

# HOUSE BILL No. 4050

January 22, 2013, Introduced by Reps. Kurtz and Daley and referred to the Committee on Families, Children, and Seniors.

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.

**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,  
6 the Michigan children's institute, the family division of circuit  
7 court under section 2(a)(1) of chapter XIIIA of the probate code of  
8 1939, 1939 PA 288, MCL 712A.2, a child caring institution, or a  
9 child placing agency.

1 (b) Pursue legislative advocacy in the best interests of  
2 children.

3 (c) Review policies and procedures relating to the  
4 department's involvement with children and make recommendations for  
5 improvement.

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

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

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

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

24 ~~— (c) Upon its own initiative or upon receipt of a complaint  
25 from a complainant, conduct a preliminary investigation to  
26 determine whether an adoption attorney may have committed an  
27 administrative act that is alleged to be contrary to law, rule, or~~

1 ~~the Michigan rules of professional conduct adopted by the Michigan~~  
2 ~~supreme court.~~

3 (C) ~~(d)~~—Except as otherwise provided in this subdivision,  
4 access records and reports necessary to carry out the ombudsman's  
5 powers and duties under this act to the same extent and in the same  
6 manner as provided to the department under the provisions of the  
7 child protection law. The ombudsman shall be provided access to  
8 medical records in the same manner as access is provided to the  
9 department under section 16281 of the public health code, 1978 PA  
10 368, MCL 333.16281. The ombudsman shall be provided access to  
11 mental health records in the same manner as access is provided to  
12 the department in section 748a of the mental health code, ~~1978~~1974  
13 PA 258, MCL 330.1748a, subject to section 9. The ombudsman is  
14 subject to the same standards for safeguarding the confidentiality  
15 of information under this section and the same sanctions for  
16 unauthorized release of information as the department.

17 (D) ~~(e)~~—Request a subpoena from a court requiring the  
18 production of a record or report necessary to carry out the  
19 ombudsman's duties and powers. If the person to whom a subpoena is  
20 issued fails or refuses to produce the record or report, the  
21 ombudsman may petition the court for enforcement of the subpoena.

22 (E) ~~(f)~~—Hold informal hearings and request that individuals  
23 appear before the ombudsman and give testimony or produce  
24 documentary or other evidence that the ombudsman considers relevant  
25 to a matter under investigation.

26 (F) ~~(g)~~—Make recommendations to the governor and the  
27 legislature concerning the need for children's protective services,

1 adoption, or foster care legislation, policy, or practice without  
2 prior review by other offices, departments, or agencies in the  
3 executive branch in order to facilitate rapid implementation of  
4 recommendations or for suggested improvements to the  
5 recommendations. ~~However, no~~ **NO** other office, department, or agency  
6 shall prohibit the release of an ombudsman's recommendation to the  
7 governor or the legislature.

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

19 ~~—— (2) If the preliminary investigation described in section 6~~  
20 ~~leads the ombudsman to believe that the matter may involve~~  
21 ~~misconduct by an adoption attorney, the ombudsman shall immediately~~  
22 ~~refer the complaint to the attorney grievance commission of the~~  
23 ~~state bar of Michigan.~~

24       (2) ~~(3)~~—The ombudsman shall advise a complainant of  
25 administrative remedies and may advise the individual to pursue all  
26 administrative remedies or channels of complaint open to the  
27 complainant before pursuing a complaint with the ombudsman.

1 Subsequent to the administrative processing of a complaint, the  
2 ombudsman may conduct further investigations of a complaint upon  
3 the request of the complainant or upon the ombudsman's own  
4 initiative.

5 (3) ~~(4)~~—If the ombudsman finds in the course of an  
6 investigation that an individual's action is in violation of state  
7 or federal criminal law, the ombudsman shall immediately report  
8 that fact to the county prosecutor or the attorney general. If the  
9 complaint is against a child placing agency, the ombudsman shall  
10 refer the matter to the department for further action with respect  
11 to licensing.

12 (4) ~~(5)~~—The ombudsman may file a petition on behalf of a child  
13 requesting the court to take jurisdiction under section 2(b) of  
14 chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2,  
15 or a petition for termination of parental rights under section 19b  
16 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL  
17 712A.19b, if the ombudsman is satisfied that the complainant has  
18 contacted the department, the prosecuting attorney, the child's  
19 attorney, and the child's guardian ad litem, if any, and that none  
20 of these persons intend to file a petition as described in this  
21 subsection.

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

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

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

3 (c) Upon the ombudsman's request, provide the ombudsman with  
4 progress reports concerning the administrative processing of a  
5 complaint.

6 (d) Upon the ombudsman's request, provide the ombudsman  
7 information he or she requests under subdivision (a) within 10  
8 business days after the request. If the department determines that  
9 release of the information would violate federal or state law, the  
10 ombudsman shall be notified of that determination within the same  
11 10-day deadline.

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

16 (3) The ombudsman, the department, and the department of  
17 ~~information technology shall enter an agreement not later than June~~  
18 ~~30, 2005 that~~ **TECHNOLOGY, MANAGEMENT, AND BUDGET** shall ensure that  
19 the ombudsman has access, in the ombudsman's own office, to  
20 departmental computer networks pertaining to protective services,  
21 foster care, and adoption, ~~including~~ **JUVENILE DELINQUENCY, AND** the  
22 central registry, ~~service workers support system/foster care,~~  
23 ~~adoption, juvenile justice (SWSS), and customer information~~  
24 ~~management system (CIMS)~~ unless otherwise prohibited by state or  
25 federal law, or the release of the information to the ombudsman  
26 would jeopardize federal funding. The cost of implementing this  
27 subsection shall be negotiated among the office of the children's

1 ombudsman, the department, and the department of ~~information~~  
2 technology, **MANAGEMENT, AND BUDGET.**

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

18       (2) The ombudsman may release information to a complainant or  
19 to a closed session of a legislative committee that has  
20 jurisdiction over family and children's services issues regarding  
21 the department's handling of a case under the child protection law  
22 that is obtained or generated during an investigation conducted by  
23 the office.

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

27       (a) Records relating to mental health evaluation or treatment

1 of a parent or child.

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

4 (c) Records relating to medical diagnosis or treatment of a  
5 parent or child.

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

8 (e) Records relating to educational services provided to a  
9 parent or child.

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

20 (5) ~~The~~ **EXCEPT AS PROVIDED IN SUBSECTION (4), THE** ombudsman  
21 shall not disclose information relating to an ongoing law  
22 enforcement investigation or an ongoing children's protective  
23 services investigation. **THE OMBUDSMAN MAY RELEASE THE RESULTS OF**  
24 **ITS INVESTIGATION TO A COMPLAINANT, OR AN INDIVIDUAL NOT MEETING**  
25 **THE DEFINITION OF COMPLAINANT, IF THE OMBUDSMAN RECEIVES**  
26 **NOTIFICATION THAT RELEASING THE RESULTS OF ITS INVESTIGATION IS NOT**  
27 **RELATED TO AND WILL NOT INTERFERE WITH AN ONGOING LAW ENFORCEMENT**



1 **INVESTIGATION OR ONGOING CHILD PROTECTIVE SERVICES INVESTIGATION.**

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

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