



**House
Legislative
Analysis
Section**

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**CHILDREN'S OMBUDSMAN ACT;
REVISE**

**House Bill 5967 (Substitute H-1)
First Analysis (9-18-02)**

**Sponsor: Rep. Lauren Hager
Committee: Family and Children
Services**

THE APPARENT PROBLEM:

Public Act 204 of 1994 created the Office of Children's Ombudsman as an autonomous agency charged with the responsibility to independently investigate complaints regarding children under the supervision of the Family Independence Agency (FIA) and other private child placing agencies. Specifically, the acts states that the office was created "as a means of monitoring and ensuring compliance with relevant statutes, rules, and policies pertaining to children's protective services and the placement, supervision, and treatment of children in foster care and adoptive homes" (MCL 722.923). The office was established amid concerns that confidentiality laws regarding children in the child welfare system, while designed to protect the identities of such children, may have served to effectively prohibit outside investigatory entities from reviewing the action or inaction of the Family Independence Agency or its contracted private child placing agencies, in certain cases where the conduct of the department or agencies, or their employees, was questioned.

Chief among its statutory duties, the office is permitted to act upon its own initiative or upon the receipt of a complaint from certain individuals, and investigate an action (or inaction) of the FIA or child placing agency that is alleged to be contrary to a law, rule, policy of the department, or policy of the agency that is imposed without an adequate statement of reason, or based on irrelevant, immaterial, or erroneous grounds.

According to its 2001 annual report, the Office of Children's Ombudsman has completed 1,533 investigations since it was officially established on January 1, 1995. For the 2000-2001 fiscal year, the office received 815 complaints, involving 1,274 children from 76 counties throughout the state. Of the complaints received, the office opened 158 investigations. These investigations include 84 complaints involving protective services, 35

complaints involving foster care, 13 complaints involving adoption services, and 26 complaints involving more than one area of concern. During the same period, the office concluded 166 investigations. Of those concluded investigations, the office affirmed the actions of the FIA or the child placing agency in 86 cases, and found violations in the remaining 80 cases. Based on its findings during each investigation, the office issues its finding and recommendations, which are then circulated among the ombudsman, the investigative team, and the FIA or the agency involved.

Recently, there has been some discussion regarding the duties and responsibilities of the office. Much of this discussion has come about due to the findings of the House Committee on Family and Children Services subcommittee on Child Protective Services, chaired by Representative Hager. The subcommittee was charged with the responsibility of examining child protective services in the state, and was established, in part, as a response to a series of articles in the *Detroit Free Press*, which originally appeared December 4-8, 2000, that chronicled the murder of 2-year-old Ariana Swinson at the hands of her abusive parents. As the committee report states, the *Free Press* series, "highlighted what appeared to be a series of bureaucratic miscues by the state's child protection machinery, composed of the Family Independence Agency and the courts".

Among its findings and recommendations, the subcommittee report noted the importance of maintaining accountability in child protection matters. This would be achieved, in part, through reinforcing and guaranteeing the Office of Children's Ombudsman's independence from the executive branch. Thus, legislation has been introduced that incorporates the findings of the Child Protective Services subcommittee, and model provisions relating to ombudsman offices in Rhode Island and Connecticut, among other states.

House Bill 5967 (9-18-02)

THE CONTENT OF THE BILL:

The bill would amend several provisions relating to the Office of Children's Ombudsman relating to the appointment process; complaint process; powers and duties of the ombudsman; conduct of investigations; confidentiality and disclosure of information; and report of findings. The bill would also add that, in addition to those duties prescribed in current law, the office would be established as a means of effecting changes in policy, procedures, and legislation; educating the public; and investigating and reviewing actions of state agencies or entities receiving state funding.

Appointment. Under current law, the ombudsman is appointed by, and serves at the will of, the governor. The bill would amend the appointment process so that the governor, with the advice and consent of the Senate, would appoint a children's ombudsman. The person would be chosen from a list, submitted to the governor, of at least three individuals decided upon by a 12-member advisory committee, and would have to be duly qualified to perform the duties of the children's ombudsman.

The ombudsman would serve a five-year term, and hold the position until a successor has been appointed. However, if the office were to become vacant, a nominating committee would form and recommend candidates for the position in the same manner as above. The committee would have to submit a list of at least three candidates for the position, ranked in order of preference, not more than 60 days after a vacancy occurs.

Not more than 60 days after the committee submits its recommendations, the governor would have to appoint an individual (from the list of recommendations submitted by the committee) to fill the vacancy. An appointment to fill a vacancy would also be subject to the advice and consent of the Senate. If the governor failed to appoint a person to fill the vacancy, the individual who ranked the highest among the committee's recommendations would be appointed to the position of Children's Ombudsman.

In addition, the governor would be permitted to remove the ombudsman from office for cause that would include, though would not be limited to, incompetence, official misconduct, habitual or willful neglect of duty, or any other misfeasance or malfeasance in connection with the operation of the office. Furthermore, the bill would require the

governor to report to the legislature the reason for removing the ombudsman from office.

Complaints. Current law lists several individuals who may file a complaint with the ombudsman. These individuals include the child, a biological parent, a foster parent, a current or prospective adoptive parent, a legal guardian, a guardian ad litem, an adult relative within the fifth degree of consanguinity, a state legislator, and an attorney for any of the above individuals (except for a legislator). The bill simply states that *any* individual could make a complaint to the ombudsman.

The act also states that the listed individuals may file a complaint alleging that an administrative action taken by the FIA, an adoption attorney, or child placing agency is contrary to law, rule or policy; imposed without an adequate statement of reason; or based on irrelevant, immaterial, or erroneous grounds. The bill would allow an individual to file a complaint with the ombudsman if the subject matter falls within the duties and powers of the ombudsman. The ombudsman would have the sole discretion and authority to determine if a complaint falls within his or her duties and powers.

Similar to current law, the bill would allow the ombudsman to conduct an investigation without receiving a complaint. Furthermore, the bill states that the ombudsman, on his or her own initiative, could conduct an investigation on a case in which the FIA did not investigate, or on a case in which the FIA did investigate but did not classify as a central registry case (see MCL 722.622).

Duties of the Ombudsman. The bill states that the ombudsman would be required to do all of the following:

- Pursue all necessary action, including but not limited to legal action, to protect the rights and welfare of each child who is under the jurisdiction of the FIA, the Michigan Children's Institute, the family division of the circuit court, a child caring institution, or a child placing agency.
- Pursue all possible legislative advocacy in the best interest of children.
- Review the policies and procedures relating to the FIA's involvement with children and make recommendations.

- Investigate each child's death that may have resulted from abuse or neglect.

In cases of abuse or neglect, the ombudsman could access, inspect, and copy all records and reports necessary to carry out his or her duties. These records could include, though would not be limited to, the records of the FIA, a child placing agency, the family court including those otherwise made confidential by law, medical records, medical examiner records, mental health records, and school records. The ombudsman could issue a subpoena requiring a person to produce a record or report. The ombudsman could also issue a subpoena requiring a person to appear at an informal hearing. If a person who was subpoenaed failed to produce the record or appear for the hearing, the ombudsman could petition the court for the enforcement of the subpoena.

The act allows the ombudsman to make recommendations to the governor. The bill would specify that the ombudsman would be allowed to make such recommendations without prior review by other offices within the executive branch.

Investigations. Under the act, if a person files a complaint against a child placing agency, the ombudsman is required to refer the matter to the FIA. The bill states that the ombudsman would refer to matter to the Department of Consumer and Industry Services.

The bill would delete a provision that allows the ombudsman to file a petition on behalf of a child requesting the court to take jurisdiction (see MCL 712A.2) or a petition for the termination of parental rights (see MCL 712A.19b) if he or she is satisfied that the complainant has contacted the FIA, the prosecuting attorney, the child's attorney, and the child's guardian ad litem, if any, and that none of the above persons intended to file the same petition. The bill would add that the ombudsman could take any legal action that he or she considers appropriate to protect a child.

