WEST VIRGINIA CODE: §16b-16-1

§16B-16-1. The Foster Care Ombudsman.

(a) There is continued within the Office of the Inspector General the position of the West Virginia Foster Care Ombudsman. The Office of the Inspector General shall employ a Foster Care Ombudsman to affect the purposes of this article. The independent Foster Care Ombudsman shall have experience as a current or former foster parent or experience in the area of child welfare.

(b) The duties of the Foster Care Ombudsman include, but are not limited to, the following:

(1) Establishing a statewide procedure to receive, investigate, and resolve complaints:

(A) Filed on behalf of a child who is subject to a reported allegation of abuse and neglect, a child who has died or sustained a critical incident, a child in the juvenile justice system, a foster child, foster parent, or kinship parent;

(B) On the Foster Care Ombudsman's own initiative, of a child who is subject to a reported allegation of abuse and neglect, a child who has died or sustained a critical incident, a child in the juvenile justice system; or

(C) On the Foster Care Ombudsman's own initiative, on behalf of a foster child, relating to action, inaction, or decisions of the state agency, child-placing agency, or residential care facility which may adversely affect the foster child, foster parent, or kinship parent;

(2) Participating in any procedure to investigate and resolve complaints filed on behalf of a foster child, a foster parent, a child who is subject to a reported allegation of abuse and neglect, a child who has died or sustained a critical incident, a child in the juvenile justice system, or a kinship parent, relating to an action, inaction, or decision of providers of managed care services, or the representatives of such providers, of public agencies, or of social service agencies, which may adversely affect the health, safety, welfare, and rights of a foster child, a foster parent, a child who is subject to a reported allegation of abuse and neglect, a child who has died or sustained a critical incident, a child in the juvenile justice system, or a kinship parent.

(3) Review periodically and make appropriate recommendations for the policies and procedures established by any state agency providing services to the child welfare system;

(4) Pursuant to an investigation, provide assistance to an individual who the Foster Care Ombudsman determines is in need of assistance, including, but not limited to, collaborating with an agency, provider, or others on behalf of the best interests of the child;

(5) Advocating for the rights of a foster child, a foster parent, a child who is subject to a reported allegation of abuse and neglect, a child who has died or sustained a critical

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incident, a child in the juvenile justice system, or a kinship parent.

(6) Recommend action when appropriate, including, but not limited to, undertaking legislative advocacy and making proposals for systemic reform and formal legal action, in order to secure and ensure the legal, civil, and special rights of children in the child welfare system and the juvenile justice system;

(7) Monitoring the development and implementation of federal, state, and local legislation, regulations, and policies with respect to foster care services.

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

(9) Participate in ongoing training programs related to his or her duties or responsibilities;

(10) Have input into the creation of, and thereafter make recommendations consistent with, the foster children, foster parents, and kinship parents bill of rights;

(11) Establishing and maintaining a statewide uniform reporting system to collect and analyze data relating to complaints for the purpose of identifying and resolving significant problems faced by foster children, foster parents, children who are subject to a reported allegation of abuse and neglect, children who have died or sustained a critical incident, children in the juvenile justice system, and kinship parents as a class. The data shall be submitted to the Bureau of Social Services within the Department of Human Services and the Legislative Oversight Commission on Health and Human Resources Accountability on a quarterly basis.

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

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

(c) (1) The Foster Care Ombudsman or his or her staff may not be compelled to testify or produce evidence in any judicial or administrative proceeding with respect to the identity of an individual providing information to the ombudsman as part of an official investigation, or the substance of that person’s report to the ombudsman as part of an official investigation. All memoranda, work product, notes, or case files developed and maintained as part of an official investigation of the Foster Care Ombudsman Office are confidential and are not subject to discovery, subpoena, or other means of legal compulsion, and are not admissible as evidence in a judicial or administrative proceeding.

(2) The ombudsman may be compelled to provide testimony by a court or administrative body of competent jurisdiction related to any action carried out by the office that is unrelated to the substance of a specific official investigation, or reports submitted to the Legislative Oversight Commission on Health and Human Resources Accountability provided

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for in §9-5-27 and §49-9-102 of this code. Should the ombudsman be compelled to testify, provide evidence in discovery, respond to a subpoena, or otherwise divulge testimony or evidence in any judicial, administrative, or legislative proceeding, the ombudsman may not be compelled to provide testimony or evidence concerning the identity of any complainant or any individual providing information to the ombudsman as part of an official investigation, or the substance of any complaint or report unless the ombudsman should decline to exercise that privilege. The purpose of this provision is to ensure a level of confidentiality between the ombudsman and a person reporting to, complaining to, or providing other evidence to the ombudsman as part of an official investigation carried out by the office.

(3) Any objection by the ombudsman to the disclosure of any testimony, documentary, or physical evidence shall be reviewed by the presiding official of such tribunal, in camera, upon the request of the ombudsman, and the presiding official shall prevent the disclosure of the identity of any complainant, witness, or reporter as well as the substance of their complaint, testimony, or report.

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