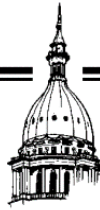




Senate Fiscal Agency
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BILL



ANALYSIS

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House Bill 4050 (Substitute H-2 as reported without amendment)

Sponsor: Representative Kenneth Kurtz

House Committee: Families, Children, and Seniors

Senate Committee: Families, Seniors and Human Services

Date Completed: 5-15-13

RATIONALE

Several issues have been raised concerning the authority of the Children's Ombudsman. The Office of the Children's Ombudsman is an independent State agency in the Department of Technology, Management, and Budget, and is responsible for receiving and investigating complaints concerning children involved with protective services, foster care, adoption services, and juvenile justice. The Ombudsman is an individual appointed by the Governor. The Children's Ombudsman Act authorizes the Ombudsman to determine whether actions of the Department of Human Services (DHS) and private agencies complied with laws, rules, and agency policy in relation to a child who may be a victim of child abuse or child neglect. It has been suggested that the Ombudsman also should have authority over cases involving the death of a child due to suspected abuse or neglect.

Under the Act, the Ombudsman may not release certain confidential information unless the information is public, or disclosure to the DHS or a court is necessary to identify, prevent, or respond to child abuse or child neglect. The Ombudsman also may not disclose information related to an ongoing law enforcement, or Children's Protective Services, investigation. Some people believe the Act should authorize the Ombudsman to release confidential records to law enforcement agencies and prosecutors, and release investigation results in situations that would not interfere with an investigation.

Another issue involves the authority of the Ombudsman to request a subpoena for a report or record necessary to carry out his

or her duties and powers. A subsection of the Act gives the Ombudsman this authority, but amendments enacted in 2004 purported to repeal that subsection as of January 3, 2010. Since then, the Ombudsman evidently has not exercised this authority, although the repeal was technically ineffective. It has been suggested that the Ombudsman's authority to request a subpoena should be "reinstated".

In addition, the Act authorizes the Ombudsman to investigate whether an adoption attorney committed misconduct. Some believe that this should be eliminated, since authority over attorneys is within the purview of the Supreme Court and the State Bar of Michigan.

CONTENT

The bill would amend the Children's Ombudsman Act to do the following:

- **Extend the Ombudsman's authority to cases in which a child might have died as a result of suspected abuse or neglect.**
- **Allow the Ombudsman to release confidential information to a law enforcement agency, or a prosecuting attorney investigating a report of child abuse or neglect.**
- **Allow the Ombudsman to release the results of his or her investigation if doing so were not related to and would not interfere with an ongoing law enforcement or Children's Protective Services investigation.**
- **Indicate that a provision authorizing the Ombudsman to request a**

subpoena from a court would apply beginning on the bill's effective date.

- Delete provisions allowing the Ombudsman to investigate whether an adoption attorney might have committed an administrative act that violated the law or rules of professional conduct.**
- Revise a provision requiring the Ombudsman to have access to departmental computer networks.**

The bill also would repeal an enacting section of a 2004 Public Act that purported to repeal the subsection authorizing the Ombudsman to request a subpoena.

Child Death Investigations

The Act authorizes the Ombudsman to take certain actions in relation to a child who may be a victim of child abuse or child neglect. In particular, the Ombudsman may investigate an administrative act that is alleged to be contrary to law or rule, contrary to policy of the Department of Human Services or a child placing agency, imposed without an adequate statement of reason, or based on irrelevant, immaterial, or erroneous grounds. The Ombudsman also may gain access to records and reports necessary to carry out his or her powers and duties, to the same extent and in the same manner as provided to the DHS under the Child Protection Law. In addition, the Ombudsman may hold informal hearings and make recommendations to the Governor and the Legislature.

The bill also would authorize the Ombudsman to take these actions in relation to a child who may have died as a result of suspected child abuse or child neglect.

(Under the Act, "administrative act" includes an action, omission, decision, recommendation, practice, or other procedure of the DHS, an adoption attorney, or a child placing agency with respect to a particular child related to adoption, foster care, or protective services.)

Currently, the Ombudsman may review each departmental death review team study in which the child's death might have resulted from child abuse or neglect, and may recommend policies, measures, or procedures to prevent future similar

occurrences. The bill would delete this provision.

Release of Information

Section 9(4) of the Act prohibits the Ombudsman's Office from releasing specified confidential information to the public unless the records are otherwise part of the public record. The Ombudsman may, however, disclose information in his or her possession to the DHS or a court if he or she determines that disclosure of confidential information is necessary to identify, prevent, or respond to the abuse or neglect of a child. The bill would add a law enforcement agency, or a prosecuting attorney investigating a report of known or suspected child abuse or child neglect, to those to whom the Ombudsman may release confidential information.

The Act also prohibits the Ombudsman from disclosing information related to an ongoing law enforcement investigation or an ongoing Children's Protective Services investigation. Under the bill, this prohibition would apply except as provided in Section 9(4). Also, if the Ombudsman received notice that releasing the results of its investigation was not related to and would not interfere with an ongoing law enforcement or Children's Protective Services investigation, the Ombudsman could release the results of its investigation to a complainant or an individual not meeting the definition of a complainant.

(A complainant is an individual listed in the Act who may make a complaint to the Ombudsman with respect to a particular child.)

Subpoena

The Act authorizes the Ombudsman to request a subpoena from a court requiring the production of a record or report necessary to carry out his or her powers and duties. The bill indicates that the Ombudsman could do so beginning on the bill's effective date.

The bill also would repeal the enacting section of Public Act 560 of 2004 that purported to repeal the subsection providing for this authority.

Adoption Attorney

The Act authorizes the Ombudsman to conduct a preliminary investigation to determine whether an adoption attorney might have committed an administrative act that is alleged to be contrary to law, rule, or the Michigan Rules of Professional Conduct. If the preliminary investigation leads the Ombudsman to believe that the matter may involve misconduct by the attorney, the Ombudsman must refer the complaint to the Attorney Grievance Commission of the State Bar.

The bill would delete these provisions.

Access to Computer Networks

The Act required the Ombudsman, the DHS, and the Department of Technology, Management, and Budget to enter into an agreement ensuring that the Ombudsman has access, in his or her office, to departmental computer networks pertaining to protective services, foster care, and adoption, including the central registry, service workers support system/foster care, adoption, juvenile justice, and customer information management system, unless otherwise prohibited by State or Federal law, or the release of information to the Ombudsman would jeopardize Federal funding.

The bill generally would retain this provision but would refer to departmental computer networks pertaining to protective services, foster care, adoption, juvenile delinquency, and the central registry.

(The central registry is a system maintained by the DHS that keeps a record of all reports filed with the Department under the Child Protection Law in which relevant and accurate evidence of child abuse or neglect is found to exist.)

MCL 722.925a et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

As a matter of internal policy, the Ombudsman has been investigating cases in

which a child may have died as a result of possible abuse or neglect. However, there is no statutory requirement that the Ombudsman conduct these investigations. The Act should codify this practice rather than leave it to agency discretion.

Also, the Act requires the Ombudsman to review each departmental child death review team study, but no such study exists. Thus, this requirement should be removed from the Act.

Supporting Argument

Reportedly, the inability of the Ombudsman to release information regarding child abuse or child neglect to officials handling a criminal case has been a problem in the past. The Act provides for disclosure only to the DHS or a court. If the Ombudsman determines that releasing confidential information to law enforcement agencies, or prosecutors investigating reports of child abuse or child neglect, is necessary to identify, prevent, or respond to child abuse or child neglect, he or she should have discretion to do so.

Further, before sharing results of an investigation, the Ombudsman must wait until any law enforcement investigation or Children's Protective Services investigation is complete. The bill would allow the Ombudsman to release investigation results to a complainant or other individual when a law enforcement agency or a prosecutor gave notice that the information did not relate to an ongoing investigation. This would give the agency or prosecutor an opportunity to make an informed decision with regard to the information and its relation to ongoing investigations, allowing the release of potentially valuable information sooner than under the current law. The Ombudsman still would have the discretion to release the information to the complainant or other individual.

Supporting Argument

Under Section 6(e) of the Act, the Ombudsman has the authority to request a subpoena for a record or report necessary to carry out his or her duties and powers. Public Act 560 of 2004 included an enacting section that attempted to repeal Section 6(e). That repeal was meant to take effect on January 3, 2010, but it was ineffective because the State Constitution prohibits

altering or amending anything smaller than a section of an act (Article 4, Section 25).

According to the Office of the Children's Ombudsman, however, the Ombudsman has not requested a subpoena since January 3, 2010, because the Ombudsman is of the position that the power to request subpoenas was eliminated on that date. The bill would clarify the Ombudsman's authority to request subpoenas.

Supporting Argument

With regard to adoption attorney investigations, the Ombudsman cannot actually investigate attorneys, despite the statutory language. The State Court Administrative Office and the Attorney Grievance Commission are the proper entities for these types of investigations. The bill would update the Act, and bring it into conformity with existing law and procedure regarding attorney investigations.

Legislative Analyst: Glenn Steffens

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Joe Carrasco

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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.