

**SUBSTITUTE FOR
HOUSE BILL NO. 4050**

A bill to amend 1994 PA 204, entitled
"The children's ombudsman act,"
by amending sections 5a, 6, 7, 8, and 9 (MCL 722.925a, 722.926,
722.927, 722.928, and 722.929), section 5a as added and sections 6,
7, 8, and 9 as amended by 2004 PA 560; and to repeal acts and parts
of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5a. The children's ombudsman has the authority to do all
2 of the following:

3 (a) Pursue all necessary action, including, but not limited
4 to, legal action, to protect the rights and welfare of a child
5 under the jurisdiction, control, or supervision of the department,

1 the Michigan children's institute, the family division of circuit
2 court under section 2(a)(1) of chapter XIIIA of the probate code of
3 1939, 1939 PA 288, MCL 712A.2, a child caring institution, or a
4 child placing agency.

5 (b) Pursue legislative advocacy in the best interests of
6 children.

7 (c) Review policies and procedures relating to the
8 department's involvement with children and make recommendations for
9 improvement.

10 ~~—— (d) Review each departmental death review team study in which~~
11 ~~the child's death may have resulted from child abuse or child~~
12 ~~neglect. As a result of the reviews, the ombudsman may recommend~~
13 ~~policies, measures, or procedures to prevent future similar~~
14 ~~occurrences.~~

15 Sec. 6. The ombudsman may do all of the following in relation
16 to a child who may be a victim of child abuse or child neglect,
17 **INCLUDING A CHILD WHO MAY HAVE DIED AS A RESULT OF SUSPECTED CHILD**
18 **ABUSE OR CHILD NEGLECT:**

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

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

1 ~~—— (c) Upon its own initiative or upon receipt of a complaint~~
2 ~~from a complainant, conduct a preliminary investigation to~~
3 ~~determine whether an adoption attorney may have committed an~~
4 ~~administrative act that is alleged to be contrary to law, rule, or~~
5 ~~the Michigan rules of professional conduct adopted by the Michigan~~
6 ~~supreme court.~~

7 (C) ~~(d)~~ Except as otherwise provided in this subdivision,
8 access records and reports necessary to carry out the ombudsman's
9 powers and duties under this act to the same extent and in the same
10 manner as provided to the department under the provisions of the
11 child protection law. The ombudsman shall 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, ~~1978~~ 1974
17 PA 258, MCL 330.1748a, subject to section 9. The ombudsman is
18 subject to the same standards for safeguarding the confidentiality
19 of information under this section and the same sanctions for
20 unauthorized release of information as the department.

21 (D) ~~(e) Request~~ **BEGINNING ON THE EFFECTIVE DATE OF THE 2013**
22 **AMENDATORY ACT THAT AMENDED THIS SECTION, REQUEST** a subpoena from a
23 court requiring the production of a record or report necessary to
24 carry out the ombudsman's duties and powers. If the person to whom
25 a subpoena is issued fails or refuses to produce the record or
26 report, the ombudsman may petition the court for enforcement of the
27 subpoena.

1 (E) ~~(f)~~ Hold informal hearings and request that individuals
2 appear before the ombudsman and give testimony or produce
3 documentary or other evidence that the ombudsman considers relevant
4 to a matter under investigation.

5 (F) ~~(g)~~ Make recommendations to the governor and the
6 legislature concerning the need for children's protective services,
7 adoption, or foster care legislation, policy, or practice without
8 prior review by other offices, departments, or agencies in the
9 executive branch in order to facilitate rapid implementation of
10 recommendations or for suggested improvements to the
11 recommendations. ~~However, no~~ **NO** other office, department, or agency
12 shall prohibit the release of an ombudsman's recommendation to the
13 governor or the legislature.

14 Sec. 7. (1) Upon deciding to investigate a complaint, from a
15 complainant and an individual not meeting the definition of
16 complainant, the ombudsman shall notify the complainant or the
17 individual not meeting the definition of complainant of the
18 decision to investigate and shall notify the department, adoption
19 attorney, or child placing agency of the intention to investigate.
20 If the ombudsman declines to investigate a complaint or continue an
21 investigation, the ombudsman shall notify the complainant or the
22 individual not meeting the definition of complainant and the
23 department, ~~adoption attorney,~~ or child placing agency of the
24 decision and of the reasons for the ombudsman's action.

25 ~~(2) If the preliminary investigation described in section 6~~
26 ~~leads the ombudsman to believe that the matter may involve~~
27 ~~misconduct by an adoption attorney, the ombudsman shall immediately~~

1 ~~refer the complaint to the attorney grievance commission of the~~
2 ~~state bar of Michigan.~~

3 (2) ~~(3)~~—The ombudsman shall advise a complainant of
4 administrative remedies and may advise the individual to pursue all
5 administrative remedies or channels of complaint open to the
6 complainant before pursuing a complaint with the ombudsman.
7 Subsequent to the administrative processing of a complaint, the
8 ombudsman may conduct further investigations of a complaint upon
9 the request of the complainant or upon the ombudsman's own
10 initiative.

11 (3) ~~(4)~~—If the ombudsman finds in the course of an
12 investigation that an individual's action is in violation of state
13 or federal criminal law, the ombudsman shall immediately report
14 that fact to the county prosecutor or the attorney general. If the
15 complaint is against a child placing agency, the ombudsman shall
16 refer the matter to the department for further action with respect
17 to licensing.

