



# **2022 ANNUAL REPORT**

**OFFICE OF THE CHILDREN'S  
OMBUDSMAN**

**RICHMOND, VIRGINIA**



# **The Office of the Children’s Ombudsman**

## **2022 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 honored to present the inaugural Annual Report of the Virginia Office of the Children's Ombudsman (OCO). This Annual Report summarizes the work of the OCO from June 25, 2021, through September 30, 2022.

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.

#### What did we observe in our first year?

The OCO received 264 complaints over the 15 month period between June 25, 2021 and September 30, 2022. We heard mostly from parents whose children were receiving child protective and foster care services.

Of the complaints we received, 13% were opened as an investigation. For the remaining complaints, we found that the local departments and their staff consistently followed laws and policies and engaged in good practices when working with families. We have had the pleasure of speaking with many dedicated local department family services specialists, supervisors, and directors who demonstrated an unwavering commitment to their work and using best practices to serve their communities.

Still, there is much room for improvement. Child welfare work involves maintaining the right balance between the need to protect children and the interest of preserving families. Recently, significant events and circumstances have affected the Commonwealth's ability to maintain this balance and continue to make this challenging work even more difficult: the pandemic that affected many families' livelihoods and mental health; parental substance abuse and the opioid epidemic that continue to ravage families; and system-wide workforce challenges that cause not only our local departments to be understaffed, but also the many providers that serve our families, resulting in a dearth of services in many communities.

Fortunately, these challenges can be overcome. We need to properly equip our Child and Family Services workforce and continue training them in trauma-informed practices and other best practices for family engagement so that we can be most effective in strengthening and restoring families.

We need to engage in coordinated and intentional efforts across the spectrum of state and local child-serving agencies to build a robust system of care serving all parts of the Commonwealth. The walls between agencies must come down to allow true collaboration and problem-solving to occur, as has been effectively demonstrated by the work of the Governor's Safe and Sound Task Force this past year. Knowing that efforts like this can be done successfully provides hope that even faced with imposing challenges, we can build a better system to serve Virginia's families.

What will you find in this Report?

Section I 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 describes our activities in the first year to establish our office and connect with other child welfare stakeholders and policy makers. Section III summarizes our involvement in various advocacy projects and other initiatives. Section IV 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 provided assistance to the families and agencies. In Section V we identify the recurring issues we noted in our cases with recommendations to address those issues. We close out the report with a look ahead at the goals we seek to achieve in the coming year.

I would like to thank the administrations of Governor Glenn Youngkin and former Governor Ralph Northam and the Virginia General Assembly for their bipartisan support of the establishment of this Office and its mission. I am also grateful for the support and assistance provided by the Virginia Department of Social Services, Commissioner Danny Avula, and 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 advocacy groups in improving Virginia's child welfare system. On behalf of the OCO staff, thank you for your support and interest in our office.



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

# OFFICE of the CHILDREN'S OMBUDSMAN

## EXECUTIVE SUMMARY

The Office of the Children's Ombudsman (OCO) was established by the General Assembly during the 2020 Regular Session. Pursuant to Virginia Code § 2.2-439, the OCO was created *"as a means of effecting changes in policy, procedure, and legislation; educating the public; investigating and reviewing actions of the Department, local departments, 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."*

### Functions of the Office of the Children's Ombudsman

The OCO receives and investigates complaints from the public about Virginia's child welfare system. Specifically, the OCO receives complaints with respect to a particular child who (i) is alleged to have been abused or neglected, (ii) is receiving child protective services, (iii) is in foster care, or (iv) is awaiting adoption. The OCO can investigate complaints that allege that administrative acts taken by the Virginia Department of Social Services, local departments of social services, or child-placing agencies were: contrary to law, rule, or policy; imposed without an adequate statement of reason; or based on irrelevant, immaterial, or erroneous grounds.

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 in order to best serve its constituents.

### First Year Activities to Establish the Office

The Director was appointed in June, 2021, and began hiring staff and developing policies and procedures to establish the Office. The OCO procured a case management system to facilitate the processing of complaints and collection of data. The OCO's website went live in May, 2022, and provides constituents information about the OCO and how to submit a complaint. Over the past year,



OCO staff met with various child welfare leaders, agencies, organizations, and other stakeholders to begin building collaborative relationships. The OCO continues to participate in various committees, workgroups, and other initiatives.

### **Advocacy Projects**

The OCO convened the Child Dependency Legal Representation Workgroup pursuant to Senate Bill 396 to consider the issues related to Virginia's model of providing legal representation in child protection and foster care cases. The workgroup recommends that Virginia increase the rate of compensation and establish performance standards for counsel appointed to represent parents.

The OCO also participated in, and continues to participate in, the Governor's Safe and Sound Task Force, which was established to address the statewide crisis of children in foster care sleeping in agency offices, hospital emergency rooms, and hotel rooms because appropriate placements were not available. The Task Force is continuing its ground-breaking work to develop strategies to prevent family disruptions, to ensure that children in foster care can be placed in family-based settings, and to build up and sustain collaborative efforts for the provision of mental health and other supportive services to strengthen families.

### **Case Reviews and Investigations**

The OCO began receiving calls and complaints soon after the appointment of the Director in June 2021. Because this is the first OCO Annual Report, the following data was gathered from all complaints received between June 25, 2021 and September 30, 2022.

Complaint Data. The OCO received and reviewed 264 complaints between June 2021 and September 30, 2022. Of these, 171 (65%) moved beyond the intake stage to become preliminary assessments. Cases that did not move beyond intake either did not fall within our jurisdiction or we were unsuccessful in our attempts to reach the complainant to complete the intake process.

Thirteen percent (35) of all complaints received became investigations, meaning that during our preliminary assessment we identified potential violations of policy or law or found reason to believe that actions were taken based on erroneous or immaterial information, or without a stated reason.

Cases in the preliminary assessment stage that did not become investigations were



closed with information or other assistance provided to the individual. This assistance includes referring them to other available remedies.

Eighty-seven of Virginia's 120 local departments of social services were the subject of the complaints we received. For cases that moved beyond the intake stage but were eventually closed out, agency directors were notified that a complaint had been received.

Investigation Data. Thirty-five of the 264 complaints received were opened as formal investigations by the OCO. Of the complaints that became investigations, 77% included issues related to Child Protective Services (CPS), 54% included issues related to foster care, 14% included issues related to adoption, and 25% included issues related to foster care diversion/alternative living arrangements. Complaints that are submitted can include one or more case type.

### **Significant Trends and Recurring Issues**

Among the case reviews and investigations conducted by the OCO, the following trends and recurring issues were identified:

Workforce challenges. In every case reviewed by the OCO in which a local department of social services was the subject of the complaint, the local department noted challenges in the recruitment, retention, and training of family services specialists (FSS). Factors, such as compensation, the difficult nature of the work, and insufficient training contribute to local departments' challenges in maintaining a well-qualified and trained staff. These challenges affect the quality of the local department's work with families and ultimately can affect case outcomes.

The OCO recommends, in addition to appropriating sufficient funds for local departments of social services to fill staff vacancies and provide competitive pay, that state leaders support the Virginia Department of Social Services' budget requests related to workforce and the establishment of the training academy for family services staff that was recommended in the 2018 study by the University of Denver, Butler Institute for Families of Virginia's Child and Family Services training model.

**Foster Care Diversion/Alternative Living Arrangements.** Of the 264 complaints the OCO received, 15% of them involved "foster care diversion" cases, also called "alternative living arrangements." These are cases in which parents are asked to

voluntarily place their children in the physical custody of a relative or fictive kin due to a child protective services 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 and 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.

There are several benefits for the families and the local departments in using alternative living arrangements under a safety plan compared to having the children placed in formal foster care through court processes. In particular, the children are placed with people they know as opposed to strangers, minimizing the trauma of being removed from their home and from their parents. These arrangements also allow for some flexibility for the local departments to respond to changing circumstances and a level of autonomy for the families that would not be allowed if the children were placed in formal foster care.

However, the OCO noted a number of practice issues in the way these alternative living arrangement cases were handled by local departments. There are also some significant legal issues with the practice as the parents' constitutional rights, the right to family integrity, and children's safety are implicated when these arrangements are put in place outside of the court process.

The OCO recommends that local departments make efforts to comply with the Virginia Department of Social Services' In-Home Services policies. The OCO also recommends that the efforts that have already begun by the Virginia Department of Social Services, the Virginia League of Social Services Executives, the OCO, and other child welfare stakeholders continue with the goal of developing strategies to resolve the issues identified with alternative living arrangements.

Foster Care Service Plans. In many cases we reviewed, we identified several areas of concern with the development of foster care services plans, which are required to be prepared for each child in foster care. Contrary to laws and policies, parents and children were often not included in the development of the plans, the services were not child- or family-specific, the plans did not describe the visitation arrangements planned for the parents and children, and some plans included inaccurate or incomplete information. The OCO recommends that local departments ensure their family services specialists are trained sufficiently to understand and comply with

the requirements for foster care service plans under state laws and policies.

Visitation. The OCO identified several concerns regarding visitation arrangements for children in foster care in the cases that were reviewed. Visitation arrangements for the parents were not made in a timely manner which caused delays in the parents' initial visits with the children after the children were placed in foster care. Inappropriate restrictions were imposed that limited the duration, frequency, and location of visits. We also noted varying policies among the local departments regarding visitation arrangements for relatives. The OCO encourages local departments to consistently follow state policies regarding visitation arrangements for children in foster care.

Other issues noted by the OCO in our case reviews include the following:

- Some local departments failed to comply with state policies and procedures when changing the child's foster care placement.
- Communication issues created challenges in the relationships among therapeutic foster parents, licensed child-placing agencies, and the local departments.
- Parental substance abuse and addiction caused challenges for local departments, especially in areas lacking sufficient substance abuse treatment services and providers.
- In some cases, the family services specialists' visits with the children were not timely or documented sufficiently.
- Some local departments' interactions with families lacked trauma-informed practices and other best practices for family engagement.

### **Looking Ahead**

The goals established for the next year reflect our commitment to helping improve Virginia's child welfare system. Our goals also reflect our commitment to improving the effectiveness, operation, and performance of the Office. In the coming year, we plan to improve our timeliness in processing complaints, improve our communication with the agencies that are subject to our case reviews and investigations, conduct outreach to more communities within the Commonwealth to spread awareness of the Office and its work, continue making connections between families and supportive resources, and engage in listening tours and roundtable discussions to learn from youth, families, and agency workers throughout the state.



# (Om · buds · man)

An official appointed to investigate individual's complaints against maladministration, especially that of public authorities.

## I. CREATION, OPERATION, AND FUNCTIONS OF THE OFFICE OF THE CHILDREN'S OMBUDSMAN

### Creation of the Office

The Office of the Children's Ombudsman (OCO) was created by the General Assembly during the 2020 Regular Session *"as a means of effecting changes in policy, procedure, and legislation; educating the public; investigating and reviewing actions of the Department, local departments, 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."*<sup>1</sup> The statutes creating and governing the OCO are found in [Chapter 4.4 of Title 2.2 of the Code of Virginia](#).

### Why do we need a Children's Ombudsman?

Virginia has 120 independent local departments of social services that administer Child and Family Services in their localities. As a result, practices vary across the Commonwealth. Although the Virginia Department of Social Services (VDSS) develops the regulations and policies for local departments to follow in administering Child and Family Services programs, its ability to ensure consistency, quality, and effectiveness of local departments' practices is limited as is its authority to enforce its policies.

<sup>1</sup>[Va. Code § 2.2-439](#).

### FREQUENTLY USED ACRONYMS

|              |   |
|--------------|---|
| <b>ALA</b>   | Alternative Living Arrangement                        |
| <b>CCCA</b>  | Commonwealth Center for Children and Adolescents      |
| <b>CPS</b>   | Child Protective Services                             |
| <b>CSA</b>   | Children's Services Act                               |
| <b>DBHDS</b> | Dept. of Behavioral Health and Developmental Services |
| <b>DMAS</b>  | Dept. of Medical Assistance Services                  |
| <b>FPM</b>   | Family Partnership Meeting                            |
| <b>FSS</b>   | Family Services Specialist                            |
| <b>LCPA</b>  | Licensed Child Placing Agency                         |
| <b>LDSS</b>  | Local Dept. of Social Services                        |
| <b>PPO</b>   | Preliminary Child Protective Order                    |
| <b>ICPC</b>  | Interstate Compact on the Placement of Children       |
| <b>OCO</b>   | Office of the Children's Ombudsman                    |
| <b>VDSS</b>  | VA Dept. of Social Services                           |
| <b>VLSSE</b> | VA League of Social Services Executives               |

In its 2018 Report, “Improving Virginia’s Foster Care System,” the Joint Legislative Audit and Review Commission found that “[m]any stakeholders – social services staff, foster parents, judges, and others – expressed concerns about the lack of accountability in Virginia’s foster care system and the impact this has on children and families.”<sup>2</sup> The creation of the OCO was recommended to assist VDSS to “systematically and comprehensively identify the extent, causes, and locations of specific and serious problems in Virginia’s foster care system.”<sup>3</sup>

## Functions of the Office

### ***Investigate***

The OCO receives and investigates complaints from the public about Virginia’s child welfare system. Specifically, we receive complaints with respect to a particular child who (i) has been alleged to have been abused or neglected, (ii) is receiving child protective services, (iii) is in foster care, or (iv) is awaiting adoption. The OCO can investigate complaints that allege that administrative acts taken by the Virginia Department of Social Services, local departments of social services, or child-placing agencies were:

- contrary to law, rule, or policy;
- imposed without an adequate statement of reason; or
- based on irrelevant, immaterial, or erroneous grounds.<sup>4</sup>

The OCO can initiate an investigation on its own initiative without receiving a complaint.<sup>5</sup> We also investigate child fatalities when the child victim’s family was involved with child protective services (CPS) or foster care prior to, or at the time of, the child’s death.<sup>6</sup> In addition, we have the authority 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.<sup>7</sup> 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

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<sup>2</sup>*Improving Virginia’s Foster Care System*, Joint Legislative Audit and Review Commission Report to the Governor and the General Assembly of Virginia (2018), pp. iii. <http://jlarc.virginia.gov/pdfs/reports/Rpt513-2.pdf>

<sup>3</sup>*Id.*, pp. 73–74.

<sup>4</sup>[Va. Code § 2.2-442](#).

<sup>5</sup>[Va. Code §§ 2.2-439\(A\)](#) and [2.2-443\(A\)](#).

<sup>6</sup>[Va. Code §§ 2.2-440\(D\)](#) and [2.2-443\(A\)\(1\)](#).

<sup>7</sup>[Va. Code § 2.2-443\(B\)](#).

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.

## **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 being 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 objective and fair manner free from bias and conflicts of interest. We treat all parties without favor or prejudice.
- ***Confidentiality:*** The OCO is dedicated to maintaining confidentiality of all information and records obtained in the performance of our duties. We limit disclosure in accordance with applicable law.

The OCO recognizes and respects both the parent-child relationship as well as the good faith efforts and intent of child-serving and child-placing agencies to act in the best interests of children. We respect the proper balance between family preservation and child safety in performing our duties.



## II. FIRST YEAR ACTIVITIES TO ESTABLISH THE OFFICE

### Creation of Policies and Procedures

OCO staff worked throughout the year to develop our policies and procedures. We reviewed the policies and procedures of similar offices in other states and consulted with stakeholders to ensure that we are responsive to complainants and providing useful information to the agencies we investigate.

### Case Management System Procurement

We knew from the beginning that accurately capturing data about the complaints we receive would be essential to fulfilling the functions and mission of this office. After researching several options, we decided to procure the CMTS case management system from Wingswept, a technology services company headquartered in North Carolina with an office in Virginia, under GSA Contract No. GS-35F-0218X. We spent several months developing and customizing our system with Wingswept staff to meet our specific workflow and data collection needs so that we can timely respond to complainants, capture information that will help us identify trends, and report on individual and systemic issues that are identified in the cases we review.

### Website Development

The OCO worked closely with the Virginia Information Technologies Agency to develop our [website](#). The term ombudsman is unfamiliar to many people, so it was important for the site to clearly describe what this office does and to provide information that may help people navigate the child welfare system. The website includes an online complaint form to allow constituents to contact us quickly and easily. The “Reports” tab will include copies of our annual reports, issue briefs and select investigative reports. There is also a resources page to connect youth and families to valuable information and supportive resources.

On May 3, 2022, we held an event to [officially launch](#) our website. Governor Glenn Youngkin delivered remarks along with Secretary John Littell, Delegate Emily Brewer, Virginia Department of Social Services Commissioner Danny Avula, and



Governor Glenn Youngkin delivers remarks at the launch for the Office of the Children's Ombudsman at the Patrick Henry Building on Tuesday, May 3, 2022. (Christian Martinez, Office of Governor Glenn Youngkin)

Kristin Lennox from VOICES for Virginia's Children. The event was well attended by legislators, state agency representatives, advocates, and colleagues.

### **Staffing**

Eric Reynolds was appointed as Director of the OCO beginning on June 25, 2021. Subsequently, he hired a Policy Analyst and two Investigations Analysts. The OCO has partnered with the University of Richmond School of Law and the Virginia Commonwealth University School of Social Work to offer internship and externship opportunities for law students and Master of Social Work candidates. The OCO staff are members of the United States Ombudsman Association and its Child and Families Chapter, which meets virtually each month to give members the opportunity to learn from each other, receive technical and professional support and assistance, and discuss emerging issues within their respective states.

**Eric Reynolds** 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, 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 as counsel for parents in child custody and child welfare cases in the Metro-Richmond area. He is a graduate of the University of Richmond School of Law.

**Jane Lissenden, Policy Analyst.** Prior to this role, she 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.** Prior to this role, she 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 Sanzetea**, *Investigations Analyst*. Prior to this role, she 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.

### **Making Connections**

During the first year, OCO staff met with many state agency leaders, senators and delegates, and representatives from various advocacy groups to introduce the Office and our mission. We presented at events including the Statewide Children's Services Act (CSA) Conference in the Fall of 2021, the Virginia League of Social Services Executives (VLSSE) Fall 2021 Conference, and the Court Improvement Program's 2022 Spring Judicial Conference.

We routinely attend meetings for the following groups: the VLSSE Board and the VLSSE's Legislative and Child and Family Committees; the Family and Children's Trust – Child Abuse and Neglect Committee; the Virginia Commission on Youth; the State Executive Council for Children's Services; the CSA State and Local Advisory Team; and the State Board of Social Services. In early 2022, the Children's Justice Act and Court Appointed Special Advocate Advisory Committee amended its bylaws to include the OCO Director as an ex officio member of the Committee.

We continue to work with the Department of Labor and Industry and the Department of Aging and Rehabilitative Services in helping them raise awareness of the Registered Apprenticeship Program and other workforce initiatives that may be resources for older youth in foster care and young adults who age out of foster care.

## **III. ADVOCACY PROJECTS**

### **Safe and Sound Taskforce**

In 2021, VDSS and local departments of social services called attention to the growing crisis of more and more foster youth experiencing severe mental and behavioral health episodes who were sleeping in local department offices, hotels,

and emergency rooms – some restrained and under the supervision of law enforcement – because appropriate placements and treatment were not available. In addition, more foster youth were remaining at acute facilities, such as the Commonwealth Center for Children and Youth in Staunton (CCCA), longer than necessary because local departments were unable to find a provider willing to receive them.



The OCO began investigating the issue on its own initiative in early 2022 and interviewed staff at VDSS, local departments, the Department of Behavioral Health and Rehabilitative Services (DBHDS), the Office of the Children's Services, private providers, and the CCCA. Local departments reported that some youths' behaviors were so severe that they caused injuries to agency staff and property damage in their offices. Some local departments contracted with outside security providers to supervise or transport the youth. The private provider community of children's residential facilities and licensed child placing agencies reported that licensing requirements, staffing shortages, and insufficient reimbursement rates limited their ability to receive youth exhibiting certain behavioral health issues.

On March 14, 2022, the OCO issued an inter-office memo to the Secretary of Health and Human Resources, John Littel, notifying the Administration of these ongoing challenges and urging immediate action to address this crisis. On April 1, 2022, Governor Youngkin established the [Safe and Sound Task Force](#) to determine the proper course of action. The OCO participates as a member of its core team that regularly meets to oversee the progress of work coming out of the Task Force.

Under the direction of Janet Kelly, Special Advisor to Governor Youngkin for Children's Services, representatives from state and local child-serving agencies, private providers, the court community, and individuals with lived foster care experience were brought together to conduct root cause analyses and develop strategies to address the issues causing foster youth to be displaced.

Special Advisor Kelly and Mira Signer, newly-appointed Special Advisor for the Safe and Sound Task Force, convened a small group of key decision-makers from various state agencies, such as VDSS, the Department of Medical Assistance Services (DMAS), the Department of Behavioral Health and Developmental Services (DBHDS), and the Office of the Children Services (OCS), to work with local

departments of social services and private providers in finding placements for the foster youth that were displaced or who were at risk of displacement.

This unprecedented collaboration among state agencies was successful in significantly decreasing the number of foster youth staying in agency offices, hotel rooms, and emergency rooms. The Task Force continues to break new ground in seeking ways to overcome the various challenges that led to this statewide crisis.

The work of the Task Force will continue to focus on developing and implementing strategies to reduce the number and length of stay of foster youth in long-term congregate care settings and address service gaps in the Commonwealth's statewide system of care.

### **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.

### **Ongoing Projects**

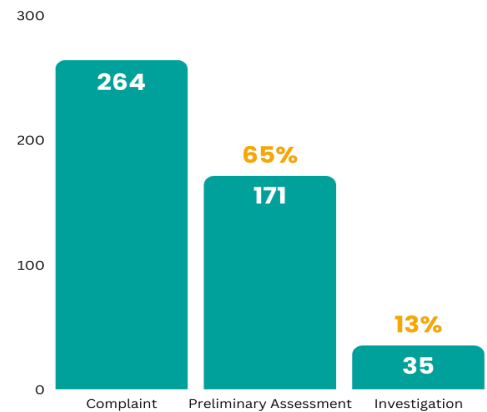
In addition to these significant projects, OCO staff is participating in VDSS' Additional Daily Supervision (ADS) Workgroup reviewing the Virginia Enhanced Maintenance Assessment Tool (VEMAT), the VDSS Tribal Roundtable with Virginia's federal and state recognized Native American tribes, and the VDSS Child Welfare Advisory Committee. The OCO engages in ongoing discussions with VDSS and VLSSE leaders about addressing various issues such as foster care diversion/alternative living arrangements and barrier crimes for foster parents and relative placements.

## IV. CASE REVIEWS AND INVESTIGATIONS

The OCO began receiving calls and complaints soon after the appointment of the Director in June 2021. Because this is the first OCO Annual Report, the following data was gathered from all complaints received between June 25, 2021 and September 30, 2022.

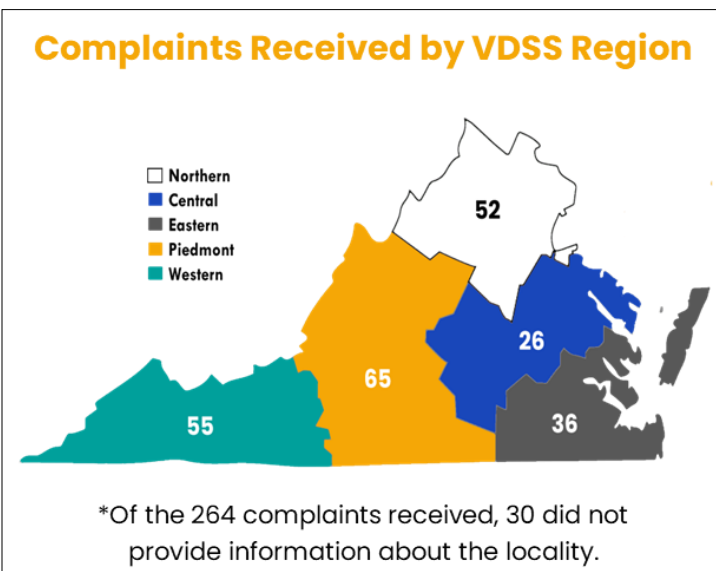
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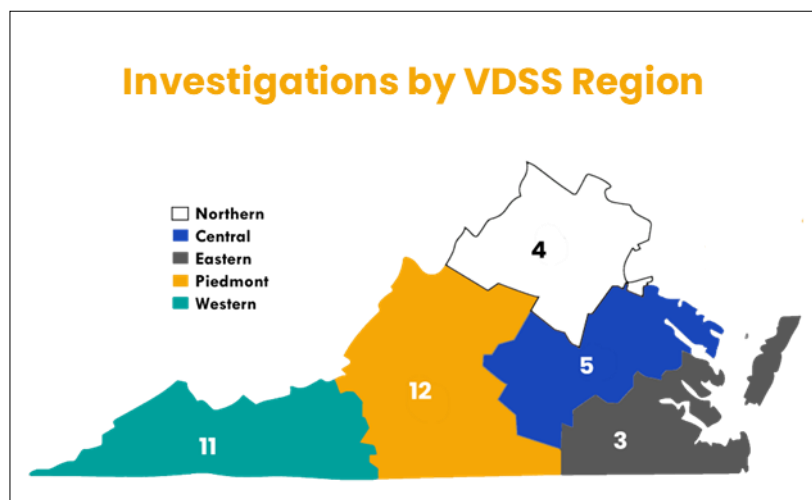
Eighty-seven of Virginia's 120 local departments of social services were the subject of the complaints we received. For cases that moved beyond the intake stage but were eventually closed out, agency directors were notified that a complaint had been received.

## Statutory Complainants Investigation Data

(Va Code § 2.2-441)



Of the 264 complaints received, 35 of them resulted in formal investigations by the OCO. Ninety-seven percent of these complaints were submitted by statutory complainants. Of these complaints that became investigations, 77% included issues related to child protective services, 54% included issues related to foster care, 14% included issues related to adoption, and 25% included issues related to foster care diversion/alternative living arrangements. (Complaints that are submitted can include one or more case type.)



## Child Fatalities Data

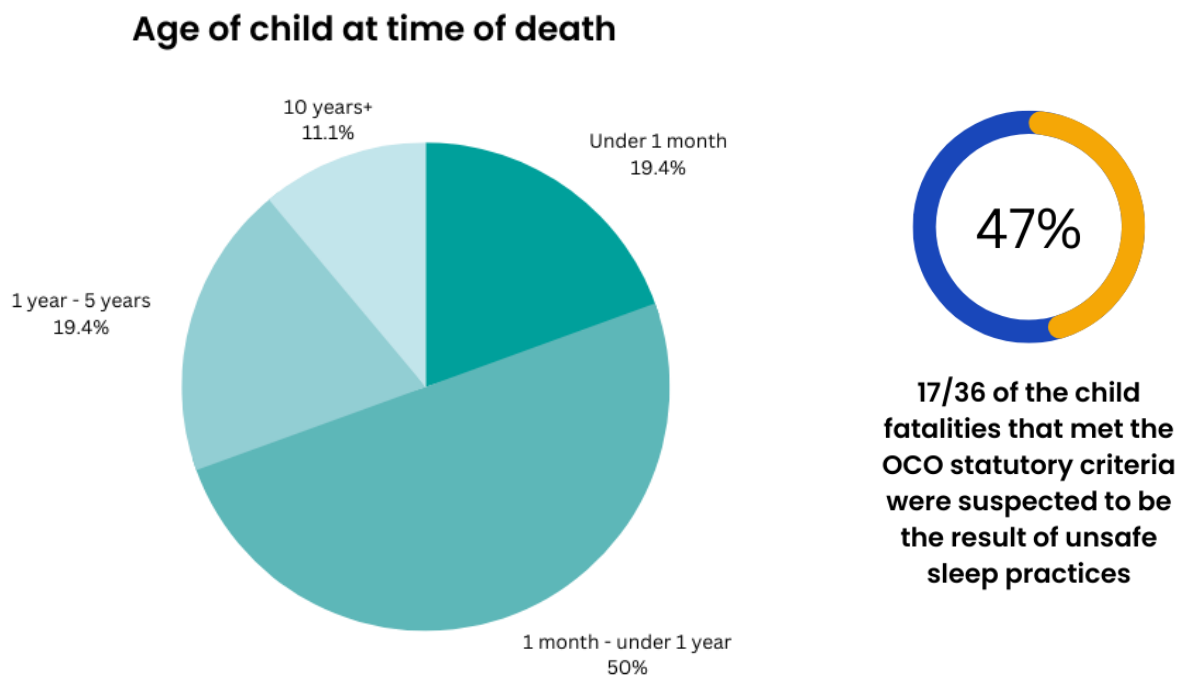
Pursuant to subsection B of [Va. Code § 2.2-443](#), the OCO may investigate child fatality cases that occurred or are alleged to have occurred due to child abuse or child neglect in the following situations:

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.

During the 15 month period between June 25, 2021 and September 30, 2022, the OCO received notices from VDSS for 36 child fatalities that met the above statutory criteria. Seven of them were children less than a month old; 18 were between the ages of one month and one year old; seven were between the ages of one year and five years; and four were aged 10 or older. The most common suspected cause of death<sup>8</sup> was unsafe sleep practices which accounted for the deaths of 17 of the children, who were all under the age of five. Other suspected causes of death included physical abuse, prescription drug overdoses, and complications from being a substance-exposed infant.<sup>9</sup> The most common reasons for the families' involvement with child protective services prior to the child's death among these cases were reports alleging neglect-inadequate supervision due to parental substance abuse and reports of substance-exposed infants at birth.



<sup>8</sup>The suspected causes of death are based on the facts and circumstances present at the time of the child's death. Official causes of death for most cases were not yet determined at the time of the OCO's receipt of the child fatality notices from VDSS.

<sup>9</sup>A "substance-exposed infant" is a newborn infant that "may have been exposed to controlled substances prior to birth." VDSS Child and Family Services Manual, [Part C, Section 10.1](#). See also [Va. Code § 63.2-1509\(B\)](#).

## Case Examples

### Case Number 1

Local law enforcement conducted a welfare check on a single mother and her child due to some concerns about the mother's mental health. The interactions between the mother and the law enforcement officer escalated and resulted in the mother being taken into custody on an Emergency Commitment Order and the child being placed in foster care.

Throughout the child protective services (CPS) case, the CPS family services specialist supported the mother once she was released from commitment and assisted her with addressing the safety concerns the local department had with the home. However, when the case transferred to foster care, progress was slow in achieving the goal for the child to return home due to challenges between the mother and the foster care family services specialist.

Upon receiving the mother's complaint, the OCO investigated the case and found that the issues that caused the child to go into foster care had been addressed yet the local department kept the child in care. The child's mental health declined while in care and the child experienced multiple placement disruptions. We also noted a lack of trauma-informed practices in the local department's engagement with the mother.

The OCO expressed its concerns with VDSS. The VDSS Regional Office became involved to assist the local department in resolving the issues. Once the local department took appropriate action, progress was swift and the mother and her child were reunited.

### Case Number 2

Grandparents from out-of-state reached out to the OCO expressing concerns about the lack of engagement with them by the local department during their grandchildren's time in foster care. The grandparents learned about the children's placement in foster care several months after the local department became involved, not through the local department, but from a family member. The letters that local departments must send to relatives notifying them of the children's entry into foster care had not been sent out because the staff member responsible for that task was out of the office at the time.

Soon after learning the children were in care, the grandparents petitioned for custody. The local department however still did not engage them in visits with the children or explore them as a possible resource for the children. The ICPC process, which is required for states to place foster children across state lines, was delayed for months.

The OCO investigated and expressed concerns with the lack of engagement with the grandparents to VDSS and its Regional Office staff, which subsequently worked with the local department to allow the grandparents an opportunity to remain in their grandchildren's lives. The local department swiftly made efforts to support the grandparents, consider them as a placement option, and provide them with opportunities to engage with their grandchildren. The grandparents were able to build a positive relationship with the children's foster parents and were able to remain active in their grandchildren's lives.

#### **Feedback from a complainant:**

*Dear Mr. Reynolds,*

*I received the results of your investigation this morning via email. I just want to say thank you so very much for even looking into my case. I will forever be grateful that you listened to me no matter what the outcome was going to be. . . . I hope that as a result of your investigation that [the LDSS] looks more closely at possible removal cases and considers safety plans first if it is truly possible to leave a child in the home with a good and strict safety plan in place. Thank you again for just listening to me, you could have turned an ear and said no but you didn't. You took the time to listen and again I will forever be grateful.*

#### **Case Number 3**

A school social worker contacted the OCO with concerns regarding a child that was placed in an alternative living arrangement with a relative. The school social worker disclosed that the child had never been enrolled in school and had been residing in the school district for about two months before it was discovered that the child needed to be enrolled in school. The school social worker expressed concerns regarding the local department's inactions of ensuring that the child had access to services to meet the child's educational needs, as well as their social, emotional, and medical needs in a timely manner.

The OCO contacted the local department expressing our concerns with the coordination of services among the local department, schools, and medical

providers and encouraged the local department to look for ways to improve collaboration among community partners when working with commonly-served children. In addition, we recommended that the local department review their policies and procedures regarding their assessment of the educational needs of children involved in prevention cases and in-home or ongoing services cases.

#### **Case Number 4**

A mother contacted the OCO concerning a local department's decision to place her child in foster care rather than allowing the child to be placed with family members. The mother also shared that she was experiencing housing instability, which was of concern for the local department, but that no services were being offered to assist her with the challenges she experienced during her CPS involvement.

The OCO reviewed the case records and found that the local department was willing to consider relatives instead of foster care but was unable to complete the appropriate checks in a timely manner as the relative identified by the mother was out-of-state and not within the child's community. We provided this information to the mother and encouraged her to seek out and engage in the services identified by the agency to support reunification with her child. The OCO also provided her information about housing support services in her community.

#### **Case Number 5**

A maternal grandmother contacted the OCO with concerns regarding her grandchildren that were placed in an alternative living arrangement with fictive kin.<sup>10</sup> She did not understand why she could not be the caregiver of her grandchildren. She also expressed concern that the fictive kin caregiver was not allowing her to visit the children. She shared that she was previously involved with CPS several years ago but was unsure of what her finding level of abuse and neglect was because the paperwork she was given had conflicting information.

The OCO reviewed the case records and was able to give the grandmother answers to her questions about the local department's actions and decisions regarding her grandchildren. We explained the policies that prohibited her from becoming a placement option due to the founded CPS complaint against her and provided information about options she may pursue to seek visitation with her grandchildren.

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<sup>10</sup>Fictive kin" means persons who are not related to a child by blood or adoption but have an established relationship with the child or his family. [Va. Code § 63.2-100](#).

The OCO also sent a letter to the local department outlining what we found in the case records regarding the inconsistent information about the grandmother's CPS finding. We noted the importance of maintaining consistent records to ensure the level of founded dispositions is accurately communicated. In addition, the OCO encouraged the local department to consider developing visitation plans in conjunction with placement decisions in alternative living arrangements to bridge the gap between birth family and fictive kin and to support familial bonds and connections, if in the best interest of the child. Both the local department and the grandmother appreciated our informative responses.

### **Case Number 6**

The OCO received a call from a foster care supervisor at a local department reporting that an undocumented child in foster care required urgent medical treatment. The child had received legal assistance from a local non-profit organization in achieving legal status, but Medicaid approval was unexpectedly delayed. The family services specialist was also having difficulty getting approval for coverage under the Children Services Act due to local procedural missteps. The OCO convened a meeting between the supervisor and leadership at the Department of Medical Assistance Services, who immediately took steps to expedite approval for the child's Medicaid coverage.

#### **Feedback from a complainant:**

*Thank you so much Mr. Reynolds! You all have taken so much careful and diligent time making sure you got to the bottom of this for me and my children! And you did! I cannot tell you the emotions I felt both great and terrible and so much in between and be able to describe them correctly when I read this report. I had to take many pauses because I couldn't see to read anymore through the tears! I feel validated if that's the correct term! Knowing that this has set in motion events that will change the way they have run our local department is amazing.... I cannot simply tell you all I'm grateful and thank you because that's not enough it's more than that!*

### **Case Number 7**

A family became involved with CPS due to concerns surrounding the mother's ability to provide the appropriate services for her child that had high needs. A family assessment was opened and services were offered to the family.

According to law, the local department is required to complete family assessments within 60 calendar days of receipt of the complaint. The mother called our office expressing confusion, fear, and stress due to her case remaining open for six months with no communication or follow up from the local department.

The OCO contacted the local department, which described the family services specialist's efforts to engage the family in services that were not reflected in the case records. In addition, the local department pointed out the significant staffing challenges it was experiencing, which caused a backlog in documentation as CPS investigators had to prioritize responding to new incoming reports and ensuring those children's safety. The local department acknowledged that this comes at the cost of overdue cases and case documentation. Following the OCO's conversation with the local department, necessary actions were taken to formally close the family's case.

## **V. SIGNIFICANT TRENDS AND RECURRING ISSUES**

From the cases the OCO reviewed over the past 15 months, we identified several trends and issues that came up in a significant number of cases. Please note that these trends and issues only represent those that came to our attention among the complaints we received and may not necessarily reflect statewide trends or patterns.

### **Workforce Challenges**

In every case reviewed by the OCO in which a local department of social services was the subject of the complaint, the local department noted challenges in the recruitment, retention, and training of family services specialists (FSS). Many directors reported that their FSS' caseloads were too high and prevented them from spending the appropriate amount of time working their cases. FSS were reported to spend much of their time on cases needing immediate attention while setting aside less urgent tasks in other cases. In some local departments, the directors and others in leadership positions often had to work individual cases to fill in for or support the assigned FSS.<sup>11</sup>

The average statewide vacancy rate for local departments of social services is 15.3% with one local department reporting a vacancy rate of 46.3%, according to

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<sup>11</sup>See [this article](#) as an example of one local department's story.

recent data provided by the VLSSE.<sup>12</sup> Many departments experience high employee turnover rates as well and worker changes were a concern noted in the majority of the cases we reviewed.<sup>13</sup> Directors cited the challenging work and low compensation as contributing to their difficulty retaining qualified workers. Directors reported losing their experienced workers to other local agencies that are able to pay higher compensation rates, such as local school divisions and court services units. They also reported that many of their more experienced FSS and supervisors left or retired during the COVID-19 pandemic.

Some local directors also expressed concern for the lack of quality training for their FSS and other workers. Most, if not all, training for FSS became virtual in the past two years due to the pandemic as did the technical assistance and support provided by the VDSS Regional Offices. Some directors reported that the benefits of in-person training that were previously available included increased engagement among the participants, which created an environment for new employees to build more robust relationships with one another and to organically develop support networks for each other. New employees miss out on these opportunities when their training is only offered virtually or in prerecorded webinars.

As a result of these challenges, some local departments struggle to meet their statutory obligations and engage in effective practices with families. Providing child protective and foster care services is very difficult work that requires a high level of skill development, critical thinking, and supervisory support as FSS often must make quick decisions – sometimes with very limited information – to ensure the safety of children. FSS should not only have the requisite knowledge and experience of child welfare laws and policies but also the soft skills in engaging in trauma-informed practices when working with families.

**One director reported that one of her family services specialists recently took a job with a different agency in the county that offered a salary approximately \$16,000 more per year than what she was able to pay.**

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<sup>12</sup>In comparison, the average national vacancy rate for state and local government (non-education) employers over the 12-month period between September 2021 and August 2022 was 5.8%. Job Openings and Labor Turnover Survey, Bureau of Labor Statistics. <https://www.bls.gov/jlt/#data>.

<sup>13</sup>In many of our investigations, the family services specialists that we needed to interview were no longer employed by the local department at the time of our investigation.



**Recommendations:**

Local departments should be equipped to offer the requisite compensation, support, and training to recruit and retain qualified FSS. The Commonwealth must support local departments' efforts to do so and provide them with the necessary tools to conduct this challenging work.

In addition to appropriating sufficient funds for local departments of social services to fill staff vacancies and provide competitive pay, the OCO recommends that state leaders support VDSS' budget requests related to workforce, which include the following:

- Funding for trauma-informed support for frontline LDSS workers- \$200,000.
- Funding for the expansion of the Child Welfare Stipend Program for Master of Social Work (MSW) and Bachelor of Social Work (BSW) students - \$240,000.
- Funding to implement recommendations made in the [Child Protective Services performance audit conducted by the Office of the State Inspector General](#) - \$8.2 million.

With regard to training, the OCO acknowledges that VDSS has recently taken significant steps to improve training for local departments and is hopeful that these efforts will better equip local department staff to conduct their work. However, other steps can be taken. A study of Virginia's 30-year-old training model for family services specialists conducted in 2018 by the University of Denver, Butler Institute for Families, recommended that VDSS develop a robust training academy for family services staff. This academy would provide ten weeks of core training and six weeks of program-specific training along with on-the-job learning activities. VDSS estimated that the annual cost for such a training academy would be \$3,711,676. The OCO recommends that state leaders support this initiative.

Significant investments in the social services workforce to assist local departments of social services to hire, retain, and train qualified family services specialists would greatly improve their performance in providing Child and Family Services in their communities.

**Foster Care Diversion/Kinship Diversion/Alternative Living Arrangements**

Fifteen percent of the 264 complaints the OCO received involved "foster care

diversion” cases, also called “alternative living arrangements” (ALA).<sup>14</sup> These are cases in which parents are asked to voluntarily place their children in the physical custody of a relative or fictive kin due to 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.

Practices varied among the local departments whose cases we reviewed. In most if not all cases, the local department presented to parents a written safety plan that included a provision whereby the child would reside with an identified relative or fictive kin. The local department would request the parent sign the safety plan signaling their approval of the child’s placement. The safety plan may be modified by agreement between the local department and parents if circumstances subsequently changed.

In April 2021, VDSS issued policies for In-Home Services, which combined the work of local departments’ prevention units with the CPS ongoing units, to guide local departments in managing cases that may include safety plans with an alternative living arrangement. The policies include provisions addressing time frames for cases, safety and risk assessments and reassessments, service planning and delivery for the family and caregivers, and how to properly open and close such cases.

This guidance is found in [Part B of the VDSS Child and Family Services Manual](#). VDSS also provided training on the new policies for local departments. However, we found that several local departments were either unaware of this guidance or were unable to implement the guidance due to staffing issues or other internal barriers.

Local departments reported the various benefits of using alternative living arrangements as part of their safety plans:

- The children are placed with someone they know and with whom they are familiar, which is less traumatic than being placed with unrelated or “stranger” foster parents.

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<sup>14</sup> Use of “Alternative living arrangements” or “ALA” for the remainder of this Report is consistent with VDSS-preferred terminology. The relatives or fictive kin with whom a child is placed under these arrangements will be referred herein as the “ALA kinship caregiver.”

- The arrangement is temporary to ensure the child's safety while the local department conducts its investigation or family assessment and is able to determine what further action may be necessary to protect the child.
- The arrangement is less restrictive and less drastic than entry into formal foster care, supports Virginia's kin-first culture for keeping children within their family, and is consistent with local departments' statutory duty to "first seek out kinship care options to keep children out of foster care and as a placement option for those children in foster care, if it is in the child's best interests, pursuant to § [63.2-900.1](#)."<sup>15</sup>
- This practice avoids the unpredictability of court proceedings and the limitations on family autonomy when the children are placed in formal foster care; the children are not considered to be "in the system" and therefore avoid becoming trapped in the system due to statutory timelines and requirements for formal foster care.
- In all ALA cases reviewed by the OCO, parental substance abuse and addiction was a primary reason for the local department's involvement with the family. The timelines required for formal foster care cases are often not conducive for the successful treatment of parents' substance abuse and addictions. Alternative living arrangements allow the local department to work with the parents without the pressure of terminating parental rights as they would if the children had been in formal foster care after a certain period of time.<sup>16</sup>
- This practice allows children to be placed with relatives who may not be able to be a formal foster care placement due to a barrier crime but who in all other ways may be appropriate to care for the child.

Despite these benefits and the VDSS guidance, the following concerns regarding safety plans providing for alternative living arrangements were identified by the OCO in its case reviews and investigations:

- Safety plans did not include information regarding how long the alternative living arrangement was to be in place.
- Some safety plans we reviewed did not include any specific actions for the parent to take or services to be offered to them for the children to safely return home.
- Visitation and contact between parents and children were often restricted or required to be supervised. In some cases, the parents were prohibited any

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<sup>15</sup>[Va. Code § 63.2-900\(A\)](#).

<sup>16</sup>[Va. Code § 63.2-910.2](#).

contact with the children at all.

- Relationships between the ALA kinship care provider and parents were often strained and sometimes volatile, preventing parents from maintaining their relationship with the children.
- There was widespread inconsistency in practices regarding performing background checks or other vetting of the ALA kinship caregiver with some agencies conducting full fingerprint and CPS background checks, others only searching the internal case management system for CPS involvement and on-line court records, and in some cases no background checks were completed.
- In many cases, the ALA was made without the local department convening any family partnership meetings.
- In some cases, the ALA kinship caregiver lived outside the child's community and even out-of-state preventing the parents from having regular contact with the children and making it difficult for the local department to provide services to the children and the ALA kinship caregiver.
- In some cases, no services were provided to the parents to help them regain custody of their children, only referrals with no clear direction or guidance.
- Some local departments stopped working with the parents or closed their case after the children were placed with the ALA kinship caregiver.
- Placements with an ALA kinship caregiver do not always result in stability. In one case, the children were placed with three different alternative living arrangements in a two-year period with the final placement being with a person who had no blood or fictive kin relationship with the children.

In addition to these concerns with specific ALA practices, there are significant legal issues that affect the rights of the parents, the ALA kinship caregivers, and the children:

- All of the parents involved in ALA cases that contacted the OCO expressed confusion as to whether these arrangements were truly voluntary. Many reported that they felt coerced to sign the safety plan as they were told to identify a relative or fictive kin to take the children or else the children would be placed in foster care. This could implicate parents' due process rights.
- In removal hearings in which the local department is requesting the child to enter formal foster care, the court must find that "the child would be subjected to an imminent threat to life or health to the extent that severe or irremediable injury would be likely to result if the child were returned to or left in the custody of his parents. . . .[and that] reasonable efforts have been made to prevent removal of the child from his home and there are no alternatives less drastic

than removal of the child from his home. . . .”<sup>17</sup> Because there is no court involvement, no such findings are made. Local departments request the ALA based on their sole assessment that the child cannot remain in the home.

- In formal foster care cases in which the local department initiates court action to remove the children from their parents and place them in formal foster care, parents are provided court-appointed legal counsel to represent them. For ALAs pursuant to a safety plan, parents are essentially asked to give up some of their custodial rights without any legal counsel to help them understand their rights, the provisions of the safety plan, the rights and actions of the local department, or the consequences of agreeing to and signing the safety plan.
- The safety plans are not legal custody orders, so parents may retake physical custody at any time which could put the child at further risk.
- Because these cases are not formal foster care cases, there are no statutory timelines that local departments must follow. In all of the cases reviewed, the alternative living arrangement lasted for a significant amount of time with some continuing for over two years with no effective permanency or closure.
- In most of the ALA cases reviewed by the OCO, the ALA kinship caregiver did not have legal rights over the children as there were no court orders granting the caregiver any legal status. This made it difficult for them to enroll children in school, seek medical care for them, and pursue public assistance and other benefits to care for the children. In formal foster care, the children would be eligible for Medicaid and the kinship caregivers may be eligible to receive foster care maintenance payments if they qualify as licensed foster care providers.
- Some local departments provided service plans once the children were placed with the ALA kinship caregiver, but others did not. There are no statutory requirements to develop service plans in ALA cases.
- There is no oversight over ALAs and the actions of the local department as there is in formal foster care cases in which the courts regularly review case progress with the input from the local department, guardians ad litem, parents’ legal counsel, and court-appointed special advocates (where available).
- In a few cases, the children were subjected to further maltreatment by the ALA kinship caregiver due to insufficient vetting of the ALA kinship caregiver and lack of supervision by the local departments.

In some cases reviewed by the OCO, the local departments pursued court action to address some of these legal issues. Typically, these local departments sought a preliminary protective order (PPO) pursuant to [Va. Code § 16.1-253](#) upon a petition

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<sup>17</sup>Va. Code §§ [16.1-251\(A\)](#) and [16.1-252\(E\)](#).

alleging the child to have been abused or neglected. The PPO often contained the same or similar provisions as the safety plan. In addition, the PPO would have notation ordering the child to “reside with” or “remain in the custody” of the ALA kinship caregiver identified in the safety plan. The OCO is concerned with this practice as subsection H of [Va. Code § 16.1-253](#) states, “Nothing in this section enables the court to remove a child from the custody of his or her parents, guardian, legal custodian or other person standing in loco parentis, except as provided in § [16.1-278.2](#), and no order hereunder shall be entered against a person over whom the court does not have jurisdiction.” Ordering the child to “reside with” or “remain in the custody” of the ALA kinship provider in a PPO may be deemed a removal of the child from the *physical* custody of his or her parents.

One local department’s practice included seeking a removal order pursuant to [Va. Code § 16.1-251](#) or [§ 16.1-252](#) upon a petition alleging the child to have been abused or neglected, and then requesting the court to order the child to be placed in the temporary care and custody of the identified ALA kinship caregiver.<sup>18</sup> The issue with this practice is that a dispositional hearing must be held within 60 days of the removal order in which a final order disposing of the abuse and neglect petition must be entered. This 60-day timeline may not provide the parents sufficient time to address the safety concerns that caused the children to be removed. In the case we reviewed, the court entered a final order granting legal and physical custody of the children to the ALA kinship caregiver at the 60 day dispositional hearing. The local department closed the case without offering any services to the parents or providing any plan for reunification. When the parents requested services from the local department, they were told that because it was not a foster care case, there was no obligation for the local department to provide them services.

In other cases reviewed by the OCO, the local departments encouraged the ALA kinship caregivers to submit their own petition seeking custody of the children. ALA kinship caregivers expressed concerns with this because it put them in an adversarial position with the parents. Parents expressed concern with this because

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<sup>18</sup>Subsection C of [Va. Code § 16.1-251](#) states, “In the emergency removal order the court shall give consideration to temporary placement of the child with a person with a legitimate interest under the supervision of the local department of social services, until such time as the hearing in accordance with § [16.1-252](#) is held.” Subsection F 1 of [Va. Code § 16.1-252](#) states that the court may “[o]rder that the child be placed in the temporary care and custody of a suitable person, subject to the provisions of subsection F1 and under the supervision of the local department of social services, with consideration being given to placement in the temporary care and custody of a person with a legitimate interest until such time as the court enters an order of disposition pursuant to § [16.1-278.2](#)...”

if they consented to a court order granting the ALA kinship caregiver custody, they were not provided assurance that they would ever be able to regain custody of their children in the future. The OCO also has concerns with this practice. Court-appointed legal counsel for parents are not provided in private custody cases as they are in formal foster care cases and parents are usually not financially able to retain legal counsel. Thus, parents are not provided with any legal advice as to the consequences of these court proceedings and how they may affect their parental presumption in future custody proceedings.

