

HOUSE BILL No. 4096

January 29, 2003, Introduced by Reps. Hager, Stahl, Julian, Meyer, Richardville, Vander Veen, Kratz, Sheen, Stewart, Woronchak, Daniels, Bieda, Hopgood, Palsrok, Tabor and LaJoy and referred to the Committee on Family and Children Services.

A bill to amend 1994 PA 204, entitled "The children's ombudsman act," by amending the title and sections 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 (MCL 722.922, 722.923, 722.924, 722.925, 722.926, 722.927, 722.928, 722.929, 722.930, and 722.931); and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

An act to ~~create~~ **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.~~

Sec. 2. As used in this act:

~~(a) "Administrative act" includes an action, omission,~~

HOUSE BILL No. 4096

1
2
3
4
5
6
7
8

~~1 decision, recommendation, practice, or other procedure of the
2 department of social services, an adoption attorney, or a child
3 placing agency with respect to a particular child related to
4 adoption, foster care, or protective services.~~

~~5 — (b) "Adoption attorney" means that term as defined in section
6 22 of the adoption code, being section 710.22 of the Michigan
7 Compiled Laws.~~

~~8 — (c) "Adoption code" means chapter X of Act No. 288 of the
9 Public Acts of 1939, being sections 710.21 to 710.70 of the
10 Michigan Compiled Laws.~~

11 (a) "Child" means an individual under the age of 18.

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

14 (c) ~~(d)~~ "Child placing agency" means an organization
15 licensed or approved by the department of ~~social services~~ under
16 Act No. 116 of the Public Acts of 1973, being sections 722.111 to
17 722.128 of the Michigan Compiled Laws **consumer and industry**
18 **services under 1973 PA 116, MCL 722.111 to 722.128**, to receive
19 children for placement in private family homes for foster care or
20 adoption and to provide services related to adoption.

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

22 ~~— (f) "Complainant" means an individual who makes a complaint
23 as provided in section 5.~~

24 (d) "Children's ombudsman" or "ombudsman" means the
25 individual appointed to the office of children's ombudsman under
26 section 3.

27 (e) ~~(g)~~ "Department" means the ~~department of social~~

1 ~~services~~ **family independence agency.**

2 ~~(h) "Foster parent" means an individual licensed by the~~
 3 ~~department of social services under Act No. 116 of the Public~~
 4 ~~Acts of 1973 to provide foster care to children.~~

5 ~~—— (i) "Official" means an official or employee of the~~
 6 ~~department or a child placing agency.~~

7 ~~—— (j) "Ombudsman" means the children's ombudsman created in~~
 8 ~~section 3.~~

9 **(f) "Foster care" means care provided to a child in a foster**
 10 **family home, foster family group home, or child caring**
 11 **institution licensed or approved by the department of consumer**
 12 **and industry services under 1973 PA 116, MCL 722.111 to 722.128,**
 13 **or care provided to a child in a relative's home under a court**
 14 **order.**

15 **(g) "Office" means the children's ombudsman office**
 16 **established under section 3.**

17 **Sec. 3. (1) As a means of effecting changes in policy,**
 18 **procedure, and legislation, educating the public, investigating**
 19 **and reviewing actions of state agencies or entities receiving**
 20 **state funding,** monitoring and ensuring compliance with relevant
 21 statutes, rules, and policies pertaining to children's protective
 22 services and the placement, supervision, ~~and~~ treatment, **and**
 23 **improving delivery of care** of children in foster care and
 24 adoptive homes, the children's ombudsman is ~~created~~ **established**
 25 as an autonomous entity in the department of management and
 26 budget. ~~The ombudsman shall exercise its powers and duties,~~
 27 ~~including the functions of budgeting and procurement and other~~

1 ~~management related functions, independently of the director of~~
2 ~~the department of management and budget.~~ The office of
3 children's ombudsman is established in the children's ombudsman
4 office. An individual appointed as ombudsman serves a term of
5 5 years and holds office until a successor is appointed and
6 qualified.

7 (2) ~~The ombudsman shall be appointed by the governor and~~
8 ~~shall serve at the pleasure of the governor.~~ The governor shall
9 appoint an individual as the ombudsman, with the advice and
10 consent of the senate, from a list of not less than 3 individuals
11 submitted to the governor by a committee consisting of the
12 following members:

13 (a) Two attorneys appointed by the state bar of Michigan.

14 (b) Two judges who are serving in the family division of
15 circuit court appointed by the supreme court.

16 (c) One physician appointed by the Michigan state medical
17 society.

18 (d) One member of the house of representatives appointed by
19 the speaker of the house of representatives.

20 (e) One member of the senate appointed by the senate majority
21 leader.

22 (f) One psychologist appointed by the governor.

23 (g) One social worker appointed by the national association
24 of social workers of Michigan.

25 (h) One representative of a child placing agency appointed by
26 the governor.

27 (i) One representative of the Michigan domestic violence

1 prevention and treatment board, appointed by the Michigan
2 domestic violence prevention and treatment board or its
3 designee.

4 (j) One member of the general public appointed by the
5 governor.

6 (k) One representative of the department of state police
7 appointed by the director of the department of state police.

8 (3) The committee established under subsection (2) shall
9 recommend not less than 3 individuals to the governor for
10 selection as the children's ombudsman. The committee shall not
11 recommend an individual unless the individual is qualified by
12 training and experience to perform the duties and exercise the
13 powers of the children's ombudsman and the children's ombudsman
14 office as provided in this act.

15 (4) If the office of children's ombudsman becomes vacant, a
16 committee consisting of members as provided in subsection (2)
17 shall be formed and shall meet to interview and consider
18 individuals to recommend for appointment as the children's
19 ombudsman under the guidelines established by subsection (3).
20 Not more than 60 days after a vacancy occurs, the committee shall
21 submit to the governor a list of not less than 3 individuals,
22 ranked in order of committee preference.

23 (5) Not more than 60 days after the committee submits its
24 recommendations, the governor shall appoint 1 of the individuals
25 recommended under subsection (4) to fill the vacancy. An
26 appointment to fill a vacancy in the office of the children's
27 ombudsman is subject to the advice and consent of the senate. If

1 the governor fails to make the appointment within 60 days, the
2 individual ranked the highest in the committee's recommendation
3 under subsection (4) is appointed as the children's ombudsman.

4 (6) The governor may remove the children's ombudsman from
5 office for cause that includes, but is not limited to,
6 incompetency to properly exercise duties, official misconduct,
7 habitual or willful neglect of duty, or any other misfeasance or
8 malfeasance in connection with the operation of the office of the
9 children's ombudsman. The governor shall report the reason for
10 the removal to the legislature.

11 Sec. 4. (1) ~~The~~ Independently from the department of
12 management and budget and from the executive office of the
13 governor, the ombudsman shall establish procedures for the office
14 for budgeting, expending ~~funds~~ money, and employing personnel.
15 Subject to annual appropriations, the ombudsman shall employ
16 sufficient personnel to carry out the duties and powers
17 prescribed by this act.

18 (2) The ombudsman shall establish procedures for receiving
19 and processing complaints from ~~complainants~~ the public,
20 conducting investigations, holding informal hearings, and
21 reporting findings resulting from investigations.

22 (3) Personnel employed by the office of the children's
23 ombudsman shall receive mandatory training conducted by the
24 Michigan domestic violence prevention and treatment board in
25 domestic violence and in handling complaints of abuse or neglect
26 that involve a history of domestic violence.

27 (4) If the subject matter of a complaint falls within the

1 duties and powers of the ombudsman to investigate, any individual
2 may submit the complaint to the ombudsman. The ombudsman has the
3 sole discretion and authority to determine if a complaint falls
4 within his or her duties and powers to investigate. The
5 ombudsman may initiate an investigation without receiving a
6 complaint. The ombudsman defines the scope, duration, and issues
7 to be considered as part of the investigation.

8 (5) The ombudsman, on his or her own initiative, may
9 investigate cases in which the department did not investigate a
10 report made according to section 3 of the child protection law,
11 1975 PA 238, MCL 722.623. The ombudsman, on his or her own
12 initiative, may investigate a case in which the department
13 conducted an investigation but did not classify the case as a
14 central registry case as defined in section 2 of the child
15 protection law, 1975 PA 238, MCL 722.622.

16 Sec. 5. ~~All of the following individuals may make a~~
17 ~~complaint to the ombudsman with respect to a particular child,~~
18 ~~alleging that an administrative act is contrary to law, rule, or~~
19 ~~policy, imposed without an adequate statement of reason, or based~~
20 ~~on irrelevant, immaterial, or erroneous grounds:~~

21 ~~—— (a) The child, if he or she is able to articulate a~~
22 ~~complaint.~~

23 ~~—— (b) A biological parent of the child.~~

24 ~~—— (c) A foster parent of the child.~~

25 ~~—— (d) An adoptive parent or a prospective adoptive parent of~~
26 ~~the child.~~

27 ~~—— (e) A legally appointed guardian of the child.~~

1 ~~—— (f) A guardian ad litem of the child.~~

2 ~~—— (g) An adult who is related to the child within the fifth~~
3 ~~degree by marriage, blood, or adoption, as defined in section 22~~
4 ~~of the adoption code, being section 710.22 of the Michigan~~
5 ~~Compiled Laws.~~

6 ~~—— (h) A Michigan legislator.~~

7 ~~—— (i) An attorney for any individual described in subparagraphs~~
8 ~~(a) to (g).~~ **The children's ombudsman has the authority to do all**
9 **of the following:**

10 **(a) Pursue all necessary action, including, but not limited**
11 **to, legal action, to protect the rights and welfare of each child**
12 **who is under the jurisdiction, control, or supervision of the**
13 **department, the Michigan children's institute, the family**
14 **division of circuit court under section 2(a)(1) of chapter XIIA**
15 **of the probate code of 1939, 1939 PA 288, MCL 712A.2, a child**
16 **caring institution, or a child placing agency.**

17 **(b) Pursue all possible legislative advocacy in the best**
18 **interests of children.**

19 **(c) Review policies and procedures relating to the**
20 **department's involvement with children and make recommendations**
21 **for improvement.**

22 **(d) Investigate each child's death that may have resulted**
23 **from abuse or neglect.**

24 **Sec. 6. The ombudsman may do all of the following in**
25 **relation to a child who may be abused or neglected:**

26 **(a) Upon ~~its~~ his or her own initiative or upon receipt of a**
27 **complaint, ~~from a complainant,~~ investigate an ~~administrative~~**

1 act **or omission** that is alleged to be contrary to law or rule,
2 ~~or~~ contrary to policy of the department or a child placing
3 agency, imposed without an adequate statement of reason, or based
4 on irrelevant, immaterial, or erroneous grounds.

5 (b) Decide, in ~~its~~ **his or her** discretion, whether to
6 investigate a complaint.

7 (c) Upon ~~its own initiative or upon~~ receipt of a complaint,
8 ~~from a complainant, conduct a preliminary~~ **conduct an**
9 investigation to determine whether an ~~adoption~~ attorney
10 **involved in an adoption** may have committed an ~~administrative~~
11 act **or omission** that is alleged to be contrary to law, rule, or
12 the Michigan rules of professional conduct adopted by the
13 Michigan supreme court.

14 (d) In the sole discretion of the ombudsman, and after
15 submitting a written request, access, inspect, and copy all
16 records and reports the ombudsman considers relevant and
17 necessary to carry out his or her duties and powers under this
18 act, including, but not limited to, records of the department,
19 child placing agency records, family court records including
20 those otherwise made confidential by law, medical records,
21 medical examiner records, mental health records, and school
22 records. To the extent these records are made confidential by
23 law, the rules of confidentiality are abrogated to the extent
24 that they are abrogated by section 11 of the child protection
25 law, 1975 PA 238, MCL 722.631.

26 (e) Issue a subpoena requiring the production of a record or
27 report necessary to carry out the ombudsman's duties and powers.

1 If the person to whom a subpoena is issued fails or refuses to
2 produce the record or report, the ombudsman may petition the
3 court for enforcement of the subpoena.

4 (f) ~~-(d)-~~ Hold informal hearings and request that individuals
5 appear before the ombudsman and give testimony or produce
6 documentary or other evidence that the ombudsman considers
7 relevant to a matter under investigation. **The ombudsman may**
8 **issue a subpoena requiring a person to appear at an informal**
9 **hearing. If the person to whom a subpoena is issued fails or**
10 **refuses to appear at the hearing, the ombudsman may petition the**
11 **court for enforcement of the subpoena.**

12 (g) ~~-(e)-~~ Make recommendations to the governor and the
13 legislature concerning the need for **children's** protective
14 services, adoption, or foster care legislation, **policy, or**
15 **practice without prior review by other offices, departments, or**
16 **agencies in the executive branch.**

17 Sec. 7. (1) Upon ~~rendering a decision~~ **deciding** to
18 investigate a complaint, ~~from a complainant,~~ the ombudsman
19 shall notify the ~~complainant~~ **complaining individual** of the
20 decision to investigate and shall notify the department,
21 ~~adoption~~ attorney, or child placing agency of the intention to
22 investigate. If the ombudsman declines to investigate a
23 complaint or continue an investigation, the ombudsman shall
24 notify the ~~complainant~~ **complaining individual** and the
25 department, ~~adoption~~ attorney, or child placing agency of the
26 decision and of the reasons for the ombudsman's action.

27 (2) If ~~the preliminary~~ **an** investigation described in

1 section 6 leads the ombudsman to believe that the matter may
2 involve misconduct by an ~~adoption~~ attorney, the ombudsman shall
3 immediately refer the complaint to the attorney grievance
4 commission of the state bar of Michigan.

5 (3) The ombudsman may advise a ~~complainant~~ **complaining**
6 **individual** to pursue all administrative remedies or channels of
7 complaint open to the ~~complainant~~ **individual** before pursuing a
8 complaint with the ombudsman. Subsequent to the administrative
9 processing of a complaint, the ombudsman may conduct further
10 investigations of ~~any~~ **a** complaint upon the request of the
11 ~~complainant or upon the ombudsman's own initiative~~ **complaining**
12 **individual**.

13 (4) If the ombudsman finds in the course of an investigation
14 that an individual's action is in violation of state or federal
15 criminal law, the ombudsman shall immediately report that fact to
16 the county prosecutor or the attorney general. If the complaint
17 is against a child placing agency, the ombudsman shall refer the
18 matter to the department of ~~social~~ **consumer and industry**
19 **services or its successor department** for further action with
20 respect to licensing.

21 (5) ~~The ombudsman may file a petition on behalf of a child~~
22 ~~requesting the court to take jurisdiction under section 2(b) of~~
23 ~~chapter XIII A of Act No. 288 of the Public Acts of 1939, being~~
24 ~~section 712A.2 of the Michigan Compiled Laws, or a petition for~~
25 ~~termination of parental rights under section 19b of chapter XIII A~~
26 ~~of Act No. 288 of the Public Acts of 1939, being section 712A.19b~~
27 ~~of the Michigan Compiled Laws, if the ombudsman is satisfied that~~

1 ~~the complainant has contacted the department, the prosecuting~~
2 ~~attorney, the child's attorney, and the child's guardian ad~~
3 ~~litem, if any, and that none of these persons intend to file a~~
4 ~~petition as described in this subsection.~~ **The ombudsman may take**
5 **any legal action that he or she considers appropriate to protect**
6 **an individual child or the welfare of this state's abused and**
7 **neglected children as a class.**

8 Sec. 8. (1) The department and a child placing agency shall
9 do all of the following:

10 (a) Upon the ombudsman's request, grant the ombudsman or
11 ~~its~~ **his or her** designee access to all ~~relevant~~ information,
12 records, and documents in the possession of the department or
13 child placing agency that the ombudsman considers **relevant and**
14 necessary in an investigation.

15 (b) Assist the ombudsman to obtain the necessary releases of
16 those documents that are specifically restricted.

17 (c) ~~Provide~~ **Upon the ombudsman's request, Provide** the
18 ombudsman ~~upon request~~ with progress reports concerning the
19 administrative processing of a complaint.

20 (d) **Upon the ombudsman's request, provide the ombudsman**
21 **information he or she requests under subdivision (a) within 5**
22 **business days after the date of request. Upon the ombudsman's**
23 **request, the attorney general may take appropriate action to**
24 **require that the information requested be provided to the**
25 **ombudsman.**

26 (2) The department, an ~~adoption~~ attorney **involved with an**
27 **adoption**, and a child placing agency shall provide information to

1 a biological parent, prospective adoptive parent, or foster
2 parent regarding the provisions of this act.

3 (3) The department shall provide the ombudsman with access,
4 in the ombudsman's own office, to departmental computer networks
5 where child abuse and neglect records are kept.