Duties of the FIA and a child placing agency. The bill would add that upon the request of the ombudsman, the FIA and a child placing agency would be required to provide any requested information within five business days. The bill would allow the attorney general to take necessary action to require that the information is provided to the ombudsman. The FIA would also be required to provide the ombudsman, in his or her own office, access to the departmental computer networks where abuse and neglect records are kept.

Disclosure. All information obtained or gathered by the ombudsman would be confidential and exempt from disclosure under the Freedom of Information Act (Public Act 442 of 1976), would not be subject to a court subpoena, and would not be discoverable in a legal proceeding. However, the ombudsman could disclose information generated or obtained by the office if he or she determined that doing so was in the public interest or was necessary to enable him or her to perform his or her duties. If the ombudsman determined that the disclosure was necessary to identify, prevent, or treat an abused or neglected child, the ombudsman could disclose such information to the appropriate agency responsible for the child's welfare. The ombudsman would be prohibited from disclosing any confidential information that pertains to an active law enforcement investigation.

Report of Findings. The bill would delete a requirement that the ombudsman consult with an individual, the FIA, or a child placing agency prior to announcing a conclusion or recommendation that criticizes the individual, the FIA, or the child placing agency.

The act requires the ombudsman to provide the complainant with a copy of his or her recommendation regarding a complaint. The bill would not require the ombudsman to provide such information, and would add that when doing so, the ombudsman would have the discretion to determine what confidential information should be provided to the complaining individual.

Repeals. The bill would repeal section 13 (MCL 722.933), which requires the ombudsman to maintain a registry of adoption attorneys. The bill would also repeal sections 14 and 15 (MCL 722.934, 722.935), concerning the current act's effective date and tie-bars to other legislation enacted in 1994.

MCL 722.921 et al.

BACKGROUND INFORMATION:

In recent years, several other states have created similar ombudsman offices, including Rhode Island, Georgia, and Connecticut. The bill is modeled, in part, after these similar statutes.

Rhode Island. Chapter 73 of Title 42 of the Rhode Island General Laws provides for the establishment, powers, and duties of the Ombudsman Office. The office is a legal office that advocates for children whose legal, civil, and special rights in the child

welfare system or family court proceedings are not being met, and monitors the actions taken by the Department of Children, Youth and Families (DCYF).

Similar to the provisions of House Bill 5967, the Rhode Island ombudsman is appointed by the governor, with the advice and consent of the Senate. The ombudsman must be a member of the state bar association who has practiced law for at least three years. The appointment is made from a list of recommendations for the position submitted by a nominating committee. The ombudsman serves for a term of five years, and acts independently of the DCYF in the performance of his or her duties.

Among other duties, the ombudsman is to review the procedures established by the DCYF with a view toward the rights of the children and to investigate the circumstances relating to the death of any child who has received services from the department. In addition, the ombudsman is to review complaints of persons and investigate those where it appears that a child may be in need of assistance; review the facilities and procedures of any and all institutions and/or residences where a juvenile has been placed by the family court or the department; and take all possible action including, among others, public education, legislative advocacy, and legal action to secure and ensure the rights of children. The ombudsman is granted authority to inspect, copy, and subpoena the records of the family court, law enforcement agencies, and other agencies or persons with whom a child has been placed for care or has received treatment. Also, the advocate, or his or her designee, has the power to commence a civil action against the state on behalf of any child the custody of whom has been assigned to an agency under control of the department. Finally, all records of the ombudsman pertaining to the care and treatment of a child are confidential and may not be disclosed in any manner that would identify individuals. However, such records are available to individuals, upon showing of good cause, by order of the family court.

