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HOUSE BILL 1537

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State of Washington

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By Representatives Brekke, Hargrove, Leonard, Jones, Valle, Nelson, Padden, Fraser, Tate, Day, Rayburn, Kremen, Riley, H. Myers, Scott, Cole, R. Johnson, Cooper, Winsley, Jacobsen, Phillips and Roland.

Read first time January 31, 1991. Referred to Committee on Human Services\Appropriations.

1 AN ACT Relating to establishing an office of children's services  
2 ombuds; amending RCW 26.44.030; adding new sections to chapter 43.63A  
3 RCW; creating a new section; repealing RCW 26.44.070; and making an  
4 appropriation.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that, despite  
7 the best efforts and intentions of the department of social and health  
8 services, some families in Washington state have unresolved disputes  
9 with the department relating to actions taken by the division of  
10 children and family services, and that there is no independent and  
11 nonadversarial process in place to resolve these disputes. The  
12 legislature further finds that the availability of an independent and  
13 nonadversarial process for complaint investigation and dispute

1 resolution can further the goal of maintaining children in safe and  
2 healthy families.

3 (2) It is the purpose of this act to establish a procedure that is  
4 responsive to the needs of families in Washington state who are the  
5 subject of actions taken by the department of social and health  
6 services pursuant to chapters 74.13, 74.14A, 74.15, 26.44, 13.32A, and  
7 13.34 RCW, that benefits children, their families, and the department  
8 by providing an independent and nonadversarial mechanism to resolve  
9 disputes.

10 NEW SECTION. **Sec. 2.** Unless the context clearly requires  
11 otherwise, the definitions in this section shall apply throughout  
12 sections 2 through 9 of this act.

13 (1) "Department" means the department of social and health  
14 services.

15 (2) "Administrative act" means any action, omission, decision,  
16 recommendation, practice, or procedure of the department relating to  
17 its activities according to chapters 74.13, 74.14A, 74.15, 26.44,  
18 13.32A, and 13.34 RCW, but does not include the preparation,  
19 presentation, or introduction of legislation.

20 NEW SECTION. **Sec. 3.** (1) There is established in the  
21 department of community development the office of the children's  
22 services ombuds.

23 (2) The department of community development shall appoint the  
24 children's services ombuds, who shall be a person having training or  
25 experience in the provision or administration of services to children  
26 and families and in complaint investigation or nonadversarial dispute  
27 resolution mechanisms. The ombuds shall not be removed from his or her  
28 office unless good cause for removal is shown.



1 complainant of that decision, stating his or her reasons. If the  
2 ombuds decides that a complaint is an appropriate subject for  
3 investigation under section 4 of this act, he or she shall notify the  
4 department of his or her decision and the specifics of the complaint.

5 NEW SECTION. **Sec. 6.** In carrying out investigative or dispute  
6 resolution activities under sections 2 through 9 of this act, the  
7 children's services ombuds shall have the right:

8 (1) To communicate privately by mail or orally with a parent who is  
9 the subject of investigative or dispute resolution activities by the  
10 ombuds; and

11 (2) To have access, including the right to inspect, copy, and  
12 subpoena child welfare records held by the department, facilities where  
13 a child has been placed for care or treatment, the clerk of a superior  
14 court of the state of Washington, or law enforcement agencies. Unless  
15 otherwise authorized by law, the ombuds shall not have access to  
16 identifying information regarding a person making a confidential  
17 referral of suspected child abuse or neglect or a police informant;  
18 mental health or substance abuse treatment information governed by  
19 federal confidentiality provisions; or information pertaining to the  
20 testing, diagnosis, or treatment of any person for HIV infection, AIDS,  
21 or any sexually transmitted disease. Information obtained pursuant to  
22 this subsection shall be kept confidential and shall not be further  
23 disseminated.

24 NEW SECTION. **Sec. 7.** If after investigation the children's  
25 services ombuds finds that:

26 (1) A complaint should be further considered by the department;

27 (2) An administrative act should be modified or canceled; or

1 (3) Reasons or more complete reasons should be given for an  
2 administrative act;  
3 the ombuds shall prepare recommendations and may request that the  
4 department notify the ombuds, within a specified time, of the action  
5 taken on his or her recommendations or may provide services to assist  
6 the complainant and the department in resolving the dispute that led to  
7 the complaint if the complainant requests such services.

8 NEW SECTION. **Sec. 8.** After a reasonable time has elapsed, the  
9 children's services ombuds shall notify the complainant of any action  
10 taken by the ombuds and by the department as a result of the  
11 investigation.

12 NEW SECTION. **Sec. 9.** (1) The children's services ombuds shall  
13 maintain records indicating the final disposition of any complaint  
14 forwarded to the department.

15 (2) All records of the children's services ombuds pertaining to  
16 investigative or dispute resolution activities undertaken by the ombuds  
17 shall be confidential. Information contained in those records may not  
18 be disclosed publicly in a manner that might identify individuals.  
19 However, records shall be available to persons approved by a superior  
20 court of the state of Washington upon application for good cause. Any  
21 information obtained pursuant to section 6(2) of this act shall be kept  
22 confidential and shall not be further disseminated except as  
23 specifically authorized or required by federal or state law.

24 **Sec. 10.** RCW 26.44.030 and 1989 c 22 s 1 are each amended to read  
25 as follows:

26 (1) When any practitioner, professional school personnel,  
27 registered or licensed nurse, social service counselor, psychologist,

1 pharmacist, licensed or certified child care providers or their  
2 employees, employee of the department, children's services ombuds or  
3 duly designated representative of the ombuds, or ((juvenile)) probation  
4 or parole officer has reasonable cause to believe that a child or adult  
5 dependent or developmentally disabled person has suffered abuse or  
6 neglect, he or she shall report such incident, or cause a report to be  
7 made, to the proper law enforcement agency or to the department as  
8 provided in RCW 26.44.040. The report shall be made at the first  
9 opportunity, but in no case longer than forty-eight hours after there  
10 is reasonable cause to believe that the child or adult has suffered  
11 abuse or neglect.

12 (2) Any other person who has reasonable cause to believe that a  
13 child or adult dependent or developmentally disabled person has  
14 suffered abuse or neglect may report such incident to the proper law  
15 enforcement agency or to the department of social and health services  
16 as provided in RCW 26.44.040.

17 (3) The department, upon receiving a report of an incident of abuse  
18 or neglect pursuant to this chapter, involving a child or adult  
19 dependent or developmentally disabled person who has died or has had  
20 physical injury or injuries inflicted upon him or her other than by  
21 accidental means or who has been subjected to sexual abuse, shall  
22 report such incident to the proper law enforcement agency. In  
23 emergency cases, where the child, adult dependent, or developmentally  
24 disabled person's welfare is endangered, the department shall notify  
25 the proper law enforcement agency within twenty-four hours after a  
26 report is received by the department. In all other cases, the  
27 department shall notify the law enforcement agency within seventy-two  
28 hours after a report is received by the department. If the department  
29 makes an oral report, a written report shall also be made to the proper  
30 law enforcement agency within five days thereafter.

1           (4) Any law enforcement agency receiving a report of an incident of  
2 abuse or neglect pursuant to this chapter, involving a child or adult  
3 dependent or developmentally disabled person who has died or has had  
4 physical injury or injuries inflicted upon him or her other than by  
5 accidental means, or who has been subjected to sexual abuse, shall  
6 report such incident in writing as provided in RCW 26.44.040 to the  
7 proper county prosecutor or city attorney for appropriate action  
8 whenever the law enforcement agency's investigation reveals that a  
9 crime may have been committed. The law enforcement agency shall also  
10 notify the department of all reports received and the law enforcement  
11 agency's disposition of them. In emergency cases, where the child,  
12 adult dependent, or developmentally disabled person's welfare is  
13 endangered, the law enforcement agency shall notify the department  
14 within twenty-four hours. In all other cases, the law enforcement  
15 agency shall notify the department within seventy-two hours after a  
16 report is received by the law enforcement agency.

17           (5) Any county prosecutor or city attorney receiving a report under  
18 subsection (4) of this section shall notify the victim, any persons the  
19 victim requests, and the local office of the department, of the  
20 decision to charge or decline to charge a crime, within five days of  
21 making the decision.

