



Virginia Commission on Youth

STUDY OF THE ESTABLISHMENT OF AN OFFICE OF CHILDREN'S SERVICES OMBUDSMAN ADVISORY GROUP OF EFFECTIVE STATE AGENCIES

November 6, 2007

1:00 p.m.

5th Floor East Conference Room
General Assembly Building

Members Present

Nancy Bullock, Virginia Dept. of Health
Cynthia Cave, Ph.D., Virginia Dept. of Education
Susan Heck, Virginia Dept. of Juvenile Justice
Rita Katzman, Virginia Dept. of Social Services
Beth McDonald, Office of the Attorney General
Kim McGaughey, Office of Comprehensive Services
Colleen Miller, Office for Protection and Advocacy
Janet Lung, Virginia Dept. of Mental Health, Mental Retardation and Substance Abuse Services
James W. Stewart, III, Dept. of Mental Health, Mental Retardation and Substance Abuse Services
Raymond Ratke, Dept. of Mental Health, Mental Retardation and Substance Abuse Services
Amy M. Atkinson, Virginia Commission on Youth

Members Not Present

Kathleen Harris, Virginia Dept. of Education
John Vollino, Office of the Clerk of the Court of Appeals
Leslie Anderson, Dept. of Mental Health, Mental Retardation and Substance Abuse Services

Commission on Youth Staff Members Present

Amy Atkinson, Leah Hamaker and Cordell Hairston

Agenda Items

I. Welcome and Introductions

Mrs. Atkinson began the meeting at 1:05 p.m. A brief introduction of advisory members, Virginia Commission on Youth staff and audience followed.

II. Review of Agenda and Meeting Goals

Mrs. Atkinson gave a brief overview of the Virginia Commission on Youth—a bi-partisan commission, which consists of six delegates, three state senators, and three members at-large appointed by the Governor—a review of agenda items and meeting goals.

III. 2006 Study Activities and Conclusions

2007 Study Activities

Mrs. Atkinson discussed the 2006 and 2007 Study Activities. In addition, copies of the 2006 Study, *Establishment of an Office of Children's Services Ombudsman* were available for the Advisory Group and audience.

IV. Draft Findings, Recommendations & Group Discussion

Mrs. Atkinson addressed and acknowledged draft wording and language concerns with the Advisory Group. In addition, Ms. Atkinson informed The Advisory Group that the findings and recommendations listed below were not final, but a working document for the Advisory Group's consideration.

Mrs. Atkinson and the Advisory Group reviewed the following recommendations and options:

**Note: Advisory Group comments are in blue.*

Recommendation 1

To create an Office of the Children's Ombudsman (Office).

The Advisory Group expressed the Office of the Children's Ombudsman should be "a separate and independent state agency."

Recommendation 2

Notwithstanding any other provision of state law, the Children's Ombudsman Office shall act independently of any state official, department, or agency and shall be located:

- Option 1: As a separate and independent state agency
- Option 2: Within the Office of the Secretary of Administration
- Option 3: Within the Office of the Secretary of Health and Human Resources
- Option 4: Within the Office of the Inspector General for Mental Health, Mental Retardation and Substance Abuse Services

The Advisory Group indicated that Option 1 was the best option based on the Commission's first year study and suggested adding the Virginia Office of Protection and Advocacy (VOPA) as another option. The Advisory Group thought VOPA was an acceptable option, but the Office would need to make sure the ombudsman had more than just a disabilities function. Mr. Stewart observed that VOPA has litigation powers and raised the question of whether or not this fact may result in agencies being more reticent to share information openly with the Ombudsman if the Ombudsman Office is located at VOPA. Ms. Heck suggested that a clause "It shall report and housed in..." be included if the Office is located within a government agency or office.

Recommendation 3

The Office of the Children's Ombudsman should provide oversight of:

- 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
- 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

The Advisory Group approved this recommendation and chose option 1, but "oversight of" should be changed to "provide advocacy and support."

Recommendation 4

Mission of Office - Investigation

The Office of the Children's Ombudsman shall have the authority to receive and investigate complaints from children, parents, and citizens concerning harmful actions or inactions of any governmental agency (based on Recommendation 3) providing children's services.

- Some members had concern with the investigation powers. It was suggested that to clarify that the investigation authority was to resolve and mediate complaints.
- A question was asked from The Advisory Group, if an Ombudsman will have authority over licensed programs?

Recommendation 5

Mission of Office - Investigation

The Office of the Children's Ombudsman shall be authorized to investigate the acts of state and local administrative agencies adversely affecting children.

The Advisory Group suggest that a definition was needed to clarify who the Ombudsman may investigate.

Recommendation 6

Mission of Office - Reports

The Office of the Children's Ombudsman shall recommend program and policy changes toward the goals of safeguarding the well-being of children to the above agencies.

One member suggested "...program and policy changes..." should be changed to "legislative and regulatory." Another member wanted to include "to the Governor and General Assembly. The Advisory Group wanted to focus more on agency improvement. The Advisory Group approved this recommendation.

Recommendation 7

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.

The Advisory Group wanted to change "...higher standards..." to "continuous quality and improvement." The Advisory Group approved this recommendation.

Recommendation 8

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.

The Advisory Group approved this recommendation and thought it was a great idea to make the general public aware of the Office.

Recommendation 9

Mission of Office – Systemic Improvements

The Office of the Children's Ombudsman shall identify systemic problems that may hinder government or community agencies from achieving comprehensive, positive outcomes for children to the Governor and General Assembly and provide systemic improvement recommendations to achieve comprehensive, positive outcomes for children.

The Advisory Group decided to move Option 1 in Recommendation 10 to Recommendation 9. Ms. Katzman suggested to change "...child protection..." to "child serving" in option 1.

Recommendation 10

Mission of Office - Advocacy

Option 1: Allow the Office of the Children's Ombudsman to seek legislative changes for children and promote positive revisions in the child protection system's policy and procedures.

Option 2: Allow the Office of the Children's Ombudsman to provide advocacy for children and families who place complaints with office.

Option 3: Serve as an impartial, independent third party fact-finder.

- Option 1 was moved to Recommendation 9 and wanted to change "...child protection..." to "child servicing."
- Option 2 was acceptable to The Advisory Group.
- The Advisory Group believed option 3 should be moved to the investigative section and wanted to change or omit the term "...fact-finder."
- Ms. Miller mentioned that the Ombudsman should advocate for family and youth but not side with families without weighing the merits of their case.
- The Advisory Group suggested that another option needed to be added for the Ombudsman to serve as an advocate for a fair process.

Recommendation 11

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.

The Advisory Group approved this recommendation.

Recommendation 12

Operational – Appointment of the Children's Ombudsman

The Children's Ombudsman shall be appointed by the Governor and 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. 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 Advisory Group suggested that another option be given to have the Ombudsman be appointed by a board with both legislative and gubernatorial appointees.

Recommendation 13

Operational - Inspections

The Office of the Children's Ombudsman shall be authorized to provide inspections of and make policy and operational recommendations for state facilities and for providers, for places of confinement of children, for juvenile correctional facilities, and for residential public charter schools in order to prevent problems, abuses, and deficiencies and improve the effectiveness of their programs and services. The Children's Ombudsman shall provide oversight and conduct announced and unannounced inspections of state facilities and for providers, including places of confinement of children, for juvenile correctional facilities, and of residential public charter schools on an ongoing basis, in response to specific complaints of abuse, neglect, or inadequate care, and as a result of monitoring serious incident reports and reports of abuse, neglect, or inadequate care or other information received. The Children's Ombudsman may conduct unannounced inspections as needed. All inspections for licensed mental health treatment units in state correctional facilities shall be conducted by the Office of the Inspector General for Mental Health, Mental Retardation and Substance Abuse Services.

In the last sentence of Recommendation 13, The Advisory Group would like to change "...shall..." to "may." Also, word "oversight" should be changed as in Recommendation 3.

Recommendation 14*Operational – Access to information*

The Office of the Children's Ombudsman shall have access to any and all information, including confidential consumer information, related to the delivery of services to the child in state facilities or served by providers, and to those served by places of confinement for juveniles, juvenile correctional centers, or residential public charter schools. However, the Children's Ombudsman shall not be given access to any proceedings, minutes, records, or reports of providers that are privileged under [§ 8.01-581.17](#), except that the Children's Ombudsman shall be given access to any privileged information in facilities operated by a licensed child welfare agency, in detention homes, and in juvenile correctional centers. All consumer information shall be maintained by the Office of the Children's Ombudsman as confidential in the same manner as is required by the agency or provider from which the information was obtained. Confidential records are not available to the public under the Freedom of Information Act.

