



Office of Child's Advocate

WHAT WE KNOW

- Government programs for children sometimes fail to protect the children they are intended to serve.
- An Office of the Child's Advocate (OCA) receives and investigates reports of such failures and helps transform that information into improvements of the systems.
- OCAs are most effective when operating with genuine independence, appropriate authority, a credible review process, and resources that correspond to the breadth of their mandates.
- An independent OCA can protect some of the most vulnerable children in South Carolina, address systemic weaknesses in state efforts to support children, and save taxpayers' money.

All children deserve the opportunity to meet their fullest potential. In some cases, this requires the support of government systems and programs to ensure that children are being given the care and attention they need. Over the years, as our society has become more complicated, child welfare and social services have become increasingly complex. In many cases they have fallen short of meeting the needs of some of the most vulnerable children; over 30 state and local child welfare systems are operating under “federal consent decrees” which result from class action lawsuits filed on behalf of children served inadequately.

Statewide, 62 percent of South Carolinians report adverse childhood experiencesⁱ and South Carolina ranks 39th in child health and well-being, indicated by factors such as economic well-being, education, health, and family contextsⁱⁱ. Those within the child welfare system comprise the most in-need of this population, and those who would benefit from an OCA are the children at highest risk.

An OCA has been proposed for the State of South Carolina. From a child well-being perspective, a state OCA offers the opportunity to intervene on children's behalf when their needs are not being met through the current system by identifying deficiencies and gaps and then proposing solutions. OCAs can also create more accountability of these systems by promoting efficiencies and effectiveness of services.ⁱⁱⁱ

WHAT IS AN OFFICE OF THE CHILD'S ADVOCATE

An agency's own ombudsman, auditor, or inspector general has the authority to oversee administrative conduct within their department. An OCA has the broader mandate to protect and promote the rights and interests of individuals across the entire sector of child-serving agencies.^{iv} An OCA is also importantly different from a department's or a statewide ombudsman because it is focused narrowly on protecting the interests of children -rather than citizens or taxpayers in general- when it receives, investigates, or otherwise identifies complaints about government activities. It serves as a guardian for children in policy implementation, and with that experience and perspective, a representative for children in policy making.^v

RECEIVING AND INVESTIGATING REPORTS

Once the OCA receives a complaint or a tip, it screens the call and either provides the contactor with resources and referrals, or gives notice of the complaint to the relevant agency and begins an investigation. It can, after initial investigation, intervene by facilitating communication, holding meetings, or pursuing legal action.^{vi} Summaries of complaints and completed investigations, as well as analysis of systemwide trends, are released to lawmakers and the public through annual and special reports.

IMPROVING THE SYSTEM

An OCA advocates for children by identifying and investigating instances when public, or publicly supported, service providers fail to comply with laws and regulations, or in which compliance fails to protect the rights and well-being of children. The OCA does not have the authority to directly impose corrective actions, and it should not be conceptualized as an alternative or parallel service provider.

The OCA's role in receiving and investigating complaints, performing its own independent investigations, and broadly examining the system of agency operations ought to also inform actionable guidance for policy makers. Through reports, public education and testimony to lawmakers, the OCA can help guide policy and regulatory changes that increase compliance with existing laws and correct omissions from statute.

Currently, 22 states have dedicated and independent OCA providing oversight for children's services.

APPROPRIATE INDEPENDENCE AND AUTHORITY

An OCA's location outside the organizations it oversees affords the OCA greater independence and transparency than inspectors within those departments usually enjoy. It also provides OCA with a systemwide perspective to approach service timeliness and effectiveness, particularly at points of interaction between stand-alone silos of individual departments and agencies. Appointment of an OCA's director solely by a state's governor, placement of the OCA within the executive branch, and or a director's term of service that mirrors the governor's term, can hamper the OCA's independency and permanency.^{vii} On the other hand, poor communication, or an adversarial relationship, with the executive can hamper the OCA's ability to translate its investigations and data analysis into appropriate public reporting and prescriptions for policy change.^{viii}

Appointment with confirmation by more than one body, protections for removal of directors without cause, preclusion of the vacancy of the director's position, and the involvement of the judiciary in either appointment or oversight can serve to further insulate the OCA's work from short term political factors as well as spur broad collaboration.^{ix}

CREDIBLE REVIEW PROCESS AND SUFFICIENT RESOURCES

A credible review process means the authority of an OCA to investigate any act or omission of a child serving agency; access information, including subpoena power to complete such investigations; and public reporting of its findings which are themselves not reviewable.^x That does not, however, mean an OCA ought not itself be subject to oversight and processes of review. In addition to internal controls and falling under the jurisdiction of the statewide inspector general, some OCAs also have advisory committees that produce their own reports recounting yearly activities and provide prescriptions for

changes to policies within, and authorizing, the OCA.^{xi} Another approach is utilizing outside evaluators, such as universities, which further removes examination of the OCA's processes and outcomes from political taint.^{xii}

Well qualified staff – such as individuals with legal expertise, health care backgrounds, and familiarity with child welfare processes – are essential to an Office of the Children's Advocate.^{xiii} Stable appropriations from the state can be supplemented by funding from federal and private sources, but they should provide sufficient and predictable funds for OCA operations.

BEST PRACTICES

The most comprehensive OCAs oversee not only their state's child welfare or protection agency, but also have jurisdiction over any executive branch child-serving agency, including the juvenile justice system. They have authority to take citizen complaints, broadly access information to investigate, and issue subpoenas; several also have powers to take legal action on behalf of children.^{xiv} Correspondingly, their authorizing statutes provide appropriate indemnifications from liability, protections for persons contacting or assisting the OCAs, strict mandates on confidentiality, and the regular public reporting of their activities.

Among the 33 states with some type of OCA, Georgia, Missouri and Tennessee are notable examples of states' with truly independent offices, focusing on the broad range of child serving agencies. Each enjoys broad access to information, as well as protections to ensure impartiality and confidentiality. In Georgia, the OCA's focus on data management has guided legislative efforts to better structure services for abused and neglected children statewide, and the Office has effectively fostered collaboration across the lines of agencies and branches of government.^{xv} Georgia's has reduced the number of children who suffered maltreatment and then went on to endure additional maltreatment in subsequent months and quickened the pace in which children move from foster care to safe, stable, permanent homes.^{xvi} As in Georgia, Tennessee's Ombudsman for Children and Families has actively engaged agency personnel at all levels and lawmakers in trainings to share lessons learned and spur collaboration. It has also secured federal funds to supplement state appropriations.^{xvii}

CONCLUSION

The internal grievance processes in the child welfare and juvenile justice realm struggle with high volume and complexity. There is often a public perception that fact finders within these agencies struggle with neutrality and may succumb to internal pressures when investigating and publicizing incidences of inappropriate services and even abuse.^{xviii} An Office of the Children's Advocate offers states like South Carolina an independent, data-driven perspective that generates early warnings to program managers and policy makers on the need to intervene and resolve problems that negatively impact individual children, and may extend into unlawful activities, public scandals, costly lawsuits, or further harm to minors who depend on state supported services.^{xix} The creation of an OCA could have profound, positive impacts on child's health and well-being, especially those who are facing significant challenges and need systems to support their potential.

ⁱ Morse, M., Stropolis, M., Priester, M. A., & Wooten, N. (2016). Adverse Childhood Experiences in South Carolina: Behavioral Risk Factors. Retrieved November 28, 2016, from http://scchildren.org/public/files/docs/Prevention_Learning_Center/ACES-in-SC-Research-Brief-Behavioral-Risk-Factors.pdf

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- ii <https://scchildren.org/research/kids-count-south-carolina/>
- iii O'Neill, Moira Kathleen. "Pulling Back the Curtain: State Children's Ombudsman at Work." Doctoral Dissertation, Yale University, May 2011, page 22
- iv Ibid.
- v Melton, G. B. (1991). Lessons from Norway: The children's ombudsman as a voice for children. Case Western Reserve Journal of International Law, 23, 197- 257., page 202
- vi "Children's Ombudsman Offices | Office of The Child Advocate", National Conference of State Legislature, September 2014; www.ncsl.org/research/human-services/childrens-ombudsman-offices.aspx
- vii Ibid O'Neill, page 188
- viii Kelly Schultz, Director, Missouri Office of Child Advocate, Phone Interview; February 1, 2018
- ix Rawlings, Tom, Director, Office of the Child Advocate Phone Interview; February 2, 2018; and Ibid O'Neill, page 188
- x O'Neill, page 23
- xi "Annual Effectiveness Report 2006," Office of the Child Advocate Advisory Committee.
http://oca.georgia.gov/sites/oca.georgia.gov/files/imported/vgn/images/portal/cit_1210/31/23/102387685OCA%20Effectiveness%20Report%202004-2005.doc
- xii Jones, Judith and Cohn, Alvin. "State Ombudsman Programs." U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevent. February 2005, page 2
- xiii Jones, Judith and Cohn, Alvin. "State Ombudsman Programs." U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevent. February 2005, page 3; and Ibid O'Neill, page 156
- xiv *Ibid O'Neil, page 82
- xv Ibid Jones, page 10; Rawlings; and
- xvi Rawlings, Tom. "'Annual Report,'" Georgia Office of the Child Advocate for the Protection of Children. 2017. Page 16
- xvii Ibid Jones, page 8
- xviii Ibid Jones, page 15
- xix Eisner, Michael. "Creation of an Ombuds Office Can Prevent Retaliation Claims." Eugene, OR: Mediate.com, 2007