

SENATE SUBSTITUTE FOR

HOUSE BILL NO. 4096

(As amended, December 8, 2004)

A bill to amend 1994 PA 204, entitled
"The children's ombudsman act,"
by amending the title and sections 2, 3, 4, 5, 6, 7, 8, 9, 10,
and 11 (MCL 722.922, 722.923, 722.924, 722.925, 722.926, 722.927,
722.928, 722.929, 722.930, and 722.931) and by adding section 5a;
and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE

2 An act to ~~create~~ **establish** the children's ombudsman
3 **office; and** to prescribe the powers and duties of the children's
4 ombudsman, certain state departments and officers, and certain
5 county and private agencies serving children; and to provide
6 remedies from certain administrative acts.

7 Sec. 2. As used in this act:

8 (a) "Administrative act" includes an action, omission,

1 decision, recommendation, practice, or other procedure of the
2 department, ~~of social services,~~ an adoption attorney, or a
3 child placing agency with respect to a particular child related
4 to adoption, foster care, or protective services.

5 (b) "Adoption attorney" means that term as defined in section
6 22 of the adoption code, ~~being section 710.22 of the Michigan~~
7 ~~Compiled Laws~~ **MCL 710.22.**

8 (c) "Adoption code" means chapter X of ~~Act No. 288 of the~~
9 ~~Public Acts of 1939, being sections 710.21 to 710.70 of the~~
10 ~~Michigan Compiled Laws~~ **the probate code of 1939, 1939 PA 288,**
11 **MCL 710.21 to 710.70.**

12 (d) "Central registry" means that term as defined in section
13 2 of the child protection law, MCL 722.622.

14 (e) "Child" means an individual under the age of 18.

15 (f) "Child abuse" and "child neglect" mean those terms as
16 defined in section 2 of the child protection law, MCL 722.622.

17 (g) "Child caring institution" means that term as defined in
18 section 1 of 1973 PA 116, MCL 722.111.

19 (h) ~~(d)~~ "Child placing agency" means an organization
20 licensed or approved by the department ~~of social services under~~
21 ~~Act No. 116 of the Public Acts of 1973, being sections 722.111 to~~
22 ~~722.128 of the Michigan Compiled Laws,~~ to receive children for
23 placement in private family homes for foster care or adoption and
24 to provide services related to adoption.

25 ~~(e)~~ "Child" means an individual under the age of 18.

26 (i) ~~(f)~~ "Complainant" means an individual who makes a
27 complaint as provided in section 5.

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1 (j) "Child protection law" means the child protection law,
2 1975 PA 238, MCL 722.621 to 722.638.

3 (k) "Children's ombudsman" or "ombudsman" means the
4 individual appointed to the office of children's ombudsman under
5 section 3.

6 (l) "Closed session" means that term as defined in the open
7 meetings act, 1976 PA 267, MCL 15.261 to 15.275.

8 (m) ~~(g)~~ "Department" means the ~~department of social~~
9 ~~services~~ family independence agency.

10 ~~(h)~~ "Foster parent" means an individual licensed by the
11 ~~department of social services under Act No. 116 of the Public~~
12 ~~Acts of 1973 to provide foster care to children.~~

13 ~~(i)~~ "Official" means an official or employee of the
14 ~~department or a child placing agency.~~

15 ~~(j)~~ "Ombudsman" means the ~~children's ombudsman created in~~
16 ~~section 3.~~

17 (n) "Foster care" means care provided to a child in a foster
18 family home, foster family group home, or child caring
19 institution licensed or approved by the department under 1973 PA
20 116, MCL 722.111 to 722.128, or care provided to a child in a
21 relative's home under a court order.

22 (o) "Office" means the children's ombudsman office
23 established under section 3.

24 Sec. 3. (1) As a means of effecting changes in policy,
25 procedure, and legislation, educating the public, investigating
26 and reviewing actions of <<the department, child placing agencies, or
27 child caring institutions>>, monitoring and ensuring compliance with
relevant

1 statutes, rules, and policies pertaining to children's protective
2 services and the placement, supervision, ~~and~~ treatment, **and**
3 **improving delivery of care** of children in foster care and
4 adoptive homes, the children's ombudsman is ~~created~~ **established**
5 as an autonomous entity in the department of management and
6 budget. ~~The ombudsman shall exercise its powers and duties,~~
7 ~~including the functions of budgeting and procurement and other~~
8 ~~management related functions, independently of the director of~~
9 ~~the department of management and budget.~~

10 (2) ~~The ombudsman shall be appointed by the governor and~~
11 ~~shall serve at the pleasure of the governor.~~ **The governor shall**
12 **appoint an individual as the ombudsman, with the advice and**
13 **consent of the senate. The individual shall be qualified by**
14 **training and experience to perform the duties and exercise the**
15 **powers of the children's ombudsman and the children's ombudsman**
16 **office as provided in this act.**

17 (3) The governor may remove the children's ombudsman from
18 office for cause that includes, but is not limited to,
19 incompetency to properly exercise duties, official misconduct,
20 habitual or willful neglect of duty, or other misfeasance or
21 malfeasance in connection with the operation of the office of the
22 children's ombudsman. The governor shall report the reason for
23 the removal to the legislature.

24 (4) The children's ombudsman serving in office on the
25 effective date of the amendatory act that added this subsection
26 shall serve at the pleasure of the governor.

27 Sec. 4. (1) The ombudsman shall establish procedures **for**

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1 **the office** for budgeting, expending ~~funds~~ **money**, and employing
2 personnel **according to the management and budget act, 1984 PA**
3 **431, MCL 18.1101 to 18.1594.** Subject to annual appropriations,
4 the ombudsman shall employ sufficient personnel to carry out the
5 duties and powers prescribed by this act.

6 (2) The ombudsman shall establish procedures for receiving
7 and processing complaints from complainants **and individuals not**
8 **meeting the definition of complainant**, conducting investigations,
9 holding **informal** hearings, and reporting findings **and**
10 **recommendations** resulting from investigations.

11 (3) Personnel employed by the office of the children's
12 ombudsman shall receive mandatory training conducted by the
13 Michigan domestic violence prevention and treatment board in
14 domestic violence and in handling complaints of child abuse or
15 child neglect that involve a history of domestic violence. <<

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20 (4) Any individual may submit a complaint to the ombudsman.
21 The ombudsman has the sole discretion and authority to determine
22 if a complaint falls within his or her duties and powers to
23 investigate and if a complaint involves an administrative act.
24 The ombudsman may initiate an investigation without receiving a
25 complaint. The ombudsman may initiate an investigation upon
26 receipt of a complaint from an individual not meeting the
27 definition of complainant. An individual not meeting the

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1 definition of complainant is not entitled to receive information
2 under this act as if he or she is a complainant. <<The individual is
3 entitled to receive the recommendations of the ombudsman and the
4 department's response to the recommendations of the ombudsman in
5 accordance with state and federal law.>> During the
6 course of an investigation, the ombudsman may refer a case to the
7 department if the ombudsman determines that the department
8 received a complaint on the case, but did not conduct a field
9 investigation. If the ombudsman refers a case to the department,
10 the department shall conduct a field investigation of the case or
11 provide notice to the ombudsman why a field investigation was not
12 conducted, or what alternative steps may have been taken to
13 address the situation. If a field investigation has been
14 conducted, the department shall report the results to the
15 ombudsman.

16 Sec. 5. All of the following individuals may make a
17 complaint to the ombudsman with respect to a particular child,
18 alleging that an administrative act is contrary to law, rule, or
19 policy, imposed without an adequate statement of reason, or based
20 on irrelevant, immaterial, or erroneous grounds:

21 (a) The child, if he or she is able to articulate a
22 complaint.

23 (b) A biological parent of the child.

24 (c) A foster parent of the child.

25 (d) An adoptive parent or a prospective adoptive parent of
26 the child.

27 (e) A legally appointed guardian of the child.

(f) A guardian ad litem of the child.

(g) An adult who is related to the child within the fifth
degree by marriage, blood, or adoption, as defined in section 22

1 of the adoption code, ~~being section 710.22 of the Michigan~~
2 ~~Compiled Laws~~ MCL 710.22.

3 (h) A Michigan legislator.

4 (i) An individual required to report child abuse or child
5 neglect under section 3 of the child protection law, 1975 PA 238,
6 MCL 722.623.

7 (j) ~~(i)~~ An attorney for any individual described in
8 ~~subparagraphs~~ subdivisions (a) to (g).

9 Sec. 5a. The children's ombudsman has the authority to do
10 all of the following:

11 (a) Pursue all necessary action, including, but not limited
12 to, legal action, to protect the rights and welfare of a child
13 under the jurisdiction, control, or supervision of the
14 department, the Michigan children's institute, the family
15 division of circuit court under section 2(a)(1) of chapter XIIIA
16 of the probate code of 1939, 1939 PA 288, MCL 712A.2, a child
17 caring institution, or a child placing agency.

18 (b) Pursue legislative advocacy in the best interests of
19 children.

20 (c) Review policies and procedures relating to the
21 department's involvement with children and make recommendations
22 for improvement.

23 (d) Review each departmental death review team study in which
24 the child's death may have resulted from child abuse or child
25 neglect. As a result of the reviews, the ombudsman may recommend
26 policies, measures, or procedures to prevent future similar
27 occurrences.

1 Sec. 6. The ombudsman may do all of the following **in**
2 **relation to a child who may be a victim of child abuse or child**
3 **neglect:**

4 (a) Upon ~~its~~ **his or her** own initiative or upon receipt of a
5 complaint, ~~from a complainant,~~ investigate an administrative
6 act that is alleged to be contrary to law or rule, ~~or~~ contrary
7 to policy of the department or a child placing agency, imposed
8 without an adequate statement of reason, or based on irrelevant,
9 immaterial, or erroneous grounds. **The ombudsman has sole**
10 **discretion to determine if a complaint involves an administrative**
11 **act.**

12 (b) Decide, in ~~its~~ **his or her** discretion, whether to
13 investigate ~~a complaint~~ **an administrative act.**

14 (c) Upon its own initiative or upon receipt of a complaint
15 from a complainant, conduct a preliminary investigation to
16 determine whether an adoption attorney may have committed an
17 administrative act that is alleged to be contrary to law, rule,
18 or the Michigan rules of professional conduct adopted by the
19 Michigan supreme court.

20 (d) **Except as otherwise provided in this subdivision, access**
21 **records and reports necessary to carry out the ombudsman's powers**
22 **and duties under this act to the same extent and in the same**
23 **manner as provided to the department under the provisions of the**
24 **child protection law. The ombudsman shall be provided access to**
25 **medical records in the same manner as access is provided to the**
26 **department under section 16281 of the public health code, 1978 PA**
27 **368, MCL 333.16281. The ombudsman shall be provided access to**

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1 mental health records in the same manner as access is provided to
2 the department in section 748a of the mental health code, 1978 PA
3 258, MCL 330.1748a <<, subject to section 9>>. The ombudsman is subject
4 to the same
5 standards for safeguarding the confidentiality of information
6 under this section and the same sanctions for unauthorized
7 release of information as the department.

8 (e) Request a subpoena from a court requiring the production
9 of a record or report necessary to carry out the ombudsman's
10 duties and powers. If the person to whom a subpoena is issued
11 fails or refuses to produce the record or report, the ombudsman
12 may petition the court for enforcement of the subpoena.

13 (f) ~~(d)~~ Hold informal hearings and request that individuals
14 appear before the ombudsman and give testimony or produce
15 documentary or other evidence that the ombudsman considers
16 relevant to a matter under investigation.

17 (g) ~~(e)~~ Make recommendations to the governor and the
18 legislature concerning the need for children's protective
19 services, adoption, or foster care legislation, policy, or
20 practice without prior review by other offices, departments, or
21 agencies in the executive branch in order to facilitate rapid
22 implementation of recommendations or for suggested improvements
23 to the recommendations. However, no other office, department, or
24 agency shall prohibit the release of an ombudsman's
25 recommendation to the governor or the legislature.

26 Sec. 7. (1) Upon ~~rendering a decision~~ deciding to
27 investigate a complaint, from a complainant and an individual not
meeting the definition of complainant, the ombudsman shall notify

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1 the complainant **or the individual not meeting the definition of**
2 **complainant** of the decision to investigate and shall notify the
3 department, adoption attorney, or child placing agency of the
4 intention to investigate. If the ombudsman declines to
5 investigate a complaint or continue an investigation, the
6 ombudsman shall notify the complainant **or the individual not**
7 **meeting the definition of complainant** and the department,
8 adoption attorney, or child placing agency of the decision and of
9 the reasons for the ombudsman's action.

10 (2) If the preliminary investigation described in section 6
11 leads the ombudsman to believe that the matter may involve
12 misconduct by an adoption attorney, the ombudsman shall
13 immediately refer the complaint to the attorney grievance
14 commission of the state bar of Michigan.

15 (3) The ombudsman ~~may advise a complainant~~ **shall advise a**
16 **complainant of administrative remedies and may advise the**
17 **individual** to pursue all administrative remedies or channels of
18 complaint open to the complainant before pursuing a complaint
19 with the ombudsman. Subsequent to the administrative processing
20 of a complaint, the ombudsman may conduct further investigations
21 of ~~any~~ **a** complaint upon the request of the complainant **<<or upon the**
22 **ombudsman's own initiative>>**. ~~or~~
~~upon the ombudsman's own initiative.~~

23 (4) If the ombudsman finds in the course of an investigation
24 that an individual's action is in violation of state or federal
25 criminal law, the ombudsman shall immediately report that fact to
26 the county prosecutor or the attorney general. If the complaint
27 is against a child placing agency, the ombudsman shall refer the

1 matter to the department ~~of social services~~ for further action
2 with respect to licensing.

3 (5) The ombudsman may file a petition on behalf of a child
4 requesting the court to take jurisdiction under section 2(b) of
5 chapter XIIIA of ~~Act No. 288 of the Public Acts of 1939, being~~
6 ~~section 712A.2 of the Michigan Compiled Laws~~ **the probate code of**
7 **1939, 1939 PA 288, MCL 712A.2**, or a petition for termination of
8 parental rights under section 19b of chapter XIIIA of ~~Act No. 288~~
9 ~~of the Public Acts of 1939, being section 712A.19b of the~~
10 ~~Michigan Compiled Laws~~ **the probate code of 1939, 1939 PA 288,**
11 **MCL 712A.19b**, if the ombudsman is satisfied that the complainant
12 has contacted the department, the prosecuting attorney, the
13 child's attorney, and the child's guardian ad litem, if any, and
14 that none of these persons intend to file a petition as described
15 in this subsection.

16 Sec. 8. (1) The department and a child placing agency shall
17 do all of the following:

18 (a) Upon the ombudsman's request, grant the ombudsman or
19 ~~its~~ **his or her** designee access to all ~~relevant~~ information,
20 records, and documents in the possession of the department or
21 child placing agency that the ombudsman considers **relevant and**
22 necessary in an investigation.

23 (b) Assist the ombudsman to obtain the necessary releases of
24 those documents that are specifically restricted.

