

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 789 Session of 2009

INTRODUCED BY PETRI, BELFANTI, CLYMER, GINGRICH, HENNESSEY,
KORTZ, MURT, PHILLIPS, SIPTROTH, J. TAYLOR AND YOUNGBLOOD,
MARCH 6, 2009

REFERRED TO COMMITTEE ON CHILDREN AND YOUTH, MARCH 6, 2009

AN ACT

1 Amending the act of June 25, 1919 (P.L.581, No.274), entitled
2 "An act for the better government of cities of the first
3 class of this Commonwealth," providing for a First Class
4 Cities Children's Ombudsman Office in the Department of
5 Public Welfare, for powers and duties of ombudsman, for
6 investigative and remedial powers, for response to
7 complaints, for cooperation of agencies and providers, for
8 confidentiality of investigators and records, for findings
9 and recommendations, for protection from retaliation, for
10 nonexclusivity of remedy and for release of information to
11 ombudsman; and making inconsistent repeals.

12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 Section 1. The act of June 25, 1919 (P.L.581, No.274),
15 referred to as the First Class City Government Law, is amended
16 by adding an article to read:

17 ARTICLE III-A

18 CHILDREN'S OMBUDSMAN

19 Section 1. Definitions.

20 The following words and phrases when used in this article
21 shall have the meanings given to them in this section unless the
22 context clearly indicates otherwise:

1 "Administrative agency." An agency in a city of the first
2 class that provides services to a child who is the subject of an
3 investigation conducted by the ombudsman under this article.

4 "Child welfare services." "Child-care services" as defined
5 in 23 Pa.C.S. § 6303 (relating to definitions). The term does
6 not include child day-care centers or group and family day-care
7 homes.

8 "Complainant." An individual who makes a complaint under
9 this article.

10 "Department." The Department of Public Welfare of the
11 Commonwealth.

12 "Mayor." The mayor or other chief executive officer of a
13 city of the first class.

14 "Ombudsman." The First Class City Children's Ombudsman.

15 "Remediable action." An action by an administrative agency
16 or an agent of the agency that is:

17 (1) contrary to law, rule or policy;

18 (2) imposed without an adequate statement of reason; or

19 (3) based on irrelevant or erroneous grounds.

20 "Secretary." The Secretary of Public Welfare of the
21 Commonwealth.

22 Section 2. First Class City Children's Ombudsman.

23 (a) First Class City Children's Ombudsman Office.--There is
24 hereby established in the department a First Class City
25 Children's Ombudsman Office to be headed by a First Class City
26 Children's Ombudsman.

27 (b) Appointment.--The secretary shall appoint the ombudsman.

28 (c) Term of office.--

29 (1) The ombudsman shall hold office for a term of five
30 years and shall continue to hold office until the ombudsman's

1 successor is appointed.

2 (2) The secretary may reappoint the ombudsman then
3 serving for one additional term. A vacancy shall be filled by
4 appointment for the remainder of the unexpired term.

5 (3) An ombudsman who has served part of an unexpired
6 term may serve up to two additional terms.

7 (d) Removal.--The secretary may remove the ombudsman only
8 for neglect of duty, misconduct or inability to perform duties.

9 (e) Administrative support.--The First Class Cities
10 Children's Ombudsman Office shall be an autonomous entity within
11 the department for purposes of administrative support.

12 Section 3. Powers and duties of ombudsman.

13 (a) General rule.--The ombudsman shall have the following
14 powers and duties:

15 (1) To receive, process and investigate complaints under
16 this article.

17 (2) To identify and make appropriate recommendations to
18 the mayor, Governor, Commonwealth executive agencies, General
19 Assembly and Supreme Court concerning issues affecting the
20 welfare of children.

21 (3) Subject to annual appropriations, to employ
22 sufficient personnel to carry out the powers and duties
23 prescribed by this article.

24 (4) To budget and expend funds.

25 (5) To advise the public of the services of the
26 ombudsman, the purposes of the office and procedures to
27 contact the office.

28 (6) To prescribe procedures necessary to carry out the
29 powers and duties of the office.

30 (b) Limitation.--The ombudsman may not overrule an action by

1 an administrative agency or court.

2 Section 4. Investigative and remedial powers.

3 The ombudsman may:

4 (1) Investigate alleged remediable actions concerning
5 child welfare services in a city of the first class.

6 (2) Investigate received complaints concerning child
7 welfare services in a city of the first class.

8 (3) Hold informal hearings and request that individuals
9 appear before the ombudsman and give testimony or produce
10 documentary evidence that the ombudsman considers relevant to
11 a matter under investigation.

12 (4) Report findings and recommendations under section 8.

13 Section 5. Response to complaints.

14 (a) Notice.--

15 (1) The ombudsman shall notify the complainant of the
16 decision to investigate and shall notify the department,
17 administrative agency, provider of child welfare services and
18 other interested parties of the intention to investigate.

19 (2) If the ombudsman declines to investigate a complaint
20 or to continue an investigation, the ombudsman shall notify
21 the complainant and the department, administrative agency,
22 provider of child welfare services and other interested
23 parties of the decision and the reasons for the ombudsman's
24 action.

25 (b) Professional discipline.--

26 (1) If the investigation of a complaint leads the
27 ombudsman to believe the matter complained of may involve
28 professional misconduct, the ombudsman shall bring the matter
29 to the attention of the authorities responsible for
30 professional discipline.

1 (2) If the complaint refers to conduct by an attorney,
2 guardian ad litem or court-appointed special advocate, the
3 ombudsman shall perform a preliminary investigation and
4 transmit the results of the investigation with the referral.

5 (c) Referrals.--In the case of complaints brought to the
6 attention of the ombudsman but not within the ombudsman's powers
7 under this section, the ombudsman shall refer the person making
8 the complaint to a person with the authority or ability to
9 assist the person.

10 (d) Alternative responses.--

11 (1) The ombudsman may advise a complainant to pursue all
12 administrative remedies or channels of complaint open to the
13 complainant before pursuing a complaint with the ombudsman.

14 (2) Subsequent to the administrative processing of a
15 complaint, the ombudsman may conduct further investigations.

16 (e) Criminal violations.--

17 (1) If the ombudsman finds in the course of an
18 investigation that an individual's action is in violation of
19 Federal or State criminal law, the ombudsman shall
20 immediately report that fact to the district attorney or the
21 Attorney General.

22 (2) If the complaint is against a provider of child
23 welfare services, the ombudsman shall refer the matter to the
24 department for further action.

25 Section 6. Cooperation of agencies and providers.

26 (a) Investigations.--The department, administrative agency
27 or provider of child welfare services shall:

28 (1) Upon the ombudsman's request, grant the ombudsman
29 access to all relevant information, records and documents in
30 its possession that the ombudsman considers necessary in the

1 investigation.

2 (2) Assist the ombudsman in obtaining the necessary
3 releases for those documents that are specifically
4 restricted.

5 (3) Provide the ombudsman upon request with progress
6 reports concerning the administrative processing of a
7 complaint.

8 (b) Public awareness.--The department, administrative agency
9 or provider of child welfare services shall provide information
10 to a biological parent, prospective adoptive parent or foster
11 parent regarding this article.

12 Section 7. Confidentiality of investigations and records.

13 (a) Matters under investigation.--

14 (1) The ombudsman shall treat all matters under
15 investigation as confidential, including the identities of
16 recipients of information, individuals from whom information
17 is acquired and persons seeking assistance from the
18 ombudsman.

19 (2) Upon receipt of information that by law is
20 confidential or privileged, the ombudsman shall maintain the
21 confidentiality of the information and shall not further
22 disclose or disseminate the information except as provided by
23 applicable Federal or State law.

24 (b) Records.--

25 (1) A record of the office of the ombudsman is
26 confidential, shall be used only for the purposes of this
27 article and is not subject to subpoena.

28 (2) Information contained in a record may not be
29 disclosed in such a manner as to identify individuals, except
30 for good cause shown on order of a court.

1 (3) The ombudsman or other agency may not disclose a
2 record of the ombudsman or a record received from the
3 ombudsman under the act of February 14, 2008 (P.L.6, No.3),
4 known as the Right-to-Know Law, except for good cause shown
5 on order of a court.

6 (4) No person may disclose any record under this
7 subsection without the consent of the complainant.

8 Section 8. Findings and recommendations.

9 (a) Report of findings.--The ombudsman shall make a report
10 of the findings of an investigation.

11 (b) Recommendations.--The ombudsman may make recommendations
12 to the department, the administrative agency, the provider of
13 child welfare services and other appropriate entities if the
14 ombudsman finds any of the following:

15 (1) A matter should be further considered by the
16 department, the administrative agency or provider of child
17 welfare services.

18 (2) An administrative action should be modified or
19 canceled.

20 (3) Reasons should be given for an administrative
21 action.

22 (4) Other action should be taken by the department, the
23 administrative agency or provider of child welfare services.

24 (c) Subjects of report.--

25 (1) Before announcing a conclusion or recommendation
26 that expressly or by implication criticizes an individual,
27 the department, the administrative agency or a provider of
28 child welfare services, the ombudsman shall provide the
29 subject of the report with reasonable advance notice and an
30 opportunity to respond.

1 (2) When making a report adverse to the department,
2 administrative agency or provider, the ombudsman shall
3 include in the report any written statement of reasonable
4 length made to the ombudsman by the department,
5 administrative agency or provider of child welfare services
6 in defense or mitigation of the action.

7 (d) Notice to complainant.--The ombudsman shall provide the
8 complainant with a copy of the report. The ombudsman may provide
9 the complainant with a copy of the ombudsman's recommendations
10 regarding the complaint.

11 (e) Annual report.--The ombudsman shall submit to the
12 Governor, the General Assembly, the administrative office of the
13 Supreme Court and the department an annual report on the conduct
14 of the ombudsman, including any recommendations regarding the
15 need for legislation or for change in rules or policies.

16 Section 9. Protection from retaliation.

17 (a) General rule.--An official, the department, the
18 administrative agency or a provider of child welfare services
19 may not penalize a person for filing a complaint or cooperating
20 with the ombudsman in investigating a complaint.

21 (b) Obstruction.--An individual, the department, the
22 administrative agency or a provider of child welfare services
23 may not hinder the lawful actions of the ombudsman or employees
24 of the ombudsman.

25 Section 10. Nonexclusivity of remedy.

26 (a) General rule.--The authority granted the ombudsman under
27 this article is in addition to the authority granted under the
28 provisions of:

29 (1) any other statute or rule under which the remedy or
30 right of appeal or objection is provided for a person; or

1 (2) any procedure provided for the inquiry into or
2 investigation of any matter.

3 (b) Authority of ombudsman.--The authority granted the
4 ombudsman does not limit or affect the remedy or right of appeal
5 or objection and is not an exclusive remedy or procedure.

6 Section 11. Release of information to ombudsman.

7 Reports specified in 23 Pa.C.S. § 6339 (relating to
8 confidentiality of reports) shall be made available to the
9 ombudsman.

10 Section 2. Repeals are as follows:

11 (1) The act of April 21, 1949 (P.L.665, No.155), known
12 as the First Class City Home Rule Act, is repealed insofar as
13 it is inconsistent with this act.

14 (2) All acts and parts of acts are repealed insofar as
15 they are inconsistent with this act.

16 Section 3. This act shall take effect in 180 days.