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SENATE BILL NO. 315

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology)

(Patron Prior to Substitute—Senator Edwards)

Senate Amendments in [] — February 12, 2008

A BILL to amend the Code of Virginia by adding in Article 6 of Chapter 2 of Title 2.2 sections numbered 2.2-214.2, 2.2-214.3, and 2.2-214.4, relating to the Office of the Children's Ombudsman.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 6 of Chapter 2 of Title 2.2 sections numbered 2.2-214.2, 2.2-214.3, and 2.2-214.4 as follows:

§ 2.2-214.2. Office created; appointment; definition.

A. There is hereby created the Office of the Children's Ombudsman to provide ombudsman services to any child served by any child-serving agency of the Commonwealth. The ombudsman shall be appointed by the Governor subject to confirmation by the General Assembly. The Governor may remove the ombudsman for cause in accordance with 2.2-108.

B. The ombudsman shall initially be appointed for a term that expires one full year following the end of the Governor's term of office, and, thereafter, the term shall be for four years. Vacancies shall be filled by appointment by the Governor for the unexpired term.

C. As used in this section and §§ 2.2-214.3 and 2.2-214.4, "child-serving agency" means a state agency that provides services to children, including, the Department of Social Services, the Department of Juvenile Justice, the Department of Education, the Department of Correctional Education, the Department of Mental Health, Mental Retardation and Substance Abuse Services, the Office of the Comprehensive Services for At-Risk Youth and Families, and the Department of Health. "Child-serving agency" shall also include local entities that receive funding from a state child-serving agency.

§ 2.2-214.3. Powers and duties.

A. The ombudsman shall have the power and duty to:

1. Operate and manage the Office of the Children's Ombudsman and to employ such personnel as may be required to carry out the provisions of this section;

2. Receive, investigate and take all reasonable steps to mediate or resolve complaints regarding the child-serving agencies. However, after an initial investigation of any complaint, the ombudsman may decline to further investigate any complaint if the ombudsman determines that the complaint is frivolous or not made in good faith;

3. Conduct inspections, in connection with a complaint received pursuant to this section, of any public or private facility, institution or residence where a child has been placed by a court or a child-serving agency when such child is residing in the facility, institution or residence. Inspections conducted pursuant to this subdivision may be unannounced;

4. Make such inquiries, and obtain such assistance, in connection with a complaint received pursuant to this section, as the ombudsman may require in the discharge of the ombudsman's duties from any agency, division of any agency, or other state entity or from any agency, division of any agency, or other entity of any political subdivision of the Commonwealth;

5. Notwithstanding any provisions to the contrary, access any and all information, including confidential information, necessary for the full and complete investigation of the complaint. All information obtained shall be maintained by the ombudsman as confidential in the same manner as is required by the agency or entity from which it was obtained. The ombudsman shall be subject to the same penalties for disclosure of confidential information as the entity or person from whom the information was obtained;

6. Enter into an agreement with any state agency providing advocacy, client assistance or ombudsman services to the agency's clients, to ensure the protection of children, provided that such agreements do not restrict the authority of the ombudsman to pursue legal or administrative remedies on behalf of children;

7. Notify the law-enforcement agency and the attorney for the Commonwealth in the jurisdiction in which a secure facility, shelter care facility or detention home, as defined in § 16.1-228, or residential public charter school is located when the ombudsman has reason to believe that there has been a violation of state criminal law; however, when the ombudsman has reason to believe that the criminal action has been committed in a state facility, notice shall be given to the director or commissioner of the department responsible for licensing or regulating such facility;

8. Report to the head of any agency any serious problem, abuse or deficiency related to that agency, or any programs or facilities operated by that agency, at such time as the problem, abuse or deficiency is discovered by the ombudsman;

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9. Promote the continuous improvement in the administration of children's services, including identifying and disseminating best practices related to the administration and delivery of children's services, working with child-serving agencies to promote competency, efficiency and justice in the administration and delivery of children's services, and recommending policy, regulatory and legislative changes for the purpose of ensuring the well-being of children;

10. Serve as a source of information and referrals for children, parents, caregivers, providers and citizens involved with child-serving agencies;

11. Apply for and accept grants from the United States government, agencies and instrumentalities thereof, and any other source, in furtherance of the provisions of this section;

12. Keep the Governor, General Assembly and Commission on Youth fully informed by means of reports required in § 2.2-214.4 concerning significant problems, abuses, and deficiencies relating to the administration of programs and services for children, and to recommend corrective actions concerning the problems, abuses and deficiencies, and to report on the progress made in implementing the corrective actions identified; and

13. Adopt policies and guidelines in order to carry out the provisions of this section.

B. Nothing in this section shall prevent any state agency providing services to children from developing and maintaining advocacy, client assistance, or ombudsman services for its clients independently from the Office of the Children's Ombudsman.

§ 2.2-214.4. Reports.

The ombudsman shall, not later than November 30 of each year, submit an annual report summarizing the activities of the Office of the Children's Ombudsman to the Governor, the General Assembly and the Commission on Youth. Such report shall include:

1. Information concerning the number of complaints received and the types of investigations completed by the Office during the reporting period;

2. Information on the response of any child-serving agency investigated pursuant to a complaint received by the Office, including any failure to respond to Office recommendations or any barriers to adoption of any Office recommendation;

3. A summary of any matters referred to any attorney for the Commonwealth, law-enforcement agency, or agency head during the reporting period and any actions taken by such persons;

4. A description of any significant problems, abuses and deficiencies related to the administration of the programs and services of child-serving agencies identified during the reporting period;

5. A description of any recommendations for corrective actions made by the Office during the reporting period with respect to significant problems, abuses or deficiencies identified;

6. An identification of each significant corrective recommendation, described in previous reports, on which corrective action has not been completed; and

7. Recommendations for systemwide changes concerning the provision of services to children by child-serving agencies in the Commonwealth, including any legislative or regulatory changes.

2. That in the first year after the date of enactment, the Office of the Children's Ombudsman shall accept and investigate complaints regarding the Department of Social Services and the Department of Juvenile Justice; in the second year the Office of the Children's Ombudsman shall accept and investigate complaints related to the Department of Social Services, the Department of Juvenile Justice, the Department of Mental Health, Mental Retardation and Substance Abuse Services, the Department of Education, and the Department of Correctional Education; in the third year and thereafter the Office of the Children's Ombudsman shall accept and investigate complaints related to any child-serving agency or any program, service or facility licensed, funded or operated by a child-serving agency.

3. That the Office of the Governor shall conduct a needs assessment of resources and work with the Department of General Services to provide for the office space needs of the Office of the Children's Ombudsman.

[4. That the provisions of this act shall not become effective unless an appropriation of general funds effectuating the purposes of this act is included in a general appropriations act passed by the 2008 Session of the General Assembly, which becomes law.]