

Legislative Analysis



OFFICE OF THE CHILD ADVOCATE

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House Bill 4638 (H-1) as reported from committee
Sponsor: Rep. Jason Hoskins

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4639 as reported
Sponsor: Rep. Kimberly Edwards

House Bill 4640 as reported
Sponsor: Rep. Jimmie Wilson, Jr.

House Bill 4642 as reported
Sponsor: Rep. Kristian Grant

House Bill 4641 as reported
Sponsor: Rep. Noah Arbit

House Bill 4643 as reported
Sponsor: Rep. Donovan McKinney

Committee: Criminal Justice
Complete to 10-11-23

SUMMARY:

House Bill 4638 would amend the Children's Ombudsman Act¹ to replace the Office of Children's Ombudsman with the Office of the Child Advocate. In general, the child advocate would retain the powers and duties of the children's ombudsman, with added responsibilities related to residential facilities and juvenile justice services. The bill would change the name of the act to the Office of the Child Advocate Act. The other five bills would amend other acts to update references to the office or the act accordingly.

The Office of Children's Ombudsman is an independent agency housed in the Department of Technology, Management, and Budget. The ombudsman is charged with investigating and reviewing actions of the Department of Health and Human Services (DHHS), 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; recommending and effecting changes in policy, procedure, and legislation; and educating the public.

Among other things, the ombudsman can receive and investigate complaints regarding the cases of children involved in the state's child welfare system and is authorized to obtain records from DHHS and other agencies, including public and private child-placing agencies. These entities are allowed to respond to complaints, are required to cooperate with investigations and provide relevant records, and are prohibited from penalizing complainants. The ombudsman can request agency action in response to an investigation, request a licensing investigation, and refer criminal matters to a law enforcement agency. The records of the ombudsman are confidential. Upon closing an investigation, the ombudsman must issue a report and, in certain cases, make recommendations.

¹ <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-act-204-of-1994.pdf>

House Bill 4638 would eliminate the Office of Children’s Ombudsman and create the Office of the Child Advocate, with the same powers and duties as the former office as described above. Under the bill, the child advocate would have an additional oversight and investigative role concerning children in *residential facilities* providing juvenile justice services that is largely the same as, and is in addition to, its oversight and investigative role with regard to protecting the safety and well-being of children in need of protective services, foster care, or adoption services. To that end, the bill would add *residential facilities* to provisions that describe other agencies or entities the office can investigate and the procedures for those investigations, notifications, responses, information sharing, findings, reports, and recommendations. The bill also would make other, or more specific, changes as described below.²

Residential facility would mean a facility that provides *juvenile justice services* and is state operated, county operated, public, private and contracted, secure, or nonsecure.

Juvenile justice service would mean³ a service, exclusive of judicial functions, provided by a county for juveniles who are within or likely to come within the court’s jurisdiction under section 2 of Chapter XIIA of the Probate Code (known as the “juvenile code”) or within the jurisdiction of the court of general criminal jurisdiction under section 606 of the Revised Judicature Act, if that court commits the juvenile to a county or court juvenile facility under section 27a of Chapter IV of the Code of Criminal Procedure. A service would include intake, detention, detention alternatives, probation, foster care, diagnostic evaluation and treatment, shelter care, or any other service approved by the office or county juvenile agency, as applicable, including preventive, diversionary, or protective care services.

Complainants

The following individuals could make a complaint to the child advocate alleging that an administrative act with respect to a particular child is contrary to law, rule, or policy, imposed without an adequate statement of reason, or based on irrelevant, immaterial, or erroneous grounds:⁴

- The child, if able to articulate a complaint.
- The child’s biological parent, foster parent, adoptive parent or a prospective adoptive parent, or legally appointed guardian.
- A guardian ad litem of the child.
- An adult who is related to the child within the fifth degree by marriage, blood, or adoption, as defined in the Adoption Code.
- A Michigan legislator.
- A mandated reporter of child abuse or child neglect under the Child Protection Law.
- A judge for a juvenile receiving juvenile justice services.
- The governor.

² This summary does not describe all of the provisions where there is continuity between the new and former offices, nor does it describe all of the provisions where the only difference in the powers and duties of the respective offices is the addition of *residential facilities* to the applicable entities with regard to the child advocate.

³ This definition is the same as that in section 117a of the Social Welfare Act.

⁴ Except for the last two in the list (the judge and the governor), these are the individuals who may make a complaint to the children’s ombudsman under current law.

Scope of authority

The bill would authorize the child advocate to do things beyond the authority currently given the children's ombudsman. The child advocate could pursue all necessary action, including legal action, to protect the rights and welfare of a child under the jurisdiction, control, or supervision of a residential facility or a child who is the victim in a Child Protective Services maltreatment in care investigation. The child advocate could review policies and procedures relating to a residential facility's involvement with children and make recommendations for improvement. The child advocate also could 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. However, a court's placement decision would not be subject to the child advocate's authority.

Requirements for residential facilities

A residential facility would have to do all of the following:⁵

- Upon the child advocate's request, grant the child advocate or their designee access to all information, records, and documents in the possession of the residential facility that the child advocate considers relevant and necessary in an investigation.
- Upon the child advocate's request, provide the child advocate information requested above within 10 business days after the request.
- Assist the child advocate to obtain the necessary releases of those documents that are specifically restricted.
- Upon the child advocate's request, provide the child advocate with progress reports concerning the administrative processing of a complaint.
- Provide information to a biological parent, legal guardian, prospective adoptive parent, or foster parent regarding the provisions of this act.
- Conspicuously post in an area accessible to residents, employees, and visitors a description of the office of the child advocate services and the contact information for filing a complaint.
- During the course of an investigation conducted by the child advocate, ensure that a resident has anonymity, privacy, and procedures in place to accommodate interviews conducted by the office of the child advocate.

Child fatality cases

The child advocate would be required to conduct a preliminary investigation into all child fatality cases that occurred or are alleged to have occurred to due child abuse or child neglect in situations where a child died while committed to a residential facility.⁶

Mandatory training

The act now requires Office of the Children's Ombudsman employees to receive mandatory training conducted by the Michigan Domestic Violence Prevention and Treatment Board in domestic violence and in handling complaints of child abuse or child neglect that involve a history of domestic violence.

⁵ Except for the last two in this list (regarding posting and interviews), these are requirements of other relevant entities under both current law (for the children's ombudsman) and the bill (for the child advocate).

⁶ This would be in addition to other child fatality investigations that the children's ombudsman now must investigate, which the child advocate would also be responsible for under the bill.

The bill would not apply this provision to employees of the Office of the Child Advocate. It would instead require those employees to receive training in the areas of child abuse or child neglect as determined by the child advocate.

Other provisions

The bill provides for the child advocate to be appointed by the governor with the advice and consent of the Senate. There is no provision for the current children's ombudsman to serve in that role. The bill does not provide a prospective effective date. The Office of Children's Ombudsman would apparently cease to exist when the bill takes effect.

Finally, under current law, if the ombudsman identifies action or inaction by the state, through its agencies or services, that failed to protect children, the ombudsman must provide their findings and recommendations to the agency (i.e., of the state) affected by those findings. The bill would instead require the child advocate to provide those findings and recommendations to the *child placing agency* affected by those findings. This would remove the requirement to report findings and recommendations to the relevant state agency and narrow the cases in which findings and recommendations must be shared to only instances involving a failure by the state to protect children that also involve a child placing agency.

MCL 722.921 et seq.

House Bills 4639 through 4643 would amend the following acts to change references to the children's ombudsman, the office of the children's ombudsman, and the Children's Ombudsman Act to the child advocate, office of the child advocate, and Office of the Child Advocate Act:

- HB 4639: Social Welfare Act (MCL 400.115m).
- HB 4640: Probate Code (MCL 710.67, 710.68, and 712A.19b).
- HB 4641: 1973 PA 116, the child care licensing act (MCL 722.115a and 722.120).
- HB 4642: Child Protection Law (MCL 722.627, 722.627b, and 722.627k).
- HB 4643: Foster Care and Adoption Services Act (MCL 722.955 et seq.).

None of these bills can take effect unless House Bill 4638 is enacted.

BACKGROUND:

The Michigan Task Force on Juvenile Justice Reform was created by Executive Order 2021-6 as a bipartisan advisory body in the Department of Health and Human Services⁷ to "lead a data-driven analysis of [Michigan's] juvenile justice system and recommend proven practices and strategies for reform grounded in data, research, and fundamental constitutional principles." In particular, in the words of its final report,⁸ the task force was "charged with developing recommendations to improve state law, policy, and appropriations guided by the following objectives:

- Safely reduce placement in detention and residential placement and associated costs.
- Increase the safety and well-being of youth impacted by the juvenile justice system.

⁷ <https://www.legislature.mi.gov/documents/2021-2022/executiveorder/pdf/2021-EO-06.pdf>

⁸ <https://micounties.org/wp-content/uploads/Michigan-Taskforce-on-Juvenile-Justice-Reform-Final-Report.pdf>

- Reduce racial and ethnic disparities among youth impacted by the juvenile justice system.
- Improve the efficiency and effectiveness of the state’s and counties’ juvenile justice systems.
- Increase accountability and transparency within the juvenile justice system.
- Better align practices with research and constitutional mandates.”

The task force issued its final report on July 18, 2022.⁹

Among its unanimous recommendations was that the state “Establish an independent ombudsman, or strengthen and expand an existing entity, for handling, investigating, and reporting incidents in facilities” and “Establish policies and confidentiality protocols that support youth/families to make complaints directly to this entity, anonymously, if necessary, rather than having to go through the facility in which a youth is currently placed.”

FISCAL IMPACT:

House Bill 4638 would lead to increased costs to the existing Office of Children’s Ombudsman, or Office of the Child Advocate as proposed under the bill, within the Department of Technology, Management, and Budget,. The bill would expand the office’s role by including investigations of complaints from juvenile justice service centers among its responsibilities. Additional staff would be required to conduct the increased investigations from the expanded role. The State Budget Office has recommended an additional 8.0 FTE positions to the office and \$1.6 million in general fund revenues in the Executive FY 2023-24 budget to cover the increased investigations as well as to increase oversight and outreach for youth in the juvenile justice system.

House Bills 4639 to 4643 would not have a significant fiscal impact on state expenditures to the Department of Health and Human Services or local units of government.

POSITIONS:

Michigan Supreme Court Chief Justice Elizabeth Clement testified in support of the bills. (6-20-23)

Representatives of the following entities testified in support of the bills:

- Office Children’s Ombudsman (6-27-23)
- Prosecuting Attorneys Association of Michigan (PAAM) (6-20-23)
- Michigan Probate Judges Association (6-20-23)
- The Delta Project (6-20-23)
- Michigan Association for Family Court Administration (6-20-23)
- Michigan Center for Youth Justice (6-27-23)

The following entities indicated support for the bills:

- State Court Administrative Office (9-19-23)
- Department of the Attorney General (9-19-23)

⁹ <https://www.michigan.gov/whitmer/news/press-releases/2022/07/18/task-force-on-juvenile-justice-reform-approves-blueprint-for-transforming-juvenile-justice>

- Criminal Defense Attorneys of Michigan (6-20-23)
- Safe and Just Michigan (6-20-23)
- Michigan League for Public Policy (6-20-23)
- Michigan Association of Counties (6-20-23)
- State Appellate Defender Office (6-20-23)
- Michigan Catholic Conference (9-19-23)
- ACLU of Michigan (9-19-23)
- Michigan Federation for Children and Families (7-11-23)
- Council of State Governments Justice Center (7-11-23)
- Coalition for Juvenile Justice (6-7-23)
- Michigan Association of Circuit Court Administrators (7-11-23)
- Student Advocacy Center of Michigan (9-11-23)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.