

Children's Ombudsman

Annual Report

1996-1997

John Engler, Governor

State of Michigan

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December 1997

The Honorable John Engler, Governor

Honorable Members of the Michigan Legislature

Ms. Marva Livingston Hammons, Director, Family Independence Agency

I am pleased to submit the 1996-1997 annual report of the Children's Ombudsman pursuant to Public Act 204 of 1994, "The Children's Ombudsman Act."

Section 10(5) of the Act states: "*The Ombudsman shall submit to the Governor, the Director of the Department, and the Legislature an annual report on the conduct of the Ombudsman, including any recommendations regarding the need for legislation or for change in rules or policies.*" Section 6(e) also states the Ombudsman may "*make recommendations to the Governor and Legislature concerning the need for protective*

services, adoption, or foster care legislation."

This report gives an accounting of the Ombudsman's conduct from July 1, 1996 to June 30, 1997. It identifies specific recommendations which are supported by investigations of complaints received during this reporting period, in addition to building upon case experience and knowledge gained during the 1995-1996 reporting period.

Thank you for the opportunity, privilege, and challenge of serving the children of Michigan.

Respectfully Submitted,

Richard S. Bearup

Children's Ombudsman

Children's Ombudsman

Annual Report - December 1997

Executive Summary

After 2 ½ years of operation, the Office of Children's Ombudsman (OCO) submits its second annual report. Signed into law by Governor John Engler on June 20, 1994, the Children's Ombudsman Act (*Public Act 204 of 1994, MCA 27.3178 (557.1) et seq; MCLA 722.921 et seq*) established an autonomous office charged with investigating complaints about children being served by protective services (abuse and neglect), foster care, and adoption agencies, and making any recommendations for changes in child welfare laws, rules, and policies.

To meet these statutory responsibilities, a complaint process was established according to *Section 4(2)* of PA 204, which requires the Ombudsman to monitor and ensure compliance with laws, rules, and policies governing the Family Independence Agency (FIA) and private child-placing agencies (*Section 3(1)*). The OCO is also to investigate "administrative acts" of public and private agencies according to whether they are "*contrary to law, rule, or policy, imposed without an adequate statement of reason, or based on irrelevant, immaterial, or erroneous grounds*" (*Section 2 and 5*).

Recommendations are developed from the findings of complaint investigations. Such complaints are beneficial in helping to resolve individual child cases because:

- Complaints give critical first-hand information about the experience of children and show how

the child welfare system works and where it needs improvement.

- Complaints are often about children who are at increased risk for protection or permanency.
- Complaints about such children are typically serious and complex, involving a level of time,

effort, and resources which public and private agencies may not readily have.

- Complaints detect recurrence of problems.
- Complaints allow the OCO to track a child's progression through protective services, foster care, and adoption.

Organization of Report: This second annual report is organized into four parts: (1) Conduct; (2) Complaints; (3) Recommendations; and (4) Appendices.

Conduct: This section reports on the work of the OCO covering the twelve-month period between July 1996 and June 1997 (the 1995-1996 annual report covered an eighteen-month period) including:

- 2,454 total children served since the office began in 1995
- 697 case investigations involved 1,445 children from 71 of 83 counties
- 564 complaints involved 1,121 children in 1996-1997
- 254 investigations involved 625 children in 1996-1997
- an average of 2.5 children at issue in each investigation
- an average of 21 new investigations and 21 new preliminary investigations per month

Goals: The goals of the OCO are to: (1) make a direct impact on the lives of children, about whom complaints are received through case investigation; (2) make serious and specific recommendations to the Governor, Legislature, and Department arising out of investigations; and (3) help improve the effective use and efficient delivery of child welfare services by public and private agencies in Michigan.

Budget: The FY (fiscal year) 1996-1997 appropriation for the office was \$988,000. The OCO appropriations for FY 1997-1998 is \$1.157 million including 14 FTE (full-time employee) positions.

Investigative Team: The Ombudsman employs a multi-disciplinary team composed of investigators who carry an average caseload of 48 and have an average 12.5 years of professional experience. Thirty-six percent (36%) of team members are minority. The team includes professionals with previous experience as:

- Attorney Case Manager, National Center for Missing & Exploited Children
- Children's Protective Services Investigator
- Assistant Prosecuting Attorney for child sexual abuse cases
- Michigan State Police Inspector for internal affairs investigations
- Detroit Police Department Investigator, Child Abuse Unit
- Child Behavioral Specialist with a juvenile psychiatric hospital
- Staff Assistant to Lt. Governor Binsfeld's Adoption and Children's Commissions

Collaborations: Numerous collaborations with FIA, private agencies, the courts, and medical professionals occurred during the reporting period. For example, operating protocols outlining contact between the OCO and public and private child welfare agencies have been developed and are being used. In addition, there was a marked increase in OCO contact with judges, prosecutors, and mandated reporters during this reporting period. Other cooperative developments include the Ombudsman's: (1) appointment by Michigan Supreme Court Chief Justice Mallett to the Court Improvement Program Advisory Committee; (2) participation on an FIA Protective Services Advisory Committee; and (3) service with FIA, private agencies, and non-profit organizations on a Child Abuse and Neglect Prevention Strategies Committee. The work of the OCO provides for contact with scores of public and private agency child welfare workers who are committed, resourceful, skillful, and concerned in their daily service to children and families.

Accountability: The Conduct section concludes with a discussion of the OCO's accountability through progress to date on the first report's recommendations:

- FIA has agreed with 46 (75%) of the first report's 61 recommendations and disagreed with 1.
- Twenty-four (24) state and local organizations have formally expressed support of most or all recommendations.
- Both the Senate Committee on Families, Mental Health and Human Services and the House Committee on Human Services and Children held several public hearings during 1997 on the Ombudsman's report, with each Committee Chairman declaring their intention to sponsor legislation implementing at least 34 OCO recommendations. Ninety-one (91) persons testified in support of the Ombudsman's office and its first report at Senate hearings alone.
- Thirteen of the recommendations in the first report are also addressed in the major package of legislation introduced to implement the recommendations of Lt. Governor Connie Binsfeld's Children's Commission.
- The Department of Consumer & Industry Services (CIS) agreed with 59% (13 of 22 applicable) OCO recommendations and disagreed with none.

- The Michigan Federation of Private and Child Family Agencies agreed with 90% (55 of the 61) of the recommendations.

Complaints: This section explains the procedures and standards used by the Ombudsman for the investigation of complaints, including how cases are opened, investigated, and closed.

Validity: The validity of OCO complaints and resulting recommendations is explained by Sharon Dodson, Ph.D., a Research Associate at Western Michigan University and an expert in continuous improvement and program evaluation. Dr. Dodson states that complaint data is useful to identify and prioritize system problems.

Statistical Summary: Information concerning the types of complaints is presented. Of the 564 total complaints received during the reporting period involving 1,121 children, a total of 254 complaints resulted in investigations, 254 were preliminary investigations, and 56 were inquiries. The majority of complaints were made by telephone.

Of the 254 investigations conducted, 26% involved allegations of child sexual abuse, 27% involved allegations of physical abuse, and 47% involved allegations of neglect. Twenty-two percent (22%) of the investigations included allegations of "serious physical abuse" (as defined by the State Bar Children's Task Force), and 4% of the investigations involved children who died.

Of the total 564 complaints received during the reporting period, 45% were about Children's Protective Services (CPS), 18% involved foster care, 10% concerned adoptions, and 27% involved some combination of the three systems. Of the cases in which foster care was the focus of the complaint, 83% involved a licensed child placing agency.

Complaints brought by parents, relatives, foster parents, and those initiated by the Ombudsman (typically following a complaint from mandated reporters) account for 80% of investigated complaints. Legislators serve as co-complainants on 20% of all complaints. Children aged 5 years old and younger were the group predominantly served by investigations.

Complaint standards and the process used to conduct investigations are also discussed in this section. It is the policy of the Children's Ombudsman not to close a child's case until protection and permanency for each child can be verified.

Recommendations: This section contains recommendations arising from complaints investigated by the OCO from July 1, 1996 through June 30, 1997. Recommendations were identified by: (1) categorizing all intake complaints; (2) pooling the specific recommendations kept on each case by all investigators; (3) cross-matching all complaints with every recommendation in consultation with a university-based researcher, experienced in complaint analysis and use; and (4) counting the occurrence of each recommendation with each investigation opened during the reporting period.

Nineteen selected recommendations are presented and primarily address child abuse and neglect investigations, foster care improvements, and issues of legal representation in the child welfare system. Each recommendation is accompanied by relevant background information and supporting OCO investigations.

Appendices: This concluding section includes acknowledgments, a report on the progress of specific recommendations from the first annual report, organizations supporting OCO recommendations, a summary of OCO statutory tools and team training, and a copy of PA 204 of 1994.

Conduct

History: The Office of Children's Ombudsman officially began its work on January 1, 1995, a result of Senate Bill 723 (now PA 204), signed into law by Governor Engler on June 20, 1994. PA 204 requires the Ombudsman to submit "*an annual report on the conduct of the Ombudsman*" (Section 10(5)). The Office of Children's Ombudsman is now in its third year of operation.

Authority: PA 204 of 1994, known as the "Children's Ombudsman Act," establishes and governs the office it creates. Six sections of this law define the Ombudsman's overall mission:

Section 3(1): "*As a means of monitoring and ensuring compliance with relevant statutes, rules, and policies pertaining to children's protective services and the placement, supervision, and treatment of children in foster care and adoptive homes, the Children's Ombudsman is created as an autonomous entity in the Department of Management and Budget.*"

Section 3(2): "*The Ombudsman shall be appointed by the Governor and shall serve at the pleasure of the Governor.*"

Section 4(2): "*The Ombudsman shall establish procedures for receiving and processing complaints from complainants, conducting investigations, holding hearings, and reporting findings resulting from investigations.*"

Section 5: "*[Certain] individuals may make a complaint to the Ombudsman with respect to a particular child, alleging that an administrative act is contrary to law, rule, or policy, imposed without an adequate statement of reason, or based on irrelevant, immaterial, or erroneous grounds*"

Section 6(e): "*[The Ombudsman may] make recommendations to the Governor and the Legislature concerning the need for protective services, adoption, or foster care legislation.*"

Section 10(5): "*The Ombudsman shall submit to the Governor, the Director of the Department, and the Legislature an annual report on the conduct of the Ombudsman, including any recommendations regarding the need for legislation or for change in rules or policies.*"

Goals: Under the direction of PA 204, the Children's Ombudsman has established three goals: (1) to make a direct impact on the lives of children, about whom complaints are received through case investigation; (2) to make serious and specific recommendations to the Governor, Legislature, and Department arising out of investigations; and (3) to help improve the effective use and efficient delivery of child welfare services by public and private agencies in Michigan.

Progress toward achieving these goals is measured by evaluating: (1) the impact on each child served; (2) compliance with the Children's Ombudsman Act; and (3) implementation of any recommendations presented in both case investigations and annual reports.

Cases: The OCO exercises oversight of certain administrative acts of FIA, private foster care and adoption placement agencies. Since the office began, it has investigated a total of 697 cases affecting 1,445 children in 71 of Michigan's 83 counties. A total of 2,454 children have been served by the OCO since it began, including all categories of contact (investigations, preliminary investigations, and inquiries). In the first annual report, covering the first eighteen months of operation, the Ombudsman investigated 443 cases involving a total of 820 children with complaints originating in 65 counties. This second annual report covers a twelve-month period (July 1996 through June 1997), investigating 254 cases involving 625 children with complaints from 57 counties. The 254 investigations used as a basis for this report do not include cases that were already active at the beginning of the reporting period.

Budget: Section 4(1) of PA 204 states: "*The Ombudsman shall establish procedures for budgeting, expending funds, and employing personnel.*" The original \$1 million appropriation to the OCO in fiscal year (FY) 1994-1995 resulted in returning 38% unexpended to the state treasury. The FY 1995-1996 appropriation was \$800,000. The FY 1996-1997 appropriation was \$988,000. The authorized appropriation for FY 1997-1998 is \$1.157 million, including 14 FTE positions. Principal expenses continue to be for investigators, office space, expenses relating to site investigations, court appearances, case management, and investigator training.

Operations: The OCO additionally fulfills its statutory requirements in four specific areas:

- Fielding and training an experienced and diverse multi-disciplinary investigative team.
- Collaborating with FIA, private agencies, courts, and mandated reporters to better serve children at risk, working together where possible and setting mutually acceptable standards where professional disagreement occurs.
- Improving case management through technical and investigative improvements.
- Accountability for the recommendations it makes to policy makers.

Multi-Disciplinary Investigative Team: The diverse pool of multi-disciplinary expertise already characteristic of the OCO was expanded in 1996-1997. Team development follows an established standard, using the Michigan Rules of Evidence. The OCO team complements one another with a combination of experience, education and cross-training in the fields of law, psychology, education, criminal justice, social work, and child development. Included among the many skills and specialized knowledge of the current Children's Ombudsman investigative team are professionals with previous experience as:

- Attorney Case Manager with the National Center for Missing & Exploited Children
- Children's Protective Services (CPS) Investigator
- Assistant Prosecuting Attorney for child sexual abuse cases
- Michigan State Police Inspector for internal affairs investigations
- Detroit Police Department Investigator, Child Abuse Unit
- Child Behavioral Health Specialist with a juvenile psychiatric hospital
- Staff Assistant to Lt. Governor's Adoption and Children's Commissions

A Registered Nurse with clinical child abuse and neglect experience will soon join the investigative team. Team members also have related expertise, including working knowledge of the Indian Child Welfare Act, teaching regular and special education children, and bi-lingual proficiency (American Sign Language and Spanish). Thirty-six percent (36%) of the OCO are representatives of minority groups.

Ombudsman investigators carry an average caseload of 48 cases and have an average of 12.5 years of professional experience. Specialized training is used to improve investigative technique and knowledge. Team members, separately and together, participated in 32 professional trainings this year. (See Appendix E).

Collaborative Efforts: During this reporting period, the OCO often collaborated with FIA, private agencies, courts, medical professionals, and many others who are part of the child welfare system.

Public and Private Agencies: *Section 8(1)* and *Section 11(1) and (2)* of PA 204 outline the requirements of public and private agencies to cooperate with the OCO. An operating protocol between OCO and FIA was established during 1995-1996. Thanks to the cooperation of the Michigan Federation of Private Child and Family Agencies and the Association of Accredited Child and Family Agencies, a protocol with private child placing agencies was developed and implemented in 1996-1997. These protocols include designation of an agency liaison with whom the Ombudsman makes initial contact, identification of the duties of the liaison to provide case information at the Ombudsman's request, procedures that follow the release of the Ombudsman's Report of Findings and Recommendations, and clarification of confidentiality issues that relate to case documents released to the Ombudsman.

The Ombudsman has in several instances actively supported FIA and private agencies when the independent findings of an OCO investigation warrants backing their case position in the best interests of the child(ren). Such efforts typically occur at the request of FIA and private agencies. The pool of knowledge and resources from these coordinated efforts often has a direct and positive impact on the prospects of protection and permanency for children.

Front Lines: FIA and private agencies are faced with the difficult daily task of ensuring protection, providing services, and finding permanent homes for children who have been abused and neglected. The public and private workers of these agencies, particularly the line

workers in CPS, foster care, and adoption, are committed and concerned professionals. From urban neighborhoods to rural communities, line workers have to be skillful and resourceful in identifying and providing services to children. It is the inter-agency networking and partnerships cultivated by these professionals that have created communities that are stronger and more responsive to the needs of families and children. The OCO is in a position to see that much of their often difficult and sometimes controversial work goes unrecognized and unheralded when, in fact, the lives of many children are positively affected.

Recent statistics put the scale of Michigan's child protection and permanency efforts into perspective:

- In 1994, there were over 2.5 million children (up to age 18) residing in Michigan.
- In 1995, 121,240 complaints of suspected child abuse and neglect were received by CPS.
- In 1995, 57,914 complaints (48% of the total complaints received) were investigated.
- In 1995, 139,289 children (5.6% of all children in the state) were involved in CPS investigations.
- In 1995, there were 21,165 confirmed victims (15.2% of total children involved in CPS investigations) of child abuse and neglect.
- In 1995, an average of 15,208 children were living in out-of-home foster care under state supervision.
- In 1995, Michigan recorded 2,189 adoptions.

Courts: During this reporting period, the Ombudsman was also invited by local judges and prosecutors across the state to consult, provide background information, and give technical assistance about individual child cases. Although specific cases are the primary focus of this cooperation, judges, prosecutors, and children's attorneys also identified areas where the system works and needs improvement, according to their experience. The Ombudsman participated in more than 20 day-long, on-site meetings with judges and prosecutors, from across the state and continues to regularly meet with and hear from them on cases and system suggestions. Many of these legal professionals bring complaints for the Ombudsman to investigate on his own initiative (*Section 6(a)*).

Medical Professionals: The Ombudsman collaborated with many of Michigan's leading child abuse and neglect medical experts, clinicians, and diagnosticians. All of these contacts concern cases under investigation by the OCO as well as suggested system reforms identified by these professionals. These experts, mostly drawn from state universities and teaching hospitals, are frequently consulted to assist in case reviews. Such experts include pediatricians, psychologists, sexual abuse counselors, and persons skilled in forensic interviewing of children/alleged perpetrators. These professionals also bring complaints to the Ombudsman to investigate on his own initiative (*Section 6(a)*).

Special Projects: Other examples of developing partnerships include:

- In 1997, Michigan Supreme Court Chief Justice Conrad Mallett appointed the Ombudsman to serve on the Court Improvement Program Advisory Committee which will monitor the implementation of how courts process child abuse and neglect cases. In addition, the Ombudsman will serve as a member of the statewide Child Death Review Team scheduled to begin operating in 1998.
- The Ombudsman was invited to participate on a CPS Advisory Committee, a work group consisting of FIA supervisors and private agency directors. The committee was formed to improve the CPS intake process for statewide uniformity and application (an effort also consistent with a recommendation of the Ombudsman's first annual report).
- The Ombudsman is working alongside FIA, private agencies and other non-profit organizations on a Prevention Strategies Committee, established to seek ways to further improve child abuse and neglect prevention efforts in Michigan.
- The Ombudsman was asked to serve on a local group created to form a Court Appointed Special Advocate (CASA) program in Ingham County.
- In 1997, the Ombudsman was elected to the Board of Directors of the United States Ombudsman Association and continues to serve as Co-Chair of the Children's Chapter of this national organization.
- The Ombudsman was invited to appear at eight Senate and House hearings regarding the OCO's first annual report.
- During 1996-1997, the Ombudsman was invited to give presentations on the role of an Ombudsman in child welfare at 18 statewide conferences and two national conferences (the National Center on Child Abuse and Neglect (NCAAN) and the American Professional Society on the Abuse of Children (APSAC)).
- In 1997, the OCO hosted a visit to the State Capitol by former world heavyweight boxing legend Muhammad Ali who addressed sessions of the State Senate and House of Representatives and testified before a Joint Legislative Committee (the Senate Committee on Families, Mental Health and Human Services and the House Committee on Human Services and Children) in support of Lt. Governor Binsfeld's Children's Commission Report and the first annual report of the Children's Ombudsman.
- In 1997, the Ombudsman was invited to host and make a presentation to a delegation from Uzbekistan (one of the former Soviet Republics) on establishing and operating an Ombudsman's office in their country to handle citizen complaints. In addition, during 1996-1997, other states in the U.S. have studied the OCO for the purpose of establishing similar Children's Ombudsman offices.

Case Management: When the office opened in early 1995, design of a case management system was initiated to assist in complaint investigation and to track, measure and profile related information. This computerized system came on line in 1996 and was subsequently enhanced in 1997. The database is used from each opening intake through investigation to case closure and also tracks preliminary investigations and inquiries.

Over 130 questions and fields are used within the system on each complaint investigation. This system is under ongoing review to improve how information is managed, profiled, applied, and reported.

Accountability: Several factors relate to the Ombudsman's accountability for complaint investigations and resulting recommendations. Satisfaction with the OCO response to complaints appears to be high according to: (1) consistently favorable post-investigation responses from complainants and interested parties; (2) positive letters and calls from constituents to their state Legislators, as reported to the OCO by Legislators; (3) supporting public testimony about the OCO at several legislative hearings; (4) cooperative results of meetings with judges, prosecutors, and mandated reporters; (5) statements and letters of appreciation from some of the children served; and (6) the formal administrative and legislative responses to the recommendations of the Children's Ombudsman's first annual report.

Administrative Response: In its first annual report, the OCO made 61 recommendations in 42 different subject areas. In 1997, FIA issued a detailed response to these recommendations, including:

- agreement with 46 (75%) of the recommendations
- partial agreement with one (1) recommendation
- agreement to review thirteen (13) recommendations
- disagreement with one (1) recommendation (See Figure 1)

FIA has also reported that it has taken some specific actions to administratively implement recommendations in its agency rule. (See Appendix B).

Figure 1. Family Independence Agency response to 1995-96 OCO recommendations.

The Department of Consumer and Industry Services (CIS), which now includes the foster care licensing and investigation functions formerly housed under FIA, also submitted a detailed response to the 1995-1996 OCO report recommendations. In that response CIS stated:

- agreement with 13 of the recommendations
- 39 of the recommendations were not applicable to their jurisdiction
- it agreed to review or believed their practices were consistent with 9 of the recommendations

Legislative Response: Ninety-one (91) persons testified in support of the OCO and its first annual report at five public hearings held by the Senate Committee on Families, Mental Health and Human Services in February and March 1997. Those testifying in support included: FIA workers, private agency administrators, physicians, probate judges, prosecuting attorneys, attorneys representing children, educators, clinical social workers, psychologists, parents, grandparents, and children. Over 20 statewide children's associations submitted testimony in support of the OCO recommendations. (See Appendix C). At each Senate hearing, Chairman Joel Gougeon circulated a list of 34 recommendations (56%) contained in the first report on which he was requesting legislation.

In May 1997, the Ombudsman was invited to make a presentation about the OCO and its annual report before the House Committee on Human Services and Children. At this hearing Chairman Edward LaForge stated that several of the annual report recommendations would be legislatively introduced in the House of Representatives during 1997-1998.

In addition, Senate Bills 603, 604, and 628 have been introduced by Senator Glenn Steil to implement the following recommendations from the first annual report. These bills: (1) establish and require use of "substantiated perpetrator unknown" standard when a child is found to have been abused, but the perpetrator's identity is not yet known; (2) prohibit closure of a protective services investigation based solely upon closure of a related criminal case; and (3) require the OCO to refer complaints regarding children's attorneys to the Michigan State Bar Grievance Commission if misconduct by the attorney is suspected. A public hearing on these bills was held by the Senate Committee on Families, Mental Health and Human Services.

A package of bills to implement major portions of Lt. Governor Binsfeld's Children's Commission Report was introduced in early 1997. While independent of each other, the Children's Commission and Children's Ombudsman reports identified several common themes and areas of proposed change. While this package is intended to implement many of the 197 recommendations offered in the Commission's Report, all or part of 13 of the Ombudsman's recommendations are also addressed.

Complaints

Process

This section is divided into two parts: (1) the complaint process used by the OCO; and (2) the type and disposition of the complaints received and investigated.

Complaint Validity: To understand that the OCO is a complaint office is crucial to its

investigative role and the resulting recommendations it makes, both in individual child cases and in this annual report. Each complaint about each child(ren) received by the OCO is unique and the importance of each child served cannot be underestimated. OCO complaints are analogous to constituent complaints received by Michigan Legislators. While constituents who complain to their Legislator about some aspect of state government comprise a relatively small percentage of their Legislative district population, no Legislator would minimize or ignore such complaints. Each complaint is valued because each citizen is important; complaints send a message about the quality of state services and help inform Legislators about what is, and is not, working.

For this report, the OCO engaged Sharon Dodson, Ph.D. to review the processes it uses for complaints and recommendations and their respective validity. Dr. Dodson is an expert in continuous improvement and program evaluation. What follows is Dr. Dodson's critique of the Ombudsman's complaint process and resulting recommendations:

Consumer Complaints: Much has been learned about the use of consumer complaints in the last twenty years as a result of the quality movement in service and manufacturing organizations. From the framework of continuous improvement efforts, consumer feedback is a vital part of the information system. Complaints are seen to provide the broadest summative evaluation of the product or service and are used to identify system failures. The strength of complaint information is due to it being direct, unfiltered feedback from the people who are using the product or service and who are directly affected by a system.

Service organizations have learned the importance of listening and responding to consumer complaints as a means to maintain customers in a highly competitive market. Although the child welfare system does not share the private sector's concern about "losing customers," much can be learned and used from the private sector's development of internal systems to intake, evaluate, respond appropriately to complaints, and to use that information to eliminate the cause of the complaints.

Use of Complaint Data: There are some limitations to consumer complaint data, the most obvious being that not everyone who experiences a problem will complain. Market analysts have estimated the proportion of people who will complain about a common service problem to be 1 in 27, but acknowledge that whether a person complains about a problem varies with many factors including the severity of the problem (in the eyes of the complainant) and their disposition and ability to take the complaint to action. Thus, complaints cannot typically be used to estimate problem occurrence across customers. Another limitation is that complaints are often distanced from the actual processes, which can complicate the process of identifying the root causes. Complaints are most successfully used in: (1) identifying the system problems that require further investigation and articulation; and (2) prioritizing those problems that are identified.

OCO Complaints: Both identifying system problems and prioritizing problems are relevant to the work of the Office of Children's Ombudsman. The OCO has implemented an investigative process for complaint handling to strengthen its ability to describe and analyze complaint data.

A number of variables were input and tracked for complaints received, including numerical information (number and ages of children involved, ages of parents, number of previous contacts), category data (complainant, county of child, type of complaint) and text (log entries relevant to the case, copies of letters). Each complaint received between July 1996 and June 1997 was analyzed to determine the substance of the complaint and the implied system issues.

Categories of system issues were generated from the complaint data for each of the 3 systems monitored by the OCO (protective services, foster care, and adoption services). Each case was reviewed and system issues identified. Whether or not each system issue occurred in the case was entered into the case data file. Trained and specialized OCO investigators from diverse academic, experiential, and professional backgrounds performed each case assessment with a high degree of uniformity while working collaboratively to assure consistent coding. System issues were indexed to each complaint to indicate their reported frequency. Although these tallies do not represent the frequency of the problem in general cases (but are about the complaints actually received), they do provide an important and useful indicator of the extent of problems.

It is important to recognize that analysis of complaint data is one part -- albeit an important one -- of a quality information system. In the child welfare system setting, monitoring of ongoing functions and activities, internal complaints, and analysis of interacting systems (justice system, law enforcement system, education system) also provide information that must be used in combination with the complaint information to make sense of the overall quality of the system.

Complaint Procedure: Each complaint to the Children's Ombudsman is initially referred to as an intake. An Intake Investigator collects background information, including, but not limited to: the names of children involved, dates of birth, current living status of the children, agencies involved, the nature and detail of the complaint, and specific actions requested by the complainant. Intakes are presented individually to the Ombudsman. The Ombudsman determines if jurisdiction exists and what course of action, if any, can or should be taken using the scope of authority and discretion permitted under PA 204. A complaint involving more than one child is counted as one case. A determination is made into which of three categories the complaint will be placed: Inquiry, Preliminary Investigation or Investigation.

Complaint Standards: The OCO investigates complaints according to four statutory provisions within PA 204:

- Section 2(a) states the Ombudsman is to investigate "*administrative acts*," defined as "*an action, omission, decision, recommendation, practice, or other procedure of [FIA or CIS], an adoption attorney, or a child placing agency with respect to a particular child related to adoption, foster care, or protective services.*"
- Section 3(1) states the Ombudsman is to "*monitor and ensure compliance with relevant statutes, rules and policies pertaining to children's protective services and the placement, supervision and treatment of foster children in foster care and adoptive homes.*"

- Section 4(2) states the Ombudsman shall "*establish procedures for receiving and processing complaints from complainants, conducting investigations, holding hearings, and reporting findings resulting from investigations.*"
- Section 6(a) states the Ombudsman "*may upon its own initiative or upon receipt of a complaint, investigate an administrative act that is alleged to be contrary to law or rule, or contrary to policy of the department or child placing agency, imposed without adequate statement of reason, or based on irrelevant, immaterial or erroneous grounds.*"

Given the Ombudsman's discretion to investigate complaints, and the statutory authorization to establish complaint and investigative procedures, five additional administrative standards are used to help decide if complaints should be investigated: (1) the complainant could reasonably be expected to use another remedy or channel; (2) the complaint has been too long delayed to justify present examination; (3) other complaints take precedence according to urgency, risk or complexity; (4) resources are insufficient for adequate investigation; and (5) the complaint is apparently trivial or not made in good faith.

Investigative Process: Complaints accepted by the Ombudsman for investigation are governed by *Sections 5 and 6* of PA 204. *Section 5* lists the persons who may bring

complaints to the Children's Ombudsman as: (a) the child; (b) a biological parent of the child; (c) a foster parent; (d) an adoptive parent or prospective adoptive parent of the child; (e) a legally appointed guardian of the child; (f) a guardian ad litem for the child; (g) an adult who is related to the child as defined in *MCL 710.22*; (h) a Michigan Legislator; and (i) an attorney for any individual described in (a-g). *Section 6* further allows the Ombudsman to open an investigation upon his/her own initiative.