6 Sec. 9. (1) ~~The ombudsman shall treat all matters under~~
7 ~~investigation, including the identities of recipients or~~
8 ~~individuals from whom information is acquired, as confidential,~~
9 ~~except so far as disclosures may be necessary to enable the~~
10 ~~ombudsman to perform the duties of the office and to support any~~
11 ~~recommendations resulting from an investigation. A record of the~~
12 ~~office of the ombudsman is confidential, shall be used only for~~
13 ~~purposes set forth in this act, and is not subject to court~~
14 ~~subpoena. A record of the office of the ombudsman is exempt from~~
15 ~~disclosure under the freedom of information act, Act No. 442 of~~
16 ~~the Public Acts of 1976, being sections 15.231 to 15.246 of the~~
17 ~~Michigan Compiled Laws. Subject to subsection (2), all~~
18 ~~information obtained or generated by the office of the children's~~
19 ~~ombudsman is confidential and exempt from disclosure under the~~
20 ~~freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, is~~
21 ~~not subject to a court subpoena, and is not discoverable in a~~
22 ~~legal proceeding.~~

23 (2) The ombudsman may disclose confidential information
24 obtained or generated by the office of the children's ombudsman
25 that is otherwise exempt from disclosure if the ombudsman
26 determines that the disclosure is in the best interest of the
27 child, is in the general public interest, or is necessary to

1 enable the ombudsman to perform his or her responsibilities under
2 this act. If the ombudsman determines that disclosure of
3 information is necessary to identify, prevent, or treat the abuse
4 or neglect of a child, the ombudsman may disclose that
5 information to the appropriate agency responsible for the welfare
6 of the child. The ombudsman may not disclose information that is
7 confidential and that concerns a pending law enforcement or child
8 protective services investigation or a pending prosecution, or
9 the identity of an individual making a child abuse or neglect
10 complaint unless that individual intentionally makes a false
11 complaint under section 11.

12 Sec. 10. (1) The ombudsman shall prepare a report of the
13 **factual** findings of an investigation and make recommendations to
14 the department or child placing agency if the ombudsman finds
15 1 or more of the following:

16 (a) A matter should be further considered by the department
17 or child placing agency.

18 (b) An ~~administrative~~ act **or omission** should be modified,
19 ~~or~~ canceled, **or corrected**.

20 (c) Reasons should be given for an ~~administrative~~ act **or**
21 **omission**.

22 (d) Other action should be taken by the department or child
23 placing agency.

24 ~~(2) Before announcing a conclusion or recommendation that~~
25 ~~expressly or by implication criticizes an individual, the~~
26 ~~department, or a child placing agency, the ombudsman shall~~
27 ~~consult with that individual, the department, or the child~~

1 ~~placing agency. When publishing an opinion adverse to the~~
2 ~~department or child placing agency, the ombudsman shall include~~
3 ~~in the publication any statement of reasonable length made to the~~
4 ~~ombudsman by the department or child placing agency in defense or~~
5 ~~mitigation of the action. The ombudsman may request to be~~
6 ~~notified by the department or child placing agency, within a~~
7 ~~specified time, of any action taken on any recommendation~~
8 ~~presented.~~

9 (2) ~~-(3)-~~ The ombudsman shall notify the ~~complainant~~
10 **complaining individual** of the actions taken by the ombudsman and
11 by the department or child placing agency.

12 ~~(4) The ombudsman shall provide the complainant with a copy~~
13 ~~of its recommendations on a complaint.~~

14 (3) The ombudsman may provide the complaining individual with
15 a copy of the ombudsman's recommendations in response to a
16 complaint. Subject to section 9, the ombudsman has discretion to
17 determine what confidential information shall be provided to the
18 complaining individual but shall not disclose confidential
19 information to the complaining individual if disclosure endangers
20 the health or safety of any individual.

21 (4) ~~-(5)-~~ The ombudsman shall submit to the governor, the
22 director of the department, and the legislature an annual report
23 on the **ombudsman's** conduct, ~~of the ombudsman,~~ including any
24 recommendations regarding the need for legislation or for change
25 in rules or policies.

26 Sec. 11. (1) ~~An~~ **Subject to subsection (4),** an official,
27 the department, or a child placing agency shall not penalize any

1 person for filing a complaint or cooperating with the ombudsman
2 in investigating a complaint.

3 (2) An individual, the department, an ~~adoption~~ attorney
4 **involved in an adoption**, or a child placing agency shall not
5 hinder the lawful actions of the ombudsman or employees of the
6 ombudsman.

7 (3) **A report by the ombudsman is not subject to prior**
8 **approval by a person outside of the office.**

9 (4) **A person who intentionally makes a false complaint of**
10 **child abuse or neglect under this act is subject to the penalties**
11 **contained in section 13(5) of the child protection law, 1975 PA**
12 **238, MCL 722.633.**

13 Enacting section 1. Sections 13, 14, and 15 of the
14 children's ombudsman act, 1994 PA 204, MCL 722.933, 722.934, and
15 722.935, are repealed.