22           (6) The department may conduct ongoing case planning and  
23 consultation with those persons or agencies required to report under  
24 this section, with consultants designated by the department, and with  
25 designated representatives of Washington Indian tribes if the client  
26 information exchanged is pertinent to cases currently receiving child  
27 protective services or department case services for the developmentally  
28 disabled. Upon request, the department shall conduct such planning and  
29 consultation with those persons required to report under this section  
30 if the department determines it is in the best interests of the child

1 or developmentally disabled person. Information considered privileged  
2 by statute and not directly related to reports required by this section  
3 shall not be divulged without a valid written waiver of the privilege.

4 (7) Any case referred to the department by a physician licensed  
5 under chapter 18.57 or 18.71 RCW on the basis of an expert medical  
6 opinion that child abuse, neglect, or sexual assault has occurred and  
7 that the child's safety will be seriously endangered if returned home,  
8 the department shall file a dependency petition unless a second  
9 licensed physician of the parents' choice believes that such expert  
10 medical opinion is incorrect. If the parents fail to designate a  
11 second physician, the department may make the selection. If a  
12 physician finds that a child has suffered abuse or neglect but that  
13 such abuse or neglect does not constitute imminent danger to the  
14 child's health or safety, and the department agrees with the  
15 physician's assessment, the child may be left in the parents' home  
16 while the department proceeds with reasonable efforts to remedy  
17 parenting deficiencies.

18 (8) Persons or agencies exchanging information under subsection (6)  
19 of this section shall not further disseminate or release the  
20 information except as authorized by state or federal statute.  
21 Violation of this subsection is a misdemeanor.

22 (9) Upon receiving reports of abuse or neglect, the department or  
23 law enforcement agency may interview children. The interviews may be  
24 conducted on school premises, at day-care facilities, at the child's  
25 home, or at other suitable locations outside of the presence of  
26 parents. Parental notification of the interview shall occur at the  
27 earliest possible point in the investigation that will not jeopardize  
28 the safety or protection of the child or the course of the  
29 investigation. Prior to commencing the interview the department or law  
30 enforcement agency shall determine whether the child wishes a third

1 party to be present for the interview and, if so, shall make reasonable  
2 efforts to accommodate the child's wishes. Unless the child objects,  
3 the department or law enforcement agency shall make reasonable efforts  
4 to include a third party in any interview so long as the presence of  
5 the third party will not jeopardize the course of the investigation.

6 (10) Upon receiving a report of incidents, conditions, or  
7 circumstances of child abuse and neglect, the department shall have  
8 access to all relevant records of the child in the possession of  
9 mandated reporters and their employees.

10 (11) The department shall maintain investigation records and  
11 conduct timely and periodic reviews of all cases constituting abuse and  
12 neglect. The department shall maintain a log of screened-out  
13 nonabusive cases.

14 (12) The department of social and health services shall, within  
15 funds appropriated for this purpose, use a risk assessment tool when  
16 investigating child abuse and neglect referrals. The tool shall be  
17 used, on a pilot basis, in three local office service areas. The  
18 department shall, within funds appropriated for this purpose, offer  
19 enhanced community-based services to persons who are determined not to  
20 require further state intervention.

21 The department shall report to the ways and means committees of the  
22 senate and house of representatives on the use of the tool by December  
23 1, 1989. The report shall include recommendations on the continued use  
24 and possible expanded use of the tool.

25 (13) Upon receipt of such report the law enforcement agency may  
26 arrange to interview the person making the report and any collateral  
27 sources to determine if any malice is involved in the reporting.

28 NEW SECTION. **Sec. 11.** RCW 26.44.070 and 1987 c 524 s 12, 1987  
29 c 206 s 6, 1986 c 269 s 3, 1984 c 97 s 6, 1981 c 164 s 4, 1977 ex.s. c

1 80 s 29, 1975 1st ex.s. c 217 s 7, 1972 ex.s. c 46 s 1, & 1969 ex.s. c  
2 35 s 6 are each repealed.

3 NEW SECTION. **Sec. 12.** Sections 2 through 9 of this act are  
4 each added to chapter 43.63A RCW.

5 NEW SECTION. **Sec. 13.** The sum of two hundred fifty thousand  
6 dollars, or as much thereof as may be necessary, is appropriated from  
7 the general fund to the department of community development for the  
8 biennium ending June 30, 1993, to carry out the purposes of this act.

9 NEW SECTION. **Sec. 14.** If any provision of this act or its  
10 application to any person or circumstance is held invalid, the  
11 remainder of the act or the application of the provision to other  
12 persons or circumstances is not affected.