

SUBSTITUTE FOR
HOUSE BILL NO. 5967

A bill to amend 1994 PA 204, entitled
"The children's ombudsman act,"
by amending the title and sections 2, 3, 4, 5, 6, 7, 8, 9, 10,
and 11 (MCL 722.922, 722.923, 722.924, 722.925, 722.926, 722.927,
722.928, 722.929, 722.930, and 722.931); and to repeal acts and
parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE
2 An act to ~~create~~ ESTABLISH the children's ombudsman
3 OFFICE; AND to prescribe the powers and duties of the children's
4 ombudsman, certain state departments and officers, and certain
5 county and private agencies serving children. ~~and to provide~~
6 ~~remedies from certain administrative acts.~~
7 Sec. 2. As used in this act:

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1 ~~-(a) "Administrative act" includes an action, omission,~~
2 ~~decision, recommendation, practice, or other procedure of the~~
3 ~~department of social services, an adoption attorney, or a child~~
4 ~~placing agency with respect to a particular child related to~~
5 ~~adoption, foster care, or protective services.~~

6 ~~(b) "Adoption attorney" means that term as defined in sec=~~
7 ~~tion 22 of the adoption code, being section 710.22 of the~~
8 ~~Michigan Compiled Laws.~~

9 ~~(c) "Adoption code" means chapter X of Act No. 288 of the~~
10 ~~Public Acts of 1939, being sections 710.21 to 710.70 of the~~
11 ~~Michigan Compiled Laws.~~

12 (A) "CHILD" MEANS AN INDIVIDUAL UNDER THE AGE OF 18.

13 (B) "CHILD CARING INSTITUTION" MEANS THAT TERM AS DEFINED IN
14 SECTION 1 OF 1973 PA 116, MCL 722.111.

15 (C) ~~-(d)-~~ "Child placing agency" means an organization
16 licensed or approved by the department of ~~social services under~~
17 ~~Act No. 116 of the Public Acts of 1973, being sections 722.111 to~~
18 ~~722.128 of the Michigan Compiled Laws~~ CONSUMER AND INDUSTRY
19 SERVICES UNDER 1973 PA 116, MCL 722.111 TO 722.128, to receive
20 children for placement in private family homes for foster care or
21 adoption and to provide services related to adoption.

22 ~~-(e) "Child" means an individual under the age of 18.~~

23 ~~(f) "Complainant" means an individual who makes a complaint~~
24 ~~as provided in section 5.~~

25 (D) "CHILDREN'S OMBUDSMAN" OR "OMBUDSMAN" MEANS THE INDIVID-
26 UAL APPOINTED TO THE OFFICE OF CHILDREN'S OMBUDSMAN UNDER
27 SECTION 3.

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1 (E) ~~-(g)-~~ "Department" means the ~~department of social~~
2 ~~services~~ FAMILY INDEPENDENCE AGENCY.

3 ~~-(h) "Foster parent" means an individual licensed by the~~
4 ~~department of social services under Act No. 116 of the Public~~
5 ~~Acts of 1973 to provide foster care to children.~~

6 ~~-(i) "Official" means an official or employee of the depart=~~
7 ~~ment or a child placing agency.~~

8 ~~-(j) "Ombudsman" means the children's ombudsman created in~~
9 ~~section 3.~~

10 (F) "FOSTER CARE" MEANS CARE PROVIDED TO A JUVENILE IN A
11 FOSTER FAMILY HOME, FOSTER FAMILY GROUP HOME, OR CHILD CARING
12 INSTITUTION LICENSED OR APPROVED BY THE DEPARTMENT OF CONSUMER
13 AND INDUSTRY SERVICES UNDER 1973 PA 116, MCL 722.111 TO 722.128,
14 OR CARE PROVIDED TO A JUVENILE IN A RELATIVE'S HOME UNDER A COURT
15 ORDER.

16 (G) "OFFICE" MEANS THE CHILDREN'S OMBUDSMAN OFFICE ESTAB-
17 LISHED UNDER SECTION 3.

