

Act No. 303
Public Acts of 2023
Approved by the Governor
December 12, 2023
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December 13, 2023
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**STATE OF MICHIGAN
102ND LEGISLATURE
REGULAR SESSION OF 2023**

Introduced by Senators Victory, Santana, Irwin, Wojno, Bayer, Shink and Geiss

ENROLLED SENATE BILL No. 432

AN ACT to amend 1994 PA 204, entitled “An act to establish the children’s ombudsman office; and 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,” by amending the title and sections 1, 2, 3, 4, 5, 5a, 6, 7, 8, 9, 10, 11, and 12 (MCL 722.921, 722.922, 722.923, 722.924, 722.925, 722.925a, 722.926, 722.927, 722.928, 722.929, 722.930, 722.931, and 722.932), the title and sections 3, 5, and 11 as amended by 2004 PA 560, sections 2 and 6 as amended by 2020 PA 186, sections 4 and 10 as amended by 2014 PA 243, section 5a as amended by 2014 PA 455, sections 7 and 8 as amended by 2013 PA 38, and section 9 as amended by 2020 PA 185.

The People of the State of Michigan enact:

TITLE

An act to establish the office of the child advocate; to prescribe the powers and duties of the child advocate, certain state departments and officers, certain county and private agencies serving children, and certain residential facilities providing juvenile justice services; and to provide remedies from certain administrative acts.

Sec. 1. This act may be cited as the “office of the child advocate act”.

Sec. 2. As used in this act:

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

(b) “Adoption attorney” means that term as defined in section 22 of the adoption code, MCL 710.22.

(c) “Adoption code” means the Michigan adoption code, chapter X of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70.

(d) “Central registry” means that term as defined in section 2 of the child protection law, MCL 722.622.

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

(f) “Child abuse” and “child neglect” mean those terms as defined in section 2 of the child protection law, MCL 722.622.

(g) “Child advocate” or “advocate” means the individual appointed to the office of child advocate under section 3.

- (h) "Child caring institution" means that term as defined in section 1 of 1973 PA 116, MCL 722.111.
- (i) "Child placing agency" means an organization licensed or approved by the department to receive children for placement in private family homes for foster care or adoption and to provide services related to adoption.
- (j) "Child protection law" means the child protection law, 1975 PA 238, MCL 722.621 to 722.638.
- (k) "Closed session" means that term as defined in section 2 of the open meetings act, 1976 PA 267, MCL 15.262.
- (l) "Complainant" means an individual who makes a complaint as provided in section 5.
- (m) "Department" means the department of health and human services.
- (n) "Foster care" means care provided to a child in a foster family home, foster family group home, or child caring institution licensed by the department under 1973 PA 116, MCL 722.111 to 722.128, or care provided to a child in a relative's home under a court order.
- (o) "Foster parent's bill of rights law" means the foster parent's bill of rights law created in section 8a of the foster care and adoption services act, 1994 PA 203, MCL 722.958a.
- (p) "Full investigation" means an act of fact finding, document review, or systematic inquiry or examination that occurs after the completion of a preliminary investigation.
- (q) "Investigation" means either a preliminary investigation or a full investigation.
- (r) "Juvenile justice services" means that term as defined in section 117a of the social welfare act, 1939 PA 280, MCL 400.117a.
- (s) "Office" means the office of the child advocate established under section 3.
- (t) "Preliminary investigation" means an act of fact finding, document review, or systematic inquiry or examination to determine if there is a correlation between an administrative act and the death of a child or to determine if a trend or systematic issue is identified that would cause the ombudsman to open a full investigation.
- (u) "Residential facility" means a facility that provides juvenile justice services and is state operated, county operated, public, private and contracted, secure, or nonsecure.

Sec. 3. (1) As a means of effecting changes in policy, procedure, and legislation, educating the public, investigating and reviewing actions of the department, child placing agencies, child caring institutions, or residential facilities, 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, and providing juvenile justice services, the office of the child advocate is established as an autonomous entity in the department of technology, management, and budget.

(2) The governor shall appoint an individual as the child advocate with the advice and consent of the senate. The individual must be qualified by training and experience to perform the duties and exercise the powers of the child advocate and the office of the child advocate as provided in this act.

(3) The governor may remove the child advocate from office for cause that includes, but is not limited to, incompetency to properly exercise duties, official misconduct, habitual or willful neglect of duty, or other misfeasance or malfeasance in connection with the operation of the office of the child advocate. The governor must report the reason for the removal to the legislature.

(4) The child advocate serves at the pleasure of the governor.

Sec. 4. (1) The child advocate shall establish procedures for the office for budgeting, expending money, and employing personnel according to the management and budget act, 1984 PA 431, MCL 18.1101 to 18.1594. Subject to annual appropriations, the child advocate must employ sufficient personnel to carry out the duties and powers prescribed by this act.

(2) The child advocate must establish procedures for receiving and processing complaints from complainants and individuals not meeting the definition of complainant, conducting investigations, holding informal hearings, and reporting findings and recommendations resulting from investigations.

(3) Personnel employed by the office of the child advocate shall receive training in the areas of child abuse or child neglect as determined by the child advocate.

(4) Any individual may submit a complaint to the child advocate. The child advocate has the sole discretion and authority to determine if a complaint falls within his or her duties and powers to investigate and if a complaint involves an administrative act. The child advocate may initiate an investigation without receiving a complaint. The child advocate may initiate an investigation upon receipt of a complaint from an individual not meeting the definition of complainant. An individual not meeting the definition of complainant is not entitled to receive

information under this act as if he or she is a complainant. The individual is entitled to receive the published findings and recommendations of the child advocate and the department's or the residential facility's response to the recommendations of the child advocate in accordance with state and federal law. During the course of an investigation, the child advocate may refer a case to the department if the child advocate determines that the department received a complaint on the case, but did not conduct an investigation. If the child advocate refers a case to the department, the department must conduct an investigation of the case or provide notice to the child advocate why an investigation was not conducted, or what alternative steps may have been taken to address the situation. If an investigation has been conducted, the department must report the results to the child advocate.

(5) The child advocate must notify the department or residential facility of any immediate safety concerns regarding a child or children who are part of an active or open child protective services or foster care case. This notification must occur as soon as possible, but not later than 1 business day after the child advocate becomes aware of the concerns.

Sec. 5. All of the following individuals may make a complaint to the child advocate 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, MCL 710.22.
- (h) A Michigan legislator.
- (i) An individual required to report child abuse or child neglect under section 3 of the child protection law, MCL 722.623.
- (j) A judge for a juvenile receiving juvenile justice services.
- (k) The governor.
- (l) An attorney for any individual described in subdivisions (a) to (k).

Sec. 5a. The child advocate is authorized to do all of the following:

- (a) Pursue 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 XIII A of the probate code of 1939, 1939 PA 288, MCL 712A.2, a child caring institution, a child placing agency, or a residential facility or a child who is the victim in a child protective services maltreatment in care investigation. A court's placement decision is not subject to the child advocate's authority.
- (b) Pursue legislative advocacy in the best interests of children.
- (c) Review policies and procedures relating to the department's or a residential facility's involvement with children and make recommendations for improvement.
- (d) Subject to an appropriation of funds, commence and conduct investigations into alleged violations of the foster parent's bill of rights law.
- (e) Mediate issues and educate the public regarding complaints dealing with certain county and private agencies serving children, maltreatment in care investigations, and investigations of lack of or insufficient services regarding a residential facility.

Sec. 6. (1) The child advocate may do all of the following in relation to a child who may be a victim of child abuse or child neglect, including a child who may have died as a result of suspected child abuse or child neglect:

- (a) Upon his or her own initiative or upon receipt of a complaint, investigate an administrative act that is alleged to be contrary to law or rule, contrary to policy of the department, a child placing agency, or a residential facility, imposed without an adequate statement of reason, or based on irrelevant, immaterial, or erroneous grounds. The child advocate has sole discretion to determine if a complaint involves an administrative act.
- (b) Decide, in his or her discretion, whether to investigate an administrative act.

(c) Upon his or her own initiative or upon receipt of a complaint and subject to an appropriation of funds, investigate an alleged violation of the foster parent's bill of rights law.

(d) Except as otherwise provided in this subdivision, access records and reports necessary to carry out the child advocate's powers and duties under this act to the same extent and in the same manner as provided to the department under the provisions of the child protection law. The child advocate must be provided access to medical records in the same manner as access is provided to the department under section 16281 of the public health code, 1978 PA 368, MCL 333.16281. The child advocate must be provided access to mental health records in the same manner as access is provided to the department in section 748a of the mental health code, 1974 PA 258, MCL 330.1748a, subject to section 9. The child advocate may request substance use disorder records if the child advocate obtains a valid consent or a court order under 42 CFR part 2. The child advocate is subject to the same standards for safeguarding the confidentiality of information under this section and the same sanctions for unauthorized release of information as the department. In the course of a child fatality investigation, the child advocate may access records from the court of jurisdiction, attorney general, prosecuting attorney, or any attorney retained by the department and reports from a county child fatality review team to the same extent and in the same manner as provided to the department under state law.

(e) Request a subpoena from a court requiring the production of a record or report necessary to carry out the child advocate's duties and powers, including a child fatality investigation. If the person to whom a subpoena is issued fails or refuses to produce the record or report, the child advocate may petition the court for enforcement of the subpoena.

(f) Hold informal hearings and request that individuals appear before the child advocate and give testimony or produce documentary or other evidence that the child advocate considers relevant to a matter under investigation.

(g) Make recommendations to the governor and the legislature concerning the need for children's protective services, adoption, foster care, or juvenile justice services legislation, policy, or practice without prior review by other offices, departments, or agencies in the executive branch in order to facilitate rapid implementation of recommendations or for suggested improvements to the recommendations. No other office, department, or child placing agency shall prohibit the release of a child advocate's recommendation to the governor or the legislature.

(2) The child advocate must conduct a preliminary investigation into all child fatality cases that occurred or are alleged to have occurred due to child abuse or child neglect in 1 or more of the following situations:

(a) A child died during an active child protective services investigation or open services case, or there was an assigned or rejected child protective services complaint within 24 months immediately preceding the child's death.

(b) A child died while in foster care, unless the death resulted from natural causes and there was not a previous child protective services or licensing complaint concerning the foster home.

(c) A child was returned home from foster care and there is an active foster care case.

(d) The foster care case involving the deceased child or sibling was closed within 24 months immediately preceding the child's death.

(e) A child died while committed to a residential facility.

(3) Upon completing a preliminary investigation into a child fatality case described under subsection (2), the child advocate must determine whether a full investigation is necessary. If the child advocate determines a full investigation is necessary, he or she must open a full investigation into the child fatality case described under subsection (2).

(4) Subject to state appropriations, a full investigation under subsection (3) must be completed within 12 months after the child advocate opens that child fatality case for a full investigation.

Sec. 7. (1) Upon deciding to investigate a complaint, from a complainant and an individual not meeting the definition of complainant, the child advocate must notify the complainant or the individual not meeting the definition of complainant of the decision to investigate and must notify the department, adoption attorney, child placing agency, or residential facility of the intention to investigate. If the child advocate declines to investigate a complaint or continue an investigation, the child advocate must notify the complainant or the individual not meeting the definition of complainant and the department, child placing agency, or residential facility of the decision and of the reasons for the child advocate's action.

(2) The child advocate must advise a complainant of administrative remedies and may advise the individual to pursue all administrative remedies or channels of complaint open to the complainant before pursuing a complaint with the child advocate. Subsequent to the administrative processing of a complaint, the child advocate may conduct further investigations of a complaint upon the request of the complainant or upon the child advocate's own initiative.

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

(4) The child advocate may file a petition on behalf of a child requesting the court to take jurisdiction under section 2(b) of chapter XIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, or a petition for termination of parental rights under section 19b of chapter XIA of the probate code of 1939, 1939 PA 288, MCL 712A.19b, if the child advocate 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, a child placing agency, and a residential facility must do all of the following:

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

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

(c) Upon the child advocate's request, provide the child advocate with progress reports concerning the administrative processing of a complaint.

(d) Upon the child advocate's request, provide the child advocate information he or she requests under subdivision (a) within 10 business days after the request. If the department determines that release of the information would violate federal or state law, the child advocate must be notified of that determination within the same 10-day deadline.

(2) The department, an attorney involved with an adoption, a child placing agency, and a residential facility must provide information to a biological parent, legal guardian, prospective adoptive parent, or foster parent regarding the provisions of this act.

(3) The child advocate, the department, and the department of technology, management, and budget must ensure that the child advocate has access, in the child advocate's own office, to departmental computer networks pertaining to protective services, foster care, adoption, juvenile delinquency, the central registry, and juvenile justice services, unless otherwise prohibited by state or federal law, or the release of the information to the child advocate would jeopardize federal funding. The cost of implementing this subsection must be negotiated among the office of the child advocate, the department, and the department of technology, management, and budget.

(4) A residential facility must conspicuously post in an area accessible to residents, employees, and visitors a description of the office of child advocate services and the contact information for the purpose of filing a complaint.

(5) During the course of an investigation conducted by the child advocate, the residential facility must ensure that a resident has anonymity, privacy, and procedures in place to accommodate interviews conducted by the office of child advocate.

Sec. 9. (1) Subject to subsections (2) through (7) and except as provided in subsection (8), a record of the child advocate's office is confidential, shall only be used for purposes set forth in this act, is not subject to court subpoena, and is not discoverable in a legal proceeding. A record of the child advocate's office is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. If the child advocate identifies action or inaction by the state, through its agencies or services, that failed to protect children, the child advocate must provide his or her findings and recommendations to the child placing agency affected by those findings, and make those findings and recommendations available to the complainant and the legislature upon request to the extent consistent with state or federal law. The child advocate must not disclose any information that impairs the rights of the child or the child's parents or guardians.

(2) The child advocate may release information to a complainant or to a closed session of a legislative committee that has jurisdiction over family and children's services issues or juvenile justice issues regarding the department's handling of a case under the child protection law that is obtained or generated during an investigation conducted by the office.

(3) Unless otherwise part of the public record, the office must not release any of the following confidential information to the general public:

(a) Records relating to mental health evaluation or treatment of a parent or child.

(b) Records relating to the evaluation or treatment of a substance use disorder of a parent or child.

(c) Records relating to medical diagnosis or treatment of a parent or child.

(d) Records relating to domestic violence-related services and sexual assault services provided to a parent or child.

(e) Records relating to educational services provided to a parent or child.

(4) Notwithstanding subsection (3), if the child advocate determines that disclosure of confidential information is necessary to identify, prevent, or respond to the child abuse or child neglect of a child, the child advocate may disclose information in his or her possession to the department, a court, a law enforcement agency, or a prosecuting attorney investigating a report of known or suspected child abuse or child neglect. The child advocate shall not release the address, telephone number, or other information regarding the whereabouts of a victim or suspected victim of domestic violence unless ordered to by a court.

(5) Except as provided in subsection (4), the child advocate must not disclose information relating to an ongoing law enforcement investigation or an ongoing children's protective services investigation. The child advocate may release the results of its investigation to a complainant, or an individual not meeting the definition of complainant, if the child advocate receives notification that releasing the results of its investigation is not related to and will not interfere with an ongoing law enforcement investigation or ongoing child protective services investigation.

(6) The child advocate must not disclose the identity of an individual making a child abuse or child neglect complaint under the child protection law unless that individual's written permission is obtained first or a court has ordered the child advocate to release that information.

(7) The child advocate may release an individual's identity who makes an intentionally false report of child abuse or child neglect under the child protection law.

(8) Not more than 30 days after the case closure date of a case investigated by the office under this act, the child advocate must release his or her findings, recommendations, and the child placing agency or residential facility responses, if any, to the public. The child advocate must redact confidential information consistent with state and federal law.

Sec. 10. (1) The child advocate must prepare a report of the factual findings of an investigation and make recommendations to the department, the child placing agency, or the residential facility if the child advocate finds 1 or more of the following:

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

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

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

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

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

(3) The child advocate must notify the complainant of the actions taken by the child advocate and by the department, child placing agency, or residential facility.

(4) The child advocate may provide to the complainant the following information:

(a) A copy of the child advocate's report regarding the investigation's findings, recommendations to the department made according to the investigation, the department's response to the child advocate's findings and recommendations, and any epilogue to the child advocate's report and the department's response.

(b) Information that has otherwise been made public.

(5) The child advocate shall not release information to the individual making the complaint that will endanger the health or welfare of a child or another individual.

(6) With respect to a child fatality case investigated under section 6(2) and upon review of records or other information received under section 6(1)(c) or (d), in the course of a child fatality investigation, if there is no ongoing child protection proceeding involving a sibling of the child who died, the child advocate must provide any necessary recommendations for improving systemic issues that are discovered during the investigation of the child fatality. The recommendations may be provided to the court of jurisdiction, the state court administrative office, the county child fatality review team, medical professionals, law enforcement, or attorneys or other legal professionals involved with the particular child who died. The recommendations must also be summarized and included in the annual report referenced in subsection (7).

(7) The child advocate must submit to the governor, the director of the department, and the legislature an annual report on the child advocate's conduct, including any recommendations regarding the need for legislation or for change in rules or policies.

Sec. 11. (1) Subject to subsection (4), an official, the department, a child placing agency, or a residential facility must not penalize any person for filing a complaint or cooperating with the child advocate in investigating a complaint.

(2) An individual, the department, an adoption attorney, a child placing agency, or a residential facility must not hinder the lawful actions of the child advocate or his or her employees.

(3) A report by the child advocate is not subject to prior approval by a person outside of the office.

(4) An individual who intentionally makes a false complaint of child abuse or child neglect under this act is subject to the penalties contained in section 13(5) of the child protection law, MCL 722.633.

Sec. 12. The authority granted the child advocate 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 child advocate does not limit or affect the remedy or right of appeal or objection and is not an exclusive remedy or procedure.



Secretary of the Senate



Clerk of the House of Representatives

Approved _____

Governor