

Legislative Analysis



CHILDREN'S OMBUDSMAN PRELIMINARY INVESTIGATION AND RELEASE OF PUBLIC RECORDS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5248 (H-2) as referred to second committee
Sponsor: Rep. Matt Hall

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5249 as referred to second committee
Sponsor: Rep. Andrea K. Schroeder

1st Committee: Families, Children and Seniors
2nd Committee: Ways and Means
Complete to 4-20-20

SUMMARY:

House Bills 5248 and 5249 would amend the Children's Ombudsman Act to require the ombudsman to release certain findings and recommendations to the public and to require the ombudsman to conduct a preliminary investigation into certain child fatality cases before determining whether a full investigation is needed.

House Bill 5248 would require that, no later than 30 days after the closure date of a case investigated by the Office of Children's Ombudsman, the ombudsman must release his or her findings, recommendations, and the agency responses, if any, to the public. The ombudsman would have to redact confidential information consistent with state and federal law.

Under the act, if the ombudsman identifies action or inaction by the state that failed to protect children, he or she must provide findings and recommendations to the agency affected and make those findings available to the complainant and the legislature upon request, to the extent consistent with law. In general, a record of the Office of Children's Ombudsman is confidential, is not subject to court subpoena, is not discoverable in a legal proceeding, and is exempt from disclosure under the Freedom of Information Act. Section 9 prescribes further conditions under which the ombudsman may, and may not, release certain records or information under the act.

MCL 722.929

House Bill 5249

Currently, the ombudsman is required to 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 child died during an active Child Protective Services (CPS) investigation or open case or there was an assigned or rejected CPS complaint within the 24 months preceding the child's death.
- A child died while in foster care, unless the death was from natural causes and there were no prior CPS or licensing complaints concerning the foster home.
- A child was returned home from foster care and there is an active foster care case.
- The foster care case involving the dead child or sibling was closed within the 24 months preceding the child's death.

The bill would instead require the ombudsman to conduct a *preliminary investigation* into all child fatality cases that occurred or were alleged to have occurred due to child abuse or child neglect in one or more of the situations described above.

Preliminary investigation would mean an act of fact finding, document review, or systematic inquiry or examination to determine if there is a correlation between an administrative act and the death of a child or to determine if a trend or systematic issue is identified that would cause the ombudsman to open a full investigation.

Upon completing a preliminary investigation, the ombudsman would have to determine whether a *full investigation* was necessary and, if it was, open a full investigation.

Full investigation would mean an act of fact finding, document review, or systematic inquiry or examination that occurs after the completion of a preliminary investigation.

Subject to state appropriations, a full investigation would have to be completed within 12 months after the ombudsman opens that child fatality case for a full investigation. (This is the same time frame within which an investigation must be completed, subject to appropriations, under current law.)

MCL 722.922 and 722.926

FISCAL IMPACT:

House Bills 5248 and 5249 would have minimal fiscal impact on the State of Michigan and no fiscal impact on local units of government. HB 5249 would change the current statutory provisions requiring the Office of Children’s Ombudsman to investigate all child fatality cases that occurred from child abuse or child neglect to requiring that the ombudsman conduct a preliminary investigation into all these cases. After the preliminary investigation, the ombudsman shall determine whether a full investigation is then needed. In FY 2017-18, the Children’s Ombudsman received 338 child death complaints. Of those, an investigation was opened in 141. It might be that fewer full investigations would be conducted under the bill’s provisions.

POSITIONS:

The Michigan Press Association indicated support for the bills. (3-4-20)

A representative of the Office of Children’s Ombudsman testified with no position on the bills. (3-4-20)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.