

Act No. 38
Public Acts of 2013
Approved by the Governor
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**STATE OF MICHIGAN
97TH LEGISLATURE
REGULAR SESSION OF 2013**

Introduced by Reps. Kurtz and Daley

ENROLLED HOUSE BILL No. 4050

AN ACT to amend 1994 PA 204, entitled "An act to 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," 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:

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

- (a) Pursue all necessary action, including, but not limited to, legal action, to protect the rights and welfare of a child under the jurisdiction, control, or supervision of the department, the Michigan children's institute, the family division of circuit court under section 2(a)(1) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, a child caring institution, or a child placing agency.
- (b) Pursue legislative advocacy in the best interests of children.
- (c) Review policies and procedures relating to the department's involvement with children and make recommendations for improvement.

Sec. 6. The ombudsman may do all of the following in relation to a child who may be a victim of child abuse or child neglect, including a child who may have died as a result of suspected child abuse or child neglect:

- (a) Upon his or her own initiative or upon receipt of a complaint, investigate an administrative act that is alleged to be contrary to law or rule, contrary to policy of the department or a child placing agency, imposed without an adequate statement of reason, or based on irrelevant, immaterial, or erroneous grounds. The ombudsman has sole discretion to determine if a complaint involves an administrative act.
- (b) Decide, in his or her discretion, whether to investigate an administrative act.
- (c) Except as otherwise provided in this subdivision, access records and reports necessary to carry out the ombudsman's powers and duties under this act to the same extent and in the same manner as provided to the department under the provisions of the child protection law. The ombudsman shall be provided access to medical records in the same manner as access is provided to the department under section 16281 of the public health code, 1978 PA 368, MCL 333.16281. The ombudsman shall be provided access to mental health records in the same manner as access is provided to the department in section 748a of the mental health code, 1974 PA 258, MCL 330.1748a, subject to section 9. The ombudsman is subject to the same standards for safeguarding the confidentiality of information under this section and the same sanctions for unauthorized release of information as the department.

(d) Beginning on the effective date of the 2013 amendatory act that amended this section, request a subpoena from a court requiring the production of a record or report necessary to carry out the ombudsman's duties and powers. If the person to whom a subpoena is issued fails or refuses to produce the record or report, the ombudsman may petition the court for enforcement of the subpoena.

(e) Hold informal hearings and request that individuals appear before the ombudsman and give testimony or produce documentary or other evidence that the ombudsman considers relevant to a matter under investigation.

(f) Make recommendations to the governor and the legislature concerning the need for children's protective services, adoption, or foster care legislation, policy, or practice without prior review by other offices, departments, or agencies in the executive branch in order to facilitate rapid implementation of recommendations or for suggested improvements to the recommendations. No other office, department, or agency shall prohibit the release of an ombudsman's recommendation to the governor or the legislature.

Sec. 7. (1) Upon deciding to investigate a complaint, from a complainant and an individual not meeting the definition of complainant, the ombudsman shall notify the complainant or the individual not meeting the definition of complainant of the decision to investigate and shall notify the department, adoption attorney, or child placing agency of the intention to investigate. If the ombudsman declines to investigate a complaint or continue an investigation, the ombudsman shall notify the complainant or the individual not meeting the definition of complainant and the department, or child placing agency of the decision and of the reasons for the ombudsman's action.

(2) The ombudsman shall advise a complainant of administrative remedies and may advise the individual to pursue all administrative remedies or channels of complaint open to the complainant before pursuing a complaint with the ombudsman. Subsequent to the administrative processing of a complaint, the ombudsman may conduct further investigations of a complaint upon the request of the complainant or upon the ombudsman's own initiative.

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

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

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

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

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

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

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

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

(3) The ombudsman, the department, and the department of technology, management, and budget shall ensure that the ombudsman has access, in the ombudsman's own office, to departmental computer networks pertaining to protective services, foster care, adoption, juvenile delinquency, and the central registry, unless otherwise prohibited by state or federal law, or the release of the information to the ombudsman would jeopardize federal funding. The cost of implementing this subsection shall be negotiated among the office of the children's ombudsman, the department, and the department of technology, management, and budget.

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

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

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

- (a) Records relating to mental health evaluation or treatment of a parent or child.
- (b) Records relating to the evaluation or treatment of a substance abuse-related disorder of a parent or child.
- (c) Records relating to medical diagnosis or treatment of a parent or child.
- (d) Records relating to domestic violence-related services and sexual assault services provided to a parent or child.
- (e) Records relating to educational services provided to a parent or child.

(4) Notwithstanding subsection (3), if the ombudsman determines that disclosure of confidential information is necessary to identify, prevent, or respond to the abuse or neglect of a child, the ombudsman may disclose information in his or her possession to the department, a court, a law enforcement agency, or a prosecuting attorney investigating a report of known or suspected child abuse or child neglect. The ombudsman shall not release the address, telephone number, or other information regarding the whereabouts of a victim or suspected victim of domestic violence unless ordered to by a court.

(5) Except as provided in subsection (4), the ombudsman shall not disclose information relating to an ongoing law enforcement investigation or an ongoing children’s protective services investigation. The ombudsman may release the results of its investigation to a complainant, or an individual not meeting the definition of complainant, if the ombudsman receives notification that releasing the results of its investigation is not related to and will not interfere with an ongoing law enforcement investigation or ongoing child protective services investigation.

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

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

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor