

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 3061

By Delegates Summers and Tully

[Originating in the Committee on Health and Human

Resources; Reported on January 26, 2023]

1 A BILL to amend and reenact §49-9-101, §49-9-102 and §49-9-107 of the Code of West Virginia,
2 1931, as amended; all relating to updating the authority of the Foster Care Ombudsman;
3 expanding the authority of the Foster Care Ombudsman; prohibiting the ombudsman from
4 being compelled to testify or provide information; requiring reporting; permitting the release
5 of information in certain circumstances.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. FOSTER CARE OMBUDSMAN PROGRAM.

§49-9-101. The Foster Care Ombudsman.

1 (a) There is continued within the Office of the Inspector General the position of the West
2 Virginia Foster Care Ombudsman. The Office of the Inspector General shall employ a Foster Care
3 Ombudsman to affect the purposes of this article.

4 (b) In addition to the duties provided in §9-5-27 of this code, the duties of the Foster Care
5 Ombudsman include, but are not limited to, the following:

6 (1) Establishing a statewide procedure to receive, investigate, and resolve complaints filed
7 on behalf of a child who is subject to a reported allegation of abuse and neglect, a child who has
8 died or sustained a critical incident, a child in the juvenile justice system; a foster child, foster
9 parent, or kinship parent, or, on the Foster Care Ombudsman's own initiative, on behalf of a foster
10 child, relating to action, inaction, or decisions of the state agency, child-placing agency, or
11 residential care facility which may adversely affect the foster child, foster parent, or kinship parent;

12 (2) Review periodically and make appropriate recommendations for the policies and
13 procedures established by any state agency providing services to foster children, foster parents,
14 kinship parents, including, but not limited to, the system of providing foster care and treatment;

15 (3) Pursuant to an investigation, provide assistance to a foster child, foster parent, or
16 kinship parent who the Foster Care Ombudsman determines is in need of assistance, including,
17 but not limited to, collaborating with an agency, provider, or others on behalf of the best interests of
18 the foster child;

19 (4) Recommend action when appropriate, including, but not limited to, undertaking
20 legislative advocacy and making proposals for systemic reform and formal legal action, in order to
21 secure and ensure the legal, civil, and special rights of foster children; ~~who reside in this state;~~

22 (5) Conduct programs of public education when necessary and appropriate;

23 (6) Have input into the creation of, and thereafter make recommendations consistent with,
24 the foster children, foster parents, and kinship parents bill of rights;

25 (7) Take appropriate steps to advise the public of the services of the Foster Care
26 Ombudsman, the purpose of the ombudsman, and procedures to contact the office; and

27 (8) Make inquiries and obtain assistance and information from other state governmental
28 agencies or persons as the Foster Care Ombudsman requires for the discharge of his or her
29 duties.

30 (c) (1) The Foster Care Ombudsman or his or her staff may not be compelled to testify or
31 produce evidence in any judicial or administrative proceeding with respect to the identity of an
32 individual providing information to the ombudsman as part of an official investigation, or the
33 substance of that person's report to the ombudsman as part of an official investigation. All
34 memoranda, work product, notes, or case files developed and maintained as part of an official
35 investigation of the Foster Care Ombudsman Office are confidential and are not subject to
36 discovery, subpoena or other means of legal compulsion, and are not admissible as evidence in a
37 judicial or administrative proceeding.

38 (2) The ombudsman may be compelled to provide testimony by a court or administrative
39 body of competent jurisdiction related to any action carried out by the office that is unrelated to the
40 substance of a specific official investigation, or reports submitted to the Legislative Oversight
41 Commission on Health and Human Resources Accountability provided for in §9-5-27 and §49-9-
42 102 of this code. Should the ombudsman be compelled to testify, provide evidence in discovery,
43 respond to a subpoena, or otherwise divulge testimony or evidence in any judicial, administrative,
44 or legislative proceeding, the ombudsman may not be compelled to provide testimony or evidence

45 concerning the identity of any complainant or any individual providing information to the
46 ombudsman as part of an official investigation, or the substance of any complaint or report unless
47 the ombudsman should decline to exercise that privilege. The purpose of this provision is to
48 ensure a level of confidentiality between the ombudsman and a person reporting to, complaining
49 to, or providing other evidence to the ombudsman as part of an official investigation carried out by
50 the office.

51 (3) Any objection by the ombudsman to the disclosure of any testimony, documentary, or
52 physical evidence shall be reviewed by the presiding official of such tribunal, in camera, upon the
53 request of the ombudsman, and the presiding official shall prevent the disclosure of the identity of
54 any complainant, witness, or reporter as well as the substance of their complaint, testimony, or
55 report.

§49-9-102. Investigation of complaints.