Procedure: Several developments follow the opening of a case for investigation. Priority status is assigned to each case. The complainant is notified by letter that an investigation is underway. Case files from public and private agencies are ordered. An Investigator is assigned to the case and meets with the Intake Investigator to transition case information, insights, and investigative goals. The Ombudsman and Supervising Investigator receive weekly progress reports on each open case. The Supervising Investigator meets with each Investigator at least twice monthly to discuss case developments, challenges, and to review progress towards investigative goals. The entire investigative team meets at least twice monthly to present and discuss select cases and review alternative investigative approaches and techniques. Outside clinical experts from medicine, psychology, social work, and law enforcement are approached for analysis and interpretation of investigated facts. Investigations include an array of actions, including: case records review, interviews, site visits, case conferences, court appearances, expert consultations, analyzing investigated facts, interpreting findings, and reporting results.

Findings: Most typically, three findings arise from an investigation. First, the public or private agency's actions may be affirmed, in whole or in part. Second, it may be determined that the public or private agency acted "*contrary to law, rule or policy, or without adequate statement of reason, or based upon irrelevant, immaterial or erroneous grounds*" (*Section 6*). Third, *Section 10* of PA 204 requires the Ombudsman to report

findings and make recommendations if at least one of four conditions appear: (1) *a matter should be further considered by the public or private agency*; (2) *an administrative act should be modified or canceled*; (3) *reasons should be given for an administrative act*; and (4) *other action should be taken by the public or private agency*. Results of an investigation are communicated and applied according to statutory requirements and procedures established by the Ombudsman under *Section 4(2)*. Detailed letters are frequently used to communicate findings, although such communication may occur through phone contacts or site meetings if such approaches are in the best interest of children. More formal reports of findings and recommendations are used in certain cases, albeit infrequently, due to their extensive scope and intensive preparation.

Closure: Cases may be closed if the public or private agency is affirmed or affirmed in part with a closing letter or contact identifying any concerns and recommendations. Cases may be closed if court decisions move the case beyond the scope of PA 204 or if the complainant fails to provide requested additional information important to the investigation. Cases may also be closed with the acceptance by a public or private agency of an OCO recommendation(s). Finally, cases may be closed if a formal report was issued or if a referral to a more appropriate agency occurred after the preliminary investigation indicated the Ombudsman either lacked continuing jurisdiction or if it was found that the complaint would be better handled elsewhere. Cases may be reopened if compelling new information arises or the child's interests or circumstances deteriorate. In addition, Section 7(3) states *"the Ombudsman may conduct further investigations of any complaint upon the request of the complainant or upon the Ombudsman's own initiative."* The ten statutory tools available to the Ombudsman to conduct investigations are listed in Appendix D.

The OCO's view of the safety and permanency of each child(ren), as informed through its investigative process, supersedes any external pressures or expectations to close cases. It has been the consistent policy of the OCO since its inception to keep a child's case open until protection and permanency for each child is clearly assured. Since the Ombudsman is not in control of, nor has the jurisdiction to affect all of the many variables that impact a child's best interest and well-being in the child welfare system, a great many cases consequently remain open for a period of time.

Type

Complaints: A total of 564 complaints were made to the OCO between July 1, 1996 and June 30, 1997 involving 1,121 children. Of these, 56 (10%) were inquiries (resulting in assistance being provided to the complainant short of an investigation), 254 (45%) were preliminary investigations (resulting in the complainant eventually being advised of actions or referrals linking their complaint with existing or better remedies), and the remaining 254 (45%) resulted in investigations. Figure 2 demonstrates the intake of inquiries, preliminary investigations, and investigations by month since the inception of the office to the end of this reporting period.

Figure 2. Number of inquiries, preliminary investigations, and investigations by month (January 1995 - June 1997).

Taking the complaint pattern as a whole, the OCO averages 21 new investigations and 21 new preliminary investigations each month.

Complaint Source: The majority of complaints were received by telephone during the reporting period, with 495 (88%) complaints by telephone and 69 (12%) by mail. Of the mailed complaints, nearly 54% became investigations, while another 39% were preliminary investigations, and the remaining 7% were inquiries. This is somewhat different than the proportion of telephone complaints in each category. By telephone, 44% of the complaints became investigations, 46% were preliminary investigations, and 10% were inquiries.

Complainant: Four categories of complainants were responsible for reporting the majority of complaints, as demonstrated in Figures 3 and 4. Taken together, parents, relatives, foster parents, adoptive parents, guardians, and the Ombudsman were responsible for reporting 80% of the cases investigated, 90% of the preliminary investigations, and 75% of the inquiries. It should be noted that Legislators are co-complainants on 20% of the total complaints, not counting the cases in which they are the primary complainant.

It is important to note that the Ombudsman typically initiates complaints on behalf of persons who are not eligible under PA 204 to bring a complaint, but who are mandated reporters as defined under *MCL 722.623* ("The Child Protection Act").

1995-1996

1996-1997

Figure 3. Year-to-year comparison by complainant categories.

Figure 4. Complainant frequency by group.

Children Served: Of 1,121 total children served by the OCO this past year, 625 were through investigations (2.5 children served per investigation), 416 were through preliminary investigations (1.6 children served per preliminary investigation) and 80 were through inquiries (an average of 1.4 children served per inquiry). This brings the total number of children served in both reporting periods to 2,454.

Complaints were made on behalf of children of all ages, as demonstrated in Figure 5. Younger, more vulnerable children were served more often than were older children with the 3-5 age group served most often. The average age of a child receiving assistance through the OCO was 3.7 years. Children served by the OCO during this report period came from 57 of Michigan's 83 counties.

Figure 5. Ages of children served by OCO through investigations

Abuse/Neglect Case Type: Of the 254 investigations conducted by the OCO this past year, 26% involved sexual abuse, 27% involved physical abuse, 47% involved neglect, 22% involved serious physical abuse, and 4% involved a child's death.

Complaint Type: Of the 564 complaints registered with the OCO this past year, 256 (45%) involved CPS, 99 (18%) involved foster care, 54 (10%) involved adoption services, and the remaining 27% involved various combinations of the three systems. Of the 254 complaints that were investigated, almost 80% involved CPS, foster care, or adoption services singly, while the remaining 20% involved combinations of the three. Of the 92 cases in which foster care was the primary or secondary complaint issue, 76 involved contracted services between FIA and child placing agencies.

As demonstrated in Figure 6, 126 investigations (50%) involved CPS. Another 33 investigations involved CPS, but in combination with related foster care and/or adoption issues. Foster care was cited alone in 56 investigations and was involved in combination with 36 other investigations. Adoption services were cited alone in 20 investigations and were a factor in combination with 6 other investigations.

Figure 6. Percent of investigations attributed to CPS, foster care, and adoption services.

Investigative Issues: The following summary of selected factors appeared in investigations during this reporting period:

- 113 investigations (44%) involved CPS referrals filed by mandated reporters
- 71 investigations (28%) involved children of divorce
- 68 investigations (27%) involved reports of domestic violence
- 62 investigations (24%) involved substance abuse
- 9 investigations (4%) involved a child's death
- 57 investigations (22%) involved serious physical abuse
- 55 investigations (22%) involved law enforcement agencies
- 109 investigations (43%) involved a licensed child placing agency
- 28 investigations (11%) involved reported sibling on sibling abuse

Recommendations

Method: This section contains recommendations arising from complaints investigated by the OCO during the period July 1, 1996 through June 30, 1997. Recommendations were identified by: (1) categorizing all intake complaints; (2) pooling the specific recommendations kept on each case by all investigators; (3) cross-matching all complaints with every recommendation under the guidance of a university-based research associate trained in complaint analysis and validity; and (4) counting the occurrence of each recommendation with each investigation opened during the reporting period.

Selected recommendations appear in boldface and are followed by the applicable investigations and, if warranted, additional explanation or context. Because there were over 250 preliminary recommendations, it was decided to include only those with at least 20 total applicable investigations with one exception being the recommendation concerning drug-exposed infants.

A. Aid to Dependent Children: It is recommended that public and private child welfare workers shall communicate with Family Independence Agency Specialists to verify that a parent who is receiving public assistance (ADC) but has had their child(ren) removed from their home, is either attending school or gainfully employed according to policy item 712 "The Social Contract" page 46. In 39 of 55 OCO investigations (71%) involving a parent receiving ADC, there existed documentation that the parent(s) was neither working nor attending school and their child(ren) had been removed from their home.

B. Background Checks: It is recommended that CPS investigations shall document whether background information exists indicating any violent behavior by a parent(s) or caregiver that might place a child at risk (e.g., CPS history, central registry, sex offenders registry, criminal history). FIA policy item 712 "Arrest or Criminal Conviction Information" pages 25-26

currently makes background checks optional. Of 159 CPS investigations examined by the OCO, 78 (49%) did not include background checks.

C. Central Registry: It is recommended that substantiated abuse and neglect data entered into the Central Registry shall state why a perpetrator is on the Registry. Data shall also be consistent as to the specific nature of the offense (i.e., physical abuse, sexual abuse, physical neglect, medical neglect). In 49 of 90 OCO investigations (54%) involving a parent placed on the Central Registry, the reason for substantiating abuse or neglect and the reason for being placed on the Registry did not match.

D. Child Medical Exams: It is recommended that FIA policy shall be modified to require public and private agencies to ensure every child entering foster care receives a medical examination within 72 hours, utilizing the Early Periodic Screening Diagnosis and Treatment (EPSDT) program. Current policy item 722 ("ENP/Family Reunification Fund" page 28) states that once a child is removed from home and placed into a public or private agency foster care home, the agency must ensure that the child receives a physical examination within 30 days of placement, unless the child has been examined during the past 12 months. In 59 of 92 OCO investigations (64%) concerning foster care, there was no documented physical examination of the child(ren) in either the twelve months preceding foster care, nor in the 30 days following placement.

E. CPS Investigations: It is recommended that CPS shall be authorized to prioritize investigations because the existing 21-day rule (policy item 712 "Time Frame for Completion of Investigation" page 26) does not allow adequate time to complete all abuse and neglect investigations. Such prioritizing might include: "A" category cases to be closed within 21 days; "B" category cases to be closed within 28 days; and "C" category cases to be granted special administrative extensions under specific conditions. In 48 of 126 OCO investigations (38%) involving CPS, their investigations were not concluded within the existing 21-day time frame. In 36 investigations, CPS workers reported a need for additional tools to sufficiently perform their duties.

F. Drug Exposed Infants: It is recommended that when a newborn infant tests positive for illicit drugs or alcohol and a subsequent child is born to the same parent, and that child also tests positive for illicit drugs or alcohol, the child(ren) shall be removed and a petition for termination of parental rights shall be filed. In 11 of 18 OCO investigations (61%) where CPS substantiated cases involving infants born with illicit drug or alcohol exposure, another drug or alcohol exposed infant was also born to the same parent(s).

G. FIA Legal Representation: It is recommended that state law and rule shall establish legal representation of FIA in all child protection proceedings. The OCO investigated 24 cases in which FIA was not legally represented in corresponding child protection court proceedings.

H. Friend of the Court Records: It is recommended that Friend of the Court

reports shall be allowed into evidence in child protection proceedings. The OCO investigated 71 cases involving children whose custody and visitation were monitored by the Friend of the Court. Currently such reports (which could corroborate allegations in a child protection proceeding) are not admissible in a child abuse and neglect court proceeding.

I. *Inconsistent Explanations for Injuries:* It is recommended that policy governing CPS investigations shall more heavily weight inconsistent explanations of a child's injuries as a major risk factor in investigative decisions. In 13 of 40 OCO investigations (32%) where inconsistent explanations were documented, the inconsistent explanations were not resolved.

J. *Legal Representation of Children:* It is recommended that: (1) public and private agency caseworkers shall inform the court when they learn that a child's attorney's legal duty to "observe and interview" the child and consult with foster parents and the caseworker (as required by *MCL 712A.17c*) has not been met; and (2) judges inquire at each review, disposition, and permanency hearing whether pursuant to *MCR 5.915(B)(2)*, the child's attorney has consulted with the child(ren)'s foster parent(s) and caseworker before each hearing. In 42 OCO investigations, it was documented that the child's attorney did not meet or consult with the child, foster parents or child's caseworker.

K. *Live-Together-Partners:* It is recommended that state law shall be changed to require

live-together-partners (LTP's) to participate in parent/agency agreements. In 40 of 50

OCO investigations (80%) involving LTP's (typically boyfriends), the LTP was not subject

to court orders, P/AA, or treatment plans involving the birth parent and child(ren) with

whom s/he lived.

L. *Medical Evidence of Abuse:* It is recommended that CPS shall document and/or report all medical evidence concerning a child abuse or neglect allegation, even when the caseworker does not personally observe the injury. In 8 of 21 OCO investigations (38%) involving documented medical evidence of physical abuse not personally observed by the CPS worker, the worker did not substantiate the abuse, despite the documented finding by a medical professional that abuse was the probable cause of injury.

M. *Parent Agency Agreements:* It is recommended that: (1) parent agency agreements (P/AA) shall be made part of court orders following each review hearing; (2) public and private agencies shall report to the court each documented sign of parental non-compliance with court-ordered P/AA's;

and (3) the legal standard of parental compliance necessary to reunify children with their parent(s) shall include substantial completion of the tasks and expectations outlined in the P/AA and court orders. In 76 of 103 OCO investigations (74%) involving P/AA's, there was documented non-compliance by the parent(s) with the terms of the P/AA and corresponding court orders. In 41 of these cases, it was documented that significant obstacles to achieving permanency for the child existed. To effectively assess parental progress, important distinctions between non-compliance, "just in time" compliance, and compliance without progress are necessary.

N. Parental Rights: If a parent(s) has a CPS history and voluntarily relinquishes parental rights in lieu of having rights involuntarily terminated, it is recommended that FIA policy item 712 "Referral from FC to CPS" page 71 shall be revised to require CPS to consider the history and circumstances of the voluntary relinquishment when conducting an investigation on future children of the same parent(s). In 13 of 47 OCO investigations (28%) in which termination of parental rights was sought on a child, it was found that the parents voluntarily relinquished parental rights because of pending involuntary termination proceedings, and subsequently gave birth to another child(ren) who was later involved in a separate child protection proceeding.

O. Prevention Services: It is recommended that CPS shall be required to make a prevention services referral within 5 days if an allegation of child abuse or neglect is unsubstantiated, but in which prevention or support services are recommended by the investigating worker. Current FIA policy item 712 "Completion of Field Investigation Overview" page 27 does not require that a specific time frame be met for prevention referrals. In 24 of 48 OCO investigations (50%) where a CPS worker unsubstantiated a case but recommended prevention services, more than five days elapsed before the referral was made.

P. Relative Placements: It is recommended that when a child is to be placed in foster care, the worker shall attempt to examine relative placements within 45 days (or within 48 hours in cases where a relative comes forward), to determine if the relative is capable of providing care for the child. In 37 of 92 OCO investigations (40%) involving foster care, prospective relative placements were not examined within 45 days of the child(ren)'s removal from his/her home (see policy item 722 "Placement with Relatives" page 11).

Q. Sibling on Sibling Abuse: It is recommended that FIA policy item 712 "Investigation by the Agency" page 6 shall be clarified to require substantiation of parental failure to protect in cases of "sibling on sibling" abuse when the abuse is known by a parent(s) who did not act to protect the child victim. Current policy states that in cases of sibling on sibling sexual abuse, CPS is "required by law to provide a report to the prosecuting attorney and to involve law enforcement officials within 24 hours" In 22 of 28 OCO investigations (78%) in which sibling on sibling abuse occurred, the parent knew of the abuse, failed to take appropriate protective action, and was not cited for

failure to protect the child.

R. *Supervising Contracted Services:* It is recommended that: (1) stronger supervision of contractual services shall occur between public and private agencies to improve mutual accountability; and (2) the supervising agency shall monitor and document progress and performance in each child's case file, noting any agreement or disagreement, including efforts to resolve any disagreements. In 40 of 109 OCO investigations (37%) involving purchased services, contractual problems existed but were not corrected through supervision.

S. *Transmitting Child Information:* It is recommended that all relevant history and case information shall be provided to private agencies when a child is placed with such agencies so as to improve the basis for treatment plans and disclose any problems that may occur or recur during placement. In 38 of 92 OCO investigations (41%) in which foster care services were contracted out to a licensed child placing agency, it was documented that information on the child's treatment and behavior was not transmitted to the private agency (e.g., medical history, CPS history, treatment history).

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Appendices

Appendix A - Acknowledgments

I wish to thank Governor John Engler for the opportunity to serve as Michigan's Children's Ombudsman and for his leadership in improving child protection. I am also grateful to Lt. Governor Connie Binsfeld for her leadership in translating her Children's Commission recommendations into concrete changes benefiting Michigan's children.

I wish to thank the State Senators and State Representatives of the Michigan Legislature, and their respective staffs, for their continuing interest in our office. I also wish to acknowledge the assistance of many individuals and organizations during our second year, including:

Marva Livingston Hammons, Director, FIA

James Haveman, Director, Community Health

Frank Kelley, Attorney General

Bill Long, Executive Director, Michigan Federation of Private Child and Family Agencies

John Lopez, Director, Department of Civil Service

Mark Murray, Interim Director, FIA and Director, Department of Management and Budget

Colonel Michael Robinson, Director, Michigan State Police

Kathy Wilbur, Director, Department of Consumer and Industry Services

Space does not permit satisfactory recognition of the countless people who played a significant role in the origins, development, and continuing work of the Children's Ombudsman office. We are most appreciative to the many individuals who have been available and accessible for expert advice and training. We are grateful to all who took an interest in our office and who have any rightful claim to our successful teamwork. Additional special thanks goes to Dr. Sharon Dodson for her technical assistance in helping produce this report. Our sincere regrets to anyone we may have overlooked or who deserves more specific mention than we are able to record here.

Finally, I am deeply indebted to the professionals who compose the Children's Ombudsman team. Their expert workmanship in helping at-risk children is nothing short of outstanding. Theirs is a legacy of public service at its best.

Richard S. Bearup

Appendix B - Summary of Progress: Annual Report Recommendations 1995-96

What follows are the documented administrative responses of the Family Independence Agency (FIA) and the Department of Consumer and Industry Services (CIS) to the recommendations of the Children's Ombudsman's 1995-1996 annual report. Also included are references to any Senate or House bills sponsored to date that also address these recommendations.

	RECOMMENDATION	PROGRESS
1	Adoptions: The Ombudsman recommends that payment incentives for adoption agencies shall be revised to encourage proper incentives to improve permanent placement prospects for special needs children.	FIA agreed with this recommendation and payment incentives are offered to private agencies for placing children in adoptive homes according to specific time tables.
2	Confidentiality: The Ombudsman recommends that state law shall change confidentiality requirements governing child protection cases in order to increase public accountability and improve child protection. Such case file information shall ultimately be subject to the provisions of the Freedom of Information Act (FOIA).	FIA partially agreed with this recommendation. CIS agreed with this recommendation. House Bill 6184 allows exceptions to the confidentiality provisions in cases only where a child died, criminal charges have been filed, the Probate Court has taken jurisdiction over the case or the case has otherwise been made public by the media.
3	Foster Care: The Ombudsman recommends that CPS shall promptly transmit all available, pertinent information about a child to foster care providers and parents. FIA shall also re-examine	FIA agreed with these recommendations. CIS agreed with these recommendations. Senate Bill 490 would allow foster parents to have access to all current and prior reports filed with the court on a child.

	the process by which this information is transmitted.	Implementation of the Lt. Governor's "medical passports" would also facilitate sharing of a child's medical history to foster care providers.
4	Relative Placement: The Ombudsman recommends that the definition of suitable relative placements be expanded to explain what degree of relationship is acceptable and desirable when considering placement for a child. The option of placing a child with a friend of the family who has "relative status" shall also be provided, building upon the work already begun by FIA's Kinship Care program.	FIA agreed with these recommendations. CIS agreed with these recommendations. Establishment of FIA policies relevant to the FIA Kinship Care program are underway.
5	Termination: The Ombudsman recommends that when children are removed from the home for a second time, the presentation of a petition to terminate parental rights at the initial disposition hearing shall occur.	FIA disagreed with this recommendation.
6	Supervision: 1.) The Ombudsman recommends that CPS supervisors shall exercise improved interactive case supervision and management of line worker investigations. FIA shall review existing case supervision practices and consult with workers, supervisors, and mandated reporters for suggested improvements. 2.) The Ombudsman recommends that FIA shall improve supervision of private foster care agencies and their agreements, recommendations, decisions and actions for a children in placement.	FIA agreed with these recommendations and described plans to improve monitoring of private agencies. While no policy has yet been implemented, FIA has undertaken a department-wide "re-engineering" effort. Senate Bill 544 would require FIA to publish an annual report card for each private agency, as well as each FIA county office, regarding their achievements of permanency for children. CIS agreed with the second part of this recommendation.
7	Expediting Permanency: The Ombudsman recommends that state law and policy shall allow for greater discretionary and expedited termination of parental rights.	FIA agreed with this recommendation and stated that "additional changes to expedite the process (<i>of termination</i>) in serious abuse will be sought." Senate Bill 544 would make it the responsibility of the "supervising agency" to strive to achieve a permanent placement for each child no more than 12 months after the original petition is filed.
8	Monitoring: The Ombudsman recommends that extended leaves of absence from a county by a family with an active CPS case shall be systematically monitored using the new SWSS (Service Worker Support System) case management system.	FIA agreed with this recommendation; action pending.
9	Parental/Caregiver Instability: The Ombudsman recommends that parental willingness and capacity to change receive greater prominence in child abuse and neglect prevention and intervention efforts, including	FIA agreed with this recommendation.

	decisions to terminate parental rights.		
10	Parental/Caregiver Non-Compliance: The Ombudsman recommends that parents and LTPs shall be required to comply with conditions of a service plan in child abuse and neglect cases, with appropriate consequences if they do not. Parents or caregivers whose non-compliance consists of unavailability for home visits shall be reported to the court. Parents or caregivers who substantially fail to comply with the P/AA shall be held accountable by the filing of a petition to terminate parental rights.		FIA agreed with these recommendations. CIS agreed with the second and third recommendations.
11	Parents in Prison: The Ombudsman recommends that the probate court shall be petitioned for termination of parental rights when a parent is to be incarcerated for more than one year and has not arranged for the legal and custodial care of their child(ren).		FIA will review this recommendation.
12	Services: The Ombudsman recommends that once a petition for termination of parental rights is filed, the door shall be closed to services for the parents or caregivers until the petition is adjudicated or unless otherwise ordered by the probate court.		FIA agreed with this recommendation. Senate Bill 490 would prohibit "parenting time" where the petition seeks termination of parental rights, unless it is not in the child's best interests.
13	Substantial Abuse and Neglect: The Ombudsman recommends that state law shall establish a presumption to petition for termination of parental rights in cases of substantial abuse or neglect.		FIA agreed with this recommendation. Senate Bill 516 defines the situations in which FIA would be mandated to file a petition with probate court for termination of parental rights.
14	Family Preservation: The Ombudsman recommends that state policy shall require that family preservation programs not be used in cases involving child sexual abuse or serious physical abuse.		FIA agreed with this recommendation. Senate Bill 169 prohibits the use of state funds for family reunification efforts in cases where the child would be placed back in the home with an adult perpetrator of incest, unless otherwise ordered by the court.

15	Substance Abuse: The Ombudsman recommends that FIA and the Department of Community Health (DCH) shall develop coordinated policy and practice outcomes relative to the detection and treatment of parental and caregiver substance abuse in cases involving		FIA agreed with this recommendation.
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	child abuse and neglect.		
16	<p>Fact Finding: The Ombudsman recommends that CPS shall require and sustain, through clear policy and improved training, that strong investigative techniques shall complement applied social work in CPS investigations.</p>		FIA agreed with this recommendation.
17	<p>History of Abuse and Neglect: 1. The Ombudsman recommends: (1) that the law change to include the child, siblings of the child or other children living in the household, in order to account for the abuse of children in the home of "blended families;" (2) that a statutory provision be added to provide for termination in cases where a parent has been convicted of physically or sexually abusing any child in their care; and (3) that state law and rule shall be amended to allow for the termination of parental rights in situations where a parent or LTP has physically or sexually abused any child living in the same household or otherwise subject to that persons care.</p> <p>2. The Ombudsman recommends that CPS shall be required to determine if a given family has been previously involved with CPS in other counties, using the new SWSS system.</p>		FIA agreed with these recommendations. Senate Bill 516 would allow termination of parental rights when a parent is convicted of a crime whose victim is a child and the nature of the crime makes the parent unfit to associate with children.

18	<p>"Indicated" Abuse and Neglect: The Ombudsman recommends that CPS shall be authorized to reach one of three investigative decisions: substantiated, unsubstantiated and a recommended new category called "indicated."</p>		<p>FIA will review this recommendation, along with several other proposals to create three or four different categories in CPS.</p>
19	<p>Perpetrator Unknown Standard: The Ombudsman recommends that CPS shall more frequently employ the "substantiated-perpetrator unknown" standard when a preponderance of evidence shows child abuse has occurred, but the perpetrator's identity is not known, to provide on-going protection and treatment for the at-risk child(ren).</p>		<p>FIA will review this recommendation. Although current FIA policy allows for substantiation when the perpetrator is unknown, the Ombudsman found that in 42.3% of applicable cases (that the Ombudsman investigated between 1995-96), they did not employ this option.</p>
20	<p>Polygraphs: The Ombudsman recommends that polygraph test results shall not serve as exclusive grounds to close out a CPS investigation.</p>		<p>FIA agreed with this recommendation. CIS agreed with this recommendation. The Ombudsman found that in 29.9% of cases (that the Ombudsman investigated between 1995-96) were closed based solely upon polygraph results.</p>
21	<p>Protocol for Investigation: The Ombudsman recommends that county child protection officials shall formally implement the requirements for coordinated investigations of child abuse and neglect, according to the protocol developed by the Governor's Task Force on Children's Justice.</p>		<p>FIA agreed with this recommendation. CIS will review this recommendation and incorporate protocol where applicable. Senate Bill 503 would require the implementation of the Lt. Governor's task Force on Children's Justice's "A Model Child Abuse Protocol," which calls for coordinated CPS investigations.</p>

22	<p>Quality Assurance Reviews: The Ombudsman recommends that in addition to current existing supervisory review, FIA shall provide for additional quality assurance performance reviews of all CPS cases -- whether substantiated, unsubstantiated or "indicated" -- using random sample techniques.</p>		<p>FIA agreed with this recommendation and implemented the Child Protection Assessment project in 1997, which will review 600 randomly selected CPS cases from across Michigan. CIS agreed with this recommendation.</p>
23	<p>Referrals to Law Enforcement: The Ombudsman recommends that CPS shall comply with its legal obligations to refer reported child sexual abuse allegations to law enforcement within 24 hours of a complaint. State law shall provide for a consistent legal definition and standard of practice between CPS and law enforcement concerning this reporting obligation. FIA shall provide appropriate education and training to its workers to help ensure compliance and consistency of standards and practice.</p>		<p>FIA will review these recommendations.</p>
24	<p>Related Criminal Investigations: The Ombudsman recommends that CPS shall not close their investigation based exclusively on police decisions to close out a related criminal investigation. CPS shall emphasize through training and supervision that two very different and separate standards of evidence exist between</p>		<p>FIA agreed with these recommendations. However, the Ombudsman found that in 20.4% of cases (that the Ombudsman investigated in 1995-96), CPS did close cases based solely upon criminal case closure. CIS stated that their practices are consistent with these recommendations.</p>

	what the police must prove in a criminal case and what CPS must prove in a child abuse and neglect case.		
25	<p>Uniform Thresholds of Abuse and Neglect: The Ombudsman recommends that a comprehensive and uniform threshold shall be established to govern what all CPS offices do and do not accept for investigation. Using the Task Force on Children's Justice protocol for coordinated investigations, FIA shall review models of improved risk assessment tools for child abuse and neglect to improve investigative decisions and implement corresponding pilot programs in a cross-section of counties.</p>		FIA agreed with these recommendations and stated that they have been working in conjunction with the National Council on Crime and Delinquency to develop a statistically valid risk assessment tool to use from CPS referral through adoption. CIS agreed with these recommendations.
26	<p>Face-to-Face Contacts: The Ombudsman recommends that CPS shall make face-to-face contact with parents, caregivers, LTPs, and alleged victims prior to closing investigations.</p>		FIA agreed with this recommendation and issued policy that clarifies the steps to be taken when face-to-face contact has not occurred. CIS stated that their practices are consistent with this recommendation.
27	<p>Interviewing Children: The Ombudsman recommends that CPS consistently interview children out of the presence of an alleged perpetrator and be given the statutory authority to do so.</p>		FIA agreed with this recommendation. CIS stated that their practices are consistent with this recommendation. Senate Bill 515 would prohibit the interviewing of a child in the presence of the alleged perpetrator.
28	<p>Maintaining Records: The Ombudsman recommends that CPS file information, specifically screened out referrals and</p>		FIA will review this recommendation.

	<p>unsubstantiated allegations, shall be retained for at least five years from the date of the most recent referral. This retained information shall not constitute a registry, as with retained substantiations, but rather serve as a subsequent investigative case record only.</p>		
29	<p>Maximum Attempted Contacts: The Ombudsman recommends that CPS shall establish a maximum attempted contacts policy for investigations, including corresponding consequences and actions to be taken, by either filing a petition and/or alerting law enforcement.</p>		<p>FIA agreed with this recommendation.</p>
30	<p>Preparing Court Testimony: The Ombudsman recommends that public and private child welfare agencies strengthen worker training in preparing for court testimony.</p>		<p>FIA agreed with this recommendation.</p>
31	<p>Unannounced Home Visits: The Ombudsman recommends continued unannounced home calls during any CPS cases where the child is not removed. FIA shall review requiring such home visits for all open, active CPS cases.</p>		<p>FIA will review these recommendations, action pending review of the costs involved with such a commitment.</p>
32	<p>Victim's Statements: The Ombudsman recommends: (1) that a child's denial of abuse shall not be the exclusive reason for closing a CPS investigation, especially</p>		<p>FIA agreed with these recommendations and stated that it is current practice. Further, FIA issued a policy clarification bulletin on the guidelines for investigations in cases where children deny abuse. However, the Ombudsman found that in 40.7% of cases (investigated by the Ombudsman between 1995-96), CPS did close a case solely based upon the child's denial that the abuse</p>

	in cases involving repeat injuries; and (2) that CPS be required to obtain a child's explanation of an injury and accord weight to such explanations, particularly when they do not coincide with that of the parent or caregiver.		occurred. CIS stated their practices are consistent with these recommendations.
33	Injury Recognition: The Ombudsman recommends that CPS workers shall participate in entry-level and in-service training by medical professionals in child injury recognition and identification. It is also recommended that the Michigan State Medical Society and the American Academy of Pediatrics - Michigan Chapter be approached to help develop the curriculum and training.		FIA agreed with these recommendations and stated that it is involving workers in continuous training.
34	Medical Exams for Young Children: The Ombudsman recommends that FIA shall expand the use of standardized medical examinations for young children, particularly age 5 and younger, for whom a report of abuse has been received.		FIA agreed with this recommendation, action pending.
35	Medical History: The Ombudsman recommends that a child's medical history, to the extent available, shall accompany him/her into foster care at the time of placement and be shared with the foster parents.		FIA agreed with this recommendation. FIA is working on implementing "medical passports" as recommended by the Lt. Governor's Commission.
36	Neo-Natal Drug Screens: The Ombudsman recommends that state		FIA will review this recommendation. They are currently monitoring the impact of a law that took effect on 3/31/97, which requires mandatory reporters to report suspected drug or alcohol exposure to CPS for

	<p>law require neo-natal drug screening when a medical professional has reasonable suspicion that the infant has been</p> <p>exposed to illicit drugs during pregnancy and shall be required to notify CPS should a positive drug screen result.</p>		<p>investigation.</p>
37	<p>Required Medical Exams: The Ombudsman recommends that foster care providers shall ensure compliance by caregivers for court-ordered, or otherwise required, medical check-ups for children.</p>		<p>FIA will review this recommendation. No current policy is in place to ensure that children's medical needs are being followed-up.</p>
38	<p>Accelerated Appellate Process: The Ombudsman recommends that the appellate process for termination of parental rights shall be accelerated.</p>		<p>FIA agreed with this recommendation. CIS agreed with this recommendation. Senate Bill 516 would require that the court render its decision on a petition for termination of parental rights within 70 days after the commencement of the initial termination hearing on the petition.</p>
39	<p>Children's Attorneys: The Ombudsman recommends that court-appointed attorneys shall be held more accountable to current legal and professional standards of representation in child welfare proceedings.</p>		<p>FIA agreed with this recommendation. Senate Bill 516 would require that the child's attorney be present at all hearings and shall not substitute counsel unless the court approves. The bill also states that the court may not discharge the attorney until permanency for the child has been achieved (i.e., child is adopted, has a permanent guardian, etc.)</p>
40	<p>Collaboration: The Ombudsman recommends that CPS and FOC collaborate in their investigations and coordinate their respective recommendations involving the same children.</p>		<p>FIA will review this recommendation and acknowledged the need for greater collaboration with Friend of the Court.</p>
41	<p>Mandated Reporters:</p>		<p>FIA will review this recommendation. Senate Bill 515</p>

	The Ombudsman recommends that state law and rule shall be amended to permit and, upon request, require confidential feedback and progress reports from CPS to mandated reporters thereby improving mutual lines of communication in the best interests of children.		would require FIA to inform the reporting person of the disposition of the investigation (i.e., whether the report has been substantiated and the rationale.) CIS agreed with this recommendation.
42	Reasonable Efforts: The Ombudsman recommends: (1) that the State Court Administrator's Office work with FIA and other interested parties and institutions to develop a consistent, working definition of "reasonable efforts;" (2) FIA shall continue to review child outcomes and conduct more detailed research to determine the effectiveness of all prevention, intervention and treatment child welfare programs; (3) in measuring effectiveness, how the goal of family preservation is being interpreted at the line workers level shall be examined; and (4) other outcomes shall be measured, including the number and mix of prior CPS referrals on the family (if any) received since their completion and compliance with other services provided to the family.		FIA agreed with these recommendations.

Appendix C - Organizations Supporting Ombudsman 1995-1996 Recommendations

During 1997, a number of associations and organizations formally endorsed most

recommendations contained in the first annual report of the Children's Ombudsman, including:

Association for Children's Mental Health

Boysville of Michigan

CARE House Assessment Center of Oakland County

Catholic Social Services of Kent County

Child Abuse and Neglect Council, County of Oakland, Inc.

Child and Family Services of the Upper Peninsula, Inc.

Children's Assessment Center (Kent County)

Children's Charter of the Courts, Inc.

Children's Law Center, Grand Rapids

Detroit Police Department, Child Abuse Unit

Foster Care Review Boards, State Court Administrator's Office

Kids Count of Michigan

Lutheran Child and Family Service of Michigan

Lutheran Social Services of Michigan

Michigan Association of Court Appointed Special Advocates (CASA)

Michigan Coalition for Children and Families

Michigan Committee for the Prevention of Child Abuse

Michigan Council for Maternal and Child Health

Michigan Federation of Private Child and Family Agencies

Michigan Foster and Adoptive Parents Association

Michigan Protection and Advocacy Service

Michigan Right to Life

Wayne County Neighborhood Legal Services, Inc.

Wedgewood Christian Services, Inc.

Appendix D - Statutory Tools of the Children's Ombudsman Act

Two of the primary missions of the Children's Ombudsman are to conduct investigations and make recommendations. Achieving these objectives are made possible by using the 10 investigative tools provided in PA 204:

1. Authority to investigate "administrative acts" (defined by *Section 2(a)* as an "action, omission, decision, recommendation, practice or other procedure of the department [FIA], an adoption attorney, or a child placing agency").
2. Discretion to investigate or review a complaint [*Section 6(b)*].
3. Authority to hold informal hearings [*Section 6(d)*].
4. Right to petition a Probate Court to either take jurisdiction, or terminate parental rights, with the corresponding responsibility to offer the court evidence supporting such petitions. (Petitioning is contingent on the actions/decisions of protective services, prosecutor, and child's attorney [*Section 7(5)*].)
5. Access to confidential records of all children in protective services, foster care, and adoption [*Section 8*].
6. Exemption from court subpoena and the Freedom of Information Act [*Section 9*].
7. Ability to disclose confidential information only where "disclosures may be necessary to enable the Ombudsman to perform the duties of the office and to support any recommendations resulting from an investigation" [*Section 9*].
8. Report findings and recommendations of specific case investigations [*Section 10(1)*] according to procedures established by the Ombudsman.
9. Report recommendations for reform to the Governor, Legislature, and FIA Director. [*Section 10(5), Section 6(e)*].
10. Retaliation and sanctions against persons cooperating with the Ombudsman is expressly prohibited by law. The law further states that no one may hinder the lawful work of the Ombudsman or his/her office [*Section 11*].

In addition, the Ombudsman must refer suspected criminal conduct to the Attorney General or county prosecutor [*Section 7(2)*]. Suspected adoption attorney misconduct must be reported to the State Bar Grievance Commission [*Section 7(2)*].

Appendix E - Team Training (7/01/96 - 6/30/97)

- Polygraph Training--Michigan State Police
- Child Protection Team Training--Children's Hospital of Michigan (Detroit)
- Adoption Training--MARE (Michigan Adoption Resource Exchange)
- Child Mental Health Training--Association for Children's Mental Health

- Legal Issues Training--Children's Law Center (Grand Rapids)
- National Center on Child Abuse and Neglect (NCCAN)
- American Professional Society on the Abuse of Children (APSAC)
- Child Interviewing Training--CARE House (Pontiac)
- Adoption Training--State Bar of Michigan
- False Allegations Training--Prosecuting Attorneys Association of Michigan (PAAM)
- Specialized Child Abuse Training-- Child Deaths--PAAM
- Safety Seminar--Michigan State Police
- Child Abuse Psychology Training--Michigan State Police
- SCAN (Scientific Content Analysis) Training--Laboratory of Scientific Interrogation
- Advanced SCAN Training--Laboratory of Scientific Interrogation
- Foster Care Training--Lutheran Social Services of Michigan
- Protective Services Training--Ingham County FIA
- Court Rules Training--Ingham County Probate Court
- Risk Assessment--Children's Hospital of Michigan (Detroit)
- Child Protection Team Training--University of Michigan Medical Center
- Interviewing Techniques--Oakland Police Academy
- Court Appointed Special Advocate (CASA) Training
- Child Maltreatment Training--DeVos Children's Hospital of Butterworth Hospital
- Medico-Legal Investigation of Death--Michigan State Police/Wayne County Medical Examiner
- Child Abuse Detection Training--Detroit City Police, Child Abuse Unit
- Childhood Trauma and Attachment Training--PAAM
- Specialized Child Abuse Investigation and Forensic Interviewing--PAAM
- Investigating False Allegations of Child Abuse--Oakland Police Academy

- Investigative Techniques--Michigan State Police
- Conflict Resolution Training--Children's Hospital of Michigan (Detroit)
- Child Victims and Perpetrators--Governor's Task Force on Children's Justice
- Child Abuse and Neglect Training--American Academy of Pediatrics, Michigan Chapter

Appendix F - Public Act 204 of 1994

Act No. 204

Public Acts of 1994

Approved by the Governor

June 20, 1994

Filed with the Secretary of State

June 21, 1994

STATE OF MICHIGAN

87TH LEGISLATURE

REGULAR SESSION OF 1994

Introduced by Senators Welborn, Dingell, Geake, Cisky, Dillingham, Gougeon, McManus, Wartner, Bouchard, DeGrow, Pridnia, Honigman, Gast, Hoffman, Arthurhultz, and Hart

ENROLLED SENATE BILL No. 723

AN ACT to create a children's ombudsman; to prescribe the powers and duties of the children's ombudsman, certain state departments and officers, and certain county and private agencies serving

children; and to provide remedies from certain administrative acts.

The People of the State of Michigan enact:

Sec. 1. This act shall be known and may be cited as "the children's ombudsman act."

Sec. 2. As used in this act:

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

(b) "Adoption attorney" means that term as defined in section 22 of the adoption code, being section 710.22 of the Michigan Compiled Laws.

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

(d) "Child placing agency" means an organization licensed or approved by the department of social services under Act No. 116 of the Public Acts of 1973, being sections 722.111 to 722.128 of the Michigan Compiled Laws, to receive children for placement in private family homes for foster care or adoption and to provide services related to adoption.

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

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

(g) "Department" means the department of social services.

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

(i) "Official" means an official or employee of the department or a child placing agency.

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

Sec. 3. (1) As a means of monitoring and ensuring compliance with relevant statutes, rules, and policies pertaining to children's protective services and the placement, supervision, and treatment of children in foster care and adoptive homes, the children's ombudsman is created as an autonomous entity in the department of management and budget. The ombudsman shall exercise its powers and duties, including the functions of budgeting and procurement and other management-related functions, independently of the director of the department of management and budget.

(2) The ombudsman shall be appointed by the Governor and shall serve at the pleasure of the Governor.

Sec. 4. (1) The ombudsman shall establish procedures for budgeting, expending funds, and employing personnel. Subject to annual appropriations, the ombudsman shall employ sufficient personnel to carry out the duties and powers prescribed by this act.

(2) The ombudsman shall establish procedures for receiving and processing complaints from complainants, conducting investigations, holding hearings, and reporting findings resulting from investigations.

Sec. 5. All of the following individuals may make a complaint to the ombudsman with respect to a particular child, alleging that an administrative act is contrary to law, rule, or policy, imposed without an adequate statement of reason, or based on irrelevant, immaterial, or erroneous grounds:

(a) The child, if he or she is able to articulate a complaint.

- (b) A biological parent of the child.
- (c) A foster parent of the child.
- (d) An adoptive parent or a prospective adoptive parent of the child.
- (e) A legally appointed guardian of the child.
- (f) A guardian ad litem of the child.
- (g) An adult who is related to the child within the fifth degree by marriage, blood, or adoption, as defined in section 22 of the adoption code, being section 710.22 of the Michigan Compiled Laws.
- (h) A Michigan Legislator.
- (i) An attorney for any individual described in subparagraphs (a) to (g).

Sec. 6. The ombudsman may do all of the following:

- (a) Upon its own initiative or upon receipt of a complaint from a complainant, investigate an administrative act that is alleged to be contrary to law or rule, or contrary to policy of the department or a child placing agency, imposed without an adequate statement of reason, or based on irrelevant, immaterial, or erroneous grounds.
- (b) Decide, in its discretion, whether to investigate a complaint.
- (c) Upon its own initiative or upon receipt of a complaint from a complainant, conduct a preliminary investigation to determine whether an adoption attorney may have committed an administrative act that is alleged to be contrary to law, rule, or the Michigan rules of professional conduct adopted by the Michigan supreme court.
- (d) Hold informal hearings and request that individuals appear before the ombudsman and give testimony or produce documentary or other evidence that the ombudsman considers relevant to a matter under investigation.
- (e) Make recommendations to the Governor and the legislature concerning the need for protective services, adoption, or foster care legislation.

Sec. 7. (1) Upon rendering a decision to investigate a complaint from a complainant, the ombudsman shall notify the complainant of the decision to investigate and shall notify the department, adoption attorney, or child placing agency of the intention to investigate. If the ombudsman declines to investigate a complaint or continue an investigation, the ombudsman shall notify the complainant and the department, adoption attorney, or child placing agency of the decision and of the reasons for the ombudsman's action.

(2) If the preliminary investigation described in section 6 leads the ombudsman to believe that the matter may involve misconduct by an adoption attorney, the ombudsman shall immediately refer the complaint to the attorney grievance commission of the state bar of Michigan.

(3) The ombudsman may advise a complainant to pursue all administrative remedies or channels of complaint open to the complainant before pursuing a complaint with the ombudsman. Subsequent to the administrative processing of a complaint, the ombudsman may conduct further investigations of any complaint upon the request of the complainant or upon the ombudsman's own initiative.

(4) If the ombudsman finds in the course of an investigation that an individual's action is in violation of state or federal criminal law, the ombudsman shall immediately report that fact to the county prosecutor or the attorney general. If the complaint is against a child placing agency, the ombudsman shall refer the matter to the department of social services for further action with respect to licensing.

(5) The ombudsman may file a petition on behalf of a child requesting the court to take jurisdiction under section 2(b) of chapter XIIA of Act No. 288 of the Public Acts of 1939, being section 712A.2 of the Michigan Compiled Laws, or a petition for termination of parental rights under section 19b of chapter XIIA of Act No. 288 of the Public Acts of 1939, being section 712A.19b of the Michigan Compiled Laws, if the ombudsman is satisfied that the complainant has contacted the department, the prosecuting attorney, the child's attorney, and the child's guardian ad litem, if any, and that none of these persons intend to file a petition as described in this subsection.

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

(a) Upon the ombudsman's request, grant the ombudsman or its designee access to all relevant information, records, and documents in the possession of the department or child placing agency that the ombudsman considers necessary in an investigation.

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

(c) Provide the ombudsman upon request with progress reports concerning the administrative processing of a complaint.

(2) The department, an adoption attorney, and a child placing agency shall provide information to a biological parent, prospective adoptive parent, or foster parent regarding the provisions of this act.

Sec. 9. The ombudsman shall treat all matters under investigation, including the identities of recipients or individuals from whom information is acquired, as confidential, except so far as disclosures may be necessary to enable the ombudsman to perform the duties of the office and to support any recommendations resulting from an investigation. A record of the office of the ombudsman is confidential, shall be used only for purposes set forth in this act, and is not subject to court subpoena. A record of the office of the ombudsman is exempt from disclosure under the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

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

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

(b) An administrative act should be modified or canceled.

(c) Reasons should be given for an administrative act.

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

(2) Before announcing a conclusion or recommendation that expressly or by implication criticizes an individual, the department, or a child placing agency, the ombudsman shall consult with that individual, the department, or the child placing agency. When publishing an opinion adverse to the department or child placing agency, the ombudsman shall include in the publication any statement of reasonable length made to the ombudsman by the department or child placing agency in defense or mitigation of the action. The ombudsman may request to be notified by the department or child placing agency, within a specified time, of any action taken on any recommendation presented.

(3) The ombudsman shall notify the complainant of the actions taken by the ombudsman and by the department or child placing agency.

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

(5) The ombudsman shall submit to the governor, the director of the department, and the legislature an annual report on the conduct of the ombudsman, including any recommendations regarding the need for

legislation or for change in rules or policies.

Sec. 11. (1) An official, the department, or a child placing agency shall not penalize any person for filing a complaint or cooperating with the ombudsman in investigating a complaint.

(2) An individual, the department, an adoption attorney, or a child placing agency shall not hinder the lawful actions of the ombudsman or employees of the ombudsman.

Sec. 12. The authority granted the ombudsman under this act is in addition to the authority granted under the provisions of any other act or rule under which the remedy or right of appeal or objection is provided for a person, or any procedure provided for the inquiry into or investigation of any matter. The authority granted the ombudsman does not limit or affect the remedy or right of appeal or objection and is not an exclusive remedy or procedure.

Sec. 13. The ombudsman shall maintain a registry of adoption attorneys who provide services described in the adoption code. The ombudsman shall remove an adoption attorney from the registry under any of the following circumstances:

- (a) The attorney requests that his or her name be removed from the registry.
- (b) The attorney fails to register as provided in section 5 of the foster care and adoption services act.
- (c) The ombudsman receives notice that the attorney's license to practice law is suspended or revoked.

Sec. 14. This act shall take effect January 1, 1995.

Sec. 15. This act shall not take effect unless all of the following bills of the 87th Legislature are enacted into law:

- (a) Senate Bill No. 299.
- (b) Senate Bill No. 721.
- (c) Senate Bill No. 722.
- (d) Senate Bill No. 724.
- (e) Senate Bill No. 725.
- (f) House Bill No. 4201.
- (g) House Bill No. 4428.
- (h) House Bill No. 4614.
- (i) House Bill No. 4638.

This act is ordered to take immediate effect.

For more information, please call 1-800-MICH-FAM
To report problems or comment on this site please e-mail childombud@state.mi.us.

State of Michigan
Office of Children's Ombudsman
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