

To: Members of the Judicial Process Committee

Thank you for this opportunity. My name is Sheri McMahon and I live in Fargo. As a supporter of creating an ombudsman program accessible to families involved with child and family services in North Dakota, I have taken some time to research existing programs elsewhere. Some states such as Iowa and Arizona have independent ombudsman agencies which assist citizens with nearly every area of state government, not just child welfare. Some child welfare ombudsman are independent agencies; others are housed within the human services agency and may include child welfare ombudsman work with a range of other human-services related areas such as medical services, long term care, civil rights, or even employee concerns. In recent years, a number of new programs have been created as a result of increase concern about child welfare oversight.

I started by reading preliminary material about ombudsman programs in general and those related to children's services. A few years ago the American Bar Association worked on this issue, and I found some information through the ABA, the Department of Justice, and other sources. I went to state government websites, looking at ombudsman program websites, statutes, and reports. I also found some media reports and position statements published in connection with the process of creating programs in states such as Pennsylvania and Georgia.

More recently, I decided to talk to people working in some of these programs. Gerald Papica is a Tennessee ombudsman. Tennessee's program was funded its first six years by an Office of Juvenile Justice and Delinquency Prevention grant beginning in 1996. Since then it is state funded. Gerald is a former CPS investigator himself. The program has two staff who investigate complaints involving foster children, children in kinship placements, and families involved with CPS. Most of the calls come from mothers. At first, he said, people in the system—his former colleagues—were wary of the program. Over time, he said, he believes it has created more accountability while emphasizing persuasive powers to effect positive change. By now, he said, the relationship with the system is “really very good.”

Tennessee's child welfare ombudsman program is part of an external agency, the Tennessee Commission for Children and Youth. The commission was established by statute. Gerald also

co-chairs a US Ombudsman Association Committee on Children and Families. He recommended I also contact Joanne MacDonnell, who is the USOA's Director of Outreach and Development as well as a full-time Deputy Ombudsman for the State of Arizona. This turned into another pleasant and productive conversation, not just about Arizona but about the ombudsman concept in general.

Arizona's ombudsman office is a separate agency empowered to investigate nearly every other agency in the state. Arizona's Department of Economic Security, which includes human services, incorporates a huge number of agencies which have in-house ombudsmen, but the State Ombudsmen is a statutory agency based on a classical ombudsman model. The ombudsmen is where ordinary citizens go for help when they feel government is treating them unfairly. The ombudsman investigates the situation and obtains facts. The ombudsman also examines the legal basis for the agency's action. Did the agency violate any statute or rule? Did the agency interpret the statute or rule in a manner that was reasonable and fair? Is there an underlying problem with the law or the rule itself that policymakers should look at? On the individual level, the ombudsman assists to find solutions through informal means whenever possible. If not, it recommends a solution. The agency may agree to that solution or state its position in deciding to reject it. These conclusions are provided to lawmakers and governors to consider. Ombudsman programs also recommend systemic changes, including legislative changes. But generally they do not litigate, they do not arbitrate, and they do not enforce.

The classical definition of an ombudsman has four features: independence, impartiality, credible review process, and confidentiality. These components should be defined by statute which establishes the office so that the appointed ombudsman is free from influence, has broad powers of investigation, whose work is generally immune from subpoena or legal action, and who is not an advocate for any individual or group.

I explored many programs, some of which were identified as ombudsman programs, others with labels such as Child Advocate, Public Counsel, Inspector General. Some would not fall under formal ombudsman definitions because they are housed within the human services system itself. Many of these would actually be considered internal complaint resolution offices, which may handle civil rights complaints and employee complaints as well as consumer complaints. It does appear that in-house child welfare ombudsman programs are more likely to screen out

complaints and find in favor of the agency than independent programs.

Reports helped get a sense of the ombudsman program activities and outcomes. Several reports included data such as source, type, and outcome of complaint. In child welfare-related complaints, reports that included source data consistently identified parents as the single largest source, usually followed by relatives. Foster, adoptive, and pre-adoptive parents generally came third, followed by other sources including medical, social services, and legal professionals, with a small percentage of children as the complaint source. An exception is California's Foster Care Ombudsman program, which is specifically targeted at youth in foster care or who have aged out. 35% of contacts to this program come from foster youth.

Contacts with an ombudsman office do not necessarily result in investigations. Sometimes the program provides information, referral, or assistance so the individual can make effective use of grievance procedures within agencies. Some complaints are screened out because they pertain to an area which the ombudsman is not authorized to investigate. Where reports did state how many complaints led to investigations, they varied in terminology and detail as to how they identified outcomes. In Michigan, 372 complaints out of 1000 were determined valid. Of those, 132 were investigated, of which 35% resulted in "adverse findings". In Maine, out of 249 complaints, 21 were deemed valid and resolved. For 21 others the complaint was deemed valid but either the agency refused to act on the ombudsman recommendations or the action could not be undone. In Washington, 698 out of 768 were investigated, with "adverse findings" in 20% of the cases. Two reports pointed out that in cases that were investigated, the ombudsman program identified many more concerns than the complainant had raised. In Utah, the program investigated 200 "concerns," of which 91 were identified by the ombudsman office after accepting the complainant's issue for investigation. In Milwaukee, 3% of investigations found violations that had been alleged by the complainant—but another 7% proved to include violations the complainant had not identified.

The classical ombudsman's conclusions cannot be used in legal proceedings. This does not preclude others from using evidence found by the ombudsman which could have been obtained by other means. The ombudsman also cannot re-investigate facts that have been established in legal proceedings. Some programs which do become involved in legal proceedings, or become directly involved with investigations that can lead to civil or criminal proceedings, would be a

departure from the classical ombudsman model.

If an ombudsman program is charged with assisting citizens in a particular area of government, such as child and family services, it is important to give that program access to information from other agencies any time such information becomes relevant to an investigation in the program's specified area of jurisdiction. Private entities, and other public agencies, must be required to cooperate with the ombudsman investigation. This can be accomplished by giving the ombudsman a subpoena power and/or by establishing a legal duty for any agency to cooperate with an ombudsman request. Obviously, this also means provision must be made to safeguard information the ombudsman office obtains that is confidential.

There are certain functions states must carry out which have been located within ombudsman programs. One is child fatality or near-fatality review. Another is institutional abuse review. Regarding the latter, currently Protection and Advocacy investigates institutional abuse of children with disabilities and is also allowed to take legal action at its discretion. This does not apply to children who are in custody, including children whose custody is based on deprivation. I do not think we have a sufficiently credible process in place for such issues at this time.

Yesterday I spoke with Naomi Steenson, who is Oregon's Ombudsman. The office deals with issues involving human services, but 40% of their calls relate to child welfare. The office has been in existence since 1991. In some states programs have been precipitated by the death of a child in foster care—such is the case with Maine and Missouri. Washington's system was precipitated by the death of a child, whether in care or not I don't know. In Oregon, there was no real precipitating event, but complaints were coming to legislators and to the Governor's office, and these officials felt they lacked expertise to tell what was right and what was wrong. Oregon's program has gone back and forth a few times from the Governor's office to the Department of Human Services. It is now within DHS but also reports directly to the Governor's office. At times there is pressure to make it more of a disciplinary agency—more like an Inspector General program, which Illinois has. In the past the program has had a somewhat adversarial emphasis, but according to the current Ombudsman one result was that local agencies were doing everything they could to hide problems from the Ombudsman program. She says that some regions in Oregon work very well with the office—want to do the right thing—but in others they identify leadership issues where the person in charge will not

tolerate questioning of authority. The ombudsman program appears to be in a position to bring out these issues precisely because it is not an enforcement agency per se.

Naomi was actually born in Grand Forks, has relatives in North Dakota, and offered some insights about the culture. We have a hard time with conflict. Faced with it, our style is to choose either avoidance or aggression. We have a much harder time engaging without slipping into one of those styles. This is something an ombudsman program can do.

Another observation Naomi made about North Dakota is that our institutions tend to be relationship-based. This makes sense to me—in that sometimes where I believe there need to be explicit protections in statute, for example, there isn't anything. For example, there isn't anything in statute declaring that as a parent I have a right to see my child's medical and educational records while he is in foster care. Getting to such a right is a terribly difficult process.

A couple of items came up during these conversations that I want to bring to the attention of this committee. When the Arizona ombudsman gets a call about children taken by CPS, the first question is whether the parents received a TCN. This is a Temporary Custody Notice, a piece of paper that declares what has just occurred. It also provides parents with some basic rights information and contact information for the ombudsman program. Joanne in Arizona described it as a “receipt for your child.” I have never seen or heard of a similar document being used in North Dakota. In 2008 the San Diego County child welfare system was the subject of a Grand Jury investigation. Its report, released last year, highlighted a wide array of very serious concerns. The proceedings came about partly because a small number of parents from different areas of the county spoke up, saying they had never received written notification at the time their children were removed. Subsequently the Grand Jury found other problems. Its report includes quoted testimony from an employee that, although the county uses an assessment tool intended to help provide more objective measures of the risk a child faced, it was always easy for CPS workers to manipulate the information to have the assessment result in the conclusion the CPS worker wanted. One recommendation from the Grand Jury was to give the ombudsman power to re-investigate facts stated in the county's initial investigation, a power it had not previously had. A lot of issues emerged from the original complaints about lack of written notification—a violation of California law—but we do not even have a notification requirement

in North Dakota. If my home is searched by law enforcement and they take items from my home, they leave a copy of a warrant and a list of what they have taken. If I am cited I get a ticket. If my child is taken, I get nothing.

Second, we need a clearly articulated complaint process within the agencies. This is not a substitute for an ombudsman program. Every ombudsman program I have found refers complainants to the agency's own complaint resolution process, although the classical model does not require the complainant to exhaust all other avenues first. Also, a complainant to an ombudsman does not have to be a party to the issue, which would be a requirement for use of an in-house complaint process. An external ombudsman would certainly be in a good position to help develop an effective complaint process to use within agencies.

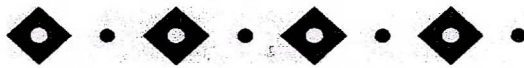
If the legislature takes this idea, there will be many decisions to make. Would an ombudsman be named by the legislature, the Governor, the Director of Human Services? Would there be a nomination procedure? Would appointment by one branch of government be confirmed by another branch? Would there be a limited term of service and, if so, would that term coincide with that of the Governor? What specific qualifications will be required? There are issues about jurisdiction, access to records, and so on to decide. Oh, yes, and funding. I didn't find a lot of funding information and I do not have expertise in public finance. The state's general fund is generally the source of funding. Most programs are allowed to seek and accept grant funding. Oregon's funding is provided in part by a \$1 charge on marriage licenses, divorce filing fees, and adoption filing fees.

