

HOUSE BILL No. 5039

October 2, 2013, Introduced by Rep. Kurtz and referred to the Committee on Families, Children, and Seniors.

A bill to amend 1994 PA 204, entitled
"The children's ombudsman act,"
by amending sections 4, 5a, 6, and 10 (MCL 722.924, 722.925a,
722.926, and 722.930), sections 4 and 10 as amended by 2004 PA 560
and sections 5a and 6 as amended by 2013 PA 38.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4. (1) The ombudsman shall establish procedures for the
2 office for budgeting, expending money, and employing personnel
3 according to the management and budget act, 1984 PA 431, MCL
4 18.1101 to 18.1594. Subject to annual appropriations, the ombudsman
5 shall employ sufficient personnel to carry out the duties and
6 powers prescribed by this act.

7 (2) The ombudsman shall establish procedures for receiving and

1 processing complaints from complainants and individuals not meeting
2 the definition of complainant, conducting investigations, holding
3 informal hearings, and reporting findings and recommendations
4 resulting from investigations.

5 (3) Personnel employed by the office of the children's
6 ombudsman shall receive mandatory training conducted by the
7 Michigan domestic violence prevention and treatment board in
8 domestic violence and in handling complaints of child abuse or
9 child neglect that involve a history of domestic violence.

10 (4) Any individual may submit a complaint to the ombudsman.
11 The ombudsman has the sole discretion and authority to determine if
12 a complaint falls within his or her duties and powers to
13 investigate and if a complaint involves an administrative act. The
14 ombudsman may initiate an investigation without receiving a
15 complaint. The ombudsman may initiate an investigation upon receipt
16 of a complaint from an individual not meeting the definition of
17 complainant. An individual not meeting the definition of
18 complainant is not entitled to receive information under this act
19 as if he or she is a complainant. The individual is entitled to
20 receive the recommendations of the ombudsman and the department's
21 response to the recommendations of the ombudsman in accordance with
22 state and federal law. During the course of an investigation, the
23 ombudsman may refer a case to the department if the ombudsman
24 determines that the department received a complaint on the case,
25 but did not conduct a field investigation. If the ombudsman refers
26 a case to the department, the department shall conduct a field
27 investigation of the case or provide notice to the ombudsman why a

1 field investigation was not conducted, or what alternative steps
2 may have been taken to address the situation. If a field
3 investigation has been conducted, the department shall report the
4 results to the ombudsman.

5 (5) THE OMBUDSMAN SHALL NOTIFY THE DEPARTMENT OF ANY IMMEDIATE
6 SAFETY CONCERNS REGARDING A CHILD OR CHILDREN WHO ARE PART OF AN
7 ACTIVE OR OPEN CHILD PROTECTIVE SERVICES OR FOSTER CARE CASE. THIS
8 NOTIFICATION SHALL OCCUR AS SOON AS POSSIBLE, BUT NOT LATER THAN 1
9 BUSINESS DAY AFTER THE OMBUDSMAN BECOMES AWARE OF THE CONCERNS.

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

12 (a) Pursue all necessary action, including, but not limited
13 to, legal action, to protect the rights and welfare of a child
14 under the jurisdiction, control, or supervision of the department,
15 the Michigan children's institute, the family division of circuit
16 court under section 2(a)(1) of chapter XIIA of the probate code of
17 1939, 1939 PA 288, MCL 712A.2, a child caring institution, or a
18 child placing agency.

19 (b) Pursue legislative advocacy in the best interests of
20 children.

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

24 (D) IN THE COURSE OF A CHILD FATALITY INVESTIGATION, REQUEST
25 AND BE PERMITTED ACCESS TO ANY OF THE FOLLOWING:

26 (i) RECORDS FROM THE COURT OF JURISDICTION, ATTORNEY GENERAL,
27 PROSECUTING ATTORNEY, OR ANY ATTORNEY RETAINED BY THE DEPARTMENT.

1 (ii) **REPORTS FROM A COUNTY CHILD FATALITY REVIEW TEAM.**

2 Sec. 6. (1) The ombudsman may do all of the following in
3 relation to a child who may be a victim of child abuse or child
4 neglect, including a child who may have died as a result of
5 suspected child abuse or child neglect:

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

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

15 (c) Except as otherwise provided in this subdivision, access
16 records and reports necessary to carry out the ombudsman's powers
17 and duties under this act to the same extent and in the same manner
18 as provided to the department under the provisions of the child
19 protection law. The ombudsman shall be provided access to medical
20 records in the same manner as access is provided to the department
21 under section 16281 of the public health code, 1978 PA 368, MCL
22 333.16281. The ombudsman shall be provided access to **SUBSTANCE**
23 **ABUSE RECORDS AND** mental health records in the same manner as
24 access is provided to the department in **CHAPTER 2A AND** section 748a
25 of the mental health code, 1974 PA 258, MCL **330.1260 TO 330.1287**
26 **AND** 330.1748a, subject to section 9. The ombudsman is subject to
27 the same standards for safeguarding the confidentiality of

1 information under this section and the same sanctions for
2 unauthorized release of information as the department.

