



SENATE BILL No. 723

June 30, 1993, Introduced by Senators WELBORN, DINGELL, GEAKE, CISKY, DILLINGHAM, GOUGEON, MC MANUS, WARTNER, BOUCHARD, DE GROW, PRIDNIA, HONIGMAN, GAST, HOFFMAN, ARTHURHULTZ and HART and referred to the Committee on Family Law, Criminal Law, and Corrections.

A bill to create the office of the children's ombudsman in the legislative council; to prescribe the powers and duties of the office of the children's ombudsman, the children's ombudsman, the legislative council, the department of social services, the department of mental health, county community mental health programs, and child placing agencies; to create the children's ombudsman fund and provide for expenditure of the fund; and to provide remedies from certain administrative acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

3 Sec. 2. As used in this act:

4 (a) "Administrative act" includes an action, omission,
5 decision, recommendation, practice, or other procedure of the

1 department of social services, the department of mental health, a
2 county program, or a child placing agency.

3 (b) "Adoption code" means chapter X of Act No. 288 of the
4 Public Acts of 1939, being sections 710.21 to 710.70 of the
5 Michigan Compiled Laws.

6 (c) "Child placing agency" means an organization licensed by
7 the department of social services under Act No. 116 of the Public
8 Acts of 1973, being sections 722.111 to 722.128 of the Michigan
9 Compiled Laws, to receive children for placement in private
10 family homes for foster care or adoption.

11 (d) "Council" means the legislative council established
12 under section 15 of article IV of the state constitution of
13 1963.

14 (e) "County program" means a county community mental health
15 program established pursuant to chapter 2 of the mental health
16 code, Act No. 258 of the Public Acts of 1974, being sections
17 330.1200 to 330.1246 of the Michigan Compiled Laws.

18 (f) "Department" means the department of social services or
19 the department of mental health.

20 (g) "Foster parent" means an individual licensed by the
21 department of social services under Act No. 116 of the Public
22 Acts of 1973 to provide foster care to children.

23 (h) "Fund" means the children's ombudsman fund created in
24 section 13.

25 (i) "Juvenile code" means chapter XIIA of Act No. 288 of the
26 Public Acts of 1939, being sections 712A.1 to 712A.28 of the
27 Michigan Compiled Laws.

1 (j) "Mental health code" means Act No. 258 of the Public
2 Acts of 1974, being sections 330.1001 to 330.2106 of the Michigan
3 Compiled Laws.

4 (k) "Office" means the office of the children's ombudsman
5 created under this act.

6 (l) "Official" means an official or employee of the depart-
7 ment, a county program, or a child placing agency.

8 (m) "Ombudsman" means the children's ombudsman created under
9 this act.

10 (n) "Social welfare act" means Act No. 280 of the Public
11 Acts of 1939, being sections 400.1 to 400.119b of the Michigan
12 Compiled Laws.

13 Sec. 3. (1) To provide a means for the legislature to moni-
14 tor the compliance of the department, county programs, child
15 placing agencies, and officials with provisions of the adoption
16 code, the juvenile code, the mental health code, the social wel-
17 fare act, and relevant rules and policies pertaining to
18 children's protective services and the placement, supervision,
19 and treatment of children in foster care and adoptive homes, the
20 office of the children's ombudsman is created within the legisla-
21 tive council.

22 (2) The principal executive officer of the office of the
23 children's ombudsman is the children's ombudsman, who shall be
24 appointed by and serve at the pleasure of the council.

25 Sec. 4. The council shall establish procedures for approv-
26 ing the budget, expending the funds, and employing personnel for
27 the office. The office shall be staffed with sufficient

1 personnel to carry out the duties and powers prescribed by this
2 act.

3 Sec. 5. The ombudsman may do all of the following:

4 (a) Subject to approval of the council, establish procedures
5 for receiving and processing complaints from prospective adoptive
6 parents, foster parents, or other representatives of children;
7 conducting investigations; holding hearings; and reporting find-
8 ings resulting from investigations.

9 (b) Upon his or her own initiative, or upon receipt of a
10 complaint from a prospective adoptive parent, a foster parent, or
11 another representative of a child, investigate an administrative
12 act that is alleged to be contrary to law, or contrary to policy
13 of the department, a county program, or a child placing agency
14 without an adequate statement of reason, or based on irrelevant,
15 immaterial, or erroneous grounds.

16 (c) Hold informal hearings and request that individuals
17 appear before the ombudsman or appear at a hearing and give tes-
18 timony or produce documentary or other evidence that the ombuds-
19 man considers relevant to a matter under investigation.

20 (d) Request from the department or county program and from
21 the complainant progress reports concerning the administrative
22 processing of any complaint.

23 (e) Make recommendations to the council concerning the need
24 for mental health, protective services, adoption, or foster care
25 legislation.

