

State of Michigan

**Office
of
Children's
Ombudsman**



Annual Report
2007-2008

Mission Statement

The mission of the Office of Children’s Ombudsman is to assure the safety and well-being of Michigan’s children in need of foster care, adoption and protective services and to promote public confidence in the child welfare system. This will be accomplished through independently investigating complaints, advocating for children, and recommending changes to improve law, policy, and practice for the benefit of current and future generations.

Investigate complaints

Advocate for abused and neglected children

Recommend changes in law, policy, and practice

Improve the child welfare system



STATE OF MICHIGAN

JENNIFER M. GRANHOLM
GOVERNOR

OFFICE OF CHILDREN'S OMBUDSMAN
LANSING

VERLIE M. RUFFIN
DIRECTOR

May 2009

The Honorable Jennifer Granholm, Governor
Honorable Members of the Michigan Legislature
Mr. Ismael Ahmed, Director, Michigan Department of Human Services

In accordance with my statutory responsibility as the Children's Ombudsman,
I respectfully submit the 2007/2008 Annual Report.

This report provides an overview of the activities of the Office of Children's Ombudsman from October 1, 2007 to September 30, 2008, and an analysis of the complaints received and investigated. In addition to the analysis there are recommendations for positive change in the child welfare system to improve outcomes for children. This year, the report includes an expanded section specifically focused on child death investigations.

The Office of Children's Ombudsman appreciates the leadership and support of Governor Granholm, the Michigan Legislature, and the Department of Human Services. Thank you for the opportunity to serve the children of Michigan.

Respectfully,

A handwritten signature in cursive script that reads "Verlie M. Ruffin".

Verlie M. Ruffin
Children's Ombudsman

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A Message from the Ombudsman.....

In July 2008, the State of Michigan and a New York child advocacy organization reached a settlement agreement in response to a historic class action lawsuit filed against Michigan's child welfare system. As a result, the Department of Human Services (DHS), the legislature, courts, private child placing agencies and others will be required to work cooperatively to implement sweeping reforms; particularly in the area of foster care. Many of the terms of the agreement reflect recommendations that the OCO has made in past annual reports and in OCO investigative case reports issued to the department; among them, a reduction in worker and supervisor caseloads, mental health screenings for children entering foster care, greater financial supports for relative caregivers, and shorter time frames for achieving permanency. In the months since the settlement agreement was reached, my staff and I have participated in statewide workgroups and I have been impressed with DHS' commitment, expertise and pace as it implements the terms of the agreement.

A highlight of each OCO Annual Report is the recommendations section. Annual Report recommendations address statewide concerns with law, policy, or practice and are directed toward the Governor, Legislature, and DHS. This year, we have included seven recommendations: one that addresses a barrier to timely permanency for children, and six strategies to ensure that children are removed from their homes only when sufficient evidence of imminent harm exists.

You will find that this year's Annual Report includes an expanded section addressing child death investigations. In this reporting period, the OCO completed 33 investigations involving children who died, triple the number investigated just two years prior. The increase is due to an agreement with DHS that allows the OCO to receive immediate notification when a child dies. As a result of our investigations involving child deaths, the OCO issued approximately 60 recommendations to DHS to improve child protection and prevent future deaths.

As I enter my fourth year as children's ombudsman, it continues to be my pleasure to serve the citizens of Michigan in our shared goal of protecting children. Please contact me or the OCO staff with any questions you may have as you review this annual report.

The Conduct of the Children's Ombudsman

In an effort to bring greater accountability to Michigan's child welfare system, the Michigan Legislature established the Office of Children's Ombudsman (OCO) in 1994. The OCO provides citizens with a way to obtain an independent and impartial investigation of child protective services, foster care, adoption, and juvenile justice cases under the supervision of the Michigan Department of Human Services.

Authority

The Children's Ombudsman Act (1994 PA 204) authorizes the ombudsman to obtain information from DHS and other agencies and service providers, including records in the possession of public and private child placing agencies and medical and mental health providers involved in a child's case. OCO records are confidential and not subject to court subpoena or discoverable in a legal proceeding and are exempt from disclosure under the Freedom of Information Act.

The ombudsman cannot make, change, or set aside a law, policy, agency practice, or agency decision. However, the office can release detailed investigative findings and recommendations addressing needed improvements in laws, policies, and agency practices, in reports to the department, private agencies, the Legislature, and OCO complainants. The ombudsman is authorized to hold informal hearings, take legal action on behalf of a child, refer a case to DHS for a Children's Protective Services (CPS) investigation, request a court subpoena compelling the production of a record or report, and pursue legislative advocacy on behalf of children.

Independence

The Office of Children's Ombudsman is an independent state office within the Department of Management and Budget (DMB). The ombudsman is appointed by the Governor and is subject to the advice and consent of the senate. The OCO investigates complaints concerning children involved in the child welfare system objectively and independent of influence from the Governor's office, DHS, DMB, and other stakeholders.

Budget and Expenditures

The OCO was appropriated \$1,396,500 for fiscal year 2007/08, which was allocated entirely from the state general fund. Eighty percent was for personnel, with most of the remainder devoted to facilities, technology, and office supplies. The OCO has 11 full-time employees: the ombudsman, eight investigators, and two administrative staff. The ombudsman maintains offices in Lansing and Detroit.

Multidisciplinary Team

The OCO uses a multidisciplinary team approach to investigations. Investigators have diverse professional and educational backgrounds with a broad range of experience in child welfare. The OCO staff receives ongoing training and routinely consults with professionals outside the office on issues related to child welfare. During case investigations, team members participate in the analysis of case facts, findings, and recommendations.

Collaboration and Outreach

Throughout the year, the OCO staff periodically met with the DHS Office of Family Advocate (OFA) and DHS policy and administrative staff to discuss individual complaint investigations, agency policies, programs, and practice. OCO staff also reviewed proposed changes to DHS policy related to CPS, foster care, and adoption.

- **Changes to law.** As a result of an OCO investigation in 2008 of a high-profile child death case, the legislature enacted changes to the Child Protection Law and related statutes to add Friend of the Court (FOC) employees to the list of persons required to report suspected child abuse or neglect to CPS.

The Governor also signed into law requirements to improve communication among Friend of the Court and CPS staff. Statutory amendments to the Child Protection Law now require DHS to determine, in specific circumstances, whether an open FOC case exists involving a child suspected of being abused or neglected. If certain case facts exist, the law also requires DHS to notify the local FOC that a CPS investigation concerning the child is being conducted and whether there is a change in the child's placement (i.e. petition and removal). Likewise, upon being notified by DHS of an investigation into alleged child abuse or neglect, the FOC is now required to notify DHS of any procedural developments in the open FOC case while the case is pending.

Lastly, the Child Protection Law was amended to require DHS to implement an investigation checklist to be used in each investigation of suspected abuse or neglect to improve the likelihood that the investigation was thorough and in compliance

with applicable laws and policies. The law prohibits a CPS investigation from being closed until the checklist is completed and a supervisor determines that the investigation complied with state law and department policy.