<p>Maine 2003</p> <p>Death of Logan Marr in foster care</p>	<p>Non-profit contracted with the Governor's office</p> <p>Ombudsman must be attorney or master's degree social worker</p>	<p>Statute specifies DHHS-reports indicate involvement with other agencies</p> <p>“best interests” of the child are the standard</p> <p>Program</p>	<p>2008-175 cases, 249 complaints.</p> <p>21 valid complaints resolved</p> <p>21 valid complaints unresolved—DHHS refused or action could not be undone</p>	<p>55% parents</p> <p>8% foster parents, service providers, attorneys</p> <p>1% children</p> <p>20% friends or other relatives</p> <p>17% unknown source</p>
<p>Michigan 1994</p>	<p>Independent state agency, Office of Management and Budget, appointed by governor, advice and consent of Senate</p> <p>\$1.4 million, general fund, 11 staff</p>	<p>Makes recommendations pertaining to policy and statute</p>	<p>1000 complaints</p> <p>240 valid complaint, not opened</p> <p>132 valid, opened for investigation</p> <p>35% adverse findings</p> <p>21% resolved by other means</p> <p>Findings and Recommendations—legal noncompliance or poor practice</p>	<p>35% parents</p> <p>22% relative</p> <p>4% mandated reporters</p> <p>Ombudsman 17%</p> <p>13% foster or adoptive parents</p> <p>Attorneys 2%</p> <p>Other 6%</p> <p>Legislators 1%</p>
<p>Missouri 2003</p> <p>Death of Dominic James in foster care</p>	<p>4 staff, \$340,000</p> <p>Independent agency within Office of Administration, Governor's Office</p>		<p>316 complaints</p> <p>No specific data on adverse findings</p>	<p>47% parents</p> <p>32% other relative</p> <p>15% foster parents, agency, or GAL</p>
<p>Rhode Island</p> <p>R.I.G.L. §42-73-7 and §40-11-1 et seq.</p>	<p>Member of the bar, 3 yr experience minimum, appointed by Governor , advice and consent of Senate</p> <p>Independent of DYCF</p> <p>Trustee privileges</p> <p>Power to commence civil</p>	<p>Child fatality and institutional review</p> <p>OCA litigates obo of compensation for criminal injuries to children under a grant</p>	<p>No info on # of complaints</p>	<p>No info on sources of complaints</p>

action obo child - 6 staff				
<p>Washington 1996</p> <p>Cannot be compelled to testify or provide evidence except to the legislative oversight committee</p> <p>Chapter 43.06A RCW</p>	<p>8.5 staff</p> <p>Governor appoints, senate confirms, no specific credentials, 3 year term</p> <p>Independent of DSHS, part of Governor's office</p> <p>Oversees DSHS</p> <p>Washington has a separate education ombudsman</p>	<p>Child fatality reviews</p> <p>Must report conduct by public official, employee, or "other person" to authorities when it warrants criminal or disciplinary action</p> <p>New interagency agreement for OCO and DSHS to establish transparency and require DSHS to adhere to timelines for remedial actions</p>	<p>2008-9 728 complaints, 698 investigated</p> <p>17% were "emergent complaints" (imminent risk)</p> <p>8% OCO intervention</p> <p>5% assistance (new category)</p> <p>20% "adverse findings—agency acted illegally, unreasonably, or child was harmed"</p>	<p>Parent 40%</p> <p>Relative 30%</p> <p>Foster parent or professional 24.5%</p> <p>Child or other 4.5%</p>
<p>New Jersey OCA 2003</p> <p>Part of the Department of the Public Advocate</p> <p>52:27EE- actually restored a DPA that had been abolished in the past</p> <p>defined by statute as a child protective services agency</p>	<p>Appointed by governor, consent of Senate</p> <p>Power to issue subpoenas and commence litigation</p> <p>OCA is an office in the dept but is independent of the dept</p> <p>power to litigate, including power to hire independent counsel</p> <p>power to hold public hearings</p> <p>power to order and monitor corrective actions</p> <p>annual reports t</p>	<p>Consult with PA but not required to</p> <p>Communicate with child subject to parent or court permission</p>	<p>No info – reports can be systemic in nature according to statute</p>	<p>No info</p>

Connecticut	Within the Department of Children and Families, 4 th tier	Basically an in-house resolution process, not independent or statutory. No reports	No information	
Milwaukee	Under DCF Secretary oversight No legal authority or power, no fault finding Not an advocate for any person or group 2.5 staff, consults with attorney when needed Contracted service does not participate in CART but is authorized to	Systemic recommendations in report: documentation, staff supervision, goals, communication. Report omits formal agency response Program has additional findings --there are 5 agency levels for resolution 52% of recommendations involved existing agency policy that had not been followed	2008 – 164 137 new, 16 screened out 62% referred to Bureau complaint resolution process- not mandatory—30 day follow up Agency action affirmed 86%. Violations 3% but increase to 10% when violations the program identified were included	69% parents 14% other relatives 8% foster or adoptive parents 15% other (total > 100, no reason)
Georgia Chapter 11 of Title 15 of the Official Code of Georgia Annotated	Appointed by governor Can apply to the governor to take legal action, can request state criminal investigation	Emphasis on policy analysis in report, discussion of alternative response and use of safety homes	2008 - 118 investigations	“one third” from parents, “significant number” from other relatives, media attention
Colorado	Complaint and conflict resolution process within department. Citizens Review panel in each county reviews grievances			

Oregon Governor's Advocacy Office	Within DHS, ombudsman for DHS programs, includes Pain Management Ombudsman and Children's Ombudsman Appointed by DHS director, approved by Governor, reports to both	40% of calls come from parents Reports monthly to Gov office, mostly demographic info
Arkansas	Foster Parent Ombusman only	
Utah 1996 62A-4a-208	Created by DHS, became statute in 1998 Appointed by DHS director	<p>Investigates and makes recommendations</p> <p>2006-389 complaints 43% referred to CFS 77 cases reviewed- 20% 20, or 26% ,of those were investigated (5% of total)-</p> <p>60 investigations completed in 2006, 200 concerns, 91 of those identified by ombudsman rather than by initial complainant. Investigations must have carried over from previous year Of those, 122 concerns were valid 68 resulted in recommendations to DHS 8 were moot 50 resolved by DHS</p>



All contact with the OCO is strictly confidential.

The OCO is not an emergency intervention service. If you have a concern that needs immediate attention, call your county Department of Human Services office or law enforcement.


How are complaints investigated?

If the OCO decides to open a case for investigation of your complaint, you will be notified by letter. The OCO will order a copy of the child's confidential DHS and/or private child-placing agency case file. An OCO investigator will then conduct an independent investigation of the complainant's issues by:

- Reviewing documents contained in the file (agency documents, court documents, medical records, etc.)

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.


- 
- Interviewing caseworkers, supervisors and other professionals, who have knowledge of the child's case.
 - Determining whether the agency's actions and decisions complied with laws and policies in the best interest of the child or children involved.

If the OCO cannot investigate your complaint, you will be provided with information that may assist you in resolving your concerns.

What happens after an investigation is completed?

All complainants will receive written notification of the results of OCO's investigation.

If the OCO finds that the actions of DHS or a private child-placing agency complied with law, rule, or policy, the OCO will send a letter to you, DHS, and the child-placing



agency stating that the OCO has completed its investigation and closed your case.

If the OCO finds that an agency did not comply with law, rule, or policy, the OCO will notify DHS and the private-child placing agency of the results of the OCO's investigation. After the agency responds in writing to the OCO, you will receive a closing report that informs you of the results of the OCO's investigation, the agency's response, and any actions taken to address or correct the identified problem(s).

How do I get more information about the OCO?

Contact our office and request a copy of our Annual Report. Each fiscal year, the Ombudsman submits an annual report to the Governor, Legislature, and DHS Director. The report contains statistical information about the work of the OCO and recommendations for changes in the child welfare system.

Visit our website at www.michigan.gov/oco. You will find our annual reports in addition to helpful information for parents, relative caregivers, and foster parents.

Dedicated to Serving Michigan's Children

OFFICE OF CHILDREN'S OMBUDSMAN

**P.O. Box 30026
Lansing, MI 48909**

**Phone: (517) 373-3077 or
1-(800) 642-4326**

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TTY: 1-(800) 649-3777

Email: childombud@michigan.gov

Website: www.michigan.gov/oco



What is an Ombudsman?

Ombudsman (om-buds-man) is a Swedish term for appointed government official who investigates citizen complaints, reports findings, and helps achieve solutions.

What is the Office of Children's Ombudsman?

The Office of Children's Ombudsman (OCO) is an independent state agency created by Public Act 204 of 1994 (the Children's Ombudsman Act.) The Children's Ombudsman is appointed by the Governor with the advice and consent of the Michigan Senate. The OCO staff consists of a multi-disciplinary team of professionals.

What does the OCO do?

The OCO has the legal authority to:

- Independently investigate complaints about children involved with protective services, foster care, adoption services, and juvenile justice.

Determine if an action or decision was made according to the laws, rules and policies governing the Department of Human Services (DHS) and private

child placing-agencies.

- Take all necessary action, including legal action, to protect the rights and welfare of a child.
- Investigate cases involving children who have died as a result of child abuse or neglect when there has been previous agency involvement.
- Make recommendations to the Governor, Legislature and the DHS Director to improve the child welfare system.
- Educate the public about child welfare laws and policies.

What issues are not investigated by the OCO

The OCO has no legal authority to investigate complaints that exclusively involve:

- Friend of the Court issues (custody, parenting time, child support)
- Guardianship
- School problems
- Law enforcement
- Court orders
- Judges

The OCO can provide you with referral

information regarding who may be able to help you.

What should I do before calling the OCO?

Anyone may file a complaint with the OCO. If possible, first, try to resolve your problem by contacting DHS or the child-placing agency handling the case. Many times an agency official can explain a specific policy or correct a problem. When you contact the agency remember to:

- Have all the relevant information. It helps to write down the problem and your questions ahead of time.
- Talk to the right people. If you cannot resolve the problem with the caseworker, ask to speak to the worker's supervisor. If you are still not satisfied, contact the program manager and agency director. Be sure to clearly state what you want the agency to do.
- Keep careful notes and records of who you spoke to, the dates, times and phone numbers and what you were told.
- Carefully read all information that is sent to you since there are often rules and deadlines that must be followed.

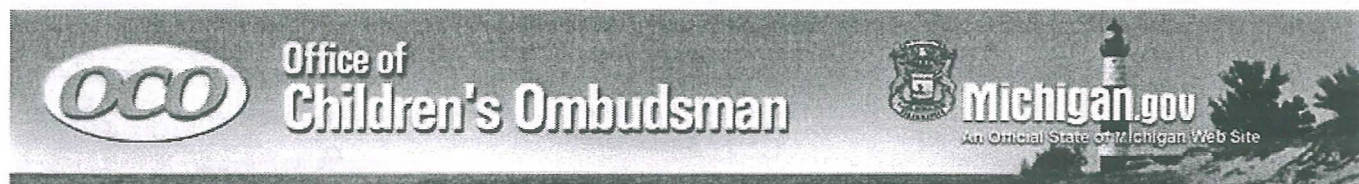


How are complaints filed with the OCO?

There are several ways to file a complaint:

- Email the complaint form found on our website at www.michigan.gov/oco.
- Call our toll free number, 1-800-642-4326, to request a complaint form and postage-paid envelope.
- Call our toll free number during business hours, Monday-Friday, 8 a.m.-5 p.m. (you may also leave a message after hours and on the weekends) and provide the following information:
 - Child or children's names and birth-dates
 - County DHS office or private agency involved
 - Brief description of the problem
 - Actions you are requesting from the OCO
- Mail a letter that includes the above information and a phone number where you can be reached.

After you have provided the necessary information, the Intake Investigator will call you to gather additional information so that a decision can be made regarding whether to open a case for investigation.


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Mission Statement

• Mission of the Office of Children's Ombudsman

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.

Ombudsman Staff


• Staff of the Office of Children's Ombudsman


The Michigan Office of Children's Ombudsman (OCO) employs a multi-disciplinary team of investigators, many with advanced degrees. Investigator positions are filled by professionals with diverse fields of experience.

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**Office of
Children's Ombudsman**

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The Office of Children's Ombudsman (OCO) was established by the Michigan Legislature in 1994 in an effort to bring greater accountability to Michigan's child welfare system. The Children's Ombudsman Act (Public Act 204 of 1994) established the OCO as an independent state agency with primary responsibility to receive and investigate complaints concerning children who for reasons of abuse or neglect are under the supervision of the Department of Human Services (DHS) or its private contracted agencies.

In addition to addressing citizen complaints, the OCO makes recommendations to the Governor, the Legislature, and the Department of Human Services (DHS) for changes in child welfare laws, rules, and policies to improve outcomes for children.

Michigan's Children's Ombudsman is appointed by the Governor with the advice and consent of the Michigan Legislature and is supported by a multi-disciplinary team of investigators. Governor Granholm appointed Verlie Ruffin as Children's Ombudsman on January 30, 2006.

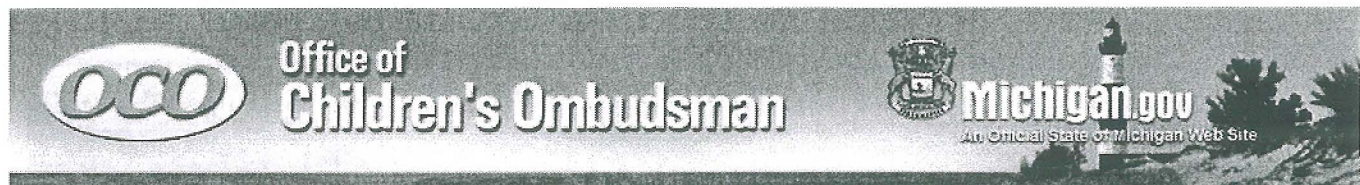


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What We Do

The Children's Ombudsman Act gives the OCO the authority to:

- Independently investigate citizen complaints about children involved with protective services, foster care, adoption services, and juvenile justice to determine whether the Department of Human Services and/or private agency actions and decisions complied with laws, rules, and agency policy.

Note: The Ombudsman has the sole authority and discretion to determine whether a complaint will be investigated.

- Release reports to OCO complainants, the Department of Human Services, and private child placing agencies detailing investigative findings and recommendations that address improvements to laws, policies, and agency practices.
- Assist citizens with their concerns about child welfare matters.
- Educate the public about the child welfare system.

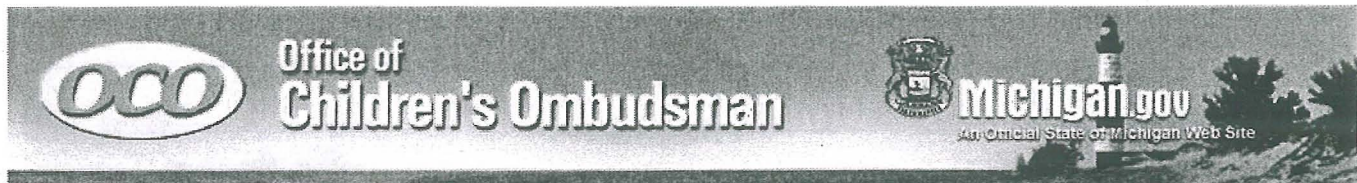
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Who Can File a Complaint?

Anyone can file a complaint with the OCO.

The following individuals, listed in Section 5 of the Children's Ombudsman Act, may receive the written findings, recommendations, and DHS responses to an OCO investigation.

- 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 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) An attorney for any of the above-listed people.
- i) A Michigan legislator.
- j) An individual required to report child abuse or child neglect under section 3 of the Child Protection Law, 1975 PA 238, MCL 722.623.

Any individual not listed above may receive the recommendations and DHS responses to an OCO investigation.

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What should I do before I call the Ombudsman?

If possible, try to resolve your problem by contacting the Department of Human Services or the child-placing agency handling the case. Many times, an agency official can explain a specific policy or correct the problem. When you contact an agency, remember to:

- Have all the relevant information. It helps to write down the problem and your questions ahead of time.
- Talk to the right people. State the action you are requesting. If you cannot resolve the problem with the caseworker, speak to the caseworker's supervisor, the county director, and the zone manager (in that order). Ask questions, and keep asking until you understand what happened and why.
- Keep careful notes and records of all your contacts, including dates, times, telephone numbers, and the names and titles of people you talked to and what you were told to do.
- Carefully read all information that is sent to you; there are often rules and deadlines that must be followed.

Departments/Agencies

Online Services

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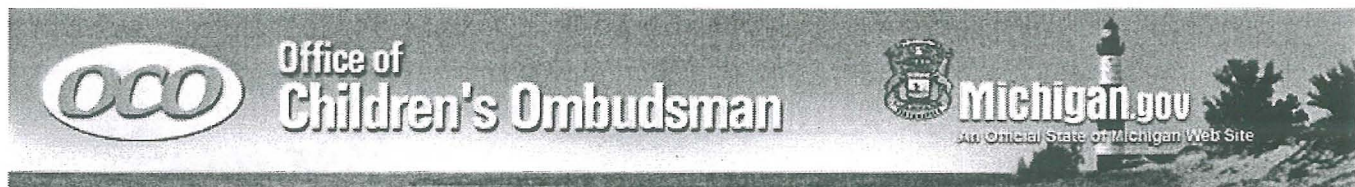
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How are complaints investigated?

The Ombudsman has the sole authority and discretion to determine whether a complaint will be investigated. If your complaint is opened for investigation, you will be notified by letter.

The OCO orders the child's confidential DHS case file and/or private child placing agency case file. Section 8 of the Children's Ombudsman Act authorizes the Department of Human Services (DHS) and/or private agency to release the case file to the Ombudsman, and to assist the Ombudsman in obtaining the necessary releases for those documents that are specifically restricted by law.

An OCO investigator is assigned to your case and conducts an independent, comprehensive investigation that includes a thorough review of all the documents in the case file, (agency documents, court documents, medical records, etc.), as well as interviews with caseworkers, supervisors, and other individuals with knowledge of the child's case.

If the OCO concludes that the DHS and/or private agency's actions and decisions were in the best interests of the child and complied with law and DHS policies, you will receive a letter affirming the actions of the agency and outlining the steps taken by the OCO to investigate your complaint.

If the OCO finds that the actions of DHS and/or the private agency were not in the best interests of the child and/or did not comply with law or DHS policies, the OCO completes a report detailing its specific findings and recommendations and sends the report to the DHS and/or private agency. Agencies have 60 days to review and respond to the results of the OCO's investigation. A closing letter will be sent to you informing you of the results of the OCO's investigation, the DHS and/or private agency's response, and any actions taken by the agency to correct the identified problem (s).

Departments/Agencies

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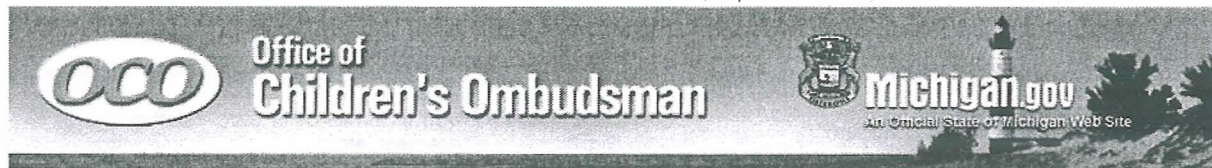
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[Foster Parent Information](#)[Relative Care Resources](#)[Birth Parent Information](#)[Annual Reports](#)[Inside OCO](#) [Printer Friendly](#) [Text Version](#)[A- A*Text Size](#) [Share](#)**OCO Complaint Form****Information About You (will be kept confidential)**

* Indicates a required field.

Name *

Address *

City *

State *

Michigan

Zip Code *

County *

Email Address *

Daytime Phone *

Cell Phone *

Your Relationship to the Child or Children *

Complaint Filed Against Michigan Agency

* Indicates a required field.

Name of Agency or Agencies:
(County DHS and or Private) *

Names of caseworkers involved *

County where agency is located *

If court is involved, in what
county was the abuse and or
neglect hearings?Type of case (check all that
apply):

- ☐ Children's Protective Services
- ☐ Foster Care
- ☐ Adoption

Have you tried to resolve your
concerns by contacting the
caseworker or supervisor?

- ☐ Yes
- ☐ No

If no, please contact the worker's supervisor, program manager, or county director. During our follow-up you will be asked if you attempted to resolve your concerns and the name(s) of the persons you contacted.

Information About the Children You Are Concerned About

* Indicates a required field.

Name(s) of the Child(ren): *	Date of Birth*	Parent's Home/Foster Care/Relative Placement, etc. *

List Other Adults Involved In The Situation

Name(s) of the Parent(s), Step-Parent(s), Legal Guardian or Other Adult(s) *	Date of Birth	This Person's Relationship to the Child *

Your Concern

Specifically describe your concerns about the agency or agencies involved.

If you wish to **PRINT** this form after entering your information, please do so **BEFORE** you click the **SUBMIT** button. Use your browser's print function in the File menu, **NOT the Printer Friendly option** near the top of this page. Thank you. **NOTE:** Only the text you can see without scrolling will be printed. If you have more text in the "Your Concern" field, you may wish to copy and paste it into a word processing program such as Microsoft Word or Notepad, among others.

Submit	Reset Form
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MODEL OMBUDSMAN ACT FOR STATE GOVERNMENTS

United States Ombudsman Association
c/o Joint Office of Citizen Complaints
15 East Fourth Street, Suite 208
Dayton, OH 45402
Telephone: 937-223-4613
E-mail: ombudsman@dayton-ombudsman.org

**United States Ombudsman Association
Model Ombudsman Act for State Governments
February 1997**

**Drafted by
Model Ombudsman Act Committee of the
United States Ombudsman Association**

Ruth Cooperrider (Chair), Legal Counsel, State of Iowa - Office of Citizens' Aide/Ombudsman

Michael Hostina, Former Deputy Ombudsman, State of Alaska - Office of the Ombudsman

Yen Lew, Ombudsman, State of Hawaii - Office of the Ombudsman

Marshall Lux, Ombudsman, State of Nebraska - Office of Public Counsel/Ombudsman

Norrie Thompson, First Assistant, State of Hawaii - Office of the Ombudsman

**Approved on February 11, 1997 by the
United States Ombudsman Association's Board of Directors**

Editor's Note:

**The February 1997 document was reformatted in April 2004.
No substantive changes were made to the language of the original document.**

**For more information on the United States Ombudsman Association,
please visit www.usombudsman.org**

PREFATORY NOTE

In the Fall of 1994, the board of directors of the United States Ombudsman Association authorized the preparation of an updated model ombudsman act appropriate for state government. There had been renewed interest in the ombudsman concept in a number of states and one, Arizona, was on the verge of enacting an ombudsman bill. It was felt that an updated model act would be a useful document for those states interested in establishing an ombudsman office as well as a useful tool to promote the classical ombudsman institution in other states. Ruth Cooperrider, legal counsel in the Iowa ombudsman's office, was asked to chair a committee to draft the model act. She was assisted in this endeavor by Marshall Lux, the Nebraska ombudsman, Mike Hostina, former deputy ombudsman from Alaska, and Yen Lew and Norrie Thompson, the Hawaii ombudsman and first assistant. The accompanying document is the result of our work.

While this model act was designed for use at the state government level, it can also be adapted for local government. Those so interested may contact the USOA for assistance.

In drafting the act, the committee decided to use as our basic reference the American Bar Association model which was completed under the leadership of Bernard Frank in 1974. The ABA model itself was based on earlier models, notably the Gellhorn model and the Harvard model. Thus, we are building on the foundations prepared for us by these worthy predecessors.

The ABA model was (and is) an excellent document, well thought-out, comprehensive in scope and meticulously annotated by Mr. Frank in his law review article presentation. We left it essentially intact, limiting our revisions to the following areas:

1. Updating and clarifying the language and making it gender neutral;
2. Amending those provisions which over the course of more than two decades of practical experience were found to lead to administrative difficulties or were otherwise problematic; and
3. Adding new provisions to accommodate recent changes in technology and public administration.

While the ABA model was our basic reference, we also reviewed the Gellhorn and Harvard models for additional clarification on certain points. The recently enacted Arizona statute was consulted to help us understand current legislative thinking about the ombudsman institution. Being either current or former ombudsman practitioners, we were also able to contribute insights from our experiences with our own respective statutes in Alaska, Hawaii, Iowa and Nebraska. This practical experience gave us an advantage over our predecessors whose frame of reference was more theoretical in nature.

Working drafts of the bill were presented at the October, 1995 USOA annual conference in Plymouth, Minnesota and the First North American Conference of ombudsman organizations held in May, 1996 in St. Louis, Missouri. After each conference, comments on the drafts were solicited from conference delegates and the members of the USOA board. Noted ombudsman scholars were also invited to comment.

