COMMONWEALTH of VIRGINIA

Office of the Governor

Office of the Children's Ombudsman
Eric J. Reynolds, Esq., Director

The Honorable Glenn Youngkin
Governor of Virginia
Patrick Henry Building, 3rd Floor
1111 East Broad Street
Richmond, Virginia 23219

Members of the General Assembly
General Assembly Building
900 East Main Street
Richmond, Virginia 23219

Danny Avula, Commissioner
Virginia Department of Social Services
801 East Main Street
Richmond, Virginia 23219

Dear Governor Youngkin, Members of the General Assembly, and Commissioner Avula,

Pursuant to § 2.2-447 of the Code of Virginia, I am pleased to submit the 2023 Annual Report of the Office of the Children's Ombudsman. The statute requires me, as Director of the Office, to report on its activities each year, including any recommendations regarding the need for legislation or for a change in rules or policies.

If you need any additional information, please do not hesitate to contact me by email at eric.reynolds@governor.virginia.gov or by telephone at 804-225-4823.

Respectfully submitted,

Eric J. Reynolds, Director
Office of the Children's Ombudsman

2023 ANNUAL REPORT

OFFICE OF THE CHILDREN'S OMBUDSMAN

RICHMOND, VIRGINIA

The Office of the Children's Ombudsman
2023 Annual Report

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Office of the Children's Ombudsman
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COMMONWEALTH of VIRGINIA
Office of the Governor

Office of the Children's Ombudsman
Eric J. Reynolds, Esq., Director

A MESSAGE FROM THE CHILDREN'S OMBUDSMAN

I am pleased to present the 2023 Annual Report of the Virginia Office of the Children's Ombudsman (OCO). This Annual Report summarizes the work of the OCO in State Fiscal Year 2023 covering July 1, 2022, through June 30, 2023.

The OCO performs three main functions regarding Virginia's child welfare system. We *investigate* individual Child and Family Services cases – cases involving prevention services, child protective services, and foster care - to ensure that laws and policies are followed. We *advocate* for legislative, regulatory, or policy changes to improve Virginia's child welfare system. We *educate* individuals in understanding and navigating the child welfare system and connecting them with appropriate resources.

The OCO was created in part to add a level of accountability in our child welfare system. I often say that the system needs to function properly for all involved - the children, the parents, extended family members, and the agencies and local departments of social services that operate within the system. Thus, as we review individual cases that come to our attention, we hope to identify when the system is not working well and then try to help the participants find ways to make it better.

That may mean recommending specific training for the local department and encouraging them to learn and comply with state guidance. It may be encouraging a parent to consider taking some action that could resolve their issue or help their case. We may help a parent by explaining the reasons why a local department took a certain action or made a particular decision that the parent did not quite understand. We may also identify a flaw inherent in the system itself –a law, regulation, or policy - that needs to be adjusted or fixed.

<u>What will you find in this Report?</u>
Section 1 of this Annual Report gives more details about the functions of this Office and the role we play in Virginia's child welfare system. Section II provides important data collected from the complaints we received and the case investigations we conducted. This section also includes examples of cases we reviewed and how the OCO assisted families and agencies. In Section III, we discuss the cases involving child fatalities that came to our attention during the year. In Section IV, we summarize our involvement in various advocacy projects and other initiatives. Section V closes out the report with recommendations for legislative and policy changes and budgetary proposals.

I want to thank the administration of Governor Glenn Youngkin and the Virginia General Assembly for their support of this Office and its mission. I am also grateful for the support and

assistance from Attorney General Jason Miyares and the Office of the Attorney General, Commissioner Danny Avula and the Virginia Department of Social Services, and the leadership for the Virginia League of Social Services Executives.

I look forward to continuing to work with Governor Youngkin's administration, our state legislators, the Commonwealth's social services agencies, and the private child welfare providers and advocacy groups in improving Virginia's child welfare system.

Eric J. Reynolds, Director
Office of the Children's Ombudsman

OFFICE of the CHILDREN'S OMBUDSMAN

Executive Summary

FUNCTIONS AND ACTIVITIES OF THE OCO

The OCO receives complaints from the public with respect to children who (i) have been alleged to have been abused or neglected, (ii) are receiving child protective services (CPS), (iii) are in foster care, or (iv) are awaiting adoption. The OCO can investigate complaints that allege that administrative acts taken regarding such children by the Virginia Department of Social Services, local departments of social services, child-placing agencies, or children's residential facilities were:

- contrary to law, rule, or policy;
- imposed without an adequate statement of reason; or
- based on irrelevant, immaterial, or erroneous grounds.

We can also investigate child fatalities when the child victim's family was involved with CPS or foster care prior to, or at the time of, the child's death. The OCO can recommend and advocate for changes in law, regulation, or policy to improve Virginia's child welfare system. The OCO also can assist constituents in understanding and navigating the child welfare system. The OCO operates under the guiding principles of independence, impartiality, and confidentiality to best serve its constituents.

COMPLAINTS AND INVESTIGATIONS

Data.

Data reported in this Annual Report reflect our work within the state Fiscal Year 2023 which ran from July 1, 2022, through June 30, 2023.

Complaint Data.

The OCO received a total of 446 complaints in Fiscal Year 2023. This is an increase of 165% compared to Fiscal Year 2022 during which time we received 168 complaints. Increases in the number of complaints received are expected as more constituents become aware of the OCO. Of the complaints received, 77% moved beyond the intake stage to become a preliminary assessment.

The most common allegations from complainants were (i) inadequate services (e.g., services did not meet the needs of the children or parents, lack of provider referrals, delays in services); (ii) improper family assessments or investigations (e.g., no interviews of siblings or other collaterals, no observation of home environment where

the alleged abuse took place, no review of important records); (iii) placement changes; (iv) visitation (visits were limited, delayed, or infrequent); (v) improper validation or screening out of CPS referrals; and (vi) foster care diversion. Many complainants also alleged agency bias against them, unresponsiveness and communication issues, and lack of family engagement (e.g., no family partnership meetings, no contact with relatives).

Investigations Data.

Of the complaints received in FY 2023, the OCO initiated 15 investigations. Of these, 14 investigations focused on local departments of social services and one investigation involved a licensed child placing agency (LCPA).

Recurring Issues, Findings, and Recommendations.

Support for Alternative Living Arrangement Caregivers.

The OCO received several complaints from relatives who were caring for children under alternative living arrangements (ALAs), which are used by many local departments of social services as an alternative to placing children in formal foster care. Among the allegations made by the relative and fictive kin caregivers were the following:

- They were not provided any financial support to take care of the children.
- They were not given the option to become an approved foster home for the children.
- They had challenges with supervising the parents' visits with the children.

To address these issues in the cases we reviewed, we made the following recommendations:

- Family partnership meetings (FPMs) should be held as soon as the need for an ALA is identified to discuss options for kinship caregivers to ensure the family receives the necessary financial support and services.
- Developing safety plans that clearly set out terms and conditions and the expectations of each party, including visitation arrangements for the parents and the supports to be provided each party to facilitate the arrangement.

Documentation.

We found that documentation was often lacking in most of the cases we reviewed in FY 2023. Information properly documented can often help us find answers to complainants' questions and help us resolve complainants' allegations without our office having to contact the local department and disrupt staff's busy schedules.

Documentation is even more important for the local departments, as the historical information that is captured is invaluable when there are worker changes, new referrals, or case transfers.

Placement Changes.

We received several complaints involving children who experienced multiple placement changes without any of the required procedures taking place. When a change in placement occurs, local departments should follow the procedures set out in state guidance in the VDSS Child and Family Services Manual, Part E, Section 6.10.

Foster Parent Expectations.

We reviewed several cases where the actions of the foster parents complicated the efforts to achieve permanency for the children. Foster families should be given realistic expectations about the goals of foster care. Foster parents should be provided meaningful training that equips them with the necessary skills to support the children's natural relationships with their parents and cultural upbringing.

Communication.

In several cases we reviewed, there was a breakdown in communication among family services specialists, licensed child placing agencies (LCPA), and LCPA-licensed foster families. Foster care agreements should be reviewed and discussed before children are placed in LCPA homes to ensure that there is a clear understanding of the roles, responsibilities, and expectations between child welfare professionals and families serving children in foster care.

We also reviewed cases that demonstrated a breakdown in communication between local departments' internal CPS and foster care units. The lack of interdepartmental communication between the CPS and foster care units adversely impacts service delivery, case planning, and trust between the families and the local department.

CHILD FATALITIES

We received 50 notifications of child fatalities that met our statutory criteria in FY 2023, compared to 31 such notifications received in FY 2022. Nine children were in foster care at the time of their death. Twelve of them were involved in open CPS cases at the time of their death: seven CPS Family Assessment cases, including three Substance Exposed Infants (SEI) Family Assessments; three CPS investigations; and two In Home Services cases.

Twenty-seven of the children were aged birth to six months. Eleven children were between the ages of one and five years. Nine were five to eighteen years old.

Of the 50 child fatality notifications we received, eighteen of the children were reported as substance exposed at the time of their birth. In 27 cases reported to us, there was a history of CPS involvement related to parental substance use, including six cases where siblings of the decedent children were reported as substance exposed at their births.

Unsafe sleep, such as co-sleeping and unsafe sleep surfaces, continues to be a leading factor in child deaths among the cases reported to the OCO, with 21 children's deaths reported to the OCO (42%) tied to circumstances indicating unsafe sleep conditions. The OCO remains very concerned with the number of children born substance exposed that die within six months of birth. We recommend a review of the protocols in place that are established in law, regulation, and policy and across agencies to ensure that these children are better protected.

RECOMMENDATIONS FOR SYSTEM IMPROVEMENT

Legal Representation for parents in child dependency cases

The judicial system plays an important role in the child welfare system. In Virginia, the number of attorneys willing to accept court appointments to represent parents in child welfare cases has decreased dramatically due to low compensation and lack of training and support. As a result, parents are not getting the legal assistance needed to protect their custodial and residual parental rights over their children.

The OCO recommends consideration of the following actions:

- Increase the cap on the rate of compensation paid to attorneys who are appointed to represent parents.
- Direct the Judicial Council to develop standards of performance with which court-appointed attorneys for parents would be required to comply.
- Establish demonstration sites to pilot a multidisciplinary model of legal representation for parents that has been shown to decrease the amount of time children remain in foster care in other states.
- Direct the Virginia Department of Social Services to amend its Child and Family Services State Plan to claim federal Title IV-E administrative costs for the provision of legal representation for children and parents in child dependency cases.

Safe and Sound Task Force initiatives

The OCO supports the following initiatives arising from the work of the Safe and Sound Task Force:

- Kinship Care/Alternative Living Arrangement Legislation to improve support for relatives and fictive kin who seek to care for children and keep them out of formal foster care.
- Build out the continuum of high-quality services and placements for children in foster care at all levels of care.

Workforce support for local departments of social services

The OCO recommends efforts to support the family services workforce of local departments of social services, including the development of a family services training academy that will better prepare new workers and implementing recommendations to address the staffing issues identified by the recent report on Child Protective Services issued by the Office of the State Inspector General in September 2022.

Strengthening and preserving families

The OCO recommends expanding the availability of primary and secondary prevention services so that we can ensure the safety of more young and vulnerable children, such as home visiting programs. The OCO also recommends the implementation of the Whole Family Model (also called "2Gen"). Both models of supporting families have been shown to help prevent child maltreatment.

Support for Older Foster Youth

<u>Driver's licenses.</u>

VDSS should partner with the Department of Motor Vehicles, the Virginia Department of Education, and the Bureau of Insurance at the State Corporation Commission to determine necessary amendments to laws or policies to support the following:

- Better access for youth in foster care to driver's education courses and resources to meet the guided driving requirements.
- Accommodations for youth in foster care regarding specific application requirements for proof of identity, residence, etc.
- More conducive policy terms governing insurance and liability issues for foster parents and local departments of social services.
- Exploring ways to reduce financial barriers associated with license and learner's permit applications, driver's education courses, and insurance premiums and deductibles.

<u>Workforce Development.</u>

The Department of Labor and Industry (DOLI) and the Department of Aging and Rehabilitative Services (DARS) have workforce development programs that can assist

older youth in foster care transition to adulthood. Staff at local departments of social services and other agencies that work directly with youth in foster care should be made more aware of these opportunities and be provided information as to how to connect youth with the appropriate DOLI and DARS offices.

OFFICE of the CHILDREN'S OMBUDSMAN

1. FUNCTIONS AND ACTIVITIES OF THE OCO

a. Governing Statutes

The Office of the Children's Ombudsman (OCO) was created by the General Assembly in 2020 "as a means of effecting changes in policy, procedure, and legislation; educating the public; investigating and reviewing actions of the Virginia Department of Social Services (VDSS), local departments of social services (LDSS), licensed child-placing agencies, or child-caring institutions; and monitoring and ensuring compliance with relevant statutes, rules, and policies pertaining to child protective services and the placement, supervision, and treatment of, and improvement of delivery of care to, children in foster care and adoptive homes."[1] The statutes creating and governing the OCO are found in Chapter 4.4 of Title 2.2 of the Code of Virginia.

This Annual Report covers our work during State Fiscal Year 2023, which began on July 1, 2022, and ended on June 30, 2023. Our 2022 Annual Report covered the period from June 2021, when the OCO became operational, through September 30, 2022. This year, we decided to align the scope of our Annual Reports with the State Fiscal Year. To facilitate year-to-year comparisons in the data shared in this Report, we included data from State Fiscal Year 2022 along with this year's data as opposed to data from our 2022 Annual Report.

b. Investigate, Advocate, Educate

Investigate. The OCO receives complaints from the public with respect to children who (i) have been alleged to have been abused or neglected, (ii) are receiving child protective services (CPS), (iii) are in foster care, or (iv) are placed for adoption. The OCO can investigate complaints that allege that administrative acts taken regarding such children by the Virginia Department of Social Services, local departments of social services, child-placing agencies, or children's residential facilities were:

- contrary to law, rule, or policy;
- imposed without an adequate statement of reason; or
- based on irrelevant, immaterial, or erroneous grounds.

We can also investigate child fatalities when the child victim's family was involved with CPS or foster care prior to, or at the time of, the child's death. The OCO has the authority

[1] Virginia Code § 2.2-439.

to pursue all necessary actions, including legal actions, to protect the rights and welfare of children receiving child protective services, in foster care, or placed for adoption. We do not have the authority to review or investigate complaints about court decisions, court orders, or the actions of judges or attorneys; child custody, visitation, or support cases; school issues or educational services; the actions of law enforcement officers; or employment or personnel issues within a local department of social services.

Advocate. We identify trends and issues in the cases we review and can recommend and advocate for changes in legislation, policies, and procedures to improve Virginia's child welfare system. Much of our advocacy takes place in workgroups, advisory boards, and other child welfare stakeholder groups. In addition, as required by law, the OCO must submit an annual report to the Governor, the VDSS Commissioner, and the General Assembly concerning OCO activities and recommendations.

Educate. We help individuals navigate Virginia's child welfare system, provide information to help them understand why a local department took a certain action and point them to other avenues that may be available to resolve their questions or concerns. We also help connect individuals and agencies with resources that may address a particular need.

c. OCO Guiding Principles

To ensure best practices in fulfilling our statutory responsibilities, the OCO abides by the following principles:

Independence: The OCO is dedicated to remaining free from outside control, limitation, or influence to ensure that our investigations, findings, and recommendations are based solely on a review of the facts and law. We operate within the Office of the Governor but are not under any Secretariat so that we can maintain our independence from the authorities that oversee the agencies that are subject to our investigative authority.

Impartiality: The OCO is dedicated to reviewing each complaint in an impartial and fair manner free from bias and conflicts of interest. We treat all parties without favor or prejudice.

Confidentiality: The OCO is dedicated to protecting the confidentiality of all information and records obtained in the performance of our duties. We limit disclosure in accordance with applicable law.

d. Staff

Eric Reynolds, *Director.* Eric was appointed Director of the OCO in June 2021. He previously served as staff attorney for the Court Improvement Program in the Office of the Executive Secretary for the Supreme Court of Virginia and was an Assistant Attorney General with the Virginia Office of the Attorney General in Richmond, representing and advising the Virginia Department of Social Services, the State Executive Council for Children's Services and the Office of Children's Services, the Department of Aging and Rehabilitative Services, and the Department of Medical Assistance Services. Prior to working for the state, he was in private practice, focusing on family law and serving as a court-appointed guardian ad litem for children and counsel for parents in child custody and child welfare cases. He is a graduate of the University of Richmond School of Law.

Jane Lissenden, *Policy Analyst*. Jane joined the OCO in August 2021. As policy analyst, she participates in the development and implementation of policies and procedures for the Office. She is engaged in case reviews and outreach efforts and assists with special projects and reports. Prior to this role, Jane served for 15 years as Training Coordinator with the Court Improvement Program in the Office of the Executive Secretary at the Supreme Court of Virginia. Jane is a graduate of James Madison University, with a Bachelor of Science degree in Public Administration and a minor in Criminal Justice.

Destiny Allen, *Investigations Analyst*. Destiny served as a School Social Worker for Chesterfield County Public Schools where she worked closely with students and their families, school personnel, and community partners to meet students' academic needs, issues, or concerns. She is a graduate of the University of Virginia's College at Wise, with a Bachelor of Science degree in Sociology, and a minor in Administration of Justice. Destiny earned her Master of Social Work degree with a concentration in Administration, Planning, and Policy from Virginia Commonwealth University, School of Social Work.

Daniela Sanzetenea, Investigations Analyst. Prior to this role, Daniela served as a Bilingual Family Services Specialist as a foster care worker for a local department of social services where she supported, advocated for, and collaborated with English and Spanish speaking children and families. She is a graduate of George Mason University, with a Bachelor of Arts in Psychology and a minor in Criminology. She earned her Master of Social Work degree with a concentration in Administration, Planning, and Policy from Virginia Commonwealth University, School of Social Work. Daniela left the OCO in the spring of 2023 for an opportunity to serve families directly for a local department of social services.

Denise Dickerson, *Intake Analyst*. Prior to coming to this office, Denise was the Program Manager for the Interstate Compact on the Placement of Children (ICPC) and the Interstate Compact on Adoption and Medical Assistance (ICAMA) at the Virginia Department of Social Services. Prior to this position, she was the Director of Operations at the Richmond Redevelopment and Housing Authority; the Director of Social Services in the City of Petersburg; the Assistant Director of Administration at the Richmond Behavioral Health Authority; and Assistant to the Deputy City Manager in the City of Richmond. She has a Bachelor of Arts degree in Sociology from Iona College in New Rochelle, New York and a Master's degree in Public Administration from Virginia Commonwealth University.

Internships and Externships. The OCO partners with local colleges and universities to provide internship and externship opportunities for students interested in child welfare. Law interns from the University of Richmond and College of William and Mary support the OCO with legal research, case reviews, and training development. The OCO has also worked with Virginia Commonwealth University's Master of Social Work program to provide field education for students who are interested in working in the child welfare field.

Staffing Level. The number of calls and complaints received by the OCO steadily increased over this past fiscal year. To meet this increased demand, a part-time Intake Analyst was hired. This position is responsible for answering phone calls from constituents, assisting with the intake process, and documenting case information in our case management tracking system.

The OCO was originally funded for 4.5 positions. We are carefully monitoring caseloads and timeframes for responses to constituents to ensure that we are effectively and efficiently addressing matters that come to our attention.

Training and Professional Development. The OCO Director is a member of the United States Ombudsman Association (USOA) and participates in the USOA's Child and Family Chapter, which includes over a hundred members from twenty-seven states. This group meets monthly to discuss topical and operational issues relevant to the functions of a child welfare ombuds program.

OCO staff attended various trainings and professional development opportunities throughout the fiscal year, including:

- USOA Annual Conference, September 13-16, 2022; Portsmouth, NH
- VDSS Permanency Conference, December 6-7, 2022, Hampton, VA
- VDSS Prevention Conference, April 3–4, 2023; Midlothian, VA
- Family Home Visiting Conference, May 17, 2023; Midlothian, VA

- Family Seeing Conference, June 20-23, 2023, Virtual

e. System Engagement.

The child welfare system is comprised of many stakeholders serving a variety of roles and responsibilities. Improvements to the system cannot be made without meaningful collaboration among the individuals and leaders from local and state government agencies and private advocacy and provider organizations. Several groups in Virginia meet regularly to discuss trends, issues, and initiatives with the goal of improving various aspects of the child welfare system.

The OCO actively participates in many of these groups, including the Child Welfare Advisory Council, the Children's Justice Act/Court-Appointed Special Advocate Advisory Committee, the VDSS Tribal Roundtable, the Family and Children's Trust Child Abuse and Neglect Committee, and the Virginia League of Social Services Executives' Child and Family Services Committee. The OCO also regularly attends meetings of the State Board of Social Services, the State Executive Council for Children's Services, the Virginia Bar Association's Commission on the Needs of Children and Youth, and the Virginia Commission on Youth.

In addition, the OCO engaged in listening sessions throughout the year with various stakeholder groups to learn more about their specific role within the child welfare system. Staff toured the United Methodist Family Services Richmond campus with Chief Executive Officer Nancy Toscano, Ph.D., LCSW, to learn more about the range of services they provide children in foster care. Director Reynolds also met with representatives of Early Impact Virginia and Children's Advocacy Centers of Virginia to learn more about the prevention and protection services their organizations provide to families and communities.

Rural Summit. After hearing how many complaints submitted to the OCO are from Virginia families living in the southwestern part of the Commonwealth, First Lady Suzanne Youngkin connected Director Reynolds with the United Way of Southwest Virginia, which organizes the annual Rural Summit to support the Commonwealth's rural communities. Director Reynolds was invited to be a member of the planning committee for the 2023 Summit held in Abingdon in October 2023. The 2023 Summit focused on workforce development and received support and guidance from the First Lady, several members of the Governor's Cabinet, including the Secretaries of Labor and Industry, Education, and Health and Human Resources, and state agency leaders. With local departments of social services experiencing significant staffing challenges, the OCO values such efforts that promote workforce development in the human services sector, especially in Virginia's rural communities.

Out-of-Family CPS Investigations Advisory Committee. Out-of-family CPS investigations respond to allegations of child abuse and neglect by caretakers that are outside the child's home such as teachers and day care workers. The Advisory Committee was convened this past year to advise the State Board of Social Services on the effectiveness of the current policies and standards governing CPS Out-of-family Investigations, and to make recommendations for any necessary changes. OCO Investigator Destiny Allen continues to participate in the Advisory Committee meetings to assist in the identification and preparation of recommendations for regulatory or policy amendments to be considered by the State Board of Social Services in this current fiscal year.

Additional Daily Supervision Workgroup. The OCO was invited by VDSS to participate in its Additional Daily Supervision (ADS) workgroup to identify gaps in the Virginia Enhanced Maintenance Assessment Tool (VEMAT) and to make recommendations for changes, including exploring whether a better assessment tool could meet the needs of children in foster care and lead to better outcomes. The workgroup agreed to pursue using the Virginia Child and Adolescent Needs and Strengths (CANS) assessment as part of the future ADS process and recommends including a matrix that incorporates resource families' activities as part of the calculation for funding.

VEMAT EXPLAINED

Maintenance payments are provided to assist in meeting the basic needs of a child. Enhanced maintenance payments – calculated using the Virginia Enhanced Maintenance Assessment Tool (VEMAT) - are available when a child has a clearly defined need that requires the caregiver to provide increased support and supervision due to the child's behavioral, emotional, or physical and personal care requirements. When a child first enters foster care, it is expected that their needs may be higher due to the circumstances that led to the child's removal and the impact of the removal itself. However, as the child stabilizes in the foster home and the child's needs are met consistently over time, it is expected that the child's on-going need for support and supervision would decrease, and therefore the VEMAT score would decrease with subsequent reassessments. Virginia's practice of providing basic and, when applicable, enhanced maintenance payments to foster or adoptive parents is consistent with federal law and regulation.

The OCO received several complaints related to the application of VEMAT in foster care cases. It was beneficial to be part of these

discussions as VDSS considers how resource families can be better supported as they care for children with higher needs.

f. Education Efforts

Education is an important part of the OCO mission. We continue to provide general information about the child welfare system to constituents and help explain CPS and foster care case processes to complainants. We also educate partner agencies and stakeholders about the OCO and our work advocating for system change. During FY 2023, our staff presented and participated in various training events throughout the state.

Director Reynolds presented at the annual Children's Services Act conference in Roanoke in November 2022, the meeting of the Family and Children's Trust Board in March 2023, and the Virginia Coalition of Private Provider Associations (VCOPPA) at their Critical Issues Symposium held virtually in May 2023. He also presented information about the office and took questions in virtual meetings with staff from local Court-Appointed Special Advocate (CASA) programs, groups of foster parents and kinship caregivers as well as organizations supporting foster and kinship caregivers and birth parents. In April 2023, Director Reynolds participated in training for attorneys for the Child Dependency Continuing Legal Education seminar series presented by the Virginia State Bar and the Virginia Poverty Law Center.

Investigations Analysts Daniela Sanzetenea and Destiny Allen participated in the Virginia Commonwealth University Child Welfare Stipend Program (CWSP) case simulation workshop in February 2023. The workshop provided an opportunity for Sanzetenea and Allen to engage in an interactive discussion with students and other workshop participants about best practices in child welfare, skill development, policy, and guidance. The Investigators were also able to share their professional insight and provide feedback to CWSP students regarding their case simulation performances.

In March 2023, Investigator Sanzetenea presented to the Arlington/Alexandria CASA program - "CASA Conversation with Virginia's Office of the Children's Ombudsman." Her presentation provided an overview of the OCO and highlighted some of the trends we identified during the year. Investigators Sanzetenea and Allen also presented information about the OCO at the Latinos in Virginia Empowerment Center's staff meeting in March 2023, and learned of their program goals and objectives, and the services offered to the Spanish-speaking communities they serve in Virginia.

2. COMPLAINTS AND INVESTIGATIONS

a. Process

The OCO receives complaints via email, online form, US mail, and telephone. Complainants are asked to complete the OCO complaint form, on which they can provide relevant information about the case participants, the specific concerns, and what they deem to be a reasonable response.

All complaints are initially assessed to determine if the OCO has jurisdiction and if the complainants' concerns can be substantiated upon a file review. Case records from the on-line child welfare database are reviewed to better understand a family's social services history. After gathering this information, the OCO determines what action can be taken, which can include any of the following:

- Referring the complainant to an appropriate agency for resolution of concerns.
- Providing the complaint with information about their case or about other remedies that may be available.
- Requesting assistance from VDSS.
- Initiating an investigation.

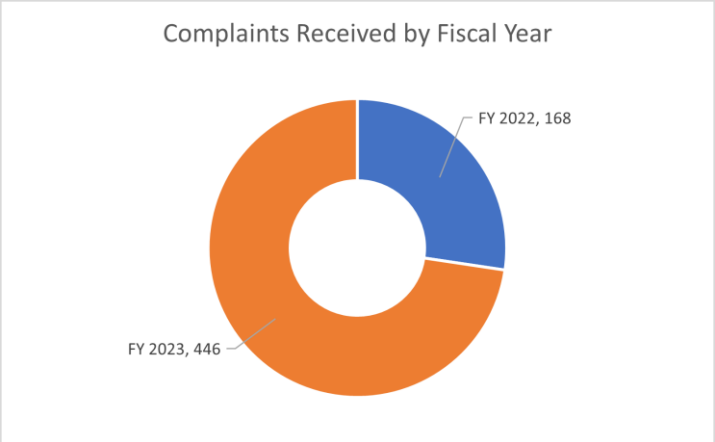
b. Data

Our Case Management Tracking System helps us collect data about where complaints are coming from, who is filing them, the subject agencies, and what issues are being raised. All data in our Annual Reports reflect our work within the state fiscal year which runs from July 1st through June 30th.

In FY 2023, the OCO began providing quarterly data reports to the Governor's Chief of Staff and the Secretary of Health and Human Resources. These reports are also available on our website: https://www.oco.virginia.gov/reports/.

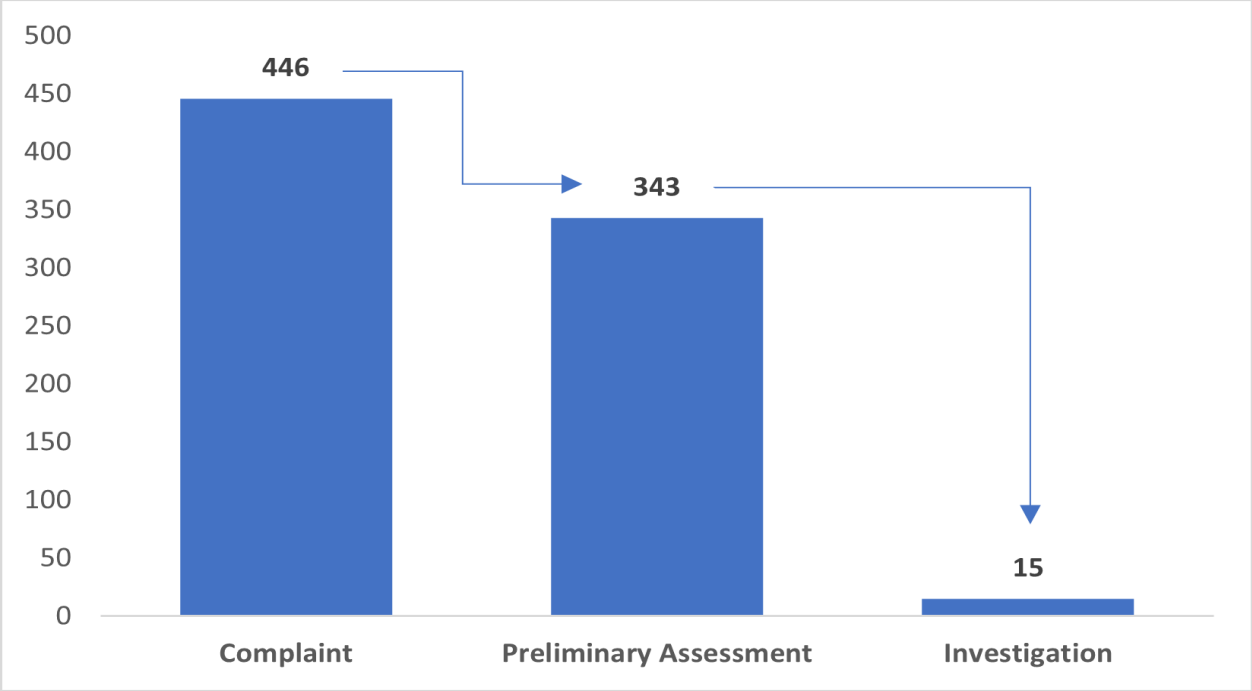
Complaints

The OCO received a total of 446 complaints in Fiscal Year 2023. This is an increase of 165% compared to Fiscal Year 2022 during which time we received 168 complaints. Increases in the number of complaints received are expected as more constituents become aware of the OCO.



Eighty-eight of Virginia's 120 local departments of social services were the subject of the complaints we received during FY 2023. However, the number of complaints received for a particular agency is not necessarily representative of that agency's practice as not all allegations made in the complaints submitted to the OCO were substantiated.

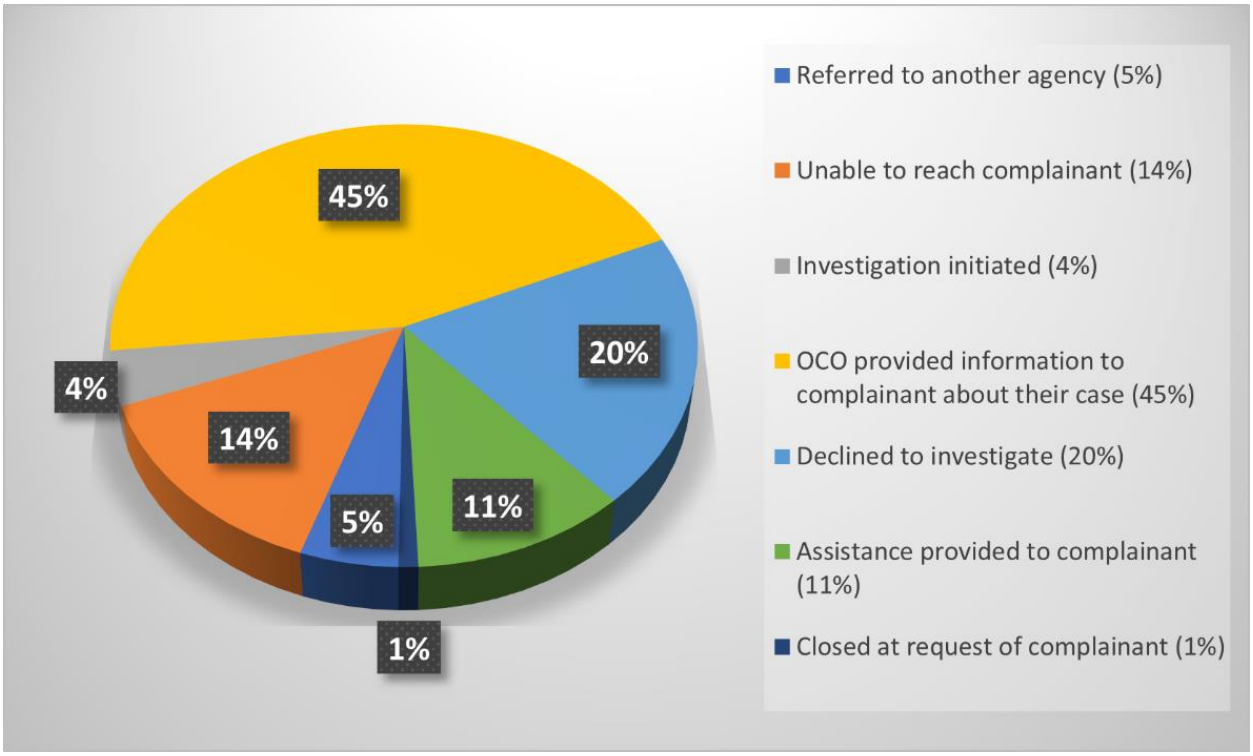
Of the complaints received, 77% moved beyond the intake stage to become a preliminary assessment. This means that the allegations in the complaint related to a child alleged to be abused or neglected, was receiving child protective services, was in foster care, or placed for adoption.



All cases that became a preliminary assessment were reviewed to determine whether the complainant's allegations could be substantiated. This assessment included a review of the information submitted by the complainant and a review of the case records in the Child Welfare Information System (OASIS), the statewide online social services database, if available, and, if necessary, a request for more information from the complainant or local department.

Cases that did not rise to the level of investigation were still reviewed and the OCO made every attempt to help or provide clarification to the complainant about the concerns that were raised. Any recommendations for improved practice that stemmed from assessments were provided to the local department and shared with VDSS and the VDSS Regional Offices.

The chart below illustrates how preliminary assessments were closed by the OCO during FY 2023:



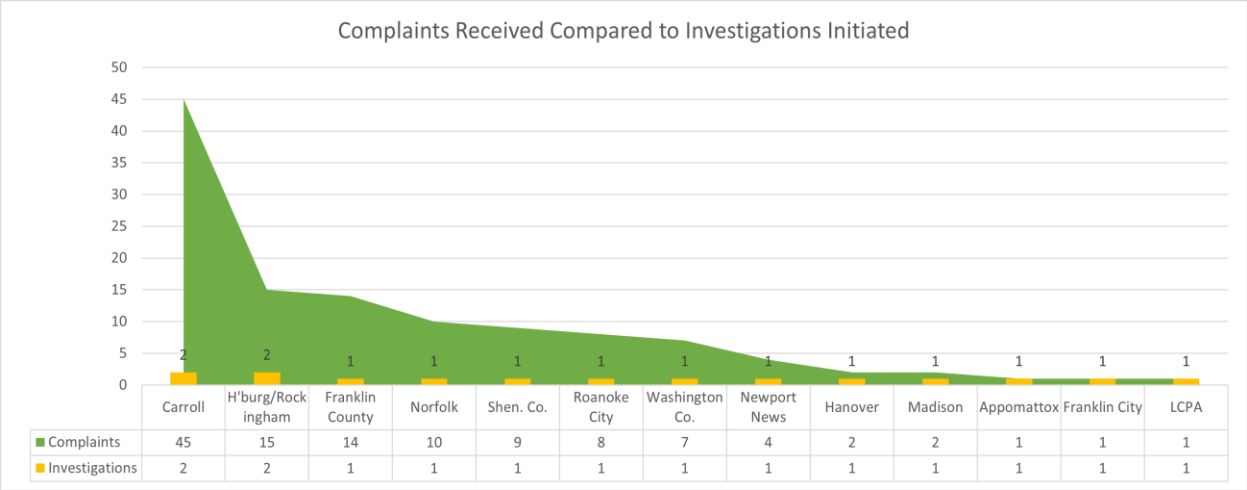
The OCO provided the complainant with specific information about their complaint to better explain why the agency took a certain action in 45% of the cases we assessed. Assistance was provided in 9% of the cases we assessed, in which OCO staff contacted the local department to help resolve the issue raised by the complainant. Five percent of the cases we assessed were referred to another agency. The cases that we declined to investigate were those that were outside of OCO jurisdiction and those for which we could not substantiate the allegations. In 14% of the cases we assessed, we were unable to subsequently contact the complainant.

The most common allegations from complainants were (i) inadequate services (e.g., services did not meet the needs of the children or parents, lack of provider referrals, delays in services); (ii) improper family assessments or investigations (e.g., no interviews of siblings or other collaterals, no observation of home environment where the alleged abuse took place, no review of important records); (iii) placement changes; (iv) visitation (visits were limited, delayed, or infrequent); (v) improper validation or screening out of CPS referrals; and (vi) foster care diversion. Many complainants also alleged agency bias against them, unresponsiveness and

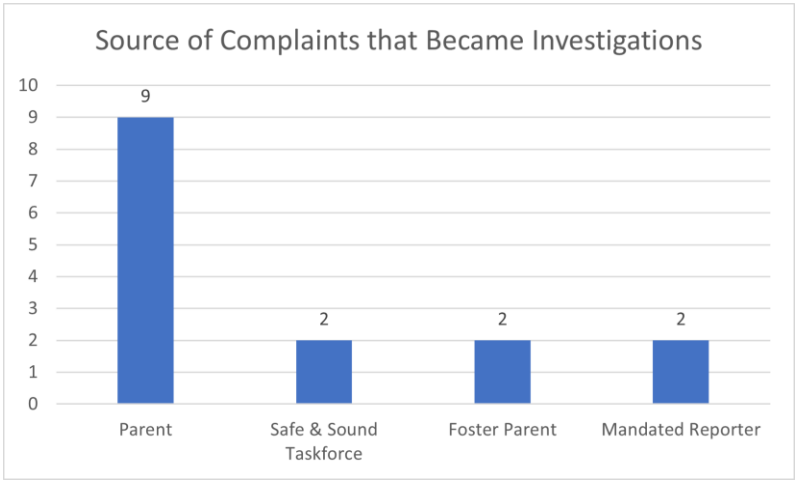
communication issues, and lack of family engagement (e.g., no family partnership meetings, no contact with relatives).

Investigations

Of the complaints received in FY 2023, the OCO initiated 15 investigations. Of these, 14 investigations of the actions of local departments of social services and one investigation involved a licensed child placing agency (LCPA). Three of these investigations have been finalized with a written report of our findings and recommendations provided to the agency, VDSS, and the complainants. Eight investigations have been completed but the written reports are still being prepared.



The OCO can accept a complaint from anyone, or the Director can initiate a complaint on his own initiative. In FY 2023, as it was in FY 2022, most of the complaints that resulted in investigations were from parents.



The OCO saw a decrease in the number of investigations initiated in FY 2023 from FY 2022, despite a significant increase in the number of complaints received. However, these numbers do not reveal the full picture. The OCO resolved many concerns at the preliminary assessment stage by consulting with the local department or providing additional assistance and support to address the complainant's concerns.

In our continual efforts to improve our efficiency and effectiveness and to ensure that we are responsive to complainants, we have adjusted our practices such that we expect to initiate more investigations in the future. This does not necessarily mean that findings will be made, but it will provide more accountability and a better way to meaningfully recommend systemic improvements.

c. Recurring Issues, Findings, and Recommendations

Support for Alternative Living Arrangement Caregivers.
The issues raised in complaints received in FY 2023 regarding alternative living arrangements (ALA) contrasted somewhat with those described in our 2022 Annual Report in that many of the our complaints came from the alternative caregivers (relatives or fictive kin) rather than from the children's parents.

Many local departments of social services use ALAs as an alternative to placing children in formal foster care. The parent is asked to identify a relative or family friend (fictive kin) with whom the child could temporarily reside until the parent's home is deemed safe for the child to return. The parent and relative or fictive kin caregiver are requested to sign a safety plan that outlines the conditions of the arrangement with which they agree to comply. Noncompliance with the safety plan could result in the local department initiating court action such as requesting a protective order or removal order.

As noted in our 2022 Annual Report, the practice, while beneficial to keep children with someone with whom they are familiar, is fraught with serious legal and practical challenges. Because of its informality and the lack of court oversight, the practice has prompted many child welfare experts to refer to it as "hidden foster care" or "shadow foster care".

Among the allegations made by the relative and fictive kin caregivers were the following:

- They were not provided any financial support to take care of the children.
- They were not given the option to become an approved foster home for the children.
- They had challenges with supervising the parents' visits with the children.

In a few cases, the local departments told the relative caregivers that foster care was not an option and that it would be best for them to file for custody of the children. The relatives were reluctant to do so due to the adversarial nature of such a court proceeding that would detrimentally affect their relationship with the parents. Relatives also said that they did not have the time or necessary knowledge to file custody petitions. Some resided in other localities making it difficult for them to file court petitions in the jurisdiction where the children lived.

In some of the cases we reviewed, the relatives were already approved foster parents in other jurisdictions. One local department told a relative who was willing to become an approved foster home that if the children entered foster care, they would be separated and placed in group homes in other parts of the state. No consideration was given to these relatives becoming the formal foster care placement.

In one case, grandparents agreed to care for a sibling set of six grandchildren. The grandparents continued to express concern to the local department about the expenses of providing for so many children. The children attended different schools and were involved in after-school activities. The transportation costs and logistics were overwhelming. The grandparents eventually fell behind on their utility bills and had their power shut off. Despite the grandparents having been an approved foster home in a neighboring jurisdiction, the local department refused to consider having the children enter foster care so the grandparents could get the financial support as a kinship provider. The arrangement eventually broke down and the children entered foster care. However, by that time, the relationship between the local department and the grandparents had soured so much that they were not considered as a placement. The children ended up being separated into three different foster homes.

In many of the cases, the responsibility for supervising visits between the children and their parents was placed upon the kinship caregiver. Some kinship caregivers, however, experienced difficulties in scheduling visits with unresponsive parents and with the actual supervising when parents engaged in problematic behaviors.

To address these issues in the cases we reviewed, we made the following recommendations:

- Family partnership meetings (FPMs) should be held as soon as the need for an ALA is identified to discuss options for kinship caregivers to ensure the family receives the necessary financial support and services.
- Prospective kinship caregivers should be given information as to the options that are available that would best meet their needs, including becoming an approved foster family with the possibility of getting some requirements waived

under the state's kinship waiver process, the advantages and disadvantages of filing a petition for custody, and the availability of financial assistance to care for the needs of the children, which could include the Kinship Guardianship Assistance Program (KinGAP) for long-term support if they were to become an approved foster family.

- Developing safety plans that clearly set out terms and conditions and the expectations of each party, including visitation arrangements for the parents and the supports to be provided each party to facilitate the arrangement.

Documentation.
The Code of Virginia and federal law require that information be maintained in the state-approved Child Welfare Information System, OASIS, and that every child in foster care be tracked so that the Virginia Department of Social Services (VDSS) may monitor service delivery and planning for achieving permanency (§ 63.2-907). This includes children placed under a non-custodial foster care agreement. OASIS is Virginia's official system of record in which cases shall be documented and tracked. VDSS Child and Family Services Manual, Part E, Section 4.3.

We found that documentation was often lacking in most of the cases we reviewed in FY 2023. Documentation is important to the work of the OCO because it tells the story of the interaction between the agency and the family. Information properly documented can often help us find answers to complainants' questions and help us resolve complainant's allegations without our office having to contact the local department and disrupt the busy schedules of staff. Documentation is even more important for the local departments, as the historical information that is captured is invaluable when there are worker changes, new referrals, or case transfers.

The lack of documentation seen in many cases is often due to staffing shortages and the challenges of working with the obsolete OASIS. We understand that efforts are underway to replace OASIS with a more modern and workable system.

Placement Changes.
We received several complaints involving children who experienced multiple placement changes without any of the required procedures taking place. Family partnership meetings were not held at these critical decision points and key members of the children's support team were not involved in making placement decisions. We also found that proper transition planning did not take place in the cases we reviewed. Changes were often very abrupt leading to confusion for the foster families and more unexplained loss for the children.

When a child enters foster care, local departments are responsible for ensuring that children are placed in homes that are equipped to help them navigate their new environment, overcome any challenges unique to their own circumstances, and to assist in achieving permanency. State guidance requires family services specialists to consider several critical factors in making placement decisions, such as the children's health and safety, maintaining sibling connections, and taking "actions to minimize the trauma of separation, to build upon the strengths of the child and family, and to meet the child's special needs and best interests." VDSS Child and Family Services Manual, Part E, Section 6.3.

In some cases, the children were sent to school in the morning by the foster parents and then picked up after school by an agency worker to be taken to a new foster family without notice. They were never told of the change beforehand and they were not given the opportunity to retrieve any of their belongings, like clothes or their favorite toys, from the previous foster family.

In other cases where the child was being placed either back in the home of their parents or to a permanent placement with a relative or adoptive home, we found a lack of proper transition planning, which should have included steps to minimize causing additional trauma such as graduated overnight or weekend visits to assist children acclimate to their new environment and closure visits with the parents for children whose goal was adoption.

In some of these cases, the local departments' decisions to abruptly change the child's placement were based on urgent safety concerns. Even in such circumstances, the decision to change the placement should be made thoughtfully and steps should be taken to avoid or minimize the chaos and trauma inflicted on the children and families when placement decisions must be made quickly.

For example, in one case, the child was placed temporarily with a respite family whom they already knew while the local department addressed the safety concerns raised about the child's foster family. Once the safety issue was resolved, the child was returned to the initial foster family. Contrast this with another case in which the children were removed immediately upon receipt of a CPS complaint against the foster parent and placed with a new foster family. Within days, the CPS complaint was unsubstantiated, but the children were never returned to the initial foster family.

Placement stability is vital to children's social, emotional, and educational growth. Multiple placement changes can cause children to lose their sense of belonging and

develop distrust of the individuals placed in their lives to support them and can cause delays in achieving permanency for children. When a change in placement occurs, local departments should follow the procedures set out in state guidance in the VDSS Child and Family Services Manual, Part E, Section 6.10. Engaging the children's family and service providers and holding FPMs to discuss the placement change are key components of these procedures.

Foster Parent Expectations.
We reviewed several cases where the foster parents' misplaced expectations complicated the efforts to achieve permanency for the children. Some foster parents made it difficult for parents to talk to their children by phone or visit virtually by creating scheduling conflicts and prematurely cutting off the contact for questionable reasons. In a few cases we reviewed, the foster parents filed custody petitions in contravention of the approved foster care goals for the children.

Foster parents are asked to walk a difficult line between loving and protecting the children in their care and supporting the children's connections with their parents to achieve reunification when it is in the best interest of the child. This is a delicate balance and when it is accomplished, the outcomes for the children's family and the foster family can be positive. When this balance is not established, it can result in increased trauma for all parties involved.

Foster families should be given realistic expectations about the goals of foster care. In most cases, the initial goal for the children will be to return them to their parents. Foster parents should not be given false hope that they may be able to adopt long before a case has reached the point at which adoption should be considered as a permanency goal.

In many cases, however, we noted foster families who provided extraordinary love and care for children and played an essential part in helping those children achieve permanency. We need to celebrate these foster families and encourage others to consider engaging in this type of community service. Foster parents should be provided meaningful training that equips them with the necessary skills to support the children's natural relationships with their parents and cultural upbringing. We need to encourage foster parents to be resources rather than replacements for the children's parents.

Communication.
With many key professionals supporting children and families involved with the foster care system, state guidance encourages local departments' family services specialists to consistently engage and effectively communicate with families to gain

pertinent information, convey critical information, and make decisions that are in the best interest of children. In several cases we reviewed, there was a breakdown in communication among family services specialists, licensed child placing agencies (LCPA), and LCPA-licensed foster families. In one case, the miscommunication led to the foster parents' decision to notify of their intent to be released from their foster parent duties.

Foster care agreements should be reviewed and discussed before children are placed in LCPA homes to ensure that there is a clear understanding of the roles, responsibilities, and expectations between child welfare professionals and families serving children in foster care, including protocols for lines of communication between the foster families and the local departments. Foster care agreements are required to include a code of ethics and set out the mutual responsibilities pursuant to the Code of Virginia (§§ 63.2-900 and 63.2-902). Placement agreements should work in conjunction with other pertinent documents, such as foster care services plans, to include additional standards and expectations in caring for foster youth and children.

We also reviewed cases that demonstrated a breakdown in communication between local departments' internal CPS and foster care units. In one case, a biological parent voiced concern about the lack of communication and difference of case management when their case transitioned from CPS to foster care. In some cases, neither a case staffing nor a family partnership meeting was convened to review the reasons for removal, discuss the safety concerns of the family, and to share pertinent information needed to make well-informed decisions. In other cases, we found that there was little communication and collaboration between CPS in-home services staff and foster care staff working with the same family in dual in-home/foster care cases.

The lack of interdepartmental communication between the CPS and foster care units adversely impacts service delivery, case planning, and trust between the families and the local department. It is important that the family services specialists from both units engage in open, honest, and transparent conversations when it is determined that a child is unsafe and needs an out-of-home placement. This practice will ensure that there is a mutual understanding of the actions and decisions made during a CPS family assessment or investigation and to help with identifying next steps in opening and managing the foster care case.

d. Case Examples

Case #1

The OCO was contacted by a medical professional who was concerned about repeated referrals being screened out by a local department of social services. The referrals were reportedly screened out because the local department had previously investigated the family's situation. Our review of the case records indicated that in this original investigation, however, the alleged victim child's siblings had not been interviewed, which caused us to be concerned about their safety in the home. In assessing and screening out the subsequent CPS referrals involving the same family, the CPS intake staff had assumed that the previous investigation had been properly completed and thought that the siblings were interviewed. After we discussed our concerns with the agency, the agency opened a family assessment to ensure the siblings' safety and well-being.

Case #2

The OCO received a complaint from a mandated reporter who was concerned that repeated CPS referrals were being made and seemingly ignored. In our review of the local department's cases with the subject family and with others, we identified a systemic issue within the local department in its screening process. We found that the local department would screen out new CPS referrals if the agency had an open CPS in-home services case. The new CPS referrals were being screened out as duplicates, even though the allegations were new.

The agency was making note of the referrals in the in-home services case, but they were not being recorded in OASIS in a way that this information could be easily accessed for historical reasons. As a result, the allegations were never investigated or addressed within the open in-home services case. The practice also contributed to a break down in trust between the local department and others involved with the family.

We notified the local department's leadership of our findings, who took immediate steps to respond to the concerns and incorporate improved practices.

Case #3

The OCO received a phone call from a relative who was concerned about reports that were being made that were not being responded to by CPS. We reviewed the case records and discovered that the relative was apparently contacting local law enforcement, assuming that the reports would be shared with CPS. Unfortunately, these reports were not being shared by law enforcement. Upon becoming aware of this lapse in protocol, CPS and law enforcement worked together to reestablish procedures for sharing information between the two agencies. The local department

was able to then respond to the relative's concerns and engage the family in services to address the safety needs of the child.

Case #4

A complaint came in from an out-of-state relative of a young child who was placed in foster care shortly after birth. The complainant had custody of the child's two older siblings but was not notified of the child's entry into foster care until several months later. Once the complainant expressed interest in being the child's permanent placement after the parents' rights were terminated, the local department quickly began working with the complainant to place the child in their home, arranging for frequent visits and initiating the Interstate Compact on the Placement of Children (ICPC) process.

Placement with the complainant was scheduled, but the child's foster parent filed court documents requesting the court to maintain the child's placement with the foster parent. The foster parent then filed a petition for adoption of the child. The juvenile and domestic relations district court granted the foster parent's request to maintain the child's foster placement over the local department's objection. Shortly thereafter, the circuit court granted the adoption.

We investigated the matter and found that the foster parent had expected that they would be able to adopt the child when the child first went into their home. We also found that the foster parent started calling the child a different name almost immediately, continually questioned the local department's plan to find kinship caregivers for the child, and hindered some of the complainant's planned visits with the child.

The case highlights the importance of early identification of potential kinship caregivers and ensuring that foster parents have appropriate expectations. The case also demonstrates the complexity and competing interests when a child enters foster care at birth and lives with a foster parent for an extended period of time.

In this case, the foster parent's actions were entirely within the law and in what they deemed to be in the child's best interests. Unfortunately, their actions ran counter to state policy prioritizing kinship care. The complainant and their family went to extraordinary expense to work with the local department toward permanency for the child, including a lot of traveling and rearranging work and school schedules to visit the child. More importantly, the foster parent's actions caused the child and her siblings, who had started building a strong relationship with each other, to experience a significant loss.

3. CHILD FATALITIES

a. Statutory Authority

Pursuant to subsection B of Va. Code § 2.2-443, the OCO may investigate child fatality cases that occurred or are alleged to have occurred due to child abuse or child neglect in the following situations:

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

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

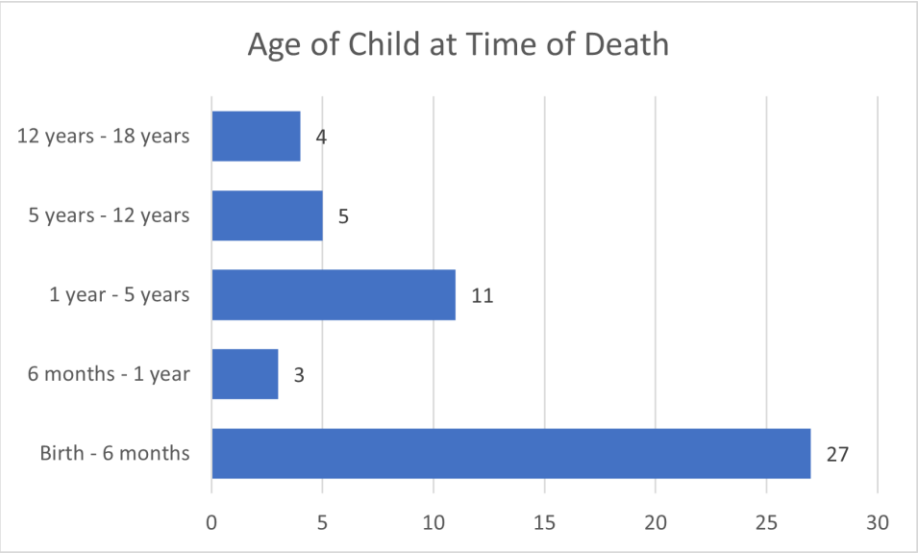
3. A child was returned home from foster care and there is an active foster care case.

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

b. Data

We received 50 notifications of child fatalities that met our statutory criteria in FY 2023, compared to 31 such notifications received in FY 2022. Nine children were in foster care at the time of their death. Twelve of them were involved in open CPS cases at the time of their death: seven CPS Family Assessment cases, including three Substance Exposed Infants (SEI) Family Assessments; three CPS Investigations; and two In-Home Services cases.

Ages. The ages of the subject children are broken down in the following graph:



Causes of death. The causes of death, as reported in the case records, included the following (some children may have had more than one cause listed):

- Sudden Unexpected Infant Death (SUID), associated with unsafe sleep (either co-sleeping or unsafe sleep surface): 6 children
- SUID, undetermined: 1 child
- Natural causes/serious medical conditions: 6 children
- Fentanyl toxicity/intoxication: 3 children
- Prescription drug overdose: 1 child
- Medical complications from being born substance-exposed: 2 children
- Vehicular accident: 6 children
- Household accident: 1 child
- Homicide: 2 children
- Accidental fatal gunshot wound: 1 child
- Suicide: 1 child
- Suffocation, accidental possibly due to unsafe sleep: 1 child

The causes of death of the remaining nineteen children were reported as undetermined or have yet to be determined as of the writing of this Report. Unsafe sleep is suspected for fourteen of these children.

Substance Exposed Infants. Of the 50 child fatality notifications we received, eighteen of the children were reported as substance exposed at the time of their birth. Four of these reports had been screened out. As noted above, three reports resulted in SEI Family Assessments that were open at the time of the children's death. Thirteen of the children reported as a substance exposed infant were under the age of six months at the time of their death, including five that were less than a month old.

Non-prescription drug use. In 27 of the 50 cases reported to us, there was a history of CPS involvement related to parental substance use, including six cases where siblings of the decedent children were reported as substance exposed at their births. The most prevalent non-prescription drugs for which parents tested positive in these cases were marijuana, methamphetamine, heroin, cocaine, and fentanyl. Three children died from fentanyl poisoning, aged 2, 5, and 6 years old.

Prior CPS history. In sixteen of the child fatality cases reported to us, there were allegations of neglect and inadequate supervision made prior to the child's death. Domestic and intimate partner violence was reported in fifteen of the cases and physical abuse of the decedent child's siblings was reported in seven cases. Other prior reports of child maltreatment included unsafe conditions of the home (in seven cases), sexual abuse against the decedent children's siblings (five cases), and medical neglect (four cases).

c. Analysis

- Unsafe sleep, such as co-sleeping and unsafe sleep surfaces, continues to be a leading factor in child deaths among the cases reported to the OCO, with 21 children's deaths reported to the OCO (42%) tied to circumstances indicating unsafe sleep conditions.
- The percentage of children who were born substance exposed is also high at 36%.
- Looking at the prior CPS history of the cases reported to the OCO, parental substance use was reported in 54% of the cases and domestic violence reported in 30%.
- The average number of CPS reports made prior to the death of the child was 2.6. In one case involving the death of a 5-year-old child, there were twenty CPS reports made over a span of eleven years on the family about the child and the child's siblings, half-siblings, and stepsiblings, including multiple reports of domestic violence, physical and sexual abuse, neglect, unstable housing, and unsafe conditions of the home. The allegations were reported to four different local departments of social services due to the family's frequent moves. Several of the reports were screened out, unsubstantiated, or unfounded. The children often recanted their prior disclosures of maltreatment, with some of them expressing fear of retaliation by the parents.

The OCO remains very concerned with the number of children born substance exposed that die within six months of birth. Most of these deaths were preventable. We recommend a review of the protocols in place that are established in law, regulation, and policy and across agencies to ensure that these children are better protected. Many of the current protocols depend on the willingness of parents to voluntarily

receive services, such as home visiting programs, substance use treatment, and in-home parent coaching. When parents choose not to engage in these services or miss vital medical appointments for the child, the child's risk of harm is greatly increased.

4. ADVOCACY PROJECTS

a. Kinship Care/Alternative Living Arrangement Legislative Proposal

Our 2022 Annual Report highlighted serious concerns with the common practice of informally "placing" children with relatives or fictive kin in an alternative living arrangement ("ALA") to divert the children from entering foster care, also known as foster care diversion or "hidden foster care." In these situations, parents are asked to voluntarily place their children in the physical custody of a relative or fictive kin during a CPS investigation or family assessment. The local department determines that the children are unsafe in their home or their safety would be at risk if they remained in the home. Instead of the local department going to court to request custody to place the children in formal foster care, the local department asks the parents to identify a relative or fictive kin that can care for the children on an informal and temporary basis. We identified several issues with this practice, as detailed in our 2022 Annual Report:

- Although these arrangements are voluntary, they are occurring at times when parents are in crisis and are often told that if they do not cooperate, the child(ren) will enter foster care. Parents reported that they often felt they were coerced into placing their children with someone else.
- Because these arrangements do not involve court oversight, there is no legal representation for parents when they are making these decisions.
- There is no set timeline for these arrangements. Although they are intended to be temporary, we reviewed many cases where they were in place for years.
- The relative or fictive kin caregiver has limited rights as the parent retains legal custody. This makes it difficult for the caregiver to meet the children's educational and medical needs. The children's safety may continue to be at risk as the parents can legally take them back at any time.
- State guidance provides a framework for this practice, but compliance varies from locality to locality. Because these are not foster care arrangements, parents are not receiving the services or support that they need to reunify with their children.

After our 2022 Annual Report was issued, the OCO worked closely with leaders from the Virginia Department of Social Services and from local departments of social services through the League of Social Services Executives to address the problems associated with foster care diversion and alternative living arrangements.

b. SB 396 Child Dependency Legal Representation Workgroup

Senate Bill 396, passed during the 2022 General Assembly, directed the OCO to "convene a workgroup to consider issues relating to the Commonwealth's model of court-appointed legal counsel in child dependency cases." The workgroup met several times between June and October 2022 to discuss issues related to the appointment of counsel in child dependency cases. In the initial meetings, members agreed that the most immediate issues to consider were those related to compensation and performance standards of court-appointed counsel. The workgroup considered various models of legal representation used in other states and discussed whether Virginia should consider adopting any of these other models in the long-term. The workgroup submitted a report to the General Assembly on November 1, 2022, with recommendations for legislative and budgetary actions to be considered, including measures to address compensation and performance standards for court-appointed counsel for parents.

In the 2023 Session of the General Assembly, Senate Joint Resolution SJ241 directed the OCO to continue the workgroup to pursue implementing the recommendations made in 2022. The workgroup has been concentrating its efforts on identifying sites for pilot programs that would establish a multidisciplinary model of legal representation for parents involved in child dependency cases. This model employs the services of social workers or peer support advocates that would work alongside attorneys to provide direct assistance to parents in fulfilling court-ordered foster care service plans. Other states and jurisdictions that provide this model of representation have seen overall reduction in children entering foster care and in the time foster care cases achieve permanency.

c. Safe and Sound Task Force

Director Reynolds continued to participate in the core team of Governor Youngkin's Safe and Sound Task Force which was formed to tackle the issue of foster children staying in agency offices, hospital emergency departments, and hotels because of the inability of local departments of social services to find approved placements for children who have significant behavioral health needs.

The many committed members of the Task Force continue to assist local departments in finding appropriate placements for children. State leaders participating in the Task Force core team are continuing their work to identify long-term strategies that will prevent the issue from becoming a crisis again.

To get a better understanding of the circumstances of these high needs children that come to the attention of the Safe and Sound Task Force, Director Reynolds and Investigator Sanzetenea reviewed one youth's case and met with her. She had been in

foster care for ten years, had experienced significant trauma in her family prior to entering foster care, has been in twenty-four foster care placements, and had about nine different family services specialists assigned to her. The multiple complex traumas and continual losses she has experienced in her young life are unimaginable.

This child is the product of multiple failed systems: her family, who subjected her to harmful physical and emotional abuse and neglect; the behavioral health system that was insufficient to meet her needs, often because of a lack of appropriate providers, disruptions in services, and residential programs that were more punitive than rehabilitative; foster homes and group homes that were ill-equipped to care for her and had unrealistic expectations; and a social services infrastructure that is unable to retain qualified staff on a consistent basis.

We need to do better for these children. Siloed state and local agencies have created a labyrinth of services that are difficult to navigate. Meanwhile, more and more studies are telling us that children's mental health continues to deteriorate. We need easier access to appropriate services and supports for the children, whether they are in foster care or in the care of their own families.

The efforts of the Safe and Sound Task Force to break down some of the siloes provide some hope that needed systemic changes will be made. The Governor's *Right Help Right Now* initiative to bolster the state's behavioral health system complements the work of the Safe and Sound Task Force as the issue of children's mental health is finally getting the long-awaited statewide attention it deserves.

d. Substance Exposed Infants

In FY 2023, the OCO started a long-term project to take a closer look at cases of child deaths that were caused by, or suspected to be caused by abuse or neglect where the children were substance-exposed at the time of their birth. Being substance exposed at birth may mean that the child tested positive for drugs or experienced more serious symptoms such as neonatal alcohol syndrome, withdrawal symptoms, or other medical conditions due to prenatal substance use by the parent. As reported in our 2022 Annual Report, the most common reasons for families' involvement with CPS prior to the child's death in the child fatality cases we reviewed were allegations of neglect and inadequate supervision due to parental substance abuse and the child being reported as substance exposed at birth. For this project, we hope to identify any necessary improvements to current laws and policies that could help prevent these children who were known to the system from falling through the cracks.

e. Legislative Activities

Legal Representation. During the 2023 Session of the General Assembly, the OCO supported legislative efforts to implement the recommendations of the SB 396 Child Dependency Legal Representation Workgroup, mentioned above, including Senator John Edwards' legislation and budget amendment increasing the compensation paid to court-appointed parents' counsel. Neither measure was successful, but Senator Edwards' Senate Joint Resolution passed directing the OCO to continue the work to seek implementation of the workgroup's recommendations.

Foster Care Caucus. OCO staff attended the Foster Care Caucus meeting held at the Pocahontas Building on January 31, 2023. The meeting was attended by Senators Barbara Favola and Monty Mason, Delegates Ann Farrell Tata, Carrie Coyner, and Emily Brewer, who discussed the legislation they introduced for the 2023 Session of the General Assembly relating to foster care and foster youth. They also heard from the Commission on Youth, staff from the Virginia Department of Social Services, OCO Director Reynolds, and former foster youth.

Advocacy Day. OCO staff participated in and presented at Advocacy Day on February 1, 2023, hosted by Children's Home Society of Virginia. Staff presented to Senator Barbara Favola, Delegate Anne Ferrall Tata, and Senator Creigh Deeds, and advocated in favor of increased salaries for local agency workers, enhancement of financial and social supports for kinship caregivers, and the benefits of expanding the Child Welfare Stipend Program.

Foster Care Awareness Month. The OCO participated in an event held on May 24, 2023, during Foster Care Awareness Month, where Governor Youngkin signed into law two important bills introduced by Delegates Tata and Betsy Carr.

Delegate Tata's House Bill 1403 directs public universities and colleges that have student housing units to provide free housing during scheduled intercessions to certain registered students who are former foster youth. While this is a much-needed support for our former foster youth who pursue higher education, Virginia needs to do better in finding forever families and caring adults for these former foster youth so they have somewhere to go during school breaks.