- **Changes to DHS policy.** This year, OCO recommendations and advocacy contributed to changes in DHS policy, including modifying the definition of mental injury; adding a definition of child torture; and a requirement for minimal professional qualifications for those providing treatment to sexual offenders.
- **Statewide advisory boards.** OCO staff served on numerous advisory boards, workgroups, and committees including the Michigan Court Improvement Program, Statewide Foster Care Review Board, Child Support Leadership Council, Advisory Board on Overrepresentation of Children of Color in Child Welfare, and the Child Welfare Improvement Task Force, among many others. OCO staff also participated in federally mandated citizen review panels including Child Death and Prevention.
- **Presentations.** Each year, the ombudsman receives requests to provide presentations to interest groups, child advocates, and various child welfare stakeholders throughout Michigan. This year, ombudsman staff made presentations to DHS staff and numerous interest groups related to child welfare and testified at several legislative hearings on pending bills or the work of the office. The ombudsman met with several DHS county directors and numerous state legislators to highlight OCO recommendations to improve child welfare.

Mission

Consistent with the Children’s Ombudsman Act and office mission, the OCO used the majority of its resources to perform the following duties:

- **Respond to citizen complaints.** Whenever possible, the OCO provides citizens with meaningful and effective strategies for resolving their concerns. This year, the OCO responded to over 1,000 complaints from citizens about the child welfare system, including complaints about DHS or private agency actions in specific child cases. When the OCO investigates the department or private child placing agency’s handling of a child’s case, we inform the complainant of the actions taken by the OCO to investigate the complaint and the actions taken by the respective agency.
- **Promote child safety, well-being and permanency.** The OCO takes action whenever it determines a child may be unsafe, an administrative action may be harmful to a child, or further action is needed to ensure a child’s well-being or permanency. For instance, the ombudsman may send a written request to DHS to conduct a CPS investigation or safety assessment of a child believed to be at risk.

After careful investigation of case facts, the ombudsman may request that a child placing agency change the permanency plan for a child, file a termination petition, provide mental health or medical services to a child, conduct a thorough home study, or consider a replacement of a child. The ombudsman may request that a licensing investigation be conducted of a child placing agency or foster home, or may refer a criminal matter to a county prosecutor, attorney general, or law enforcement agency.

- **Improve the child welfare system.** One of the OCO's primary roles is to identify problems and make recommendations to improve the child welfare system. Through case analysis and investigative findings this year, the office issued over 300 recommendations to DHS for system-wide improvement or to address problematic decisions that affected individual children. DHS agreed with and took steps to implement the majority of those recommendations.

Complaints

The primary function of the ombudsman's office is to respond to complaints about Michigan's child welfare system. Anyone concerned about how a child's case is being handled by DHS or a private child placing agency may make a complaint to the OCO.

Complaint Intake

Citizens who contact the OCO have varying degrees of understanding about the child welfare system. The intake investigator provides complainants with detailed information about applicable laws and policies. Educating the public about how the child welfare system works in Michigan is a statutory duty of the office and an essential component of system accountability.

When citizens are informed about the relevant laws and policies that govern practice, they are better able to navigate the system, advocate knowledgeably and effectively for themselves and the child and resolve their complaint.

The ombudsman uses the following criteria to evaluate each complaint and decide whether to investigate:

- ✓ The complaint concerns a child involved with CPS, foster care, adoption or juvenile justice in Michigan.
- ✓ An action or inaction by DHS or a private child placing agency is alleged to have violated law, rule, or DHS policy.
- ✓ An alleged decision or action by DHS or a private child placing agency was harmful to a child's safety, health or well-being.

- ✓ The complainant has exhausted other administrative remedies to resolve the complaint without success.
- ✓ It is likely that an investigation by the OCO will positively impact the child's situation or children in future cases.
- ✓ The complaint concerns a child whose death may have resulted from abuse or neglect.

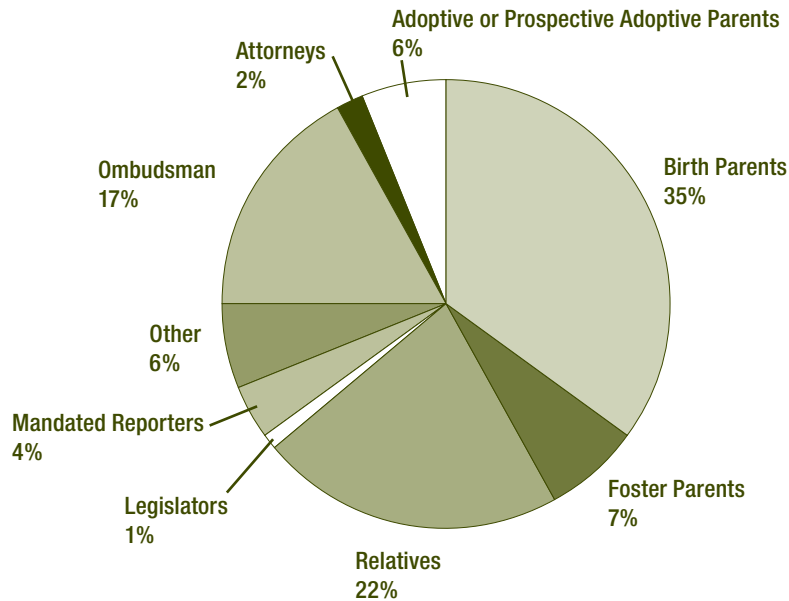
Source of Complaints

Complaints to the ombudsman can be made by telephone, mail, fax, email, or by submitting an electronic complaint form accessible on the OCO website: www.michigan.gov/oco.

The OCO is required by law to keep the identity of complainants confidential unless the complainant gives the ombudsman permission to disclose his or her identity. Within the limits of confidentiality laws, the ombudsman may provide information to the complainant regarding DHS' and the private child placing agency's handling of the case.

In fiscal year 2007/08, the OCO received 1,182 complaints concerning 1,459 children in 74 of Michigan's 83 counties. Birth parents made up the greatest share of complainants (35%) followed by relatives of the child (22%).

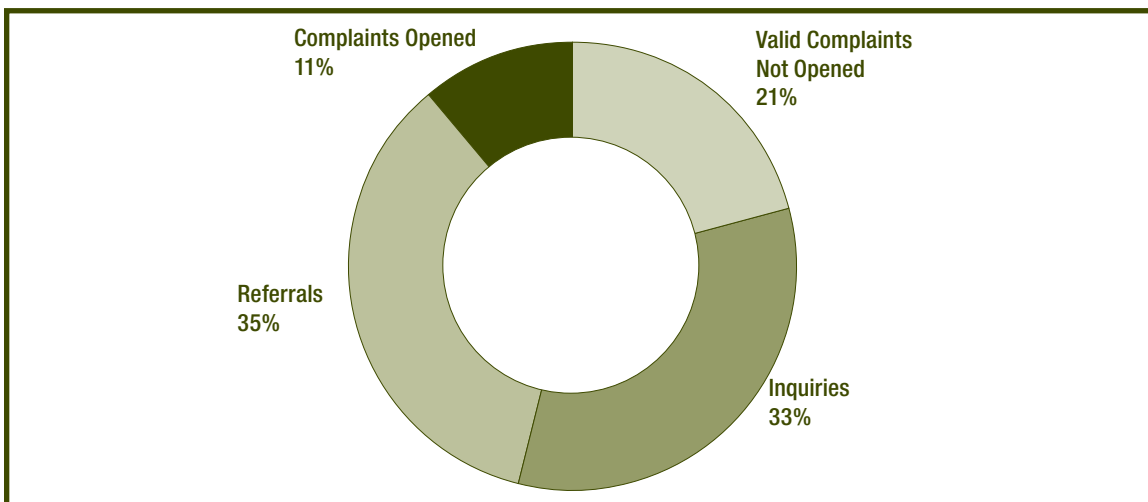
Source of Complaints



Complaint Categories

Not all complaints are appropriate for investigation by the OCO. To most effectively manage and respond to citizen complaints, the ombudsman classifies complaints into one of the following four categories:

