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House Bill 5039 (Substitute H-2 as passed by the House)
Sponsor: Representative Kenneth Kurtz
House Committee: Families, Children, and Seniors
Senate Committee: Families, Seniors and Human Services

(enacted version)

Date Completed: 6-4-14

CONTENT

The bill would amend the Children's Ombudsman Act to do the following:

- **Require the Children's Ombudsman, within one business days, to notify the Department of Human Services (DHS) of an immediate safety concern about a child who was the subject of an open case.**
- **Allow the Ombudsman to request substance use disorder records if a valid consent or court order were obtained.**
- **Allow the Ombudsman to gain access to records from the court of jurisdiction or attorneys in the course of a child fatality investigation.**
- **Require the Ombudsman to investigate child fatality cases alleged to have occurred under certain situations.**
- **Require the Ombudsman to issue recommendations for improving systemic issues discovered during an investigation and include those recommendations in its annual report.**

The bill would take effect 90 days after its enactment.

(The Office of Children's Ombudsman is an autonomous entity in the Department of Technology, Management, and Budget, and the Ombudsman is an individual appointed by the Governor. The Act authorizes the Ombudsman to take certain actions in relation to a child who may be a victim of child abuse or child neglect. In particular, the Ombudsman may investigate an administrative act that is alleged to be contrary to law or rule, contrary to policy of the DHS or a child placing agency, imposed without an adequate statement of reason, or based on irrelevant, immaterial, or erroneous grounds.)

Notice of Safety Concerns

The bill would require the Ombudsman to notify the DHS of any immediate safety concerns regarding a child who was part of an active or open Child Protective Services or foster care case. The notification would have to occur as soon as possible but not later than one business day after the Ombudsman became aware of the concerns.

Access to Records

In relation to a child who may be a victim of child abuse or neglect, including a child who may have died as a result of suspected abuse or neglect, the Act allows the Ombudsman to do the following:

- Investigate an administrative act that is alleged to be contrary to rule, law, or DHS policy, imposed without adequate statement of reason, or based on irrelevant, immaterial, or erroneous grounds.
- Decide, in his or her own discretion, whether to investigate an administrative act.
- Gain access to records and reports necessary to carry out the Ombudsman's powers and duties under the Act to the same extent and manner as provided to the DHS under the Child Protection Law, respectively.

The Ombudsman must be provided access to medical records and mental health records in the same manner as access is provided to the DHS under the Public Health Code and under the Mental Health Code, respectively.

The bill would allow the Ombudsman to request substance use disorder records if the Ombudsman obtained a valid consent or court order under 42 CFR Part 2. (Title 42 CFR Part 2 relates to the confidentiality of alcohol and drug abuse patient records, and regulates the disclosure of those patient records with and without patient consent.)

Also, under the bill, in the course of a child fatality investigation, the Ombudsman could gain access to records from the court of jurisdiction, Attorney General, prosecuting attorney, or any attorney retained by the DHS and reports from a county child fatality review team to the same extent and manner as provided to the DHS under State law.

The Act allows the Ombudsman to request a subpoena from a court requiring the production of a record or report necessary to carry out the Ombudsman's duties and powers. The bill would include a child fatality investigation.

Child Fatality Investigation

The bill would require the Ombudsman to investigate all child fatality cases that occurred or were alleged to have occurred due to child abuse or child neglect in the following situations:

- A child died during an active Child Protective Services investigation or open services case, or there was an assigned or rejected Child Protective Services complaint within 24 months immediately preceding the child's death.
- A child died while in foster care, unless the death resulted from natural causes and there were no prior Child Protective Services or licensing complaints concerning the foster home.
- A child was returned home from foster care and there was an active foster care case.
- The foster care case involving the deceased child or sibling was closed within 24 months immediately preceding the child's death.

A child fatality investigation would have to be completed within 12 months after the Ombudsman opened a child fatality case for investigation, subject to State appropriations.

With respect to a child fatality case investigated under the situations described above, and upon review of medical, mental health, and other records and information, if there were no ongoing child protection proceeding involving a sibling of the child who died, the Ombudsman would have to provide any necessary recommendations for improving systemic issues that were discovered during the child fatality investigation. The recommendations could be provided to the court of jurisdiction, the State Court Administrative Office, the county child fatality review team, medical professionals, or attorneys or other legal professionals involved with the particular child who died. The recommendations would have to be summarized and included in the annual report submitted to the Governor, the Director of the DHS, and the Legislature.

FISCAL IMPACT

The bill would result in additional administrative costs to the Office of Children's Ombudsman in the Department of Technology, Management, and Budget. The FY 2013-14 budget for the Office includes 10.0 FTEs and \$1.2 million. The FY 2014-15 Governor's recommendation for the Office of Children's Ombudsman includes an additional 4.0 FTEs and \$510,200.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.