

**FINAL REPORT OF THE  
VIRGINIA COMMISSION ON YOUTH**

# **Establishment of an Office of Children's Services Ombudsman**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



**REPORT DOCUMENT NO. 117**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
2008**





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March 7, 2008

TO: The Honorable Timothy M. Kaine, Governor of Virginia  
  
and  
  
Members of the Virginia General Assembly

In 2006, the Commission on Youth directed Commission on Youth staff to study the Establishment of an Office of Children's Services Ombudsman in Virginia. In Fall 2006, the Commission on Youth directed that staff continue the study for a second year.

This study relates to a 2006 General Assembly legislative proposal, Senate Bill 208, introduced by Senator John Edwards, which proposed the creation of an Office of Children's Services Ombudsman within the legislative branch of state government. The Senate Committee on General Laws and Technology reviewed this bill and unanimously agreed to request the Commission on Youth to further study the impact of the bill. *Establishment of an Office of Children's Services Ombudsman, Report Document 81 (2007)* was published as the Commission on Youth's interim report.

This final report is submitted for your consideration. The Commission on Youth would like to recognize the assistance provided by a number of government agencies, organizations and individuals in completing this study.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William H. Fralin, Jr.", written over a horizontal line.

William H. Fralin, Jr.  
Chairman

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**MEMBERS OF THE VIRGINIA COMMISSION ON YOUTH**

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**From the Virginia House of Delegates\***

William H. Fralin, Jr., Chair  
Mamye E. BaCote  
Robert H. Brink  
Mark L. Cole  
Robert Tata

**From the Senate of Virginia**

Harry B. Blevins  
R. Edward Houck  
Yvonne B. Miller

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from the Commonwealth at Large**

Vanessa Cardenas  
Glen Francis  
Marvin H. Wagner

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Amy M. Atkinson, Executive Director  
Joyce Garner  
Cordell Hairston  
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\* One seat vacant as of April 2008



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## **I. Authority for Study**

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Section 30-174 of the *Code of Virginia* establishes the Commission on Youth and directs it to "...study and provide recommendations addressing the needs of and services to the Commonwealth's youth and their families." This section also directs the Commission to "...encourage the development of uniform policies and services to youth across the Commonwealth and provide a forum for continuing review and study of such services."

Following the 2006 General Assembly Session, the Commission on Youth directed Commission staff to study the Establishment of an Office of Children's Services Ombudsman in Virginia. At the Commission's November 28, 2006 meeting, staff presented the study's findings and recommendations and the members subsequently voted to continue the study for a second year. An interim report of the first year study efforts was published in 2007 as *Establishment of an Office of Children's Services Ombudsman, Report Document 81*. The second year of the study concludes with this report to the 2008 General Assembly and Governor.

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## **II. Members**

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The Commission on Youth is a standing legislative commission of the Virginia General Assembly. It is comprised of twelve members: six Delegates, three Senators and three citizens appointed by the Governor. One House seat is vacant as of January 2008.

Members of the Virginia Commission on Youth are:  
Delegate William H. Fralin, Jr., Chairman, Roanoke  
Senator Harry B. Blevins, Vice Chairman, Chesapeake  
Delegate Mamyé E. BaCote, Newport News  
Delegate Robert H. Brink, Arlington  
Delegate Mark L. Cole, Fredericksburg  
Senator R. Edward Houck, Spotsylvania  
Senator Yvonne B. Miller, Norfolk  
Delegate Robert Tata, Virginia Beach  
Miss Vanessa Cardenas, Arlington  
Mr. Glen Francis, Portsmouth  
Mr. Marvin H. Wagner, Fredericksburg

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## **III. Executive Summary**

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At its May 17, 2006 meeting, the Commission on Youth approved the study of the Establishment of an Office of Children's Services Ombudsman. The study directly relates to a 2006 General Assembly legislative proposal, Senate Bill (SB) 208, which proposed to create an Office of Children's Services Ombudsman within the legislative branch of state government. On January 10, 2006, SB 208 was referred to the Senate Committee on General Laws and Technology. The Senate Committee reviewed the bill and heard testimonies on January 25, 2006. Committee members expressed concerns about the bill, particularly with the provisions addressing child protection and child welfare laws. Committee members unanimously agreed that it would be appropriate to have the Commission on Youth study the impact of this bill. Subsequently, the Committee sent a letter requesting the Commission to study the Establishment of a Children's Services Ombudsman Office in Virginia.



The Commission directed staff to study the impact of SB 208 in three areas:

- Evaluate the need for the establishment of an Office of Children's Services Ombudsman;
- Identify the appropriate administrative structure of an Office of Children's Services Ombudsman; and
- Determine the cost to establish an Office of Children's Services Ombudsman.

As proposed in SB 208, the mission of the Office of Children's Services Ombudsman in Virginia would be to:

- Protect children and parents from harmful agency action or inaction;
- Investigate the acts of state and local administrative agencies adversely affecting children;
- Recommend appropriate changes toward the goals of safeguarding the rights of children, parents and caregivers and
- Promote higher standards of competency, efficiency and justice in the administration of the child protection and child welfare laws, juvenile justice services and education of children.

SB 208 also set forth requirements for receiving complaints.

In subsequent months, the Commission undertook various activities to evaluate the need for the establishment of an Office of Children's Services Ombudsman. Activities included holding three public hearings throughout the Commonwealth and convening multiple advisory group meetings, conducting key informant interviews, conducting extensive research of existing legislative, judicial and executive studies, and analyzing Virginia's current children services complaint systems and viable children's services ombudsman services in other states.

At the November 28, 2006 Commission meeting, Commission staff presented initial findings and recommendations to the Commission. The Commission unanimously agreed to continue the study of the Establishment of an Office of Children's Ombudsman. The Commission further directed staff to present final findings and recommendations from this study to the Commission prior to the 2008 General Assembly Session.

On January 19, 2007, the Commission submitted an interim study report, *Establishment of an Office of Children's Services Ombudsman, Report Document 81*. This report further detailed the Commission's activities, initial findings and research, essential characteristics of a children's services ombudsman, various types of ombudsman services, the need for a children's services ombudsman and current structures in Virginia.

During the 2007 study year, the Commission undertook various activities in order to identify the appropriate administrative structure of an Office of Children's Ombudsman and to determine the cost of such an Office.

At its December 5, 2007 meeting, the Commission on Youth approved recommendations which follow.

### **Recommendation 1**

#### ***Establishment of Office***

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.

### **Recommendation 2**

#### ***Resource Assessment for Office***

Introduce an enactment clause of the legislation creating the Office of the Children's Ombudsman to 1) direct the Office of the Governor to conduct a needs assessment of resources and to work with General Services to provide for the Ombudsman's office space needs and 2) 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**

#### ***Phase-in of Ombudsman Services***

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

- During the first year of operation: Departments of Social Services and Juvenile Justice;
- During the second year of operation: Departments of Social Services, Juvenile Justice, Mental Health, Mental Retardation and Substance Abuse Services, Education, and Correctional Education.; and
- During the third year of operation: 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.

### **Recommendation 4**

#### ***Mission of Office – Investigation***

The Office of the Children's Ombudsman shall be authorized to investigate complaints regarding actions 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.

### **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**

### ***Operational – Management of Office***

The Children’s Ombudsman shall be authorized to operate and manage the Office of the 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 9**

### ***Operational – Appointment of the Children’s Ombudsman***

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.

## **Recommendation 10**

### ***Rights and Powers of the Children’s Ombudsman***

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

1. 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.
2. 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.

### **Recommendation 11**

#### ***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.

### **Recommendation 12**

#### ***Reports – 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:

1. 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;
2. 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;
3. 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;
4. Recommendations for improvements or needed changes concerning the provision of services to children by the child-serving agencies of the state; and
5. Recommendations for systemic improvements in the provision of services to children, including and legislative changes necessary to promote positive changes in policy and procedure.

### **Recommendation 13**

#### ***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.

### **Recommendation 14**

#### ***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 15**

***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 allow a reasonable opportunity for comments of the Governor to be appended to the reports.

**Recommendation 16**

***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 17**

***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 18**

***Cooperative Agreements with State Agencies Regarding Advocacy Services***

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 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 19**

***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).

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**IV. Study Goals and Objectives**

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The second-year plan, which follows, was unanimously approved by the Commission on Youth at its April 3, 2007 meeting.

## **A. STUDY MANDATE**

Legislators, child advocates and others have expressed the need for the establishment of an Office of Children's Services Ombudsman. At its November 2005 meeting, the Commission on Youth directed staff to develop a plan to study this issue.

During the 2006 General Assembly Session, Senator Edwards introduced Senate Bill 208, which proposed to create the Office of Children's Services Ombudsman within the legislative branch. Members of the Senate Committee on General Laws and Technology reviewed Senate Bill 208 and expressed several concerns, particularly regarding the administration of child protection and child welfare laws. Because of the testimony presented at the meeting, the Committee sent a letter requesting the Commission on Youth to study the impact of Senate Bill 208. The Commission formed an Advisory Group during the 2006 study year to:

- Evaluate the need for the establishment of an Office of Children's Services Ombudsman in Virginia;
- Identify the appropriate administrative structure of an Office of Children's Services Ombudsman; and
- Determine the cost of the establishment of an Office of Children's Services Ombudsman.

At the Commission's November 28, 2006 meeting, the Commission unanimously agreed to continue the study to establish an Office of Children's Services Ombudsman.

## **B. IDENTIFIED ISSUES**

The second-year study plan set forth the following issues:

- The current welfare 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 current welfare system does not offer independent reviews of complaints that have been reported by foster children, foster parents, adoptive parents, family members, 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 the child welfare system and child-serving agencies.
- There is a need to protect children and parents from harmful agency action or inaction.
- There is a need to provide a system accountability mechanism and to protect the interests of children and their families who are parties in the child welfare system.
- There is a need to investigate the acts of state and local administrative agencies adversely affecting children.
- There is a need to recommend appropriate changes toward the goals of safeguarding the rights of children and parents.
- There is a need to 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.
- The need to ensure that the Office of Children's Services Ombudsman is not a duplication of services.

## **C. STUDY ACTIVITIES**

The Commission oversaw the following study activities:

- Interviewed stakeholders including guardians ad litem, parents, youth, foster care youth councils, Court Appointed Special Advocates and other interested parties;
- Convened an Advisory Group of effective state agencies;
- Determined the population of children that the Office would serve;
- Identified gaps within the current system;
- Determined the services that the Office would provide;
- Identified the appropriate administrative structure of the Office;
- Determined the basic principles and mission of the Office;
- Determined the cost of the establishment of an Office of Children’s Services Ombudsman; and
- Developed recommendations.

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## **V. Methodology**

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Under the direction of the Commission on Youth, staff undertook the following methodologies for this study.

### **A. ADVISORY GROUP**

During the first year of the study, the Commission convened an Advisory Group of children’s service experts, including representatives from executive branch government agencies, judicial system, advocacy organizations, private citizens and legislative members. The expertise of members included education, child welfare, mental health and juvenile justice agencies. The Advisory Group also included a concerned citizen, a legal expert and a parent representative with a special needs child. Four of the Advisory Group members worked on the original legislative language that proposed the creation of the Office of Children’s Services Ombudsman in Virginia.

The government entities represented on the Advisory Group included:

- Supreme Court of Virginia;
- Virginia Court of Appeals;
- Virginia Department of Education;
- Virginia Department of Juvenile Justice;
- Virginia Department of Medical Assistance Services;
- Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services;
- Virginia Department of Social Services;
- Virginia Office for Protection and Advocacy;
- Virginia Office of Comprehensive Services;
- Virginia Office of the Attorney General; and
- Virginia Commission on Youth members.

The non-government entities represented on the Advisory Group included:

- Mid-Atlantic Juvenile Defender Center, Juvenile Law and Policy Clinic, University of Richmond School of Law;
- Prevent Child Abuse Virginia;
- Voices for Virginia’s Children; and
- Parent to Parent of Virginia.

The membership of the first year Advisory Group is provided as Appendix D. The Advisory Group met in Richmond three times during 2006: July 13, August 9, and September 25. Detailed information about the 2006 Advisory Group may be found in the interim report, *Establishment of an Office of Children's Services Ombudsman, Report Document 81 (2007)*.

In the second year of the study, the Commission established a new Advisory Group, which consisted of state agencies that currently provide services to children, as well as other affected agencies. Those agencies include:

- Office of the Attorney General;
- Office of the Clerk of the Court of Appeals;
- Office of Comprehensive Services for At Risk Youth and Families;
- Department of Education;
- Department of Health;
- Office of the Inspector General for the Department of Mental Health, Mental Retardation and Substance Abuse Services;
- Department of Juvenile Justice;
- Department of Mental Health, Mental Retardation and Substance Abuse Services;
- Office for Protection and Advocacy;
- Office of the Secretary of Health and Human Resources; and
- Department of Social Services.

The membership of the second year Advisory Group's is provided as Appendix E.

At the Advisory Group's November 6, 2007 meeting, the 2006 Interim Report and 2007 study activities were reviewed. The Advisory Group discussed the draft recommendations to establish a Children's Ombudsman Office, the mission of the Office and its operational structure, in anticipation of Commission staff's presentation to the Commission on December 5, 2007. The minutes for the November 2007 Advisory Group meeting are provided as Appendix K.

During the course of the two-year study, the Advisory Groups offered observations related to the establishment of the Office of Children's Ombudsman in Virginia:

- It is essential for the Office to have independence from current child-serving agencies.
- It is important for the Office not to duplicate or interfere in the jobs, processes and mechanisms within the existing children's services structure.
- Since all complaints should be resolved at the lowest possible level, it is essential to maintain the systems that are currently in place.
- It is essential for the Office to be marketed throughout the Commonwealth.
- The Office must be deemed as a necessity within the current system so that financial resources can be secured.
- Opportunities to better serve children across child-serving systems are currently being missed.
- There are a variety of unmet needs among children in Virginia.
- There is a lack of understanding about the current children's services system. There are multiple ways for children to enter into the current system.



## **B. PUBLIC COMMENT**

During the first year of the study, the Commission of Youth directed staff to hold public hearings to provide the public with an opportunity to voice opinions and concerns regarding the establishment of the Office of the Children's Ombudsman and/or issues and options related to the creation of such an Office. The public hearings also provided an opportunity for Commission on Youth members to hear directly from the public about their views, opinions and/or concerns with the establishment of the Office.

In addition, the Commission solicited public input regarding the establishment of the Office of the Children's Ombudsman through roundtable discussions, personal interviews, and written comments. These observations provided the framework for the perceived public need for a Children's Ombudsman Office, as well as a caution that such an Office should not duplicate current services or oversight. A summary of these comments, along with those from the public hearings, is included in Appendix F.

As one of the first steps for the study in 2006, Commission staff conducted interviews to obtain more information about the intent of the 2006 legislation, unmet needs of youth and families and concerns of local entities, as well as to receive input from experts on establishing Children's Ombudsman Offices. Interviewed were the following:

- Bill patron (Senator Edwards);
- Youth representatives of the Virginia Youth Advisory Council;
- Local social service directors;
- Parents of special needs children;
- National Conference of State Legislatures (NCSL) staff; and
- Offices of children's ombudsman in various states.

In the second year of the study, staff focused on interviewing youth, families, advocates and family and youth organizations. The primary purpose of these interviews was to obtain first-hand information about the impact the proposed Office would have on children and on Virginia. In addition, the Commission requested and received written comments from other interested parties regarding the establishment of a Children's Ombudsman Office. The Commission received input from the following interested groups and individuals:

- Court Appointed Special Advocates;
- Children's Center of Virginia;
- The Parent Council;
- Virginia Youth Advisory Council;
- FACES – Family Advocacy, Collaboration, Empowerment, and Support) of Virginia's Families
- The Arc of Virginia's Family Involvement Project;
- Parent to Parent of Virginia;
- Families & Allies of Virginia's Youth;
- Private providers; and
- Youth and concerned citizens.

The summary of those comments is included in Appendix F.

### **C. LITERATURE REVIEW**

As directed by the Commission, staff reviewed background literature pertaining to the concept, purpose and models of Children's Ombudsman Offices. Staff examined the following components of an ombudsman office:

- Basic principles;
- Common characteristics;
- Powers and authority;
- Responsibilities;
- Twelve basic essentials;
- General standards; and
- Other aspects.

As part of the literature review, staff examined information from various sources, including the American Bar Association (ABA), National Conference of State Legislators (NCSL), International Ombudsman Association; and United States Ombudsman Association. A complete listing of all background and literature research sources is provided as Appendix G.

### **D. ANALYSIS OF SENATE BILL 208**

In accordance with the study plan, Commission staff conducted an extensive analysis of SB 208 (Edwards, 2006) during the first year of the study. The analysis included compiling and reviewing background issues of SB 208, researching the intent and expected outcome of the bill, as well as investigating similar legislative proposals. SB 208 is provided as Appendix A.

Commission staff also researched and analyzed two other bills from the 2006 General Assembly Session related to children with disabilities to determine their impact on the establishment of the Office of the Children's Ombudsman:

- SB 241, Individuals with Disabilities Education Act: Burden of Proof;<sup>1</sup> and
- SB 545, Creation of the Scholarship for Disabled Students Program.<sup>2</sup>

SB 241 (Ticer, 2006) would have placed the burden of persuasion on the school division in an administrative hearing concerning the individualized education program of a child with a disability. SB 545 (Stosch, 2006) would have established a scholarship program on behalf of disabled students to provide scholarships to a private school of choice for the student from whom an individual education plan had been written.

### **E. EXISTING CHILDREN'S SERVICE STRUCTURE IN VIRGINIA**

One of the preliminary issues identified in the study plan was the need to ensure that the Office of Children's Ombudsman was not a duplication of services. Accordingly, staff conducted an extensive review and analysis of existing statutory requirements, regulations, programs and complaint processes within the current children's services structure in Virginia. Information on the analysis of the current children's services structure may be found in Appendix H.

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<sup>1</sup> Virginia General Assembly Legislative Information System. 2006. Senate Bill 241. [Online]. Available: <http://leg1.state.va.us/cgi-bin/legp504.exe?061+ful+SB241+pdf>. [June 2006].

<sup>2</sup> Virginia General Assembly Legislative Information System. 2006. Senate Bill 545. [Online]. Available: <http://leg1.state.va.us/cgi-bin/legp504.exe?061+ful+SB525+pdf>. [June 2006].

## **F. CHILDREN'S OMBUDSMAN OFFICES IN OTHER STATES**

During the first year of the study, Commission staff researched states that currently have Ombudsman Offices for children's services. Staff examined several states, including Georgia, Michigan, Tennessee, Rhode Island and Connecticut. Staff contacted these states, conducted extensive research on the ombudsman services offered and examined legislative authorities for the Offices. Appendix I provides a detailed description of all states having a Children's Ombudsman, including states having an Office of the Child Advocate, at the time of this study.

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## **V. Background**

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An extensive analysis of Senate Bill 208 (2006) was conducted as a major study activity. Senator John Edwards introduced SB 208 during the 2006 Virginia General Assembly Session. SB 208 proposed to create, within the legislative branch, the Office of Children's Services Ombudsman. The bill is provided as Appendix A.

As proposed in SB 208, the mission of the Office of Children's Services Ombudsman was to:

- Protect children and parents from harmful agency action or inaction;
- Investigate the acts of state and local administrative agencies adversely affecting children;
- Recommend appropriate changes toward the goals of safeguarding the rights of children and parents; and
- 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.

SB 208 proposed that the Office of Children's Services Ombudsman to be headed by a Director who is appointed by the Joint Rules Committee of the General Assembly. The Director would establish procedures for receiving complaints and conducting investigations for the purposes of resolving and mediating complaints regarding any activity, practice, policy or procedure of any facility or program operated, funded or licensed by any state or local agency, that adversely affected the health, safety, welfare or rights of any child.<sup>3</sup>

SB 208 prescribed several receipt of complaint procedures, including:

- Acknowledgement of the receipt of a complaint by sending written notice to the complainant within seven days after receiving the complaint;
- When appropriate, providing written notice of a complaint to the appropriate agency within seven days after receiving the complaint. The appropriate state agency would then report its findings and actions no later than 14 days after receiving the complaint;
- Immediate referral of a complaint made under this section to the Department of Social Services (DSS) or any other appropriate governmental agency whenever the complaint involved an immediate and substantial threat to the health or safety of a child. DSS or the agency receiving the complaint would report its findings and actions no later than 48 hours following receipt of the complaint;

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<sup>3</sup> Virginia General Assembly Legislative Information System. 2006. Senate Bill 208. [Online]. Available: <http://leg1.state.va.us/cgi-bin/legp504.exe?061+ful+SB208>. [June 2006].

- Within seven days after identifying a deficiency in the treatment of or provision of services to a child that is in violation of state or federal law or regulation, written referral of the matter to the appropriate state agency. The state agency would then report on its findings and actions within seven days of receiving notice of the matter;
- Advise the complainant and any person affected by the complaint, no more than 30 days after it receipt of the complaint, of any action taken and of any opinions and recommendations with respect to the complaint. The Office may request any party affected by the opinions or recommendations to notify the Office, within a time period specified by the Office, of any action the party has taken on its recommendation; and
- Referral of any complaint not resolved through negotiation, mediation or conciliation to the Director or the Director’s designee to determine whether further protection and advocacy services shall be provided by the Office.

SB 208 proposed that the Office possess the authority to make public any of its recommendations and/or opinions that concern “a complaint, the responses of persons and governmental agencies to its opinions or recommendations, and any act, practice, policy or procedure that adversely affects or may adversely affect the health, safety, welfare or rights of a child.”<sup>4</sup> The Office would publicize its functions throughout Virginia and would also maintain a toll-free number wherein complaints could be received and filed.

As outlined in SB 208, information received and maintained by the Office would be confidential and not subject to the provisions concerning disclosure of public records under the Virginia Freedom of Information Act (FOIA). This would include evidence received in connection with specific complaints or investigations. However, records concerning closed cases would be subject to FOIA, but in a manner that would not disclose the identity of any complainant or person.

In accordance with SB 208, the Office would have the ability to enter into cooperative agreements with child-serving state agencies that currently offer advocacy, client assistance or ombudsman services for children. This Office would also receive, upon request, assistance 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.”<sup>5</sup>

As part of the 2006 General Assembly’s bill review process, the Virginia Department of Planning and Budget analyzed the fiscal impact of SB 208. The fiscal impact for establishing the Office, including funding for eight staff positions (Director, Assistant Director, two office service specialists and four health/welfare analysts) is provided as Table 1. The Impact Statement is provided as Appendix B.

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<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

Table 1

**Department of Planning and Budget  
Fiscal Impact Statement of Senate Bill 208 (2006)**

| <b>Fiscal Year</b> | <b>Dollars</b> | <b>FTEs</b> | <b>Source</b> |
|--------------------|----------------|-------------|---------------|
| 2006-2007          | 537,000        | 8           | General Fund  |
| 2007-2008          | 506,000        | 8           | General Fund  |
| 2008-2009          | 519,000        | 8           | General Fund  |
| 2009-2010          | 570,000        | 8           | General Fund  |
| 2010-2011          | 551,000        | 8           | General Fund  |
| 2011-2012          | 565,000        | 8           | General Fund  |

Source: Virginia Commission on Youth Graphic and Analysis of the Senate Bill 208 Fiscal Impact Statement (2006), 2006.

On January 10, 2006, SB 208 was referred to the Senate Committee on General Laws and Technology. The Committee heard testimony and discussed this bill on January 25. There was a consensus among Committee members that SB 208 raised several issues related to the administration of child protection and child welfare laws. Committee members unanimously agreed that it would be appropriate for the Commission on Youth to further study the impact of SB 208.

At its May 17, 2006 meeting, the Commission approved the study of the Establishment of an Office of Children's Services Ombudsman in Virginia. The Commission directed staff to study this issue in three main areas:

- to evaluate the need for the establishment of the Office;
- to identify the appropriate administrative structure of the Office; and
- to determine the cost of the establishment of the Office.

Proposed Language Prior to SB 208

Prior to the introduction of SB 208, several advocates and advocacy groups in Virginia proposed legislative language to create an Office of Children's Services Ombudsman in Virginia. As this language proposed, the ombudsman would be independent, autonomous and impartial to state agencies. The ombudsman would monitor, investigate and review actions of the following state agencies:

- Department of Social Services (DSS);
- Department of Juvenile Justice (DJJ); and
- Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS).

This Office would also have the authority to investigate, monitor and review actions of any juvenile residential facility.

The Ombudsman would be elected by the General Assembly with a majority vote from each house; serve for a five-year term; and have the possibility of being reappointed. As proposed, the Ombudsman would have the authority to:

- Pursue all necessary action including, but not limited to, legal action, for the purpose of protecting the rights and welfare of a child under the jurisdiction, control or supervision of the Department of Social Services (DSS), Department of Juvenile Justice (DJJ) and Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) or any juvenile residential facility;
- Pursue legislative advocacy that is in the best interests of children;
- Review policies and procedures relating to the DSS, DJJ, DMHMRSAS or any juvenile residential facility;
- Review any death of any child under the jurisdiction, control or supervision of the DSS, DJJ, DMHMRSAS or any juvenile residential facility, when the death is suspected to be a result of child abuse or neglect. As a result of the reviews, the Office may recommend policies, measures or procedures to prevent future similar occurrences;
- Investigate, upon receipt of a complaint from a complainant or a person not meeting the definition of a complainant, or on his or her own initiative, any administrative act of a public or private agency, or child caring institution without regard to the finality of the act;
- Enter and inspect without prior notice the premises under the jurisdiction, control or supervision of the DSS, DJJ, DMHMRSAS or any juvenile residential facility;
- Hold informal hearings and request that individuals appear before the Ombudsman and give testimony or produce documentary or other evidence that the Office considers relevant to the matter under investigation;
- Subpoena any person to appear, to give sworn testimony or to produce documentary or other evidence that is reasonably relevant to the matters under investigation. Should the person to whom the subpoena is issued fails or refuses to produce the record or report, the ombudsman may petition the court for enforcement of the subpoena;
- Undertake, participate in or cooperate with persons and agencies in such conferences, inquiries, meetings or studies which might improve the functioning of agencies or lessen the risks that objectionable administrative acts will occur;
- Issue recommendations to the Governor and the General Assembly concerning the need for legislation, policy or practice without prior review by other offices, departments or agencies in the executive branch in order to facilitate rapid implementation of recommendations or for suggested improvements to the recommendations;
- Bring suit in the Court to enforce the provisions of this act; and
- Adopt, promulgate, amend and rescind rules and regulations required for the discharge of the ombudsman's duties, including procedures for receiving and processing complaints, conducting investigations and reporting findings, conclusions and recommendations, pursuant to the requirements of the Virginia Administrative Procedure Act.<sup>6</sup>

#### Senate Bill 1069 (2005)

During the 2005 General Assembly Session, Senator Edwards introduced a bill that paralleled SB 208. SB 1069 proposed to create an Office of Children's Services Ombudsman within the Office of the Secretary of Health and Human Resources. The bill was referred to the Senate Committee on Rehabilitation and Social Services on January 12, 2005 and was stricken at the request of the patron on January 28. SB 1069 is provided as Appendix C.

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<sup>6</sup> Ibid.

Although similar, SB 1069 differs from SB 208 in several ways. Table 2 provides a comparison of the two legislative proposals, with differences indicated in italics.

Table 2

**Comparison of Senate Bill 208 (2006) and Senate Bill 1069 (2005)  
Establishment of an Office of Children’s Services Ombudsman**

| <b>SB 208 (2006)</b>   | <b>SB 1069 (2005)</b>  |
|--|--|
| Proposed for the Office to be located within the <i>legislative branch</i> .   | Proposed for the Office to be located within the <i>executive branch</i> .   |
| Mission of the Office would include promoting higher competency in child protection and child welfare laws, <i>juvenile justice services and education of children</i> .   | Mission of the Office would include promoting higher competency in child protection and child welfare laws.  |
| Director appointed by the <i>Joint Rules Committee of the Virginia General Assembly</i> .  | Director appointed by the <i>Secretary of Health and Human Resources</i> .   |
| As proposed, the director shall establish procedures for receiving complaints and conducting investigations for the purposes of resolving and mediating complaints regarding any activity, practice, policy or procedure of any facility or program operated, funded or licensed by any state or local agency, that is adversely affecting the health, safety, welfare or rights of any child. | As proposed, the director shall establish procedures for receiving complaints and conducting investigations for the purposes of resolving and mediating complaints regarding any activity, practice, policy or procedure of any facility or program operated, funded or licensed by <i>the Department of Social Services or any other</i> state or local agency, that is adversely affecting the health, safety, welfare or rights of any child. |

Source: Virginia Commission on Youth Graphic and Analysis of SB 208 (2006) and SB 1069 (2005), 2006.

Acknowledging and honoring the request of the Senate Committee of General Laws and Technology, the Virginia Commission on Youth, at its May 17, 2006 meeting, approved the study of the Establishment of an Office of Children’s Services Ombudsman. After receiving the study findings and recommendations at its November 28, 2006 meeting, Commission members unanimously agreed to continue the study for a second year. An interim report was submitted to the Governor and General Assembly in January 2007 and subsequently published as *Establishment of an Office of Children’s Services Ombudsman, Report Document 81*.

Over the course of the two-year study, the Commission undertook various activities to evaluate the need for the establishment of an Office of the Children’s Ombudsman at outlined in the study methodology section of this report. At the December 5, 2007 meeting, the Commission recommended that legislation be introduced during the 2008 General Assembly Session to establish an Office of the Children’s Ombudsman.

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## VII. Overview

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### A. PRINCIPLES OF AN OMBUDSMAN

An ombudsman is defined as a government official “appointed to receive and investigate complaints made by individuals against abuses or capricious acts of public officials.”<sup>7</sup> It is also defined as a person who “investigates reported complaints (as from students or consumers), reports findings and helps to achieve equitable settlements.”<sup>8</sup>

According to the United States Ombudsman Association (USOA), an ombudsman is “a public official appointed by the legislature to receive and investigate citizen complaints against administrative acts of government. These acts may or may not include the administrative acts of the judiciary or the legislature, depending upon the statute.”<sup>9</sup>

Traditionally, a government ombudsman is appointed by the legislative, judicial or executive branch of government and is independently located to monitor the delivery of services to citizens. These services may include, but are not limited to, services provided to children, students, parents, the elderly and government workers.

Ombudsman programs tend to vary, especially in the functions, authorities and jurisdiction of the programs. Unfortunately, there is no one ombudsman program that is the standard for all ombudsman programs. Nevertheless, there are four basic principles and several characteristics that are typical for all ombudsman programs:

- Independence;
- Impartiality;
- Confidentiality; and
- Credible review process.<sup>10</sup>

These are discussed in the paragraphs which follow.

#### Independence

It is essential for an ombudsman to be independent from other organizations and entities, especially from those organizations and entities where complaints are being filed. The independence should be in function, structure and appearance, thus enabling the ombudsman to:

- Report findings and make recommendations based exclusively on facts, law, reason and fairness; and
- Be free from external influences and control.

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<sup>7</sup> Merriam-Webster Dictionary. *Ombudsman*. [Online]. Available: <http://www.m-w.com/dictionary/ombudsman>. [May 2006].

<sup>8</sup> Ibid.

<sup>9</sup> U.S. Ombudsman Association (USOA). (1997). *Governmental Ombudsman Standards*. [Online]. Available: [http://www.usombudsman.org/documents/PDF/References/USOA\\_STANDARDS.pdf](http://www.usombudsman.org/documents/PDF/References/USOA_STANDARDS.pdf). [June 2006].

<sup>10</sup> Gottehrer, D., & Hostina, M. United States Ombudsman Association. *Essential Characteristics of a Classical Ombudsman*. [Online]. Available: [http://usoa.non-profitsites.biz/en/references/more\\_references/essential\\_characteristics.cfm](http://usoa.non-profitsites.biz/en/references/more_references/essential_characteristics.cfm). [May 2006].



According to the International Ombudsman Association (IOA), an ombudsman should:

- Hold no other position within the organization which might compromise independence;
- Exercise sole discretion over whether or how to act regarding an individual's concern, a trend or concerns of multiple individuals over time. [The ombudsman] may also initiate action on a concern identified through the [ombudsman's] direct observation;
- [Possess] access to all information and all individuals in the organization, as permitted by law; and
- [Possess] authority to select...staff and manage...budget and operations.<sup>11</sup>

This independence eliminates any potential or existing prejudice and partiality towards or against a particular entity and/or agency. Ensuring that the Office operates as an independent entity to the greatest degree practicable is a key factor in whether the ombudsman will be effective and credible to the public. The authoritativeness and permanency of an ombudsman's position and Office serve as two important criteria to measure this standard.<sup>12</sup>

The USOA recommends that an ombudsman be appointed by an entity not subject to the ombudsman's jurisdiction and which does not have operational or administrative authority over the programs or agencies that are subject to its jurisdiction.<sup>13</sup> The U.S. Ombudsman Association further recommends that the ombudsman's appointment be for a defined term to give the ombudsman the ability to conduct investigations and make reports without external pressures.<sup>14</sup> In addition, the ombudsman should be protected from retaliatory or political retribution; therefore, it is recommended that the ombudsman should be removed from his term of office only for just cause.<sup>15</sup>

### Impartiality

Along with being independent, the ombudsman should also be impartial. Impartiality enables the ombudsman to:

- Advocate for a fair process;
- Review and receive complaints objectively; and
- Ensure neutrality.

According to the IOA, an ombudsman should:

- Be neutral, impartial and unaligned;
- Strive for impartiality, fairness and objectivity in the treatment of people and the consideration of issues. The [ombudsman] advocates for fair and equitably administered processes and does not advocate on behalf of any individual within the organization;
- Posses designated neutral reporting to the highest possible level of the organization and operating independent of ordinary line and staff structures. The [ombudsman] should not report to nor be structurally affiliated with any compliance function of the organization;

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<sup>11</sup> International Ombudsman Association (IOA). 2004. *Guidance for Best Practices and Commentary on the American Bar Association Standards for the Establishment and Operation of Ombudsman Offices, Revised February 2004*. [Online]. Available:

[http://www.ombudsassociation.org/pdfs/GuidanceOnABAStandards%20\\_final.pdf](http://www.ombudsassociation.org/pdfs/GuidanceOnABAStandards%20_final.pdf). [June 2006].

<sup>12</sup> U.S. Ombudsman Association (USOA). *Governmental Ombudsman Standards*. [Online]. Available: [http://www.usombudsman.org/documents/PDF/References/USOA\\_STANDARDS.pdf](http://www.usombudsman.org/documents/PDF/References/USOA_STANDARDS.pdf). [January 2007].

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

- Not be aligned with any formal or informal associations within the organization in a way that might create actual or perceived, and incur no gain or loss from, the outcome of an issue;
- Have the responsibility to consider the legitimate concerns and interests of all individuals affected by the matter under consideration; and
- Help develop a range of responsible options to resolve problems and facilitate discussion to identify the best options.<sup>16</sup>

### Confidentiality

An ombudsman should also maintain a high level of confidentiality. Citizens need to know that information shared with the ombudsman will remain confidential, allowing the ombudsman to:

- Protect sensitive information;
- Encourage citizens to make complaints; and
- Encourage witnesses and citizens to speak openly and honestly.

Confidentiality also provides the ombudsman with the privilege and discretion to keep cases and information confidential. The ombudsman must:

- Hold all communications with those seeking assistance in strict confidence and take all reasonable steps to safeguard confidentiality;
- Not testify in any formal process inside the organization and resist testifying in any formal process outside of the organization, even if given permission or requested to do so;
- If the [ombudsman] pursues an issue systemically, the [ombudsman] does so in a way that safeguards the identity of individuals;
- Keep no records containing identifying information on behalf of the organization;
- Maintain information in a secure location and manner, protected from inspection, and has a consistent and standard practice for the destruction of such information;
- Prepare any data and/or reports in a manner that protects confidentiality; and
- Neither act as agent for, nor accept notice on behalf of, the organization.<sup>17</sup>

### Credible Review Process

An ombudsman must also have a credible review process in order to:

- Provide for a thorough and timely review process; and
- Enable 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.

The person who serves as an ombudsman must also possess credibility. This person should have the trust and respect of the community, as well as operate in integrity, fairness and non-partisanship. The ombudsman should also be appointed unilaterally.

## **B. ESSENTIAL CHARACTERISTICS OF A CHILDREN'S OMBUDSMAN**

The American Bar Association (ABA) recommends twelve essential characteristics for ombudsman services:

- Authority of the ombudsman to criticize all agencies, officials and public employees except courts and their personnel, legislative bodies and their personnel, and the chief executive and his personal staff;

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<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

- Independence of the ombudsman from control by any other officer, except for his responsibility to the legislative body;
- Appointment by the legislative body or appointment by the executive with confirmation by a designated proportion of the legislative body, preferably more than a majority, such as two-thirds;
- Independence of the ombudsman through a long term, not less than five years, with freedom from removal except for cause, determined by more than a majority of the legislative body, such as two-thirds;
- A high salary equivalent to that of a designated top officer;
- Freedom of the ombudsman to employ his own assistants and to delegate work to them, resolve restraints of civil service and classifications acts;
- Freedom of the ombudsman to investigate any act or failure to act by any agency, official or public employee;
- Access of the ombudsman to all public records that may be relevant to an investigation;
- Authority to inquire into fairness, correctness of findings, motivation, adequacy of reasons, efficiency and procedural propriety of any action or inaction by any agency, official or public employee;
- Discretionary power to determine what complaints to investigate and to determine what criticisms to make or to publicize;
- Opportunity for any agency, official or public employee criticized by the ombudsman to have advance notice of the criticism and to publish with the criticism an answering statement; and
- Immunity of the ombudsman and his staff from civil liability on account of official action.<sup>18</sup>

### Responsibilities and Authority

The responsibilities and authority for an Ombudsman's Office vary. As demonstrated later in this report, the responsibilities and authority of such an Office can be dependent on the specialty of the ombudsman, such as a children's service ombudsman versus an educational ombudsman; and/or the type of ombudsman, such as government ombudsman versus private ombudsman.

Nevertheless, some of the more common responsibilities and authorities of an Ombudsman Office include:

- Conducting investigations;
- Receiving and handling complaints;
- Making public reports;
- Providing systemic recommendations;
- Advocating ; and
- Monitoring of legislative changes.

While ombudsmen are not first responders, they do serve in a monitoring role to ensure that agencies are responding appropriately to the needs of children and families. When a complaint is filed with the Children's Ombudsman, the ombudsman job is to investigate the

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<sup>18</sup> American Bar Association (ABA) Section of Administrative Law & Regulatory Practice. 1997. *Model Ombudsman Act for State Governments*. [Online]. Available: <http://www.abanet.org/adminlaw/ombuds/usoamodel1.html>. [June 2006].

complaint to determine what may have gone wrong, work to resolve the matter, and strive to prevent similar problems from occurring in the future.<sup>19</sup>

Regardless of the range of responsibilities and authority of the ombudsman, an ombudsman tends to be a paradox. The ombudsman usually has no enforcement or disciplinary power. An ombudsman is simultaneously both powerful and powerless. According to USOA,

The ombudsman can investigate complaints, choosing which are the most important and initiate investigations without complaints...They can determine whether a complaint is justified and seek remedies for it. They can compel people to talk to them and produce records...But they cannot make an agency do anything. They can, however, make their reports public. Aside from choosing what questions to ask and issuing subpoenas, their powers are mainly persuasion and publicity.<sup>20</sup>

### Characteristics of a Children's Ombudsman

A children's ombudsman is unique for many reasons. Such an Office can:

- Provide a system-accountability mechanism for all child-serving agencies, as well as child-serving programs, placements and departments.
- Provide a method of strengthening and promoting public confidence in the child welfare system.
- Provide system-wide improvement recommendations to benefit children and families.
- Serve as a child advocate by ensuring the rights of children and the safety of abused and neglected children.<sup>21</sup>

### **C. TYPES OF OMBUDSMAN OFFICES**

There are several types of ombudsman programs. According to the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention (OJJDP), these types can be categorized in one of two ways.

- Private ombudsman programs:
  - External advocacy and individual advocacy; and
- Public ombudsman programs:
  - State ombudsman programs;
  - Local ombudsman programs;
  - Inspector general and internal affairs programs; and
  - U.S. Department of Justice, Civil Rights Division.<sup>22</sup>

In addition to the public ombudsman programs, many states have human rights and/or civil rights programs that can serve in a similar capacity.

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<sup>19</sup> American Bar Association (ABA) Governmental Affairs Office. 2007. *Testimony Before the House Children and Youth Committee of the Pennsylvania State Legislature Regarding PA HB1709 Establishing the Commonwealth's Children's Ombudsman and the Commonwealth Children's Ombudsman Office, Presented by Anne Marie Lancour, American Bar Association, November 1, 2007.* [Online]. Available: [http://www.abanet.org/poladv/letters/famlaw/2007nov1\\_pacop\\_t.pdf](http://www.abanet.org/poladv/letters/famlaw/2007nov1_pacop_t.pdf). [June 2006].

<sup>20</sup> U.S. Ombudsman Association (USOA). 1997. *Public Sector Ombudsman.* [Online]. Available: [http://usoa.non-profitsites.biz/en/references/public\\_sector.cfm](http://usoa.non-profitsites.biz/en/references/public_sector.cfm). [June 2006].

<sup>21</sup> Ibid.

<sup>22</sup> U.S. Department of Justice Office of Juvenile Justice and Delinquency Prevention (OJJDP). *State Ombudsman Programs.* [Online]. Available: <http://www.ncjrs.gov/pdffiles1/ojjdp/204607.pdf>. [June 2006].

### Private Ombudsman Programs

External advocates for children are organizations that strive to protect service delivery systems for children's services. These organizations, which exist primarily at the national level, work to promote the improvement of the children's service system for all children. Such organizations are independent of government agencies and operations (federal, state and local), as well as independent of service delivery systems (such as child welfare and juvenile justice systems). External advocates may also conduct investigations of child-abuse, monitor legislative proposals, make system improvement recommendations and advocate legislatively.

Individual advocacy is another private ombudsman structure. Unlike external advocates, individual advocates are usually associated with a particular service delivery system (such as child welfare or juvenile justice system) and with a specific need of a child. This advocate works directly with children to navigate through the system, to advocate for the child by ensuring that the child receives needed services and to provide impartial information on behalf of the child. An example of an individual advocate is a Court Appointed Special Advocate (CASA).

### Public Ombudsman Programs

According to the OJJDP, there are four main types of public ombudsman programs related to children's services. Unlike a private ombudsman program, the public programs are those that have a formal grievance process to address complaints about mistreatments within an institution. These Offices also receive complaints against government agencies and aid in the relief of the individual filing the complaint. These programs are established by a particular branch of government.

One of the main types of public ombudsman programs is the state's Ombudsman Office. As of this date, there are approximately 30 states having some type of children's ombudsman office. This includes states that have a Child Advocate Office. A complete listing of these states is provided as Appendix I.

The role of the state ombudsman is to monitor and protect services on a state level. The role and authority of these programs can vary from state to state. There is no one model for state ombudsman programs. Some state ombudsman programs are located outside of child-serving agencies, while other programs are located within child-serving agencies. Some focus on a special population of children (such as children within the juvenile justice system), while other programs work with all children. Similar to state ombudsman programs, local ombudsman programs can vary depending on the jurisdiction that established the program and the roles and authorities granted to the ombudsman.

## **D. EXISTING OMBUDSMAN OFFICES IN VIRGINIA**

There are numerous public ombudsman programs within Virginia, including:

- Workers' Compensation Commission Ombudsman;
- Department of Corrections Ombudsman;
- Department of Education Ombudsman;
- Department of Human Resources Management Ombudsman;
- Department of Juvenile Justice;
- State Long-term Care Ombudsman;
- Managed Care Ombudsman (State Corporation Commission);
- Small Business Assistance Program Ombudsman (Department of Environmental Quality);

- Office for Protection and Advocacy Ombudsman Services for Persons with Disabilities;
- University of Virginia Ombudsman; and
- Criminal Injuries Compensation Fund Crime Victim’s Ombudsman.

### E. CHILDREN’S OMBUDSMAN OFFICES IN OTHER STATES

The momentum to establish children’s ombudsman and child advocate programs in the United States has increased as states seek to obtain valuable information regarding problems within the child services system and to provide possible solutions to those problems. According to the Mid-Atlantic Juvenile Defender Center, Juvenile Law and Policy Clinic at the University of Richmond School of Law, approximately 27 states have some type of children’s ombudsman service. A listing of these states is provided in Table 3.

Table 3

#### Children’s Ombudsman Offices in the United States

|                |               |               |
|----------------|---------------|---------------|
| Alaska         | Arizona       | California    |
| Colorado       | Connecticut   | Delaware      |
| Florida        | Georgia       | Illinois      |
| Kansas         | Kentucky      | Maine         |
| Maryland       | Massachusetts | Michigan      |
| Missouri       | Nebraska      | New Hampshire |
| New Jersey     | New Mexico    | New York      |
| Oklahoma       | Oregon        | Rhode Island  |
| South Carolina | Tennessee     | Texas         |

Source: Virginia Commission on Youth Graphic of the Mid-Atlantic Juvenile Defender Center, Juvenile Law and Policy Clinic, University of Richmond School of Law, 2006.

The jurisdiction of Children’s Ombudsman Offices varies from state to state. New Jersey’s Office of the Child Advocate, for example, extends jurisdiction to all public and private settings in which a child has been placed by a State or county agency or department.<sup>23</sup> The Child Advocate has the authority to investigate juvenile detention centers, group homes, foster homes, residential treatment centers and shelters. Michigan, however, gives its Office of the Children’s Ombudsman the authority to investigate only those children who are being served in Michigan’s child welfare system. Appendix I provides detailed information about the 30 states which offer ombudsman services for children, including their location, jurisdiction and funding structure.

States with a Children’s Ombudsman Office have found that many of the complaints the office receives are often resolved by referring the complaint to the appropriate child-serving agency. The Office of the Child Advocate in Connecticut has found that approximately three-fourths of their complaints are resolved by referring the complaint-making citizen to the

<sup>23</sup> State of New Jersey Office of the Child Advocate. *About the OCA*. [Online]. Available: <http://www.state.nj.us/childadvocate/about>. [January 2007].

appropriate agency.<sup>24</sup> Michigan, Tennessee and Washington also report significant information and referral rates of between 34% and 67% to citizens making complaints.<sup>25</sup>

Commission staff focused specifically on model children's ombudsman offices of Rhode Island, Michigan, Connecticut, Georgia and Tennessee. A summary of these states' ombudsman programs follows.

## RHODE ISLAND

The Office of the Child Advocate serves as an independent ombudsman, monitoring the Department of Children Youth and Families (DCYF). The Office has the statutory power to take legal action against the DCYF.<sup>26</sup>

The Office consists of a Child Advocate, a staff of five (2 attorneys, senior monitor and evaluation specialist, chief field investigator, administrative secretary/office manager), as well as volunteer student interns who, in turn, report to the Child Advocate.

The Office provides the following services:<sup>27</sup>

- Guardian ad litem
- Project Victim Services
- Family Reviews and Investigations
- Child Fatalities
- Investigations
- Night to Night Placement Monitoring
- Institutional Abuse Reviews and Investigations
- Facilities Review
- Monitoring the Rhode Island Training School
- Public Education
- Children's Policy Development
- Legislative Advocacy
- Litigation

## MICHIGAN

The Office of Children's Ombudsman is an independent state agency derived from *The Children's Ombudsman Act, 1994 Public Act*—amended January 2005. It has the authority to take legal action and investigate complaints about children in Michigan's child welfare system. The Ombudsman is appointed by the Governor.

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<sup>24</sup> Connecticut Office of the Child Advocate Advisory Committee. 2006. *Evaluation of the Effectiveness of the Office of the Child Advocate*. [Online]. Available: <http://www.ct.gov/oca/cwp/view.asp?a=1301&q=254888>. [January 2008].

<sup>25</sup> Michigan Office of the Children's Ombudsman. 2006. *Annual Report 2005-2006*. [Online]. Available: <http://michigan.gov/oco>; The Ombudsman for Tennessee's Children in State Custody & Kinship Care: *Ombudsman Program Annual Report (2004)*. [Online]. Available: <http://www.state.tn.us/tccy/ombuds.html>; and Washington Office of the Family and Children Ombudsman. *2006 Annual Report*. [Online]. Available: <http://www.governor.wa.gov/ofco/reports/default.asp>. [January 2008].

<sup>26</sup> Rhode Island Office of the Child Advocate. 2006. *Protect the Children Protect the Future: The Rhode Island Office of the Child Advocate 2006 Annual Report*. [Online]. Available: <http://www.child-advocate.ri.gov/documents/2006%20OCA%20Annual%20Report.pdf>. [January 2008].

<sup>27</sup> Ibid.

The Office has 12 full-time employees—Ombudsman, eight investigators, supervising investigator, two administrative staff—as well as two offices. It was appropriated \$1,303,900 for Fiscal Year 2006. From 2001-2006, the Ombudsman office received 4,101 complaints.<sup>28</sup>

The Office collaborates with the Michigan Department of Human Service (MDHS) Office of Family Advocate and Central Office, community organizations and training opportunities dealing with child welfare issues.

## CONNECTICUT

The Office of the Child Advocate is an independent office, reporting to the Department of Administrative Services.

The Office has a full-time staff of ten employees (Child Advocate, Associate Child Advocate, six Assistant Child Advocates, Monitor, Administrative Assistant, and Processing Technician), as well as statutory authority to offer litigation.<sup>29</sup> The Office has a Fiscal Year 2005-06 budget of \$989,716.<sup>30</sup>

The Office provides the following services:<sup>31</sup>

- Trends in Citizen Concerns
- Facility and Program Reviews
- Special Investigations
- Child Fatality Review
- Prevention
- Public Policy
- Community Outreach
- Interagency Collaboration—Department of Correction (CDC), Department of Mental Retardation (DMR) and Department of Children and Families (DCF)

## GEORGIA

Operating within the Georgia's existing protective services system, the Office of the Child Advocate is an independent entity.

The Office consists of a Director, Deputy Director/Chief Investigator, five Evaluators, Victim Advocate Program Manager, Referral Specialist and an Administrative Assistant.

The Office provides the following services:

- Investigations (audits, identified practice concerns, foster care),
- Advocacy (policy recommendations, Special Assistant Attorneys General (SAAGs), Victim Advocacy Grant); and,
- Education programs for the State.<sup>32</sup>

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<sup>28</sup> Michigan Office of the Children's Ombudsman. 2006. *Office of Children's Ombudsman 2005-2006 Annual Report*. [Online]. Available: [http://www.michigan.gov/documents/oco/Ombudsman\\_Ann\\_Rep\\_06\\_215202\\_7.pdf](http://www.michigan.gov/documents/oco/Ombudsman_Ann_Rep_06_215202_7.pdf). [January 2008].

<sup>29</sup> Connecticut Office of the Child Advocate. 2006. *The Office of the Child Advocate 2005-2006 Annual Report*. [Online]. Available: <http://www.ct.gov/oca/lib/oca/annualreport2006.doc>. [January 2008].

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.



## TENNESSEE

The Ombudsman operates as an independent entity under the supervision of the Tennessee Commission on Children and Youth (TCCY) Juvenile Justice Unit. The Ombudsman has the statutory authority to review make recommendations for improvement for children in the foster care system (Department of Children's Services (DCS) or DCS kinship care/relative. The Ombudsman can access records, interview children, families, state and private agency staff involving the treatment and concern of state custody child or family. In addition, the office accepts referrals from children, families, state workers and private agency staff.

The TCCY Ombudsman Program does not do the following:

- Participate in a referral or open a case that is imminently bound for court and/or petitions are filed regarding child custody, termination of parental rights, abuse, neglect and dependent issues.
- Act as an attorney, provide legal advice or offer counsel.
- Serve as an agent of law enforcement.
- Find individual fault or resort to placing blame on an individual.

The following are from the TCCY Ombudsman Bi-Annual Report:<sup>33</sup>

- The Ombudsman office received 933 referrals, of which 48% (476) active cases and 53% (517) are information-only cases, from January 2001 to December 2004.
- Active cases—child in state custody or kinship care/relative caregiver program; Information-only cases—referrals are closed and children not in state custody.
- No referrals are turned down.
- Relationship and cooperation has improved between the TCCY Ombudsman and DCS regional offices and 9 out of 12 regions have arranged an ombudsman point person.
- Within 1-2 business days, the Ombudsman responded to all referrals received through electronic, voice and regular mail systems.

Additionally, there are, as of this study date, several countries that have ombudsman services for children:

- |             |                  |
|-------------|------------------|
| ▪ Austria   | ▪ New Zealand    |
| ▪ Belgium   | ▪ Norway         |
| ▪ Canada    | ▪ Sweden         |
| ▪ Guatemala | ▪ United Kingdom |

Countries having non-governmental ombudsman programs for children include Finland, Israel and the United Kingdom.<sup>34</sup>

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<sup>32</sup> Georgia Office of the Child Advocate. 2007. *For the Protection of Children: Annual Report FY 2006 and 2007*. [Online]. Available: [http://gachildadvocate.org/vgn/images/portal/cit\\_1210/55/9/9038669706\\_07\\_annualreport.pdf](http://gachildadvocate.org/vgn/images/portal/cit_1210/55/9/9038669706_07_annualreport.pdf). [January 2008].

<sup>33</sup> *The Ombudsman for Tennessee's Children in State Custody & Kinship Care: Ombudsman Program Annual Report*. (January 2005). [Online]. Available: <http://www.state.tn.us/tccy/Obud2004.pdf>. [January 2008].

<sup>34</sup> American Bar Association (ABA) Center on Children and the Law. 1993. *Establishing Ombudsman Programs for Children and Youth: How Government's Responsiveness to Its Young Citizens Can Be Improved*. 40-60.

## F. NEEDS ADDRESSED BY CHILDREN'S OMBUDSMAN OFFICES

Several organizations and advocacy groups have conducted research on the need for states to establish ombudsman programs, especially children's ombudsman programs. These needs tend to focus on two main areas: social services and juvenile justice, with further concentration on child protective services, including foster care, juvenile facilities and group homes. These program areas typically serve children who are in government custody.

OJJDP cites several reasons why children's ombudsman programs are needed:

- Large numbers of cases and delays make the grievance process cumbersome; there is little time for proper investigation of complaints;
- Some disputes are very complex and need more attention than a cursory review can provide;
- Reliance on internal resolution of complaints may lead the public to perceive that fact-finders are not really neutral;
- Service providers cannot be insulated from the pressures of their agencies and may not be truthful in expressing grievances or complaints; they may not have the skill or will to judge critically what is wrong or make recommendations;
- Some internal investigators, in fact, may be serving their agencies' desire to keep complaints "under control"<sup>35</sup>; and
- By reviewing complaints over time, patterns can be detected that a specific agency may not have recognized.<sup>36</sup>

Additionally, ombudsman programs have the potential to:

- Safeguard individual children;
- Generate early warnings that can alert policymakers and program managers to the need to intervene and resolve problems before they become systemic or result in unlawful activities, public scandal, costly lawsuits or harm to the youth;
- Protect the rights of youth in custody and work to ensure public accountability; and
- Alert state oversight agencies and the public about programs, procedures and other factors that may adversely affect the health, safety, welfare or rights of resident children and youth.<sup>37</sup>

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## VIII. Evaluation of Need for a Virginia Children's Ombudsman Office

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As one means of evaluating the need to establish an Office of Children's Services Ombudsman within Virginia, the Commission on Youth directed staff in 2006 to hold public hearings. The purpose of these hearings was to provide the public with an opportunity to voice opinions and/or concerns regarding the establishment of an Office of Children's Services Ombudsman and/or issues and options related to the creation of such an Office.

Most of the public comments the Commission received were from individuals with a social services background, including adoption, foster care, professional social workers and social

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<sup>35</sup> Davidson, H. 1994. Applying an International Innovation to Help U.S. Children: The Child Welfare Ombudsman. *Family Law Quarterly* 28:117. [Online]. Available: [www.ncjrs.gov/pdffiles1/ojjdp/204607.pdf](http://www.ncjrs.gov/pdffiles1/ojjdp/204607.pdf). [June 2006].

<sup>36</sup> Ibid.

<sup>37</sup> U.S. Department of Justice Office of Juvenile Justice and Delinquency Prevention (OJJDP). *State Ombudsman Programs*. Jones, J., and Cohn, A. [Online]. Available: [www.ncjrs.gov/pdffiles1/ojjdp/204607.pdf](http://www.ncjrs.gov/pdffiles1/ojjdp/204607.pdf). [June 2006].

services in other states. The Commission also received comments from individuals with a background in education, the correctional system and the Comprehensive Services Act. In total, 26 comments were submitted to the Commission during the first year. Additional comments were received in the second year as part of staff interviews, written comments in response to draft study recommendations and testimony before 2008 General Assembly legislative bodies. Appendix F provides a summary of the public comments.

Proponents of the establishment of a Children's Ombudsman Office stated that such an Office would serve as a valuable resource to the children and families receiving services through the child-service system. An Ombudsman would provide independent oversight of state government agencies and would serve as a place where individuals and private organizations could call to seek guidance and assistance in confidence. Further, the Office could encourage overall systematic improvements for the child-service system.

Conversely, concerns were expressed about the potential effects that such an Office would create. Stakeholders, citizens and human service workers who testified at the public hearings expressed concern that creation of such an Office would overburden an already overburdened child welfare system, resulting in a diminishing of service capacity and responsiveness, rather than improvement. Critics also stated that there are many processes and avenues of accountability already in place for agencies delivering services to youth and families.

In addition to receiving public hearing comments, Commission staff met in 2006 with various organizations and individuals about concerns related to establishing an Office in Virginia. Commission staff presented at the November 16, 2006 statewide Local Department of Social Services (LDSS) Directors' meeting. The comments provided to Commission staff included:

- The Commission should continue to study for a second year;
- The role of the Office of the Children's Ombudsman must be carefully defined to ensure that the services offered by the Office of Children's Services Ombudsman provides would not be a duplication of existing services;
- There was no objection to the oversight role of the Office of Children's Services Ombudsman;
- There was a great concern about the possible subpoena power of the Office of Children's Services Ombudsman, as well as the background qualifications of the personnel;
- The courts currently provide an extraordinary oversight of the system; and
- There was a fear that this Office of Children's Services Ombudsman would require additional time from human service workers which, in turn, would decrease the time available for workers to spend with children and their families.

In the second year of the study, Commission staff conducted interviews with key individuals associated with the establishment of the Office of Children's Ombudsman. The primary purpose of these interviews was to obtain first-hand information about the impact that the proposed Office would have on children and Virginia. The Commission received input from the following groups and individuals:

- Court Appointed Special Advocates;
- Children's Center of Virginia;
- The Parent Council;
- Virginia Youth Advisory Council;
- FACES (Family Advocacy, Collaboration, Empowerment and Support) of Virginia's Families;

- The Arc of Virginia’s Family Involvement Project;
- Parent to Parent of Virginia;
- Families & Allies of Virginia’s Youth;
- Private providers; and
- Youth and concerned citizens.

Each of the groups listed indicated support for a Children’s Ombudsman Office and indicated that an Office which would provide an important step towards protecting the safety and well-being of children in the Commonwealth. Many expressed concerns about Virginia’s current child-serving structure. Some of the stakeholders’ concerns related directly to specific problems (keeping siblings together in foster care) and issues related to systematic problems (the disconnect between state and local offices and between state agencies). Several of the stakeholders stated that, unfortunately, children sometimes “fall in between the cracks,” and that an ombudsman would be able to bridge the gap where children are not served appropriately. Also, the stakeholders expressed the need to have an independent third party review complaints from an unbiased viewpoint.

The Commission also sought public written comments regarding the establishment of an Children’s Ombudsman Office. A private citizen in support of the Office stated:

The most important beginning strategic point that needs to be made about an ombudsman is that it is a major opportunity to examine how the services system operates with the objective to IMPROVE the system and not, as many will assert, to place blame on some functions or agencies that deliver services. 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.

The ombudsman concept is not new, but as systems, especially social services and mental health and juvenile justice, have grown more complex and accumulated more responsibility and power to implement their missions or purpose, they need transparency, monitoring and quality assurance. And ombudsman have consequently grown in their utility. This is especially true for public functions such as children's services which hold substantial power and influence, such as termination of parental rights, [children’s] removal from their homes and even institutionalization and incarceration.<sup>38</sup>

A full listing of the interview summaries, along with written submitted public comments, can be found in Appendix F.

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## **IX. Children’s Services Structure in Virginia**

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Many different state agencies provide services to children in Virginia, either directly, through local offices, or through contacts with private providers, while other agencies offer assistance and support to the system. However, in Virginia, there is not a central point of

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<sup>38</sup> Herring, Ron. 2007. Comments submitted to the Virginia Commission on Youth’s for its Study on the Establishment of an Office of Children’s Ombudsman. Appendix F – “Comments Previously Submitted to the Commission on Youth, Written Comments Submitted for the Commission on Youth’s November 20, 2007 Meeting” – provides the full text and other comments received.

contact for children's services, wherein complaints can be filed and investigations can be conducted to ensure the health, safety and welfare of children. Moreover, for most children's services, there is not an independent review process for complaints.

In conducting the study of the establishment of an Office of Children's Ombudsman, Commission staff focused on several existing agencies, which are associated with the Virginia's child-serving system. These agencies include:

- Department of Education (DOE);
- Department of Juvenile Justice (DJJ);
- Department of Mental Health, Mental Retardation and Substance Abuse Services(DMHMRSAS);
- Department of Social Services (DSS);
- Department of Correctional Education (DCE);
- Office of Comprehensive Services for At Risk Youth and Families (OCS);
- Office of the Inspector General for Mental Health, Mental Retardation and Substance Abuse Services (OIG);
- State Child Fatality Review Team; and
- Virginia Office for Protection and Advocacy (VOPA).

Details of the operation and function of these agencies may be found in *Establishment of an Office of Children's Services Ombudsman, Report Document 81 (2007)*.<sup>39</sup> Two of these agencies – DOE and DJJ – currently have an operational internal ombudsman program for children served by their agencies. Also, the *Code of Virginia* gives VOPA the authority to provide within its Office an ombudsman for children with disabilities; however, the ombudsman program for VOPA has not been funded.

A majority of these agencies have a complaint and appeal process. Appendix J details each agency's complaint process. However, while internal complaint systems are in place, for most children's services, there is not an independent review process for complaints which provides an unbiased and impartial voice to help children and families when conflicts occur within the child-services structure. For an example, if a complaint is filed that relates to licensing, the agency will direct its licensing staff to investigate the complaint.

Four child-serving agencies (DJJ, DMHMRSAS, DOE and DSS) license residential facilities for children served by their agency. These agencies have staff to facilitate licensing inspections to ensure compliance with state regulations and issue licenses for the facilities they regulate. A conditional, annual, triennial or provisional license is issued by the lead agency based on the facility's level of compliance with regulations, as well as their length of operation.<sup>40</sup>

Following its 2006 evaluation of children's residential services delivered through the Comprehensive Services Act, the Joint Legislative Audit and Review Commission (JLARC) reported many shortfalls of Virginia system. Its findings and recommendations are published

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<sup>39</sup> The structure of the Virginia Department of Correctional Education (DCE) was not provided in *Report Document 81 (2007)*. Information about the DCE may be found in Appendix H.

<sup>40</sup> Joint Legislative Audit and Review Commission. 2007. *Evaluation of Children's Residential Services Delivered through the Comprehensive Services Act, House Document 12*. Richmond, VA: Joint Legislative Audit and Review Commission. [Online]. Available: [http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/HD122007/\\$file/HD12.pdf](http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/HD122007/$file/HD12.pdf). [January 2007].

in *Evaluation of Children's Residential Services Delivered through the Comprehensive Services Act, House Document 12 (2007)*.<sup>41</sup>

According to the report, the State's process for licensing and enforcing compliance of residential facilities does not appear to adequately support children's basic health and safety.<sup>42</sup> JLARC's findings indicated the following:

- Licensing agencies do not appear to conduct required number of inspections;
- Required number of inspections may not be adequate;
- Inspections may not be sufficiently thorough;
- Some facilities with high numbers of repeat violations receive no formal enforcement action;
- Agencies issue systemic deficiencies and provisional licenses to facilities with uncorrected violations or broad operational problems; and
- Agencies rarely revoke licenses.

These four licensing facilities also operate under a common set of regulations for residential programs. These interdepartmental standards, which first became effective July 1, 1981, provide a minimum level of regulation necessary to ensure protection and treatment of children receiving residential services.<sup>43</sup>

Therefore, there is a need to:

- Provide a mechanism for filing complaints external to the child welfare system and child-serving agencies;
- Provide a system accountability mechanism to protect the interests of children and families in the child welfare system; investigate the acts of state and local administrative agencies adversely affecting children;
- Protect children and parents from harmful agency action or inaction;
- Recommend appropriate changes to safeguard the rights of children and parents; and
- Promote higher standards of competency, efficiency and justice in the administration of child protection and child welfare laws, juvenile justice services and education.

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## **X. Findings and Recommendations**

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The current children's services structure in Virginia is comprised of many different agencies and government entities. The agencies within the current children's services structure in Virginia include those that provide direct services, those that offer planning, policy and other support services, and those that provide research-driven services. These agencies include the following:

Agencies that provide direct services to children:

- Department of Correctional Education (DCE);
- Department of Education (DOE);
- Department of Health (VDH);
- Department of Juvenile Justice (DJJ);

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<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

- Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS);
- Department of Social Services (DSS); and
- Community Services Boards (CSBs).

Agencies that provide planning, referral, policy and other support to children's services:

- 2-1-1 Virginia;
- Department of Criminal Justice Services (DCJS);
- Department of Medical Assistance Services (DMAS);
- Office of Comprehensive Services for At Risk Youth and Families (OCS);
- Office of the Inspector General for Mental Health, Mental Retardation and Substance Abuse Services (OIG); and
- Office of Protection and Advocacy (VOPA).

Government entities that provide research, policy, procedures and regulations, and studies on children's services:

- Advisory Committee on Juvenile Justice;
- Board for People with Disabilities;
- Child Day-Care Council;
- Child Support Guidelines Review Panel;
- Commission on Youth;
- Community Integration Advisory Commission;
- Community Integration for Virginians with Disabilities;
- Disability Commission;
- Joint Commission on Health Care;
- Joint Legislative Audit and Review Commission; and
- State Executive Council for Comprehensive Services for At Risk Youth and Families.

Other government entities associated with children's services:

- Guardians Ad Litem for Children.

### Findings

*An overarching theme in Virginia's system is that there is no one central point of contact that parents, children and associated parties can contact to receive assistance. While there are numerous agencies that provide an array of services, there is no independent agency/government entity that provides accountability to these various components of the current children's services structure. Because there is no central independent agency/government entity, there is no structure in place to make systemic improvement recommendations. There is also no requirement for any type of assessment or report that identifies key issues and appraises the existing children's services structure. As discussed within this report, other states in recent years have created Ombudsman Offices to handle and investigate complaints from citizens and families, to recommend system accountability in the form of annual reports and to monitor those entities responsible for the provision of children's services. The creation of these Offices by other states corresponds with many of the opinions expressed at the Commission on Youth's three public hearings as well as with the written comments received.*

### Recommendation 1

#### ***Establishment of Office***

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.

### Recommendation 2

#### ***Resource Assessment for Office***

Introduce an enactment clause of the legislation creating the Office of the Children's Ombudsman to 1) direct the Office of the Governor to conduct a needs assessment of resources and to work with General Services to provide for the Ombudsman's office space needs and 2) 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 Children's Ombudsman.

### Recommendation 3

#### ***Phase-in of Ombudsman Services***

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

- During the first year of operation: Departments of Social Services and Juvenile Justice.
- During the second year of operation: Departments of Social Services, Juvenile Justice, Mental Health, Mental Retardation and Substance Abuse Services, Education, and Correctional Education.
- During the third year of operation: 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.

### Findings

*Investigation of complaints is a key component of a Children's Ombudsman Office, giving the Office the tools needed to resolve and mediate complaints from children, parents and other citizens concerning harmful actions or inactions of child-serving agencies.*

*Each child-serving agency in Virginia has some type of internal dispute resolution, grievance mechanism and/or investigatory authority. However, child-serving agencies that use internal staff for such complaint handling and investigations may find that such staff are not adequately insulated from agency pressures such that they can give an unbiased evaluation of the complaint.*

### Recommendation 4

#### ***Mission of Office – Investigation***

The Office of the Children's Ombudsman shall be authorized to investigate complaints regarding actions 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.**

*Findings*

*As many states have recognized, an independent Children’s Ombudsman having the authority to investigate systemic issues and recommend corrective action can improve the overall child-service system.*

*Based on the complaints received by the Office of the Children’s Ombudsman and results of the investigations, the Office would have the ability address individual complaints, as well as the authority to examining systemic issues, thus, making recommendations to improve the child-serving system and preventing problems before they occur.*

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 they 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.**

*Findings*

*The Office of the Children’s Ombudsman would offer an opportunity for a governmental entity to promote higher standards of competency, efficiency and justice in the administration of children’s services.*

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.**

*Findings*

*It is anticipated that many of the calls that the Office of the Children’s Ombudsman will receive will be from those in need of assistance navigating through the child-serving agencies. The Children’s Ombudsman should be able to refer children, parents, caregivers and providers to the appropriate resources.*

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.**

Findings

*As an independent state agency, the Office of the Children's Ombudsman needs to have the authority to operate and manage the Office and to employ personnel.*

Recommendation 8

**Operational – Management of Office**

**The Children's Ombudsman shall be authorized to operate and manage the Office of the 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.**

Findings

*To maintain legitimacy of the Office, a Children's Ombudsman must be able to function independent of agencies to which the Children's Ombudsman oversees. In addition, another central element of the Children's Ombudsman's independence is ensuring that he or she is not subject to the control of the appointing authority.*

Recommendation 9

**Operational – Appointment of the Children's Ombudsman**

**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.**

Findings

*In order to carry out the duties and responsibilities of the Office, the Children's Ombudsman requires the authority to conduct fact-finding through the investigation of institutions, facilities, and residences, public and private, where a child has been placed by a court or a child-serving agencies. In addition, the Children's Ombudsman needs to have access to agency personnel and any record of a state or local agency that is necessary to carry out his or her investigation. Furthermore, it is necessary for the Children's Ombudsman to have enforceable power to obtain documents which agencies may be withholding.*

Recommendation 10

**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.**

### Findings

*The Office of the Children’s Ombudsman may play a vital role in bringing hidden problems of the child-service system to the attention of the Governor, General Assembly and the public. Many states require their ombudsman not only to collect data, but also to make policy recommendations to correct the problems identified in their investigations. Further, an annual report will give the Office of the Children’s Ombudsman an opportunity to share a summary of the work and activities of the Office.*

### Recommendation 11

#### **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.**

### Recommendation 12

#### **Reports – 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;**
- **Recommendations for systemic improvements in the provision of services to children, including any legislative changes necessary to promote positive changes in policy and procedure.**

### Findings

*When the Children's Ombudsman has reasonable grounds to believe there has been a violation of criminal law, it should be the duty and responsibility of the Children's Ombudsman to inform the appropriate authorities.*

*In addition, when the Children's Ombudsman identifies serious problems, abuses or deficiencies relating to the administration of the programs and services of state facilities and of providers, the Governor, along with the appropriate agency head, should be notified immediately.*

### Recommendation 13

#### ***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.**

### Recommendation 14

#### ***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.**

### Findings

*It is essential for the Children's Ombudsman to be independent from other organizations and entities. The independence should be in function, structure and appearance, thus enabling the Children's Ombudsman to:*

- *Report findings and make recommendations based exclusively on facts, law, reason and fairness, without preliminary clearances or approvals; and*
- *Be free from external influences and control.*

### Recommendation 15

#### ***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 allow a reasonable opportunity for comments of the Governor to be appended to the reports.**

Findings

*The ability to maintain confidentiality is one of the core components of an Ombudsman Office. Ensuring confidentiality encourages caregivers, social workers, children, youth and others in reporting problems about individual placements or program deficiencies. In addition, cooperation of other state agencies is an essential element needed in order to operate an Office of the Children's Ombudsman.*

Recommendation 16

**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 17

**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 18

**Cooperative Agreements with State Agencies Regarding Advocacy Services**

**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 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.**

Findings

*As part of the 2006 General Assembly's bill review process, Virginia Department of Planning and Budget analyzed the fiscal impact of Senator Edwards' bill which created a Children's Ombudsman Office, SB 208. The fiscal impact for establishing the Office, specifically the funding for eight staff positions (Director, Assistant Director, two office service specialists and four health/welfare analysts), was approximately \$500,000. The Commission on Youth estimates that the cost of the Office would be approximately the same amount as determined in 2006.*

Recommendation 19

**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).**

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## **XI. Acknowledgments**

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The Commission on Youth extends its sincere appreciation to the members of its Advisory Groups and to the following agencies and individuals for their assistance and cooperation on this study. In addition to those listed, the Commission extends its appreciation to those individuals who attended the public hearings, submitted comments and/or provided additional information to the Commission for this study.

*ADOPT*

Jennifer Surratt

Citizen Advocates

Rita L. Evans

Ron Herring

*FACES of Virginia Families*

Leon Hill

Patti Huber

Cate Newbanks

Foster Care Parent

Terri Kiser-Williams

Foster Care Youth (capped and alpha'ed names)

Cody Allen Davis

Michael Joseph Verile

Melissa Marie Williams

Thomas Franklin Wise

*JustChildren Program - Legal Aid Justice Center*

*Andrew Block*

*Sarah Geddes*

*Mid-Atlantic Juvenile Defender Center, University of Richmond School of Law*

Josh Cheatham

Chelsey Dunn

Melissa Coretz Goemann

*Prevent Child Abuse Hampton Roads*

Betty Wade Coyle

Bruce and Connie Myer

*Prevent Child Abuse Virginia*

Johanna W. Schuchert

*Virginia Coalition for Juvenile Justice*

Jim Goodin

Liane Rozzell

*Virginia C.U.R.E.*  
Eileen Grey

*Virginia Poverty Law Center*  
Christine Marra

*Voices for Virginia's Children*  
Mary Dunn Stewart

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063027728

SENATE BILL NO. 208

Offered January 11, 2006

Prefiled January 10, 2006

A BILL to amend and reenact § 2.2-3705.5 of the Code of Virginia and to amend the Code of Virginia by adding in Title 30 a chapter numbered 40, consisting of sections numbered 30-266 through 30-270, relating to the creation of the Office of Children's Services Ombudsman.

Patron—Edwards

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-3705.5 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding in Title 30 a chapter numbered 40, consisting of sections numbered 30-266 through 30-270, as follows:

§ 2.2-3705.5. Exclusions to application of chapter; health and social services records.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Health records, except that such records may be personally reviewed by the individual who is the subject of such records, as provided in subsection F of § 32.1-127.1:03.

Where the person who is the subject of medical records is confined in a state or local correctional facility, the administrator or chief medical officer of such facility may assert such confined person's right of access to the medical records if the administrator or chief medical officer has reasonable cause to believe that such confined person has an infectious disease or other medical condition from which other persons so confined need to be protected. Medical records shall only be reviewed and shall not be copied by such administrator or chief medical officer. The information in the medical records of a person so confined shall continue to be confidential and shall not be disclosed by the administrator or chief medical officer of the facility to any person except the subject or except as provided by law.

Where the person who is the subject of medical and mental records is under the age of 18, his right of access may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. In instances where the person who is the subject thereof is an emancipated minor or a student in a public institution of higher education, the right of access may be asserted by the subject person.

For the purposes of this chapter, statistical summaries of incidents and statistical data concerning patient abuse as may be compiled by the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services shall be open to inspection and copying as provided in § 2.2-3704. No such summaries or data shall include any patient-identifying information.

2. Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Professions or any board in that department on individual licensees or applicants. However, such material may be made available during normal working hours for copying, at the requester's expense, by the individual who is the subject thereof, in the offices of the Department of Health Professions or in the offices of any health regulatory board, whichever may possess the material.

3. Reports, documentary evidence and other information as specified in §§ 2.2-706 and 63.2-104.

4. Investigative notes; proprietary information not published, copyrighted or patented; information obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; and other correspondence and information furnished in confidence to the Department of Social Services in connection with an active investigation of an applicant or licensee pursuant to Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2. However, nothing in this section shall prohibit disclosure of information from the records of completed investigations in a form that does not reveal the identity of complainants, persons supplying information, or other individuals involved in the investigation.

5. Information and records collected for the designation and verification of trauma centers and other specialty care centers within the Statewide Emergency Medical Services System and Services pursuant to Article 2.1 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1.

6. Reports and court documents relating to involuntary admission required to be kept confidential pursuant to § 37.1-67.3.

7. Data formerly required to be submitted to the Commissioner of Health relating to the establishment of new or the expansion of existing clinical health services, acquisition of major medical

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59 equipment, or certain projects requiring capital expenditures pursuant to former § 32.1-102.3:4.

60 8. Information required to be provided to the Department of Health Professions by certain licensees  
61 pursuant to § 54.1-2506.1.

62 9. All information and records acquired during a review of any child death by the State Child  
63 Fatality Review team established pursuant to § 32.1-283.1, during a review of any child death by a local  
64 or regional child fatality review team established pursuant to § 32.1-283.2, and all information and  
65 records acquired during a review of any death by a family violence fatality review team established  
66 pursuant to § 32.1-283.3.

67 10. Patient level data collected by the Board of Health and not yet processed, verified, and released,  
68 pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the Commissioner of  
69 Health has contracted pursuant to § 32.1-276.4.

70 11. Records of the Intervention Program Committee within the Department of Health Professions, to  
71 the extent such records may identify any practitioner who may be, or who is actually, impaired to the  
72 extent disclosure is prohibited by § 54.1-2517.

73 12. Records submitted as a grant application, or accompanying a grant application, to the  
74 Commonwealth Neurotrauma Initiative Advisory Board pursuant to Chapter 3.1 (§ 51.5-12.1 et seq.) of  
75 Title 51.5, to the extent such records contain (i) medical or mental records, or other data identifying  
76 individual patients or (ii) proprietary business or research-related information produced or collected by  
77 the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific,  
78 technical or scholarly issues, when such information has not been publicly released, published,  
79 copyrighted or patented, if the disclosure of such information would be harmful to the competitive  
80 position of the applicant.

81 13. Any record copied, recorded or received by the Commissioner of Health in the course of an  
82 examination, investigation or review of a managed care health insurance plan licensee pursuant to  
83 §§ 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or  
84 all computer or other recordings.

85 14. Records, information and statistical registries required to be kept confidential pursuant to  
86 §§ 63.2-102 and 63.2-104.

87 15. (For effective date - See note) All data, records, and reports relating to the prescribing and  
88 dispensing of covered substances to recipients and any abstracts from such data, records, and reports that  
89 are in the possession of the Prescription Monitoring Program pursuant to Chapter 25.2 (§ 54.1-2519 et  
90 seq.) of Title 54.1 and any material relating to the operation or security of the Program.

91 16. Records of the Virginia Birth-Related Neurological Injury Compensation Program required to be  
92 kept confidential pursuant to § 38.2-5002.2.

93 17. Records of the State Health Commissioner relating to the health of any person or persons subject  
94 to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of  
95 Chapter 2 of Title 32.1; this provision shall not, however, be construed to prohibit the disclosure of  
96 statistical summaries, abstracts or other information in aggregate form.

97 18. Records containing the names and addresses or other contact information of persons receiving  
98 transportation services from a state or local public body or its designee under Title II of the Americans  
99 with Disabilities Act, (42 U.S.C. § 12131 et seq.) or funded by Temporary Assistance for Needy  
100 Families (TANF) created under § 63.2-600.

101 19. *Records of the Office of Children's Services Ombudsman required to be kept confidential*  
102 *pursuant to § 30-267.*

#### 103 CHAPTER 40.

#### 104 OFFICE OF CHILDREN'S SERVICES OMBUDSMAN.

105 § 30-266. *Ombudsman services for children; appointment of Director.*

106 A. *There is hereby created in the legislative branch of state government the Office of Children's*  
107 *Services Ombudsman. The mission of the Office is to protect children and parents from harmful agency*  
108 *action or inaction; investigate the acts of state and local administrative agencies adversely affecting*  
109 *children; recommend appropriate changes toward the goals of safeguarding the rights of children and*  
110 *parents; and promote higher standards of competency, efficiency, and justice in the administration of*  
111 *child protection and child welfare laws, juvenile justice services, and education of children. The Office*  
112 *shall be headed by a Director appointed by the Joint Rules Committee which shall fix his compensation.*  
113 *The Director may employ such other persons as he deems necessary to assist him in carrying out his*  
114 *duties and shall fix their salaries or compensation within the amounts appropriated therefor.*

115 B. *The Director shall establish procedures for receiving complaints and conducting investigations for*  
116 *the purposes of resolving and mediating complaints regarding any activity, practice, policy, or*  
117 *procedure of any facility or program operated, funded, or licensed by any state or local agency, that is*  
118 *adversely affecting the health, safety, welfare, or rights of any child. After initial investigation, the*  
119 *Office may decline to accept any complaint it determines is frivolous or not made in good faith. The*  
120 *Office shall attempt to resolve the complaint at the lowest appropriate level, unless otherwise provided*

121 by law. The procedures shall require the Office to:

122 1. Acknowledge the receipt of a complaint by sending written notice to the complainant within seven  
123 days after receiving the complaint;

124 2. When appropriate, provide written notice of a complaint to the appropriate agency within seven  
125 days after receiving the complaint. The appropriate state agency shall report its findings and actions no  
126 later than 14 days after receiving the complaint;

127 3. Immediately refer a complaint made under this section to the Department of Social Services or  
128 any other appropriate governmental agency whenever the complaint involves an immediate and  
129 substantial threat to the health or safety of a child. The Department of Social Services or agency  
130 receiving the complaint shall report its findings and actions no later than 48 hours following its receipt  
131 of the complaint;

132 4. Within seven days after identifying a deficiency in the treatment of or provision of services to a  
133 child that is in violation of state or federal law or regulation, refer the matter in writing to the  
134 appropriate state agency. The state agency shall report on its findings and actions within seven days of  
135 receiving notice of the matter;

136 5. Advise the complainant and any person affected by the complaint, no more than 30 days after it  
137 receives the complaint, of any action it has taken and of any opinions and recommendations it has with  
138 respect to the complaint. The Office may request any party affected by the opinions or recommendations  
139 to notify the Office, within a time period specified by the Office, of any action the party has taken on its  
140 recommendation; and

141 6. Refer any complaint not resolved through negotiation, mediation, or conciliation to the Director or  
142 the Director's designee to determine whether further protection and advocacy services shall be provided  
143 by the Office.

144 C. The Office may make public any of its opinions or recommendations concerning a complaint, the  
145 responses of persons and governmental agencies to its opinions or recommendations, and any act,  
146 practice, policy, or procedure that adversely affects or may adversely affect the health, safety, welfare,  
147 or rights of a child.

148 D. The Office shall publicize its existence, functions, and activities, and the procedures for filing a  
149 complaint under this section, and send this information in written form to each provider of services to  
150 children, with instructions that the information is to be posted in a conspicuous place accessible to  
151 consumers, clients, visitors, and employees. The Office shall establish, maintain, and publicize a toll-free  
152 number for receiving complaints.

153 § 30-267. Confidentiality of information.

154 A. All documentary and other evidence received or maintained by the Office or its agents in  
155 connection with specific complaints or investigations shall be confidential and not subject to the  
156 provisions concerning disclosure of public records under the Virginia Freedom of Information Act  
157 (§ 2.2-3700 et seq.). However, access to one's own records shall not be denied unless otherwise  
158 prohibited by state or federal law. Records concerning closed cases shall be subject to the disclosure  
159 requirements of the Virginia Freedom of Information Act, but in a manner that does not identify any  
160 complainant or any person unless (i) such complainant or person or his legal representative consents in  
161 writing to such identification or (ii) such identification is required by court order.

162 B. Communications between employees and agents of the Office and its clients or prospective clients  
163 concerning specific complaints, investigations, or cases shall be confidential.

164 C. Notwithstanding the provisions of this section, the Office shall be permitted to:

165 1. Issue a public report of the results of an investigation of a founded complaint that does not  
166 release the identity of any complainant or any person unless (a) such complainant or person or his  
167 legal representative consents in writing to such disclosure or (b) such disclosure is required by court  
168 order; and

169 2. Report the results of an investigation to responsible investigative or enforcement agencies should  
170 an investigation reveal information concerning any facility or other entity, or its staff or employees,  
171 warranting possible sanctions or corrective action. This information may be reported to agencies  
172 responsible for employee discipline, employee licensing or certification, or criminal prosecution.

173 § 30-268. Cooperative agreements with state agencies regarding advocacy services for their clients.

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

181 § 30-269. Immunity.

182 *Any person who in good faith complains to the Office on behalf of a child, or who provides*  
183 *information or participates in the investigation of any such complaint, shall have immunity from any*  
184 *civil liability and shall not be subject to any penalties, sanctions, restrictions, or retaliation as a*  
185 *consequence of making such complaint, providing such information, or participating in such*  
186 *investigation.*

187 *§ 30-270. Cooperation of other state agencies.*

188 *The Office may request and shall receive from every department, division, board, bureau,*  
189 *commission, authority, or other agency created by the Commonwealth, or to which the Commonwealth is*  
190 *a party, or from any political subdivision of the Commonwealth, cooperation and assistance in the*  
191 *performance of its duties.*

## Department of Planning and Budget 2006 Fiscal Impact Statement

**1. Bill Number** SB208

**House of Origin**     Introduced     Substitute     Engrossed

**Second House**     In Committee     Substitute     Enrolled

**2. Patron**        Edwards

**3. Committee**    General Laws

**4. Title**            Office of Children's Services Ombudsman.

**5. Summary/Purpose:**

Creates, within the legislative branch, the Office of Children's Services Ombudsman. The mission of the office is to protect children and parents from harmful agency action or inaction; investigate the acts of state and local administrative agencies adversely affecting children; recommend appropriate changes toward the goals of safeguarding the rights of children and parents; and promote higher standards of competency, efficiency, and justice in the administration of child protection and child welfare laws. The office is to be headed by a director appointed by the Joint Rules Committee. The bill also contains an exemption from the Freedom of Information Act for active investigations conducted by the office.

**6. Fiscal Impact Estimates are:** Preliminary

**6a. Expenditure Impact:**

| <i>Fiscal Year</i> | <i>Dollars</i> | <i>Positions</i> | <i>Fund</i> |
|--------------------|----------------|------------------|-------------|
| 2006-07            | \$537,000      | 8                | GF          |
| 2007-08            | \$506,000      | 8                | GF          |
| 2008-09            | \$519,000      | 8                | GF          |
| 2009-10            | \$570,000      | 8                | GF          |
| 2010-11            | \$551,000      | 8                | GF          |
| 2011-12            | \$565,000      | 8                | GF          |

**7. Budget amendment necessary:** yes, Legislative Department, new item.

**8. Fiscal implications:** Table 6a assumes the Office of Children's Service Ombudsman will be staffed with eight personnel: a director, an assistant director, two office service specialists and four health and welfare analysts. The following table lists each of the eight positions and assigns a compensation package figure to each job title.

Table A. Staff/Compensation Analysis (includes fringe benefits)

| Anticipated Staff Needs   | Annual Compensation Package (assumes 30% fringe factor) |
|---------------------------|---|
| Director                  | \$91,000  |
| Assistant Director        | \$71,500  |
| Office Service Specialist | \$29,250  |
| Office Service Specialist | \$29,250  |
| Health/Welfare Analyst    | \$48,750  |
| Health/Welfare Analyst    | \$48,750  |
| Health/Welfare Analyst    | \$48,750  |
| Health/Welfare Analyst    | \$48,750  |
| <b>Total</b>              | <b>\$416,000</b>  |

The chart in item 6a. assumes a 3 percent salary adjustment each year.

The Departments of Social Services and Mental Health, Mental Retardation and Substance Abuse Services have indicated this legislation would have a minimal fiscal impact on their respective operations; therefore, no additional funding for their operations have been factored into this analysis.

Table B. itemizes other customary office expenditures that would be incurred by the newly created Office of Children’s Services Ombudsman. This table also assumes the following:

- a) Pursuant to the bill, a toll-free telephone line will be maintained. It is assumed that this phone line will incur 5,000 minutes of usage monthly. The toll-free line has a \$5.35 monthly fee and a \$0.0529 per minute usage charge. This table also assumes the toll-free line will be an interstate line for there is an additional fee to make the phone line intrastate.
- b) Pursuant to the bill, the Office would advertise and market its mission to the general populous.
- c) The table assumes a three year computer replacement cycle.
- d) The table assumes a \$2,500 per employee office furnishings allotment.

Table B.- Anticipated Office Expenditures

| <b>Expenditures</b> | <b>FY07</b>      | <b>FY08</b>     | <b>FY09</b>     | <b>FY010</b>     | <b>FY011</b>    | <b>FY012</b>    |
|---------------------|------------------|-----------------|-----------------|------------------|-----------------|-----------------|
| Telecommunications  | \$3,175          | \$3,175         | \$3,175         | \$3,175          | \$3,175         | \$3,175         |
| Marketing/Publicity | \$2,000          | \$2,000         | \$2,000         | \$2,000          | \$2,000         | \$2,000         |
| Computers/Equipment | \$36,000         | \$8,000         | \$8,000         | \$40,000         | \$8,000         | \$8,000         |
| Office Furnishings  | \$20,000         | \$5,000         | \$5,000         | \$5,000          | \$5,000         | \$5,000         |
| Office Space        | \$60,000         | \$60,000        | \$60,000        | \$65,000         | \$65,000        | \$65,000        |
| <b>Totals</b>       | <b>\$121,175</b> | <b>\$78,175</b> | <b>\$78,175</b> | <b>\$115,175</b> | <b>\$83,175</b> | <b>\$83,175</b> |

**9. Specific agency or political subdivisions affected:** Department of Social Services and Department of Mental Health, Mental Retardation and Substance Abuse Services.

**10. Technical amendment necessary:** no

**11. Other comments:** none

**Date:** 01/24/06 / RT

**Document:** G:\06 Legislation\Sb208.Doc Reginald Thompson

**cc:** Secretary of Health and Human Resources

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## SENATE BILL NO. 1069

Offered January 12, 2005

Prefiled January 12, 2005

A BILL to amend and reenact § 2.2-3705.5 of the Code of Virginia and § 2.2-212 of the Code of Virginia as it is currently effective and as it shall become effective, and to amend the Code of Virginia by adding in Title 63.2 a chapter numbered 16.1, consisting of sections numbered 63.2-1615.1 through 63.2-1615.4, relating to the creation of the Office of Children's Services Ombudsman.

\_\_\_\_\_  
 Patron—Edwards

\_\_\_\_\_  
 Referred to Committee on Rehabilitation and Social Services

**Be it enacted by the General Assembly of Virginia:**

**1. That § 2.2-3705.5 of the Code of Virginia and § 2.2-212 of the Code of Virginia as it is currently effective and as it shall become effective are amended and reenacted, and that the Code of Virginia is amended by adding in Title 63.2 a chapter numbered 16.1, consisting of sections numbered 63.2-1615.1 through 63.2-1615.4 as follows:**

§ 2.2-212. (Effective until July 1, 2006) Agencies for which responsible.

The position of Secretary of Health and Human Resources (the Secretary) is created. The Secretary of Health and Human Resources shall be responsible to the Governor for the following agencies: Department of Health, Department for the Blind and Vision Impaired, Department of Health Professions, Department for the Aging, Department of Mental Health, Mental Retardation and Substance Abuse Services, Department of Rehabilitative Services, Department of Social Services, Department of Medical Assistance Services, Advisory Council on the Future of Nursing in Virginia, Child Day-Care Council, Virginia Department for the Deaf and Hard-of-Hearing, and the Office of Comprehensive Services for Youth and At-Risk Youth and Families, and the Office of Children's Services Ombudsman. The Governor may, by executive order, assign any other state executive agency to the Secretary of Health and Human Resources, or reassign any agency listed above to another Secretary.

Unless the Governor expressly reserves such power to himself, the Secretary shall (i) coordinate the work of state agencies to implement the long-term care policy of the Commonwealth and (ii) serve as the lead Secretary for the Comprehensive Services Act for At-Risk Youth and Families, working with the Secretary of Education and the Secretary of Public Safety to facilitate interagency service development and implementation, communication and cooperation.

§ 2.2-212. (Effective July 1, 2006) Position established; agencies for which responsible; additional powers.

The position of Secretary of Health and Human Resources (the Secretary) is created. The Secretary of Health and Human Resources shall be responsible to the Governor for the following agencies: Department of Health, Department for the Blind and Vision Impaired, Department of Health Professions, Department for the Aging, Department of Mental Health, Mental Retardation and Substance Abuse Services, Department of Rehabilitative Services, Department of Social Services, Department of Medical Assistance Services, Child Day-Care Council, Virginia Department for the Deaf and Hard-of-Hearing, and the Office of Comprehensive Services for Youth and At-Risk Youth and Families, and the Office of Children's Services Ombudsman. The Governor may, by executive order, assign any other state executive agency to the Secretary of Health and Human Resources, or reassign any agency listed above to another Secretary.

Unless the Governor expressly reserves such power to himself, the Secretary shall (i) coordinate the work of state agencies to implement the long-term care policy of the Commonwealth and (ii) serve as the lead Secretary for the Comprehensive Services Act for At-Risk Youth and Families, working with the Secretary of Education and the Secretary of Public Safety to facilitate interagency service development and implementation, communication and cooperation.

§ 2.2-3705.5. Exclusions to application of chapter; health and social services records.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Health records, except that such records may be personally reviewed by the individual who is the subject of such records, as provided in subsection F of § 32.1-127.1:03.

Where the person who is the subject of medical records is confined in a state or local correctional facility, the administrator or chief medical officer of such facility may assert such confined person's right of access to the medical records if the administrator or chief medical officer has reasonable cause to

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59 believe that such confined person has an infectious disease or other medical condition from which other  
60 persons so confined need to be protected. Medical records shall only be reviewed and shall not be  
61 copied by such administrator or chief medical officer. The information in the medical records of a  
62 person so confined shall continue to be confidential and shall not be disclosed by the administrator or  
63 chief medical officer of the facility to any person except the subject or except as provided by law.

64 Where the person who is the subject of medical and mental records is under the age of 18, his right  
65 of access may be asserted only by his guardian or his parent, including a noncustodial parent, unless  
66 such parent's parental rights have been terminated or a court of competent jurisdiction has restricted or  
67 denied such access. In instances where the person who is the subject thereof is an emancipated minor or  
68 a student in a public institution of higher education, the right of access may be asserted by the subject  
69 person.

70 For the purposes of this chapter, statistical summaries of incidents and statistical data concerning  
71 patient abuse as may be compiled by the Commissioner of the Department of Mental Health, Mental  
72 Retardation and Substance Abuse Services shall be open to inspection and copying as provided in  
73 § 2.2-3704. No such summaries or data shall include any patient-identifying information.

74 2. Applications for admission to examinations or for licensure and scoring records maintained by the  
75 Department of Health Professions or any board in that department on individual licensees or applicants.  
76 However, such material may be made available during normal working hours for copying, at the  
77 requester's expense, by the individual who is the subject thereof, in the offices of the Department of  
78 Health Professions or in the offices of any health regulatory board, whichever may possess the material.

79 3. Reports, documentary evidence and other information as specified in §§ 2.2-706 and 63.2-104.

80 4. Investigative notes; proprietary information not published, copyrighted or patented; information  
81 obtained from employee personnel records; personally identifiable information regarding residents,  
82 clients or other recipients of services; and other correspondence and information furnished in confidence  
83 to the Department of Social Services in connection with an active investigation of an applicant or  
84 licensee pursuant to Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2.  
85 However, nothing in this section shall prohibit disclosure of information from the records of completed  
86 investigations in a form that does not reveal the identity of complainants, persons supplying information,  
87 or other individuals involved in the investigation.

88 5. Information and records collected for the designation and verification of trauma centers and other  
89 specialty care centers within the Statewide Emergency Medical Services System and Services pursuant to  
90 Article 2.1 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1.

91 6. Reports and court documents relating to involuntary admission required to be kept confidential  
92 pursuant to § 37.1-67.3.

93 7. Data formerly required to be submitted to the Commissioner of Health relating to the  
94 establishment of new or the expansion of existing clinical health services, acquisition of major medical  
95 equipment, or certain projects requiring capital expenditures pursuant to former § 32.1-102.3:4.

96 8. Information required to be provided to the Department of Health Professions by certain licensees  
97 pursuant to § 54.1-2506.1.

98 9. All information and records acquired during a review of any child death by the State Child  
99 Fatality Review team established pursuant to § 32.1-283.1, during a review of any child death by a local  
100 or regional child fatality review team established pursuant to § 32.1-283.2, and all information and  
101 records acquired during a review of any death by a family violence fatality review team established  
102 pursuant to § 32.1-283.3.

103 10. Patient level data collected by the Board of Health and not yet processed, verified, and released,  
104 pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the Commissioner of  
105 Health has contracted pursuant to § 32.1-276.4.

106 11. Records of the Intervention Program Committee within the Department of Health Professions, to  
107 the extent such records may identify any practitioner who may be, or who is actually, impaired to the  
108 extent disclosure is prohibited by § 54.1-2517.

109 12. Records submitted as a grant application, or accompanying a grant application, to the  
110 Commonwealth Neurotrauma Initiative Advisory Board pursuant to Chapter 3.1 (§ 51.5-12.1 et seq.) of  
111 Title 51.5, to the extent such records contain (i) medical or mental records, or other data identifying  
112 individual patients or (ii) proprietary business or research-related information produced or collected by  
113 the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific,  
114 technical or scholarly issues, when such information has not been publicly released, published,  
115 copyrighted or patented, if the disclosure of such information would be harmful to the competitive  
116 position of the applicant.

117 13. Any record copied, recorded or received by the Commissioner of Health in the course of an  
118 examination, investigation or review of a managed care health insurance plan licensee pursuant to  
119 §§ 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or  
120 all computer or other recordings.



121 14. Records, information and statistical registries required to be kept confidential pursuant to  
122 §§ 63.2-102 and 63.2-104.

123 15. (For effective date - See note) All data, records, and reports relating to the prescribing and  
124 dispensing of covered substances to recipients and any abstracts from such data, records, and reports that  
125 are in the possession of the Prescription Monitoring Program pursuant to Chapter 25.2 (§ 54.1-2519 et  
126 seq.) of Title 54.1 and any material relating to the operation or security of the Program.

127 16. Records of the Virginia Birth-Related Neurological Injury Compensation Program required to be  
128 kept confidential pursuant to § 38.2-5002.2.

129 17. Records of the State Health Commissioner relating to the health of any person or persons subject  
130 to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of  
131 Chapter 2 of Title 32.1; this provision shall not, however, be construed to prohibit the disclosure of  
132 statistical summaries, abstracts or other information in aggregate form.

133 18. Records containing the names and addresses or other contact information of persons receiving  
134 transportation services from a state or local public body or its designee under Title II of the Americans  
135 with Disabilities Act, (42 U.S.C. § 12131 et seq.) or funded by Temporary Assistance for Needy  
136 Families (TANF) created under § 63.2-600.

137 19. *Records of the Office of Children's Services Ombudsman required to be kept confidential*  
138 *pursuant to § 63.2-1615.2.*

139 CHAPTER 16.1.

140 OFFICE OF CHILDREN'S SERVICES OMBUDSMAN.

141 § 63.2-1615.1. *Ombudsman services for children; appointment of Director.*

142 A. *There is hereby created in the Office of the Secretary of Health and Human Resources the Office*  
143 *of Children's Services Ombudsman (the Office). The mission of the Office is to protect children and*  
144 *parents from harmful agency action or inaction; investigate the acts of state and local administrative*  
145 *agencies adversely affecting children; recommend appropriate changes toward the goals of safeguarding*  
146 *the rights of children and parents; and promote higher standards of competency, efficiency, and justice*  
147 *in the administration of child protection and child welfare laws. The Office shall be headed by a*  
148 *Director appointed by the Secretary of Health and Human Resources.*

149 B. *The Director shall establish procedures for receiving complaints and conducting investigations for*  
150 *the purposes of resolving and mediating complaints regarding any activity, practice, policy, or*  
151 *procedure of any facility or program operated, funded, or licensed by the Department of Social Services*  
152 *or any other state or local agency, that is adversely affecting the health, safety, welfare, or rights of any*  
153 *child. After initial investigation, the Office may decline to accept any complaint it determines is frivolous*  
154 *or not made in good faith. The Office shall attempt to resolve the complaint at the lowest appropriate*  
155 *level, unless otherwise provided by law. The procedures shall require the Office to:*

156 1. *Acknowledge the receipt of a complaint by sending written notice to the complainant within seven*  
157 *days after receiving the complaint;*

158 2. *When appropriate, provide written notice of a complaint to the Department of Social Services or*  
159 *any other appropriate agency within seven days after receiving the complaint. The Department of Social*  
160 *Services or agency shall report its findings and actions no later than 14 days after receiving the*  
161 *complaint;*

162 3. *Immediately refer a complaint made under this section to the Department of Social Services or*  
163 *any other appropriate governmental agency whenever the complaint involves an immediate and*  
164 *substantial threat to the health or safety of a child. The Department of Social Services or agency*  
165 *receiving the complaint shall report its findings and actions no later than 48 hours following its receipt*  
166 *of the complaint;*

167 4. *Within seven days after identifying a deficiency in the treatment of a child that is in violation of*  
168 *state or federal law or regulation, refer the matter in writing to the appropriate state agency. The state*  
169 *agency shall report on its findings and actions within seven days of receiving notice of the matter;*

170 5. *Advise the complainant and any person affected by the complaint, no more than 30 days after it*  
171 *receives the complaint, of any action it has taken and of any opinions and recommendations it has with*  
172 *respect to the complaint. The Office may request any party affected by the opinions or recommendations*  
173 *to notify the Office, within a time period specified by the Office, of any action the party has taken on its*  
174 *recommendation; and*

175 6. *Refer any complaint not resolved through negotiation, mediation, or conciliation to the Director or*  
176 *the Director's designee to determine whether further protection and advocacy services shall be provided*  
177 *by the Office.*

178 C. *The Office may make public any of its opinions or recommendations concerning a complaint, the*  
179 *responses of persons and governmental agencies to its opinions or recommendations, and any act,*  
180 *practice, policy, or procedure that adversely affects or may adversely affect the health, safety, welfare,*  
181 *or rights of a child.*

182 *D. The Office shall publicize its existence, functions, and activities, and the procedures for filing a*  
183 *complaint under this section, and send this information in written form to each provider of services to*  
184 *children, with instructions that the information is to be posted in a conspicuous place accessible to*  
185 *consumers, clients, visitors, and employees. The Office shall establish, maintain and publicize a toll-free*  
186 *number for receiving complaints.*

187 *§ 63.2-1615.2. Confidentiality of information.*

188 *A. All documentary and other evidence received or maintained by the Office or its agents in*  
189 *connection with specific complaints or investigations shall be confidential and not subject to the*  
190 *provisions concerning disclosure of public records under the Virginia Freedom of Information Act*  
191 *(§ 2.2-3700 et seq.). However, access to one's own records shall not be denied unless otherwise*  
192 *prohibited by state or federal law. Records concerning closed cases shall be subject to the disclosure*  
193 *requirements of the Virginia Freedom of Information Act, but in a manner that does not identify any*  
194 *complainant or any person unless (i) such complainant or person or his legal representative consents in*  
195 *writing to such identification or (ii) such identification is required by court order.*

196 *B. Communications between employees and agents of the Office and its clients or prospective clients*  
197 *concerning specific complaints, investigations or cases shall be confidential.*

198 *C. Notwithstanding the provisions of this section, the Office shall be permitted to:*

199 *1. Issue a public report of the results of an investigation of a founded complaint that does not*  
200 *release the identity of any complainant or any person unless (a) such complainant or person or his*  
201 *legal representative consents in writing to such disclosure or (b) such disclosure is required by court*  
202 *order; and*

203 *2. Report the results of an investigation to responsible investigative or enforcement agencies should*  
204 *an investigation reveal information concerning any facility or other entity, or its staff or employees,*  
205 *warranting possible sanctions or corrective action. This information may be reported to agencies*  
206 *responsible for employee discipline, employee licensing or certification, or criminal prosecution.*

207 *§ 63.2-1615.3. Cooperative agreements with state agencies regarding advocacy services for their*  
208 *clients.*

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

216 *§ 63.2-1615.4. Immunity.*

217 *Any person who in good faith complains to the Office on behalf of a child, or who provides*  
218 *information or participates in the investigation of any such complaint, shall have immunity from any*  
219 *civil liability and shall not be subject to any penalties, sanctions, restrictions, or retaliation as a*  
220 *consequence of making such complaint, providing such information, or participating in such*  
221 *investigation.*

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

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

### SUMMARY OF PUBLIC HEARING COMMENTS

*July 27, 2006 Public Hearing, Norfolk  
August 24, 2006 Public Hearing, Roanoke  
Written Comments Submitted to the Commission on Youth*

#### 1. BENEFITS OF ESTABLISHING AN OFFICE OF CHILDREN'S SERVICES OMBUDSMAN

##### Norfolk

- There is a big need for oversight of state government agencies. The Office would provide such oversight.
- The Office would serve as a place wherein individuals and private organizations can call to seek guidance and assistance.
- Why do we allow harmful treatment to happen to children within state facilities? The Office would be able to correct this problem.
- The Office would serve as a very useful, significant tool because children do not have a voice. It is up to the parents and/or guardians to provide that voice for these children.
- Although the current system does an outstanding job in protecting children, there are areas in the Commonwealth where children fall through the cracks of the system. The Office would serve as an independent oversight to look at what happens when a child falls through the cracks of the system.
- The Office would be able to receive these complaints and begin an objective investigation to fix the problems. The Office would also be able to determine whether there are legitimate concerns within the system as to why the child fell through the cracks of the system.
- The Office would provide a way of protecting children by creating an independent voice for children and their families when they encounter problems.
- Children with disabilities can be critically impacted when inaccurate responses are made by agencies that fail to recognize the needs of or properly protect children. The Office would be able to handle these situations.
- The Office would be able to provide additional support for families mired in the bureaucratic maze that often accompanies services.
- The Office would be a better oversight for correcting some of the mistakes within the current system.
- The Office would fill a unique void in the child welfare system in that it will establish a stronger and more viable system of checks and balances. A checks and balance system is absolutely crucial to ensure the long-term health, safety and welfare of our children and families.
- If the Office is properly planned and calibrated, it will not just be another layer of bureaucracy for our children and families to navigate, but rather, it will be an office that children and family can rely on and can view as a safe harbor where they can gain some relief from any dysfunction and fatal flaw in the current system.
- An ombudsman is absolutely critical because if there were a state-level ombudsman, I would have contacted that office *immediately* for an investigation to be launched.
- To enhance child advocacy: The Office will give citizens and officials an identifiable, independent process through which complaints can be processed and reports can be generated to keep the public informed about the performance of state agencies.
- To protect children: Children are vulnerable and as minors have limited rights and require the protection of adults looking out for their best interests. Virginia has a responsibility to guarantee the protection of children receiving state services.
- To improve services: Children's ombudsman offices encourage improved performance by government agencies responsible for caring for children in state care. Establishing an official advocate for children can enhance planning, cultivate coordination and encourage the best utilization of limited resources in order to improve outcomes for children and families in the state system.
- To protect families: Placing children into state custody is an invasive governmental intervention into family life and, therefore, the government bears a special responsibility to families impacted by this intervention and for children placed into state care.

