

Department of Legislative Services
 Maryland General Assembly
 2015 Session

FISCAL AND POLICY NOTE

House Bill 1022
 Judiciary

(Delegate C. Wilson, *et al.*)

State Government - Office of the Child Welfare Ombudsman - Establishment

This bill establishes the Office of the Child Welfare Ombudsman in the Office of the Attorney General. The purpose of the office is to investigate and determine whether (1) the needs of children and families under the jurisdiction of the Department of Human Resources (DHR) or a local department are being met in compliance with State law; (2) the rights of children and families are being upheld; and (3) the children are not being abused or neglected.

Fiscal Summary

State Effect: General fund expenditures increase by a minimum of \$507,900 in FY 2016 for the State to establish and staff the newly created Office of the Child Welfare Ombudsman. Future year expenditures reflect annualization and inflation, as well as the hiring of additional staff in FY 2017. The penalty provisions of the bill do not have a material impact on State finances or operations.

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	507,900	1,004,500	1,241,600	1,297,300	1,355,700
Net Effect	(\$507,900)	(\$1,004,500)	(\$1,241,600)	(\$1,297,300)	(\$1,355,700)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: The penalty provisions of the bill do not have a material impact on local government finances or operations.

Small Business Effect: None.

Analysis

Bill Summary:

Child Welfare Ombudsman

With the advice and consent of the Senate and input from current or former foster children, the Attorney General must appoint the Child Welfare Ombudsman. The ombudsman must have been admitted to practice law in the State and have at least five years of experience in child welfare. The term of the ombudsman is five years. The ombudsman is a full-time State employee and entitled to an annual salary as provided in the State budget. The Attorney General may remove the ombudsman for good cause shown after notice and an opportunity to be heard.

Office of the Child Welfare Ombudsman

The Office of the Child Welfare Ombudsman must include a full-time ombudsman and staff, including assistant ombudsmen, as provided for in the State budget. The ombudsmen may appoint and employ the professional, investigative, and clerical staff provided for in the State budget. As necessary, the ombudsman may hire or contract with experts in the field of child welfare. To the extent practicable, the ombudsman must use the services and personnel of the Office of the Attorney General, the Department of State Police, and other State and law enforcement units. These entities must cooperate, to the extent practicable, with the ombudsman and the office's staff.

In cooperation with the Secretary of Budget and Management, the Attorney General must set minimum salaries, qualifications, and standards of training and experience for positions in the office. The budget of the ombudsman and the office must be a part of the budget of the Office of the Attorney General, and the Governor must provide in the State budget sufficient money for the office to hire necessary staff. If the budget is insufficient to allow the office to perform its duties, the ombudsman may apply to the Board of Public Works for additional money from the General Emergency Fund. Personnel of the office are generally subject to the provisions of the State Personnel and Pensions Article. However, the compensation of the following personnel must be determined by the ombudsman and, if possible, in accordance with the State pay plan: (1) assistant ombudsman; (2) attorneys that are special appointees or in the management service; and (3) all positions in management, professional, and skilled service classifications unique to the office. On an annual basis, by January 31, the ombudsman must report to the Secretary of Budget and Management and the General Assembly all personnel positions, classifications, and salaries in the office as of the end of the immediately preceding calendar year.

Duties of the Office

The office must:

- identify, receive, investigate, and seek the resolution or referral of complaints made by or on behalf of a child involved in child in need of assistance (CINA) cases concerning any act, omission, practice, policy, or procedure of a State or local agency or any person working on behalf of the agency that may adversely affect the health, safety, or welfare of the child;
- inspect and review the operation, policies, and procedures of foster care homes, group homes, kinship care homes, residential treatment facilities, shelters for the care of abused or neglected children, and independent living arrangements operated, licensed, or approved for payment by DHR or a local department or used by DHR or a local department for the care of children in its custody;
- review, evaluate, report, and make recommendations to a State or local agency concerning procedures established by the agency to provide services to children and families that are at risk of abuse or neglect, children in State or institutional custody, or children and families who receive child protective kinship care or foster care services;
- receive, investigate, and make referrals to other State or local agencies, or take appropriate actions with respect to a complaint received by the office regarding the actions of DHR, a local department, or a State-funded private entity that provides services to children and families who are at risk of abuse or neglect, children in State or institutional custody, or children and families who receive child protective, kinship care, or foster care services;
- establish and maintain a helpline and website to receive and respond to calls from citizens regarding the welfare of children in the State;
- conduct unannounced site visits at reasonable times and in a reasonable manner to any institution or facility to which children are committed or placed, as specified;
- consult with any appropriate State or county agency or State-funded private entity providing child welfare services to children, and may request from such entity, and the entity is authorized and directed to provide, such cooperation and assistance as will enable the child advocate to properly perform its responsibilities; and
- establish and implement procedures for receiving, processing, responding to, and resolving complaints made by or on behalf of children who are recipients of the services of the local departments.

Duties of the Ombudsman

The ombudsman may (1) review and copy relevant laws, policies, procedures, and specified records and reports, including those relating to an individual child; (2) conduct interviews with staff, children, and others; (3) issue subpoenas to compel the attendance and testimony of witnesses or the production of books, papers, and other documents, and apply to the appropriate circuit court for relief in instances of noncompliance; (4) administer oaths to witnesses; and (5) if the ombudsman considers that legislation would affect the interests of persons under its jurisdiction, recommend such legislation to the General Assembly.

Complaints

A child who is the recipient of services from DHR or a local department or is a CINA may file a complaint with the ombudsman, as specified. The complaint process must be confidential, expedient, and responsive to the child's perception of safety issues and the child's emotional needs. The ombudsman must establish and implement appropriate response times and safety measures for different types of complaints. Local departments of social services must include, in developmentally appropriate language, specified information in each child's record about the complaint procedure. A child must be given the information at the initial court hearing, before any subsequent court hearings, and before every new placement.

The office must provide training on complaint policies and procedures to specified workers as well as other professionals working with children through CINA cases. The training must be provided as part of the professionals' employment orientation and continuing professional development.

The office must inform the child, in a developmentally appropriate way, of the outcome of any investigation. If the outcome of the investigation entails site visits with the child for a specified period of time, the child must be informed of the scope and intent of the follow-up process. The ombudsman must treat all complaints received as confidential, including the identities of complainants and individuals from whom information is acquired. However, the ombudsman may disclose information as necessary to enable the performance of the duties of the ombudsman and to support any recommendations resulting from an investigation. Records relating to complaints received by the office and the investigation of complaints are exempt from disclosure under the Public Information Act.

Reporting Requirements

The office must report in a timely manner to the Secretary of Human Resources and the General Assembly knowledge of any systemic or life-threatening problems and any findings, actions, and recommendations relating to investigations regarding the care, supervision, and treatment of (1) children and families who are at risk of abuse or neglect; (2) children in DHR or local department custody; or (3) children and families who receive protective kinship or foster care services. All other findings, actions, and recommendations related to the office's activities must also be reported. The bill also requires quarterly reports to the Secretary of Human Resources of specified items, including all activities of the office and details regarding the complaints made to the office. A copy of the report must be provided to specified entities.

By November 30 of each year, the office must report to the Secretary, the Citizens Review Board for Children, the State Council on Child Abuse and Neglect (SCCAN), the Governor, and the General Assembly on all the office's activities and the actions taken by DHR in response to findings and recommendations of the office. The office must remove any identifying information as necessary to protect the privacy of the child and the child's family.

Penalties

A person may not discriminate or retaliate in any manner against a person for filing a complaint under the bill's provisions, providing information to an advocate of a child in good faith, or willfully interfering with an advocate of a child in the performance of the advocate's official duties. A violator is guilty of a misdemeanor and subject to maximum penalties of a \$5,000 fine and/or imprisonment for five years.

Current Law/Background: There is no State Office of the Child Welfare Ombudsman. DHR, through its Social Services Administration, has the primary responsibility for child welfare services throughout the State, which are provided primarily by the local departments of social services.

A CINA is a child who requires court intervention because the child was abused or neglected or has a developmental disability or a mental disorder, and the child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs.

DHR is required to establish a program of out-of-home placement for minor children (1) who are placed in the custody of a local department, for a period of up to 180 days, by a parent or legal guardian under a voluntary placement agreement; (2) who are abused, abandoned, neglected, or dependent, if a juvenile court has determined that continued

residence in the child’s home is contrary to the child’s welfare and has committed the child to the custody or guardianship of a local department; or (3) who, with the approval of DHR, are placed in an out-of-home placement by a local department under a voluntary placement agreement regarding a child with a developmental disability or a mental illness, as specified. Out-of-home placements are placements of a child into foster care, kinship care, group care, or residential treatment care. DHR must also establish a program of out-of-home placement for former CINAs.

As one of its responsibilities, the State Citizen’s Review Board for Children may review specific child welfare and out-of-home placement cases and evaluate the extent to which State and local agencies are effectively discharging their child protection responsibilities in accordance with (1) the State plan required by the federal government; (2) the child protection standards set forth in State and federal law; and (3) any other criteria it considers important to ensure the protection of children. It also reviews the extent to which the State child protective services system is coordinated with the foster care and adoption program established under Title IV-E of the Social Security Act and conducts reviews of child fatality and near fatality reports. Each jurisdiction must establish a local board of review for minor children in out-of-home care, or establish a multicounty local board. The local boards also conduct case reviews as to minor children who reside in out-of-home care. Local governments may establish local citizens review panels to assist and advise the board and SCCAN.

SCCAN is another entity responsible for evaluating the extent to which State and local agencies are effectively discharging their child protection responsibilities in accordance with the criteria specified above. SCCAN is required to examine the policies and procedures of State and local agencies and specific cases that it considers necessary to perform its duties.

State Fiscal Effect: General fund expenditures increase by a minimum of \$507,863 in fiscal 2016, which reflects a start date of October 1, 2015, for the ombudsman and six additional staff beginning in December 1, 2015. In addition to the ombudsmen position, this estimate reflects the cost of hiring these six additional employees (one senior ombudsman, three assistant ombudsman, one attorney, and one administrative assistant), to carry out the functions of the office. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	7
Salaries and Fringe Benefits	\$449,915
Operating Expenses	<u>57,948</u>
Total FY 2016 State Expenditures	\$507,863

General fund expenditures increase to a minimum of \$1.0 million by fiscal 2017, which reflects the cost hiring four additional employees (and associated start-up costs), full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. These four additional employees (one senior ombudsman and three assistant ombudsman) who are hired on January 1, 2017, are needed due to an anticipated increase in workload; it is assumed that the office begins receiving additional complaints and performing more inspections, reviews, and investigations. Expenditures may continue to increase, potentially significantly, if the workload undertaken by the office necessitates additional staff.

In addition, the estimate above does not include expenditures relating to the establishment of a 24-hour helpline, or any expenditures relating to contracting with experts in the field of child welfare, both of which have the potential to significantly increase expenditures further. The Department of Legislative Services (DLS) notes that the above estimates are preliminary only, as an accurate determination of the expenditures associated with creating the office cannot be reliably determined before the function commences, particularly when expenditures depend in large part on the scope of the activities undertaken by the office, as well as the number of complaints that are received. However, DLS also advises that the number of children subject to the purview of the new office is significant. For example, DLS estimates that DHR's monthly caseload for foster care and adoptions/guardianship cases totals more than 14,000 children in fiscal 2016. Accordingly, even though the expenditures above are only a preliminary estimate, DLS advises that the establishment of the office has a significant impact on State expenditures.

Additional Information

Prior Introductions: None.

Cross File: SB 609 (Senator Brochin, *et al.*) - Judicial Proceedings.

Information Source(s): Office of the Attorney General, Department of Budget and Management, Judiciary (Administrative Office of the Courts), Department of State Police, Howard and Montgomery counties, Baltimore City, cities of Bowie and Takoma Park, Department of Legislative Services

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Analysis by: Jennifer K. Botts

Direct Inquiries to:
(410) 946-5510
(301) 970-5510