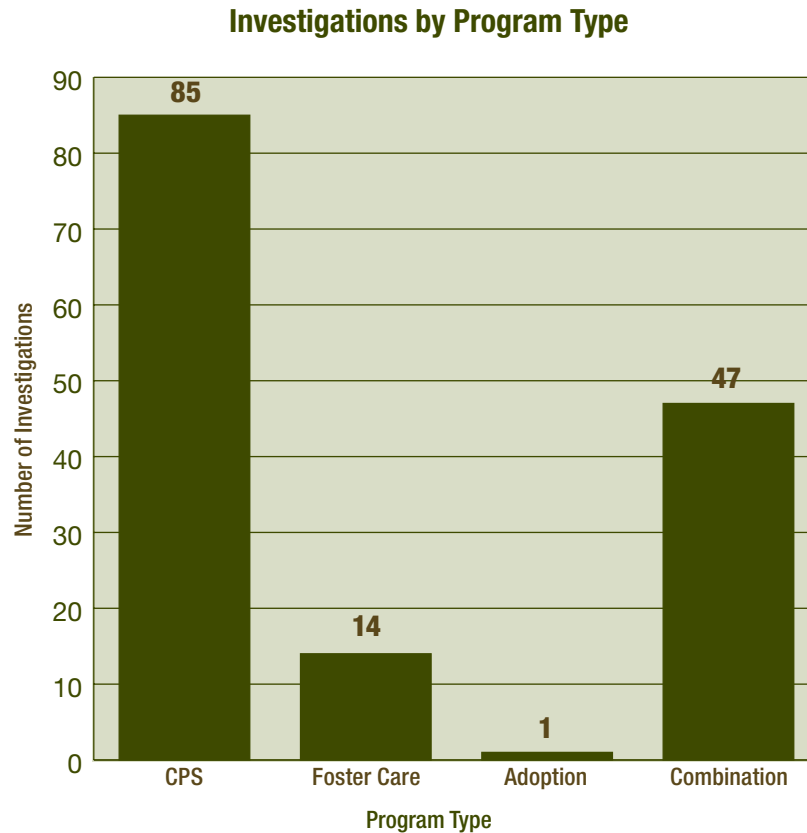
- **Inquiries** - requests for information; general concerns about the child welfare system; or specific complaints involving areas that the ombudsman does not have jurisdiction to investigate, such as Friend of the Court, child custody matters, or educational issues. **This year, the OCO classified 383 complaints as inquiries.**
- **Referrals** – complaints that concern a child involved with CPS, foster care, adoption, or a juvenile justice program, but that involve actions of an agency or person the OCO is not authorized to investigate, such as the court, law enforcement, or an attorney. **The OCO classified 402 complaints as referrals.**
- **Valid Complaints Not Opened** – complaints that are within the OCO’s jurisdiction to investigate, but the ombudsman determines that an investigation will either not resolve the complaint issue or the complaint would be more effectively resolved through other action. A complainant may allege that several years ago the agency had no basis to request termination of parental rights or a person may disagree with an agency’s decision or action, but there is no indication that the action or decision was contrary to law or policy. **The OCO classified 240 complaints as valid complaints not opened.**
- **Valid Complaints Opened** – complaints that involve CPS, foster care, adoption, or juvenile justice and include allegations of law or policy violation or poor practice that impacted a child’s safety or well-being. The ombudsman determines that the complaint satisfies complaint analysis criteria and opens an investigation. **This year, the OCO opened 132 complaints for investigation.**



Investigations

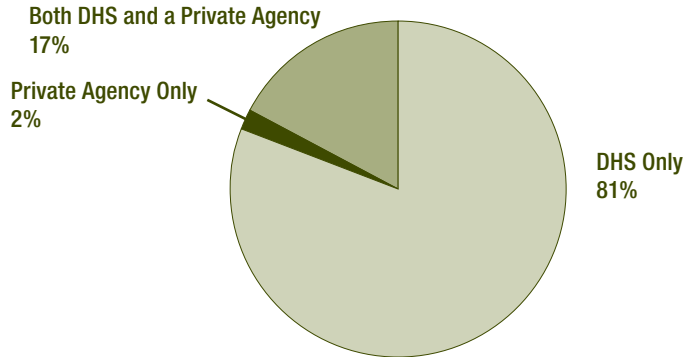
The OCO completed 147 investigations this fiscal year. On average, investigations took 5.81 months to complete and included a comprehensive review of case file material and interviews with DHS, private agency staff and others knowledgeable about the child's situation. Investigations generally focused on resolving issues raised by the complainant. However, if the OCO identified other factors that impacted the child's well-being, such as delayed permanency, untimely service provision, lack of parenting time or sibling visits, or improper placement decisions, the OCO also addressed those issues with DHS, the Bureau of Children and Adult Licensing, the private child placing agency, the court, or the child's attorney.

Of the 147 investigations completed this fiscal year, the majority (58%) focused exclusively on CPS concerns, followed by 32% investigations that involved more than one program area (CPS, foster care, and/or adoption).



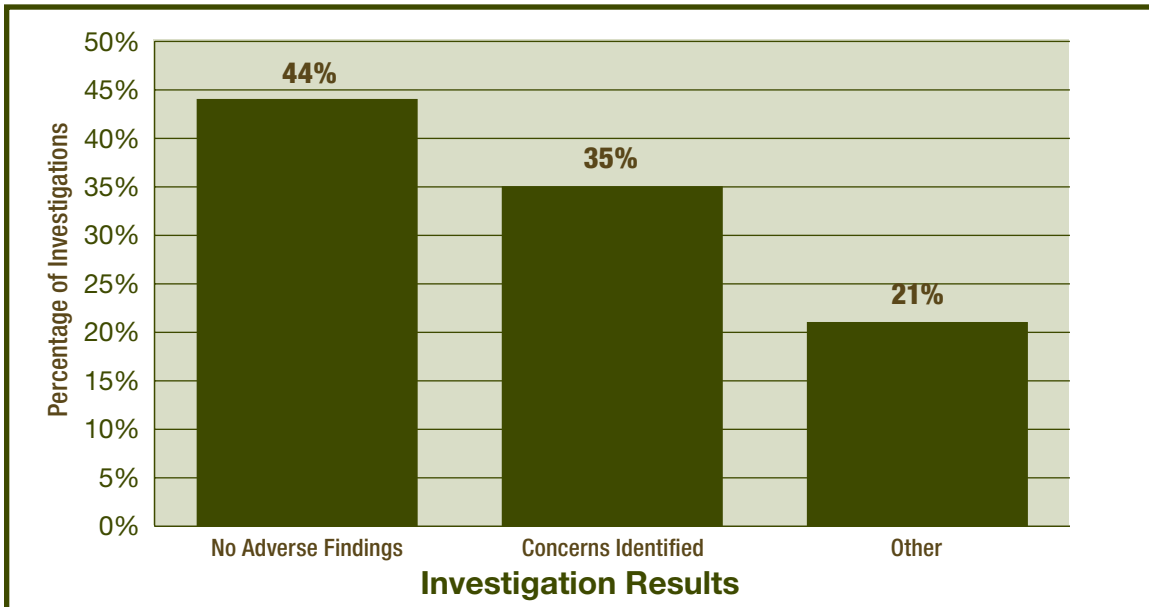
Of the 147 investigations completed, 119 (81%) involved DHS only, 25 (17%) involved both DHS and one or more private child placing agency, and 3 involved only a private child placing agency.

