

IN THE SENATE

SENATE BILL NO. 1380

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO THE HEALTH AND SOCIAL SERVICES OMBUDSMAN; AMENDING SECTION  
2 67-2601, IDAHO CODE, AS AMENDED BY SECTION 2, CHAPTER 182, LAWS OF 2023,  
3 AND BY SECTION 33, CHAPTER 220, LAWS OF 2023, TO PROVIDE FOR THE OF-  
4 FICE OF HEALTH AND SOCIAL SERVICES OMBUDSMAN WITHIN THE DEPARTMENT OF  
5 SELF-GOVERNING AGENCIES; AMENDING TITLE 56, IDAHO CODE, BY THE ADDITION  
6 OF A NEW CHAPTER 19, TITLE 56, IDAHO CODE, TO DEFINE A TERM, TO ESTAB-  
7 LISH PROVISIONS REGARDING THE HEALTH AND SOCIAL SERVICES OMBUDSMAN,  
8 TO PROVIDE FOR POWERS AND DUTIES, TO ESTABLISH PROVISIONS REGARDING  
9 COMPLAINTS, TO ESTABLISH PROVISIONS REGARDING COMPLAINT REVIEW AND EX-  
10 AMINATION, TO ESTABLISH PROVISIONS REGARDING THE OBLIGATIONS OF STATE  
11 AGENCIES AND DEPARTMENTS, TO ESTABLISH PROVISIONS REGARDING PENALTIES  
12 FOR OBSTRUCTION OR RETALIATION, TO ESTABLISH PROVISIONS REGARDING AC-  
13 CESS TO RECORDS, AND TO ESTABLISH PROVISIONS REGARDING DISCLOSURE OF  
14 COMPLAINTS; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.  
15

16 Be It Enacted by the Legislature of the State of Idaho:

17 SECTION 1. That Section 67-2601, Idaho Code, as amended by Section 2,  
18 Chapter 182, Laws of 2023, and by Section 33, Chapter 220, Laws of 2023, be,  
19 and the same is hereby amended to read as follows:

20 67-2601. DEPARTMENT CREATED -- ORGANIZATION. (1) There is hereby cre-  
21 ated the department of self-governing agencies. The department shall, for  
22 the purposes of section 20, article IV of the constitution of the state of  
23 Idaho, be an executive department of the state government.

24 (2) The department shall consist of the following:

25 (a) Agricultural commodity commissions: Idaho apple commission, as  
26 provided by chapter 36, title 22, Idaho Code; Idaho bean commission,  
27 as provided by chapter 29, title 22, Idaho Code; Idaho beef council, as  
28 provided by chapter 29, title 25, Idaho Code; Idaho cherry commission,  
29 as provided by chapter 37, title 22, Idaho Code; Idaho dairy products  
30 commission, as provided by chapter 31, title 25, Idaho Code; Idaho pea  
31 and lentil commission, as provided by chapter 35, title 22, Idaho Code;  
32 Idaho potato commission, as provided by chapter 12, title 22, Idaho  
33 Code; Idaho wheat commission, as provided by chapter 33, title 22, Idaho  
34 Code; and Idaho alfalfa and clover seed commission, as provided in chap-  
35 ter 42, title 22, Idaho Code.

36 (b) The board of commissioners of the Idaho state bar, as provided by  
37 chapter 4, title 3, Idaho Code.

38 (c) The board of examiners, pursuant to section 67-2001, Idaho Code.

39 (d) The division of veterans services, to be headed by a division ad-  
40 ministrator who shall be a nonclassified employee exempt from the pro-  
41 visions of chapter 53, title 67, Idaho Code. The administrator of the  
42 division shall administer the provisions of chapter 2, title 65, Idaho

1 Code, and chapter 9, title 66, Idaho Code, with the advice of the vet-  
 2 erans affairs commission established under chapter 2, title 65, Idaho  
 3 Code, and shall perform such additional duties as are imposed upon him  
 4 by law.

5 (e) The board of library commissioners, pursuant to section 33-2502,  
 6 Idaho Code.

7 (f) The Idaho state historical society, pursuant to section 67-4123,  
 8 Idaho Code.

9 (g) The office of the state appellate public defender, pursuant to  
 10 chapter 59, title 19, Idaho Code, and the office of the state public  
 11 defender, pursuant to chapter 60, title 19, Idaho Code.

12 (h) The division of occupational and professional licenses, which is  
 13 hereby created.

14 (i) The office of administrative hearings, pursuant to section  
 15 67-5280, Idaho Code.

16 (j) The office of health and social services ombudsman, pursuant to  
 17 chapter 19, title 56, Idaho Code.

18 (3) Notwithstanding any other provision of law to the contrary, the  
 19 governor shall have the authority to assign entities listed in subsection  
 20 (2) of this section to divisions, sections, or units in such a manner as will  
 21 tend to provide an orderly arrangement in the administrative organization of  
 22 state government.

