

HOUSE BILL No. 5874

September 11, 2012, Introduced by Rep. Kurtz 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 PA
13 258, MCL 330.1748a, subject to section 9. The ombudsman is subject
14 to the same standards for safeguarding the confidentiality of
15 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.