

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 3061

BY DELEGATES SUMMERS AND TULLY

[Passed February 15, 2023; in effect from passage.]

1 AN ACT 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
5 release 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:

7 (A) Filed on behalf of a child who is subject to a reported allegation of abuse and neglect,
8 a child who has died or sustained a critical incident, a child in the juvenile justice system, a foster
9 child, foster parent, or kinship parent;

10 (B) On the Foster Care Ombudsman's own initiative, of a child who is subject to a reported
11 allegation of abuse and neglect, a child who has died or sustained a critical incident, a child in the
12 juvenile justice system; or

13 (C) On the Foster Care Ombudsman's own initiative, on behalf of a foster child, relating to
14 action, inaction, or decisions of the state agency, child-placing agency, or residential care facility
15 which may adversely affect the foster child, foster parent, or kinship parent;

16 (2) Review periodically and make appropriate recommendations for the policies and
17 procedures established by any state agency providing services to the child welfare system;

18 (3) Pursuant to an investigation, provide assistance to an individual who the Foster Care
19 Ombudsman determines is in need of assistance, including, but not limited to, collaborating with
20 an agency, provider, or others on behalf of the best interests of the child;

21 (4) Recommend action when appropriate, including, but not limited to, undertaking
22 legislative advocacy and making proposals for systemic reform and formal legal action, in order
23 to secure and ensure the legal, civil, and special rights of children in the child welfare system and
24 the juvenile justice system;

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

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

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

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

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

41 (2) The ombudsman may be compelled to provide testimony by a court or administrative
42 body of competent jurisdiction related to any action carried out by the office that is unrelated to
43 the substance of a specific official investigation, or reports submitted to the Legislative Oversight

44 Commission on Health and Human Resources Accountability provided for in §9-5-27 and §49-9-
45 102 of this code. Should the ombudsman be compelled to testify, provide evidence in discovery,
46 respond to a subpoena, or otherwise divulge testimony or evidence in any judicial, administrative,
47 or legislative proceeding, the ombudsman may not be compelled to provide testimony or evidence
48 concerning the identity of any complainant or any individual providing information to the
49 ombudsman as part of an official investigation, or the substance of any complaint or report unless
50 the ombudsman should decline to exercise that privilege. The purpose of this provision is to
51 ensure a level of confidentiality between the ombudsman and a person reporting to, complaining
52 to, or providing other evidence to the ombudsman as part of an official investigation carried out
53 by the office.

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

§49-9-102. Investigation of complaints.

1 (a) Upon receipt of a complaint or by court order within the scope of the Foster Care
2 Ombudsman Program, the Foster Care Ombudsman shall investigate, except as provided in §49-
3 9-102(c) of this code, any act, practice, policy, or procedure of any state agency, child-placing
4 agency, juvenile facility, or residential care facility which affects the health, safety, welfare, or
5 rights of a foster child, a foster parent, a child who is subject to a reported allegation of abuse and
6 neglect, a child who has died or sustained a critical incident, a child in the juvenile justice system,
7 or a kinship parent.

8 (b) Investigative activities of the Foster Care Ombudsman include, but are not limited to:
9 information gathering, mediation, negotiation, informing parties of the status of the investigation,
10 notification to any aggrieved party of alternative processes, reporting of suspected violations to a

11 licensing or certifying agency, and the reporting of suspected criminal violations to the appropriate
12 authorities.

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

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

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

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

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

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

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

27 (e) The Foster Care Ombudsman shall submit an annual written report to the Governor
28 containing:

29 (1) The number of complaints;

30 (2) The types of complaints;

31 (3) The location of the complaints;

32 (4) How the complaints are resolved; and

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

34 (f) The Foster Care Ombudsman shall summarize the reports and present that information
35 to the Legislative Oversight Commission on Health and Human Resources Accountability.

36 Nothing shall preclude the Foster Care Ombudsman office from submitting data, findings, or
37 reports beyond this annual report.

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

§49-9-107. Confidentiality of investigations.

1 (a) Information relating to any investigation of a complaint that contains the identity of the
2 complainant, a child who is subject to a reported allegation of abuse and neglect, a child who has
3 died or sustained a critical incident, a child in the juvenile justice system, a foster child, foster
4 parent, or kinship parent shall remain confidential except:

5 (1) Where imminent risk of serious harm is communicated directly to the Foster Care
6 Ombudsman or his or her staff;

7 (2) Where disclosure is necessary to the bureau in order for such office to determine the
8 appropriateness of initiating an investigation regarding potential abuse, neglect, or emergency
9 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
19 foster child, foster parent, or kinship parent, including written material identifying a foster child,
20 foster parent, or a child who is subject to a reported allegation of abuse and neglect, a child who
21 has died or sustained a critical incident, a child in the juvenile justice system, or kinship parent,

22 are confidential pursuant to §49-5-101 *et seq.* of this code and are not subject to the provisions
23 of §29B-1-1 *et seq.* of this code, and may not be disclosed or released by the Foster Care
24 Ombudsman Program, except under the circumstances enumerated in this section.

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

29 (e) The Inspector General shall have access to the records and files of the Foster Care
30 Ombudsman Program to verify its effectiveness and quality where the identity of any complainant,
31 a child who is subject to a reported allegation of abuse and neglect, a child who has died or
32 sustained a critical incident, a child in the juvenile justice system, or foster child, foster parent, or
33 kinship parent is not disclosed.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

.....
Clerk of the House of Delegates

.....
Clerk of the Senate

Originated in the House of Delegates.

In effect from passage.

.....
Speaker of the House of Delegates

.....
President of the Senate

The within is this the.....
Day of, 2023.

.....
Governor