

State of Michigan

# Office of Children's Ombudsman



Annual Report ♦ 2011-2012

### **Mission Statement**

The mission of the OCO is to assure the safety and well-being of Michigan's children in need of protective services, foster care, adoption services, and juvenile justice 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.

### **Vision Statement**

The OCO strives to be a part of the solution that fosters greater accountability and transparency for Michigan's child welfare system.



STATE OF MICHIGAN

RICK SNYDER  
GOVERNOR

OFFICE OF CHILDREN'S OMBUDSMAN  
LANSING

VERLIE M. RUFFIN  
DIRECTOR

July 2013

The Honorable Rick Snyder, Governor  
Honorable Members of the Michigan Legislature  
Ms. Maura Corrigan, Director, Michigan Department of Human Services

In accordance with my statutory responsibility as the Children's Ombudsman, I respectfully submit the Fiscal Year 2012 Annual Report.

This report provides an overview of the activities of the Office of Children's Ombudsman from October 1, 2011 to September 30, 2012, and an analysis of the complaints received and investigated. In addition to the analysis are recommendations for positive change in the child welfare system to improve outcomes for children.

The Office of Children's Ombudsman appreciates the leadership and support of Governor Snyder, 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, Director  
Office of Children's Ombudsman





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## Message from the Children's Ombudsman

The 2012 Fiscal Year marks the eighteenth annual report produced by the Office of Children's Ombudsman. The goal of every report is to provide Michigan citizens with an informative representation of what we do for Michigan's vulnerable children and their families.

As a "complaint driven" autonomous agency, we serve to give a voice to citizen concerns about children involved in children's protective services, foster care, adoption services, and juvenile justice. We also investigate cases where a child has died because of alleged child abuse or neglect and the family has had previous agency involvement.

This year's report includes information on:

- The OCO 2012 Performance Audit conducted by the Office of the Auditor General;
- OCO's progress in working with the Department of Human Services (DHS) to obtain access to the DHS Michigan Statewide Automated Child Welfare Information System (MiSACWIS); and
- Four recommendations to improve the child welfare system

The OCO's four recommendations will help make the child welfare system better for children and families. Two of the recommendations are about improving DHS practice, specifically documentation about placement decisions and clarifying policy to make it easier for parents to understand. There are also two recommendations for statutory changes that would affect relatives seeking placement of a child and legal representation for caseworkers handling child abuse and neglect cases.

During the FY 2012 annual report period, the OCO experienced a 14 percent increase over FY 2011 contacts (including both citizen complaints and child death notifications). While this increase has been challenging and somewhat daunting, the administrative staff and team of five expert investigators have continued to fulfill their responsibilities and commitment to the citizens of Michigan by tenaciously addressing complaints and recommending ways to improve the child welfare system.

As described in our Vision Statement, the OCO "strives to be a part of the solution that fosters accountability and transparency for Michigan's child welfare system." Our hope is to continue to make a positive, lasting difference that will benefit children and families for years to come.

Verlie M. Ruffin, Director



# Executive Summary

## Authority

The Office of Children's Ombudsman (OCO) was established by the Michigan Legislature in 1994 to provide greater accountability and transparency to Michigan's child welfare system. Legislators were concerned that confidentiality laws governing child welfare also served to protect the system from outside scrutiny and accountability. The OCO provides citizens with the means to obtain an impartial and independent investigation of a child's case under the supervision of the Department of Human Services (DHS) involving protective services, foster care, adoption services, or juvenile justice.

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

Consistent with the Children's Ombudsman Act, mission and vision of the office, the OCO:

- **Responds to citizen complaints.** This year the OCO responded to **1335** complaints, questions, and concerns regarding **1536** children from **78** of Michigan's **83** counties. Every attempt is made to answer questions and provide referral information that may help resolve their concerns.
- **Conducts independent investigations.** The OCO completed **111** investigations of **133** agencies involving **295** children from **41** of Michigan's **83** counties.
- **Promotes child safety, well-being and permanency.** In cases where the OCO determines that a child may be unsafe, an agency decision may be harmful to a child, or additional steps are needed to ensure a child's well-being or permanency, the ombudsman will request that DHS take a specific action.
- **Makes recommendations to improve the child welfare system.** One of the OCO's primary functions is to identify problems and make recommendations to improve the child welfare system. Based upon case analysis and investigative findings, the office issued **144** recommendations addressing compliance with state laws and policies, and that address problematic decisions affecting individual children. DHS agreed with a majority of these recommendations.





## **Budget and Expenditures**

The OCO is an independent state agency housed administratively within the Department of Technology, Management and Budget. The OCO was appropriated \$1,028,900 for Fiscal Year 2012, allocated from the state general fund. Eighty percent of budget expenditures were for personnel and the remainder for facilities and support services. OCO staff for the fiscal year included: the ombudsman; five investigators; one supervisor, and two administrative staff. The OCO maintains offices in Lansing and Detroit.

## **Office Operations**

### ***2012 Performance Audit***

The Office of the Auditor General conducted a constitutionally required performance audit of the OCO during this fiscal year covering the period October 1, 2009 through March 31, 2012. The audit resulted in one material finding and two reportable findings.

The audit conclusion was that the *“OCO’s efforts to ensure timely and effective reviews and investigations of complaints concerning a child involved with children’s protective services, foster care, adoption services or the juvenile justice system were moderately effective.”*

The material finding was about OCO not obtaining and DHS not providing the OCO with in-office access to the DHS child welfare computer systems as required by statute. When the Children’s Ombudsman Act was amended in 2005, DHS was required to provide the OCO with in-office access to its child welfare computer systems. The auditors found that *“although OCO has pursued access to the computer networks, access has been denied by DHS.”* However, in December 2012, DHS Director Maura Corrigan assured the OCO in writing that the OCO *“will have access to the Michigan Statewide Automated Child Welfare Information System (MiSACWIS) planned for implementation in the summer of 2013.”* Director Corrigan was not heading DHS at the time of OCO’s efforts to obtain access to the computer systems.

MiSACWIS will replace several DHS child welfare computer systems. OCO staff has been involved in the planning and design of MiSACWIS and will take part in piloting the system in the summer of 2013. In-office access to MiSACWIS will result in less paperwork for both the OCO and DHS, will allow the OCO to have expedited access to case file information and assist in timely completion of investigations.

The first reportable finding was regarding the timeliness of OCO investigations. Although the OCO makes every effort to complete investigations within established timeframes, this does not always occur. As the audit pointed out, case file documentation requested from DHS is sometimes delayed, affecting the OCO’s ability to complete investigations. In addition, independent of receiving a copy of the case file, OCO investigations took longer than six months to complete. In large part, delays in timely completing investigations is due to insufficient staff resources.



The second reportable finding identified cases in which the OCO did not always verify that the agency OCO investigated took the action it agreed to take. The OCO has instituted new policies and procedures addressing this finding and DHS has already begun providing the OCO with documentation that verifies what the agency agreed to do.

The Office of the Auditor General approved and accepted the OCO's responses to the audit recommendations and corrective action plan.

### **Team Approach**

One investigator is assigned to each case and is responsible for conducting interviews with agency staff and collateral sources and analyzing agency case file documents to determine if applicable laws, state policies and procedures were followed. Prior to completion of all affirmation and administrative closing cases, two additional investigators analyze a case or background summary and review the findings and the conclusions reached by the assigned investigator. Reports of Findings and Recommendations are the result of input and discussion by the supervisor and the entire investigative team.

### **Staff Training**

Investigators have a broad range of experience in child welfare. The OCO staff attends training conferences and routinely consults with professionals outside the office on issues related to child welfare.

### **Collaboration and Outreach**

Throughout the year, the OCO staff periodically consults with the DHS Office of Family Advocate (OFA) and DHS policy and administrative staff to discuss individual complaint investigations, agency policies, programs, and practices. OCO staff also regularly reviews proposed changes to DHS policies related to CPS, foster care, adoption services, and juvenile justice.

The ombudsman and investigators serve on advisory boards, workgroups, and committees including various aspects of child welfare such as: DHS MiSACWIS project; Michigan Child Death Statewide Advisory Team; Court Improvement Program Advisory Committee; Michigan Advisory Committee on the Over Representation of Children of Color in Child Welfare; Child Welfare Training Consortium, and the DHS Safe Sleep Advisory Committee.



## Complaint Intake and Referral

The primary function of the OCO is to respond to complaints about children who are involved in Michigan's child welfare system.

Anyone may file a complaint with the OCO. Complaints can be made via telephone, mail, fax, email, or electronic complaint form accessible on the OCO website at [www.michigan.gov/oco](http://www.michigan.gov/oco). The ombudsman also has the discretion to open a case without a complaint and be listed as the complainant.

The identity of the complainant is kept confidential unless permission is given to disclose his or her identity in situations when doing so would be helpful in expediting a resolution to their concern.

### Source of Complaints

In Fiscal Year 2012, the OCO was contacted by **1335** individuals concerning **1536** children in **78** of Michigan's **83** counties. Birth parents (**36%**) and relatives of the child (**23%**) made up the greatest share of complainants, followed by the ombudsman (**22%**).\*

\*Note: Includes **259** child death alerts received by the OCO.

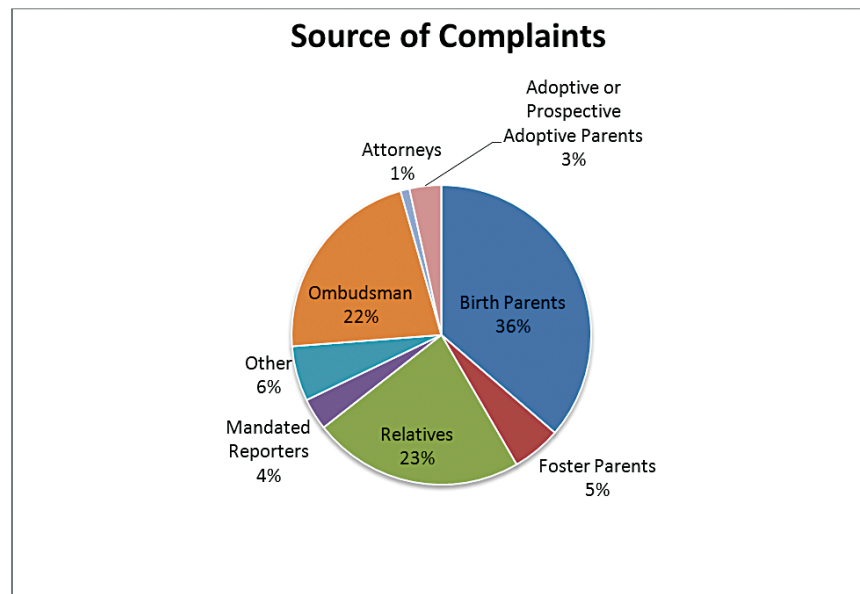


Figure 1: Source of Complaints



## **Most Frequently Identified Complaint Issues**

Complaints received are divided into 10 separate categories. Each category is divided into subcategories that generally describe each complaint issue. The bold numbers next to each main category reflect the grand total for this fiscal year. When individuals contact the OCO, they often have more than one concern. The numbers for each subcategory reflect the number of times the concern was raised by someone who contacted the OCO.

### **Children’s Protective Services - 359**

- Child Safety-Failure to protect children from parental abuse/neglect - 86
- Inappropriate decision by Centralized Intake - 31
- Inappropriate disposition - 97
- Investigation not thorough - 31
- Issues about expungement from Central Registry - 10
- Other - 104

### **Child Safety - 43**

- Current unsafe placement (home) - 39
- Current unsafe placement (out-of-home) - 3
- Developmentally delayed child in need of protection - 1

### **Removal Issues - 42**

- Unnecessary/”illegal”/inappropriate removal from parental/guardian’s care - 30
- Removal not in child’s best interest - 12

### **Placement/Replacement - 102**

- Failure to consider or place with a “fit and willing relative” - 42
- Inappropriate sibling split - 6
- Non-relative placement/replacement not in child’s best interest - 6
- Relative placement/replacement not in child’s best interest - 13
- Other relative placement/replacement not in the child’s best interest - 8
- Other - 27

### **Service Provision - 46**

- Related to needs of parent - 11
- Related to needs of child(ren) - 13
- Delay in referral for/availability of services - 9
- Other - 13

### **Permanency - 41**

- Permanency plan not in the child’s best interest - 23
- Unnecessary delay in returning children to parent/guardian - 15
- Other - 3

### **Adoption - 51**

- Someone not considered (relative, non-relative) - 14
- Someone not recommended for or granted consent - 10
- Other (including “process taking unnecessarily long”) - 27

### **Child Death Notice (from DHS to OCO) - 515**

- DHS/private agency involvement within previous 24 months - 113
- DHS/private agency involvement more than 24 months ago - 42
- Open CPS investigation or ongoing CPS case at time of death - 18
- Child a court ward at time of death (temporary or permanent court ward) - 15
- Unsafe sleep environment - 80
- Abuse/neglect - 16
- Accidental - 39
- Natural causes - 42
- Other (including suicide) - 150

**Other Child Welfare Related Issues/Concerns - 208**

These concerns are about guardianships; the court; where termination of parental rights has occurred and parent either has or has not filed an appeal; the unprofessional conduct of case worker; foster home licensing issues (including payment related issues); and Family Independence Program (FIP) and other payments for an unlicensed relative caregiver.

**Other (non-child welfare related) - 286**

Friend of the Court/custody issues, public assistance, school concerns, Corrections Ombudsman, other various concerns.

## **Educating the Public**

Citizens who contact the OCO have varying degrees of understanding about Michigan's child welfare system. Educating the public about how the child welfare system works is a statutory duty of the office and an essential component of system accountability. Citizens who are informed about the relevant laws and policies that govern practice are better able to navigate the system and advocate knowledgeably and effectively for themselves and the child. One of the functions of the intake process is to provide complainants with detailed information about laws and policies related to their specific concerns. DHS policy is available online and an innumerable number of citizens contact the OCO to get a clear understanding of policy requirements. In the Recommendations section of this annual report is a recommendation about clarifying DHS policy to make it easier for parents to understand.

Two categories of complaints/questions/concerns that focus solely on educating the public and do not result in an investigation are:

- **Inquiries:** Issues that are not about a child in the child welfare system such as: how to become a licensed foster parent; adoption questions; complaints from other states about a child not in Michigan's child welfare system; or requests for information. In addition, inquiries include complaints involving child-related issues that the OCO does not have jurisdiction to investigate such as Friend of the Court, child custody matters, cash assistance or school concerns. **This fiscal year, the OCO received 205 inquiries.**
  
- **Referrals:** Complaints that concern a child involved in the child welfare system (CPS, foster care, adoption services, or juvenile justice) but may involve actions of an agency or person the OCO is not authorized to investigate, such as the court, law enforcement, or an attorney. Other complaints that are considered referrals include situations where parents request OCO's assistance in the restoration of their parental rights; foster parents who have not received payment; adoption subsidy denials; or complaints about alleged unprofessional conduct of a caseworker. **The OCO referred 525 complaints to other agencies or provided information to complainants this fiscal year.**



## **Valid Complaint Criteria**

The OCO has authority to evaluate complaints and determine whether an investigation is warranted. A complaint is valid if one or more of the following criteria is met:

- The complaint concerns a child involved with Michigan’s CPS, foster care, adoption services, or juvenile justice system. In addition, one or both of the following apply:
  - ◆ DHS or a private child-placing agency may have violated law, rule, or DHS policy; or
  - ◆ 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 complaint concerns the death of a child whose family had been previously involved with the child welfare system in the preceding 24 months and whose death may have resulted from abuse or neglect.
- 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 specific child’s situation or children in future cases.

Valid complaints are divided into two categories: valid complaints not opened and valid complaints opened.

### ***Valid Complaints Not Opened for Investigation***

Valid complaints that are not open for investigation are usually regarding a situation where an investigation will not resolve the complaint issue. For example, a parent may have a complaint about CPS but his/her parental rights were terminated. Since termination of parental rights occurs by court order, the only remedy for the parent is to file an appeal. In another example, a relative reports not being considered for placement of a child but the child has already been adopted. **The OCO classified 159 complaints as valid complaints not opened.**

### ***Valid Complaints Opened for Investigation***

Complaints that satisfy one or more investigation criteria in addition to a determination by the OCO that an investigation may resolve the complainant’s concerns result in the opening of a case for investigation. **This fiscal year, the OCO opened 137 complaints for investigation.** Some examples of valid complaints that were opened for investigation involve:<sup>1</sup>

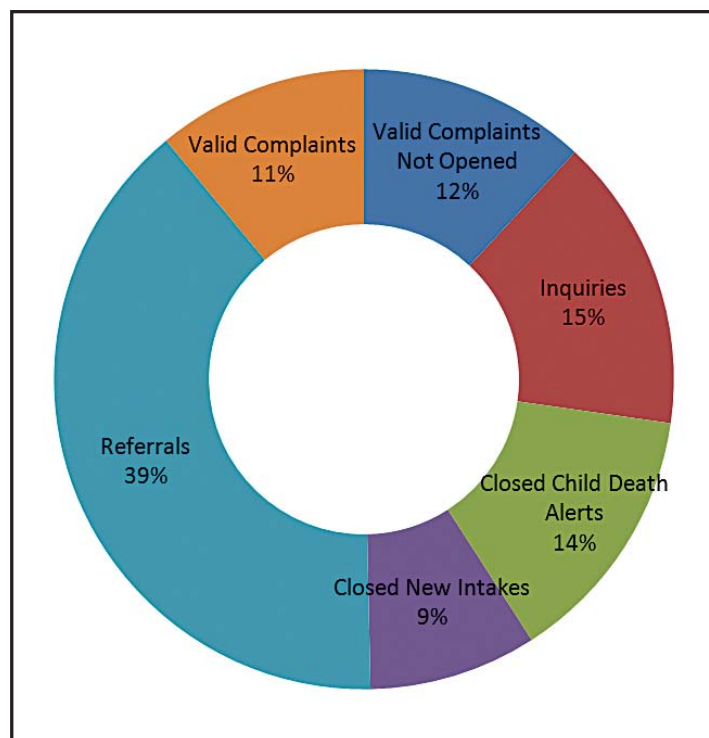
<sup>1</sup>Each complaint has a unique set of facts and because a complaint may be similar to concerns presented here, this information is not meant as a guarantee that a case will be opened for investigation.



- ◆ Whether CPS properly considered prior child welfare history while investigating a complaint
- ◆ Whether the permanency plan for a child/children is safe and in his/her best interest
- ◆ Referrals made to CPS may have been improperly rejected for investigation.
- ◆ Closing an open CPS case without adequate resolution of the family's issues that put the child at risk
- ◆ Foster children not being contacted or visited by their caseworker according to policy

### **Other Complaints**

When contact with an individual is attempted to complete an intake but the complainant cannot be reached, the complaint is archived in the OCO's database as a "closed new intake." If the individual contacts the OCO again, the intake is completed. **There were 117 closed new intakes and 182 closed child death alerts this fiscal year.**



**Figure 2: Complaint Categories**



## Administrative Response Requests

In situations where the OCO determines that immediate review of an action or decision by the involved agency is necessary to protect a child, to alleviate a situation, or to address a delay in permanency for a child, the OCO may issue a Request for Administrative Response to DHS and/or a private child-placing agency. This request may be made to the agency following intake or during an OCO investigation. In these elevated response situations, the DHS Office of Family Advocate responds on behalf of the involved agency within 10 business days. In Fiscal Year 2012, the OCO issued nine administrative response requests. Following is a summary of the OCO requests and the DHS responses:

OCO Concern	DHS Response/Outcome
DHS sought to reunify adopted children with their adoptive parent despite allegations of physical abuse by the adoptive parent and inappropriate discipline in the relative caregivers' home.	DHS conducted a thorough review of the plan to reunify the family and conducted a Permanency Planning Conference with the relative caregivers to ensure a complete understanding of acceptable disciplinary techniques.
CPS rejected a complaint alleging that a mother had exchanged her infant child for drugs.	CPS conducted a full investigation in conjunction with law enforcement.
CPS failed to verify the safety and well-being of a child who allegedly resided with a parent in another state.	CPS coordinated its efforts to locate the child with child welfare authorities in the other state.
CPS misapplied the law governing sexual abuse and inappropriately substantiated persons for sexual abuse and failure to protect a child from sexual abuse.	DHS conducted a full review and determined that the alleged perpetrators should not have been substantiated for sexual abuse or failure to protect. The alleged perpetrators were removed from the DHS central registry.
DHS placed children with an unrelated and unlicensed caregiver, possibly without the required court order, and failed to explore relative placement for the children with a relative in another state.	The court ordered the children placed with the unrelated and unlicensed caregiver, and DHS explored relative placement for all of the children through the Interstate Compact on the Placement of Children (ICPC).
DHS placed children with a relative who lived approximately 90 miles from the parental home, beyond the 75 miles allowed by DHS policy.	The relative was the only fit relative to request placement. Parenting time was scheduled on weekends, halfway between the two homes. One parent later moved closer to the relative's home.
A child-placing agency may have placed a child with an inappropriate relative caregiver.	The agency completed an updated home study and formal placement decision. The child was eventually replaced to another home.





CPS placed a substantiated sexual abuse complaint in Category III.	CPS corrected its disposition and later filed a petition in court.
DHS initially placed a child with a non-custodial parent but later removed the child after discovering that the non-custodial parent's living-together-partner was on the DHS central registry. However, two of the child's siblings remained in the home.	DHS completed updated assessments regarding the non-custodial parent's home. One child remained in foster care, and the two siblings remained in this parent's home, subject to a safety plan.

## Requests for Action

The OCO issued three Requests for Action this fiscal year. A Request for Action is issued to DHS under one or more of the following circumstances:

- Immediate risk to a child(ren)
- Inappropriate placement of a child(ren) leaving the child(ren) at risk
- Employee misconduct

The OCO submits Requests for Action to the DHS Office of Family Advocate who responds in writing within five business days. Following is a summary of the OCO requests and the DHS responses:

OCO Request	DHS Response/Outcome
File a petition requesting termination of parental rights of both parents as required by section 18 of the Child Protection Law, MCL 722.638.	DHS filed the legally mandated petition after the prosecuting attorney refused to include both parents on the petition.
Review the decision to place a child with a relative and determine whether placement with the child's parent would be more appropriate.	DHS reviewed the relative placement and concluded that it was appropriate and in the child's best interests. The child's parent refused immediate placement.
Review the decision to allow a newborn to remain in the mother's care while a sibling is in foster care.	DHS followed policy regarding newborn placement when a sibling is in foster care and determined the newborn was safe in the mother's physical custody.



# Investigation Results

## Investigation Types (Preliminary and Full)

The OCO completed **111** investigations this fiscal year. An investigation may involve more than one DHS county office or private child-placing agency. During this fiscal year, the OCO investigated 133 separate DHS county offices and private child-placing agencies.

There are two types of OCO investigations, preliminary and full. Each investigation is assigned to one primary investigator; however, for each case at least two additional investigators review a summary and recommendations from the primary investigator prior to the completion of the investigation.

### ***Preliminary Investigations***

A case is opened for a preliminary investigation to determine whether a full investigation is warranted, or if it is determined at intake that the complainant's specific concern may be quickly resolved. Preliminary investigations are typically completed within 30 days. A preliminary investigation may consist of obtaining relevant agency or court documents, submitting questions to a caseworker via email, or conducting interviews with agency staff. If it is determined that a more extensive investigation is warranted, the preliminary investigation will be changed to a full investigation.

The OCO completed 16 preliminary investigations this fiscal year.

### ***Full Investigations***

A full investigation consists of requesting case file records and documents from DHS and/or a private child-placing agency. The OCO requests documents such as agency-generated records and reports; court documents; service provider reports; personal/confidential documents (as long as DHS has a signed release from the parent) and other information deemed relevant by the OCO. The primary investigator reviews the documents and conducts interviews with agency staff and other sources as needed. Documentation and information obtained during an investigation by the OCO is reviewed and compared with DHS policy, procedure, and applicable laws to determine agency compliance.

The OCO completed **117** full investigations this fiscal year.

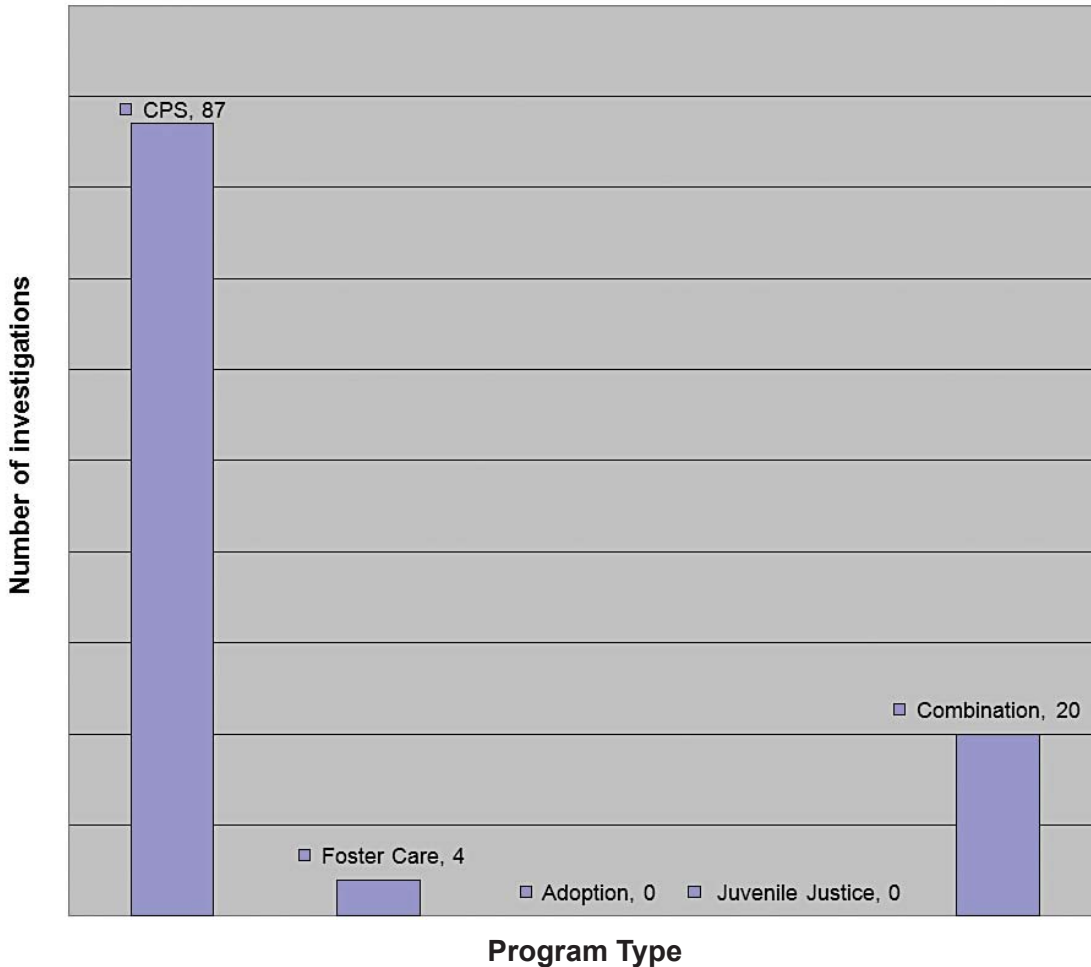
## Program Type (CPS, Foster Care, Adoption Services or Juvenile Justice)

Full investigations primarily focus on resolving concerns identified by the complainant. However, if other issues were identified during the OCO's investigation, those issues or concerns are also included as part of the OCO's review. These additional issues may be incorporated into the closing report to the complainant and/or addressed with the involved agency.



Of the **111** investigations completed this fiscal year, the majority (**78%**) focused exclusively on CPS concerns; **18%** involved more than one program type (combination); and **4%** addressed only foster care concerns.

### Investigations by Program Type



### Release of Information to Complainants

When an investigation is completed, the OCO notifies the complainant in writing of the outcome of the investigation and any action taken by the involved agencies to address the complaint issues. The relationship a complainant has to the child, as described in the Children’s Ombudsman Act, governs the information that can legally be provided to the complainant. In addition, the OCO adheres to state and federal laws governing confidentiality; hence, there may be information that cannot legally be provided to a complainant about the results of the OCO’s investigation. The Children’s Ombudsman Act also prohibits the OCO from releasing the results of its investigation if there is an ongoing CPS or law enforcement investigation. Once those investigations are closed, the ombudsman may release the written results.



## **Case Closure Types**

OCO case investigations are closed in three different ways:

### ***Affirmations***

Cases are closed as affirmations when no violations are found. Below are examples of actions by agencies that were affirmed by the OCO:

- Actions taken by CPS were supported by case facts and in the best interest of the child, i.e. placement decisions, permanency plans
- CPS documentation of case facts and evidence to support the conclusion reached was clear
- CPS investigations were thorough and services provided were commensurate with the identified safety risk and the needs of family members
- Appropriate services were provided through foster care and monitored according to policy

The OCO affirmed DHS and/or a child-placing agency **40** times for full investigations and **16** times for preliminary investigations.

### ***Administrative Close***

Both full and preliminary investigations may be closed administratively. An administrative closing is not an affirmation but short of a Report of Findings and Recommendations. There are two types of an administrative closing. The first one is utilized when the circumstances below apply:

- The agency is currently addressing the complaint concerns
- A preliminary investigation revealed that further involvement and/or a full investigation will not affect the outcome of the case. The identified issues would not have altered the actions taken or the outcome of the case
- A full investigation revealed that further involvement and/or action will not affect the outcome of the case. An investigation by the OCO would not affect the outcome of the case
- Other

The other type of administrative close is used when minor violations were found and the OCO requested they be addressed by the involved agency. If the issues are adequately resolved during the OCO investigation, the case is subsequently closed. Prior to notifying the complainant in writing of the investigation results, the DHS Office of Family Advocate is provided an opportunity to review the issues and how they were resolved and, if desired, may submit a follow-up, written response to accompany the OCO's closing letter to the complainant. The OCO



concluded **44** cases as administrative closings this fiscal year.

### ***Reports of Findings and Recommendations (F&R)***

Only full investigations can be closed via a Report of Findings and Recommendations. An F&R is issued by the OCO to DHS when a determination is made 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 F&R contains background information about the case, specific findings outlining the violations, and corresponding recommendations in a report to the involved agencies. DHS Office of Family Advocate responds to the OCO in writing within 60 days on behalf of the involved agencies.

### **Analysis of Reports of Findings and Recommendations (F&Rs)**

The **33** F&Rs issued in Fiscal Year 2012 encompassed over **171** findings and **144** recommendations. As in all previous years, the majority of the findings for this fiscal year were the result of noncompliance with existing law or policy.

### ***Most Prevalent Findings (Violations) by DHS Program Area***

#### ***Children's Protective Services (CPS)***

Within the CPS program area, the top policy violations were in the subject areas of general instructions and checklist; completion of field investigations; special investigative situations; face-to-face contact; failing to file court petitions within 24-hours, documenting information in the CPS investigation report, and post-investigative services.

Specific examples of repeated findings include:

- Non-compliance with policies related to complaints that meet the definition of a "multiple complaint"
- Non-compliance with response times
- Not conducting a thorough investigation, including
  - ◆ Lack of contact with collateral contacts that could provide relevant information
  - ◆ Securing appropriate medical exams
  - ◆ Lack of coordination with law enforcement
  - ◆ Lack of assessments related to Threatened Harm
- Regarding the disposition of a CPS investigation



- ◆ Extending investigations beyond the 30-day timeframe without sufficient documented justification
- ◆ Failure to document support/evidence for the disposition
- ◆ Improper scoring of the Risk Assessment
- Failure to make required contacts and provide services on ongoing cases
- Related to Court Actions
  - ◆ Failure to file for court jurisdiction within 24 hours as required by law
  - ◆ Overstepping legal authority by affecting custody without a court order
  - ◆ Failure to file mandatory petitions

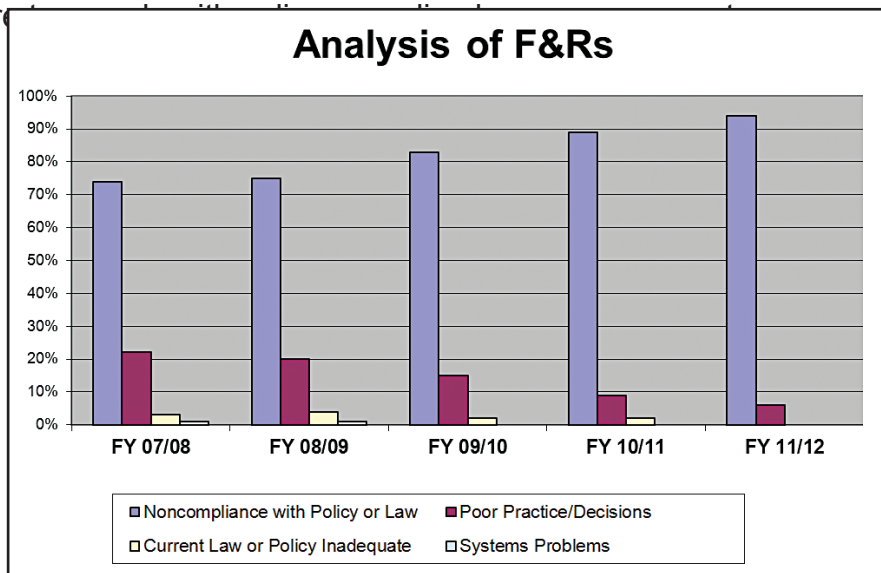
Foster Care

In the foster care program area, the top violations found by the OCO were the following: placement and replacement of children; developing the service plan; and permanency planning conferences.

Specific examples of repeated findings include:

- Placement issues including:
  - ◆ Failure to comply with the Federal Fostering Connections Act
  - ◆ Failure to properly seek out relatives for placement
  - ◆ Failure to properly document placement decisions

■ Failure to comply with the...





## Investigation Results by Agency and Outcome

Of the **111** completed OCO investigations, **133** agencies were involved. In cases where more than one agency was involved with a family, there may be more than one outcome. For example, one case investigation may result in affirming how a county CPS office handled an investigation of a family, in addition to an F&R regarding inadequate foster care services provided to the children in that family by a private child-placing agency.

Ninety-eight cases (**88%**) involved only DHS, **11 (10%)** involved both DHS and one or more private child-placing agency, and **two (2%)** involved only a private child-placing agency.

The following chart lists the outcome(s) by county DHS office and private child-placing agency for OCO investigations completed in Fiscal Year 2012:

Agency DHS County	Number of Times Agency Investigated	Outcome			
		Affirm	F&R	Administrative	Preliminary
Allegan	1			1	
Barry	1	1			
Bay	1			1	
Berrien	2		1	1	
Calhoun	2	1		1	
Clinton	1			1	
Crawford	1				1
Centralized Intake	2			1	1
Genesee	7	5		2	
Grand Traverse	1				1
Hillsdale	1			1	
Houghton	1		1		
Iron	1		1		
Isabella	4		1	3	
Jackson	3	1	1		1
Kalamazoo	1		1		
Kent	3	2		1	
Lenawee	1		1		
Livingston	2	1		1	
Macomb	11	3	3	4	1
Manistee	1			1	
Marquette	1			1	
Mason	1			1	
Mecosta	2	1			1
Midland	1			1	
Monroe	1				1
Montcalm	4	1	1	1	1

— continued —



— continued —

Agency	Number of Times Agency Investigated	Outcome			
DHS County		Affirm	F&R	Administrative	Preliminary
Muskegon	2			1	1
Newaygo	4	2	1		1
Oakland	4	1	2		1
Ogemaw	1				1
Ottawa	2	1	1		
Saginaw	5	3	1	1	
Schoolcraft	1			1	
Shiawassee	1				1
St. Clair	2			1	1
Tuscola	1	1			
Washtenaw	1		1		
Wayne	33	9	13	10	1
Wexford	2		1	1	
<b>Totals DHS</b>	<b>117</b>	<b>33</b>	<b>31</b>	<b>38</b>	<b>15</b>
<b>Private Child-Placing Agencies</b>					
Alternatives for Children	1	1			
Anishnaabek Community & Family Services	1			1	
Catholic Social Services	2	1		1	
Children's Center	1			1	
Ennis Center for Children	3	2	1		
Homes for Black Children	1				1
Judson Center	1	1			
Orchards Children's Services	1	1			
Pathways, MI	1			1	
Spectrum Human Services	1			1	
Starr Commonwealth	1		1		
St. Francis Family Services	1			1	
Wolverine Human Services	1	1			
<b>Totals PCPAs</b>	<b>16</b>	<b>7</b>	<b>2</b>	<b>6</b>	<b>1</b>
<b>Grand Totals</b>	<b>133</b>	<b>40</b>	<b>33</b>	<b>44</b>	<b>16</b>





## Child Death Case Investigations

The number of child death case investigations opened each fiscal year is dependent upon information in the Children’s Protective Services Child Death Report aka “child death alert” or separate information provided by the DHS Office of Family Advocate. This DHS office emails a child death alert to the OCO when DHS is notified that a child has died. In Fiscal Year 2012, the OCO received **259** child death alerts from DHS resulting in the opening of **68** child death case investigations.

Specific criteria are used to determine whether the OCO will open a child death case for investigation. Many children die because of an accident, medical condition or for other reasons that do not fit the criteria. The focus of an OCO investigation is to determine whether interventions by DHS and/or a private child-placing agency prior to a child’s death were handled in accordance with policy and law. The OCO also determines whether a correlation existed between previous agency involvement with the family and the circumstances that led to the child’s death.

An OCO investigation may be conducted when at least one of the following criteria is met:

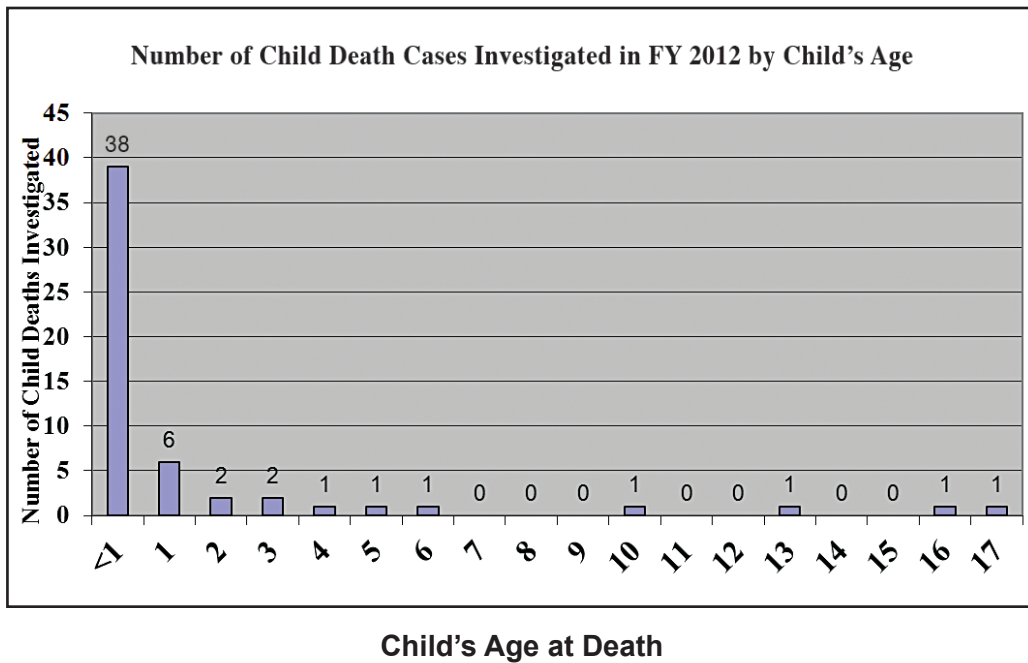
- A child died during an active CPS investigation or open services case, or there was an assigned or rejected CPS complaint within the previous 24 months
- A child died while in foster care, unless the death resulted from natural causes and there were no prior CPS or licensing complaints concerning the foster home
- A child was returned home from foster care and there is an active foster care case
- The foster care case involving the deceased child or sibling was closed within the previous 24 months
- Media interest
- Legislator request
- Ombudsman discretion



## **Child Death Investigation Analysis**

Statistical information regarding the **54** completed child death case investigations indicates:

- 69 percent (38 children) of the child deaths involved a child under the age of one year.
- 77 percent of the child deaths occurred in the parental home.
- In 54 percent (30 children) of the child death investigations, the child's sleep environment was identified as a factor associated with the death.
- 25 percent (14 children) of the children had previous medical conditions that were identified as a contributing factor in their death.
- 25 children (45%) died while in parental care during an active CPS investigation or an open CPS services case.
- 19 children (34%) were born positive for an illegal substance.





## Child Death Case Investigation Results by Agency and Outcome

The **58** completed child death investigations involved **22** DHS county offices and **2** private child-placing agencies.

Agency	Number of Investigations	Outcome			
DHS		Affirm	F&R	Administrative Closings	Preliminary
Bay	1			1	
Centralize Intake	1				1
Genesee	4	4			
Hillsdale	1			1	
Houghton	1		1		
Iron	1		1		
Isabella	2			2	
Jackson	2	1	1		
Kalamazoo	1		1		
Kent	2	1		1	
Lenawee	1		1		
Macomb	6	2	1	3	
Manistee	1			1	
Mason	1			1	
Mecosta	1	1			
Midland	1			1	
Montcalm	1			1	
Muskegon	1				1
Newaygo	2	1	1		
Oakland	1		1		
Saginaw	2	1	1		
Tuscola	1	1			
Wayne	21	7	9	5	
<b>Totals DHS</b>	<b>56</b>	<b>19</b>	<b>18</b>	<b>17</b>	<b>2</b>
<b>Private Child-Placing Agencies</b>					
Wolverine Human Services	1	1			
Starr Commonwealth	1		1		
<b>Totals PCPAs</b>	<b>2</b>	<b>1</b>	<b>1</b>		
<b>Grand Totals</b>	<b>58</b>	<b>20</b>	<b>19</b>	<b>17</b>	<b>2</b>



## OCO FY 2012 Annual Report Recommendations and DHS Responses

When violations of policy, law, and/or procedure are identified, new policy should be created, or existing policy should be modified, the OCO writes a Report of Findings and Recommendations. Each fiscal year recommendations from individual case investigations are reviewed by OCO staff and the most prominent issues are featured in this section of the annual report.

For Fiscal Year 2012, two recommendations represent areas of concern that repeatedly arose during case investigations. There are also two recommendations for statutory changes that would improve the child welfare system for children and families. One of the statutory recommendations focuses on increasing the opportunity for children removed from home to be placed with relatives. The other statutory recommendation emphasizes the need for consistent legal representation in Michigan for agency caseworkers in child abuse/neglect court proceedings.

### **Improving Documentation of Placement Decisions**

#### **OCO Recommendation 1:**

The OCO recommends that MDHS improve compliance with law and policy governing relative and sibling placement. The OCO recommends that DHS increase efforts to support and document their decision-making regarding these placements.

**Rationale:** The OCO continues to review cases where the foster care placement decision is not supported in case documentation and proper notice of the placement decision has not been provided. The OCO has identified the following concerns:

- In 2010, MCL 722.954a(5) was amended to require that “special consideration and preference” be given to placement with relatives. Often there is no documentation of the effort to identify, locate, notify, and consult with relatives to determine placement with a “fit and appropriate” relative within 30 days of removal as required by MCL 722.954a(2).
- Lack of documentation to support compliance with Section 206 of the federal Fostering Connections to Success and Increasing Adoptions Act of 2008, which states “that reasonable efforts shall be made —

*(A) to place siblings removed from their home in the same foster care, kinship guardianship, or adoptive placement, unless the State documents that such a joint placement would be contrary to the safety or well-being of any of the siblings...*



- In situations in which the legal preferences for relative and sibling placement seem to conflict, there is inadequate documentation of the factors involved in the placement decision. The OCO has reviewed several cases in which both interested relatives and licensed, unrelated foster parents who have placement of sibling(s) are competing for placement of children and both parties believe law and policy support their request for placement. There have also been cases reviewed by the OCO when neither relatives nor licensed caregivers of siblings are chosen for placement, despite both being given legal preference.
- Relatives and other parties who have expressed an interest in placement are not always notified of placement decisions via DHS-31, *Foster Care Placement Decision Notice*.

### **DHS Response to Recommendation 1:**

Effective 5/1/12, DHS implemented the use of the DHS-3130A, Initial Relative Placement Home Study to enhance and streamline the assessment process of relative caregivers. The DHS-3130A replaced the DHS-197, 'Initial Relative Outline', and allows for a more comprehensive assessment which also improves the documentation of the factors involved in placement decisions.

Additionally, in September 2012, DHS updated the case service plans and system help guides by adding direction on how and where to document ongoing relative engagement efforts, relative notification, sibling placement, and the rationale for placement decisions.

Current DHS policy requires the caseworker to complete and send the following to all relatives identified by the parents and children, within 30 calendar days of removal of a child:

- ◆ DHS-990, Relative Notification Letter.
- ◆ DHS-989, Relative Response, allows the relative to indicate whether the relative would like to be considered for placement and/or other connections to and support for the child.
- ◆ DHS-988, Relative Search Information, allows a relative to provide the contact information of other relatives who may have an interest in becoming a resource for the child.

The foster care worker must continue to pursue the identification and notification of relatives. As other relatives are identified through the relative response forms, those relatives are to be contacted within five business days from receipt of the form. Throughout the case, the foster care worker must continue to seek, identify, notify, and engage relatives until legal permanency for the child is achieved.

DHS policy also requires caseworkers to make ongoing efforts to place siblings within the same home. A reassessment of a sibling split placement is required in the case plan each quarter. The reassessment must also include the efforts



and progress made to place all siblings within the same out-of-home placement. Written second line supervisory approval is required for a placement which separates or maintains separation of siblings.

To continue to stress the importance of these current policy items, these topics have been added to the supervisory teleconference that is held monthly with supervisors from both county and private agencies.

## **Release of Information to Parents**

### **OCO Recommendation 2:**

The OCO recommends that DHS ensure compliance with MCL 722.627(2)(e) and (f) and Confidentiality Policy SRM 131 regarding the release of confidential CPS information to parents and other individuals who may legally receive the information. In addition, DHS should consider revising policy to ensure it clearly explains the process and requirements for releasing confidential CPS information. It would also be prudent for DHS to consider adding information about obtaining a copy of confidential CPS information to the DHS publication, “*A Parent’s Guide to Working with Children’s Protective Services.*”

Rationale: DHS policy is available online, and parents often refer to the policy in order to understand their rights and the duties and responsibilities of agency staff. However, the policy governing the release of CPS information to parents is difficult to find and understand. The OCO continuously receives complaints from parents who request a copy of CPS reports they are legally entitled to receive, but have either not been provided with the documentation or been told they are not entitled to receive it. The OCO has advised complainants of the requirement to put their request in writing and provide a copy of picture ID; however, this does not always result in parents being given the information.

Two sections of the Child Protection Law allow parents, perpetrators and alleged perpetrators to receive confidential CPS information:

MCL 722.627(2)(e):

*A person...who is responsible for the child’s health or welfare.*

MCL 722.627(2)(f):

*A person named in the report or record as a perpetrator or alleged perpetrator of the child abuse or neglect...if the identity of the reporting person is protected as provided in section 5.*

A reference in the online CPS policy manual found in the Release of CPS Information tab directs the reader to SRM 131. The reference does not include a hyperlink.



In order to find SRM 131, the reader must know to go to the “Services General Requirements” section and click on “Services Requirements Manual (SRM).” “Confidentiality” is listed under SRM 131. Release of CPS information or records begins on page 12 and states in pertinent part:

*Children’s protective services case information and records are confidential. Unless the case information or records are released to the public by the DHS director as specified information, children’s protective services case information or records may only be released **after proper redaction** to the following:*

- Parents whose parental rights are intact (custodial, non-custodial, birth or adoptive) and legal guardians of children who are the subject of children’s protective services complaints. Individuals seeking information may request it in person or in writing to the local office. If a written request is from an individual regarding their own records, it must include a copy of the individual’s picture identification.

On page 16 of SRM 131 the agency deadline for providing this information is explained:

- a. *Verify the identity of the requestor (driver’s license, state ID).*
- b. *Properly redact the record.*

*Children’s protective service information may also be sent to the requestor via mail. Follow steps a and b above, and mail properly redacted copies of case material within 15 days of receipt of the request. If the request is from an individual, mail the information to the address listed on the individual’s picture identification...*

Policy should be easy to access and written so parents and agency staff will have a clear understanding of the release of confidential CPS information process.

### **DHS Response to Recommendation 2:**

It is true that the CPS Policy (PSM) is accessible for parents, but it is written to guide CPS staff practice and to provide directives consistent with the Michigan Child Protection Law (CPL).

Although SRM 131 may be written in a manner that is difficult for parents to understand, it does provide detailed guidance about how and when to redact information, which ensures that the statutory requirements of the CPL are met.

PSM 717-3 provides a fairly clear directive about provision of case reports to parents (petitioners), “*The petitioner has the right to review investigation reports and obtain copies of needed documents and materials, after confidential information has been redacted.*”



In addition, in 2013, CPS workers will be required to provide to parents “A Parent’s Guide to Working with Children’s Protective Services.” This pamphlet will provide to parents an overview of CPS, steps that CPS workers must follow, and answers to common questions, including how to obtain copies of their CPS reports. When the Parent’s Guide is finalized, a copy will be provided to the Office of Children’s Ombudsman for review.

## **Statutory Recommendations**

### **Placement with Relatives**

#### **OCO Recommendation 3:**

The OCO recommends that the Michigan Legislature amend MCL 722.954a to require a court to review, upon request, an agency’s refusal to place a child removed from his or her parental home with a fit and willing relative.

**Rationale:** Under current law, when a child is removed from his or her parental home, DHS or a private child-placing agency is required to identify, locate, notify, and consult with the child’s relatives to find a suitable placement for the child. Within 90 days of the child’s removal from home, the agency must make a placement decision, document the reasons for the placement decision, and provide notice of the decision to several individuals, including any relative who expresses an interest in caring for the child. The agency “shall give special consideration and preference” for placement to a fit and willing relative who is able to meet the child’s needs. However, if the agency refuses to place the child with a relative, that relative may only ask the child’s lawyer-guardian ad litem (LGAL) to review this decision. The LGAL may then ask the court to review the placement decision if the LGAL determines the decision was not in the child’s best interest.

The OCO believes that current law does not sufficiently protect children’s interests in maintaining family structure and connections. The OCO has reviewed numerous cases in which interested and concerned relatives were never formally notified of the agency’s placement decision, as required by current law, thus depriving the relative of the limited right to have the child’s LGAL review the placement decision. More importantly, the child has lost an opportunity for placement within his or her extended family, which significantly mitigates the trauma of removal from parental custody. If parental rights are eventually terminated, the interested and concerned relative may apply to adopt the child, but because the child will have been placed with unrelated foster parents in the interim, the agency and the Michigan Children’s Institute superintendent often conclude that the child’s connection to his or her foster family outweighs the preference for relative placement at that point in the proceedings.





To remedy this problem, the OCO recommends that the Michigan Legislature amend MCL 722.954a(6) as follows:

**(6) A person WHO PROPERLY RESPONDED TO THE NOTICE DESCRIBED IN SUBSECTION (3) BY REQUESTING PLACEMENT, AND** who receives a written decision described in subsection (4), may request in writing, within 5 days, documentation of the reasons for the decision, and if the person does not agree with the placement decision, he or she may request that the child's attorney review the decision to determine if the decision is in the child's best interest. ~~If the child's attorney determines the decision is not in the child's best interest, within 14 days after the date of the written decision the attorney shall petition the court that placed the child out of the child's home for a review hearing. The court shall commence the review hearing not more than 7 days after the date of the attorney's petition and shall hold the hearing on the record.~~

### **DHS Response to Recommendation 3:**

The Department disagrees with this recommendation. It is true that when it is safe to do so, a child should be placed with a fit and willing relative. It is also true that placement with a relative can help the child(ren) maintain family structure and connections and help to reduce trauma. However, the Department is tasked with the obligation to ensure that placements are safe for the child, and it is only when significant indicators of risk are evident, following thorough background checks that a relative placement would be denied by the Department.

The Department believes that sufficient statutory, policy, and practice requirements are in place to allow for the consideration of relative placements. If the Department determines that a relative is inappropriate for placement, that relative is provided with remedies to ask for the court's consideration to order this placement. If the OCO has concerns that appropriate relatives have been denied this consideration, the Department can and should investigate these specific circumstances.

## **Legal Representation for DHS**

### **OCO Recommendation 4:**

The OCO recommends that the Michigan Legislature amend MCL 712A.17 to require prosecuting attorneys or assistant attorneys general to serve as DHS' attorney in all child protective proceedings.

**Rationale:** Current law does not require a prosecuting attorney to represent DHS in child protective proceedings. When a prosecutor appears in a child protective proceeding, he or she represents "the people of Michigan" and only serves as "legal consultant" to the department. The prosecutor must only appear at a hearing when ordered to do so by the court. MCL 712A.17(4), (5). If the prosecutor disagrees with DHS decisions or simply refuses to participate in a case, DHS must obtain private counsel if it wishes to be represented at all. MCL 712A.17(5).



Although most prosecuting attorneys participate in trials, pleas, and hearings on termination of parental rights, they often do not provide assistance to or appear on DHS' behalf at dispositional review or permanency planning hearings, when crucial decisions are made regarding the children involved.

This results in inconsistent legal assistance to county DHS offices outside of Wayne County (where, by contract, assistant attorneys general represent Wayne County DHS at all hearings). The lack of consistent legal counsel contributes to problems in individual cases and systemic problems. Without an attorney to represent the local DHS office, caseworkers must make decisions with legal ramifications without the benefit of legal counsel or sufficient legal training. Errors jeopardize children's safety, delay permanency, impact federal Title IV-E funding, and require representation by the attorney general's office in contempt of court proceedings and appeals.

**DHS Response to Recommendation 4:**

Michigan DHS strongly supports this recommendation. In addition to the lack of consistent counsel, and legal decisions made in the absence of legal counsel and/or sufficient training, consistent and competent legal representation in child protective proceedings would help DHS meet the federal requirements of the Child and Family Services Review. This representation could assist in meeting the requirements of the Modified Settlement Agreement. Comprehensive legal representation for DHS would also greatly assist caseworkers in meeting legal standards governing caseworker visits, placement stability, and timeliness to reunification or alternative permanency – all issues identified by the plaintiffs in the original class-action complaint.



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