[Mrs. Atkinson will work with Staff Attorneys to explore the legalities of using the term "providers." Ms. McDonald stated that certain Code provisions should be cited in the recommendation.](#)

Recommendation 15*Operational - Reports*

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.

[Ms. Katzman expressed interest in knowing if recommended changes could be made to the local DSS. Mr. Ratke discussed state vs. local authority.](#)

Recommendation 16*Operational - Notification*

The Office of the Children's Ombudsman shall notify in a timely manner the attorney for the Commonwealth 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.

[Mr. Stewart noted the language in this recommendation was written similar to the way his office is operated. The Advisory Group approved this recommendation.](#)

Recommendation 17*Operational - Review of Child Related Reports*

The Office of the Children's Ombudsman shall have the authority to review, comment on, and make recommendations about, as appropriate, any reports prepared by the Department of Mental Health, Mental Retardation and Substance Services, the Department of Juvenile Justice, the Department of Social Services, the Department of Education, Department of Health and the Department of Correctional Education, as well as the critical incident data and other statistical information collected by the Departments.

[The Advisory Group rejected this recommendation.](#)

Recommendation 18*Operational – Monitoring of Regulations*

The Office of the Children's Ombudsman shall monitor and participate in the adoption of regulations by the child-serving agencies (Based on [Recommendation 3](#)).

[The Advisory Group rejected this recommendation.](#)

Recommendation 19

Operational – Subpoena Power

The Office of the Children's Ombudsman shall be authorized to issue subpoenas or other writs for the purpose of enforcing the provisions of the Office of the Children's Ombudsman.

The Advisory Group approved this recommendation but suggested that "...or other writs..." needed to be removed.

Recommendation 20

Reports – Annual Report

The Children's Ombudsman shall prepare, not later than November 30 of each year, a report summarizing the activities of the Office to the Governor, General Assembly and the Virginia Commission on Youth. The report shall include:

- Option 1: A description of significant problems, abuses, and deficiencies related to the administration of child programs and services;
- Option 2: A description of the recommendations for corrective actions made by the Office during the reporting period, with respect to significant problems, abuses, or deficiencies identified;
- Option 3: An identification of each significant recommendation, described in previous reports under this section, on which corrective action has not been completed;
- Option 4: 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; and/or
- Option 5: Information concerning the numbers of complaints received and types of investigations completed by the Office during the reporting period.

The Advisory Group would like to change wording in Option 2 and suggested "any barriers to compliance" be added to option 2. The Advisory Group approved this recommendation.

Recommendation 21

Reports – Access to Reports

The Children's Ombudsman shall make copies of their annual report available to the public upon request and at a reasonable cost and shall post the report on its website within 30 days of its final submission to the Governor and General Assembly.

The Advisory Group would like to omit "...upon request..." and wanted to make sure "at a reasonable cost" and also "...shall post the report on its website..." remained in the recommendation. The Advisory Group approved this recommendation.

Recommendation 22

Reports – Notification of Serious Problems

The Children's Ombudsman shall report immediately to the Governor and the Commissioner of the Department of Social Services, the Director of Juvenile Justice, Health, 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.

"DMHMRSAS" and "CSA" should be included in the recommendation.

Recommendation 23

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.

The Advisory Group approved this recommendation

Recommendation 24

Reports – Direct Reporting

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 the General Assembly and

the Virginia Commission on Youth to allow a reasonable opportunity for comments of the Governor to be appended to the reports when they are submitted to the General Assembly and the Virginia Commission on Youth.

The Advisory Group approved this recommendation but made the following suggestions:

- If the Office is appointed by the Governor, then language for the recommendation should remain as drafted.
- If the Office is appointed by a Board, then the language should be changed to reflect that requirement.

Recommendation 25

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 Inspector General and shall not be further disclosed, except as permitted by law.

The Advisory Group suggested changing the language of "...as confidential by the Inspector General..." and approved this recommendation.

Recommendation 26

Reports – Additional Reports

The Office of the Children's Ombudsman's written reports of state facility inspections shall be transmitted to the Governor for review and comment as deemed necessary by the Governor. The Children's Ombudsman shall report on the general conditions, staffing patterns, and access to active and contemporary treatment in each state facility, facility operated by a licensed child welfare agency, detention home, and juvenile correctional center.

