

HOUSE BILL No. 6074

September 16, 1998, Introduced by Reps. LaForge, Gire, Price and Brater and referred to the Committee on Human Services and Children.

A bill to amend 1994 PA 204, entitled "The children's ombudsman act," by amending sections 2, 3, 5, 6, 7, 8, 10, and 11 (MCL 722.922, 722.923, 722.925, 722.926, 722.927, 722.928, 722.930, and 722.931).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Administrative act" includes an action, omission, deci-
3 sion, recommendation, practice, or other procedure of the
4 ~~department of social~~ FAMILY INDEPENDENCE AGENCY, DEPARTMENT OF
5 COMMUNITY HEALTH, DEPARTMENT OF CONSUMER AND INDUSTRY services,
6 an adoption attorney, A CHILD CARE ORGANIZATION, or a child plac-
7 ing agency with respect to a particular child related to
8 adoption, foster care, or protective services.

1 (b) "Adoption attorney" means ~~that term as defined in~~
2 ~~section 22 of~~ AN ATTORNEY WHO ACTS AS COUNSEL IN A DIRECT
3 PLACEMENT ADOPTION UNDER the adoption code. ~~, being~~
4 ~~section 710.22 of the Michigan Compiled Laws.~~

5 (c) "Adoption code" means chapter X of ~~Act No. 288 of the~~
6 ~~Public Acts of 1939, being sections 710.21 to 710.70 of the~~
7 ~~Michigan Compiled Laws~~ 1939 PA 288, MCL 710.21 TO 710.70.

8 (D) "CHILD CARE ORGANIZATION" MEANS THAT TERM AS DEFINED IN
9 1973 PA 116, MCL 722.111 TO 722.128.

10 (E) ~~(d)~~ "Child placing agency" means an organization
11 licensed or approved by the ~~department of social services~~
12 FAMILY INDEPENDENCE AGENCY under ~~Act No. 116 of the Public Acts~~
13 ~~of 1973, being sections 722.111 to 722.128 of the Michigan~~
14 ~~Compiled Laws~~ 1973 PA 116, MCL 722.111 TO 722.128, to receive
15 children for placement in private family homes for foster care or
16 adoption and to provide services related to adoption OR A LOCAL
17 COMMUNITY HEALTH AGENCY OR PROBATE COURT THAT RECEIVES CHILDREN
18 FOR PLACEMENT IN PRIVATE FAMILY HOMES FOR FOSTER CARE OR ADOPTION
19 AND PROVIDES SERVICES RELATED TO ADOPTION.

20 (F) ~~(e)~~ "Child" means an individual under the age of 18.

21 (G) ~~(f)~~ "Complainant" means an individual who makes a com-
22 plaint as provided in section 5.

23 ~~(g)~~ "Department" means ~~the department of social services.~~

24 (h) "Foster parent" means an individual licensed by the
25 ~~department of social services~~ FAMILY INDEPENDENCE AGENCY OR A
26 CHILD PLACING AGENCY under ~~Act No. 116 of the Public Acts of~~

1 ~~1973~~ 1973 PA 116, MCL 722.111 TO 722.128, to provide foster care
2 to children.

3 (i) "Official" means an official or employee of the
4 ~~department~~ FAMILY INDEPENDENCE AGENCY, DEPARTMENT OF COMMUNITY
5 HEALTH, DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES, or a child
6 placing agency, OR AN INVESTIGATIVE OFFICER OF THE PROBATE COURT
7 OR CIRCUIT COURT.

8 (j) "Ombudsman" means the children's ombudsman created in
9 section 3.

10 Sec. 3. (1) As a means of monitoring and ensuring compli-
11 ance with relevant statutes, rules, and policies pertaining to
12 children's protective services, INFANT-MATERNAL SUPPORT SERVICES,
13 CHILD ABUSE AND NEGLECT PREVENTION SERVICES, CHILD CARE ORGANIZA-
14 TIONS LICENSED OR REGISTERED UNDER 1973 PA 116, MCL 722.111 TO
15 722.128, and the placement, supervision, and treatment of chil-
16 dren in foster care and adoptive homes, the children's ombudsman
17 is created as an autonomous entity in the department of manage-
18 ment and budget AND TRANSFERRED TO THE LEGISLATIVE BRANCH IN A
19 TYPE 1 TRANSFER. The ombudsman shall exercise its powers and
20 duties, including the functions of budgeting and procurement and
21 other management-related functions, independently of the director
22 of the department of management and budget.

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

25 Sec. 5. All of the following individuals may make a com-
26 plaint to the ombudsman with respect to a particular child,
27 alleging that an administrative act is contrary to law, rule, or

1 policy, imposed without an adequate statement of reason, or based
2 on irrelevant, immaterial, or erroneous grounds:

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

5 (b) A biological parent of the child.

6 (c) A foster parent of the child.

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

9 (e) A legally appointed guardian of the child.

10 (f) A guardian ad litem of the child.

11 (g) An adult who is related to the child within the fifth
12 degree by marriage, blood, or adoption, as defined in section 22
13 of the adoption code, ~~being section 710.22 of the Michigan~~
14 ~~Compiled Laws~~ MCL 710.22.

15 (h) A Michigan legislator.

16 (i) An attorney for any individual described in subpara-
17 graphs (a) to (g).

18 (J) A PERSON REQUIRED UNDER SECTION 3 OF THE CHILD PROTEC-
19 TION LAW, 1975 PA 238, MCL 722.623, TO REPORT SUSPECTED CHILD
20 ABUSE OR NEGLECT.

21 Sec. 6. The ombudsman may do all of the following:

22 (a) Upon ~~its~~ THE OMBUDSMAN'S own initiative or upon
23 receipt of a complaint from a complainant, investigate an admin-
24 istrative act that is alleged to be contrary to law or rule, or
25 contrary to policy of the ~~department~~ FAMILY INDEPENDENCE
26 AGENCY, DEPARTMENT OF COMMUNITY HEALTH, OR DEPARTMENT OF CONSUMER
27 AND INDUSTRY SERVICES or a child placing agency; ~~—~~ imposed

1 without an adequate statement of reason; ~~—, or~~ based on
2 irrelevant, immaterial, or erroneous grounds.

3 (b) Decide, in ~~its~~ THE OMBUDSMAN'S discretion, whether to
4 investigate a complaint.

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

11 (d) Hold informal hearings and request that individuals
12 appear before the ombudsman and give testimony or produce docu-
13 mentary or other evidence that the ombudsman considers relevant
14 to a matter under investigation. THE OMBUDSMAN MAY COMPEL TESTI-
15 MONY OF ANY PERSON THE OMBUDSMAN BELIEVES IS ABLE TO PROVIDE
16 INFORMATION RELATING TO A MATTER UNDER INVESTIGATION AND MAY
17 COMPEL THE PRODUCTION OF DOCUMENTS THE OMBUDSMAN BELIEVES MAY
18 RELATE TO A MATTER UNDER INVESTIGATION.

19 (E) BRING SUIT REGARDING THE EXERCISE OF THE OMBUDSMAN'S
20 POWERS TO COMPEL TESTIMONY OR PRODUCTION OF DOCUMENTS UNDER SUB-
21 DIVISION (D).

22 (F) ~~(e)~~ Make recommendations to the governor and the leg-
23 islature concerning the need for protective services, adoption,
24 or foster care legislation.

25 Sec. 7. (1) Upon rendering a decision to investigate a com-
26 plaint from a complainant, the ombudsman shall notify the
27 complainant of the decision to investigate and shall notify the

1 STATE department WITH JURISDICTION OVER THE SUBJECT MATTER OF THE
2 COMPLAINT, adoption attorney, or child placing agency of the
3 intention to investigate. If the ombudsman declines to investi-
4 gate a complaint or continue an investigation, the ombudsman
5 shall notify the complainant and the STATE department WITH JURIS-
6 DICTION OVER THE SUBJECT MATTER OF THE COMPLAINT, adoption attor-
7 ney, or child placing agency of the decision and of the reasons
8 for the ombudsman's action.

9 (2) If the preliminary investigation described in section 6
10 leads the ombudsman to believe that the matter may involve mis-
11 conduct by an adoption attorney, the ombudsman shall immediately
12 refer the complaint to the attorney grievance commission of the
13 state bar of Michigan.