Investigations by Agency Type



Investigation Results

Of the 147 investigations completed in fiscal year 2007/08, 44 percent resulted in no adverse findings, while concerns with case handling were identified in 35 percent. The OCO neither affirmed nor made adverse findings in the remainder of complaint investigations (21%) because the complaints were either resolved by the agency or the ombudsman determined that no further action was needed.



After an investigation is completed, the ombudsman notifies the complainant of the outcome of the investigation and any action taken by DHS or the private child placing agency to address the complaint issues. The OCO issues a closing letter to each agency involved in accordance with one of the following four closing categories:

- **Affirmation** – the OCO determines that the agency complied with applicable laws, rules, and policies, and agency decisions and actions were consistent with case facts and the child’s best interests.
- **Findings and Recommendations (F&R)** - the OCO concludes that the agency did not comply with laws, rules, and/or policies, or agency actions and decisions were not consistent with the case facts or the child’s best interests. The ombudsman details its findings and recommendations in a report to the agency, and the agency responds in writing within 60 days.
- **Administrative Resolution** – the OCO concludes that the agency did not comply with laws, rules, and/or policies, or agency actions and decisions were not consistent with case facts or the child’s best interests. Upon notification by the ombudsman of the concerns, the agency responds by taking action to rectify them. For example, the OCO may have requested the agency conduct a safety assessment, reconsider a placement decision, provide medical or mental health services to a child, or change a permanency goal. The OCO verifies that the requested action was taken and closes its case if no further concerns are identified.
- **Exceptional Close** – the ombudsman determines that the agency either resolved the complainant’s issue on its own, or the circumstances in the case have changed and issues that gave rise to the complaint no longer exist. Alternatively, the OCO may have determined that it lacked jurisdiction to affect the outcome for the child or that further investigation by the OCO would not achieve the outcome desired by the complainant.

The following chart lists the outcome(s) by county DHS offices and private child placing agencies for OCO complaint investigations completed in fiscal year 2007/08:

Ombudsman Investigations by Agency and Outcome

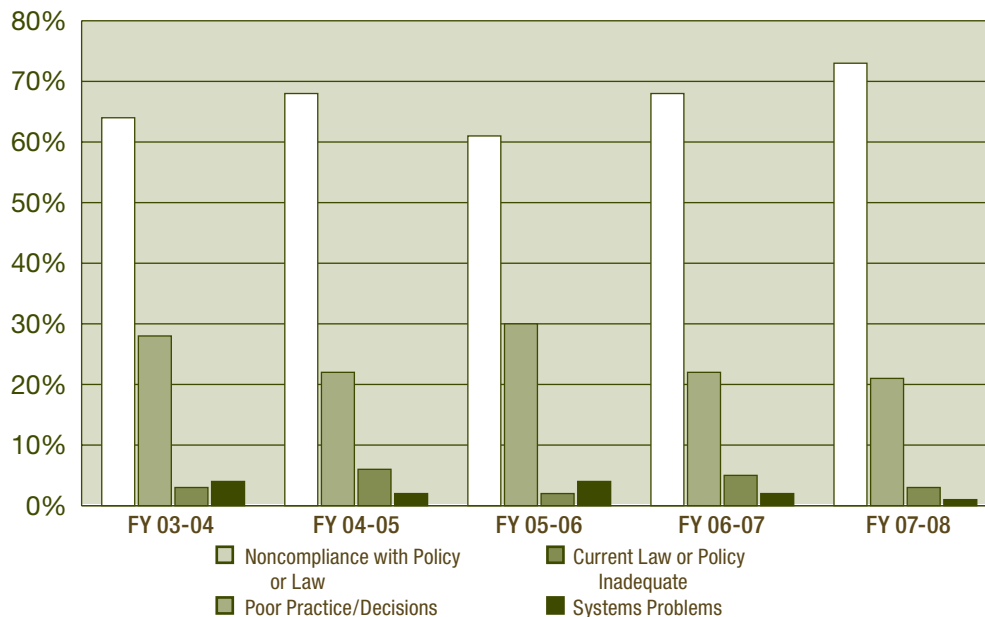
Agency	Number of Investigations	Outcome			
		Affirmation	F&R	Admin. Resolution	Except. Close
Allegan DHS	1				1
Arenac DHS	1	1			
Bay DHS	2	1	1		
Berrien DHS	4	2	1		1
Calhoun DHS	7	4	3		
Eaton DHS	1		1		
Genesee DHS	15	7	3		5
Gogebic DHS	1	1			
Grand Traverse DHS	2	1	1		
Gratiot DHS	2				2
Hillsdale DHS	2			1	1

Agency	Number of Investigations	Outcome			
		Affirmation	F&R	Admin. Resolution	Except. Close
Houghton DHS	1			1	
Huron DHS	2	1	1		
Ingham DHS	11	6	1		4
Ionia DHS	1	1			
Jackson DHS	5	1	2		2
Kalamazoo DHS	6	1	1	1	3
Kent DHS	6	4	1		1
Lake DHS	1				1
Lapeer DHS	2	1			1
Lenawee DHS	2				2
Livingston DHS	2	1	1		
Macomb DHS	10	5	2		3
Mecosta DHS	3	2			1
Monroe DHS	1	1			
Montcalm DHS	2	1	1		
Muskegon DHS	3	2	1		
Newaygo DHS	1	1			
Oakland DHS	9	3	5		1
Saginaw DHS	3	1	1		1
Sanilac DHS	1	1			
Shiawassee DHS	1	1			
St. Clair DHS	7	5	1		1
St. Joseph DHS	3	2	1		
Tuscola DHS	2	1	1		
Washtenaw DHS	2	1	1		
Wayne DHS	36	10	21		5
Wexford DHS	1	1			
Alternatives for Children	1	1			
Bethany Christian Services	1	1			
Catholic Social Services	1	1			
Child and Family Services	2	1			1
Ennis Center for Children	3	2			1
Family and Children's Services	1				1
Family Counseling and Children's Services	1	1			
Family Service and Children's Aid	1		1		

Agency	Number of Investigations	Outcome			
		Affirmation	F&R	Admin. Resolution	Except. Close
Girlstown Foundation	1	1			
Holy Cross	2	1			1
Homes for Black Children	2		2		
Judson Center	1	1			
Lutheran Adoption Services	1	1			
Lutheran Child & Family Services	1	1			
Lutheran Social Services	5	3			2
Methodist Children's Home Society	1	1			
Orchards Children's Services	1		1		
Spaulding for Children	1	1			
Spectrum Human Services	2	1	1		
St. Vincent Catholic Charities	2	1			1
The Children's Center	1	1			
Vista Maria	1	1			
Wolverine Human Services	1	1			

Analysis of F&Rs

The OCO issued 57 Reports of Findings and Recommendations (F&Rs) in fiscal year 2007/08 encompassing over 200 findings. Consistent with each year prior, the overwhelming majority (96%) of findings were the result of noncompliance with existing law or policy or poor practice and decision-making.



