

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 2.2-438, 2.2-441, 2.2-445, and 2.2-446 of the Code of Virginia, relating to Office of the Children's Ombudsman; foster youth's right to receive information.

[S 1406]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-438, 2.2-441, 2.2-445, and 2.2-446 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-438. Definitions.

As used in this chapter, unless context requires another meaning:

"Abused or neglected child" means the same as that term is defined in § 63.2-100.

"Administrative act" includes an action, omission, decision, recommendation, practice, or other procedure of the Department, a local department, a children's residential facility, or a child-placing agency with respect to a particular child related to adoption, foster care, or protective services.

"Central registry" means the system maintained at the Department of Social Services pursuant to § 63.2-1515.

"Child" means an individual ~~under the~~ who is (i) younger than the age of 18 or (ii) for purposes of the *Fostering Futures* program established pursuant to Article 2 (§ 63.2-917 et seq.) of Chapter 9 of Title 63.2, younger than the age of 21 and meets the eligibility criteria set forth in § 63.2-919.

"Child-placing agency" means (i) any person who places children in foster homes, adoptive homes, or independent living arrangements pursuant to § 63.2-1819; (ii) a local board that places children in foster homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903, and 63.2-1221; or (iii) an entity that assists parents with the process of delegating parental and legal custodial powers of their children pursuant to Chapter 10 (§ 20-166 et seq.) of Title 20. "Child-placing agency" does not include the persons to whom such parental or legal custodial powers are delegated pursuant to Chapter 10 (§ 20-166 et seq.) of Title 20. Officers, employees, or agents of the Commonwealth or any locality thereof, acting within the scope of their authority as such, who serve as or maintain a child-placing agency shall not be required to be licensed.

"Children's Ombudsman" or "Ombudsman" means the individual appointed to head the Office of the Children's Ombudsman under § 2.2-439.

"Children's residential facility" means the same as that term is defined in § 63.2-100.

"Child-serving agency" means (i) a state agency that provides services to children, including the Department of Behavioral Health and Developmental Services, the Department of Education, the Department of Health, the Department of Juvenile Justice, the Department of Social Services, and the Office of Children's Services, and (ii) a local entity that provides services to children and that receives funding from a state agency under clause (i). "Child-serving agency" does not include any law-enforcement agency.

"Complainant" means an individual who makes a complaint pursuant to § 2.2-441.

"Department" means the Department of Social Services.

"Foster care" means care provided to a child by a foster parent, children's residential facility, or group home licensed or approved by the Department under Chapter 9 (§ 63.2-900) of Title 63.2; care provided to a child in a relative's home under a court order; or any other care provided at the time the child's custody has been given to a government agency.

"Law-enforcement agency" means any crime victim and witness assistance program whose funding is provided in whole or in part by grants administered by the Department of Criminal Justice Services pursuant to § 9.1-104, any state or local police or sheriff's department, any office of an attorney for the Commonwealth, or the Office of the Attorney General.

"Local department" means the local department of social services of any county or city in the Commonwealth.

"Office" means the Office of the Children's Ombudsman established under § 2.2-439.

§ 2.2-441. Individuals making complaint to Children's Ombudsman.

A. Any of the following individuals may make a complaint to the Ombudsman with respect to a particular child, alleging that an administrative act is contrary to law, rule, or policy; imposed without an adequate statement of reason; or based on irrelevant, immaterial, or erroneous grounds:

1. The child, if the child is able to articulate a complaint, *in accordance with the provisions of subsection A of § 2.2-446;*

2. A biological parent of the child;

3. A foster parent of the child;

4. An adoptive parent or a prospective adoptive parent of the child;
5. A legally appointed guardian of the child;
6. A guardian ad litem for the child;
7. A relative of the child or any person with a legitimate interest as defined in § 20-124.1;
8. A Virginia legislator;
9. An individual required to report that a child is alleged to be an abused or neglected child under § 63.2-1509; and
10. An attorney for any individual described in subdivisions 1 through 7.

B. Any individual may submit a complaint to the Ombudsman. The Ombudsman has the sole discretion and authority to determine if a complaint falls within the Ombudsman's duties and powers to investigate and if a complaint involves an administrative act. The Ombudsman may initiate an investigation upon receipt of a complaint from an individual not meeting the definition of complainant. An individual not meeting the definition of complainant is not entitled to receive information under this chapter as if such individual is a complainant. The individual is entitled to receive the recommendations of the Ombudsman and the Department or local department's response to the recommendations of the Ombudsman in accordance with state and federal law. During the course of an investigation, the Ombudsman may refer a case to a child-serving agency if the Ombudsman determines that such agency received a complaint on the case but did not conduct an investigation. If the Ombudsman refers a case to a child-serving agency, such agency shall conduct an investigation of the case or provide notice to the Ombudsman explaining why an investigation was not conducted or what alternative steps may have been taken to address the situation. If an investigation has been conducted, the child-serving agency shall report the results to the Ombudsman.

§ 2.2-445. Department and child-placing agency; duties; information to be provided to biological parent, adoptive parent, or foster parent; access to departmental computer networks.

A. The Department or local department, a children's residential facility, and a child-placing agency shall do all of the following:

1. Upon the Ombudsman's request, grant the Ombudsman or the Office access to all information, records, and documents in the possession of the Department or local department, children's residential facility, or child-placing agency that the Ombudsman considers relevant and necessary in an investigation.
2. Assist the Ombudsman or the Office to obtain the necessary releases of those documents that are specifically restricted.
3. Upon the Ombudsman's request, provide the Ombudsman or the Office with progress reports concerning the administrative processing of a complaint.
4. Upon the Ombudsman's request, provide the Ombudsman or the Office the information requested under subdivision 1 or notification within 10 business days after the request that the Department or local department has determined that release of the information would violate federal or state law.
5. Upon the Ombudsman's request, grant access and provide consent to interview children in foster care who are the subject of or the complainant in an investigation.

B. The Department or local department, a children's residential facility, and a child-placing agency shall provide *the Office's contact information along with information regarding the provisions of this chapter* to a biological parent, prospective adoptive parent, or foster parent ~~regarding the provisions of this chapter.~~

The Department or local department, a children's residential facility, and a child-placing agency shall also provide the Office's contact information along with information regarding the provisions of this chapter to any child in foster care age 12 or older upon the opening of a foster care case for such child. If a child turns the age of 12 while in foster care, such child shall be provided the information required by this paragraph on or about his twelfth birthday. Each such child shall receive such required notification annually as long as such child remains in foster care.

C. The Ombudsman and the Office shall have access, in the Ombudsman's own office, to departmental computer networks pertaining to protective services, foster care, adoption, juvenile delinquency, and the central registry, unless otherwise prohibited by state or federal law or if the release of the information to the Ombudsman would jeopardize federal funding. The cost of implementing this subsection shall be negotiated among the Office and the custodians of such networks.

§ 2.2-446. Confidentiality of record of Children's Ombudsman; disclosure; limitations; release of certain information.

A. All statements, documentation, and other evidence received or maintained by the Office or its agents in connection with complaints made to or investigations undertaken pursuant to the Ombudsman's powers enumerated in § 2.2-442 shall be confidential and not subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) and are not discoverable in legal proceedings. If the Ombudsman identifies action or inaction by the state through its agencies or services that failed to protect children, the Ombudsman shall provide any findings and recommendations to the agency affected by those findings and to the General Assembly upon request, and may provide those findings and recommendations to the complainant, to the extent consistent with state or federal law. The Ombudsman shall not disclose any information that impairs the rights of the child or the child's parents or guardians.

If the child is the complainant, the Ombudsman need not gain the consent of the Department or local department, the children's residential facility, the child-placing agency, or the foster parent or guardian of the child or other person having custody or care of the child to receive information from or communicate with the child.

B. Unless otherwise part of the public record, the Office shall not release any of the following confidential information to the general public:

1. Records relating to a mental health evaluation or treatment of a parent or child;
2. Records relating to the evaluation or treatment of a substance abuse-related disorder of a parent or child;
3. Records relating to a medical diagnosis or treatment of a parent or child;
4. Records relating to domestic violence-related services and sexual assault services provided to a parent or child; or
5. Records relating to educational services provided to a parent or child.

C. Notwithstanding subsection B, if the Ombudsman determines that disclosure of confidential information is necessary to identify, prevent, or respond to the abuse or neglect of a child, the Ombudsman may disclose such information to the Department or local department, a court, a law-enforcement agency, or a prosecuting attorney investigating a report of known or suspected abuse or neglect of a child. The Ombudsman shall not release the address, telephone number, or other information regarding the whereabouts of a victim or suspected victim of domestic violence unless ordered to by a court.

D. Except as provided in subsection C, the Ombudsman shall not disclose information relating to an ongoing law-enforcement investigation or an ongoing child protective services investigation. The Ombudsman may release the results of its investigation to a complainant, or an individual not meeting the definition of complainant, if the Ombudsman receives notification of and determines that releasing the results of its investigation is not related to and will not interfere with an ongoing law-enforcement investigation or ongoing child protective services investigation.

E. The Ombudsman shall not disclose the identity of an individual making a complaint alleging that a child is an abused or neglected child unless that individual's written permission is obtained first or a court has ordered the Ombudsman to release such information.

F. The Ombudsman may release an individual's identity who makes an intentionally false report alleging that a child is an abused or neglected child, subject to other laws relating to such disclosure.