

House Bill 5967

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

Complete to 4-26-02

A SUMMARY OF HOUSE BILL 5967 AS INTRODUCED 4-25-02

The Children's Ombudsman Act (Public Act 204 of 1994) created the Office of the Children's Ombudsman, which is an autonomous entity within the Department of Management and Budget. The office investigates the actions, decisions, and policies of the Family Independence Agency as they relate to an individual child in the state's child welfare system. The office provides complainants with an administrative remedy, and makes recommendations to the governor, legislature, and the FIA regarding changes to the laws, administrative rules, and policies of the child welfare system. The bill would replace the Office of the Children's Ombudsman with the Child Advocate Office. In doing so, the bill would re-title the act as the Child Advocate Office Act.

Child Advocate. The governor, with the advice and consent of the Senate, would appoint a child advocate. 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. The prospective child advocate would have to be duly qualified to perform the duties of the child advocate and either be a member of the State Bar of Michigan for at least three years or a licensed attorney in good standing from another state for at least three years and be eligible to become a member of the State Bar. The child advocate would serve a five-year term, and hold the position until a successor has been appointed. Under current law, the ombudsman is appointed by, and serves at the pleasure of, the governor.

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 at litem, an adult relative within the fifth degree, 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 child advocate.

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 child advocate if the subject matter falls within the duties and powers of the child advocate. The child advocate 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 child advocate to conduct an investigation without receiving a complaint. Furthermore, the bill states that the child advocate, 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 Child Advocate. The bill states that the child advocate would be required to do all of the following:

- Take the necessary actions to protect the rights and welfare of each child subject to the jurisdiction of the FIA, the Michigan Children's Institute, the family division of the circuit court, another state agency, or a child placing agency.
- Pursue all necessary legal action to safeguard the welfare of a child.
- Pursue all possible legislative advocacy on behalf of children who are at risk for abuse and neglect.
- Review the policies and procedures relating to the FIA's involvement with children and make recommendations.
- Review and investigate the situation of a child who may be abused or neglected.
- Investigate each child's death that may have resulted from abuse or neglect.

In cases of abuse or neglect, the child advocate 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 child advocate could issue a subpoena requiring a person to produce a record or report. The child advocate 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 child advocate 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 child advocate 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 child advocate 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 child advocate 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 child advocate, 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 child advocate. A failure to comply would be a misdemeanor subject to a \$500 fine. The FIA would also be required to provide the child advocate, 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 child advocate would be confidential and exempt from disclosure under the Freedom of Information Act (1976 P.A. 442), would not be subject to a court subpoena, and would not be discoverable in a legal proceeding. However, the child advocate 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 child advocate determined that the disclosure was necessary to identify, prevent, or treat an abused or neglected child, the child advocate could disclose such information to the appropriate agency responsible for the child's welfare. The child advocate 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 add that when doing so, the child advocate 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.

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■ 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.