

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 4344

BY DELEGATES ROHRBACH, REED, SUMMERS,
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PINSON AND PACK

[Originating in the Committee on Finance;

February 17, 2022]

1 A BILL to repeal §49-2-125 of the Code of West Virginia, 1931, as amended; amend and reenact
2 §49-1-203 of said code; to amend and reenact §49-2-111a and §49-2-111c of said code;
3 to amend said code by adding thereto two new sections, designated §49-2-111d and §49-
4 2-111e; to amend and reenact §49-4-405, §49-4-501 and §49-4-601 of said code; to
5 amend and reenact §49-5-101 of said code; and to amend and reenact §49-9-101, §49-
6 9-103, §49-9-105, §49-9-106 and §49-9-107 of said code, all relating to foster care;
7 creating new definitions; deleting outdated language; requiring bureau of social services
8 to issue a request for proposal to incorporate into its PATH system a matching database,
9 and to create a dashboard database; requiring study of centralized intake; requiring
10 salaries of direct service employees be increased and the Division of Personnel to
11 increase certain salary ranges; implementation of the pay rates and employment
12 requirements shall not be subject to grievance procedures or private lawsuits; requiring
13 circuit courts to enable multidisciplinary treatment team to meet monthly; including
14 managed care case coordinator in multidisciplinary treatment team; allowing department
15 to hire counsel; requiring sheriff's office to serve notice of hearing without additional
16 compensation; permitting child agency or facility to disclose confidential information in
17 certain circumstances; requiring foster care ombudsman to make recommendations in
18 accordance with the Foster Child Bill of Rights and the Foster and Kinship Parent Bill of
19 Rights; authorizing ombudsman to have access to kinship family; exempting foster care
20 ombudsman from testifying about official duties; making ombudsman's records
21 confidential and not admissible in evidence; removing circumstance for authorizing
22 disclosure of confidential matters; making investigation of complaint confidential except

23 when imminent risk of harm reported to foster care ombudsman; and requiring
24 ombudsman to maintain confidentiality with respect to all matters and exceptions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§49-1-203. Definitions related, but not limited to, licensing and approval of programs.

1 When used in this chapter, terms defined in this section have the meanings ascribed to
2 them that relate to, but are not limited to, licensing and approval of programs. ~~except in those~~
3 ~~instances where a different meaning is provided or the context in which the word used clearly~~
4 ~~indicates that a different meaning is intended.~~

5 “Approval” means a finding by the Secretary of the Department of Health and Human
6 Resources that a facility operated by the state has met the requirements of legislative rules
7 promulgated for operation of that facility and that a certificate of approval or a certificate of
8 operation has been issued.

9 “Certification of approval” or “certificate of operation” means a statement issued by the
10 Secretary of the Department of Health and Human Resources that a facility meets all of the
11 necessary requirements for operation.

12 “Certificate of license” means a statement issued by the Secretary of the Department of
13 Health and Human Resources authorizing an individual, corporation, partnership, voluntary
14 association, municipality, or county, or any agency thereof, to provide specified services for a
15 limited period of time in accordance with the terms of the certificate.

16 “Certificate of registration” means a statement issued by the Secretary of the Department
17 of Health and Human Resources to a family child care home, informal family child care home, or
18 relative family child care home to provide specified services for a limited period in accordance
19 with the terms of the certificate.

20 “Data dashboard” means a visual presentation of data, definitions, and other information
21 that is web-based and available to the public to show current child welfare statistics, trends over
22 time, and progress toward established performance goals.

23 “License” means the grant of official permission to a facility to engage in an activity which
24 would otherwise be prohibited.

25 “Matching database” means a searchable database of all foster parents in the state
26 currently accepting placement of children. This database is used to help workers locate families
27 who have expressed interest in caring for children with specific characteristics.

28 “Registration” means the grant of official permission to a family child care home, informal
29 family child care home, or a relative family child care home determined to be in compliance with
30 the legislative rules promulgated pursuant to this chapter.

31 “Rule” means legislative rules promulgated by the Secretary of the Department of Health
32 and Human Resources or a statement issued by the Secretary of the Department of Health and
33 Human Resources of the standards to be applied in the various areas of child care.

34 “Variance” means a declaration that a rule may be accomplished in a manner different
35 from the manner set forth in the rule.

36 “Waiver” means a declaration that a certain legislative rule is inapplicable in a particular
37 circumstance.

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

§49-2-111a. Performance based contracting for child placing agencies.

1 (a) For purposes of this section:

2 (1) “Child” means:

3 (A) A person of less than 18 years of age; or

4 (B) A person 18 to 21 years of age who is eligible to receive the extended foster care
5 services.

6 (2) "Child-placing agency" means an agency licensed by the department to place a child
7 in a foster care home.

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

9 (4) "Evidence-based" means a program or practice that is cost-effective and includes at
10 least two randomized or statistically controlled evaluations that have demonstrated improved
11 outcomes for its intended population.

12 (5) "Performance-based contracting" means structuring all aspects of the service contract
13 around the purpose of the work to be performed and the desired results with the contract
14 requirements set forth in clear, specific, and objective terms with measurable outcomes and
15 linking payment for services to contractor performance.

16 (6) "Promising practice" means a practice that presents, based upon preliminary
17 information, potential for becoming a research-based or consensus-based practice.

18 (7) "Research-based" means a program or practice that has some research demonstrating
19 effectiveness, but that does not yet meet the standard of evidence-based practices.

20 (b) ~~No later than July 1, 2021,~~ The department shall enter into performance-based
21 contracts with child placing agencies.

22 (c) The department shall actively consult with other state agencies and other entities with
23 expertise in performance-based contracting with child placing agencies to develop the
24 requirements of the performance-based contract.

25 (d) The performance-based contract shall be developed and implemented in a manner
26 that complies with applicable provisions of this code. Contracts for child placing agencies are
27 exempt from §5A-3-1 of this code.

28 (e) The resulting contracts shall include, but are not limited to, the following:

29 (1) Adequate capacity to meet the anticipated service needs in the contracted service area
30 of the child placing agency;

31 (2) The use of evidence-based, research-based, and promising practices, where
32 appropriate, including fidelity and quality assurance provisions;

33 (3) Child placing agency data reporting, including data on performance and service
34 outcomes, including, but not limited to:

35 (A) Safety outcomes;

36 (B) Permanency outcomes;

37 (C) Well-being outcomes;

38 (D) Incentives earned;

39 (E) Placement of older children;

40 (F) Placement of children with special needs; and

41 (G) Recruitment and retention of foster parents; and

42 (4) A hold harmless period to determine a baseline for evaluation.

43 (f) Performance-based payment methodologies must be used in child placing agency
44 contracting. Performance measures should relate to successful engagement by a child or parent
45 in services included in their case plan, and resulting improvement in identified problem behaviors
46 and interactions. For the first year of implementation of performance-based contracting, the
47 department may transfer financial risk for the provision of services to the child placing agency
48 only to the limited extent necessary to implement a performance-based payment methodology,
49 such as phased payment for services. However, the department may develop a shared savings
50 methodology through which the child placing agency will receive a defined share of any savings
51 that result from improved performance. If the department receives a Title IV-E waiver, the shared
52 savings methodology must be consistent with the terms of the waiver. If a shared savings
53 methodology is adopted, the child placing agency shall reinvest the savings in enhanced services
54 to better meet the needs of the families and children they serve.

55 (g) The department shall actively monitor the child placing agency's compliance with the
56 terms of contracts executed under this section.

57 (h) The use of performance-based contracts under this section shall be done in a manner
58 that does not adversely affect the state's ability to continue to obtain federal funding for child
59 welfare-related functions currently performed by the state and with consideration of options to
60 further maximize federal funding opportunities and increase flexibility in the use of such funds,
61 including use for preventive and in-home child welfare services.

62 (i) The department shall pay child placing agencies contracted to provide adoption
63 services to foster families a minimum of \$1,000 per child for each adoption finalized.

64 (j) The rate of payment to foster parents and child placing agencies shall be reviewed by
65 the department, at a minimum of every two years, to determine whether the level of foster care
66 payments facilitates or hinders the efficient placement of foster children with West Virginia
67 families. The department shall remit payments to foster parents on the same week each month
68 to facilitate foster parents' ability to budget and appropriately expend payments for the benefit of
69 the children in their custody.

70 (k) The department shall report the performance of the child placing agency to the
71 Legislative Oversight Commission on Health and Human Resources Accountability by December
72 31, annually.

§49-2-111c. Priorities for use of funds.

1 (a) Subject to appropriations by the Legislature, the department is authorized and directed
2 to:

3 (1) Enhance and increase efforts to provide services to prevent the removal of children
4 from their homes;

5 (2) Identify relatives and fictive kin of children in need of placement outside of the home;

6 (3) Train kinship parents to become certified foster parents;

7 (4) Expand a tiered foster care system that provides higher payments for foster parents
8 providing care to, and child placing agencies providing services to, foster children who have
9 severe emotional, behavioral, or intellectual problems or disabilities, with particular emphasis

10 upon removing children in congregate care and placing them with suitable foster parents; This
11 ~~program shall be operational no later than December 1, 2020 and~~

12 (5) Develop a pilot program to increase payment to uncertified kinship parents for the
13 purpose of further helping families who have accepted kinship placements.

14 (b) During fiscal year 2021, the department shall expend at least \$16,900,000 for the
15 purposes of implementing the priorities and objectives listed in this section.