26 Sec. 6. (1) Upon rendering a decision to investigate a
27 complaint from a prospective adoptive parent, a foster parent, or

1 another representative of a child, the ombudsman shall notify the
2 complainant of the decision and shall notify the department,
3 county program, or child placing agency of the intention to
4 investigate. If the ombudsman declines to investigate a com-
5 plaint or continue an investigation, the ombudsman shall notify
6 the complainant and the department, county program, or child
7 placing agency of the decision and of the reasons for the
8 ombudsman's action.

9 (2) The ombudsman shall advise a complainant to pursue all
10 administrative remedies or channels of complaint open to the
11 complainant. Subsequent to the administrative processing of a
12 complaint, the ombudsman may conduct further investigations of
13 any complaint upon the request of the complainant or upon the
14 ombudsman's own initiative.

15 Sec. 7. (1) The department, county program, and child plac-
16 ing agencies shall do all of the following:

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

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

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

26 (d) Provide information to a prospective adoptive parent or
27 foster parent regarding the provisions of this act and the rights

1 and obligations of a prospective adoptive parent or foster parent
2 under the laws of this state.

3 (2) As a condition of the licensure of a child placing
4 agency or approval of the annual plan and budget of a county pro-
5 gram, the department shall require that the child placing agency
6 or county program agree to comply with subsection (1).

7 Sec. 8. Upon request of the ombudsman, the council may hold
8 a hearing. The council may administer oaths, subpoena witnesses,
9 and examine the books and records of the department, county pro-
10 gram, or a child placing agency in accordance with section 104 of
11 the legislative council act, Act No. 268 of the Public Acts of
12 1986, being section 4.1104 of the Michigan Compiled Laws, in a
13 matter that is or was a proper subject of investigation by the
14 ombudsman under this act.

15 Sec. 9. The ombudsman shall treat all matters under inves-
16 tigation, including the identities of recipients or individuals
17 from whom information is acquired, as confidential, except so far
18 as disclosures may be necessary to enable the ombudsman to per-
19 form the duties of the office and to support any recommendations
20 resulting from an investigation.

21 Sec. 10. (1) The ombudsman shall prepare a report of the
22 findings of an investigation and make recommendations to the
23 council if the ombudsman finds 1 or more of the following:

24 (a) A matter should be further considered by the department,
25 a county program, or a child placing agency.

26 (b) An administrative act should be modified or canceled.

1 (c) A statute or rule on which an administrative act is
2 based should be altered.

3 (d) Reasons should be given for an administrative act.

4 (e) Other action should be taken by the department, county
5 program, or child placing agency.

6 (2) Before announcing a conclusion or recommendation that
7 expressly or by implication criticizes an individual, the depart-
8 ment, a county program, or a child placing agency, the ombudsman
9 shall consult with the department or that individual or county
10 program or child placing agency. When publishing an opinion
11 adverse to the department or a county program or child placing
12 agency, the ombudsman shall include in the publication any state-
13 ment of reasonable length made to the ombudsman by the depart-
14 ment, county program, or child placing agency in defense or miti-
15 gation of the action. The ombudsman may request to be notified
16 by the department, county program, or child placing agency,
17 within a specified time, of any action taken on any recommenda-
18 tion presented.

19 (3) The ombudsman shall notify the complainant of the
20 actions taken by the office and by the department, county pro-
21 gram, or child placing agency.

22 (4) The ombudsman shall submit to the council and the legis-
23 lature an annual report on the conduct of the office.

24 Sec. 11. (1) A complainant shall not be penalized in any
25 way by an official or the department, county program, or child
26 placing agency for filing a complaint or cooperating with the
27 ombudsman in investigating a complaint.

1 (2) An individual, the department, or a county program or
2 child placing agency shall not hinder the lawful actions of the
3 ombudsman or employees of the office, or willfully refuse to
4 comply with lawful demands of the office.

5 Sec. 12. The authority granted the ombudsman under this act
6 is in addition to the authority granted under the provisions of
7 any other act or rule under which the remedy or right of appeal
8 or objection is provided for a person, or any procedure provided
9 for the inquiry into or investigation of any matter. The author-
10 ity granted the ombudsman does not limit or affect the remedy or
11 right of appeal or objection and is not an exclusive remedy or
12 procedure.

13 Sec. 13. (1) The children's ombudsman fund is created in
14 the state treasury. The fund shall be administered by the office
15 and shall be used only as provided in this act.

16 (2) The state treasurer shall credit to the fund all money
17 appropriated for the fund. Money remaining in the fund at the
18 end of a fiscal year, including interest earned by the fund,
19 shall be carried over in the fund to the next and succeeding
20 fiscal years and shall not be credited to or revert to the gen-
21 eral fund.