

**SUBSTITUTE FOR
HOUSE BILL NO. 5039**

A bill to amend 1994 PA 204, entitled
"The children's ombudsman act,"
by amending sections 4, 6, and 10 (MCL 722.924, 722.926, and
722.930), sections 4 and 10 as amended by 2004 PA 560 and section 6
as amended by 2013 PA 38.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

7 (2) The ombudsman shall establish procedures for receiving and
8 processing complaints from complainants and individuals not meeting

1 the definition of complainant, conducting investigations, holding
2 informal hearings, and reporting findings and recommendations
3 resulting from investigations.

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

9 (4) Any individual may submit a complaint to the ombudsman.
10 The ombudsman has the sole discretion and authority to determine if
11 a complaint falls within his or her duties and powers to
12 investigate and if a complaint involves an administrative act. The
13 ombudsman may initiate an investigation without receiving a
14 complaint. The ombudsman may initiate an investigation upon receipt
15 of a complaint from an individual not meeting the definition of
16 complainant. An individual not meeting the definition of
17 complainant is not entitled to receive information under this act
18 as if he or she is a complainant. The individual is entitled to
19 receive the recommendations of the ombudsman and the department's
20 response to the recommendations of the ombudsman in accordance with
21 state and federal law. During the course of an investigation, the
22 ombudsman may refer a case to the department if the ombudsman
23 determines that the department received a complaint on the case,
24 but did not conduct a field investigation. If the ombudsman refers
25 a case to the department, the department shall conduct a field
26 investigation of the case or provide notice to the ombudsman why a
27 field investigation was not conducted, or what alternative steps

1 may have been taken to address the situation. If a field
2 investigation has been conducted, the department shall report the
3 results to the ombudsman.

4 **(5) THE OMBUDSMAN SHALL NOTIFY THE DEPARTMENT OF ANY IMMEDIATE**
5 **SAFETY CONCERNS REGARDING A CHILD OR CHILDREN WHO ARE PART OF AN**
6 **ACTIVE OR OPEN CHILD PROTECTIVE SERVICES OR FOSTER CARE CASE. THIS**
7 **NOTIFICATION SHALL OCCUR AS SOON AS POSSIBLE, BUT NOT LATER THAN 1**
8 **BUSINESS DAY AFTER THE OMBUDSMAN BECOMES AWARE OF THE CONCERNS.**

9 Sec. 6. (1) The ombudsman may do all of the following in
10 relation to a child who may be a victim of child abuse or child
11 neglect, including a child who may have died as a result of
12 suspected child abuse or child neglect:

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

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

22 (c) Except as otherwise provided in this subdivision, access
23 records and reports necessary to carry out the ombudsman's powers
24 and duties under this act to the same extent and in the same manner
25 as provided to the department under the provisions of the child
26 protection law. The ombudsman shall be provided access to medical
27 records in the same manner as access is provided to the department

1 under section 16281 of the public health code, 1978 PA 368, MCL
2 333.16281. The ombudsman shall be provided access to mental health
3 records in the same manner as access is provided to the department
4 in section 748a of the mental health code, 1974 PA 258, MCL
5 330.1748a, subject to section 9. **THE OMBUDSMAN MAY REQUEST**
6 **SUBSTANCE USE DISORDER RECORDS IF THE OMBUDSMAN OBTAINS A VALID**
7 **CONSENT OR A COURT ORDER UNDER 42 CFR PART 2.** The ombudsman is
8 subject to the same standards for safeguarding the confidentiality
9 of information under this section and the same sanctions for
10 unauthorized release of information as the department. **IN THE**
11 **COURSE OF A CHILD FATALITY INVESTIGATION, THE OMBUDSMAN MAY ACCESS**
12 **RECORDS FROM THE COURT OF JURISDICTION, ATTORNEY GENERAL,**
13 **PROSECUTING ATTORNEY, OR ANY ATTORNEY RETAINED BY THE DEPARTMENT**
14 **AND REPORTS FROM A COUNTY CHILD FATALITY REVIEW TEAM TO THE SAME**
15 **EXTENT AND IN THE SAME MANNER AS PROVIDED TO THE DEPARTMENT UNDER**
16 **STATE LAW.**

17 ~~(d) Beginning on the effective date of the 2013 amendatory act~~
18 ~~that amended this section, request~~ **REQUEST** a subpoena from a court
19 requiring the production of a record or report necessary to carry
20 out the ombudsman's duties and powers, **INCLUDING A CHILD FATALITY**
21 **INVESTIGATION.** If the person to whom a subpoena is issued fails or
22 refuses to produce the record or report, the ombudsman may petition
23 the court for enforcement of the subpoena.

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

1 (f) Make recommendations to the governor and the legislature
2 concerning the need for children's protective services, adoption,
3 or foster care legislation, policy, or practice without prior
4 review by other offices, departments, or agencies in the executive
5 branch in order to facilitate rapid implementation of
6 recommendations or for suggested improvements to the
7 recommendations. No other office, department, or agency shall
8 prohibit the release of an ombudsman's recommendation to the
9 governor or the legislature.

10 (2) THE OMBUDSMAN SHALL INVESTIGATE ALL CHILD FATALITY CASES
11 THAT OCCURRED OR ARE ALLEGED TO HAVE OCCURRED DUE TO CHILD ABUSE OR
12 CHILD NEGLECT IN THE FOLLOWING SITUATIONS:

13 (A) A CHILD DIED DURING AN ACTIVE CHILD PROTECTIVE SERVICES
14 INVESTIGATION OR OPEN SERVICES CASE, OR THERE WAS AN ASSIGNED OR
15 REJECTED CHILD PROTECTIVE SERVICES COMPLAINT WITHIN 24 MONTHS
16 IMMEDIATELY PRECEDING THE CHILD'S DEATH.

17 (B) A CHILD DIED WHILE IN FOSTER CARE, UNLESS THE DEATH
18 RESULTED FROM NATURAL CAUSES AND THERE WERE NO PRIOR CHILD
19 PROTECTIVE SERVICES OR LICENSING COMPLAINTS CONCERNING THE FOSTER
20 HOME.

21 (C) A CHILD WAS RETURNED HOME FROM FOSTER CARE AND THERE IS AN
22 ACTIVE FOSTER CARE CASE.

23 (D) THE FOSTER CARE CASE INVOLVING THE DECEASED CHILD OR
24 SIBLING WAS CLOSED WITHIN 24 MONTHS IMMEDIATELY PRECEDING THE
25 CHILD'S DEATH.

26 (3) SUBJECT TO STATE APPROPRIATIONS, AN INVESTIGATION UNDER
27 SUBSECTION (2) SHALL BE COMPLETED WITHIN 12 MONTHS AFTER THE

1 **OMBUDSMAN OPENS A CHILD FATALITY CASE FOR INVESTIGATION.**

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

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

8 (b) An administrative act or omission should be modified,
9 canceled, or corrected.

10 (c) Reasons should be given for an administrative act or
11 omission.

12 (d) Other action should be taken by the department or **THE**
13 child placing agency.

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

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

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

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

8 (b) Information that has otherwise been made public.

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

12 **(6) WITH RESPECT TO A CHILD FATALITY CASE INVESTIGATED UNDER**
13 **SECTION 6(2) AND UPON REVIEW OF RECORDS OR OTHER INFORMATION**
14 **RECEIVED UNDER SECTION 6(1)(C) OR (D), IN THE COURSE OF A CHILD**
15 **FATALITY INVESTIGATION, IF THERE IS NO ONGOING CHILD PROTECTION**
16 **PROCEEDING INVOLVING A SIBLING OF THE CHILD WHO DIED, THE OMBUDSMAN**
17 **SHALL PROVIDE ANY NECESSARY RECOMMENDATIONS FOR IMPROVING SYSTEMIC**
18 **ISSUES THAT ARE DISCOVERED DURING THE INVESTIGATION OF THE CHILD**
19 **FATALITY. THE RECOMMENDATIONS MAY BE PROVIDED TO THE COURT OF**
20 **JURISDICTION, THE STATE COURT ADMINISTRATIVE OFFICE, THE COUNTY**
21 **CHILD FATALITY REVIEW TEAM, MEDICAL PROFESSIONALS, OR ATTORNEYS OR**
22 **OTHER LEGAL PROFESSIONALS INVOLVED WITH THE PARTICULAR CHILD WHO**
23 **DIED. THE RECOMMENDATIONS SHALL ALSO BE SUMMARIZED AND INCLUDED IN**
24 **THE ANNUAL REPORT REFERENCED IN SUBSECTION (7).**

25 (7) ~~(6)~~—The ombudsman shall submit to the governor, the
26 director of the department, and the legislature an annual report on
27 the ombudsman's conduct, including any recommendations regarding

1 the need for legislation or for change in rules or policies.
2 Enacting section 1. This amendatory act takes effect 90 days
3 after the date it is enacted into law.