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CA Foster Care Ombudsman Needs More Authority, Independence

This article examines the role of California's ombudsman¹ for foster care. It cites shortcomings in the way the ombudsman's office is currently structured, provides a brief history of ombudsmanship, and looks at how the foster care ombudsman role differs in other states. Finally, the article offers recommendations for improving the ombudsman's role in California. While not a panacea, an ombudsman with more authority and independence would help strengthen foster care services in California and ensure that they meet the needs of dependent youth and children.²

by Curt Child and Ian Sandefer

Statistics show the need for improved services for foster youth. California currently has more than 80,000 abused and neglected children in its foster care system, or about 20 percent of all foster children in the United States.³ Every year, more than 500 children and youth are abused by their caretaker while in foster care. More than 6,000 children who have been in foster care for less than one year have had three or more placements.⁴ More than half of the state's dependent children are not receiving the appropriate mental health services or adequate dental care. As for emancipated youth, nearly one-third will become homeless within a year of aging out of the system. Around 10 percent of young women leaving California's foster care system are teen mothers⁵ and 67 percent will have had at least one child within five years of aging out.⁶

California's child welfare and foster care system delegates responsibility for the care and treatment of its dependent children to numerous state and county agencies and to the judicial system. Youth often must maneuver this complicated system with little or no assistance. Most social workers do the best they can, but with extremely heavy caseloads it is often difficult to meet each client's ongoing, individual needs. Without adequate guidance, foster youth can get caught between agencies that seem to be denying or diverting responsibility. As a result, their needs are overlooked and the state fails to fulfill its duties as a surrogate parent.

Recognizing the need to protect children in the foster care system, the California Legislature established the Office of the State Foster Care Ombudsman in 1998.⁷ The office performs three main functions. First, it

must disseminate information to foster children and their communities about foster children's rights and about the services of the ombudsman's office. Second, it must investigate and resolve complaints made by foster youth regarding their care, placement, and services. Finally, each year it must compile data regarding contacts, investigations, referrals, and the number of unresolved complaints.⁸

"The mission of the California Foster Care Ombudsman Office is to provide a voice to speak and act on behalf of foster children and youth regarding their care, placement, and services."⁹ Despite its mission, however, the current structure of the program prevents it from making systemic changes in the state's failing foster care programs. While the ombudsman office might be capable of resolving the complaints of individual foster children, it is not permitted to investigate larger

1 The California Legislature established the Office of the State Foster Care Ombudsman by Cal. Welf. and Inst. Code § 16161 (West 2006) and the Department of Social Services administratively created the Office of the California State Ombudsman for Foster Care with All County Letter No. 00-58 (Aug. 2000). "Ombudsperson," "ombudsman," "ombuds," and "ombuds officer" all describe the wide range of government employees who address consumer complaints regarding government services. For clarity, the authors use "ombudsman"—the operational term in California's foster care program—without any gender bias.

2 This analysis is not intended to be a criticism of the current state foster care ombudsman or her staff. Rather, the focus is on a statutory and administrative structure that limits the ombudsman's ability to be effective on a broader scale.

3 California Performance Review, *supra* note 3; *Child Welfare Services Reports for California*, <http://cssr.berkeley.edu/cwscmsreports>.

4 *Child Welfare Services Reports for California*, <http://cssr.berkeley.edu/CWSCMS-reports>.

5 Michael Wald and Tia Martinez, *Connected by 25: Improving the Life Chances of the Country's Most Vulnerable 12-24 Year Olds*, working paper for the William and Flora Hewlett Foundation (Nov. 2003), <http://www.familyrightsassociation.com/news/archive/2003/nov/dy%20finalpdf.pdf#search=wald%20and%20martinez%20country's%20most%20vulnerable>.

6 Barbara Needell, et al., *Youth Emancipating from Foster Care in California: Findings Using Linked Administrative Data* (May 2002), <http://cssr.berkeley.edu/childwelfare/researchdetails.asp?name=youth>.

7 SB 933 (1997-98 regular session) § 66; Cal. Welf. and Inst. Code §§ 16160-16167 (West 2006).

8 Cal. Welf. and Inst. Code §§ 16160-16167 (West 2006); see also California Department of Social Services, All County Letter No. 00-58 (Aug. 2000).

9 California Foster Care Ombudsman Office Annual Report, May 2003-May 2004.

structural problems and issues within the foster care system, nor recommend changes. Unresolved, these structural problems prevent foster youth from becoming successful adults.

The time has come to reassess the model that California adopted for its foster care ombudsman and determine if it is fulfilling the needs of foster children and youth, and others involved with the child welfare system. In light of systemic failures, there is a need to ensure that California's foster care ombudsman responds effectively to individual complaints. But equally important, the ombudsman also must address systemic failures that produce poor outcomes for foster children.

The Ombudsman's Office has Limited Ability to Promote Systemic Change

In California, the ombudsman's role is limited to "attempting to resolve complaints made by or on behalf of children placed in foster care, related to their care, placement, or services."¹⁰ However, case-by-case remedies do little to ensure that the overall program will provide the safety and protection guaranteed by law to children and youth in foster care.

As many states have recognized, an independent ombudsman who, either on his or her own initiative or in response to a complaint, has the authority to investigate systemic issues and recommend corrective action, can improve foster care. California's ombudsman does not have such authority, even if a pattern of individual complaints calls for changes in the overall program. For example, the ombudsman may receive repeated complaints from youth about the lack of mental health or education services, but is not permitted to investigate the underlying causes nor suggest systemic remedies.

Requiring the ombudsman to recommend improvements in the child welfare system strengthens a state's protection and care of vulnerable children, as illustrated in Washington state. Its Office of the Family and Children's Ombudsman responded to recurring concerns of parents, relatives, and stakeholders about the consistency and effectiveness of assessment practices by the state's child protection teams (CPTs).¹¹ CPTs help the Washington's Department of Social and Health Services with high-risk cases, providing "a vital component of the system's cross check on caseworker bias."¹² The concerns had to do with CPT membership, how the teams make decisions, and the timing of CPT meetings.¹³ A thorough review by the ombudsman revealed disagreement in the Division of Children and Family Services about the purpose and value of CPTs, and a lack of uniformity in regional and local CPT practices.¹⁴ The ombudsman recommended that the Department of Social and Health Services work closely with stakeholders and service providers statewide to clarify the policy and practice guidelines for CPTs, to create a system of accountability for following CPT policy, and to improve training in how to use CPT reviews and implement recommendations.¹⁵ If the ombudsman had not had authority to conduct system-wide investigations, these problems and the CPTs' ineffectiveness would have continued.

Limited Independence and Impartiality

California's foster care ombudsman is under the administrative control of the Department of Social Services, the very department responsible for the state's foster care program.¹⁶ This structure creates direct conflicts of interest—or, at the very least, the

appearance of conflicts—because the department director controls all aspects of the program's operation and allocation of resources.¹⁷ This means the ombudsman has no independent authority to recommend policy or program improvements.

Moreover, the Department of Social Services director, in consultation with a committee of interested individuals, appoints the ombudsman to a four-year term¹⁸; thus, the ombudsman reports directly to the person who oversees the foster care program. While this arrangement may limit internal conflicts, it is incompatible with the ombudsman's responsibility to ensure compliance with administrative actions, statutes, rules, and policies related to foster care services and the treatment of children under the state's care.

Other ombudsman programs in California have greater independence from the entities they must regulate. For example, patients' rights services for mental health patients and their families are contracted out "to avoid the potential for a conflict of interest or the appearance of a conflict of interest..."¹⁹; a private, nonprofit entity protects and advocates for the rights of persons with disabilities²⁰; and an inspector general oversees the Department of Corrections, including the Division of Juvenile Justice.²¹ The inspector general's office is a separate department that "shall not be a subdivision of any other governmental entity" and whose director is appointed by the governor, subject to confirmation by the state Senate.²² The inspector general is responsible for conducting investigations and audits as requested or upon his or her own initiative.²³

California should provide no less oversight of the agencies that care for abused and neglected children under

10 California Foster Care Ombudsman Office, Annual Report, 2 (May 2003–May 2004).

11 Washington Office of the Family and Children's Ombudsman, Annual Report (2003).

12 *Id.* at 33.

13 *Id.* at 29.

14 *Id.*

15 *Id.* at 34–36.

16 Cal. Welf. and Inst. Code § 16161 (West 2006).

17 See the letter from Larry B. Hill, professor of political science, University of Oklahoma, to Martha W. Barnett, president, American Bar Association (July 20, 2001), <http://www.usombudsman.org/ABA/Hill.doc>. According to Hill, an ombudsman should be appointed by, and responsible to, the legislature. He argues that ombudsmen located within the agencies they oversee are vulnerable and their independence is compromised, regardless of legislative

checks. Such ombudsmen, Hill says, are "what Max Weber referred to as 'patrimonial' organizations: their values cannot really be universalistic because the interests of their father figure to whom they report ultimately affect their actions."

18 Cal. Welf. and Inst. Code § 16162 (West 2006).

19 *Id.* §5510(b).

20 *Id.* §5510(c).

21 State of California Office of the Inspector General, <http://www.oig.ca.gov/about/>.

22 Cal. Penal Code §6125 (West 2006).

23 *Id.* §6126.

its care than it provides for aged, disabled, and institutionalized persons in other state programs.

By statute, the Department of Social Services director also controls the foster care ombudsman's budget, including the hiring and reduction of staff.²⁴ This limits the program's effectiveness. The director, for example, can restrict the salary or travel budget to an extent that the ombudsman cannot conduct proper investigations. The Legislature could resolve this problem by budgeting funds for, and distributing them directly to, the ombudsman's office.

Lack of Confidentiality Protections

The ombudsman statute does not contain any provisions for protecting the confidentiality of complainants' identities or investigation records. This dissuades caregivers, social workers, children, youth, and others from reporting problems about individual placements or program deficiencies. The statute should include an anti-retaliation provision to ensure that children and other complainants do not suffer repercussions when they complain about injustices or inadequate services.

Confidentiality protections also would enable the ombudsman to do more thorough fact-finding. Although the ombudsman is supposed to "have access to any record of a state or local agency that is necessary to carry out his or her responsibilities, and may meet or communicate with any foster child in his or her placement or elsewhere," the law has no enforcement mechanism.²⁵ The ombudsman must have enforceable power to obtain documents people are withholding, attend meetings related to foster care, and enter facilities to investigate complaints.

Limited Youth Orientation

Youths often call the ombudsman amid a crisis that demands immediate attention. These crises frequently arise at times other than normal business hours. An effective ombudsman office must adjust its hours so youth have access to services at night and on weekends, when they are most likely to need them.

In addition, ombudsman staff should understand the particular problems that foster youth face. The best way to achieve this understanding is to employ former foster youth. Although California gave such youth priority when it first hired staff for the foster care ombudsman's office,²⁶ their employment does not alleviate the problems they encounter after leaving foster care.²⁷ Under California's Civil Service hiring rules, they work as student interns, receive low pay and no health benefits, and are the first to be laid off during budget cutbacks.²⁸ These youth should receive the same Civil Service protections as other state employees.

Ombudsman History and Roles

The Swedish parliament established the first ombudsman office in 1809.²⁹ "Ombudsman" refers to someone who acts on behalf of another as a "protector against oppressive measures by the government."³⁰ The function of the legislatively appointed Swedish ombudsman was to hear public complaints against the government. Today, "ombudsman" has taken on a broader meaning, denoting "any person or body...that acts as a 'public watchdog' or 'citizen defender.'"³¹ Some commentators call the ombudsman "a bulwark of democratic government against the tyranny of officialdom."³² The underlying rationale is that an autonomous office hearing the public's complaints

California Foster Care Ombudsman Office

Ombudsman:
Karen Grace-Kaho

Staff:
Ten staff members, including two clerical, five analysts, one social service consultant, and two part-time student assistants who are former foster youth. In process of hiring several additional staff and one student assistant.

Supervising Department:
California Department of
Social Services Children and
Family Services Division

Mission/Purpose:
The office was established for the purpose of providing children who are placed in foster care with a means to resolve issues related to their care, placement, and services.

No. of Complaints:
937* Complaints

Source: Primarily foster youth, foster parents, parents, and other relatives

Complaint Type:
Placement issues (187); "personal rights" violations (96), such as telephone access, adequate food and clothing, contacts with family and advocates; abuse and neglect in placements (62), followed by issues relating to health, adoption, education, emancipation, and homelessness.

Address: 744 P Street, Room 900
Sacramento, CA 95814
Website: www.fosteryouthhelp.
ca.gov
Helpline: 1.877.846.1602
Email: fosteryouthhelp@dss.
ca.gov

*May 2005-May 2006

24 Cal. Welf. and Inst. Code §16163 states, "The department shall hire the necessary personnel to perform the functions of the [ombudsman] office."

