



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB1462

by Rep. Sara Feigenholtz

SYNOPSIS AS INTRODUCED:

New Act
5 ILCS 140/7.5

Creates the Children's Mental Health Ombudsman Program Act. Provides that the Children's Mental Health Ombudsman Program (Program) is created in the Office of the Governor for specified purposes, including for the purposes of advocating on behalf of children with mental health disorders, identifying barriers to effective mental health treatment and proposed solutions; monitoring and ensuring compliance with relevant statutes, regulations, rules, and policies pertaining to children's behavioral health services; and investigating complaints that a State or a government agency has engaged in activities, practices, or omissions that constitute violations of applicable court orders, statutes, or regulations or that may have an adverse effect upon the health, safety, welfare, or rights of children. Provides that the Governor shall appoint the Children's Mental Health Ombudsman (Ombudsman). Requires the Ombudsman, in consultation with other specified persons, to establish policies and procedures as needed to facilitate compliance with the provisions of the Program, including procedures for filing, investigating, and resolving complaints. Grants the Ombudsman subpoena powers. Requires the Ombudsman to: (i) monitor federal, State, and local statutes, rules, regulations, and policies regarding services and supports for children with mental health disorders; (ii) maintain complete records of complaints received; (iii) submit annual reports to the Governor and the General Assembly on the activities of the Program; (iv) adopt rules that are necessary for performing the required activities of the Program; and other matters. Amends the Freedom of Information Act. Exempts from disclosure all information and records acquired by the Ombudsman during the performance of his or her duties.

LRB101 00367 KTG 45372 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning children.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Children's Mental Health Ombudsman Program Act.

6 Section 5. Definitions. As used in this Act:

7 "Mental health disorder" has the same meaning as "mental
8 illness" under Section 1-129 of the Mental Health and
9 Developmental Disabilities Code.

10 "Ombudsman" means the Children's Mental Health Ombudsman.

11 Section 10. Children's Mental Health Ombudsman Program.
12 There is created in the Office of the Governor a Children's
13 Mental Health Ombudsman Program for the purposes of: advocating
14 on behalf of children with mental health disorders, and
15 identifying barriers to effective mental health treatment and
16 proposed solutions; monitoring and ensuring compliance with
17 relevant statutes, regulations, rules, and policies pertaining
18 to children's behavioral health services; and receiving,
19 investigating, and resolving through administrative action, as
20 described in Section 20, complaints filed by a child or by
21 individuals legally authorized to act on behalf of a child or
22 children or by any individual, organization, or government

1 agency that has reason to believe that any entity regulated by
2 the State or a government agency has engaged in activities,
3 practices, or omissions that constitute violations of
4 applicable court orders, statutes, rules, or regulations or
5 that may have an adverse effect upon the health, safety,
6 welfare, or rights of children. The Children's Mental Health
7 Ombudsman, appointed by the Governor as provided in Section 15,
8 has the authority to temporarily order State agencies and local
9 educational authorities to assume full or partial
10 responsibility for payment of costs of services for which a
11 child has been determined eligible when the delivery of those
12 services is delayed more than 14 days because agreement on
13 responsibility for payment cannot be reached.

14 Section 15. Children's Mental Health Ombudsman;
15 appointment. The Governor shall appoint the Children's Mental
16 Health Ombudsman who shall be a person qualified by training
17 and experience to perform the duties of the Children's Mental
18 Health Ombudsman Program. The Ombudsman, in consultation with
19 the Secretary of Human Services, the Director of Healthcare and
20 Family Services, the Director of the Division of Mental Health
21 within the Department of Human Services, and the State
22 Superintendent of Education, shall establish policies and
23 procedures as needed to facilitate compliance with the
24 Children's Mental Health Ombudsman Program. These policies and
25 procedures shall include procedures for filing complaints,

1 investigating complaints, and taking action to implement
2 resolutions to these complaints, including the use of State
3 agency enforcement authority to resolve complaints as
4 recommended by the Ombudsman.

5 Section 20. Investigations.

6 (a) The Children's Mental Health Ombudsman has the power to
7 subpoena witnesses and compel the production of all documents,
8 papers, books, records, reports, reviews, recommendations,
9 correspondence, data, and other evidence that the Ombudsman
10 reasonably believes is relevant to his or her investigations
11 authorized under this Act. If any person to whom a subpoena is
12 issued fails to appear or, having appeared, refuses to give
13 testimony or fails to produce the evidence required, the
14 Ombudsman may apply to any circuit court to issue an order to
15 compel the testimony and production of documents of any such
16 witness. The failure to comply with the order of the court
17 issued in response thereto shall be punished as a contempt.

