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CHILDREN'S OMBUDSMAN ACT; REVISE

House Bill 4096
Sponsor: Rep. Lauren Hager
Committee: Family and Children
Services

Complete to 1-31-03

A SUMMARY OF HOUSE BILL 4096 AS INTRODUCED 1-29-03

The bill would amend several provisions of the Children's Ombudsman Act relating to the appointment process; complaint process; powers and duties of the ombudsman; conduct of investigations; confidentiality and disclosure of information; and report of findings. The bill would also add that, in addition to those duties prescribed in current law, the office would be established as a means of effecting changes in policy, procedures, and legislation; educating the public; and investigating and reviewing actions of state agencies or entities receiving state funding.

Appointment. Under current law, the ombudsman is appointed by, and serves at the will of, the governor. The bill would amend the appointment process so that the governor, with the advice and consent of the Senate, would appoint a children's ombudsman. The person would be chosen from a list, submitted to the governor, of at least three individuals decided upon by a 13-member advisory committee, and would have to be duly qualified to perform the duties of the children's ombudsman.

The ombudsman would serve a five-year term, and hold the position until a successor has been appointed. However, if the office were to become vacant, a nominating committee would form and recommend candidates for the position in the same manner as above. The committee would have to submit a list of at least three candidates for the position, ranked in order of preference, not more than 60 days after a vacancy occurs.

Not more than 60 days after the committee submits its recommendations, the governor would have to appoint an individual (from the list of recommendations submitted by the committee) to fill the vacancy. An appointment to fill a vacancy would also be subject to the advice and consent of the Senate. If the governor failed to appoint a person to fill the vacancy, the individual who ranked the highest among the committee's recommendations would be appointed to the position of Children's Ombudsman.

In addition, the governor would be permitted to remove the ombudsman from office for cause that would include, though would not be limited to, incompetence, official misconduct, habitual or willful neglect of duty, or any other misfeasance or malfeasance in connection with the operation of the office. Furthermore, the bill would require the governor to report to the legislature the reason for removing the ombudsman from office.

House Bill 4096 (1-31-03)

Complaints. Current law lists several individuals who may file a complaint with the ombudsman. These individuals include the child, a biological parent, a foster parent, a current or prospective adoptive parent, a legal guardian, a guardian ad litem, an adult relative within the fifth degree of consanguinity, a state legislator, and an attorney for any of the above individuals (except for a legislator). The bill simply states that *any* individual could make a complaint to the ombudsman.

The act also states that the listed individuals may file a complaint alleging that an administrative action taken by the FIA, an adoption attorney, or child placing agency is contrary to law, rule or policy; imposed without an adequate statement of reason; or based on irrelevant, immaterial, or erroneous grounds. The bill would allow an individual to file a complaint with the ombudsman if the subject matter falls within the duties and powers of the ombudsman. The ombudsman would have the sole discretion and authority to determine if a complaint falls within his or her duties and powers.

Similar to current law, the bill would allow the ombudsman to conduct an investigation without receiving a complaint. Furthermore, the bill states that the ombudsman, on his or her own initiative, could conduct an investigation on a case in which the FIA did not investigate, or on a case in which the FIA did investigate but did not classify as a central registry case (see MCL 722.622).

Duties of the Ombudsman. The bill states that the ombudsman would be required to do all of the following:

- Pursue all necessary action, including but not limited to legal action, to protect the rights and welfare of each child who is under the jurisdiction of the FIA, the Michigan Children's Institute, the family division of the circuit court, a child caring institution, or a child placing agency.
- Pursue all possible legislative advocacy in the best interest of children.
- Review the policies and procedures relating to the FIA's involvement with children and make recommendations.
- Investigate each child's death that may have resulted from abuse or neglect.

In cases of abuse or neglect, the ombudsman could, upon submitting a written request, access, inspect, and copy all records and reports necessary to carry out his or her duties. These records could include, though would not be limited to, the records of the FIA, a child placing agency, the family court including those otherwise made confidential by law, medical records, medical examiner records, mental health records, and school records. The ombudsman could issue a subpoena requiring a person to produce a record or report. The ombudsman could also issue a subpoena requiring a person to appear at an informal hearing. If a person who was subpoenaed failed to produce the record or appear for the hearing, the ombudsman could petition the court for the enforcement of the subpoena.

The act allows the ombudsman to make recommendations to the governor. The bill would specify that the ombudsman would be allowed to make such recommendations without prior review by other offices within the executive branch.

All personnel employed by the ombudsman would be required to receive training conducted by the Michigan Domestic Violence Prevention and Treatment Board regarding domestic violence and handling complaints of abuse or neglect that involve a history of domestic violence.

Investigations. Under the act, if a person files a complaint against a child placing agency, the ombudsman is required to refer the matter to the FIA. The bill states that the ombudsman would refer to matter to the Department of Consumer and Industry Services. However, a person who intentionally files a false complaint of child abuse or neglect under the act would be subject to the penalties for the same offense under the Child Protection Law (MCL 722.633).

The bill would delete a provision that allows the ombudsman to file a petition on behalf of a child requesting the court to take jurisdiction (see MCL 712A.2) or a petition for the termination of parental rights (see MCL 712A.19b) if he or she is satisfied that the complainant has contacted the FIA, the prosecuting attorney, the child's attorney, and the child's guardian ad litem, if any, and that none of the above persons intended to file the same petition. The bill would add that the ombudsman could take any legal action that he or she considers appropriate to protect a child.

Duties of the FIA and a child placing agency. The bill would add that upon the request of the ombudsman, the FIA and a child placing agency would be required to provide any requested information within five business days. The bill would allow the attorney general to take necessary action to require that the information is provided to the ombudsman. The FIA would also be required to provide the ombudsman, in his or her own office, access to the departmental computer networks where abuse and neglect records are kept.

Disclosure. All information obtained or gathered by the ombudsman would be confidential and exempt from disclosure under the Freedom of Information Act (Public Act 442 of 1976), would not be subject to a court subpoena, and would not be discoverable in a legal proceeding. However, the ombudsman could disclose information generated or obtained by the office if he or she determined that doing so was in the child's best interest, was in the public interest, or was necessary to enable him or her to perform his or her duties. If the ombudsman determined that the disclosure was necessary to identify, prevent, or treat an abused or neglected child, the ombudsman could disclose such information to the appropriate agency responsible for the child's welfare. The ombudsman would be prohibited from disclosing any confidential information that pertains to an active law enforcement or Child Protective Services investigation, pending prosecution, or the identity of a individual who filed a child abuse complaint (unless that person intentionally filed a false complaint).

Report of Findings. The bill would delete a requirement that the ombudsman consult with an individual, the FIA, or a child placing agency prior to announcing a conclusion or recommendation that criticizes the individual, the FIA, or the child placing agency.

The act requires the ombudsman to provide the complainant with a copy of his or her recommendation regarding a complaint. The bill would not require the ombudsman to provide such information, and would add that when doing so, the ombudsman would have the discretion to determine what confidential information should be provided to the complaining individual.

The act would prohibit the ombudsman from disclosing confidential information to the complaining individual if such disclosure endangers the health or safety of any individual.

Repeals. The bill would repeal section 13 (MCL 722.933), which requires the ombudsman to maintain a registry of adoption attorneys. The bill would also repeal sections 14 and 15 (MCL 722.934, 722.935), concerning the current act's effective date and tie-bars to other legislation enacted in 1994.

MCL 722.921 et al.

Analyst: M. Wolf

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