Analysis of Administrative Resolutions

The ombudsman issued three Administrative Resolution letters this year in situations where we determined that action was necessary to protect a child from an unsafe situation or to correct a mistake that might result in harm to a child. Following is a summary of the requests that the OCO made to DHS or a private child placing agency and the responses by the involved agencies:

Ombudsman Action	Response/Outcome
After reviewing case history and conducting interviews, the ombudsman requested CPS to conduct an investigation to verify child safety and well-being.	DHS responded by completing a CPS investigation, opening the case, and providing services to the family to reduce risk of harm to the children.
The ombudsman investigated a case involving a young child who had been in foster care for over two years, and asked the agency to request termination of parental rights so the child could achieve permanency.	The agency agreed and filed a petition for termination of parental rights.
The ombudsman was concerned that prior CPS investigations of sexual abuse indicated the children might be unsafe in their father's care. The ombudsman requested CPS conduct another investigation to determine whether the children were at risk.	CPS conducted an investigation of alleged sexual abuse and took action to ensure child safety.

Analysis of Exceptional Closings

The OCO issued Exceptional Closing letters in 34 cases in fiscal year 2007/08. Following are the numbers and rationales for case closing:

Numbers of Cases	Rationale
11	Agency self-corrected the problem.
4	Circumstances changed, issues that gave rise to complaint no longer existed.
2	OCO lacked jurisdiction to affect outcome for the child.
17	Further investigation or action by the OCO would not result in complainant's desired outcome.

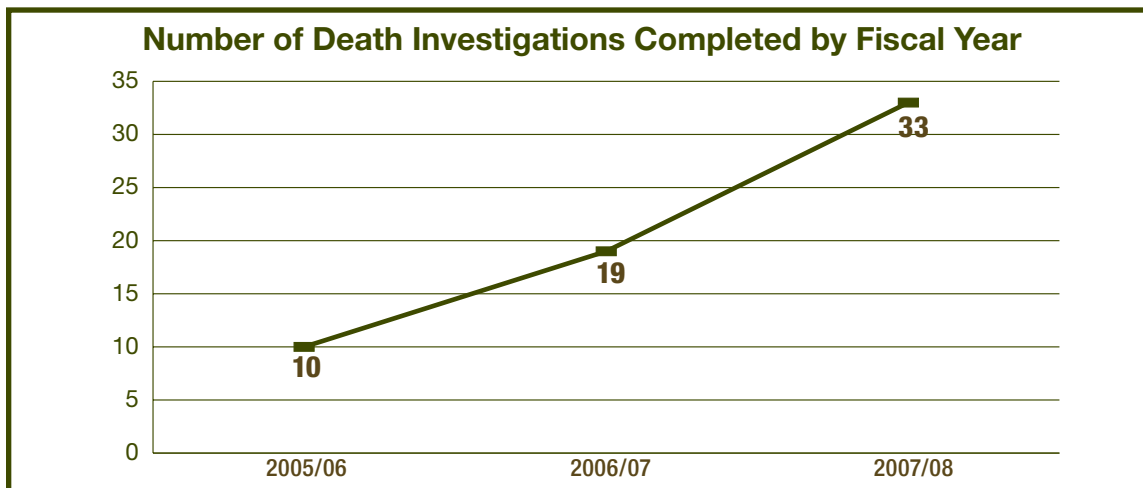
Child Deaths

In January 2005, the Children’s Ombudsman Act was amended to authorize the OCO to investigate child deaths that may have resulted from child abuse or neglect and make recommendations to prevent future child deaths.¹

In 2008, the OCO and the DHS Office of Family Advocate entered into an agreement that resulted in DHS promptly sending an electronic “*death alert*” to the OCO when DHS becomes aware that a child has died.

When the OCO receives a “*death alert*” from DHS, the OCO uses specific criteria to determine whether to investigate the child’s case. The OCO investigates each child death case where the child’s family had prior CPS involvement, including prior CPS complaints, even if they were screened out or unsubstantiated. The OCO also investigates all cases where children died during an active CPS investigation or open services case or after being returned home from foster care. The OCO investigates all cases where a child died in foster care, unless it is clear that the death was the result of natural causes and there were no prior CPS or licensing complaints concerning the foster home.

Since the passage of Ariana’s Law, the OCO has more than tripled its number of child death investigations. This year, 22 % of OCO investigations involved a child death.

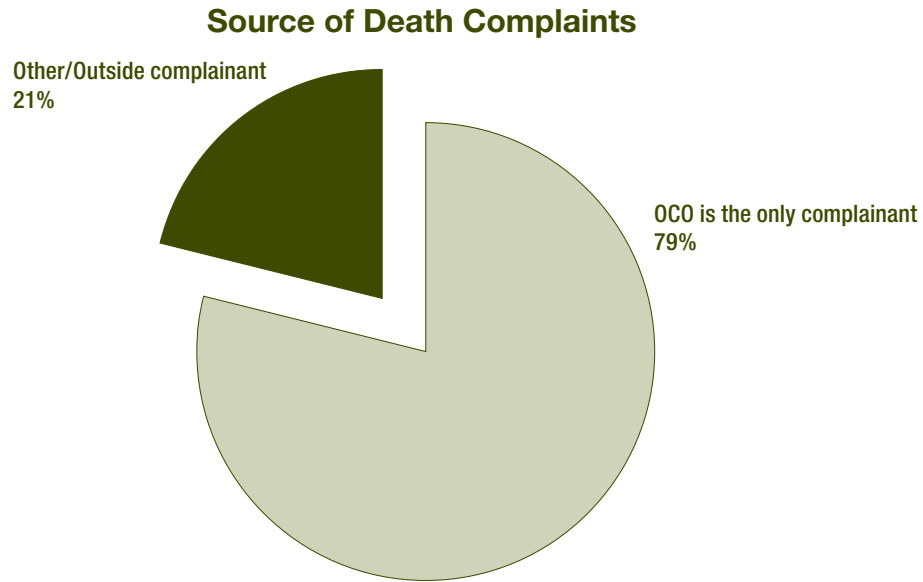


Death Complainants

In the majority of OCO investigations concerning a child death, the OCO became aware of the death from a DHS electronic “*death alert*” or from a media report. Since there is typically no external complainant to the OCO in those cases, the ombudsman is

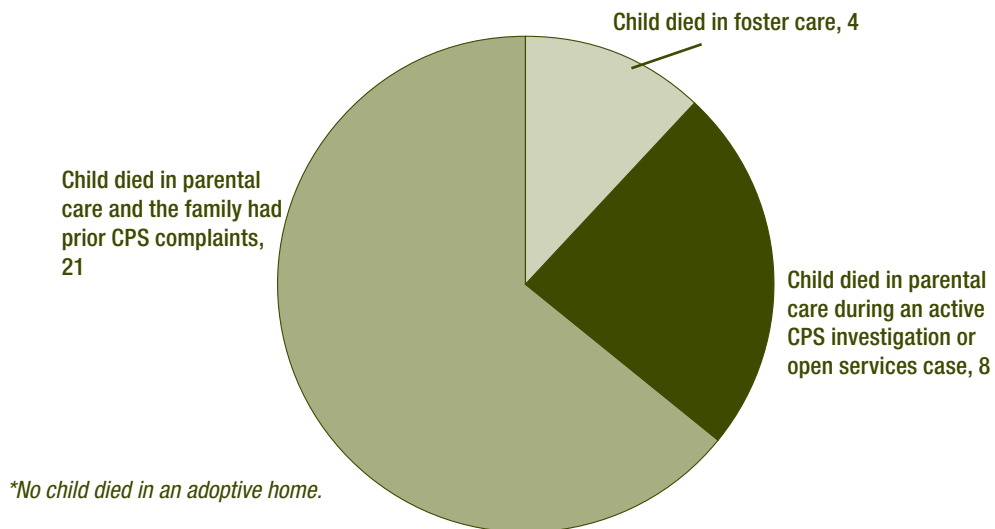
¹ The law that amended the Children’s Ombudsman Act is known as Ariana’s Law and was sponsored by Representative Lauren Hager. In 2000, Ariana was beaten and drowned by her parents after being returned to them from foster care by DHS and the Court.

considered the sole complainant. When no external complainant exists, the OCO does not provide its report of findings and recommendations to anyone, other than DHS and any involved private child placing agency.² The chart below shows that the OCO was the sole complainant in the majority of OCO death investigations.