We received in return a number of very useful comments and suggestions from all these sources, including scholars such as Gerald C. Caiden, Bernard Frank and Donald C. Rowat. Our thanks to all of them. In particular, we would be remiss if we did not acknowledge Mr. Frank's careful review of our draft and his detailed commentary. Mr. Frank, the chair of the ABA ombudsman committee which had issued the ABA model act in 1974, further stated it was appropriate, timely, and logical for the USOA to review and update the ABA model and issue a new USOA model to supersede the ABA model. We are grateful for his endorsement.

In considering the comments and suggestions we received, we undertook a section-by-section review of the draft model act. While that process took an additional six months, it is our feeling that the model act was significantly strengthened as a result. Obviously not all suggestions were accepted. In many cases, this was because the suggestion was at variance with the approach taken in another part of the act. Or, the suggestion raised an issue that we had already considered and resolved among ourselves. This final draft represents a document that is acceptable to all members of the committee, where individual differences and preferences were subsumed in a spirit of consensus and where suggestions from other individuals were incorporated as deemed appropriate.

While we believe that the model act as here presented is suitable for all states, we recognize that political circumstances in a given state may mean that some variations may be more appropriate. This model act is not cast in stone. Those who may be interested in possible alternatives to any of the provisions of this model act are invited to contact the USOA.

Although this is a model act for state governments, the USOA believes the ombudsman institution is applicable at all levels of government and encourages its wider establishment. The state ombudsman office created by this model act is not intended to preempt the establishment of any new local ombudsman office. Any local ombudsman office - whether at the county, municipal, township or other level - whose enabling document meets the standards of independence, fairness, confidentiality, and integrity of the review process which characterize a classical ombudsman, should have statutory immunity similar to that granted to the state ombudsman under this model act. Such immunity is necessary to enable local ombudsmen to have confidential communications with complainants and witnesses and to make findings without fear of interference or retaliation through legal proceedings. The USOA will assist any state legislature considering the enactment of such local ombudsman immunity.

This model act is intended to provide for the establishment of an ombudsman who is able to operate effectively in the context of contemporary state government in this, the final years of the twentieth century. The USOA recognizes that future revisions may be necessary to keep this document up-to-date in light of ongoing changes in the law, in standards of government and public administration and in technology. The USOA welcomes suggestions for future consideration.

United States Ombudsman Association

Model Ombudsman Act for State Governments

An Act to establish the office of Ombudsman in _____.

COMMENT:

Enactment clause would be in an appropriate form for the state.

Section 1. Legislative Purpose

It is the intent of the legislature to establish, in addition to other remedies or rights of appeal of any person under state law, an independent, impartial, state office, readily available to the public, responsible to the legislature, empowered to investigate the acts of state [(Alternate) and local] administrative agencies and to recommend appropriate changes toward the goals of safeguarding the rights of persons and of promoting higher standards of competency, efficiency and justice in the administration of state [(Alternate) and local] laws.

COMMENT:

This section provides a concise description of the characteristics of the office and its goals.

If jurisdiction over political subdivisions of the state is included, the phrase "and local" should be included. It must be determined whether the inclusion of the phrase "and local" will be interpreted as pre-empting state jurisdiction over both state and local agencies and preventing local governmental units from establishing their own Ombudsmen.

Section 2. Short Title

This Act may be cited as "The (name of state) Ombudsman Act."

COMMENT:

The title "Ombudsman" is distinctive from the more usual official titles such as "director" and "commissioner" and has gained recognition in the United States and other countries. The existing state statutes do not all use the title: Hawaii - "Ombudsman"; Nebraska - "Public Counsel"; Iowa - "Citizens' Aide"; Alaska - "Ombudsman"; Arizona - "Ombudsman-Citizens' Aide." But it should be noted the term "Ombudsman" is used in these states by the public, the media, and even by the incumbents, who found other titles could be confused with other offices and concepts.

The term "Ombudsman" should be used only when the legislation provides for an independent official who receives complaints against government agencies and who, after investigation, may, if the complaints are justified, make recommendations to remedy the complaints.

If a term other than "Ombudsman" is selected, appropriate changes must be made throughout this Act.

Section 3. Definitions

As used in this Act,

(a) "Agency" means any department, organization, board, commission, council, bureau, administrative tribunal, facility, institution or other governmental entity of (name of state), [(Alternate) any person who is providing services to individuals under contract with (name of state) and as a term of that contract is subject to the Ombudsman's jurisdiction], and any official, officer, administrative hearing examiner, employee or member of (name of state), whether elected or appointed, acting or purporting to act by reason of connection with (name of state), except:

- (1) any judge;
- (2) the legislature, its members, its committees and its employees;
- (3) the governor and the governor's personal staff;
- [(4) (Alternate A) any political subdivision of the state;]
- [(4) (Alternate B) mayors, council members, judges, and any other elected officials of any political subdivision and their personal staff;]
- (5) any multi-state governmental entity.

(b) "Administrative act" means any action, decision, adjudication, failure to act, omission, rule or regulation, interpretation, recommendation, policy, practice or procedure of any agency.

(c) "Person" means any individual, aggregate of individuals, corporation, partnership, or unincorporated association.

(d) "Record" means all records, documents, books, papers, files, photographs, microfilms, sound recordings, video recordings, magnetic storage media, computer data and all other materials, regardless of physical form or characteristics, created, generated, recorded, received, possessed or controlled by or on behalf of any agency.

COMMENT:

(a) Rather than specifying by name those agencies under the Ombudsman's jurisdiction, the Act permits jurisdiction over all state-related governmental operations and personnel (in pursuance of public function) with certain limited exceptions which should be minimized. An alternative clause has been added to provide that the Ombudsman's jurisdiction would include businesses, corporations, persons, etc., under contract to provide services to individuals on behalf of the state. With the increasing popularity of "privatizing" government services, policy-makers may feel the need to bring these "private" bureaucracies under the Ombudsman's jurisdiction, in order to insure that the public receives the same level of protection afforded when the services are provided directly by state agencies. If this alternative is adopted, then it would also be necessary to add to the state's statutes relating to procurement a provision to require all agencies entering into a contract for the "privatization" of governmental services to include in that contract a clause obligating the private service provider to submit to the Ombudsman's jurisdiction. By making cooperation with the Ombudsman a condition of the contract, the private contractors will understand from the outset their responsibilities to the Ombudsman and will accept that arrangement as a part of the agreement with the state.

(a)(1) The exclusion of judges is based upon the existence of the long established system of appellate review of judicial decisions and upon the existence of other mechanisms for the sanctioning and/or the removal of judges who act unethically or who are incapacitated. The exclusion is narrow and contemplates that the Ombudsman

would have jurisdiction to investigate administrative or ministerial acts by employees of the judicial branch, when those acts are peripheral to the adjudication itself. In many instances, administrative errors affecting a particular adjudication would have to be challenged and resolved through the established judicial process, but even in those cases, the Ombudsman could make recommendations for improving administrative procedures that would have a prospective effect. The Ombudsman would not, of course, have the jurisdiction to question, criticize or review the substantive content of any judicial order, decision or opinion. The exclusion of judges would pertain only to judicial officers of the judicial branch of government and would not exclude administrative tribunals or administrative law "judges" from the Ombudsman's jurisdiction.

(a)(2) The Legislature--an independent policy making body, whose actions are conspicuous and subject to public scrutiny, and whose tenure is subject to periodic popular review--is excluded. Committees and staff members who assist in policy formation are, likewise, excluded. Although there may be legislative employees, agencies, bureaus or divisions that provide direct services to the public, those employees and entities are also excluded from the Ombudsman's jurisdiction, because of concerns that the Ombudsman's close relationship with the legislative branch would compromise the independence of the office in dealing with cases involving those employees, agencies, etc. If it is determined that it is desirable to include these legislative service agencies within the Ombudsman's jurisdiction, then as an alternative the exclusion might read, "(2) the members and committees of the legislature and their immediate staff."

(a)(3) Elected state officials (e.g., Lt. Governor, Treasurer) who deserve exclusion for the same reasons as (a)(2) above, may be added to (a)(3) but they must be distinguished from other elected state officials who should be included and who are less immediately involved in policy-making and are engaged chiefly in administrative matters indistinguishable from those performed by non-elected officials generally. Thus, appropriate officials to be excluded may vary from state to state. Alternatively, this exclusion might read, "(3) elected constitutional officials and their personal staff;".

(a)(4) Alternate A: Where local jurisdiction is not included, (a)(4) should read, "[(4) any political subdivision of the state;]."

(a)(4) Alternate B: If jurisdiction over a political subdivision is included, Alternate B should be used to give an exclusion parallel to that for state officials: "[(4) mayors, council members, judges, and other elected officials of political subdivisions and their personal staff;]." A saving clause for existing municipal Ombudsman offices may be added if necessary and desirable.

(a)(5) The specific exclusion of multi-state entities, such as regional transportation and planning authorities, and implicit exclusion of federal agencies (including the local offices thereof), are based on practical and constitutional limitations on sovereign power of the state over such agencies.

(b) "Administrative Act" is broadly defined and includes decisions by administrative boards or tribunals or administrative law "judges" and rule-making activities.

(c) "Person" is defined broadly.

(d) "Record" is broadly defined to make it clear that the Ombudsman is intended to have access to all recorded information possessed or controlled by agencies, regardless of the form or manner of storage of that information.

Section 4. Creation of Office

The office of Ombudsman is established.

Section 5. Nomination and Appointment

The (insert name of legislative body) shall elect the Ombudsman by a two-thirds vote of the members of each house present and voting.

COMMENT:

The Ombudsman is an appointed officer of the legislative branch of government. This arrangement helps to guarantee the independence of the Ombudsman, who might be reluctant to criticize the actions of agencies that are responsible to the executive, if he or she were an executive appointee. As part of the legislative branch of government, the Ombudsman is not only providing a direct service to citizens, but is also performing a role in legislative oversight of the agencies under the Ombudsman's jurisdiction. Since the Ombudsman may only make recommendations, and may not compel the executive and judicial agencies to take substantive actions, the Ombudsman's role is consistent with the concept of separation of powers.

Section 6. Qualifications

(a) The Ombudsman shall be a person of recognized judgment, objectivity and integrity who is well-equipped to analyze problems of law, administration, and public policy.

(b) No person while serving as Ombudsman:

- (1) shall be actively involved in political party activities or publicly endorse, solicit funds for or make contributions to political parties or candidates for elective office;
- (2) shall be a candidate for or hold any other elective or appointive public office;
- (3) shall engage in any other occupation, business, or profession likely to detract from the full-time performance of his or her duties as Ombudsman or to result in a conflict of interest or an appearance of impropriety or partiality.

COMMENT:

The Ombudsman should be a full-time impartial expert in whom the public can have confidence.

(a) This subsection gives the core characteristics and qualifications for an Ombudsman and hence provides more guidance than a mere listing of restrictions on the official.

(b) Paragraph (b)(1) seeks to preserve the Ombudsman's impartiality and the appearance of impartiality in the political arena. The Ombudsman retains the right to participate in the political process as a voter and to express his or her opinion privately.

Paragraph (b)(2) inhibits an Ombudsman from using the office as a political stepping-stone. To further protect the office from politicization, some states (Arizona, Hawaii, and Nebraska) provide that the Ombudsman shall not have served as a member of the Legislature for one or two years prior to his or her appointment. However, this could prevent the appointment of a highly qualified legislator.

Paragraph (b)(3) seeks to assure that the Ombudsman's work is performed on a full-time basis, and that the Ombudsman remains impartial.

Section 7. Term of Office

The Ombudsman shall serve for a term of _____ years and until his or her successor is appointed and qualified. He or she may be reappointed for additional terms.

COMMENT:

A long term is desirable: to permit the Ombudsman sufficient time to become proficient at his or her duties; to provide a measure of independence from politics; and to provide prestige and security to attract qualified persons to the position. An excessively long term (e.g., 15 years) prevents the desired periodic accountability to the Legislature. The term should not be less than five years. The same points that argue for a long term of office for the Ombudsman also support the concept that the incumbent should be eligible for reappointment at the end of his or her term.

Section 8. Removal and Vacancy

(a) The Legislature by a vote of two-thirds of the members of each house present and voting may remove the Ombudsman from office, but only for mental or physical incapacity to perform the duties of the office, or other grounds sufficient for removal of a judge from state court.

(b) If the position of Ombudsman becomes vacant for any reason, the Deputy Ombudsman shall serve as Acting Ombudsman until an Ombudsman has been appointed for a full term.

COMMENT:

(a) The Ombudsman should be secure in the position, so removal is made difficult and must be for cause. This protects the Ombudsman from groundless attacks or political threats. As an alternative, this subsection might provide that the Ombudsman could be removed from office according to state constitutional provisions for removal of judges or other public officials.

(b) In filling vacancies, full term appointment is preferable to remainder-of-term appointment as it provides the desirable longer term of office.

Section 9. Compensation

The Ombudsman shall receive the same salary and benefits as [(Alternate A) a state judge at the general trial court or higher level.] [(Alternate B) a state department head.] [(Alternate C) a legislative agency head.] The salary of the Ombudsman shall not be diminished during the Ombudsman's term of office, unless by general law applying to all salaried officers of the state.

COMMENT:

The Ombudsman is a high-level official who should receive a salary that reflects the importance, responsibility and prestige of the office. Also, a high salary is warranted if the Ombudsman is prohibited by law from engaging in any other occupation, business, or profession.

Three alternative salary proposals are offered for consideration. The first sets the salary at least equal to that of a general trial court judge. The comparison between the two offices is apt in terms of recognizing the Ombudsman's stature as well as reinforcing the

concept of the Ombudsman's independence and neutrality. The second ties the Ombudsman's salary to that of the state department heads. This also provides appropriate stature to the office and emphasizes the point that the Ombudsman deals with department heads as an equal rather than as a lower level official. The third equates the Ombudsman with other legislative agency heads. This approach may be a more familiar frame of reference to legislators and it would help assure consistency within any existing legislative branch salary system. Practically speaking, any of the three alternatives should result in fairly similar salary amounts.

Section 10. Organization of Office

(a) The Ombudsman shall select, appoint and fix the compensation of a person as Deputy Ombudsman and may select, appoint and fix the compensation of such other officers and employees as the Ombudsman may deem necessary to discharge the Ombudsman's responsibilities under this Act. Compensation shall be fixed within the amount available by appropriation. All officers and employees shall serve at the Ombudsman's pleasure.

(b) The Ombudsman may delegate to staff members any authority, power or duty except this power of delegation and the Ombudsman's duty to make any report under this Act. However, the Ombudsman may authorize the Deputy Ombudsman to act in the Ombudsman's stead in the event of illness, absence, leave or disability, or when, in the Ombudsman's sole discretion, an appearance of impropriety or partiality or a conflict of interest prevents the Ombudsman from discharging his or her duty in a particular matter.

(c) The Ombudsman and his or her staff shall be entitled to participate in any employee benefit or retirement plan available to state employees.

COMMENT:

(a) The sensitive nature of the work and the high degree of delegation to and confidence in staff that will be required dictate that the Ombudsman be free of civil service and political constraints in staff selection and retention. The Ombudsman, however, should refer to civil service salary schedules in setting comparable salaries for staff, and would naturally use state accounting facilities for payment of such [cf., section 11(j)]. The appointment of a Deputy Ombudsman is compulsory while selection of other officials, including an Assistant Ombudsman or Ombudsmen, is optional.

(b) This same desire for flexibility should permit a broad delegation of powers. The Ombudsman, however, remains responsible for the organization of the office and for whatever reports leave the office [section 16] -- unless the Deputy Ombudsman has assumed the Ombudsman's duties under this sub-section or when the office is vacant [section 8(b)]. The Ombudsman has complete discretion with respect to recusal for "cause" in order to avoid procedural smoke screens and because the Ombudsman can be expected to diligently maintain his or her limited authority through appropriate recusal. The Ombudsman has discretion to require, by regulation [section 11(b)] or otherwise, that a delegation be in writing or that staff members take an oath of office.

Section 11. Powers

The Ombudsman's powers and duties include but are not limited to the following:

(a) to investigate, on complaint or on the Ombudsman's own initiative, any administrative act of an agency, without regard to the finality of the administrative act;

(b) to undertake, participate in or cooperate with persons and agencies in such conferences, inquiries, meetings, or studies which might improve the functioning of agencies or lessen the risks that objectionable administrative acts will occur;

(c) to make such inquiries and obtain such assistance and information from any agency or person as the Ombudsman shall require for the discharge of the Ombudsman's duties. Agencies shall not restrict the Ombudsman's access to agency personnel;

(d) notwithstanding any other provision of state law, to have access to and to examine and copy, without payment of a fee, any agency records, including records which are confidential by state law. The Ombudsman shall not disclose confidential records and shall be subject to the same penalties as the legal custodian of the records for any unlawful or unauthorized disclosure;

(e) to enter and inspect without prior notice the premises of any agency;

(f) to subpoena any person to appear, to give sworn testimony or to produce documentary or other evidence that is reasonably relevant to the matters under investigation;

(g) to maintain confidential any matter related to complaints and investigations, including the identities of the complainants and witnesses, except as the Ombudsman deems necessary to discharge the Ombudsman's duties;

(h) to bring suit in (name of court) to enforce the provisions of this Act;

(i) to adopt, promulgate, amend and rescind rules and regulations required for the discharge of the Ombudsman's duties, including procedures for receiving and processing complaints, conducting investigations, and reporting findings, conclusions and recommendations. However, the Ombudsman may not levy any fees for the submission or investigation of complaints;

(j) to prepare and administer a budget for the office of the Ombudsman;

COMMENT:

The general powers and duties of the Ombudsman are enumerated for clarity; however, this section is not an exhaustive listing of all the powers and duties delegated to the Ombudsman. Additional provisions related to staffing, delegation of powers and duties, recommendations, and reports are contained in sections 10, 15, and 16.

(a) The Ombudsman's investigatory power is limited to administrative acts of agencies [section 3(b)]. The Ombudsman may receive and consider complaints from any source. The Ombudsman can initiate an investigation when others are unwilling to come forward with a complaint or when the Ombudsman discovers a matter warranting investigation.

(b) Although most of the Ombudsman's time will be occupied with individual complaints, the Ombudsman can conduct studies of a general nature to improve agency efficiency or service to the public, either independently or jointly with other governmental bodies or non-governmental research enterprises.

(c) The Ombudsman has broad access to any type of information from an agency or person, and an agency may not restrict agency personnel from assisting or providing information to the Ombudsman. There is no requirement to conduct formal evidentiary hearings of an adversary nature, although the Ombudsman can take statements from persons under oath. If testimony is taken, it should be perceived purely as an investigatory proceeding, and the procedure need not comport with what is normally required in a formal adjudication hearing.

(d) The Ombudsman can examine and copy or obtain a copy of any agency record, including records which are confidential under state law, without the payment of any fee. However, the Ombudsman and the Ombudsman's staff are obligated to maintain the confidentiality of any confidential records provided by an agency to the same extent as the legal custodian of the records.

(e) The Ombudsman has the power to inspect any agency without notice, as advance notice might negate the value of such a visit. Information gathered on site visits may provide subjects for investigation on the Ombudsman's own motion.

(f) The Ombudsman can compel any person to provide testimonial, documentary, or other evidence through issuance of a subpoena. Implicitly, the Ombudsman and his or her staff are empowered to administer oaths to such witnesses. Protections and privileges for witnesses, regardless of whether or not they have been subpoenaed, are provided in section 18. If a person refuses to comply with the subpoena, the Ombudsman can seek enforcement under section 11(h).

(g) To facilitate the gathering of information, the Ombudsman has discretion to keep confidential any complaint or investigative information. The Ombudsman may disclose such information as the Ombudsman deems necessary or appropriate in carrying out the Ombudsman's duties.

(h) The Ombudsman may bring suit regarding the exercise of his or her powers, including actions: for a declaratory judgment to obtain jurisdiction [under sections 3(a) and 11(a)]; to enter and inspect agencies [section 11(e)]; to show cause for not appearing after being subpoenaed [section 11(f)]; and to enforce confidentiality provisions [sections 13(d) and 13(e)].

(i) The Ombudsman is given broad regulatory discretion to determine the procedures for carrying out the office's functions. The Ombudsman may through rules or regulations specify the means by which complaints may be submitted (which may include fax or electronic mail) and require for good reason that certain types of complaints be in writing. To insure accessibility (and avoid discrimination against the poor), a fee may not be imposed for the Ombudsman's services.

(j) A provision for budgetary powers may be necessary in some states and useful in others, to insure that the Ombudsman's budget is independent of outside (agency) administration.

Section 12. Investigation of Complaints

(a) The Ombudsman shall conduct a suitable investigation of a complaint that is an appropriate subject for investigation. An appropriate subject for investigation by the Ombudsman includes any administrative act which the Ombudsman believes might be:

- (1) Contrary to law or regulation;
 - (2) Based on mistaken facts or irrelevant considerations;
 - (3) Unsupported by an adequate statement of reasons;
 - (4) Performed in an inefficient manner;
 - (5) Unreasonable, unfair, or otherwise objectionable, even though in accordance with law;
- or

- (6) Otherwise erroneous.
- (b) The Ombudsman in the Ombudsman's discretion may decide not to investigate because:
- (1) The complainant could reasonably be expected to use another remedy or channel;
 - (2) The complaint is trivial, frivolous, vexatious, or not made in good faith;
 - (3) The complaint has been too long delayed to justify present examination;
 - (4) The complainant is not personally aggrieved by the subject matter of the complaint;
 - (5) Resources are insufficient for adequate investigation; or
 - (6) Other complaints are more worthy of attention.
- (c) The Ombudsman's declining to investigate a complaint shall not bar the Ombudsman from proceeding on his or her own initiative to investigate an administrative act whether or not included in the complaint.

COMMENT:

- (a) The Ombudsman has a duty to investigate the complaints described in subsection (a), although he or she may decline to investigate for the reasons given in subsection (b). The enumerated complaints indicate the kinds of administrative acts that generate complaints to the Ombudsman's office. As shown by paragraph (a)(6), which is a catchall, and subsection (c), the statute is intended as a guide to and not a limitation on the complaints which the Ombudsman can investigate.
- (b) The Ombudsman may choose to investigate a complaint even though the statute permits him or her to refuse. For instance, under paragraph (b)(1), if the Ombudsman believes that recourse to an administrative or legal remedy would be futile or overly burdensome to the complainant, the Ombudsman may investigate the complaint. Similarly, the Ombudsman may decide to investigate a complaint of public concern even though the complainant was not personally aggrieved.
- (c) Complaints which are inappropriate for investigation may nevertheless reveal administrative acts which the Ombudsman may decide to investigate on his or her own initiative [section 11(a)].

Section 13. Rights of Complainant--Communication With Complainant

- (a) After the Ombudsman has decided whether or not to investigate a complaint, the Ombudsman shall suitably inform the complainant.
- (b) The Ombudsman shall, if requested by the complainant, suitably report the status of his or her investigation to the complainant.
- (c) After investigation of a complaint, the Ombudsman shall suitably inform the complainant of his or her conclusion or recommendation and, if appropriate, any action taken or to be taken by the agency involved.
- (d) A letter to the Ombudsman from a person held in custody--including by detention, incarceration and hospitalization--by an agency shall be forwarded immediately, unopened, to the Ombudsman. A letter from the Ombudsman to such person shall be immediately delivered, unopened, to the person. Telephone and personal contacts between the Ombudsman and a person in custody shall not be prohibited or monitored.

COMMENT:

Subsections (a), (b) and (c) give the Ombudsman a general duty to inform the complainant of the status of his complaint. The experience and judgment of the Ombudsman will determine the suitable response to be made.

Section 14. Rights of Agency

Before formally issuing a conclusion or recommendation that is significantly critical or adverse to an agency, the Ombudsman shall have consulted with that agency and permitted the agency reasonable opportunity to reply. If the Ombudsman makes a conclusion or recommendation available to the agency to facilitate a reply, the conclusion or recommendation is confidential and may not be disclosed to the public by the agency unless the Ombudsman releases it.

COMMENT:

This section protects agencies, their officers and employees by requiring consultation and giving them reasonable time to reply to significant criticism before the Ombudsman issues critical findings. The Ombudsman has the discretion to make all or part of his or her findings available to facilitate a reply. Because the Ombudsman may modify findings, which may include removal of confidential information and incorporation of the agency's response [section 15(b)], after reviewing the agency's reply, disclosure of findings not released by the Ombudsman is a violation of law, which may be dealt with under existing records confidentiality provisions.

Notice of the Ombudsman's decision to investigate is not required because such formalities: are inconsistent with the role of the Ombudsman as an alternative to procedure-bound remedies and the limited resources of the office; are largely ceremonial in that the Ombudsman will inevitably contact the agency during an investigation; and are not required by due process given the absence of Ombudsman power to enforce recommendations and the fact that an opportunity to be heard is required before publication.

If an advance notice provision is nonetheless desired, it should provide for: informal or preliminary inquiries without notice, since experience shows that the vast majority of complaints are handled expeditiously and informally; withholding notice when notice would hinder investigation; and flexibility of form to avoid legalistic procedural wrangling, e.g. "If after making preliminary inquiries the Ombudsman decides to investigate, the Ombudsman shall suitably inform the agency involved unless the Ombudsman reasonably believes that advance notice will unduly hinder the investigation or make it ineffectual. The Ombudsman may inform the agency verbally or in writing."

Section 15. Procedure after Investigation

(a) If, after investigation, the Ombudsman is of the opinion that an agency should:

- (1) consider the matter further,
- (2) modify or cancel an act,
- (3) alter a regulation, practice or ruling,
- (4) explain more fully the act in question,
- (5) rectify an omission, or
- (6) take any other action,

the Ombudsman shall state any conclusions, recommendations and reasons therefore to the agency. If the Ombudsman so requests, the agency shall, within the time specified, inform the Ombudsman about the action taken on recommendations or the reasons for not complying with them.

(b) After a reasonable period of time has elapsed, the Ombudsman may issue his or her conclusions or recommendations to the legislature, the governor, a grand jury, the public, or any other appropriate authority. The Ombudsman shall include any brief statement the agency may provide if an opportunity to reply is required by this Act.

(c) If the Ombudsman believes that an action has been dictated by laws whose results are unfair or otherwise objectionable, and could be revised by legislative action, the Ombudsman shall notify the (insert name of legislative body) and the agency of desirable statutory change.

(d) If the Ombudsman believes that any agency official or employee has acted in a manner warranting criminal or disciplinary proceedings, the Ombudsman shall refer the matter to the appropriate authorities without notice to that person.

COMMENT:

(a) Though the Ombudsman will rarely have reason to make a recommendation if there is no error in what the agency has done or neglected to do, the Ombudsman should remain free to suggest improvements in method or policy even when the existing practice may be legally permissible. Thus the Ombudsman may facilitate one agency's learning about and taking advantage of the experience of another. This subsection contemplates no entry of judgment, as it were, but simply the expression of opinion by the Ombudsman. The Ombudsman is not a superior official, in a position of command, and cannot compel a change in an administrative act. The Ombudsman's recommendation may, however, induce an agency to exercise whatever power it may possess to right what the Ombudsman points out as a past mistake.

(b) If the Ombudsman is required to provide an opportunity to reply under section 14 and a reply is forthcoming, the Ombudsman must include it when issuing findings. Rather than permitting the Ombudsman to summarize replies, replies are limited to a "brief" statement which shall be printed unedited; regulations as to what is "brief" might be promulgated under section 11(i).

(c) There may be instances where an agency acted in accordance with existing law, but the law itself produces unjust results. The Ombudsman has the duty to bring these situations to the attention of the legislature and appropriate agency officials; if appropriate, the Ombudsman may comment on or recommend changes in legislation.

(d) The Ombudsman's duty to report wrongdoing pertains to miscreant officials. This subsection makes it clear that the Ombudsman may report allegations of wrongdoing without having to first notify the person involved (who may otherwise flee the state or destroy pertinent evidence if tipped off prematurely). This avoids any ambiguity which may arise if this subsection is read in conjunction with section 14.

If the person has testified before the Ombudsman, such testimony would bear the same privileges as testimony in court [section 18].

Section 16. Reports

The Ombudsman may from time to time and shall annually report on his or her activities to the Governor, to the Legislature, or any of its committees, to the public and, in the Ombudsman's discretion, to agencies.

COMMENT:

The Ombudsman's sole means of correcting flawed practices when agencies refuse to do so is to publish criticism and recommendations.

The annual report, whose release date would be set by the Ombudsman [section 11(i)], is mandatory. Special [section 15(b)] or general interim reports are discretionary with the Ombudsman.

Section 17. Ombudsman's Immunities

(a) The substantive content of any finding, conclusion, recommendation, or report of the Ombudsman or member of the Ombudsman's staff shall not be reviewable in any court.

(b) The Ombudsman and the Ombudsman's staff have the same immunities from civil and criminal liabilities as a judge of this state.

(c) The Ombudsman and the Ombudsman's staff shall not be compelled to testify or produce evidence in any judicial or administrative proceeding with respect to any matter involving the exercise of their official duties except as may be necessary to enforce this Act.

COMMENT:

(a) & (b) As a public watchdog, the Ombudsman should be able to state his or her position freely and candidly without fear of pressure or reprisal. The judicial immunities afforded the Ombudsman are intended to protect against harassment when the Ombudsman deals with controversial issues or makes an unpopular decision. While the Ombudsman's findings are presented only after due consideration, no claim of infallibility is made and the Ombudsman's findings, conclusions and recommendations are always subject to criticism by government officials as well as members of the public. Since the Ombudsman has no enforcement power and any findings and recommendations are only advisory in nature, the courts should have no authority to order that an expression of opinion be changed.

(c) Certain dealings that the Ombudsman has with complainants and witnesses may be confidential in nature. This subsection is meant to protect these confidential relationships so as to encourage complainants to avail themselves of the Ombudsman's services and witnesses to cooperate with the Ombudsman, where they may be otherwise reluctant to do so.

Section 18. Witnesses' Privileges

Any person who provides information under this Act may be accompanied and advised by counsel of his or her choice and shall be paid the same fees and travel allowances and accorded the same privileges and immunities as witnesses whose attendance has been required in the (name of court). However, a representative of an agency providing information under this Act during business hours shall not be entitled to receive such fees and allowances.

COMMENT:

Although investigations conducted by the Ombudsman are not contested cases or adjudications of rights or interests, and although nearly all testimony will be private and confidential, witnesses who testify (whether or not by subpoena) are given judicial privileges and immunities. Witness fees and travel allowances are also required for persons who provide information to the Ombudsman under the Act. A provision that a representative of an agency during business hours shall not be entitled to such fees and allowances is included to avoid possible double payment of public servants during working hours.

Section 19. Obstruction

Any person who willfully obstructs or hinders the proper and lawful exercise of the Ombudsman's powers, or willfully misleads or attempts to mislead the Ombudsman in the Ombudsman's inquiries, shall be guilty of a (specify the level of offense).

COMMENT:

It must be determined in each state whether necessity exists for indicating the court in which proceedings are to be brought and upon whose initiative. Since fines for offenses vary from state to state and may be subject to periodic changes, it is preferable to specify the offense rather than a set amount of fine for a violation.

Section 20. Reprisals Prohibited

(a) No person who files a complaint or participates in any investigation or proceeding pursuant to this chapter shall be subject to any penalties, sanctions or restrictions in connection with his or her employment or be denied any right, privilege, or benefit because of such action.

(b) A person who alleges a violation of this part may bring a civil action for appropriate injunctive relief, actual damages, and punitive damages. Punitive damages shall not exceed \$10,000.

COMMENT:

This section provides protection to complainants and witnesses from reprisals at their place of employment or the deprivation of other rights or privileges because of their participation in Ombudsman investigations.

Section 21. Relation to Other Laws

The provisions of this Act are in addition to and do not in any manner limit or affect any other provisions of law under which any remedy or right of appeal is provided for any person, or any procedure is provided for the inquiry into or investigation of any matter. The powers conferred on the Ombudsman may be exercised notwithstanding any provision of law to the effect that any administrative action shall be final or unappealable.

COMMENT:

This section clearly sets forth that the Ombudsman office is a supplemental remedy and is in addition to other remedies or rights of appeal--a principle also covered in section 1 with respect to legislative purpose. This section also establishes the principle that the Ombudsman powers are not inhibited by statutory enactments providing that any administrative action shall be final or unappealable.

Section 22. Appropriation

There is appropriated out of the general revenues of the state the sum of \$_____, or so much thereof as may be necessary for fiscal year _____, to the office of the Ombudsman to carry out the purposes of this Act.

COMMENT:

Before an Ombudsman statute can be implemented, funding needs to be made available to pay for the expense of the office. This section provides the mechanism to do this. This section should be included where required by the fiscal regulations or practice of the state. If inclusion of such section is not necessary, it can be omitted.

Section 23. Effective Date

This Act shall take effect upon its approval.

COMMENT:

This is standard enactment language. The Act actually becomes effective only after appropriation has been made and an Ombudsman has taken office.

Section 24. Severability

The provisions of this Act are declared severable, and if any provision thereof is held to be invalid for any reason, the validity of the remainder of the Act shall not be affected.

COMMENT:

The inclusion of this section is optional. It is not in any of the existing state Ombudsman statutes. The need for a severability clause is unclear, but it may be helpful to assuage any legal concerns that may be raised when the bill is being voted on in the legislature.



REFERENCES

Our proposed model ombudsman act is based primarily on the American Bar Association Model Ombudsman Statute for State Governments. The annotated ABA model, together with Bernard Frank's extensive commentary, may be found in Bernard Frank, "State Ombudsman Legislation in the United States," *University of Miami Law Review* 29, no. 3 (Spring 1975), 379-445. This is an extremely comprehensive source of information about the history of the ombudsman institution in the United States as well as on the principles behind ombudsman legislation.

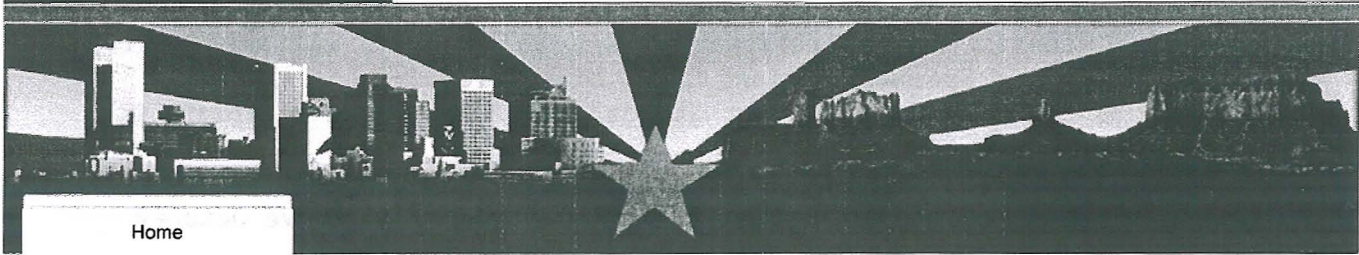
In turn, the ABA model was based on the model prepared by the late Professor Walter Gellhorn. See Walter Gellhorn, "Annotated Model Ombudsman Statute." In *Ombudsman for American Government?* Edited by Stanley V. Anderson. Englewood Cliffs, NJ: Prentice-Hall, Inc., 1968.

One of the sources that Professor Gellhorn used for his model was the Harvard model prepared by the Harvard Student Legislative Reference Bureau. See "A State Statute to Create the Office of Ombudsman," *Harvard Journal on Legislation* 2, no. 2 (June 1965), 213-238.