16 (c) ~~On or before July 1, 2022 and on or before July 1 of every year thereafter,~~ the secretary
17 ~~of the department~~ shall present a report to the Joint Standing Committee on Government and
18 Finance regarding the expenditures made pursuant to subsection (b) of this section and the
19 department's progress in meeting the priorities and objectives listed in subsection (a) of this
20 section: *Provided*, That the secretary shall provide the information described in this subsection
21 and updates to previous reports at any time, upon request of the Joint Standing Committee on
22 Government and Finance.

23 (d) When the Bureau of Social Services' case management system, known as the "PATH
24 system" is operational, the bureau shall issue a request for proposal to incorporate into the PATH
25 system or through the purchase of additional products, a matching database.

26 (e) The bureau shall create a data dashboard by October 1, 2022.

§49-2-111d. Study of centralized intake.

1 The department shall conduct a study of centralized intake. By January 1, 2023, the
2 department shall contract with a third-party independent expert to evaluate the centralized intake
3 process by evaluating:

4 (1) Centralized intake process;

5 (2) Best practice standards; and

6 (3) Review of standards for accepting referrals.

§49-2-111e. Recruiting and retaining employees.

1 (a) The Legislature finds that the Bureau of Social Services have extreme difficulty with
2 recruiting and retaining direct service employees of all types.

3 (b) The Legislature directs that a pay equity salary adjustment and increase be provided
4 to all direct service employees, as defined by the commissioner, working within the Bureau of
5 Social Services, regardless of where the direct service employee reports to work. This salary
6 adjustment shall be for a total of 15% per direct service employee. The Division of Personnel
7 shall increase the salary ranges for each classification by 20%.

8 (c) In the event any provision of this section conflicts with any rule, policy, or provision of
9 this code, this section shall control. Due to the limits of funding, the implementation of the pay
10 rates and employment requirements shall not be subject to the provisions of §6C-2-1 et seq. of
11 this code. The provisions of this section are rehabilitative in nature and it is the specific intent of
12 the Legislature that no private cause of action, either express or implied, shall arise pursuant to
13 the provisions or implementation of this section.

§49-2-125. Commission to Study Residential Placement of Children; findings; requirements; reports; recommendations.

1 [REPEALED]

ARTICLE 4. COURT ACTIONS.

§49-4-405. Multidisciplinary treatment planning process involving child abuse and neglect; team membership; duties; reports; admissions.

1 (a) Within 30 days of the initiation of a judicial proceeding pursuant to part six, of this
2 article, the Department of Health and Human Services shall convene a multidisciplinary treatment
3 team to assess, plan and implement a comprehensive, individualized service plan for children
4 who are victims of abuse or neglect and their families. The circuit court shall set aside one day
5 each month to enable multidisciplinary treatment team's to meet. The multidisciplinary team shall
6 obtain and utilize any assessments for the children or the adult respondents that it deems
7 necessary to assist in the development of that plan.

8 (b) In a case initiated pursuant to part six of this article, the treatment team consists of:

9 (1) The child or family's case manager in the Department of Health and Human Resources;

- 10 (2) The adult respondent or respondents;
- 11 (3) The child's parent or parents, guardians, any co-petitioners, custodial relatives of the
12 child, foster or preadoptive parents;
- 13 (4) Any attorney representing an adult respondent or other member of the treatment team;
- 14 (5) The child's counsel or the guardian ad litem;
- 15 (6) The prosecuting attorney or his or her designee;
- 16 (7) A member of a child advocacy center when the child has been processed through the
17 child advocacy center program or programs or it is otherwise appropriate that a member of the
18 child advocacy center participate;
- 19 (8) Any court-appointed special advocate assigned to a case;
- 20 (9) Any other person entitled to notice and the right to be heard;
- 21 (10) An appropriate school official; ~~and~~
- 22 (11) The managed care case coordinator; and
- 23 ~~(11)~~(12) Any other person or agency representative who may assist in providing
24 recommendations for the particular needs of the child and family, including domestic violence
25 service providers.

26 The child may participate in multidisciplinary treatment team meetings if the child's
27 participation is deemed appropriate by the multidisciplinary treatment team. Unless otherwise
28 ordered by the court, a party whose parental rights have been terminated and his or her attorney
29 may not be given notice of a multidisciplinary treatment team meeting and does not have the right
30 to participate in any treatment team meeting.

31 (c) Prior to disposition in each case which a treatment planning team has been convened,
32 the team shall advise the court as to the types of services the team has determined are needed
33 and the type of placement, if any, which will best serve the needs of the child. If the team
34 determines that an out-of-home placement will best serve the needs of the child, the team shall
35 first consider placement with appropriate relatives then with foster care homes, facilities or

36 programs located within the state. The team may only recommend placement in an out-of-state
37 facility if it concludes, after considering the best interests and overall needs of the child, that there
38 are no available and suitable in-state facilities which can satisfactorily meet the specific needs of
39 the child.

40 (d) The multidisciplinary treatment team shall submit written reports to the court as
41 required by the rules governing this type of proceeding or by the court, and shall meet as often
42 as deemed necessary but at least every three months until the case is dismissed from the docket
43 of the court. The multidisciplinary treatment team shall be available for status conferences and
44 hearings as required by the court.

45 (e) If a respondent or copetitioner admits the underlying allegations of child abuse or
46 neglect, or both abuse and neglect, in the multidisciplinary treatment planning process, his or her
47 statements may not be used in any subsequent criminal proceeding against him or her, except
48 for perjury or false swearing.

**§49-4-501. Prosecuting attorney representation of the Department of Health and Human
Resources; conflict resolution.**

1 (a) The prosecuting attorney shall render to the Department of Health and Human
2 Resources, without additional compensation, the legal services as the department may require.
3 This section shall not be construed to prohibit the department from developing plans for
4 cooperation with courts, prosecuting attorneys, and other law-enforcement officials in a manner
5 as to permit the state and its citizens to obtain maximum fiscal benefits under federal laws, rules
6 and regulations.

7 (b) Nothing in this code may be construed to limit the authority of a prosecuting attorney
8 to file an abuse or neglect petition, including the duties and responsibilities owed to its client the
9 Department of Health and Human Resources, in his or her fulfillment of the provisions of this
10 article.

11 (c) Whenever, pursuant to this chapter, a prosecuting attorney acts as counsel for the
12 Department of Health and Human Resources, and a dispute arises between the prosecuting
13 attorney and the department's representative because an action proposed by the other is believed
14 to place the child at imminent risk of abuse or serious neglect, either the prosecuting attorney or
15 the department's representative may contact the secretary of the department and the executive
16 director of the West Virginia Prosecuting Attorneys Institute for prompt mediation and resolution.
17 The secretary may designate either his or her general counsel or the director of social services to
18 act as his or her designee and the executive director may designate an objective prosecuting
19 attorney as his or her designee.

20 (d) Notwithstanding the provisions of this article, the department may hire counsel to
21 represent its interests in court proceedings under §49-4-101 et seq. of this code.

§49-4-601. Petition to court when child believed neglected or abused; venue; notice; right to counsel; continuing legal education; findings; proceedings; procedure.

1 (a) *Petitioner and venue.* — If the department or a reputable person believes that a child
2 is neglected or abused, the department or the person may present a petition setting forth the facts
3 to the circuit court in the county in which the child resides, or if the petition is being brought by the
4 department, in the county in which the custodial respondent or other named party abuser resides,
5 or in which the abuse or neglect occurred, or to the judge of the court in vacation. Under no
6 circumstance may a party file a petition in more than one county based on the same set of facts.

7 (b) *Contents of Petition.* — The petition shall be verified by the oath of some credible
8 person having knowledge of the facts. The petition shall allege specific conduct including time
9 and place, how the conduct comes within the statutory definition of neglect or abuse with
10 references thereto, any supportive services provided by the department to remedy the alleged
11 circumstances and the relief sought.

12 (c) *Court action upon filing of petition.* — Upon filing of the petition, the court shall set a
13 time and place for a hearing and shall appoint counsel for the child. When there is an order for

14 temporary custody pursuant to this article, the preliminary hearing shall be held within ten days of
15 the order continuing or transferring custody, unless a continuance for a reasonable time is granted
16 to a date certain, for good cause shown.

17 (d) *Department action upon filing of the petition.* — At the time of the institution of any
18 proceeding under this article, the department shall provide supportive services in an effort to
19 remedy circumstances detrimental to a child.

20 (e) *Notice of hearing.* —

21 (1) The petition and notice of the hearing shall be served by the sheriff's office, without
22 additional compensation, upon both parents and any other custodian, giving to the parents or
23 custodian at least five days' actual notice of a preliminary hearing and at least ten days' notice of
24 any other hearing.

25 (2) Notice shall be given to the department, any foster or preadoptive parent, and any
26 relative providing care for the child.

27 (3) In cases where personal service within West Virginia cannot be obtained after due
28 diligence upon any parent or other custodian, a copy of the petition and notice of the hearing shall
29 be mailed to the person by certified mail, addressee only, return receipt requested, to the last
30 known address of the person. If the person signs the certificate, service shall be complete and
31 the certificate shall be filed as proof of the service with the clerk of the circuit court.

32 (4) If service cannot be obtained by personal service or by certified mail, notice shall be
33 by publication as a Class II legal advertisement in compliance with §59-3-1 *et seq.* of this code.

34 (5) A notice of hearing shall specify the time and place of the hearing, the right to counsel
35 of the child and parents or other custodians at every stage of the proceedings and the fact that
36 the proceedings can result in the permanent termination of the parental rights.

37 (6) Failure to object to defects in the petition and notice may not be construed as a waiver.

38 (f) *Right to counsel.* —

39 (1) In any proceeding under this article, the child, his or her parents and his or her legally
40 established custodian or other persons standing in *loco parentis* to him or her has the right to be
41 represented by counsel at every stage of the proceedings and shall be informed by the court of
42 their right to be so represented and that if they cannot pay for the services of counsel, that counsel
43 will be appointed.

44 (2) Counsel shall be appointed in the initial order. For parents, legal guardians, and other
45 persons standing in *loco parentis*, the representation may only continue after the first appearance
46 if the parent or other persons standing in *loco parentis* cannot pay for the services of counsel.

47 (3) Counsel for other parties shall only be appointed upon request for appointment of
48 counsel. If the requesting parties have not retained counsel and cannot pay for the services of
49 counsel, the court shall, by order entered of record, appoint an attorney or attorneys to represent
50 the other party or parties and so inform the parties.

51 (4) Under no circumstances may the same attorney represent both the child and the other
52 party or parties, nor may the same attorney represent both parents or custodians. However, one
53 attorney may represent both parents or custodians where both parents or guardians consent to
54 this representation after the attorney fully discloses to the client the possible conflict and where
55 the attorney assures the court that she or he is able to represent each client without impairing her
56 or his professional judgment; however, if more than one child from a family is involved in the
57 proceeding, one attorney may represent all the children.

58 (5) A parent who is a copetitioner is entitled to his or her own attorney. The court may
59 allow to each attorney so appointed a fee in the same amount which appointed counsel can
60 receive in felony cases.

61 (g) *Continuing education for counsel.* — Any attorney representing a party under this
62 article shall receive a minimum of eight hours of continuing legal education training per reporting
63 period on child abuse and neglect procedure and practice. In addition to this requirement, any
64 attorney appointed to represent a child must first complete training on representation of children

65 that is approved by the administrative office of the Supreme Court of Appeals. The Supreme Court
66 of Appeals shall develop procedures for approval and certification of training required under this
67 section. Where no attorney has completed the training required by this subsection, the court shall
68 appoint a competent attorney with demonstrated knowledge of child welfare law to represent the
69 parent or child. Any attorney appointed pursuant to this section shall perform all duties required
70 of an attorney licensed to practice law in the State of West Virginia.

71 (h) *Right to be heard.* — In any proceeding pursuant to this article, the party or parties
72 having custodial or other parental rights or responsibilities to the child shall be afforded a
73 meaningful opportunity to be heard, including the opportunity to testify and to present and cross-
74 examine witnesses. Foster parents, preadoptive parents, and relative caregivers shall also have
75 a meaningful opportunity to be heard.

76 (i) *Findings of the court.* — Where relevant, the court shall consider the efforts of the
77 department to remedy the alleged circumstances. At the conclusion of the adjudicatory hearing,
78 the court shall make a determination based upon the evidence and shall make findings of fact
79 and conclusions of law as to whether the child is abused or neglected and whether the respondent
80 is abusing, neglecting, or, if applicable, a battered parent, all of which shall be incorporated into
81 the order of the court. The findings must be based upon conditions existing at the time of the filing
82 of the petition and proven by clear and convincing evidence.

83 (j) *Priority of proceedings.* — Any petition filed and any proceeding held under this article
84 shall, to the extent practicable, be given priority over any other civil action before the court, except
85 proceedings under §48-27-309 of this code and actions in which trial is in progress. Any petition
86 filed under this article shall be docketed immediately upon filing. Any hearing to be held at the
87 end of an improvement period and any other hearing to be held during any proceedings under
88 this article shall be held as nearly as practicable on successive days and, with respect to the
89 hearing to be held at the end of an improvement period, shall be held as close in time as possible

90 after the end of the improvement period and shall be held within 30 days of the termination of the
91 improvement period.

92 (k) *Procedural safeguards.* — The petition may not be taken as confessed. A transcript or
93 recording shall be made of all proceedings unless waived by all parties to the proceeding. The
94 rules of evidence shall apply. Following the court’s determination, it shall be inquired of the parents
95 or custodians whether or not appeal is desired and the response transcribed. A negative response
96 may not be construed as a waiver. The evidence shall be transcribed and made available to the
97 parties or their counsel as soon as practicable, if the same is required for purposes of further
98 proceedings. If an indigent person intends to pursue further proceedings, the court reporter shall
99 furnish a transcript of the hearing without cost to the indigent person if an affidavit is filed stating
100 that he or she cannot pay therefor.

ARTICLE 5. RECORD KEEPING AND DATABASE.

§49-5-101. Confidentiality of records; nonrelease of records; exceptions; penalties.

1 (a) Except as otherwise provided in this chapter or by order of the court, all records and
2 information concerning a child or juvenile which are maintained by the Division of Juvenile
3 Services, the Department of Health and Human Resources, a child agency or facility, court or
4 law-enforcement agency are confidential and shall not be released or disclosed to anyone,
5 including any federal or state agency.

6 (b) Notwithstanding the provisions of subsection (a) of this section or any other provision
7 of this code to the contrary, records concerning a child or juvenile, except adoption records and
8 records disclosing the identity of a person making a complaint of child abuse or neglect, may be
9 made available:

10 (1) Where otherwise authorized by this chapter;

11 (2) To:

12 (A) The child;

13 (B) A parent whose parental rights have not been terminated; or

14 (C) The attorney of the child or parent;

15 (3) With the written consent of the child or of someone authorized to act on the child's
16 behalf; or

17 (4) Pursuant to an order of a court of record. However, the court shall review the record
18 or records for relevancy and materiality to the issues in the proceeding and safety, and may issue
19 an order to limit the examination and use of the records or any part thereof.

20 (c) In addition to those persons or entities to whom information may be disclosed under
21 subsection (b) of this section, information related to child abuse or neglect proceedings, except
22 information relating to the identity of the person reporting or making a complaint of child abuse or
23 neglect, shall be made available, upon request, to:

24 (1) Federal, state or local government entities, or any agent of those entities, including
25 law-enforcement agencies and prosecuting attorneys, having a need for that information in order
26 to carry out its responsibilities under law to protect children from abuse and neglect;

27 (2) The child fatality review team;

28 (3) Child abuse citizen review panels;

29 (4) Multidisciplinary investigative and treatment teams; or

30 (5) A grand jury, circuit court or family court, upon a finding that information in the records
31 is necessary for the determination of an issue before the grand jury, circuit court or family court.

32 (d) In the event of a child fatality or near fatality due to child abuse and neglect, information
33 relating to a fatality or near fatality shall be made public by the Department of Health and Human
34 Resources and to the entities described in subsection (c) of this section, all under the
35 circumstances described in that subsection. However, information released by the Department of
36 Health and Human Resources pursuant to this subsection may not include the identity of a person
37 reporting or making a complaint of child abuse or neglect. For purposes of this subsection, "near
38 fatality" means any medical condition of the child which is certified by the attending physician to
39 be life threatening.

40 (e) Except in juvenile proceedings which are transferred to criminal proceedings, law-
41 enforcement records and files concerning a child or juvenile shall be kept separate from the
42 records and files of adults and not included within the court files. Law-enforcement records and
43 files concerning a child or juvenile shall only be open to inspection pursuant to section one
44 hundred three of this article.

45 (f) Any person who willfully violates this section is guilty of a misdemeanor and, upon
46 conviction, shall be fined not more than \$1,000, or confined in jail for not more than six months,
47 or both fined and confined. A person convicted of violating this section is also liable for damages
48 in the amount of \$300 or actual damages, whichever is greater.

49 (g) Notwithstanding the provisions of this section, or any other provision of this code to the
50 contrary, the name and identity of any juvenile adjudicated or convicted of a violent or felonious
51 crime shall be made available to the public;

52 (h)(1) Notwithstanding the provisions of this section or any other provision of this code to
53 the contrary, the Division of Juvenile Services may provide access to and the confidential use of
54 a treatment plan, court records or other records of a juvenile to an agency in another state which:

55 (A) Performs the same functions in that state that are performed by the Division of Juvenile
56 Services in this state;

57 (B) Has a reciprocal agreement with this state; and

58 (C) Has legal custody of the juvenile.

59 (2) A record which is shared under this subsection may only provide information which is
60 relevant to the supervision, care, custody and treatment of the juvenile.

61 (3) The Division of Juvenile Services is authorized to enter into reciprocal agreements with
62 other states and to propose rules for legislative approval in accordance with article three, chapter
63 twenty-nine-a of this code to implement this subsection.

64 (4) Other than the authorization explicitly given in this subsection, this subsection may not
65 be construed to enlarge or restrict access to juvenile records as provided elsewhere in this code.

66 (i) The records subject to disclosure pursuant to subsection (b) of this section shall not
67 include a recorded/videotaped interview, as defined in subdivision (6), section two, article six-b,
68 chapter sixty-two of this code, the disclosure of which is exclusively subject to the provisions of
69 section six of said article.

70 (j) A child agency or facility may disclose otherwise confidential information to other child
71 agencies or facilities when making referrals or providing services on behalf of the child. This
72 information shall be maintained in the same manner as provided in this code.

ARTICLE 9. FOSTER CARE OMBUDSMAN PROGRAM.

§49-9-101. The Foster Care Ombudsman.

1 (a) There is continued within the Office of the Inspector General the position of the West
2 Virginia Foster Care Ombudsman. The Office of the Inspector General shall employ a Foster
3 Care Ombudsman to affect the purposes of this article.

4 (b) In addition to the duties provided in §9-5-27 of this code, the duties of the Foster Care
5 Ombudsman include, but are not limited to, the following:

6 (1) Establishing a statewide procedure to receive, investigate, and resolve complaints
7 filed on behalf of a foster child, foster parent, or kinship parent, or, on the Foster Care
8 Ombudsman's own initiative, on behalf of a foster child, relating to action, inaction, or decisions
9 of the state agency, child-placing agency, or residential care facility which may adversely affect
10 the foster child, foster parent, or kinship parent;

11 (2) Review periodically and make appropriate recommendations for the policies and
12 procedures established by any state agency providing services to foster children, foster parents,
13 kinship parents, including, but not limited to, the system of providing foster care and treatment;

14 (3) Pursuant to an investigation, provide assistance to a foster child, foster parent, or
15 kinship parent who the Foster Care Ombudsman determines is in need of assistance, including,
16 but not limited to, collaborating with an agency, provider, or others on behalf of the best interests
17 of the foster child;

18 (4) Recommend action when appropriate, including, but not limited to, undertaking
19 legislative advocacy and making proposals for systemic reform and formal legal action, in order
20 to secure and ensure the legal, civil, and special rights of foster children who reside in this state;

21 (5) Conduct programs of public education when necessary and appropriate;

22 (6) Have input into the creation of, and thereafter make recommendations consistent with,
23 ~~the foster children, foster parents, and kinship parents bill of rights~~ The Foster Child Bill of Rights
24 in §49-2-126 of this code and The Foster and Kinship Parent Bill of Rights in §49-2-127 of this
25 code;

26 (7) Take appropriate steps to advise the public of the services of the Foster Care
27 Ombudsman, the purpose of the ombudsman, and procedures to contact the office; and

28 (8) Make inquiries and obtain assistance and information from other state governmental
29 agencies or persons as the Foster Care Ombudsman requires for the discharge of his or her
30 duties.

§49-9-103. Access to foster care children.

1 (a) The Foster Care Ombudsman shall, with proper identification, have access to a foster
2 family or kinship family home, a state agency, a child-placing agency, or a residential care facility
3 for the purposes of investigations of a complaint. The Foster Care Ombudsman may enter a
4 foster family home, a state agency, a child-placing agency, or a residential care facility at a time
5 appropriate to the complaint. The visit may be announced in advance or be made unannounced
6 as appropriate to the complaint under investigation. Upon entry, the Foster Care Ombudsman
7 shall promptly and personally advise the person in charge of his or her presence. If entry is
8 refused by the person in charge, the Foster Care Ombudsman may apply to the magistrate court
9 of the county in which a foster family home, a state agency, a child-placing agency, or a residential
10 care facility is located for a warrant authorizing entry, and the court shall issue an appropriate
11 warrant if it finds good cause therefor.

12 (b) For activities other than those specifically related to the investigation of a complaint,
13 the Foster Care Ombudsman, upon proper identification, shall have access to a foster family
14 home, a state agency, a child-placing agency, or a residential care facility between the hours of
15 8:00 a.m. and 8:00 p.m. in order to:

16 (1) Provide information on the Foster Care Ombudsman Program to a foster child, foster
17 parents, or kinship parents;

18 (2) Inform a foster child, a foster parent, or a kinship parent of his or her rights and
19 entitlements, and his or her corresponding obligations, under applicable federal and state laws;
20 and

21 (3) Direct the foster child, the foster parents, or the kinship parents to appropriate legal
22 resources;

23 (c) Access to a foster family home, a state agency, a child-placing agency, or a residential
24 care facility under this section shall be deemed to include the right to private communication with
25 the foster child, the foster parents, or the kinship parents.

26 (d) A Foster Care Ombudsman who has access to a foster family home, a state agency,
27 a child-placing agency, or a residential care facility under this section shall not enter the living
28 area of a foster child, foster parent, or kinship parent without identifying himself or herself to the
29 foster child, foster parent, or kinship parent. After identifying himself or herself, an ombudsman
30 shall be permitted to enter the living area of a foster child, foster parent, or kinship parent unless
31 that foster child, foster parent, or kinship parent communicates on that particular occasion the
32 foster child, foster parents', or kinship parents' desire to prevent the ombudsman from entering.
33 A foster child, foster parent, or kinship parent has the right to terminate, at any time, any visit by
34 the Foster Care Ombudsman.

35 (e) Access to a foster family home, a state agency, a child-placing agency, or a residential
36 care facility pursuant to this section includes the right to tour the facility unescorted.

§49-9-105. Subpoena powers.

1 (a) The Foster Care Ombudsman may, in the course of any investigation:

2 (1) Apply to the circuit court of the appropriate county or the Circuit Court of Kanawha
3 County for the issuance of a subpoena to compel at a specific time and place, by subpoena, the
4 appearance, before a person authorized to administer oaths, the sworn testimony of any person
5 whom the Foster Care Ombudsman reasonably believes may be able to give information relating
6 to a matter under investigation; or

7 (2) Apply to the circuit court of the appropriate county or the Circuit Court of Kanawha
8 County for the issuance of a subpoena duces tecum to compel any person to produce at a specific
9 time and place, before a person authorized to administer oaths, any documents, books, records,
10 papers, objects, or other evidence which the Foster Care Ombudsman reasonably believes may
11 relate to a matter under investigation.

12 (b) A subpoena or subpoena duces tecum applied for by the Foster Care Ombudsman
13 may not be issued until a circuit court judge in term or vacation thereof has personally reviewed
14 the application and accompanying affidavits and approved, by a signed order entered by the
15 judge, the issuance of the subpoena or subpoena duces tecum. Subpoenas or subpoenas duces
16 tecum applied for pursuant to this section may be issued on an ex parte basis following review
17 and approval of the application by the judge in term or vacation thereof.

18 (c) The Attorney General shall, upon request, provide legal counsel and services to the
19 Foster Care Ombudsman in all administrative proceedings and in all proceedings in any circuit
20 court and the West Virginia Supreme Court of Appeals.

21 (d) The Foster Care Ombudsman or his or her staff may not be compelled to testify or
22 produce evidence in any judicial or administrative proceeding with respect to any matter involving
23 the exercise of his or her official duties. All related memoranda, work product, notes, or case files

24 of the Foster Care Ombudsman Office are confidential and are not subject to discovery,
25 subpoena, or other means of legal compulsion, and are not admissible in evidence in a judicial or
26 administrative proceeding. However, the Foster Care Ombudsman may provide testimony related
27 to quarterly or annual reports submitted to the Legislative Oversight Commission on Health and
28 Human Resources Accountability provided for in §9-5-27 and §49-9-102 of this code.

§49-9-106. Cooperation among the government departments or agencies.

1 (a) The Foster Care Ombudsman shall have access to the records of any state
2 government agency reasonably necessary to any investigation. The Foster Care Ombudsman
3 shall be notified of and be allowed to observe any survey conducted by a government agency
4 affecting the health, safety, welfare, or rights of the foster child, the foster parents, or the kinship
5 parents.

6 (b) The Foster Care Ombudsman shall develop procedures to refer any complaint to any
7 appropriate state government department, agency, or office.

8 (c) When abuse, neglect, or exploitation of a foster child is suspected, the Foster Care
9 Ombudsman shall make a referral to the Bureau for ~~Children and Families~~ Social Services, Office
10 of Health Facility Licensure and Certification, or both.

11 (d) Any state government department, agency, or office that responds to a complaint
12 referred to it by the Foster Care Ombudsman Program shall make available to the Foster Care
13 Ombudsman copies of inspection reports and plans of correction, and notices of any citations and
14 sanctions levied against the foster family home, the child-placing agency, or the residential care
15 facility identified in the complaint.

§49-9-107. Confidentiality of investigations.

1 (a) Information relating to any investigation of a complaint that contains the identity of the
2 complainant or foster child, foster parent, or kinship parent shall remain confidential except:

3 (1) ~~Where disclosure is authorized in writing by the complainant foster child, foster parent,~~
4 ~~kinship parent, or the guardian~~ Where imminent risk of serious harm is communicated directly to
5 the Foster Care Ombudsman or his or her staff;

6 (2) Where disclosure is necessary to the Bureau for ~~Children and Families~~ Social Services
7 in order for such office to determine the appropriateness of initiating an investigation regarding
8 potential abuse, neglect, or emergency circumstances; or

9 (3) Where disclosure is necessary to the Office of Health Facility Licensure and
10 Certification in order for such office to determine the appropriateness of initiating an investigation
11 to determine facility compliance with applicable rules of licensure, certification, or both.

12 **(b) The Foster Care Ombudsman shall maintain confidentiality with respect to all matters**
13 **including the identities of complainants, witnesses, or others from whom information is acquired,**
14 **except insofar as disclosures may be necessary to enable the Foster Care Ombudsman to carry**
15 **out duties of the office or to support recommendations.**

16 ~~(b)~~ (c) Notwithstanding any other section within this article, all information, records, and
17 reports received by or developed by the Foster Care Ombudsman Program which relate to a
18 foster child, foster parent, or kinship parent, including written material identifying a foster child,
19 foster parent, or kinship parent, are confidential pursuant to §49-5-101 *et seq.* of this code, and
20 are not subject to the provisions of §29B-1-1 *et seq.* of this code, and may not be disclosed or
21 released by the Foster Care Ombudsman Program, except under the circumstances enumerated
22 in this section.

23 ~~(c)~~ (d) Nothing in this section prohibits the preparation and submission by the Foster Care
24 Ombudsman of statistical data and reports, as required to implement the provisions of this article
25 or any applicable federal law, exclusive of any material that identifies any foster child, foster
26 parent, kinship parent, or complainant.

27 ~~(d)~~ (e) The Inspector General shall have access to the records and files of the Foster Care
28 Ombudsman Program to verify its effectiveness and quality where the identity of any complainant
29 or foster child, foster parent, or kinship parent is not disclosed.