

Senate Bill No. 593

(By Senators Unger, Jenkins and Klempa)

[Introduced February 15, 2012; referred to the Committee on the
Judiciary; and then to the Committee on 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, §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

1 of certain information; and granting immunity to office from
2 liability in specified circumstances.

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

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

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

9 **§49-6F-1. Purpose.**

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

1 of behavioral health services for children.

2 **§49-6F-2. Definitions.**

3 In this article:

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

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

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

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

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

22 (6) "Division of Juvenile Services" means the state agency
23 within the Department of Military Affairs and Public Safety charged
24 with the responsibility for juvenile detention and corrections as

1 provided by article five-e of this chapter.

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

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

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

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

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

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

21 (c) The Office of Child Advocacy and the staff of the office
22 is independent of the Department of Health and Human Resources.
23 Neither agency may prevent, inhibit or prohibit the office from
24 initiating, carrying out or completing any investigation, review or

1 other activity within the office's statutory duties and deemed
2 necessary by the director.

3 **§49-6F-4. Appointment; qualifications; term of office.**

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

10 (b) The director:

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

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

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

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

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

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

1 the unexpired term.

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

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

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

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

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

1 (4) Reporting to the Legislative Oversight Commission on Health
2 and Human Resources Accountability annually by December 31 of each
3 calendar year, concerning the state of each state entity's specific
4 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 and
15 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 Child
20 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) Reviewing, evaluating, reporting on and making
2 recommendations concerning whether kinship care providers should be
3 the preferred process in providing services to children, in the
4 manner adopted by federal law, who are at risk of abuse or neglect,
5 in the custody of the state or any child who receives Child
6 Protective Services and the Division of Juvenile Services;

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

11 (11) Remaining knowledgeable and informed concerning the
12 state's administrative practices, procedures and policies as they
13 relate to the protection of children;

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

22 (13) Dissemination of information to the public on the
23 objectives of the office, the services the office provides and the
24 methods by which the office may be contacted, including, but not

1 limited to, a toll-free telephone number to receive and respond to
2 calls from citizens and a web page describing the services available
3 through the office;

4 (14) Aiding the Governor and the Legislature in proposing
5 methods of achieving increased coordination and collaboration among
6 state agencies and entities, including the judiciary, to ensure
7 maximum effectiveness and efficiency in the provision of services
8 to children;

9 (15) Providing necessary training and technical assistance to
10 Child Protective Services, Division of Juvenile Services prosecuting
11 attorneys and the judiciary on issues relevant to the performance
12 of their respective duties with regard to child abuse and child
13 neglect;

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

18 (17) Doing all necessary activities intended to improve the
19 Child Protective Services Division and the Division of Juvenile
20 Services.

21 (b) The director may appoint an adequate number of staff to
22 properly perform the duties of the office. The total compensation
23 of the staff shall be within the limits of the amounts appropriated
24 by the Legislature for personal services of the office. All staff

1 shall serve at the will and pleasure of the director.

2 **§49-6F-6. Access to information; communication with children;**
3 **confidentiality.**

4 (a) The director shall have access to:

5 (1) All written reports of child abuse and neglect matters
6 including the names of all children involved in investigation,
7 treatment or placement by Child Protective Services;

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

11 (3) All current and archived records maintained by Child
12 Protective Services;

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

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

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

18 (7) All state institutions serving children and state licensed
19 facilities or residences for the purposes of carrying out this
20 article.

21 (b) The director may communicate privately, by mail or orally,
22 with any child who is the subject of a Child Protective Services
23 investigation, or otherwise in the custody of the Department of
24 Health and Human Services;

1 (c) All records of the office pertaining to the care and
2 treatment of a child shall remain confidential and are subject to
3 the same confidentiality requirements as set forth in section one,
4 article seven of this chapter. These records are not subject to any
5 method of legal compulsion without a showing of good cause by the
6 circuit or family court. Information contained in the records may
7 not be disclosed publicly in any manner that would disclose
8 identifying information about complainants or witnesses. The records
9 are exempt from the Freedom of Information Act as provided by
10 chapter twenty-nine-b of this code.

11 **§49-6F-7. Admissibility of evidence; testimony regarding official**
12 **duties; exceptions.**

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

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

23 (1) The office has direct knowledge of an alleged crime and the
24 testimony, evidence or discovery sought is relevant to that

1 allegation;

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

5 (3) The director has been asked to provide general information
6 regarding the general operation of or the general processes employed
7 at his or her office.

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

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

12 (b) No discriminatory, disciplinary or retaliatory action may
13 be taken against an employee of the state, an employee of a
14 contracting agency of the state, a foster parent or a recipient of
15 service from Child Protective Services or Division of Juvenile
16 Services for any communication made, or information given or
17 disclosed, to aid the Office of Child Advocacy in carrying out its
18 responsibilities, unless the communication or information is made,
19 given or disclosed maliciously or not in good faith.

20 (c) All communications by the employees of the Office of Child
21 Advocacy if reasonably related to the requirements of this section
22 and done in good faith are privileged. This privilege serves as a
23 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, including charging the director to evaluate the federal kinship care providers process as a preferred procedure, 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, strike-throughs and underscoring have been omitted.