We also consulted the current state ombudsman statutes to compare the differences and similarities among them. Interested readers are directed to those sources for further information about possible statutory variations and alternatives. The Alaska ombudsman is authorized under Title 24, Chapter 55 of the Alaska Statutes. In Arizona, Title 41, Chapter 8, Article 5 of the Arizona Revised Statutes Annotated establishes the office of the ombudsman-citizens aide. Chapter 96, Hawaii Revised Statutes, is the ombudsman statute for Hawaii. In Iowa, the ombudsman is known as the citizens' aide pursuant to Chapter 2C, Iowa Code Annotated. Public Counsel is the title used in Nebraska in accordance with Sections 81-8,240 to 81-8,254, Revised Statutes of Nebraska.

Arizona Ombudsman

Citizens' Aide



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What is an ombudsman?

An ombudsman is a neutral dispute resolver. It is the ombudsman's job to aid in the resolution of problems in a nonadversarial manner. An ombudsman has broad powers to investigate and to make recommendations, but no authority to make or reverse a decision.

What is the Arizona Ombudsman-Citizens' Aide?

The Arizona Ombudsman-Citizens' Aide is an independent agency of the Arizona Legislature that was established to make government more responsive to Arizona citizens. It is the office that Arizona citizens can turn to when they feel they have been treated unfairly by a state administrator, agency, department, board or commission. The services of the Ombudsman are free and confidential.

The office is given its authority by Arizona Revised Statute sections 41-1371 through 41-1383 and operates under Arizona Administrative Code title 2 chapter 16.

Mission Statement:

The mission of the Arizona Ombudsman – Citizens' Aide is to improve the effectiveness, efficiency, and responsiveness of state government by receiving public complaints, investigating the administrative acts of state agencies and, when warranted, recommending fair and appropriate remedy. In addition, the Arizona Ombudsman – Citizens' Aide promotes open government throughout the state, by providing assistance and education to state and local government officials and members of the public, resolving disputes, and investigating complaints in matters relating to public access laws.

What can the Ombudsman do for me?

Our job is to investigate your complaint and determine whether you have been treated fairly. If we conclude your complaint is justified, we will work with you and the agency to find a fair solution. If we conclude your complaint is not justified, we will take the time to explain our reasoning. The ombudsman is not an advocate or someone who will automatically take your side in a conflict. Our job is to consider all sides of a question in an impartial and objective way.

We will discuss your complaint with you in confidence. In many cases, we can provide the information you need to solve the problem yourself. In other cases we will investigate your complaint and act as a helpful mediator in negotiating a solution.

We have no power to order changes in rules, regulations, policies or procedures. But, the great majority of state administrators are cooperative and responsive to our recommendations. If we are unable to work out a satisfactory solution, we can send a formal report of our findings and recommendations to the state legislature, governor and public.

When should I go to the Ombudsman?

Usually it is best to think of the ombudsman as a last resort -- someone who will try to help when other approaches have failed. If you have a problem, first discuss it with the person or office involved. Many times they will explain a specific policy or correct the problem on the spot. In fact, agency staff can solve most problems quicker and easier than the ombudsman. If you don't know who to see, or what procedure to use, contact us. We can point you to the right person and explain the best way to go about solving your problem.

If you have already made a reasonable effort with the agency to resolve your problem and have still not been successful, contact the Ombudsman.

Are there problems the Ombudsman can't handle?

With the exception of matters relating to public access, we are only allowed to receive complaints having to do with administrative acts of the State of Arizona. We cannot take up conflicts with: private individuals, companies or organizations; federal, county or local governments; the Board of Regents, universities, or community colleges; elected officials and their chief advisors; the legislature and its staff; or the judicial branch of government.

We can also decline to look into a case where our intervention would be inappropriate. If we can't take up your case, we will tell you why. We will also do our best to provide advice, information and referral when we can't help directly. We've compiled a directory organized by issue or problem to help you.

We cannot provide legal advice.

ARTICLE 5. OFFICE OF THE OMBUDSMAN-CITIZENS AIDE

Article 5, consisting of Sections 41-1371 to 41-1383, was added by Laws 1995, Ch 281, Section 1, effective July 1, 1996.

Article 5, consisting of Sections 41-1371 to 41-1383, was amended by Laws 1997, Second Special Session, Ch 3, effective November 17, 1997.

Article 5, Section 41-1378 was amended by Laws 2000, Chapter 47, effective July 18, 2000

Article 5, Section 41-1378 was amended by Laws 2001, Chapter 261, effective August 9, 2001 and Laws 2001, Chapter 344, Effective October 1, 2001

Article 5, Section 41-1376.01 was amended by Laws 2006, Chapter 370, Effective January 1, 2007.

41-1371. Definitions

In this article, unless the context otherwise requires:

1. "Administrative act" means an action, decision, omission, recommendation, practice, policy or procedure of an agency but does not include the preparation or presentation of legislation or the substantive content of a judicial order, decision or opinion.

2. "Agency" means a department, office, corporation, authority, organization, commission, council or board of the executive branch of state government, a department, office, institution, authority, organization, commission, committee, council or board of state government that is independent of the executive or legislative branches of state government or an officer, employee or member of an agency acting or purporting to act in the exercise of official duties. Agency does not mean the judicial department of state government, the board of regents, universities or community college districts.

3. "Record" means any document, photograph, film, exhibit or other item developed or received under law or in connection with the transaction of official business except an attorney's work product, communications that are protected under the attorney-client privilege and confidential information as defined in section 41-1378, subsection D, paragraph 4.

41-1372. Exemptions

This article does not apply to:

1. Any elected state official.
2. Chief advisors who maintain a direct, confidential and advisory relationship with:
 - (a) The governor.
 - (b) The secretary of state.
 - (c) The attorney general.
 - (d) The state treasurer.
 - (e) The state mine inspector.
 - (f) The superintendent of public instruction.
 - (g) A commissioner of the corporation commission.
3. An agency attorney who maintains an attorney-client relationship with either:
 - (a) An officer or employee of an agency acting in the exercise of the officer's or employee's duty.
 - (b) An elected official who is listed under paragraph 2.
4. The staff of the legislature.

41-1373. Ombudsman-citizens aide selection committee

A. When there is a vacancy in the office of ombudsman-citizens aide, or within twelve months before the expiration of the term of office, the ombudsman-citizens aide selection committee is established consisting of:

1. Two members of the senate appointed by the president of the senate. One member shall be from each political party.

2. Two members of the house of representatives appointed by the speaker of the house of representatives. One member shall be from each political party.

3. One public member who is appointed by the president of the senate and who represents a large business that is regulated by this state.

4. One public member who is appointed by the speaker of the house of representatives and who represents a small business that is regulated by this state.

5. Three members who are appointed by the governor and who represent:

(a) A consumer group that is not regulated by this state.

(b) State employees who hold managerial positions.

(c) State employees who hold nonmanagerial positions.

B. The appointing officers shall appoint the members of the committee when a vacancy occurs in the office of ombudsman-citizens aide. The committee shall receive applications and nominate by a two-thirds vote one candidate for ombudsman-citizens aide according to its adopted procedures. The appointment of the ombudsman-citizens aide from this nomination is made by passage of a bill on a roll call vote of two-thirds of the membership of each house of the legislature. Membership on the ombudsman-citizens aide selection committee expires when the appointment is approved. If the governor disapproves the bill, he shall return it to the house in which it originated. If after reconsideration, it again passes on a roll call vote of three-fourths of the membership of each house of the legislature, it shall become law notwithstanding the governor's objection.

C. Meetings of the committee are open to the public except for meetings to interview candidates and to make preliminary choices among the candidates. The meeting held to vote for the nominee is open to the public.

D. The identity of all candidates shall be public.

E. Committee members are eligible to receive reimbursement of expenses pursuant to title 38, chapter 4, article 2 but are not eligible to receive compensation.

41-1374. Qualifications

A person may not serve as ombudsman-citizens aide within one year of the last day the person served as a state elected officer. As minimum qualifications, the ombudsman-citizens aide shall be a resident of this state for at least six months, shall be at least twenty-five years of age and shall have investigatory experience.

41-1375. Ombudsman-citizens aide; term; compensation

A. The office of ombudsman-citizens aide is established.

B. The ombudsman-citizens aide who is appointed and approved under section 41-1373 shall serve full time and shall be a public officer subject to the conflict of interest provisions of title 38, chapter 3, article 8.

C. The term of office of the ombudsman-citizens aide is five years beginning on the date of appointment. Except as provided in subsection D of this section, the ombudsman-citizens aide shall not serve more than three full terms.

D. If the term of the ombudsman-citizens aide expires without the appointment of a successor, the incumbent ombudsman-citizens aide may continue in office until either:

1. A successor is appointed.

2. The ombudsman-citizens aide is removed from office pursuant to subsection E of this section.

E. The ombudsman-citizens aide may be removed from office at any time by a concurrent resolution approved by two-thirds of the membership of each house of the legislature, but only for neglect of duty, conviction of improperly divulging confidential information, misconduct or disability. The ombudsman-citizens aide may forfeit the office of ombudsman-citizens aide without legislative action pursuant to section 38-510. If the ombudsman-citizens aide is removed, resigns, dies or becomes incapacitated, a deputy ombudsman may serve as acting ombudsman-citizens aide until a new ombudsman-citizens aide is appointed.

F. The ombudsman-citizens aide is eligible to receive compensation as determined pursuant to section 38-611.

G. The ombudsman-citizens aide may incur, subject to appropriation, expenses that are necessary to carry out the duties under this chapter. The legislative council shall fund the expenses of the ombudsman-citizens aide from the monies appropriated to the council. The legislative council shall include the expenses as a line item in the general appropriations act.

41-1376. Powers and duties

A. The ombudsman-citizens aide shall:

1. Investigate the administrative acts of agencies pursuant to section 41-1377, subsections A and B except as provided in section 41-1377, subsections C, D and E. The ombudsman-citizens aide shall investigate the administrative acts of an agency without regard to the finality of the administrative act.

2. Annually before January 1 prepare a written report to the governor, the legislature and the public that contains a summary of the ombudsman-citizens aide's activities during the previous fiscal year. The ombudsman-citizens aide shall semiannually present this report before the legislative council. This report shall include:

(a) The ombudsman-citizens aide's mission statement.

(b) The number of matters that were within each of the categories specified in section 41-1379, subsection B.

(c) Legislative issues affecting the ombudsman-citizens aide.

(d) Selected case studies that illustrate the ombudsman-citizens aide's work and reasons for complaints.

(e) Ombudsman-citizens aide's contact statistics.

(f) Ombudsman-citizens aide's staff.

3. Before conducting the first investigation adopt rules that ensure that confidential information that is gathered will not be disclosed.

4. Appoint a deputy ombudsman and prescribe the duties of employees or, subject to appropriation, contract for the services of independent contractors necessary to administer the duties of the office of ombudsman-citizens aide. All staff serves at the pleasure of the ombudsman-citizens aide, and they are exempt from chapter 4, articles 5 and 6 of this title. All staff shall be subject to the conflict of interest provisions of title 38, chapter 3, article 8.

5. Before conducting the first investigation, adopt rules that establish procedures for receiving and processing complaints, including guidelines to ensure each complainant has exhausted all reasonable alternatives within the agency, conducting investigations, incorporating agency responses into recommendations and reporting findings.

6. Notify the chief executive or administrative officer of the agency in writing of the intention to investigate unless notification would unduly hinder the investigation or make the investigation ineffectual.

7. Appoint an assistant to help the ombudsman-citizens aide investigate complaints relating to child protective services in the department of economic security. The assistant shall have expertise in child protective services procedures and laws. Notwithstanding any law to the contrary, the ombudsman-citizens aide and the assistant have access to child protective services records and to any automated case management system used by child protective services in the department of economic security.

B. After the conclusion of an investigation and notice to the head of the agency pursuant to section 41-1379, the ombudsman-citizens

aide may present the ombudsman-citizens aide's opinion and recommendations to the governor, the legislature, the office of the appropriate prosecutor or the public, or any combination of these persons. The ombudsman-citizens aide shall include in the opinion the reply of the agency, including those issues that were resolved as a result of the ombudsman-citizens aide's preliminary opinion or recommendation.

41-1376.01. Additional powers and duties; definitions

A. In addition to the powers and duties prescribed in section 41-1376, the ombudsman-citizens aide shall appoint two assistants, one of whom shall be an attorney, to help the ombudsman-citizens aide investigate complaints relating to public access laws involving an agency. The assistants shall train public officials and educate the public on the rights of the public and the responsibilities of public agencies under the public access laws. The assistants shall prepare interpretive and educational materials and programs in cooperation with the ombudsman-citizens aide and shall distribute to elected or appointed public officials the public access laws and educational materials concerning the public access laws.

B. The annual report of the ombudsman-citizens aide shall include the following information about public access:

1. The number of inquiries that are received from the public, the media and government agencies.

2. The number of inquiries that are received about state agencies, county agencies, city or town agencies, school districts and other local jurisdictions.

3. The number of requests that are received concerning public records and public meetings.

4. The number of investigations that are conducted and the results of the investigations.

C. For investigations made pursuant to this section, the ombudsman-citizens aide may:

1. Make inquiries and obtain information considered necessary subject to the restrictions in section 41-1377.

2. Enter without notice to inspect agency premises with agency staff on the premises.

3. Hold hearings.

4. Notwithstanding any other law, have access to all agency records, including confidential records, except:

(a) Sealed court records without a subpoena.

(b) Active criminal investigation records.

(c) Records that could lead to the identity of confidential police informants.

(d) Attorney work product and communications that are protected under attorney-client privilege.

(e) Confidential information as defined in section 42-2001, except as provided in section 42-2003, subsection M.

(f) Information protected by section 6103(d), 6103(p) or 7213 of the internal revenue code.

(g) Confidential information relating to section 36-2903, subsection I, section 36-2917, section 36-2932, subsection F or section 36-2972.

(h) Confidential information relating to sections 36-507, 36-509 and 36-2220.

(i) Documents that are protected by section 214 of the critical infrastructure information act of 2002 (6 United States Code section 133a) or by 49 Code of Federal Regulations part 1520.

(j) Information that is protected by section 214 of the critical infrastructure information act of 2002 (6 United States Code section 133a) or 49 Code of Federal Regulations part 1520 or critical infrastructure information as defined by section 41-1801 on government owned facilities that are classified as critical infrastructure by the federal government or as defined by section 41-1801.

5. Issue subpoenas if necessary to compel the attendance and testimony of witnesses and the production of books, records, documents and other evidence to which the ombudsman-citizens aide may have access pursuant to paragraph 4 of this subsection. The ombudsman-citizens aide may only issue a subpoena if the ombudsman-citizens aide has previously requested testimony or evidence and the person or agency to which the request was made has failed to comply with the request in a reasonable amount of time.

D. It is contrary to the public policy of this state for any agency or any individual acting for an agency to take any adverse action against an individual in retaliation because the individual cooperated with or provided information to the ombudsman-citizens aide or the ombudsman-citizens aide's staff.

E. For the purposes of this section:

1. "Agency" has the same meaning prescribed in section 41-1371 but includes a public body as defined in section 39-121.01, subsection A, paragraph 2.

2. "Public access laws" means:

(a) Title 39, chapter 1.

(b) Title 38, chapter 3, article 3.1.

(c) Any other state statute or rule governing access to public meetings or public records.

41-1377. Scope of investigations

A. On receiving a complaint the ombudsman-citizens aide may investigate administrative acts of agencies that the ombudsman-citizens aide has reason to believe may be:

1. Contrary to law.
2. Unreasonable, unfair, oppressive, arbitrary, capricious, an abuse of discretion or unnecessarily discriminatory, even though they may be in accordance with law.

3. Based on a mistake of fact.
4. Based on improper or irrelevant grounds.
5. Unsupported by an adequate statement of reasons.
6. Performed in an inefficient or discourteous manner.
7. Otherwise erroneous.

B. On receiving a complaint the ombudsman-citizens aide may investigate to find an appropriate remedy.

C. On receiving a complaint the ombudsman-citizens aide may refuse to investigate an administrative act of an agency that otherwise qualifies for investigation under subsection A of this section if:

1. There is presently available an adequate remedy for the grievance stated in the complaint.

2. The complaint relates to a matter that is outside the duties of the ombudsman-citizens aide.

3. The complaint relates to an administrative act that the complainant has had knowledge of for an unreasonable time period before filing the complaint.

4. The complainant does not have a sufficient personal interest in the subject matter of the complaint.

5. The complaint is trivial or made in bad faith.

6. The resources of the office of ombudsman-citizens aide are insufficient to adequately investigate the complaint.

D. The ombudsman-citizens aide shall refuse to investigate complaints filed by a person in the custody of the state department of corrections.

E. On receiving a complaint that involves confidential information as defined in section 42-2001, the ombudsman-citizens aide shall either:

1. Work with the department of revenue problem resolution officer or an employee of the department of revenue who is authorized to access confidential taxpayer information.

2. Obtain a power of attorney from the taxpayer to access confidential information specific to the complainant in a form acceptable to the department of revenue.

F. On receiving a complaint that involves confidential information relating to section 36-2903, subsection I, section 36-2917, section 36-2932, subsection F or section 36-2972, the ombudsman-citizens aide shall either:

1. Work with the Arizona health care cost containment system administration employee who is authorized to access confidential information.

2. Obtain a power of attorney from the complainant to access confidential information specific to the complainant in a form acceptable to the Arizona health care cost containment system administration.

G. On receiving a complaint that involves confidential information relating to sections 36-507, 36-509 and 36-2220, the ombudsman-citizens aide shall either:

1. Work with the department of health services employee who is authorized to access confidential information.

2. Obtain a power of attorney from the complainant to access confidential information specific to the complainant in a form acceptable to the department of health services.

41-1378. Complaint; investigation; investigative authority;
violation; classification

A. All complaints shall be addressed to the ombudsman-citizens aide. If an agency receives correspondence between a complainant and the ombudsman-citizens aide, it shall hold that correspondence in trust and shall promptly forward the correspondence, unopened, to the ombudsman-citizens aide.

B. Within thirty days of receipt of the complaint, the ombudsman-citizens aide shall notify the complainant of the decision to investigate or not to investigate the complaint. If the ombudsman-citizens aide decides not to investigate and if requested by the complainant, the ombudsman-citizens aide shall provide the reasons for not investigating in writing.

C. The ombudsman-citizens aide shall not charge any fees for investigations or complaints.

D. In an investigation, the ombudsman-citizens aide may:

1. Make inquiries and obtain information considered necessary subject to the restrictions in section 41-1377.

2. Enter without notice to inspect agency premises with agency staff on the premises.

3. Hold hearings.

4. Notwithstanding any other law, have access to all state agency records, including confidential records, except:

(a) Sealed court records without a subpoena.

(b) Active criminal investigation records.

(c) Records that could lead to the identity of confidential police informants.

(d) Attorney work product and communications that are protected under the attorney-client privilege.

(e) Confidential information as defined in section 42-2001, except as provided in section 42-2003, subsection M.

(f) Information protected by section 6103(d), 6103(p)(8) or 7213 of the internal revenue code.

(g) Confidential information relating to section 36-2903, subsection I, section 36-2917, section 36-2932, subsection F or section 36-2972.

(h) Confidential information relating to sections 36-507, 36-509 and 36-2220.

5. Issue subpoenas if necessary to compel the attendance and testimony of witnesses and the production of books, records, documents and other evidence to which the ombudsman-citizens aide may have access pursuant to paragraph 4 of this subsection. The ombudsman-citizens aide may only issue a subpoena if the ombudsman-citizens aide has previously requested testimony or evidence and the person or agency to which the request was made has failed to comply with the request in a reasonable amount of time.

E. It is contrary to the public policy of this state for any state agency or any individual acting for a state agency to take any adverse action against an individual in retaliation because the

individual cooperated with or provided information to the ombudsman-citizens aide or the ombudsman-citizens aide's staff.

F. If requested by the complainants or witnesses, the ombudsman-citizens aide shall maintain confidentiality with respect to those matters necessary to protect the identities of the complainants or witnesses. The ombudsman-citizens aide shall ensure that confidential records are not disclosed by either the ombudsman-citizens aide or staff to the ombudsman-citizens aide. The ombudsman-citizens aide shall maintain the confidentiality of an agency record. With respect to requests made pursuant to title 39, chapter 1, article 2 or other requests for information, the ombudsman-citizens aide shall maintain all records that are received from a custodial agency in the same manner as the custodial agency would if it had received the request.

G. The ombudsman-citizens aide or any staff member or other employee of the ombudsman-citizens aide who knowingly divulges or makes known in any manner not permitted by law any particulars of any record, document or information for which the law restricts disclosure is guilty of a class 5 felony.

41-1379. Procedures after an investigation

A. If an opinion or recommendation of the ombudsman-citizens aide is critical of a person or agency, the ombudsman-citizens aide shall first consult with the person or agency before rendering the opinion or recommendation. A preliminary opinion or preliminary recommendation is confidential and shall not be publicly disclosed by any party.

B. The ombudsman-citizens aide shall report the ombudsman-citizens aide's opinion and recommendations to an agency, if the ombudsman-citizens aide finds, after investigation, that:

1. A matter should be further considered by that agency.
2. A matter should be referred to the presiding officers of both houses of the legislature for further investigation or legislative action.
3. A statute or rule on which an administrative act is based should be amended.
4. An administrative act should be modified or cancelled.
5. Reasons should be given for an administrative act.
6. There are no grounds or there are insufficient grounds for action by the agency.
7. Any other action should be taken by the agency.
8. The agency's action was arbitrary or capricious, constituted an abuse of discretion or was not according to law.

C. The ombudsman-citizens aide may request the agency to notify the office within a specified time of any action taken on his recommendations.

D. The ombudsman-citizens aide shall notify the complainant of the ombudsman-citizens aide's recommendations and the actions taken by the agency.

E. If the ombudsman-citizens aide believes there is a breach of duty or misconduct by an officer or employee of an agency in the conduct of the officer's or employee's duty, the ombudsman-citizens aide shall refer the matter to the chief executive officer of the agency, to the presiding officer of both houses of the legislature, to a prosecutor's office or to another appropriate official or agency.

41-1380. Ombudsman-citizens aide protections

A. A civil action may not be brought against the ombudsman-citizens aide or the staff of the ombudsman-citizens aide for any action or omission in performing the duties under this article except for gross negligence or intentional wrongful acts or omissions except as provided in title 38, chapter 3, article 8.

B. A proceeding or decision of the ombudsman-citizens aide may be reviewed in superior court only to determine if it is contrary to this article.

C. The ombudsman-citizens aide and the staff of the ombudsman-citizens aide shall not be required to testify in court regarding matters that come to their attention in the exercise of their duties except as may be necessary to enforce this article.

D. Records and files maintained by the ombudsman-citizens aide are not public records and are exempt from title 39, chapter 1. The information contained in these records and files that were prepared pursuant to an investigation conducted under this article are not subject to disclosure except to the attorney general or any county attorney in connection with an investigation that has been referred to the attorney general or a county attorney pursuant to section 41-1379. For the purposes of this subsection, "records and files" means all information the department of economic security and the office of the ombudsman-citizens aide gathers during the course of a child protective services investigation conducted under this article from the time a file is opened and until it is closed. Records and files do not include information that is contained in child welfare agency licensing records.

41-1381. Ombudsman-citizens aide political activity

The ombudsman-citizens aide and the staff of the ombudsman-citizens aide may express a private opinion, may register to vote as to party and may vote but may not engage in any other political activity. If the ombudsman-citizens aide or any staff member or employee of the ombudsman-citizens aide becomes a candidate for political office, that person shall resign.

41-1382. Ombudsman-citizens aide office

The office of ombudsman-citizens aide shall not be located within the state office building complex or adjacent or contiguous to any other state agency.

41-1383. Violation: classification

A person who knowingly hinders the lawful actions of the ombudsman-citizens aide or the staff of the ombudsman-citizens aide or who knowingly refuses to comply with their lawful demands is guilty of a class 1 misdemeanor.