

Act No. 455
Public Acts of 2014
Approved by the Governor
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**STATE OF MICHIGAN
97TH LEGISLATURE
REGULAR SESSION OF 2014**

Introduced by Rep. Glardon

ENROLLED HOUSE BILL No. 4650

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 2, 5a, and 6 (MCL 722.922, 722.925a, and 722.926), section 2 as amended by 2004 PA 560, section 5a as amended by 2013 PA 38, and section 6 as amended by 2014 PA 243.

The People of the State of Michigan enact:

Sec. 2. As used in this act:

- (a) “Administrative act” includes an action, omission, decision, recommendation, practice, or other procedure of the department, an adoption attorney, or a child placing agency with respect to a particular child related to adoption, foster care, or protective services.
- (b) “Adoption attorney” means that term as defined in section 22 of the adoption code, MCL 710.22.
- (c) “Adoption code” means the Michigan adoption code, chapter X of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70.
- (d) “Central registry” means that term as defined in section 2 of the child protection law, MCL 722.622.
- (e) “Child” means an individual under the age of 18.
- (f) “Child abuse” and “child neglect” mean those terms as defined in section 2 of the child protection law, MCL 722.622.
- (g) “Child caring institution” means that term as defined in section 1 of 1973 PA 116, MCL 722.111.
- (h) “Child placing agency” means an organization licensed or approved by the department to receive children for placement in private family homes for foster care or adoption and to provide services related to adoption.
- (i) “Complainant” means an individual who makes a complaint as provided in section 5.
- (j) “Child protection law” means the child protection law, 1975 PA 238, MCL 722.621 to 722.638.
- (k) “Children’s ombudsman” or “ombudsman” means the individual appointed to the office of children’s ombudsman under section 3.
- (l) “Closed session” means that term as defined in section 2 of the open meetings act, 1976 PA 267, MCL 15.262.
- (m) “Department” means the department of human services.
- (n) “Foster care” means care provided to a child in a foster family home, foster family group home, or child caring institution licensed or approved by the department under 1973 PA 116, MCL 722.111 to 722.128, or care provided to a child in a relative’s home under a court order.

(o) “Foster parent’s bill of rights law” means the foster parent’s bill of rights law created in section 8a of the foster care and adoption services act, 1994 PA 203, MCL 722.958a.

(p) “Office” means the children’s ombudsman office established under section 3.

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

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

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

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

(d) Subject to an appropriation of funds, commence and conduct investigations into alleged violations of the foster parent’s bill of rights law.

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) Upon his or her own initiative or upon receipt of a complaint and subject to an appropriation of funds, investigate an alleged violation of the foster parent’s bill of rights law.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

Enacting section 1. This amendatory act takes effect April 1, 2015.

Enacting section 2. This amendatory act does not take effect unless House Bill No. 4649 of the 97th Legislature is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor