

H. B. 2237

(By Delegate Cowles)

[Introduced January 12, 2011; referred to the
Committee on the Judiciary then Finance.]

A BILL to amend the Code of West Virginia, 1931, as amended, be
adding thereto a new article, designated §49-10-1, §49-10-2,
§49-10-3, §49-10-4, §49-10-5, §49-10-6, §49-10-7 and §49-10-8,
all relating to creating the position of child advocate to
protect children; legislative findings; definitions; powers
and duties of a child advocate; discrimination and retaliation
for reporting; and Child Advocacy Committee.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended
by adding thereto a new article, designated §49-10-1, §49-10-2,
§49-10-3, §49-10-4, §49-10-5, §49-10-6, §49-10-7 and §49-10-8, all
to read as follows:

ARTICLE 10. CHILD ADVOCATE FOR THE PROTECTION OF CHILDREN.

§49-10-1. Short title.

1 This article shall be known and may be cited as the "West
2 Virginia Child Advocate for the Protection of Children Act."

3 **§49-10-2. Legislative findings.**

4 The mission of protection of the children of this state should
5 have the greatest legislative and executive priority. Recognizing
6 that the needs of children must be attended to in a timely manner
7 and that more aggressive action should be taken to protect children
8 from abuse and neglect, the Legislature creates the Office of the
9 Child Advocate for the Protection of Children to provide
10 independent oversight of persons, organizations, and agencies
11 responsible for providing services to or caring for children who
12 are victims of child abuse and neglect, or whose domestic situation
13 requires intervention by the state. The Office of the Child
14 Advocate for the Protection of Children will provide children with
15 an avenue through which to seek relief when their rights are
16 violated by state officials and agents entrusted with their
17 protection and care.

18 **§49-10-3. Definitions.**

19 As used in this article, the term:

20 (1) "Advocate" or "child advocate" means the Child Advocate
21 for the Protection of Children established under this code.

22 (2) "Agency" means the Department of Health and Human
23 Resources.

24 (3) "Child" or "children" means an individual receiving

1 protective services from the division, for whom the division has an
2 open case file, or who has been, or whose siblings, parents, or
3 other caretakers have been the subject of a report to the division
4 within the previous five years.

5 (4) "Department" means the Department of Health and Human
6 Resources.

7 (5) "Division" means the Division of Family and Children
8 Services of the Department of Health and Human Resources.

9 **§49-10-4. Office of the Child Advocate for the Protection of**
10 **Children.**

11 (a) There is created the Office of the Child Advocate for the
12 Protection of Children. The Governor, by executive order, shall
13 create a nominating committee which shall consider nominees for
14 the position of the advocate and shall make a recommendation to the
15 Governor. The advocate shall have knowledge of the child welfare
16 system, the juvenile justice system, and the legal system and shall
17 be qualified by training and experience to perform the duties of
18 the office as set forth in this article.

19 (b) The advocate shall be appointed by the Governor from a
20 list of at least three names submitted by the nominating committee
21 for a term of three years and until his or her successor is
22 appointed and qualified and may be reappointed. The salary of the
23 advocate may not be less than \$60,000 per year, shall be fixed by
24 the Department of Administration, and shall come from funds

1 appropriated for the purposes of the advocate.

2 (c) The Office of the Child Advocate for the Protection of
3 Children shall be assigned to the Department of Administration for
4 administrative purposes only.

5 (d) The advocate may appoint staff considered necessary to
6 effectively fulfill the purposes of this article, within the
7 limitations of the funds available for the purposes of the
8 advocate. The duties of the staff may include the duties and
9 powers of the advocate if performed under the direction of the
10 advocate. The advocate and his or her staff shall receive
11 reimbursement for travel and other expenses as is normally allowed
12 to state employees, from funds appropriated for the purposes of the
13 advocate.

14 (e) The advocate may contract with experts in fields
15 including, but not limited to, medicine, psychology, education,
16 child development, juvenile justice, mental health, and child
17 welfare, as needed to support the work of the advocate, using funds
18 appropriated for the purposes of the advocate.

19 (f) Notwithstanding any other provision of state law, the
20 advocate shall act independently of any state official, department,
21 or agency in the performance of his or her duties.

22 **§49-10-5. Duties of the child advocate.**

23 The advocate shall perform the following duties:

24 (1) Identify, receive, investigate and seek the resolution or

1 referral of complaints made by or on behalf of children concerning
2 any act, omission to act, practice, policy or procedure of an
3 agency or any contractor or agent thereof that may adversely affect
4 the health, safety, or welfare of the children;

5 (2) Refer complaints involving abused children to appropriate
6 regulatory and law-enforcement agencies;

7 (3) Report the death of any child to the chairperson of the
8 child fatality review subcommittee of the county in which the child
9 resided at the time of death, unless the advocate has knowledge
10 that the death has been reported by the county medical examiner or
11 coroner, and to provide the subcommittee access to any records of
12 the advocate relating to the child;

13 (4) Provide periodic reports on the work of the Office of the
14 Child Advocate for the Protection of Children, including, but not
15 limited to, an annual written report for the Governor and the
16 Legislature and other persons, agencies, and organizations
17 considered appropriate. The reports shall include recommendations
18 for changes in policies and procedures to improve the health,
19 safety and welfare of children and shall be made expeditiously in
20 order to timely influence public policy;

