

H. B. 2558

(By Delegates Mahan, Fleischauer, Brown, Fragale,
Ferro, Ennis, Longstreth, Stowers,
L. Phillips, Rowan and Frazier)

[Introduced January 19, 2011; referred to the
Committee on the Judiciary then Finance.]

**Interim
Bill**

**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, §49-6F-4, §49-6F-5, §49-6F-6, §49-6F-7 and §49-6F-8,
all relating to establishing the Office of Child Advocacy;
defining terms; providing powers and duties of the Office of
Child Advocacy; providing qualifications, term of office and
salary of the director; granting authority for the director to
hire staff; providing the director and staff of the Office of
Child Advocacy to investigate and monitor the Division of
Child Protective Services and Division of Juvenile Services;
authorizing access by Office of Child Protective Services and
certain Division of Corrections records and information;
allowing communication with children involved in Child
Protective Services investigations and in the custody of the
Division of Juvenile Services; providing for confidentiality
of certain information; and granting immunity to office from
liability in specified circumstances.

1 *Be it enacted by the Legislature of West Virginia:*

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

6 **ARTICLE 6F. OFFICE OF CHILD ADVOCACY.**

7 **§49-6F-1. Purpose.**

8 The Legislature is committed to providing for the well being
9 of children and families of the State of West Virginia. Securing
10 a future for some of our most vulnerable citizens, those involved
11 in abuse and neglect proceedings and those with behavioral health
12 problems, has proven to be a daunting and on-going effort for the
13 Legislature. Further, disposition of these children to assure
14 state resources are being maximized towards assisting these
15 children as they enter into adulthood is a vital government
16 function, therefore the Legislature creates the Office of Child
17 Advocacy. The director is charged with coordinating efforts on
18 behalf of children and families involved in the state system; to
19 work with advocacy groups; to advocate and promote systematic
20 reforms; and to recommend changes in law, policy, rule or procedure
21 necessary to enhance the protection of children and families
22 involved in abuse and neglect and foster care matters, and advance
23 proper and effective management of behavioral health services for
24 children.

1 **§49-6F-2. Definitions.**

2 In this article:

3 (1) "Child or children" means a person or persons yet to
4 attain the age of eighteen years, or a person who has attained the
5 age of eighteen years or older when jurisdiction of the agency over
6 that person is continued as a result of agency jurisdiction over
7 that person when he or she was under the age of eighteen years.

8 (2) "Child abuse and neglect" means child abuse and neglect as
9 those terms are defined in section three, article one of this
10 chapter.

11 (3) "Child Fatality Review Team" means the Child Fatality
12 Review Team as established by section five, article five-d of this
13 chapter.

14 (4) "Child protective services" means the state agency within
15 the Department of Health and Human Resources charged with the
16 responsibility for review, investigation and placement of children
17 involved in child abuse and neglect matters established in article
18 six-a, chapter forty-nine of this code.

19 (5) "Director" means the Director of the Office of Child
20 Advocacy.

21 (6) "Division of juvenile services" means the state agency
22 within the Department of Military Affairs and Public Safety charged
23 with the responsibility for juvenile detention and corrections as
24 provided by article five-e of this chapter.

1 (7) "Multidisciplinary team" means the multidisciplinary team
2 as defined by section three, article one of this chapter.

3 (8) "Office" means the Office of Child Advocacy.

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

6 **§49-6F-3. Office of Child Advocacy created to monitor child**
7 **protective services and Division of Juvenile**
8 **Services; office to be independent.**

9 (a) There is created the Office of Child Advocacy to promote
10 public awareness and understanding of child protective services and
11 the Division of Juvenile Services, to monitor and ensure compliance
12 with administrative acts, relevant statutes, legislative rules and
13 internal policies pertaining to child protective services and the
14 Division of Juvenile Services and the investigations, placement,
15 supervision and treatment of children in child abuse and neglect
16 cases, foster care and placement, treatment and state operated and
17 contracted youth and social services, including treatment of those
18 children with behavioral health issues.

19 (b) The director reports directly to the Governor.

20 © The Office of Child Advocacy and the staff of the office is
21 independent of the Department of Health and Human Resources.
22 Neither agency may prevent, inhibit or prohibit the office from
23 initiating, carrying out or completing any investigation, review or
24 other activity within the office's statutory duties and deemed

1 necessary by the director.

2 **§49-6F-4. Appointment; qualifications; term of office.**

3 (a) The Office of Child Advocacy is under the direct
4 supervision of the director. The director is the executive and
5 administrative head of the office and shall be appointed by the
6 Governor with the advice and consent of the Senate. The director
7 shall be qualified by training and experience to direct the
8 operations of the Office of Child Advocacy.

