

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1709 Session of
2007

INTRODUCED BY PETRI, HARHART, BELFANTI, CLYMER, GEORGE,
GINGRICH, GOODMAN, GRELL, JOSEPHS, MELIO, MUNDY, MURT,
PHILLIPS, RAPP, SOLOBAY, J. TAYLOR, WATSON AND YOUNGBLOOD,
JULY 9, 2007

REFERRED TO COMMITTEE ON CHILDREN AND YOUTH, JULY 9, 2007

AN ACT

1 Establishing the Commonwealth Children's Ombudsman and the
2 Commonwealth Children's Ombudsman Office; and providing for
3 their powers and duties.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Commonwealth
8 Children's Ombudsman Act.

9 Section 2. Definitions.

10 The following words and phrases when used in this act shall
11 have the meanings given to them in this section unless the
12 context clearly indicates otherwise:

13 "Administrative agency." An agency of State or local
14 government that provides services to a child who is the subject
15 of an investigation conducted by the ombudsman under this act.

16 "Child welfare services." The term shall have the same
17 meanings as "child-care services" in 23 Pa.C.S. § 6303 (relating

1 to definitions). The term does not include child day-care
2 centers or group and family day-care homes.

3 "Complainant." An individual who makes a complaint under
4 this act.

5 "Department." The Department of Public Welfare of the
6 Commonwealth.

7 "Ombudsman." The Commonwealth Children's Ombudsman.

8 "Office." The Commonwealth Children's Ombudsman Office
9 within the Department of Public Welfare.

10 "Remediable action." An action by an administrative agency
11 or an agent of an administrative agency that is:

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

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

14 (3) based on irrelevant or erroneous grounds.

15 "Secretary." The Secretary of Public Welfare of the
16 Commonwealth.

17 Section 3. Commonwealth Children's Ombudsman.

18 (a) Commonwealth Children's Ombudsman Office.--There is
19 hereby established in the department a Commonwealth Children's
20 Ombudsman Office to be headed by a Commonwealth Children's
21 Ombudsman.

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

23 (c) Term of office.--

24 (1) The ombudsman shall hold office for a term of five
25 years and shall continue to hold office until the ombudsman's
26 successor is appointed.

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

30 (3) An ombudsman who has served part of an unexpired

term may serve up to two additional terms.

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

(e) Administrative support.--The office shall be an autonomous entity within the department for purposes of administrative support.

Section 4. Powers and duties of ombudsman.

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

(1) To receive, process and investigate complaints under this act.

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

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

(4) To budget and expend funds.

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

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

(b) Limitation.--The ombudsman may not overrule an action by an administrative agency or court.

Section 5. Investigative and remedial powers.

The ombudsman may:

(1) Investigate alleged remediable actions concerning child welfare services throughout this Commonwealth.

1 (2) Investigate received complaints concerning child
2 welfare services in this Commonwealth.

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

7 (4) Report findings and recommendations under section 9.
8 Section 6. Response to complaints.

9 (a) Notice.--

10 (1) The ombudsman shall notify a complainant of the
11 decision to investigate and shall notify the department,
12 administrative agency, provider of child welfare services and
13 other interested parties of the intention to investigate.

14 (2) If the ombudsman declines to investigate a complaint
15 or to continue an investigation, the ombudsman shall notify
16 the complainant and the department, administrative agency,
17 provider of child welfare services and other interested
18 parties of the decision and the reasons for the ombudsman's
19 action.

20 (b) Professional discipline.--

21 (1) If the investigation of a complaint leads the
22 ombudsman to believe the matter complained of may involve
23 professional misconduct, the ombudsman shall bring the matter
24 to the attention of the authorities responsible for
25 professional discipline.

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

30 (c) Referrals.--In the case of complaints brought to the

1 attention of the ombudsman but not within the ombudsman's powers
2 under this section, the ombudsman shall refer the person making
3 the complaint to a person with the authority or ability to
4 assist the person.

5 (d) Alternative responses.--

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

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

11 (e) Criminal violations.--

12 (1) If the ombudsman finds in the course of an
13 investigation that an individual's action is in violation of
14 Federal or State criminal law, the ombudsman shall
15 immediately report that fact to the district attorney or the
16 Attorney General.

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

20 Section 7. Cooperation of agencies and providers.

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

23 (1) Upon the ombudsman's request, grant the ombudsman
24 access to all relevant information, records and documents in
25 its possession that the ombudsman considers necessary in the
26 investigation.

27 (2) Assist the ombudsman in obtaining the necessary
28 releases for those documents that are specifically
29 restricted.

30 (3) Provide the ombudsman upon request with progress

1 reports concerning the administrative processing of a
2 complaint.

3 (b) Public awareness.--The department, administrative agency
4 or provider of child welfare services shall provide information
5 to a biological parent, prospective adoptive parent or foster
6 parent regarding this act.

7 Section 8. Confidentiality of investigations and records.

8 (a) Matters under investigation.--

9 (1) The ombudsman shall treat all matters under
10 investigation as confidential, including the identities of
11 recipients of information, individuals from whom information
12 is acquired and persons seeking assistance from the
13 ombudsman.

14 (2) Upon receipt of information that by law is
15 confidential or privileged, the ombudsman shall maintain the
16 confidentiality of the information and shall not further
17 disclose or disseminate the information except as provided by
18 applicable Federal or State law.

19 (b) Records.--

20 (1) A record of the office of the ombudsman is
21 confidential, shall be used only for the purposes of this act
22 and is not subject to subpoena.

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

26 (3) The ombudsman or other agency may not disclose a
27 record of the ombudsman or a record received from the
28 ombudsman under the act of June 21, 1957 (P.L.390, No.212),
29 referred to as the Right-to-Know Law, except for good cause
30 shown on order of a court.

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

Section 9. Findings and recommendations.

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

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

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

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

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

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

(c) Subjects of report.--

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

(2) When making a report adverse to the department, administrative agency or provider, the ombudsman shall include in the report any written statement of reasonable length made to the ombudsman by the department, administrative agency or provider of child welfare services

1 in defense or mitigation of the action.

2 (d) Notice to complainant.--The ombudsman shall provide the
3 complainant with a copy of the report. The ombudsman may provide
4 the complainant with a copy of the ombudsman's recommendations
5 regarding the complaint.

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

11 Section 10. Protection from retaliation.

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

16 (b) Obstruction.--An individual, the department, the
17 administrative agency or a provider of child welfare services
18 may not hinder the lawful actions of the ombudsman or employees
19 of the office.

20 Section 11. Nonexclusivity of remedy.

21 (a) General rule.--The authority granted the ombudsman under
22 this act is in addition to the authority granted under the
23 provisions of:

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

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

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

1 Section 12. Release of information to ombudsman.

2 Reports specified in 23 Pa.C.S. § 6339 (relating to
3 confidentiality of reports) shall be made available to the
4 ombudsman.

5 Section 13. Effective date.

6 This act shall take effect in 180 days.