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Legal Authority

History:

The Montana Legislature created the Office of the Child and Family Ombudsman (OCFO) in 2013 and made the office permanent in 2015. OCFO's authorizing statutes are codified in Title 41, chapter 3, part 12 of the Montana Code Annotated (MCA).

Purpose and Intent:

The Legislature provided the purpose and intent of OCFO in § 41-3-1209, MCA, as follows:

The legislature finds that an independent, impartial, and confidential ombudsman serves:

- (1) to protect the interests and rights of Montana's children and families; and
- (2) to strengthen child and family services by working in collaboration with the department and with appropriate county attorneys in cases under review.

OCFO is an independent, impartial, and confidential resource for protecting the rights of Montana's children and families. Specifically, the law tasks OCFO with investigating and improving services for children served by the Department of Public Health and Human Services (DPHHS), Child and Family Services Division (CFSD). These services are commonly referred to as child protection services or child welfare services.

Structure:

OCFO is housed in the Department of Justice, Division of Criminal Investigation, Children's Justice Bureau. The position of Ombudsman is appointed by the Attorney General. The Children's Justice Bureau Chief oversees the operations of OCFO. The Deputy Child and Family Ombudsman and other OCFO staff are hired in accordance with State of Montana hiring procedures.

References:

[Office of Child and Family Ombudsman, Title 41, chapter 3, part 12, MCA](#)

[§ 41-3-205, MCA](#)

[§ 41-3-209, MCA](#)

(Revised March 24, 2017)

Mission

Mission:

OCFO responds to requests to protect the rights of children and families by improving case outcomes and strengthening Montana's child welfare system.

(Revised March 24, 2017)

Core Principles

Independent, Impartial, Confidential, and Credible Review Process:

OCFO is **independent** of DPHHS. OCFO is a separate and free from influence of the individuals the office may investigate. OCFO is part of the Department of Justice, Division of Criminal Investigation, Children's Justice Bureau.

OCFO is **impartial**. OCFO does not represent a side in disputes, but is required to make findings or formulate an opinion on the handling of the case. The Ombudsman works collaboratively with all parties, including DPHHS, to improve services for the children of Montana. The Ombudsman may advocate certain recommendations that benefit the individual who requested assistance; however, advocacy from the Ombudsman is directed at improving the services offered by DPHHS and should not be construed as supporting one individual over another.

Information collected by the Ombudsman is **confidential**. Only information that needs to be shared will be shared.

OCFO is committed to a **credible review process**. Every individual who contacts OCFO will receive the same opportunities to request assistance and receive review of their request. This process is discussed in more detail in the policy Requesting Assistance.

In addition, the Ombudsman is **knowledgeable**. The Ombudsman will be familiar with the laws governing child welfare, systems of care, and best practices in working with children and families. The Ombudsman will pursue information about and stay abreast of changes to and advances in the provision of services to children and families.

OCFO is committed to a trauma informed and strength based practice. Individuals in contact with OCFO will be treated with respect, an understanding of how adverse experiences impact lives, and appreciation of their strengths.

References:

[Governmental Ombudsman Standards \(October 2003\), United States Ombudsman Association](#)

(Revised March 24, 2017)

Powers and Duties

The Legislature provided the powers and duties of OCFO in § 41-3-1211, MCA, as follows:

The powers and duties of the ombudsman are:

- (1) to respond to requests for assistance regarding administrative acts and to investigate administrative acts;
- (2) to investigate circumstances surrounding reports that are provided to the ombudsman pursuant to 41-3-209;
- (3) to inspect, copy, or subpoena records as needed to perform the ombudsman's duties under this part;
- (4) to take appropriate steps to ensure that persons are made aware of the purpose, services, and procedures of the ombudsman and how to contact the ombudsman;
- (5) to share relevant findings related to an investigation, subject to disclosure restrictions and confidentiality requirements, with individuals or entities legally authorized to receive, inspect, or investigate reports of child abuse or neglect;
- (6) to periodically review department procedures and promote best practices and effective programs by working collaboratively with the department to improve procedures, practices, and programs;
- (7) to undertake, participate in, and cooperate with persons and the department in activities, including but not limited to conferences, inquiries, panels, meetings, or studies, that serve to improve the manner in which the department functions;
- (8) to provide education on the legal rights of children;
- (9) to apply for and accept grants, gifts, contributions, and bequests of funds for the purpose of carrying out the ombudsman's responsibilities; and
- (10) to report annually to the attorney general and the children, families, health, and human services interim committee. The report must be public and may contain recommendations from the ombudsman regarding systematic improvements for the department.

Administrative acts are defined as "a department action, omission, decision, rule, interpretation, recommendation, policy, practice, or procedure relating to child and family services". Each request will be reviewed as to this definition.

The following policies establish the specific processes OCFO follows to meet these responsibilities:

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- Requesting Assistance
- Levels of Intervention
- Findings Report
- Procedure Review
- Reporting
- Critical Incidents
- Outreach and Education
- Enforcement

References:

[§ 41-3-1211, MCA](#)

(Revised March 24, 2017)

Employment and Administration

Policy:

The Ombudsman and OCFO staff are employed by the State of Montana, Department of Justice, and are subject to the laws, regulations, and rules governing employment by a government entity. Employees have access to, and may receive training in, State of Montana employment policies and procedures. Policies and procedures regarding employment by the State of Montana are available in the Montana Operations Manual.

Additional training for employees of OCFO will be determined on a case-by-case basis, depending on experience, current need, and budgetary allowances.

Procedures:

The Ombudsman and OCFO staff are subject to the laws, regulations, and rules governing employment by a government entity and to the Montana Operations Manual.

References:

[Montana Department of Administration](#)

[Montana Operations Manual](#)

(Revised March 24, 2017)

Revisions to the Policy and Procedures Manual

Policy:

The Policy and Procedures Manual (“Manual”) is available online on the Children’s Justice Bureau webpage or dojmt.gov/enforcement/childrensjustice .

Procedures:

Changes, updates, revisions, and additions to the Manual will be made by the Ombudsman as needed and forwarded to Department of Justice staff. Staff is encouraged to update their manual with email notices and attachments. The online posting of the Manual will be updated in conjunction with the annual report.

Comments regarding suggestions to improve the Manual should be forwarded to the Ombudsman via email.

(Revised March 24, 2017)

Independence

Policy:

OCFO is **independent** of DPHHS, meaning it is separate and free from influence of the individuals the Ombudsman may investigate.

Procedures:

OCFO is part of the Department of Justice, Division of Criminal Investigation, Children's Justice Bureau. The Department of Justice offers support and protection from unjust influence, enabling the Ombudsman to function as an impartial and credible entity that reports findings based solely on a review of facts and law, in the light of reason and fairness.

OCFO and the duties performed by the Ombudsman are independent of outside control or influence, particularly, DPHHS and any of the agencies within DPHHS the Ombudsman may investigate. To foster such independence:

- 1) OCFO is established in statute.
- 2) The Ombudsman is appointed by the Attorney General.
- 3) OCFO is housed in the Department of Justice.
- 4) The Ombudsman is subject to State of Montana employment laws and cannot be removed except for good cause.
- 5) OCFO is provided a budget with which to carry out assigned duties.
- 6) OCFO retains authority to select, direct, and discharge staff.
- 7) The Ombudsman has discretion over investigations, including the ability to initiate an investigation on the Ombudsman's own motion, subject to the limits of the Ombudsman's authority.
- 8) The Ombudsman has discretion to prescribe how requests are to be made, received, and acted upon, including the scope and manner of investigations.
- 9) OCFO maintains discretion to determine which conclusions and recommendations are reached, and the freedom to determine what to publish.
- 10) The findings and recommendations of OCFO are not appealable to any other authority.

References:

[§ 41-3-1208, MCA](#)

[§ 41-3-1209, MCA](#)

[Governmental Ombudsman Standards \(October 2003\), United States Ombudsman Association](#)

(Revised March 24, 2017)

Impartiality

Policy:

OCFO is **impartial**. OCFO does not represent a side in disputes, but is required to make findings or formulate an opinion on the handling of the case. OCFO is not biased and strives to ensure all parties are heard and understood. The Ombudsman works collaboratively with all parties, including DPHHS, to improve services for the children of Montana.

The Ombudsman may advocate certain recommendations that benefit the individual who requested assistance; however, advocacy from the Ombudsman is directed at improving the services offered by DPHHS and should not be construed as supporting one individual over another. The mission to improve outcomes and the system is considered at all times.

In addition, the Ombudsman does not have an individual interest in the outcome of any request for assistance or investigation. The Ombudsman is an objective party tasked with investigating requests, determining if an action or omission occurred, and making recommendations based in fact and law.

Procedures:

In order to maintain impartiality, the Ombudsman and OCFO staff will:

- 1) Utilize the same process of review and determination for each request received.
- 2) Refrain from partisan and political activities and from employment and business relationships and transactions that may create a conflict of interest, or may create the appearance of a conflict of interest.
- 3) Hold no other public office that has the potential of creating a conflict of interest or the appearance of a conflict of interest.
- 4) Recuse from involvement in requests where a conflict of interest or the appearance of a conflict of interest may exist.
- 5) Set aside personal views regarding the subject matter or the parties involved not allowing such views to affect decisions as to what complaints to accept or how they are investigated.
- 6) Advocate for recommendations that are consistent with laws, rules, and policies, and with a reasonable outcome.

References:

[§ 41-3-1209, MCA](#)

[Governmental Ombudsman Standards \(October 2003\), United States Ombudsman Association](#)

(Revised March 24, 2017)

Confidentiality

Policy:

Information collected by the Ombudsman is **confidential**. Only information that needs to be shared will be shared. Sharing of information will proceed as required by state and federal law.

Procedures:

OCFO may share information collected in the course of addressing requests for assistance in accordance with state and federal law. Individuals may waive their confidentiality. Information will be shared under the following circumstances:

- 1) When sharing the information meets the disclosure and confidentiality requirements provided in §§ 41-3-1209, 41-3-1211, and 41-3-205, MCA, with individuals or entities that are legally authorized to receive, inspect, or investigate reports of child abuse or neglect;
- 2) When sharing the information is required to resolve an issue, make recommendations for improvements, or protect a child or family;
- 3) When sharing the information has proper Release of Information forms signed as needed.

OCFO notifies appropriate parties when information is being shared. The Ombudsman balances the need to protect sensitive information, to allow citizens to come forward and individuals to speak candidly, with the need to disclose information as a part of an investigation or public report.

Record Retention

OCFO will maintain the confidentiality of information collected during and after case closure. Records of information collected from requests for assistance will be maintained according to the records retention schedule outlined by the Secretary of State Records Management Bureau.

Mandated Reporting

The Ombudsman and OCFO staff are mandated reporters of child neglect and abuse. Should the Ombudsman or anyone working for OCFO determine there is reasonable suspicion that neglect or abuse is occurring, a call to the Child Abuse Hotline will be made.

References:

[§ 41-3-1209, MCA](#)

[§ 41-3-201, MCA](#)

[§ 41-3-205, MCA](#)

[Montana State Records Forms and Retention Schedules, Montana Secretary of State](#)

(Revised March 24, 2017)

Requesting Assistance

Policy:

Any individual concerned about the interests or rights of a child in Montana who is involved in the child protection system or in need of protection may request assistance from the Ombudsman.

Procedures:

Contact Procedure

A request for assistance from the Ombudsman can be made in the following ways:

1. Call the Ombudsman at **1-844-25CHILD** (1-844-252-4453).
2. Email the request form to the Ombudsman at DOJOMBUDSMAN@mt.gov
3. Fax the request form to the Ombudsman at 406-329-1259.
4. Mail request form to the Ombudsman at P.O. Box 201417, Helena, MT 59620.
5. Complete the online request form at dojmt.gov/wp-content/uploads/CJB-omb-request-0515.pdf

Third Party Requests

The Ombudsman will decline a request made by a third party. A third party is someone who calls on behalf of another person. When asked by a third party to contact an individual who they believe needs assistance, the Ombudsman will direct the third party to have the individual contact the Office directly.

If a referral is received from a legislator, the Governor's Office, or the Attorney General, the Ombudsman may make contact or may request that the constituent be directed to submit a request first. Ensuring the citizen has access to making contact with OCFO will be prioritized.

Suspicion of Abuse or Neglect

If a person requesting assistance suspects a child is abused or neglected, the person will be directed to call the Child Abuse Hotline at 1-866-820-5437. The Ombudsman can assist the person in understanding what will take place when a call to the hotline is made, but the Ombudsman cannot open a child protection case. The Ombudsman is not a replacement for the investigative powers of DPHHS.

If a person requesting assistance called the hotline and feels their concerns are not being heard or a child remains unsafe, the Ombudsman will provide a request form. OCFO will review and determine if there is cause to intervene and what options exist.

Suspicion of Criminal Acts

If a person requesting assistance believes that person witnessed a crime or believes a crime is going to be committed, the Ombudsman will direct the person to call 911 and report the crime to law enforcement. The Ombudsman can assist the person in understanding what will take place when a call

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to law enforcement is made, but the Ombudsman cannot open a criminal investigation. The Ombudsman is not a replacement for the investigative powers of law enforcement.

If a person requesting assistance believes they need legal assistance, the Ombudsman may refer the individual to legal services. While the Ombudsman may describe legal procedures and options when responding to requests, the Ombudsman will not provide legal advice or analysis.

Intake Procedure

Once a request is received, it will be reviewed for appropriateness and completion. The Ombudsman will make every effort to complete the review of a new request within two weeks of receiving the information. The Ombudsman may call and collect additional information. The Ombudsman will also review the database for previous requests. A call for more information does not mean that the Ombudsman will intervene. Requests will be documented in the OCFO database. See Data Collection for more information.

Should a conflict of interest arise for both the Chief and Deputy Ombudsman, the Children's Justice Bureau Chief will be consulted. The Attorney General may appoint a Special Ombudsman for a period of time to review the request and intervene as deemed appropriate. Use of a Special Ombudsman will depend upon available resources.

Declining a Request

The Ombudsman can determine that the request is not appropriate for OCFO to address. If this occurs, the Ombudsman may provide an explanation in writing for denying the request. To the best of the Ombudsman's ability, referrals and resources will be included to assist the individual in getting help for their concern. Examples of the reasons why requests are not accepted can include but are not limited to the following:

- 1) The request is outside the Ombudsman's jurisdiction.
- 2) The individual has other available remedies.
- 3) The request is trivial, frivolous, vexatious, or not made in good faith.
- 4) The individual will not provide information necessary to conduct a review.
- 5) The requestor is not personally aggrieved by the subject matter of the request.
- 6) The issue has been previously investigated.

If OCFO denies a request, this does not prevent the individual from making another request in the future.

At any point during review or intervention, OCFO may decline to continue working on the request. Examples of the reasons why requests may be discontinued include but are not limited to:

- 1) The requestor commits a crime that impedes continuation.
- 2) The requestor refuses to provide needed information.
- 3) Another more effective remedy is pursued.

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Determining Level of Intervention

Once the Ombudsman reviews the request and determines that it is appropriate to address, the Ombudsman will determine how to intervene. The Ombudsman will take the following into consideration in making that determination:

- 1) Has the individual requesting assistance attempted to get help from the department?
- 2) Is there documentation supporting the request?
- 3) What does the individual hope will occur from the Ombudsman's intervention?

The Ombudsman will place the request into one of the following categories:

- 1) Resource and Referral
- 2) Conflict Resolution/Informal Mediation
- 3) Findings Report

When intervening on a request, the Ombudsman will classify it as Emergent or Non-Emergent. A request will be classified as Emergent if the Ombudsman determines the information provided suggests that an action or omission by DPHHS has placed a child or parent in imminent substantial risk of harm. A review will commence upon receipt of the information and notification to DPHHS of the concern will occur within 24 hours.

Other requests will be classified as Non-Emergent. Non-Emergent requests will be processed by the Ombudsman based on the information provided and as required for a timely response.

References:

[Office of Child and Family Ombudsman, Title 41, chapter 3, part 12, MCA](#)

[§ 41-3-1212, MCA](#)

[Governmental Ombudsman Standards \(October 2003\), United States Ombudsman Association](#)

(Revised March 24, 2017)

Levels of Intervention

Policy:

After the Ombudsman determines that the request is appropriate and sufficient information is available to move forward, the Ombudsman will determine the appropriate level of intervention. The Ombudsman will document both the level and the steps taken to address the request. The Ombudsman will inform the person requesting assistance of these determinations and of progress as steps are carried out. The Ombudsman will provide information as needed only and will follow confidentiality standards in releasing information at any stage of involvement.

Procedures:

After review, the Ombudsman will assign an intervention to any request deemed appropriate for opening. Intervention level can change throughout the course of involvement. The following are the current levels of intervention:

Resource and Referral

In many cases, the Ombudsman will be able to assist by finding the right person or service to address the request. The Ombudsman will provide information on who to contact. The Ombudsman may follow-up with the individual and the referral source, if a release is signed, within two weeks of directing the individual calling to the resource.

Conflict Resolution/Informal Mediation

Sometimes, a person follows through on a referral and their needs are still not fully addressed. The Ombudsman, after following up with the referral source and the individual, may offer to mediate the concern with the parties involved. This may involve phone calls to clarify needs. Other times, a person may feel they have exhausted their resources and are not getting anywhere. The Ombudsman, after speaking with the parties involved, could suggest mediation through a meeting of the parties.

For mediation to work, all parties need to be willing to be present at a meeting and willing to resolve the issue through discussion and planning. The Ombudsman will recommend that a meeting be arranged. Most often, it will be recommended that a Family Engagement Meeting be convened, following already established procedures. This will allow for a neutral worker to facilitate the discussion and planning.

The Ombudsman will participate in meetings by phone or in person. The Ombudsman will assist in making sure any concerns are addressed. A plan will be developed with follow up tasks for pertinent parties. The Ombudsman will follow up with the individual who requested assistance following any meeting.

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Findings Report

In some cases, a request will come to the Ombudsman with larger concerns and a good deal of work already attempted to resolve the issue. During the course of intervention, a request may also be elevated to requiring a Findings Report. If the Ombudsman determines that that request for assistance requires it, the Ombudsman will write a Findings Report. The Ombudsman will initiate a Findings Report if the following criteria are met:

- 1) The intake process identifies an action or omission by DPHHS;
- 2) The action or omission involves a child served by DPHHS or a child with safety, permanency, or well-being needs;
- 3) The action or omission places a child, parent, or other caregiver at risk of harm or is a violation of law, policy, or procedure with respect to a child or family receiving or in need of services from DPHHS;
- 4) The individual requesting assistance attempted to seek help through department employees or procedures.

Investigating acts or omissions can include collection of case documentation, interviews of involved parties, and attendance at meetings, and court hearings about the case. The process may include a meeting of the parties involved. The process will conclude with a written report, documentation of findings and recommendations as appropriate. The Ombudsman will follow the steps of each category to best address the request. See Finding Report section for more information.

Reference:

[Office of Child and Family Ombudsman, Title 41, chapter 3, part 12, MCA](#)

(Revised March 24, 2017)

Findings Report

Policy:

While the following section outlines the steps OCFO takes to complete a Findings Report on a request found to meet this level of intervention, the Ombudsman recognizes that each request for assistance is unique and may require additional steps to complete an investigation of acts and omissions. The Ombudsman reserves the right to change or add to the steps taken to complete an investigation as long as such steps are consistent with the law.