1 (a) Upon receipt of a complaint filed ~~on behalf of a foster child, foster parent, or kinship~~
2 ~~parent, on his or her own initiative~~ or by court order within the scope of the Foster Care
3 Ombudsman Program, the Foster Care Ombudsman shall investigate, except as provided in §49-
4 9-102(c), any act, practice, policy, or procedure of any state agency, child-placing agency, juvenile
5 facility or residential care facility which affects the health, safety, welfare, or rights of a foster child,
6 a foster parent, or a kinship parent.

7 (b) Investigative activities of the Foster Care Ombudsman include, but are not limited to:
8 information gathering, mediation, negotiation, informing parties of the status of the investigation,
9 notification to any aggrieved party of alternative processes, reporting of suspected violations to a
10 licensing or certifying agency, and the reporting of suspected criminal violations to the appropriate
11 authorities.

12 (c) The Foster Care Ombudsman need not investigate any complaint upon determining
13 that:

14 (1) The complaint is trivial, frivolous, vexatious, or not made in good faith;

15 (2) The complaint has been too long delayed to justify present investigation;

16 (3) The resources available, considering the established priorities, are insufficient for an
17 adequate investigation;

18 (4) The matter complained of is not within the investigatory authority of the Foster Care
19 Ombudsman; or

20 (5) A real or apparent conflict of interest exists and no other person within the office is
21 available to investigate the complaint in an impartial manner.

22 (d) The Office of the Inspector General and other appropriate state governmental agencies
23 may establish and implement cooperative agreements for receiving, processing, responding to,
24 and resolving complaints involving state governmental agencies under the provisions of this
25 section.

26 (e) ~~Beginning with the third quarter of 2020, the~~ The Foster Care Ombudsman shall submit
27 a an annual written report to the Governor containing:

28 (1) The number of complaints;

29 (2) The types of complaints;

30 (3) The location of the complaints;

31 (4) How the complaints are resolved; and

32 (5) Any other information the Foster Care Ombudsman feels is appropriate.

33 (f) ~~Beginning in December 2020, the~~ The Foster Care Ombudsman shall summarize the
34 ~~quarterly~~ reports and present that information to the Legislative Oversight Commission on Health
35 and Human Resources Accountability. Nothing shall preclude this office from submitting data,
36 findings, or reports beyond this annual report.

37 (g) Another office, department, agency or official may not prohibit the release of an
38 ombudsman's recommendations to the Governor and the legislature.

§49-9-107. Confidentiality of investigations.

2 (a) Information relating to any investigation of a complaint that contains the identity of the
3 complainant or foster child, foster parent, or kinship parent shall remain confidential except:

4 (1) ~~Where disclosure is authorized in writing by the complainant foster child, foster parent,~~
5 ~~kinship parent, or the guardian. Where imminent risk of serious harm is communicated directly to~~
6 ~~the Foster Care Ombudsman or his or her staff;~~

7 (2) ~~Where disclosure is necessary to the bureau for Children and Families in order for such~~
8 ~~office to determine the appropriateness of initiating an investigation regarding potential abuse,~~
9 ~~neglect, or emergency circumstances; or~~

10 (3) ~~Where disclosure is necessary to the Office of Health Facility Licensure and~~
11 ~~Certification in order for such office to determine the appropriateness of initiating an investigation~~
12 ~~to determine facility compliance with applicable rules of licensure, certification, or both.~~

13 (b) ~~The Foster Care Ombudsman shall maintain confidentiality with respect to all matters~~
14 ~~including the identities of complainants, witnesses, or others from whom information is acquired,~~
15 ~~except insofar as disclosures may be necessary to enable the Foster Care Ombudsman to carry~~
16 ~~out duties of the office or to support recommendations.~~

17 (c) Notwithstanding any other section within this article, all information, records, and
18 reports received by or developed by the Foster Care Ombudsman Program which relate to a foster
19 child, foster parent, or kinship parent, including written material identifying a foster child, foster
20 parent, or kinship parent, are confidential pursuant to §49-5-101 *et seq.* of this code, and are not
21 subject to the provisions of §29B-1-1 *et seq.* of this code, and may not be disclosed or released by
22 the Foster Care Ombudsman Program, except under the circumstances enumerated in this
23 section.

24 (e) ~~(d)~~ Nothing in this section prohibits the preparation and submission by the Foster Care
25 Ombudsman of statistical data and reports, as required to implement the provisions of this article
26 or any applicable federal law, exclusive of any material that identifies any foster child, foster
27 parent, kinship parent, or complainant.

- 28 ~~(d)~~ (e) The Inspector General shall have access to the records and files of the Foster Care
29 Ombudsman Program to verify its effectiveness and quality where the identity of any complainant.

NOTE: The purpose of this bill is to update the authority of the foster care ombudsman.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.