CHAPTER 63--H.F.No. 3845

An act relating to children and families; establishing the Office of the Foster Youth Ombudsperson and Board of the Foster Youth Ombudsperson; appropriating money for the Office of the Foster Youth Ombudsperson and Board of the Foster Youth Ombudsperson; proposing coding for new law in Minnesota Statutes, chapters 13; 260C.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[13.876] FOSTER YOUTH OMBUDSPERSON; DATA.**

Subdivision 1. **Private data.** The following data maintained by the foster youth ombudsperson are classified as private data, pursuant to section 13.02, subdivision 12:

(1) all data on individuals related to contacts made by individuals seeking the assistance of the ombudsperson, except as specified in subdivision 2;

(2) data recorded from personal and phone conversations and in correspondence between the ombudsperson's staff and persons interviewed during the course of an investigation;

(3) data from juvenile court proceedings that do not pertain to juveniles certified as adults, that are in the possession of the foster youth ombudsperson;

(4) case assignment data; and

(5) data on individuals who are juveniles that are contained within an inactive investigative file maintained by the ombudsperson.

Subd. 2. **Confidential data.** Data contained within an active investigative file maintained by the ombudsperson are classified as confidential data, pursuant to section 13.02, subdivision 3.

Subd. 3. **Access to data.** The foster youth ombudsperson has access to juvenile placement and medical data as provided under section 260C.82, subdivision 6.

Sec. 2. **[260C.80] OFFICE OF THE FOSTER YOUTH OMBUDSPERSON; BOARD.**

Subdivision 1. **Office of the Foster Youth Ombudsperson.** The Office of the Foster Youth Ombudsperson is hereby created. The ombudsperson serves at the pleasure of the governor in the unclassified service, must be selected without regard to political affiliation, and must be a person highly competent and qualified to work to improve the lives of youth in the foster care system, while understanding the administration and public policy related to youth in the foster care system. No person may serve as the foster youth ombudsperson while holding any other public office. The foster youth ombudsperson is accountable to the governor and may investigate decisions, acts, and other matters related to the health, safety, and welfare of youth in foster care to promote the highest attainable standards of competence, efficiency, and justice for youth who are in the care of the state.

Subd. 2. **Board of the Foster Youth Ombudsperson.** The Board of the Foster Youth Ombudsperson is established to make recommendations to the foster youth ombudsperson and staff while continuously overseeing the foster youth ombudsperson's work. The board shall evaluate the foster youth ombudsperson's

effectiveness through regular meetings with current and former youth in the foster care system and community advocates working closely with the foster care system. The board consists of:

(1) five youth who are currently in the foster care system or who were recently in the foster care system;

(2) four adults who were in the foster care system as youths;

(3) one attorney who works in the juvenile court system or family court;

(4) one guardian ad litem who is currently appointed to protect the interests of minors in cases in the juvenile court system;

(5) one social worker who works in the juvenile justice system or family court; and

(6) three nonprofit professionals who work at nonprofits serving foster youth.

Subd. 3. **Terms; compensation; removal; vacancies.** The membership terms, compensation, removal of members, and filling of vacancies on the Board of the Foster Youth Ombudsperson are governed by section 15.0575. A member of the Board of the Foster Youth Ombudsperson must not have a conflict of interest with the board due to the member's employment with a county or the agency.

Sec. 3. **[260C.81] ORGANIZATION OF THE OFFICE OF THE FOSTER YOUTH OMBUDSPERSON.**

The foster youth ombudsperson may select, appoint, and compensate out of available funds assistants and employees to perform the ombudsperson's responsibilities, including intake, investigation, administrative support, legal advocacy, and other support necessary to assist foster youth. The foster youth ombudsperson and full-time staff are members of the Minnesota State Retirement Association. The foster youth ombudsperson may delegate to staff members any of the ombudsperson's authority or duties except the duty of formally making recommendations to an agency or reports to the Office of the Governor or to the legislature. The Office of the Foster Youth Ombudsperson shall provide outreach, resources, and assistance to youth in foster care by directly engaging with youth in residential treatment facilities, group homes, and family foster homes. The Office of the Foster Youth Ombudsperson shall receive administrative support from the commissioner of administration under section 16B.371.

Sec. 4. **[260C.82] POWERS OF FOSTER YOUTH OMBUDSPERSON; INVESTIGATION; ACTION ON COMPLAINTS: RECOMMENDATIONS.**

Subdivision 1. **Agency.** For purposes of this section, "agency" means the divisions, officials, or employees of the Minnesota Department of Human Services, the responsible social services agency, or a licensed child-placing agency.

Subd. 2. **Powers.** (a) The foster youth ombudsperson may:

(1) establish a complaint process, including how a person may make a complaint and how the ombudsperson may review and act upon the complaint;

(2) determine the scope and manner of the ombudsperson's and staff's investigations;

(3) make conclusions, recommendations, and proposals to the governor or to the legislature, provided that the governor or legislature may request and receive information from the ombudsperson at any time;

(4) investigate, upon a complaint or upon personal initiative, any action of an agency, including a request from a youth in foster care to examine the physical placement where the child resides;

(5) request and be given access to information from an agency that is necessary for performing the ombudsperson's responsibilities;

(6) subpoena any person to appear, give testimony, or produce documents or other evidence that the ombudsperson considers relevant to a matter under inquiry and may petition a state district court to seek enforcement of a subpoena. Any witness at a hearing or before an investigation has the same privileges reserved to a witness in the courts or under the laws of this state; and

(7) be present at court hearings, conferences, meetings, and deliberations when a youth in foster care requests the ombudsperson's presence.

