

AMENDMENTS TO THE CHILDREN'S OMBUDSMAN ACT



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FISCAL ANALYSIS

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HOUSE BILL 5967 H-1

Sponsor: Rep. Lauren Hager

House Committee: Family and Children Services

FLOOR ANALYSIS - 9/25/02

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SUMMARY

House Bill 5967 (H-1) would amend 1994 PA 204, the Children's Ombudsman Act, in all of the following ways:

Add "effecting changes in policy, procedure, and legislation, educating the public, investigating and reviewing actions of state agencies or entities receiving state funding, and improvement of delivery of care of children" to the list of responsibilities of the Children's Ombudsman.

Add to the Ombudsman being appointed by the Governor that it be "with the advice and consent of the Senate, from a list of not less than 3 individuals submitted to the Governor by a committee consisting of the following members: two attorneys appointed by the State Bar of Michigan, two judges who are serving in the Family Division of Circuit Court appointed by the Supreme Court, one physician appointed by the Michigan State Medical Society, one member of the House of Representatives appointed by the Speaker of the House of Representatives, one member of the Senate appointed by the Senate Majority Leader, one psychologist appointed by the Governor, one social worker appointed by the Governor, one representative of a child placing agency appointed by the Governor, one member of the general public appointed by the Governor, and one representative of the Department of State Police appointed by the Director of State Police." Also, would add that the Ombudsman is appointed to serve a term of 5 years and hold office until a successor is appointed and qualified.

If the Children's Ombudsman position becomes vacant, the committee is required to submit to the Governor a list of not less than 3 individuals ranked in order of committee preference, not more than 60 days after the vacancy occurs. Also, not more than 60 days after the committee submits its recommendations, the Governor is to appoint 1 of the individuals to fill the vacancy. If the Governor fails to make the appointment within 60 days, the individual ranked the highest in the recommendation is appointed as the Children's Ombudsman.

Authorize the Governor to remove the Children's Ombudsman from office for cause that includes, but is not limited to, incompetency to properly exercise duties, official misconduct, habitual or willful neglect of duty, or any other misfeasance or malfeasance in connection with the operation of the Office. Also, would require the Governor to report the reason for removal of the Children's Ombudsman to the Legislature.

Require the Office to establish procedures for budgeting, expending money, and employing personnel "independently from the Department of Management and Budget and from the Executive Office of the Governor."

Add that "If the subject matter of a complaint falls within the duties and powers of the Ombudsman to investigate, any individual may submit the complaint to the Ombudsman, and the Ombudsman has the sole discretion and authority to determine if a complaint falls within his or her duties and powers to investigate. The Ombudsman may initiate an investigation without receiving a complaint. The Ombudsman defines the scope, duration, and issues to be considered as part of the investigation."

Add that "The Ombudsman, on his or her own initiative, may investigate cases the Family Independence Agency (FIA) does not investigate, and may investigate cases the FIA investigates, but does not classify as central registry cases."

Authorize the Children's Ombudsman 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, control, or supervision of the FIA, the Michigan Children's Institute, the Family Division of Circuit Court, a child caring institution, or a child placing agency; pursue all possible legislative advocacy in the best interests of children; review policies and procedures relating to the FIA's involvement with children and make recommendations for improvement; and investigate each child's death that may have resulted from abuse or neglect.

Add that the Children's Ombudsman, "in relation to a child who may be abused or neglected," has the authority to access, inspect, and copy all records and reports necessary to carry out the Ombudsman's duties and powers, including, but not limited to, records of the FIA, child placing agency records, family court records including those otherwise made confidential by law, medical records, medical examiner records, mental health records, and school records. To the extent these records are made confidential by law, the rules of confidentiality are abrogated to the extent that they are abrogated by the Child Protection Law. The Ombudsman has the authority to issue a subpoena requiring the production of a record or report necessary to carry out his or her 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. Also, the Ombudsman may issue a subpoena requiring a person to appear at an informal hearing and if the person fails or refuses to appear, the Ombudsman may petition the court for enforcement of the subpoena.

Authorize the Ombudsman to take any legal action that he or she considers appropriate to protect an individual child or the welfare of this state's abused and neglected children as a class.

Require FIA to provide the Ombudsman with the information he or she requests within 5 business days after the date of the request. Authorizes the Attorney General, upon request of the Ombudsman, to take appropriate action to require that the information requested be provided to the Ombudsman.

Require FIA to provide the Ombudsman, in the Ombudsman's own office, with access to FIA's computer networks where child abuse and neglect records are kept.

Authorize the Ombudsman to disclose confidential information obtained or generated by the Office, that is otherwise exempt from disclosure, if the Ombudsman determines that the disclosure is in the general public interest or is necessary to enable the Ombudsman to perform his or her responsibilities. If the Ombudsman determines that disclosure of information is necessary to identify, prevent, or treat the abuse or neglect of a child, the Ombudsman is authorized to disclose that information to the appropriate agency responsible for the welfare of the child. However, the Ombudsman is prohibited from disclosing information that is confidential concerning a pending law enforcement or child protective services investigation or a pending prosecution, or the identity of an individual making a child abuse or neglect complaint.

Authorize the Ombudsman to use his or her discretion in providing complaining individuals with copies of the Ombudsman's recommendations in response to complaints. Also, authorize the Ombudsman to use his or her discretion in determining what confidential information should be provided to the complaining individuals.

Add that "a report by the Ombudsman is not subject to prior approval by a person outside of the Office."

FISCAL IMPACT

Currently, the Office of the Children's Ombudsman is an "oversight" agency. The Office has authority to investigate complaints about children in Michigan's child welfare system, and to investigate the actions, decisions, policies, and protocols of the FIA and child placing agencies. The Ombudsman makes recommendations to the Governor, Legislature, and FIA regarding changes in child welfare laws, rules, and policies.

House Bill 5967 expands the powers and duties of the Office of Children's Ombudsman, but to the discretion of the Ombudsman. Given that the bill does not require action on behalf of the Ombudsman, instead only authorizing it, there would be no fiscal impact to the state. However, if the Ombudsman were to exercise the expanded duties and powers authorized in the bill, additional costs to the state would occur, as the need for increased resources would arise. The amount of additional costs is indeterminate at this time and would depend solely on the actions of the Ombudsman.

The bill would require the Office of Children's Ombudsman to establish procedures for budgeting, expending money, and employing personnel "independently from the Department of Management and Budget and from the Executive Office of the Governor." Currently, though it is an independent government agency, it does utilize the Executive Office of the Governor, the Office of the State Budget, and the Department of Civil Service in the same fashion as other state departments and agencies, (for budgeting, accounting, employing personnel, and other centralized administrative and support services). An indeterminate amount of additional costs would occur if the Office were required to have its own budget division, its own human resources unit, etc.

Also, the bill would require FIA to provide the Ombudsman, in the Ombudsman's own office, with access to FIA's computer networks where child abuse and neglect records are kept. Currently, the Ombudsman does not have this sort of computer access and providing it would create additional costs to the state.