SENATE
PUBLIC HEALTH, WELFARE & SAFETY
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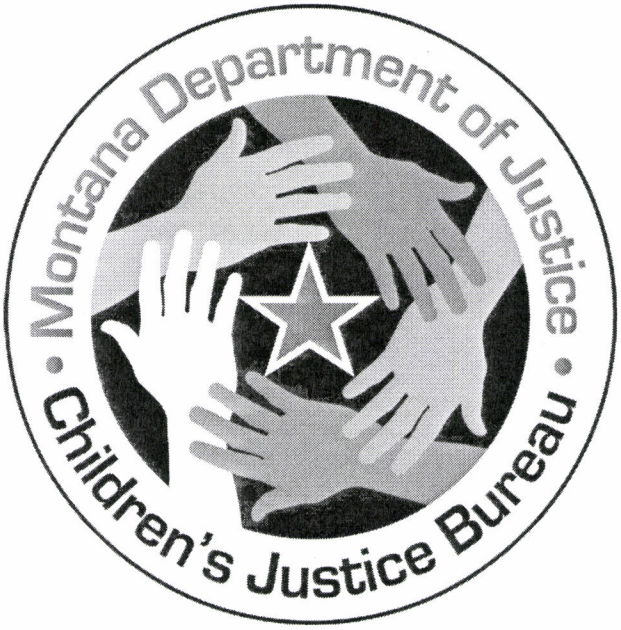
Montana Department of Justice
Office of the Child and Family Ombudsman
Annual Report 2014



Office of Child & Family Ombudsman

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Executive Summary

Welcome to the inaugural annual report of the Office of the Child and Family Ombudsman. This annual report is required by Montana law and reports activities of the office for calendar year 2014. We appreciate your interest in this important work.

History

The 2013 Montana Legislature created the Office of the Child and Family Ombudsman and placed the Office in the Department of Justice.

The Ombudsman is appointed by the Attorney General and governed by Montana Code Annotated 41-3-1201-1207. The Attorney General placed The Office of the Child and Family Ombudsman in the Division of Criminal Investigation's Children's Justice Bureau.

Mission Statements

The **Montana Division of Criminal Investigation** is committed to the promotion of public safety for the citizens of Montana. DCI shall provide professional assistance and support to law enforcement in the areas of criminal investigations, training, narcotics interdiction, criminal intelligence, criminal records, and computerized criminal justice information. We value the safety of our children and shall provide the resources necessary to train and assist those who protect them, and bring those to justice who abuse the innocent. We shall provide **service** to our citizens, **justice** to those who violate our laws, and maintain **honor** in the performance of our duties.

The mission of the **Children's Justice Bureau** is **Safety** and **Justice** for Children.

The mission of the **Office of the Child and Family Ombudsman** is to work to prevent child abuse and neglect and increase safety, well-being and permanency for Montana's children through fair and just **advocacy**, **education**, **outreach** and **investigation**.

Inaugural Year

Attorney General Tim Fox appointed Traci Shinabarger, LCSW, MPA, BCBA as the Child and Family Ombudsman in December 2013. In 2014, building program infrastructure, developing policy and procedure, conducting statewide outreach, and responding to citizens were the focus of the Ombudsman.

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Overview

Montana's Child and Family Ombudsman Office operates with core principles which are consistent with the standards of the United States Ombudsman Association. The four principles are: independence, impartiality, confidentiality, and knowledge.

The Office of the Child and Family Ombudsman is **independent** of the Montana Department of Public Health and Human Services (DPHHS), meaning it is separate and free from influence of the individuals the office may investigate. The Office is part of the Montana Department of Justice. In the Department of Justice, the Ombudsman is part of the Division of Criminal Investigation and the Children's Justice Bureau.

The Ombudsman is **impartial**. The Ombudsman does not take sides in disputes, but rather works to mediate issues and seek resolution for all parties. The Ombudsman works collaboratively with all parties, including DPHHS, to improve services for the children of Montana. The Ombudsman may advocate certain recommendations which benefit the individual who requested assistance; however, advocacy from the Ombudsman is always 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**.

The Ombudsman is required to be **knowledgeable**. The Ombudsman will have a solid understanding of the laws governing child welfare, systems of care, and best practices in working with children and families. The Ombudsman will continually pursue information and stay abreast of changes and advances in the provision of services to investigate the circumstances relating to the death of any child who has received services from DPHHS.

"Thank you for your participation in the meeting. Your input from a child-focused perspective helped diffuse anger... and built cooperation."

- CFSD employee

Year One – Research, Training, and Outreach

The first quarter of 2014 was dedicated to research, training, outreach and procedural development for the Office of the Child and Family Ombudsman. Procedural development is discussed following this section.

Research:

The key resource organization for Ombudsman is the United States Ombudsman Association (USOA). The Ombudsman joined the USOA as a voting member. The USOA has a Children and Family Chapter chaired by Mary Meinig of the Office of Family and Child Ombudsman in Washington State.

The Office of Family and Child Ombudsman in Washington was identified as an important source of information for the Montana Office of Child and Family Ombudsman. In March 2014, the Montana Ombudsman shadowed the Washington office for one week and learned about their development and procedures.

"Thank you so much for all of your help with this situation. I really do appreciate it."
- Foster parent

The Montana Ombudsman also researched programs in Colorado, Michigan, Massachusetts, and Georgia, which provided a foundation of information to support development of the Montana Office of the Child and Family Ombudsman.

Training:

In 2014, the Ombudsman attended trainings specifically selected to supply information about the national child welfare system and the Montana child protection systems.

- Montana Child Abuse and Neglect Conference - April 2014
- National Child Abuse and Neglect Conference – May 2014
- Montana Child Abuse and Neglect (MCAN) basic training – September/October 2014
- United States Ombudsman Association Annual Conference – October 2014
    - First two days orientation for new Ombudsman
    - Review of national standards

Outreach:

The Department of Justice announced the hiring of the Ombudsman and opening of the Office on its website in February 2014. Subsequent outreach efforts included:

- Office of the Child and Family Ombudsman information posted to Montana Department of Justice website on the Children's Justice Bureau webpage, including contact information for the Ombudsman and access to the Request for Assistance Form.
- Printed materials were designed and printed in May 2014. The materials were distributed statewide to each of the Child and Family Services county offices to assure citizens know about the Office of the Child and Family Ombudsman and how to make a request for assistance. The materials were also distributed at a number of conferences and trainings and are available upon request.
- "Meet the Ombudsman" presentations in each Child and Family Services region in the state. Locations included Billings, Butte, Bozeman, Hamilton, Helena, Great Falls, Kalispell, and Miles City.

In 2015, outreach continues with plans to offer presentations about the Office of the Child and Family Ombudsman to Court Appointed Special Advocate (CASA) groups, and other stakeholders, such as the Montana County Attorney's Association, children's service providers, and community service groups.

Year One - Policy and Procedure Development

In order to be well prepared to respond to citizens' requests for assistance, the major initial responsibility of the Ombudsman was to draft policies and procedures for the Office of the Child and Family Ombudsman. The draft policies and procedures describe the role and responsibilities of the Office and outline the procedures for how the Ombudsman meets those responsibilities.

Responding to Requests and Contacts:

Once the Ombudsman receives a request for assistance, the Ombudsman reviews and organizes each request according to the following categories:

- Decline to intervene – The contact or request does not fall within the legal scope of the Office of the Child and Family Ombudsman or has already been addressed by the Office.
- Referral to other services - The Ombudsman will be able to assist by finding the right person or service to address the request. The Ombudsman will provide the requestor information on whom to contact. The Ombudsman may follow-up with the individual.
- Informal Mediation - The Ombudsman, after following up with the referral source and the individual, may offer to mediate the concern with the parties involved. Mediation may involve phone calls to clarify needs. The Ombudsman, after speaking with the parties involved, could suggest mediation through a meeting of the parties.
- Investigation and Report -In other cases, a request will come to the Ombudsman with serious and complex concerns and significant attempts to resolve the issue. The Ombudsman will open an investigation 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 department DPHHS
    4) The individual requesting assistance has also sought help through DPHHS employees or procedures.

An investigation may include collection of all case documentation, interviews of involved parties, and attendance at meetings and court hearings about the case. An investigation may include a meeting of the parties involved. All investigations will conclude with a written report delivered to the Director of DPHHS and include recommendations for future action.

The Ombudsman also reviews each request and will classify it as Emergent or Non-Emergent.

- Emergent – when 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*. An Emergent response will commence upon receipt of the information. Emergent responses may include calling 911 and a report to the statewide Child Abuse Hotline, which is administered by DPHHS.

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

Office of the Child and Family Ombudsman Contact Data and Statistics

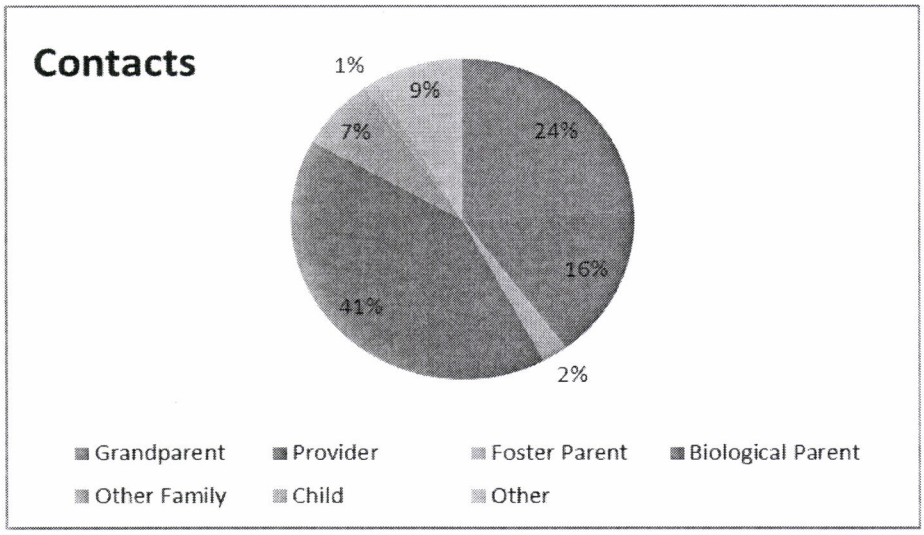
The Montana Office of the Child and Family Ombudsman opened to the public on April 1, 2014. From April 1 to December 15, 2014, the Office received 83 individual contacts. If the contact presented information supporting possible jurisdiction to intervene, the contact was asked to complete the Request for Assistance Form. The Ombudsman assisted citizens with the request form as needed.

The table below identifies the classification and status of the 84 contacts in 2014.

TABLE 1: Ombudsman actions and case status

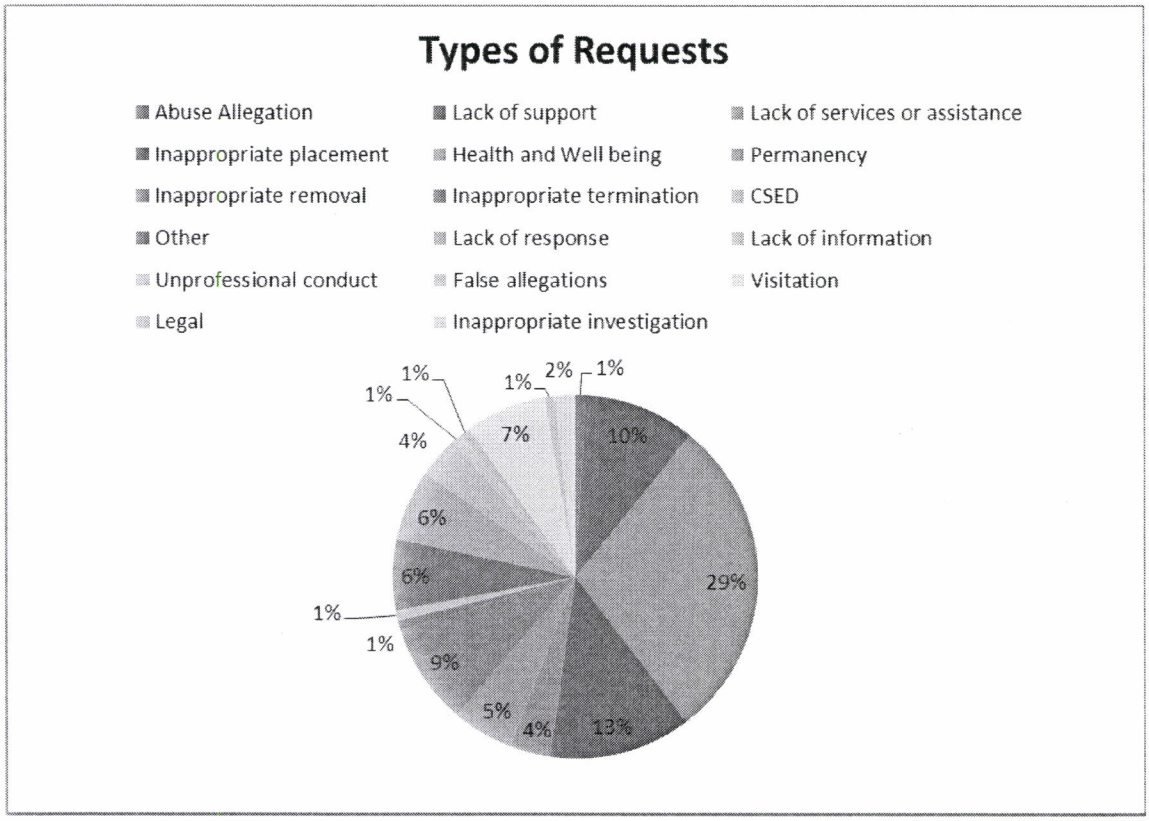
Ombudsman Action	Number of Contacts
Declined to intervene	4
Referred for other services and closed	18
Mediated and closed	15
Investigated and closed	4
Open, being reviewed or mediated	32
Pending request form to review	10
Total contacts	**83**

GRAPH 1: Citizens who contacted the Ombudsman. Contacts were tracked by their relationship to the child



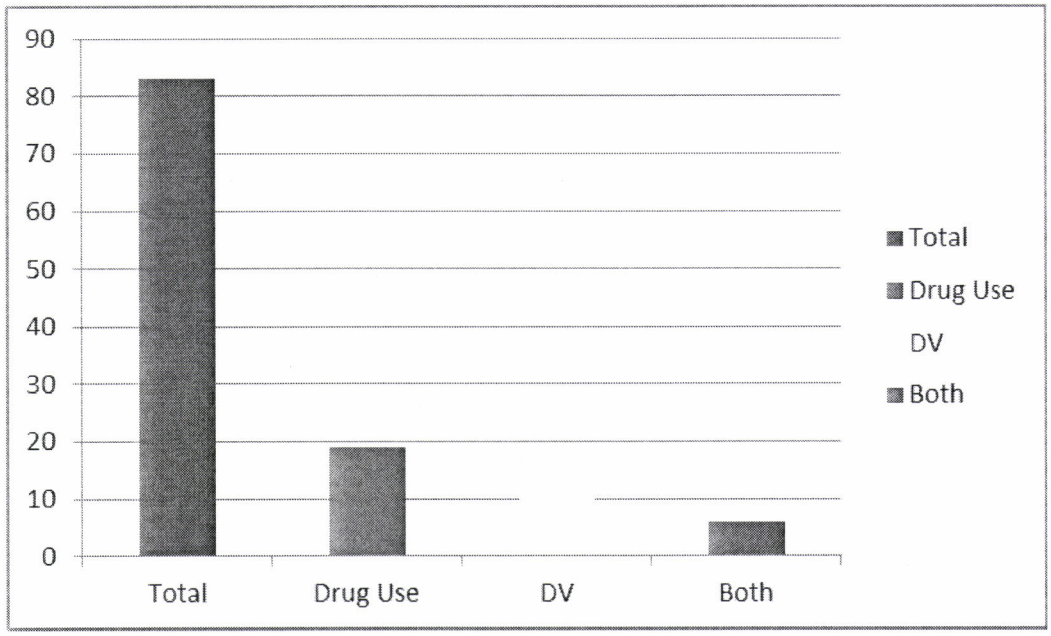
Biological parents and grandparents make up the largest number of contacts. Individuals related by blood or adoption to the child make up 72% of the contacts in GRAPH 1.