25 Cal. Welf. and Inst. Code §16164(a)(8) (West 2006).

26 Cal. Welf. and Inst. Code § 16163; personal interview with Jennifer Rodriguez on June 29, 2005, see *supra* note 91.

27 *Id.*

28 See Katherine C. Naff, *Prospects for Civil Service Reform in California: A Triumph of Technique over Purpose?*, San Francisco State University, American Political Science Association (2002), http://bss.sfsu.edu/naff/HRM/calif_%20paper.pdf.

29 Howard A. Davidson, et al., *Establishing Ombudsman Programs for Children and Youth: How Government's Responsiveness to Its Young Citizens Can Be Improved*, 8 (1993); Donald C. Rowat, *The Ombudsman Plan: The Worldwide Spread of an Idea*, 3 (2d ed., 1985).

30 *Id.*, *supra* note 16, at 8.

31 *Id.*

32 Rowat, *supra* note 16, at 15.

is better able to remedy individual complaints and root out problems with government systems.³³ This, in turn, maintains the government's legitimacy.³⁴

"A remarkable burgeoning of interest in ombudsmanship" arose in the United States after 1965.³⁵ Developments at the state and federal level, as well as conferences, studies, a *Time* magazine article, and American Bar Association resolutions, demonstrated increasing approval of the ombudsman concept.³⁶ After 1975, there was a significant shift from general ombudsmen to ombudsmen focused on serving the more vulnerable sectors of the population.³⁷ By 1978, every state had ombudsman offices for residents of long-term care institutions, and by 1982, 18 states had established special ombudsman plans for correctional institutions.³⁸ Additionally, the mid-1980s saw an increase in the establishment of national children's ombudsman offices around the world. This was spurred by the 1979 International Year of the Child and the United Nations Convention on the Rights of the Child, which the United Nations General Assembly adopted in 1989.³⁹ It was in this context that foster care ombudsman offices began to emerge around the United States; by 2004, there were about 27 child ombudsman offices nationally.⁴⁰

The creation of the California Office of the Foster Care Ombudsman was one of the recommendations of the California Youth Connection (CYC), an advocacy organization that comprises current and former foster youth. CYC wanted an organization that children in out-of-home care could call

when they were having a problem with their care, placement, or services.⁴¹ As stated in the legislative intent, the foster care ombudsman is to provide protections to foster youth similar to those provided by the long-term care ombudsman pursuant to section 9710 of the Welfare and Institutions Code.⁴²

The foster care ombudsman performs ministerial functions such as distributing information, responding to individual complaints of foster youth, and collecting and disseminating data on complaints and investigations.⁴³ The ombudsman is not authorized to investigate systemic problems or make recommendations concerning the foster care system as a whole. Welfare and Institutions Code § 16164(a) (7) (A)-(C) relegates the ombudsman's policy role to the compilation of data, which must be disbursed to the Legislature and other organizations.⁴⁴ The ombudsman has the discretion to conduct a thorough investigation of individual complaints.⁴⁵ He or she can try to resolve a complaint informally or submit a written plan to a state or county agency "recommending" a course of action.⁴⁶

Traits of Effective Ombudsmen

There are many different ombudsman models in the United States, but everyone agrees that ombudsmen must have certain characteristics to be effective.⁴⁷ These essential characteristics, according to the American Bar Association's recently adopted *Standards for the Establishment and Operation of Ombuds Offices*, are independence, confidentiality, and impartiality in conducting inquiries and investigations.⁴⁸ To best

serve the youth in California's confusing and underperforming foster care program, the program must also be a catalyst for change and be youth-oriented.

Catalyst for Change

A recent Juvenile Justice Bulletin from the Office of Juvenile Justice and Delinquency Prevention noted that one important role of an ombudsman is "to consider how issues and problems in individual cases may require system-wide changes to make an impact on organizational culture."⁴⁹ To achieve systemic changes that impact multiple organizations, there is a need for the ombudsman to have greater discretion to address broader issues arising from out-of-home placements. This role ultimately can promote policy and program changes at top administrative levels, rather than inadequate piecemeal remedies.⁵⁰

To protect the anonymity of innocent children, the child welfare system is essentially closed to the public. The ombudsman can play a vital role in bringing hidden problems in the foster care system to the public's attention. Many states require their ombudsman not only to collect data, but also to make policy recommendations to the legislature, governor's office, and other public entities.⁵¹

For example, each year Connecticut's ombudsman must make recommendations for systemic changes. According to state statute, "The Child Advocate shall annually submit to the Governor and the General Assembly a detailed report analyzing the Work of the Office of the Child Advocate [and] The Child Advocate shall: Recommend

33 Davidson, *supra* note 16, at 8.

34 *Id.*

35 *Id.* at 83. For a detailed chronology of the development of ombudsmanship in the United States, see Chapter 10, "Recent Developments in the United States."

36 *Id.* at 86-87.

37 Rowat, *supra* note 16, at 87-88.

38 *Id.* at 88.

39 Davidson, *supra* note 16, at 9-10.

40 See Judith Jones and Alvin W. Cohn, *State Ombudsman Programs* (Feb. 2005), <http://www.ncjrs.org/pdffiles1/ojdp/204607.pdf>; Laureen D'Ambra, *Survey of Ombudsman Offices for Children in the United States* (2003), <http://www.child-advocate.ri.gov/OmbudsmanContents.htm>.

41 SB 933 (1997-98 regular session) § 66.

42 Cal. Welf. and Inst. Code §16160 (West 2006).

43 *Id.* §16164(a).

44 *Id.* §§ 16164(a)(7)(B) and (C) state: "(B) Present this compiled data, on an annual basis, at appropriate child welfare conferences, forums, and other events, as determined by the department, that may include presentations to, but are not limited to, representatives of the Legislature, the County Welfare Directors Association, child welfare organizations, children's advocacy groups, consumer and service provider organizations, and other interested parties. (C) It is the intent of the Legislature that representatives of the organizations described in subparagraph (B) consider this data in the development of any recommendations offered toward improving the child welfare system."

45 *Id.* §16164(a)(3).

46 *Id.* §16165.

47 P. Puritz and M.A. Scali, *Beyond the Walls: Improving Conditions of Confinement for Youth in Custody*, American Bar Association (1998); Heidi M. Hsia and Marty

Beyer, *System Change Through State Challenge Activities: Approaches and Products*, OJJDP Juvenile Justice Bulletin (March 2000), http://www.ncjrs.org/html/ojdp/jjbul2000_03_3/contents.html; American Bar Association, *Standards for the Establishment and Operation of Ombuds Offices* (revised Feb. 2004).

48 American Bar Association, *Standards for the Establishment and Operation of Ombuds Offices* (revised Feb. 2004).

49 Heidi M. Hsia and Marty Beyer, *System Change Through State Challenge Activities: Approaches and Products*, OJJDP Juvenile Justice Bulletin (March 2000), http://www.ncjrs.org/html/ojdp/jjbul2000_03_3/contents.html.

50 *Id.*

51 *E.g.*, Alaska Stat. § 24.55.120 (2006); Haw. Rev. Stat. § 96-6(b) (2006); Iowa Code Ann. § 2C.9(1) (West 2006); Mich. Admin. Code r.722.924(4) (2006).

changes in state policies concerning children including changes in the system of providing juvenile justice, child care, foster care and treatment.”⁵² In Washington state, the “ombudsman shall...[i]nvestigate, upon his or her own initiative or upon receipt of a complaint, an administrative act alleged to be contrary to law, rule, or policy, imposed without an adequate statement of reason, or based on irrelevant, immaterial, or erroneous grounds...”⁵³ In Alaska, “[t]he ombudsman may investigate the administrative act of an agency on the ombudsman’s own motion if the ombudsman reasonably believes that it is an appropriate subject for investigation...”⁵⁴

Permitting an ombudsman to initiate investigations even when a formal complaint has not been filed gives him or her discretion to address systemic failures; otherwise, the ombudsman labors under a mandate of willful blindness. Such discretion is critically important when unrelated or systemic problems are discovered during an investigation of an individual complaint.

Independence

To maintain his or her legitimacy, a foster care ombudsman must be able to function independently of agencies the ombudsman oversees. The report accompanying the American Bar Association resolution states that independence in structure, function, and appearance is essential for the office to be credible and effective.⁵⁵ An ombudsman is not truly independent if an individual or entity subject to the ombudsman’s jurisdiction, or an individual or entity directly responsible for a person under the ombudsman’s jurisdiction, can control or limit the ombudsman’s performance of his or her duties.⁵⁶ Furthermore, the office

lacks independence if such entities can, for actual or perceived retaliatory purposes, eliminate the office entirely, remove the ombudsman, or reduce the office’s budget or resources.⁵⁷

A central element of the ombudsman’s independence is ensuring that he or she is not subject to the control of the appointing authority. The appointment schemes in some states attempt to keep ombudsmen separate from the entities they oversee. In Connecticut, Rhode Island, and Georgia, a committee of representatives from various state and child welfare agencies nominates three to seven candidates and submits the list to the governor for appointment.⁵⁸ In Washington state, the governor appoints the child advocate, subject to confirmation by the state Senate.⁵⁹ In Delaware, the child advocate is appointed by the Executive Committee of the Child Protection Accountability Commission, which comprises judges, attorneys, legislators, medical professionals, law enforcement officers, and representatives from the Delaware Department of Services for Children, Youth, and Their Families.⁶⁰ The appointee then becomes the executive director of the commission and serves under its direction to monitor Delaware’s child protection system and ensure the health, safety, and well-being of Delaware’s abused, neglected, and dependent children.⁶¹

The Office of the Family and Children’s Ombudsman in Washington state is in the Office of the Governor,⁶² but is located in another city, away from the capitol city of Olympia, so it can operate independently.⁶³ The ombudsman reports directly to the governor and exercises his or her powers and duties independently of the health and welfare secretary.⁶⁴ The governor is required to appoint an ombudsman—someone of recognized

judgment, independence, objectivity, and integrity who is qualified by training and experience in family and children’s services law and policy.⁶⁵ The ombudsman serves a term of three years and may be reappointed.⁶⁶

Alaska’s general ombudsman is appointed by a legislative selection committee composed of three members of each house. The appointee is put to a roll call vote of the Legislature in joint session and must win at least a two-thirds majority vote, as well as the governor’s approval.⁶⁷ A two-thirds majority vote of legislators in an immediate joint session can override a governor’s veto.⁶⁸ Iowa and Hawaii have similar schemes, but their governors do not have veto authority.⁶⁹

How an ombudsman can be removed from office also varies among states. Hawaii permits removal by a two-thirds legislative vote, “but only for neglect of duty, misconduct, or disability.”⁷⁰ Washington state’s ombudsman can only be removed for neglect of duty, misconduct, or inability to perform duties.⁷¹ Iowa, in contrast, allows removal at any time by a majority vote of both houses.⁷²

Depending on the state, agencies that an ombudsman oversees may or may not have authority in budgeting for that office. The Georgia Legislature makes such appropriations.⁷³ Connecticut sets a limit on the number of staff that the child advocate office may have and the Legislature appropriates the funds for salary and expenses for the office.⁷⁴ In Iowa, the citizens’ aide is empowered to “employ and supervise all employees under the citizens’ aide’s direction in such position and at such salaries as shall be authorized by the legislative council.”⁷⁵ The ombudsman’s budget in Washington state is reviewed by the Legislative Children’s Oversight Committee,⁷⁶

52 Conn. Gen. Stat. Ann. § 46a-13l (a)(6) (West 2006). See also Del. Code Ann. tit. 29, § 9005 (2005); Haw. Rev. Stat. Ann. § 96-13 (2004); Iowa Code § 2C.18 (2005); Ga. Code Ann. § 15-11-173(4) (2005); Mich. Admin. Code r. 722.926(g) (2005); R.I. Gen. Laws § 42-73-6 (2004).

53 Wash. Rev. Code Ann. §43.06A.030(2) (West 2006).

54 Alaska Stat. § 24.55.120 (2005).

55 American Bar Association, *Standards for the Establishment and Operation of Ombudsman Offices* (2000).

56 *Id.*

57 *Id.*

58 Conn. Gen. Stat. Ann. § 46a-13k(a) (2006); R.I. Gen. Laws § 42-73-2 (2004); Ga. Code Ann. § 15-11-172(a)-(b) (2005).

59 Wash. Rev. Code Ann. §43.06A.020 (West 2006).

60 Del. Code Ann. tit. 29, § 9003A (2005).

61 *Id.* §§9001A, 9003A.

62 Wash. Rev. Code Ann. §43.06A.010 (West 2006).

63 *Annual Report of the Office of the Family and Children’s Ombudsman*, Washington state (2003), <http://www.governor.wa.gov/ofco/03rpt/index.htm>.

64 *Id.*

65 *Id.* §43.06A.020(1).

66 *Id.* §43.06A.020(2).

67 Alaska Stat. § 24.55.020 (2005).

68 *Id.*

69 Haw. Rev. Stat. § 96-2 (2004); Iowa Code § 2C.3 (2005).

70 Haw. Rev. Stat. § 96-2 (2004).

71 Wash. Rev. Code Ann. §43.06A.020(2) (West 2006).

72 Iowa Code Ann. § 2C.5 (West 2005).

73 Ga. Code Ann. § 15-11-172(d) (2005).

74 Conn. Gen. Stat. § 46a-13k(d) (2006).

75 Iowa Code Ann. § 2C.3 (2005).

76 *Annual Report of the Office of the Family and Children’s Ombudsman*, Washington state (2003), <http://www.governor.wa.gov/ofco/03rpt/index.htm>.

which consists of six state lawmakers.

To exercise his or her independent authority, an ombudsman must have access to all of the information necessary to conduct an investigation. Many states grant their ombudsman the power to subpoena both documents and witnesses and, if information or testimony is withheld, to seek a superior court injunction against the offending party.⁷⁷ Rhode Island's child advocate stresses the importance of being able to bring suit when dealing with the Department of Children, Youth and Families (DCYF): Because negotiations often stall, the only way to get DCYF to comply with mandatory reporting laws is to file suit in Superior Court.⁷⁸ In some states, anyone who willfully interferes with an ombudsman's investigation can be charged with a misdemeanor and fined.⁷⁹ The goal of such powers is to make agencies more forthcoming when they deal with the ombudsman office, and to foster more-thorough investigations that will be of greater value to the governor, legislators, the public, and the children and youth whom the system serves.

Impartiality

The ombudsman must be free of bias and conflicts of interest in order to engender public trust. His or her authority is built upon this foundation. The office must rise above the political fray and advocate for the best interests of the children it is charged to protect. Impartiality must extend to all inquiries and investigations, regardless of their source. According to the American Bar Association, "Impartiality does not preclude the ombuds[man] from developing an interest in securing changes that are deemed necessary as a result of the process, nor from otherwise being an advocate on behalf of the designated constituency."⁸⁰

Such impartiality extends to the dealings an ombudsman office has with its benefactor, the state. For example, the Rhode Island Office of the Child Advocate, which serves as the foster care ombudsman, is required to "[t]ake all possible action including...programs of public education, legislative advocacy, and formal legal action, to secure and ensure the legal, civil, and special rights of children."⁸¹ The child advocate has the power to "commence in the superior court a civil action against the state" on behalf of any child who is under the custody of "any institution or agency under the control of the department of children, youth, and families or other private agency."⁸²

Confidentiality

To promote effective remedies and protect the privacy of children in foster care, the ombudsman must guarantee that the names of those who provide information and the identities of service recipients will remain confidential. That means also protecting the identity of a caller and safeguarding investigation records, including all communications and notes. Such a guarantee encourages youth vulnerable to repercussions for lodging complaints against the people who have responsibility and control over their care, privileges, and lives to come forward with information about conditions that put them at risk.

An ombudsman "does not disclose and is not required to disclose any information provided in confidence, except to address an imminent risk of serious harm."⁸³ Alaska,⁸⁴ Delaware,⁸⁵ Hawaii,⁸⁶ Illinois,⁸⁷ Michigan,⁸⁸ Washington,⁸⁹ and Rhode Island⁹⁰ all have strong confidentiality protections built into their laws. Rhode Island's protection against public disclosure of the identify of any individual involved in a case extends to "all records of

the child advocate pertaining to the care and treatment of a child"; such protection can only be overturned by an order of the family court upon a showing of good cause.⁹¹ In Washington state, the release of identifying information of "service recipients, complainants, and individuals from whom information is acquired" is strictly prohibited.⁹²

Additionally, to encourage social workers, members of the general public, foster children, or other concerned citizens to be forthcoming with information about abuses and problems in the system, complainants must be protected from reprisal. Statutes in Connecticut,⁹³ Georgia,⁹⁴ Illinois,⁹⁵ and Michigan⁹⁶ offer such protection. Similarly, the California Long-Term Care Ombudsman Act requires confidentiality and provides protection against retaliation.⁹⁷

Youth Orientation

The core purpose of a foster care ombudsman program is to protect children and youth in foster care. A key cultural component is program staff's ability to empathize with them and their unique needs. The office must ensure that children and youth have access to the program's services and that the culture of the program is crafted to serve their specific needs. Ombudsman services must be available to foster youth when they are most likely to be in demand—at night or on the weekend—rather than only from 9 a.m. to 5 p.m. on business days.

Furthermore, the office should employ current and former foster youth to help respond to individual complaints; this makes staff more sensitive to clients' needs and enables the collection of more-thorough information in investigations.

77 See Haw. Rev. Stat. Ann. § 96-10(1)-(2) (2004); Iowa Code § 2C.9(5) (2005); R.I. Gen. Laws § 42-73-9(2) (2004); Conn. Gen. Stat. § 46a-13m (2006); Mich. Admin. Code r. 722.926(e) (2005); Alaska Stat. § 24.55.160(a)(4) (2005); Ill. Admin. Code tit. 89, § 430.30(b)(4)(A) (2005).

78 Finn, *supra* note 25.

79 See Haw. Rev. Stat. Ann. § 96-19 (2004); Ill. Admin. Code tit. 89, § 430.50(c) (2005); Iowa Code § 2C.22 (2005).

80 American Bar Association, *Standards for the Establishment and Operation of Ombuds Offices*, 3 (revised Feb. 2004).

81 R.I. Gen. Laws § 42-73-7(6) (2004).

82 *Id.* § 42-73-9.1 (2004).

83 American Bar Association, *Standards for the Establishment and Operation of Ombuds Offices* (Feb. 2003), <http://www.abanet.org/buslaw/corporateresponsibility/clearinghouse/03spring/11/materials.pdf>.

84 Alaska Stat. § 24.55.160(b) (2005).

85 Del. Code Ann. tit. 29, § 9006A(1) (2005). 86 Haw. Rev. Stat. § 96-9(b) (2004).

87 Ill. Admin. Code tit. 89, § 430.90 (2006). 88 Mich. Admin. Code r. 722.929 (2005).

89 Wash. Rev. Code § 43.06A.050 (2006).

90 R.I. Gen. Laws § 42-73-10 (2004).

91 *Id.*

92 Wash. Rev. Code § 43.06A.050 (2006).

93 Conn. Gen. Stat. § 46a-13n(b) (2006).

94 Ga. Code Ann. § 15-11-175 (2005).

95 Ill. Admin. Code tit. 89, §§ 430.50(a)(4), 430.90(d) (2006).

96 Mich. Admin. Code r. 722.931(1) (2005).

97 See also Cal. Welf. And Inst. Code § 9715(b)-(c) (2006).

Conclusion and Recommendations

California needs an independent and impartial foster care ombudsman who, operating under strong confidentiality safeguards, is a catalyst for the changes that are necessary to fully protect the abused and neglected children and youth under state care. The ombudsman can bridge bureaucratic gaps between service agencies in individual cases and suggest ways to improve the foster care program and its policies. Currently, the ombudsman can offer only piecemeal remedies.

The ombudsman should be a catalyst for change, with greater independence and authority. The office should provide increased confidentiality protections to foster youth filing complaints, and work to expand the role of foster youth in program administration.

A Catalyst for Change

This can be accomplished by authorizing the ombudsman to:

- Investigate state and local child-welfare and foster-care services on his or her own initiative or upon receiving a formal complaint.
- Flag partial compliance or non-compliance with state and federal laws, specify administrative deficiencies, and recommend corrective actions.
- Report findings to the public, the governor, and the Legislature.

Independence and Authority

The ombudsman will gain independence and authority if:

- The office is placed outside the Department of Social Services.
- The governor, rather than the Department of Social Services director, appoints the ombudsman, subject to Senate confirmation.
- The ombudsman can be removed for cause, not just when his or her term expires.

- The ombudsman's budget, including staff salaries, investigation and travel expenses, and outreach to educate the public about services, is independent.
- He or she has the power to subpoena documents and get information necessary to complete an investigation, including access to facilities and private homes. Failure to provide such information should be subject to sanctions or contempt-of-court proceedings.
- There are strict prohibitions against interfering with the ombudsman's activities.

Confidentiality Protections

These should include:

- Safeguards on the identities of persons who make complaints, unless there is an imminent risk of harm to the individual.
- Guarantees that all records the ombudsman keeps regarding the care and treatment of children will remain confidential.
- Assurances that those who file a complaint or participate in an investigation or proceeding will not be subject to any penalties, sanctions, or restrictions regarding their employment, or be denied any right, privilege, or benefit because of such action.

Administrative Functions

Foster care would improve if:

- Ombudsman services were available to youths in the evening and on weekends, not just during business hours.
- Civil Service hiring procedures were revised so the ombudsman office could attract and retain former foster youth as staff members.

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