3 ~~(d) Beginning on the effective date of the 2013 amendatory act~~
4 ~~that amended this section, request~~ **REQUEST** a subpoena from a court
5 requiring the production of a record or report necessary to carry
6 out the ombudsman's duties and powers. If the person to whom a
7 subpoena is issued fails or refuses to produce the record or
8 report, the ombudsman may petition the court for enforcement of the
9 subpoena.

10 (e) Hold informal hearings and request that individuals appear
11 before the ombudsman and give testimony or produce documentary or
12 other evidence that the ombudsman considers relevant to a matter
13 under investigation.

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

23 **(G) INVESTIGATE ALL CHILD FATALITY CASES THAT OCCURRED OR ARE**
24 **ALLEGED TO HAVE OCCURRED DUE TO CHILD ABUSE OR CHILD NEGLECT**
25 **INCLUDING ANY OF THE FOLLOWING SITUATIONS:**

26 **(i) A CHILD DIED DURING AN ACTIVE CHILD PROTECTIVE SERVICES**
27 **INVESTIGATION OR OPEN SERVICES CASE, OR THERE WAS AN ASSIGNED OR**

1 REJECTED CHILD PROTECTIVE SERVICES COMPLAINT WITHIN 24 MONTHS
2 IMMEDIATELY PRECEDING THE CHILD'S DEATH.

3 (ii) A CHILD DIED WHILE IN FOSTER CARE, UNLESS THE DEATH
4 RESULTED FROM NATURAL CAUSES AND THERE WERE NO PRIOR CHILD
5 PROTECTIVE SERVICES OR LICENSING COMPLAINTS CONCERNING THE FOSTER
6 HOME.

7 (iii) A CHILD WAS RETURNED HOME FROM FOSTER CARE AND THERE IS AN
8 ACTIVE FOSTER CARE CASE.

9 (iv) THE FOSTER CARE CASE INVOLVING THE DECEASED CHILD OR
10 SIBLING WAS CLOSED WITHIN 24 MONTHS IMMEDIATELY PRECEDING THE
11 CHILD'S DEATH.

12 (2) SUBJECT TO STATE APPROPRIATIONS, AN INVESTIGATION UNDER
13 SUBSECTION (1)(G) SHALL BE COMPLETED WITHIN 12 MONTHS AFTER THE
14 OMBUDSMAN OPENS A CHILD FATALITY CASE FOR INVESTIGATION.

15 Sec. 10. (1) The ombudsman shall prepare a report of the
16 factual findings of an investigation and make recommendations to
17 the department or **THE** child placing agency if the ombudsman finds 1
18 or more of the following:

19 (a) A matter should be further considered by the department or
20 **THE** child placing agency.

21 (b) An administrative act or omission should be modified,
22 canceled, or corrected.

23 (c) Reasons should be given for an administrative act or
24 omission.

25 (d) Other action should be taken by the department or **THE**
26 child placing agency.

27 (2) Before announcing a conclusion or recommendation that

1 expressly or by implication criticizes an individual, the
2 department, or a child placing agency, the ombudsman shall consult
3 with that individual, the department, or the child placing agency.
4 When publishing an opinion adverse to the department or child
5 placing agency, the ombudsman shall include in the publication any
6 statement of reasonable length made to the ombudsman by the
7 department or child placing agency in defense or mitigation of the
8 action. The ombudsman may request to be notified by the department
9 or child placing agency, within a specified time, of any action
10 taken on any recommendation presented.

11 (3) The ombudsman shall notify the complainant of the actions
12 taken by the ombudsman and by the department or child placing
13 agency.

14 (4) The ombudsman may provide to the complainant the following
15 information:

16 (a) A copy of the ombudsman's report regarding the
17 investigation's findings, recommendations to the department made
18 according to the investigation, the department's response to the
19 ombudsman's findings and recommendations, and any epilogue to the
20 ombudsman's report and the department's response.

21 (b) Information that has otherwise been made public.

22 (5) The ombudsman shall not release information to the
23 individual making the complaint that will endanger the health or
24 welfare of a child or another individual.

25 **(6) WITH RESPECT TO A CASE INVESTIGATED UNDER SECTION 6(1)(G),**
26 **AND UPON REVIEW OF RECORDS OR OTHER INFORMATION FROM THOSE ENTITIES**
27 **LISTED IN SECTION 5A(D), THE OMBUDSMAN SHALL PROVIDE ANY NECESSARY**

1 RECOMMENDATIONS FOR IMPROVING SYSTEMIC ISSUES THAT ARE DISCOVERED
2 DURING THE INVESTIGATION OF THE CHILD FATALITY. THE RECOMMENDATIONS
3 MAY BE PROVIDED TO THE COURT OF JURISDICTION, THE COUNTY CHILD
4 FATALITY REVIEW TEAM, MEDICAL PROFESSIONALS, OR ATTORNEYS OR OTHER
5 LEGAL PROFESSIONALS INVOLVED WITH THE PARTICULAR CHILD WHO DIED.
6 THE RECOMMENDATIONS SHALL ALSO BE SUMMARIZED AND INCLUDED IN THE
7 ANNUAL REPORT REFERENCED IN SUBSECTION (7).

8 (7) ~~(6)~~—The ombudsman shall submit to the governor, the
9 director of the department, and the legislature an annual report on
10 the ombudsman's conduct, including any recommendations regarding
11 the need for legislation or for change in rules or policies.