Georgia. Georgia's Office of the Ombudsman for the Protection of Children was created through the enactment of House Bill 1422 (Act 496) on April 6, 2000, in the wake of the death of a 5-year-old Atlanta boy as a result of severe abuse. The office was created "to provide independent oversight of persons, organizations, and agencies responsible for providing services to or caring for children who are victims of child abuse and neglect, or whose domestic situation requires intervention by the state" [see Georgia Code 15-11-170 (b)].

The mission of the office is threefold: Provide independent oversight and investigation; advocate for changes in laws, policies, and procedures; and promote better training for caseworkers and service providers. According to the office's 2001 annual report, the office established certain goals within each primary function. The office's investigative goals include developing a comprehensive data management system to effectively investigate complaints and identify needed systemic changes; identify service delivery deficiencies within the child protective services system; intervene in specific abuse and neglect cases in order to ensure effective and prompt action by the Division of Family and Children Services (DFCS); and prevent placement or retention of children under the custody of DFCS in dangerous situations.

Similar to the provisions of House Bill 5967 relating to the appointment of the ombudsman, under Georgia law, the governor establishes a nominating committee, which considers nominees for the position of ombudsman and makes recommendations to the governor. The advocate is then appointed by the governor from a list of at least three names submitted by the nominating committee, and serves for a term of three years, though he or she may be reappointed. For administrative purposes, the office is assigned to the Office of Planning and Budget, though the advocate is required to act independently of any state official, department, or agency. However, notwithstanding any other provisions in state law, the ombudsman acts independently of any state official, department, or agency in the performance of his or her duties.

Among other duties, the advocate is required to identify, receive, investigate, and seek the resolution or referral of complaints made by or on behalf of children concerning any act, omission to act, practice, policy, or procedure of an agency or contracted agency that may adversely impact the health, safety, and welfare of children. The ombudsman also convenes quarterly meetings with organizations, agencies, and individuals who work in the area of child protection to seek opportunities to collaborate and improve the status of children in the state.

Similar to Rhode Island law, the advocate is granted access to all records and files of the Division of Family and Children Services, various courts, law enforcement agencies, service providers, and institutions. In addition, the advocate may enter and inspect any institution, facility, or residence in which a child has been placed by a court or the division of

Family and Children Services, and is currently residing. Finally, Georgia established the Ombudsman Advisory Committee to review and assess the patterns of treatments and services for children, policy implications, and necessary systemic improvements.

Connecticut. The Connecticut Office of the Ombudsman was established in 1995 (P.A. 95-242). Under state law, the governor, with approval of the General Assembly, is required to appoint a person with knowledge of the child welfare system and the legal system to fill the Office of Ombudsman. The appointment is made from a list of at least three individuals submitted by an advisory committee.

Acting independently from any state department, the ombudsman is required to, among other duties, evaluate the delivery of services to children by state agencies and other entities that provide services with state funds; review the procedures established by any state agency providing services to children, with a view toward the rights of children; review complaints of persons concerning the actions of any state agency or other entity providing services to children; pursuant to an investigation, provide assistance to a child or family in need of such assistance; review the facilities and procedures of any institution in which a child has been placed; and recommend changes in state policies concerning child care, foster care, and juvenile justice.

Similar to provisions in other states and to House Bill 5967, the ombudsman is granted access to any records necessary to carry out the responsibilities of the office, and may issue a subpoena for the production of such records or to compel the attendance and testimony of any witnesses. In addition, Connecticut law permits the ombudsman, or his or her designee, to represent, appear, intervene in, or bring an action on behalf of any child in any proceeding before any court, agency, board, or commission. Furthermore, an advisory committee to the office is established to review and assess the patterns of treatment and service for children; policy implications of the findings regarding patterns of treatment and services; and necessary systemic improvements. In addition, the advisory committee annually evaluates the effectiveness of the office and submits to the governor a list of candidates for the office.

Delaware. Chapter 90A of Title 29 of the Delaware Code establishes the Office of the Ombudsman. The ombudsman serves as the executive director of the Child Protection Accountability Commission, and is

charged with the responsibility of coordinating efforts on behalf of children; working with advocacy groups; promoting system reform; recommending changes in state laws, procedures, and policy necessary to enhance the protection of children; and implementing and coordinating a program providing legal representation on behalf of children. The advocate is also charged the responsibility of effectuating the purposes of the commission – to monitor the state’s child protection system to ensure the health, safety, and well being of abused, neglected, and dependent children.

Confidentiality of Child Abuse or Neglect Records.

Under the Child Protection Law (Public Act 238 of 1975), unless made public by a decision of the FIA director, a written report, document, or photograph filed with the FIA in relation to a matter of alleged child abuse is confidential and may only be disclosed to certain individuals including, among others, police or law enforcement agencies; a physician treating the child; a person legally authorized to place a child in protective services; a person named in the report or record as the perpetrator or alleged perpetrator; a court; a grand jury; a legislative committee with jurisdiction over protective services; and the children’s ombudsman (MCL 722.627). The Child Protection Law (MCL 722.627d) permits the director upon his or her initiative, or upon a written request, to release specific information if there is clear and convincing evidence that either of the following is true:

- The release of such information is in the best interest of the child to whom the specified information relates.

- The release of such information is not in conflict with the best interest of the child and one or more of the following is true:

- The release is in the best interest of a member of the child’s family or of an individual who resides in the same home as the child.

- The release clarifies actions taken by the department on a specific case.

- The report or record concerns a child who has died or concerns a member of that child’s family.

- All or part of the report or record is publicly disclosed in a judicial proceeding.

--A complaint or investigation to which the report or record pertains has been part of the subject matter of a published or broadcast media story.

--The report or record concerns a substantiated report of sexual abuse, serious injury, or life threatening harm involving the child or a sibling or the child identified in the request.

In addition, the law prohibits the FIA director from denying a request for specific information based on a desire to shield a lack of or an inappropriate performance by the department (MCL 722.627e).

FISCAL IMPLICATIONS:

According to a preliminary estimate by the House Fiscal Agency, the bill as currently drafted would have no fiscal impact. (9-18-02).

ARGUMENTS:

For:

Under current law, the children's ombudsman is designed to be an 'autonomous entity' that ensures compliance with relevant statutes, rules, and policies pertaining to children's protective services through its role as a watchdog of the state's Family Independence Agency. However, given the current provisions regarding the appointment of the ombudsman, it appears to some people that there is reason to question the independence of the office.

First, the ombudsman is appointed by, and serves at the pleasure of, the governor. Indeed, the second person to hold the position had previously served as the governor's human services policy coordinator. While in no way questioning that person's integrity or qualifications for the position, or the office's operations during that time, it is that sort of situation that clouds the oversight capacity of the office. By virtue of the ombudsman's status as a gubernatorial appointee, he or she is placed in the precarious position of having to be critical of the FIA and, ultimately, the administration to which the ombudsman belongs. Due to this relationship, it appears, on the surface, that the children's ombudsman may not investigate the actions of the FIA as critically or as thoroughly as he or she should, due to loyalty or for fear of retribution or retaliation.

Secondly, due to the fact that the office and the FIA both fall under the control of the executive office, it appears that relationship between the two offices has a propensity to become too 'comfortable'. This, in

turn, compromises the impartiality and investigatory role of the ombudsman's office, and fails to ensure proper oversight of the department's actions. While one would certainly want the two offices to work together to some degree, there should exist a certain amount of tension between the two offices to ensure that the findings and recommendations of the office carry enough weight to impact the decisions, policies, and procedures of the FIA.

As an oversight agency, the ombudsman's office should be granted enough independence to thoroughly investigate the actions or inaction of the FIA without undue influence from the department or the executive office, and be granted adequate authority to ensure that its findings and recommendations are taken into consideration and addressed by the department.

For these objectives to be accomplished, the office should be removed from the direct control of the governor. Rather than having the ombudsman being appointed by, and serving at the pleasure of, the governor, the ombudsman, under the provisions of the bill, would be appointed by the governor, with the consent of the Senate, chosen from a list submitted by a nominating committee, and would serve for a period of five years and until a successor is chosen. The nominating committee would be comprised of a diverse group of individuals with intimate knowledge of the workings of the child welfare system, who could offer a unique insight as to the type of person that would effectively serve as the ombudsman. Furthermore, removing the governor from direct control over the hiring and firing of the ombudsman ensures that the office can operate with a certain degree of separation and independence from the executive branch.

Against:

If the intent of the bill is to ensure the independence of the ombudsman, the office should be established within the Legislative Council in a manner similar to that of the Legislative Corrections Ombudsman, created under Public Act 46 of 1975. Under that act, the corrections ombudsman is appointed by, and serves at the pleasure of, the council. Under the bill, the ombudsman would, ultimately, remain a gubernatorial appointee, which still fails to ensure the true independence of the office. Finally, the bill grants the governor the sole authority to remove the ombudsman from office. The governor only is required to report the reason for such removal to the legislature. If the legislature finds that the ombudsman was unjustly removed from office, there

are no provisions in the bill to overturn governor's action.

Response:

The bill's provisions pertaining to the appointment of the ombudsman would provide adequate assurances that the office would remain independent of the executive branch. The current system for appointing the ombudsman is problematic because the governor is granted full discretion over the hiring and firing of the ombudsman. The bill does not grant the governor with the direct control over the appointment of the ombudsman.

For:

The bill would permit any individual to file a complaint to the ombudsman. Current law lists several individuals who may file a complaint with the ombudsman, including the child, a biological parent, a foster parent, a current or prospective adoptive parent, a legal guardian, a guardian ad litem, an adult relative within the fifth degree of consanguinity, a state legislator, and an attorney for any of the above individuals (except for a legislator). However, current law does not permit a neighbor, schoolteacher, or any other responsible adult who may have regular contact with a child to file a complaint directly with the office. Anyone not explicitly stated as a possible complainant would have to first contact their state representative or hope that the situation is brought to the attention of the office to prompt it to open an investigation on its own. Permitting any individual to file a complaint with the ombudsman is necessary to ensure the protection, safety, and well-being of children within the child welfare system.

Response:

While the bill would permit anyone to file a complaint with the office, it would also permit the office to report its findings and recommendations to the person who filed the initial complaint. This could grant individuals who have no interest or standing in a matter under investigation by the office access to confidential information and other records pertaining to a matter under investigation.

For:

The bill clarifies the ability to investigate actions *not* taken by the department. Under current law, the ombudsman is permitted to investigate an act that is alleged to be contrary to a law, rule, policy, or procedure. It has been the practice of previous ombudsmen to also investigate a failure to take an action, based on the fact that not taking an action still requires an administrative act or decision. However, in these instances, it has been asserted by some that

the ombudsman lacked the authority to investigate a case in which an action was not taken, which then hinders the ombudsman to thoroughly investigate a matter. The bill then, ensures that the ombudsman has the clear authority to investigate cases in which an action was not taken by the department. This, too, ensures the safety and protection of children involved in the child welfare system.

For:

The bill also strengthens and clarifies the duties and responsibilities of the ombudsman. Under current law the duties of the ombudsman include investigating an administrative act of the department; determining whether to investigate a complaint; investigating an action of an adoption attorney; holding informal hearings; and making recommendations to the governor and the legislature. The bill adds several duties that will ensure the safety and protection of children, by permitting the ombudsman to take certain affirmative actions. The bill requires the advocate to take the steps necessary to protect the rights and welfare of each child in the child welfare system, and to pursue all necessary legal action to safeguard the welfare of a child in the child welfare system. These added responsibilities grant clear authority to advocate to remove children residing in a dangerous environment, notwithstanding any actions or determinations by the department and the courts.

