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JUVENILE JUSTICE EDITORIAL

WHO YOU GONNA CALL?

VIRGINIA'S MULTI-YEAR EFFORT TO CREATE A
CHILDREN'S OMBUDSMAN OFFICE

*Melissa Goemann**

If your home was overrun with spirits in the movie *Ghostbusters*, it was easy to know who to call—Ghostbusters! But for a child or parent to navigate through the maze of Virginia bureaucracies to figure out whom to call when questions or concerns arise about a child in state care can be difficult, if not impossible. A desire to simplify that process formed the impetus for recent Virginia legislation to establish a children's ombudsman office. Indeed, the ombudsman legislation would elevate the ombudsman beyond the role of simply “ghostbusting,” or handling each complaint in a vacuum.¹ It would also require the ombudsman to analyze these complaints along with other data, and to make recommendations to the agencies for systemic improvements.² Finally, the ombudsman would shed light on the workings of the child-serving agencies by submitting annual reports to the General Assembly detailing the complaints handled each year and making recommendations for improvements.³

I. HISTORY OF THE CHILDREN'S OMBUDSMAN BILL

The children's ombudsman bill had its genesis as an idea from Ron

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1. See S.B. 315, Va. Gen. Assembly (Reg. Sess. 2008).

2. *Id.*

3. *Id.*

Herring, the retired Chief Executive Officer of Lutheran Family Services of Virginia.⁴ Herring took his idea to Senator John S. Edwards⁵ who, in 2005, introduced the first bill to establish an Office of the Children's Services Ombudsman.⁶ Ultimately, Senator Edwards decided that the bill needed more work, and he withdrew the bill for 2005.⁷

In 2006, Senator Edwards filed Senate Bill 208.⁸ This bill was similar to the prior bill, but it expanded the ombudsman services to cover all children instead of just those primarily in the care of the Department of Social Services, as the previous bill had done.⁹ The Senate Committee on General Laws and Technology heard the bill and decided that it was sufficiently complex to warrant a study of the issue by the Commission on Youth.¹⁰ The Commission directed staff to evaluate the need for such an office, determine its appropriate administrative structure, and calculate the cost to establish it.¹¹ Commission staff convened an Advisory Group of children's services experts and stakeholders and conducted a thorough study over the next two years to research these three areas.¹² The Commission also held three public hearings to obtain citizen input.¹³

Following completion of its study, at its meeting on December 5, 2007, the Commission voted to recommend the introduction of legislation to create an Office of the Children's Ombudsman.¹⁴ Consequently, in 2008, both Senator Edwards and Delegate William H. Fralin¹⁵ of the Commission on Youth filed identical companion bills to establish this

4. E-mail from Ron Herring, Chief Executive Officer (Retired), Lutheran Family Services of Virginia, to Melissa Goemann, Director, Juvenile Law and Policy Clinic, University of Richmond: T.C. Williams School of Law (Mar. 24, 2008, 18:43 EST) (on file with author).

5. John S. Edwards serves as the Democratic Senator for the 21st District of Virginia, which encompasses Craig County, Giles County, Roanoke City, and part of Montgomery County, Pulaski County, and Roanoke County.

6. S.B. 1069, Va. Gen. Assembly (Reg. Sess. 2005).

7. Legislative Information Services, Bill Tracking: SB 1069, 2008 Session, <http://leg1.state.va.us/cgi-bin/legp504.exe?OSI+sum+SB1069> (last visited Mar. 31, 2008).

8. S.B. 208, Va. Gen. Assembly (Reg. Sess. 2006).

9. Compare S.B. 208, Va. Gen. Assembly (Reg. Sess. 2006), with S.B. 1069, Va. Gen. Assembly (Reg. Sess. 2005).

10. COY is a standing legislative commission of the Virginia General Assembly comprised of six Delegates, three Senators, and three citizens appointed by the Governor. See Virginia Commission on Youth, Members, <http://coy.state.va.us/members120507.htm>. (last visited Mar. 29, 2008).

11. VA. COMM'N ON YOUTH, FINAL REPORT OF THE VIRGINIA COMMISSION ON YOUTH: ESTABLISHMENT OF AN OFFICE OF CHILDREN'S SERVICES OMBUDSMAN, REP. DOC. No. 117, at 2 (March 7, 2008) [hereinafter VA. COMM'N ON YOUTH, FINAL REPORT].

12. *Id.* at 7.

13. *Id.* at 2, 10.

14. *Id.* at 2-3.

15. William H. Fralin serves as the Republican Delegate for the 17th District of Virginia, which includes part of Botetourt County, Roanoke City, and Roanoke County.

office.¹⁶ The bills were passed by the 2008 legislature.¹⁷ Unfortunately, the General Assembly included an enactment clause that stated that the statute would not become effective unless the legislature also provided funding for the new agency.¹⁸ The General Assembly, in fact, failed to allocate funding, effectively undoing the passage of the bill.¹⁹

The long road to passage of the children's ombudsman bill has not yet been completed. However, much like the tortoise of the "The Tortoise and the Hare" fame, the legislation has proceeded slowly, but carefully, and is inching ever closer to the finish line. This editorial will explore the factors both helping and blocking the legislative road to passage.

II. THE LEGISLATURE APPRECIATES THE MERITS OF ACCESSIBLE GOVERNMENT

In recent years, the Virginia legislature has attempted to create a variety of ombudsman offices demonstrating an interest to help citizens get complaints resolved and questions answered and to help them navigate government bureaucracies.²⁰ Federal mandates and federal funding, however, are sometimes needed to establish these offices.

For example, in 1979, an Ombudsman Program for the Aging was established as a requirement of the Older Americans Act in order to improve the care of older Americans.²¹ In the 1980s, the program was expanded to include the investigation of complaints regarding community services providing long-term care to older Virginians.²² The program operates a toll-free number so that citizens know whom to call to find information or to file a complaint about services for the aging.²³ The long-term care ombudsman serves as an information and complaint resolution service for the aging as well as a way to identify and recommend changes to

16. Compare S.B. 315, Va. Gen. Assembly (Reg. Sess. 2008), with H.B. 1131, Va. Gen. Assembly (Reg. Sess. 2008).

17. See Act of Mar. 27, 2008, ch. 698, 2008 Va. Acts ____ (setting forth Senate Bill 315 as passed by the General Assembly and approved by the Governor); Act of Mar. 7, 2008, ch. 446, 2008 Va. Acts ____ (setting forth House Bill 1131 as passed by the General Assembly and approved by the Governor).

18. S.B. 315, Va. Gen. Assembly (Reg. Sess. 2008).

19. See COMMONWEALTH OF VA., EXECUTIVE BIENNIAL BUDGET 2008-2010, AMENDMENTS TO THE 2007 APPROPRIATIONS ACT (Dec. 17, 2007).

20. See, e.g., H.B. 2482, Va. Gen. Assembly (Reg. Sess. 2005) (creating an ombudsman for the Department of Human Resource Management); S.B. 382, Va. Gen. Assembly (Reg. Sess. 2004) (establishing an ombudsman program for the agencies on aging).

21. See VA. LONG-TERM CARE OMBUDSMAN PROGRAM, POLICIES AND PROCEDURES MANUAL 2 (2002-2003).

22. VA. CODE ANN. § 2.2-704 (Repl. Vol. 2005).

23. VA. LONG-TERM CARE OMBUDSMAN PROGRAM, *supra* note 22, at 2.

improve the systems that serve them.²⁴ The Virginia program has been transferred out of state government from the Virginia Department of Aging to a non-profit organization, in order to increase the program's autonomy.²⁵

Additionally, the Virginia Office for Protection and Advocacy was established in 2002 to help people with disability related problems, directly as a result of the available federal funding.²⁶ The statute includes provisions for an ombudsman office for persons with disabilities that would work to investigate, resolve, and mediate complaints regarding programs of any state or local agency adversely affecting people with disabilities.²⁷ Unfortunately, the General Assembly has never funded the ombudsman portion of the program.²⁸

Alternatively, other state agencies have legislatively established ombudsman programs that were not the result of federal mandate or federal funding. The Department of Human Resource Management did so with a statute that requires the appointment of an ombudsman to "promote and protect the interests of covered employees under any state employee's health plan."²⁹ A crime victims' ombudsman was established for the Virginia Workers' Compensation Commission, established to "assure that crime victims' rights are safeguarded and protected during the claims process."³⁰ A statute also provides for an Office of the Managed Care Ombudsman within the Bureau of Insurance for managed care licensees to register complaints.³¹

III. VIRGINIA'S DESIRE TO SHED LIGHT ON GOVERNMENT AGENCIES

Advocates of increased transparency for Virginia's child-service agencies have found an ally in the Virginia legislature's relatively positive attitude towards open government, exemplified by Virginia's broad Freedom of Information Act (FOIA) laws. This is especially true regarding the executive branch. In a study of FOIA laws across the nation by the Marion Brechner Citizen Access Project at the University of Florida,

24. *Id.*

25. E-mail from Joani F. Latimer, State Long-Term Care Ombudsman, Virginia Association of Area Agencies on Aging, to Melissa Goemann, Director, Juvenile Law and Policy Clinic, University of Richmond: T.C. Williams School of Law (Mar. 25, 2008) (on file with author).

26. VA. CODE ANN. § 51.5-39.2(A) (Repl. Vol. 2005).

27. VA. CODE ANN. § 51.5-39.7(A) (Repl. Vol. 2005).

28. See COMMONWEALTH OF VA., *supra* note 20.

29. VA. CODE ANN. § 2.2-2818(L) (Repl. Vol. 2005).

30. VA. CODE ANN. § 19.2-368.3:1 (A) (Repl. Vol. 2004).

31. See VA. CODE ANN. § 38.2-5904(A) (Repl. Vol. 2007).

Virginia's laws on obtaining executive branch records were given the second highest rating for openness.³² Similarly, in a survey done by Investigative Reporters and Editors, Inc. (IRE), most state FOIA laws were found to be generally weak, while Virginia's laws ranked the fifth best of all states in terms of openness.³³ Virginia's track record for recognizing the value of transparency in government agency processes supports the establishment of a children's ombudsman able to shed light on the workings of Virginia's child-serving agencies.

IV. NO "SMOKING GUN"

Virginia's legislative process tends to be reactive rather than proactive; lawmakers often require a "smoking gun" before opening the Commonwealth's purse strings to fund new programs. A recent example is the General Assembly's 2008 mental health reform legislation, which was passed in the wake of the Virginia Tech tragedy. It literally took a smoking gun to force changes in the state's mental health system that had been the subject of tireless lobbying for years.

Recent years have yielded numerous newspaper stories of children who have been the unfortunate victims of mismanagement by government agencies in Virginia and members of the public have testified regarding these cases.³⁴ There have not, however, been any recent high-profile cases that would force the issue and generate the legislative will necessary to fund a children's ombudsman office.

V. CITIZEN SUPPORT MAY CARRY THE DAY

We can only hope that the people of Virginia will not have to wait for a tragic high-profile incident to establish a children's ombudsman office. Thirty states throughout the country already have seen the wisdom of providing such a service for their citizens and have established ombudsman offices for children in a variety of different forms.³⁵

32. Marion Brechner Citizen Access Project, <http://www.citizenaccess.org> (last visited Mar. 22, 2008).

33. *Freedom of Information in the USA: Part 1*, IRE JOURNAL (Apr.–Mar. 2002), available at <http://www.ire.org/foi/bga>.

34. See Frank Green, *Teen Beaten by Officer, Suit Says: Incident Between Youth and Staff was Alleged Last Year at Powhatan Juvenile Center*, RICH. TIMES-DISPATCH, Nov. 15, 2005, at B2; Jen McCaffery, *Proposal Would Help Monitor Child Care*, ROANOKE TIMES (Va.), Aug. 23, 2006, at B8; Mary Dunne Stewart, *Virginia Shouldn't Provide Worst Foster Care*, RICH. TIMES-DISPATCH, Mar. 23, 2008, at E5.

35. See VA. COMM'N ON YOUTH, FINAL REPORT, *supra* note 11, app. I.

There is great citizen support for this legislation. At the COY public hearings around the state, and at each legislative committee hearing on the bill, foster children, foster parents, and parents of youth in the juvenile justice system who have suffered from harmful agency actions or inactions testified movingly as to the need for an ombudsman office.³⁶ As a result, the children's ombudsman bills passed unanimously through many committees, unanimously on the floor of the House, and with only one dissenting vote in the Senate.³⁷ All that remains is the political will to fund this important legislation, a difficult problem in challenging economic times, but one that we must overcome for the sake of Virginia's most vulnerable youth. The time for creation of a children's ombudsman has come.

Virginia's children and families need to know who to call.

36. See *id.* at app. F; see also, e.g., *The Establishment of an Office of the Children's Ombudsman: Hearing on S.B. 315 Before the S. Comm. on General Laws and Tech.*, Va. Gen. Assembly (Reg. Sess 2008) (statements of foster children, foster parents, and parents of adjudicated youth).

37. See Legislative Information Services, Bill Tracking: SB 315, 2008 Session, <http://leg1.state.va.us/cgi-bin/legp504.exe?ses=081&typ=bil&val=sb315> (last visited Mar. 31, 2008).