##### Roanoke

- Appointed by the government as one who investigates and addresses complaints reported by individual citizens, the ombudsman is a process of objective governance that works.
- I am in favor of the proposal to add the Office in Virginia.
- The proposed Office should be funded.

- This Office would provide one more place to turn.
- Somehow, there has to be an agency that provides a means of investigating specific issues and of exploring all the information and work of multiple agencies (private and public), which often fail to accurately correlate information.
- I fully support this addition in Virginia and personally request the service upon implementation, unless you can provide information regarding other options currently open to achieve justice.
- I support establishing the Office to conduct independent investigations and reviews of citizen complaints to ensure the health, safety and welfare of children in Virginia. The creation of such an Office, external to current child serving agencies, could be a great asset to at-risk children of Virginia.
- We seek and support legislation to create and fund the Office for students with special needs in each school division. *Rationale:* Currently each locality handles parental grievances on a case-by-case basis. An ombudsman in each locality would serve as an advocacy for parents and their children for the purposes of resolving and mediating complaints regarding any activity, practice, policy or procedure of any facility or program operated, funded or licensed by any state or local agency, that is adversely affecting the health, safety, welfare or rights of any child. This Office would assure a higher level of accountability and advocacy to parents with special needs children.
- I hope that you vote to recommend establishing the Office.
- Virginia wanted to emancipate a child. The child was abandoned and pushed into the world by the only system that he knew. However, he was able to get his hands on materials which provided him guidance on what Virginia's expectation was in providing children and youth in care. This is not unusual with some localities pushing youth who are trying to be successful to be emancipated. This child could have used the Office to assist in this fight and provide local departments of social services (LDSS) guidance on this situation. I ask that the Commission establish this Office not just for adults but for the young people in care.
- Having been an ombudsman, I know the value of such an Office. I ask the Commission to help Virginia establish a position that looks at the bigger picture for Virginia's children.
- Civilization is judged by the way it treats its young, and that is why I am support the establishment of this Office.

### **Written Comments**

- Is there anything I can do to be of assistance [to the Commission in establishing this Office]?
- I am in complete support of establishing the Office in Virginia.
- There needs to be someone who can step up for the children. The Office will help with this.
- The children in need deserve this kind of advocacy group to address their concerns. Those concerns can only truly be addressed by an independent office.
- This Office must be formed for the sake of the children and families who love them and care for them. The children are our future and without them the world will not go on.
- When two state-sponsored meetings in one week raise the need to coordinate services for children, it illustrates how important an ombudsman for youth would be to provide the appropriate cross-agency support for children. I realize that the Office may or may not be able to do policy and case-work; nevertheless, to have one responsible official review the areas where the Commonwealth touches the lives of children, particularly those in acute need of help, would be a huge step forward.
- There was no one in my corner and nowhere to go. We talked about a lawyer, but we did not have the money to fight the Department of Social Services. It is horrible that one person [social workers] may have that much power. This Office is one of the best things to come along. Virginia may be able to keep more families if there was some place they could go for help. I understand that there maybe nothing I can do for my story, but if I can help stop one family from feeling that loss I felt, I am 100% in support.
- In order to protect our children, who as minors cannot often speak for themselves, but rely on us, the adults must take appropriate measures to insure their safety; improve current services of agencies responsible for the care and welfare of our children; insure that government programs for children are as safe as possible; and provide an independent, impartial, confidential place where those who wish to make complaints against any agency involved with a child's abuse. These are the provisions we would have with the Office, and this should be high on the list of priorities for Virginia!

## **2. CONCERNS ABOUT ESTABLISHING AN OFFICE OF CHILDREN'S SERVICES OMBUDSMAN**

### **Norfolk**

- Not opposed to the establishment of the Office, in theory; however, there are many concerns.

- In theory, I am not opposed establishing the Office; however, I do not think that the Office will correct the problems. The Office will only be a luxury in a system that is in need of very serious solutions. The Office will not solve the problems.

### **Roanoke**

- I am not speaking against the creation of the Office; however, I am speaking for the prioritization of funding. Creating the Office may have the unintended consequence of actually leaving less time available to serve Virginia's children.
- While having an advocacy system in place for those who receive any services from the government is a laudable goal, there are several things to consider before creating one.
- A child welfare ombudsman office would give...disgruntled individuals another way to express their ire with our findings, no matter how careful or professional we are. Having to respond to ombudsman inquiries on those cases and to provide documentation on such cases is going to use more time that could be devoted to child welfare. If you create more paperwork for local social service agencies and the authority to require its completion, something will have to give in other areas of service. In my opinion, funding priority should be given to direct services for children. Creating the ombudsman office prior to funding services may have the unintended consequence of actually leaving less time available to serve Virginia's children.

### **Written Comments**

- While it is easy to imagine how this office could benefit children, it is equally easy to imagine how its creation could further overburden an already overburdened child welfare system, resulting in a diminishing of service capacity and responsiveness rather than improvement. In addition to legitimate reports of concern, we could expect numerous unfounded accusations by extremely aggrieved people who object strongly to our child welfare system doing exactly what it is supposed to do. We could also expect complaints that the system is not doing things it cannot legally do. There are already many processes and avenues of accountability for agencies delivering these services. While an ombudsman office could certainly add value, I am concerned that the value added might not be worth the cost in state and local resources and the potential impact on services.
- The responsibilities of the new Office, in many cases, would be duplicitous to existing oversight entities. It would tax already overworked local workers to complete new/additional paperwork/reports unnecessarily. This establishment of an office to receive complaints on local agencies would allow for some parties to complain simply because they disagree with outcomes or responsibilities given to agencies by the *Code of Virginia*.
- The establishment of this new Office would create the potential for more work to be added to workers who simply cannot assume an additional unfunded mandate. The Department of Social Services is given more and more of those each year without increased staff or resources. The consequences would primarily be negative.
  - In social services, all clients have the right to appeal any decision made regarding services or benefits. An appeal process already exists. If the clients disagree with the actual policy/procedure localities are implementing, the client has the right to express this opinion to the state office and/or the state social services board. If they disagree with the *Code of Virginia*, they should talk with their elected representatives.
  - In juvenile court, children's rights are supposed to be guarded by the appointed Guardian-Ad-Litem (GALs). In some cases, GALs are not involved enough to know the child and the situation; however, it is the responsibility of the juvenile court to insure that GALs meet their responsibilities.
  - In courts that have Court-appointed Special Advocates (CASA) representatives, the "ombudsman" function may already be met.
  - In education, I am not sure what kind of oversight exists outside of special education services.
- Child-serving systems overall sometimes fail to truly represent what is best for the child in question for reasons not related to "harmful agency action and inaction". For example, if the Virginia legislature would revisit the original Child and Federal Child and Family Services Review Program Improvement Plan (PIP), it demonstrates that social services can already identify resources needed for sufficient services and staff to meet the Federal Standards in Child Welfare Services, but the original PIP was grossly under-funded. So once again, social services provide the best services it can with the resources it is given.
- Safeguarding parental rights tends to overshadow what is best for children in many situations. A newly established Office would not fix anything. Existing agencies' services, practices and oversights could perhaps be updated as a viable alternative to establishing a new Office.
- I am opposed to creating the Office due to the added expense at a time when federal and state dollars are being cut for vital children and family services. I am opposed to creating another agency that needs

administrative support when the money can be used for direct services to children and families within existing structures.

- The Office has the potential to be both intrusive and to duplicate efforts of the many existing agencies that are charged with advocating for children and families.
- A sufficient number of agencies already exist to ensure the health, safety and welfare of children.
- The state funds would be better spent in support of these agencies, allowing implementation and even enhancement of that mission.

### **3. COMMENTS ON THE CURRENT SYSTEM**

#### **Norfolk**

- The child welfare system is simply overwhelmed, under resourced and categorically dysfunctional. In its current form, it is woefully inadequate to accomplish the goal of protecting children who have been abused (physically, emotionally, and/or sexually).
- The state Department of Social Services is currently undermanned and understaffed.
- Local departments of social services are understaffed and have a great turnover rate.
- In recent years, a number of concerns have been raised involving children's services in the Commonwealth. Currently, concerned citizens, families and public officials have difficulty in knowing how to investigate charges and to address legitimate concerns involving child protective services, foster care, adoption, the courts and children in residential services programs.
- Currently, there is some separation wherein DSS can conduct independent investigations and respond to citizens' complaints or issue a response anytime there is a serious child protection services case that results in serious injury or death. DSS conducts independent investigations from local agencies.
- The number of reported cases is lower than the number of total cases.
- Many children are often too afraid to disclose information to anyone, including an adult they trust, because of the inherent psychological toll it takes on the child.
- The current problem is not necessarily with staff, but with the system. Staff cannot go beyond the structural limits which exist within a system.
- There are things in the system that need to be changed. There are children that are slipping through the cracks. There are children in families that are not being served as well as they could be served.
- It takes about one year to train a social worker to properly conduct child protection service investigations for low-level, low-risk situations. It takes about two years to train somebody to handle high risk-cases.
- Colleges and universities are not teaching social work graduates how to conduct these investigations. This is also a problem.
- The life span for social workers is about three years.
- Local departments of social services are consistently dealing with turnover and the need for staff to receive proper training. Additionally, the caseloads are too high.
- The laws in Virginia are not set up to assist in facilitating child protection service investigations. One example is audio-taping. Imagine a child who has disclosed information to a professional and who is then required to disclose the same information to a social worker whom the child has never met. The child must talk with the social worker in private and in front of an audiotape recorder. In this situation, a child, even an adult, will have it difficult to reporting the misconduct of someone else. This is especially true if the child knows that the information on the audiotape will be played in front of his/her parent(s), guardian(s) and/or abuser(s). It is not clear how the Office would correct these situations/problems.

#### **Roanoke**

- Children cannot, by virtue of their age alone, participate in our representative form of government.
- Regardless of appearance, vocabulary, intelligence, or their level of skill and dexterity, children are indeed just that – children.
- We must care enough to establish methods and means to ensure their safety and to protect them justly from the errors and omissions caused by the majority.
- It has been my experience working within state government and privately that, in Virginia, institutions and service agencies for children do not often adequately function across disciplines and the nature of self-preserving bureaucracy prohibits the vertical resolution of systemic concerns within those entities.
- Currently, I see no additional structure present in Virginia to provide further examination of actions that fail to demonstrate outcomes representing justice and ultimate focus on youth future.
- Virginia examines itself through its parts, not by observing its reflection as a whole.
- Meanwhile, children, their parents and caregivers must navigate themselves through the existing maze of services, attempting many times to have those disparate entities see the one child they have before them. Agencies refer children to other agencies when things go well. They point fingers at other agencies when things go wrong and agencies deflect cases and their obligations whenever they can. If the child is in striking



distance of that particular agency's magical enumerator - 18 years of age, 19 years of age or other ages depending on the mandated service. The Department of Social Services, Department of Juvenile Justice, school divisions and Community Services Boards all attempt to find a balance of services for children, but oftentimes are hampered by their own internal regulation and philosophical policy differences.

- Many youth in Virginia and indeed in our world do not live what should be a real life. Instead they are a part of an unpleasant daily drama that colors their ability to experience a quality life. They wade through a myriad of experiences that can lead to lives filled with negative outcomes. In the end, they pay for this and so does society. Everyone loses.
- In serving young people in Virginia, you serve a large portion of Virginia's population. I know you are aware that they [children] need and deserve to be served well.
- Often it is the structure of our offerings that lack the provision of answers and solutions.
- Frustration, fear and confused expectations impact our systems.
- While department heads and other leaders should and, with wisdom, do look at statistics, an ombudsman can help those guiding the services for children see what they cannot see: how well they are or are not integrating their services to effectively influence a positive change for that one child in need. Data-driven decisions in government are preferred, but often to the exclusion of those children who fall through the holes in our society's safety net. Ombudsman services help others see where our nets need mending, where wear and tear have abraded our usefulness, and can help find solutions through cooperation and honest examination of the impediments created by the policies of our very agencies. The policies our designed by agency specifics, not by on entity where they may overlap and influence all. They come together and mash or do not mash. That is an inherent problem between our state and local governments, and also within the state agency family itself.
- Children and their families need to be heard. When all levels within an agency have yielded the same response to a family, consistent with policy, it still would be beneficial for Virginia to determine if that is the correct response. Like driving at excessive speeds, just because we can, doesn't mean we should. Just because an agency says it can do nothing more, doesn't necessarily mean there is nothing more to do. Agencies are often burdened by responding to crises, some real and some imposed, and agency heads often lament that they could not accomplish what they had intended to do in office. An ombudsman can help keep those issues meaningful between administrations.
- I heard of children, young people and adults who attempt to seek assistance when no clear path to help existed.
- Issues for youth are largely ignored in favor of pleasing adults.
- As structures exist, it is my opinion that actions often protect adult rights over those of children.
- Many of Virginia's children and families are faced by multiple challenges that require the involvement of multiple child serving agencies. Juvenile justice involvement or mental health problems frequently co-exist with substance abuse issues, the need for child protective services and the need for educational support. With these complexities, it is very easy for some children's issues to fall through the cracks. Such an Office would have the ability to address the needs of children without being limited by a singly agency's perspectives.
- We need more than one person doing the role of the Department of Education's ombudsman.
- First, is the funding available to do so? Speaking from the perspective of social services, a recent study showed that social services has had an increase in caseload from 1990 through 2005 of approximately 136 percent, while state funding to social services has increased only 34% or an average of 2.27% per year. Approximately 2.27% annually is equivalent to increases in the cost of living over that period, which means that local social service agencies have not had funding to add any staff to assist with the 136% increase in caseload over that 15 year period. I would argue that if funds are not available to keep up with needed services in juvenile justice, social services and other children's services, then funds are not available to create a new advocacy agency.
- Second, is there a problem needing to be addressed? There have been two recent studies of social services' child welfare system. The first was a Joint Legislative Audit and Review Commission study of child protective services. That study found that Virginia's local agencies are delivering child protective services within law and policy and within the time frames dictated, though with variations around the Commonwealth. The second study was the Child and Family Services Review done by the federal government. That study found Virginia lacking in several measures of child well-being, though Virginia's children were found to be safe in general. I also do not argue that we have not made many mistakes in the past. So, yes, there is a problem needing to be addressed.
- The Department of Social Services created a program improvement plan to address the deficiencies found by the Child and Family Services Review. There are several promising, evidence-based methods of service provision which are being piloted throughout the state to improve services and to attain measurable results. We can increase the number of foster children who return to their homes and decrease the amount of time they spend in care. We can decrease the number of placements each child has. There are methods to

better predict which children need to come into foster care and when a child can safely be returned home. However, the pilot programs have shown that a great deal of training and additional staff time is needed to implement these program improvements.

- The cost of training and staffing to implement the program improvement plan statewide was carefully estimated and came to \$26,650,537. A request was sent to the 2005 General Assembly for that funding and \$4,650,249, or about 17% of the request, was appropriated. That amount, when allocated among the 120 local social services agencies, was not sufficient for most agencies to add even one social worker.
- Training is not currently available for most of the program improvements and, if it were available, current staff is so overwhelmed as to make taking time for training problematical. The issue is one of availability of resources to make improvements, not willingness on the part of local agencies.
- I have made reports as legally required of abuse reported to me by staff members and students only to find this hurt the student.
- The child welfare system is often subject to attempted use by couples battling over custody. Attorneys have even been known to suggest to a client that the client make a child protective services complaint to bolster their argument for custody. We must respond to every child protection complaint, so misuse of the system wastes valuable time. Naturally, the complainant is not happy when we tell him or her that we have found no abuse or neglect and will not be following up with a report or attending court on their behalf. Also, caretakers who are found to be abusive or neglectful are not happy with that finding. The social services system has mechanisms available for those who are dissatisfied with the actions of a local agency. There is an appeal system which is totally separate from local operations which can be used to review any action taken by a local social service agency.
- It is good to have watchdogs over any public agency, but we (DSS) need funding. It is not fair to have someone watching us if you have not created the ability for us to do the services.
- There are several pilot programs that can save Virginia a lot of money.
- Currently each locality handles parental grievances on a case-by-case basis. An ombudsman in each locality would serve as an advocate for parents and their children for the purposes of resolving and mediating complaints regarding any activity, practice, policy, or procedure of any facility or program operated, funded or licensed by any state or local agency, that is adversely affecting the health, safety, welfare or rights of any child. This Office would assure a higher level of accountability and advocacy to parents with special needs children.

### **Written Comments**

- There is a need to coordinate services for children in the juvenile justice system.
- The mental health needs and/or educational needs of these children were missed or at least interrupted due to lack of coordination or lack of mandate for the kids who became involved in the juvenile justice system.
- When two state-sponsored meetings in one week raise the need to coordinate services for children, it illustrates how important an Ombudsman for Youth would be to provide the appropriate cross-agency support for children.
- When I worked with the former association, I heard many concerns about there being nowhere for families to go and file formal complaints.
- There is no one who can help the families.
- During all of this I called the Department of Social Services in Richmond and was told all they could do was mediate and that the final decision was the caseworker's in charge and that the team would decide.
- There is a concern about how some of these cases have been handled by state agencies, including foster care programs, adoption programs, child protective services, and the juvenile and circuit courts. When a child dies, as we can back up with statistics available to the Commission on Youth, we become truly concerned about why this has happened, and continues to happen, when a parent, foster parent, guardian, or advocate has seemingly taken all the necessary steps, going through all the proper agencies and court, and then, the child is either further abused, physically and/or sexually, or even dies!
- It is criminal what we as a society do to our children, and at times, even with the best of intentions, we fail.
- There are social workers who are extremely overworked, and at times, there are workers who just do not have the passion and strength to do the work.
- At times, there are workers who have similar issues and who have yet to deal with their own issues and yet they are to work with children. It is a process of screening.
- Courts are a problem. Some judges are making rulings against children but the judges do not understand what is going on with the child. There are also judges who are involved in the process.
- There needs to be someone who can stand-up for the children. The Office will help with this.
- In San Diego, workers are trained for two years prior to doing investigations (front-end); however, in Virginia, recent graduates are placed to do (front-end) investigations in CPS.

- In San Diego, all attorneys worked for county and worked only on child services cases. The attorneys were in contact with case workers and more involved in the process. In Virginia, attorneys are appointed and not involved with the case/process.

#### 4. QUESTIONS AND COMMENTS ABOUT THE ADMINISTRATION OF THE OFFICE

##### Norfolk

- The Office must act in a responsive and conscientious manner, maintain high documentation standards and accurate data tracking methods.
- Who would be part of the staff/membership of the Office?
- What would be their credentials? Since a part of the duties would be to conduct independent investigations of case practices, staff expertise would be required. Staff must be knowledgeable of policies and *Code*, as well as to be able to conduct investigations in a way that aligns with what policies and *Code* requires.
- What would be the authority of the Office? Would the purpose of the Office be only to make recommendations or would the Office have authority beyond making recommendations?
- Where would the funding come from? If there are funds available, then those funds could be better used in hiring more staff for the local departments of social services so that the caseloads of workers can be reduced. This would allow workers the opportunity to have smaller caseloads. These workers would also have the time and resources to be able to identify more resources in the community and to work with the families in a more intimate way to ensure the safety of children.
- Education should be included within the purview of this Office.

##### Roanoke

##### Questions Answered

*Includes questions asked by Commission on Youth members*

- *What should be the role of the ombudsman?* The role of the Office should not be the content expert regarding that individual child. The role of the Office should be to identify to the agency heads, deputies, Governor, General Assembly, etc., to identify problems within the system; to help identify when issues are coming up with regulations (which a lot of it will be data and statistics). The Office must look at data and provide data-driven decisions. If the Office gets recurring complaints in a specific area concerning two agencies, the ombudsman should have the ability to talk with the agencies directly about the problem/perception of the problem.
- *Do you envision the Office serving as an advocate and not simple a referral/informational office?* The Office has to be an advocate. Young people do not have a place to go that is outside of local departments of social services or other children services when they have issues or concerns, or when they feel intimidated by their social workers and/or localities. It is important for them to have a place that they can contact about their issues and/or concerns. Youth needs to have some place to go when services are not being provided to them. The office will enable youth to find other avenues that are available so that will ensure that they receive the services that they need while they are in the custody of the Virginia. (CSA already requires this.)
- *Do you envision this Office as really advocating on behalf of the youth? What type of authority would this Office have? What avenues are currently available to youth?* The system has state policies and state laws, but the agencies pretty much run themselves. The Office would be almost like a mediator. Sometimes, the problem is not the fault of the social workers. The social workers may not be educated enough on the available services, may be new to the system or simple overworked. Sometimes, workers get overwhelmed and frustrated and treat children under those frustrations.
- *What is the role of the ombudsman in active cases?* One vision is to deal with individuals that are having trouble accessing programs across the system. There is a system set up in the judicial branch for Guardian-Ad-Litem investigative services.
- *Do you envision the Ombudsman having a say or advising in prioritization of funds?* Not sure. If there is an ombudsman office created, the Office cannot help but to become advocates for more funding for services because across general services, not just social services in Virginia, there is a tremendous lack of funding. So, in one part, it would be great to have the Office because they will look the system and conclude that more money is needed. Yet, on the other side, how much will it cost to create that service and what could Virginia do with that money?
- *Should the Office be more of an advisory? Who is currently making sure that programs are working best for each individual child? Who is the advocate for child who knows the available programs across the spectrum and knows which one is best for the child?* Currently, the agencies that serve children break through several secretariats. There is no one thread going through.
- *Would you envision this ombudsman having the ability or the charge to take over some of those roles or be an addition to what is currently out there in the judicial system when children become involved in the court system, not just the criminal courts, but all courts?* The Office should be able to go in and investigate and

make sure that those systems have worked appropriately and that there is not a failure in the mechanism, people involved, or the process. This is a huge need.

- *How big should the Office be?* The size of the Office will affect the cost of the program.
- *Do you envision that the Office would have to be as large as the adult program to be effective?* No.
- *One of the things that will be a struggle is the authority of the ombudsman to various agencies. Should the Ombudsman be more of a mediator? If it is that role, how effective will the ombudsman be?* The Office may best be served with an ombudsman that has no power. The ombudsman should have mediation, advocacy and identification authority.
- *Do you envision this Office partnering with community-based organizations?* The organization deals with prevention, which could possibly prevent further intervention. Prevention is a big piece that this organization could assist with.
- *Do you envision the role of the Office as one that advocates and promotes prevention strategies (i.e. drop-out prevention)?* Yes.

## 5. ADDITIONAL COMMENTS AND QUESTIONS TO CONSIDER

### Norfolk

- What is a very practical approach to address the problems within the current system, knowing that funds are difficulty and limited and knowing that legislators have tough decisions to make about funds in Virginia?
- What is a common sense approach?
- What do we need to establish that will fix the problems of the current system that, in essence, if funds are invested in the front end would, not only save money, but would also save heartache and lives on the back end?
- Examine the court systems in regards to capable individuals not standing up for children within the court systems.
- Child sexual abuse and molestation is no respecter of race, social economic status, level of education or community stature. The problem permeates every facet of the community at every level.
- The cost to society [for inaction] is immeasurable.

### Roanoke

- Children are a specialty.
- See the role of the organization as being a collaborative agency to spread the word of the Office.
- The community partnership is anxious to work towards all the efforts that promote the health and safety of the children and youth of Virginia.
- As mandatory reporter, is it correct that reports must go to VDOE and they are tasked to looking into those situations?

### **Questions Answered**

*Includes questions asked by Commission on Youth members*

- *Could the structure of the Department of Corrections' (DOC) ombudsman program work in this situation?* Yes, DOC structure would probably prevail. DOC's structure is decentralized. There is a central ombudsman that heads the unit. The ombudsman could also be like the National Transportation Safety Board. A lead person would be assigned to a particular complaint or task. There would also be a way to decide which tasks are more important than others.
- *What are some specific examples where interagency problems have let children fall through the cracks or have not been the greatest?* There is a myriad of issues and a need for more coordination placement for children. There are all types of squabbling going on regarding placement and payment of placement for children. Certainly, if you are involved in CSA, you would hear more stories. Each agency turns to the left and stamps the child to the next agency. The school doesn't want responsibility for day treatment because it is too costly, even though it is in their Individualized Education Program (IEP). The Department of Social Services does not feel comfortable in paying for it because the child may now live in a specialized group home and yet the community has been tasked to pay for it.
- *What is your experience with the Virginia Department of Education's (VDOE) ombudsman program?* When talking with parents who have experience with VDOE's ombudsman program, the insinuation is that there needs to be another service available to parents.
- *What did the Governor have in his budget for social services?* Not a penny made it in the Governor's budget. The problem falls on the Governor as well.

## 6. STRUCTURING RECOMMENDATIONS AND COMMENTS

### Roanoke

- Provide for an agency-level incumbent. The Ombudsman must be able to negotiate between parties, and also walk in to see the Governor and speak on behalf of children and their families.
- The Ombudsman must be free to examine issues as they are, not as the government wishes them to appear. If something is wrong, let us strive to correct it, not find ways to avoid responding to an issue.
- Give the Office a warrant to conduct its static and dynamic examinations without hindrance or delay.
- Staff the Office with competent personnel. Rather than divisional constraints, assemble persons of diverse background to examine issues where the issues lead them. Also, the Office should be aligned with several institutions of higher learning to ensure that the latest information, research, and thinking are incorporated in the office's recommendations.
- Establish a rotating lead position over each case when accepted for review by the Ombudsman.
- There needs to be someone who can advise the legislature, governor and agency heads one-on-one on what can make the children's services system better and the things that will work best for children. This is very important.

## 7. METHODOLOGY RECOMMENDATIONS

### Roanoke

- Establish the office to look at impediments to service coordination, not complaint resolution. The Ombudsman may wish to examine an agency's complaint/grievance system to determine their effectiveness in responding to consumers' and citizens' concerns, but is not needed to resolve matters between parties.
- Allow employees and other professional proponents a forum for expression. Our physicians, psychiatrists, psychologists, counselors, probation officers, teachers, and all others who interact professionally with children need to have opportunity to propose change and concerns outside their normal administrative remedies. Let individuals seek redress and suggest changes in public policy and service provision to children through the Ombudsman.
- The Ombudsman should be able to choose the issues for review. Similar to the United States' Supreme Court, there are issues with wide-ranging implications that provide a greater return than others. Issues not investigated may be referred back to the agencies involved or other entities to continue to examine and resolve.

## 8. ADDITIONAL RECOMMENDATIONS

### Roanoke

- Recommendation to this Commission is that we have distinctly more qualified personnel within the Office.

## 9. ISSUES FOR STAFF TO RESEARCH

### Norfolk/Roanoke

- Reasons why colleges and universities are not teaching social work students how to conduct investigations.
- Examine the laws in Virginia for recording testimonies within investigations.
- Why is there such a time lapse between when a complaint is filed, an investigation is opened and the needed information is gathered?
- Find out whether there is a tracking mechanism across the school systems. If one school reports suspected child abuse and neglect of a parent and then the parent relocates the child to another school division, is there a tracking mechanism that will alert the new school division of the report of suspected child abuse and neglect by the previous school?
- The Commission must be careful as we craft the Office, ensuring that the Office supplements and not replaces those who are interested in the youth and have a volunteer capacity. The Commission must make sure that the Office is inclusive.
- Research Senate Bill 245 (IEP).
- Gather information on the several pilot programs within DSS that were referred to by the public.
- Contact the Virginia Youth Advisory Council in regards to this study. VA-YAC is a council of foster kids currently in state care.

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

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

### SUMMARY OF RELATED CHILDREN'S SERVICE GOVERNMENT ENTITIES WITHIN THE CURRENT CHILDREN'S SERVICES SYSTEM IN VIRGINIA

#### Executive and Judicial Branches and Independent Entities

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|  |  |
|--|--|
| 2-1-1 Virginia   | Department of Social Services  |
| Community Services Boards  | Guardian Ad Litem for Children   |
| Department of Correctional Education   | Office for Protection and Advocacy   |
| Department of Criminal Justice Services  | Office of Comprehensive Services for At-Risk<br>Youth and Families                                       |
| Department of Education  | Office of the Attorney General   |
| Department of Health   | Office of the Inspector General for Mental<br>Health, Mental Retardation and Substance<br>Abuse Services |
| Department of Juvenile Justice   |  |
| Department of Medical Assistance<br>Services                                       |  |
| Department of Mental Health, Mental<br>Retardation and Substance Abuse<br>Services |  |

#### Commissions, Initiatives, Boards

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|   |   |
|---|---|
| Advisory Committee on Child Abuse and<br>Neglect          | Disability Commission   |
| Advisory Committee on Juvenile Justice                    | Joint Commission on Health Care   |
| Child Day-Care Council                                    | Joint Legislative Audit and Review<br>Commission State Child Fatality Review<br>Team    |
| Child Support Guidelines Review Panel                     | State Crime Commission  |
| Commission on Youth                                       | State Executive Council for<br>Comprehensive Services for At Risk<br>Youth and Families |
| Community Integration Advisory<br>Commission              | Virginia Board for People with Disabilities   |
| Community Integration for Virginians with<br>Disabilities |   |

**EXECUTIVE BRANCH: Secretariat Not Applicable**

| AGENCY   | STATUTORY REQUIREMENTS/AUTHORITY  |
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| <p><b>Office of the Attorney General</b></p>   | <p><b>Mission:</b> The Office of the Attorney General is the Commonwealth's law firm. The office is charged with providing advice to state agencies and the Governor; serving as consumer counsel for the people of the Commonwealth; defending criminal convictions on appeal to ensure that justice is served; and defending the laws of the Commonwealth when they are challenged on constitutional grounds. In the carrying out of these obligations this office will adhere to the highest ethical standards, respect the traditions and precedents that have shaped our Commonwealth, and bring all legal resources to bear in order to protect the people, the customs, and the welfare of the Commonwealth of Virginia. As Virginia's law firm, the Office of the Attorney General is dedicated to seeing to it that justice is served, wisdom is sought, and the right course of action is consistently taken. By faithfully serving Virginia and her people, this office strives to ensure that the Commonwealth will reach a future even brighter than its glorious past.</p> <p><b>Duties:</b> The duties and powers include:</p> <ul style="list-style-type: none"> <li>▪ Provide legal advice and representation to the Governor and executive agencies, state boards and commissions, and institutions of higher education. The advice commonly includes help with personnel issues, contracts, purchasing, regulatory and real estate matters and the review of proposed legislation. The Office also represents those agencies in court.</li> <li>▪ Provide written legal advice in the form of official opinions to members of the General Assembly and government officials.</li> <li>▪ Defend criminal convictions on appeal, and defend the state when prisoners sue concerning their incarceration.</li> <li>▪ Defend the constitutionality of state laws when they are challenged in court.</li> <li>▪ Enforce state laws that protect businesses and consumers when there are violations. Individual consumer complaints are usually handled by another agency.</li> <li>▪ Represent consumers in utility matters before the State Corporation Commission.</li> <li>▪ Collect debts owed to state agencies, hospitals and universities.</li> <li>▪ Conduct or assist criminal investigations and prosecutions in certain limited cases (for example Medicaid fraud, money laundering, theft of state property, environmental crimes, and computer crimes).</li> <li>▪ Represent the Department of Social Services in its efforts to collect child support on behalf of children and families.</li> <li>▪ Supervise the appointment and payment of private attorneys hired by other state agencies for various matters.</li> <li>▪ Assist victims of crime who are following criminal cases at the appellate level.</li> <li>▪ Provide information to the public on Identity Theft prevention and remediation.</li> <li>▪ Administer grants to help reduce crimes involving gangs, drugs and sex predators.</li> <li>▪ Administer the Sexually Violent Predator Civil Commitment Program to protect children from the most dangerous predators.</li> </ul> |
| <p><b>Office of the Inspector General for Mental Health, Mental Retardation and Substance Abuse Services</b></p> | <p><b>Summary:</b> (§ 37.2-423) There is hereby created the Office of Inspector General for Mental Health, Mental Retardation and Substance Abuse Services to inspect, monitor, and review the quality of services provided in state facilities and by providers as defined in § 37.2-403, including licensed mental health treatment units in state correctional facilities.</p> <p><b>Appointment:</b> (§ 37.2-423) The Inspector General shall be appointed by the Governor, subject to confirmation by the General Assembly, and shall report to the Governor. The Inspector General shall be appointed 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.</p> <p><b>Duties:</b> (§ 37.2-424) The Inspector General shall have the following powers and duties:</p> <ol style="list-style-type: none"> <li>1. To operate and manage the Office of the Inspector General and to employ the personnel required to carry out the provisions of this article.</li> <li>2. To make and enter into contracts and agreements that may be necessary and incidental to carry out the provisions of this article, 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.</li> <li>3. To provide inspections of and make policy and operational recommendations for state facilities and for providers, including licensed mental health treatment units in state</li> </ol>   |

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| <p><b>Office of the Inspector General for Mental Health, Mental Retardation and Substance Abuse Services</b><br/>(cont.)</p> | <p>correctional facilities, in order to prevent problems, abuses, and deficiencies in and improve the effectiveness of their programs and services. The Inspector General shall provide oversight and conduct announced and unannounced inspections of state facilities and of providers, including licensed mental health treatment units in state correctional facilities, 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 Inspector General shall conduct unannounced inspections at each state facility at least once annually.</p> <ol style="list-style-type: none"> <li>4. To access any and all information, including confidential consumer information, related to the delivery of services to consumers in state facilities or served by providers, including licensed mental health treatment units in state correctional facilities. However, the Inspector General 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 Inspector General shall be given access to any privileged information in state facilities and licensed mental health treatment units in state correctional facilities. All consumer information shall be maintained by the Inspector General as confidential in the same manner as is required by the agency or provider from which the information was obtained.</li> <li>5. To keep the Governor, General Assembly, and the Joint Commission on Health Care fully and currently informed by means of reports required by § 37.2-424 concerning significant problems, abuses, and deficiencies relating to the administration of the programs and services of state facilities and of providers, including licensed mental health treatment units in state correctional facilities, to recommend corrective actions concerning the problems, abuses, and deficiencies, and to report on the progress made in implementing the corrective actions.</li> <li>6. To notify in a timely manner the attorney for the Commonwealth for the locality in which a state facility is located and law enforcement, as appropriate, whenever the Inspector General has reasonable grounds to believe there has been a violation of state criminal law. However, where the Inspector General has reason to believe that a criminal offense has been committed in a state correctional facility, notification of that suspicion shall be given to the Inspector General for the Department of Corrections.</li> <li>7. To review, comment on, and make recommendations about, as appropriate, any reports prepared by the Department and the critical incident data collected by the Department in accordance with regulations adopted under § 37.2-400 to identify issues related to quality of care, seclusion and restraint, medication usage, abuse and neglect, staff recruitment and training, and other systemic issues.</li> <li>8. To monitor and participate in the adoption of regulations by the Board.</li> <li>9. To receive reports, information, and complaints from the Virginia Office for Protection and Advocacy concerning issues related to quality of care provided in state facilities and by providers, including licensed mental health treatment units in state correctional facilities, and to conduct independent reviews and investigations.</li> </ol> <p><b>Reports:</b> (§ 37.2-425)</p> <ol style="list-style-type: none"> <li>A. The Inspector General shall prepare, not later than May 31 and November 30 of each year, semiannual reports summarizing the activities of the Office during the immediately preceding six-month periods ending March 31 and September 30. Reports shall include: <ol style="list-style-type: none"> <li>1. A description of significant problems, abuses, and deficiencies related to the administration of the programs and services of state facilities and of providers, including licensed mental health treatment units in state correctional facilities, during the reporting period;</li> <li>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;</li> <li>3. An identification of each significant recommendation, described in previous reports under this section, on which corrective action has not been completed;</li> <li>4. A summary of matters referred to the attorneys for the Commonwealth, law enforcement, and the Inspector General for the Department of Corrections and actions taken on them during the reporting period; and</li> <li>5. Information concerning the numbers of complaints received and types of investigations completed by the Office during the reporting period.</li> </ol> </li> <li>B. Within 30 days of the transmission of each semiannual report, the Inspector General shall make copies of the report available to the public upon request and at a reasonable cost.</li> </ol> |

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| <p><b>Office of the Inspector General for Mental Health, Mental Retardation and Substance Abuse Services</b><br/>(cont.)</p> | <p>C. The Inspector General shall report immediately to the Governor and the Commissioner or the Director of the Department of Corrections, as may be appropriate, whenever the Office becomes aware of particularly serious problems, abuses, or deficiencies relating to the administration of the programs and services of state facilities and of providers, including licensed mental health treatment units in state correctional facilities.</p> <p>D. The Inspector General may conduct additional investigations and make reports relating to the administration of the programs and services of state facilities and of providers, including licensed mental health treatment units in state correctional facilities, as are, in the judgment of the Inspector General, necessary or desirable.</p> <p>E. Notwithstanding any other provision of law, the reports, information, or documents required by or under this section shall be transmitted directly to the Governor, the General Assembly, and the Joint Commission on Health Care by the Inspector General without preliminary clearances or approvals. The Inspector General shall, insofar as feasible, provide copies of the semiannual reports to the Governor in advance of the date for their submission to the General Assembly and the Joint Commission on Health Care, to provide a reasonable opportunity for comments of the Governor to be appended to the reports when they are submitted to the General Assembly and the Joint Commission on Health Care.</p> <p>F. Records that are confidential under federal or state law shall be maintained as confidential by the Inspector General and shall not be further disclosed, except as permitted by law.</p> <p>G. The Inspector General's written reports of state facility inspections shall be transmitted to the Governor for review and comment as deemed necessary by the Governor. The Inspector General shall report on the general conditions, staffing patterns, and access to active and contemporary treatment in each state facility, at a minimum, on an annual basis. The Department shall comment in writing on any recommendations made by the Inspector General.</p> <p><b>Definition of Provider and Services:</b> (§ 37.2-403)</p> <ul style="list-style-type: none"> <li>▪ "Provider" means any person, entity, or organization, excluding an agency of the federal government by whatever name or designation, that delivers (i) services to persons with mental illness, mental retardation, or substance abuse, (ii) services to persons who receive day support, in-home support, or crisis stabilization services funded through the Individual and Families Developmental Disabilities Support Waiver, (iii) services to persons under the Brain Injury Waiver, or (iv) residential services for persons with brain injury. The person, entity, or organization shall include a hospital as defined in § 32.1-123, community services board, behavioral health authority, private provider, and any other similar or related person, entity, or organization. It shall not include any individual practitioner who holds a license issued by a health regulatory board of the Department of Health Professions or who is exempt from licensing pursuant to § 54.1-3501, 54.1-3601, or 54.1-3701.</li> <li>▪ "Service or services" means: <ol style="list-style-type: none"> <li>1. Planned individualized interventions intended to reduce or ameliorate mental illness, mental retardation, or substance abuse through care, treatment, training, habilitation, or other supports that are delivered by a provider to individuals with mental illness, mental retardation, or substance abuse. Services include outpatient services, intensive in-home services, opioid treatment services, inpatient psychiatric hospitalization, community gero-psychiatric residential services, assertive community treatment, and other clinical services; day support, day treatment, partial hospitalization, psychosocial rehabilitation, and habilitation services; case management services; and supportive residential, special school, halfway house, and other residential services;</li> <li>2. Day support, in-home support, and crisis stabilization services provided to individuals under the Individual and Families Developmental Disabilities Support Waiver; and</li> <li>3. Planned individualized interventions intended to reduce or ameliorate the effects of brain injury through care, treatment, or other supports provided under the Brain Injury Waiver or in residential services for persons with brain injury.</li> </ol> </li> </ul> |

**EXECUTIVE BRANCH: Education Secretariat**

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| <p><b>Department of Education</b></p> | <p>Note: See the <i>Regulations Governing Special Education Programs for Children with Disabilities in Virginia</i>, March 27, 2002</p> <p><b>Cooperation with other state agencies regarding students placed in group homes or residential facilities having educational programs:</b> (§ 22.1-16.3)</p> <p>A. In addition to the requirement to cooperate with other state departments in licensing and certification of residential schools for students with disabilities, the Department of Education shall cooperate with other state departments in fulfilling their respective licensing and certification responsibilities and in reducing and simplifying the regulations involved in the licensing and certification of group homes and residential facilities for children when such homes or facilities include an educational program. The Board shall promulgate regulations allowing the Department of Education to so assist and cooperate with other state departments.</p> <p>B. The Board's regulations shall address the services required to be provided in such homes and facilities as it may deem appropriate to ensure the education and safety of the students. In addition, the Board's regulations shall include, but shall not be limited to (i) specifications for the structure and accommodations of such homes or facilities according to the needs of the children to be placed; (ii) rules concerning allowable activities, local government and home- or facility-imposed curfews, and study, recreational, and bedtime hours; and (iii) a requirement that each home or facility have a community liaison who shall be responsible for facilitating cooperative relationships with the neighbors, the local school division, local law enforcement, local government officials, and the community at large.</p> <p><b>Report on education and standards of quality for school divisions; when submitted and effective:</b> (§ 22.1-18)</p> <p>By November 15 of each year, the Board of Education shall submit to the Governor and the General Assembly a report on the condition and needs of public education in the Commonwealth and shall identify any school divisions and the specific schools therein which have failed to establish and maintain schools meeting the existing prescribed standards of quality. Such standards of quality shall be subject to revision only by the General Assembly, pursuant to Article VIII, Section 2 of the Constitution of Virginia. Such report shall include a complete listing of the current standards of quality for the Commonwealth's public schools, together with a justification for each particular standard, how long each such standard has been in its current form, and whether the Board recommends any change or addition to the standards of quality.</p> <p><b>Definitions:</b> (§ 22.1-213)</p> <p>As used in this article:</p> <p>"Children with disabilities" means those persons (i) who are aged two to twenty-one, inclusive, having reached the age of two by the date specified in § 22.1-254, (ii) who are mentally retarded, physically disabled, seriously emotionally disturbed, speech impaired, hearing impaired, visually impaired, multiple disabled, other health impaired including autistic or who have a specific learning disability or who are otherwise disabled as defined by the Board of Education and (iii) who because of such impairments need special education.</p> <p>"Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a disabled child to benefit from special education, including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.</p> <p>"Special education" means specially designed instruction at no cost to the parent, to meet the unique needs of a disabled child, including classroom instruction, home instruction, instruction provided in hospitals and institutions, instruction in physical education and instruction in career and technical education.</p> <p>"Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or do mathematical calculations. The term does not include children who have learning problems that are primarily the result of visual, hearing or motor handicaps, of mental retardation, or of environmental, cultural or economic disadvantage.</p> <p><b>Board to prepare special education program for children with disabilities:</b> (§ 22.1-214)</p> <p>A. The Board of Education shall prepare and supervise the implementation by each school division of a program of special education designed to educate and train children with disabilities between the ages defined in § 22.1-213 and may prepare and place in operation such program for such individuals of other ages. The program developed by the Board of Education shall be designed to ensure that all children with disabilities have available to them a free and appropriate education, including specially designed instruction to meet the unique needs of such children. The program shall require (i) that the hearing of</p> |

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| <p><b>Department of Education</b> <i>(cont.)</i></p> | <p>each disabled child be tested prior to placement in a special education program and (ii) that a complete audiological assessment, including tests which will assess inner and middle ear functioning, be performed on each child who is hearing impaired or who fails the test required in clause (i). The school boards of the several school divisions, the Department for the Blind and Vision Impaired, the Department for the Deaf and Hard-of-Hearing, the Department of Health and other state and local agencies which can or may be able to assist in providing educational and related services shall assist and cooperate with the Board of Education in the development of such program.</p> <p>B. The Board of Education shall prescribe procedures to afford due process to children with disabilities and their parents or guardians and to school divisions in resolving disputes as to program placements, individualized education programs, tuition eligibility and other matters as defined in state or federal statutes or regulations. These procedures shall encourage the use of mediation as an informal means of resolving such disputes. Mediation shall not, however, be used to deny or delay the due process rights of parents or guardians.</p> <p>C. The Board of Education may provide for final decisions to be made by a hearing officer. The parents and the school division shall have the right to be represented by legal counsel or other representative before such hearing officer without being in violation of the provisions of § 54.1-3904.</p> <p>D. Any party aggrieved by the findings and decision made pursuant to the procedures prescribed pursuant to subsections B and C of this section may bring a civil action in the circuit court for the jurisdiction in which the school division is located. In any such action the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and basing its decision on the preponderance of the evidence, shall grant such relief as the court determines appropriate.</p> <p>E. Whenever the Board of Education, in its discretion, determines that a school division fails to establish and maintain programs of free and appropriate public education which comply with regulations established by the Board, the Board may withhold all special education moneys from the school division and may use the payments which would have been available to such school division to provide special education, directly or by contract, to eligible children with disabilities in such manner as the Board considers appropriate.</p> <p>F. The Board of Education shall supervise educational programs for children with disabilities by other public agencies and shall ensure that the identification, evaluation and placement of children with disabilities and youth in education programs by other public agencies, as appropriate, are consistent with the provisions of the Board of Education's special education regulations.</p> <p>G. The Board of Education shall prescribe regulations to provide a range of assessment procedures for the evaluation of children with disabilities. These regulations shall include provision for parents to participate, if they so request, in the consideration of the assessment components to be used. However, such regulations shall not require any local school board to exceed the requirements of federal law or regulations for the identification and evaluation of children with disabilities.</p> <p><b>Issuance of subpoenas by hearing officers:</b> (§ 22.1-214.1)<br/>Any hearing officer appointed pursuant to the procedures provided for in subsections B and C of § 22.1-214 shall have the power to issue subpoenas requiring testimony or the production of books, papers, and physical or other evidence. Any person so subpoenaed who objects may, if the hearing officer does not quash or modify the subpoena at a timely request as illegally or improvidently granted, immediately procure by a petition a decision on the validity thereof in the circuit court of the jurisdiction in which the hearing is to be held. In any case of refusal or neglect to comply with the hearing officer's subpoena, the hearing officer may procure an order of enforcement from such court.</p> <p><b>Department to develop certain curriculum guidelines; Board to approve:</b> (§ 22.1-214.3)<br/>The Department of Education shall develop curricula for the school-age residents of the state training centers for the mentally retarded and curriculum guidelines for the school-age residents of the state mental health facilities in cooperation with the Department of Mental Health, Mental Retardation and Substance Abuse Services and representatives of the teachers employed to provide instruction to the children. Prior to implementation, the Board of Education shall approve these curricula and curriculum guidelines.</p> <p>These curricula and curriculum guidelines shall be designed to provide a range of programs and suggested program sequences for different functioning levels and handicaps and shall be reviewed and revised at least every three years. In addition to academic programming, the curriculum guidelines for the school-age residents of the state mental health facilities shall include affective education and physical education as well as independent living and career and technical education, with particular emphasis on the needs of older adolescents and young adults.</p> <p><b>School divisions to provide special education; plan to be submitted to Board:</b> (§ 22.1-215)<br/>Each school division shall provide free and appropriate education, including special education, for the children with disabilities residing within its jurisdiction in accordance with regulations of the Board of Education.</p> |



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| <p><b>Department of Education</b> (<i>cont.</i>)</p> | <p>For the purposes of this section, "children with disabilities, residing within its jurisdiction" shall include: (i) those individuals of school age identified as appropriate to be placed in public school programs, who are residing in a state institution operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services located within the school division, or (ii) those individuals of school age who are Virginia residents and are placed and living in a foster care home or child-caring institution or group home located within the school division and licensed under the provisions of Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 as a result of being in the custody of a local department of social services or welfare or being privately placed, not solely for school purposes.</p> <p>The Board of Education shall promulgate regulations to identify those children placed within facilities operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services who are eligible to be appropriately placed in public school programs.</p> <p>The cost of the education provided to children residing in the state institutions, who are appropriate to place within the public schools, shall remain the responsibility of the Department of Mental Health, Mental Retardation and Substance Abuse Services. The cost of the education provided to children who are not residents of the Commonwealth and are placed and living in a foster care home or child-caring institution or group home located within the school division and licensed under the provisions of Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 shall be billed to the sending agency or person by the school division as provided in subsection C of § 22.1-5. No school division shall refuse to educate any such child or charge tuition to any such child.</p> <p>Each school division shall submit to the Board of Education in accordance with the schedule and by the date specified by the Board, a plan acceptable to the Board for such education for the period following and a report indicating the extent to which the plan required by law for the preceding period has been implemented. However, the schedule specified by the Board shall not require plans to be submitted more often than annually unless changes to the plan are required by federal or state law or regulation.</p> <p><b>Information regarding procedures and rights relating to special education placement and withdrawal:</b> (§ 22.1-215.1)<br/> Effective July 1, 2001, the Board of Education shall publicize and disseminate to parents of students who are enrolled in special education programs or for whom a special education placement has been recommended information regarding current federal law and regulation addressing procedures and rights related to the placement and withdrawal of children in special education.</p> <p><b>Visually impaired children:</b> (§ 22.1-217)</p> <p>A. Special education for visually impaired children provided by a school division shall be established, maintained and operated jointly by the school board and the Virginia Department for the Blind and Vision Impaired subject to the regulations of the Board of Education. Braille instruction shall be included in the student's Individualized Education Plan (IEP), whenever appropriate. When developing the IEP for students with visual impairment, the presumption shall be that proficiency in literacy is essential for such student to achieve satisfactory educational progress. However, use of Braille shall not be required if other special education services are more appropriate to the student's educational needs, and the provision of other appropriate services shall not preclude Braille instruction.</p> <p>B. The Virginia Department for the Blind and Vision Impaired shall prepare and deliver a program of special education services in addition to the special education provided in the public school system designed to meet the educational needs of visually impaired children between the ages of birth and twenty-one and may prepare and deliver such programs for such individuals of other ages. In the development of such a program, the Virginia Department for the Blind and Vision Impaired shall cooperate with the Board of Education and the school boards of the several school divisions. The Virginia Department for the Blind and Vision Impaired shall assist the Board of Education and the school boards of the several school divisions with in-service training in Braille for currently employed teachers of students who are blind and visually impaired.</p> <p>C. As used in this section:<br/> "Braille" means the system of reading and writing through touch and is commonly known as standard English Braille Grade 2. "Program" means a modified program which provides special materials or services and may include the employment of itinerant teachers or resource room teachers for the visually impaired. "Visually impaired" shall be defined by the Board of Education and the Virginia Department for the Blind and Vision Impaired.</p> <p><b>Programs for the research and development of innovative methods of teaching mentally retarded, mentally ill or emotionally disturbed children:</b> (§ 22.1-217.1)<br/> For the purpose of improving the quality of the education and training provided to the school-age residents of the state mental health and mental retardation facilities, there is hereby established a program of grants, from such funds as are appropriated by the General Assembly, to promote the research and development of innovative methods of teaching mentally retarded, mentally ill or emotionally disturbed children in residential</p> |

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| <b>Department of Education</b> <i>(cont.)</i> | <p>settings. This program shall be available to the education directors and instructional staffs of the institutions administered by the Department of Mental Health, Mental Retardation and Substance Abuse Services. The Board of Education shall award these grants on the basis of the recommendations of an advisory committee composed of the Director of the Virginia Treatment Center for Children, two representatives of the Department of Education and two representatives of the Department of Mental Health, Mental Retardation and Substance Abuse Services. The advisory committee shall establish objectives for these grants, develop requests for proposals and set criteria for evaluating the applications for funds</p> <p><b>Duty to process placements through the Interstate Compact on the Placement of Children:</b> (§ 22.1-218.1)<br/> In order to protect the interests of the Commonwealth and local governments and provide for the safety and welfare of children with disabilities, all placements of children with disabilities facilitated by a school division in an out-of-state special education facility shall be processed through the Interstate Compact on the Placement of Children as provided in Chapters 10 (§ 63.2-1000 et seq.) and 11 (§ 63.2-1100 et seq.) of Title 63.2.</p> <p><b>Power of counties, cities and towns to appropriate and expend funds for education of children with disabilities:</b> (§ 22.1-220)<br/> The governing body of any county, city or town is hereby authorized and empowered to appropriate and expend funds of the county, city or town in furtherance of the education of children with disabilities residing in such county, city or town who attend Woodrow Wilson Rehabilitation Center or public or private nonsectarian schools, or public or private nonsectarian child-day programs for children below the compulsory school attendance age, whether within or without the county, city or town and whether within or without the Commonwealth.</p> |

**EXECUTIVE BRANCH: Health and Human Resources Secretariat**

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| <b>2-1-1 Virginia</b> | <p><b>Mission:</b> 2-1-1 Virginia connects citizens needing human services with appropriate community resources to help satisfy those needs. 2-1-1 also helps strengthen communities with its ability to assist in planning for human services delivery at local, regional and state levels; and provides information to assist decision makers in allocating financial and other resources to respond to state and local human service priorities. 2-1-1 VIRGINIA:</p> <ul style="list-style-type: none"> <li>▪ Offers referrals to services that strengthen families;</li> <li>▪ Locates potential service providers;</li> <li>▪ Offers choices and suggests resources to promote self-reliance and help individuals help themselves;</li> <li>▪ Identifies and connects services that support a comprehensive approach to problem-solving;</li> <li>▪ Identifies unmet community needs for policy makers; and</li> <li>▪ Provides Quick Guides or directories to local entities</li> </ul> <p><b>Purpose:</b> (§ 63.2-222) There shall be created a statewide human services information and referral system designed to:</p> <ol style="list-style-type: none"> <li>1. Collect and maintain accurate and complete resource data on a statewide basis;</li> <li>2. Link citizens needing human services with appropriate community resources to satisfy those needs;</li> <li>3. Assist in planning for human services delivery at the local, regional and state levels; and</li> <li>4. Provide information to assist decision-makers in allocating financial and other resources to respond to state and local human service priorities.</li> </ol> <p><b>Duties: Virginia Department of Social Services</b> (§ 63.2-226) The Department [of Social Services] shall assume administrative responsibilities for the statewide system. In this capacity, the Department shall establish an office to:</p> <ol style="list-style-type: none"> <li>1. Develop a plan for the design and implementation of a statewide human services information and referral program;</li> <li>2. Coordinate and supervise the implementation and operation of the information and referral program;</li> <li>3. Coordinate funding for the system;</li> <li>4. Select regional providers of information and referral services;</li> <li>5. Supervise coordination of information management among information and referral regions across the Commonwealth;</li> <li>6. Encourage effective relationships between the system and state and local agencies and public and private organizations;</li> <li>7. Develop and implement a statewide publicity effort;</li> <li>8. Provide training, technical assistance, research, and consultation for regional and local information and referral centers, and to localities interested in developing information and referral services;</li> <li>9. Determine a core level of services to be funded from state government resources;</li> </ol> |

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| <p><b>2-1-1 Virginia</b><br/>(cont.)</p> | <p>10. Coordinate standardization of resource data collection, maintenance and dissemination;<br/> 11. Stimulate and encourage the availability of statewide information and referral services; and<br/> 12. Develop and implement a program for monitoring and assessing the performance and success of the information and referral program.</p> <p><b>Duties—Regional Providers:</b> (§ 63.2-227) There shall be established a regional system of providers of information and referral services. The Department [of Social Services] shall select the regional providers. The regional providers shall:</p> <ol style="list-style-type: none"> <li>1. Collect, maintain and disseminate resource data;</li> <li>2. Provide citizen access to information about resources throughout the Commonwealth;</li> <li>3. Assist in planning functions by providing selected data to the Department on a regular basis;</li> <li>4. Provide data to public and private agencies other than the Department on a contractual basis;</li> <li>5. Cooperate with the state administering agency;</li> <li>6. Seek funds from available sources;</li> <li>7. Maintain effective relationships between the system and state and local agencies and public and private organizations; and</li> <li>8. When feasible and appropriate and within the limits of available funds, establish satellite offices or develop cooperative agreements with local information and referral groups and resource and referral groups that can assist the regional providers in performing their duties and responsibilities.</li> </ol>   |
| <p><b>Community Services Boards</b></p>  | <p><b>Purpose:</b> (§ 37.2-500) The Department of Mental Health, Mental Retardation and Substance Abuse Services, for the purposes of establishing, maintaining, and promoting the development of mental health, mental retardation, and substance abuse services in the Commonwealth, may provide funds to assist any city or county or any combinations of cities or counties or cities and counties in the provision of these services. Every county or city shall establish a community services board by itself or in any combination with other cities and counties, unless it establishes a behavioral health authority pursuant to Chapter 6 (§ 37.2-600 et seq.) of this title. Every county or city or any combination of cities and counties that has established a community services board, in consultation with that board, shall designate it as an operating community services board, an administrative policy community services board or a local government department with a policy-advisory community services board. The governing body of each city or county that established the community services board may change this designation at any time by ordinance. In the case of a community services board established by more than one city or county, the decision to change this designation shall be the unanimous decision of all governing bodies.</p> <p><b>Core Services:</b> (§ 37.2-500) The core of services provided by community services boards within the cities and counties that they serve shall include emergency services and, subject to the availability of funds appropriated for them, case management services. The core of services may include a comprehensive system of inpatient, outpatient, day support, residential, prevention, early intervention, and other appropriate mental health, mental retardation, and substance abuse services necessary to provide individualized services and supports to persons with mental illnesses, mental retardation, or substance abuse.</p> <p>In order to provide comprehensive mental health, mental retardation, and substance abuse services within a continuum of care, the community services board shall function as the single point of entry into publicly funded mental health, mental retardation, and substance abuse services.</p> <p><b>Duties:</b> (§ 37.2-504) A. Every operating and administrative policy community services board and local government department with a policy-advisory board shall have the following powers and duties:</p> <ol style="list-style-type: none"> <li>1. Review and evaluate public and private community mental health, mental retardation, and substance abuse services and facilities that receive funds from it and advise the governing body of each city or county that established it as to its findings.</li> <li>2. Pursuant to § 37.2-508, submit to the governing body of each city or county that established it an annual performance contract for community mental health, mental retardation, and substance abuse services for its approval prior to submission of the contract to the Department.</li> <li>3. Within amounts appropriated for this purpose, provide services authorized under the performance contract.</li> <li>4. In accordance with its approved performance contract, enter into contracts with other providers for the delivery of services or operation of facilities.</li> <li>5. In the case of operating and administrative policy boards, make policies or regulations concerning the delivery of services and operation of facilities under its direction or supervision, subject to applicable policies and regulations adopted by the Board.</li> <li>6. In the case of an operating board, appoint an executive director of community mental health, mental retardation, and substance abuse services, who meets the minimum qualifications established by the Department, and prescribe his duties. The compensation of the executive director shall be fixed by the operating board within the amounts made available by appropriation for this purpose. The executive director shall serve at the pleasure of the operating board and be employed under an annually renewable contract that contains performance objectives and evaluation criteria. For an operating board, the Department shall approve the selection of the executive director for adherence to minimum qualifications</li> </ol> |

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| <b>Community Services Boards</b><br><i>(cont.)</i> | <p>established by the Department and the salary range of the executive director. In the case of an administrative policy board, the board shall participate with local government in the appointment and annual performance evaluation of an executive director of community mental health, mental retardation, and substance abuse services, who meets the minimum qualifications established by the Department, and prescribe his duties. The compensation of the executive director shall be fixed by local government in consultation with the administrative policy board within the amounts made available by appropriation for this purpose. In the case of a local government department with a policy-advisory board, the director of the local government department shall serve as the executive director. The policy-advisory board shall participate in the selection and the annual performance evaluation of the executive director, who meets the minimum qualifications established by the Department. The compensation of the executive director shall be fixed by local government in consultation with the policy-advisory board within the amounts made available by appropriation for this purpose.</p> <ol style="list-style-type: none"> <li>7. Prescribe a reasonable schedule of fees for services provided by personnel or facilities under the jurisdiction or supervision of the board and establish procedures for the collection of those fees. All fees collected shall be included in the performance contract submitted to the local governing body or bodies pursuant to subdivision 2 of this section and § 37.2-508 and shall be used only for community mental health, mental retardation, and substance abuse purposes. Every board shall institute a reimbursement system to maximize the collection of fees from persons receiving services under its jurisdiction or supervision, consistent with the provisions of § 37.2-511, and from responsible third party payors. Boards shall not attempt to bill or collect fees for time spent participating in commitment hearings for involuntary admissions pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8.</li> <li>8. Accept or refuse gifts, donations, bequests, or grants of money or property from any source and utilize them as authorized by the governing body of each city or county that established it.</li> <li>9. Seek and accept funds through federal grants. In accepting federal grants, the board shall not bind the governing body of any city or county that established it to any expenditures or conditions of acceptance without the prior approval of the governing body.</li> <li>10. Notwithstanding any provision of law to the contrary, disburse funds appropriated to it in accordance with such regulations as may be established by the governing body of each city or county that established it.</li> <li>11. Apply for and accept loans as authorized by the governing body of each city or county that established it.</li> <li>12. Develop joint written agreements, consistent with policies adopted by the Board, with local school divisions; health departments; boards of social services; housing agencies, where they exist; courts; sheriffs; area agencies on aging; and regional Department of Rehabilitative Services offices. The agreements shall specify the services to be provided to consumers. All participating agencies shall develop and implement the agreements and shall review the agreements annually.</li> <li>13. Develop and submit to the Department the necessary information for the preparation of the Comprehensive State Plan for mental health, mental retardation, and substance abuse services pursuant to § 37.2-315.</li> <li>14. Take all necessary and appropriate actions to maximize the involvement and participation of consumers and family members of consumers in policy formulation and services planning, delivery, and evaluation.</li> <li>15. Institute, singly or in combination with other community services boards or behavioral health authorities, a dispute resolution mechanism that is approved by the Department and enables consumers and family members of consumers to resolve concerns, issues, or disagreements about services without adversely affecting their access to or receipt of appropriate types and amounts of current or future services from the community services board.</li> <li>16. Notwithstanding the provisions of § 37.2-400 or any regulations adopted thereunder, release data and information about individual consumers to the Department so long as the Department implements procedures to protect the confidentiality of that data and information.</li> <li>17. In the case of administrative policy boards and local government departments with policy-advisory boards, carry out other duties and responsibilities as assigned by the governing body of each city or county that established it.</li> <li>18. In the case of operating boards, have authority, notwithstanding any provision of law to the contrary, to receive state and federal funds directly from the Department and act as its own fiscal agent, when authorized to do so by the governing body of each city or county that established it.<br/>By local agreement between the administrative policy board and the governing body of the city or county that established it, additional responsibilities may be carried out by the local government, including personnel or financial management. In the case of an administrative policy board established by more than one city or county, the cities and counties shall designate which local government shall assume these responsibilities.</li> </ol> <p>B. Every policy-advisory community services board, with staff support provided by the director of the local government department, shall have the following powers and duties:</p> <ol style="list-style-type: none"> <li>1. Advise the local government regarding policies or regulations for the delivery of services and operation of facilities by the local government department, subject to applicable policies and regulations adopted by the Board.</li> <li>2. Review and evaluate the operations of the local government department and advise the local governing body of each city or county that established it as to its findings.</li> </ol> |

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| <b>Community Services Boards</b><br><i>(cont.)</i> | <ol style="list-style-type: none"> <li>3. Review the community mental health, mental retardation, and substance abuse services provided by the local government department and advise the local governing body of each city or county that established it as to its findings.</li> <li>4. Review and comment on the annual performance contract, performance reports, and Comprehensive State Plan information developed by the local government department. The board's comments shall be attached to the performance contract, performance reports, and Comprehensive State Plan information prior to their submission to the local governing body of each city or county that established it and to the Department.</li> <li>5. Advise the local government as to the necessary and appropriate actions to maximize the involvement and participation of consumers and family members of consumers in policy formulation and services planning, delivery, and evaluation.</li> <li>6. Participate in the selection and the annual performance evaluation of the local government department director employed by the city or county.</li> <li>7. Carry out other duties and responsibilities as assigned by the governing body of each city or county that established it.</li> </ol> <p><b>Data Collection on Children and Adolescents:</b> (§ 37.2-507) Every community services board shall submit to the Department information on children under the age of 14 and adolescents ages 14 through 17 for whom admission to an inpatient acute care psychiatric or residential treatment facility licensed pursuant to Article 2 (§ 37.2-403 et seq.) of Chapter 4 of this title, excluding group homes, was sought but was unable to be obtained by the board. Information to be submitted shall include:</p> <ol style="list-style-type: none"> <li>a. The child or adolescent's date of birth;</li> <li>b. Date admission was attempted; and</li> <li>c. Reason the child or adolescent could not be admitted to the facility.</li> </ol>  |
| <b>Department of Health</b>                        | <p><b>Mission:</b> The Virginia Department of Health and the Board of Health seeks to achieve and maintain optimum personal and community health by emphasizing health promotion, disease prevention, emergency preparedness, and environment protection.</p> <p><b>Responsibilities:</b> (§ 32.1-122.04) The Department shall have the following responsibilities as directed by the Board:</p> <ol style="list-style-type: none"> <li>1. To conduct the research for the health planning activities of the Commonwealth.</li> <li>2. To prepare, review and revise the State Health Plan when so directed by the Board.</li> <li>3. To develop, under the direction of the Board and with the cooperation of the regional health planning agencies, the components and methodology for the State Health Plan, including any research, issue analyses and related reports.</li> <li>4. To provide technical assistance to the regional health planning agencies.</li> <li>5. To perform such other functions relating to health planning in the Commonwealth as may be requested by the Governor or the Secretary.</li> </ol> <p><b>Reporting:</b> (§ 32.1-14) The Board shall submit an annual report to the Governor and General Assembly. Such report shall contain information on the Commonwealth's vital records and health statistics and an analysis and summary of health care issues affecting the citizens of Virginia, including but not limited to, health status indicators, the effectiveness of delivery of health care, progress toward meeting standards and goals, the financial and geographic accessibility of health care, and the distribution of health care resources, with particular attention to health care access for those Virginia citizens in rural areas, inner cities, and with greatest economic need. Such report shall also contain statistics and analysis regarding the health status and conditions of minority populations in the Commonwealth by age, gender, and locality.</p> <p><b>Reporting:</b> (§ 32.1-78) Notwithstanding § 32.1-271 or any other law to the contrary, the Commissioner shall report to the Superintendent of Public Instruction or to the appropriate school division superintendent within the Commonwealth the identity of, and pertinent information about, children with health problems or handicapping conditions which might affect the child's career in school and his need for special education.</p> <p><b>Complaint System:</b> (§ 32.1-137.6)</p> <ol style="list-style-type: none"> <li>C. Each managed care health insurance plan licensee subject to § 32.1-137.2 shall establish and maintain for each of its managed care health insurance plans a complaint system approved by the Commissioner and the Bureau of Insurance to provide reasonable procedures for the resolution of written complaints in accordance with the requirements established under this article and Title 38.2, and shall include the following: <ol style="list-style-type: none"> <li>1. A record of the complaints shall be maintained for the period set forth in § 32.1-137.16 for review by the Commissioner.</li> <li>2. Each managed care health insurance plan licensee shall provide complaint forms and/or written procedures to be given to covered persons who wish to register written complaints. Such forms or procedures shall include the address and telephone number of the managed care licensee to which complaints shall be directed and the mailing address, telephone number, and the electronic mail address of the Office of the Managed Care Ombudsman established pursuant to § 38.2-5904</li> </ol> </li> </ol> |

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| <b>Department of Health (cont.)</b> | <p>and shall also specify any required limits imposed by or on behalf of the managed care health insurance plan. Such forms and written procedures shall include a clear and understandable description of the covered person's right to appeal adverse decisions pursuant to § 32.1-137.15.</p> <p>D. The Commissioner, in cooperation with the Bureau of Insurance, shall examine the complaint system. The effectiveness of the complaint system of the managed care health insurance plan licensee in allowing covered persons, or their duly authorized representatives, to have issues regarding quality of care appropriately resolved under this article shall be assessed by the State Health Commissioner under this article. Compliance by the health carrier and its managed care health insurance plans with the terms and procedures of the complaint system, as well as the provisions of Title 38.2, shall be assessed by the Bureau of Insurance.</p> <p>E. As part of the renewal of a certificate, each managed care health insurance plan licensee shall submit to the Commissioner and to the Office of the Managed Care Ombudsman an annual complaint report in a form agreed and prescribed by the Board and the Bureau of Insurance. The complaint report shall include, but shall not be limited to (i) a description of the procedures of the complaint system, (ii) the total number of complaints handled through the complaint system, (iii) the disposition of the complaints, (iv) a compilation of the nature and causes underlying the complaints filed, (v) the time it took to process and resolve each complaint, and (vi) the number, amount, and disposition of malpractice claims adjudicated during the year with respect to any of the managed care health insurance plan's health care providers. The Department of Human Resource Management and the Department of Medical Assistance Services shall file similar periodic reports with the Commissioner, in a form prescribed by the Board, providing appropriate information on all complaints received concerning quality of care and utilization review under their respective health benefits program and managed care health insurance plan licensee contractors.</p> <p>F. The Commissioner shall examine the complaint system under subsection B for compliance of the complaint system with respect to quality of care and shall require corrections or modifications as deemed necessary.</p> <p>G. The Commissioner shall have no jurisdiction to adjudicate individual controversies arising under this article.</p> <p>H. The Commissioner of Health or the nonprofit organization pursuant to § 32.1-276.4 may prepare a summary of the information submitted pursuant to this provision and § 32.1-122.10:01 to be included in the patient level data base.</p> <p><u>Care Connection for Children (CCC)</u><br/> <b>Service Description:</b> Care Connection for Children is a statewide network of centers of excellence for children with special health care needs (CSHCN) that provide leadership in the enhancement of specialty medical services; care coordination; medical insurance benefits evaluation and coordination; management of the CSHCN Pool of Funds; information and referral to CSHCN resources; family-to-family support; and training and consultation with community providers on CSHCN issues.</p> <p><u>Children with Special Health Care Needs</u><br/> <b>Mission:</b> The Children with Special Health Care Needs (CSHCN) Program promotes the optimal health and development of Virginia's children with special health care needs by working in partnership with families, service providers, and communities.</p> <p><b>Overview:</b> The program provides:</p> <p>A. Direct health care services:</p> <ul style="list-style-type: none"> <li>▪ Care Connection for Children Program</li> <li>▪ Child Development Services Program</li> <li>▪ Bleeding Disorders Program</li> </ul> <p>B. Population-based services:</p> <ul style="list-style-type: none"> <li>▪ Pediatric Screening and Genetic Services</li> </ul> <p>C. Assessment of community health status and available resources:</p> <ul style="list-style-type: none"> <li>▪ MCH Block Grant Needs Assessment</li> <li>▪ Guiding Principles for Services to CSHCN</li> </ul> <p>D. Policy development to support and encourage better health</p> <p>E. Assurance that needed services are available</p> <p><u>Child Development Services Program</u><br/> <b>Overview:</b> Child Development Services Program is a specialized program for children and adolescents suspected of having developmental and behavioral disorders such as:</p> <ul style="list-style-type: none"> <li>▪ Developmental delays</li> <li>▪ Developmental disorders associated with sensory or physical disabilities</li> <li>▪ Disorders of attention and hyperactivity</li> <li>▪ Learning problems</li> <li>▪ Emotional and behavioral concerns</li> <li>▪ Mental retardation</li> <li>▪ Combination of these problems</li> </ul> |

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| <b>Department of Health (cont.)</b>              | <p>A professional team consisting of a pediatrician, nurse, social worker, educational consultant, and psychologist provides services. Core services include diagnostic assessment and care planning, follow-up care coordination and referral. Consultations are available from other pediatric specialists as needed. The professional staff also offers consultation, training, and advocacy throughout the community, focused on promoting the healthy growth and development of children.</p> <p><b>Case Management:</b> Team members provide case management through health needs assessment, care planning, coordination, referral, and monitoring to assure that the multiple needs of patients are met. Interagency coordination is provided with Virginia Department of Education, local health departments, Part H Early Intervention Services, mental health clinics (Community Services Boards), Head Start Programs, Department of Social Services and others to ensure coordinated services to children.</p>  |
| <b>Department of Medical Assistance Services</b> | <p><b>Duties:</b> (§ 32.1-321.1) The Department of Medical Assistance Services shall have the following powers and duties:</p> <ol style="list-style-type: none"> <li>1. To investigate and refer for prosecution violations of applicable state and federal laws and regulations pertaining to the application for and receipt of services or benefits;</li> <li>2. To investigate and refer for civil recovery any debts owed to the medical assistance program or funds paid for services or benefits as a result of violations of applicable state and federal laws and regulations pertaining to the application for and receipt of services or benefits; and</li> <li>3. To cooperate with the federal government, other state agencies and the State Attorney General's Office in the detection and deterrence of fraud by recipients of medical assistance or their agents.</li> </ol> <p><u>Children's Health Insurance Program (CHIP) Advisory Committee</u><br/> <b>Purpose:</b> (§ 32.1-351.2) The Department of Medical Assistance Services shall maintain a Children's Health Insurance Program Advisory Committee to assess the policies, operations, and outreach efforts for Family Access to Medical Insurance Security (FAMIS) and FAMIS Plus and to evaluate enrollment, utilization of services, and the health outcomes of children eligible for such programs. The Committee shall consist of no more than 20 members and shall include membership from appropriate entities, as follows: one representative of the Joint Commission on Health Care, the Department of Social Services, the Department of Health, the Department of Education, the Department of Mental Health, Mental Retardation and Substance Abuse Services, the Virginia Health Care Foundation, various provider associations and children's advocacy groups; and other individuals with significant knowledge and interest in children's health insurance. The Committee may report on the current status of FAMIS and FAMIS Plus and make recommendations as deemed necessary to the Director of the Department of Medical Assistance Services and the Secretary of Health and Human Resources.</p> <p>The Department of Medical Assistance Services shall enter into agreements with the Department of Education and the Department of Health to identify children who are eligible for free or reduced price school lunches or for services through the Women, Infants, and Children program (WIC) in order that the eligibility of such children for the Virginia Plan for Title XXI of the Social Security Act may be determined expeditiously.</p> <p><u>Family Access to Medical Insurance (FAMIS) Security Plan</u><br/> <b>Purpose:</b> (§ 32.1-351)</p> <ol style="list-style-type: none"> <li>A. The Department of Medical Assistance Services shall amend the Virginia Children's Medical Security Insurance Plan to be renamed the Family Access to Medical Insurance Security (FAMIS) Plan. The Department of Medical Assistance Services shall provide coverage under the Family Access to Medical Insurance Security Plan for individuals under the age of 19 when such individuals (i) have family incomes at or below 200 percent of the federal poverty level or were enrolled on the date of federal approval of Virginia's FAMIS Plan in the Children's Medical Security Insurance Plan (CMSIP); such individuals shall continue to be enrolled in FAMIS for so long as they continue to meet the eligibility requirements of CMSIP; (ii) are not eligible for medical assistance services pursuant to Title XIX of the Social Security Act, as amended; (iii) are not covered under a group health plan or under health insurance coverage, as defined in § 2791 of the Public Health Service Act (42 U.S.C. § 300gg-91(a) and (b) (1)); (iv) have been without health insurance for at least four months or meet the exceptions as set forth in the Virginia Plan for Title XXI of the Social Security Act, as amended; and (v) meet both the requirements of Title XXI of the Social Security Act, as amended, and the Family Access to Medical Insurance Security Plan. Eligible children, residing in Virginia, whose family income does not exceed 200 percent of the federal poverty level during the enrollment period shall receive 12 continuous months of coverage as permitted by Title XXI of the Social Security Act.</li> <li>B. Family Access to Medical Insurance Security Plan participants shall participate in cost-sharing to the extent allowed under Title XXI of the Social Security Act, as amended, and as set forth in the Virginia Plan for Title XXI of the Social Security Act. The annual aggregate cost-sharing for all eligible children in a family above 150 percent of the federal poverty level shall not exceed five percent of the family's gross income or as allowed by federal law and regulations. The annual aggregate cost-sharing for all eligible children in a family at or below 150 percent of the federal poverty level shall not exceed 2.5 percent of the family's gross income. The nominal copayments for all eligible children in a family shall not be less than those in effect on January 1, 2003. Cost-sharing shall not be required for well-child and preventive services including age-appropriate child immunizations.</li> </ol> |

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| <b>Department of Medical Assistance Services (cont.)</b> | <p>C. The Family Access to Medical Insurance Security Plan shall provide comprehensive health care benefits to program participants, including well-child and preventive services, to the extent required to comply with federal requirements of Title XXI of the Social Security Act. These benefits shall include comprehensive medical, dental, vision, mental health, and substance abuse services, and physical therapy, occupational therapy, speech-language pathology, and skilled nursing services for special education students. The mental health services required herein shall include intensive in-home services, case management services, day treatment, and 24-hour emergency response. The services shall be provided in the same manner and with the same coverage and service limitations as they are provided to children under the State Plan for Medical Assistance Services.</p> <p>D. The Virginia Plan for Title XXI of the Social Security Act shall include a provision that participants in the Family Access to Medical Insurance Security Plan who have access to employer-sponsored health insurance coverage, as defined in § 32.1-351.1, may, but shall not be required to, enroll in an employer's health plan, and the Department of Medical Assistance Services or its designee shall make premium payments to such employer's plan on behalf of eligible participants if the Department of Medical Assistance Services or its designee determines that such enrollment is cost-effective, as defined in § 32.1-351.1.</p> <p>E. The Family Access to Medical Insurance Security Plan shall ensure that coverage under this program does not substitute for private health insurance coverage.</p> <p>F. The health care benefits provided under the Family Access to Medical Insurance Security Plan shall be through existing Department of Medical Assistance Services' contracts with health maintenance organizations and other providers, or through new contracts with health maintenance organizations, health insurance plans, other similarly licensed entities, or other entities as deemed appropriate by the Department of Medical Assistance Services, or through employer-sponsored health insurance. All eligible individuals, insofar as feasible, shall be enrolled in health maintenance organizations.</p> <p>G. The Department of Medical Assistance Services may establish a centralized processing site for the administration of the program to include responding to inquiries, distributing applications and program information, and receiving and processing applications. The Family Access to Medical Insurance Security Plan shall include a provision allowing a child's application to be filed by a parent, legal guardian, authorized representative or any other adult caretaker relative with whom the child lives. The Department of Medical Assistance Services may contract with third-party administrators to provide any additional administrative services. Duties of the third-party administrators may include, but shall not be limited to, enrollment, outreach, eligibility determination, data collection, premium payment and collection, financial oversight and reporting, and such other services necessary for the administration of the Family Access to Medical Insurance Security Plan. Any centralized processing site shall determine a child's eligibility for either Title XIX or Title XXI and shall enroll eligible children in Title XIX or Title XXI. A single application form shall be used to determine eligibility for Title XIX or Title XXI of the Social Security Act, as amended, and outreach, enrollment, re-enrollment and services delivery shall be coordinated with the FAMIS Plus program pursuant to § 32.1-325. In the event that an application is denied, the applicant shall be notified of any services available in his locality that can be accessed by contacting the local department of social services.</p> <p>H. The Virginia Plan for Title XXI of the Social Security Act, as amended, shall include a provision that, in addition to any centralized processing site, local social services agencies shall provide and accept applications for the Family Access to Medical Insurance Security Plan and shall assist families in the completion of applications. Contracting health plans, providers, and others may also provide applications for the Family Access to Medical Insurance Security Plan and may assist families in completion of the applications.</p> <p>I. The Department of Medical Assistance Services shall develop and submit to the federal Secretary of Health and Human Services an amended Title XXI plan for the Family Access to Medical Insurance Security Plan and may revise such plan as may be necessary. Such plan and any subsequent revisions shall comply with the requirements of federal law, this chapter, and any conditions set forth in the appropriation act. In addition, the plan shall provide for coordinated implementation of publicity, enrollment, and service delivery with existing local programs throughout the Commonwealth that provide health care services, educational services, and case management services to children. In developing and revising the plan, the Department of Medical Assistance Services shall advise and consult with the Joint Commission on Health Care and shall provide quarterly reports on enrollment, policies affecting enrollment, such as the exceptions that apply to the four months' prior coverage limitation referenced in subsection A of this section, benefit levels, outreach efforts, including efforts to enroll uninsured children of former Temporary Assistance to Needy Families (TANF) recipients, and other topics.</p> <p>J. Funding for the Family Access to Medical Insurance Security Plan shall be provided through state and federal appropriations and shall include appropriations of any funds that may be generated through the Virginia Family Access to Medical Insurance Security Plan Trust Fund.</p> <p>K. The Board of Medical Assistance Services, or the Director, as the case may be, shall adopt, promulgate, and enforce such regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) as may be necessary for the implementation and administration of the Family Access to Medical Insurance Security Plan.</p> <p>L. Children enrolled in the Virginia Plan for Title XXI of the Social Security Act prior to implementation of</p> |



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| <p><b>Department of Medical Assistance Services (cont.)</b></p> | <p>these amendments shall continue their eligibility under the Family Access to Medical Insurance Security Plan and shall be given reasonable notice of any changes in their benefit packages. Continuing eligibility in the Family Access to Medical Insurance Security Plan for children enrolled in the Virginia Plan for Title XXI of the Social Security Act prior to implementation of these amendments shall be determined in accordance with their regularly scheduled review dates or pursuant to changes in income status. Families may select among the options available pursuant to subsections D and F of this section.</p> <p>M. The provisions of Chapter 9 (§ 32.1-310 et seq.) of this title relating to the regulation of medical assistance shall apply, mutatis mutandis, to the Family Access to Medical Insurance Security Plan.</p> <p>N. In addition, in any case in which any provision set forth in Title 38.2 excludes, exempts or does not apply to the Virginia plan for medical assistance services established pursuant to Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq. (Medicaid), such exclusion, exemption or carve out of application to Title XIX of the Social Security Act (Medicaid) shall be deemed to subsume and thus to include the Family Access to Medical Insurance Security (FAMIS) Plan, established pursuant to Title XXI of the Social Security Act, upon approval of FAMIS by the federal Centers for Medicare &amp; Medicaid Services as Virginia's State Children's Health Insurance Program.</p> <p><u>Special Education Health Services</u><br/> <b>Purpose:</b> (§ 32.1-326.3)</p> <p>A. The Department of Medical Assistance Services, in cooperation with the Department of Education, shall, consistent with the biennium budget cycle, examine and revise, as necessary, the regulations relating to the funding and components of special education services.</p> <p>Any revisions shall be designed to maximize access to health care for poor children who are eligible for medical assistance services and are disabled and have been identified as eligible for special education, and to assist school divisions in the funding of medically necessary related services by making use of every possible, cost-effective means, Medicaid reimbursement or other program administered by the Department of Medical Assistance Services, including, but not limited to, the State Children's Health Insurance Plan pursuant to Title XXI of the United States Social Security Act, as approved by the federal Health Care Financing Administration at the time. Any revisions shall be based on the flexibility allowed to the states and be focused on avoiding large costs for acute or medical care and increasing children's access to health care, and shall include, but need not be limited to:</p> <ol style="list-style-type: none"> <li>1. Rates for services which shall clearly identify that only the federal share shall be reimbursed for the special education health services and shall demonstrate that local governments are funding the state match for the special education health services provided by school divisions.</li> <li>2. The benefits and drawbacks of allowing school divisions to provide services as Medicaid providers to disabled students.</li> <li>3. The appropriate credentials of the providers of care, in compliance with federal requirements and with the approval of the Health Care Financing Administration, for special education health services; e.g., licensure by the Board of Education and licensure by the appropriate health regulatory board within the Department of Health Professions.</li> <li>4. Delivery of medically necessary related services for special education students who are eligible for medical assistance services. The services shall be limited to those services which are required by the student's Individualized Education Plan (IEP), shall be covered under the then-current state plan for medical assistance services, and may be provided, consistent with federal law and as approved by the Health Care Financing Administration, by a school division participating as a special education health services provider. Such services shall include, but need not be limited to, speech therapy, including such services when delivered by school speech-language pathologists licensed by the Board of Audiology and Speech-Language Pathology or those individuals who are directly supervised, at least twenty-five percent of the time, by such licensed speech-language pathologists; physical therapy; occupational therapy; psychiatric and psychological evaluations and therapy, including such services when delivered by school psychologists-limited licensed by the Board of Psychology; transportation between the student's home, the school or other site where health-related services are to be provided on those days when the student is scheduled to receive such services at the school or such other site; and skilled nursing services, such as health assessments, screening activities, nursing appraisals, nursing assessments, nursing procedures, medication assessment, medication monitoring, and medication administration.</li> <li>5. The role of the Medallion, Medallion II, Options or other managed care programs in regard to the special education health services and coordination with school divisions regarding any required referrals.</li> </ol> <p>B. Any funds necessary to support revisions to the special education health services shall be included in the budget estimates for the departments, as appropriate.</p> <p>C. The Director of the Department of Medical Assistance Services or his designee and the Superintendent of Public Instruction or his designee shall develop and execute a memorandum of agreement relating to special education health services. This memorandum of agreement shall be revised on a periodic basis; however, the agreement shall, at a minimum, be revised and executed within six months of the inauguration of a new governor in order to maintain policy integrity.</p> <p>D. The agreement shall include, but need not be limited to, (i) requirements for regular and consistent</p> |

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| <b>Department of Medical Assistance Services (cont.)</b>                            | <p>communications and consultations between the two departments and with school division personnel and officials and school board representatives; (ii) a specific and concise description and history of the federal Individuals with Disabilities Education Act (IDEA), a summary of school division responsibilities pursuant to the Individuals with Disabilities Education Act, and a summary of any corresponding state law which influences the scope of these responsibilities; (iii) a specific and concise summary of the then-current Department of Medical Assistance Services regulations regarding the special education health services; (iv) assignment of the specific responsibilities of the two state departments for the operation of special education health services; (v) a schedule of issues to be resolved through the regular and consistent communications process, including, but not limited to, ways to integrate and coordinate care between the Department of Medical Assistance Services' managed care providers and special education health services providers; (vi) a process for the evaluation of the services which may be delivered by school divisions participating as special education health services providers pursuant to Medicaid; (vii) a plan and schedule to reduce the administrative and paperwork burden of Medicaid participation on school divisions in Virginia; and (viii) a mechanism for informing primary care providers and other case management providers of those school divisions that are participating as Medicaid providers and for identifying such school divisions as Medicaid providers that are available to receive referrals to provide special education health services.</p> <p>E. The Board of Medical Assistance Services shall cooperate with the Board of Education in developing a form to be included with the Individualized Education Plan (IEP) that shall be accepted by the Department of Medical Assistance Services as the plan of care (POC) and in collecting the data necessary to establish separate and specific Medicaid rates for the IEP meetings and other services delivered by school divisions to students. The POC form shall (i) be consistent with the plan of care required by the Department of Medical Assistance Services of other Medicaid providers, (ii) allow for written updates, (iii) be used by all school divisions participating as Medicaid providers of special education health services, (iv) document the student's progress, and (v) be integrated and coordinated with the Department of Medical Assistance Services' managed care providers.</p> <p>F. The Department of Medical Assistance Services shall consult with the Department of Education in preparing a consent form which (i) is separate from the IEP, (ii) includes a statement noting that such form is not part of the student's IEP, (iii) includes a release to authorize billing of school-based health services delivered to the relevant student by the school division, and (iv) shall be used by all school divisions participating in Medicaid reimbursement. This consent form shall be made available to the parents upon conclusion of the IEP meeting. The release shall allow for billing of school-based health services by Virginia school divisions to the Virginia Medicaid program and other programs operated by the Department of Medical Assistance Services.</p> <p>G. The Department of Medical Assistance Services and the Department of Education shall also develop a cost-effective, efficient, and appropriate process to allow school divisions access to eligibility data for students for whom consent has been obtained.</p> <p>H. The Board of Medical Assistance Services shall, when in compliance with federal law and regulation and approved by the Health Care Financing Administration, also (i) include, in its regulations which provide for reimbursement of school divisions participating in Medicaid as special education health services providers, a provision for reimbursement of mental health services delivered by licensed school psychologists-limited and a provision for reimbursement for services rendered to Medicaid-eligible students of speech-language pathology services delivered by school speech-language pathologists or those individuals who are directly supervised, at least twenty-five percent of the time, by such licensed speech-language pathologists; (ii) revise the limitations, established pursuant to relevant regulations and Virginia's state plan for medical assistance services, on services delivered by school divisions participating in Medicaid as special education health services providers, in effect on January 1, 1999, for physical therapy, occupational therapy, and speech, hearing, and language disorders when such services are rendered to children who are eligible for special education services and have IEPs requiring such services; (iii) cooperate with the Board of Education in developing a form to be included with the IEP that shall be accepted by the Department of Medical Assistance Services as the plan of care when signed by a physician or, when under such physician's supervision, his designee; (iv) cooperate with the Board of Education in collecting the data necessary to establish separate and specific rates for the IEP services delivered by school divisions to students with disabilities who are eligible for special education and for medical assistance services; and (v) analyze the data necessary for such rates and establish new rates for reimbursement of IEP meetings based on such data.</p> <p>I. Services delivered by school divisions as participating providers in the Medicaid program or any other program operated by the Department of Medical Assistance Services shall not include any family planning, pregnancy or abortion services.</p> |
| <b>Department of Mental Health, Mental Retardation and Substance Abuse Services</b> | <p><u>State Mental Health, Mental Retardation and Substance Abuse Services Board</u><br/> <b>Purpose:</b> (§ 37.2-200)</p> <p>A. The State Mental Health, Mental Retardation and Substance Abuse Services Board is established as a policy board, within the meaning of § 2.2-2100, in the executive branch of government. The Board shall consist of nine nonlegislative citizen members to be appointed by the Governor, subject to confirmation by the General Assembly. The nine members shall consist of one consumer or former consumer, one family member of a consumer or former consumer, one consumer or former consumer or family member</p>  |

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| <p><b>Department of Mental Health, Mental Retardation and Substance Abuse Services</b><br/>(cont.)</p> | <p>of a consumer or former consumer, one elected local government official, one psychiatrist licensed to practice in Virginia, and four citizens of the Commonwealth at large. The Governor, in appointing the psychiatrist member, may make his selection from nominations submitted by the Medical Society of Virginia in collaboration with the Psychiatric Society of Virginia and the Northern Virginia Chapter of the Washington Psychiatric Society.</p> <p>B. Appointments shall be made for terms of four years each, except appointments to fill vacancies that shall be for the unexpired terms of vacated appointments. Vacancies shall be filled in the same manner as the original appointments. All members may be reappointed. However, no member shall be eligible to serve more than two four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment. No person shall serve more than a total of 12 years. Members of the Board may be suspended or removed by the Governor at his pleasure.</p> <p>C. Members of the Board shall receive compensation for their services and shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. The Board is authorized to employ a secretary to assist in the Board's administrative duties. The compensation of the secretary shall be fixed by the Board within the specific limits of the appropriation made therefor by the General Assembly, and the compensation shall be subject to the provisions of Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2. The secretary shall perform the duties required of him by the Board. The Department and all other agencies of the Commonwealth shall provide assistance to the Board upon request.</p> <p>D. The main office of the Board shall be in the City of Richmond. The Board shall meet quarterly and at such other times as it deems proper. The Board shall elect a chairman and vice-chairman from among its membership. The meetings of the Board shall be held at the call of the chairman or whenever the majority of the members so request. Five members shall constitute a quorum.</p> <p>E. The chairman of the Board shall submit to the Governor and the General Assembly an annual executive summary of the activity and work of the Board no later than the first day of each regular session of the General Assembly. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.</p> <p><b>Internal Evaluation:</b> (§ 37.2-201) The Board shall appoint an internal evaluation committee to be composed of at least three members of the Board who shall review and evaluate the effects of designated policies of the Board and the performance of the Department, state facilities, community services boards, and behavioral health authorities in carrying out those policies. The committee and any staff designated by the Commissioner shall have access to all records of the Department, state facilities, community services boards, and behavioral health authorities in carrying out these monitoring activities. The committee shall report its findings to the Board, which shall take action thereon as it deems appropriate.</p> <p><b>Duties:</b> (§ 37.2-203) The Board shall have the following powers and duties:</p> <ol style="list-style-type: none"> <li>1. To develop and establish programmatic and fiscal policies governing the operation of state hospitals, training centers, community services boards, and behavioral health authorities;</li> <li>2. To ensure the development of long-range programs and plans for mental health, mental retardation, and substance abuse services provided by the Department, community services boards, and behavioral health authorities;</li> <li>3. To review and comment on all budgets and requests for appropriations for the Department prior to their submission to the Governor and on all applications for federal funds;</li> <li>4. To monitor the activities of the Department and its effectiveness in implementing the policies of the Board;</li> <li>5. To advise the Governor, Commissioner, and General Assembly on matters relating to mental health, mental retardation, and substance abuse;</li> <li>6. To adopt regulations that may be necessary to carry out the provisions of this title and other laws of the Commonwealth administered by the Commissioner or the Department;</li> <li>7. To ensure the development of programs to educate citizens about and elicit public support for the activities of the Department, community services boards, and behavioral health authorities;</li> <li>8. To ensure that the Department assumes the responsibility for providing for education and training of school-age consumers in state facilities, pursuant to § 37.2-312; and</li> <li>9. To change the names of state facilities.</li> </ol> <p>Prior to the adoption, amendment, or repeal of any regulation regarding substance abuse services, the Board shall, in addition to the procedures set forth in the Administrative Process Act (§ 2.2-4000 et seq.), present the proposed regulation to the Substance Abuse Services Council, established pursuant to § 2.2-2696, at least 30 days prior to the Board's action for the Council's review and comment.</p> <p><b>Reporting:</b> (§ 37.2-308)</p> <p>A. The Department shall collect and compile the following data:</p> <ol style="list-style-type: none"> <li>1. The total number of licensed and staffed inpatient acute care psychiatric beds for children under the</li> </ol> |

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| <p><b>Department of Mental Health, Mental Retardation and Substance Abuse Services</b><br/>(cont.)</p> | <p>age of 14 and adolescents ages 14 through 17; and</p> <ol style="list-style-type: none"> <li>2. The total number of licensed and staffed residential treatment beds for children under the age of 14 and adolescents ages 14 through 17 in residential facilities licensed pursuant to this title, excluding group homes.</li> </ol> <p>B. The Department shall collect and compile data obtained from the community policy and management team pursuant to subdivision 15 of § 2.2-5206 and each community services board or behavioral health authority pursuant to § 37.2-507 and subdivision 18 of § 37.2-605. The Department shall ensure that the data reported is not duplicative.</p> <p>C. The Department shall report this data on a quarterly basis to the Chairmen of the House Appropriations and Senate Finance Committees and to the Virginia Commission on Youth.</p> <p><b>Duties on Substance Abuse:</b> (§ 37.2-310) The Department shall have the following powers and duties related to substance abuse:</p> <ol style="list-style-type: none"> <li>1. To act as the sole state agency for the planning, coordination, and evaluation of the comprehensive interagency state plan for substance abuse services.</li> <li>2. To provide staff assistance to the Substance Abuse Services Council pursuant to § 2.2-2696.</li> <li>3. To (i) develop, implement, and promote, in cooperation with federal, state, local, and other publicly-funded agencies, a comprehensive interagency state plan for substance abuse services, consistent with federal guidelines and regulations, for the long-range development of adequate and coordinated programs, services, and facilities for the research, prevention, and control of substance abuse and the treatment and rehabilitation of persons with substance abuse; (ii) review the plan annually; and (iii) make revisions in the plan that are necessary or desirable.</li> <li>4. To report biennially to the General Assembly on the comprehensive interagency state plan for substance abuse services and the Department's activities in administering, planning, and regulating substance abuse services and specifically on the extent to which the Department's duties as specified in this title have been performed.</li> <li>5. To develop, in cooperation with the Department of Corrections, Virginia Parole Board, Department of Juvenile Justice, Department of Criminal Justice Services, Commission on the Virginia Alcohol Safety Action Program, Office of the Executive Secretary of the Supreme Court of Virginia, Department of Education, Department of Health, Department of Social Services, and other appropriate agencies, a section of the comprehensive interagency state plan for substance abuse services that addresses the need for treatment programs for persons with substance abuse who are involved with these agencies.</li> <li>6. To specify uniform methods for keeping statistical information for inclusion in the comprehensive interagency state plan for substance abuse services.</li> <li>7. To provide technical assistance and consultation services to state and local agencies in planning, developing, and implementing services for persons with substance abuse.</li> <li>8. To review and comment on all applications for state or federal funds or services to be used in substance abuse programs in accordance with § 37.2-311 and on all requests by state agencies for appropriations from the General Assembly for use in substance abuse programs.</li> <li>9. To recommend to the Governor and the General Assembly legislation necessary to implement programs, services, and facilities for the prevention and control of substance abuse and the treatment and rehabilitation of persons with substance abuse.</li> <li>10. To organize and foster training programs for all persons engaged in the treatment of substance abuse.</li> <li>11. To identify, coordinate, mobilize, and use the research and public service resources of institutions of higher education, all levels of government, business, industry, and the community at large in the understanding and solution of problems relating to substance abuse.</li> <li>12. To inspect substance abuse treatment programs at reasonable times and in a reasonable manner.</li> <li>13. To maintain a current list of substance abuse treatment programs, which shall be made available upon request.</li> </ol> <p><b>Children in State Facilities:</b> (§ 37.2-312) The Department shall be responsible for providing for education and training of school-age consumers in state facilities. The Board of Education shall supervise the education and training provided to school-age consumers in training centers and provide for and direct the education for school-age consumers in state hospitals in cooperation with the Department. In discharging this responsibility, the Department shall exercise leadership by: (i) coordinating actions with the Department of Education and state facilities to ensure consistency between treatment and educational priorities in the policy and implementation of direct services for school-age consumers in state facilities; (ii) ensuring that comparable resources especially in career and technical education, appropriate to the students' disabilities and needs, are available in all state facilities; (iii) monitoring the quality of the instruction provided to all school-age consumers in state facilities; (iv) requiring state facility directors to evaluate the performance of the education directors pursuant to guidelines developed in cooperation with the Board of Education; (v) developing and implementing, in cooperation with the Department of Education, programs to ensure that the educational and treatment needs of children with dual diagnoses in state facilities are met; (vi) taking an active role with the Department of Education to evaluate the effectiveness of prevalent educational models in state facilities; and (vii) designing a mechanism for maintaining constant direct contact and the sharing of ideas, approaches, and innovations between the education directors and teachers whether they are</p> |

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| <p><b>Department of Mental Health, Mental Retardation and Substance Abuse Services</b><br/>(cont.)</p> | <p>employees of local school divisions or of the Commonwealth who are educating school-age consumers in state facilities.</p> <p><b>Comprehensive State Plan:</b> (§ 37.2-315) The Department, in consultation with community services boards, behavioral health authorities, state hospitals and training centers, consumers, consumers' families, advocacy organizations, and other interested parties, shall develop and update biennially a six-year Comprehensive State Plan for mental health, mental retardation, and substance abuse services. The Comprehensive State Plan shall identify the needs of and the resource requirements for providing services and supports to persons with mental illness, mental retardation, or substance abuse across the Commonwealth and shall propose strategies to address these needs. The Comprehensive State Plan shall be used in the development of the Department's biennial budget submission to the Governor.</p> <p><b>Licensure Conditions:</b> (§ 37.2-406)</p> <p>A. Notwithstanding the Commissioner's discretion to grant licenses pursuant to this article or any Board regulation regarding licensing, no initial license shall be granted by the Commissioner to a provider of treatment for persons with opiate addiction through the use of methadone or other opioid replacements, if the provider is to be located within one-half mile of a public or private licensed day care center or a public or private K-12 school, except when such service is provided by a hospital licensed by the Board of Health or the Commissioner or is owned or operated by an agency of the Commonwealth.</p> <p>B. Further, upon receiving notice of a proposal for or an application to obtain an initial license from a provider of treatment for persons with opiate addiction through the use of methadone or other opioid replacements, the Commissioner shall, within 15 days of the receipt, notify the local governing body of and the community services board serving the jurisdiction in which the facility is to be located of the proposal or application and the facility's proposed location.<br/>Within 30 days of the date of the notice, the local governing body and community services board shall submit to the Commissioner comments on the proposal or application. The local governing body shall notify the Commissioner within 30 days of the date of the notice concerning the compliance of the applicant with this section and any applicable local ordinances.</p> <p>C. No license shall be issued by the Commissioner to the provider until the conditions of this section have been met, i.e., local governing body and community services board comments have been received and the local governing body has determined compliance with the provisions of this section and any relevant local ordinances.</p> <p>D. No applicant for a license to provide treatment for persons with opiate addiction through the use of methadone or other opioid replacements that has obtained a certificate of occupancy in accordance with the law and regulations in effect on January 1, 2004, shall be required to comply with the provisions of this section. No existing licensed provider shall be required to comply with the provisions of this section in any city or county in which it is currently providing such treatment.</p> <p>E. The provisions of subsection A of this section shall not apply to the jurisdictions in Planning District 8.</p> <p><b>Cooperation:</b> (§ 37.2-408)</p> <p>A. The Department shall assist and cooperate with other state departments in fulfilling their respective licensing and certification responsibilities and in reducing and simplifying the regulations involved in such licensing and certification. The Board shall adopt regulations that shall allow the Department to so assist and cooperate with other state departments. The Board may adopt regulations to enhance cooperation and assistance among agencies licensing similar programs.</p> <p>B. The Board's regulations shall address the services required to be provided in group homes and residential facilities for children as it may deem appropriate to ensure the health and safety of the children. In addition, the Board's regulations shall include, but shall not be limited to (i) specifications for the structure and accommodations of such homes and facilities according to the needs of the children to be placed; (ii) rules concerning allowable activities, local government- and home- or facility-imposed curfews, and study, recreational, and bedtime hours; and (iii) a requirement that each facility have a community liaison who shall be responsible for facilitating cooperative relationships with the neighbors, the school system, local law enforcement, local government officials, and the community at large.</p> <p>C. Pursuant to the procedures set forth in subsection D, the Commissioner may issue a summary order of suspension of the license of a group home or residential facility for children licensed pursuant to the Board's regulations under subsection A, in conjunction with any proceeding for revocation, denial, or other action, when conditions or practices exist in the home or facility that pose an immediate and substantial threat to the health, safety, and welfare of the children who are residents and the Commissioner believes the operation should be suspended during the pendency of such proceeding.</p> <p>D. The summary order of suspension shall take effect upon its issuance and shall be served on the licensee or its designee as soon as practicable thereafter by personal service and certified mail, return receipt requested, to the address of record of the licensee. The order shall state the time, date, and location of a hearing to determine whether the suspension is appropriate. Such hearing shall be held no later than three business days after the issuance of the summary order of suspension and shall be convened by the Commissioner or his designee.<br/>After such hearing, the Commissioner may issue a final order of summary suspension or may find that</p> |

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| <p><b>Department of Mental Health, Mental Retardation and Substance Abuse Services</b><br/>(cont.)</p> | <p>such summary suspension is not warranted by the facts and circumstances presented. A final order of summary suspension shall include notice that the licensee may appeal the Commissioner's decision to the appropriate circuit court no later than 10 days following issuance of the order. The sole issue before the court shall be whether the Department had reasonable grounds to require the licensee to cease operations during the pendency of the concurrent revocation, denial, or other proceeding. The concurrent revocation, denial, or other proceeding shall not be affected by the outcome of any hearing on the appropriateness of the summary suspension. The willful and material failure to comply with the summary order of suspension or final order of summary suspension shall be punishable as a Class 2 misdemeanor. The Commissioner may require the cooperation of any other agency or subdivision of the Commonwealth in the relocation of children who are residents of a home or facility whose license has been summarily suspended pursuant to this section and in any other actions necessary to reduce the risk of further harm to children.</p> <p>E. In addition to the requirements set forth above, the Board's regulations shall require, as a condition of initial licensure or, if appropriate, license renewal, that the applicant shall: (i) be personally interviewed by Department personnel to determine the qualifications of the owner or operator before granting an initial license; (ii) provide evidence of having relevant prior experience before any initial license is granted; (iii) provide, as a condition of initial license or renewal licensure, evidence of staff participation in training on appropriate siting of the residential facilities for children, good neighbor policies, and community relations; and (iv) be required to screen residents prior to admission to exclude individuals with behavioral issues, such as histories of violence, that cannot be managed in the relevant residential facility.</p> <p>F. In addition, the Department shall:</p> <ol style="list-style-type: none"> <li>1. Notify relevant local governments and placing and funding agencies, including the Office of Comprehensive Services, of multiple health and safety or human rights violations in residential facilities for which the Department serves as lead licensure agency when such violations result in the lowering of the licensure status of the facility to provisional;</li> <li>2. Post on the Department's website information concerning the application for initial licensure or renewal, denial, or provisional licensure of any residential facility for children located in the locality;</li> <li>3. Require all licensees to self-report lawsuits against or settlements with residential facility operators relating to the health and safety or human rights of residents and any criminal charges that may have been made relating to the health and safety or human rights of residents;</li> <li>4. Require proof of contractual agreements or staff expertise to provide educational services, counseling services, psychological services, medical services, or any other services needed to serve the residents in accordance with the facility's operational plan; and</li> <li>5. Modify the term of the license at any time during the term of the license based on a change in compliance.</li> </ol> <p><b>Inspections:</b> (§ 37.2-411) All services provided or delivered under any license shall be subject to review or inspection at any reasonable time by any authorized inspector or agent of the Department. The Commissioner or his authorized agents shall inspect all licensed providers and shall have access at all reasonable times to all services and records, including medical records. Records that are confidential under federal or state law shall be maintained as confidential by the Department and shall not be further disclosed except as permitted by law; however, there shall be no right of access to communications that are privileged pursuant to § 8.01-581.17. The Commissioner shall call upon other state or local departments to assist in the inspections and those departments shall render an inspection report to the Commissioner. After receipt of all inspection reports, the Commissioner shall make the final determination with respect to the condition of the service so reviewed or inspected. The Commissioner or his authorized agents shall make at least one annual unannounced inspection of each service offered by each licensed provider. Inspections shall be focused on preventing specific risks to consumers, including an evaluation of the physical facilities in which the services are provided. In addition, the Commissioner shall promptly investigate all complaints. The Board may adopt and the Commissioner shall enforce reasonable regulations that may be necessary or proper to carry out the general purposes of this article.</p> <p><b>Licensure Revocation/Suspension/Refusal:</b> (§ 37.2-418)</p> <ol style="list-style-type: none"> <li>A. The Commissioner is authorized to revoke or suspend any license issued hereunder or refuse issuance of a license on any of the following grounds: (i) violation of any provision of this article or of any applicable regulation made pursuant to such provisions; (ii) permitting, aiding, or abetting the commission of an illegal act in services delivered by the provider; or (iii) conduct or practices detrimental to the welfare of any individual receiving services from the provider.</li> <li>B. Whenever the Commissioner revokes, suspends, or denies a license, the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall apply. Any person aggrieved by the final decision of the Commissioner to refuse to issue a license or by his revocation or suspension of a license is entitled to judicial review in accordance with the provisions of the Administrative Process Act.</li> <li>C. If a license is revoked or refused as herein provided, a new application for license may be considered by the Commissioner when the conditions upon which the action was based have been corrected and satisfactory evidence of this fact has been furnished. In no event may an applicant reapply for a license</li> </ol> |

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| <p><b>Department of Mental Health, Mental Retardation and Substance Abuse Services</b><br/>(cont.)</p> | <p>after the Commissioner has refused or revoked a license until a period of six months from the effective date of that action has elapsed, unless the Commissioner in his sole discretion believes that there has been such a change in the conditions causing refusal of the prior application or revocation of the license as to justify considering the new application. When an appeal is taken by the applicant pursuant to this section, the six-month period shall be extended until a final decision has been rendered on appeal. A new license may then be granted after proper inspection has been made and all provisions of this article and applicable regulations made thereunder have been complied with and recommendations to that effect have been made to the Commissioner upon the basis of an inspection by any authorized inspector or agent of the Department.</p> <p>D. Suspension of a license shall in all cases be for an indefinite time and the suspension may be lifted and rights under the license fully or partially restored at such time as the Commissioner determines, based on an inspection, that the rights of the licensee appear to so require and the interests of the public will not be jeopardized by resumption of operation.</p> <p>E. Pursuant to the procedures set forth in subsection F and in addition to the authority provided in subsections A through D, the Commissioner may issue a summary order of suspension of the license of a group home or residential facility for children, in conjunction with any proceeding for revocation, denial, or other action, when conditions or practices exist in the home or facility that pose an immediate and substantial threat to the health, safety, and welfare of the children who are residents and the Commissioner believes the operation should be suspended during the pendency of such proceeding.</p> <p>F. The summary order of suspension shall take effect upon its issuance and shall be served on the licensee or its designee as soon as practicable thereafter by personal service and certified mail, return receipt requested, to the address of record of the licensee. The order shall state the time, date, and location of a hearing to determine whether the suspension is appropriate. Such hearing shall be held no later than three business days after the issuance of the summary order of suspension and shall be convened by the Commissioner or his designee.</p> <p>After such hearing, the Commissioner may issue a final order of summary suspension or may find that such summary suspension is not warranted by the facts and circumstances presented. A final order of summary suspension shall include notice that the licensee may appeal the Commissioner's decision to the appropriate circuit court no later than 10 days following issuance of the order. The sole issue before the court shall be whether the Commissioner had reasonable grounds to require the licensee to cease operations during the pendency of the concurrent revocation, denial, or other proceeding. The concurrent revocation, denial, or other proceeding shall not be affected by the outcome of any hearing on the appropriateness of the summary suspension.</p> <p>The willful and material failure to comply with the summary order of suspension or final order of summary suspension shall be punishable as a Class 2 misdemeanor. The Commissioner may require the cooperation of any other agency or subdivision of the Commonwealth in the relocation of children who are residents of a home or facility whose license has been summarily suspended pursuant to this section and in any other actions necessary to reduce the risk of further harm to children.</p> <p><b>Human Rights Review:</b> (§ 37.2-412) Licensing pursuant to this article shall be contingent upon substantial compliance with § 37.2-400 and acceptable implementation of the human rights regulations adopted pursuant thereto, as determined by periodic human rights reviews performed by the Department. Such reviews shall be conducted as part of the Department's licensing reviews or, at the Department's discretion, whenever human rights issues arise.</p> <p><b>Human Rights and Licensing Enforcement and Sanctions:</b> (§37.2-419)</p> <p>A. As used in this section, "special order" means an administrative order issued to any party licensed or funded by the Department that has a stated duration of not more than 12 months and that may include a civil penalty that shall not exceed \$500 per violation per day, prohibition of new admissions, or reduction of licensed capacity for violations of § 37.2-400, the licensing or human rights regulations, or this article.</p> <p>B. Notwithstanding any other provision of law, following a proceeding as provided in § 2.2-4019, the Commissioner may issue a special order for a violation of any of the provisions of § 37.2-400 or any regulation adopted under any provision of § 37.2-400 or of this article that adversely affects the human rights of consumers or poses an imminent and substantial threat to the health, safety, or welfare of consumers. The issuance of a special order shall be considered a case decision as defined in § 2.2-4001. The Commissioner shall not delegate his authority to impose civil penalties in conjunction with the issuance of special orders. The Commissioner may take the following actions to sanction public and private providers licensed or funded by the Department for noncompliance with § 37.2-400, the human rights regulations, or this article:</p> <ol style="list-style-type: none"> <li>1. Place any service of any such provider on probation upon finding that it is substantially out of compliance with the licensing or human rights regulations and that the health or safety of consumers is at risk.</li> <li>2. Reduce licensed capacity or prohibit new admissions when he concludes that the provider cannot or will not make necessary corrections to achieve compliance with licensing or human rights regulations except by a temporary restriction of its scope of service.</li> <li>3. Require that probationary status announcements, provisional licenses, and denial or revocation</li> </ol> |

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| <p><b>Department of Mental Health, Mental Retardation and Substance Abuse Services</b><br/>(cont.)</p> | <p>notices be of sufficient size and distinction and be posted in a prominent place at each public entrance of the affected service.</p> <ol style="list-style-type: none"> <li>4. Mandate training for the provider's employees, with any costs to be borne by the provider, when he concludes that the lack of training has led directly to violations of licensing or human rights regulations.</li> <li>5. Assess civil penalties of not more than \$500 per violation per day upon finding that the licensed or funded provider is substantially out of compliance with the licensing or human rights regulations and that the health or safety of consumers is at risk.</li> <li>6. Withhold funds from licensees or programs receiving public funds that are in violation of the licensing or human rights regulations.</li> </ol> <ol style="list-style-type: none"> <li>C. The Commissioner shall inform other public agencies that provide funds to the licensee or the program, including the Departments of Social Services and Medical Assistance Services, of any licensee or program that is in violation of the licensing or human rights regulations.</li> <li>D. The Board shall adopt regulations to implement the provisions of this section.</li> </ol> <p><u>State and Local Human Rights Committees</u></p> <p><b>Membership:</b> (§ 37.2-204) The Board shall appoint a state human rights committee that shall appoint local human rights committees to address alleged violations of consumers' human rights. One-third of the appointments made to the state or local human rights committees shall be current or former consumers or family members of current or former consumers, with at least two consumers who are receiving or who have received within five years of their initial appointment public or private mental health, mental retardation, or substance abuse treatment or habilitation services on each committee. In addition, at least one appointment to the state and each local human rights committee shall be a health care provider. Remaining appointments shall include lawyers and persons with interest, knowledge, or training in the mental health, mental retardation, or substance abuse field. No current employee of the Department, a community services board, or a behavioral health authority shall serve as a member of the state human rights committee. No current employee of the Department, a community services board, a behavioral health authority, or any facility, program, or organization licensed or funded by the Department or funded by a community services board or behavioral health authority shall serve as a member of any local human rights committee that serves an oversight function for the employing facility, program, or organization.</p> <p><b>Reporting:</b> (§ 37.2-709) Each director of a state facility shall notify the Director of the Virginia Office for Protection and Advocacy, pursuant to § 51.5-39.12, in writing within 48 hours of critical incidents or deaths of consumers in the state facility.</p> <p><b>Guardian Ad Litem:</b> (§37.2-1003)</p> <ol style="list-style-type: none"> <li>A. On the filing of every petition for guardianship or conservatorship, the court shall appoint a guardian ad litem to represent the interests of the respondent. The guardian ad litem shall be paid a fee that is fixed by the court to be paid by the petitioner or taxed as costs, as the court directs.</li> <li>B. Duties of the guardian ad litem include: (i) personally visiting the respondent; (ii) advising the respondent of rights pursuant to §§ 37.2-1006 and 37.2-1007, and certifying to the court that the respondent has been so advised; (iii) recommending that legal counsel should be appointed for the respondent, pursuant to § 37.2-1006, if the guardian ad litem believes that counsel for the respondent is necessary; (iv) investigating the petition and evidence, requesting additional evaluation if necessary, and filing a report pursuant to subsection C; and (v) personally appearing at all court proceedings and conferences.</li> <li>C. In the report required by subsection B (iv), the guardian ad litem shall address the following major areas of concern: (i) whether the court has jurisdiction; (ii) whether or not a guardian or conservator is needed; (iii) the extent of the duties and powers of the guardian or conservator, such as personal supervision, financial management, or medical consent only; (iv) the propriety and suitability of the person selected as guardian or conservator, after consideration of geographic location, familial or other relationship with the respondent, ability to carry out the powers and duties of the office, commitment to promoting the respondent's welfare, any potential conflicts of interests, wishes of the respondent, and recommendations of relatives; (v) a recommendation as to the amount of surety on the conservator's bond, if any; and (vi) consideration of proper residential placement of the respondent.</li> <li>D. A health care provider shall disclose or make available to the guardian ad litem, upon request, any information, records, and reports concerning the respondent that the guardian ad litem determines necessary to perform his duties under this section.</li> </ol> |



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| <p><b>Department of Social Services</b></p> | <p><b>Powers and Duties of the State Board of Social Services:</b> (§ 63.2-216) In addition to such other duties as are assigned to it, the Board shall act in a capacity advisory to the Commissioner, and when requested shall confer and advise with him upon such matters as may arise in the performance of his duties. When requested by the Commissioner, or by the Governor, the Board shall investigate such questions and consider such problems as they, or either of them, may submit and shall report their findings and conclusions. The Board may also initiate investigations and consider problems and make recommendations to the Commissioner or to the Governor, of its own motion.</p> <p><b>Establishment:</b> (§ 63.2-222) There shall be created a statewide human services information and referral system designed to:</p> <ol style="list-style-type: none"> <li>1. Collect and maintain accurate and complete resource data on a statewide basis;</li> <li>2. Link citizens needing human services with appropriate community resources to satisfy those needs;</li> <li>3. Assist in planning for human services delivery at the local, regional and state levels; and</li> <li>4. Provide information to assist decision-makers in allocating financial and other resources to respond to state and local human service priorities.</li> </ol> <p><b>Duties:</b> (§ 63.2-226) The Department shall assume administrative responsibilities for the statewide system. In this capacity, the Department shall establish an office to:</p> <ol style="list-style-type: none"> <li>1. Develop a plan for the design and implementation of a statewide human services information and referral program;</li> <li>2. Coordinate and supervise the implementation and operation of the information and referral program;</li> <li>3. Coordinate funding for the system;</li> <li>4. Select regional providers of information and referral services;</li> <li>5. Supervise coordination of information management among information and referral regions across the Commonwealth;</li> <li>6. Encourage effective relationships between the system and state and local agencies and public and private organizations;</li> <li>7. Develop and implement a statewide publicity effort;</li> <li>8. Provide training, technical assistance, research, and consultation for regional and local information and referral centers, and to localities interested in developing information and referral services;</li> <li>9. Determine a core level of services to be funded from state government resources;</li> <li>10. Coordinate standardization of resource data collection, maintenance and dissemination;</li> <li>11. Stimulate and encourage the availability of statewide information and referral services; and</li> <li>12. Develop and implement a program for monitoring and assessing the performance and success of the information and referral program.</li> </ol> <p><b>Duties of Regional Providers:</b> (§ 63.2-227) There shall be established a regional system of providers of information and referral services. The Department shall select the regional providers. The regional providers shall:</p> <ol style="list-style-type: none"> <li>1. Collect, maintain and disseminate resource data;</li> <li>2. Provide citizen access to information about resources throughout the Commonwealth;</li> <li>3. Assist in planning functions by providing selected data to the Department on a regular basis;</li> <li>4. Provide data to public and private agencies other than the Department on a contractual basis;</li> <li>5. Cooperate with the state administering agency;</li> <li>6. Seek funds from available sources;</li> <li>7. Maintain effective relationships between the system and state and local agencies and public and private organizations; and</li> <li>8. When feasible and appropriate and within the limits of available funds, establish satellite offices or develop cooperative agreements with local information and referral groups and resource and referral groups that can assist the regional providers in performing their duties and responsibilities.</li> </ol> <p><u>Advisory Boards</u></p> <p><b>Establishment:</b> (§ 63.2-305) A. If the governing body of a city or county or the governing bodies of any combination of cities and counties participating in a district designate, under the provisions of §§ 63.2-302, 63.2-304 or § 63.2-307, a local government official as constituting the local board, such governing body or bodies shall appoint a board to serve in an advisory capacity to such local government official with respect to the duties and functions imposed upon him by this title.</p> <p><b>Membership:</b> (§ 63.2-305) Each such advisory board shall consist of no fewer than five and no more than thirteen members. In the case of an advisory board established for a district, there shall be at least one member on the board from each county and city in the district. The members shall be appointed initially for terms of from one to four years so as to provide for the balanced overlapping of the terms of the membership thereon. Subsequent appointments shall be for a term of four years each, except that appointments to fill vacancies that occur during terms shall be for the remainder of these unexpired terms. Appointments to fill unexpired terms shall not be considered full terms, and such persons shall be eligible to be appointed to two</p> |

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| <p><b>Department of Social Services</b><br/>(cont.)</p> | <p>consecutive full terms. No person shall serve more than two consecutive full terms. The local government official shall be an ex officio member, without vote, of the advisory board.</p> <p>The advisory board shall elect its own chairman and shall meet at least bimonthly. In addition to regularly scheduled meetings, it may meet at the call of the chairman or on the petition of at least one-half of the members.</p> <p><b>Duties:</b> (§ 63.2-305) The powers and duties of the advisory board shall be:</p> <ol style="list-style-type: none"> <li>1. To interest itself in all matters pertaining to the public assistance and social services needed by people of the political subdivision or subdivisions served by the local department;</li> <li>2. To monitor the formulation and implementation of public assistance and social services programs by the local department;</li> <li>3. To meet with the local government official who constitutes the local board at least four times a year for the purpose of making recommendations on policy matters concerning the local department;</li> <li>4. To make an annual report to the governing body or bodies, concurrent with the budget presentation of the local department, concerning the administration of the public assistance and social services programs; and</li> <li>5. To submit to the governing body or bodies, from time to time, other reports that the advisory board deems appropriate.</li> </ol> <p><b>Child welfare and other services:</b> (§ 63.2-319) Each local board shall provide, either directly or through the purchase of services subject to the supervision of the Commissioner and in accordance with regulations adopted by the Board, any or all child welfare services herein described when such services are not available through other agencies serving residents in the locality. For purposes of this section, the term "child welfare services" means public social services that are directed toward:</p> <ol style="list-style-type: none"> <li>1. Protecting the welfare of all children including handicapped, homeless, dependent, or neglected children;</li> <li>2. Preventing or remedying, or assisting in the solution of problems that may result in the neglect, abuse, exploitation or delinquency of children;</li> <li>3. Preventing the unnecessary separation of children from their families by identifying family problems, assisting families in resolving these problems and preventing the break up of the family where preventing the removal of a child is desirable and possible;</li> <li>4. Restoring to their families children who have been removed by providing services to the families and children;</li> <li>5. Placing children in suitable adoptive homes in cases where restoration to the biological family is not possible or appropriate; and</li> <li>6. Assuring adequate care of children away from their homes in cases where they cannot be returned home or placed for adoption.</li> </ol> <p>Each local board is also authorized and, as may be provided by regulations of the Board, shall provide rehabilitation and other services to help individuals attain or retain self-care or self-support and such services as are likely to prevent or reduce dependency and, in the case of dependent children, to maintain and strengthen family life.</p> <p><b>Reporting:</b> (§ 63.2-336) At the request of the local governing body, the local director shall each year prepare and keep on file a full report of the local department's work and proceedings during the year. If such request is made, one copy of such report shall be filed with the local governing body and another with the Board.</p> <p><b>State pool of funds under the Comprehensive Services Act:</b> (§ 63.2-410)<br/>The General Assembly and the governing body of each county and city shall appropriate such sum or sums of money for use by the community policy and management teams through the state pool of funds established in Chapter 52 (§ 2.2-5200 et seq.) of Title 2.2 as shall be sufficient to provide basic foster care services for children who are identified as being at risk, as determined by policy developed by the Board, or who are under the custody and control of the local board. The local governing body of each county and city shall appropriate such sums of money as necessary for the purchase of such other essential social services to children and adults under such conditions as may be prescribed by the Board in accordance with federally reimbursed public assistance and social service programs.</p> <p><b>Construction and operation of children's residential facilities:</b> (§ 63.2-411)<br/>Subject to approval by the Governor, a local board is authorized and empowered (i) to operate, construct, purchase, renovate or enlarge children's residential facilities for children who are in the custody of such local board by reason of commitment, voluntary entrustment or temporary detention order or (ii) to contract for such services from other counties or cities operating such facilities or from individuals or private corporations whose facilities are licensed by the appropriate state agency. The cost of maintaining children in such facilities through purchase of service contracts shall be established in accordance with regulations of the Board. Any moneys paid by a local board of a county or city to another county or city for services purchased pursuant to this section shall be applied by that county or city to the establishment and operation of such children's residential facilities. Children's residential facilities established pursuant to the provisions of this</p> |

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| <p><b>Department of Social Services</b><br/>(cont.)</p> | <p>section shall meet standards prescribed by the Board.</p> <p>Within the limits of appropriations of state funds, the Department shall reimburse the local board one half the actual cost of the construction, purchase, renovation or enlargement of each such facility. The Commonwealth shall reimburse the local board for administrative costs of operations of such facilities, including the entire reasonable cost of food, medicines, disinfectants, beds and bedding, utilities, equipment and service maintenance, transportation, staff salaries and fringe benefits, insurance and other necessary supplies in accordance with the provisions of § 63.2-401. In the event that a local board requests and receives financial assistance for the costs of the local share of the construction, purchase, renovation or operation of children's residential facilities for children who are in the custody of such local board from any source other than reimbursement provided pursuant to this section, the total financial assistance and reimbursement shall not exceed the total cost of construction, purchase, renovation or operations, and such funds shall not be considered state funds.</p> <p><b>Accepting children for placement in homes, facilities, etc., by local boards:</b> (§ 63.2-900)</p> <p>A. Pursuant to § 63.2-319, a local board shall have the right to accept for placement in suitable family homes, children's residential facilities or independent living arrangements, subject to the supervision of the Commissioner and in accordance with regulations adopted by the Board, such persons under 18 years of age as may be entrusted to it by the parent, parents or guardian, committed by any court of competent jurisdiction, or placed through an agreement between it and the parent, parents or guardians where legal custody remains with the parent, parents, or guardians.</p> <p>The Board shall adopt regulations for the provision of foster care services by local boards, which shall be directed toward the prevention of unnecessary foster care placements and towards the immediate care of and permanent planning for children in the custody of or placed by local boards and that shall achieve, as quickly as practicable, permanent placements for such children. The local board shall first seek out kinship care options to keep children out of foster care and as a placement option for those children in foster care, if it is in the child's best interest, pursuant to § 63.2-900.1.</p> <p>The local board shall, in accordance with the regulations adopted by the Board and in accordance with the entrustment agreement or other order by which such person is entrusted or committed to its care, have custody and control of the person so entrusted or committed to it until he is lawfully discharged, has been adopted or has attained his majority.</p> <p>Whenever a local board places a child where legal custody remains with the parent, parents or guardians, the board shall enter into an agreement with the parent, parents or guardians. The agreement shall specify the responsibilities of each for the care and control of the child.</p> <p>The local board shall have authority to place for adoption, and to consent to the adoption of, any child properly committed or entrusted to its care when the order of commitment or entrustment agreement between the parent or parents and the agency provides for the termination of all parental rights and responsibilities with respect to the child for the purpose of placing and consenting to the adoption of the child.</p> <p>The local board shall also have the right to accept temporary custody of any person under 18 years of age taken into custody pursuant to subdivision B of § 16.1-246 or 63.2-1517. The placement of a child in a foster home, whether within or without the Commonwealth, shall not be for the purpose of adoption unless the placement agreement between the foster parents and the local board specifically so stipulates.</p> <p>B. Prior to the approval of any family for placement of a child, a home study shall be completed as prescribed in regulations adopted by the Board.</p> <p>C. Prior to placing any such child in any foster home or children's residential facility, the local board shall enter into a written agreement with the foster parents or other appropriate custodian setting forth therein the conditions under which the child is so placed pursuant to § 63.2-902. However, if a child is placed in a children's residential facility licensed as a temporary emergency shelter, and a verbal agreement for placement is secured within eight hours of the child's arrival at the facility, the written agreement does not need to be entered into prior to placement, but shall be completed and signed by the local board and the facility representative within 24 hours of the child's arrival or by the end of the next business day after the child's arrival.</p> <p>D. Within 72 hours of placing a child of school age in a foster care placement, as defined in § 63.2-100, the local social services agency making such placement shall, in writing, (i) notify the principal of the school in which the student is to be enrolled and the superintendent of the relevant school division or his designee of such placement, and (ii) inform the principal of the status of the parental rights.</p> <p>If the documents required for enrollment of the foster child pursuant to § 22.1-3.1, 22.1-270 or 22.1-271.2, are not immediately available upon taking the child into custody, the placing social services agency shall obtain and produce or otherwise ensure compliance with such requirements for the foster child within 30 days after the child's enrollment.</p> |

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| <p><b>Department of Social Services</b><br/>(cont.)</p> | <p><b>Investigation, visitation and supervision of foster homes or independent living placement; removal of child:</b> (§ 63.2-904)</p> <p>A. Before placing or arranging for the placement of any such child in a foster home or independent living placement, a local board or licensed child-placing agency shall cause a careful study to be made to determine the suitability of such home or independent placement, and after placement shall cause such home or independent placement and child to be visited as often as necessary to protect the interests of such child.</p> <p>B. Every local board or licensed child-placing agency that places a child in a foster home or independent living placement shall maintain such supervision over such home or independent living placement as shall be required by the standards and policies established by the Board.</p> <p>C. Whenever any child placed by a local board or licensed child-placing agency and still under its control or supervision is subject, in the home in which he is placed, to unwholesome influences or to neglect or mistreatment, or whenever the Commissioner shall so order, such local board or agency shall cause the child to be removed from such home and shall make for him such arrangements as may be approved by the Commissioner.</p> <p><b>Administrative review of children in foster care:</b> (§ 63.2-907)</p> <p>Each local board shall establish and keep current a social service plan with service objectives and shall provide the necessary social services for achievement of a permanent home for each child for whom it has care and custody or has an agreement with the parents or guardians to place in accordance with regulations adopted by the Board. Each local board shall review the cases of children placed through an agreement or in its custody in accordance with the regulations adopted by the Board. Each local board shall review the cases of children placed through an agreement or in its custody on a planned basis to evaluate the current status and effectiveness (i) of the service plan's objectives and (ii) of the services being provided for each child in custody, which are directed toward the immediate care of and planning for permanency for the child, in accordance with policies of the Board.</p> <p>The Department shall establish and maintain (a) a system to review and monitor compliance by local boards with the policies adopted by the Board and (b) a tracking system of every child in the care and custody of or placed by local boards in order to monitor the effectiveness of service planning, service objectives and service delivery by the local boards that shall be directed toward the achievement of permanency for children in foster care. The Board shall adopt regulations necessary to implement the procedures and policies set out in this section. The Board shall establish as a goal that at any point in time the number of children who are in foster care for longer than twenty-four months shall not exceed 5,500 children.</p> <p><b>Permanent foster care placement:</b> (§ 63.2-908)</p> <p>A. Permanent foster care placement means the place in which a child has been placed pursuant to the provisions of §§ 63.2-900, 63.2-903 and this section with the expectation and agreement between the placing agency and the place of permanent foster care that the child shall remain in the placement until he reaches the age of majority unless modified by court order or unless removed pursuant to § 16.1-251 or § 63.2-1517. A permanent foster care placement may be a place of residence of any natural person or persons deemed appropriate to meet a child's needs on a long-term basis.</p> <p>B. A local department or a licensed child-placing agency shall have authority pursuant to a court order to place a child over whom it has legal custody in a permanent foster care placement where the child shall remain until attaining majority or thereafter, until the age of twenty-one years, if such placement is a requisite to providing funds for the care of such child, so long as the child is a participant in an educational, treatment or training program approved pursuant to regulations of the Board. No such child shall be removed from the physical custody of the foster parents in the permanent care placement except upon order of the court or pursuant to § 16.1-251 or § 63.2-1517. The department or agency so placing a child shall retain legal custody of the child. A court shall not order that a child be placed in permanent foster care unless it finds that (i) diligent efforts have been made by the local department to place the child with his natural parents and such efforts have been unsuccessful, and (ii) diligent efforts have been made by the local department to place the child for adoption and such efforts have been unsuccessful or adoption is not a reasonable alternative for a long-term placement for the child under the circumstances.</p> <p>C. Unless modified by the court order, the foster parent in the permanent foster care placement shall have the authority to consent to surgery, entrance into the armed services, marriage, application for a motor vehicle and driver's license, application for admission into college and any other such activities that require parental consent and shall have the responsibility for informing the placing department or agency of any such actions.</p> <p>D. Any child placed in a permanent foster care placement by a local department shall, with the cooperation of the foster parents with whom the permanent foster care placement has been made, receive the same services and benefits as any other child in foster care pursuant to §§ 63.2-319, 63.2-900 and 63.2-903 and any other applicable provisions of law.</p> <p>E. The Board shall establish minimum standards for the utilization, supervision and evaluation of permanent foster care placements.</p> <p>F. The rate of payment for permanent foster care placements by a local department shall be in accordance</p> |

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| <p><b>Department of Social Services</b><br/>(cont.)</p> | <p>with standards and rates established by the Board. The rate of payment for such placements by other licensed child-placing agencies shall be in accordance with standards and rates established by the individual agency.</p> <p>G. If the child has a continuing involvement with his natural parents, the natural parents should be involved in the planning for a permanent placement. The court order placing the child in a permanent placement shall include a specification of the nature and frequency of visiting arrangements with the natural parents.</p> <p>H. Any change in the placement of a child in permanent foster care or the responsibilities of the foster parents for that child shall be made only by order of the court which ordered the placement pursuant to a petition filed by the foster parents, local department, licensed child-placing agency or other appropriate party.</p> <p><b>Investigations; report to circuit court: (§ 63.2-1208)</b></p> <p>A. Upon consideration of the petition, the circuit court shall, upon being satisfied as to proper jurisdiction and venue, immediately enter an order referring the case to a child-placing agency to conduct an investigation and prepare a report unless no investigation is required pursuant to this chapter. The court shall enter the order of reference prior to or concurrently with the entering of an order of publication, if such is necessary. Upon entry of the order of reference, the clerk shall forward a copy of the order of reference, the petition, and all exhibits thereto to the Commissioner and the child-placing agency retained to provide investigative, reporting, and supervisory services. If no Virginia agency was retained to provide such services, the order of reference, petition, and all exhibits shall be forwarded to the local director of social services of the locality where the petitioners reside or resided at the time of filing the petition or had legal residence at the time the petition was filed.</p> <p>B. Upon receiving a petition and order of reference from the circuit court, the applicable agency shall make a thorough investigation of the matter and report thereon in writing, in such form as the Commissioner may prescribe, to the circuit court within 60 days after the copy of the petition and all exhibits thereto are forwarded. A copy of the report to the circuit court shall be served on the Commissioner by delivering or mailing a copy to him on or before the day of filing the report with the circuit court. On the report to the circuit court there shall be appended either acceptance of service or certificate of the local director, or the representative of the child-placing agency, that copies were served as this section requires, showing the date of delivery or mailing. The circuit court shall expeditiously consider the merits of the petition upon receipt of the report.</p> <p>C. If the report is not made to the circuit court within the periods specified, the circuit court may proceed to hear and determine the merits of the petition and enter such order or orders as the circuit court may deem appropriate.</p> <p>D. The investigation requested by the circuit court shall include, in addition to other inquiries that the circuit court may require the child-placing agency or local director to make, inquiries as to (i) whether the petitioner is financially able, except as provided in Chapter 13 (§ 63.2-1300 et seq.) of this title, morally suitable, in satisfactory physical and mental health and a proper person to care for and to train the child; (ii) what the physical and mental condition of the child is; (iii) why the parents, if living, desire to be relieved of the responsibility for the custody, care and maintenance of the child, and what their attitude is toward the proposed adoption; (iv) whether the parents have abandoned the child or are morally unfit to have custody over him; (v) the circumstances under which the child came to live, and is living, in the physical custody of the petitioner; (vi) whether the child is a suitable child for adoption by the petitioner; and (vii) what fees have been paid by the petitioners or on their behalf to persons or agencies that have assisted them in obtaining the child. Any report made to the circuit court shall include a recommendation as to the action to be taken by the circuit court on the petition. A copy of any report made to the circuit court shall be furnished to counsel of record representing the adopting parent or parents. When the investigation reveals that there may have been a violation of § 63.2-1200 or § 63.2-1218, the local director or child-placing agency shall so inform the circuit court and the Commissioner.</p> <p>E. The report shall include the relevant physical and mental history of the birth parents if known to the person making the report. The child-placing agency or local director shall document in the report all efforts they made to encourage birth parents to share information related to their physical and mental history. However, nothing in this subsection shall require that an investigation of the physical and mental history of the birth parents be made.</p> <p>F. If the specific provisions set out in §§ 63.2-1228, 63.2-1238, 63.2-1242 and 63.2-1244 do not apply, the petition and all exhibits shall be forwarded to the local director where the petitioners reside or to a licensed child-placing agency.</p> <p><b>Establishment of Child-Protective Services Unit; duties: (§ 63.2-1502)</b><br/>There is created a Child-Protective Services Unit in the Department that shall have the following powers and duties:</p> <ol style="list-style-type: none"> <li>1. To evaluate and strengthen all local, regional and state programs dealing with child abuse and neglect.</li> <li>2. To assume primary responsibility for directing the planning and funding of child-protective services. This shall include reviewing and approving the annual proposed plans and budgets for protective services submitted by the local departments.</li> <li>3. To assist in developing programs aimed at discovering and preventing the many factors causing child</li> </ol> |

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| <p><b>Department of Social Services</b><br/>(cont.)</p> | <p>abuse and neglect.</p> <ol style="list-style-type: none"> <li>4. To prepare and disseminate, including the presentation of, educational programs and materials on child abuse and neglect.</li> <li>5. To provide educational programs for professionals required by law to make reports under this chapter.</li> <li>6. To establish standards of training and provide educational programs to qualify workers in the field of child-protective services. Such standards of training shall include provisions regarding the legal duties of the workers in order to protect the constitutional and statutory rights and safety of children and families from the initial time of contact during investigation through treatment.</li> <li>7. To establish standards of training and educational programs to qualify workers to determine whether complaints of abuse or neglect of a child in a private or state-operated hospital, institution or other facility, or public school, are founded.</li> <li>8. To maintain staff qualified pursuant to Board regulations to assist local department personnel in determining whether an employee of a private or state-operated hospital, institution or other facility or an employee of a school board, abused or neglected a child in such hospital, institution, or other facility, or public school.</li> <li>9. To monitor the processing and determination of cases where an employee of a private or state-operated hospital, institution or other facility, or an employee of a school board, is suspected of abusing or neglecting a child in such hospital, institution, or other facility, or public school.</li> <li>10. To help coordinate child-protective services at the state, regional, and local levels with the efforts of other state and voluntary social, medical and legal agencies.</li> <li>11. To maintain a child abuse and neglect information system that includes all cases of child abuse and neglect within the Commonwealth.</li> <li>12. To provide for methods to preserve the confidentiality of all records in order to protect the rights of the child, and his parents or guardians.</li> <li>13. To establish minimum training requirements for workers and supervisors on family abuse and domestic violence, including the relationship between domestic violence and child abuse and neglect.</li> </ol> <p><b>Local departments to establish child-protective services; duties:</b> (§ 63.2-1503)</p> <ol style="list-style-type: none"> <li>A. Each local department shall establish child-protective services under a departmental coordinator within such department or with one or more adjacent local departments that shall be staffed with qualified personnel pursuant to regulations adopted by the Board. The local department shall be the public agency responsible for receiving and responding to complaints and reports, except that (i) in cases where the reports or complaints are to be made to the court and the judge determines that no local department within a reasonable geographic distance can impartially respond to the report, the court shall assign the report to the court services unit for evaluation; and (ii) in cases where an employee at a private or state-operated hospital, institution or other facility, or an employee of a school board is suspected of abusing or neglecting a child in such hospital, institution or other facility, or public school, the local department shall request the Department and the relevant private or state-operated hospital, institution or other facility, or school board to assist in conducting a joint investigation in accordance with regulations adopted by the Board, in consultation with the Departments of Education, Health, Medical Assistance Services, Mental Health, Mental Retardation and Substance Abuse Services, Juvenile Justice and Corrections.</li> <li>B. The local department shall ensure, through its own personnel or through cooperative arrangements with other local agencies, the capability of receiving reports or complaints and responding to them promptly on a 24-hours-a-day, seven-days-per-week basis.</li> <li>C. The local department shall widely publicize a telephone number for receiving complaints and reports.</li> <li>D. The local department shall upon receipt of a complaint, report immediately to the attorney for the Commonwealth and the local law-enforcement agency and make available to them the records of the local department when abuse or neglect is suspected in any case involving (i) death of a child; (ii) injury or threatened injury to the child in which a felony or Class 1 misdemeanor is also suspected; (iii) any sexual abuse, suspected sexual abuse or other sexual offense involving a child, including but not limited to the use or display of the child in sexually explicit visual material, as defined in § 18.2-374.1; (iv) any abduction of a child; (v) any felony or Class 1 misdemeanor drug offense involving a child; or (vi) contributing to the delinquency of a minor in violation of § 18.2-371, and provide the attorney for the Commonwealth and the local law-enforcement agency with records of any complaints of abuse or neglect involving the victim or the alleged perpetrator. The local department shall not allow reports of the death of the victim from other local agencies to substitute for direct reports to the attorney for the Commonwealth and the local law-enforcement agency. The local department shall develop, when practicable, memoranda of understanding for responding to reports of child abuse and neglect with local law enforcement and the attorney for the Commonwealth.</li> <li>E. When abuse or neglect is suspected in any case involving the death of a child, the local department shall report the case immediately to the regional medical examiner and the local law-enforcement agency.</li> <li>F. The local department shall use reasonable diligence to locate (i) any child for whom a report of suspected abuse or neglect has been received and is under investigation, receiving family assessment, or for whom a founded determination of abuse and neglect has been made and a child-protective services case opened and (ii) persons who are the subject of a report that is under investigation or</li> </ol> |

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| <p><b>Department of Social Services</b><br/>(cont.)</p> | <p>receiving family assessment, if the whereabouts of the child or such persons are unknown to the local department.</p> <p>G. When an abused or neglected child and the persons who are the subject of an open child-protective services case have relocated out of the jurisdiction of the local department, the local department shall notify the child-protective services agency in the jurisdiction to which such persons have relocated, whether inside or outside of the Commonwealth, and forward to such agency relevant portions of the case record. The receiving local department shall arrange protective and rehabilitative services as required by this section.</p> <p>H. When a child for whom a report of suspected abuse or neglect has been received and is under investigation or receiving family assessment and the child and the child's parents or other persons responsible for the child's care who are the subject of the report that is under investigation or family assessment have relocated out of the jurisdiction of the local department, the local department shall notify the child-protective services agency in the jurisdiction to which the child and such persons have relocated, whether inside or outside of the Commonwealth, and complete such investigation or family assessment by requesting such agency's assistance in completing the investigation or family assessment. The local department that completes the investigation or family assessment shall forward to the receiving agency relevant portions of the case record in order for the receiving agency to arrange protective and rehabilitative services as required by this section.</p> <p>I. Upon receipt of a report of child abuse or neglect, the local department shall determine the validity of such report and shall make a determination to conduct an investigation pursuant to § 63.2-1505 or, if designated as a child-protective services differential response agency by the Department according to § 63.2-1504, a family assessment pursuant to § 63.2-1506.</p> <p>J. The local department shall foster, when practicable, the creation, maintenance and coordination of hospital and community-based multidisciplinary teams that shall include where possible, but not be limited to, members of the medical, mental health, social work, nursing, education, legal and law-enforcement professions. Such teams shall assist the local departments in identifying abused and neglected children; coordinating medical, social, and legal services for the children and their families; developing innovative programs for detection and prevention of child abuse; promoting community concern and action in the area of child abuse and neglect; and disseminating information to the general public with respect to the problem of child abuse and neglect and the facilities and prevention and treatment methods available to combat child abuse and neglect. These teams may be the family assessment and planning teams established pursuant to § 2.2-5207. Multidisciplinary teams may develop agreements regarding the exchange of information among the parties for the purposes of the investigation and disposition of complaints of child abuse and neglect, delivery of services and child protection. Any information exchanged in accordance with the agreement shall not be considered to be a violation of the provisions of §§ 63.2-102, 63.2-104 or § 63.2-105.<br/>The local department shall also coordinate its efforts in the provision of these services for abused and neglected children with the judge and staff of the court.</p> <p>K. The local department may develop multidisciplinary teams to provide consultation to the local department during the investigation of selected cases involving child abuse or neglect, and to make recommendations regarding the prosecution of such cases. These teams may include, but are not limited to, members of the medical, mental health, legal and law-enforcement professions, including the attorney for the Commonwealth or his designee; a local child-protective services representative; and the guardian ad litem or other court-appointed advocate for the child. Any information exchanged for the purpose of such consultation shall not be considered a violation of §§ 63.2-102, 63.2-104 or § 63.2-105.</p> <p>L. The local department shall report annually on its activities concerning abused and neglected children to the court and to the Child-Protective Services Unit in the Department on forms provided by the Department.</p> <p>M. Statements, or any evidence derived therefrom, made to local department child-protective services personnel, or to any person performing the duties of such personnel, by any person accused of the abuse, injury, neglect or death of a child after the arrest of such person, shall not be used in evidence in the case-in-chief against such person in the criminal proceeding on the question of guilt or innocence over the objection of the accused, unless the statement was made after such person was fully advised (i) of his right to remain silent, (ii) that anything he says may be used against him in a court of law, (iii) that he has a right to the presence of an attorney during any interviews, and (iv) that if he cannot afford an attorney, one will be appointed for him prior to any questioning.</p> <p>N. Notwithstanding any other provision of law, the local department, in accordance with Board regulations, shall transmit information regarding founded complaints or family assessments and may transmit other information regarding reports, complaints, family assessments and investigations involving active duty military personnel or members of their household to family advocacy representatives of the United States Armed Forces.</p> <p>O. The local department shall notify the custodial parent and make reasonable efforts to notify the noncustodial parent as those terms are defined in § 63.2-1900 of a report of suspected abuse or neglect of a child who is the subject of an investigation or is receiving family assessment, in those cases in which such custodial or noncustodial parent is not the subject of the investigation.</p> |

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| <p><b>Department of Social Services</b><br/>(cont.)</p> | <p><b>Child-protective services differential response system:</b> (§ 63.2-1504)<br/>The Department shall implement a child-protective services differential response system in all local departments. The differential response system allows local departments to respond to valid reports or complaints of child abuse or neglect by conducting either an investigation or a family assessment. The Department shall publish a plan to implement the child-protective services differential response system in local departments by July 1, 2000, and complete implementation in all local departments by July 1, 2003. The Department shall develop a training program for all staff persons involved in the differential response system, and all such staff shall receive this training.</p> <p><b>Investigations by local departments:</b> (§ 63.2-1505)</p> <p>A. An investigation requires the collection of information necessary to determine:</p> <ol style="list-style-type: none"> <li>1. The immediate safety needs of the child;</li> <li>2. The protective and rehabilitative services needs of the child and family that will deter abuse or neglect;</li> <li>3. Risk of future harm to the child;</li> <li>4. Alternative plans for the child's safety if protective and rehabilitative services are indicated and the family is unable or unwilling to participate in services;</li> <li>5. Whether abuse or neglect has occurred;</li> <li>6. If abuse or neglect has occurred, who abused or neglected the child; and</li> <li>7. A finding of either founded or unfounded based on the facts collected during the investigation.</li> </ol> <p>B. If the local department responds to the report or complaint by conducting an investigation, the local department shall:</p> <ol style="list-style-type: none"> <li>1. Make immediate investigation and, if the report or complaint was based upon one of the factors specified in subsection B of § 63.2-1509, the local department may file a petition pursuant to § 16.1-241.3;</li> <li>2. Complete a report and transmit it forthwith to the Department, except that no such report shall be transmitted in cases in which the cause to suspect abuse or neglect is one of the factors specified in subsection B of § 63.2-1509 and the mother sought substance abuse counseling or treatment prior to the child's birth;</li> <li>3. Consult with the family to arrange for necessary protective and rehabilitative services to be provided to the child and his family;</li> <li>4. Petition the court for services deemed necessary including, but not limited to, removal of the child or his siblings from their home;</li> <li>5. Determine within forty-five days if a report of abuse or neglect is founded or unfounded and transmit a report to such effect to the Department and to the person who is the subject of the investigation. However, upon written justification by the local department, such determination may be extended, not to exceed a total of sixty days. If through the exercise of reasonable diligence the local department is unable to find the child who is the subject of the report, the time the child cannot be found shall not be computed as part of the forty-five-day or sixty-day period and documentation of such reasonable diligence shall be placed in the record; and</li> <li>6. If a report of abuse or neglect is unfounded, transmit a report to such effect to the complainant and parent or guardian and the person responsible for the care of the child in those cases where such person was suspected of abuse or neglect.</li> </ol> <p><b>Family assessments by local departments:</b> (§ 63.2-1506)</p> <p>A. A family assessment requires the collection of information necessary to determine:</p> <ol style="list-style-type: none"> <li>1. The immediate safety needs of the child;</li> <li>2. The protective and rehabilitative services needs of the child and family that will deter abuse or neglect;</li> <li>3. Risk of future harm to the child; and</li> <li>4. Alternative plans for the child's safety if protective and rehabilitative services are indicated and the family is unable or unwilling to participate in services.</li> </ol> <p>B. When a local department has been designated as a child-protective services differential response system participant by the Department pursuant to § 63.2-1504 and responds to the report or complaint by conducting a family assessment, the local department shall:</p> <ol style="list-style-type: none"> <li>1. Conduct an immediate family assessment and, if the report or complaint was based upon one of the factors specified in subsection B of § 63.2-1509, the local department may file a petition pursuant to § 16.1-241.3;</li> <li>2. Immediately contact the subject of the report and the family of the child alleged to have been abused or neglected and give each a written and an oral explanation of the family assessment procedure. The family assessment shall be in writing and shall be completed in accordance with Board regulation;</li> <li>3. Complete the family assessment within forty-five days and transmit a report to such effect to the Department and to the person who is the subject of the family assessment. However, upon written justification by the local department, the family assessment may be extended, not to exceed a total</li> </ol> |



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| <p><b>Department of Social Services</b><br/>(cont.)</p> | <p>of sixty days;</p> <ol style="list-style-type: none"> <li>4. Consult with the family to arrange for necessary protective and rehabilitative services to be provided to the child and his family. Families have the option of declining the services offered as a result of the family assessment. If the family declines the services, the case shall be closed unless the local department determines that sufficient cause exists to redetermine the case as one that needs to be investigated. In no instance shall a case be redetermined as an investigation solely because the family declines services;</li> <li>5. Petition the court for services deemed necessary;</li> <li>6. Make no disposition of founded or unfounded for reports in which a family assessment is completed. Reports in which a family assessment is completed shall not be entered into the central registry contained in § 63.2-1515; and</li> <li>7. Commence an immediate investigation, if at any time during the completion of the family assessment, the local department determines that an investigation is required.</li> </ol> <p>C. When a local department has been designated as a child-protective services differential response agency by the Department, the local department may investigate any report of child abuse or neglect, but the following valid reports of child abuse or neglect shall be investigated: (i) sexual abuse, (ii) child fatality, (iii) abuse or neglect resulting in serious injury as defined in § 18.2-371.1, (iv) child has been taken into the custody of the local department, or (v) cases involving a caretaker at a state-licensed child day center, religiously exempt child day center, licensed, registered or approved family day home, private or public school, hospital or any institution.</p> <p><b>Valid report or complaint:</b> (§ 63.2-1508)<br/>A valid report or complaint means the local department has evaluated the information and allegations of the report or complaint and determined that the local department shall conduct an investigation or family assessment because the following elements are present:</p> <ol style="list-style-type: none"> <li>1. The alleged victim child or children are under the age of eighteen at the time of the complaint or report;</li> <li>2. The alleged abuser is the alleged victim child's parent or other caretaker;</li> <li>3. The local department receiving the complaint or report has jurisdiction; and</li> <li>4. The circumstances described allege suspected child abuse or neglect.</li> </ol> <p>Nothing in this section shall relieve any person specified in § 63.2-1509 from making a report required by that section, regardless of the identity of the person suspected to have caused such abuse or neglect.</p> <p><b>Complaints by others of certain injuries to children:</b> (§ 63.2-1510)<br/>Any person who suspects that a child is an abused or neglected child may make a complaint concerning such child, except as hereinafter provided, to the local department of the county or city wherein the child resides or wherein the abuse or neglect is believed to have occurred or to the Department's toll-free child abuse and neglect hotline. If an employee of the local department is suspected of abusing or neglecting a child, the complaint shall be made to the court of the county or city where the abuse or neglect was discovered. Upon receipt of such a report by the court, the judge shall assign the report to a local department that is not the employer of the suspected employee for investigation or family assessment; or, if the judge believes that no local department in a reasonable geographic distance can be impartial in responding to the reported case, the judge shall assign the report to the court service unit of his court for evaluation. The judge may consult with the Department in selecting a local department to respond to the report or complaint. Such a complaint may be oral or in writing and shall disclose all information which is the basis for the suspicion of abuse or neglect of the child.</p> <p><b>Complaints of abuse and neglect against school personnel; interagency agreement:</b> (§ 63.2-1511)</p> <ol style="list-style-type: none"> <li>A. If a teacher, principal or other person employed by a local school board or employed in a school operated by the Commonwealth is suspected of abusing or neglecting a child in the course of his educational employment, the complaint shall be investigated in accordance with §§ 63.2-1503, 63.2-1505 and 63.2-1516.1. Pursuant to § 22.1-279.1, no teacher, principal or other person employed by a school board or employed in a school operated by the Commonwealth shall subject a student to corporal punishment. However, this prohibition of corporal punishment shall not be deemed to prevent (i) the use of incidental, minor or reasonable physical contact or other actions designed to maintain order and control; (ii) the use of reasonable and necessary force to quell a disturbance or remove a student from the scene of a disturbance that threatens physical injury to persons or damage to property; (iii) the use of reasonable and necessary force to prevent a student from inflicting physical harm on himself; (iv) the use of reasonable and necessary force for self-defense or the defense of others; or (v) the use of reasonable and necessary force to obtain possession of weapons or other dangerous objects or controlled substances or paraphernalia that are upon the person of the student or within his control. In determining whether the actions of a teacher, principal or other person employed by a school board or employed in a school operated by the Commonwealth are within the exceptions provided in this section, the local department shall examine whether the actions at the time of the event that were made by such person were reasonable.</li> <li>B. For purposes of this section, "corporal punishment," "abuse," or "neglect" shall not include physical pain, injury or discomfort caused by the use of incidental, minor or reasonable physical contact or other actions</li> </ol> |

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| <p><b>Department of Social Services</b><br/>(cont.)</p> | <p>designed to maintain order and control as permitted in clause (i) of subsection A or the use of reasonable and necessary force as permitted by clauses (ii), (iii), (iv), and (v) of subsection A, or by participation in practice or competition in an interscholastic sport, or participation in physical education or an extracurricular activity.</p> <p>C. If, after an investigation of a complaint under this section, the local department determines that the actions or omissions of a teacher, principal, or other person employed by a local school board or employed in a school operated by the Commonwealth were within such employee's scope of employment and were taken in good faith in the course of supervision, care, or discipline of students, then the standard in determining if a report of abuse or neglect is founded is whether such acts or omissions constituted gross negligence or willful misconduct.</p> <p>D. Each local department and local school division shall adopt a written interagency agreement as a protocol for investigating child abuse and neglect reports against school personnel. The interagency agreement shall be based on recommended procedures for conducting investigations developed by the Departments of Education and Social Services.</p> <p><b>Retention of records in all reports; procedures regarding unfounded reports alleged to be made in bad faith or with malicious intent: (§ 63.2-1514)</b></p> <p>A. The local department shall retain the records of all reports or complaints made pursuant to this chapter, in accordance with regulations adopted by the Board.</p> <p>B. The Department shall maintain a child abuse and neglect information system that includes a central registry of founded complaints, pursuant to § 63.2-1515. The Department shall maintain all (i) unfounded investigations, (ii) family assessments, and (iii) reports or complaints determined to be not valid in a record which is separate from the central registry and accessible only to the Department and to local departments for child-protective services. The purpose of retaining these complaints or reports is to provide local departments with information regarding prior complaints or reports. In no event shall the mere existence of a prior complaint or report be used to determine that a subsequent complaint or report is founded. The subject of the complaint or report is the person who is alleged to have committed abuse or neglect. The subject of the complaint or report shall have access to his own record. The record of unfounded investigations and complaints and reports determined to be not valid shall be purged one year after the date of the complaint or report if there are no subsequent complaints or reports regarding the same child or the person who is the subject of the complaint or report in that one year. The local department shall retain such records for an additional period of up to two years if requested in writing by the person who is the subject of such complaint or report. The record of family assessments shall be purged three years after the date of the complaint or report if there are no subsequent complaints or reports regarding the same child or the person who is the subject of the report in that three-year period. The child-protective services records regarding the petitioner which result from such complaint or report shall be purged immediately by any custodian of such records upon presentation to the custodian of a certified copy of a court order that there has been a civil action that determined that the complaint or report was made in bad faith or with malicious intent. After purging the records, the custodian shall notify the petitioner in writing that the records have been purged.</p> <p>C. At the time the local department notifies a person who is the subject of a complaint or report made pursuant to this chapter that such complaint or report is either an unfounded investigation or a completed family assessment, it shall notify him how long the record will be retained and of the availability of the procedures set out in this section regarding reports or complaints alleged to be made in bad faith or with malicious intent. Upon request, the local department shall advise the person who was the subject of an unfounded investigation if the complaint or report was made anonymously. However, the identity of a complainant or reporter shall not be disclosed.</p> <p>D. Any person who is the subject of an unfounded report or complaint made pursuant to this chapter who believes that such report or complaint was made in bad faith or with malicious intent may petition the circuit court in the jurisdiction in which the report or complaint was made for the release to such person of the records of the investigation or family assessment. Such petition shall specifically set forth the reasons such person believes that such report or complaint was made in bad faith or with malicious intent. Upon the filing of such petition, the circuit court shall request and the local department shall provide to the circuit court its records of the investigation or family assessment for the circuit court's in camera review. The petitioner shall be entitled to present evidence to support his petition. If the circuit court determines that there is a reasonable question of fact as to whether the report or complaint was made in bad faith or with malicious intent and that disclosure of the identity of the complainant would not be likely to endanger the life or safety of the complainant, it shall provide to the petitioner a copy of the records of the investigation or family assessment. The original records shall be subject to discovery in any subsequent civil action regarding the making of a complaint or report in bad faith or with malicious intent.</p> <p><b>Central registry; disclosure of information: (§ 63.2-1515)</b><br/>The central registry shall contain such information as shall be prescribed by Board regulation; however, when the founded case of abuse or neglect does not name the parents or guardians of the child as the abuser or neglector, and the abuse or neglect occurred in a licensed or unlicensed child day center, a licensed, registered or approved family day home, a private or public school, or a children's residential facility, the</p> |

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| <p><b>Department of Social Services</b><br/>(cont.)</p> | <p>child's name shall not be entered on the registry without consultation with and permission of the parents or guardians. If a child's name currently appears on the registry without consultation with and permission of the parents or guardians for a founded case of abuse and neglect that does not name the parents or guardians of the child as the abuser or neglector, such parents or guardians may have the child's name removed by written request to the Department. The information contained in the central registry shall not be open to inspection by the public. However, appropriate disclosure may be made in accordance with Board regulations.</p> <p>The Department shall respond to requests for a search of the central registry made by (i) local departments and (ii) local school boards regarding applicants for employment, pursuant to § 22.1-296.4, in cases where there is no match within the central registry within 10 business days of receipt of such requests. In cases where there is a match within the central registry regarding applicants for employment, the Department shall respond to requests made by local departments and local school boards within 30 business days of receipt of such requests. The response may be by first-class mail or facsimile transmission.</p> <p>Any central registry check of a person who has applied to be a volunteer with a (a) Virginia affiliate of Big Brothers/Big Sisters of America, (b) Virginia affiliate of Compeer, (c) Virginia affiliate of Childhelp USA/rs, (d) volunteer fire company or volunteer rescue squad, or (e) with a court-appointed special advocate program pursuant to § 9.1-153 shall be conducted at no charge.</p> <p><b>Tape recording child abuse investigations:</b> (§ 63.2-1516)<br/>Any person who is suspected of abuse or neglect of a child and who is the subject of an investigation or family assessment pursuant to this chapter may tape record any communications between him and child-protective services personnel that take place during the course of such investigation or family assessment, provided all parties to the conversation are aware the conversation is to be recorded. The parties' knowledge of the recording shall be demonstrated by a declaration at the beginning of the recorded portion of the conversation that the recording is to be made. If a person who is suspected of abuse or neglect of a child and who is the subject of an investigation or family assessment pursuant to this chapter elects to make a tape recording as provided in this section, the child-protective services personnel may also make such a recording.</p> <p><b>Investigation procedures involving person who is the subject of complaint:</b> (§ 63.2-1516.01)<br/>The local department shall, at the initial time of contact with the person subject to a child abuse and neglect investigation, advise such person of the complaints or allegations made against the person, in a manner that is consistent with laws protecting the rights of the person making the report or complaint. In cases where a child is alleged to have been abused or neglected by a teacher, principal or other person employed by a local school board or employed in a school operated by the Commonwealth, in the course of such employment in a nonresidential setting, the provisions of § 63.2-1516.1 shall also apply.</p> <p><b>Appeals of certain actions of local departments:</b> (§ 63.2-1526)</p> <p>A. A person who is suspected of or is found to have committed abuse or neglect may, within thirty days of being notified of that determination, request the local department rendering such determination to amend the determination and the local department's related records. Upon written request, the local department shall provide the appellant all information used in making its determination. Disclosure of the reporter's name or information which may endanger the well-being of a child shall not be released. The identity of a collateral witness or any other person shall not be released if disclosure may endanger his life or safety. Information prohibited from being disclosed by state or federal law or regulation shall not be released. The local department shall hold an informal conference or consultation where such person, who may be represented by counsel, shall be entitled to informally present testimony of witnesses, documents, factual data, arguments or other submissions of proof to the local department. With the exception of the local director, no person whose regular duties include substantial involvement with child abuse and neglect cases shall preside over the informal conference. If the local department refuses the request for amendment or fails to act within forty-five days after receiving such request, the person may, within thirty days thereafter, petition the Commissioner, who shall grant a hearing to determine whether it appears, by a preponderance of the evidence, that the determination or record contains information which is irrelevant or inaccurate regarding the commission of abuse or neglect by the person who is the subject of the determination or record and therefore shall be amended. A person who is the subject of a report who requests an amendment to the record, as provided above, has the right to obtain an extension for an additional specified period of up to sixty days by requesting in writing that the forty-five days in which the local department must act be extended. The extension period, which may be up to sixty days, shall begin at the end of the forty-five days in which the local department must act. When there is an extension period, the thirty-day period to request an administrative hearing shall begin on the termination of the extension period.</p> <p>B. The Commissioner shall designate and authorize one or more members of his staff to conduct such hearings. The decision of any staff member so designated and authorized shall have the same force and effect as if the Commissioner had made the decision. The hearing officer shall have the authority to issue subpoenas for the production of documents and the appearance of witnesses. The hearing officer is</p> |

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| <p><b>Department of Social Services</b><br/>(cont.)</p> | <p>authorized to determine the number of depositions that will be allowed and to administer oaths or affirmations to all parties and witnesses who plan to testify at the hearing. The Board shall adopt regulations necessary for the conduct of such hearings. Such regulations shall include provisions stating that the person who is the subject of the report has the right (i) to submit oral or written testimony or documents in support of himself and (ii) to be informed of the procedure by which information will be made available or withheld from him. In case of any information withheld, such person shall be advised of the general nature of such information and the reasons, for reasons of privacy or otherwise, that it is being withheld. Upon giving reasonable notice, either party at his own expense may depose a nonparty and submit such deposition at the hearing pursuant to Board regulation. Upon good cause shown, after a party's written motion, the hearing officer may issue subpoenas for the production of documents or to compel the attendance of witnesses at the hearing, except that alleged child victims of the person and their siblings shall not be subpoenaed, deposed or required to testify. The person who is the subject of the report may be represented by counsel at the hearing. Upon petition, the court shall have the power to enforce any subpoena that is not complied with or to review any refusal to issue a subpoena. Such decisions may not be further appealed except as part of a final decision that is subject to judicial review. Such hearing officers are empowered to order the amendment of such determination or records as is required to make them accurate and consistent with the requirements of this chapter or the regulations adopted hereunder. If, after hearing the facts of the case, the hearing officer determines that the person who is the subject of the report has presented information that was not available to the local department at the time of the local conference and which if available may have resulted in a different determination by the local department, he may remand the case to the local department for reconsideration. The local department shall have fourteen days in which to reconsider the case. If, at the expiration of fourteen days, the local department fails to act or fails to amend the record to the satisfaction of the appellant, the case shall be returned to the hearing officer for a determination. If aggrieved by the decision of the hearing officer, such person may obtain further review of the decision in accordance with Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act (§ 2.2-4000 et seq.).</p> <p>C. Whenever an appeal of the local department's finding is made and a criminal charge is also filed against the appellant for the same conduct involving the same victim as investigated by the local department, the appeal process shall automatically be stayed until the criminal prosecution in circuit court is completed. During such stay, the appellant's right of access to the records of the local department regarding the matter being appealed shall also be stayed. Once the criminal prosecution in circuit court has been completed, the local department shall advise the appellant in writing of his right to resume his appeal within the time frames provided by law and regulation.</p> <p><b>Board oversight duties; Out-of-Family Investigations Advisory Committee:</b> (§ 63.2-1527)</p> <p>A. The Board shall be responsible for establishing standards for out-of-family investigations and for the implementation of the family assessment track of the differential response system.</p> <p>B. The Out-of-Family Investigations Advisory Committee (the Committee) is hereby established as an advisory committee in the executive branch of state government.</p> <p>C. The Committee shall consist of 15 members as follows: one representative of public school employees, one representative of a hospital for children, one representative of a licensed child care center, one representative of a juvenile detention home, one representative of a public or private residential facility for children, one representative of a family day care home, one representative of a local department of Social Services, one representative of a religious organization with a program for children, one representative of Virginians for Child Abuse Prevention and six citizens of the Commonwealth at large. The Chairman of the Board shall appoint such persons for terms established by the Board.</p> <p>D. The Committee shall advise the Board on the effectiveness of the policies and standards governing out-of-family investigations.</p> <p>E. The Committee shall elect a chairman and vice-chairman from among its membership. A majority of the members shall constitute a quorum. The meetings of the Committee shall be held at the call of the chairman or whenever the majority of the voting members so request.</p> <p>F. Members shall receive no compensation for their services nor be reimbursed for expenses incurred in the discharge of their duties as provided in §§ 2.2-2813 and 2.2-2825.</p> <p>G. The Department of Social Services shall provide staff support to the Committee. All agencies of the Commonwealth shall provide assistance to the Committee, upon request.</p> <p><b>Advisory Committee continued as Advisory Board:</b> (§ 63.2-1528)</p> <p>The Advisory Committee on Child Abuse and Neglect is continued and shall hereafter be known as the Advisory Board on Child Abuse and Neglect. The Advisory Board shall be composed of nine persons appointed by the Governor for three-year staggered terms, and permanent members including the Superintendent of Public Instruction, the Commissioner of the Department of Health, the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services, the Commissioner of the Department of Social Services, the Director of the Department of Juvenile Justice, the Director of the Department of Corrections, the Director of the Department of Criminal Justice Services, and the Attorney General of Virginia, or their designees. The Advisory Board shall meet quarterly and, as the need may arise, advise the Department, Board and Governor on matters concerning programs for the prevention and</p> |

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| <p><b>Department of Social Services</b><br/>(cont.)</p> | <p>treatment of abused and neglected children and their families and child abuse and neglect issues identified by the Commissioner of the Department of Social Services.</p> <p><b>Evaluation of the child-protective services differential response system:</b> (§ 63.2-1529)<br/>The Department shall evaluate and report on the impact and effectiveness of the implementation of the child-protective services differential response system in meeting the purposes set forth in this chapter. The evaluation shall include, but is not limited to, the following information: changes in the number of investigations, the number of families receiving services, the number of families rejecting services, the effectiveness of the initial assessment in determining the appropriate level of intervention, the impact on out-of-home placements, the availability of needed services, community cooperation, successes and problems encountered, the overall operation of the child-protective services differential response system and recommendations for improvement. The Department shall submit annual reports on or before December 15 to the House Committee on Health, Welfare and Institutions and the Senate Committee on Rehabilitation and Social Services.</p> <p><b>Inspections and interviews:</b> (§ 63.2-1706)</p> <ul style="list-style-type: none"> <li>I. Applicants for licensure and licensees shall at all times afford the Commissioner reasonable opportunity to inspect all of their facilities, books and records, and to interview their agents and employees and any person living or participating in such facilities, or under their custody, control, direction or supervision.</li> <li>J. For any assisted living facility or adult day care center issued a license or renewal thereof for a period of six months, the Commissioner shall make at least two inspections during the six-month period, one of which shall be unannounced. For any assisted living facility or adult day care center issued a license or renewal thereof for a period of one year, the Commissioner shall make at least three inspections each year, at least two of which shall be unannounced. For any assisted living facility or adult day care center issued a license or a renewal thereof for a period of two years, the Commissioner shall make at least two inspections each year, at least one of which shall be unannounced. For any assisted living facility or adult day care center issued a three-year license, the Commissioner shall make at least one inspection each year, which shall be unannounced.</li> <li>K. All licensed child welfare agencies shall be inspected not less than twice annually, and one of those inspections shall be unannounced.</li> <li>L. The activities, services and facilities of each applicant for renewal of his license as an assisted living facility, adult day care center or child welfare agency shall be subject to an inspection or examination by the Commissioner to determine if he is in compliance with current regulations of the Board or Child Day-Care Council, whichever is applicable.</li> <li>M. For any licensed assisted living facility, adult day care center or child welfare agency, the Commissioner may authorize such other announced or unannounced inspections as the Commissioner considers appropriate.</li> </ul> <p><b>Records and reports:</b> (§ 63.2-1708)<br/>Every licensed assisted living facility, licensed adult day care center, licensed or registered child welfare agency, or family day home approved by a family day system shall keep such records and make such reports to the Commissioner as he may require. The forms to be used in the making of such reports shall be prescribed and furnished by the Commissioner.</p> <p><b>Enforcement and sanctions; child welfare agencies; revocation and denial:</b> (§ 63.2-1709.1)<br/>The Commissioner may revoke or deny the renewal of the license of any child welfare agency that violates any provision of this subtitle or fails to comply with the limitations and standards set forth in its license.</p> <p><b>Enforcement and sanctions; special orders; civil penalties:</b> (§ 63.2-1709.2)</p> <ul style="list-style-type: none"> <li>A. Notwithstanding any other provision of law, following a proceeding as provided in § 2.2-4019, the Commissioner may issue a special order (i) for violation of any of the provisions of this subtitle, § 54.1-3408, or any regulation adopted under any provision of this subtitle which violation adversely affects, or is an imminent and substantial threat to, the health, safety, or welfare of the person cared for therein, or (ii) for permitting, aiding, or abetting the commission of any illegal act in an assisted living facility, adult day care center, or child welfare agency. Notice of the Commissioner's intent to take any of the actions enumerated in subdivisions B 1 through B 7 shall be provided by the Department and a copy of such notice shall be posted in a prominent place at each public entrance of the licensed premises to advise consumers of serious or persistent violations. The issuance of a special order shall be considered a case decision as defined in § 2.2-4001. The Commissioner shall not delegate his authority to impose civil penalties in conjunction with the issuance of special orders.</li> <li>B. The Commissioner may take the following actions regarding assisted living facilities, adult day care centers, and child welfare agencies through the issuance of a special order and may require a copy of the special order provided by the Department to be posted in a prominent place at each public entrance of the licensed premises to advise consumers of serious or persistent violations: <ul style="list-style-type: none"> <li>1. Place a licensee on probation upon finding that the licensee is substantially out of compliance</li> </ul> </li> </ul> |

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| <p><b>Department of Social Services</b><br/>(cont.)</p> | <p>with the terms of its license and that the health and safety of residents, participants, or children are at risk;</p> <ol style="list-style-type: none"> <li>2. Reduce licensed capacity or prohibit new admissions when the Commissioner concludes that the licensee cannot make necessary corrections to achieve compliance with regulations except by a temporary restriction of its scope of service;</li> <li>3. Mandate training for the licensee or licensee's employees, with any costs to be borne by the licensee, when the Commissioner concludes that the lack of such training has led directly to violations of regulations;</li> <li>4. Assess civil penalties for each day the assisted living facility is or was out of compliance with the terms of its license and the health, safety, and welfare of residents are at risk, which shall be paid into the state treasury and credited to the Assisted Living Facility Education, Training, and Technical Assistance Fund created pursuant to § 63.2-1803.1. The aggregate amount of such civil penalties shall not exceed \$10,000 for assisted living facilities in any 24-month period. Criteria for imposition of civil penalties and amounts, expressed in ranges, shall be developed by the Board, and shall be based upon the severity, pervasiveness, duration, and degree of risk to the health, safety, or welfare of residents. Such civil penalties shall be applied by the Commissioner in a consistent manner. Such criteria shall also provide that (i) the Commissioner may accept a plan of correction, including a schedule of compliance, from an assisted living facility prior to setting a civil penalty, and (ii) the Commissioner may reduce or abate the penalty amount if the facility complies with the plan of correction within its terms. A single act, omission, or incident shall not give rise to imposition of multiple civil penalties even though such act, omission, or incident may violate more than one statute or regulation. A civil penalty that is not appealed becomes due on the first day after the appeal period expires. The license of an assisted living facility that has failed to pay a civil penalty due under this section shall not be renewed until the civil penalty has been paid in full, with interest, provided that the Commissioner may renew a license when an unpaid civil penalty is the subject of a pending appeal;</li> <li>5. Assess civil penalties of not more than \$500 per inspection upon finding that the adult day care center or child welfare agency is substantially out of compliance with the terms of its license and the health and safety of residents, participants, or children are at risk;</li> <li>6. Require licensees to contact parents, guardians, or other responsible persons in writing regarding health and safety violations; and</li> <li>7. Prevent licensees who are substantially out of compliance with the licensure terms or in violation of the regulations from receiving public funds.</li> </ol> <p>C. The Board shall adopt regulations to implement the provisions of this section.</p> <p><b>Appeal from refusal, denial of renewal or revocation of license:</b> (§ 63.2-1710)</p> <ol style="list-style-type: none"> <li>A. Whenever the Commissioner refuses to issue a license or to renew a license, or revokes a license for an assisted living facility, adult day care center or child welfare agency, the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall apply, except that all appeals from notice of the Commissioner's intent to refuse to issue or renew, or revoke a license shall be received in writing from the assisted living facility, adult day care center or child welfare agency operator within fifteen days of the date of receipt of the notice. Judicial review of a final review agency decision shall be in accordance with the provisions of the Administrative Process Act. No stay may be granted upon appeal to the Virginia Supreme Court.</li> <li>B. In every appeal to a court of record, the Commissioner shall be named defendant.</li> <li>C. An appeal, taken as provided in this section, shall operate to stay any criminal prosecution for operation without a license.</li> <li>D. When issuance or renewal of a license as an assisted living facility or adult day care center has been refused by the Commissioner, the applicant shall not thereafter for a period of one year apply again for such license unless the Commissioner in his sole discretion believes that there has been such a change in the conditions on account of which he refused the prior application as to justify considering the new application. When an appeal is taken by the applicant pursuant to subsection A, the one-year period shall be extended until a final decision has been rendered on appeal.</li> <li>E. When issuance or renewal of a license for a child welfare agency has been refused by the Commissioner, the applicant shall not thereafter for a period of six months apply again for such license unless the Commissioner in his sole discretion believes that there has been such a change in the conditions on account of which he refused the prior application as to justify considering the new application. When an appeal is taken by the applicant pursuant to subsection A, the six-month period shall be extended until a final decision has been rendered on appeal.</li> </ol> <p><b>Inspection of unlicensed child or adult care operations; inspection warrant:</b> (§ 63.2-1718)</p> <p>In order to perform his duties under this subtitle, the Commissioner may enter and inspect any unlicensed child or adult care operation with the consent of the owner or person in charge, or pursuant to a warrant. Administrative search warrants for inspections of child or adult care operations, based upon a petition demonstrating probable cause and supported by an affidavit, may be issued ex parte by any judge having authority to issue criminal warrants whose territorial jurisdiction includes the child or adult care operation to be</p> |

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| <p><b>Department of Social Services</b><br/>(cont.)</p> | <p>inspected, if he is satisfied from the petition and affidavit that there is reasonable and probable cause for the inspection. The affidavit shall contain either a statement that consent to inspect has been sought and refused, or that facts and circumstances exist reasonably justifying the failure to seek such consent. Such facts may include, without limitation, past refusals to permit inspection or facts establishing reason to believe that seeking consent would provide an opportunity to conceal violations of statutes or regulations. Probable cause may be demonstrated by an affidavit showing probable cause to believe that the child or adult care operation is in violation of any provision of this subtitle or any regulation adopted pursuant to this subtitle, or upon a showing that the inspection is to be made pursuant to a reasonable administrative plan for the administration of this subtitle. The inspection of a child or adult care operation that has been the subject of a complaint pursuant to § 63.2-1728 shall have preeminent priority over any other inspections of child or adult care operations to be made by the Commissioner unless the complaint on its face or in the context of information known to the Commissioner discloses that the complaint has been brought to harass, to retaliate, or otherwise to achieve an improper purpose, and that the improper purpose casts serious doubt on the veracity of the complaint.</p> <p><b>Child welfare agencies; criminal conviction and waiver:</b> (§ 63.2-1723)</p> <p>A. Any person who seeks to operate, volunteer or work at a child welfare agency and who is disqualified because of a criminal conviction or a criminal conviction in the background check of any other adult living in a family day home regulated by the Department, pursuant to §§ 63.2-1720, 63.2-1721 and 63.2-1724, may apply in writing for a waiver from the Commissioner. The Commissioner may grant a waiver if the Commissioner determines that (i) the person is of good moral character and reputation and (ii) the waiver would not adversely affect the safety and well-being of children in the person's care. The Commissioner shall not grant a waiver to any person who has been convicted of a barrier crime as defined in § 63.2-1719. However, the Commissioner may grant a waiver to a family day home regulated by the Department if any other adult living in the home of the applicant or provider has been convicted of not more than one misdemeanor offense under § 18.2-57 or § 18.2-57.2, provided (a) five years have elapsed following the conviction and (b) the Department has conducted a home study that includes, but is not limited to, (1) an assessment of the safety of children placed in the home and (2) a determination that the offender is now a person of good moral character and reputation. The waiver shall not be granted if the adult living in the home is an assistant or substitute provider or if such adult has been convicted of a misdemeanor offense under both §§ 18.2-57 and 18.2-57.2. Any waiver granted under this section shall be available for inspection by the public. The child welfare agency shall notify in writing every parent and guardian of the children in its care of any waiver granted for its operators, employees or volunteers.</p> <p>B. The Board shall adopt regulations to implement the provisions of this section.</p> <p><b>Background check required; children's residential facilities:</b> (§ 63.2-1726)</p> <p>A. As a condition of employment, volunteering or providing services on a regular basis, every children's residential facility that is regulated or operated by the Departments of Social Services; Education; Military Affairs; or Mental Health, Mental Retardation and Substance Abuse Services shall require any individual who (i) accepts a position of employment at such a facility who was not employed by that facility prior to July 1, 1994, (ii) volunteers for such a facility on a regular basis and will be alone with a juvenile in the performance of his duties who was not a volunteer at such facility prior to July 1, 1994, or (iii) provides contractual services directly to a juvenile for such facility on a regular basis and will be alone with a juvenile in the performance of his duties who did not provide such services prior to July 1, 1994; to submit to fingerprinting and to provide personal descriptive information, to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding such applicant. The children's residential facility shall inform the applicant that he is entitled to obtain a copy of any background check report and to challenge the accuracy and completeness of any such report and obtain a prompt resolution before a final determination is made of the applicant's fitness to have responsibility for the safety and well-being of children. The applicant shall provide the children's residential facility with a written statement or affirmation disclosing whether he has ever been convicted of or is the subject of pending charges for any offense within or outside the Commonwealth. Prior to permitting an applicant to begin his duties, the children's residential facility shall obtain the statement or affirmation from the applicant and shall submit the applicant's fingerprints and personal descriptive information to the Central Criminal Records Exchange. The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no record exists, shall forward it to the state agency which operates or regulates the children's residential facility with which the applicant is affiliated. The state agency shall, upon receipt of an applicant's record lacking disposition data, conduct research in whatever state and local recordkeeping systems are available in order to obtain complete data. The state agency shall report to the children's facility whether the applicant meets the criteria to have responsibility for the safety and well-being of children based on whether or not the applicant has ever been convicted of or is the subject of pending charges for the following crimes: murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2, abduction for immoral purposes as set out in § 18.2-48, assault and bodily woundings as set out in</p> |

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| <p><b>Department of Social Services</b><br/>(cont.)</p> | <p>Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, robbery as set out in § 18.2-58, extortion by threat as set out in § 18.2-59, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2, possession or distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, pandering as set out in § 18.2-355, crimes against nature involving children as set out § 18.2-361, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, failure to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, abuse and neglect of incapacitated adults as set out in § 18.2-369, employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2, as set out in § 18.2-379, or an equivalent offense in another state. If the applicant is denied employment, or the opportunity to volunteer or provide services at a children's residential facility because of information appearing on his criminal history record, and the applicant disputes the information upon which the denial was based, upon written request of the applicant the state agency shall furnish the applicant the procedures for obtaining his criminal history record from the Federal Bureau of Investigation. If the applicant has been permitted to provide services pending receipt of the report, the children's residential facility is not precluded from suspending the applicant from his position or denying the applicant unsupervised access to clients pending a final determination of the applicant's fitness to have responsibility for the safety and well-being of children. The information provided to the children's residential facility shall not be disseminated except as provided in this section.</p> <p>B. Those individuals listed in clauses (i), (ii) and (iii) of subsection A shall also authorize the children's residential facility to obtain a copy of information from the central registry maintained pursuant to § 63.2-1515 on any investigation of child abuse or neglect undertaken on him. The applicant shall provide the children's residential facility with a written statement or affirmation disclosing whether he has ever been the subject of a founded case of child abuse or neglect within or outside the Commonwealth. The children's residential facility shall submit the request for information to the central registry prior to permitting an applicant to begin his duties. The children's residential facility shall obtain a copy of the information from the central registry within twenty-one days of the applicant beginning his duties. The provisions of this subsection also shall apply to every residential facility for juveniles which is regulated or operated by the Department of Juvenile Justice.</p> <p>C. The Boards of Social Services; Education; Juvenile Justice; and Mental Health, Mental Retardation and Substance Abuse Services, and the Department of Military Affairs, may adopt regulations to comply with the provisions of this section. Copies of any information received by a children's residential facility pursuant to this section shall be available to the agency that regulates or operates such facility but shall not be disseminated further. The cost of obtaining the criminal history record and the central registry information shall be borne by the employee or volunteer unless the children's residential facility, at its option, decides to pay the cost.</p> <p><b>Establishment of toll-free telephone line for complaints; investigation on receipt of complaints:</b><br/>(§ 63.2-1728)<br/>With such funds as are appropriated for this purpose, the Commissioner shall establish a toll-free telephone line to respond to complaints regarding operations of assisted living facilities, adult day care centers and child welfare agencies. Upon receipt of a complaint concerning the operation of an assisted living facility, adult day care center or child welfare agency, regardless of whether the program is subject to licensure, the Commissioner shall, for good cause shown, cause an investigation to be made, including on-site visits as he deems necessary, of the activities, services, records and facilities. The assisted living facility, adult day care center or child welfare agency shall afford the Commissioner reasonable opportunity to inspect all of the operator's activities, services, records and facilities and to interview its agents and employees and any child or other person within its custody or control. Whenever an assisted living facility, adult day care center or child welfare agency subject to inspection under this section is determined by the Commissioner to be in noncompliance with the provisions of this subtitle or with regulations adopted pursuant to this subtitle, the Commissioner shall give reasonable notice to the assisted living facility, adult day care center or child welfare agency of the nature of its noncompliance and may thereafter take appropriate action as provided by law, including a suit to enjoin the operation of the assisted living facility, adult day care center or child welfare agency.</p> <p><b>Regulations for child welfare agencies:</b> (§ 63.2-1734)<br/>The Board, or in the case of child day centers, the Child Day-Care Council, shall adopt regulations for the activities, services and facilities to be employed by persons and agencies required to be licensed under this subtitle, which shall be designed to ensure that such activities, services and facilities are conducive to the welfare of the children under the custody or control of such persons or agencies.</p> <p>Such regulations shall be developed in consultation with representatives of the affected entities and shall include, but need not be limited to, matters relating to the sex, age, and number of children and other persons to be maintained, cared for, or placed out, as the case may be, and to the buildings and premises to be used, and reasonable standards for the activities, services and facilities to be employed. Such limitations and</p> |



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| <p><b>Department of Social Services</b><br/>(cont.)</p> | <p>standards shall be specified in each license and renewal thereof. Such regulations shall not require the adoption of a specific teaching approach or doctrine or require the membership, affiliation or accreditation services of any single private accreditation or certification agency.</p> <p><b>Cooperation of Department with other state departments concerning children's residential facilities; interdepartmental regulation of children's residential facilities; summary suspension of children's residential facility licenses under certain circumstances; penalty: (§ 63.2-1737)</b></p> <p>A. Notwithstanding any other provisions of this subtitle, the Department shall cooperate with other state departments in fulfilling their respective licensing and certification responsibilities and in reducing and simplifying the regulations involved in such licensing and certification of children's residential facilities. The Board shall adopt regulations for the interdepartmental regulation of children's residential facilities, including group homes that shall allow the Department to assist and cooperate with other state departments in fulfilling their respective licensing and certification responsibilities and in reducing and simplifying the regulations involved in such licensing and certification. Notwithstanding any other provisions of this chapter, licenses issued to children's residential facilities pursuant to cooperative efforts described in this section may be issued for periods of up to 36 successive months.</p> <p>B. The Board's regulations for the interdepartmental regulation of children's residential facilities shall address the services required to be provided in such facilities as it may deem appropriate to ensure the health and safety of the children. In addition, the Board's regulations shall include, but shall not be limited to (i) specifications for the structure and accommodations of such facilities according to the needs of the children; (ii) rules concerning allowable activities, local government- and facility-imposed curfews, and study, recreational, and bedtime hours; and (iii) a requirement that each facility have a community liaison who shall be responsible for facilitating cooperative relationships with the neighbors, the school system, local law enforcement, local government officials, and the community at large.</p> <p>C. Notwithstanding any other provisions of this chapter, any facility licensed by the Commissioner as a child-caring institution as of January 1, 1987, and that receives no public funds shall be licensed under minimum standards for licensed child-caring institutions as adopted by the Board and in effect on January 1, 1987. Effective January 1, 1987, all children's residential facilities shall be licensed under the interdepartmental regulations for children's residential facilities.</p> <p>D. Pursuant to the procedures set forth in subsection E and in addition to the authority for other disciplinary actions provided in this title, the Commissioner may issue a summary order of suspension of the license of any group home or residential facility for children, in conjunction with any proceeding for revocation, denial, or other action, when conditions or practices exist in the home or facility that pose an immediate and substantial threat to the health, safety, and welfare of the children who are residents and the Commissioner believes the operation of the home or facility should be suspended during the pendency of such proceeding.</p> <p>E. The summary order of suspension shall take effect upon its issuance and shall be served on the licensee or its designee as soon as practicable thereafter by personal service and certified mail, return receipt requested, to the address of record of the licensee. The order shall state the time, date, and location of a hearing to determine whether the suspension is appropriate. Such hearing shall be held no later than three business days after the issuance of the summary order of suspension and shall be convened by the Commissioner or his designee.</p> <p>After such hearing, the Commissioner may issue a final order of summary suspension or may find that such summary suspension is not warranted by the facts and circumstances presented. A final order of summary suspension shall include notice that the licensee may appeal the Commissioner's decision to the appropriate circuit court no later than 10 days following issuance of the order. The sole issue before the court shall be whether the Commissioner had reasonable grounds to require the licensee to cease operations during the pendency of the concurrent revocation, denial, or other proceeding. The concurrent revocation, denial, or other proceeding shall not be affected by the outcome of any hearing on the appropriateness of the summary suspension.</p> <p>The willful and material failure to comply with the summary order of suspension or final order of summary suspension shall be punishable as a Class 2 misdemeanor. The Commissioner may require the cooperation of any other agency or subdivision of the Commonwealth in the relocation of children who are residents of a home or facility whose license has been summarily suspended pursuant to this section and in any other actions necessary to reduce the risk of further harm to such residents.</p> <p>F. In addition to the requirements set forth in subsection B, the Board's regulations shall require, as a condition of initial licensure or, if appropriate, license renewal, that the applicant shall: (i) be personally interviewed by Department personnel to determine the qualifications of the owner or operator before granting an initial license; (ii) provide evidence of having relevant prior experience before any initial license is granted; (iii) provide, as a condition of initial license or renewal licensure, evidence of staff participation in training on appropriate siting of the residential facilities for children, good neighbor policies, and community relations; and (iv) be required to screen residents prior to admission to exclude individuals with behavioral issues, such as histories of violence, that cannot be managed in the relevant residential facility.</p> <p>G. In addition, the Department shall:</p> <ol style="list-style-type: none"> <li>1. Notify relevant local governments and placing and funding agencies, including the Office of</li> </ol> |

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| <p><b>Department of Social Services</b><br/>(cont.)</p> | <p>Comprehensive Services, of multiple health and safety or human rights violations in residential facilities for which the Department serves as lead licensure agency when such violations result in the lowering of the licensure status of the facility to provisional;</p> <ol style="list-style-type: none"> <li>2. Post on the Department's website information concerning the application for initial licensure or renewal, denial, or provisional licensure of any residential facility for children located in the locality;</li> <li>3. Require all licensees to self-report lawsuits against or settlements with residential facility operators relating to the health and safety or human rights of residents and any criminal charges that may have been made relating to the health and safety or human rights of residents;</li> <li>4. Require proof of contractual agreements or staff expertise to provide educational services, counseling services, psychological services, medical services, or any other services needed to serve the residents in accordance with the facility's operational plan;</li> <li>5. Disseminate to local governments, or post on the Department's website, an accurate (updated weekly or monthly as necessary) list of licensed and operating group homes and other residential facilities for children by locality with information on services and identification of the lead licensure agency; and</li> <li>6. Modify the term of the license at any time during the term of the license based on a change in compliance.</li> </ol> <p><b>Acceptance and control over children by licensed child-placing agency, children's residential facility or independent foster home:</b> (§ 63.2-1817)<br/> A licensed child-placing agency, children's residential facility or independent foster home shall have the right to accept, for any purpose not contrary to the limitations contained in its license, such children as may be entrusted or committed to it by the parents, guardians, relatives or other persons having legal custody thereof, or committed by any court of competent jurisdiction. The agency, facility or home shall, within the terms of its license and the agreement or order by which such child is entrusted or committed to its care, have custody and control of every child so entrusted or committed and accepted, until he is lawfully discharged, has been adopted, or has attained his majority. An entrustment agreement for the termination of parental rights and responsibilities with respect to such child shall be executed in writing and notarized.<br/> An agency licensed as a child-placing agency by the Department and certified as a proprietary school for students with disabilities by the Department of Education shall not be required to take custody of any child placed in its special education program but shall enter into a placement agreement with the parents or guardian of the child concerning the respective responsibilities of the agency and the parents or guardian for the care and control of the child. Such an agency shall conform with all other legal requirements of licensed child-placing agencies including the provisions of §§ 16.1-281 and 16.1-282.<br/> A licensed private child-placing agency may accept placement of a child through an agreement with a local department where the local department retains legal custody of the child or where the parents or legal guardian of the child retain legal custody but have entered into a placement agreement with the local department or the public agency designated by the community policy and management team.</p> <p>Whenever a licensed child-placing agency accepts legal custody of a child, the agency shall comply with §§ 16.1-281 and 16.1-282.</p> <p>A children's residential facility licensed as a temporary emergency shelter may accept a child for placement provided that verbal agreement for placement is obtained from the parents, guardians, relatives or other persons having legal custody thereof, within eight hours of the child's arrival at the facility and provided that a written placement agreement is completed and signed by the legal guardian and the facility representative within 24 hours of the child's arrival or by the end of the next business day after the child's arrival.</p> <p><b>Reports to Commissioner:</b> (§ 63.2-1818)<br/> Upon the entry of a final order of adoption involving a child placed by a licensed child-placing agency, that agency shall transmit to the Commissioner all reports and collateral information in connection with the case which shall be preserved by the Commissioner in accordance with § 63.2-1246. Such agency may keep duplicate copies of such reports and collateral information or may obtain copies of such documents from the Commissioner at a reasonable fee as prescribed by the Board.</p> <p><b>Where child-placing agencies may place children:</b> (§ 63.2-1819)<br/> Any licensed child-placing agency may place or negotiate and arrange for the placement of children in any licensed children's residential facility, and, unless its license contains a limitation to the contrary, a licensed child-placing agency may also place or arrange for the placement of such persons in any suitable foster home or independent living placement.</p> |

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| <b>Office of Comprehensive Services for At Risk Youth and Families</b> | <p><b>Purpose of the Comprehensive Services Act for At Risk Youth and Families:</b> (§ 2.2-5200) A. It is the intention of this law to create a collaborative system of services and funding that is child-centered, family-focused and community-based when addressing the strengths and needs of troubled and at-risk youths and their families in the Commonwealth.</p> <p>This law shall be interpreted and construed so as to effectuate the following purposes:</p> <ol style="list-style-type: none"> <li>1. Ensure that services and funding are consistent with the Commonwealth's policies of preserving families and providing appropriate services in the least restrictive environment, while protecting the welfare of children and maintaining the safety of the public;</li> <li>2. Identify and intervene early with young children and their families who are at risk of developing emotional or behavioral problems, or both, due to environmental, physical or psychological stress;</li> <li>3. Design and provide services that are responsive to the unique and diverse strengths and needs of troubled youths and families;</li> <li>4. Increase interagency collaboration and family involvement in service delivery and management;</li> <li>5. Encourage a public and private partnership in the delivery of services to troubled and at-risk youths and their families; and</li> <li>6. Provide communities flexibility in the use of funds and to authorize communities to make decisions and be accountable for providing services in concert with these purposes.</li> </ol> <p><u>State and Local Advisory Team</u></p> <p><b>Purpose:</b> (§ 2.2-5201) The state and local advisory team is established to better serve the needs of troubled and at-risk youths and their families by advising the Council by managing cooperative efforts at the state level and providing support to community efforts.</p> <p><b>Appointment:</b> (§ 2.2-5201) The team shall be appointed by and be responsible to the Council. The team shall include one representative from each of the following state agencies: the Department of Health, Department of Juvenile Justice, Department of Social Services, Department of Mental Health, Mental Retardation and Substance Abuse Services, the Department of Medical Assistance Services, and the Department of Education. The team shall also include a parent representative who is not an employee of any public or private program which serves children and families; a representative of a private organization or association of providers for children's or family services; a local Comprehensive Services Act coordinator or program manager; a juvenile and domestic relations district court judge; and one member from each of five different geographical areas of the Commonwealth and who serves on and is representative of the different participants of community policy and management teams. The nonstate agency members shall serve staggered terms of not more than three years, such terms to be determined by the Council.</p> <p><b>Duties:</b> (§ 2.2-5202) The state and local advisory team may:</p> <ol style="list-style-type: none"> <li>1. Advise the Council on state interagency program policies that promote and support cooperation and collaboration in the provision of services to troubled and at-risk youths and their families at the state and local levels;</li> <li>2. Advise the Council on state interagency fiscal policies that promote and support cooperation and collaboration in the provision of services to troubled and at-risk youths and their families at the state and local levels;</li> <li>3. Advise state agencies and localities on training and technical assistance necessary for the provision of efficient and effective services that are responsive to the strengths and needs of troubled and at-risk youths and their families; and</li> <li>4. Advise the Council on the effects of proposed policies, regulations and guidelines.</li> </ol> <p><u>Community Policy and Management Team</u></p> <p><b>Appointment:</b> (§ 2.2-5204). Every county, city, or combination of counties, cities, or counties and cities shall establish a community policy and management team in order to receive funds pursuant to this chapter. Each such team shall be appointed by the governing body of the participating local political subdivision establishing the team.</p> <p><b>Duties:</b> (§ 2.2-5206) The community policy and management team shall manage the cooperative effort in each community to better serve the needs of troubled and at-risk youths and their families and to maximize the use of state and community resources. Every such team shall:</p> <ol style="list-style-type: none"> <li>1. Develop interagency policies and procedures to govern the provision of services to children and families in its community;</li> <li>2. Develop interagency fiscal policies governing access to the state pool of funds by the eligible populations including immediate access to funds for emergency services and shelter care;</li> <li>3. Establish policies to assess the ability of parents or legal guardians to contribute financially to the cost of services to be provided and, when not specifically prohibited by federal or state law or regulation, provide for appropriate parental or legal guardian financial contribution, utilizing a standard sliding fee scale based upon ability to pay;</li> <li>4. Coordinate long-range, community-wide planning that ensures the development of resources and services needed by children and families in its community including consultation on the development of a community-based system of services established under § 16.1-309.3;</li> <li>5. Establish policies governing referrals and reviews of children and families to the family assessment and</li> </ol> |

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| <b>Office of Comprehensive Services for At Risk Youth and Families (cont.)</b> | <p>planning teams or a collaborative, multidisciplinary team process approved by the Council and a process to review the teams' recommendations and requests for funding;</p> <ol style="list-style-type: none"> <li>6. Establish quality assurance and accountability procedures for program utilization and funds management;</li> <li>7. Establish procedures for obtaining bids on the development of new services;</li> <li>8. Manage funds in the interagency budget allocated to the community from the state pool of funds, the trust fund, and any other source;</li> <li>9. Authorize and monitor the expenditure of funds by each family assessment and planning team or a collaborative, multidisciplinary team process approved by the Council;</li> <li>10. Submit grant proposals that benefit its community to the state trust fund and enter into contracts for the provision or operation of services upon approval of the participating governing bodies;</li> <li>11. Serve as its community's liaison to the Office of Comprehensive Services for At-Risk Youth and Families, reporting on its programmatic and fiscal operations and on its recommendations for improving the service system, including consideration of realignment of geographical boundaries for providing human services;</li> <li>12. Collect and provide uniform data to the Council on, but not limited to, expenditures, number of youth served in specific CSA activities, length of stay for residents in core licensed residential facilities, and proportion of youth placed in treatment settings suggested by a uniform assessment instrument for CSA-funded services;</li> <li>13. Administer funds pursuant to § 16.1-309.3;</li> <li>14. Have authority, upon approval of the participating governing bodies, to enter into a contract with another community policy and management team to purchase coordination services provided that funds described as the state pool of funds under § 2.2-5211 are not used; and</li> <li>15. Submit to the Department of Mental Health, Mental Retardation and Substance Abuse Services information on children under the age of 14 and adolescents ages 14 through 17 for whom an admission to an acute care psychiatric or residential treatment facility licensed pursuant to Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2, exclusive of group homes, was sought but was unable to be obtained by the reporting entities. Such information shall be gathered from the family assessment and planning team or participating community agencies authorized in § 2.2-5207. Information to be submitted shall include: <ol style="list-style-type: none"> <li>a. The child or adolescent's date of birth;</li> <li>b. Date admission was attempted; and</li> <li>c. Reason the patient could not be admitted into the hospital or facility.</li> </ol> </li> </ol> <p><u>Family Assessment and Planning Team</u></p> <p><b>Appointment:</b> (§ 2.2-5207) Each community policy and management team shall establish and appoint one or more family assessment and planning teams as the needs of the community require. Each family assessment and planning team shall include representatives of the following community agencies who have authority to access services within their respective agencies: community services board established pursuant to § 37.2-501, juvenile court services unit, department of social services, and local school division. Each family and planning team also shall include a parent representative and may include a representative of the department of health at the request of the chair of the local community policy and management team. Parent representatives who are employed by a public or private program that receives funds pursuant to this chapter or agencies represented on a family assessment and planning team may serve as a parent representative provided that they do not, as a part of their employment, interact directly on a regular and daily basis with children or supervise employees who interact directly on a regular basis with children. Notwithstanding this provision, foster parents may serve as parent representatives. The family assessment and planning team may include a representative of a private organization or association of providers for children's or family services and of other public agencies... Persons serving on the team who are parent representatives or who represent private organizations or associations of providers for children's or family services shall abstain from decision-making involving individual cases or agencies in which they have either a personal interest, as defined in § 2.2-3101 of the State and Local Government Conflict of Interests Act, or a fiduciary interest.</p> <p><b>Immunity:</b> (§ 2.2-5207) Persons who serve on a family assessment and planning team shall be immune from any civil liability for decisions made about the appropriate services for a family or the proper placement or treatment of a child who comes before the team, unless it is proven that such person acted with malicious intent. Any person serving on such team who does not represent a public agency shall file a statement of economic interests as set out in § 2.2-3117 of the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.). Persons representing public agencies shall file such statements if required to do so pursuant to the State and Local Government Conflict of Interests Act.</p> <p><b>Duties:</b> (§ 2.2-5208). The family assessment and planning team, in accordance with § 2.2-2648, shall assess the strengths and needs of troubled youths and families who are approved for referral to the team and identify and determine the complement of services required to meet these unique needs. Every such team, in accordance with policies developed by the community policy and management team, shall:</p> <ol style="list-style-type: none"> <li>1. Review referrals of youths and families to the team;</li> <li>2. Provide for family participation in all aspects of assessment, planning and implementation of services;</li> </ol> |

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|        | <p>3. Provide for the participation of foster parents in the assessment, planning and implementation of services when a child has a program goal of permanent foster care or is in a long-term foster care placement. The case manager shall notify the foster parents of a troubled youth of the time and place of all assessment and planning meetings related to such youth. Such foster parents shall be given the opportunity to speak at the meeting or submit written testimony if the foster parents are unable to attend. The opinions of the foster parents shall be considered by the family assessment and planning team in its deliberations;</p> <p>4. Develop an individual family services plan for youths and families reviewed by the team that provides for appropriate and cost-effective services;</p> <p>5. Where parental or legal guardian financial contribution is not specifically prohibited by federal or state law or regulation, or has not been ordered by the court or by the Division of Child Support Enforcement, assess the ability of parents or legal guardians, utilizing a standard sliding fee scale, based upon ability to pay, to contribute financially to the cost of services to be provided and provide for appropriate financial contribution from parents or legal guardians in the individual family services plan;</p> <p>6. Refer the youth and family to community agencies and resources in accordance with the individual family services plan;</p> <p>7. Recommend to the community policy and management team expenditures from the local allocation of the state pool of funds; and</p> <p>8. Designate a person who is responsible for monitoring and reporting, as appropriate, on the progress being made in fulfilling the individual family services plan developed for each youth and family, such reports to be made to the team or the responsible local agencies.</p> <p><b>Referrals:</b> (§ 2.2-5209) The community policy and management team shall establish policies governing the referral of troubled youths and families to the family assessment and planning team or a collaborative, multidisciplinary team process approved by the Council. These policies shall include that all youth and families for which CSA-funded treatment services are requested are to be assessed by the family assessment and planning team or an approved collaborative, multidisciplinary team process and shall consider the criteria set out in subdivisions A 1 and A 2 of § 2.2-5212. Except for cases involving only the payment of foster care maintenance that shall be at the discretion of the local community policy and management team, cases for which service plans are developed outside of this family assessment and planning team process or approved collaborative, multidisciplinary team process shall not be eligible for state pool funds.</p> <p>Nothing in this section shall prohibit the use of state pool funds for emergency placements, provided the youth are subsequently assessed by the family assessment and planning team or an approved collaborative, multidisciplinary team process within 14 days of admission and the emergency placement is approved at the time of placement. In cases involving the denial of state pool funds resulting from parental refusal to consent to release of student records under federal law, where such refusal precludes the development of placement through the family assessment and planning team process or the approved collaborative, multidisciplinary team process, an appeal for good cause may be made to the Council.</p> <p><b>Information Sharing:</b> (§ 2.2-5210) All public agencies that have served a family or treated a child referred to a family assessment and planning team shall cooperate with this team. The agency that refers a youth and family to the team shall be responsible for obtaining the consent required to share agency client information with the team. After obtaining the proper consent, all agencies shall promptly deliver, upon request and without charge, such records of services, treatment or education of the family or child as are necessary for a full and informed assessment by the team.</p> <p>Proceedings held to consider the appropriate provision of services and funding for a particular child or family or both who have been referred to the family assessment and planning team and whose case is being assessed by this team or reviewed by the community management and planning team shall be confidential and not open to the public, unless the child and family who are the subjects of the proceeding request, in writing, that it be open. All information about specific children and families obtained by the team members in the discharge of their responsibilities to the team shall be confidential.</p> <p>Demographic, service and cost information on youths and families receiving services and funding through this chapter that is of a nonidentifying nature may be gathered for reporting and evaluation purposes.</p> |

**EXECUTIVE BRANCH: Public Safety Secretariat**

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| <p><b>Department of Correctional Education</b></p> | <p><b>Purpose:</b> The Department of Correctional Education (DCE), a separate executive branch agency, is an independent school district with its own school board that operates in cooperation with the Department of Corrections and the Department of Juvenile Justice. DCE Juvenile Schools are accredited by the Virginia Department of Education.</p> <p><b>Mission:</b> The Department of Correctional Education prepares youth and adults for success after incarceration. Academic and vocational training are means to an end - the return to school, the pursuit of higher education, and employment upon release. DCE provides educational services in adult and youth correctional facilities throughout Virginia. All academic and career and technical education teachers meet state certification and endorsement standards.</p> <p><b>Responsibilities:</b> (§ 22.1-340) The Department shall be composed of all the educational facilities of all institutions and community-based programs for adults as set forth in §§ 53.1-67.7 and 53.1-67.8 operated by the Department of Corrections and the Department of Juvenile Justice. The Department of Correctional Education shall be designated as a local education agency (LEA) but shall not be eligible to receive state funds appropriated for direct aid to public education.</p> <p><b>Transfer of information upon commitment; information to be furnished by and to local school boards</b> (§ 16.1-287) Whenever the court commits a child to the Department of Juvenile Justice, or to any other institution or agency, it shall transmit with the order of commitment copies of the clinical reports, predisposition study and other information it has pertinent to the care and treatment of the child. The Department shall not be responsible for any such committed child until it has received the court order and the information concerning the child. All local school boards shall be required to furnish the Department promptly with any information from their files that the Department deems to be necessary in the classification, evaluation, placement or treatment of any child committed to the Department. The Department pursuant to §§ 22.1-289 and 22.1-344, in cooperation with the Department of Juvenile Justice, shall likewise be required to furnish local school boards academic, and career and technical education and related achievement information promptly from its files that the local school board may deem necessary when children are returned to the community from the Department's care. The Department and other institutions or agencies shall give to the court such information concerning the child as the court at any time requires. All such information shall be treated as confidential.</p> <p><b>Alternative education programs for certain students</b> (§ 22.1-209.1:2) With such funds as may be appropriated for this purpose, the Board of Education shall establish a program consisting of alternative education options for elementary, middle, and high school students in compliance with subdivision D 6 of § 22.1-253.13:1 who... (iii) have been released from a juvenile correctional center and have been identified by the Superintendent of the Department of Correctional Education and the relevant division superintendent as requiring an alternative education program.</p> <p><b>Juveniles sentenced as adults</b> (§ 53.1-63.1) The Department shall establish, staff and maintain, at any state correctional facilities designated by the Board, programs and housing for the rehabilitation, training, and confinement of juveniles sentenced by the circuit courts as adults and committed to the Department pursuant to § 16.1-272. The Department shall establish, staff, and maintain education for such juveniles in accordance with Chapter 18 (§ 22.1-339 et seq.) of Title 22.1.</p> <p><b>Juvenile boot camps</b> (§ 66-13) The Department shall establish, staff, and maintain educational programs for such juveniles in accordance with Chapter 18 (§ 22.1-339 et seq.) of Title 22.1.</p> <p><b>Career training and technical education programs</b> (§ 66-25.1:2) The Department of Juvenile Justice shall provide juveniles committed to the Department with opportunities to work and to participate in career training or technical education programs operated by the Department or by the Department of Correctional Education in accordance with § 22.1-339 et</p> |

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| <b>Department of Correctional Education</b> <i>(cont.)</i> | seq. ...In providing career-related programs, training, and services, the Department of Juvenile Justice, in conjunction with the Department of Correctional Education, may consult and cooperate with the Virginia Employment Commission and the Department of Labor and Industry.  |
| <b>Department of Criminal Justice Services</b>             | <p>The Department of Criminal Justice Services is charged with planning and carrying out programs and initiatives to improve the functioning and effectiveness of the criminal justice system as a whole</p> <p>The Department:</p> <ul style="list-style-type: none"> <li>▪ Distributes federal and state funding to localities, state agencies and nonprofit organizations in the areas of law enforcement, prosecution, crime and delinquency prevention, juvenile justice, victims services, corrections, and information systems;</li> <li>▪ Establishes and enforces minimum training standards for law enforcement, criminal justice and private security personnel;</li> <li>▪ Licenses and regulates the private security industry in Virginia;</li> <li>▪ Provides training, technical assistance and program development services to all segments of the criminal justice system; and</li> <li>▪ Conducts research and evaluations.</li> </ul> <p>The agency's primary constituents are local and state criminal justice agencies and practitioners, private agencies, private security practitioners and businesses, and the public-at-large. Other constituents include local governments and state agencies, the federal government and advocacy groups/associations.</p> <p>The Department is unique in state government because of its system-wide perspective on criminal justice. While it directs programs and services to each component of the system, it has an overarching responsibility to view the system as a whole, to understand how changes in one part of criminal justice will affect other parts, and to work to assure that plans and programs are comprehensive.</p> <p><u>Juvenile Services</u><br/> <b>Purpose:</b> The Juvenile Services Section is involved in planning, policy development and funding of juvenile justice and delinquency prevention initiatives provided through federal or state resources. Section staff provides coordination, program support, technical assistance, training, and monitoring of programs designed to address juvenile justice system improvement and delinquency prevention and programs to improve the investigation, prosecution, and administrative and judicial handling of child abuse cases.</p> <p><u>Court-Appointed Special Advocate Program</u><br/> <b>Purpose:</b> (§ 9.1-151).<br/> A. There is established a Court-Appointed Special Advocate Program (the "Program") that shall be administered by the Department [of Criminal Justice Services]. The Program shall provide services in accordance with this article to children who are subjects of judicial proceedings involving allegations that the child is abused, neglected, in need of services or in need of supervision, and for whom the juvenile and domestic relations district court judge determines such services are appropriate. The Department shall adopt regulations necessary and appropriate for the administration of the Program.<br/> B. The Board shall appoint an Advisory Committee to the Court-Appointed Special Advocate Program, consisting of fifteen members, knowledgeable of court matters, child welfare and juvenile justice issues and representative of both state and local interests. The duties of the Advisory Committee shall be to advise the Board on all matters relating to the Program and the needs of the clients served by the Program, and to make such recommendations as it may deem desirable.</p> <p><b>Duties of the Volunteer-Court Appointed Special Advocate:</b> (§ 9.1-153)<br/> A. Services in each local court-appointed special advocate program shall be provided by volunteer court-appointed special advocates, hereinafter referred to as advocates. The advocate's duties shall include:<br/> 2. Investigating the case to which he is assigned to provide independent factual information to the court.<br/> 3. Submitting to the court of a written report of his investigation in compliance with the provisions of § 16.1-274. The report may, upon request of the court, include recommendations as to the child's welfare.<br/> 4. Monitoring the case to which he is assigned to ensure compliance with the court's orders.<br/> 5. Assisting any appointed guardian ad litem to represent the child in providing effective representation of the child's needs and best interests.<br/> 6. Reporting a suspected abused or neglected child pursuant to § 63.2-1509.<br/> B. The advocate is not a party to the case to which he is assigned and shall not call witnesses or examine witnesses. The advocate shall not, with respect to the case to which he is assigned, provide legal counsel or advice to any person, appear as counsel in court or in proceedings which are part of</p> |

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| <p><b>Department of Criminal Justice Services</b> (cont.)</p> | <p>the judicial process, or engage in the unauthorized practice of law. The advocate may testify if called as a witness.</p> <p>C. The program director shall assign an advocate to a child when requested to do so by the judge of the juvenile and domestic relations district court having jurisdiction over the proceedings. The advocate shall continue his association with each case to which he is assigned until relieved of his duties by the court or by the program director.</p> <p>D. The Department shall adopt regulations governing the qualifications of advocates who for purposes of administering this subsection shall be deemed to be criminal justice employees. The regulations shall require that an advocate be at least twenty-one years of age and that the program director shall obtain with the approval of the court (i) a copy of his criminal history record or certification that no conviction data are maintained on him and (ii) a copy of information from the central registry maintained pursuant to § 63.2-1515 on any investigation of child abuse or neglect undertaken on him or certification that no such record is maintained on him. Advocates selected prior to the adoption of regulations governing qualifications shall meet the minimum requirements set forth in this article.</p> <p>E. An advocate shall have no associations which create a conflict of interests or the appearance of such a conflict with his duties as an advocate. No advocate shall be assigned to a case of a child whose family has a professional or personal relationship with the advocate. Questions concerning conflicts of interests shall be determined in accordance with regulations adopted by the Department.</p> <p>F. No applicant shall be assigned as an advocate until successful completion of a program of training required by regulations. The Department shall set standards for both basic and ongoing training.</p> <p><b>Immunity:</b> (§ 9.1-154) No staff of or volunteers participating in a program, whether or not compensated, shall be subject to personal liability while acting within the scope of their duties, except for gross negligence or intentional misconduct.</p> <p><b>Records:</b> (§ 9.1-156)</p> <p>A. Upon presentation by the advocate of the order of his appointment and upon specific court order, any state or local agency, department, authority, or institution, and any hospital, school, physician, or other health or mental health care provider shall permit the advocate to inspect and copy, without the consent of the child or his parents, any records relating to the child involved in the case. Upon the advocate presenting to the mental health provider the order of the advocate's appointment and, upon specific court order, in lieu of the advocate inspecting and copying any related records of the child involved, the mental health care provider shall be available within seventy-two hours to conduct for the advocate a review and an interpretation of the child's treatment records which are specifically related to the investigation.</p> <p>B. An advocate shall not disclose the contents of any document or record to which he becomes privy, which is otherwise confidential pursuant to the provisions of this Code, except upon order of a court of competent jurisdiction.</p> |
| <p><b>Department of Juvenile Justice</b></p>                  | <p><b>Internal Investigations:</b> (§ 66-3.1) The Director may designate an inspector general of the Department and no more than ten members of the internal investigations unit of the Department to have the same powers as a sheriff or a law-enforcement officer in the investigation of allegations of criminal behavior affecting the operations of the Department. Investigators so designated shall receive the training required by the Department of Criminal Justice Services for law-enforcement personnel before exercising such powers. Nothing in this section shall be construed to grant the Department any authority over the operation and security of detention homes which is not specified in other provisions of law.</p> <p><b>Authority:</b> (§ 66-13)</p> <p>A. The Department is authorized and empowered to receive juveniles committed to it by the courts of the Commonwealth. The Department shall establish, staff and maintain facilities for the rehabilitation, training and confinement of such juveniles. The Department may make arrangements with satisfactory persons, institutions or agencies, or with cities or counties maintaining places of detention for juveniles, for the temporary care of such juveniles.</p> <p>B. In accordance with the Juvenile Corrections Private Management Act, Chapter 2.1 (§ 66-25.3 et seq.) of this title, the Department may establish, or contract with private entities, political subdivisions or commissions to establish, juvenile boot camps. The Board shall prescribe standards for the development, implementation and operation of the boot camps with highly structured components including, but not limited to, military style drill and ceremony, physical labor, education and rigid discipline and no less than six months of intensive aftercare. The Department of Correctional Education shall establish, staff, and maintain educational programs for such juveniles in accordance with Chapter 18 (§ 22.1-339 et seq.) of Title 22.1. A contract to expend state funds to establish a facility for a</p>   |



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| <p><b>Department of Juvenile Justice</b><br/>(cont.)</p> | <p>juvenile boot camp shall not be executed by the Department unless an appropriation has been expressly approved as is otherwise provided by law.</p> <p>C. The Department may by mutual agreement with a locality or localities and, pursuant to standards promulgated pursuant to § 16.1-309.9, establish detention homes for use by a locality or localities for pre-trial and post-dispositional detention pursuant to §§ 16.1-248.1 and 16.1-284.1. The Department may collect by mutual agreement with a locality or localities and from any locality of this Commonwealth from which a juvenile is placed in such a detention home, the reasonable cost of maintaining such juvenile in such facility and a portion of the cost of construction of such facility. Such agreements shall be subject to approval by the General Assembly in the general appropriation act.</p> <p>D. The Department shall collect data pertaining to the demographic characteristics of juveniles incarcerated in state juvenile correctional institutions, including, but not limited to, the race or ethnicity, age, and gender of such persons, and the types of and extent to which health-related problems are prevalent among such persons. Beginning July 1, 1997, such data shall be collected, tabulated quarterly, and reported by the Director to the Governor and the General Assembly at each regular session of the General Assembly thereafter.</p> <p><b>Cooperation: (§ 66-24)</b></p> <p>A. The Department of Juvenile Justice shall cooperate with other state departments in fulfilling their respective licensing and certification responsibilities and in reducing and simplifying the regulations involved in the licensing or certification of children's residential facilities. The Board shall promulgate regulations that shall allow the Department to so assist and cooperate with other state departments.</p> <p>B. The Department is authorized to establish and maintain such a system of community group homes or other residential care facilities as the Department may from time to time acquire, construct, contract for or rent for the care of juveniles in direct state care, pending development of more permanent placement plans. Any community group home or other residential care facility that the Department may contract for or rent for the care of juveniles in direct state care shall be licensed or certified in accordance with the regulations of the Board.</p> <p>Any more permanent placement plans shall consider adequate care and treatment, and suitable education, training and employment for such juveniles, as is appropriate.</p> <p>C. The Department is further authorized to employ necessary personnel for community group homes or other residential care facilities or to contract with private entities for their operation.</p> <p>D. The Board shall promulgate regulations for licensure or certification of community group homes or other residential care facilities that contract with or are rented for the care of juveniles in direct state care pursuant to subsection B.</p> <p>The Board's regulations shall address the services required to be provided in such facilities as it may deem appropriate to ensure the welfare and safety of the juveniles. In addition, the Board's regulations shall include, but need not be limited to (i) specifications for the structure and accommodations of such facilities according to the needs of the juveniles to be placed in the home or facility; (ii) rules concerning allowable activities, local government- and group home- or residential care facility-imposed curfews, and study, recreational, and bedtime hours; and (iii) a requirement that each home or facility have a community liaison who shall be responsible for facilitating cooperative relationships with the neighbors, the school system, local law enforcement, local government officials, and the community at large.</p> <p>E. Pursuant to the procedures set forth in subsection F and in addition to any other legally authorized disciplinary actions, the Director may issue a summary order of suspension of the license or certificate of any group home or residential facility so regulated by the Department, in conjunction with any proceeding for revocation, denial, or other action, when conditions or practices exist in the home or facility that pose an immediate and substantial threat to the health, safety, and welfare of the juveniles who are residents and the Director believes the operation of the home or facility should be suspended during the pendency of such proceeding.</p> <p>F. The summary order of suspension shall take effect upon its issuance and shall be served on the licensee or certificate holder or its designee as soon as practicable thereafter by personal service and certified mail, return receipt requested, to the address of record of</p> |

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| <p><b>Department of Juvenile Justice</b><br/>(cont.)</p> | <p>the licensee or certificate holder. The order shall state the time, date, and location of a hearing to determine whether the suspension is appropriate. Such hearing shall be held no later than three business days after the issuance of the summary order of suspension and shall be convened by the Director or his designee.</p> <p>After such hearing, the Director may issue a final order of summary suspension or may find that such summary suspension is not warranted by the facts and circumstances presented. A final order of summary suspension shall include notice that the licensee or certificate holder may appeal the Director's decision to the appropriate circuit court no later than 10 days following issuance of the order. The sole issue before the court shall be whether the Director had reasonable grounds to require the licensee to cease operations during the pendency of the concurrent revocation, denial, or other proceeding. The concurrent revocation, denial, or other proceeding shall not be affected by the outcome of any hearing on the appropriateness of the summary suspension.</p> <p>The willful and material failure to comply with the summary order of suspension or final order of summary suspension shall be punishable as a Class 2 misdemeanor. The Director may require the cooperation of any other agency or subdivision of the Commonwealth in the relocation of the juveniles who are residents of a home or facility whose license or certificate has been summarily suspended pursuant to this section and in any other actions necessary to reduce the risk of further harm to such residents.</p> <p>G. In addition to the requirements set forth above, the Board's regulations shall require, as a condition of initial licensure or, if appropriate, license renewal, that the applicant shall: (i) be personally interviewed by Department personnel to determine the qualifications of the owner or operator before granting an initial license; (ii) provide evidence of having relevant prior experience before any initial license is granted; (iii) provide, as a condition of initial license or renewal licensure, evidence of staff participation in training on appropriate siting of the residential facilities for children, good neighbor policies, and community relations; and (iv) be required to screen residents prior to admission to exclude individuals with behavioral issues, such as histories of violence, that cannot be managed in the relevant residential facility.</p> <p>H. In addition, the Department shall:</p> <ol style="list-style-type: none"> <li>1. Notify relevant local governments and placing and funding agencies, including the Office of Comprehensive Services, of multiple health and safety or human rights violations in residential facilities for which the Department serves as lead agency when such violations result in the lowering of the licensure or certification status of the facility to provisional;</li> <li>2. Post on the Department's website information concerning the application for initial licensure or certification of or renewal, denial, or provisional licensure or certification of any residential facility for children located in the locality;</li> <li>3. Require all licensees or certificate holders to self-report lawsuits against or settlements with residential facility operators relating to the health and safety or human rights of residents and any criminal charges that may have been made relating to the health and safety or human rights of residents;</li> <li>4. Require proof of contractual agreements or staff expertise to provide educational services, counseling services, psychological services, medical services, or any other services needed to serve the residents in accordance with the facility's operational plan; and</li> <li>5. Modify the term of the license or certificate at any time during the term of the license or certificate based on a change in compliance.</li> </ol> <p><u>State Board of Juvenile Justice</u><br/><b>Duties:</b> (§ 66-10) The Board shall have the following powers and duties:</p> <ol style="list-style-type: none"> <li>1. To develop and establish programmatic and fiscal policies governing the operation of programs and facilities for which the Department is responsible under this law.</li> <li>2. To ensure the development and implementation of a long-range youth services policy.</li> <li>3. To review and comment on all budgets and requests for appropriations for the Department prior to their submission to the Governor and on all applications for federal funds.</li> <li>4. To monitor the activities of the Department and its effectiveness in implementing the policies of the Board.</li> <li>5. To advise the Governor, Director and the General Assembly on matters relating to</li> </ol> |

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| <p><b>Department of Juvenile Justice</b><br/>(cont.)</p> | <p>youth services.</p> <ol style="list-style-type: none"> <li>6. To promulgate such regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth administered by the Director or the Department. The Board of Juvenile Justice may adopt such Board of Corrections' regulations and standards as it may deem appropriate. If regulations and standards so adopted are not amended substantively by the Board of Juvenile Justice, such Board need not comply with the provisions of Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2.</li> <li>7. To ensure the development of programs to educate citizens and elicit public support for the activities of the Department.</li> <li>8. To establish length-of-stay guidelines for juveniles indeterminately committed to the Department and to make such guidelines available for public comment.</li> </ol> <p><u>Delinquency prevention and youth development programs</u><br/> <b>Authority:</b> (§ 66-26) The Director shall develop and supervise delinquency prevention and youth development programs in order that better services and coordination of services are provided to children. The Director shall have the authority to appoint necessary agents for the carrying out of these programs as may be needed. To this end the Director shall cooperate with state and local authorities in establishing and maintaining suitable delinquency prevention and youth development programs.</p> <p><u>Youth services citizen boards</u><br/> <b>Membership:</b> (§ 66-34) Each county and city participating in a program funded by an approved grant shall be represented on a youth services citizen board. The board shall be appointed by the county or city governing body or combination thereof and may include in its membership representative elected officials, representatives of public and private agencies serving youths, citizens not employed by government or service agencies and at least one member who is below the age of eighteen years. A majority of the board shall be citizens who are not employed by government or service agencies and who are not elected governmental officials. The board shall actively participate with community representatives in the formulation of a comprehensive plan for the development, coordination and evaluation of the youth services program and shall make formal recommendations to the governing authority or authorities at least annually concerning the comprehensive plan and its implementation during the ensuing year.</p> <p><u>Local programs</u><br/> <b>Responsibilities:</b> (§ 66-35) It shall be the responsibility of the local programs to:</p> <ol style="list-style-type: none"> <li>1. Prepare and annually update a comprehensive plan based on an objective assessment of the community's youth development and delinquency prevention needs and resources;</li> <li>2. Assist the locality in establishing and modifying programs and services to youth pursuant to § 16.1-309.3 on the basis of an objective assessment of the community's needs and resources;</li> <li>3. Collaborate with public and private entities to maintain and disseminate an annual inventory of youth and parenting related services and programs in the locality;</li> <li>4. Collaborate with public and private entities to identify gaps in program services and identify potential funding sources to assist in developing programs to respond to identified gaps; and</li> <li>5. Provide assistance to other community agencies and organizations, including the community policy and management team established pursuant to § 2.2-5204, in establishing and modifying programs and services to youth.</li> </ol> |

## JUDICIAL BRANCH

| AGENCY                                | STATUTORY REQUIREMENTS/AUTHORITY   |
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| <b>Guardian ad Litem for Children</b> | <p><b>Summary:</b> The role and responsibility of the Guardian ad Litem (GAL) is to represent, as an attorney, the child's best interests before the court. The GAL is a full and active participant in the proceedings who independently investigates, assesses and advocates for the child's best interests. Decision-making power resides with the court.</p> <p><b>Duties:</b> In fulfilling the duties of a GAL, an attorney shall:</p> <ul style="list-style-type: none"> <li>A. Meet face-to-face and interview the child.</li> <li>B. Conduct an independent investigation in order to ascertain the facts of the case.</li> <li>C. Advise the child, in terms the child can understand, of the nature of all proceedings, the child's rights, the role and responsibilities of the GAL, the court process and the possible consequences of the legal action.</li> <li>D. Participate, as appropriate, in pre-trial conferences, mediation and negotiations.</li> <li>E. Ensure the child's attendance at all proceedings where the child's attendance would be appropriate and/or mandated.</li> <li>F. Appear in Court on the dates and times scheduled for hearings prepared to fully and vigorously represent the child's interests.</li> <li>G. Prepare the child to testify, when necessary and appropriate, in accord with the child's interest and welfare.</li> <li>H. Provide the court sufficient information including specific recommendations for court action based on the findings of the interviews and independent investigation.</li> <li>I. Communicate, coordinate and maintain a professional working relationship in so far as possible with all parties without sacrificing independence.</li> <li>J. File appropriate petitions, motions, pleadings, briefs, and appeals on behalf of the child and ensure the child is represented by a GAL in any appeal involving the case.</li> <li>K. Advise the child, in terms the child can understand, of the court's decision and its consequences for the child and others in the child's life.</li> </ul> |

## INDEPENDENT ENTITIES

| AGENCY                                   | STATUTORY REQUIREMENTS/AUTHORITY   |
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| <b>Office of Protection and Advocacy</b> | <p><b>Purpose:</b> (§ 51.5-39.2) The Department for Rights of Virginians with Disabilities is hereby established as an independent state agency to be known as the Virginia Office for Protection and Advocacy. The Office is designated as the agency to protect and advocate for the rights of persons with mental, cognitive, sensory, physical or other disabilities and to receive federal funds on behalf of the Commonwealth of Virginia to implement the federal Protection and Advocacy for Individuals with Mental Illness Act, the federal Developmental Disabilities Assistance and Bill of Rights Act, the federal Rehabilitation Act, the Virginians with Disabilities Act and such other related programs as may be established by state and federal law. Notwithstanding any other provision of law, the Office shall be independent of the Office of the Attorney General and shall have the authority, pursuant to subdivision 5 of § 2.2-510, to employ and contract with legal counsel to carry out the purposes of this chapter and to employ and contract with legal counsel to advise and represent the Office, to initiate actions on behalf of the Office, and to defend the Office and its officers, agents and employees in the course and scope of their employment or authorization, in any matter, including state, federal and administrative proceedings. Compensation for legal counsel shall be paid out of the funds appropriated for the administration of the Office. However, in the event defense is provided under Article 5 (§ 2.2-1832 et seq.) of Chapter 18 of Title 2.2, counsel shall be appointed pursuant to subdivision 4 of § 2.2-510. The Office shall provide ombudsman, advocacy and legal services to persons with disabilities who may be represented by the Office. The Office is authorized to receive and act upon complaints concerning discrimination on the basis of disability, abuse and neglect or other denial of rights, and practices and conditions in institutions, hospitals, and programs for persons with disabilities, and to investigate complaints relating to abuse and neglect or other violation of the rights of persons with disabilities in proceedings under state or federal law, and to initiate any proceedings to secure the rights of such persons.</p> |

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| <p><b>Office of Protection and Advocacy</b><br/>(cont.)</p> | <p><b>Duties:</b> (§ 51.5-39.4) The Office shall have the following powers and duties:</p> <ol style="list-style-type: none"> <li>1. To monitor the implementation of Chapter 9 (§ 51.5-40 et seq.) of this title and to render assistance to persons with disabilities in the protection of their rights under the laws of the Commonwealth and of the United States.</li> <li>2. To exhaust in a timely manner all appropriate administrative remedies to resolve complaints concerning violations of rights of persons with disabilities, when those rights are related to such disabilities. When such procedures fail or if, in pursuing administrative remedies, the Office determines that any matter with respect to an individual with a disability will not be resolved in a reasonable time, the Office shall have the authority to pursue legal and other alternative remedies to protect the rights of such persons.</li> <li>3. To access facilities, institutions, and providers, as defined in §§ 37.2-100 and 37.2-403, and all other facilities and institutions that provide care or treatment to individuals with disabilities. Reasonable access shall be granted for the purposes of conducting investigations of allegations of abuse and neglect, and performing such other activities as necessary to monitor the care and treatment provided to, and to protect the rights of, individuals with disabilities.</li> <li>4. To access records of facilities, institutions, and providers, as defined in §§ 37.2-100 and 37.2-403, and all other facilities and institutions that provide care or treatment to individuals with disabilities regarding the commitment, care, treatment, and habilitation of such individuals, unless the disclosure of such records is specifically prohibited by federal law. Records that are confidential under federal or state law shall be maintained as confidential by the Office and shall not be further disclosed, except as permitted by law. However, there shall be no right of access to privileged communications pursuant to § 8.01-581.17.</li> <li>5. To access, for the purposes of inspection and copying, the records of an individual with a disability (a) who by reason of his mental or physical condition is unable to authorize the Office to have such access; (b) who does not have a legal guardian or for whom the Commonwealth, or designee of the Commonwealth, is the legal guardian; and (c) with respect to whom a complaint has been received by the Office or with respect to whom there is probable cause to believe that such person has been subjected to abuse or neglect. The director of the facility or institution shall disclose the name, address, and telephone number of any legal guardian or authorized representative.</li> </ol> <p><b>Mission:</b> Through zealous and effective advocacy and legal representation to: protect and advance legal, human, and civil rights of persons with disabilities; combat and prevent abuse, neglect, and discrimination; and promote independence, choice, and self-determination by persons with disabilities.</p> <p><b>Summary:</b> The Virginia Office for Protection and Advocacy (VOPA) helps with disability-related problems like abuse, neglect, and discrimination. We also help people with disabilities obtain services and treatment. All callers receive help with these problems. Individuals with problems, targeted in our program goals, may also receive advocacy services and/or legal representation.</p> <p>The Virginia Office for Protection and Advocacy (VOPA) is dedicated to the mission of zealous and effective advocacy and legal representation for persons with disabilities. The Office operates under the authority of federal and state statutes. Pursuant to those statutes, all individuals who contact VOPA will receive some level of service. However, in many cases, people receive only information and referral services. Not all people will receive case-level representation.</p> <p>The authorizing statutes for this Office establish eligibility criteria for the clients we will serve and require the establishment of goals and focus areas, based on public input. The authorizing statutes require that our goals address the needs of vulnerable, complex, and underserved populations.</p> <p>To that end, and recognizing that VOPA does not operate with unlimited resources, we have selected specific areas in which to focus our work. The areas have been selected after extensive public input, guidance from our two advisory councils, and with the approval of our Board of Directors. The selection of these focus areas is not meant to suggest that other</p> |

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| <p><b>Office of Protection and Advocacy</b><br/>(cont.)</p> | <p>issues are not important.</p> <p>Additionally, we use case selection criteria to evaluate the level of service that will be offered. These criteria include consideration of:</p> <ul style="list-style-type: none"> <li>▪ Severity of harm.</li> <li>▪ Imminence of risk.</li> <li>▪ Potential of case to facilitate systems change and/or benefit other individuals.</li> <li>▪ Availability of other advocacy or legal resources to help the individual address the alleged violation.</li> <li>▪ Ability of client to advocate for him/herself and/or ability of the family to advocate effectively for the client.</li> <li>▪ Availability of other appropriate, independent investigatory authorities.</li> <li>▪ Availability of agency resources.</li> <li>▪ Lack of merit or available legal remedy.</li> </ul> <p>If a case is being evaluated for litigation, additional factors may be considered.</p> <p><b>History:</b> Effective July 16, 2002, the Department for Rights of Virginians with Disabilities ceased to exist as an executive branch state agency and was replaced by the newly created, independent state agency, the Virginia Office for Protection and Advocacy (VOPA). The new agency has Governing Board. There are three separate appointing authorities for the new Board. The Governor appoints three members; the Speaker of the House appoints five members, and the Senate Privileges and Elections Committee appoints three members. The law ensures that the Board will include broad representation of persons knowledgeable about the needs of persons with disabilities, including consumers, family members, guardians, and advocates and disallows any elected official or current service provider from serving on the Board.</p> <p><b>2006-2007 Goals, Focus Area and Objectives:</b> The Goals, Focus Areas, and Objectives are the guidelines by which the Virginia Office for Protection and Advocacy accepts or declines cases. Cases may be opened outside of the stated Goals, Focus Areas, and Objectives with the approval of the Executive Director. <i>Effective October 1, 2006 - September 30, 2007</i></p> <p>A. Goal: <u>People with Disabilities are free from abuse and neglect.</u></p> <ol style="list-style-type: none"> <li>1. Focus Area #1: Deaths Where There is Probable Cause to Believe Abuse or Neglect Occurred</li> <li>2. Focus Area #2: Abuse or Neglect in Community Settings</li> <li>3. Focus Area #3: Abuse or Neglect in Institutional Settings</li> <li>4. Focus Area #4: Physical Abuse in Juvenile Facilities</li> <li>5. Focus Area #5: Shortage of Beds for Psychiatric Patients in Community Settings</li> <li>6. Focus Area #6: Lack of Psychiatric Treatment in County and Municipal Jails</li> <li>7. Focus Area #7: Completion of Ongoing Work</li> </ol> <p>B. Goal: <u>Children with disabilities receive an appropriate education.</u></p> <ol style="list-style-type: none"> <li>1. Focus Area #1: Denial of Eligibility Due to Lack of or Inappropriate Evaluations and Assessments</li> <li>2. Focus Area #2: Children Who Have Been (or Are at Risk of Being) Suspended Due to Inadequate Behavioral Intervention Plans (BIPs) or Functional Behavioral Assessments (FBAs)</li> <li>3. Focus Area #3: Assistive Technology in Schools</li> <li>4. Focus Area #4: Technical Assistance to Private Bar, Legal Services Agencies, and Parent Advocacy Groups Regarding Changes in the Individuals with Disabilities Education Act 2004 (IDEA 2004)</li> <li>5. Focus Area #5: Completion of Ongoing Work</li> </ol> <p>C. Goal: <u>People with disabilities have equal access to government services.</u></p> <ol style="list-style-type: none"> <li>1. Focus Area #1: Geriatric Programs in Mental Health Facilities</li> <li>2. Focus Area #2: Inaccessible Polling Places for Persons with Disabilities</li> <li>3. Focus Area #3: Services and Supports to Enable Individuals to Move Into the Community</li> </ol> |

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| <p><b>Office of Protection and Advocacy</b><br/>(cont.)</p> | <p>4. Focus Area #4: Appropriate TBI Supports in Education, Employment, and Public Service</p> <p>5. Focus Area #5: Inaccessibility of Commercial Locations Under Contract with the State</p> <p>D. Goal: <u>People with disabilities live in the most integrated environment possible.</u></p> <ol style="list-style-type: none"> <li>1. Focus Area #1: Service Animals in Public Accommodations</li> <li>2. Focus Area #2: Appropriate and Timely Discharge Plans at State Mental Health and Mental Retardation Facilities</li> <li>3. Focus Area #3: Alternative Decision-Making Methods</li> <li>4. Focus Area #4: Off-Campus Activities for Training Center Residents</li> <li>5. Focus Area #5: Inaccessibility of Retail Settings</li> </ol> <p>E. Goal: <u>People with disabilities are employed to their maximum potential.</u></p> <ol style="list-style-type: none"> <li>1. Focus Area #1: Vocational Training for Training Center Residents</li> <li>2. Focus Area #2: Barriers to Work for Social Security Beneficiaries</li> <li>3. Focus Area #3: Supported Employment</li> <li>4. Focus Area #4: Maximized Employment for Vocational Rehabilitation Clients</li> <li>5. Focus Area #5: Employment Information Clinic</li> </ol> <p>F. Goal: <u>People with disabilities have equal access to appropriate and necessary health care.</u></p> <ol style="list-style-type: none"> <li>1. Focus Area #1: Assistive Technology through Insurance</li> <li>2. Focus Area #2: Retention of Benefits through 1619(b) and Medicaid Buy-In</li> <li>3. Focus Area #3: Medical Care of Residents of Intermediate Care Facilities for People with Mental Retardation (ICFs/MR) and Waiver Homes)</li> <li>4. Focus Area #4: Medicaid Appeals for Waiver and EPSDT Issues</li> </ol> <p>G. Goal: <u>People with disabilities in the Commonwealth of Virginia are aware of VOPA's services.</u></p> <ol style="list-style-type: none"> <li>1. Focus Area #1: Underserved Communities</li> <li>2. Focus Area #2: Client Assistance Program (CAP) at Centers for Independent Living (CILs)</li> <li>3. Focus Area #3: Outreach to Constituents of the Eastern Shore</li> <li>4. Focus Area #4: Spanish-Speaking Constituents</li> <li>5. Focus Area #5: Law Enforcement Agencies Recognize the Rights of Persons with Disabilities</li> <li>6. Focus Area #6: Collaboration with Mental health Consumer Groups</li> <li>7. Focus Area #7: Special Education for Children in Foster Care</li> <li>8. Focus Area #8: Employment for Persons with Mental Illness</li> <li>9. Focus Area #9: Discharge Rights at Nursing Homes</li> </ol> <p><u>Virginia Office of Protection and Advocacy Board</u><br/><b>Duties:</b> (§ 51.5-39.5)</p> <p>A. The Virginia Office for Protection and Advocacy shall be administered by the Board, whose powers and duties include, but are not limited to:</p> <ul style="list-style-type: none"> <li>▪ Appointing and annually evaluating the performance of a Director who shall not be a member of the Board, to serve as the Chief Executive Officer of the Office at the pleasure of the Board.</li> <li>▪ Preparing and submitting a budget to the General Assembly for the operation of the Office and the Board;</li> <li>▪ Establishing general policies for the Office and advising and assisting the Director in developing annual program goals;</li> <li>▪ Establishing annual program goals for the Office;</li> <li>▪ Adopting regulations, policies, and procedures and making determinations necessary to carry out the provisions of this chapter and Chapter 9 (§ 51.5-40 et seq.) of this title. The adoption of such regulations shall be consistent with the provisions of Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act;</li> <li>▪ Monitoring and evaluating the operations of the Office;</li> <li>▪ Maintaining records of its proceedings and making such records available for inspection</li> </ul> |

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| <p><b>Office of Protection and Advocacy</b><br/>(cont.)</p> | <p>by the public; and</p> <ul style="list-style-type: none"> <li>▪ Performing any other acts necessary to carry out the provisions of this chapter.</li> </ul> <p>B. The Board shall have the authority to apply for and accept, gifts, donations, grants, and bequests on behalf of the Office from the United States Government and agencies and instrumentalities thereof and from any other source and to deposit all monies received in the Protection and Advocacy Fund created pursuant to this subsection. To these ends, the Board shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient or desirable, consistent with policies, rules, and regulations of the Board.</p> <p><b>Membership:</b> (§ 51.5-39.2) The Office shall be governed by an 11-member board consisting of 11 nonlegislative citizen members. The members shall be appointed as follows: five citizens at large, of whom one shall be a person with a developmental disability or the parent, family member, guardian, advocate, or authorized representative of such an individual, one shall be a person with a physical disability or the parent, family member, guardian, advocate, or authorized representative of such an individual, one shall be a person who represents persons with cognitive disabilities, one shall be a person who represents persons with developmental disabilities, and one shall be a person who represents persons with sensory or physical disabilities...; three citizens at large, of whom one shall be a person with a cognitive disability or the parent, family member, guardian, advocate, or authorized representative of such an individual, one shall be a person who represents persons with mental illnesses, and one shall be a person who represents people with mental or neurological disabilities, to be appointed by the Senate Committee on Rules; and three citizens at large, of whom one shall be a person with a mental illness or the parent, family member, guardian, advocate, or authorized representative of such an individual, one shall be a person with a sensory disability or the parent, family member, guardian, advocate, or authorized representative of such an individual, and one shall be a person with a mental or neurological disability or the parent, family member, guardian, advocate, or authorized representative of such an individual... Persons appointed to the board to represent individuals with a disability shall be knowledgeable of the broad range of needs of such persons served by the Office. Persons appointed to the board who have a disability shall be individuals who are eligible for, are receiving, or have received services through the state system that protects and advocates for the rights of individuals with disabilities. In appointing the members of the Board, consideration shall be given to persons nominated by statewide groups that advocate for the physically, developmentally, and mentally disabled.</p> <p>No member of the General Assembly, elected official, or current employee of the Department of Mental Health, Mental Retardation and Substance Abuse Services, State Health Department, Department of Rehabilitative Services, Department for the Blind and Vision Impaired, Virginia Department for the Deaf and Hard-of-Hearing, a community services board, a behavioral health authority, or a local government department with a policy-advisory community services board shall be appointed to the Board.</p> <p><b>Reporting:</b> (§ 51.5-39.2) The chairman of the Board shall submit to the Governor and the General Assembly an annual executive summary of the interim activity and work of the Board no later than the first day of each regular session of the General Assembly. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted to the General Assembly's website.</p> <p><u>Ombudsman Services for Persons with Disabilities</u><br/><b>Functions:</b> (§ 51.5-39.7). (not funded)</p> <p>There is hereby created within the Office an ombudsman section. The Director shall establish procedures for receiving complaints and conducting investigations for the purposes of resolving and mediating complaints regarding any activity, practice, policy, or procedure of any hospital, facility or program operated, funded or licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services, the Department of Rehabilitative Services, the Department of Social Services, or any other state or local agency, that is adversely affecting the health, safety, welfare or civil or human rights of any person with mental, cognitive, sensory or physical disabilities. After initial investigation, the section may decline to accept any complaint it determines is frivolous or not made in good faith. The</p> |



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| <b>Office of Protection and Advocacy</b><br><i>(cont.)</i> | <p>ombudsman section shall attempt to resolve the complaint at the lowest appropriate level, unless otherwise provided by law. The procedures shall require the section to:</p> <ol style="list-style-type: none"> <li>1. Acknowledge the receipt of a complaint by sending written notice to the complainant within seven days after receiving the complaint;</li> <li>2. When appropriate, provide written notice of a complaint to the Department of Mental Health, Mental Retardation and Substance Abuse Services or any other appropriate agency within seven days after receiving the complaint. The Department or agency shall report its findings and actions no later than fourteen days after receiving the complaint;</li> <li>3. Immediately refer a complaint made under this section to the Department of Mental Health, Mental Retardation and Substance Abuse Services or any other appropriate governmental agency whenever the complaint involves an immediate and substantial threat to the health or safety of a person with mental retardation, developmental disabilities, mental illness, or other disability. The Department or agency receiving the complaint shall report its findings and actions no later than forty-eight hours following its receipt of the complaint;</li> <li>4. Within seven days after identifying a deficiency in the treatment of a person with a disability 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;</li> <li>5. Advise the complainant and any person with a disability affected by the complaint, no more than thirty 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 section may request any party affected by the opinions or recommendations to notify the section, within a time period specified by the section, of any action the party has taken on its recommendation; and</li> <li>6. Refer any complaint not resolved through negotiation, mediation, or conciliation to the Director or the Director's designee to determine whether further protection and advocacy services shall be provided by the Office.</li> </ol> <p>C. The ombudsman section may make public any of its opinions or recommendations concerning a complaint, the responses of persons and governmental agencies to its opinions or recommendations, and any act, practice, policy, or procedure that adversely affects or may adversely affect the health, safety, welfare, or civil or human rights of a person with a disability, subject to the provisions of § 51.5-39.8.</p> <p>D. The Office shall publicize its existence, functions, and activities, and the procedures for filing a complaint under this section, and send this information in written form to each provider of services to persons with disabilities, with instructions that the information is to be posted in a conspicuous place accessible to patients, residents, consumers, clients, visitors, and employees. The Office shall establish, maintain and publicize a toll-free number for receiving complaints.</p> |

## LEGISLATIVE BRANCH: Commissions

| COMMISSION                    | STATUTORY REQUIREMENTS/AUTHORITY   |
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| <b>State Crime Commission</b> | <p><b>Summary:</b> (§ 30-156 A) Established in the legislative branch of state government. The purpose of the Commission shall be to study, report and make recommendations on all areas of public safety and protection. In so doing it shall endeavor to ascertain the causes of crime and recommend ways to reduce and prevent it, explore and recommend methods of rehabilitation of convicted criminals, study compensation of persons in law enforcement and related fields and study other related matters including apprehension, trial and punishment of criminal offenders. The Commission shall make such recommendations as it deems appropriate with respect to the foregoing matters, and shall coordinate the proposals and recommendations of all commissions and agencies as to legislation affecting crimes, crime control and criminal procedure. The Commission shall cooperate with the executive branch of state government, the Attorney General's office and the judiciary who are in turn encouraged to cooperate with the Commission. The Commission shall cooperate with governments and governmental agencies of other states and the United States.</p> |

| COMMISSION                                       | STATUTORY REQUIREMENTS/AUTHORITY  |
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| <p><b>State Crime Commission</b><br/>(cont.)</p> | <p><b>Membership:</b> (§ 30-156. B) Shall consist of 13 members that include nine legislative members, three nonlegislative citizen members, and one state official as follows: six members of the House of Delegates to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; three members of the Senate to be appointed by the Senate Committee on Rules; three nonlegislative citizen members to be appointed by the Governor; and the Attorney General or his designee. Nonlegislative citizen members shall be citizens of the Commonwealth of Virginia. Unless otherwise approved by the chairman of the Commission, nonlegislative citizen members shall only be reimbursed for travel originating and ending within the Commonwealth of Virginia for the purpose of attending meetings.</p> <p>The term of each appointee shall be for two years, except that the Attorney General and legislative members shall serve terms coincident with their terms of office. All members may be reappointed. Appointments to fill vacancies, other than by expiration of a term, shall be made for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments.</p> <p><b>Duties:</b> (§ 30-158)</p> <ol style="list-style-type: none"> <li>1. Maintain offices, hold meetings and functions at any place within the Commonwealth that it deems necessary.</li> <li>2. Conduct private and public hearings, and designate a member of the Commission to preside over such hearings. Pursuant to a resolution adopted by a majority of the Commission, witnesses appearing before the Commission may be examined privately and the Commission shall not make public the particulars of such examination. The Commission shall not have the power to take testimony at private or public hearings unless at least three of its members are present at such hearings. Witnesses appearing before the Commission at its request shall be entitled to receive the same fees and mileage as persons summoned to testify in the courts of the Commonwealth, if such witnesses request such fees and mileage.</li> <li>3. Conduct studies and gather information and data in order to accomplish its purposes as set forth in § 30-156, and in connection with the faithful execution and effective enforcement of the laws of the Commonwealth with particular reference but not limited to organized crime and racketeering, and formulate its recommendations to the Governor and the General Assembly.</li> <li>4. Submit an annual report of its recommendations to the General Assembly and the Governor. The Commission shall make such further interim reports to the Governor and the General Assembly as it deems advisable or as required by the Governor or by concurrent resolution of the General Assembly. The chairman of the Commission shall submit to the General Assembly and the Governor an annual executive summary of the interim activity and work of the Commission no later than the first day of each regular session of the General Assembly. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.</li> <li>5. B. At the direction or request of the legislature by concurrent resolution or of the Governor, the Commission shall, or at the request of any department, board, bureau, commission, authority or other agency created by the Commonwealth, or to which the Commonwealth is a party, the Commission may study the operations, management, jurisdiction, powers and interrelationship of any such department, board, bureau, commission, authority or other agency that has any direct responsibility for enforcing the criminal laws of the Commonwealth.</li> </ol> <p><b>Cooperation:</b> (§ 30-159)</p> <ol style="list-style-type: none"> <li>A. The Commission 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 any political subdivision thereof, cooperation and assistance in the performance of its duties.</li> <li>B. The Commission shall examine matters relating to law enforcement extending across the boundaries of the Commonwealth into other states; and may consult and exchange information with officers and agencies of other states with respect to law-enforcement problems of mutual concern to this and other states.</li> </ol> |

| COMMISSION                                      | STATUTORY REQUIREMENTS/AUTHORITY  |
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| <b>State Crime Commission</b><br><i>(cont.)</i> | <p><b>Referrals:</b> (§ 30-160) Whenever it appears to the Commission that there is reasonable cause, for official investigation or prosecution of a crime, or for the removal of a public officer for misconduct, the Commission shall refer the matter and such information as has come to its attention to the officials authorized and having the duty and authority to conduct investigations or to prosecute criminal offenses, or to remove such public officer, or to the judge of an appropriate court of record with recommendation that a special grand jury be convened.</p> <p><b>Reporting:</b> (§ 30-161) By such means and to such extent as it deems appropriate, the Commission shall keep the public informed as to the operations of organized crime, problems of criminal law enforcement in the Commonwealth and other activities of the Commission.</p>  |
| <b>Disability Commission</b>                    | <p><b>Summary:</b> To identify and recommend legislative priorities and policies for adoption or examination by the General Assembly in order to provide ongoing support in developing and reviewing services and funding related to Virginians with disabilities</p> <p><b>Purpose:</b> (§ 30-236) ...The Commission shall have the following powers and duties:</p> <ol style="list-style-type: none"> <li>1. Serve as the primary forum in the Commonwealth where the needs and issues of people with disabilities are addressed through the collaboration of members of the legislative and executive branches of state government, and citizens of the Commonwealth;</li> <li>2. Evaluate and advance budget proposals and policy issues oriented towards a service system that maximizes the self-sufficiency of Virginians with disabilities;</li> <li>3. Develop and review recommendations for service program changes and funding related to services for persons with physical and sensory disabilities; and</li> <li>4. Advise on local, state and federal policies and programs relevant to citizens with disabilities.</li> </ol> <p><b>Reporting:</b> (§ 30-238) ...The chairman shall submit to the General Assembly and the Governor an annual executive summary of the interim activity and work of the Commission no later than the first day of each regular session of the General Assembly. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.</p> <p><b>Sunset:</b> (§ 30-239) This chapter shall expire on July 1, 2007.</p>  |
| <b>Joint Commission on Health Care</b>          | <p><b>Purpose:</b> (§ 30-168) (Effective until July 1, 2010) The Joint Commission on Health Care...is established in the legislative branch of state government. The purpose of the Commission is to study, report and make recommendations on all areas of health care provision, regulation, insurance, liability, licensing, and delivery of services. In so doing, the Commission shall endeavor to ensure that the Commonwealth as provider, financier, and regulator adopts the most cost-effective and efficacious means of delivery of health care services so that the greatest number of Virginians receive quality health care. Further, the Commission shall encourage the development of uniform policies and services to ensure the availability of quality, affordable and accessible health services and provide a forum for continuing the review and study of programs and services.</p> <p>The Commission may make recommendations and coordinate the proposals and recommendations of all commissions and agencies as to legislation affecting the provision and delivery of health care. For the purposes of this chapter, "health care" shall include behavioral health care.</p> <p><b>Membership:</b> (§ 30-168.1) (Effective until July 1, 2010) The Commission shall consist of 18 legislative members...eight members of the Senate; and 10 members of the House of Delegates. Members of the Commission shall serve terms coincident with their terms of office.</p> <p><b>Duties:</b> (§ 30-168.3) (Effective until July 1, 2010) The Commission shall have the following powers and duties:</p> <ol style="list-style-type: none"> <li>1. To study and gather information and data to accomplish its purposes as set forth in § 30-168;</li> <li>2. To study the operations, management, jurisdiction, powers and interrelationships of any department, board, bureau, commission, authority or other agency with any direct responsibility for the provision and delivery of health care in the Commonwealth;</li> <li>3. To examine matters relating to health care services in other states and to consult and exchange information with officers and agencies of other states with respect to health</li> </ol> |

| COMMISSION   | STATUTORY REQUIREMENTS/AUTHORITY  |
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| <b>Joint Commission on Health Care</b><br><i>(cont.)</i> | <p>service problems of mutual concern;</p> <ol style="list-style-type: none"> <li>4. To maintain offices and hold meetings and functions at any place within the Commonwealth that it deems necessary;</li> <li>5. To invite other interested parties to sit with the Commission and participate in its deliberations;</li> <li>6. To appoint a special task force from among the members of the Commission to study and make recommendations on issues related to behavioral health care to the full Commission; and</li> <li>7. To report its recommendations to the General Assembly and the Governor annually and to make such interim reports as it deems advisable or as may be required by the General Assembly and the Governor.</li> </ol>   |
| <b>Joint Legislative Audit and Review Commission</b>     | <p><b>Membership:</b> (§ 30-56) The Commission shall consist of nine members of the House of Delegates..., and five members from the Senate..., and the Auditor of Public Accounts, ex officio, who shall have no vote.</p> <p><b>Duties:</b> (§ 30-58.1)</p> <ol style="list-style-type: none"> <li>A. Make performance reviews of operations of state agencies to ascertain that sums appropriated have been, or are being expended for the purposes for which such appropriations were made and to evaluate the effectiveness of programs in accomplishing legislative intent;</li> <li>B. Study on a continuing basis the operations, practices and duties of state agencies, as they relate to efficiency in the utilization of space, personnel, equipment and facilities;</li> <li>C. Make such special studies and reports of the operations and functions of state agencies as it deems appropriate and as may be requested by the General Assembly;</li> <li>D. Make such reports on its findings and recommendations at such time and in such manner as the Commission deems proper submitting same to the agencies concerned, to the Governor and to the General Assembly. Such reports as are submitted shall relate to the following matters: <ol style="list-style-type: none"> <li>1. Ways in which the agencies may operate more economically and efficiently;</li> <li>2. Ways in which agencies can provide better services to the Commonwealth and to the people; and</li> <li>3. Areas in which functions of state agencies are duplicative, overlapping, or failing to accomplish legislative objectives or for any other reason should be redefined or redistributed.</li> </ol> </li> </ol> <p><b>Studies and Reports:</b> (§ 30-58.2) The Commission shall prepare supplementary studies and reports of the program reviews and evaluations called for in §§ 30-58.1 and 30-67 in the following manner:</p> <ol style="list-style-type: none"> <li>1. At least once in each biennium and at such other times as the Commission deems necessary, a report shall be made to the General Assembly which includes: (i) annotations of reports previously issued; (ii) a summary of significant actions taken by executive agencies in response to reports and recommendations previously issued; and (iii) matters pertaining to the report topics that may require additional legislative attention and consideration.</li> <li>2. From time to time, agencies involved in matters which have been studied under the provisions of § 30-58.1 or § 30-67 may be required to communicate to the Commission at a hearing called for such purpose or in writing, the status of actions completed or being taken in response to reports and recommendations previously issued.</li> <li>3. In the event a report of the Commission cites waste, extravagance, unauthorized activities, or other significant deficiencies which result in the misuse of public funds, a supplementary report shall be made at such time as the Commission deems appropriate, which provides the General Assembly: (i) a review of the problem; (ii) recommendations made by the Commission or other legislative committee to correct the problem; (iii) actions taken or planned by the agency to correct the problem; and (iv) such other matters as may require additional legislative attention to correct the problem. Supplementary reports published by the Commission shall be issued to the Governor, agencies concerned, and members of the General Assembly.</li> </ol> |

| COMMISSION                 | STATUTORY REQUIREMENTS/AUTHORITY  |
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| <b>Commission on Youth</b> | <p><b>Purpose:</b> (§ 30-174) The purpose of the Commission shall be to study and provide recommendations addressing the needs of and services to the Commonwealth's youth and their families. In so doing, it shall encourage the development of uniform policies and services to youth across the Commonwealth and provide a forum for continuing review and study of such services. In addition to its own proposals, the Commission shall coordinate the proposals and recommendations of all commissions and agencies as to legislation affecting youth.</p> <p><b>Membership:</b> (§ 30-174) The Commission shall consist of 12 members to be appointed as follows: six members of the House of Delegates...; three members of the Senate...; and three nonlegislative citizen members to be appointed by the Governor.</p> <p><b>Reporting from Another Agency:</b> (§ 37.2-308) The Department of Mental Health, Mental Retardation and Substance Abuse Services] shall collect and compile the following data:</p> <ol style="list-style-type: none"> <li>1. The total number of licensed and staffed inpatient acute care psychiatric beds for children under the age of 14 and adolescents ages 14 through 17; and</li> <li>2. The total number of licensed and staffed residential treatment beds for children under the age of 14 and adolescents ages 14 through 17 in residential facilities licensed pursuant to this title, excluding group homes.</li> </ol> <p>The Department shall report this data on a quarterly basis to the Chairmen of the House Appropriations and Senate Finance Committees and to the Virginia Commission on Youth.</p> |

## EXECUTIVE BRANCH: Initiatives

| ENTITY   | STATUTORY REQUIREMENTS/AUTHORITY  |
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| <b>Advisory Committee on Child Abuse and Neglect</b> | <p><b>Membership:</b> (§ 63.2-1528) The Advisory Committee on Child Abuse and Neglect is continued and shall hereafter be known as the Advisory Board on Child Abuse and Neglect. The Advisory Board shall be composed of nine persons appointed by the Governor for three-year staggered terms, and permanent members including the Superintendent of Public Instruction, the Commissioner of the Department of Health, the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services, the Commissioner of the Department of Social Services, the Director of the Department of Juvenile Justice, the Director of the Department of Corrections, the Director of the Department of Criminal Justice Services, and the Attorney General of Virginia, or their designees.</p> <p><b>Purpose:</b> (§ 63.2-1528) The Advisory Board shall meet quarterly and, as the need may arise, advise the Department, Board and Governor on matters concerning programs for the prevention and treatment of abused and neglected children and their families and child abuse and neglect issues identified by the Commissioner of the Department of Social Services.</p>  |
| <b>Advisory Committee on Juvenile Justice</b>        | <p><b>Summary:</b> (§ 9.1-111) The Advisory Committee on Juvenile Justice...is established as an advisory committee in the executive branch of state government. The Advisory Committee shall have the responsibility for advising and assisting the Board, the Department, all agencies, departments, boards and institutions of the Commonwealth, and units of local government, or combinations thereof, on matters related to the prevention and treatment of juvenile delinquency and the administration of juvenile justice in the Commonwealth.</p> <p><b>Membership:</b> (§ 9.1-111) The membership of the Advisory Committee shall comply with the membership requirements contained in the Juvenile Justice and Delinquency Prevention Act pursuant to 42 U.S.C. § 5633, as amended, and shall consist of: the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services; the Commissioner of the Department of Social Services; the Director of the Dept. of Juvenile Justice; the Superintendent of Public Instruction; one member of the Senate Committee for Courts of Justice...; one member of the House Committee on Health, Welfare and Institutions appointed...; and such number of nonlegislative citizen members appointed by the Governor to comply with the membership range established by such federal act.</p> <p><b>Duties:</b> (§ 9.1-111) The Advisory Committee shall have the following duties and responsibilities to:</p> <ol style="list-style-type: none"> <li>1. Review the operation of the juvenile justice system in the Commonwealth, including facilities and programs, and prepare appropriate reports;</li> <li>2. Review statewide plans, conduct studies, and make recommendations on needs and</li> </ol> |

| ENTITY  | STATUTORY REQUIREMENTS/AUTHORITY   |
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| <b>Advisory Committee on Juvenile Justice</b><br><i>(cont.)</i> | <p>priorities for the development and improvement of the juvenile justice system in the Commonwealth; and</p> <p>3. Advise on all matters related to the federal Juvenile Justice and Delinquency Prevention Act of 1974 (P. L. 93-415, as amended), and recommend such actions on behalf of the Commonwealth as may seem desirable to secure benefits of that or other federal programs for delinquency prevention of the administration of juvenile justice.</p>   |
| <b>Child Day-Care Council</b>                                   | <p><b>Summary:</b> The Council shall adopt regulations for licensure and operation of child day centers in the Commonwealth in accordance with the regulations referred to in § 63.2-1734.</p> <p><b>Duties:</b> (§ 63.2-1734) The Board, or in the case of child day centers, the Child Day-Care Council, shall adopt regulations for the activities, services and facilities to be employed by persons and agencies required to be licensed under this subtitle, which shall be designed to ensure that such activities, services and facilities are conducive to the welfare of the children under the custody or control of such persons or agencies.</p> <p>Such regulations shall be developed in consultation with representatives of the affected entities and shall include, but need not be limited to, matters relating to the sex, age, and number of children and other persons to be maintained, cared for, or placed out, as the case may be, and to the buildings and premises to be used, and reasonable standards for the activities, services and facilities to be employed. Such limitations and standards shall be specified in each license and renewal thereof. Such regulations shall not require the adoption of a specific teaching approach or doctrine or require the membership, affiliation or accreditation services of any single private accreditation or certification agency.</p> <p><b>Membership:</b> (§ 63.2-1735) The members of the Council shall consist of two nonprofit child day center operators; three private for-profit child day center operators; one representative from each of the Departments of Social Services, Health, Education, Fire Programs, and Housing and Community Development; one pediatric health professional; one child development specialist; one parent consumer; one legal professional; one representative of the National Association for the Education of Young Children; one representative of the National Academy of Early Childhood Programs; one representative of the Association of Christian Schools International; one representative of the American Association of Christian Schools; one representative of the National Early Childhood Program Accreditation; one representative of the National Accreditation Council for Early Childhood Professional Personnel and Programs; one representative of the International Academy for Private Education; one representative of the American Montessori Society; one representative of the International Accreditation and Certification of Childhood Educators, Programs, and Trainers; one representative of the National Accreditation Commission; one representative of the Virginia Council for Private Education; and one representative each of a child day center offering a seasonal program emphasizing outdoor activities, a private child day center offering a half-day nursery school program, and a local governing body all of which operate programs required to be licensed under this chapter. The membership of the Council shall also include such representatives of state agencies as advisory members as the Governor deems necessary. The Governor shall designate a member of the Council to serve as chairman.</p> |
| <b>Child Support Guidelines Review Panel</b>                    | <p><b>Summary:</b> Review Child Support Guidelines established pursuant to § 20-108.2. The Panel shall determine the adequacy of the guideline for the determination of appropriate awards for the support of children by considering current research and data on the cost of and expenditures necessary for rearing children, and any other resources it deems relevant to such review.</p> <p><b>Membership:</b> (§ 20-108.2) The Secretary of Health and Human Resources shall ensure that the guideline set out in this section is reviewed by October 31, 2001, and every four years thereafter, by the Child Support Guidelines Review Panel, consisting of 15 members comprised of four legislative members and 11 nonlegislative citizen members. Members shall be appointed as follows: three members of the House Committee for Courts of Justice...; one member of the Senate Committee for Courts of Justice...; and one representative of a juvenile and domestic relations district court, one representative of a circuit court, one representative of the Department of Social Services' Division of Child Support Enforcement, three members of the Virginia State Bar, two custodial parents, two noncustodial parents, and one child advocate...</p>   |

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| <b>Child Support Guidelines Review Panel</b> <i>(cont.)</i>   | <p><b>Purpose:</b> (§ 20-108.2) The Panel shall determine the adequacy of the guideline for the determination of appropriate awards for the support of children by considering current research and data on the cost of and expenditures necessary for rearing children, and any other resources it deems relevant to such review. The Panel shall report its findings to the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports before the General Assembly next convenes following such review.</p> <p><b>Reporting:</b> (§ 20-108.2) The chairman of the Panel shall submit to the Governor and the General Assembly a quadrennial executive summary of the interim activity and work of the Panel no later than the first day of 2006 regular session of the General Assembly and every four years thereafter. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.</p>   |
| <b>Community Integration Advisory Commission</b>              | <p><b>Purpose:</b> (§ 2.2-2524) (Expires July 1, 2009) The Community Integration Advisory Commission...is established as an advisory commission in the executive branch of state government. The purpose of the Commission shall be to monitor the progress of all executive branch state agencies toward community integration of Virginians with disabilities in accordance with applicable state and federal laws that persons with disabilities enjoy the benefits of society and the freedoms of daily living.</p> <p><b>Membership:</b> (§ 2.2-2525) (Expires July 1, 2009) The Commission shall have a total membership of 21 nonlegislative citizen members to be appointed as follows: four nonlegislative citizen members, of whom two shall be persons with disabilities, one shall be the relative of a citizen of the Commonwealth with a disability, and one shall be a provider of services to citizens of the Commonwealth with disabilities or an advocate for persons with disabilities or for services to such persons to be appointed by the Senate Committee on Rules; six nonlegislative citizen members, of whom three shall be persons with disabilities, one shall be the relative of a citizen of the Commonwealth with a disability, and two shall be providers of services to citizens of the Commonwealth with disabilities or an advocate for persons with disabilities or for services to such persons to be appointed by the Speaker of the House of Delegates; and 11 nonlegislative citizen members, of whom three shall be persons with disabilities, one shall be a resident of a state mental health facility, one shall be a resident of a state mental retardation training facility, one shall be a resident of a nursing facility, two shall be the relatives of citizens of the Commonwealth with disabilities, and three shall be providers of services to citizens of the Commonwealth with disabilities or an advocate for persons with disabilities or for services to such persons to be appointed by the Governor. Nonlegislative citizen members of the Commission shall be citizens of the Commonwealth.</p> <p>Nonlegislative citizen members shall serve a term of four years; however, no nonlegislative citizen member shall serve more than two consecutive four-year terms. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All members may be reappointed. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment.</p> <p><b>Duties:</b> (§ 2.2-2527) (Expires July 1, 2009)</p> <ol style="list-style-type: none"> <li>1. To monitor the implementation of state and federal laws pertaining to community integration of Virginians with disabilities; and</li> <li>2. To make appropriate recommendations to the Governor concerning community integration of Virginians with disabilities.</li> </ol> |
| <b>Community Integration for Virginians with Disabilities</b> | <p><b>Establishment:</b> Established by Executive Order 2 (2006).</p> <p><b>Issue:</b> Each Virginian with a disability deserves to enjoy the same benefits of society and freedoms of everyday life that Virginians without disabilities enjoy. The Commonwealth has an obligation under the U.S. Supreme Court's <i>Olmstead v. L.C.</i> decision, the Americans with Disabilities Act, and the Virginians with Disabilities Act to provide appropriate opportunities for people with disabilities who choose to do so to become fully integrated into the community. Accordingly, state government must have appropriate structures in place to facilitate community integration for people with disabilities.</p> <p><b>Duties:</b></p> <ol style="list-style-type: none"> <li>1. Develop and annually update a comprehensive, cross-governmental strategic plan, the</li> </ol>   |