(b) Neither the ombudsperson nor any member of the ombudsperson's staff shall be compelled to testify or to produce evidence in any judicial or administrative proceeding with respect to any matter involving the exercise of the ombudsperson's official duties.

Subd. 3. **Liability.** No proceeding or civil action except removal from office or a proceeding brought pursuant to chapter 13 shall be commenced against the foster youth ombudsperson for actions taken under sections 260C.80 to 260C.82, unless the act or omission demonstrates malicious intent or was grossly negligent.

Subd. 4. **Complaints.** (a) The ombudsperson may receive a complaint from any source concerning the health, safety, or welfare of a youth in foster care. The ombudsperson may, at the request of another or on the ombudsperson's own initiative, investigate any action of an agency or a family foster home, custodian, parent, or facility licensed by the state, including a residential treatment facility and secured detention facility. The ombudsperson may exercise powers without regard to the finality of any action. The ombudsperson may require a complainant to pursue other remedies or channels of complaint open to the complainant before accepting or investigating a complaint. After completing the investigation of a complaint, the ombudsperson shall inform the complainant, the agency, and any person who is the subject of the investigation of the action taken.

(b) A facility or family foster home must immediately forward any letter to the ombudsperson from a person in the facility or family foster home. The facility or family foster home must not open any letter to the ombudsperson from a person at the facility or foster home. A facility or family foster home must deliver any mail or forward any e-mail from the ombudsperson to a person in the facility or family foster home immediately after the facility or family foster home receives the mail or e-mail. A facility or family foster home must not punish a person for making a complaint to the ombudsperson. A facility or family foster home must not unfavorably alter the conditions of a person's placement as a consequence for making a complaint to the ombudsperson.

Subd. 5. **Recommendations.** (a) If the ombudsperson considers a complaint to be valid, the ombudsperson may recommend that an agency or a judicial officer:

(1) consider the matter further;

(2) modify or cancel the agency's or judicial officer's actions;

(3) change a ruling or explain an action; or

(4) take any other step that the ombudsperson recommends to provide direction or require action by a facility, placement, or custodian providing a residence to the complainant.

(b) If the ombudsperson requests, the agency shall, within the time that the ombudsperson specifies, inform the ombudsperson about the action taken based on the ombudsperson's recommendations or the reasons for not complying with the ombudsperson's recommendations. If the ombudsperson has the reason to believe that any person, including a public official, has acted in a manner warranting criminal or disciplinary proceedings, the ombudsperson may refer the matter to the appropriate authorities. If the ombudsperson believes that an action upon which a valid complaint is founded had a statutory basis, and that the statute produced results or effects that were unfair or otherwise objectionable, the ombudsperson shall bring to the attention of the governor and the legislature the ombudsperson's view concerning desirable statutory change.

Subd. 6. **Grants.** The ombudsperson may apply for and receive grants from public and private entities for the purposes of carrying out the ombudsperson's powers and duties under this section.

Subd. 7. **Data.** State district courts may and administrative agencies must provide the foster youth ombudsperson with access to juvenile court data, foster care placement data, and medical data maintained by an agency and classified as private data on individuals or confidential data on individuals when access to the data is necessary for the ombudsperson to perform the ombudsperson's duties under sections 260C.80 to 260C.82.

Sec. 5. **[260C.83] RECOMMENDATIONS AND REPORTS TO GOVERNOR.**

Subdivision 1. **Specific reports.** The ombudsperson may send conclusions and suggestions concerning any matter reviewed to the governor. Before finalizing a conclusion or recommendation that expressly or implicitly criticizes an agency, facility, program, or any person, the ombudsperson shall consult with the governor and the agency, facility, program, or person concerning the conclusion or recommendation. When sending a conclusion or recommendation to the governor that is adverse to an agency, facility, program, or any person, the ombudsperson shall include any statement of reasonable length made by that agency, facility, program, or person in defense or mitigation of the office's conclusion or recommendation.

Subd. 2. **General reports.** In addition to whatever conclusions or recommendations the ombudsperson may make to the governor on an ad hoc basis, the ombudsperson shall, at the end of each biennium, report to the governor and to the chairs and ranking minority members of the legislative committees with jurisdiction over child welfare and state government concerning the exercise of the ombudsperson's functions during the preceding biennium.

Sec. 6. **APPROPRIATION; OFFICE OF THE FOSTER YOUTH OMBUDSPERSON.**

$775,000 in fiscal year 2023 is appropriated from the general fund to the Office of the Foster Youth Ombudsperson for the establishment and operation of the Office of the Foster Youth Ombudsperson and the Board of the Foster Youth Ombudsperson. The base for this appropriation is $726,000 in fiscal year 2024 and $726,000 in fiscal year 2025.

Presented to the governor May 17, 2022