18 (b) No discriminatory or retaliatory action shall be taken
19 against any person who communicates with or provides
20 information to the Ombudsman. Any person who knowingly or
21 willfully discriminates or retaliates against such a person
22 shall be liable to such person for treble damages, costs, and
23 attorney's fees.

24 (c) Notwithstanding any other law to the contrary, the
25 disclosure of information to the Ombudsman in accordance with

1 this Act is not prohibited. Any information considered to be
2 confidential under State law shall be submitted for the
3 Ombudsman's review upon the determination of the Ombudsman that
4 the review of the information is necessary. The Ombudsman shall
5 ensure that no information submitted for his or her review is
6 disseminated to parties outside the Children's Mental Health
7 Ombudsman Program, except when disclosure may be necessary to
8 enable the Ombudsman to perform his or her duties. Under no
9 circumstances shall the Ombudsman or any employee of the
10 Children's Mental Health Ombudsman Program violate the
11 confidentiality provisions of any law of this State, except as
12 authorized under subsection (e).

13 Any and all information and records acquired by the
14 Ombudsman in the exercise of his or her purposes and duties
15 under this Act are confidential and not subject to disclosure
16 under the Freedom of Information Act.

17 Information, documents, and records of the Ombudsman and
18 the Children's Mental Health Ombudsman Program are not subject
19 to subpoena, discovery, or introduction into evidence in any
20 civil or criminal proceeding; however, information, documents,
21 and records otherwise available from any other source are not
22 immune from subpoena, discovery, or introduction into evidence
23 through these sources solely because they were presented during
24 the Ombudsman's investigation or maintained by the Children's
25 Mental Health Ombudsman Program.

26 (d) Statistical compilations of data that do not contain

1 any information that would permit the identification of any
2 person may be disclosed to the public.

3 (e) The restrictions of this Section do not preclude the
4 Ombudsman from sharing with the Governor, the Attorney General,
5 a United States district attorney, an agency or other agency
6 personnel, or the chairs of the Senate Human Services Committee
7 and the House Special Needs Services Committee the report of,
8 or the results of, a critical incident investigation involving
9 that agency. Any executive or legislative branch employees who
10 receive or read such a document are bound by the
11 confidentiality requirements of this Section.

12 Section 25. Duties. To ensure the goals of the Children's
13 Mental Health Ombudsman Program, as described in Section 10,
14 are met:

15 (1) the Ombudsman shall monitor the development and
16 implementation of federal, State, and local statutes,
17 rules, regulations, and policies regarding services and
18 supports for children with mental health disorders,
19 including the education of these children;

20 (2) the Ombudsman shall maintain complete records of
21 complaints received, the actions taken, findings,
22 outcomes, and recommendations in response to those
23 complaints and other actions, including those taken by the
24 State and private agency responses to serious complaints;

25 (3) each quarter, the Ombudsman shall send a report to

1 each State agency about which complaints were received by
2 the Ombudsman during the relevant period, listing the
3 complaints involving that State agency that were received
4 during the past quarter, and shall meet regularly with the
5 Office of the Governor, the Secretary of Human Services,
6 the Director of Healthcare and Family Services, the
7 Director of the Division of Mental Health within the
8 Department of Human Services, and the State Superintendent
9 of Education, and shall report on any system-wide problems
10 that the Ombudsman has identified, and potential
11 solutions;

12 (4) the Ombudsman shall report annually, within 120
13 days of the end of the fiscal year, to the Governor and the
14 General Assembly on the activities of the Children's Mental
15 Health Ombudsman Program, including complaints that are
16 relevant to the Ombudsman, an analysis of patterns in
17 complaints made through the Ombudsman, and requests for
18 assistance made through the Department of Insurance, the
19 Department of Children and Family Services' Office of the
20 Inspector General, and the Department of Human Services'
21 Office of the Inspector General, and shall make
22 recommendations for legislation, policy, or programmatic
23 changes related to the protection of the rights of children
24 with mental health disorders. These reports shall be
25 publicly available and published on the Office of the
26 Governor's website. The requirement for reporting to the

1 General Assembly shall be satisfied by filing copies of the
2 report as required by Section 3.1 of the General Assembly
3 Organization Act, and filing such additional copies with
4 the State Government Report Distribution Center for the
5 General Assembly as is required under paragraph (t) of
6 Section 7 of the State Library Act.

7 Section 30. Additional policies. The Ombudsman shall adopt
8 rules, policies, and procedures as necessary for performing the
9 required activities of the Children's Mental Health Ombudsman
10 Program.

11 Section 35. The Freedom of Information Act is amended by
12 changing Section 7.5 as follows:

13 (5 ILCS 140/7.5)

14 Sec. 7.5. Statutory exemptions. To the extent provided for
15 by the statutes referenced below, the following shall be exempt
16 from inspection and copying:

17 (a) All information determined to be confidential
18 under Section 4002 of the Technology Advancement and
19 Development Act.

20 (b) Library circulation and order records identifying
21 library users with specific materials under the Library
22 Records Confidentiality Act.

23 (c) Applications, related documents, and medical

1 records received by the Experimental Organ Transplantation
2 Procedures Board and any and all documents or other records
3 prepared by the Experimental Organ Transplantation
4 Procedures Board or its staff relating to applications it
5 has received.

6 (d) Information and records held by the Department of
7 Public Health and its authorized representatives relating
8 to known or suspected cases of sexually transmissible
9 disease or any information the disclosure of which is
10 restricted under the Illinois Sexually Transmissible
11 Disease Control Act.

12 (e) Information the disclosure of which is exempted
13 under Section 30 of the Radon Industry Licensing Act.

14 (f) Firm performance evaluations under Section 55 of
15 the Architectural, Engineering, and Land Surveying
16 Qualifications Based Selection Act.

17 (g) Information the disclosure of which is restricted
18 and exempted under Section 50 of the Illinois Prepaid
19 Tuition Act.

20 (h) Information the disclosure of which is exempted
21 under the State Officials and Employees Ethics Act, and
22 records of any lawfully created State or local inspector
23 general's office that would be exempt if created or
24 obtained by an Executive Inspector General's office under
25 that Act.

26 (i) Information contained in a local emergency energy

1 plan submitted to a municipality in accordance with a local
2 emergency energy plan ordinance that is adopted under
3 Section 11-21.5-5 of the Illinois Municipal Code.

4 (j) Information and data concerning the distribution
5 of surcharge moneys collected and remitted by carriers
6 under the Emergency Telephone System Act.

7 (k) Law enforcement officer identification information
8 or driver identification information compiled by a law
9 enforcement agency or the Department of Transportation
10 under Section 11-212 of the Illinois Vehicle Code.

11 (l) Records and information provided to a residential
12 health care facility resident sexual assault and death
13 review team or the Executive Council under the Abuse
14 Prevention Review Team Act.

15 (m) Information provided to the predatory lending
16 database created pursuant to Article 3 of the Residential
17 Real Property Disclosure Act, except to the extent
18 authorized under that Article.

19 (n) Defense budgets and petitions for certification of
20 compensation and expenses for court appointed trial
21 counsel as provided under Sections 10 and 15 of the Capital
22 Crimes Litigation Act. This subsection (n) shall apply
23 until the conclusion of the trial of the case, even if the
24 prosecution chooses not to pursue the death penalty prior
25 to trial or sentencing.

26 (o) Information that is prohibited from being

1 disclosed under Section 4 of the Illinois Health and
2 Hazardous Substances Registry Act.

3 (p) Security portions of system safety program plans,
4 investigation reports, surveys, schedules, lists, data, or
5 information compiled, collected, or prepared by or for the
6 Regional Transportation Authority under Section 2.11 of
7 the Regional Transportation Authority Act or the St. Clair
8 County Transit District under the Bi-State Transit Safety
9 Act.

10 (q) Information prohibited from being disclosed by the
11 Personnel Record ~~Records~~ Review Act.

12 (r) Information prohibited from being disclosed by the
13 Illinois School Student Records Act.

14 (s) Information the disclosure of which is restricted
15 under Section 5-108 of the Public Utilities Act.

16 (t) All identified or deidentified health information
17 in the form of health data or medical records contained in,
18 stored in, submitted to, transferred by, or released from
19 the Illinois Health Information Exchange, and identified
20 or deidentified health information in the form of health
21 data and medical records of the Illinois Health Information
22 Exchange in the possession of the Illinois Health
23 Information Exchange Authority due to its administration
24 of the Illinois Health Information Exchange. The terms
25 "identified" and "deidentified" shall be given the same
26 meaning as in the Health Insurance Portability and

1 Accountability Act of 1996, Public Law 104-191, or any
2 subsequent amendments thereto, and any regulations
3 promulgated thereunder.

