

STATE OF MICHIGAN

Office of Children's Ombudsman



**ANNUAL REPORT
2004 - 2005**



STATE OF MICHIGAN

OFFICE OF CHILDREN'S OMBUDSMAN
LANSING

JENNIFER M. GRANHOLM
GOVERNOR

VERLIE M. RUFFIN
DIRECTOR

September 2006

The Honorable Jennifer Granholm, Governor
Ms. Marianne Udow, Director, Department of Human Services
Honorable Members of the Michigan Legislature

I am pleased to submit the 2004-2005 Annual Report of the Office of Children's Ombudsman, as provided in The Children's Ombudsman Act, 1994 Public Act 204, section 10(6), which states, "*The ombudsman shall submit to the governor, the director of the department, and the legislature an annual report on the ombudsman's conduct, including any recommendations regarding the need for legislation or for change in rules or policies.*"

This report provides an overview of the activities of the Office of Children's Ombudsman from October 1, 2004, to September 30, 2005, and an analysis of the complaints received and investigated by the Office of Children's Ombudsman. This year's report also includes recommendations to assist workers in understanding the concept of "threatened harm"; assuring that eligible foster children receive Medicaid; identifying relatives for placement of foster children; and strengthening guardianships to assure permanency and stability for children.

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

Respectfully submitted,

Verlie M. Ruffin
Children's Ombudsman

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Office of Children's Ombudsman

MISSION STATEMENT

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

Investigate Complaints

Advocate for Abused and Neglected Children

Recommend Changes in Law, Policy, and Practice

Improve the Child Welfare System

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Office of Children's Ombudsman 2004 - 2005 Annual Report

This annual report discusses the work of the Office of Children's Ombudsman (OCO) during the fiscal year October 1, 2004, to September 30, 2005. The report consists of six sections: Conduct of the Office, Complaint Analysis, Complaint Process and Investigations, Analysis of Investigative Findings and Recommendations, OCO Recommendations and DHS Responses, and Appendices.

Conduct of the Office

Legal Authority

This year marks the tenth year of operation of the Office of Children's Ombudsman (OCO). The OCO is an autonomous state agency established by The Children's Ombudsman Act, 1994 Public Act 204, Michigan Compiled Laws (MCL) 722.921, et seq. In December 2004, an amended version of The Children's Ombudsman Act was enacted into law by the Michigan legislature. The amended law became effective January 3, 2005, and broadens the jurisdiction, responsibilities, and duties of the OCO. The amendments, outlined in Appendix 2, relate to the appointment of the ombudsman, the investigation of complaints, the powers and duties of the ombudsman, confidentiality and disclosure of information, and the reporting of findings and recommendations resulting from complaint investigations.

The amended version of PA 204 sec. 3 (1) establishes the Office of Children's Ombudsman "[a]s a means of effecting changes in policy, procedure, and legislation, educating the public, investigating and reviewing actions of the department, child-placing agencies, or child caring institutions, monitoring and ensuring compliance with relevant statutes, rules, and policies pertaining to children's protective services and the placement, supervision, treatment, and improving delivery of care of children in foster care and adoptive homes."

The Children's Ombudsman Act also gives authority to the OCO to "[p]ursue all necessary action, including, but not limited to, legal action, to protect the rights and welfare of a child under the jurisdiction, control, or supervision of the department, the Michigan children's institute, the family division of circuit court under section 2(a)(1) of chapter XIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, a child caring institution, or a child placing agency."

Budget

The appropriation for the fiscal year 2004-2005 was \$1,279,300. The principal expenditures were for personnel, office facilities, and technology. The OCO has 12 full-time employees, including the ombudsman, eight investigators, a supervising investigator, and two administrative staff. There are OCO offices in Lansing and Detroit.

Multidisciplinary Team

The OCO has a multidisciplinary team approach to case investigations. Investigators have diverse professional backgrounds and a broad range of experience in child welfare, including protective services, foster care supervision and licensing, law enforcement, legal practice, and family support services. Many

OCO investigators have advanced degrees, and all investigators receive ongoing training in matters related to child welfare.

Collaboration and Outreach

The OCO meets regularly with the Michigan Department of Human Services (MDHS) Office of Family Advocate and MDHS Central Office administration to discuss issues related to child welfare, such as proposed policy changes and program enhancements, OCO recommendations, or concerns arising from individual case investigations. MDHS also seeks OCO input and assistance on issues related to child welfare policy and practice.

The OCO meets on a quarterly basis with the Child Welfare Services division of the State Court Administrative Office (SCAO) to discuss initiatives related to child welfare and the courts. This includes efforts such as SCAO's Court Improvement Program aimed at improving permanency outcomes for children, and collaboration and co-sponsorship of a statewide conference in March 2005 titled "Addressing the Educational Needs of Children in Foster Care."

The ombudsman and OCO investigators serve on many boards and committees, including the governor's Children's Action Network; MDHS Program Improvement Plan committees; MDHS Public Private Partnership Initiative committees; Foster Care Review Boards; the Child Death Review State Advisory committee and Child Support Leadership Council. The OCO currently hosts the bimonthly meetings of the Michigan chapter of the American Professional Society on the Abuse of Children and its Medical Advisory Committee.

Training

The ombudsman and OCO investigators participate in a variety of trainings and conferences related to child welfare. The OCO collaborated with the Governor's Task Force on Children's Justice, SCAO, MDHS, and the Department of Education in planning a multidisciplinary conference in March 2005. In addition, the ombudsman and OCO staff gave informational presentations to state and private agencies and organizations during this report period.

In August 2005, all OCO staff received mandatory training in domestic violence, conducted by staff from the Michigan Domestic Violence Prevention and Treatment Board, as required by section 4 (3) of the amended version of PA 204.

Complaint Analysis

The primary responsibility of the Office of Children's Ombudsman is to receive and investigate complaints from individuals concerning children who are involved with Michigan's child welfare system for reasons of abuse and neglect.

Many of the complaints and inquiries made to the OCO fall outside the authority of the office, and the OCO spends a significant amount of time helping people understand the complex laws, rules, and policies that govern the child welfare system. The OCO routinely provides callers with verbal or written information and referrals to other agencies or organizations, when appropriate, to help resolve callers' concerns.

During the report period October 1, 2004, through September 30, 2005, the OCO received 782 complaints and inquiries involving 1393 children from 72 of Michigan's 83 counties.

Confidentiality

The OCO is required by law to keep the identity of complainants confidential unless the complainant gives the OCO specific permission to reveal his or her identity. The OCO's investigative records are confidential and are exempt from disclosure under the Freedom of Information Act (FOIA) and are not subject to court subpoena.

Complaint Sources

Section 4 of the amended Children's Ombudsman Act allows any individual to file a complaint with the OCO. Also effective January 3, 2005, mandated reporters were added to the list of complainants in section 5. The list now includes:

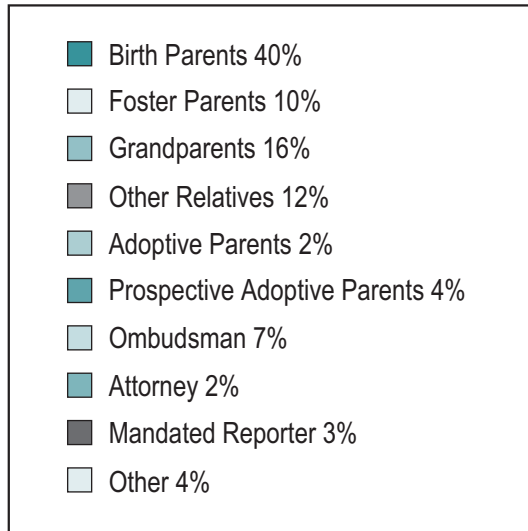
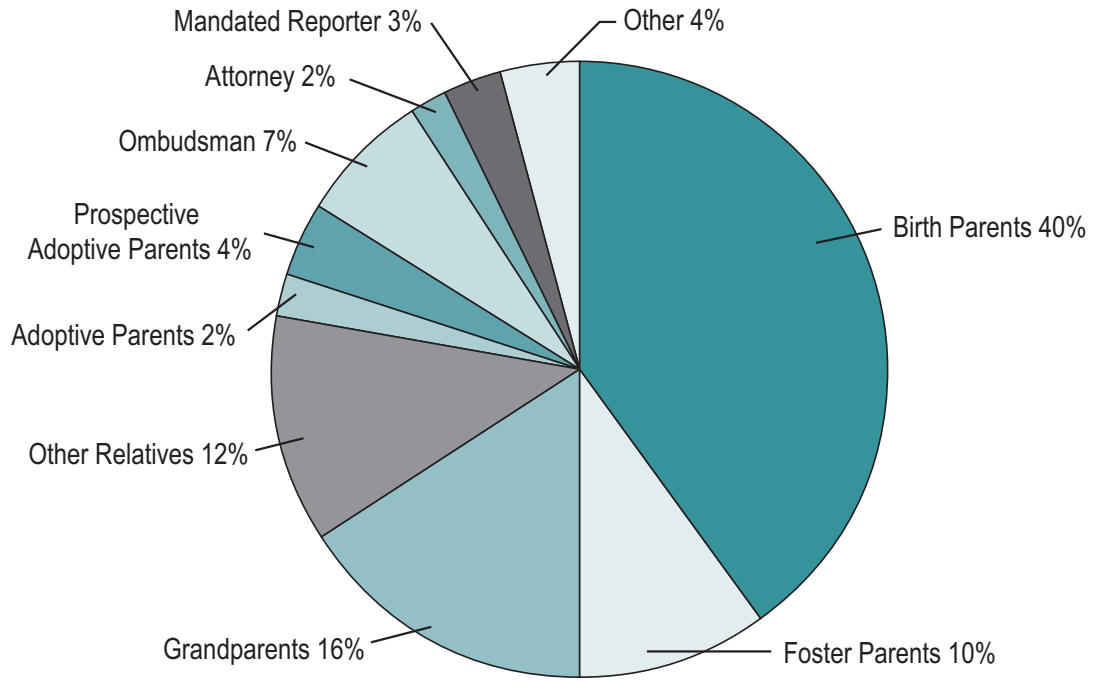
- a) The child, if he or she is able to articulate a complaint.
- b) A biological parent of the child.
- c) A foster parent of the child.
- d) An adoptive or prospective adoptive parent of the child.
- e) A legally appointed guardian of the child.
- f) A guardian ad litem of the child.
- g) An adult who is related to the child within the fifth degree by marriage, blood, or adoption.
- h) A Michigan legislator.
- i) An individual required to report child abuse or child neglect under section 3 of the child protection law.
- j) An attorney for any individual in subdivisions (a) to (g).

In addition, section 6 of the Children's Ombudsman Act gives the ombudsman the discretionary authority to open a complaint upon his or her initiative or "upon receipt of a complaint."

During this reporting period:

- The majority of complainants were birth parents 281 (40 percent), followed by relatives 201 (28 percent), and foster parents 73 (10 percent).
- The ombudsman was identified as the complainant on 48 cases (7 percent) during the reporting period.

Source of Complaints



Complaint Process and Investigations

Complaint Process

All complaints that fall within the statutory guidelines of The Children's Ombudsman Act are brought to the attention of the ombudsman. The ombudsman has discretionary authority to determine whether a complaint will be investigated and the scope of the investigation. The ombudsman may advise complainants to pursue existing remedies before determining whether a full investigation by the OCO is warranted.

Complaints generally fall into one of three categories: Inquiries, Referrals, and Valid Complaints.

Inquiries are requests for information, general concerns about aspects of the child welfare system, or specific complaints that the OCO has no statutory authority to investigate, such as custody matters, child support, or school issues.

- During this reporting period, 105 complaints were classified as inquiries.

Referrals are complaints that concern a child involved with protective services, foster care, or adoption, but the complaint involves the actions of an agency or person the OCO is not authorized to investigate, such as the court, law enforcement, or an attorney.

- During this reporting period, 118 complaints were classified as referrals.

Valid Complaints are complaints the OCO has the statutory authority to investigate and that meet investigation criteria established by the OCO. These complaints concern the actions or inactions of MDHS or a private child-placing agency related to a child who is involved with protective services, foster care, or adoption. Case investigations are time-intensive and involve a comprehensive review of case file documentation and interviews with agency staff and other sources as needed; they may also include additional activities, such as case conferences or court appearances.

- During this reporting period, 111 complaints were opened for investigation. Of these complaints, 43 involved CPS, 16 involved foster care, five involved adoption services, and 47 involved a combination of one or more of those categories.

