

# **WEST VIRGINIA LEGISLATURE**

## **2022 REGULAR SESSION**

**Introduced**

### **House Bill 4344**

BY DELEGATES ROHRBACH, REED, SUMMERS, D.

JEFFRIES, TULLY, BATES, WORRELL, ROWAN, FORSHT,

PINSON AND PACK

[Introduced January 24, 2022; 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  
3 adding thereto a new section, designated §49-2-111d; to amend and reenact §49-4-405,  
4 §49-4-501 and §49-4-601 of said code; and to amend and reenact §49-9-101, §49-9-103,  
5 §49-9-105, §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7 outdated language; requiring bureau to use the PATH system and a web based portal,  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  
15 to 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  
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 “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  
37 from 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:

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  
24 the PATH system or through the purchase of additional products an operational web-based portal,  
25 a matching database and a dashboard database. These purchases are exempt from §5-3A-1 et  
26 seq. 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  
4 to all direct service employees working within the Bureau of Social Services, regardless of where  
5 the 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) In the event any provision of this section conflicts with any rule, policy, or provision of  
11 this code, this section shall control. Due to the limits of funding, the implementation of the pay  
12 rates and employment requirements shall not be subject to the provisions of §6C-2-1 et seq. of  
13 this code. The provisions of this section are rehabilitative in nature and it is the specific intent of  
14 the Legislature that no private cause of action, either express or implied, shall arise pursuant to  
15 the provisions or 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 necessary to assist in the development of that plan.

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

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

9 (2) The adult respondent or respondents;

10 (3) The child's parent or parents, guardians, any co-petitioners, custodial relatives of the  
11 child, foster or preadoptive parents;

12 (4) Any attorney representing an adult respondent or other member of the treatment team;

13 (5) The child's counsel or the guardian ad litem;

14 (6) The prosecuting attorney or his or her designee;

15 (7) A member of a child advocacy center when the child has been processed through the  
16 child advocacy center program or programs or it is otherwise appropriate that a member of the

17 child advocacy center participate;

18 (8) Any court-appointed special advocate assigned to a case;

19 (9) Any other person entitled to notice and the right to be heard;

20 (10) An appropriate school official; and

21 (11) The managed care case coordinator; and

22 ~~(11)~~(12) Any other person or agency representative who may assist in providing  
23 recommendations for the particular needs of the child and family, including domestic violence  
24 service providers.

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

30 (c) Prior to disposition in each case which a treatment planning team has been convened,  
31 the team shall advise the court as to the types of services the team has determined are needed  
32 and the type of placement, if any, which will best serve the needs of the child. If the team  
33 determines that an out-of-home placement will best serve the needs of the child, the team shall  
34 first consider placement with appropriate relatives then with foster care homes, facilities or  
35 programs located within the state. The team may only recommend placement in an out-of-state  
36 facility if it concludes, after considering the best interests and overall needs of the child, that there  
37 are no available and suitable in-state facilities which can satisfactorily meet the specific needs of  
38 the child.

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

43 status conferences and hearings as required by the court.

44 (e) If a respondent or copetitioner admits the underlying allegations of child abuse or  
45 neglect, or both abuse and neglect, in the multidisciplinary treatment planning process, his or her  
46 statements may not be used in any subsequent criminal proceeding against him or her, except  
47 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 §49-4-1 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  
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 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  
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 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  
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 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           ~~(e)~~ (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.

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.