4 (u) Records and information provided to an independent
5 team of experts under the Developmental Disability and
6 Mental Health Safety Act (also known as Brian's Law).

7 (v) Names and information of people who have applied
8 for or received Firearm Owner's Identification Cards under
9 the Firearm Owners Identification Card Act or applied for
10 or received a concealed carry license under the Firearm
11 Concealed Carry Act, unless otherwise authorized by the
12 Firearm Concealed Carry Act; and databases under the
13 Firearm Concealed Carry Act, records of the Concealed Carry
14 Licensing Review Board under the Firearm Concealed Carry
15 Act, and law enforcement agency objections under the
16 Firearm Concealed Carry Act.

17 (w) Personally identifiable information which is
18 exempted from disclosure under subsection (g) of Section
19 19.1 of the Toll Highway Act.

20 (x) Information which is exempted from disclosure
21 under Section 5-1014.3 of the Counties Code or Section
22 8-11-21 of the Illinois Municipal Code.

23 (y) Confidential information under the Adult
24 Protective Services Act and its predecessor enabling
25 statute, the Elder Abuse and Neglect Act, including
26 information about the identity and administrative finding

1 against any caregiver of a verified and substantiated
2 decision of abuse, neglect, or financial exploitation of an
3 eligible adult maintained in the Registry established
4 under Section 7.5 of the Adult Protective Services Act.

5 (z) Records and information provided to a fatality
6 review team or the Illinois Fatality Review Team Advisory
7 Council under Section 15 of the Adult Protective Services
8 Act.

9 (aa) Information which is exempted from disclosure
10 under Section 2.37 of the Wildlife Code.

11 (bb) Information which is or was prohibited from
12 disclosure by the Juvenile Court Act of 1987.

13 (cc) Recordings made under the Law Enforcement
14 Officer-Worn Body Camera Act, except to the extent
15 authorized under that Act.

16 (dd) Information that is prohibited from being
17 disclosed under Section 45 of the Condominium and Common
18 Interest Community Ombudsperson Act.

19 (ee) Information that is exempted from disclosure
20 under Section 30.1 of the Pharmacy Practice Act.

21 (ff) Information that is exempted from disclosure
22 under the Revised Uniform Unclaimed Property Act.

23 (gg) Information that is prohibited from being
24 disclosed under Section 7-603.5 of the Illinois Vehicle
25 Code.

26 (hh) Records that are exempt from disclosure under

1 Section 1A-16.7 of the Election Code.

2 (ii) Information which is exempted from disclosure
3 under Section 2505-800 of the Department of Revenue Law of
4 the Civil Administrative Code of Illinois.

5 (jj) Information and reports that are required to be
6 submitted to the Department of Labor by registering day and
7 temporary labor service agencies but are exempt from
8 disclosure under subsection (a-1) of Section 45 of the Day
9 and Temporary Labor Services Act.

10 (kk) Information prohibited from disclosure under the
11 Seizure and Forfeiture Reporting Act.

12 (ll) Information the disclosure of which is restricted
13 and exempted under Section 5-30.8 of the Illinois Public
14 Aid Code.

15 (mm) ~~(ll)~~ Records that are exempt from disclosure under
16 Section 4.2 of the Crime Victims Compensation Act.

17 (nn) ~~(ll)~~ Information that is exempt from disclosure
18 under Section 70 of the Higher Education Student Assistance
19 Act.

20 (oo) Information that is exempt from disclosure under
21 Section 15 of the Children's Mental Health Ombudsman
22 Program Act.

23 (Source: P.A. 99-78, eff. 7-20-15; 99-298, eff. 8-6-15; 99-352,
24 eff. 1-1-16; 99-642, eff. 7-28-16; 99-776, eff. 8-12-16;
25 99-863, eff. 8-19-16; 100-20, eff. 7-1-17; 100-22, eff. 1-1-18;
26 100-201, eff. 8-18-17; 100-373, eff. 1-1-18; 100-464, eff.

1 8-28-17; 100-465, eff. 8-31-17; 100-512, eff. 7-1-18; 100-517,
2 eff. 6-1-18; 100-646, eff. 7-27-18; 100-690, eff. 1-1-19;
3 100-863, eff. 8-14-18; 100-887, eff. 8-14-18; revised
4 10-12-18.)