In some circumstances a valid complaint may not be opened for investigation. For example, a complaint may concern events that occurred many years prior, and involvement by the OCO would not serve any purpose, or a complaint may involve issues that have since been addressed through new policy or law. Some complainants may request an outcome the OCO cannot provide, such as restoration of parental rights or disciplining a worker, or in some cases the complainant may disagree with the agency's actions even though there was no violation of law and policy. The OCO has established a complaint category, "valid complaint-not opened," to identify these complaints.

- During this reporting period, 371 complaints were classified as valid complaints-not opened.

Investigations

Preliminary Investigations

Some complaints may require additional information before the OCO can determine whether an investigation is appropriate or warranted. Preliminary investigations may include contact with MDHS or private agency staff or other sources, or obtaining and reading specific case file documents, such as investigation reports, service plans, or court petitions.

- During this reporting period, the OCO conducted 77 preliminary investigations and assigned 23 for a full investigation.

Requests for Action

A Memorandum of Understanding between the OCO and MDHS was developed to facilitate OCO requests for immediate action by MDHS when the OCO believes a child is at immediate risk of harm, or a child is in an inappropriate placement, or there is evidence of employee misconduct. MDHS responds to the Request for Action within five business days with the results of their intervention and a time frame for completion of the requested action.

- During this reporting period, the OCO submitted nine Requests for Action.

Completed Investigations

During this report period, the OCO completed 107 investigations involving 411 children in 37 of Michigan's 83 counties. Of these investigations, 50 involved protective services (47 percent), 19 involved foster care (18 percent), 4 involved adoption services (4 percent), and 34 involved a combination of one or more categories (31 percent).

The majority of case investigations result in either an affirmation of MDHS actions or a report of findings and recommendations.

Affirmation – The OCO concludes that the agency complied with law, rule, and policy, and a closing report is sent to the complainant and the involved agency affirming the agency's actions.

- During this reporting period, 38 investigations resulted in case affirmations.

Report of Findings and Recommendations (F&R) – If the OCO concludes that the agency did not comply with law, rule, and/or policy, or agency actions and decisions were not consistent with the case facts or the child's best interest, a report of Findings and Recommendations (F&R) is issued to MDHS and/or the involved child-placing agency. The involved agency has 60 days to review and respond in writing to the findings and recommendations outlined in the OCO report. Recommendations issued by the OCO may include training for staff on a particular MDHS policy or practice; consideration for a change of action consistent with the child's needs and case facts; changes to laws and MDHS policies, or new or amended laws and MDHS policies to better protect children.

- During this reporting period, 36 investigations resulted in reports of findings and recommendations.

Release of Findings and Recommendations to Complainants

The amended Children's Ombudsman Act expands the information the OCO may report to a complainant after an investigation has been completed. In the past, complainants defined in PA 204 sec. 5 could receive a report that included the actions taken by the OCO and the involved agency, the recommendations made by the OCO to the agency, and the agency's response. The OCO may now release its findings, as well as recommendations to sec. 5 complainants provided the information released complies with state and federal confidentiality restrictions. In addition, any complainant not listed in sec. 5 is entitled to receive a report of the recommendations made by the ombudsman and the agency's response, subject to state and federal laws governing confidentiality.

Administrative Close – In some cases the issues that brought the complaint to the OCO are resolved by the agency after the OCO has commenced an investigation. For example, the OCO may request an action by the agency, such as considering a relative for placement or changing a permanency goal. If the requested action is completed and the OCO determines that there are no additional matters that require attention, the case is closed as an administrative resolution. A closing report is sent to the complainant outlining the actions taken by the OCO and the involved agency.

- During this reporting period, 17 investigations resulted in administrative resolutions.

Exceptional Close – In some instances, the OCO determines that continued involvement by the OCO will not affect the outcome of the case, or the agency initiates corrective action after the OCO has commenced an investigation but prior to case closure. A closing report is sent to the agency and the complainant outlining the reason for case closure.

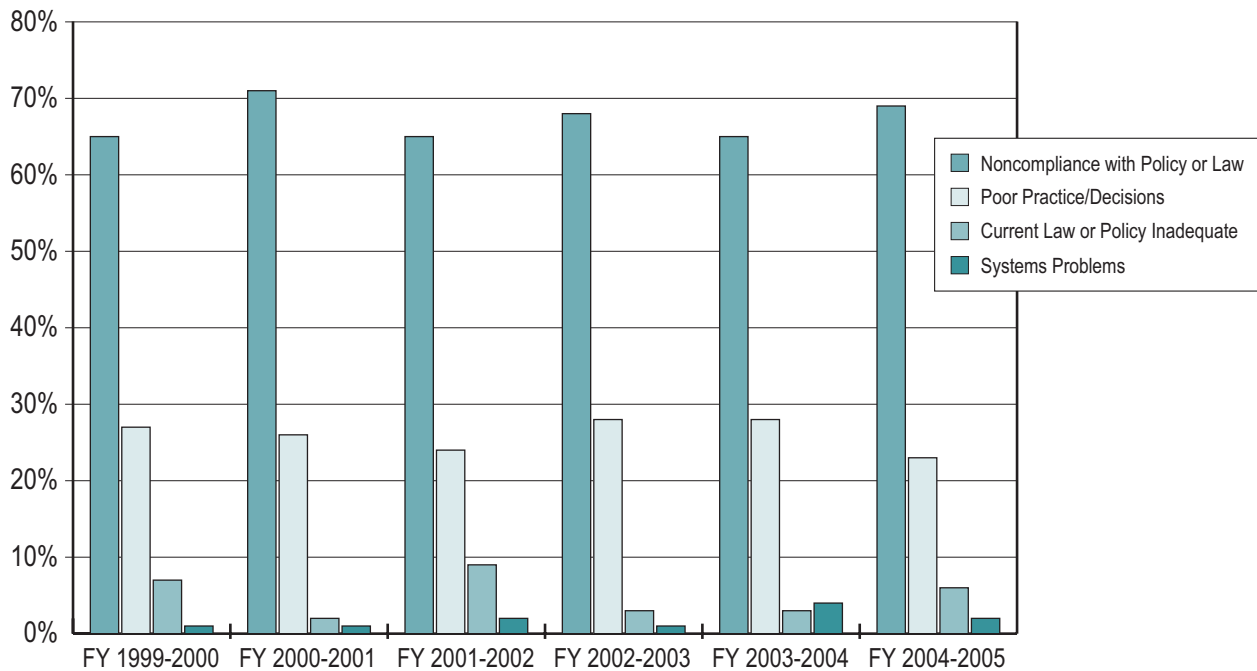
- During this reporting period, 16 investigations resulted in exceptional closings.

Analysis of Investigative Findings and Recommendations

The OCO issued 36 reports of Findings and Recommendations to MDHS and/or private child-placing agencies during this reporting period. The reports included a total of 159 individual findings and corresponding recommendations. The findings are grouped into four main categories:

- **Noncompliance with law or policy (109 Findings)**
- **Poor practice/decision making (37 Findings)**
- **Current policy/law inadequate (9 Findings)**
- **Systems problems (4 Findings)**

Summary of Findings



Consistent with the OCO's findings over the past seven years, noncompliance with existing laws and policies continues to represent the largest category of findings, followed by poor practice and decision making. Systems issues or inadequate laws and policies are less likely to contribute to case mishandling.

Prevalent Findings

An analysis of the findings and recommendations made by the OCO during the reporting period shows that the following issues were most frequently cited in F&R reports.

Children's Protective Services

- **CPS investigations:** CPS workers are required to thoroughly investigate complaints of abuse and neglect and consider all relevant evidence when determining whether a preponderance of evidence of abuse or neglect exists. At the conclusion of an investigation, the worker is required to assign a category to the complaint based on the facts and evidence. The OCO continues to review cases where the investigation was not thorough, the investigation was not completed within required time frames, documentation was inaccurate or insufficient, or the disposition of the complaint was inconsistent with the case facts and evidence. The OCO reported 37 findings concerning CPS investigations that did not meet law and policy requirements.
- **Supervisory oversight:** CPS policy requires supervisors to review workers' reports, service plans, and other documents to assure accurate completion of documents, review decision making, and allow timely correction of any errors. The OCO continues to find instances where supervisory oversight did not occur or did not occur within appropriate time frames. The OCO made six findings specifically related to lack of supervisory oversight during this fiscal year.
- **Verifying the safety and well-being of all children:** CPS policy requires a worker to assess the safety and well-being of all children in a family during all investigations, even when only one child is alleged to have been mistreated. Noncompliance with this policy was cited in four F&R reports during this fiscal year.

Foster Care

- **Placement and replacement of children:** Maintaining a stable placement for a child and his or her siblings enhances physical and emotional well-being. The OCO continues to review cases where siblings are separated or the separation is maintained without adequate justification, or children are moved for inappropriate reasons or without proper notification to the child's caregivers and the Foster Care Review Board. The OCO reported 12 findings during this fiscal year related to placement issues of children in foster care.
- **Meeting children's identified needs:** Workers are required to identify children's needs through completion of Structured Decision Making assessments and to ensure service provision commensurate with those identified needs. The OCO made nine findings related to lack of provision of needed services to children in foster care during this report period.
- **Assess the safety of children who remain in the home when siblings are in care:** Workers are required to assess the safety of any child who remains in the home, or is new to the home, when siblings are in care. This includes completion of a comprehensive assessment form documenting why the child can safely remain in the home when others have been removed. The OCO reported six instances where assessments were not completed or were not thorough.
- **Relative placement and required documentation:** Workers are required to identify and study suitable relatives for placement of a child within 90 days of the child's entry into foster care. The results of the relative home study are documented on a DHS-31 form and provided to the interested parties in a case as well as to the relative. The OCO continues to investigate cases where relatives were not considered for placement, or did not receive a copy of the DHS-31, contrary to policy. Four findings were reported in F&R reports during this fiscal year.

2004-2005 OCO Annual Report Recommendations and DHS Responses

Children's Protective Services

Recommendation 1:

The OCO recommends MDHS identify ways to help CPS workers understand and apply the concept of “threatened harm” when conducting field investigations, reaching dispositions, and making decisions concerning a new child born to parents whose parental rights to other children were terminated.¹

Rationale:

Policy states that when a new child is born to parents whose rights were previously terminated as a result of child abuse/neglect proceedings, MDHS must conduct a full field investigation to determine if the newborn is safe. This includes a review of case history to assess whether conditions that led to the prior termination have been rectified. If the conditions have not been rectified, policy states that “threatened harm” to the newborn exists and CPS must file a petition with the court for jurisdiction of the child.

The OCO continues to review cases where CPS conducted a field investigation and concluded that the newborn was not at risk of harm in his/her parent's care, despite evidence that the parent had not rectified the conditions that led to prior termination of parental rights. When the OCO reviewed those investigations and conducted interviews with CPS staff, the following concerns were identified:

- The worker based the disposition on a determination that the newborn had not suffered “current” abuse or neglect. If the infant appeared healthy and appropriate provisions had been made to take care of the infant, a Category IV “no preponderance” disposition was reached and the case was closed.
- The worker did not thoroughly review or consider the historical facts and evidence that led to prior abuse/neglect and termination of parental rights.
- The investigation did not document how the conditions that led to prior abuse/neglect and termination of parental rights had been rectified, making it safe for the newborn to remain in the home.

MDHS Response to Recommendation 1:

Agree. CPS Program Office, in conjunction with the CPS Advisory Committee and the Office of the Family Advocate developed a definition for “threatened harm” released via Policy Bulletin (CFB 2005-004), effective 05/01/05. This definition provides a basis for establishing the threat of harm to a child in situations where a child has not yet been abused, but harm is imminent. In the past, threatened harm has been included in *The Child Protection Law*, as part of the definition of child abuse, but it was not defined in MDHS policy.

¹ The OCO acknowledges that MDHS included an operational definition of threatened harm in CPS policy in May 2005.

To ensure that CPS workers and supervisors understand and can adequately apply the concept of “threatened harm,” the following has occurred:

The CPS program manager has provided an in-service to CPS supervisors in Region 3 and Region 4 to educate managers about the decision-making process and documentation requirements in cases involving threatened harm; this will equip supervisors so that they can provide training for their workers.

The CPS program manager will continue to schedule in-services for supervisors in the remaining regions of the state.

The Child Welfare Institute (CWI) provides training to new workers regarding the definition of “Threatened Harm.” Trainees are required to read the policy and complete an exercise involving review and discussion of six case examples of threatened harm. The trainees must determine whether or not each example constitutes threatened harm. CWI also uses a specific case example of severe physical injury to determine whether or not there is threatened harm when two children remain in the home after one child was removed. Additionally, CWI provides training specific to appropriate use of the DHS-003, Comprehensive Assessment.

DHS has developed and instituted mandatory CPS supervisor training in which threatened harm policy and practice has been incorporated into the curriculum.

Services specialists from each regional office and Wayne County will coordinate efforts with CWI and the CPS program office to develop a tutorial package for use by local office managers with local office staff in an effort to enhance understanding and application of the concept of threatened harm in making child safety determinations. The tutorial package is likely to include a desk aid for use by workers in identifying the elements necessary to determine threatened harm as defined by policy.

During 2006, regional office staff will be encouraged to complete sample case reads of cases in which threatened harm is alleged due to a child being born to parents who have had a previous termination of parental rights. Following case reviews, the regional office and the CPS program office will provide technical assistance to individual counties, as needed and/or appropriate. Finally, information gleaned from the case review process will be shared with local office directors.

Foster Care

Recommendation 2:

The OCO recommends MDHS identify the steps it will take to ensure that Medicaid Assistance (MA) cases are registered and opened within five business days for all eligible children placed in foster care. Failure to promptly register, open, and manage an MA case prevents a child placed in foster care from accessing and receiving needed medical and mental health services.

Rationale:

Nearly all children who are committed to or placed with MDHS by a court, and who reside in out-of-home care due to abuse or neglect, are eligible for the Medicaid Assistance program.² However, the OCO continues to receive complaints from relative care providers and foster parents who are unable to access essential health

² Exceptions to automatic coverage under the Medicaid Assistance program include children placed in training schools, jails, detention facilities, or halfway houses and children who are not U.S. citizens or qualified aliens.

care services for a child in their care because the child does not have an open MA case. In some cases, MDHS has failed to register and open the MA case for the child.³ In cases where a child is placed with relatives, coverage is often delayed when relatives are advised that they are responsible for applying for MA for the child. In cases where a child's placement is through a private child-placing agency, the child's MA case must be activated by the MDHS foster-care monitoring worker, which can also delay coverage. In still other cases, changes in foster care placement may result in a lapse of coverage. As a result of these and other systemic barriers, a lack of MA coverage for foster children may persist for several months.

MDHS Response to Recommendation 2:

Agree. With the implementation of Service Worker Support System (SWSS) CPS, the transfer of the 5-day packet to Foster Care (FC) will be improved. Current policy requires the FC worker to open MA within 5 days; however, there are situations that may cause unavoidable delay.

When children enter foster care and are active on the Medicaid case of their parent/caretaker, they remain active on their parent's case until the end of the month in which they were removed. Therefore, the new Medicaid case cannot open until the first day of the following month.

Many providers are reluctant to treat children without a Medicaid card even if the worker provides the caregiver with the Medicaid number or a printout of the computer screen, which verifies the Medicaid eligibility.

When the Medicaid card is provided to a relative caregiver, enrollment in plans outside the relative caregiver's geographical area may prohibit access to a preferred service provider.

When a foster care worker opens a Medicaid case within 5 days for children placed in relative care, the relative caregiver may experience a delay in Temporary Aid to Needy Families (TANF) financial assistance. The child's active Medicaid case needs to be closed to allow a new Medicaid case to be opened under relative caregiver's Family Independence Program (FIP) case.

Beginning 01/01/06, a new MDHS publication titled "Relative Caregiver Resources and Responsibilities" (DHS-Pub-457, issued in November 2005) must be given to relative caregivers at the time a child is placed in their care. This pamphlet provides relative caregivers with information about the process for opening Medicaid and FIP. The pamphlet advises relative caregivers to apply as soon as possible to avoid delays. Medicaid coverage is less likely to be delayed when relative caregivers have appropriate information at the time of placement.

Additionally, the Field Office Administration (FOA) is working with the Medicaid/SSI policy staff to complete changes in policy that will allow eligibility specialists to transfer a child's open Medicaid case, at the time he/she enters foster/relative care, to a Medicaid category with continuing eligibility extending for 60 days beyond the placement date. This would ensure ongoing Medicaid eligibility for the child and adequate time to make appropriate case determinations that reflect the changed status of the child. Initial discussions between FOA and Medicaid/SSI policy staff have been completed. Medicaid/SSI policy staff will determine the necessary action steps to implement this change.

³ Foster care policy CFF 902-11 states that the foster care worker is responsible "to register, withdraw, open, manage and close a child's Medicaid Assistance case."

Finally, in 2006, DHS allocated an Eligibility Specialist (ES) in counties with large Title IV-E eligible caseloads, to assist in timely determinations of Title IV-E eligibility. As ES workers become experts in this role, FOA will consider whether it would be beneficial for these staff to determine/re-determine Medicaid eligibility for children entering care, to further alleviate possible delays.

Recommendation 3:

The OCO recommends that MDHS develop specific procedures to identify, locate, and consult with relatives when making placement decisions for foster children.⁴

Rationale:

Law and policy require MDHS to consider suitable relatives when making placement decisions for foster children.⁵ While current MDHS policy outlines efforts that workers must take to identify and locate absent or putative parents, policy does not specify the steps that workers must take to identify and locate other relatives with whom the child could be placed. When relative placement is not considered early in a foster care case, it can impact subsequent adoption decisions and delay permanency for the child. The OCO has identified the following concerns:

- Non-custodial parents and their relatives are not always considered for placement.
- Putative fathers may not be identified as required by policy⁶ or advised to establish paternity. Relatives of putative fathers, who may have an interest in placement, are excluded from consideration even though such placement is allowed under MCL 712A.13a(i)(j).
- Interstate home studies to assess an interested relative's role in the child's life while in foster care, including potential placement and visitation, can take several months to complete and are not always initiated early on.
- Efforts to identify and locate relatives may not be completed within 30 days of initial placement. Relatives who have expressed an interest in placement are not always notified of placement decisions and their right to appeal the placement decision via DHS-31, *Foster Care Placement Decision Notice*, as required by policy.
- When replacement of a child in foster care becomes necessary, relatives are not always considered for placement as required by policy.
- Efforts to identify, locate, and consult with relatives are often inadequately documented in the case record.

⁴ MCL 722.954a(2) requires the supervising agency to identify, locate, and consult with relatives to determine placement with a fit and appropriate relative who would meet the child's developmental, emotional, and physical needs as an alternative to foster care.

⁵ Example: See Minnesota Department of Human Services Bulletin #05-68-12 "Relative Search Best Practice Guide."

⁶ DHS policy CFF 722-6, page 15, Efforts to Identify and Locate Absent/Putative Parent(s).

MDHS Response to Recommendation 3:

Agree in part. The MDHS is committed to ensuring that children are placed within their family network, whenever it can be accomplished safely. In the last ten years, the department has experienced a 66.29% increase in the number of children being placed with relative caregivers versus unrelated caregivers. This trend continued in 2005 with MDHS experiencing a 1.3% increase in the number of children being placed with relatives.

That said, the MDHS has specific policy (CFF 722-3 p. 4) regarding "*Placement with Relatives*" that requires foster care workers to "*identify and locate all relatives for possible placement of the child within their home.*" In these cases, the worker is to:

Discuss the options for relative placement with the parent(s) and child(ren), if appropriate.

Obtain sufficient contact information (names, addresses and phone numbers) in order to be able to consider relatives for possible placement.

Ask each parent and child to identify all relatives including siblings related to the child(ren) by blood, marriage or adoption.

Discuss the situation with the parents and seek agreement from the parent(s) and the extended family for a particular relative to care for the child(ren).

Obtain the family's agreement on a particular relative for placement, if able, and then complete a criminal history and Central Registry check.

Proceed with the home study process for all identified relatives that have appropriate criminal history and Central Registry checks.

FC program office will revise policy to emphasize the aforementioned steps by displaying the requirements in a bulleted format as noted above. This will help ensure that workers see each requirement.

Additionally, foster care policy (CFF 722-9), regarding the Updated Service Plan (USP), contains a section titled "*Relative Resources and Placement,*" which requires the worker to complete the following every three months:

- Identify any kinship resources (in Michigan and other states per Interstate Compact for Placement of Children ICPC - procedures) with the potential to provide placement for the child, including relatives identified by the parent and child.
- If a decision has been made regarding kinship care placement of the child, include the decision and the rationale for the decision or attach a copy of the DHS-31, Foster Care placement Decision Notice to this USP.
- Attach any completed home studies.

Finally, as of January 2006, all but 18 of Michigan's 83 counties have implemented Family-to-Family (F2F). A team decision-making (TDM) meeting is one of the four core strategies for F2F. TDMs encourage parents to identify relatives and other responsible individuals, who are a source of support to their family. This enables staff to identify relatives and other interested responsible adults that can

assist in caring for the children and in mentoring the family. The department expects to complete roll-out of F2F to the remaining 18 counties, in 2007. Regional managers are already working with the 18 remaining county directors to familiarize them with the four core F2F strategies.

Recommendation 4:

In cases where the Family Division of the Circuit Court has taken jurisdiction over a child under MCL 712A.2(b) and the court is considering guardianship as the permanency plan for the child, the OCO recommends the following actions be taken to strengthen Michigan's ability to provide children with permanency, stability, and security:

State law should be enacted to require that when a court orders a full guardianship arrangement for a child, the court shall:

- Establish on the record that the child was in state custody as a result of abuse or neglect, and the parents were not able to resume care.
- Determine that statutory grounds exist to terminate parental rights.
- Determine that adoption is not in the child's best interest.
- Determine that the guardian has agreed to raise the child to adulthood.
- Require the guardian to identify a successor guardian in the case of death or disability.
- Determine that unless continuing placement in the home of the guardian is detrimental to the child, there should be no further provisions allowing termination of a full minor guardianship.

MDHS should provide subsidized guardianship in Michigan, either by securing matching federal funds or allocating state funds for this purpose.⁷

MDHS policy CFF 722-7, page 3, should include the following guidelines when guardianship is being considered as a permanency plan:

Adoption is the preferred permanency placement for children who cannot be reunited with a parent.

- In cases where the agency determines that adoption is not in the child's best interest, guardianship may be considered as the permanency plan.
- Guardianship is not an acceptable permanency plan for infants and young children.
- Guardianship may not be recommended, in lieu of termination of parental rights, unless it is determined with supervisory approval to be in the child's best interest. These situations are limited and examples should be specified in policy.

Rationale:

In passing the Adoption and Safe Families Act in 1997, Congress authorized concurrent planning, and, in doing so, indicated that among the permanency options that should be available to the states is the placement of a child under a legal guardianship. To make its intention clear that guardianship may be used as a permanency plan, Congress defined guardianship as:

⁷ At least 35 states provide some form of subsidized guardian.

[A] judicially created relationship between a child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision-making. The term 'legal guardian' means the caretaker in such a relationship.

Michigan law does not provide for “permanent guardianship.” In Michigan, guardianship is typically a legal arrangement to provide temporary care for a child when a parent is unwilling or unable to do so. When a guardian is appointed, parental rights are not terminated and guardians may be discharged by petition. Failure to establish and adequately support a legal guardianship intended to be permanent and self-sustaining may result in a lack of stability and permanency for the child.

MDHS Response to Recommendation 4:

Agree in part. The MDHS supports a statutory amendment to create a provision for “permanent guardianships” in certain cases, if funding guidelines, such as Title IV-E and adoption subsidy, were also changed so that these guardianships could be supported financially. Currently, Michigan law does not permit MDHS to consider permanent guardianship for permanent wards committed to the Michigan Children’s Institute (MCI).

The MDHS also supports an option for subsidized guardianship in certain circumstances, as this would be beneficial to children and families. MDHS has worked diligently with other state departments and community partners to bring subsidized guardianship to Michigan. In 2004, Michigan explored the use of a Title IV-E waiver to provide subsidized guardianship. After considerable review MDHS determined that adequate funding sources are not available to support the program. MDHS has explored the concept and sustainability of subsidized guardianships by offering a “Kinship Pilot” such as the one that is housed in Kent County and at three offices in Wayne County. Enhanced funding and supportive services are offered to families caring for relatives’ children. Families can remain in the pilot as long as they live within those counties. However, it has been determined that expansion of the program is not possible due to limited funding.

That said, current policy sufficiently addresses the use of guardianship in other cases when it is warranted. MDHS does not agree that guardianship should be ruled out as an acceptable permanency plan for infants and young children. Guardianship should not be restricted to certain ages, but should be recommended and granted based on the best interest of each child. All permanency recommendations are reviewed by MDHS supervision and the Court. There are sufficient controls in place to evaluate the appropriateness of recommended permanency plans.

Appendix 1

Progress on Annual Report Recommendations 1995-2004

Legislative recommendations not implemented to date

The following ten recommendations made by the OCO for legislative change have not been implemented to date. MDHS indicated agreement or partial agreement with seven of the recommendations, disagreed with two recommendations, and neither agreed nor disagreed with one recommendation. The proposed recommendations for legislative action are outlined below:

1. **Friend of the Court Reports:** The OCO recommends that Friend of the Court reports shall be allowed into evidence in child protective proceedings.

Fiscal Year 1995

MDHS response: Agree

2. **Nonparent Adult Definition:** The OCO recommends a statutory amendment to the definition of “nonparent adult” currently found in MCL 722.622(t)(iii). Currently, MCL 722.622 identifies individuals who may be held responsible for abusing and/or neglecting a child. The “nonparent adult” category allows the State to hold responsible individuals who have substantial and regular contact with the child and a close relationship with a person responsible for the child’s health or welfare, but who are not legally responsible for the child. The OCO recommends amending subsection (iii) to simply read, “is not the child’s parent.” By striking the phrase, “or a person otherwise related to the child by blood or affinity to the third degree,” the law would allow the State to hold relatives who do not reside in the child’s home but who have a close personal relationship with the child responsible under the definition of “nonparent adult” if they harm the child. At the present time, CPS is unable to substantiate and list such an individual as a perpetrator on the Central Registry.

Fiscal year 1999

MDHS response: Agree in part

3. **Provide CPS Records to Family Court:** The OCO recommends a statutory amendment to the Child Protection Law (CPL) requiring the MDHS to provide information to the Family Court with jurisdiction over a custody/visitation or guardianship case when CPS finds a preponderance of evidence that a child has been abused or neglected and: a) the MDHS is aware that the child is the subject of court-ordered custody/visitation or a legal guardianship; and/or b) the MDHS is aware that the adult perpetrator is a party to a court-ordered custody/visitation action or is a court-appointed legal guardian of a child.

Fiscal year 1999

Fiscal year 2002

MDHS response: Agree

4. **Disclose Central Registry Information:** The OCO recommends a statutory change to the CPL requiring CPS to disclose certain Central Registry information to parents. Specifically, the CPL should

be amended to direct the MDHS to release Central Registry information to a parent or a person legally responsible for a child if the MDHS becomes aware that an individual with a substantiated history of child abuse or neglect has moved into a home where children reside. The CPS "Notice of Action and Rights" due process letter sent to substantiated perpetrators placed on the Central Registry should inform the perpetrator of this new policy. The OCO also recognizes a perpetrator's right, as part of due process, to file a request for expunction. Therefore, if a perpetrator has filed a request for expunction according to the process outlined in the due process notification letter, the MDHS shall not release the Central Registry information until the request for expunction process has been completed.

Fiscal year 1999

MDHS response: Agree in part

- 5. Attorney Representation at Court Hearings:** The OCO recommends a statutory provision be enacted to require that at CPS and foster care hearings the MDHS or its contract agency be represented by an attorney.

Fiscal year 1997

MDHS response: Agree

- 6. Expand Definition of "Omission":** The OCO recommends a statutory amendment to current section 136b(1)(c) of the Michigan Penal Code to expand the definition of the term "omission" to include identical language as found in current section 2(j) of the Child Protection Law. Specifically, the OCO recommends the following amended language:

"Omission" means a willful failure to provide the food, clothing, or shelter necessary for a child's welfare or the willful abandonment of a child, or placing a child at an unreasonable risk to the child's health or welfare by failure of the parent, legal guardian, or any other person responsible for the child's health or welfare to intervene to eliminate that risk when that person is able to do so and has, or should have, knowledge of the risk.

Fiscal year 1999

MDHS response: Disagree

- 7. Amend FIA Appropriations Act:** The OCO recommends that the standard language in the annual FIA Appropriations Act be amended to read: a) A child would be living in the same household with a parent or other adult who has been convicted of criminal sexual conduct OR ATTEMPTED CRIMINAL SEXUAL CONDUCT (CSC) against a child.

Fiscal year 2001

FIA response: Agree

- 8. Provide Greater Access to Mental Health Treatment for Children:** The OCO recommends a law be enacted to prevent parents from having to relinquish custody and plead guilty to neglect of their child

solely to obtain residential mental health services deemed necessary for their child's serious mental illness or emotional disorder.

The OCO further recommends that an interagency task force be established to review current child mental health care programs and funding sources, identify gaps in the system, and develop a comprehensive mental health care system that will meet the needs of all children in Michigan.

Fiscal Year 2002

MDHS response: Agree

- 9. Restrict Services for Sexual Perpetrators:** The OCO recommends an amendment to the Child Protection Law that would prohibit the MDHS from providing services or contracting services to preserve or reunite a family, unless court ordered, if either of the following would result:
- (a) A child would be living in the same household with a parent or other adult who has been convicted of criminal sexual conduct against a child.
 - (b) A child would be living in the same household with a parent or other adult who has been substantiated for sexual abuse against a child.

This amendment should allow services as long as those services are not directed toward preserving or reuniting the family.

Fiscal Year 2002

MDHS response: Disagree

- 10. Two-Parent Adoptions:** The OCO recommends the Michigan Adoption Code be amended to permit adoption of a child by two adults who are not married if the court determines it is in the child's best interest.

Fiscal Year 2003

MDHS response: Neither agree nor disagree

Progress on Annual Report Recommendations 1995-2004

Year	Implemented	Partially Implemented	Not Implemented	Total Number
1995-96	52	8	1	61
1996-97	11	5	3	19
1997-98	4	0	1	5
1998-99	6	1	5	12
1999-00	4	2	2	8
2000-01	6	2	3	11
2001-02	3	2	2	7
2002-03	2	3	2	7
2003-04	0	2	1	3
Total	88	25	20	133

Recommendations Partially Implemented

Policy/Practice	Law	Total
25	0	25

Recommendations Not Implemented

Policy/Practice	Law	Total
10	10	20

Appendix 2

Amendments to The Children's Ombudsman Act (MCL 722.921 et seq.)⁸

During the 2000-2001 legislative session, the House Committee on Family and Children Services' subcommittee on Child Protective Services, chaired by Representative Hager, recommended legislative changes to strengthen the OCO's powers and duties in an effort to achieve greater accountability in child protection matters. The amended legislation was enacted in December 2004 and became effective on January 3, 2005. Changes related to the following powers and duties of the ombudsman are listed below:

Establishment of the Office: The OCO is established “[a]s a means of effecting changes in policy, procedure, and legislation, educating the public, investigating and reviewing actions of the department and child placing agencies, or child caring institutions, monitoring and ensuring compliance with relevant statutes, rules, and policies pertaining to children’s protective services and the placement, supervision, treatment, and improving delivery of care of children in foster care and adoptive homes.” (sec. 3)

Appointment of the Ombudsman: The ombudsman is appointed by and serves at the will of the governor, but the advice and consent of the Senate is required. The ombudsman must be qualified by training and experience to perform the duties and exercise the powers of the ombudsman. The ombudsman can be removed from office by the governor for cause, but the governor must report the reason to the Senate. (sec. 3)

Domestic Violence: All OCO personnel must receive mandatory domestic violence training conducted by the Michigan Domestic Violence Prevention and Treatment Board. (sec. 4)

Who Can File a Complaint: Mandated reporters are added to the list of statutory complainants. In addition, any individual is permitted to make a complaint to the ombudsman. The ombudsman has the sole discretion and authority to determine whether a complaint will be investigated. Additionally, if the ombudsman determines during an investigation that MDHS received a CPS complaint but did not conduct a field investigation, the ombudsman can refer the case to MDHS for a field investigation, and MDHS is required to report its actions back to the OCO. (sec. 4 and 5)

Duties of the Ombudsman: The bill states that the ombudsman has the authority to:

- Pursue all necessary action to protect the rights and welfare of a child under the jurisdiction of the MDHS, the Michigan Children’s Institute, the family division of the circuit court, a child caring institution, or a child placing agency.
- Pursue legislative advocacy in the best interest of children.
- Review policies and procedures related to MDHS’s involvement with children and make recommendations.
- Review each departmental death review team study in child deaths resulting from abuse or neglect and make recommendations to prevent future occurrences. (sec. 5a)

Medical and Mental Health Records: The ombudsman is permitted access to medical records and mental health records in the same manner as access is provided to the MDHS under the Public Health Code and the Mental Health Code, and the same confidentiality standards exist. (sec. 6)

⁸ The Children’s Ombudsman Act can be accessed at the OCO web site at www.michigan.gov/oco.

Powers of the Office: The ombudsman could request a subpoena requiring a person to produce a record or report, and could petition the court to enforce that request. [This provision will be repealed in January 2010.] (sec. 6)

The bill permits the ombudsman to make recommendations to the governor and the legislature without prior review or obstruction by other agencies within the executive branch in order to facilitate rapid implementation of recommendations. (sec. 6)

Duties of the MDHS: The MDHS and private child-placing agencies are required to provide requested information to the OCO within ten business days. In addition, the OCO is permitted access to the MDHS computer networks regarding protective services, foster care, and adoption, except where access is prohibited by state and federal law. (sec. 8)

Disclosure of Information: The OCO can release information regarding MDHS's actions in a case under the Child Protection Law or to a closed session of a legislative committee that has jurisdiction over family and children's issues. (sec. 9)

The OCO may not disclose certain confidential information, unless it is part of a public record, nor can identifying information be disclosed concerning a victim of suspected domestic violence, or any information that would endanger the health and welfare of a child or any individual. (sec. 9)

In addition, the OCO cannot disclose any confidential information about an active law enforcement investigation, or the identity of an individual making a report of child abuse or neglect without written permission of the individual or a court order. (sec. 9)

Report of Findings and Recommendations: The ombudsman is required to notify the complainant of the actions taken by the ombudsman and by the department regarding a complaint. The ombudsman may provide the complainant with a copy of the report of findings, the recommendations made to the department, the department's response, and any information that has been made public. (sec. 10) Individuals who are not statutory complainants are entitled to receive a copy of the OCO's recommendations and the department's response. (sec. 4)

Reports from the ombudsman are not subject to prior approval by anyone outside of the office. (sec. 11)

Adoption Attorney Registry: The amended legislation repeals the requirement for the ombudsman to maintain a registry of adoption attorneys. (formerly sections 13, 14, and 15)

Appendix 3

OCO Investigations by County

County	Number of OCO Investigations (FY 04-05)	County	Number of OCO Investigations (FY 04-05)
Alcona		Keweenaw	
Alger		Lake	
Allegan		Lapeer	1
Alpena		Leelanau	
Antrim		Lenawee	
Arenac	1	Livingston	
Baraga		Luce	
Barry		Mackinac	1
Bay	1	Macomb	7
Benzie	1	Manistee	
Berrien		Marquette	
Branch	1	Mason	
Calhoun	3	Mecosta	
Cass		Menominee	
Charlevoix		Midland	
Cheboygan		Missaukee	
Chippewa		Monroe	
Clare		Montcalm	
Clinton	3	Montmorency	
Crawford		Muskegon	2
Delta		Newago	2
Dickinson		Oakland	19
Eaton	1	Oceana	
Emmett	1	Ogemaw	1
Genesee	14	Ontonagan	
Gladwin		Osceola	
Gogebic		Oscoda	
Grand Traverse	2	Otsego	
Gratiot	1	Ottawa	2
Hillsdale		Presque Isle	
Houghton		Roscommon	
Huron		Saginaw	1
Ingham	4	St. Clair	
Ionia		St. Joseph	
Iosco		Sanilac	
Iron		Schoolcraft	
Isabella	1	Shiawassee	1
Jackson	4	Tuscola	1
Kalamazoo	3	Van Buren	
Kalkaska		Washtenaw	4
Kent	10	Wayne	40
		Total	133⁹

⁹ Some investigations included more than one county.

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Number of Copies Printed: 1,500; Total Cost: \$3,214.98; Cost Per Copy: \$2.143