The Advisory Group rejected this recommendation.

Recommendation 27

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.

The Advisory Group approved this recommendation but recommended that it be rolled into Recommendation 4 and 5.

Recommendation 28

Complaint Procedure

The complaint procedures shall require the Ombudsman to:

- Option 1: Acknowledge the receipt of a complaint by sending written notice to the complainant within seven working days after receiving the complaint;
- Option 2: When appropriate, provide written notice of a complaint to the appropriate agency within seven days after receiving the complaint. The appropriate state agency shall report its findings and actions no later than 14 days after receiving the complaint;
- Option 3: Immediately refer a complaint made under this section to the Department of Juvenile Justice, Department of Social Services, Department of Education, Office of Comprehensive Services, Department of Correctional Education or any other appropriate governmental agency whenever the complaint involves an immediate and substantial threat to the health or safety of a person being served. The agency receiving the complaint shall report its findings and actions no later than 48 hours following its receipt of the complaint;
- Option 4: Within seven days after identifying a deficiency in the treatment of or provision of services that is in violation of state or federal law or regulation, refer the matter in writing to the appropriate state agency. The state agency shall report on its findings and actions within seven days of receiving notice of the matter;
- Option 5: Advise the complainant and any person affected by the complaint, no more than 30 days after it receives the complaint, of any action it has taken and of any opinions and

recommendations it has with respect to the complaint. The Ombudsman may request any party affected by the opinions or recommendations to notify the Ombudsman, within a time period specified by the Ombudsman, of any action the party has taken on its recommendation;

Option 6: Refer any complaint not resolved through negotiation, mediation, or conciliation to the Child Ombudsman's designee to determine whether further protection and advocacy services shall be provided by the Office; and/or

Option 7: The Children's Ombudsman will not act upon a complaint or initiate an investigation until the complainant has pursued all established administrative review procedures or appeals processes set forth in state law or regulation. However, if the Ombudsman finds that the complaint violates state or federal criminal law, the ombudsman shall immediately report that finding to the appropriate county or district attorney or to the attorney general even if the administrative review procedures have not been exhausted.

The Advisory Group rejected this recommendation.

Recommendation 29

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.

The Advisory Group approved this recommendation.

Recommendation 30

Cooperative 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 the Inspector General. 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.

The Advisory Group omitted "...and independent of the Office of the Inspector General." The Advisory Group agreed that the recommendation's language is meant to be a collaborative effort between agencies. The Advisory Group then agreed to approve this recommendation.

Recommendation 31

Budget - Administrative

Introduce budget language directing the (the Office of the Governor, the Secretary of Health and Human Resources or the Secretary of Administration) to work with the Department of General Services to establish office space and office space needs for the Office of the Children's Ombudsman and work with the Virginia Information Technologies Agency to establish and provide the technological needs of the Office.

The Advisory Group requested to remove Virginia Information Technologies Agency (VITA). If appropriate, VOPA will be added based on the previous recommendation. The Advisory Group approved this recommendation.

Recommendation 32

Budget - Operating

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).

The Advisory Group approved this recommendation.

Recommendation 33*Budget – Office of the Inspector General*

Introduce a budget amendment to provide additional staff for the Office of the Inspector General for Mental Health, Mental Retardation and Substance Abuse for the purpose of hiring two additional inspectors to support inspections and investigates of child related issues.

The Advisory Group rejected this recommendation.

Recommendation 34*Office of the Inspector General*

Amend the *Code of Virginia* to expand the duties and powers of the Inspector General for Mental Health, Mental Retardation and Substance Abuse to inspect facilities licensed by the Department of Social Services and places of confinement for juveniles as defined in § 16.1-249; to access such information concerning those facilities and placements.

The Advisory Group rejected this recommendation.

V. Closing Comments

Mrs. Atkinson informed to The Advisory Group that the Virginia Commission on Youth staff will send the current working draft of the findings and recommendations to the Advisory Group. Mrs. Atkinson and staff will make the recommended changes and send the revised draft to the Advisory Group prior to the Virginia Commission on Youth's meeting. The Commission on Youth's next meeting is scheduled for November 20, 2007. Mrs. Atkinson thanked everyone for their time and input.

The meeting adjourned at 3:30 p.m.