

Act No. 204
Public Acts of 1994
Approved by the Governor
June 20, 1994
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June 21, 1994

**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1994**

Introduced by Senators Welborn Dingell Geake Cisky Dillingham Gougeon McManus Wartner
Bouchard DeGrow Pridnia Honigman Gast Hoffman Arthurhultz and Hart

ENROLLED SENATE BILL No. 723

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

The People of the State of Michigan enact

Sec 1 This act shall be known and may be cited as the children's ombudsman act

Sec 2 As used in this act

(a) Administrative act includes an action omission decision recommendation practice or other procedure of the department of social services 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 being section 710 22 of the Michigan Compiled Laws

(c) Adoption code means chapter X of Act No 288 of the Public Acts of 1939 being sections 710 21 to 710 70 of the Michigan Compiled Laws

(d) Child placing agency means an organization licensed or approved by the department of social services under Act No 116 of the Public Acts of 1973 being sections 722 111 to 722 128 of the Michigan Compiled Laws to receive children for placement in private family homes for foster care or adoption and to provide services related to adoption

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

(f) Complainant means an individual who makes a complaint as provided in section 5

(g) Department means the department of social services

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

(i) Official means an official or employee of the department or a child placing agency

(j) Ombudsman means the children's ombudsman created in section 3

Sec 3 (1) As a means of monitoring and ensuring compliance with relevant statutes rules and policies pertaining to children's protective services and the placement supervision and treatment of children in foster care and adoptive homes the children's ombudsman is created as an autonomous entity in the department of management and budget The

ombudsman shall exercise its powers and duties including the functions of budgeting and procurement and other management related functions independently of the director of the department of management and budget

(2) The ombudsman shall be appointed by the governor and shall serve at the pleasure of the governor

Sec 4 (1) The ombudsman shall establish procedures for budgeting expending funds and employing personnel 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 conducting investigations holding hearings and reporting findings resulting from investigations

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 being section 710 22 of the Michigan Compiled Laws

(h) A Michigan legislator

(i) An attorney for any individual described in subparagraphs (a) to (g)

Sec 6 The ombudsman may do all of the following

(a) Upon its own initiative or upon receipt of a complaint from a complainant investigate an administrative act that is alleged to be contrary to law or rule or 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

(b) Decide in its discretion whether to investigate a complaint

(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) 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

(e) Make recommendations to the governor and the legislature concerning the need for protective services adoption or foster care legislation

Sec 7 (1) Upon rendering a decision to investigate a complaint from a complainant the ombudsman shall notify the 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 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 may advise a complainant 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 any 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 of social services 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 XIIIA of Act No 288 of the Public Acts of 1939 being section 712A 2 of the Michigan Compiled Laws or a petition for termination of parental rights under section 19b of chapter XIIIA of Act No 288 of the Public Acts of 1939

being section 712A 19b of the Michigan Compiled Laws 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 its designee access to all relevant information records and documents in the possession of the department or child placing agency that the ombudsman considers necessary in an investigation

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

(c) Provide the ombudsman upon request with progress reports concerning the administrative processing of a complaint

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

Sec 9 The ombudsman shall treat all matters under investigation including the identities of recipients or individuals from whom information is acquired as confidential except so far as disclosures may be necessary to enable the ombudsman to perform the duties of the office and to support any recommendations resulting from an investigation A record of the office of the ombudsman is confidential shall be used only for purposes set forth in this act and is not subject to court subpoena A record of the office of the ombudsman is exempt from disclosure under the freedom of information act Act No 442 of the Public Acts of 1976 being sections 15 231 to 15 246 of the Michigan Compiled Laws

Sec 10 (1) The ombudsman shall prepare a report of the 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 should be modified or canceled

(c) Reasons should be given for an administrative act

(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 shall provide the complainant with a copy of its recommendations on a complaint

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

Sec 11 (1) 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

Sec 12 The authority granted the ombudsman under this act is in addition to the authority granted under the provisions of any other act or rule under which the remedy or right of appeal or objection is provided for a person or any procedure provided for the inquiry into or investigation of any matter The authority granted the ombudsman does not limit or affect the remedy or right of appeal or objection and is not an exclusive remedy or procedure

Sec 13 The ombudsman shall maintain a registry of adoption attorneys who provide services described in the adoption code The ombudsman shall remove an adoption attorney from the registry under any of the following circumstances

(a) The attorney requests that his or her name be removed from the registry

(b) The attorney fails to register as provided in section 5 of the foster care and adoption services act

(c) The ombudsman receives notice that the attorney s license to practice law is suspended or revoked

Sec 14 This act shall take effect January 1 1995

Sec 15 This act shall not take effect unless all of the following bills of the 87th Legislature are enacted into law

(a) Senate Bill No 299

(b) Senate Bill No 721

(c) Senate Bill No 722

(d) Senate Bill No 724

(e) Senate Bill No 725

(f) House Bill No 4201

(g) House Bill No 4428

(h) House Bill No 4614

(i) House Bill No 4638

This act is ordered to take immediate effect

Secretary of the Senate

Co Clerk of the House of Representatives

Approved

Governor