Case Status at the Time of Child Death

Of the 33 child deaths investigated by the OCO this year, two thirds involved children who had prior contact with CPS.

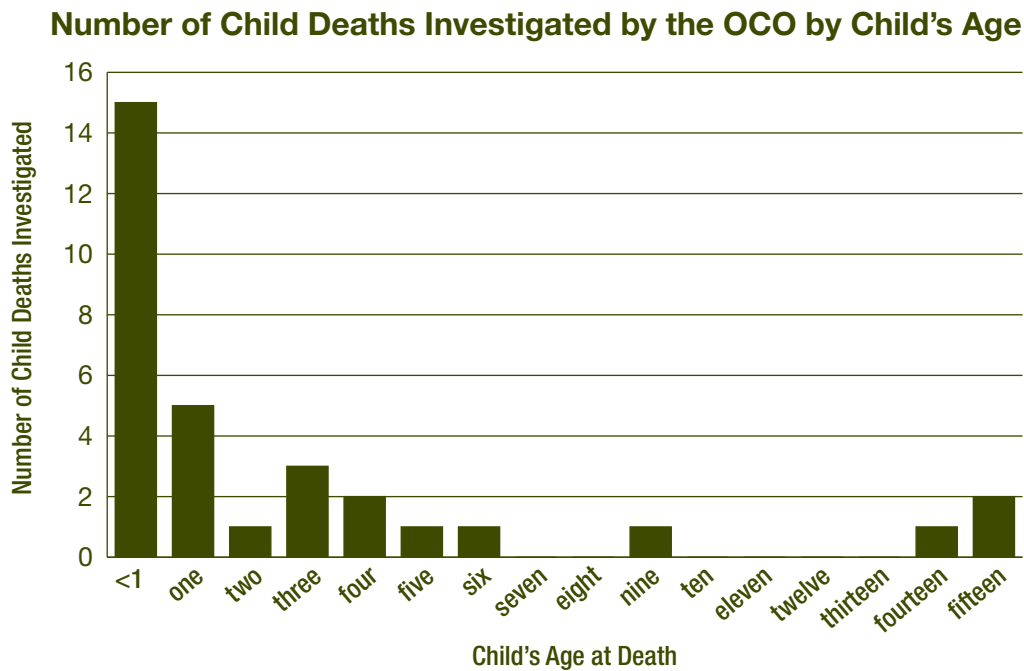


² The OCO may release findings and recommendations to the legislature upon its request. The OCO may also release information concerning an investigation to a closed session of a legislative committee that has jurisdiction over family and children services issues.

Death Investigation Analysis

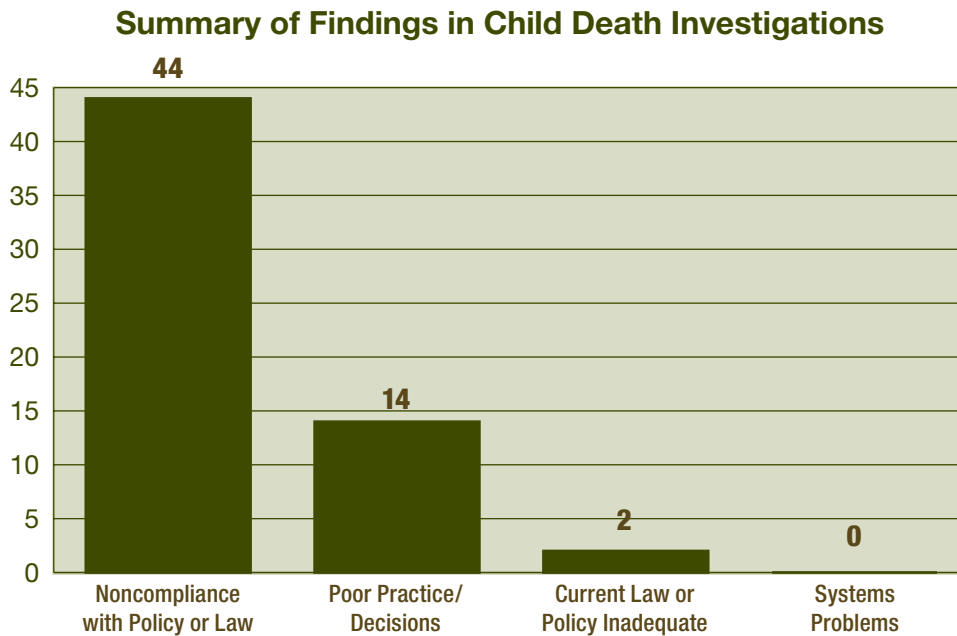
Concerning the 33 deaths that the OCO investigated this fiscal year:

- Children younger than two years old accounted for 61 percent of the victims.
- In 15 cases, the child's death resulted from physical abuse.
- Parental neglect was a factor in nine deaths.
- Nine deaths resulted from circumstances unrelated to parental behavior (i.e. gunshot, car accident, congenital abnormality).
- Of the 15 deaths investigated involving a child under age 1, unsafe sleep was identified as a factor in six.



OCO Death Investigation Results

In fiscal year 2007/08, the OCO affirmed agency case handling in 15 of the 33 child death investigations, and identified concerns with agency case handling in 12 cases.³ In cases where concerns were identified, the OCO issued approximately 60 individual findings to DHS or private child placing agencies. The overwhelming majority of the findings (97%) identified agency noncompliance with existing law or policy or poor practice and decision-making.



³ An additional six cases were included as exceptional close.

The following chart identifies the OCO investigation outcome for each county DHS office and private child placing agency.

**OCO Investigations of Child Deaths by Agency and Outcome
FY 2007/08**

Agency	Number of Investigations	Outcome			
		Affirm	F&R	Admin. Res.	Except. Close
Allegan DHS	1				1
Berrien DHS	1		1		
Calhoun DHS	4	2	2		
Genesee DHS	4	2	1		1
Ingham DHS	2	2			
Kalamazoo DHS	2				2
Kent DHS	2	1	1		
Livingston DHS	1	1			
Mecosta DHS	1				1
Montcalm DHS	1		1		
Muskegon DHS	2	1	1		
Oakland DHS	1	1			
Saginaw DHS	1		1		
Sanilac DHS	1	1			
St. Clair DHS	3	1	1		1
St. Joseph DHS	1		1		
Wayne DHS	8	4	3		1
Child & Family Services	1	1			
Ennis Center for Children	1	1			

OCO Annual Report Recommendations **and DHS Responses**

Putative Fathers

The OCO reviews many cases in which a putative father (an alleged biological father) appears later in the court proceedings and is given an opportunity to establish paternity of a child. Often, the putative father fails to establish paternity within a reasonable time, and permanency planning decisions are delayed. If a putative father appears but fails to establish paternity, supervising agencies and courts are often uncertain whether the man should be named in a subsequent petition requesting termination of parental rights.