21 (5) Establish policies and procedures necessary for the Office
22 of the Child Advocate for the Protection of Children to accomplish
23 the purposes of this article including, without limitation,
24 providing the division with a form of notice of availability of the

1 Office of the Child Advocate for the Protection of Children. The
2 notice shall be posted prominently, by the division, in division
3 offices and in facilities receiving public moneys for the care and
4 placement of children and shall include information describing the
5 Office of the Child Advocate for the Protection of Children and
6 procedures for contacting that office; and

7 (6) Convene quarterly meetings with organizations, agencies
8 and individuals who work in the area of child protection to seek
9 opportunities to collaborate and improve the status of children in
10 West Virginia.

11 **§49-10-6. Powers of the child advocate.**

12 The advocate has the following rights and powers:

13 (1) To communicate privately, by mail or orally, with any
14 child and with each child's parent or guardian;

15 (2) To have access to all records and files of the division
16 concerning or relating to a child, and to have access, including
17 the right to inspect, copy, and subpoena records held by clerks of
18 the various courts, law-enforcement agencies, service providers,
19 including medical and mental health, and institutions, public or
20 private, with whom a particular child has been either voluntarily
21 or otherwise placed for care or from whom the child has received
22 treatment within the state. To the extent any information provides
23 the names and addresses of individuals who are the subject of any
24 confidential proceeding or statutory confidentiality provisions,

1 the names and addresses or related information which has the effect
2 of identifying such individuals may not be released to the public
3 without the consent of such individuals;

4 (3) To enter and inspect any and all institutions, facilities,
5 and residences, public and private, where a child has been placed
6 by a court or the division and is currently residing. Upon
7 entering such a place, the advocate shall notify the administrator
8 or, in the absence of the administrator, the person in charge of
9 the facility, before speaking to any children. After notifying the
10 administrator or the person in charge of the facility, the advocate
11 may communicate privately and confidentially with children in the
12 facility, individually or in groups, or the advocate may inspect
13 the physical plant. To the extent possible, entry and
14 investigation provided by this code section shall be conducted in
15 a manner which will not significantly disrupt the provision of
16 services to children;

17 (4) To apply to the Governor to bring legal action in the
18 nature of a writ of mandamus or application for injunction pursuant
19 to West Virginia Code to require an agency to take or refrain from
20 taking any action required or prohibited by law involving the
21 protection of children;

22 (5) To apply for and accept grants, gifts and bequests of
23 funds from other states, federal and interstate agencies,
24 independent authorities, private firms, individuals and foundations

1 for the purpose of carrying out the lawful responsibilities of the
2 Office of the Child Advocate for the Protection of Children;

3 (6) When less formal means of resolution do not achieve
4 appropriate results, to pursue remedies provided by this article on
5 behalf of children for the purpose of effectively carrying out the
6 provisions of this article; and

7 (7) To engage in programs of public education and legislative
8 advocacy concerning the needs of children requiring the
9 intervention, protection, and supervision of courts and state and
10 county agencies.

11 **§49-10-7. Unlawful discrimination and retaliation.**

12 No person may discriminate or retaliate in any manner against
13 a child, parent or guardian of a child, employee of a facility,
14 agency, institution or other type of provider, or any other person
15 because of the making of a complaint or providing of information in
16 good faith to the advocate, or willfully interfere with the
17 advocate in the performance of his or her official duties. Any
18 person violating this section is guilty of a misdemeanor.

19 **§49-10-8. Child Advocate Advisory Committee.**

20 (a) There is established a Child Advocate Advisory Committee.
21 The advisory committee consists of:

22 (1) One representative of a not-for-profit children's agency
23 appointed by the Governor;

24 (2) One representative of a for profit children's agency

1 appointed by the President of the Senate;

2 (3) One pediatrician appointed by the Speaker of the House of
3 Delegates;

4 (4) One social worker with experience and knowledge of child
5 protective services who is not employed by the state appointed by
6 the Governor;

7 (5) One psychologist appointed by the President of the Senate;

8 (6) One attorney appointed by the Speaker of the House of
9 Delegates from the Children and the Courts Committee of the State
10 Bar of West Virginia; and

11 (7) One judge appointed by the Chief Justice of the West
12 Virginia Supreme Court of Appeals.

13 Each member of the advisory committee serves a two-year term
14 until the appointment and qualification of the member's successor.

15 Appointments to fill vacancies shall be filled in the same
16 manner as the original appointment.

17 (b) The advisory committee shall meet a minimum of three times
18 a year with the advocate and his or her staff to review and assess
19 the following:

20 (1) Patterns of treatment and service for children;

21 (2) Policy implications; and

22 (3) Necessary systemic improvements.

23 The advisory committee shall also provide for an annual
24 evaluation of the effectiveness of the Office of the Child Advocate

1 for the Protection of Children.

NOTE: The purpose of this bill is add language to West Virginia Code to provide a child advocate for the protection of children.

This article is new; therefore, it has been completely underscored.