

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2428

By Delegates Rohrbach and Espinosa

[Introduced January 11, 2023; Referred to the
Committee on Health and Human Resources then
Finance]

1 A BILL to amend and reenact §49-1-203 of the Code of West Virginia, 1931, as amended; to
 2 amend and reenact §49-2-110 and §49-2-111c of said code; to amend said code by adding
 3 thereto a new section, designated §49-2-111d; to amend and reenact §49-4-405, §49-4-
 4 501, and §49-4-601 of said code; and to amend and reenact §49-9-101, §49-9-103, §49-9-
 5 105, §49-9-106, and §49-9-107 of said code, all relating to foster care; creating new
 6 definitions; requiring child placement agencies provide services to kinship family; deleting
 7 outdated language; requiring bureau to use the PATH system and a web based portal,
 8 matching database, and dashboard database; requiring salaries of direct service
 9 employees be raised for recruitment and retention; requiring circuit court judges to issue
 10 scheduling order for multidisciplinary treatment team; including managed care case
 11 coordinator in multidisciplinary treatment team; allowing department to hire outside
 12 counsel; requiring sheriff's office to serve notice of hearing; requiring foster care
 13 ombudsman to make recommendations in accordance with the Foster Child Bill of Rights
 14 and the Foster and Kinship Parent Bill of Rights; authorizing ombudsman to have access to
 15 kinship family; exempting foster care ombudsman from testifying about official duties;
 16 making investigation of complaint confidential except when imminent risk of harm reported
 17 to foster care ombudsman.

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 with
19 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 "Portal" means information drawn from various data sources and shared as needed with
29 individuals involved in a particular child's case.

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

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

36 "Variance" means a declaration that a rule may be accomplished in a manner different from
 37 the manner set forth in the rule.

38 "Waiver" means a declaration that a certain legislative rule is inapplicable in a particular
 39 circumstance.

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

§49-2-110. Development of standards of child care.

1 (a) The department shall develop standards for the care of children. It shall cooperate with,
 2 advise, and assist all child welfare agencies, including state institutions, which care for children
 3 who have been neglected, have been adjudicated delinquent, or have special needs such as
 4 physical, mental, or intellectual disabilities, and shall supervise those agencies. The department,
 5 in cooperation with child welfare agencies, shall formulate and make available standards of child
 6 care and services for children, to which all child welfare agencies must conform.

7 (b) A child placing agency shall provide support services to a kinship family.

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

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

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) Once the PATH system is operational for 60 days, the bureau shall incorporate into the
24 PATH system or through the purchase of additional products an operational web-based portal, a
25 matching database and a dashboard database. These purchases are exempt from §5-3A-1 et seq.
26 of this code.

§49-2-111d. 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 to
4 all direct service employees working within the Bureau of Social Services, regardless of where the
5 direct service employee reports to work. This salary adjustment shall be for a total of 20% per
6 direct service employee. The Division of Personnel shall increase the salary ranges for each
7 classification by 20%.

8 (c) Funding for the pay rates for direct service employee of the Bureau of Social Services

9 shall be provided from the general revenue appropriations to the bureau.

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

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~~ circuit court judge shall issue a scheduling
 3 ~~order shall to~~ convene a multidisciplinary treatment team to assess, plan and implement a
 4 comprehensive, individualized service plan for children who are victims of abuse or neglect and
 5 their families. The multidisciplinary team shall obtain and utilize any assessments for the children
 6 or the adult respondents that it ~~deems~~ determines necessary to assist in the development of that
 7 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~~ considered appropriate by the multidisciplinary treatment team. Unless
28 otherwise ordered by the court, a party whose parental rights have been terminated and his or her
29 attorney may not be given notice of a multidisciplinary treatment team meeting and does not have
30 the right 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 as
42 ~~deemed necessary but at least every three months~~ scheduled by the court, until the case is

43 dismissed from the docket of the court. The multidisciplinary treatment team shall be available for
44 status conferences and 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 for
48 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 as
5 to permit the state and its citizens to obtain maximum fiscal benefits under federal laws, rules and
6 regulations.

7 (b) Nothing in this code may be construed to limit the authority of a prosecuting attorney to
8 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 §49-4-1 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 is
2 neglected or abused, the department or the person may present a petition setting forth the facts to
3 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 person
8 having knowledge of the facts. The petition shall allege specific conduct including time and place,
9 how the conduct comes within the statutory definition of neglect or abuse with references thereto,
10 any supportive services provided by the department to remedy the alleged circumstances and the
11 relief sought.

12 (c) *Court action upon filing of petition.* -- Upon filing of the petition, the court shall set a time
13 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 10 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 10 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 the
31 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 by
33 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 of
35 the child and parents or other custodians at every stage of the proceedings and the fact that the
36 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 the
55 attorney assures the court that she or he is able to represent each client without impairing her or
56 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 allow
59 to each attorney so appointed a fee in the same amount which appointed counsel can receive in
60 felony cases.

61 (g) *Continuing education for counsel.* -- Any attorney representing a party under this article
62 shall receive a minimum of eight hours of continuing legal education training per reporting period
63 on child abuse and neglect procedure and practice. In addition to this requirement, any attorney
64 appointed to represent a child must first complete training on representation of children that is
65 approved by the administrative office of the Supreme Court of Appeals. The Supreme Court of
66 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 of
70 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 a
75 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 and
79 conclusions of law as to whether the child is abused or neglected and whether the respondent is
80 abusing, neglecting, or, if applicable, a battered parent, all of which shall be incorporated into the
81 order of the court. The findings ~~must~~ shall 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 end
87 of an improvement period and any other hearing to be held during any proceedings under this
88 article shall be held as nearly as practicable on successive days and, with respect to the hearing to
89 be held at the end of an improvement period, shall be held as close in time as possible after the
90 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 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 Care
3 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 filed
7 on behalf of a foster child, foster parent, or kinship parent, or, on the Foster Care Ombudsman's
8 own initiative, on behalf of a foster child, relating to action, inaction, or decisions of the state
9 agency, child-placing agency, or residential care facility which may adversely affect the foster
10 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~~ needs assistance,
16 including, but not limited to, collaborating with an agency, provider, or others on behalf of the best
17 interests 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 to
20 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 in

24 §49-2-126 of this code and The Foster and Kinship Parent Bill of Rights in §49-2-127 of this code;

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

27 (8) Make inquiries and obtain assistance and information from other state governmental
28 agencies or persons as the Foster Care Ombudsman requires for the discharge of his or her
29 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 foster
4 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~~ considered to include the right to private
25 communication with 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, a
27 child-placing agency, or a residential care facility under this section shall not enter the living area of
28 a foster child, foster parent, or kinship parent without identifying himself or herself to the foster
29 child, foster parent, or kinship parent. After identifying himself or herself, an ombudsman shall be
30 permitted to enter the living area of a foster child, foster parent, or kinship parent unless that foster
31 child, foster parent, or kinship parent communicates on that particular occasion the foster child,
32 foster parents', or kinship parents' desire to prevent the ombudsman from entering. A foster child,
33 foster parent, or kinship parent has the right to terminate, at any time, any visit by the Foster Care
34 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 the
14 application and accompanying affidavits and approved, by a signed order entered by the judge,
15 the issuance of the subpoena or subpoena duces tecum. Subpoenas or subpoenas duces tecum
16 applied for pursuant to this section may be issued on an ex parte basis following review and
17 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, subpoena,
25 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 the Bureau for Social Services and Office of
11 Health Facility Licensure and Certification.

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

13 (b) The Foster Care Ombudsman shall maintain confidentiality with respect to all matters
14 including the identities of complainants, witnesses, or others from whom information is acquired,

15 except insofar as disclosures may be necessary to enable the Foster Care Ombudsman to carry
16 out duties of the office or to support recommendations.

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

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

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

NOTE: The purpose of this bill is to update foster care regulation.

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