OCO Recommendation 1:

The OCO recommends that the Michigan Supreme Court amend MCR 3.921(C) to ensure that courts determine the rights of putative fathers early in child protective proceedings. Specifically, the OCO recommends the following amendments:

- **Require a court to determine whether a child has no legal father during the preliminary hearing (instead of “at any time during the pendency of a proceeding”). If the court determines that a child has no legal father, the court should take testimony regarding the natural father’s identity and address and direct that notice of hearing be provided to a putative father, as currently required by MCR 3.921(C)(1).**
- **Require a court to commence a “putative father hearing” under MCR 3.921(C) (2) within 63 days after the preliminary hearing. Currently, MCR 3.921(C) contains no time requirement.**
- **Allow a court to terminate any parental rights a putative father may have if the supervising agency makes diligent but unsuccessful efforts to identify and locate a putative father, an identified putative father fails to appear in response to proper notice of hearing, or he appears but fails to establish paternity within the time set by the court. The amended court rule should be based upon the standards for terminating a putative father’s rights set forth in the Michigan Adoption Code, MCL 710.37(2) and MCL 710.39(2).**

DHS Response to Recommendation 1:

While this recommendation is not made specifically to DHS, DHS would like to identify some issues related to the recommendation. Michigan has an Absent Parent Protocol, for use by field staff. DHS policy states workers are to “Use this protocol as a guide when attempting to locate absent parents” to ensure a timely and permanent placement for children. It is the philosophy of DHS that absent parents should be identified, located and contacted as soon as possible and that the court can significantly assist in the effort to locate absent parents by raising the issue at every proceeding.

That said, it would be difficult for a court to determine at the preliminary hearing whether a child has a legal father. To make such a determination, DHS must first determine whether the mother was married at the time of conception or birth by talking with the mother and/or relatives, contact the Family Division of Circuit Court to determine whether an order of filiation or judgment of paternity has been entered and contact the state registrar to determine if an acknowledgment of parentage has been filed. Typically, these actions cannot be completed within the timeframe between the filing of a petition and the preliminary hearing.

DHS is also concerned that terminating any parental rights a putative father may have may adversely affect placement or permanency. For example, if a child is placed with a putative father's relatives, as allowed under MCL 712A.13a, and the putative father's rights are terminated, the putative father's relatives may need to be licensed as foster parents, unless the court orders the child to remain in the home. In addition, when notified, putative fathers may establish paternity and play a constructive role in their children's lives.

The State Court Administrative Office (SCAO) is convening a non-respondent parent workgroup in spring 2009 to address the very issues presented in this recommendation. SCAO plans to include representatives from DHS and the Office of Children's Ombudsman (OCO) to participate in the workgroup.

Removals

In Michigan, law enforcement agencies, the court and CPS share responsibility in responding to child abuse and neglect cases. In emergency situations, children must be removed from their homes to assure their safety and protection. In non-emergency situations, the decision to remove a child must be based on a careful and objective evaluation of case facts and evidence and an accurate assessment of child safety and risk of future harm.

DHS policy provides the threshold that must be met for CPS to recommend emergency removal of a child: *"emergency removal is allowable only if the situation is an emergency and a child is at imminent risk of harm without removal and services other than removal will not protect the child, or services provided did not eliminate the need for removal."* Additional policy guidelines direct CPS to seek removal when it is *"the only possible protecting intervention,"* and only when it determines that without placement *"... the child will likely be in danger of imminent harm."*⁴

Although most removals occur through CPS intervention and authorization by the court, a law enforcement officer may remove a child on an emergency basis without a court order. While this practice is legal, the state statute authorizing this action is broader than the standard established by DHS policy governing removals by CPS workers and is subject to wider interpretation and application. Additionally, Michigan law and court rule governing

⁴ CFP 713-1 and CFP 715-2.

the minimum threshold for court-ordered removal of children is broad and allows the court to order removal in non-emergency situations without determining a child is at *imminent risk of harm*.

To ensure that children are removed from their homes only when sufficient evidence of imminent harm exists, the OCO recommends the following six strategies to strengthen the checks and balances that govern the actions of CPS, law enforcement, and the court.

OCO Recommendation 2:

The OCO recommends that the Michigan Legislature amend MCL 712A.14(1) to require a law enforcement officer to have a reasonable suspicion that a child is in imminent risk of physical injury or sexual abuse before removing a child from parental custody without a court order.

Currently, MCL 712A.14(1) permits a law enforcement officer to remove a child “*whose surroundings are such as to endanger his or her health, morals, or welfare.*” This standard is too broad, may encourage CPS workers to seek law enforcement cooperation in inappropriate situations, and does not meet constitutional requirements for emergency removals.⁵

If a law enforcement officer believes that a child is at imminent risk of harm other than physical injury or sexual abuse, the officer may seek an ex-parte protective order⁶ from the court to remove the child.

DHS Response to Recommendation 2:

While this recommendation is not made specifically to DHS, there are some considerations that DHS would like to suggest related to the recommendation. DHS agrees that the standard governing law enforcement emergency removals without a court order should be raised to comply with constitutional standards and prevent unnecessary removals of children from their homes. However, law enforcement should be able to remove a child who is subject to forms of harm other than physical or sexual abuse. In addition, law enforcement should be able to remove a child who is suffering from a serious injury and is in need of immediate assistance.

A subcommittee of the Court Improvement Program State Advisory Committee is currently reviewing this issue and includes representation from law enforcement, the Legislature, SCAO, DHS, and the OCO.

OCO Recommendation 3:

The OCO recommends that the Michigan Supreme Court amend MCR 3.963(B) (1) to require a judge or referee to have reasonable cause to believe that a child is at imminent risk of harm before issuing an ex-parte order removing a child from parental custody.

⁵ See *Gates v Texas Dep't of Protective & Regulatory Services*, ___ F3d ___ (CA 5, 2008), and *Gomes v Wood*, 451 F3d 1122 (CA 10, 2006).

⁶ An ex-parte order is an order issued by a court without a hearing at which opposing parties are allowed to present evidence.

MCR 3.963(B)(1), which governs ex-parte emergency protective orders, is based in part on MCL 712A.14(1). The court rule allows a court to “*issue a written order authorizing a child protective services worker, an officer, or other person deemed suitable by the court to immediately take a child into protective custody when, upon presentment of proofs as required by the court, the judge or referee has reasonable grounds to believe that conditions or surroundings under which the child is found are such as would endanger the health, safety, or welfare of the child and that remaining in the home would be contrary to the welfare of the child.*” (Emphasis added.) Like the statute on which it is based, the italicized portion of this court rule allows a judge or referee to remove children from their homes in non-emergency situations. MCR 3.963(B)(1) should be amended for the same reasons stated in Recommendation 1.

The Michigan Supreme Court should align its amendment of MCR 3.963(B)(1) with current DHS policy⁷ that allows removal if the situation is an emergency, and the child is at imminent risk of harm without removal and services other than removal will not protect the child or services provided did not eliminate the need for removal.