18 Sec. 3. (1) As a means of EFFECTING CHANGES IN POLICY, PRO-
19 CEDURE, AND LEGISLATION, EDUCATING THE PUBLIC, INVESTIGATING AND
20 REVIEWING ACTIONS OF STATE AGENCIES OR ENTITIES RECEIVING STATE
21 FUNDING, monitoring and ensuring compliance with relevant stat-
22 utes, rules, and policies pertaining to children's protective
23 services and the placement, supervision, ~~and~~ treatment, AND
24 IMPROVEMENT OF DELIVERY OF CARE of children in foster care and
25 adoptive homes, the children's ombudsman is ~~created~~ ESTABLISHED
26 as an autonomous entity in the department of management and
27 budget. ~~The ombudsman shall exercise its powers and duties,~~

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1 ~~including the functions of budgeting and procurement and other~~
2 ~~management-related functions, independently of the director of~~
3 ~~the department of management and budget.~~ THE OFFICE OF
4 CHILDREN'S OMBUDSMAN IS ESTABLISHED IN THE CHILDREN'S OMBUDSMAN
5 OFFICE. AN INDIVIDUAL APPOINTED AS OMBUDSMAN SERVES A TERM OF
6 5 YEARS AND HOLDS OFFICE UNTIL A SUCCESSOR IS APPOINTED AND
7 QUALIFIED.

8 (2) ~~The ombudsman shall be appointed by the governor and~~
9 ~~shall serve at the pleasure of the governor.~~ THE GOVERNOR SHALL
10 APPOINT AN INDIVIDUAL AS THE OMBUDSMAN, WITH THE ADVICE AND CON-
11 SENT OF THE SENATE, FROM A LIST OF NOT LESS THAN 3 INDIVIDUALS
12 SUBMITTED TO THE GOVERNOR BY A COMMITTEE CONSISTING OF THE FOL-
13 LOWING MEMBERS:

14 (A) TWO ATTORNEYS APPOINTED BY THE STATE BAR OF MICHIGAN.

15 (B) TWO JUDGES WHO ARE SERVING IN THE FAMILY DIVISION OF
16 CIRCUIT COURT APPOINTED BY THE SUPREME COURT.

17 (C) ONE PHYSICIAN APPOINTED BY THE MICHIGAN STATE MEDICAL
18 SOCIETY.

19 (D) ONE MEMBER OF THE HOUSE OF REPRESENTATIVES APPOINTED BY
20 THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

21 (E) ONE MEMBER OF THE SENATE APPOINTED BY THE SENATE MAJOR-
22 ITY LEADER.

23 (F) ONE PSYCHOLOGIST APPOINTED BY THE GOVERNOR.

24 (G) ONE SOCIAL WORKER APPOINTED BY THE NATIONAL ASSOCIATION
25 OF SOCIAL WORKERS OF MICHIGAN.

26 (H) ONE REPRESENTATIVE OF A CHILD PLACING AGENCY APPOINTED
27 BY THE GOVERNOR.

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1 (I) ONE REPRESENTATIVE OF THE MICHIGAN DOMESTIC VIOLENCE
2 PREVENTION AND TREATMENT BOARD, APPOINTED BY THE MICHIGAN DOMES-
3 TIC VIOLENCE PREVENTION AND TREATMENT BOARD OR ITS DESIGNEE.

4 (J) ONE MEMBER OF THE GENERAL PUBLIC APPOINTED BY THE
5 GOVERNOR.

6 (K) ONE REPRESENTATIVE OF THE DEPARTMENT OF STATE POLICE
7 APPOINTED BY THE DIRECTOR OF THE DEPARTMENT OF STATE POLICE.

8 (3) THE COMMITTEE ESTABLISHED UNDER SUBSECTION (2) SHALL
9 RECOMMEND NOT LESS THAN 3 INDIVIDUALS TO THE GOVERNOR FOR SELEC-
10 TION AS THE CHILDREN'S OMBUDSMAN. THE COMMITTEE SHALL NOT RECOM-
11 MEND AN INDIVIDUAL UNLESS THE INDIVIDUAL IS QUALIFIED BY TRAINING
12 AND EXPERIENCE TO PERFORM THE DUTIES AND EXERCISE THE POWERS OF
13 THE CHILDREN'S OMBUDSMAN AND THE CHILDREN'S OMBUDSMAN OFFICE AS
14 PROVIDED IN THIS ACT.

15 (4) IF THE OFFICE OF CHILDREN'S OMBUDSMAN BECOMES VACANT, A
16 COMMITTEE CONSISTING OF MEMBERS AS PROVIDED IN SUBSECTION (2)
17 SHALL BE FORMED AND SHALL MEET TO INTERVIEW AND CONSIDER INDIVID-
18 UALS TO RECOMMEND FOR APPOINTMENT AS THE CHILDREN'S OMBUDSMAN
19 UNDER THE GUIDELINES ESTABLISHED BY SUBSECTION (3). NOT MORE
20 THAN 60 DAYS AFTER A VACANCY OCCURS, THE COMMITTEE SHALL SUBMIT
21 TO THE GOVERNOR A LIST OF NOT LESS THAN 3 INDIVIDUALS, RANKED IN
22 ORDER OF COMMITTEE PREFERENCE.

23 (5) NOT MORE THAN 60 DAYS AFTER THE COMMITTEE SUBMITS ITS
24 RECOMMENDATIONS, THE GOVERNOR SHALL APPOINT 1 OF THE INDIVIDUALS
25 RECOMMENDED UNDER SUBSECTION (4) TO FILL THE VACANCY. AN
26 APPOINTMENT TO FILL A VACANCY IN THE OFFICE OF THE CHILDREN'S
27 OMBUDSMAN IS SUBJECT TO THE ADVICE AND CONSENT OF THE SENATE. IF

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1 THE GOVERNOR FAILS TO MAKE THE APPOINTMENT WITHIN 60 DAYS, THE
2 INDIVIDUAL RANKED THE HIGHEST IN THE COMMITTEE'S RECOMMENDATION
3 UNDER SUBSECTION (4) IS APPOINTED AS THE CHILDREN'S OMBUDSMAN.

4 (6) THE GOVERNOR MAY REMOVE THE CHILDREN'S OMBUDSMAN FROM
5 OFFICE FOR CAUSE THAT INCLUDES, BUT IS NOT LIMITED TO, INCOMPE-
6 TENCY TO PROPERLY EXERCISE DUTIES, OFFICIAL MISCONDUCT, HABITUAL
7 OR WILLFUL NEGLECT OF DUTY, OR ANY OTHER MISFEASANCE OR MALFEA-
8 SANCE IN CONNECTION WITH THE OPERATION OF THE OFFICE OF THE
9 CHILDREN'S OMBUDSMAN. THE GOVERNOR SHALL REPORT THE REASON FOR
10 THE REMOVAL TO THE LEGISLATURE.

11 Sec. 4. (1) ~~The~~ INDEPENDENTLY FROM THE DEPARTMENT OF MAN-
12 AGEMENT AND BUDGET AND FROM THE EXECUTIVE OFFICE OF THE GOVERNOR,
13 THE ombudsman shall establish procedures FOR THE OFFICE for bud-
14 geting, expending ~~funds~~ MONEY, and employing personnel.
15 Subject to annual appropriations, the ombudsman shall employ suf-
16 ficient personnel to carry out the duties and powers prescribed
17 by this act.

18 (2) The ombudsman shall establish procedures for receiving
19 and processing complaints from ~~complainants~~ THE PUBLIC, con-
20 ducting investigations, holding INFORMAL hearings, and reporting
21 findings resulting from investigations.

22 (3) PERSONNEL EMPLOYED BY THE OFFICE OF THE CHILDREN'S
23 OMBUDSMAN SHALL RECEIVE MANDATORY TRAINING IN DOMESTIC VIOLENCE
24 AND HANDLING COMPLAINTS OF ABUSE OR NEGLECT THAT INVOLVE A HIS-
25 TORY OF DOMESTIC VIOLENCE CONDUCTED BY THE MICHIGAN DOMESTIC VIO-
26 LENCE PREVENTION AND TREATMENT BOARD.

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1 (4) IF THE SUBJECT MATTER OF A COMPLAINT FALLS WITHIN THE
2 DUTIES AND POWERS OF THE OMBUDSMAN TO INVESTIGATE, ANY INDIVIDUAL
3 MAY SUBMIT THE COMPLAINT TO THE OMBUDSMAN. THE OMBUDSMAN HAS THE
4 SOLE DISCRETION AND AUTHORITY TO DETERMINE IF A COMPLAINT FALLS
5 WITHIN HIS OR HER DUTIES AND POWERS TO INVESTIGATE. THE OMBUDS-
6 MAN MAY INITIATE AN INVESTIGATION WITHOUT RECEIVING A COMPLAINT.
7 THE OMBUDSMAN DEFINES THE SCOPE, DURATION, AND ISSUES TO BE CON-
8 sidered AS PART OF THE INVESTIGATION.