Specific to investigations of acts or omissions, per [§ 41-3-1211, MCA](#), OCFO will:

- respond to requests for assistance regarding administrative acts and to investigate administrative acts;
- investigate circumstances surrounding reports that are provided to the ombudsman pursuant to [§ 41-3-209, MCA](#);
- inspect, copy, or subpoena records as needed to perform the ombudsman's duties under this part;
- share relevant findings related to an investigation, subject to disclosure restrictions and confidentiality requirements, with individuals or entities legally authorized to receive, inspect, or investigate reports of child abuse or neglect;
- periodically review department procedures and promote best practices and effective programs by working collaboratively with DPHHS to improve procedures, practices, and programs.

OCFO determines how to categorize and structure Findings Reports. The following information outlines the current types of investigative processes used to complete Findings Reports.

Types of investigations

Case Specific

An investigation that alleges an action or omission occurred in a case specific to a child or family, putting the child or family at risk of harm and warranting an investigation of the individual case record.

Ombudsman Initiated

An investigation that arises when the Ombudsman discovers an action or omission that is not originally part of the request or is brought to the attention of the Ombudsman through the media or pattern of requests.

Procedure Review

An investigation that alleges a pattern of actions or omissions in multiple cases, areas, or service delivery, causing harm or potential harm to children and families and warrants an investigation of

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policies and procedures from a system perspective. A procedure review may also include a topic area or practice area of particular significance to Montana policies and procedures. See Procedure Review policy for more information.

Critical Incident

In investigation generated per [§ 41-3-209, MCA](#), where OCFO receives information from DPHHS on a critical incident. See Critical Incidents policy for more information.

Procedures:

Steps in a Case Specific Findings Report

The Ombudsman may initiate a Findings Report if the following criteria are met:

- 1) The intake process identifies an action or omission by DPHHS;
- 2) The action or omission involves a child served by DPHHS or a child with safety, permanency, or well-being needs;
- 3) The action or omission places a child, parent, or other caregiver at risk of harm or is a violation of law, policy, or procedure with respect to a child or family receiving or in need of services from DPHHS;
- 4) The individual requesting assistance attempted to seek help through department employees or procedures.

Step One: Question Development

The Ombudsman will work with the Requestor to identify up to three questions to guide the investigation. These will be the areas of the greatest concern. The Ombudsman will determine the questions to investigate. Alternatively, the Ombudsman will identify the specific acts or omissions found during the investigation and develop the report accordingly.

Step Two: Information collection

The Ombudsman will inform the Regional Administrator of the request being elevated to a Findings Report. The Ombudsman may utilize email, in person meetings, or conference call to request information. The Ombudsman will also set up a time to review the paper or hard file. Options include in-person at the field office, in-person at the local office, and by mail. The Regional Administrator and or her designee will assist the Ombudsman in obtaining the file for review.

In the case of an Emergent request, the Ombudsman will work with the Children's Justice Bureau Chief on the more effective way to notify the CFSD Administrator or DPHHS Director within 24 hours of the receipt of emergent information. This could also include a call to Centralized Intake.

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Step Three: Interviews and Meetings

The Ombudsman will interview by phone concerned parties or in person to clarify information collected. In some cases, the Ombudsman will attend meetings or court proceedings already scheduled or scheduled at the request of the Requestor or Ombudsman, to discuss the request and further clarify issues in the case. In some requests, it may not be necessary to interview or attend meetings. Each step will be used as most pertinent to the individual investigation.

Step Three: Review

Once the Ombudsman completes the process of collecting and clarifying the information in the request and case file, the Ombudsman will review both the original request and any subsequent issues arising from the information collected. The Ombudsman will review relevant law, regulation, policy, procedure, and practice associated with the questions under review. The Ombudsman will make findings in regards to actions or omissions by CFSD.

Step Four: Report and Recommendations

The Ombudsman will issue the Findings Report once the process is complete. The report will outline any findings and brief supporting information for the findings. The Ombudsman will make recommendations to DPHHS in the report. DPHHS will be asked to respond to the report. Two weeks following the response from DPHHS and the Requestor, the case will be closed.

The Ombudsman will send the Findings Report by certified mail to the Director of DPHHS and the CFSD Administrator. The report will be sent to the Requestor on a case-by-case basis. The Ombudsman will provide information according to law and policies on confidentiality. If it is determined that the report cannot be released to the Requestor, the Ombudsman will discuss the recommendations with the Requestor and answer questions as able prior to case closure.

Reference:

[Office of Child and Family Ombudsman, Title 41, chapter 3, part 12, MCA](#)

(Revised March 24, 2017)

Procedure Review

Policy:

OCFO duties include periodically reviewing the procedures used by DPHHS with a view toward the rights of children and recommending to DPHHS changes in its procedures. OCFO will track trends presented by citizens through their requests for assistance. From those trends, OCFO will review procedures in place by the DPHHS to address these issues and make recommendations for improvement. This process will be referred to as a Procedure Review. OCFO will respond to individual requests or case specific Findings Reports first as response to citizens is the priority. As resources allow, OCFO will conduct Procedure Reviews and issue a Findings Report on those reviews.

Procedures:

Steps in a Procedure Review

Step One: Trend Identification and Question Development

Once a trend is identified, it will be tracked and followed with cases identified for inclusion in a systemic investigation. Based on collection of common procedural issues, the Ombudsman will determine the questions to investigate. Examples of trends identified and reported in previous annual reports include visitation policies, legal representation of parties, and grandparent rights.

Step Two: Information collection

The Ombudsman will complete any case specific Findings Reports prior to inclusion in a systemic investigation. The Ombudsman will create a plan to collect information and organize relevant federal, state, and local law and policies. As needed, the Ombudsman will include interviews of individuals who can elaborate on how law and policy work in practice. The Ombudsman will attempt to identify all influencing factors for the compliance or noncompliance with law or policy. Lastly, the Ombudsman will conduct research on best practices, evidence-based practices, and other published recommendations on the issue in question.

Step Three: Review

Once the Ombudsman completes the process of collecting and clarifying the information on the issue, the Ombudsman will review and document findings regarding actions or omissions by CFSD, influencing factors for compliance or noncompliance, and any best practice or research supportive of findings and factors. The Ombudsman will review relevant statute, regulations, policy, procedures and practices.

Step Four: Report and Recommendations

The Ombudsman will issue a Findings Report once the process is complete. The report will outline any findings and brief supporting information for the findings. The Ombudsman will make recommendations to DPHHS in the report. The format of the report will depend on what will be most

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effective and clear in disseminating the finding, factors, research, and recommendations for the issue at hand. A report on a Procedure Review may be made available to the public.

DPHHS will be asked to respond within 30 days to the report. Additional information may be available to support a reversal of an adverse finding or simply state DPHHS's position on any recommendations.

Additional Reporting

The Ombudsman will include in the annual report a summary of trends arising from requests for assistance. The annual report will also include summary of any systemic investigations and the recommendations generated from those investigations.

Reference:

[Office of Child and Family Ombudsman, Title 41, chapter 3, part 12, MCA](#)

(Revised March 24, 2017)

Critical Incidents

Policy:

In addition to responding to requests for assistance and conducting procedure reviews, the Legislature required DPHHS to report critical incidents to OCFO in § 41-3-209, MCA, as follows:

The department shall report to the office of the child and family ombudsman:

- 1) within 1 business day, a death of a child who, within the last 12 months:
 - (a) had been the subject of a report of abuse or neglect;
 - (b) had been the subject of an investigation of alleged abuse or neglect;
 - (c) was in out-of-home care at the time of the child's death; or
 - (d) had received services from the department under a voluntary protective services agreement;
- (2) within 5 business days:
 - (a) any criminal act concerning the abuse or neglect of a child;
 - (b) any critical incident, including but not limited to elopement, a suicide attempt, rape, nonroutine hospitalizations, and neglect or abuse by a substitute care provider, involving a child who is receiving services from the department pursuant to this chapter; or
 - (c) a third report received within the last 12 months about a child at risk of or who is suspected of being abused or neglected.

Procedures:

Currently, most notifications of these incidents are received via email. Some will result in case specific review while others will result in procedure review. Determinations of the type of review will be based on the most effective approach to improving the child welfare system.

When notification is received on child fatalities as outlined in (1), they are categorized as requiring a Findings Report. OCFO will determine whether to issue a case specific or procedure review report.

DPHHS includes any cross report to law enforcement or a call from law enforcement to Centralized Intake as also meeting the criteria in (2)(a). Cross reports are logged and reviewed as resources allow. Data is provided in the annual report.

Incidents defined in (2)(c) are referred to as "Alerts". Alerts are received via the CAPS case management system. Review of electronic Alerts is completed as quickly as resources permit. Alerts also tracked and

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assessed for trends and information that can support improved outcomes for children and families. Data is provided in the annual report.

References:

[Office of Child and Family Ombudsman, Title 41, chapter 3, part 12, MCA](#)

[§ 41-3-205, MCA](#)

[§ 41-3-209, MCA](#)

(Revised March 24, 2017)

Reporting

Policy:

OCFO collects data and produces reports to provide opportunity for improvement, maintaining the mission to improve outcomes for families and strengthen the child welfare system.

Procedures:

Data Collection

OCFO maintains a database on each request, intervention, outcome, and report. Demographic information is collected as well as information to assess outreach and education efforts. Information collected is used to support investigations as well as identifying patterns of actions of omissions and in developing the annual report and systemic investigations.

Findings Reports

A request or trend in the data that results in an investigation concludes with a report outlining any findings and recommendations. At a minimum, the Ombudsman sends the Findings Report to the following:

- 1) Director of the Department of Public Health and Human Services;
- 2) Child and Family Services Division Administrator;
- 3) Children's Justice Bureau Chief;
- 4) The Regional Administrator; and
- 5) The requestor, if allowed by confidentiality and disclosure statutes

The Ombudsman will work with the individual requesting assistance and CFSD to address recommendations in the report. The Ombudsman will track recommendations and steps taken to address those recommendations.

Should another division within DPHHS be involved in the investigation, the Ombudsman will look to the Administrator of that division to report recommendations. Only information needed to address concerns will be shared as allowed by confidentiality and disclosure statutes.

Annual Report

OCFO will submit its Annual Report to the Attorney General and the Children, Families, Health, and Human Services Interim Committee each year, analyzing the work of OCFO and providing recommendations. The Annual Report is public, made available on the Department of Justice website, and can be requested from the Ombudsman.

The Annual Report covers from December 16th of the prior year through December 15th of the current year. The report helps both the Attorney General and the Legislature in providing support to OCFO and in decision-making of legislative action to improve services to children and families.

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References:

[§ 41-3-1211, MCA](#)

[§ 41-3-1212, MCA](#)

(Revised March 24, 2017)

Request Closure

Policy:

OCFO will close each open request at a reasonable time following the intervention. Open requests are those that were deemed appropriate for intervention at any level. At a minimum, requests will close two weeks following the Ombudsman's final intervention and follow up.

Procedures:

A phone call, email, or letter to the individual requesting assistance will confirm the closure. Information on the intervention, any findings or recommendations, is at the discretion of the Ombudsman to share. Information regarding case closures will be documented in the OCFO database.

Individuals are welcome to contact the Ombudsman again to request assistance following a request closure. The Ombudsman reviews the request as indicated in the Requesting Assistance section of the manual.

OCFO may contact requestors after a request closure to assess their experience with OCFO. This would occur through an email or mail survey, and respondents may remain anonymous.

References:

[Office of Child and Family Ombudsman, Title 41, chapter 3, part 12, MCA](#)

(Revised March 24, 2017)

Privilege

Policy:

In addition to the protections of the confidentiality and disclosure statutes and rules, Montana law protects citizens accessing OCFO by establishing an Ombudsman privilege. Section [41-3-1213, MCA](#), states:

The ombudsman may not be compelled to testify or produce evidence in any judicial or administrative proceeding with respect to any matter involving the exercise of the ombudsman's official duties, except as necessary to enforce the provisions of this part.

This privilege allows citizens to submit a request without concern that the Ombudsman will be compelled to testify or produce evidence. The privilege also supports the independence and impartiality of OCFO, ensuring findings and recommendations are used to improve the system. The Ombudsman's privilege extends to supervisors, staff, and agents performing work on behalf of the Ombudsman.

Procedures:

If OCFO receives an information request, OCFO will consult with the Bureau Chief and Department of Justice legal staff to determine the appropriate response.

References:

[§ 41-3-1213, MCA](#)

(Revised March 24, 2017)

Enforcement

Policy:

OCFO responds to requests for assistance, investigates administrative acts, and reports on recommendations for protecting rights and strengthening the child welfare system. DPHHS may accept or reject recommendations provided by OCFO; however, statute requires DPHHS to provide OCFO an explanation of actions taken or not taken.

Procedures:

Collaboration

[Section 41-3-1209, MCA](#), states that OCFO will work “in collaboration with the department and with appropriate county attorneys in cases under review” with the intent of strengthening the system. And, in [§ 41-3-1211, MCA](#), OCFCO will “promote best practices and effective programs by working collaboratively with the department to improve procedures, practices, and programs”. While OCFO welcomes opportunities to collaborate, OCFO instituted the following procedures specifically to increase collaborative efforts:

- 1) Presenting OCFO to CFSD through meetings, trainings, and staffings to explain the process.
- 2) Following an established communication plan.
- 3) Notifying the Regional Administrator of open requests and status of levels of intervention.
- 4) Allowing Regional Administrators to make introductions of CFSD staff to the Ombudsman where needed.
- 5) Alerting CFSD to process and communication concerns effecting the safety of children and supporting their interventions to maintain safety.
- 6) Communicating openly about concerns and offering suggestions to resolve conflicts before elevating a request to an investigation.
- 7) Providing questions in writing as needed.
- 8) Attending meetings in the community of the request.
- 9) Providing research or supportive information when in agreement with the case plan.
- 10) Providing data on information collected.

OCFO is committed to treating DPHHS employees with courtesy and respect and to working together with DPHHS to solve problems.

Subpoena power

OCFO has access to the case management systems utilized by DPPHS, including CAPS, DocGen, and the FFA Repository. Where documentation is not available on these systems, procedure is to request it through the Regional Administrator and it is made available. If CFSD or any other entity with information pertinent to a review or investigation was not made available, the Ombudsman has the

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authority “to inspect, copy, or subpoena records as needed to perform the ombudsman’s duties under this part.” OCFO will consult with Department of Justice legal staff prior to issuing a subpoena.

Response by DPHHS

During intervention on requests, communication between CFSD and OCFO occurs frequently. Montana law assists OCFO in obtaining information by requiring in [§ 41-3-1212, MCA](#), “At the ombudsman’s request, the department shall inform the ombudsman in a timely manner about any action taken to address or any reasons for not addressing the ombudsman’s findings, conclusions, and recommendations.”

While certain types of questions can and are answered on the same day or week by email or phone call, a formal written request for follow up is made in each Findings Report. OCFO will review each response provided by DPHHS.

Communication Plan

To increase the collaboration between OCFO and DPHHS, thereby increasing the effectiveness of investigations, findings, and reports, OCFO will pursue a Communication Plan or Interagency Agreement between OCFO and DPHHS. The legal authority to enter into this type of agreement resides with the Attorney General and the Director of DPHHS. This agreement will be made public upon the signatures of all necessary parties.

References:

[§ 41-3-1209, MCA](#)

[§ 41-3-1211, MCA](#)

[§ 41-3-1212, MCA](#)

[ARM 37.47.607](#)

[ARM 37.47.608](#)

(Revised March 24, 2017)

Outreach and Education

Policy:

OCFO understands that for citizens to make contact, citizens must be aware of who the Ombudsman is and what OCFO does. OCFO also recognizes the power of education around rights, policies, procedures, and practices to empower citizens to advocate for themselves. Section [41-3-1211, MCA](#), outlines the following duties in relation to outreach and education:

- to take appropriate steps to ensure that persons are made aware of the purpose, services, and procedures of the ombudsman and how to contact the ombudsman;
- to undertake, participate in, and cooperate with persons and the department in activities, including but not limited to conferences, inquiries, panels, meetings, or studies, that serve to improve the manner in which the department functions;
- to provide education on the legal rights of children.

Procedures:

Information about OCFO and request for assistance forms are available on the Department of Justice website (dojmt.gov/enforcement/childrensjustice). The Ombudsman spends time with each contact explaining the process and determinations on interventions.

To increase awareness, OCFO provides educational items such as brochures, rack cards, and posters to every CFSD field office. OCFO mails materials to other agencies and offices that may have contact with children or families. OCFO offers presentations to Department and community agency staff as regularly scheduled or requested. OCFO is on the training agenda for CFSD and the annual Montana Child Abuse and Neglect Conference.

Work Plan

In addition, OCFO develops an annual work plan with outreach goals, including but not limited to, attorneys, Court Appointed Special Advocates, mental health centers, judges, and court staff. The plan also includes attendance by an Ombudsman at trainings offered through the University of Montana School of Social Work: Center for Children, Families and Workforce Development or through DPHHS. This serves both as a chance to outreach and to educate.

Rights Education

The Ombudsman will work to create a Children's Bill of Rights and promote the education of those rights throughout the state. In addition, based on patterns arising from requests for assistance and from the Ombudsman's research and recommendations of improvement, the Ombudsman will work with the Department of Justice to advocate for statutory changes, as necessary and for education programs about individuals' rights.

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Stakeholder Meetings

When resources allow, OCFO will hold stakeholder meetings in each region. Meetings will be open to the public and follow an agenda prepared by the Ombudsman. The Ombudsman will invite representatives from education, law enforcement, medicine, and mental health professions.

References:

[§ 41-3-1211, MCA](#)

[Center for Children, Families, and Workforce Development, University of Montana](#)

(Revised March 24, 2017)

Grant Writing

Policy:

Section [§ 41-3-1211, MCA](#), gives OCFO the expressed authority to “apply for and accept grants, gifts, contributions, and bequests of funds for the purpose of carrying out the ombudsman’s responsibilities”.

Procedures:

OCFO periodically researches open grant processes for opportunities to fund projects. OCFO will maintain a record of grant applications. OCFO will work with Division of Criminal Investigation budget staff upon any award of a grant or funds.

OCFO will apply annually for retaining an AmeriCorps VISTA member. This will be a yearlong volunteer position of up to three years funded in part by OCFO and by federal funding allotted to the states. The Ombudsman and AmeriCorps VISTA will collaborate to develop a work plan for specific projects. AmeriCorps VISTA members will be bound by confidentiality laws and will undergo an orientation program with the Ombudsman supervising the VISTA.

References:

[§ 41-3-1211, MCA](#)

[AmeriCorps VISTA](#)

(Revised March 24, 2017)

Information Requests

Policy:

OCFO will respond in a reasonable time to requests for public records. The Department of Justice policies and procedures apply to public records requests.

Procedures:

Media Inquiries

Requests for interviews by media outlets will be redirected to the Attorney General's Office Communications Director.

Public Information Requests

Requests for public records made by a citizen not requesting assistance or not directly involved in a request can be made online at dojmt.gov/about/contact-us. Requests will be reviewed and responded to in accordance with applicable laws.

Grievances

Any concerns or complaints about staff of OCFO can be made by contacting the Children's Justice Bureau Chief or the Administrator of the Division of Criminal Investigation.

Reference:

[Contact Form, Montana Department of Justice](#)

(Revised March 24, 2017)