

H. B. 4514

(By Delegates Manypenny, Jones, Fragale,
Caputo, Diserio and Longstreth)

[Introduced February 13, 2014; referred to the
Committee on Health and Human Resources then Finance.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §49-6F-1, §49-6F-2,
§49-6F-3 and §49-6F-4, all relating to creating the Office of
Child Protection Ombudsman; making findings; prescribing that
the office be independent; providing how the ombudsman is to
be appointed; setting forth specific powers and duties;
requiring the ombudsman to investigate complaints against
circuit and family law judges concerning alleged failures to
adequately protect children; requiring rule-making; providing
for confidentiality; and creating misdemeanor penalties.

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 §49-6F-1, §49-6F-2,
§49-6F-3 and §49-6F-4, all to read as follows:

ARTICLE 6F. OFFICE OF CHILD PROTECTION OMBUDSMAN.

§49-6F-1. Findings.

1 Currently in West Virginia, there is no path for citizens,
2 involved with unfavorable cases rendered by the Department of
3 Health and Human Resources, decisions of the circuit courts and
4 family law judges, concerning alleged failures to adequately
5 protect children's rights from abuse and neglect. It is essential
6 to ensure compliance of the requirements of the Adoption Safe
7 Family Act and the Fostering Connections Act of 2008 so that funds
8 are not lost due to noncompliance of the federal laws.

9 **§49-6F-2. Child Protection Ombudsman; appointment; monitor child**
10 **protective services and members of judiciary; duties;**
11 **prohibited acts; confidentiality; office to be**
12 **independent.**

13 (a) There is hereby created an independent office of Child
14 Protection Ombudsman who will monitor child and protective services
15 and members of the judiciary, circuit and family law judges and who
16 will investigate complaints, concerning alleged failures to
17 adequately protect children's rights to be free from abuse and
18 neglect. The office shall act as a neutral and nonadversarial
19 arbiter in disputes between citizens and the department's division
20 of child protective services and the legal system.

21 (b) The ombudsman shall be appointed by the Governor with the
22 advice and consent of the President of the Senate and the Speaker
23 of the House of Delegates.

1 (c) The ombudsman may not be actively involved in political
2 party activities or publicly endorse, solicit funds for or make
3 contributions to political parties or candidates for elective
4 office, or be engaged in any other occupation, business or
5 profession likely to detract from a full-time performance of his or
6 her duties as ombudsman.

7 (d) The ombudsman shall be afforded access to information as
8 necessary to perform his or her duties. All information is
9 confidential and may not be disclosed except as necessary to
10 perform the duties required or as otherwise required by law.

11 (e) The Office of the Ombudsman shall be independent of the
12 Department of Health and Human Resources. All staffing positions
13 and other administrative costs, including salaries, shall be
14 determined by th Governor with the advice and consent of the
15 President of the Senate and the Speaker of the House of Delegates.

16 **§49-6F-3. Specific duties and authority of child protection**
17 **ombudsman; rule-making.**

18 (a) The duties of the ombudsman include:

19 (1) To monitor and investigate the performance of child
20 protective services rendered by the department, particularly
21 whether the performance complies with the requirements of the
22 Adoption and Safe Family Act;

23 (2) To accept and investigate complaints against circuit or
24 family court judges involving allegations that the judges have

1 failed in their legal duties towards abused or neglected children;

2 (3) To intervene in pending litigation involving abused or
3 neglected children in order to insure circuit or family court
4 judges comply with legal requirements related to abused or
5 neglected children, and to appeal judicial acts or orders to the
6 state Supreme Court of Appeals in the event the acts or orders
7 appear not to be in compliance with applicable legal requirements;

8 (4) To report to the Legislature and to the Governor annually,
9 concerning the state of the department and the state of the
10 judiciary relative to each entity's specific duties in child abuse
11 and neglect cases;

12 (5) To act as a neutral and nonadversarial arbiter in disputes
13 between citizens and the Department's Division of Child Protective
14 Services;

15 (6) To hold citizen's confidences when citizens make
16 complaints against the Department's Division of Child Protective
17 Services or circuit or family court judges;

18 (7) To make recommendations to the Legislature and the
19 Governor for legislative or administrative changes designed to
20 improve the Department's performance in responding to child abuse
21 and neglect cases as well as the judiciary's role in the protection
22 of children from child abuse and child neglect;

23 (8) To remain knowledgeable and informed regarding current
24 law, changes in the law and trends in the law vis a vis child abuse

1 and child neglect and to answer queries from the public regarding
2 the same;

3 (9) To remain knowledgeable and informed concerning the
4 department's administrative practices, procedures and policies as
5 they relate to the protection of children;

6 (10) To file legal actions, including, but not limited to,
7 actions in mandamus, prohibition, or declaratory judgment actions,
8 that seek to require governmental officials to perform necessary
9 activities to adequately serve and protect children or to prohibit
10 those officials from engaging in actions that are counterproductive
11 to the protection and welfare of children; and

12 (11) To do all necessary activities intended to improve the
13 Department's Child Protective Services Division.

14 (b) Upon enactment of this article, the ombudsman shall
15 propose rules for legislative approval in accordance with article
16 three, chapter twenty-nine-a of this code designed to implement the
17 provisions of this article.

18 **§49-6F-4. Penalties.**

19 Any person who willfully obstructs or hinders the proper and
20 lawful exercise of the ombudsman's powers, or willfully misleads or
21 attempts to mislead the ombudsman in the ombudsman's inquires, is
22 guilty of a misdemeanor and, upon conviction, shall be confined in
23 jail for not more than six months, fined not less than \$2,500, or
24 both fined and confined.

NOTE: The purpose of this bill is to create the Office of Child Protection Ombudsman. The bill prescribes that the office be independent. The bill provides how the ombudsman is to be appointed. The bill sets forth specific powers and duties. The bill requires the Ombudsman to investigate complaints against circuit and family law judges concerning alleged failures to adequately protect children. The bill requires rule-making. The bill provides for confidentiality. The bill creates misdemeanor penalties.

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