



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
OFFICE OF CHILDREN'S OMBUDSMAN
LANSING

SUZANNA SHKRELI
DIRECTOR

Findings and Recommendations

Under state law a record of the Office of Children's Ombudsman's is confidential, is not subject to court subpoena, and is not discoverable in a legal proceeding. Additionally, a record of the Office of Children's Ombudsman's is exempt from disclosure under the Freedom of Information Act.

Date: November 3, 2021

Case No.: 2021-0108

Child's name: [REDACTED]

Date of birth: [REDACTED]

Summary:

On February 11, 2021, the Office of Children's Ombudsman (OCO) opened an investigation into the involvement of Mason County Department of Health and Human Services (DHHS) with [REDACTED] [REDACTED]

The OCO reviewed confidential records and information in the Michigan Statewide Automated Child Welfare Information System (MiSACWIS), which includes but is not limited to service reports, medical records, social work contacts, police reports, and court orders. The OCO interviewed family members, department personnel, and law enforcement personnel.

The objective of this review was to identify areas for improvement in the child welfare system. By looking at how this family's case was handled by Mason County DHHS, and the involvement of staff, court personnel, physicians and law enforcement, this review reinforces the safety and well-being of a child is the shared responsibility of the family, community, and both law enforcement and medical personnel aiding children and families. This report is not intended to place blame, but to highlight areas of concern regarding the handling of this case and advocate for changes in the child welfare system on behalf of similarly situated children.

Family History:

Two-year-old [REDACTED] is the daughter of [REDACTED] and the legal daughter of [REDACTED] and [REDACTED] are divorced; [REDACTED] alleged biological father is a man whom [REDACTED] met while she was a counselor at a substance abuse program.

[REDACTED] has been the subject of three Children's Protective Services (CPS) investigations since April 2020, all involving her use of controlled substances. The first investigation was closed as a category IV and the second closed as a category III open/close. The third investigation, which is the focus of this OCO investigation, was initiated in January 2021 and closed as a category II.

Purpose, Scope, and Summary of Investigation:

This case was brought to the attention of the OCO due to concerns for [REDACTED] safety. The OCO's investigation focused on a January 27, 2021 CPS investigation to determine whether the involved agencies followed law and policy governing emergency removal of children from parental custody.

On January 27, 2021, CPS centralized intake received allegations that [REDACTED] and [REDACTED] were asked to leave a recovery home in Charlevoix County because drug paraphernalia was found in their room. [REDACTED] and [REDACTED] left the home, but their location was unknown. On February 3, 2021, family members informed Charlevoix County CPS that [REDACTED] and [REDACTED] were at a relative's home in Manistee County. The CPS investigation was transferred to the Mason County DHHS office.¹

Mason County CPS made contact with [REDACTED] and family members. Family members reported that they were going on vacation and had installed hidden cameras in the home. On February 9, 2021, a family member reported to Mason County CPS that [REDACTED] was observed on camera "smoking substances" in [REDACTED] presence. Mason County CPS advised the family member to ask law enforcement to verify [REDACTED] well-being.

A Michigan State Police (MSP) trooper visited the home and informed a Mason County CPS worker that [REDACTED] appeared to be under the influence of drugs, and he found evidence of drug use in the home. The trooper told the CPS worker he had taken [REDACTED] into protective custody and asked the worker to assume custody of [REDACTED]. Mason County CPS responded that CPS could not take custody of a child without a court order, which must be obtained through a petition. The Mason County CPS worker told the OCO that he advised the MSP trooper that he would contact the Manistee County prosecutor's office to discuss filing a petition. The MSP trooper then contacted [REDACTED] legal father, who

¹ Due to a conflict of interest within Manistee County DHHS, the investigation was transferred to Mason County DHHS.

assumed custody of [REDACTED]

The following day, Mason County CPS and a Manistee County assistant prosecuting attorney concluded that no petition would be filed because [REDACTED] was safe with her legal father, and because DHHS policy states that parental drug use alone does not constitute child abuse or neglect.

[REDACTED] and [REDACTED] were subsequently located at a relative's home in Chippewa County. [REDACTED] admitted to a CPS worker that she was under the influence of heroin when the MSP trooper took protective custody of [REDACTED]. Mason County CPS substantiated [REDACTED] for improperly supervising [REDACTED] and opened a services case. The Chippewa County relative later obtained guardianship of [REDACTED] and [REDACTED]. [REDACTED] sought substance abuse treatment.



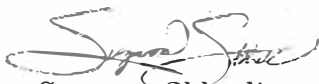
Chris Kilmer
Investigator

Finding:

<u>Primary Agency of Focus:</u>	Mason County DHHS
The OCO finds that Mason County CPS did not take the necessary action of contacting the designated judge or referee, as required by policy and law, to obtain a court order after being told by an MSP trooper that [REDACTED] was being taken into protective custody. It may be argued that [REDACTED] was released to her legal father by the trooper through the help of Mason County CPS, but this occurred after the agency told the trooper they could not come and pick [REDACTED] up.	

Recommendation:

<u>Primary Agency of Focus:</u>	Mason County DHHS
<u>Secondary Agency(ies):</u>	Children's Services Agency
<p>This case presents an opportunity for the three key child welfare partners, Children's Protective Services, law enforcement, and the courts in Mason and Manistee counties, to revise their protocols to align with Michigan law governing emergency removal of children from parental custody.</p> <p>Law enforcement's role differs from CPS' role in these situations. Child welfare partners in Mason and Manistee counties should discuss those differences. The courts in these jurisdictions play a critical role as well, and the parties may wish to review Michigan Court Rule (MCR) 3.963 and revise their protocols consistent with that court rule.</p> <p>Thus, the OCO recommends that these partners come together to review this case and discuss it in the context of guiding law, policies, and protocols.</p> <p>The OCO also recommends that MDHHS Children's Services Agency review this case and consider providing guidance to all county offices on their legal responsibilities after a law enforcement officer has removed a child from parental custody.</p>	



Suzanna Shkreli
Children's Ombudsman



STATE OF MICHIGAN

DEPARTMENT OF HEALTH AND HUMAN SERVICES
LANSING

GRETCHEN WHITMER
GOVERNOR

ELIZABETH HERTEL
DIRECTOR

January 18, 2022

Ms. Suzanna Shkreli
Office of Children’s Ombudsman
401 S Washington Sq, Ste 103
Lansing, Michigan 48933

Dear Ms. Shkreli:

The following is the Michigan Department of Health and Human Services (MDHHS) response to the recommendations from the Office of Children’s Ombudsman (OCO) Report of Findings and Recommendations regarding the care of [REDACTED] while in state custody.

This report contains confidential information from a Children’s Protective Services file. The Michigan Child Protection Law [MCL 722.627, section 7(3)] prohibits the release of this information to any individual/entity not authorized under Section 7(2) of the law. Pursuant to Section 13(3), release of this confidential information to an unauthorized individual/entity may subject you to criminal and/or civil penalties.

Finding:

<u>Primary Agency of Focus:</u>	Mason County DHHS
<p>The OCO finds that Mason County CPS did not take the necessary action of contacting the designated judge or referee, as required by policy and law, to obtain a court order after being told by an MSP trooper that [REDACTED] was being taken into protective custody. It may be argued that [REDACTED] was released to her legal father by the trooper through the help of Mason County CPS, but this occurred after the agency told the trooper they could not come and pick [REDACTED] up.</p>	
<p><u>MDHHS response to Finding:</u> Notice to DHHS under MCL 712A.14(a)(1) is not a mandate to MDHHS to take or seek custody of the child. Additionally, there is no legal mandate for MDHHS to notify the court under MCL 712A.14(a)(2) when law enforcement has custody of the child and MDHHS only has notice of that custodial situation. MCL 712A.14(a)(2) applies only when a decision has been made that the child cannot be safely released to a parent, guardian, or legal custodian.</p>	

In this case, after initial contact with Child Protective Services (CPS), the trooper and CPS contacted the legal father and law enforcement released the child to him less than an hour later.

Recommendation:

<u>Primary Agency of Focus:</u>	Mason County DHHS
<u>Secondary Agency(ies):</u>	Children's Services Agency
<p>This case presents an opportunity for the three key child welfare partners, Children's Protective Services, law enforcement, and the courts in Mason and Manistee counties, to revise their protocols to align with Michigan law governing emergency removal of children from parental custody.</p> <p>Law enforcement's role differs from CPS' role in these situations. Child welfare partners in Mason and Manistee counties should discuss those differences. The courts in these jurisdictions play a critical role as well, and the parties may wish to review Michigan Court Rule (MCR) 3.963 and revise their protocols consistent with that court rule.</p> <p>Thus, the OCO recommends that these partners come together to review this case and discuss it in the context of guiding law, policies, and protocols.</p> <p>The OCO also recommends that MDHHS Children's Services Agency review this case and consider providing guidance to all county offices on their legal responsibilities after a law enforcement officer has removed a child from parental custody.</p> <p><u>MDHHS response to Recommendation:</u> Mason County administration has reached out to their local partners to discuss the situation to determine how law enforcement and the local office can better partner. Although MDHHS believes the county acted appropriately, we recognize practices regarding partnering with local law enforcement may vary and the department will review the case to identify if any statewide communication is necessary.</p>	

Thank you for the opportunity to respond to this Report of Findings and Recommendations. If you have questions or concerns, please feel free to contact me.

Sincerely,



Demetrius Starling
Executive Director
Children's Services Agency