Delegate Carr's House Bill 1744 makes it easier for home studies conducted for prospective foster and adoptive parents to be transferred among local departments of social services and licensed child-placing agencies. Virginia has a shortage of approved and licensed foster homes; this legislation should help local departments find qualified foster and adoptive families for children.

Following the bill-signing event, Director Reynolds along with other leaders from state child-serving agencies attended a private meeting with Governor Youngkin to discuss priorities for the 2024 legislative session. During the meeting, the Governor acknowledged the challenges within the Commonwealth's child welfare system, including the difficult work that family services workers at local departments of social services do, and expressed his support for initiatives seeking to improve the system for families and for family services workers.

5. RECOMMENDED SYSTEM IMPROVEMENTS

Legal Representation for parents in child dependency cases

The judicial system plays an important role in the child welfare system. When government intervenes in the private realm of the family in the interest of protecting children, parents' constitutional rights are necessarily affected. The courts are a key component of the system of checks and balances that has developed in federal and state law over the past several decades. The courts help maintain balance between the interests of protecting children and preserving families while holding the government accountable for its actions to prevent it from overstepping and infringing on the rights of parents and children.

In our adversarial judicial system, attorneys must ensure that the proper evidence is before the courts so that judges can make informed decisions and are in the best position to provide that necessary oversight over government actions. Yet, in Virginia, the statewide number of attorneys willing to accept court appointments to represent parents in child welfare cases has decreased dramatically in the past few years due to low compensation and lack of training and support. As a result, parents are not getting the legal assistance needed to protect their custodial and residual parental rights over their children.

Currently, such attorneys are paid at a rate of $90 per hour with a maximum of $120 per case. This amount has not changed in over twenty years and is inexplicably tied to the rate and maximum amount paid to court-appointed criminal defense attorneys representing defendants charged with misdemeanors in the district courts. This makes little sense as the stakes in child welfare cases are significantly higher than the interests at stake in misdemeanor cases.

To remedy this, the OCO recommends consideration of the following actions:

- Increase the cap on the rate of compensation paid to attorneys who are appointed to represent parents from $120 to the fee caps in place for court-appointed criminal defense attorneys in felony cases, which currently are $445

for Class III-VI felonies and $1,235 for Class II felonies. Using these rates, parents' counsel would be compensated up to $445 in foster care cases and up to $1,235 for termination of parental rights cases. This should help "stanch the bleeding" to prevent more attorneys from removing themselves from the courts' lists of attorneys willing to represent parents in these cases.

With this increased fee cap, attorneys appointed to represent parents will be expected to improve the quality of their representation. To that end, the Judicial Council should be directed to develop standards of performance with which attorneys would be required to comply.

- Establish demonstration sites to pilot a new model of legal representation for parents that has been shown in other states to decrease the amount of time children remain in foster care. This multidisciplinary model of representation employs support positions such as social workers and peer advocates to work alongside the attorney in assisting the parent address the safety needs of their children. The model could also permit attorneys to represent parents prior to court involvement so that the safety issues may be remedied without the children needing to be placed in foster care. If these pilot sites demonstrate similar outcomes as those experienced by other states, Virginia could realize significant savings with fewer children entering foster care and reducing the time children stay in care.

  The demonstration sites would be established in different areas of the Commonwealth taking into consideration various criteria including foster care populations and socio-economic factors. The sites would be evaluated over a period of two years to determine the model's efficacy and whether this model should be expanded. A small staff of two full time employees within the judiciary department would oversee the administration of funding and evaluate the demonstration sites.

- Direct the Virginia Department of Social Services to amend its Child and Family Services State Plan to claim federal Title IV-E administrative costs for the provision of legal representation for children and parents in child dependency cases. Based on the most recent data, Virginia could be reimbursed about 21% of our costs in providing attorneys for parents and guardians ad litem for children in child welfare cases. These federal funds would be available to lessen the fiscal impact associated with the proposed increase of the fee cap and demonstration sites.

Safe and Sound Task Force initiatives

The OCO supports the following initiatives arising from the work of the Governor's Safe and Sound Task Force:

- Kinship Care/Alternative Living Arrangement Legislation to improve support for relatives and fictive kin who seek to care for children and keep them out of formal foster care. The legislation should:
    - Establish clear standards and practices in approving kinship caregivers and facilitating alternative living arrangements for children; and
    - Provide support for kinship caregivers to care for children who often have significant behavioral health needs.
- Build out the continuum of high-quality services and placements for children in foster care at all levels of care.
    - Expand psychiatric residential treatment providers' capacity to offer specialized treatment of children experiencing sexual trauma, sexualized behaviors, complex trauma, eating disorders, and other significant behavioral and mental health issues.
    - Establish an enhanced model of care for residential treatment for children to improve access and quality of care.
    - Establish a Center of Excellence through a public-private partnership or academic setting to provide best-in-class medical and behavioral health care for children in foster care and in kinship care.

Workforce support for local departments of social services

As reported in our 2022 Annual Report, workforce challenges faced by local departments of social services contributed to many of the practice issues identified by the OCO in its reviews of individual families' cases. Local departments from across the Commonwealth reported difficulty in hiring and retaining qualified staff. Many experienced program managers and supervisors left during the COVID pandemic resulting in local departments having to fill those leadership positions with lesser experienced staff.

The OCO recommends consideration of initiatives to support the family services workforce of local departments of social services, including the development of a family services training academy that will better prepare new workers, and the implementation of the recommendations made by the Office of the State Inspector General in its recent report on Child Protective Services issued in September 2022.

Strengthening and preserving families

In our 2022 Annual Report, we noted the number of child fatalities reported to us involving families who had some contact with child protective services or foster care before or at the time of the child's death. Some of the children were born substance exposed. Many of them were victims of unsafe sleep conditions or inadequate supervision. Too many of them were less than six months old. We continue to see these same circumstances in the child fatality cases that we reviewed for this year's Report. These tragic cases involve our most vulnerable children, who continue to slip through the cracks of our prevention and protection systems.

The OCO recommends consideration of efforts to expand the availability of primary and secondary prevention services so that we can ensure the safety of more of these very young and vulnerable children. Home visiting programs should be available in more parts of the Commonwealth. These programs send parenting experts into the home to teach parenting skills to new parents and provide other hands-on support. Some home visiting programs provide specially trained nurses to the homes of new parents when children have medical needs. These programs are evidence-based and have been shown to greatly improve child and maternal health, prevent child maltreatment, increase parental self-sufficiency, and improve young children's school readiness.

The OCO also recommends the implementation of the Whole Family Model (also called "2Gen") program in Community Action Agencies, local departments of social services, and Division of Child Support Enforcement offices throughout the Commonwealth. This model of supporting families has been shown to positively affect families' employment and income, community involvement, childcare, and education and job skills. Improvements in all these areas have been shown to help prevent child maltreatment.

Support for Older Foster Youth

Legislative and policy actions should be considered to support older youth in foster care and youth aging out of foster care in obtaining their driver's licenses and increasing access and availability of workforce and career development opportunities. As wards of the state, these older youth and young adults need the support in these two important areas that other youth would otherwise receive from their parents and family. Unfortunately, they must overcome many obstacles that other youth do not face.

Driver's Licenses. The Virginia Commission on Youth issued a Report in 2018 for its *Barriers to Obtaining a Driver's License for Virginia's Foster Youth* study. The Report, found here, made several recommendations for legislative and budgetary actions

and policy changes to address the issues and barriers identified by the Commission, including insurance costs and liability concerns.

Other barriers that the Commission identified relate to the paperwork requirements for youth to get a learner's permit and license. Many youth in foster care experience multiple placement changes and thus may not have the two proofs of their Virginia address needed to apply for a license. They may have difficulty getting their birth certificate. Also, youth in foster care have difficulty accessing or paying for driver's education classes, especially if their school does not offer them. One of the most significant barriers is the youth's ability to meet the requirement for 45 hours of guided driving practice. Foster parents are reluctant to let the youth drive their cars, or the youth is in a group home with no access to a vehicle or a licensed driver who can serve as their guide.

VDSS should partner with the Department of Motor Vehicles, the Virginia Department of Education, and the Bureau of Insurance at the State Corporation Commission to determine necessary amendments to laws or policies to support the following:

- Better access for youth in foster care to driver's education courses and resources to meet the guided driving requirements.
- Accommodations for youth in foster care regarding specific application requirements for proof of identity, residence, etc.
- More conducive policy terms governing insurance and liability issues for foster parents and local departments of social services.
- Exploring ways to reduce financial barriers associated with license and learner's permit applications, driver's education courses, and insurance premiums and deductibles.

Workforce Development. Shortly after becoming operational, the OCO learned about opportunities for older youth in foster care to connect with workforce development resources available through the Department of Labor and Industry (DOLI) and the Department of Aging and Rehabilitative Services (DARS), specifically DOLI's Registered Apprenticeship program and DARS' workforce programs for older youth with disabilities. Staff at local departments of social services and other agencies that work directly with youth in foster care should be made more aware of these opportunities and be provided information as to how to connect youth with the appropriate DOLI and DARS offices.

In addition, the Commission on Youth identified several other initiatives to assist older youth in foster care find and connect with career planning and job skills training in its 2022 *Study on Workforce Development for Foster Care Youth*, found here. The OCO

recommends implementing the Commission's recommendations which included the development of the iFoster Portal or a similar app that connects youth with resources for employment, housing, educational, financial assistance, and workforce development; the establishment of a grant program for the Great Expectations Program and the Virginia Community College System to provide services such as college mentors, housing stipends, child care, and transportation for eligible former foster youth; and specialized training and career planning for school guidance counselors to assist youth in foster care plan for their future.