23 SECTION 2. That Title 56, Idaho Code, be, and the same is hereby amended  
 24 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-  
 25 ter 19, Title 56, Idaho Code, and to read as follows:

26 CHAPTER 19  
 27 HEALTH AND SOCIAL SERVICES OMBUDSMAN

28 56-1901. HEALTH AND SOCIAL SERVICES OMBUDSMAN ESTABLISHED. (1) As  
 29 used in this chapter, "service recipient" means:

30 (a) A child who receives foster care or protective supervision services  
 31 pursuant to chapter 16, title 16, Idaho Code; or

32 (b) A child receiving services in a residential treatment facility in  
 33 Idaho.

34 (2) There is hereby created in the department of self-governing agen-  
 35 cies the office of health and social services ombudsman.

36 (3) The health and social services ombudsman shall act as an indepen-  
 37 dent ombudsman monitoring and evaluating the compliance of public agencies  
 38 and private entities with relevant statutes, rules, and policies pertaining  
 39 to the provision of health and social services to service recipients.

40 (4) The health and social services ombudsman shall ensure the protec-  
 41 tion of service recipients' rights and promotion of the recipients' best in-  
 42 terests and safeguard the welfare of service recipients through advocacy,  
 43 system reform, public awareness, and training.

44 (5) The health and social services ombudsman shall be appointed by the  
 45 governor and subject to confirmation by the senate. Such individual shall  
 46 be qualified by training and experience to perform the duties and exercise  
 47 the powers of the health and social services ombudsman as provided in this  
 48 chapter.

1           56-1902.   POWERS AND DUTIES. The health and social services ombudsman  
2 shall:

3           (1) Operate independently of the legislature, the courts, the depart-  
4 ment of health and welfare, and any other state agency or department;

5           (2) Establish and manage a statewide procedure to receive, examine, and  
6 resolve complaints submitted pursuant to section 56-1903, Idaho Code;

7           (3) Inform a service recipient or the service recipient's legal  
8 guardian of the service recipient's rights and obligations under applicable  
9 federal and state laws;

10          (4) Collect and analyze each quarterly report issued by the citizen  
11 review panel pursuant to section 16-1647, Idaho Code, and any responses by  
12 the department of health and welfare or other relevant state department or  
13 agency;

14          (5) Gather and analyze data to discern general patterns and trends,  
15 chronic problems, and other systemic challenges in the provision of health  
16 and social services, including but not limited to foster care or protective  
17 supervision services, and in the detection, reporting, examination, prose-  
18 cution, and resolution of cases of abuse and neglect;

19          (6) Review and recommend changes to laws relevant to the child protec-  
20 tive act pursuant to chapter 16, title 16, Idaho Code, and the juvenile cor-  
21 rections act pursuant to chapter 5, title 20, Idaho Code;

22          (7) Provide an annual report on the work of the office, the operation of  
23 child welfare in the state, and related recommendations to the governor, the  
24 legislature, the director of the department of health and welfare or other  
25 relevant state departments or agencies, the state public defender, and the  
26 courts; and

27          (8) Establish internal procedures and educate the public about the role  
28 of the office.

29           56-1903.   COMPLAINTS. (1) Complaints may be submitted to the ombuds-  
30 man:

31          (a) With respect to a particular service recipient, alleging an  
32 agency's or department's behavior or action was:

33               (i) Contrary to law, rule, or policy;

34               (ii) Imposed without an adequate statement of reason; or

35               (iii) Based on irrelevant, immaterial, or erroneous grounds;

36          (b) By any of the following:

37               (i) A service recipient, including a child under eighteen (18)  
38 years of age if the child is able to articulate a complaint;

39               (ii) A biological parent of a service recipient;

40               (iii) A foster parent of a service recipient;

41               (iv) An adoptive parent or a prospective adoptive parent of a ser-  
42 vice recipient;

43               (v) A legally appointed guardian of the service recipient;

44               (vi) A guardian ad litem for a service recipient;

45               (vii) A relative of a service recipient or any person with a legit-  
46 imate interest;

47               (viii) A member of the Idaho senate or Idaho house of representa-  
48 tives; and

49               (ix) An attorney for any individual described in this paragraph.

1 (2) Upon receipt of a complaint, the ombudsman is authorized to con-  
2 duct a review or examination of said complaint if, within the ombudsman's  
3 sole discretion, the ombudsman deems the complaint meritorious and within  
4 the powers and duties of the office of the ombudsman.

5 (3) When there is reasonable cause to believe maltreatment has resulted  
6 in death or serious physical injury jeopardizing the life, health, or safety  
7 of a service recipient, the ombudsman shall report such information as expe-  
8 ditiously as possible to the appropriate law enforcement agency.