Amending the identified portion of the court rule would not affect the required finding “*that remaining in the home would be contrary to the welfare of the child.*” By definition, it is contrary to the welfare of a child to remain in a home in which the child is subject to imminent risk of harm.

DHS Response to Recommendation 3:

A subcommittee of the Court Improvement Program State Advisory Committee is currently reviewing this issue and includes representation from law enforcement, the Legislature, SCAO, DHS

OCO Recommendation 4:

The OCO recommends that DHS ensure that CPS recommendations for removal of a child from home are consistently accompanied by adequate evidence to support the conclusion that the child is “*at imminent risk of harm,*”⁸ and that “*the only possible protecting intervention is the removal of the child from the family.*”⁹

Existing CPS policies guide workers in completing investigations and implementing protecting responses that are consistent with child risk and safety; however, the OCO has investigated cases where CPS recommended removal of a child without documenting adequate support that the child was unsafe or at imminent risk of harm. Additional worker training, supervisory oversight, and quality assurance mechanisms are needed to ensure adherence to policies.¹⁰

⁷ CFP 715-2.

⁸ CFP 715-2.

⁹ CFP 713-1.

¹⁰ The OCO 2007 Annual Report included two recommendations related to strengthening supervisory oversight of CPS, foster care, and adoption programs, and improving adherence to existing policy when reaching CPS dispositions.

DHS Response to Recommendation 4:

Agree. The Child Welfare Training Institute (CWTI) includes training regarding the removal of children throughout both the nine-week pre-service institute (PSI) and during program specific transfer training (PSTT) for experienced workers that are moving into CPS from another child welfare program. The training emphasizes a review of safety factors present during a case and consideration of all alternatives prior to a request for removal. CWTI is also adding a three-hour child trauma module to PSI, which will highlight factors to consider at removal.

Since October 2008, CPS workers have been required to complete annual in-service training. CWTI is considering the development of a detailed training focusing on removal considerations that will help to fulfill the annual requirement. Beginning in April 2009, child welfare supervisors will also be required to complete 40 hours of training that will focus on supervisory oversight, appropriate documentation and case conferences.

DHS is currently participating in an Overnight Removal subcommittee of the Court Improvement Project (CIP) where numerous experts in child welfare and the law, including OCO staff, are working to ensure that when child(ren) are removed from their caretakers, there is truly an immediate safety concern for the child(ren). In addition, this subcommittee will ensure proper legislation and procedures for judicial oversight of removal requests.

OCO Recommendation 5:

The OCO recommends DHS require mandatory training for all CPS workers and supervisors to ensure allegations in a court petition requesting removal of a child include facts that establish that remaining in the home would be contrary to the child's welfare.

MCR 3.961(B)(3) requires the department to file a petition which contains: *"The essential facts that constitute an offense against the child under the Juvenile Code."* Petitions sometimes contain recitations of historical events or behaviors on the part of the parent that do not constitute an offense against a child or risk of imminent harm to a child.

DHS Response to Recommendation 5:

Agree in part. The Child Welfare Training Institute (CWTI) is already mandatory and includes training regarding the removal of children. Relevant training includes both a nine-week pre-service institute (PSI) and a program specific transfer training (PSTT) for experienced workers moving into CPS from another child welfare program. The training emphasizes a review of safety factors present during a case and consideration of all alternatives before removal. CWTI is also adding a three-hour child trauma module to PSI, which will highlight factors to consider at removal. Included in the training is proper investigation and documentation skills related to removal decisions and petitions. In addition to mandatory trainings, experienced child welfare staff may enroll in any legal training offered by the CWTI.

OCO Recommendation 6:

The OCO recommends that judges and referees serving in the Family Division of the Circuit Court ensure explicit and meaningful application of the following standards to prevent unnecessary removal of children from their homes:

- ***“Probable cause.”*** When CPS has filed a petition for removal of a child, the court may authorize the petition *“upon a showing of probable cause...that one or more of the allegations in the petition are true and fall within MCL 712A.2(b).”* Petition allegations do not need to be proven true at the preliminary hearing, but the court must find probable cause that one or more allegations are true and fall within MCL 712A.2(b). When the court applies the probable cause standard to determine whether to authorize a petition, it must ensure that the petition allegation(s) fall within MCL 712A.2 (b), as opposed to a list of factual assertions or historical events unrelated to the abuse, neglect, or risk to the child.
- ***“Contrary to the welfare.”*** Under Michigan Court Rules, a child’s removal from home may only occur when the court finds that remaining in the home would be *“contrary to the welfare”* of the child. According to the U.S. Department of Health and Human Services, *the statute recognizes the severity of removing a child, even temporarily, from home. This protection is in place because Congress believed that judicial oversight would prevent unnecessary removals and act as a safeguard against potential inappropriate agency action.”*¹¹ It is critical that contrary to the welfare determinations be based on an independent judicial assessment of case facts and actual risk to the child.
- ***“Reasonable efforts.”*** Under state and federal law, within 60 days from the date the child was removed from home, the court must determine whether the state agency made *“reasonable efforts”* to prevent the removal. MCR 3.965(D) states: *“the child’s health and safety must be of paramount concern to the court”* in making reasonable efforts determinations. The reasonable efforts finding is intended to prevent the unnecessary removal of children from their homes and is not applicable in emergency or egregious circumstances. It is critical that the court base reasonable efforts determinations on an independent judicial assessment of case facts and services provided.

DHS Response to Recommendation 6:

While this recommendation is not made specifically to DHS, there are some considerations that DHS would like to suggest related to the recommendation. DHS notes that the statutes and court rules identified in this recommendation are included in the *Guidelines for Achieving Permanency in Child Protective Proceedings* and the *Child Protective Proceedings Benchbook*. As part of Title IV-E training, SCAO emphasizes

¹¹ Federal Register / Vol. 65, No. 16 / Tuesday, January 25, 2000 / Rules and Regulations

that the determinations of “contrary to the welfare” and “reasonable efforts” need to be adequately supported by evidence.

OCO Recommendation 7:

The OCO recommends DHS ensure that CPS and foster care workers immediately notify the court when circumstances that led to the agency’s request for removal have significantly changed and the need for out-of-home placement has been alleviated.

Federal and state law view foster care as a temporary response to abuse and neglect. This concept is reflected in DHS policy¹²:

Once the presenting problem which led to the child’s removal has been appropriately resolved, and the safety of the child is ensured, the child must be promptly returned to parental care.

DHS policy¹³ further states:

If a case has been petitioned to court and the circumstances, facts, evidence, etc. that the court used to decide to authorize the petition change, immediately notify the court of the new information.

On motion of a party, MCL 712A.13a (12) and MCR 3.966(A) require the court to review the custody order, placement order and initial service plan. The court may modify those orders and plan if it is in the best interest of the child. In some cases reviewed by the OCO the presenting problem was resolved prior to adjudication but the agency did not notify the court of the changed circumstances and the children remained in out-of-home placement.

DHS Response to Recommendation 7:

Agree. DHS is committed to returning children to their homes when it can be done safely. DHS will amend policy (CFF 722-6 and CFP 715-3) to reference the legal basis for the court to review the custody order, placement order and initial service plan before the adjudication hearing [MCL 712A.13a (12) and MCR 3.966(A)].

¹² CFF 722-6

¹³ CFP 715-3, Supplemental/Amended Petition “Special Note”

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