

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4650**

A bill to amend 1994 PA 204, entitled
"The children's ombudsman act,"
by amending sections 2, 5a, and 6 (MCL 722.922, 722.925a, and
722.926), section 2 as amended by 2004 PA 560, section 5a as
amended by 2013 PA 38, and section 6 as amended by 2014 PA 243.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Administrative act" includes an action, omission,
3 decision, recommendation, practice, or other procedure of the
4 department, an adoption attorney, or a child placing agency with
5 respect to a particular child related to adoption, foster care, or
6 protective services.

7 (b) "Adoption attorney" means that term as defined in section
8 22 of the adoption code, MCL 710.22.

1 (c) "Adoption code" means **THE MICHIGAN ADOPTION CODE**, chapter
2 X of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70.

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

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

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

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

10 (h) "Child placing agency" means an organization licensed or
11 approved by the department to receive children for placement in
12 private family homes for foster care or adoption and to provide
13 services related to adoption.

14 (i) "Complainant" means an individual who makes a complaint as
15 provided in section 5.

16 (j) "Child protection law" means the child protection law,
17 1975 PA 238, MCL 722.621 to 722.638.

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

20 (l) "Closed session" means that term as defined in **SECTION 2 OF**
21 the open meetings act, 1976 PA 267, ~~MCL 15.261 to 15.275.~~ **MCL**
22 **15.262.**

23 (m) "Department" means the ~~family independence agency.~~
24 **DEPARTMENT OF HUMAN SERVICES.**

25 (n) "Foster care" means care provided to a child in a foster
26 family home, foster family group home, or child caring institution
27 licensed or approved by the department under 1973 PA 116, MCL

1 722.111 to 722.128, or care provided to a child in a relative's
2 home under a court order.

3 (O) "FOSTER PARENT'S BILL OF RIGHTS LAW" MEANS THE FOSTER
4 PARENT'S BILL OF RIGHTS LAW CREATED IN SECTION 8A OF THE FOSTER
5 CARE AND ADOPTION SERVICES ACT, 1994 PA 203, MCL 722.958A.

6 (P) ~~(e)~~—"Office" means the children's ombudsman office
7 established under section 3.

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

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

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

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

22 (D) SUBJECT TO AN APPROPRIATION OF FUNDS, COMMENCE AND CONDUCT
23 INVESTIGATIONS INTO ALLEGED VIOLATIONS OF THE FOSTER PARENT'S BILL
24 OF RIGHTS LAW.

25 Sec. 6. (1) The ombudsman may do all of the following in
26 relation to a child who may be a victim of child abuse or child
27 neglect, including a child who may have died as a result of

1 suspected child abuse or child neglect:

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

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

11 (C) UPON HIS OR HER OWN INITIATIVE OR UPON RECEIPT OF A
12 COMPLAINT AND SUBJECT TO AN APPROPRIATION OF FUNDS, INVESTIGATE AN
13 ALLEGED VIOLATION OF THE FOSTER PARENT'S BILL OF RIGHTS LAW.

14 (D) ~~(e)~~—Except as otherwise provided in this subdivision,
15 access records and reports necessary to carry out the ombudsman's
16 powers and duties under this act to the same extent and in the same
17 manner as provided to the department under the provisions of the
18 child protection law. The ombudsman shall be provided access to
19 medical records in the same manner as access is provided to the
20 department under section 16281 of the public health code, 1978 PA
21 368, MCL 333.16281. The ombudsman shall be provided access to
22 mental health records in the same manner as access is provided to
23 the department in section 748a of the mental health code, 1974 PA
24 258, MCL 330.1748a, subject to section 9. The ombudsman may request
25 substance use disorder records if the ombudsman obtains a valid
26 consent or a court order under 42 CFR part 2. The ombudsman is
27 subject to the same standards for safeguarding the confidentiality

1 of information under this section and the same sanctions for
2 unauthorized release of information as the department. In the
3 course of a child fatality investigation, the ombudsman may access
4 records from the court of jurisdiction, attorney general,
5 prosecuting attorney, or any attorney retained by the department
6 and reports from a county child fatality review team to the same
7 extent and in the same manner as provided to the department under
8 state law.

9 (E) ~~(d)~~—Request a subpoena from a court requiring the
10 production of a record or report necessary to carry out the
11 ombudsman's duties and powers, including a child fatality
12 investigation. If the person to whom a subpoena is issued fails or
13 refuses to produce the record or report, the ombudsman may petition
14 the court for enforcement of the subpoena.

15 (F) ~~(e)~~—Hold informal hearings and request that individuals
16 appear before the ombudsman and give testimony or produce
17 documentary or other evidence that the ombudsman considers relevant
18 to a matter under investigation.

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

1 (2) The ombudsman shall investigate all child fatality cases
2 that occurred or are alleged to have occurred due to child abuse or
3 child neglect in the following situations:

4 (a) A child died during an active child protective services
5 investigation or open services case, or there was an assigned or
6 rejected child protective services complaint within 24 months
7 immediately preceding the child's death.

8 (b) A child died while in foster care, unless the death
9 resulted from natural causes and there were no prior child
10 protective services or licensing complaints concerning the foster
11 home.

12 (c) A child was returned home from foster care and there is an
13 active foster care case.

14 (d) The foster care case involving the deceased child or
15 sibling was closed within 24 months immediately preceding the
16 child's death.

17 (3) Subject to state appropriations, an investigation under
18 subsection (2) shall be completed within 12 months after the
19 ombudsman opens a child fatality case for investigation.

20 Enacting section 1. This amendatory act takes effect October
21 1, 2014.

22 Enacting section 2. This amendatory act does not take effect
23 unless House Bill No. 4649 of the 97th Legislature is enacted into
24 law.