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BILL ANALYSIS

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Senate Bill 432 (Substitute S-1 as passed by the Senate)
Senate Bills 435 and 436 (as passed by the Senate)
Sponsor: Senator Roger Victory (S.B. 432)
 Senator Dayna Polehanki (S.B. 435)
 Senator John N. Damoose (S.B. 436)
Committee: Civil Rights, Judiciary, and Public Safety

Date Completed: 10-23-23

INTRODUCTION

Taken together, the bills would rename the Office of the Children's Ombudsman (OCO) and Children's Ombudsman to the Office of the Child Advocate and Child Advocate, respectively. Senate Bill 432 (S-1) would require the Office of the Child Advocate to protect the rights and welfare of children under the control of a residential facility that provided juvenile justice services in the same manner that the OCO must currently provide protection to children under the control of other agencies, such as the Department of Health and Human Services (DHHS). In addition, the bill would allow a judge for a juvenile receiving juvenile justice services to file a complaint with the Child Advocate on behalf of the juvenile.

BRIEF RATIONALE

Governor Whitmer signed Executive Order 2021-6 on June 9, 2021, which created the Task Force on Juvenile Justice Reform (Task Force) as a temporary advisory body within the DHHS. The Task Force was charged with analyzing Michigan's juvenile justice system and recommending changes meant to improve youth outcomes.¹ Among other things, the Task Force reported that the quality of services and case management received by youth, from defense to post-disposition placement, differs across the State and that the lack of centralization has led to discrepancies in practices. It suggested that the State expand an existing entity's scope to handle incidents in juvenile justice facilities and standardize the system's practices.

BRIEF FISCAL IMPACT

Senate Bill 432 (S-1) would have a moderate fiscal impact on the Department of Technology, Management, and Budget (DTMB) and no significant fiscal impact on local units of government. The DTMB estimates that \$1.6 million GF/GP and 8.0 full-time equivalents (FTEs) would be required for the Office of the Child Advocate to perform the duties prescribed by the bill. House Bill 4437 appropriates these funds and FTE positions to the Office. The bill also would have an indeterminate, but likely negligible fiscal impact on the DHHS.

The other two bills would have no fiscal impact on the DHHS or local units of government.

MCL 722.921-722.932 (S.B. 432)
722.115a & 722.120 (S.B. 435)
722.627 et al. (S.B. 436)

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¹ Executive Order 2021-6.

CONTENT

Senate Bill 432 (S-1) would amend the Children's Ombudsman Act to do the following:

- **Rename the OCO to the Office of the Child Advocate and the Ombudsman to the Child Advocate.**
- **Specify that the duties of the Office of the Child Advocate also would apply to residential facilities that offered juvenile justice services.**
- **Specify that the Office of the Child Advocate could be responsible for certain juvenile justice services in addition to the services that the OCO is currently responsible for.**
- **Expand the list of individuals that may make a complaint to the Office of the Child Advocate to include the Governor.**
- **Specify that a recommendation made following a child fatality case could be provided to law enforcement.**

Senate Bills 435 and 436 would amend various acts to modify references of the OCO and the Children's Ombudsman to instead refer to the Office of the Child Advocate and Child Advocate, respectively.

Senate Bills 435 and 436 are tie-barred to Senate Bill 432.

Senate Bill 432 (S-1) is described in greater detail below.

Senate Bill 432 (S-1)

Definitions

Under the Children's Ombudsman Act, "administrative act" includes an action, omission, decision, recommendation, practice, or other procedure of the DHHS, an adoption attorney, or child placing agency with respect to a particular child related to adoption, foster care, or prospective services. Instead, the term would mean an action, omission, decision, recommendation, practice, or other procedure of the DHHS, an adoption attorney, child placing agency, *or a residential facility*, with respect to a particular child related to adoption, foster care, prospective services, *or juvenile justice services*.

"Juvenile justice service" would mean that term as defined in the Social Welfare Act: a service, exclusive of judicial functions, provided by a county for juveniles who are within or likely to come within the court's jurisdiction under Chapter XIIA of the Probate Code (which generally concerns minors), or within the jurisdiction of the court of general criminal jurisdiction under Section 606 of the Revised Judicature Act (which concerns specific juvenile violations), if that court commits the juvenile to a county or court juvenile facility under the Code of Criminal Procedure. A service includes intake, detention, detention alternatives, probation, foster care, diagnostic evaluation and treatment, shelter care, or any other service approved by the office or county juvenile agency, as applicable, including preventive, diversionary, or protective care services. A juvenile justice service approved by the office or county juvenile agency must meet all applicable State and local government licensing standards.

"Residential facility" would mean a facility that provides juvenile justice services and is State operated, county operated, public, private and contracted, secure, or nonsecure.

Office of the Child Advocate

The Office of the Children's Ombudsman is an autonomous entity in the DTMB and the Ombudsman is an individual appointed by the Governor. Among other things, upon receipt of a complaint or upon his or her own initiative, the Ombudsman may investigate an administrative act that is alleged to be contrary to law or rule, contrary to the policy of the DHHS or a child placing agency under certain conditions. Under the bill, the Office also could review residential facilities and provide juvenile justice services.

The bill would rename the OCO and the Ombudsman to the Office of the Child Advocate and Child Advocate, respectively.

Currently, personnel employed by the OCO 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. The bill would delete this provision and instead, employees of the Office of the Child Advocate would receive training in the areas of child abuse or neglect as determined by the Child Advocate.

Duties of the OCO

The Children's Ombudsman has the authority to: 1) pursue all necessary action, including legal action, to protect the rights and welfare of a child under the jurisdiction or control of the DHHS, the Michigan Children's Institute, the Family Division of Circuit Court, a child caring institution, or a child placing agency; 2) pursue legislative advocacy in the best interests of children; 3) review policies and procedures relating to the DHHS's involvement with children and make recommendations for improvement; 4) subject to the appropriations of funds, commence and conduct investigations into alleged violations of the foster parents bill of rights law.

Under the bill, the Child Advocate also could pursue all necessary action, including legal action, to protect the rights and welfare of a child under the jurisdiction or control of a residential facility or a child who was a victim in a Child Protective Services (CPS) maltreatment in care investigation. A courts placement decision would not be subject to the child advocate's authority.

Additionally, the Child Advocate would be authorized to mediate issues and educate the public regarding complaints dealing with certain county and private agencies serving children, maltreatment in care investigations, and investigations of lack of or insufficient services regarding a residential facility.

Duties of Child Placing Agency, the DHHS, & a Residential Facility

Under the Act, the DHHS and a child placing agency must do the following:

- Upon request of the Ombudsman, grant the Ombudsman or his or her designee access to all information, records, and documents in possession of the DHHS or child placing agency's possession that the Ombudsman considers relevant within 10 business days unless the information would violate State or Federal law.
- Assist the Ombudsman to obtain necessary releases of such documents that are specifically restricted.
- Upon the request of the Ombudsman, provide progress reports concerning the administrative processing of a complaint.

Under the bill, a residential facility also would have to comply with the duties required above.

Currently, the DHHS, an attorney involved with an adoption, and a child placing agency must provide information to a biological parent, prospective adoptive parent, or foster parent regarding the provisions of the Act. Under the bill, the DHHS, an attorney involved with an adoption, a child placing agency, *and a residential facility would have to* provide information to a biological parent, *legal guardian*, prospective adoptive parent, or foster parent regarding the provisions of the Act.

The Ombudsman, the DHHS, and the DTMB, must ensure that the Ombudsman has access, in the Ombudsman's own office, to departmental computer networks pertaining to protective services, foster care, adoption, juvenile delinquency, and the central registry unless prohibited by State or Federal law or the release of the information would jeopardize Federal funding. Additionally, under the bill, the Child Advocate, the DHHS, and the DTMB also would have to ensure the Child Advocate had networks pertaining to juvenile justice services.

Under the bill, a residential facility would have to post conspicuously in an area accessible to residents, employees, and visitors a description of the Office of the Child Advocate services and the contact information for the purposes of filing a complaint.

During an investigation conducted by the Child Advocate, the residential facility would have to ensure that a resident had anonymity, privacy, and procedures in place to accommodate interviews conducted by the Office of the Child Advocate.

An individual, the DHHS, an adoption attorney, or a child placing agency are prohibited from hindering the lawful actions of the Ombudsman or his or her employees. Under the bill a residential facility also could not hinder the lawful actions of the child advocate.

Reporting a Complaint

The following individuals may make a complaint to the Ombudsman with respect to a particular child, alleging that an administrative act is contrary to rule or law, or policy imposed without adequate statement of reason or based on irrelevant, immaterial, or erroneous grounds:

- The child, if he or she is able to articulate a complaint.
- A biological parent of the child
- Foster parent of the child.
- Adoptive parent or prospective adoptive parent of the child.
- A legally appointed guardian of the child.
- Guardian ad litem of the child.
- An adult who is related to the child within the fifth degree by marriage, blood, or adoption.
- A Michigan legislator.
- An individual required to report child abuse or child neglect.
- An attorney for any of the eligible individuals.

The bill also would allow a judge for a juvenile receiving juvenile justice services and the Governor to file a complaint.

Under the bill, the individual would be entitled to receive the published findings and recommendations of the Office of the Child Advocate and the DHHS's or the residential facility's response to the recommendations of the Child Advocate in accordance with State and Federal Law.

Currently, the Ombudsman may release information to a complainant or to a closed session of a legislative committee that has jurisdiction over family and children's services regarding the DHHS' handling of a case under the Child Protection Law that is obtained or generated during an investigation conducted by the Office. Under the bill, the Child Advocate could release information pertaining to juvenile justice services.

An official, the DHHS, or a child placing agency, may not penalize any person for filing a complaint or cooperating with the Ombudsman in investigating a complaint. Under the bill a residential facility also could not penalize a person for filing a complaint or cooperating with the Child Advocate.

Notice Of Safety Concerns

The OCO is required to notify the DHHS of any immediate safety concerns regarding a child who is part of an active or open CPS or foster care case. The notification must occur as soon as possible but no later than one business day after the Ombudsman is made aware. Under the bill, the Child Advocate also would have to notify an applicable residential facility of such safety concerns.

Investigation of a Residential Facility

If the Ombudsman decides to investigate a complaint, from a complainant and an individual who did not meet the definition of complainant, the Ombudsman must notify the DHHS, adoption attorney, or child placing agency of the intention to investigate. If the Ombudsman declined to investigate a complaint the Ombudsman would have to notify the entities listed above of the decision and the reasons for the Ombudsman's action. Under the bill, the Child Advocate also would have to notify an applicable residential facility.

If the Ombudsman found during an investigation that an individual's action is not in violation of State or Federal criminal law the Ombudsman must immediately report that fact to the county prosecutor or Attorney General. If the complaint is against a child placing agency the Ombudsman must refer the matter to the DHHS for further action with respect to licensing. Under the bill, the Child Advocate also would have to refer a matter to the DHHS for further action if the complaint were against a residential facility.

Child Abuse or Neglect; Fatality Cases

The Act allows the Ombudsman to take certain actions 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. Under the bill, the Child Advocate could investigate an applicable residential facility.

The Ombudsman may also make recommendations to the Governor and the Legislature concerning certain services. Under the bill, the Child Advocate also could make recommendations concerning juvenile justice services legislation.

The Act requires the Ombudsman to conduct a preliminary investigation into all child fatality cases that occur or are alleged to have occurred due to child abuse or child neglect in the following situations:

- A child died during an active CPS Investigation or open services case, or there was an assigned or rejected CPS 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 CPS or licensing complaints concerning the foster home.
- The child was returned home from foster care and there is 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.