### **Recommendations:**

The OCO acknowledges the benefits of alternative living arrangements as reported by local departments and expressed by the VLSSE, particularly the mitigation of trauma imposed on the children when they are placed with relatives and people they know. Local departments and families should have options available to them to address the safety needs of the children and facilitate the rehabilitation of the family. These options, however, should not be at the cost of compromising the children's safety, the parents' constitutional rights, or family integrity.

The OCO recommends that the State Board of Social Services take regulatory action to establish state policy regarding ALAs. In the meantime, local departments should comply with the VDSS In-Home Services policies. The OCO also recommends that the efforts that have already begun by VDSS, the VLSSE, the OCO, and other child welfare stakeholders continue with the goal of developing strategies to resolve the issues identified with alternative living arrangements. Strategies that should be considered include:


- Providing attorneys for parents subject to safety plans calling for an ALA.
- Strengthening state policies with statutory changes or regulatory actions that cover the following:
  - Providing parents clear notice of the factual basis for the need for an alternative living arrangement;
  - Setting a maximum length of time for safety plans, and;
  - Including an exit strategy with clear plans regarding what would enable reunification (specific services or actions and concrete supports) or other appropriate permanency outcomes.
- For longer term alternative living arrangements, create a court process or amend current court processes that can effectuate a temporary transfer of physical custody and joint legal custody of the child to the ALA kinship caregiver without affecting the parental presumption and providing for the continuation of



social services for the family to achieve reunification or other appropriate permanency outcomes.



### **Quotes from parents about alternative living arrangements:**

- *"My children were kidnapped. There was no court order."*
  - *"They told me that if I did not find someone to take the kids, they would go into foster care. How is that voluntary?"*
  - *"They said that if my kids went into foster care, I would never be able to get them back."*
  - *"I thought my children were in foster care, so why aren't I receiving services?"*
  - *"How can I get my children back if DSS is no longer in the case?"*
  - *"Why did they encourage my relative to go file for custody? How am I going to get my kid back?"*
  - *"How do I know what to do to get my kids back if there is no foster care service plan?"*
  - *"How do I get services? Does DSS make referral? Who pays?"*
  - *"I didn't know how long this was supposed to last."*
  - *"They keep putting the kids with someone else. They're not even considering me."*
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### **Foster Care Service Planning**

For each child in foster care, state laws and policies<sup>19</sup> require the local department to prepare a foster care service plan that includes descriptions of the following:

- The programs, care, services, and other support offered to the child and the child's parents and other prior custodians;
- The participation and conduct sought from the child's parents and other prior custodians; and

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<sup>19</sup>[Va. Code § 16.1-281](#). See also [22VAC40-201-80](#) and the VDSS Child and Family Services Manual, [Part E, Section 15](#).

- The visitation and other contacts permitted between the child and the child's parents and other prior custodians, and between the child and the child's siblings.

Parents, relatives, and fictive kin who are interested in the child's welfare, and the child if he or she is twelve years of age or older must be involved in the development of the foster care services plan.

The following recurring issues regarding foster care service plans were identified by the OCO from its case reviews and investigations:

- Parents and children not involved in the development of the plans.
- Lack of documentation in the case records regarding how the plans were developed and who was involved in their development.
- Services were not case-specific. Many plans included "boiler-plate" services, such as psychological evaluations, attachment assessments, substance abuse evaluations, and parenting assessments or classes, regardless of the issues that caused the children to go into care and regardless of the actual conditions or needs exhibited or demonstrated by the parents or children.
- Minimal description of visitation arrangements and no description of how visitation between the parents and children would or could progress.
- Inaccurate information and incomplete information included in the plans. In some cases, information regarding progress made by the parents in their rehabilitation was either excluded from the plans or greatly minimized.

### **Recommendations:**

Birth family engagement is critical to achieving the primary goal of reunification for children involved in the foster care system. One of the most significant opportunities to engage birth families is in the development of the foster care service plan. The OCO encourages local departments to provide a family-first approach in the development of the plan by asking birth parents directly what they identify as their strengths and areas for growth. Parent participation in the development of the plan will lead to a more meaningful service plan since it will incorporate the voices of the people impacted by and bounded to the plan. This will also provide an opportunity for parents to develop a clearer understanding of the circumstances that resulted in their child's/children's removal and the steps that need to be taken to remedy those circumstances and address the local department's concerns.

The OCO recommends that local departments ensure their family services specialists are trained sufficiently to understand and comply with the requirements for foster care service plans under state laws and policies. Local departments should refrain from using “boiler-plate” language in these plans and develop parent-specific and child-specific action steps based on their unique case concerns. Foster care service plans provide parents and others involved in the case a roadmap for the way the case should proceed and what should be expected to achieve permanency for the child, including visitation plans. It is imperative that each plan reflects accurate and up-to-date information while providing a fair balance of case achievements and challenges.

### Visitation

The following recurring issues regarding visitation for children in foster care were identified by the OCO in its case reviews and investigations:

1. **Visitation arrangements for the parents were not made in a timely manner.** In many cases we reviewed, visits were delayed for up to several weeks after the children were first placed into care. One local department had a local policy requiring the initial visit to be held after the foster care service plan was approved by the court at the dispositional hearing – 60 days after the child’s removal – reportedly to allow the children to stabilize and acclimate to the foster home and to prevent any confusion for them. Delaying visits for such a significant amount of time is contrary to state policy.
2. **Inappropriate limitations and restrictions placed on visits.** In most cases reviewed, visits for parents were routinely held at the local department’s office, were one-hour in duration, occurred either once a week or every other week during business hours, and were required to be supervised regardless of the circumstances of the family. These conditions were also placed on visits between the children and non-offending parents (parents who were not alleged to have abused or neglected the child or children). Some cases may involve circumstances that warrant one or more of these limitations or restrictions, but that determination must be made on the specific nature of each case.

Also, in some localities, local department policy prohibited parents from taking their cell phones with them during visits. They were thus unable to take photos of their children. This was reportedly to prevent parents from posting photos or video recordings of the children on social media or other public platforms. Again, this restriction may be warranted in some cases, but not all, and should be

imposed on a case-by-case basis rather than as a general rule.

3. **Virtual visits.** During the pandemic, many local departments began replacing in-person visits with virtual visits between parents and children as a result of mandated restrictions on person-to-person contact. While this was not ideal, local departments had very few alternatives during that time. Parents and agency staff reported issues with children's limited ability to focus or pay attention in virtual visits. Children would stop engaging so the visits would end early. In some cases, the local department requested the children's foster parent to supervise the virtual visits. In one such case, the foster parent – who also expressed interest in adopting the children – often terminated virtual visits for arbitrary reasons alleging and reporting to the local department that the parent was inappropriate during the visit. Virtual visits can be helpful to local departments with their engagement with family members and for visits, especially if someone is sick, has transportation issues, or lives a great distance away, but should not be the preferred format for visits absent any such circumstances.
4. **Inconsistent policies for relatives' visitation with children.** Some agencies required relatives to file for custody of the children before allowing visits. Others allowed only relatives who offered to be foster placements for the children to visit. Some agencies required background checks while others did not. Other agencies allowed relatives and fictive kin to visit without any such requirements or expectations.

### **Recommendations:**

Visits should be regular and meaningful to help maintain the parent-child relationship while the child remains in foster care. Local departments should consistently follow VDSS policies regarding visits between the parents and their children in foster care, which can be found in Part E, [Section 4.8](#) and [Section 8](#) of the VDSS Child and Family Services Manual.

Visitation plans must be in the best interest of the child and should support the child's safety, permanency, and well-being. The visitation plan should be a written plan addressed in the foster care service plan and should include the structure and logistics of the visits. The plan should also be documented within five (5) days of the child's entry into foster care.<sup>20</sup>

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<sup>20</sup>VDSS Child and Family Services Manual, Part E, [Section 4.8.1](#).

Local departments should arrange visitation immediately after the child is removed from their home unless a court order prohibits visitation or contact, with the initial visit occurring within five days. Visits should be scheduled as often as possible. Local departments should use the following criteria for visits:

- Least restrictive, inclusive setting with consideration given to the culture and social patterns of the family.
- In the child's community whenever possible.
- A setting that is age appropriate and ensures the safety of the child.
- In the local department's office when necessary for the protection of the child or to allow for support before, during or after the visit.<sup>21</sup>

Local departments should also follow VDSS policies regarding the participation of extended family members and fictive kin in visits with the child. "Strong connections with family members and significant adults provide the child with stability, long-term safety nets, and the necessary foundations for success in adulthood."<sup>22</sup> VDSS policy instructs local departments to encourage supportive relatives and fictive kin to connect with the child for visits, phone calls, and other means of communication and connection.<sup>23</sup>

### **Other Policy and Practice Considerations**

Additional policy and practice considerations were identified in our case reviews by OCO investigators. These issues have not yet elevated to a level of "significant trends and issues" for our office, but to enhance case management practices and case outcomes, we shed light on these concerns and provide some recommendations.

#### **Foster Parents**

Foster parenting can be an isolating experience often filled with daily challenges and demands. The OCO values and appreciates Virginia's foster parents and recognizes the need for more foster parents to come forward to serve the diverse needs of children involved in the foster care system. To recruit and retain foster parents, the OCO recommends that ongoing trainings be provided to foster parents by the local departments of social services and the licensed child-placing agencies

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<sup>21</sup>*Id.*

<sup>22</sup>VDSS Child and Family Services Manual, Part E, [Section 2.4](#).

<sup>23</sup>*Id.*

(LCPA) to ensure the families are equipped with the tools, services, and community supports to best serve children and families.

Foster parent expectations and training. The OCO has identified that in some cases, foster parents' expectations did not align with the foster care goal of reunification, which is the initial goal in most cases. We urge local departments and LCPAs to offer ongoing support to foster parents in recognizing the value and purpose of reunification. The OCO encourages foster parents to see themselves as resources for the child's birth parents rather than as replacements of the child's birth family. When appropriate, foster parents can become a part of the birth family's network of support and maintain ties possibly even after the permanency goal has been achieved. Should the permanency goal not be achieved, we encourage the local departments and foster parents to acknowledge the impact of adoption and assess the benefits of maintaining the child's ties to their birth family if in the child's best interests to ensure they remain connected to the people, culture, and community that made them who they are.

Foster care placement changes. The OCO also received complaints from foster parents regarding foster care placement changes, which can be another traumatic event for the children as they are removed from a familiar environment and placed in a new one with new caregivers, and in some cases, a new school and a new community. The OCO has reviewed cases where foster parents, birth parents, and other key partners were not involved in placement change decisions. In order to mitigate the negative impact of a placement change and promote team collaboration, the OCO recommends that local departments refer to [Section 6.10](#) of the VDSS Child and Family Services Manual and abide by the steps outlined to successfully, communicatively, and carefully change a child's placement.

In other cases the OCO reviewed, Family Partnership Meetings (FPM) prior to a placement change were either delayed or did not occur at all. According to state policy, FPMs should be held prior to the child's change of placement in order to make an informed decision regarding the appropriateness of the placement change, develop a meaningful plan for the transition, and provide an opportunity for all significant adults and team members to have their voices heard. We recognize that emergencies arise impacting the ability for FPMs to be held in a timely manner and recommend that FPMs be held promptly to promote case stabilization.

Communication issues among foster parents, LCPAs, and local departments. The OCO noted several cases involving communication challenges between the local departments and LCPAs. We encourage local departments and LCPAs to establish standard communication protocols and maintain open lines of communication by participating in monthly worker visits together as needed, sharing case updates, and openly discussing case concerns to build stronger ties and uniformly support both the foster parents and the children toward the achievement of the identified foster care goal.

### **Parental Substance Abuse and Addiction**

Substance abuse and addiction significantly impact families and cause unique challenges for local departments working with those families. The OCO received and reviewed many cases involving parental substance abuse and addiction and noted how local departments' ability to provide services was impacted by the inaccessibility of resources and services in their communities. Local departments also encountered challenges in their ability to effectively and meaningfully connect with parents experiencing substance abuse and addiction.

We encourage local departments to collaborate with each other within their regional boundaries and connect with community partners (e.g., schools, community service boards, and medical/mental health providers) to explore opportunities to develop a wider array of substance abuse and addiction resources and tools to increase the availability of resources.

We also encourage VDSS to develop and implement trainings and guidance for local departments' staff in support of continued substance abuse and addiction awareness and skill development to effectively engage with and assess the needs of parents experiencing substance abuse and addiction issues.

### **Family Services Specialist Visits with Children**

Visits with children by family services specialists (FSS) are vital to evaluating case progress and informing the recommendation of services. Visits also provide an opportunity for the FSS to meaningfully and critically engage with the children on their caseload. For some children, this may be the only opportunity they have to meet with their FSS outside of formal agency meetings and offers a chance to build trust-based relationships between them and their FSS.

Local departments' high employee turnover rates cause high caseloads for the remaining employees, and as a result, the quality of FSS visits may decrease. Nonetheless, FSS should still commit to consistently visit with the child in accordance with state law and policy. FSS should also make sure that they have one-on-one time with the child to adequately assess their safety and to ensure that the child's voice, wishes, and concerns are heard. The OCO recommends that FSS consult the Home Visit Guidance Tool on the forms page in the VDSS Fusion website to ensure their documentation of their visits in the case management system accurately and thoroughly describes the efforts to support the child's safety, permanency, and well-being.

### **Practice Issues**

Child welfare involvement can cause a whirlwind of social, emotional and behavioral responses from not only children, but their caregivers, relatives and fictive kin. This is particularly common for those who encounter the local department for the first time and are unfamiliar with CPS or foster care policies and procedures. It is imperative that FSS build rapport, meet individuals where they are with cultural humility, and acknowledge that children and parents can provide meaningful information about their own families that can help the local department plan for the children's safety, permanency, and well-being.

Engagement in and use of trauma-informed practices are key to helping families navigate the child welfare system and to assisting local departments recognize acute and complex trauma that children and families may have experienced. These practices also help FSS effectively deliver services and assist in conveying a response that allows individuals to develop trust and willingness to engage with local departments. It is also vital that trauma-informed practices are implemented among agency staff to alleviate the vicarious trauma that FSS may experience in their day-to-day work.

The OCO has noted trauma-informed practices demonstrated in a number of cases reviewed and observed how these practices positively impacted the outcomes of those cases. In some cases, we identified areas of improvement and encouraged agencies to prioritize trauma-informed care trainings to strengthen the skills needed for FSS to effectively and meaningfully engage with families.



## VI. LOOKING BACK AND LOOKING AHEAD

The Office of the Children’s Ombudsman was busy in its first year establishing its operations, staffing, and policies and procedures. Our interactions with the subjects of our case reviews and investigations – local departments of social services – have been overwhelmingly positive. Many directors expressed appreciation for the work we did and the assistance we provided in helping them manage their agencies under very challenging circumstances. We also received sincere gratitude from many of the parents, relatives, and others that we were able to assist.

Nonetheless, we recognize that we have areas of improvement that we need to address internally. We continually reassess our policies, procedures, and the decisions we make regarding our responses to the complaints we receive. We appreciated the feedback we received over the past year from local departments, VDSS staff, and others and will continue to welcome such feedback as we seek out ways to improve our work.

The Office of the Children’s Ombudsman is looking forward to our second year. The goals established build on the work we started in our first year and reflect our commitment to the mission of this Office in helping improve Virginia’s child welfare system. Our goals also reflect our commitment to improving the effectiveness, operation, and performance of the Office. In the coming year, we plan to:

- Improve overall timeliness in processing complaints and concluding case reviews and investigations.
- Improve communication with the agencies that are the subject of our case reviews and investigations.
- Develop policies and procedures for conducting investigations of the child fatalities within our statutory authority.
- Conduct outreach about the Office to more communities within the Commonwealth, such as the growing Spanish-speaking community, and other agencies and organizations such as law enforcement, local school divisions, and organizations or groups that work with foster parents.
- Increase our efforts to reach out to youth receiving foster care services to make them aware of this Office.
- Partner with other child welfare agencies and organizations to develop multidisciplinary training for family services specialists, attorneys, and court-appointed special advocate program staff and volunteers.

- Continue our involvement and participation in the various workgroups, committees, and advisory groups established to address issues and seek improvements in the practices and work of child-serving agencies.
- Engage in listening tours and roundtable discussions to gather information and feedback from youth and families with lived experience with the child welfare system as well as from leadership and staff from local departments of social services.
- Continue to connect children and families with supportive resources and services that are available throughout the Commonwealth.
- Continue our partnerships with universities and law schools to provide internship and externship opportunities to expose them to the impact social workers and attorneys can have in the area of child welfare.

Virginia's child welfare system is made up of many hard-working individuals at the local and state levels who are dedicated to ensuring the safety, permanency, and well-being of children. The Office of the Children's Ombudsman supports their efforts and looks forward to continuing our work with them to improve the child welfare system so that all children and families are given the opportunity to thrive.