

SENATE BILL NO. 1081

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology

on _____)

(Patron Prior to Substitute--Senator Edwards)

A BILL to amend and reenact §§ 2.2-438 through 2.2-448 and 2.2-3703 of the Code of Virginia and to repeal § 2.2-449 of the Code of Virginia, relating to the Office of the Children's Ombudsman.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-438 through 2.2-448 and 2.2-3703 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, ~~an adoption attorney~~, or a child-placing agency with respect to a particular child related to adoption, foster care, or protective services.

~~"Adoption attorney" means an attorney acting as counsel in an adoption proceeding or case.~~

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

"Child" means an individual under the age of 18.

~~"Child abuse" means harm or threatened harm to a child's health or welfare that occurs through nonaccidental physical or mental injury, sexual abuse, sexual exploitation, abandonment, or maltreatment by a parent, a legal guardian, or any other person responsible for the child's health or welfare or by a teacher, a teacher's aide, or a member of the clergy.~~

~~"Child-caring institution" means a child-care facility that is organized for the purpose of receiving minor children for care, maintenance, and supervision, usually on a 24-hour basis, in buildings maintained~~

27 ~~by the child-caring institution for that purpose, and that operates throughout the year. An educational~~
28 ~~program may be provided, but the educational program shall not be the primary purpose of the facility.~~
29 ~~"Child-caring institution" includes a maternity home for the care of mothers who are minors, an inpatient~~
30 ~~substance-use-disorder treatment facility for minors, and an agency group home that is described as a small~~
31 ~~child-caring institution, owned, leased, or rented by a licensed agency providing care for more than four~~
32 ~~but less than 13 minor children. "Child-caring institution" also includes institutions for developmentally~~
33 ~~disabled or emotionally disturbed minor children. "Child-caring institution" does not include (i) a licensed~~
34 ~~or accredited educational institution whose pupils, in the ordinary course of events, return annually to the~~
35 ~~homes of their parents or guardians for not less than two months of summer vacation; (ii) an establishment~~
36 ~~required to be licensed as a summer camp by § 35.1-18; or (iii) a licensed or accredited hospital legally~~
37 ~~maintained as such.~~

38 ~~"Child neglect" means harm or threatened harm to a child's health or welfare by a parent, legal~~
39 ~~guardian, or any other person responsible for the child's health or welfare that occurs through either of the~~
40 ~~following:~~

41 ~~1. Negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical~~
42 ~~care, though financially able to do so, or the failure to seek financial or other reasonable means to provide~~
43 ~~adequate food, clothing, shelter, or medical care; or~~

44 ~~2. Putting the child's health or welfare at unreasonable risk through failure of the parent, legal~~
45 ~~guardian, or other person responsible for the child's health or welfare to intervene to eliminate that risk~~
46 ~~when that person is able to do so and has, or should have, knowledge of any such risk.~~

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

54 of their authority as such, who serve as or maintain a child-placing agency shall not be required to be
55 licensed.

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

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

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

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

66 "Department" means the Department of Social Services.

67 "Foster care" means care provided to a child by ~~a child-caring institution~~ or a foster parent,
68 children's residential facility, or group home licensed or approved by the Department under Chapter 9 (§
69 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
70 provided at the time the child's custody has been given to a government agency.

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

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

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

78 **§ 2.2-439. Children's Ombudsman; establishment; appointment; removal.**

79 A. There is hereby created the Office of the Children's Ombudsman as a means of effecting
80 changes in policy, procedure, and legislation; educating the public; investigating and reviewing actions of

81 the Department, local departments, child-placing agencies, or ~~child-caring institutions~~ children's
82 residential facilities; and monitoring and ensuring compliance with relevant statutes, rules, and policies
83 pertaining to child protective services and the placement, supervision, and treatment of, and improvement
84 of delivery of care to, children in foster care and adoptive homes.