9 (4) When a complaint is made by an individual pursuant to subsection (1)  
10 of this section, if known, the complaint shall contain:

11 (a) The name and address of the service recipient and the alleged perpe-  
12 trator;

13 (b) The nature and extent of the maltreatment; and

14 (c) Any other known information that will be of assistance in the exami-  
15 nation of the complaint.

16 56-1904. COMPLAINT REVIEW AND EXAMINATION. (1) Upon receipt of a com-  
17 plaint, or upon the ombudsman's own initiative, the ombudsman may:

18 (a) Determine if a complaint involves any action by the department of  
19 health and welfare or any other state agency or department that provides  
20 health and social services in this state to service recipients;

21 (b) Review an alleged violation of the rights of a service recipient or  
22 service recipient's legal guardian;

23 (c) When a child may have died as a result of alleged abuse or neglect  
24 while receiving foster care or protective supervision services or after  
25 being placed for adoption:

26 (i) Initiate examinations of actions taken by the department of  
27 health and welfare or any state agency that provides health and so-  
28 cial services in this state;

29 (ii) Pursue all necessary action, including legal action, to pro-  
30 tect the child's welfare and rights;

31 (iii) Review policies and make recommendations for improvements  
32 regarding any agency's or department's involvement with children;  
33 and

34 (iv) Commence and conduct investigations into alleged violations  
35 of the rights of a foster parent;

36 (d) Access records and reports to the same extent and in the same manner  
37 as provided to any department or agency, court of any jurisdiction, the  
38 attorney general, prosecuting attorney, or any attorney retained by a  
39 state agency or department to the same extent and in the same manner as  
40 provided to the department of health and welfare;

41 (e) Pursue, through subpoena or otherwise, the production of documents  
42 necessary to carry out the ombudsman's role pursuant to this chapter and  
43 seek enforcement from a court of relevant jurisdiction;

44 (f) Hold fact finding hearings and request individuals to appear be-  
45 fore the ombudsman to give testimony or produce documents or other evi-  
46 dence that the ombudsman considers relevant to a matter under examina-  
47 tion; and

48 (g) At any time, make independent recommendations without prior re-  
49 view by any other agency, department, office, or official concerning

1 improvements to health and social services and the rapid implementation  
2 of such. No entity may prohibit the release of an ombudsman recommenda-  
3 tion to the governor, the legislature, or the courts.

4 (2) If, in the course of conducting an examination into a complaint, the  
5 ombudsman suspects an individual has committed a crime, the ombudsman shall  
6 immediately inform the proper authorities.

7 (3) Upon completion of an examination into a complaint, the ombudsman  
8 shall prepare a final report of the complaint review. If maltreatment of a  
9 service recipient or violation of the rights of the service recipient is sub-  
10 stantiated, the final report shall be made available to law enforcement.

11 56-1905. OBLIGATIONS OF STATE AGENCIES AND DEPARTMENTS. Upon request  
12 of the ombudsman, a state agency or department shall:

13 (1) Provide the ombudsman with access to all information, records,  
14 and documents in possession or control of the state agency or department,  
15 including unfettered access to the state agency's or department's computer  
16 network and electronic files to the extent not prohibited by federal law;

17 (2) Assist the ombudsman with document acquisition, including by pro-  
18 viding help with any waivers or releases necessary to obtain the informa-  
19 tion; and

20 (3) Provide timely responses to requests from the ombudsman.

21 56-1906. PENALTIES FOR OBSTRUCTION OR RETALIATION. Any individual who  
22 willfully interferes with or impedes the health and social services ombuds-  
23 man in the performance of the duties of the ombudsman's office or who retali-  
24 ates against anyone who files a complaint pursuant to section 56-1903, Idaho  
25 Code, shall be guilty of a misdemeanor punishable by a fine of up to one thou-  
26 sand dollars (\$1,000) or by imprisonment in the county jail for a term not to  
27 exceed six (6) months, or both.

28 56-1907. ACCESS TO RECORDS. Any person, department, agency, or com-  
29 mission authorized to carry out the duties enumerated in this chapter shall  
30 have access to all relevant records, which shall be subject to disclosure  
31 pursuant to chapter 1, title 74, Idaho Code. Other persons and entities  
32 shall be granted only such access with the written consent of the guardian or  
33 guardian ad litem of the service recipient or the service recipient's legal  
34 representative or pursuant to other proper judicial process or federal law.

35 56-1908. DISCLOSURE OF COMPLAINTS. Complaints received by the ombuds-  
36 man and any examination of such complaint, including informal proceedings  
37 and any informal proceedings conducted by any designee of the ombudsman pur-  
38 suant to this chapter and any rules adopted pursuant to this chapter, shall  
39 not be subject to public disclosure pursuant to chapter 1, title 74, Idaho  
40 Code.

41 SECTION 3. An emergency existing therefor, which emergency is hereby  
42 declared to exist, this act shall be in full force and effect on and after  
43 July 1, 2024.