Against:

The bill would require the ombudsman to review and investigate, based on a complaint from the public or on the advocate's own initiative, the situation of a child who may be abused or neglected. However, it is the role of the FIA to investigate such matters of abuse and neglect. This provision appears then to create a second investigatory agency, thereby duplicating the work of the FIA. The role of the ombudsman is to provide oversight of the FIA, not to provide the same services as the department itself. This dual investigatory system could take place alongside an investigation by the FIA – those trained to investigate such matters – or after the FIA closes a case. This provision would place an undue hardship on the family, especially the children, who are subject to the multiple investigations. Furthermore, if the intent is to ensure that the FIA caseworkers have given a case adequate time and resources to properly make a determination, a better approach would be to increase the number of caseworkers (thereby reducing the workload of each caseworker). In addition, it is not clear how the investigation of child abuse (not investigations of the department's actions)

would be conducted. Would these investigations have to be conducted in the same manner then as under the Child Protection Law? Granting the ombudsman full investigatory powers without operationalizing those powers – that is, specifying how those investigations are to be conducted – greatly undermines the ability of the FIA, and undermines the oversight role of the ombudsman’s office.

Against:

The Child Protection Law and the Office of the Children’s Ombudsman Act provide the ombudsman with access to relevant documents, records, and other information pertaining to a matter under investigation by the ombudsman. The children’s ombudsman act requires the ombudsman to treat such information, including the identities of recipients and other individuals, as confidential, with the exception that such information may be disclosed to allow the office to perform its duties and in support of any recommendations that are an outgrowth of its investigations. The bill, however, grants the ombudsman extraordinary authority and discretion to disclose information that is otherwise confidential if such disclosure was in the “general public interest” or necessary to enable the ombudsman to perform his or her duties. Combined with the expanded access granted to the ombudsman to delicate information, including medical records, mental health records, school records, and confidential family court records, the prospects of full public disclosure of the nature of a case under investigation by the office could have a chilling affect on the child protection system.

The bill permits disclosure of otherwise confidential information when it is the “general public interest”, yet there is no attempt to define what constitutes the public interest. Under current state and federal law, confidential child protection records may be disclosed in the best interests of the *child*. Granting the ombudsman sole discretion and authority over the release of such information provides for no standard procedures governing the public disclosure of such information, no ability for the family and children involved in the matter to object to the disclosure, and no legal remedy or redress or review of the actions taken by the ombudsman. In addition, such disclosure authority does not square with current state law under the Child Protection Law and could be used as a means of circumventing that act. The Child Protection Law permits disclosure only to certain individuals and under certain circumstances. This bill then, by granting the ombudsman unfettered access to all CPS files of the department that pertain to a particular investigation and an extraordinary

amount of discretion to disclose such information, undermines and guts the confidentiality provisions built into the Child Protection Law, and in no way protects or maintains the “best interests of the child”.

Against:

The Office of the Children’s Ombudsman opposes many of the bill’s provisions, as follows:

- The OCO opposes authorizing the ombudsman to conduct initial investigations because it would change the role from that of an oversight agency to one that duplicated and potentially interfered with the role of the FIA and law enforcement agencies.
- The OCO opposes the provisions in the bill that create a nominating committee to name three candidates from which the governor must choose the ombudsman. The OCO also opposes the five-year term provision and recommends continuing the current system whereby the ombudsman serves, like other appointees, “at the pleasure of the governor.”
- The OCO is not seeking independence from the Dept. of Management and Budget for budget and personnel matters and does not see a need for it.
- The OCO is not seeking subpoena power and does not believe it is necessary.
- The OCO is not seeking access to FIA computer systems and does not believe it is necessary.

POSITIONS:

The Michigan Chapter of the National Association of Social Workers supports the bill. (9-17-02)

The Family Independence Agency opposes the bill as drafted. (9-17-02)

The Office of the Children’s Ombudsman opposes the bill in its present form. (9-18-02)

The Michigan County Social Services Association opposes the bill. (9-17-02)

Analyst: M. Wolf

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.