

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2669

**FISCAL
NOTE**

BY DELEGATE COWLES

[Introduced January 25, 2019; Referred
to the Committee on Senior, Children, and Family
Issues then Health and Human Resources.]

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

Be it enacted by the Legislature of West Virginia:

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 Virginia Child Advocate for the
 2 Protection of Children Act.”

§49-10-2. Legislative findings.

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

§49-10-3. Definitions.

1 As used in this article, the term:

2 (1) “Advocate” or “child advocate” means the Child Advocate for the Protection of Children
 3 established under this article.

4 (2) “Child” or “children” means an individual receiving protective services from the division,
 5 for whom the division has an open case file, or who has been, or whose siblings, parents, or other

6 caretakers have been the subject of a report to the division within the previous five years.

7 (3) "Department" means the Department of Health and Human Resources.

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

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

1 (a) There is created the Office of the Child Advocate for the Protection of Children. The
2 Governor, by executive order, shall create a nominating committee which shall consider nominees
3 for the position of the advocate and shall make a recommendation to the Governor. The advocate
4 shall have knowledge of the child welfare system, the juvenile justice system, and the legal system
5 and shall be qualified by training and experience to perform the duties of the office as set forth in
6 this article.

7 (b) The advocate shall be appointed by the Governor from a list of at least three names
8 submitted by the nominating committee for a term of three years and until his or her successor is
9 appointed and qualified and may be reappointed. The salary of the advocate may not be less than
10 \$60,000 per year, shall be fixed by the Department of Administration, and shall come from funds
11 appropriated for the purposes of the advocate.

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

14 (d) The advocate may appoint staff considered necessary to effectively fulfill the purposes
15 of this article, within the limitations of the funds available for the purposes of the advocate. The
16 duties of the staff may include the duties and powers of the advocate if performed under the
17 direction of the advocate. The advocate and his or her staff shall receive reimbursement for travel
18 and other expenses as is normally allowed to state employees, from funds appropriated for the
19 purposes of the advocate.

20 (e) The advocate may contract with experts in fields including, but not limited to, medicine,
21 psychology, education, child development, juvenile justice, mental health, and child welfare, as

22 needed to support the work of the advocate, using funds appropriated for the purposes of the
23 advocate.

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

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

1 The advocate shall perform the following duties:

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

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

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

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

18 (5) Establish policies and procedures necessary for the Office of the Child Advocate for
19 the Protection of Children to accomplish the purposes of this article including, without limitation,
20 providing the division with a form of notice of availability of the Office of the Child Advocate for
21 the Protection of Children. The notice shall be posted prominently, by the division, in division

22 offices and in facilities receiving public moneys for the care and placement of children and shall
23 include information describing the Office of the Child Advocate for the Protection of Children and
24 procedures for contacting that office; and

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

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

1 The advocate has the following rights and powers:

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

4 (2) To have access to all records and files of the division concerning or relating to a child,
5 and to have access, including the right to inspect, copy, and subpoena records held by clerks of
6 the various courts, law-enforcement agencies, service providers, including medical and mental
7 health, and institutions, public or private, with whom a particular child has been either voluntarily
8 or otherwise placed for care or from whom the child has received treatment within the state. To
9 the extent any information provides the names and addresses of individuals who are the subject
10 of any confidential proceeding or statutory confidentiality provisions, the names and addresses or
11 related information which has the effect of identifying such individuals may not be released to the
12 public without the consent of such individuals;

13 (3) To enter and inspect any and all institutions, facilities, and residences, public and
14 private, where a child has been placed by a court or the division and is currently residing. Upon
15 entering such a place, the advocate shall notify the administrator or, in the absence of the
16 administrator, the person in charge of the facility, before speaking to any children. After notifying
17 the administrator or the person in charge of the facility, the advocate may communicate privately
18 and confidentially with children in the facility, individually or in groups, or the advocate may inspect
19 the physical plant. To the extent possible, entry and investigation provided by this code section

20 shall be conducted in a manner which will not significantly disrupt the provision of services to
21 children;

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

25 (5) To apply for and accept grants, gifts and bequests of funds from other states, federal
26 and interstate agencies, independent authorities, private firms, individuals and foundations for the
27 purpose of carrying out the lawful responsibilities of the Office of the Child Advocate for the
28 Protection of Children;

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

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

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

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

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

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

3 (1) One representative of a not-for-profit children’s agency appointed by the Governor;

4 (2) One representative of a for profit children’s agency appointed by the President of the

5 Senate;

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

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

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

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

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

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

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

18 (b) The advisory committee shall meet a minimum of three times a year with the advocate
19 and his or her staff to review and assess 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 evaluation of the effectiveness of
24 the Office of the Child Advocate for the Protection of Children.

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

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.