



Virginia Commission on Youth

Study of the Establishment of an Office of Children's Ombudsman

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Study Mandate

- The Commission on Youth will continue to study the Establishment of an Office of Children's Services Ombudsman and report findings and recommendations to the Commission prior to the 2008 General Assembly Session.
- Study activities to include:
 - interview stakeholders;
 - convene an Advisory Group of affected state agencies;
 - determine the basic principles and mission of the Office;
 - determine the services that the Office would provide;
 - identify the appropriate administrative structure of the Office; and
 - determine the cost.



Office of the Children's Ombudsman

Summary and Activities of Study – Year One

- Convened three Advisory Group meetings.
- Held three public hearings and received public comment.
- Interviewed bill patron, local social services directors and parents of special education students.
- Contacted U.S. Ombudsman Association, American Bar Association, National Conference of State Legislators and Virginia Youth Advisory Council.
- Continued the study.



Office of the Children's Ombudsman

Summary and Activities of Study – Year Two

- Convened an Advisory Group of Affected State Agencies.
- Interviewed and received input from Court Appointed Special Advocates, Children's Center of Virginia, the Parent Council, FACES, the Family Involvement Project, Parent to Parent of Virginia, Families & Allies of Virginia's Youth, private providers, youth and concerned citizens.
- Conducted additional research.
- Developed findings and recommendations.



Office of the Children's Ombudsman

Summary – Written Comments

- Working parents, particularly those with at-risk children, have extremely limited time to learn how the state agencies work, how they interact and how to approach them.
- A cross-departmental Ombudsman would be helpful in addressing concerns that involve more than one agency.
- The power of the Ombudsman must be broad enough that due diligence is available and so that children and their caregivers have another avenue for the impartial investigation of complaints.



Office of the Children's Ombudsman

Summary – Written Comments (*continued*)

- When children are incarcerated in the juvenile justice system, they lose educational instructional time while at the Reception and Diagnostic Center at the Department of Juvenile Justice (DJJ).
- DJJ needs to do more work on job placement for incarcerated youth, while acknowledging the needs of the family.
- An Ombudsman would provide a major opportunity to examine how the child service system operates, with the objective to improve the system.



Office of the Children's Services Ombudsman

Summary – Written Comments (*continued*)

- The goal is to receive concerns and or complaints from multiple stakeholders in the service system, and especially the consumers of the services, for the purpose, not of prosecution or negative sanctions, but providing analysis and recommendations to the General Assembly for improvements in the system and to issue an annual report to the citizens of the Commonwealth on the state of the system. If the Ombudsman believes criminal behavior exists, then it would be referred to other appropriate authorities.
- There is a need to make sure local Departments of Social Services are acting in the best interest of the child.



Findings

Identified Issues

- The child service system does not provide a central point of contact for children's services wherein complaints can be filed and investigations can be conducted to ensure the health, safety and welfare of children.
- The child service system does not offer independent reviews of complaints that have been reported by foster children, foster parents, adoptive parents, family members, juvenile justice youth, children and adolescents, members of the public, community organizations or other interested parties.
- There is a need to provide a mechanism for filing complaints that is external to child-serving agencies.

Identified Issues *(continued)*

There is a need to:

- Protect children and parents from harmful agency action or inaction.
- Provide a system accountability mechanism to protect the interests of children and their families who are parties in the child welfare system.
- Investigate the acts of state and local administrative agencies which may adversely affect children.
- Recommend appropriate changes toward the goals of safeguarding the rights of children and parents.
- Promote higher standards of competency, efficiency and justice in the administration of child protection and child welfare laws, juvenile justice services and education of children.
- Ensure that the Office of Children's Ombudsman is not a duplication of services.

Characteristics of an Ombudsman

- Independent
- Impartial
- Confidential
- Credible Review Process

Characteristics of an Ombudsman *Independent*

- Enables the Ombudsman to report findings and make recommendations based exclusively on facts, law, reason and fairness.
- Allows the Ombudsman to be free from internal and external influences and control.
- Eliminates any potential or existing prejudice and partiality towards or against a particular entity and/or agency.



Characteristics of an Ombudsman *Impartial*

- Advocates for a fair process.
- Reviews and receives complaints objectively.
- Ensures neutrality.



Characteristics of an Ombudsman *Confidential*

- Provides the Ombudsman with the privilege and discretion to keep cases and information confidential.
- Protects sensitive information.
- Encourages citizens to make complaints.
- Encourages witnesses and citizens to speak openly and honestly.



Characteristics of an Ombudsman *Credible Review Process*

- Provides for a thorough and timely review process.
- Enables the Ombudsman to operate in a manner that causes citizens to have confidence and respect for the office, as well as being accepted by agencies and related entities.

Uniqueness of a Children's Ombudsman

- Provides a system accountability mechanism for all child-serving agencies, as well as child-serving programs, placements and departments.
- Provides a method of strengthening and promoting public confidence in the child welfare system.
- Provides system-wide improvement recommendations to benefit children and families.
- Serves as a child advocate by ensuring the rights of children and the safety of abused and neglected children.



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Recommendations



Recommendation 1 – Establishment of an Office of Children’s Ombudsman

- Option 1: Introduce legislation during the 2008 General Assembly Session to create an Office of the Children’s Ombudsman (Office) as a separate and independent state agency.
- Option 2: Introduce legislation during the 2008 General Assembly Session to create an Office of the Children’s Ombudsman (Office) within the Virginia Office of Protection and Advocacy (VOPA) as a separate and independent office.
- Option 3: Introduce legislation during the 2008 General Assembly Session to create an Office of the Children’s Ombudsman (Office) within the Office of the Secretary of Administration as a separate and independent office.
- Option 4: Introduce legislation during the 2008 General Assembly Session to create an Office of the Children’s Ombudsman (Office) within the Secretary of Health and Human Resources as a separate and independent office.
- Option 5: Introduce legislation during the 2008 General Assembly Session to create an Office of the Children’s Ombudsman (Office) within the Office of the Inspector General for Mental Health, Mental Retardation and Substance Abuse Services (OIG) as a separate and independent office.

Recommendation 2 – Establishment of an Office of Children’s Ombudsman

Introduce an enactment clause of the legislation creating the Office of the Children’s Ombudsman to:

- Option 1: Direct VOPA to work with the Office of the Children’s Ombudsman to provide for the Ombudsman’s office space needs. Addition costs for the Ombudsman’s office space shall be paid for out of the Office of the Children’s Ombudsman’s budget. However, the Children’s Ombudsman Office may share resources, such as common office areas, and relevant training opportunities provided by VOPA.
- Option 2: Direct the Office of the Governor to work with General Services to provide for the Ombudsman’s office space needs.
- Option 3: Direct the Office of the Secretary of Administration to work with General Services to provide for the Ombudsman’s office space needs.
- Option 4: Direct the Office of the Secretary of Health and Human Resources to work with General Services to provide for the Ombudsman’s office space needs.
- Option 5: Include a delayed enactment clause allowing time for the administrative and technical set-up of the Office.
- Option 6: Clarify that the Office of the Children’s Ombudsman is an independent agency and technical support of the establishment of the Office shall not give such an entity any authority over the operation or function of the Office of the Children’s Ombudsman.



Recommendation 3 – Establishment of an Office of Children’s Ombudsman

The Office of the Children’s Ombudsman should provide ombudsman services for children served by the following departments:

- Option 1: All departments that provide services to children: Departments of Social Services, Juvenile Justice, Health, Mental Health, Mental Retardation and Substance Abuse Services, Education, Office of Comprehensive Services for At Risk Youth and Families, and Correctional Education, as well as any entities, program or services that the departments may license, fund or operate.
- Option 2: Certain departments that provide services to children: Departments of Social Services, Juvenile Justice, Mental Health, Mental Retardation and Substance Abuse Services, Education and Correctional Education.
- Option 3: Departments that have custodial authority of children: Departments of Social Services and Juvenile Justice.

Recommendation 4 – Mission of Office *Investigation*

- The Office of the Children's Ombudsman shall be authorized to investigate the acts of child-serving agencies. The Office of the Children's Ombudsman shall conduct investigations for the purposes of resolving and mediating complaints from children, parents and citizens concerning harmful actions or inactions of any child-serving agency. After initial investigation, the Ombudsman may decline to accept any complaint it determines is frivolous or not made in good faith. The Office of the Children's Ombudsman shall attempt to resolve the complaint at the lowest appropriate level, unless otherwise provided by law. The Ombudsman shall develop written procedures and guidelines for the handling of complaints which shall be made available on its website.*

* Note: The Department of Education would like to include: "This section shall not apply to complaints systems mandated by federal law and regulation."



Recommendation 5 – Mission of Office ***Systemic Improvements & Recommendations***

- The Office of the Children’s Ombudsman shall promote continuous quality improvement in the administration of children’s services. If the Ombudsman identifies systemic problems that may hinder child-serving agencies from achieving comprehensive, positive outcomes for children, then the Office shall recommend policy, regulatory and legislative changes toward the goal of safeguarding the well-being of children to the appropriate child-serving agencies. These recommendations shall be included in their annual report to the Governor, General Assembly and Virginia Commission on Youth.



Recommendation 6 – Mission of Office *Standards*

- The Office of the Children’s Ombudsman shall promote higher standards of competency, efficiency and justice in the administration of children’s services, with considerations given to best-practices for serving children within the state system.

Recommendation 7 – Mission of Office *Information and Referral*

- The Office of the Children’s Ombudsman shall serve as a resource for information, referral and guidance for children, parents, caregivers, providers and citizens of the Commonwealth.



Recommendation 8 – Mission of Office *Advocacy*

- The Office of the Children’s Ombudsman shall provide advocacy for children and families who place complaints with the Office and seek to ensure a fair process. The Ombudsman may seek legislative changes for children and promote positive revisions in the child protection system’s policy and procedures, when needed.

Recommendation 9 – Operational *Management of Office*

- The Children's Ombudsman shall be authorized to operate and manage the Office of Children's Ombudsman and to employ the personnel required to carry out duties and responsibilities of the Office. In addition, the Children's Ombudsman shall be authorized to make and enter into contracts and agreements that may be necessary and incidental to carry out the duties and responsibilities of the Office, and to apply for and accept grants from the United States government, agencies and instrumentalities thereof, and any other source, in furtherance of the provisions of this article.



Recommendation 10 – Operational ***Appointment of the Children’s Ombudsman***

- Option 1: The Children’s Ombudsman shall be appointed by the Governor, initially for a term that expires one full year following the end of the Governor’s term of office, and, thereafter, the term shall be for four years and the Ombudsman may be reappointed for subsequent terms. Vacancies shall be filled by appointment by the Governor for the unexpired term and shall be effective until 30 days after the next meeting of the ensuing General Assembly and, if confirmed, thereafter for the remainder of the term. The Governor may remove the Children’s Ombudsman from office for just cause.
- Option 2: The Children’s Ombudsman shall be appointed and governed by a Board consisting of citizens at large with a special interest in promoting higher standards of competency, efficiency and justice in the administration of children’s services. Appointments of the Children’s Ombudsman Board shall be from the Governor, House of Delegates and the Senate of Virginia. Vacancies shall be filled by appointment by the Children’s Ombudsman Board for the unexpired term and shall be effective until 30 days after the next meeting of the ensuing General Assembly and, if confirmed, thereafter for the remainder of the term. The Board may remove the Children’s Ombudsman from office for just cause. The term shall be for four years, and the Ombudsman may be reappointed for subsequent terms.



Recommendation 11 – Operational ***Rights and Powers of the Children's Ombudsman***

The Office of the Children's Ombudsman shall have the following rights and powers:

- In response to a complaint, to enter and inspect any and all institutions, facilities, and residences, public and private, where a child has been placed by a court or a child-serving agency and is currently residing. These inspections may be conducted unannounced;
- To make such inquiries and obtain such assistance from any child-serving agency as the Ombudsman requires in the discharge of the Ombudsman's duties. Agencies shall not restrict the Ombudsman's access to agency personnel. Notwithstanding any other provision of state law, the Ombudsman has access to and can examine and copy, without payment of a fee, any child-serving agency records, including records which are confidential by state law. The Ombudsman shall not disclose confidential records and shall be subject to the same penalties as the legal custodian of the records for any unlawful or unauthorized disclosure; and
- To issue subpoenas or other writs for the purpose of enforcing the provisions of the Office of the Children's Ombudsman.



Recommendation 12 – Operational *Reports*

- Option 1: The Office of the Children's Ombudsman shall have the duty to keep the Governor, General Assembly, the Virginia Commission on Youth and the public fully and currently informed concerning significant problems, abuses, and deficiencies relating to the administration of the specified programs and child services; to recommend corrective actions concerning the problems, abuses and deficiencies of such programs and services; and to report on the progress made in implementing the corrective actions.
- Option 2: The Office of the Children's Ombudsman shall have the duty to keep the Children's Ombudsman Board, the Governor, General Assembly, the Virginia Commission on Youth and the public fully and currently informed concerning significant problems, abuses and deficiencies relating to the administration of the specified programs and child services; to recommend corrective actions concerning the problems, abuses and deficiencies of such programs and services; and to report on the progress made in implementing the corrective actions.



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Recommendation 13 – Operational ***Annual Report***

The Children's Ombudsman shall provide periodic reports on the work of the Office of the Children's Ombudsman, including but not limited to an annual written report to the Governor, General Assembly and the Virginia Commission on Youth. The annual report shall be prepared not later than November 30 of each year and shall summarize the activities of the Office to the Governor, General Assembly and the Virginia Commission on Youth. The report shall include:

- Information concerning the numbers of complaints received and types of investigations completed by the Office during the reporting period and recommendations made to child-serving agencies;
- Information concerning child-serving agency responses to complaints brought to their attention by the Ombudsman and any barriers to compliance with the Ombudsman's recommendations;
- A summary of matters referred to the attorneys for the Commonwealth, law enforcement, and agency heads, and actions taken on them during the reporting period;
- Recommendations for improvements or needed changes concerning the provision of services to children by the child-serving agencies of the state; and
- Recommendations for systemic improvements in the provision of services to children, including any legislative changes necessary to promote positive changes in policy and procedure.

Recommendation 14 – Operational *Notification*

- The Office of the Children’s Ombudsman shall notify, in a timely manner, the Commonwealth’s Attorney for the locality in which a state facility, shelter care facility or detention home, as defined in §16.1-228, or residential public charter school is located and law enforcement, as appropriate, whenever the Children’s Ombudsman has reasonable grounds to believe there has been a violation of state criminal law. However, where the Children’s Ombudsman has reason to believe that a criminal offense has been committed in a state facility, notification of that suspicion shall be given to the agency head of that department.



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Recommendation 15 – Reports ***Notification of Serious Problems***

- The Children's Ombudsman shall report immediately to the Governor and the Commissioners of the Department of Social Services, and Mental Health, Mental Retardation and Substance Abuse Services, the Director of Juvenile Justice, Health, and the Comprehensive Services for At Risk Youth and Families, or the Superintendent of the Department of Education, and Department of Correctional Education, as may be appropriate, whenever the Office becomes aware of serious problems, abuses or deficiencies relating to the administration of the programs and services of state facilities and of providers.

Recommendation 16 – Reports ***Investigations Reports***

- The Children's Ombudsman may conduct additional investigations and make reports relating to the administration of the programs and services of state agencies.



Recommendation 17 – Reports

Direct Reporting

- Option 1: The reports, information, or documents required by or under this section shall be transmitted directly to the Governor, the General Assembly, and the Virginia Commission on Youth without preliminary clearances or approvals. The Children's Ombudsman shall, insofar as feasible, provide copies of the annual report to the Governor in advance of the date for their submission to allow a reasonable opportunity for comments of the Governor to be appended to the reports.
- Option 2: The reports, information or documents required by or under this section shall be transmitted directly to the Children's Ombudsman Board, the Governor, the General Assembly and the Virginia Commission on Youth without preliminary clearances or approvals. The Children's Ombudsman shall, insofar as feasible, provide copies of the annual report to the Children's Ombudsman Board and to the Governor in advance of the date for their submission to allow a reasonable opportunity for comments to be appended to the reports.



Recommendation 18 – Reports

Confidential Records

- Records that are confidential under federal or state law shall be maintained by the Office of the Children’s Ombudsman as confidential by the Ombudsman and shall not be further disclosed, except as permitted by law.

Recommendation 19 – Complaint Procedure

- After initial investigation, the Ombudsman may decline to accept any complaint it determines is frivolous or not made in good faith. The Office of the Children’s Ombudsman shall attempt to resolve the complaint at the lowest appropriate level, unless otherwise provided by law.



Recommendation 20 – Cooperation of Other State Agencies

- The Office of the Children’s Ombudsman may request and shall receive from every department, division, board, bureau, commission, authority, or other agency created by the Commonwealth, or to which the Commonwealth is a party, or from any political subdivision of the Commonwealth, cooperation and assistance in the performance of its duties.

Recommendation 21 – Cooperation Agreements with State Agencies Regarding Advocacy Services for Their Clients

- Notwithstanding the foregoing, state agencies providing services to children may develop and maintain advocacy, client assistance or ombudsman services for their clients, which services may be within the agency and independent of the Office of Children’s Ombudsman. The Office may enter into cooperative agreements with any state agency providing advocacy, client assistance or ombudsman services for the agency’s clients, in order to ensure the protection of and advocacy for children, provided that such agreements do not restrict such authority as the Office may otherwise have to pursue any legal or administrative remedy on behalf of children.



Recommendation 22 – Budget

- Introduce a budget amendment providing the monies necessary for the Office of the Children’s Ombudsman to carry out its duties and responsibilities. In addition, the budget amendment shall include funding for marketing the services of the agency. This budget amendment will set forth the operating budget for the Office of the Children’s Ombudsman, as well as the number of full-time equivalents (FTEs).