

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 788 Session of 2009

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

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

AN ACT

1 Amending Title 23 (Domestic Relations) of the Pennsylvania  
2 Consolidated Statutes, providing for a children's ombudsman  
3 and remedial powers, for response to complaints, for  
4 cooperation of agencies and providers, for confidentiality of  
5 investigations and records, for findings and recommendations,  
6 for protection from retaliation and for nonexclusivity of  
7 remedy.

8 The General Assembly of the Commonwealth of Pennsylvania  
9 hereby enacts as follows:

10 Section 1. Section 6303 of Title 23 of the Pennsylvania  
11 Consolidated Statutes is amended by adding a definition to read:  
12 § 6303. Definitions.

13 (a) General rule.--The following words and phrases when used  
14 in this chapter shall have the meanings given to them in this  
15 section unless the context clearly indicates otherwise:

16 \* \* \*

17 "Ombudsman." The children's ombudsman established under  
18 section 6379.3 (relating to children's ombudsman).

19 \* \* \*

20 Section 2. Section 6340 of Title 23 is amended by adding a

1 paragraph to read:

2 § 6340. Release of information in confidential reports.

3 (a) General rule.--Reports specified in section 6339  
4 (relating to confidentiality of reports) shall only be made  
5 available to:

6 \* \* \*

7 (18) The ombudsman.

8 \* \* \*

9 Section 3. Chapter 63 of Title 23 is amended by adding a  
10 subchapter to read:

11 SUBCHAPTER D.1

12 CHILDREN'S OMBUDSMAN

13 Sec.

14 6379.1. Scope of subchapter.

15 6379.2. Definitions.

16 6379.3. Children's ombudsman.

17 6379.4. Powers and duties of ombudsman.

18 6379.5. Investigative and remedial powers.

19 6379.6. Response to complaints.

20 6379.7. Cooperation of agencies and providers.

21 6379.8. Confidentiality of investigations and records.

22 6379.9. Findings and recommendations.

23 6379.10. Protection from retaliation.

24 6379.11. Nonexclusivity of remedy.

25 § 6379.1. Scope of subchapter.

26 This subchapter relates to the children's ombudsman.

27 § 6379.2 Definitions.

28 The following words and phrases when used in this subchapter  
29 shall have the meanings given to them in this section unless the  
30 context clearly indicates otherwise:

1 "Administrative agency." A State or county agency that  
2 provides services to a child who is the subject of an  
3 investigation conducted by the ombudsman under this subchapter.

4 "Child welfare services" or "child-care services." As  
5 defined in section 6303 (relating to definitions). The term does  
6 not include services provided by a child day-care center or  
7 group and family day-care home.

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

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

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

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

14 (3) based on irrelevant or erroneous grounds.

15 § 6379.3. Children's ombudsman.

16 (a) Appointment.--The Governor shall appoint a children's  
17 ombudsman, subject to confirmation by a majority of the  
18 membership of the Senate. The ombudsman shall be qualified by  
19 training and experience to perform the duties and exercise the  
20 powers of the ombudsman as provided in this subchapter.

21 (b) Term of office.--The ombudsman shall hold office for a  
22 term of five years and shall continue to hold office until a  
23 successor is appointed. The Governor may reappoint the ombudsman  
24 then serving for one additional term, subject to Senate  
25 confirmation. A vacancy shall be filled by appointment for the  
26 remainder of the unexpired term. An ombudsman who has served  
27 part of an unexpired term may serve up to two additional terms.

28 (c) Removal.--The Governor may remove the ombudsman only for  
29 neglect of duty, misconduct or inability to perform duties. The  
30 Governor shall provide a report to the General Assembly citing

1 the reasons for removal.

2 (d) Administrative support.--The ombudsman shall be  
3 established as an autonomous entity in the department for  
4 purposes of administrative support. The ombudsman shall exercise  
5 its powers and duties independently of the department.

6 § 6379.4. Powers and duties of ombudsman.

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

9 (1) To receive, process and investigate complaints under  
10 this subchapter.

11 (2) To pursue legislative advocacy in the best interests  
12 of children.

13 (3) To identify and make appropriate recommendations to  
14 the Governor, General Assembly and the Supreme Court  
15 concerning issues affecting the welfare of children.

16 (4) Subject to annual appropriations, to employ  
17 sufficient personnel to carry out the powers and duties  
18 prescribed by this subchapter.

19 (5) To manage the expenditure of budgeted funds.

20 (6) To advise the public of services of the ombudsman,  
21 the purposes of the office and the procedures to contact the  
22 office.

23 (7) To prescribe procedures necessary to carry out the  
24 powers and duties of the ombudsman.

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

27 § 6379.5 Investigative and remedial powers.

28 The ombudsman may:

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

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

3       (3) Investigate complaints involving violations of  
4 applicable law or regulation or the alleged mismanagement of  
5 the department or administrative agency which directly or  
6 indirectly placed a child in danger.

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

11       (5) Report findings and recommendations under section  
12 6379.9 (relating to findings and recommendations).

13 § 6379.6. 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 county agency, provider of child welfare services and other  
18 interested parties of the decision 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, county agency, provider  
22 of child welfare services and other interested parties of the  
23 decision and the reasons for the ombudsman's action.

24       (b) Professional discipline.--

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

30       (2) If the complaint refers to conduct by an attorney,

1 guardian ad litem or court-appointed special advocate, the  
2 ombudsman shall perform a preliminary investigation and  
3 transmit the results of the investigation with the referral.

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

9 (d) Alternative responses.--

10 (1) The ombudsman shall advise a person making a  
11 complaint to pursue all administrative remedies or channels  
12 of complaint available to the person before pursuing a  
13 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 § 6379.7. Cooperation of agencies and providers.

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

29 (1) Upon the ombudsman's request, grant the ombudsman or  
30 the ombudsman's designee access to all information, records

1 and documents in its possession that the ombudsman considers  
2 necessary to the investigation.

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

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

9 (4) Upon the ombudsman's request, provide the ombudsman  
10 information requested within ten business days after the  
11 request. If the department determines that that release of  
12 the information would violate Federal or State law, the  
13 ombudsman shall be notified of that determination within the  
14 ten-day deadline.

15 (b) Public awareness.--The department, county agency or  
16 provider of child welfare services shall provide information to  
17 a biological parent, prospective adoptive parent or foster  
18 parent regarding the provisions of this subchapter. The  
19 ombudsman shall develop written materials for public  
20 distribution regarding the provisions of this subchapter.

21 § 6379.8 Confidentiality of investigations and records.

22 (a) Matters.--

23 (1) The ombudsman shall treat all matters under  
24 investigation as confidential, including the identities of  
25 recipients of information, individuals from whom information  
26 is acquired and persons seeking assistance from the  
27 ombudsman.

28 (2) Upon receipt of information that by law is  
29 confidential or privileged, the ombudsman shall maintain the  
30 confidentiality of the information and shall not further

1 disclose or disseminate the information except as provided by  
2 Federal or State law.

3 (b) Records.--

4 (1) A record of the office of the ombudsman is  
5 confidential, shall be used only for the purposes of this  
6 subchapter and is not subject to subpoena.

7 (2) Information contained in the records may not be  
8 disclosed in such a manner as to identify individuals, except  
9 for good cause shown on order of a court.

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

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

17 § 6379.9 Findings and recommendations.

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

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

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

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

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



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

3       (c) Subjects of report.--

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

10       (2) When making a report adverse to the department,  
11       county agency or provider, the ombudsman shall include in the  
12       report any written statement made to the ombudsman by the  
13       department, county agency or provider of child welfare  
14       services in defense or mitigation of the administrative  
15       action. The ombudsman may request to be notified by the  
16       subject of the report within a specified time of any  
17       administrative action taken on the recommendations of the  
18       ombudsman.

19       (d) Notice to complainant--The ombudsman shall provide a  
20       person making a complaint with a copy of the ombudsman's  
21       recommendations regarding the complaint and shall notify the  
22       person of any action taken by the ombudsman and by the  
23       department, county agency or provider of child welfare services.  
24       The ombudsman may not release to the person any report  
25       information or other material required to be kept confidential  
26       under section 6339 (relating to confidentiality of reports).

27       (e) Annual report.--The ombudsman shall submit to the  
28       Governor, the General Assembly, the administrative office of the  
29       Supreme Court and the department an annual report on the conduct  
30       of the ombudsman, including any recommendations regarding the

1 need for legislation or for change in rules or policies.

2 § 6379.10. Protection from retaliation.

3 (a) General rule.--An official, the department, the county  
4 agency or a provider of child welfare services may not penalize  
5 a person for filing a complaint in good faith or cooperating  
6 with the ombudsman in investigating a complaint under this  
7 subchapter.

8 (b) Obstruction.--An individual, the department, the county  
9 agency or a provider of child welfare services may not hinder  
10 the lawful actions of the ombudsman or employees of the  
11 ombudsman.

12 § 6379.11. Nonexclusivity of remedy.

13 (a) General rule.--The authority granted the ombudsman under  
14 this subchapter is in addition to the authority granted under  
15 the provisions of:

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

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

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

23 Section 4. This act shall take effect in 180 days.