9 (b) The director:

10 (1) Shall serve on a full-time basis;

11 (2) May not hold political office in the government of the
12 state either by election or appointment while serving as director;

13 (3) Shall be a citizen of the state;

14 (4) Is entitled to receive an annual salary as provided by the
15 Governor; and

16 (5) Is exempt from coverage under the classified service as
17 provided in section four, article six, chapter twenty-nine of this
18 code.

19 © The director shall hold office for a term of three years and
20 shall continue to hold office until reappointed or until a
21 successor is appointed. The Governor may remove the director only
22 for neglect of duty, misconduct or inability to perform duties.
23 Any vacancy shall be filled by similar appointment for the
24 remainder of the unexpired term.

1 §49-6F-5. Powers and duties of the Office of Child Advocacy;
2 hiring of staff.

3 (a) The powers and duties of the director include, but are not
4 limited to:

5 (1) Reviewing, monitoring and investigation of the performance
6 of services for children as rendered by the state, foster care and
7 placement, treatment, and state operated and contracted youth and
8 social services, including housing of status offenders and
9 treatment of children with behavioral health issues;

10 (2) Inspection and review of the operations, policies and
11 procedures of foster homes, group homes, residential treatment
12 facilities, shelters for the care of abused or neglected children,
13 facilities and programs for children with behavioral health issues
14 or any other public or private residential setting in which a child
15 has been placed by the state.

16 (3) Intervention in disposition orders and placements, by
17 petition to the court for hearings for modification of a
18 dispositional order as authorized by section fourteen, article
19 five, chapter forty-nine of this code when the director believes
20 the best interests of a juvenile are not reflected in the
21 disposition order. The presiding court shall consider the petition
22 and at the discretion of the court may revise or modify the order
23 accordingly. The director may, at his or her discretion, appeal any
24 such order.

1 (4) Reporting to the Legislative Oversight Commission on
2 Health and Human Resources Accountability annually by December 31
3 of each calendar year, concerning the state of each state entity's
4 specific duties in child abuse and neglect matters, and provide
5 nonconfidential information and assistance to the commission as it
6 may otherwise request;

7 (5) Acting as a neutral and nonadversarial arbiter in disputes
8 between citizens and the Division of Child Protective Services and
9 the Division of Juvenile Services;

10 (6) Making recommendations to the Governor for legislative or
11 administrative changes designed to improve the state's performance
12 in responding to child abuse and neglect cases as well as the
13 prosecuting attorney and judiciary's role in the protection of
14 children from child abuse and child neglect, and for the housing
15 and treatment of adjudicated delinquent youth;

16 (7) Reviewing, evaluating, reporting on and making
17 recommendations concerning the procedures established by the state
18 in providing services to children who are at risk of abuse or
19 neglect, in the custody of the state or any child who receives
20 child protective services and the Division of Juvenile Services;

21 (8) Reviewing, evaluating, reporting on and making
22 recommendations concerning the selection, assistance and monitoring
23 of foster care homes, to assure proper placement and services to
24 children placed in foster homes;

1 (9) Remaining knowledgeable and informed regarding current
2 law, changes in the law and trends in the law relating to child
3 abuse child neglect and juvenile services, and to answer queries
4 from the public regarding same;

5 (10) Remaining knowledgeable and informed concerning the
6 state's administrative practices, procedures and policies as they
7 relate to the protection of children;

8 (11) Filing legal actions in abuse and neglect cases and for
9 issues arising from disposition of adjudicated juvenile
10 delinquents, including, but not limited to, actions in mandamus,
11 prohibition or declaratory judgement actions that seek to require
12 governmental officials to perform necessary activities to
13 adequately serve and protect children or to prohibit those
14 officials from engaging in actions that are counterproductive to
15 the protection and welfare of children;

16 (12) Dissemination of information to the public on the
17 objectives of the office, the services the office provides and the
18 methods by which the office may be contacted, including, but not
19 limited to, a toll-free telephone number to receive and respond to
20 calls from citizens and a web page describing the services
21 available through the office;

22 (13) Aiding the Governor and the Legislature in proposing
23 methods of achieving increased coordination and collaboration among
24 state agencies and entities, including the judiciary, to ensure

1 maximum effectiveness and efficiency in the provision of services
2 to children;

3 (14) Providing necessary training and technical assistance to
4 child protective services, Division of Juvenile Services
5 prosecuting attorneys and the judiciary on issues relevant to the
6 performance of their respective duties with regard to child abuse
7 and child neglect;

8 (15) Applying for and accepting grants, gifts and bequests of
9 funds from other entities, states, federal and interstate agencies
10 for the purpose of carrying out the lawful responsibilities of the
11 Office of Child Advocacy; and

12 (16) Doing all necessary activities intended to improve the
13 child protective services division and the Division of Juvenile
14 Services.