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| <p><b>Community Integration for Virginians with Disabilities</b><br/>(cont.)</p> | <p>purpose of which is to assure continued community integration of Virginians with disabilities;</p> <ol style="list-style-type: none"> <li>2. Seek advice and input from the Governor's Olmstead Community Integration Oversight Advisory Board as the strategic plan is developed;</li> <li>3. Develop budget and legislative proposals that support implementation of the strategic plan; and</li> <li>4. Report by July 15, 2006, to the Board on the status of community integration of Virginians with disabilities.</li> <li>5. All executive branch agencies of the Commonwealth shall participate in the activities of the Team upon request.</li> </ol> <p><b>Membership:</b></p> <ul style="list-style-type: none"> <li>▪ Department for the Blind and Vision Impaired</li> <li>▪ Department of Education</li> <li>▪ Department of Housing and Community Development</li> <li>▪ Department of Medical Assistance Services</li> <li>▪ Department of Mental Health, Mental Retardation and Substance Abuse Services</li> <li>▪ Department of Rail and Public Transportation</li> <li>▪ Department of Rehabilitative Services</li> <li>▪ Department of Social Services</li> <li>▪ Department of Transportation</li> <li>▪ Department of Veterans' Services</li> <li>▪ Office of Comprehensive Services for At-Risk Youth and Families</li> <li>▪ Special Advisor to the Governor for Workforce Development</li> <li>▪ State Council of Higher Education for Virginia</li> <li>▪ Virginia Board for People With Disabilities</li> <li>▪ Virginia Community Colleges System</li> <li>▪ Department for the Aging</li> <li>▪ Department for the Deaf and Hard of Hearing</li> <li>▪ Department of Health</li> <li>▪ Department of Professional and Occupational Regulation</li> <li>▪ Virginia Housing Development Authority</li> <li>▪ Statewide Independent Living Council</li> <li>▪ Secretaries of Commerce and Trade, Education, Health and Human Resources, and Transportation, or their designees, shall serve as ex officio, voting members of the Implementation Team. The Governor may appoint representatives of other agencies or institutions of higher education to the Implementation Team.</li> </ul> <p><b>Membership of Advisory Board:</b> The Board shall have a total membership of 21 citizen members, appointed by the Governor. The Board shall consist of: 11 members with disabilities, including one current resident of a state mental health facility, one current resident of a state mental retardation training center, and one current resident of a nursing facility; four family members of Virginians with disabilities; and six members who provide services to Virginians with disabilities or who advocate for such persons or services. In making appointments to the Board, the Governor shall endeavor to ensure both a balanced geographical representation and a diverse disability and ethnic representation. Additional members may be appointed at the Governor's discretion.</p> <p><b>Purpose of Advisory Board:</b></p> <ol style="list-style-type: none"> <li>1. Monitor the implementation of state and federal laws concerning community integration of Virginians with disabilities;</li> <li>2. Study all matters that present barriers or challenges to full community integration of Virginians with disabilities;</li> <li>3. Advise and make recommendations to the Director and the Implementation Team related to eliminating barriers and challenges to community integration of Virginians with disabilities and such other related matters as may arise in the performance of their duties;</li> <li>4. Review and advise the Director and the Implementation Team on its strategic plan; and</li> <li>5. Report recommendations to the Governor.</li> </ol> <p>All agencies of the Commonwealth shall assist the Board upon request. Additional staff support as is necessary for the conduct of the Implementation Team and Oversight Advisory Board's work during the term of their existence shall be furnished by the Office of the Governor and such other executive agencies as the Governor may designate.</p> |



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| <p><b>Community Integration for Virginians with Disabilities</b> <i>(cont.)</i></p> | <p><b>Purpose of the Director of Community Integration for People with Disabilities:</b><br/> ...The Office of the Governor a Director of Community Integration for People with Disabilities is to direct and coordinate all Olmstead implementation and oversight activities.</p> <ol style="list-style-type: none"> <li>1. Review agency strategic plans to assure that they support community integration of Virginians with disabilities;</li> <li>2. Create a system to monitor the effectiveness of community integration efforts;</li> <li>3. Assist agencies in implementing policies and regulatory changes needed to ensure and support community integration of Virginians with disabilities;</li> <li>4. Monitor federal legislation and policy in order to maximize the Commonwealth's effective use of and access to funds that support community integration;</li> <li>5. Report annually by May 31 to the Governor on the status of efforts to create opportunities that further the goal of ensuring integration of Virginians with disabilities into the community; and</li> <li>6. Serve as Chairman of the Implementation Team.</li> </ol> <p>An estimated 1,500 hours of staff time will be required to coordinate and support the Implementation Team and the Oversight Advisory Committee.</p>   |
| <p><b>State Child Fatality Review Team</b></p>                                      | <p><b>Duties:</b> (§ 32.1-283.1)</p> <ol style="list-style-type: none"> <li>A. There is hereby created the State Child Fatality Review Team, hereinafter referred to as the "Team," which shall develop and implement procedures to ensure that child deaths occurring in Virginia are analyzed in a systematic way. The Team shall review (i) violent and unnatural child deaths, (ii) sudden child deaths occurring within the first 18 months of life, and (iii) those fatalities for which the cause or manner of death was not determined with reasonable medical certainty. No child death review shall be initiated by the Team until conclusion of any law-enforcement investigation or criminal prosecution. The Team shall (i) develop and revise as necessary operating procedures for the review of child deaths, including identification of cases to be reviewed and procedures for coordination among the agencies and professionals involved, (ii) improve the identification, data collection, and record keeping of the causes of child death, (iii) recommend components for prevention and education programs, (iv) recommend training to improve the investigation of child deaths, and (v) provide technical assistance, upon request, to any local child fatality teams that may be established. The operating procedures for the review of child deaths shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.) pursuant to subdivision 17 of subsection B of § 2.2-4002.</li> <li>B. The 16-member Team shall be chaired by the Chief Medical Examiner and shall be composed of the following persons or their designees: the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services; the Director of Child Protective Services within the Department of Social Services; the Superintendent of Public Instruction; the State Registrar of Vital Records; and the Director of the Department of Criminal Justice Services. In addition, one representative from each of the following entities shall be appointed by the Governor to serve for a term of three years: local law-enforcement agencies, local fire departments, local departments of social services, the Medical Society of Virginia, the Virginia College of Emergency Physicians, the Virginia Pediatric Society, Virginia Sudden Infant Death Syndrome Alliance, local emergency medical services personnel, Commonwealth's attorneys, and community services boards.</li> <li>C. Upon the request of the Chief Medical Examiner in his capacity as chair of the Team, made after the conclusion of any law-enforcement investigation or prosecution, information and records regarding a child whose death is being reviewed by the Team may be inspected and copied by the Chief Medical Examiner or his designee, including, but not limited to, any report of the circumstances of the event maintained by any state or local law-enforcement agency or medical examiner, and information or records maintained on such child by any school, social services agency or court. Information, records or reports maintained by any Commonwealth's Attorney shall be made available for inspection and copying by the Chief Medical Examiner pursuant to procedures which shall be developed by the Chief Medical Examiner and the Commonwealth's Attorneys' Services Council established by § 2.2-2617. In addition, the Chief Medical Examiner may inspect and copy from any Virginia health care provider, on behalf of the Team, (i) without obtaining consent, the health and mental health records of the child and those perinatal medical records of the child's mother that related to such child and (ii) upon obtaining</li> </ol> |

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| <p><b>State Child Fatality Review Team</b><br/>(cont.)</p> | <p>consent from each adult regarding his personal records, or from a parent regarding the records of a minor child, the health and mental health records of the child's family. All such information and records shall be confidential and shall be excluded from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) pursuant to subdivision 9 of § 2.2-3705.5. Upon the conclusion of the child death review, all information and records concerning the child and the child's family shall be shredded or otherwise destroyed by the Chief Medical Examiner in order to ensure confidentiality. Such information or records shall not be subject to subpoena or discovery or be admissible in any criminal or civil proceeding. If available from other sources, however, such information and records shall not be immune from subpoena, discovery or introduction into evidence when obtained through such other sources solely because the information and records were presented to the Team during a child death review. Further, the findings of the Team may be disclosed or published in statistical or other form which shall not identify individuals. The portions of meetings in which individual child death cases are discussed by the Team shall be closed pursuant to subdivision A 22 of § 2.2-3711. In addition to the requirements of § 2.2-3712, all team members, persons attending closed team meetings, and persons presenting information and records on specific child deaths to the Team during closed meetings shall execute a sworn statement to honor the confidentiality of the information, records, discussions, and opinions disclosed during any closed meeting to review a specific child death. Violations of this subsection shall be punishable as a Class 3 misdemeanor.</p> <p>D. Upon notification of a child death, any state or local government agency maintaining records on such child or such child's family which are periodically purged shall retain such records for the longer of 12 months or until such time as the State Child Fatality Review Team has completed its child death review of the specific case.</p> <p>E. The Team shall compile annual data which shall be made available to the Governor and the General Assembly as requested. These statistical data compilations shall not contain any personally identifying information and shall be public records.</p> <p><u>Local and Regional Child Fatality Establishment and Duties:</u> (§ 32.1-283.2)</p> <p>A. Upon the initiative of any local or regional law-enforcement agency, fire department, department of social services, emergency medical services agency, Commonwealth's attorney's office, or community services board, local or regional child fatality teams may be established for the purpose of conducting contemporaneous reviews of local child deaths in order to develop interventions and strategies for prevention specific to the locality or region. Each team shall establish rules and procedures to govern the review process. Agencies may share information but shall be bound by confidentiality and execute a sworn statement to honor the confidentiality of the information they share. Violations shall be punishable as a Class 3 misdemeanor. The State Child Fatality Review Team shall provide technical assistance and direction as provided for in subsection A of § 32.1-283.1.</p> <p>B. Local and regional teams may be composed of the following persons from the localities represented on a particular board or their designees: a local or regional medical examiner, a local social services official in charge of child protective services, a director of the relevant local or district health department, a chief law-enforcement officer, a local fire marshal, the attorney for the Commonwealth, an executive director of the local community services board or other local mental health agency, and such additional persons, not to exceed five, as may be appointed to serve by the chairperson of the local or regional team. The chairperson shall be elected from among the designated membership. The additional members appointed by the chairperson may include, but are not restricted to, representatives of local human services agencies; local public education agencies; local pediatricians, psychiatrists and psychologists; and local child advocacy organizations.</p> <p>C. Each team shall establish local rules and procedures to govern the review process prior to conducting the first child fatality review. The review of a death shall be delayed until any criminal investigations connected with the death are completed or the Commonwealth consents to the commencement of such review prior to the completion of the criminal investigation.</p> <p>D. All information and records obtained or created regarding the review of a fatality shall be confidential and shall be excluded from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) pursuant to subdivision 9 of § 2.2-3705.5. All such information and records shall be used by the team only in the exercise of its proper purpose and function and shall</p> |

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| <p><b>State Child Fatality Review Team</b><br/>(cont.)</p> | <p>not be disclosed. Such information or records shall not be subject to subpoena, subpoena duces tecum, or discovery or be admissible in any criminal or civil proceeding. If available from other sources, however, such information and records shall not be immune from subpoena, subpoena duces tecum, discovery or introduction into evidence when obtained through such other sources solely because the information and records were presented to the team during a fatality review. No person who participated in the reviews nor any member of the team shall be required to make any statement as to what transpired during the review or what information was collected during the review. Upon the conclusion of the fatality review, all information and records concerning the victim and the family shall be returned to the originating agency or destroyed. However, the findings of the team may be disclosed or published in statistical or other form which shall not identify individuals. The portions of meetings in which individual cases are discussed by the team shall be closed pursuant to subdivision A 22 of § 2.2-3711. All team members, persons attending closed team meetings, and persons presenting information and records on specific fatalities to the team during closed meetings shall execute a sworn statement to honor the confidentiality of the information, records, discussions, and opinions disclosed during any closed meeting to review a specific death. Violations of this subsection shall be punishable as a Class 3 misdemeanor.</p> <p>E. Members of teams, as well as their agents and employees, shall be immune from civil liability for any act or omission made in connection with participation in a child fatality review team review, unless such act or omission was the result of gross negligence or willful misconduct. Any organization, institution, or person furnishing information, data, testimony, reports or records to review teams as part of such review, shall be immune from civil liability for any act or omission in furnishing such information, unless such act or omission was the result of gross negligence or willful misconduct.</p> <p><u>Family Violence Fatality Review Teams</u><br/><b>Establishment and Duties:</b> (§ 32.1-283.3)</p> <p>A. The Chief Medical Examiner shall develop a model protocol for the development and implementation of local family violence fatality review teams (hereinafter teams) which shall include relevant procedures for conducting reviews of fatal family violence incidents. A "fatal family violence incident" means any fatality, whether homicide or suicide, occurring as a result of abuse between family members or intimate partners. The Chief Medical Examiner shall provide technical assistance to the local teams and serve as a clearinghouse for information.</p> <p>B. Subject to available funding, the Chief Medical Examiner shall provide ongoing surveillance of fatal family violence occurrences and promulgate an annual report based on accumulated data.</p> <p>C. Any county or city, or combination of counties, cities or counties and cities may establish a family violence fatality review team to examine fatal family violence incidents and to create a body of information to help prevent future family violence fatalities. The team shall have the authority to review the facts and circumstances of all fatal family violence incidents that occur within its designated geographic area.</p> <p>D. Membership in the team may include, but shall not be limited to: health care professionals, representatives from the local bar, attorneys for the Commonwealth, judges, law-enforcement officials, criminologists, the medical examiner, other experts in forensic medicine and pathology, family violence victim advocates, health department professionals, probation and parole professionals, adult and child protective services professionals, and representatives of family violence local coordinating councils.</p> <p>E. Each team shall establish local rules and procedures to govern the review process prior to the first fatal family violence incident review conducted. The review of a death shall be delayed until any criminal investigations or prosecutions connected with the death are completed.</p> <p>F. All information and records obtained or created regarding the review of a fatality shall be confidential and shall be excluded from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) pursuant to subdivision 9 of § 2.2-3705.5. All such information and records shall be used by the team only in the exercise of its proper purpose and function and shall not be disclosed. Such information or records shall not be subject to subpoena, subpoena duces tecum or discovery or be admissible in any criminal or civil proceeding. If available from other sources, however, such information and records shall not be immune from</p> |

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| <p><b>State Child Fatality Review Team</b><br/>(cont.)</p>                                      | <p>subpoena, subpoena duces tecum, discovery or introduction into evidence when obtained through such other sources solely because the information and records were presented to the team during a fatality review. No person who participated in the review nor any member of the team shall be required to make any statement as to what transpired during the review or what information was collected during the review. Upon the conclusion of the fatality review, all information and records concerning the victim and the family shall be returned to the originating agency or destroyed. However, the findings of the team may be disclosed or published in statistical or other form which shall not identify individuals. The portions of meetings in which individual cases are discussed by the team shall be closed pursuant to subdivision A 22 of § 2.2-3711. All team members, persons attending closed team meetings, and persons presenting information and records on specific fatalities to the team during closed meetings shall execute a sworn statement to honor the confidentiality of the information, records, discussions, and opinions disclosed during any closed meeting to review a specific death. Violations of this subsection shall be punishable as a Class 3 misdemeanor.</p> <p>G. Members of teams, as well as their agents and employees, shall be immune from civil liability for any act or omission made in connection with participation in a family violence fatality review, unless such act or omission was the result of gross negligence or willful misconduct. Any organization, institution, or person furnishing information, data, testimony, reports or records to review teams as part of such review, shall be immune from civil liability for any act or omission in furnishing such information, unless such act or omission was the result of gross negligence or willful misconduct.</p>   |
| <p><b>State Executive Council for Comprehensive Services for At Risk Youth and Families</b></p> | <p><b>Membership:</b> (§ 2.2-2648) The Council shall consist of one member of the House of Delegates...and one member of the Senate...; the Commissioners of Health, of Mental Health, Mental Retardation and Substance Abuse Services, and of Social Services; the Superintendent of Public Instruction; the Executive Secretary of the Virginia Supreme Court; the Director of the Department of Juvenile Justice; the Director of the Department of Medical Assistance Services; the chairman of the state and local advisory team established pursuant to § 2.2-5202; two local government representatives to include a member of a county board of supervisors or a city council and a county administrator or city manager, to be appointed by the Governor; a private provider representative from a facility that maintains membership in an association of providers for children's or family services and receives funding as authorized by the Comprehensive Services Act (§ 2.2-5200 et seq.), to be appointed by the Governor, who may appoint from nominees recommended by the Virginia Coalition of Private Provider Associations; and a parent representative.</p> <p><b>Duties:</b> (§ 2.2-2648) The Council shall have the following powers and duties:</p> <ol style="list-style-type: none"> <li>1. Hire and supervise a director of the Office of Comprehensive Services for At-Risk Youth and Families;</li> <li>2. Appoint the members of the state and local advisory team in accordance with the requirements of § 2.2-5201;</li> <li>3. Provide for the establishment of interagency programmatic and fiscal policies developed by the Office of Comprehensive Services for At-Risk Youth and Families, which support the purposes of the Comprehensive Services Act (§ 2.2-5200 et seq.), through the promulgation of regulations by the participating state boards or by administrative action, as appropriate;</li> <li>4. Provide for a public participation process for programmatic and fiscal guidelines and dispute resolution procedures developed for administrative actions that support the purposes of the Comprehensive Services Act (§ 2.2-5200 et seq.). The public participation process shall include, at a minimum, 60 days of public comment and the distribution of these guidelines and procedures to all interested parties;</li> <li>5. Oversee the administration of and consult with the Virginia Municipal League and the Virginia Association of Counties about state policies governing the use, distribution and monitoring of moneys in the state pool of funds and the state trust fund;</li> <li>6. Provide for the administration of necessary functions that support the work of the Office of Comprehensive Services for At-Risk Youth and Families;</li> <li>7. Review and take appropriate action on issues brought before it by the Office of Comprehensive Services for At-Risk Youth and Families, Community Policy and Management Teams (CPMTs), local governments, providers and parents;</li> <li>8. Advise the Governor and appropriate Cabinet Secretaries on proposed policy and</li> </ol> |

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| <p><b>State Executive Council for Comprehensive Services for At Risk Youth and Families (cont.)</b></p> | <p>operational changes that facilitate interagency service development and implementation, communication and cooperation;</p> <ol style="list-style-type: none"> <li>9. Provide administrative support and fiscal incentives for the establishment and operation of local comprehensive service systems;</li> <li>10. Oversee coordination of early intervention programs to promote comprehensive, coordinated service delivery, local interagency program management, and co-location of programs and services in communities. Early intervention programs include state programs under the administrative control of the state executive council member agencies;</li> <li>11. Oversee the development and implementation of a mandatory uniform assessment instrument and process to be used by all localities to identify levels of risk of Comprehensive Services Act (CSA) youth;</li> <li>12. Oversee the development and implementation of uniform guidelines to include initial intake and screening assessment, development and implementation of a plan of care, service monitoring and periodic follow-up, and the formal review of the status of the youth and the family;</li> <li>13. Oversee the development and implementation of uniform guidelines for documentation for CSA-funded services;</li> <li>14. Review and approve a request by a CPMT to establish a collaborative, multidisciplinary team process for referral and reviews of children and families pursuant to § 2.2-5209;</li> <li>15. Oversee the development and implementation of mandatory uniform guidelines for utilization management; each locality receiving funds for activities under the Comprehensive Services Act shall have a locally determined utilization management plan following the guidelines or use of a process approved by the Council for utilization management, covering all CSA-funded services;</li> <li>16. Oversee the development, implementation, and collection of uniform data collection standards, and the development of outcome measures; including, but not limited to, expenditures, number of youth served in specific CSA activities, length of stay for residents in core licensed residential facilities, and proportion of youth placed in treatment settings suggested by a uniform assessment instrument for CSA-funded services;</li> <li>17. Establish and oversee the operation of an informal review and negotiation process with the Director of the Office of Comprehensive Services and a formal dispute resolution procedure before the State Executive Council, which include formal notice and an appeals process, should the Director or Council find, upon a formal written finding, that a CPMT failed to comply with any provision of this Act. "Formal notice" means the Director or Council provides a letter of notification, which communicates the Director's or the Council's finding, explains the effect of the finding, and describes the appeal process, to the chief administrative officer of the local government with a copy to the chair of the CPMT. The dispute resolution procedure shall also include provisions for remediation by the CPMT that shall include a plan of correction recommended by the Council and submitted to the CPMT. If the Council denies reimbursement from the state pool of funds, the Council and the locality shall develop a plan of repayment;</li> <li>18. Deny state funding to a locality where the CPMT fails to provide services that comply with the Comprehensive Services Act (§ 2.2-5200 et seq.), in accordance with subdivision 17; and</li> <li>19. Biennially publish and disseminate to members of the General Assembly and community policy and management teams a state progress report on comprehensive services to children, youth and families and a plan for such services for the next succeeding biennium. The state plan shall: <ol style="list-style-type: none"> <li>A. Provide a fiscal profile of current and previous years' federal and state expenditures for a comprehensive service system for children, youth and families;</li> <li>B. Incorporate information and recommendations from local comprehensive service systems with responsibility for planning and delivering services to children, youth and families;</li> <li>C. Identify and establish goals for comprehensive services and the estimated costs of implementing these goals, report progress toward previously identified goals and establish priorities for the coming biennium; and</li> <li>D. Include such other information or recommendations as may be necessary and appropriate for the improvement and coordinated development of the state's comprehensive services system.</li> </ol> </li> </ol> |

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| <p><b>Virginia Board for People with Disabilities</b></p> | <p><b>Summary:</b> The Board serves as the Developmental Disabilities Planning Council, addressing the needs of people with developmental disabilities as established under the federal "Developmental Disabilities Assistance and Bill of Rights Act" and the state "Virginians with Disabilities Act." Since 1992, the Board has been an executive branch state agency located within the Secretariat of Health and Human Resources. The Board has autonomy over the use of its federal funding and the hiring of its staff.</p> <p><b>Duties:</b> The Board advises the Governor, the Secretary of Health and Human Resources, federal and state legislators, and other constituent groups on issues related to people with disabilities in Virginia. The Board's purpose is to engage in advocacy, capacity building, and systems change activities that...contribute to a coordinated consumer and family centered, consumer and family directed, comprehensive system of services, individualized supports, and other forms of assistance that enable individuals with DD to exercise self-determination, be independent, be productive, and be integrated and included in all facets of community life. This is accomplished through outreach, training, technical assistance, supporting and educating communities, barrier elimination, system design/redesign, coalition development and citizen participation, informing policymakers, and demonstration of new approaches, services, and supports to community-based service delivery.</p> <p><b>Membership:</b> The Governor appoints 31 of the Board's 40 members. The remaining nine members are state agency designees. Sixty percent of the Board's 40 members are people with disabilities or family members of people with disabilities. The Board meets at least quarterly in Richmond, Virginia. The Board encourages public comment on its planning activities and at Board meetings, and encourages individuals to contact the Board with needs, information or concerns about disability-related issues.</p> |

## CHILDREN’S OMBUDSMAN OFFICES IN THE UNITED STATES

Courtesy of the Mid-Atlantic Juvenile Defender Center, Juvenile Law and Policy Clinic, University of Richmond School of Law

### Contact Information:

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- The American Bar Association defines “ombudsman” as “a government official who hears and investigates complaints by private citizens against government agencies” (American Bar Association, 1979). Ombudsman offices have been created in the United States through legislative, executive, or judicial authorization.
- Children’s Ombudsman offices are created to: (1) handle and investigate complaints from citizens and families related to government services for children and families, which may include child protective services, foster care, adoption and juvenile justice services; (2) provide a system of accountability by recommending system wide improvements to benefit children and families, often in the form of annual reports to the Legislature, Governor, and public agencies; (3) protect the interests and rights of children and families, both individually and system wide; and (4) monitor programs, placements, and departments responsible for providing for children’s services, which may include inspecting state facilities and institutions.
- At least 30 states in this country have children’s ombudsman types of offices charged with duties and purposes related to the welfare of children. Basic information about these offices is detailed below.

| State  | Contact Info  | Location           | Jurisdiction                    | Funding/Staff  | Notes   |
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| Alaska | Office of the Omb.<br>240 Main Street<br>Suite 202<br>P.O. Box 11300<br>Juneau, AK 99811-3000 | Legislative Branch | Oversight of all state agencies | \$500,000 annually<br>7 staff (all state services).<br>NOTE that funding <i>decreased</i> 1999 to 2003 | <ul style="list-style-type: none"> <li>• Est. 1975 to assist the public with questions and complaints about state agencies as well as with problems involving the University of Alaska System; receives complaints involving the Division of Family and Youth Services, investigates complaints and upon finding a problem, recommends specific solutions.</li> <li>• Written reports are required for every case formally investigated; reports are submitted to the agency against which the complaint is made, to the complainant and to the legislature and governor (where appropriate).</li> <li>• Office annually submits list of subjects that merit legal attention by the state legislature based on previous investigations and complaint patterns.</li> <li>• Office sometimes completes reviews of child fatalities in conjunction with Division of Family and Youth Services or state law enforcement.</li> </ul> |

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| Arizona    | Office of the Omb.-<br>Citizen's Aide<br>3737 North 7 <sup>th</sup> Street<br>Suite 209<br>Phoenix, AZ 85014<br>(602)277-7292 | Legislative<br>Branch   | Oversight of all<br>state agencies                                      |  | <ul style="list-style-type: none"> <li>• Est. 1996; includes deputy ombudsman and 3 assistants, one dedicated to investigating complaints against Child Protective Services.</li> <li>• Investigates administrative acts of state agencies upon receipt of complaints from parents, foster parents and other concerned individuals; pursues informal avenue with them to resolve the issue; where informal avenues fail, the Ombudsman submits a written report to the agency. The report is distributed to members of the legislature and becomes a public document.</li> <li>• Also identifies &amp; tracks systemic issues affecting the child welfare system.</li> </ul>   |
| California | Omb. for Foster Care<br>Dept. of Social<br>Services<br>744 P Street,<br>MS 9-025<br>Sacramento, CA<br>95814<br>(877) 846-1602 | Autonomous<br>entity within<br>the Dept. of<br>Social<br>Services | Operate within<br>state divisions<br>of children and<br>family services |  | <ul style="list-style-type: none"> <li>• Ombudsman is appointed by the Director of Dept. Social Services, in consultation with a committee of interested individuals, for a term of two years; reports directly to the County Board of Supervisors; allows the Ombudsperson to be an objective party who functions independent of any department agency.</li> <li>• Exists to provide children who are placed in foster care with a means to resolve issues related to their care, placement and services; receives complaints from children, parents and caretakers, professionals and concerned adults; responds as appropriate – provides information, conducts informal and formal investigations. Agencies must respond within 30 days. Omb. granted access to records.</li> <li>• Omb. submits written reports to County Board of Supervisors, makes recommendations to governmental authorities, makes presentations at conferences, convenes public hearings and conducts evaluative studies that are released as public reports.</li> <li>• Operates a toll-free number to receive complaints; number must be provided to children in care by their social workers, along with information about the purpose of the Ombudsperson office.</li> </ul> |



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| <p>Colorado<br/>(In the Office of Consumer Relations)</p> | <p>Dept. Human Services<br/>Office of Consumer Relations<br/>State Human Services Building<br/>1575 Sherman Street<br/>Denver, CO 80203<br/>(303) 866-5825</p> |  | <p>Oversight of all state agencies</p> |  | <ul style="list-style-type: none"> <li>• Located within the Dept. of Human Services is the Office of Consumer Relations, which deals with a wide range of human needs, including but not limited to advocating for children. It serves as an ombudsman office with respect to its oversight of the child protection, social services and juvenile delinquency systems, foster and child care, child support enforcement, and services to the developmentally disabled.</li> <li>• Receives, investigates and responds to complaints that focus mainly on matters regarding child welfare, mental health and child support.</li> <li>• As necessary, staff makes referrals and track cases to monitor identified problem areas.</li> </ul>   |
| <p>Connecticut</p>  | <p>Connecticut Child Advocate's Office<br/>18-20 Trinity Street<br/>Hartford, CT 06106<br/>(860) 566-2106</p>  |  | <p>Independent/<br/>autonomous</p>     |  | <ul style="list-style-type: none"> <li>• Est. 1995; duties and responsibilities include: evaluating procedures for and the delivery of, services by state agencies or other entities that receive state funding; reviewing and investigating complaints; reviewing facilities where children are placed by the Court or the Department of Children and Families; recommending changes in policies and procedures for dealing with juveniles, child care, foster care, and child treatment; engaging in public education, legislative advocacy, and legal action "to secure and ensure the legal, civil and special rights of children"; providing training and technical assistance to court-appointed special child advocates; reviewing numbers of special-needs children in foster care or other placements and recommending changes in policies and procedures for such placements; and serving on the Child Fatality Review Panel.</li> <li>• OCA may: initiate court involvement or intervene in cases where a petition is already filed; obtain access to all records necessary to properly carry out legal mandates; issue subpoenas for witnesses and documents; and communicate privately with children.</li> <li>• OCA is led by an advisory committee (inc. pediatrician, social worker, psychologist, attorney, judge, representative of private agencies) which meets with the Child Advocate three times a year to review and assess the patterns of treatment and service for children, policy implications of those patterns, and areas for necessary systemic improvement.</li> </ul> |

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| Delaware | Office of Child Advocate<br>913 N. Market Street,<br>Suite 900<br>Wilmington, DE<br>(305) 577-6830                                  |  | Independent/<br>autonomous      |  | <ul style="list-style-type: none"> <li>• Est. 1999 to assist the Child Protection Accountability Commission, which currently oversees the child protection system; Child Advocate serves as Executive Director of the Commission.</li> <li>• Purpose of the Office is to secure and ensure the legal, civil and special rights of children involved with the child welfare system. In addition, the Child Advocate oversees a program providing attorneys for abused or otherwise at-risk children</li> <li>• Coordinates efforts on behalf of children; works with other advocacy groups; promotes system reform; recommends changes in law, procedure, and policy necessary to enhance the protection of Delaware’s children; implements and coordinates a program providing contractual legal representation on behalf of children; also serves as a public education agency to create public awareness regarding its purpose, the services it provides, and how it can be contacted.</li> </ul> |
| Florida  | Statewide Advocacy Committee<br>1317 Winewood Boulevard, Building 1,<br>Room 401<br>Tallahassee, FL<br>32399-0700<br>(850) 488-6173 |  | Oversight of all state agencies | 3 full time staff,<br>350 volunteer members appointed by the Governor investigate complaints | <ul style="list-style-type: none"> <li>• Local Advocacy Councils (LAC) are consumer protection mechanisms serving people receiving services from state agencies. Councils receive complaints, monitor programs and facilities operated, funded, or contracted by state agencies, review research projects involving human subjects, and advocate for the welfare of individuals who are in the care and custody of state social service agencies or private contracted companies.</li> <li>• Statewide Advocacy Council (SAC) – appellate body; receives appeals on complaints that the LACs have not been able to resolve at the local level; may address complaints alleging threats to the life, safety or health of individuals, or those involving multi-service areas in scope without a district appeal. Following investigation by SAC, issues may be referred to the secretary or agency head, or to the Governor for action. SAC must submit an annual report to the Governor.</li> </ul> |
| Georgia  | Office of the Child Advocate<br>3330 Northside Drive,<br>Suite 100<br>Macon, GA 31210<br>(478) 757-2661<br>1-800-254-2064           |  | Independent/<br>autonomous      |  | <ul style="list-style-type: none"> <li>• Est. 2001 to monitor and oversee DFCS operations at both the state and local levels; to assist, protect and restore the security of children whose well-being is threatened; to provide independent oversight of persons, organizations and agencies responsible for providing services to or caring for children who are victims of child abuse and neglect, or whose domestic situation requires intervention by the state; to protect the rights of children.</li> </ul>  |



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| Kansas   | <p>Ombudsman Program for Social and Rehabilitation Services<br/> Perry Building<br/> 300 SW. Oakly<br/> Topeka, KS 66606<br/> 913-296-4687</p>   |  |  |  | <ul style="list-style-type: none"> <li>• The Ombudsman Program for Social and Rehabilitation Services was established in 1990 by executive order. The office is a state agency with 12 employees. The purposes of the office are to receive complaints, address concerns, and advocate for all children and adults within the system. Approximately 40 percent of cases involve children's issues. In the past 2 years staff, budget, and caseload have remained constant.</li> <li>• Inquiries and complaints are channeled through the Governor's Office and Social Rehabilitation Services. Recommendations to improve services are ordinarily made to the Youth Commission and occasionally to governmental authorities or legislative committees. The existence and functions of the office are well known and it is accessible to the public. Written reports are distributed statewide. The Youth Commission reviews child fatalities, monitors placement facilities, and uses legal staff to access the courts</li> </ul>   |
| Kentucky | <p>Cabinet for Families and Children/Office of the Ombudsman<br/> 275 E. Main Street,<br/> 1E-B<br/> Frankfort, KY 40601<br/> (502) 564-5497</p> <p>Juv. Justice Omb.<br/> Dept. of Juv. Justice<br/> Madison Place,<br/> Second Floor<br/> 320 West Main Street<br/> Frankfort, KY 40601<br/> (800) 890-6854</p> <p>Kentucky Youth Advocates<br/> 2034 Frankfort Avenue<br/> Louisville, KY 40206<br/> (502) 895-8167</p> |  | Operates within state divisions of children and family services. | <p>The full time staff of 14 is lead by an Executive Director appointed by the Governor.</p> <p>Funding is provided through private foundations and donations.</p> | <ul style="list-style-type: none"> <li>• Cabinet for Families and Children/Office of the Ombudsman is a public office, est. 1973 to: (1) receive, investigate, and respond to complaints and inquiries regarding programs administered by the Cabinet; (2) recommend corrective action to Cabinet officials where appropriate; (3) prompt and aid in the resolution of specific issues and broader underlying systemic problems; and (4) advise the Cabinet Secretary on how to improve service delivery based on data gathered by the Ombudsman.</li> <li>• Est. 1997 in accordance with a federal court consent decree; handles complaints regarding juveniles involved in the justice system by virtue of their criminal offenses, as opposed to status offenses. Complaints may relate to treatment and placement of this population. In addition, the Office inspects facilities that provide residential care for these juveniles</li> <li>• Est. 1975, provides services for disadvantaged and poor children; advocates on a case-by-case basis, educating the public, and recommending legislative and policy changes; conducts research, publishes its findings and lobbies for legislative initiatives. In response to complaints on individual cases, the Director of Case Advocacy assures that appropriate referrals are made and that complainants have the information they need to address their concerns.</li> </ul> |

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| Maine  | <p>Maine Child Welfare Services Ombudsman</p> <p>303 State Street,<br/>Augusta, Maine 04330</p> <p>(866)621-0758.</p> | <p>Managed by the Maine Children's Alliance. They contract directly with the Governor's Office.</p> |  |  | <ul style="list-style-type: none"> <li>• Impartial office which specializes in assisting people with resolving concerns and complaints with Maine's Child Protective Services.</li> <li>• Provides information to the public, answers inquiries, investigates and works toward resolution of complaints, determines priorities for compliances and policies and procedures for operating the program, participates in conferences, meetings and studies to address child welfare issues, provides information and referral services, informs people about how to obtain services from the department, collects and analyzes data for the purpose of making reports as may be required, and analyzes and provides opinions and recommendations to agencies, the governor and the legislature on state programs, rules, policies and laws.</li> </ul>  |
| Maryland<br>Located in the<br>Office of the<br>Attorney<br>General | Juvenile Justice Monitoring Unit  |   |  |  | <ul style="list-style-type: none"> <li>• The mission of the Juvenile Justice Monitoring Unit (JJMU) is to promote the positive transformation of the juvenile justice system to meet the needs of Maryland's youth, families, and communities. This mission is accomplished by: collaborating with all who are involved with the juvenile justice system; collecting and evaluating all information; reporting findings and recommendations, and monitoring actions taken.</li> <li>• The Juvenile Justice Monitoring Unit is responsible for reviewing and reporting on Department of Juvenile Services (DJS) residential programs across Maryland. Responsibilities include evaluating the following at each facility: Department of Juvenile Service's child advocacy grievance process; Department of Juvenile Service's monitoring process; treatment of and services to youth; physical conditions of the facility; and adequacy of staffing.</li> </ul> |

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| Massachusetts | <p>The Commonwealth of Massachusetts<br/>Executive Office of Health and Human Services<br/>Office of Child Care Services<br/>One Ashburton Place,<br/>Room 1105<br/>Boston, MA 02115<br/>(617) 626-2000</p> <p>Massachusetts<br/>Department of Social Services<br/>Ombudsman Office<br/>24 Farnsworth Street<br/>Boston, MA 02210<br/>(617) 748-2444</p> |  | Operate within state divisions of children and family services | 3 staff members   | <ul style="list-style-type: none"> <li>• Est. to advance and advocate for high quality care for children and families; programs under the jurisdiction of OCCS include: child care centers, child care homes, large family child care homes, private nursery schools, private kindergartens, residential facilities for troubled children, as well as foster care and adoption placement agencies. Office licenses, regulates, and monitors child care facilities and detention programs for children and youth; refers parents to appropriate child care facilities and residential detention programs for children and youth; trains and educates child care providers through support of the statewide Child Care Resource and Referral Network; and purchases subsidized child care for eligible low income families, authorized welfare-to-work participants, families moving off welfare and teen-parent prevention programs through budgetary support of the Children's Trust Fund.</li> <li>• Omb Office est. 1980 as branch of the state child welfare agency; strictly a complaint-resolution agency; responds to inquiries and complaints of clients, foster parents, adoptive parents, advocates, legislators, and others regarding any program, policy or service-delivery issue concerning the Department of Social Services (DSS). Drafts written reports, with recommendations, to be submitted to the DSS Commissioner. Two distinct units – the Case Investigation Unit and the Residential Services Unit – review child fatalities and placement facilities, respectively.</li> </ul> |
| Michigan      | <p>Office of Children's Ombudsman<br/>P.O. Box 30026<br/>Lansing, MI 48909<br/>(517) 373-3077 or 1-800-MICH-FAM<br/>FAX: (517) 335-4471</p>  |  | Independent/autonomous   | <p>\$1,160,000.<br/>14 full time staff</p> <p>1999-2000, received over 700 complaints; accepted approx. 175 cases for investigation</p> | <ul style="list-style-type: none"> <li>• Autonomous office responsible for investigating complaints about Children's Protective Services and Foster Care and Adoption cases handled by both public and private child welfare agencies; reviews complaints from other sources, including legislators, attorneys, or the Ombudsman herself; makes annual recommendations to the Governor, Legislature, and the Michigan Family Independence Agency for overall improvements in Michigan's child welfare system.</li> <li>• The Ombudsman is appointed by and serves at the pleasure of the Governor.</li> </ul>  |

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| Missouri      | <p>State Technical Assistance Team (STAT)<br/> Division of Legal Services (DLS)<br/> Missouri Department of Social Services (DSS)<br/> 2724 Merchants Drive<br/> P.O. Box 1527<br/> Jefferson City, MO<br/> 65102-1527<br/> (573) 751-5980</p> |  | Operate within state divisions of children and family services |  | <ul style="list-style-type: none"> <li>• STAT is a special unit within DSS; addresses matters relating to child fatality review and multi-disciplinary child abuse investigations; investigates complaints; facilitates cooperation and coordination among dissimilar organizations with shared responsibilities and mandates; provides information and assistance for the entire multi-disciplinary community of professionals dealing with serious child abuse and neglect events; provides technical assistance and training to multi-disciplinary teams and law enforcement agencies in the investigation and prosecution of child sexual abuse cases; performs duties related to the Missouri Child Fatality Review Program, including providing assistance and training to county child fatality review panels, developing and implementing protocols for evaluating and reviewing child fatalities, and assisting in the prosecution of child fatality cases as requested.</li> </ul> |
| Nebraska      | <p>Public Counsel Office<br/> Ombudsman for Welfare Services<br/> P.O. Box 94712<br/> State Capitol<br/> Lincoln, Nebraska<br/> 68509<br/> (402) 471-2035</p>  |  | Oversight of all state agencies                                |  | <ul style="list-style-type: none"> <li>• Independent governmental office receives and investigates miscellaneous complaints relating to administrative agencies of state government; develops general recommendations for the purpose of promoting continued improvement in the policies and procedures of the child welfare agency.</li> <li>• Jurisdiction of the Office does not include the courts, the legislature and the governor and his/her immediate staff, or political subdivisions.</li> <li>• The powers of the Ombudsman's Office may be viewed as a delegation and specialization of the general oversight functions of the legislature. The investigatory powers of the Office are broad, including freedom of access to agency records and facilities.</li> </ul>  |
| New Hampshire | <p>State of New Hampshire<br/> Dept. of Health and Human Services<br/> Office of the Ombudsman<br/> 129 Pleasant Street<br/> Concorde, NH 03301-3857<br/> (603) 271-6491</p>   |  | Operate within state divisions of children and family services |  | <ul style="list-style-type: none"> <li>• Est. 1995 in the Department of Health and Human Services to provide the assistance to clients, employees, and members of the public in resolving disputes related to matters under the jurisdiction of the Department of Health and Human Services; utilizes mediation and/or other alternative dispute resolution methods.</li> </ul>  |

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| New Jersey                                      | Office of the Child Advocate<br>135 W. Hanover Street<br>3rd Floor<br>PO Box 92<br>Trenton, NJ 08625<br>Tel: 609.984.1188<br>Fax: 609.292.1433 |  | Independent/<br>autonomous  | \$2,000,000.                  | <ul style="list-style-type: none"> <li>• Est. 2003. to investigate, review, monitor and evaluate state agency responses to allegations of child abuse or neglect and make recommendations for systemic and comprehensive reform.</li> <li>• Office's jurisdiction extends to all public and private settings in which a child has been placed by a state or county agency or department, including but not limited to juvenile detention centers, group homes, foster homes, residential treatment centers and shelters.</li> <li>• Office has subpoena power, the power to sue state government, may conduct public hearings and is deemed a child protective agency.</li> </ul>   |
| New Mexico<br><br>Created by<br>executive order | Field Liaison Office<br>P.O. Drawer 5160<br>PERA 254<br>Santa Fe, NM 87502<br>(505) 827-8442   |  | Operate within<br>state divisions<br>of children and<br>family services | 1 full time<br>employee       | <ul style="list-style-type: none"> <li>• Created by an administrative directive/executive order as division of the Department of Children, Youth and Families; therefore, it is not an independent ombudsman office. Approximately 65% of the complaints handled involve children. The office is well-known and accessible to the public. The Office has an established relationship with other state agencies and the Office of the Governor. Staff consists of one employee, who is responsible for tracking and researching complaints to determine their validity, and mediating between the field workers, clients and public. There is no separate budget for the office, although the caseload has increased over the past years.</li> </ul> |
| New York  | Child Planning and<br>Advocacy Now<br>Project (C-PLAN)<br>1 Centre Street, Room<br>1034<br>New York, NY 10007<br>(212) 669-4955                |  |   | 5 paid staff<br>4 MSW interns | <ul style="list-style-type: none"> <li>• Est. 1995 to respond to the needs of children and families involved in the New York City child welfare system.</li> <li>• C-PLAN promotes three essential goals: advocacy, documentation, and systemic reform and provides individual case advocacy for families experiencing problems with the child welfare system, including the Administration for Children's Services (ACS) and voluntary agencies with which it contracts.</li> <li>• C-PLAN has a Coordinating Council made up of representatives from the city, state, and federal government, parent and child advocates, and constituent representatives.</li> </ul>   |



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| Oklahoma | <p>Office of Client Advocacy (OCA)<br/>Department of Human Services (DHS)<br/>P.O. Box 25352<br/>Oklahoma City, OK 73125<br/>(405) 521-3491</p> <p>Oklahoma Commission on Children and Youth<br/>4545 N. Lincoln Boulevard, Suite 114<br/>Oklahoma City, OK 73105-3416<br/>(405) 521-4016</p> |  | <p>Operate within state divisions of children and family services</p> <p>Handles approx. 750 referrals a year</p> | <p>\$2,500,000.<br/>50 staff</p>   | <ul style="list-style-type: none"> <li>• Provides services to adults with developmental disabilities; the investigators examine allegations of abuse, neglect, mistreatment and exploitation with regard to the special-needs adult population and the child population during investigations of child deaths when the child or family was "known to child welfare" during the year preceding the death; monitors complaints related to child placement facilities, including investigating grievances filed on behalf of children living in out-of-home settings other than foster homes, monitors other divisions/departments within DHS.</li> <li>• Office of the Advocate General/Advocate Defender located within the OCA, advocate is also Associate Director with DHS; reports directly to the Commission on Human Rights and the DHS Director; handles grievances regarding those persons committed to the custody of DHS; establishes procedure for appeals to resolve grievances or complaints.</li> <li>• The Oklahoma Commission on Children and Youth facilitates joint planning and coordination among public and private agencies, oversees children' services, monitors public and private agencies and placements for children. The Commission has no enforcement authority but has broad jurisdiction over children under 18 years of age; can also convene public hearings and issue subpoenas; issues public reports that include recommendations for system improvement.</li> </ul> |
| Oregon   | <p>Office of Children's Ombudsman<br/>500 Summer Street N.E.<br/>Fourth Floor<br/>Salem, Oregon 97310<br/>(503) 945-6904</p>  |  | <p>Operate within state divisions of children and family services</p>   | <p>Funding sources include contributions to a toll-free hotline for child abuse and fees added to the cost of filing birth certificates, adoption or divorce petitions</p> | <ul style="list-style-type: none"> <li>• Ombudsman is appointed by the Governor, with Senate approval, to a four-year term; reports directly to the Governor and the Director of Human Services; quasi-independent, shares office space with the Director of Human Services.</li> <li>• Focused on child sexual abuse and neglect, including specific allegations, education and prevention programs; disseminates information, provides support to state and local offices, collects and analyzes data; has access to all relevant governmental management information and data programming systems, including those maintained by the criminal justice and child welfare departments.</li> <li>• Assists the Children's Services Division of the Court Appointed Special Advocate Program (CASA) when a particular investigation or court proceeding involves a child victim or child perpetrator of child sexual abuse, reviews the situation, makes referrals to programs and services.</li> </ul>   |

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| Rhode Island | Office of the Child Advocate<br>272 West Exchange Street<br>Suite 301<br>Providence, RI 02903<br>(401) 222-6650 |  | Independent/<br>autonomous |  | <ul style="list-style-type: none"> <li>• Represents the best interest of individuals involved in the child welfare system as a "class;" works to (1) address complaints related to government services for children and youth; (2) provide a "system accountability" mechanism; and (3) protect the interests and legal rights of children and their families who are parties in the child welfare and juvenile justice arenas. Investigates and resolves complaints; may inspect, copy, and/or subpoena records regarding the child; may take appropriate steps to publicize the Office's purpose and role; may review private and public residential placement facilities and shelter; and participates in child fatality reviews where victims have some connection with DCYF. OCA also adopts an active role in the legislative and public education processes.</li> <li>• The Child Advocate is a member of the Executive Board of the Children's Policy Coalition, which reviews policy, budgets and legislation relating to children.</li> </ul> |
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| South Carolina | Governor's Office of Children's Affairs<br>1205 Pendleton Street<br>Suite 477<br>Columbia, SC 29201<br>(803) 734-0409 |  | Operate within state divisions of children and family services |  | <ul style="list-style-type: none"> <li>• Focuses on three main areas within the child welfare system via separate divisions or units created by statutory mandates: (1) the Children's Case Resolution System (CCRS); (2) the Investigative Unit; and (3) Constituent Services. In addition, a Foster Care Review Board functions with the Office of Children's Affairs; monitors existing services and advocates for improved services for children in the public sector; promotes coordination between state agencies that serve children with special needs; responds to complaints or inquiries involving children; reviews cases of children whose emotional, physical, and educational needs are not being adequately met by the state's service delivery system; and provides arbitration and mediation services for the most difficult cases where resolution between agencies does not occur</li> <li>• The Investigative Unit within the Office of Children's Affairs examines allegations of abuse and neglect of children who reside in residential treatment facilities licensed by the state of South Carolina. Any person suspecting maltreatment of a child in substitute care should file a report with the Investigative Unit</li> <li>• The Division of Foster Care Review provides an external system of accountability and advocacy for children and families involved with the foster care system in South Carolina and utilizes panels of community volunteers to promote safe, permanent homes for children in foster care and to increase public awareness regarding the impact of child abuse and neglect. Statistical data is compiled on all children reviewed. Annual recommendations regarding the status of the child welfare system are made to the governor and to the general assembly</li> </ul> |
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| Tennessee | Tennessee Commission on Children and Youth (TCCY) Ombudsman<br>710 James Robertson Parkway, Ninth Floor<br>Nashville, TN 37243-0800<br>(615) 741-2633       |  | Independent/autonomous   |                                    | <ul style="list-style-type: none"> <li>• Omb. service is service of the TCCY. Ombudsman is appointed by the Governor to promote system-wide improvements, educates the community, coordinates efforts to enhance services, evaluates the service delivery system and makes recommendations regarding the care and treatment of state-involved children; prepares reports and plans for the governor, the general assembly, and the federal Office of Juvenile Justice and Delinquency Prevention.</li> <li>• Program receives referrals regarding concerns about the care and treatment of children in state custody; has access to all records and may interview children, families, and state and private agency staff to help resolve problems; engages in general advocacy efforts.</li> </ul> |
| Texas     | Texas Department of Protective and Regulatory Services<br>701 W. 51st Street<br>P.O. Box 149030<br>Austin, Texas 78714-9030<br>(512) 438-4800               |  | Operate within state divisions of children and family services | 1 director, 5 ombudsman associates | <ul style="list-style-type: none"> <li>• Est. 1991 to receive and catalog complaints; charged with (1) protecting children, and elderly or disabled adults who are living at home or in state facilities; (2) licensing residential care facilities, group day-care homes, day-care centers, and child-placing activities; and (3) registering family homes. Investigates current and prior actions about the case to determine whether the agency's policies and procedures were followed; provides written responses describing the reasons for agency actions.</li> </ul>   |
| Utah      | Office of Child Protection Ombudsman<br>120 North 200 West, Room 422<br>P.O. Box 45500<br>Salt Lake City, UT 84145-0550<br>(801) 538-4589 or 1-800-868-6413 |  | Operate within state divisions of children and family services | \$700,000<br>7 staff members       | <ul style="list-style-type: none"> <li>• Established in 1996 to serve as an independent agency in collaboration with the Division of Child and Family Services (DCFS) to advocate on behalf of children.</li> <li>• Empowered to investigate acts or omissions in a particular child's case to determine if the act or omission was contrary to law, regulation or policy, places a child's health or safety at risk, is made without an adequate statement of reason, or is based on irrelevant, immaterial or erroneous grounds; may prepare a written summary of its findings and make all necessary recommendations to the Division of Child and Family Services regarding individual cases, rules, policies and operations.</li> </ul>  |

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| Washington | Office of the Family and Children's Ombudsman<br>6720 Fort Dent Way, Suite 240<br>Tukwila, WA 98188<br>(206) 439-3870       |  | Independent/<br>autonomous                                     | \$400,000<br>6 staff members<br><br>Despite a statutory mandate, a lack of sufficient resources precludes the Office from a thorough review of child placement facilities | <ul style="list-style-type: none"> <li>• Est. 1996 to advocate on behalf of children and families involved with the state due to child abuse and neglect; intervenes as necessary to prevent or mitigate harm to children and their families due to an agency's act or omission; investigates as necessary to identify systemic problems; recommends improvements to agency officials, the governor and the legislature; promotes public awareness and an understanding of family and child-related services; and monitors compliance with laws and policies related to the provision of services and the agency's child placement, supervision and treatment operations.</li> <li>• Ombudsman appointed by the governor for three-year term; located within the Governor's Office but receives oversight from the Legislative Oversight Committee.</li> </ul>           |
| Wyoming    | Division of Family Services<br>Office of the Client Advocate<br>2300 Capital Avenue<br>Cheyenne, WY 82002<br>(307) 777-7561 |  | Operate within state divisions of children and family services |   | <ul style="list-style-type: none"> <li>• The Office of the Client Advocate is a unit within the Director's Office of the Division of Family Services, existing at the discretion of the Director and funded through the Division's budget. The Client Advocate reports to the Program Service Manager, who reports to the Director of Family Services. Prior to the beginning of 1999 when this Office was reorganized to become the Office of the Client Advocate, this advocacy function was provided by the Ombudsman Division of Family Services, initially established in 1989. The Client Advocate's Office, staffed solely by the Client Advocate, receives, investigates and responds to approximately 75 inquiries and complaints per month from family services clients, the governor's office and service providers regarding a variety of issues.</li> </ul> |

**Study of the Establishment of  
An Office of Children's Services Ombudsman**

**ADVISORY GROUP OF EFFECTIVE STATE AGENCIES  
MEETING MINUTES**

**November 6, 2007**

5<sup>th</sup> Floor East Conference Room - General Assembly Building  
1:00 p.m.

**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

**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 M. Atkinson, Leah Hamaker and Cordell Hairston

**Agenda Items**

**I. Welcome and Introductions**

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

**II. Review of Agenda and Meeting Goals**

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

**III. 2006 Study Activities and Conclusions**

**2007 Study Activities**

Ms. Atkinson discussed the 2006 and 2007 Study Activities. In addition, copies of the 2006 study report were made available to the Advisory Group and audience.

**IV. Draft Findings, Recommendations & Group Discussion**

Ms. Atkinson addressed and acknowledged draft wording and language concerns with the Advisory Group. In addition, Ms. Atkinson informed the Advisory Group members that the

findings and recommendations listed below were not final, but a working document for the Advisory Group's consideration.

Ms. Atkinson and the Advisory Group reviewed the following draft recommendations and options:

### **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 concerns with the investigation powers. It was suggested to clarify that the investigation authority was to resolve and mediate complaints.*
- *A question was asked whether 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 suggested 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 essential 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 proposed 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.

*Ms. 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 Recommendations 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**

#### ***Budge - 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 pervious 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**

Commission on Youth staff will send the current working draft of the findings and recommendations to the Advisory Group. Ms. 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 on November 20, 2007. Ms. Atkinson thanked everyone for their time and input.

The meeting adjourned at 3:30 p.m.