18 (4) ~~(5)~~—The ombudsman may file a petition on behalf of a child
19 requesting the court to take jurisdiction under section 2(b) of
20 chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2,
21 or a petition for termination of parental rights under section 19b
22 of chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL
23 712A.19b, if the ombudsman is satisfied that the complainant has
24 contacted the department, the prosecuting attorney, the child's
25 attorney, and the child's guardian ad litem, if any, and that none
26 of these persons intend to file a petition as described in this
27 subsection.

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

3 (a) Upon the ombudsman's request, grant the ombudsman or his
4 or her designee access to all information, records, and documents
5 in the possession of the department or child placing agency that
6 the ombudsman considers relevant and necessary in an investigation.

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

9 (c) Upon the ombudsman's request, provide the ombudsman with
10 progress reports concerning the administrative processing of a
11 complaint.

12 (d) Upon the ombudsman's request, provide the ombudsman
13 information he or she requests under subdivision (a) within 10
14 business days after the request. If the department determines that
15 release of the information would violate federal or state law, the
16 ombudsman shall be notified of that determination within the same
17 10-day deadline.

18 (2) The department, an attorney involved with an adoption, and
19 a child placing agency shall provide information to a biological
20 parent, prospective adoptive parent, or foster parent regarding the
21 provisions of this act.

22 (3) The ombudsman, the department, and the department of
23 ~~information technology shall enter an agreement not later than June~~
24 ~~30, 2005 that~~ **TECHNOLOGY, MANAGEMENT, AND BUDGET** shall ensure that
25 the ombudsman has access, in the ombudsman's own office, to
26 departmental computer networks pertaining to protective services,
27 foster care, ~~and adoption, including~~ **JUVENILE DELINQUENCY, AND** the

1 central registry, ~~service workers support system/foster care,~~
2 ~~adoption, juvenile justice (SWSS), and customer information~~
3 ~~management system (CIMS)~~ unless otherwise prohibited by state or
4 federal law, or the release of the information to the ombudsman
5 would jeopardize federal funding. The cost of implementing this
6 subsection shall be negotiated among the office of the children's
7 ombudsman, the department, and the department of ~~information~~
8 technology, **MANAGEMENT, AND BUDGET.**

9 Sec. 9. (1) Subject to subsections (2) through (7), a record
10 of the children's ombudsman's office is confidential, shall only be
11 used for purposes set forth in this act, is not subject to court
12 subpoena, and is not discoverable in a legal proceeding. A record
13 of the children's ombudsman's office is exempt from disclosure
14 under the freedom of information act, 1976 PA 442, MCL 15.231 to
15 15.246. If the ombudsman identifies action or inaction by the
16 state, through its agencies or services, that failed to protect
17 children, the ombudsman shall provide his or her findings and
18 recommendations to the agency affected by those findings, and make
19 those findings and recommendations available to the complainant and
20 the legislature upon request, to the extent consistent with state
21 or federal law. The ombudsman shall not disclose any information
22 that impairs the rights of the child or the child's parents or
23 guardians.

24 (2) The ombudsman may release information to a complainant or
25 to a closed session of a legislative committee that has
26 jurisdiction over family and children's services issues regarding
27 the department's handling of a case under the child protection law

1 that is obtained or generated during an investigation conducted by
2 the office.

3 (3) Unless otherwise part of the public record, the office
4 shall not release any of the following confidential information to
5 the general public:

6 (a) Records relating to mental health evaluation or treatment
7 of a parent or child.

8 (b) Records relating to the evaluation or treatment of a
9 substance abuse-related disorder of a parent or child.

10 (c) Records relating to medical diagnosis or treatment of a
11 parent or child.

12 (d) Records relating to domestic violence-related services and
13 sexual assault services provided to a parent or child.

14 (e) Records relating to educational services provided to a
15 parent or child.

16 (4) Notwithstanding subsection (3), if the ombudsman
17 determines that disclosure of confidential information is necessary
18 to identify, prevent, or respond to the abuse or neglect of a
19 child, the ombudsman may disclose information in his or her
20 possession to the department, ~~or~~ a court, **A LAW ENFORCEMENT AGENCY,**
21 **OR A PROSECUTING ATTORNEY INVESTIGATING A REPORT OF KNOWN OR**
22 **SUSPECTED CHILD ABUSE OR CHILD NEGLECT.** The ombudsman shall not
23 release the address, telephone number, or other information
24 regarding the whereabouts of a victim or suspected victim of
25 domestic violence unless ordered to by a court.

26 (5) ~~The~~ **EXCEPT AS PROVIDED IN SUBSECTION (4), THE** ombudsman
27 shall not disclose information relating to an ongoing law

1 enforcement investigation or an ongoing children's protective
2 services investigation. **THE OMBUDSMAN MAY RELEASE THE RESULTS OF**
3 **ITS INVESTIGATION TO A COMPLAINANT, OR AN INDIVIDUAL NOT MEETING**
4 **THE DEFINITION OF COMPLAINANT, IF THE OMBUDSMAN RECEIVES**
5 **NOTIFICATION THAT RELEASING THE RESULTS OF ITS INVESTIGATION IS NOT**
6 **RELATED TO AND WILL NOT INTERFERE WITH AN ONGOING LAW ENFORCEMENT**
7 **INVESTIGATION OR ONGOING CHILD PROTECTIVE SERVICES INVESTIGATION.**

8 (6) The ombudsman shall not disclose the identity of an
9 individual making a child abuse or **CHILD** neglect complaint under
10 the child protection law unless that individual's written
11 permission is obtained first or a court has ordered the ombudsman
12 to release that information.

13 (7) The ombudsman may release an individual's identity who
14 makes an intentionally false report of child abuse or **CHILD** neglect
15 under the child protection law.

16 Enacting section 1. Enacting section 2 of 2004 PA 560 is
17 repealed.