15 (b) The director may appoint an adequate number of staff to
16 properly perform the duties of the office. The total compensation
17 of the staff shall be within the limits of the amounts appropriated
18 by the Legislature for personal services of the office. All staff
19 shall serve at the will and pleasure of the director.

20 **§49-6F-6. Access to information; communication with children;**
21 **confidentiality.**

22 (a) The director shall have access to:

23 (1) All written reports of child abuse and neglect matters
24 including the names of all children involved in investigation,

1 treatment or placement by child protective services;

2 (2) All records of local multidisciplinary teams created
3 pursuant to the provisions of section two, article five-d of this
4 chapter;

5 (3) All current and archived records maintained by child
6 protective services;

7 (4) All court documents, including, but not limited to,
8 pleadings, petitions, orders and discovery information;

9 (5) All on-line case management information;

10 (6) All records of child fatality review teams created
11 pursuant to section five, article five-d of this chapter; and

12 (7) All state institutions serving children, and state
13 licensed facilities or residences for the purposes of carrying out
14 this article.

15 (b) The director may communicate privately, by mail or orally,
16 with any child who is the subject of a child protective services
17 investigation, or otherwise in the custody of the department of
18 health and human services;

19 © All records of the office pertaining to the care and
20 treatment of a child shall remain confidential and are subject to
21 the same confidentiality requirements as set forth in section one,
22 article seven of this chapter. These records are not subject to
23 any method of legal compulsion without a showing of good cause by
24 the circuit or family court. Information contained in the records

1 may not be disclosed publicly in any manner that would disclose
2 identifying information about complainants or witnesses. The
3 records are exempt from the freedom of information act as provided
4 by chapter twenty-nine-b of this code.

5 **§49-6F-7. Admissibility of evidence; testimony regarding official**
6 **duties; exceptions.**

7 (a) Neither the director nor the staff of the Office of Child
8 Advocacy may be compelled in any judicial or administrative
9 proceeding to testify or produce evidence regarding the exercise of
10 the official duties of the director. All related memoranda, work
11 product, notes and case files of the office are confidential, not
12 subject to discovery, judicial or administrative subpoena or other
13 method of legal compulsion and are not admissible as evidence in a
14 judicial or administrative proceeding.

15 (b) The privilege described in subsection (a) of this section
16 does not apply when:

17 (1) The office has direct knowledge of an alleged crime and
18 the testimony, evidence or discovery sought is relevant to that
19 allegation;

20 (2) The office has received a threat of, or becomes aware of
21 a risk of, imminent serious harm to any person, and the testimony,
22 evidence or discovery sought is relevant to that threat or risk; or

23 (3) The director has been asked to provide general information
24 regarding the general operation of or the general processes

1 employed at his or her office.

2 **§49-6F-8. Immunity from liability for good faith performance of**
3 **duties.**

4 (a) An employee of the Office of the Child Advocacy is not
5 liable for good faith performance under this article.

6 (b) No discriminatory, disciplinary or retaliatory action may
7 be taken against an employee of the state, an employee of a
8 contracting agency of the state, a foster parent, or a recipient of
9 service from child protective services or Division of Juvenile
10 Services for any communication made, or information given or
11 disclosed, to aid the Office of Child Advocacy in carrying out its
12 responsibilities, unless the communication or information is made,
13 given or disclosed maliciously or not in good faith.

14 © All communications by the employees of the Office of Child
15 Advocacy if reasonably related to the requirements of this section
16 and done in good faith are privileged. This privilege serves as a
17 defense in any action brought in libel or slander.

NOTE: The purpose of this bill is to establish the Office of Child Advocacy. The bill defines terms. The bill sets forth the powers and duties of the Office of Child Advocacy and provides the qualifications, term of office and salary of its Director. The bill grants authority for the Director to hire staff. Also, the bill provides the Director and staff of the Office of Child Advocacy to investigate and monitor the Division of Child Protective Services and Division of Juvenile Services. The bill authorizes access by office of Child Protective Services and certain Division of Corrections to records and information. The bill allows communications with children involved in Child Protective Services investigations and in the custody of the

division of Juvenile Services. The bill further provides for confidentiality of certain information and grants immunity to Office from liability in specified circumstances.

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