

Act No. 560
Public Acts of 2004
Approved by the Governor
January 3, 2005
Filed with the Secretary of State
January 3, 2005
EFFECTIVE DATE: January 3, 2005

**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2004**

Introduced by Reps. Hager, Stahl, Julian, Meyer, Richardville, Vander Veen, Kratz, Sheen, Stewart, Woronchak, Daniels, Bieda, Hopgood, Palsrok, Tabor, LaJoy, McConico, Reeves, Anderson, O'Neil, Phillips, Minore, Zelenko, Jamnick, DeRossett, Lipsey, Murphy, Dennis, Ruth Johnson, Brown, Gaffney, Stallworth, Hunter, Tobocman, Paletko, Law, Wojno, Acciavatti, Vagnozzi, Taub, Accavitti, Gleason, Ward, Sak, Huizenga, Elkins, Gillard and Mortimer

ENROLLED HOUSE BILL No. 4096

AN ACT to amend 1994 PA 204, entitled "An act to create the children's ombudsman; to prescribe the powers and duties of the children's ombudsman, certain state departments and officers, and certain county and private agencies serving children; and to provide remedies from certain administrative acts," 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:

TITLE

An act to establish the children's ombudsman office; and to prescribe the powers and duties of the children's ombudsman, certain state departments and officers, and certain county and private agencies serving children; and to provide remedies from certain administrative acts.

Sec. 2. As used in this act:

- (a) "Administrative act" includes an action, omission, decision, recommendation, practice, or other procedure of the department, an adoption attorney, or a child placing agency with respect to a particular child related to adoption, foster care, or protective services.
- (b) "Adoption attorney" means that term as defined in section 22 of the adoption code, MCL 710.22.
- (c) "Adoption code" means chapter X of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70.
- (d) "Central registry" means that term as defined in section 2 of the child protection law, MCL 722.622.
- (e) "Child" means an individual under the age of 18.
- (f) "Child abuse" and "child neglect" mean those terms as defined in section 2 of the child protection law, MCL 722.622.
- (g) "Child caring institution" means that term as defined in section 1 of 1973 PA 116, MCL 722.111.
- (h) "Child placing agency" means an organization licensed or approved by the department to receive children for placement in private family homes for foster care or adoption and to provide services related to adoption.
- (i) "Complainant" means an individual who makes a complaint as provided in section 5.
- (j) "Child protection law" means the child protection law, 1975 PA 238, MCL 722.621 to 722.638.
- (k) "Children's ombudsman" or "ombudsman" means the individual appointed to the office of children's ombudsman under section 3.
- (l) "Closed session" means that term as defined in the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.
- (m) "Department" means the family independence agency.

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

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

Sec. 3. (1) As a means of effecting changes in policy, procedure, and legislation, educating the public, investigating and reviewing actions of the department, child placing agencies, or child caring institutions, monitoring and ensuring compliance with relevant statutes, rules, and policies pertaining to children's protective services and the placement, supervision, treatment, and improving delivery of care of children in foster care and adoptive homes, the children's ombudsman is established as an autonomous entity in the department of management and budget.

(2) The governor shall appoint an individual as the ombudsman, with the advice and consent of the senate. The individual shall be qualified by training and experience to perform the duties and exercise the powers of the children's ombudsman and the children's ombudsman office as provided in this act.

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

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

Sec. 4. (1) The ombudsman shall establish procedures for the office for budgeting, expending money, and employing personnel according to the management and budget act, 1984 PA 431, MCL 18.1101 to 18.1594. Subject to annual appropriations, the ombudsman shall employ sufficient personnel to carry out the duties and powers prescribed by this act.

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

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

(4) Any individual may submit a complaint to the ombudsman. The ombudsman has the sole discretion and authority to determine if a complaint falls within his or her duties and powers to investigate and if a complaint involves an administrative act. The ombudsman may initiate an investigation without receiving a complaint. The ombudsman may initiate an investigation upon receipt of a complaint from an individual not meeting the definition of complainant. An individual not meeting the definition of complainant is not entitled to receive information under this act as if he or she is a complainant. The individual is entitled to receive the recommendations of the ombudsman and the department's response to the recommendations of the ombudsman in accordance with state and federal law. During the course of an investigation, the ombudsman may refer a case to the department if the ombudsman determines that the department received a complaint on the case, but did not conduct a field investigation. If the ombudsman refers a case to the department, the department shall conduct a field investigation of the case or provide notice to the ombudsman why a field investigation was not conducted, or what alternative steps may have been taken to address the situation. If a field investigation has been conducted, the department shall report the results to the ombudsman.

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

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

(b) A biological parent of the child.

(c) A foster parent of the child.

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

(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 of the adoption code, MCL 710.22.

(h) A Michigan legislator.

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

(j) An attorney for any individual described in subdivisions (a) to (g).

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

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

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

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

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

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

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

(b) Decide, in his or her discretion, whether to investigate an administrative act.

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

(d) Except as otherwise provided in this subdivision, access records and reports necessary to carry out the ombudsman's powers and duties under this act to the same extent and in the same manner as provided to the department under the provisions of the child protection law. The ombudsman shall be provided access to medical records in the same manner as access is provided to the department under section 16281 of the public health code, 1978 PA 368, MCL 333.16281. The ombudsman shall be provided access to mental health records in the same manner as access is provided to the department in section 748a of the mental health code, 1978 PA 258, MCL 330.1748a, subject to section 9. The ombudsman is subject to the same standards for safeguarding the confidentiality of information under this section and the same sanctions for unauthorized release of information as the department.

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

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

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

Sec. 7. (1) Upon deciding to investigate a complaint, from a complainant and an individual not meeting the definition of complainant, the ombudsman shall notify the complainant or the individual not meeting the definition of complainant of the decision to investigate and shall notify the department, adoption attorney, or child placing agency of the intention to investigate. If the ombudsman declines to investigate a complaint or continue an investigation, the ombudsman shall notify the complainant or the individual not meeting the definition of complainant and the department, adoption attorney, or child placing agency of the decision and of the reasons for the ombudsman's action.

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

(3) The ombudsman shall advise a complainant of administrative remedies and may advise the individual to pursue all administrative remedies or channels of complaint open to the complainant before pursuing a complaint with the ombudsman. Subsequent to the administrative processing of a complaint, the ombudsman may conduct further investigations of a complaint upon the request of the complainant or upon the ombudsman's own initiative.

(4) If the ombudsman finds in the course of an investigation that an individual's action is in violation of state or federal criminal law, the ombudsman shall immediately report that fact to the county prosecutor or the attorney general. If the complaint is against a child placing agency, the ombudsman shall refer the matter to the department for further action with respect to licensing.

(5) The ombudsman may file a petition on behalf of a child requesting the court to take jurisdiction under section 2(b) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, or a petition for termination of parental rights under section 19b of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.19b, if the ombudsman is satisfied that the complainant has contacted the department, the prosecuting attorney, the child's attorney, and the child's guardian ad litem, if any, and that none of these persons intend to file a petition as described in this subsection.

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

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

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

(c) Upon the ombudsman's request, provide the ombudsman with progress reports concerning the administrative processing of a complaint.

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

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

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

Sec. 9. (1) Subject to subsections (2) through (7), a record of the children's ombudsman's office is confidential, shall only be used for purposes set forth in this act, is not subject to court subpoena, and is not discoverable in a legal proceeding. A record of the children's ombudsman's office is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. If the ombudsman identifies action or inaction by the state, through its agencies or services, that failed to protect children, the ombudsman shall provide his or her findings and recommendations to the agency affected by those findings, and make those findings and recommendations available to the complainant and the legislature upon request, to the extent consistent with state or federal law. The ombudsman shall not disclose any information that impairs the rights of the child or the child's parents or guardians.

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

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

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

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

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

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

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

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

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

(6) The ombudsman shall not disclose the identity of an individual making a child abuse or neglect complaint under the child protection law unless that individual's written permission is obtained first or a court has ordered the ombudsman to release that information.

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

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

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

- (b) An administrative act or omission should be modified, canceled, or corrected.
- (c) Reasons should be given for an administrative act or omission.
- (d) Other action should be taken by the department or child placing agency.

(2) Before announcing a conclusion or recommendation that expressly or by implication criticizes an individual, the department, or a child placing agency, the ombudsman shall consult with that individual, the department, or the child placing agency. When publishing an opinion adverse to the department or child placing agency, the ombudsman shall include in the publication any statement of reasonable length made to the ombudsman by the department or child placing agency in defense or mitigation of the action. The ombudsman may request to be notified by the department or child placing agency, within a specified time, of any action taken on any recommendation presented.

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

(4) The ombudsman may provide to the complainant the following information:

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

(b) Information that has otherwise been made public.

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

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

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

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

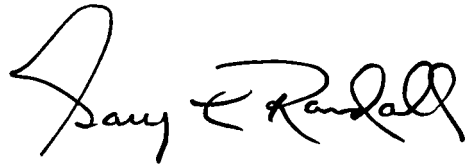
(3) A report by the ombudsman is not subject to prior approval by a person outside of the office.

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

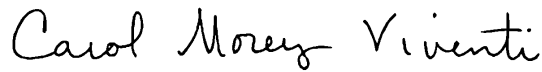
Enacting section 1. Sections 13, 14, and 15 of the children's ombudsman act, 1994 PA 204, MCL 722.933, 722.934, and 722.935, are repealed.

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor