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House Bill 4050 (Substitute H-2 as passed by the House)
Sponsor: Representative Kenneth Kurtz
House Committee: Families, Children, and Seniors
Senate Committee: Families, Seniors and Human Services

Date Completed: 4-17-13

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 was not related to and would not interfere with an ongoing law enforcement or Child 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 Office of Children's Ombudsman is an autonomous entity in the Department of Technology, Management, and Budget, and the Ombudsman is an individual appointed by the Governor. 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 (DHS) 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

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. Under these circumstances, the bill also would allow the Ombudsman to disclose confidential information in his or her possession to a law enforcement agency, or a prosecuting attorney investigating a report of known or suspected child abuse or child neglect.

The Act prohibits the Ombudsman from disclosing information related to an ongoing law enforcement investigation or an ongoing Children's Protective Services investigation. The bill would allow the Ombudsman to release the results of his or her investigation to a complainant, or an individual not meeting the definition of complainant, if the Ombudsman received notification that releasing the results was not related to and would not interfere with an ongoing law enforcement or Children's Protective Services investigation.

(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.

(This provision is found in Section 6(e) of the Act. Public Act 560 of 2004, which amended the Children's Ombudsman Act, contained an enacting section to repeal Section 6(e). The subsection remains in the Act and House Bill 4050 would repeal that enacting section of the Public Act 560.)

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.

Legislative Analyst: Suzanne Lowe

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.