Under the bill, the Child Advocate also would have to investigate a child fatality case in which a child died while committed to a residential facility.

During a child fatality investigation, if there are no ongoing child protection proceedings involving a sibling of the child who died, the Ombudsman must provide any necessary recommendations for improving systematic issues that are discovered during the investigation. The recommendations may be provided to the court of jurisdiction, the State court administrative office, the county child review team, medical professionals, or attorneys or other legal professionals involved with the child who died. Under the bill, the recommendations also could be provided to law enforcement.

Release of Findings After Case Closure

The Ombudsman is required to release his or her findings, recommendations, and child placing agency responses within 30 days of a court case closure to the public. The bill would specify that the Child Advocate would have to include any applicable residential facility response.

The OCO must prepare a report of the factual findings of an investigation and make recommendations to the DHHS or child placing agency if the OCO finds more than one of the following:

- A matter should be further considered by the DHHS or child placing agency.
- An administrative act or omission should be modified, canceled, or corrected.
- Reasons should be given for an administrative act or omission.
- Other action should be taken by the DHHS or child placing agency.

Under the bill, the recommendations of the report also would have to be made to an applicable residential facility.

Prior to announcing conclusion or recommendation that expressly, or by implication, criticizes an individual, the DHHS or child planning agency must consult with that individual, the DHHS, or the child placing agency. When publishing an opinion adverse to the DHHS or child placing agency, the Ombudsman must include the publication of any statement of reasonable length made to the Ombudsman by the DHHS or child placing agency in defense or mitigation of the action. The Ombudsman may request to be notified by the DHHS or child placing agency within a specified time, of any action taken on any recommendation presented. Under the bill, the provisions above also would apply to a residential facility.

The Ombudsman must notify the complainant of the actions taken by the Ombudsman and by the DHHS or child placing agency. Under the bill, the Child Advocate also would have to notify an applicable residential facility.

PREVIOUS LEGISLATION

(This section does not provide a comprehensive account of previous legislative efforts on this subject matter.)

Senate Bills 432, 435, and 436 are companion bills to House Bills 4638, 4641, and 4642, respectively.

BACKGROUND

The Task Force released its report and recommendations on July 22, 2022. Overall, the report found that the quality of services and case management received by youth, from defense to post-disposition placement, differs across the State. The State lacks uniform judicial justice policies and quality assurance standards, leading to disparities the State cannot address and data it cannot rely upon. Additionally, the lack of State centralization has led to discrepancies in the implementation of research-based, developmentally appropriate practices across the State. Accordingly, children participating in the judicial justice system may not receive quality care or receive care different from their peers.

Among other recommendations, the Task Force unanimously suggested that the State strengthen and expand an existing entity for handling, investigating, and reporting incidents in facilities. Additionally, the entity should establish policies and confidentiality protocols to allow the complainant to make the complaint anonymously opposed to directly through a facility where the youth is placed.²

FISCAL IMPACT

Senate Bill 432 (S-1)

The bill would have a moderate fiscal impact on the DTMB and no significant fiscal impact on local units of government. The DTMB estimates that \$1.6 million GF/GP and 8.0 FTEs would be required for the Office of the Child Advocate to perform the duties prescribed by the bill. House Bill 4437 appropriates these funds and FTE positions to the Office. The DTMB anticipates that adjustments to the estimated cost of these responsibilities may be required in future fiscal years based on actual case loads and activity.

The bill also would have an indeterminate, but likely negligible fiscal impact on the DHHS. The bill would remove the requirement that office personnel receive mandatory training conducted by the Michigan Domestic Violence Prevention and Treatment Board, but it does not specify which department would be responsible for providing training in the areas of child abuse and neglect as determined by the Child Advocate. If the responsibility stayed within the DHHS, it could experience a small increase in administrative costs to develop a new training.

Senate Bills 435 & 436

The bills would have no fiscal impact on the DHHS or local units of government.

² Michigan Task Force on Juvenile Justice Reform Report and Recommendations, p. 17, July 22, 2022.

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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.