25 (c) ~~Provide~~ **Upon the ombudsman's request, provide** the
26 ombudsman ~~upon request~~ with progress reports concerning the
27 administrative processing of a complaint.

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1 (d) Upon the ombudsman's request, provide the ombudsman
2 information he or she requests under subdivision (a) within 10
3 business days after the request. If the department determines
4 that release of the information would violate federal or state
5 law, the ombudsman shall be notified of that determination within
6 the same 10-day deadline.

7 (2) The department, an ~~adoption~~ attorney involved with an
8 adoption, and a child placing agency shall provide information to
9 a biological parent, prospective adoptive parent, or foster
10 parent regarding the provisions of this act.

11 (3) The ombudsman, the department, and the department of
12 information technology shall enter an agreement not later than
13 June 30, 2005 that shall ensure that the ombudsman has access, in
14 the ombudsman's own office, to departmental computer networks
15 pertaining to <<protective services, foster care, and adoption>>,
16 including the
17 central registry, service workers support system/foster care,
18 adoption, juvenile justice (SWSS), and customer information
19 management system (CIMS) unless otherwise prohibited by state or
20 federal law, or the release of the information to the ombudsman
21 would jeopardize federal funding. The cost of implementing this
22 subsection shall be negotiated among the office of the children's
23 ombudsman, the department, and the department of information
24 technology.

24 Sec. 9. (1) ~~The ombudsman shall treat all matters under~~
25 ~~investigation, including the identities of recipients or~~
26 ~~individuals from whom information is acquired, as confidential,~~
27 ~~except so far as disclosures may be necessary to enable the~~

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1 ~~ombudsman to perform the duties of the office and to support any~~
2 ~~recommendations resulting from an investigation. A record of the~~
3 ~~office of the ombudsman is confidential, shall be used only for~~
4 ~~purposes set forth in this act, and is not subject to court~~
5 ~~subpoena. A record of the office of the ombudsman is exempt from~~
6 ~~disclosure under the freedom of information act, Act No. 442 of~~
7 ~~the Public Acts of 1976, being sections 15.231 to 15.246 of the~~
8 ~~Michigan Compiled Laws. Subject to subsections (2) through (7),~~
9 a record of the children's ombudsman's office is confidential,
10 shall only be used for purposes set forth in this act, is not
11 subject to court subpoena, and is not discoverable in a legal
12 proceeding. A record of the children's ombudsman's office is
13 exempt from disclosure under the freedom of information act, 1976
14 PA 442, MCL 15.231 to 15.246. If the ombudsman identifies action
15 or inaction by the state, through its agencies or services, that
16 failed to protect children, the ombudsman shall provide his or
17 her findings and recommendations to the agency affected by those
18 findings, and make those findings and recommendations available
19 to the complainant <<and the legislature upon request>>, to the extent
20 consistent with state or
21 federal law. The ombudsman shall not disclose any information
22 that impairs the rights of the child or the child's parents or
23 guardians.

23 (2) The ombudsman may release information to a complainant or
24 to a closed session of a legislative committee that has
25 jurisdiction over family and children's services issues regarding
26 the department's handling of a case under the child protection
27 law that is obtained or generated during an investigation

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1 conducted by the office.

2 (3) Unless otherwise part of the public record, the office
3 shall not release any of the following confidential information
4 to the general public:

5 (a) Records relating to mental health evaluation or treatment
6 of a parent or child.

7 (b) Records relating to the evaluation or treatment of a
8 substance abuse-related disorder of a parent or child.

9 (c) Records relating to medical diagnosis or treatment of a
10 parent or child.

11 (d) Records relating to domestic violence-related services
12 and sexual assault services provided to a parent or child.

13 (e) Records relating to educational services provided to a
14 parent or child.

15 (4) Notwithstanding subsection (3), if the ombudsman
16 determines that disclosure of confidential information is
17 necessary to identify, prevent, or respond to the abuse or
18 neglect of a child, the ombudsman may disclose information in his
19 or her possession to <<the department or>> a court. The ombudsman shall
20 not release
21 the address, telephone number, or other information regarding the
22 whereabouts of a victim or suspected victim of domestic violence
23 unless ordered to by a court.

24 (5) The ombudsman shall not disclose information relating to
25 an ongoing law enforcement investigation or an ongoing children's
26 protective services investigation.

27 (6) The ombudsman shall not disclose the identity of an
individual making a child abuse or neglect complaint under the

1 child protection law unless that individual's written permission
2 is obtained first or a court has ordered the ombudsman to release
3 that information.

4 (7) The ombudsman may release an individual's identity who
5 makes an intentionally false report of child abuse or neglect
6 under the child protection law.

7 Sec. 10. (1) The ombudsman shall prepare a report of the
8 **factual** findings of an investigation and make recommendations to
9 the department or child placing agency if the ombudsman finds
10 1 or more of the following:

11 (a) A matter should be further considered by the department
12 or child placing agency.

13 (b) An administrative act **or omission** should be modified,
14 ~~or~~ canceled, **or corrected**.

15 (c) Reasons should be given for an administrative act **or**
16 **omission**.

17 (d) Other action should be taken by the department or child
18 placing agency.

19 (2) Before announcing a conclusion or recommendation that
20 expressly or by implication criticizes an individual, the
21 department, or a child placing agency, the ombudsman shall
22 consult with that individual, the department, or the child
23 placing agency. When publishing an opinion adverse to the
24 department or child placing agency, the ombudsman shall include
25 in the publication any statement of reasonable length made to the
26 ombudsman by the department or child placing agency in defense or
27 mitigation of the action. The ombudsman may request to be

1 notified by the department or child placing agency, within a
2 specified time, of any action taken on any recommendation
3 presented.

4 (3) The ombudsman shall notify the complainant of the actions
5 taken by the ombudsman and by the department or child placing
6 agency.

7 (4) ~~The ombudsman shall provide the complainant with a copy~~
8 ~~of its recommendations on a complaint.~~ **The ombudsman may provide**
9 **to the complainant the following information:**

10 (a) **A copy of the ombudsman's report regarding the**
11 **investigation's findings, recommendations to the department made**
12 **according to the investigation, the department's response to the**
13 **ombudsman's findings and recommendations, and any epilogue to the**
14 **ombudsman's report and the department's response.**

15 (b) **Information that has otherwise been made public.**

16 (5) **The ombudsman shall not release information to the**
17 **individual making the complaint that will endanger the health or**
18 **welfare of a child or another individual.**

19 (6) ~~(5)~~ **The ombudsman shall submit to the governor, the**
20 **director of the department, and the legislature an annual report**
21 **on the ombudsman's conduct, ~~of the ombudsman,~~ including any**
22 **recommendations regarding the need for legislation or for change**
23 **in rules or policies.**

24 **Sec. 11. (1) ~~An~~ Subject to subsection (4), an official,**
25 **the department, or a child placing agency shall not penalize any**
26 **person for filing a complaint or cooperating with the ombudsman**
27 **in investigating a complaint.**

1 (2) An individual, the department, an adoption attorney, or a
2 child placing agency shall not hinder the lawful actions of the
3 ombudsman or employees of the ombudsman.

4 (3) A report by the ombudsman is not subject to prior
5 approval by a person outside of the office.

6 (4) An individual who intentionally makes a false complaint
7 of child abuse or neglect under this act is subject to the
8 penalties contained in section 13(5) of the child protection law,
9 MCL 722.633.

10 Enacting section 1. Sections 13, 14, and 15 of the
11 children's ombudsman act, 1994 PA 204, MCL 722.933, 722.934, and
12 722.935, are repealed.

13 Enacting section 2. Section 6(e) of the children's
14 ombudsman act, 1994 PA 204, MCL 722.936, is repealed 5 years
15 after the effective date of this amendatory act.