

Act No. 243
Public Acts of 2014
Approved by the Governor
June 21, 2014
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**STATE OF MICHIGAN
97TH LEGISLATURE
REGULAR SESSION OF 2014**

Introduced by Rep. Kurtz

ENROLLED HOUSE BILL No. 5039

AN ACT to amend 1994 PA 204, entitled "An act to establish the children's ombudsman office; and 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," by amending sections 4, 6, and 10 (MCL 722.924, 722.926, and 722.930), sections 4 and 10 as amended by 2004 PA 560 and section 6 as amended by 2013 PA 38.

The People of the State of Michigan enact:

Sec. 4. (1) The ombudsman shall establish procedures for the office for budgeting, expending money, and employing personnel according to the management and budget act, 1984 PA 431, MCL 18.1101 to 18.1594. 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 and individuals not meeting the definition of complainant, conducting investigations, holding informal hearings, and reporting findings and recommendations resulting from investigations.

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

(4) Any individual may submit a complaint to the ombudsman. The ombudsman has the sole discretion and authority to determine if a complaint falls within his or her duties and powers to investigate and if a complaint involves an administrative act. The ombudsman may initiate an investigation without receiving a complaint. The ombudsman may initiate an investigation upon receipt of a complaint from an individual not meeting the definition of complainant. An individual not meeting the definition of complainant is not entitled to receive information under this act as if he or she is a complainant. The individual is entitled to receive the recommendations of the ombudsman and the department's response to the recommendations of the ombudsman in accordance with state and federal law. During the course of an investigation, the ombudsman may refer a case to the department if the ombudsman determines that the department received a complaint on the case, but did not conduct a field investigation. If the ombudsman refers a case to the department, the department shall conduct a field investigation of the case or provide notice to the ombudsman why a field investigation was not conducted, or what alternative steps may have been taken to address the situation. If a field investigation has been conducted, the department shall report the results to the ombudsman.

(5) The ombudsman shall notify the department of any immediate safety concerns regarding a child or children who are part of an active or open child protective services or foster care case. This notification shall occur as soon as possible, but not later than 1 business day after the ombudsman becomes aware of the concerns.

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

(a) Upon his or her own initiative or upon receipt of a complaint, investigate an administrative act that is alleged to be contrary to law or rule, 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. The ombudsman has sole discretion to determine if a complaint involves an administrative act.

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

(c) Except as otherwise provided in this subdivision, access records and reports necessary to carry out the ombudsman's powers and duties under this act to the same extent and in the same manner as provided to the department under the provisions of the child protection law. The ombudsman shall be provided access to medical records in the same manner as access is provided to the department under section 16281 of the public health code, 1978 PA 368, MCL 333.16281. The ombudsman shall be provided access to mental health records in the same manner as access is provided to the department in section 748a of the mental health code, 1974 PA 258, MCL 330.1748a, subject to section 9. The ombudsman may request substance use disorder records if the ombudsman obtains a valid consent or a court order under 42 CFR part 2. The ombudsman is subject to the same standards for safeguarding the confidentiality of information under this section and the same sanctions for unauthorized release of information as the department. In the course of a child fatality investigation, the ombudsman may access records from the court of jurisdiction, attorney general, prosecuting attorney, or any attorney retained by the department and reports from a county child fatality review team to the same extent and in the same manner as provided to the department under state law.

(d) Request a subpoena from a court requiring the production of a record or report necessary to carry out the ombudsman's duties and powers, including a child fatality investigation. If the person to whom a subpoena is issued fails or refuses to produce the record or report, the ombudsman may petition the court for enforcement of the subpoena.

(e) 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.

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

(2) The ombudsman shall investigate all child fatality cases that occurred or are alleged to have occurred due to child abuse or child neglect in the following situations:

(a) 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.

(b) 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.

(c) A child was returned home from foster care and there is an active foster care case.

(d) The foster care case involving the deceased child or sibling was closed within 24 months immediately preceding the child's death.

(3) Subject to state appropriations, an investigation under subsection (2) shall be completed within 12 months after the ombudsman opens a child fatality case for investigation.

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

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

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

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

(d) Other action should be taken by the department or the 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 may provide to the complainant the following information:

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

(b) Information that has otherwise been made public.

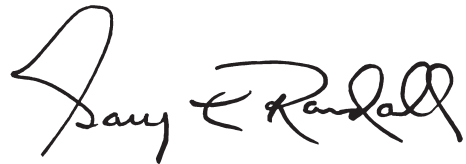
(5) The ombudsman shall not release information to the individual making the complaint that will endanger the health or welfare of a child or another individual.

(6) With respect to a child fatality case investigated under section 6(2) and upon review of records or other information received under section 6(1)(c) or (d), in the course of a child fatality investigation, if there is no ongoing child protection proceeding involving a sibling of the child who died, the ombudsman shall provide any necessary recommendations for improving systemic issues that are discovered during the investigation of the child fatality. The recommendations may 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 shall also be summarized and included in the annual report referenced in subsection (7).

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

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor