

# HOUSE BILL NO. 5249

November 13, 2019, Introduced by Reps. Schroeder, Kahle, Hall, LaFave, Webber, LaGrand, Camilleri, Crawford and Liberati 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 2 and 6 (MCL 722.922 and 722.926), as amended by 2014 PA 455.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

- 1           Sec. 2. As used in this act:
- 2           (a) "Administrative act" includes an action, omission,
- 3 decision, recommendation, practice, or other procedure of the
- 4 department, an adoption attorney, or a child placing agency with

1 respect to a particular child related to adoption, foster care, or  
2 protective services.

3 (b) "Adoption attorney" means that term as defined in section  
4 22 of the adoption code, MCL 710.22.

5 (c) "Adoption code" means the Michigan adoption code, chapter  
6 X of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70.

7 (d) "Central registry" means that term as defined in section 2  
8 of the child protection law, MCL 722.622.

9 (e) "Child" means an individual under the age of 18.

10 (f) "Child abuse" and "child neglect" mean those terms as  
11 defined in section 2 of the child protection law, MCL 722.622.

12 (g) "Child caring institution" means that term as defined in  
13 section 1 of 1973 PA 116, MCL 722.111.

14 (h) "Child placing agency" means an organization licensed or  
15 approved by the department to receive children for placement in  
16 private family homes for foster care or adoption and to provide  
17 services related to adoption.

18 (i) "Complainant" means an individual who makes a complaint as  
19 provided in section 5.

20 (j) "Child protection law" means the child protection law,  
21 1975 PA 238, MCL 722.621 to 722.638.

22 (k) "Children's ombudsman" or "ombudsman" means the individual  
23 appointed to the office of children's ombudsman under section 3.

24 (l) "Closed session" means that term as defined in section 2 of  
25 the open meetings act, 1976 PA 267, MCL 15.262.

26 (m) "Department" means the department of **health and** human  
27 services.

28 (n) "Foster care" means care provided to a child in a foster  
29 family home, foster family group home, or child caring institution

1 licensed ~~or approved~~ by the department under 1973 PA 116, MCL  
2 722.111 to 722.128, or care provided to a child in a relative's  
3 home under a court order.

4 (o) "Foster parent's bill of rights law" means the foster  
5 parent's bill of rights law created in section 8a of the foster  
6 care and adoption services act, 1994 PA 203, MCL 722.958a.

7 (p) **"Full investigation" means an act of fact finding,  
8 document review, or systematic inquiry or examination that occurs  
9 after the completion of a preliminary investigation.**

10 (q) "Investigation" means either a preliminary investigation  
11 or a full investigation.

12 (r) ~~(p)~~ "Office" means the children's ombudsman office  
13 established under section 3.

14 (s) **"Preliminary investigation" means an act of fact finding,  
15 document review, or systematic inquiry or examination to determine  
16 if there is a correlation between an administrative act and the  
17 death of a child or to determine if a trend or systematic issue is  
18 identified that would cause the ombudsman to open a full  
19 investigation.**

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

24 (a) Upon his or her own initiative or upon receipt of a  
25 complaint, investigate an administrative act that is alleged to be  
26 contrary to law or rule, contrary to policy of the department or a  
27 child placing agency, imposed without an adequate statement of  
28 reason, or based on irrelevant, immaterial, or erroneous grounds.  
29 The ombudsman has sole discretion to determine if a complaint

1 involves an administrative act.

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

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

7 (d) Except as otherwise provided in this subdivision, access  
8 records and reports necessary to carry out the ombudsman's powers  
9 and duties under this act to the same extent and in the same manner  
10 as provided to the department under the provisions of the child  
11 protection law. The ombudsman ~~shall~~**must** be provided access to  
12 medical records in the same manner as access is provided to the  
13 department under section 16281 of the public health code, 1978 PA  
14 368, MCL 333.16281. The ombudsman shall be provided access to  
15 mental health records in the same manner as access is provided to  
16 the department in section 748a of the mental health code, 1974 PA  
17 258, MCL 330.1748a, subject to section 9. The ombudsman may request  
18 substance use disorder records if the ombudsman obtains a valid  
19 consent or a court order under 42 CFR part 2. The ombudsman is  
20 subject to the same standards for safeguarding the confidentiality  
21 of information under this section and the same sanctions for  
22 unauthorized release of information as the department. In the  
23 course of a child fatality investigation, the ombudsman may access  
24 records from the court of jurisdiction, attorney general,  
25 prosecuting attorney, or any attorney retained by the department  
26 and reports from a county child fatality review team to the same  
27 extent and in the same manner as provided to the department under  
28 state law.

29 (e) Request a subpoena from a court requiring the production

1 of a record or report necessary to carry out the ombudsman's duties  
 2 and powers, including a child fatality investigation. If the person  
 3 to whom a subpoena is issued fails or refuses to produce the record  
 4 or report, the ombudsman may petition the court for enforcement of  
 5 the subpoena.

6 (f) Hold informal hearings and request that individuals appear  
 7 before the ombudsman and give testimony or produce documentary or  
 8 other evidence that the ombudsman considers relevant to a matter  
 9 under investigation.

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

19 (2) The ombudsman shall ~~investigate~~ **conduct a preliminary**  
 20 **investigation into** all child fatality cases that occurred or are  
 21 alleged to have occurred due to child abuse or child neglect in **1**  
 22 **or more of** the following situations:

23 (a) A child died during an active child protective services  
 24 investigation or open services case, or there was an assigned or  
 25 rejected child protective services complaint within 24 months  
 26 immediately preceding the child's death.

27 (b) A child died while in foster care, unless the death  
 28 resulted from natural causes and there ~~were no prior~~ **was not a**  
 29 **previous** child protective services or licensing ~~complaints~~

1 **complaint** concerning the foster home.

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

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

7 (3) Upon completing a preliminary investigation into a child  
8 fatality case described under subsection (2), the ombudsman shall  
9 determine whether a full investigation is necessary. If the  
10 ombudsman determines a full investigation is necessary, he or she  
11 shall open a full investigation into the child fatality case  
12 described under subsection (2).

13 (4) ~~(3)~~ Subject to state appropriations, ~~an~~ **a full**  
14 investigation under subsection ~~(2)~~ shall ~~(3) must~~ be completed  
15 within 12 months after the ombudsman opens ~~a~~ **that** child fatality  
16 case for **a full** investigation.