14 (3) The ombudsman may advise a complainant to pursue all
15 administrative remedies or channels of complaint open to the com-
16 plainant before pursuing a complaint with the ombudsman.
17 Subsequent to the administrative processing of a complaint, the
18 ombudsman may conduct further investigations of any complaint
19 upon the request of the complainant or upon the ombudsman's own
20 initiative.

21 (4) If the ombudsman finds in the course of an investigation
22 that an individual's action is in violation of state or federal
23 criminal law, the ombudsman shall immediately report that fact to
24 the county prosecutor or the attorney general. If the complaint
25 is against a child placing agency, the ombudsman shall refer the
26 matter to the ~~department of social services~~ FAMILY INDEPENDENCE
27 AGENCY for further action with respect to licensing.

1 (5) The ombudsman may file a petition on behalf of a child
2 requesting the court to take jurisdiction under section 2(b) of
3 chapter XIIIA of ~~Act No. 288 of the Public Acts of 1939, being~~
4 ~~section 712A.2 of the Michigan Compiled Laws~~ 1939 PA 288,
5 MCL 712A.2, or a petition for termination of parental rights
6 under section 19b of chapter XIIIA of ~~Act No. 288 of the Public~~
7 ~~Acts of 1939, being section 712A.19b of the Michigan Compiled~~
8 ~~Laws, if the ombudsman is satisfied that the complainant has con-~~
9 ~~tacted the department, the prosecuting attorney, the child's~~
10 ~~attorney, and the child's guardian ad litem, if any, and that~~
11 ~~none of these persons intend to file a petition as described in~~
12 ~~this subsection~~ 1939 PA 288, MCL 712A.19B.

13 Sec. 8. (1) The ~~department and~~ FAMILY INDEPENDENCE
14 AGENCY, DEPARTMENT OF COMMUNITY HEALTH, DEPARTMENT OF CONSUMER
15 AND INDUSTRY SERVICES, OR a child placing agency shall do all of
16 the following:

17 (a) Upon the ombudsman's request, ~~grant~~ PROVIDE TO the
18 ombudsman or its designee ~~access to~~ COPIES OF all ~~relevant~~
19 information, records, FILES, and documents in the possession of
20 the ~~department or~~ FAMILY INDEPENDENCE AGENCY, DEPARTMENT OF
21 COMMUNITY HEALTH, DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES,
22 OR child placing agency that the ombudsman considers necessary in
23 an investigation. IF THE OMBUDSMAN REQUESTS COPIES OF RECORDS OR
24 DOCUMENTS DESCRIBED IN THIS SUBDIVISION, THE FAMILY INDEPENDENCE
25 AGENCY, DEPARTMENT OF COMMUNITY HEALTH, DEPARTMENT OF CONSUMER
26 AND INDUSTRY SERVICES, OR CHILD PLACING AGENCY SHALL PROVIDE

1 THOSE COPIES TO THE OMBUDSMAN OR ITS DESIGNEE WITHIN 10 DAYS
2 AFTER THE DATE OF THE REQUEST.

3 (b) ~~Assist the ombudsman to obtain~~ OBTAIN AND PROVIDE TO
4 THE OMBUDSMAN OR ITS DESIGNEE WITHIN 10 DAYS AFTER THE DATE OF
5 THE REQUEST the necessary releases of those documents that are
6 specifically restricted.

7 (c) Provide the ombudsman upon request with QUARTERLY
8 progress reports concerning the administrative processing of a
9 complaint.

10 (2) The ~~department~~ FAMILY INDEPENDENCE AGENCY, an adoption
11 attorney, and a child placing agency shall provide information to
12 a biological parent, prospective adoptive parent, or foster
13 parent regarding the provisions of this act.

14 (3) EXCEPT AS OTHERWISE PROVIDED BY LAW, UPON THE
15 OMBUDSMAN'S REQUEST, A PUBLIC OR NONPUBLIC SCHOOL, A HEALTH CARE
16 FACILITY, A COUNTY MEDICAL EXAMINER, CHILD FATALITY REVIEW TEAM,
17 A LAW ENFORCEMENT AGENCY, OR A COURT OR COURT EMPLOYEE, INCLUD-
18 ING, BUT NOT LIMITED TO, THE FRIEND OF THE COURT, SHALL PROVIDE
19 TO THE OMBUDSMAN OR ITS DESIGNEE ALL RELEVANT INFORMATION,
20 RECORDS, AND DOCUMENTS IN THE POSSESSION OF THE SCHOOL, HEALTH
21 CARE FACILITY, COUNTY MEDICAL EXAMINER, CHILD FATALITY REVIEW
22 TEAM, LAW ENFORCEMENT AGENCY, OR COURT OR COURT EMPLOYEE THAT THE
23 OMBUDSMAN CONSIDERS NECESSARY IN AN INVESTIGATION. IF THE
24 OMBUDSMAN REQUESTS COPIES OF RECORDS OR DOCUMENTS DESCRIBED IN
25 THIS SUBSECTION, THE SCHOOL, HEALTH CARE FACILITY, COUNTY MEDICAL
26 EXAMINER, CHILD FATALITY REVIEW TEAM, LAW ENFORCEMENT AGENCY, OR
27 COURT OR COURT EMPLOYEE SHALL PROVIDE THOSE COPIES TO THE

1 OMBUDSMAN OR ITS DESIGNEE WITHIN 10 DAYS AFTER THE DATE OF THE
2 REQUEST.

3 Sec. 10. (1) The ombudsman shall prepare a report of the
4 findings of an investigation and make recommendations to the
5 STATE department ~~or~~ HAVING JURISDICTION OVER THE SUBJECT MATTER
6 OF THE COMPLAINT OR TO THE child placing agency if the ombudsman
7 finds 1 or more of the following:

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

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

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

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

14 (2) Before announcing a conclusion or recommendation that
15 expressly or by implication criticizes an individual, ~~the~~ A
16 STATE department, or a child placing agency, the ombudsman shall
17 consult with that individual, ~~the~~ department, or ~~the~~ child
18 placing agency. When publishing an opinion adverse to ~~the~~ A
19 STATE department or A child placing agency, the ombudsman shall
20 include in the publication any statement of reasonable length
21 made to the ombudsman by the STATE department or child placing
22 agency in defense or mitigation of the action. The ombudsman may
23 request to be notified by the STATE department or child placing
24 agency, within a specified time, of any action taken on any rec-
25 ommendation presented, AND THE DEPARTMENT OR CHILD PLACING AGENCY
26 SHALL PROVIDE THAT NOTIFICATION.

1 (3) The ombudsman shall notify the complainant of the
2 actions taken by the ombudsman and by the STATE department WITH
3 JURISDICTION OVER THE SUBJECT MATTER OF THE COMPLAINT or child
4 placing agency.

5 (4) The ombudsman shall provide the complainant with a copy
6 of its FINDINGS AND recommendations on a complaint.

7 (5) The ombudsman shall submit to the governor, TO the
8 director of the ~~department~~ FAMILY INDEPENDENCE AGENCY, DEPART-
9 MENT OF COMMUNITY HEALTH, AND DEPARTMENT OF CONSUMER AND INDUSTRY
10 SERVICES, and TO the legislature an annual report on the conduct
11 of the ombudsman, including any recommendations regarding the
12 need for legislation or for change in rules or policies.

13 Sec. 11. (1) An official, the ~~department, or~~ FAMILY INDE-
14 PENDENCE AGENCY, THE DEPARTMENT OF COMMUNITY HEALTH, THE DEPART-
15 MENT OF CONSUMER AND INDUSTRY SERVICES, OR a child placing agency
16 shall not penalize any person for filing a complaint or cooperat-
17 ing with the ombudsman in investigating a complaint.

18 (2) An individual, the ~~department~~ FAMILY INDEPENDENCE
19 AGENCY, THE DEPARTMENT OF COMMUNITY HEALTH, THE DEPARTMENT OF
20 CONSUMER AND INDUSTRY SERVICES, an adoption attorney, or a child
21 placing agency shall not hinder the lawful actions of the ombuds-
22 man or employees of the ombudsman.