9 (5) THE OMBUDSMAN, ON HIS OR HER OWN INITIATIVE, MAY INVES-
10 TIGATE CASES IN WHICH THE DEPARTMENT DID NOT INVESTIGATE A REPORT
11 MADE PURSUANT TO SECTION 3 OF THE CHILD PROTECTION LAW, 1975
12 PA 238, MCL 722.623. THE OMBUDSMAN, ON HIS OR HER OWN INITIA-
13 TIVE, MAY INVESTIGATE A CASE IN WHICH THE DEPARTMENT CONDUCTED AN
14 INVESTIGATION BUT DID NOT CLASSIFY THE CASE AS A CENTRAL REGISTRY
15 CASE AS DEFINED IN SECTION 2 OF THE CHILD PROTECTION LAW, 1975
16 PA 238, MCL 722.622.

17 Sec. 5. ~~All of the following individuals may make a com-~~
18 ~~plaint to the ombudsman with respect to a particular child,~~
19 ~~alleging that an administrative act is contrary to law, rule, or~~
20 ~~policy, imposed without an adequate statement of reason, or based~~
21 ~~on irrelevant, immaterial, or erroneous grounds~~ THE CHILDREN'S
22 OMBUDSMAN HAS THE AUTHORITY TO DO ALL OF THE FOLLOWING:

- 23 ~~(a) The child, if he or she is able to articulate a~~
24 ~~complaint.~~
25 ~~(b) A biological parent of the child.~~
26 ~~(c) A foster parent of the child.~~

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~~(d) An adoptive parent or a prospective adoptive parent of the child.~~

~~(e) A legally appointed guardian of the child.~~

~~(f) A guardian ad litem of the child.~~

~~(g) An adult who is related to the child within the fifth degree by marriage, blood, or adoption, as defined in section 22 of the adoption code, being section 710.22 of the Michigan Compiled Laws.~~

~~(h) A Michigan legislator.~~

~~(i) An attorney for any individual described in subparagraphs (a) to (g).~~

(A) 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 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 ALL POSSIBLE 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.

(D) INVESTIGATE EACH CHILD'S DEATH THAT MAY HAVE RESULTED FROM ABUSE OR NEGLECT.

Sec. 6. The ombudsman may do all of the following IN RELATION TO A CHILD WHO MAY BE ABUSED OR NEGLECTED:

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1 (a) Upon ~~its~~ HIS OR HER own initiative or upon receipt of
2 a complaint, ~~from a complainant,~~ investigate an
3 ~~administrative~~ act OR OMISSION that is alleged to be contrary
4 to law or rule, ~~or~~ contrary to policy of the department or a
5 child placing agency, imposed without an adequate statement of
6 reason, or based on irrelevant, immaterial, or erroneous
7 grounds.

8 (b) Decide, in ~~its~~ HIS OR HER discretion, whether to
9 investigate a complaint.

10 (c) Upon ~~its own initiative or upon~~ receipt of a
11 complaint, ~~from a complainant, conduct a preliminary~~ CONDUCT AN
12 investigation to determine whether an ~~adoption~~ attorney
13 INVOLVED IN AN ADOPTION may have committed an ~~administrative~~
14 act OR OMISSION that is alleged to be contrary to law, rule, or
15 the Michigan rules of professional conduct adopted by the
16 Michigan supreme court.

17 (D) IN THE SOLE DISCRETION OF THE OMBUDSMAN, AND AFTER SUB-
18 MITTING A WRITTEN REQUEST, ACCESS, INSPECT, AND COPY ALL RECORDS
19 AND REPORTS THE OMBUDSMAN CONSIDERS RELEVANT AND NECESSARY TO
20 CARRY OUT THE OMBUDSMAN'S DUTIES AND POWERS UNDER THIS SECTION,
21 INCLUDING, BUT NOT LIMITED TO, RECORDS OF THE DEPARTMENT, CHILD
22 PLACING AGENCY RECORDS, FAMILY COURT RECORDS INCLUDING THOSE OTH-
23 ERWISE MADE CONFIDENTIAL BY LAW, MEDICAL RECORDS, MEDICAL
24 EXAMINER RECORDS, MENTAL HEALTH RECORDS, AND SCHOOL RECORDS. TO
25 THE EXTENT THESE RECORDS ARE MADE CONFIDENTIAL BY LAW, THE RULES
26 OF CONFIDENTIALITY ARE ABROGATED TO THE EXTENT THAT THEY ARE

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1 ABROGATED BY SECTION 11 OF THE CHILD PROTECTION LAW, 1975 PA 238,
2 MCL 722.631.

3 (E) ISSUE A SUBPOENA REQUIRING THE PRODUCTION OF A RECORD OR
4 REPORT NECESSARY TO CARRY OUT THE OMBUDSMAN'S DUTIES AND POWERS.
5 IF THE PERSON TO WHOM A SUBPOENA IS ISSUED FAILS OR REFUSES TO
6 PRODUCE THE RECORD OR REPORT, THE OMBUDSMAN MAY PETITION THE
7 COURT FOR ENFORCEMENT OF THE SUBPOENA.

8 (F) ~~-(d)-~~ Hold informal hearings and request that individu-
9 als appear before the ombudsman and give testimony or produce
10 documentary or other evidence that the ombudsman considers rele-
11 vant to a matter under investigation. THE OMBUDSMAN MAY ISSUE A
12 SUBPOENA REQUIRING A PERSON TO APPEAR AT AN INFORMAL HEARING. IF
13 THE PERSON TO WHOM A SUBPOENA IS ISSUED FAILS OR REFUSES TO
14 APPEAR AT THE HEARING, THE OMBUDSMAN MAY PETITION THE COURT FOR
15 ENFORCEMENT OF THE SUBPOENA.

16 (G) ~~-(e)-~~ Make recommendations to the governor and the leg-
17 islature concerning the need for CHILDREN'S protective services,
18 adoption, or foster care legislation, POLICY, OR PRACTICE WITHOUT
19 PRIOR REVIEW BY OTHER OFFICES, DEPARTMENTS, OR AGENCIES IN THE
20 EXECUTIVE BRANCH.

21 Sec. 7. (1) Upon ~~rendering a decision~~ DECIDING to inves-
22 tigate a complaint, ~~from a complainant,~~ the ombudsman shall
23 notify the ~~complainant~~ COMPLAINING INDIVIDUAL of the decision
24 to investigate and shall notify the department, ~~adoption~~ attor-
25 ney, or child placing agency of the intention to investigate. If
26 the ombudsman declines to investigate a complaint or continue an
27 investigation, the ombudsman shall notify the ~~complainant~~

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1 COMPLAINING INDIVIDUAL and the department, ~~adoption~~ attorney,
2 or child placing agency of the decision and of the reasons for
3 the ombudsman's action.

4 (2) If ~~the preliminary~~ AN investigation described in
5 section 6 leads the ombudsman to believe that the matter may
6 involve misconduct by an ~~adoption~~ attorney, the ombudsman shall
7 immediately refer the complaint to the attorney grievance commis-
8 sion of the state bar of Michigan.

9 (3) The ombudsman may advise a ~~complainant~~ COMPLAINING
10 INDIVIDUAL to pursue all administrative remedies or channels of
11 complaint open to the ~~complainant~~ INDIVIDUAL before pursuing a
12 complaint with the ombudsman. Subsequent to the administrative
13 processing of a complaint, the ombudsman may conduct further
14 investigations of ~~any~~ A complaint upon the request of the
15 ~~complainant or upon the ombudsman's own initiative~~ COMPLAINING
16 INDIVIDUAL.

17 (4) If the ombudsman finds in the course of an investigation
18 that an individual's action is in violation of state or federal
19 criminal law, the ombudsman shall immediately report that fact to
20 the county prosecutor or the attorney general. If the complaint
21 is against a child placing agency, the ombudsman shall refer the
22 matter to the department of ~~social~~ CONSUMER AND INDUSTRY serv-
23 ices OR ITS SUCCESSOR DEPARTMENT for further action with respect
24 to licensing.

25 (5) ~~The ombudsman may file a petition on behalf of a child~~
26 ~~requesting the court to take jurisdiction under section 2(b) of~~
27 ~~chapter XIIIA of Act No. 288 of the Public Acts of 1939, being~~

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1 ~~section 712A.2 of the Michigan Compiled Laws, or a petition for~~
2 ~~termination of parental rights under section 19b of chapter XIIIA~~
3 ~~of Act No. 288 of the Public Acts of 1939, being section 712A.19b~~
4 ~~of the Michigan Compiled Laws, if the ombudsman is satisfied that~~
5 ~~the complainant has contacted the department, the prosecuting~~
6 ~~attorney, the child's attorney, and the child's guardian ad~~
7 ~~litem, if any, and that none of these persons intend to file a~~
8 ~~petition as described in this subsection.~~ THE OMBUDSMAN MAY TAKE
9 ANY LEGAL ACTION THAT HE OR SHE CONSIDERS APPROPRIATE TO PROTECT
10 AN INDIVIDUAL CHILD OR THE WELFARE OF THIS STATE'S ABUSED AND
11 NEGLECTED CHILDREN AS A CLASS.

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

14 (a) Upon the ombudsman's request, grant the ombudsman or
15 ~~its~~ HIS OR HER designee access to all ~~relevant~~ information,
16 records, and documents in the possession of the department or
17 child placing agency that the ombudsman considers RELEVANT AND
18 necessary in an investigation.

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

21 (c) ~~Provide~~ UPON THE OMBUDSMAN'S REQUEST, PROVIDE the
22 ombudsman ~~upon request~~ with progress reports concerning the
23 administrative processing of a complaint.

24 (D) UPON THE OMBUDSMAN'S REQUEST, PROVIDE THE OMBUDSMAN
25 INFORMATION HE OR SHE REQUESTS UNDER SUBDIVISION (A) WITHIN 5
26 BUSINESS DAYS AFTER THE DATE OF REQUEST. UPON THE OMBUDSMAN'S
27 REQUEST, THE ATTORNEY GENERAL MAY TAKE APPROPRIATE ACTION TO

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1 REQUIRE THAT THE INFORMATION REQUESTED BE PROVIDED TO THE
2 OMBUDSMAN.

3 (2) The department, an ~~adoption~~ attorney INVOLVED WITH AN
4 ADOPTION, and a child placing agency shall provide information to
5 a biological parent, prospective adoptive parent, or foster
6 parent regarding the provisions of this act.

7 (3) THE DEPARTMENT SHALL PROVIDE THE OMBUDSMAN WITH ACCESS,
8 IN THE OMBUDSMAN'S OWN OFFICE, TO DEPARTMENTAL COMPUTER NETWORKS
9 WHERE CHILD ABUSE AND NEGLECT RECORDS ARE KEPT.

10 Sec. 9. (1) ~~The ombudsman shall treat all matters under~~
11 ~~investigation, including the identities of recipients or individ-~~
12 ~~uals from whom information is acquired, as confidential, except~~
13 ~~so far as disclosures may be necessary to enable the ombudsman to~~
14 ~~perform the duties of the office and to support any recommenda-~~
15 ~~tions resulting from an investigation. A record of the office of~~
16 ~~the ombudsman is confidential, shall be used only for purposes~~
17 ~~set forth in this act, and is not subject to court subpoena. A~~
18 ~~record of the office of the ombudsman is exempt from disclosure~~
19 ~~under the freedom of information act, Act No. 442 of the Public~~
20 ~~Acts of 1976, being sections 15.231 to 15.246 of the Michigan~~
21 ~~Compiled Laws.~~ SUBJECT TO SUBSECTION (2), ALL INFORMATION
22 OBTAINED OR GENERATED BY THE OFFICE OF THE CHILDREN'S OMBUDSMAN
23 IS CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER THE FREEDOM OF
24 INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246, IS NOT
25 SUBJECT TO A COURT SUBPOENA, AND IS NOT DISCOVERABLE IN A LEGAL
26 PROCEEDING.

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1 (2) THE OMBUDSMAN MAY DISCLOSE CONFIDENTIAL INFORMATION
2 OBTAINED OR GENERATED BY THE OFFICE OF THE CHILDREN'S OMBUDSMAN
3 THAT IS OTHERWISE EXEMPT FROM DISCLOSURE IF THE OMBUDSMAN DETER-
4 MINES THAT THE DISCLOSURE IS IN THE BEST INTEREST OF THE CHILD,
5 IS IN THE GENERAL PUBLIC INTEREST, OR IS NECESSARY TO ENABLE THE
6 OMBUDSMAN TO PERFORM HIS OR HER RESPONSIBILITIES UNDER THIS ACT.
7 IF THE OMBUDSMAN DETERMINES THAT DISCLOSURE OF INFORMATION IS
8 NECESSARY TO IDENTIFY, PREVENT, OR TREAT THE ABUSE OR NEGLECT OF
9 A CHILD, THE OMBUDSMAN MAY DISCLOSE THAT INFORMATION TO THE
10 APPROPRIATE AGENCY RESPONSIBLE FOR THE WELFARE OF THE CHILD.
11 HOWEVER, THE OMBUDSMAN MAY NOT DISCLOSE INFORMATION THAT IS CON-
12 FIDENTIAL AND THAT CONCERNS A PENDING LAW ENFORCEMENT OR CHILD
13 PROTECTIVE SERVICES INVESTIGATION OR A PENDING PROSECUTION, OR
14 THE IDENTITY OF AN INDIVIDUAL MAKING A CHILD ABUSE OR NEGLECT
15 COMPLAINT UNLESS THAT INDIVIDUAL INTENTIONALLY MAKES A FALSE COM-
16 PLAINT UNDER SECTION 11.

17 Sec. 10. (1) The ombudsman shall prepare a report of the
18 FACTUAL findings of an investigation and make recommendations to
19 the department or child placing agency if the ombudsman finds
20 1 or more of the following:

21 (a) A matter should be further considered by the department
22 or child placing agency.

23 (b) An ~~administrative~~ act OR OMISSION should be modified,
24 ~~or~~ canceled, OR CORRECTED.

25 (c) Reasons should be given for an ~~administrative~~ act OR
26 OMISSION.

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1 (d) Other action should be taken by the department or child
2 placing agency.

3 ~~(2) Before announcing a conclusion or recommendation that~~
4 ~~expressly or by implication criticizes an individual, the depart=~~
5 ~~ment, or a child placing agency, the ombudsman shall consult with~~
6 ~~that individual, the department, or the child placing agency.~~
7 ~~When publishing an opinion adverse to the department or child~~
8 ~~placing agency, the ombudsman shall include in the publication~~
9 ~~any statement of reasonable length made to the ombudsman by the~~
10 ~~department or child placing agency in defense or mitigation of~~
11 ~~the action. The ombudsman may request to be notified by the~~
12 ~~department or child placing agency, within a specified time, of~~
13 ~~any action taken on any recommendation presented.~~

14 (2) ~~(3)~~ The ombudsman shall notify the ~~complainant~~
15 COMPLAINING INDIVIDUAL of the actions taken by the ombudsman and
16 by the department or child placing agency.

17 ~~(4) The ombudsman shall provide the complainant with a copy~~
18 ~~of its recommendations on a complaint.~~

19 (3) THE OMBUDSMAN MAY PROVIDE THE COMPLAINING INDIVIDUAL
20 WITH A COPY OF THE OMBUDSMAN'S RECOMMENDATIONS IN RESPONSE TO A
21 COMPLAINT. SUBJECT TO SECTION 9, THE OMBUDSMAN HAS DISCRETION TO
22 DETERMINE WHAT CONFIDENTIAL INFORMATION SHALL BE PROVIDED TO THE
23 COMPLAINING INDIVIDUAL BUT SHALL NOT DISCLOSE CONFIDENTIAL INFOR-
24 MATION TO THE COMPLAINING INDIVIDUAL IF THAT DISCLOSURE ENDANGERS
25 THE HEALTH OR SAFETY OF ANY PERSON.

26 (4) ~~(5)~~ The ombudsman shall submit to the governor, the
27 director of the department, and the legislature an annual report

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1 on the OMBUDSMAN'S conduct, ~~of the ombudsman,~~ including any
2 recommendations regarding the need for legislation or for change
3 in rules or policies.

4 Sec. 11. (1) ~~An~~ SUBJECT TO SUBSECTION (4), AN official,
5 the department, or a child placing agency shall not penalize any
6 person for filing a complaint or cooperating with the ombudsman
7 in investigating a complaint.

8 (2) An individual, the department, an ~~adoption~~ attorney
9 INVOLVED IN AN ADOPTION, or a child placing agency shall not
10 hinder the lawful actions of the ombudsman or employees of the
11 ombudsman.

12 (3) A REPORT BY THE OMBUDSMAN IS NOT SUBJECT TO PRIOR
13 APPROVAL BY A PERSON OUTSIDE OF THE OFFICE.

14 (4) A PERSON WHO INTENTIONALLY MAKES A FALSE COMPLAINT OF
15 CHILD ABUSE OR NEGLECT UNDER THIS ACT IS SUBJECT TO THE PENALTIES
16 CONTAINED IN SECTION 13(5) OF THE CHILD PROTECTION LAW, 1975 PA
17 238, MCL 722.633.

18 Enacting section 1. Sections 13, 14, and 15 of the
19 children's ombudsman act, 1994 PA 204, MCL 722.933, 722.934, and
20 722.935, are repealed.