilege serves as a defense in any action in libel or slander.

23 **Report of conduct warranting criminal or disciplinary proceedings.** When the
24 ombudsman or a member of the ombudsman's staff has reasonable cause to believe that any
25 public official, employee, or other person has acted in a manner warranting criminal or
26 disciplinary proceedings, the ombudsman or a member of the ombudsman's staff shall report
27 the matter, or cause a report to be made, to the appropriate authorities.

28 **Communication with children in custody of department of human services -**

29 **Access to information.** The department of human services shall:

- 1 1. Allow the ombudsman or the ombudsman's designee to communicate privately
2 with any child in the custody of the department for the purposes of carrying out its
3 duties under this chapter;
- 4 2. Permit the ombudsman or the ombudsman's designee physical access to state
5 institutions and state-licensed facilities or residences that serve children for the
6 purpose of carrying out its duties under this chapter;
- 7 3. Upon the ombudsman's request, grant the ombudsman or the ombudsman's
8 designee the right to access, inspect, and copy all relevant information, records, or
9 documents in the possession or control of the department of human services which
10 the ombudsman considers necessary in an investigation; and
- 11 4. Grant the family and children's ombudsman office unrestricted online access to the
12 department's child welfare data system of record (FRAME) or any successor
13 information system for the purpose of carrying out the office's duties under this
14 chapter.

15 **Construction.** This chapter does not conflict with the duty to report specified under
16 chapter 50-25.1.