85 B. The Office of the Children's Ombudsman shall be headed by the Children's Ombudsman, who
86 shall be appointed by the Governor, subject to confirmation by the General Assembly. The individual shall
87 be qualified by training and experience to perform the duties and exercise the powers of the Children's
88 Ombudsman and the Office of the Children's Ombudsman as provided in this chapter.

89 C. The appointment shall be for a term of four years. The Governor may remove the Ombudsman
90 for cause in accordance with § 2.2-108. Vacancies shall be filled by appointment by the Governor for the
91 unexpired term.

92 ~~D. The operation and administration of the Office shall be funded by the Children's Advocacy~~
93 ~~Fund established pursuant to § 2.2-449.~~

94 **§ 2.2-440. Procedures; training; notification of safety concerns.**

95 A. The Ombudsman shall establish procedures for the Office for budget, expenditures, and
96 employment. Subject to annual appropriations, the Ombudsman shall employ sufficient personnel to carry
97 out the duties and powers prescribed by this chapter.

98 B. The Ombudsman shall establish procedures for receiving and processing complaints from
99 complainants and individuals not meeting the definition of complainant, conducting investigations,
100 holding informal hearings, and reporting findings and recommendations resulting from investigations.

101 C. Personnel employed by the Office shall receive mandatory training in domestic violence and in
102 handling complaints ~~of alleging that a child abuse or child neglect that include a history of domestic~~
103 ~~violence is an abused or neglected child.~~

104 ~~D. Any individual may submit a complaint to the Ombudsman. The Ombudsman has the sole~~
105 ~~discretion and authority to determine if a complaint falls within the Ombudsman's duties and powers to~~
106 ~~investigate and if a complaint involves an administrative act. The Ombudsman may initiate an~~
107 ~~investigation without receiving a complaint. The Ombudsman may initiate an investigation upon receipt~~

108 ~~of a complaint from an individual not meeting the definition of complainant. An individual not meeting~~
109 ~~the definition of complainant is not entitled to receive information under this chapter as if such individual~~
110 ~~is a complainant. The individual is entitled to receive the recommendations of the Ombudsman and the~~
111 ~~Department or local department's response to the recommendations of the Ombudsman in accordance with~~
112 ~~state and federal law. During the course of an investigation, the Ombudsman may refer a case to a child-~~
113 ~~serving agency if the Ombudsman determines that such agency received a complaint on the case but did~~
114 ~~not conduct an investigation. If the Ombudsman refers a case to a child-serving agency, such agency shall~~
115 ~~conduct an investigation of the case or provide notice to the Ombudsman explaining why an investigation~~
116 ~~was not conducted or what alternative steps may have been taken to address the situation. If an~~
117 ~~investigation has been conducted, the child-serving agency shall report the results to the Ombudsman.~~

118 ~~E.~~ The Ombudsman shall notify a child-serving agency of any immediate safety concerns
119 regarding a child or children who are part of an active or open child protective services or foster care case.
120 This notification shall occur as soon as possible, but not later than one business day after the Ombudsman
121 becomes aware of the concerns.

122 **§ 2.2-441. Individuals making complaint to Children's Ombudsman.**

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

- 126 1. The child, if the child is able to articulate a complaint;
- 127 2. A biological parent of the child;
- 128 3. A foster parent of the child;
- 129 4. An adoptive parent or a prospective adoptive parent of the child;
- 130 5. A legally appointed guardian of the child;
- 131 6. A guardian ad litem ~~of~~ for the child;
- 132 7. A relative of the child or any person with a legitimate interest as defined in § 20-124.1;
- 133 8. A Virginia legislator;

134 9. An individual required to report that a child-abuse or child-neglect is alleged to be an abused or
135 neglected child under § 63.2-1509; and

136 10. An attorney for any individual described in subdivisions 1 through 7.

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

151 **§ 2.2-442. Children's Ombudsman; powers and duties.**

152 ~~The~~ In addition to any powers described in this chapter, the Children's Ombudsman has the
153 authority to do all of the following with regard to children receiving child-protective services, in foster
154 care, or placed for adoption and children who may have died as a result of alleged abuse or neglect:

- 155 1. Pursue all necessary action, including legal action, to protect the rights and welfare of such
156 children;
- 157 2. Pursue legislative advocacy in the best interest of such children;
- 158 3. Review policies and procedures relating to any child-serving agency's involvement with such
159 children upon the Ombudsman's own initiative or upon receipt of a complaint and make recommendations
160 for improvement;~~and~~

161 4. Initiate investigations of administrative acts of the Department, a local department, or a child-
162 placing agency in cases relating to such children upon the Ombudsman's own initiative or upon receipt of
163 a complaint; and

164 5. Subject to an appropriation of funds, commence and conduct investigations into alleged
165 violations of the rights of a foster parent.

166 **§ 2.2-443. Abused or neglected children; children receiving child-protective services, in foster**
167 **care, or placed for adoption; powers of Children's Ombudsman; child fatality cases; investigation.**

168 A. The Ombudsman may do all of the following ~~in relation to a child who may be a victim of child~~
169 ~~abuse or child neglect, including a child who may have died as a result of suspected child abuse or child~~
170 ~~neglect:~~

171 1. ~~Upon the Ombudsman's own initiative or upon receipt of a complaint, investigate an~~
172 ~~administrative act that is alleged to be contrary to law or rule; contrary to any policy of the Department, a~~
173 ~~local department, or a child placing agency; imposed without an adequate statement of reason; or based~~
174 ~~on irrelevant, immaterial, or erroneous grounds. The Ombudsman has Determine, in the Ombudsman's~~
175 ~~sole discretion, to determine if a complaint involves an administrative act.~~

176 2. Decide, in the Ombudsman's discretion, whether to investigate an administrative act.

177 3. Upon the Ombudsman's own initiative or upon receipt of a complaint and subject to an
178 appropriation of funds, investigate an alleged violation of the rights of a foster parent.

179 4. Except as otherwise provided in this subdivision, access records and reports necessary to carry
180 out the Ombudsman's powers and duties under this chapter to the same extent and in the same manner as
181 provided to the Department. The Ombudsman shall be provided access to medical and mental health
182 disorder records in the same manner as access is provided to the Department. The Ombudsman may
183 request substance use disorder records if the Ombudsman obtains a valid consent or a court order under
184 42 C.F.R. Part 2. In the course of a child fatality investigation, the Ombudsman may access records from
185 the court of jurisdiction, Attorney General, prosecuting attorney, or any attorney retained by the
186 Department or local department and reports from a county child fatality review team to the same extent
187 and in the same manner as provided to the Department or local department under state law.

188 5. Request a subpoena from a court requiring the production of a record or report necessary to
189 carry out the Ombudsman's duties and powers, including a child fatality investigation. If the person to
190 whom a subpoena is issued fails or refuses to produce the record or report, the Ombudsman may petition
191 the court for enforcement of the subpoena.

192 6. Hold informal hearings and request that individuals appear before the Ombudsman and give
193 testimony or produce documentary or other evidence that the Ombudsman considers relevant to a matter
194 under investigation.

195 7. Make recommendations to the Governor and the General Assembly concerning the need for
196 child protective services, adoption, or foster care legislation, policy, or practice without prior review by
197 other offices, departments, or agencies in the executive branch in order to facilitate rapid implementation
198 of recommendations or for suggested improvements to the recommendations. No other office, department,
199 or agency shall prohibit the release of an Ombudsman's recommendation to the Governor or the General
200 Assembly.

201 B. The Ombudsman may investigate all child fatality cases that occurred or are alleged to have
202 occurred due to ~~child abuse or child neglect~~ of a child in the following situations:

203 1. A child died during an active child protective services investigation or open services case, or
204 there was a valid or invalid child protective services complaint within 12 months immediately preceding
205 the child's death.

206 2. A child died while in foster care, unless the death is determined to have resulted from natural
207 causes and there were no prior child protective services or licensing complaints concerning the foster
208 home.

209 3. A child was returned home from foster care and there is an active foster care case.

210 4. A foster care case involving the deceased child or sibling was closed within 24 months
211 immediately preceding the child's death.

212 C. Subject to state appropriations, an investigation under subsection B shall be completed within
213 12 months after the Ombudsman opens a child fatality case for investigation.

214 D. The Ombudsman is subject to the same standards for safeguarding the confidentiality of
215 information under this section and the same sanctions for unauthorized release of information as the
216 Department.

217 **§ 2.2-444. Decision to investigate; notice; pursuing administrative remedies or channels of**
218 **complaint; further investigation; violation of state or federal criminal law; complaint against child-**
219 **placing agency; petition requesting court jurisdiction or termination of parental rights.**

220 A. Upon deciding to investigate a complaint from a complainant or an individual not meeting the
221 definition of complainant, the Ombudsman shall notify the complainant or the individual not meeting the
222 definition of complainant of the decision to investigate and shall notify the Department or local
223 department, ~~adoption attorney,~~ or children's residential facility, or child-placing agency of the intention to
224 investigate. If the Ombudsman declines to investigate a complaint or continue an investigation, the
225 Ombudsman shall notify the complainant or the individual not meeting the definition of complainant and
226 the Department or local department, or children's residential facility, or child-placing agency of the
227 decision and of the reasons for the Ombudsman's action.

228 B. The Ombudsman shall advise a complainant of administrative remedies and may advise the
229 individual to pursue all administrative remedies or channels of complaint open to the complainant before
230 pursuing a complaint with the Ombudsman. Subsequent to the administrative processing of a complaint,
231 the Ombudsman may conduct further investigations of a complaint upon the request of the complainant
232 or upon the Ombudsman's own initiative.

233 C. If the Ombudsman finds in the course of an investigation that an individual's action is in
234 violation of state or federal criminal law, the Ombudsman shall immediately report that fact to the local
235 attorney for the Commonwealth or the Attorney General. If the complaint is against a child-placing
236 agency, the Ombudsman shall refer the matter to the Department or local department for further action
237 with respect to licensing or approval.

238 **§ 2.2-445. Department and child-placing agency; duties; information to be provided to**
239 **biological parent, adoptive parent, or foster parent; access to departmental computer networks.**

240 A. The Department or local department and a child-placing agency shall do all of the following:

241 1. Upon the Ombudsman's request, grant the Ombudsman or the ~~Ombudsman's designee~~ Office
242 access to all information, records, and documents in the possession of the Department or local department,
243 children's residential facility, or child-placing agency that the Ombudsman considers relevant and
244 necessary in an investigation.

245 2. Assist the Ombudsman or the Office to obtain the necessary releases of those documents that
246 are specifically restricted.

247 3. Upon the Ombudsman's request, provide the Ombudsman or the Office with progress reports
248 concerning the administrative processing of a complaint.

249 4. Upon the Ombudsman's request, provide the Ombudsman or the Office the information
250 requested under subdivision 1 or notification within 10 business days after the request that the Department
251 or local department has determined that release of the information would violate federal or state law.

252 B. The Department or local department, an attorney involved with an adoption, and a child-placing
253 agency shall provide information to a biological parent, prospective adoptive parent, or foster parent
254 regarding the provisions of this chapter.

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

260 **§ 2.2-446. Confidentiality of record of Children's Ombudsman; disclosure; limitations;**
261 **release of certain information.**

262 A. ~~Subject to subsections B through F, a record~~ All records of the Office ~~is~~ are confidential, shall
263 only be used for purposes set forth in this chapter, ~~is~~ are not subject to the Virginia Freedom of Information
264 Act (§ 2.2-3700 et seq.) or to court subpoena, and ~~is~~ are not discoverable in a legal proceeding. If the
265 Ombudsman identifies action or inaction by the state through its agencies or services that failed to protect
266 children, the Ombudsman shall provide any findings and recommendations to the agency affected by those
267 findings and to the General Assembly upon request, and ~~make~~ may provide those findings and

268 recommendations available to the complainant and the General Assembly upon request, to the extent
269 consistent with state or federal law. The Ombudsman shall not disclose any information that impairs the
270 rights of the child or the child's parents or guardians.

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

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

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

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

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

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

298 **§ 2.2-447. Report of findings; recommendations; consultation with individual, Department,**
299 **local department, or child-placing agency; publication of adverse report; notice of actions;**
300 **information provided to complainant; child fatality investigation; report.**

301 A. The Ombudsman shall prepare a report of the factual findings of an investigation and make
302 recommendations to the Department, local department, children's residential facility, or child-placing
303 agency if the Ombudsman finds any of the following:

304 1. A matter should be further considered by the Department, local department, or child-placing
305 agency.

306 2. An administrative act or omission should be modified, canceled, or corrected.

307 3. Reasons should be given for an administrative act or omission.

308 4. Other action should be taken by the Department, local department, children's residential facility,
309 or child-placing agency.

310 B. ~~Before announcing~~ At least 30 calendar days before publishing a conclusion or recommendation
311 report that expressly or by implication criticizes an individual, is adverse to the Department, the local
312 department, a children's residential facility, or a child-placing agency, or the individual that is or was the
313 subject of an investigation by the Ombudsman, the Ombudsman shall consult with inform that individual,
314 the Department, the local department, ~~or the children's residential facility~~, the child-placing agency, or the
315 individual. When publishing ~~an opinion~~ a report adverse to the Department, local department, ~~or children's~~
316 residential facility, child-placing agency, or individual, the Ombudsman shall include in the publication
317 any statement of reasonable length made to the Ombudsman by the Department, local department, ~~or~~
318 children's residential facility, child-placing agency, or individual in defense or mitigation of the action.
319 The Ombudsman may request to be notified by the Department, local department, ~~or children's residential~~
320 facility, child-placing agency, or individual, within a specified time, of any action taken on any
321 recommendation presented.

322 C. The Ombudsman shall notify the complainant of the actions taken by the Ombudsman and by
323 the Department, local department, children's residential facility, or child-placing agency.

324 D. The Ombudsman may provide to the complainant the following information:

325 1. A copy of the Ombudsman's report regarding the investigation's findings, recommendations to
326 the Department or local department made according to the investigation, the Department or local
327 department's response to the Ombudsman's findings and recommendations, and any epilogue to the
328 Ombudsman's report and the Department or local department's response; or

329 2. Information that has otherwise been made public.

330 E. The Ombudsman shall not release information to the individual making the complaint if doing
331 so could endanger the health or welfare of a child or another individual.

332 F. With respect to a child fatality case investigated under subsection B of § 2.2-443 and upon
333 review of records or other information received under subdivision A 3 or 4 of § 2.2-443 in the course of a
334 child fatality investigation, if there is no ongoing child protection proceeding involving a sibling of the
335 child who died, the Ombudsman shall provide any necessary recommendations for improving systemic
336 issues that are discovered during the investigation of the child fatality. The recommendations may be
337 provided to the court of jurisdiction, the state court administrative office, the county child fatality review
338 team, medical professionals, or attorneys or other legal professionals involved with the particular child
339 who died. The recommendations shall also be summarized and included in the annual report referenced
340 in subsection G.

341 G. The Ombudsman shall submit to the Governor, the director of the Department, and the General
342 Assembly an annual report on the Ombudsman's activities, including any recommendations regarding the
343 need for legislation or for a change in rules or policies.

344 **§ 2.2-448. Penalty for filing complaint or cooperating in investigation prohibited.**

345 A. An official, the Department, a local department, a child-serving agency, a children's residential
346 facility, or a child-placing agency shall not penalize any person for filing a complaint or cooperating with
347 the Ombudsman in investigating a complaint.

348 B. An individual, the Department, a local department, ~~an adoption attorney~~, a child-serving agency,
349 a children's residential facility, or a child-placing agency shall not hinder the lawful actions of the
350 Ombudsman or employees of the Ombudsman.

351 C. A report by the Ombudsman is not subject to prior approval by a person outside of the Office.

352 **§ 2.2-3703. Public bodies and records to which chapter inapplicable; voter registration and**
353 **election records; access by persons incarcerated in a state, local, or federal correctional facility.**

354 A. The provisions of this chapter shall not apply to:

355 1. The Virginia Parole Board (the Board), except that (i) information from the Board providing the
356 number of inmates considered by the Board for discretionary parole, the number of inmates granted or
357 denied parole, and the number of parolees returned to the custody of the Department of Corrections solely
358 as a result of a determination by the Board of a violation of parole shall be open to inspection and available
359 for release, on a monthly basis, as provided by § 2.2-3704; (ii) all guidance documents, as defined in §
360 2.2-4101, shall be public records and subject to the provisions of this chapter; (iii) all records concerning
361 the finances of the Board shall be public records and subject to the provisions of this chapter; and (iv)
362 individual Board member votes shall be public records and subject to the provisions of this chapter. The
363 information required by clause (i) shall be furnished by offense, sex, race, age of the inmate, and the
364 locality in which the conviction was obtained, upon the request of the party seeking the information. The
365 information required by clause (ii) shall include all documents establishing the policy of the Board or any
366 change in or clarification of such policy with respect to grant, denial, deferral, revocation, or supervision
367 of parole or geriatric release or the process for consideration thereof, and shall be clearly and
368 conspicuously posted on the Board's website. However, such information shall not include any portion of
369 any document reflecting the application of any policy or policy change or clarification of such policy to
370 an individual inmate;

371 2. Petit juries and grand juries;

372 3. Family assessment and planning teams established pursuant to § 2.2-5207;

373 4. Sexual assault response teams established pursuant to § 15.2-1627.4, except that records relating
374 to (i) protocols and policies of the sexual assault response team and (ii) guidelines for the community's

375 response established by the sexual assault response team shall be public records and subject to the
376 provisions of this chapter;

377 5. Multidisciplinary child sexual abuse response teams established pursuant to § 15.2-1627.5;

378 6. The Virginia State Crime Commission;~~and~~

379 7. The Office of the Children's Ombudsman; and

380 8. The records maintained by the clerks of the courts of record, as defined in § 1-212, for which
381 clerks are custodians under § 17.1-242, and courts not of record, as defined in § 16.1-69.5, for which
382 clerks are custodians under § 16.1-69.54, including those transferred for storage, maintenance, or
383 archiving. Such records shall be requested in accordance with the provisions of §§ 16.1-69.54:1 and 17.1-
384 208, as appropriate. However, other records maintained by the clerks of such courts shall be public records
385 and subject to the provisions of this chapter.

386 B. Public access to voter registration and election records shall be governed by the provisions of
387 Title 24.2 and this chapter. The provisions of Title 24.2 shall be controlling in the event of any conflict.

388 C. No provision of this chapter or Chapter 21 (§ 30-178 et seq.) of Title 30 shall be construed to
389 afford any rights to any person (i) incarcerated in a state, local or federal correctional facility, whether or
390 not such facility is (a) located in the Commonwealth or (b) operated pursuant to the Corrections Private
391 Management Act (§ 53.1-261 et seq.) or (ii) civilly committed pursuant to the Sexually Violent Predators
392 Act (§ 37.2-900 et seq.). However, this subsection shall not be construed to prevent such persons from
393 exercising their constitutionally protected rights, including, but not limited to, their right to call for
394 evidence in their favor in a criminal prosecution.

395 **2. That § 2.2-449 of the Code of Virginia is repealed.**

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