GRAPH 2: Types of Requests



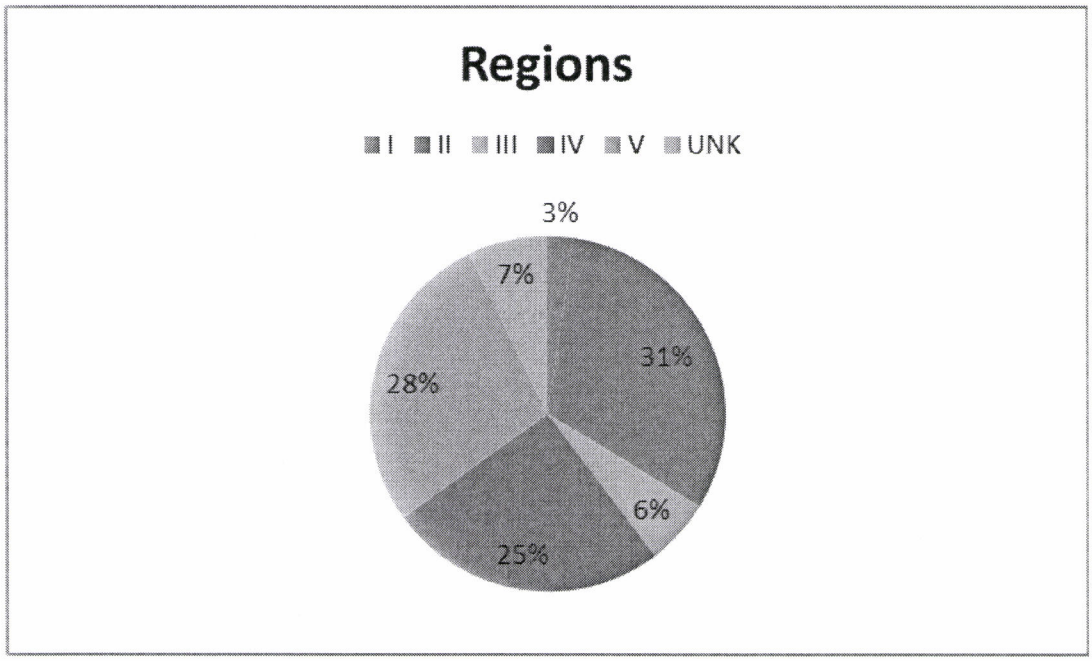
Reasons for contacting the Ombudsman varied; however, most could be associated with one common theme or concern. The most prevalent was a concern about lack of services or assistance from CFSD. The types of services requested varied from communication to investigation. Inappropriate placement and inappropriate removal were the next two most noted concerns.

GRAPH 3: Contacts Reporting Drug and Alcohol Use and/or Domestic Violence related to their request.



Drug and alcohol use as well as domestic violence were tracked if either or both conditions were part of the information collected about the child's family during Intake. The chart above depicts the number of contacts involving drug and alcohol use, domestic violence, or both. Of 83 contacts measured, 19 involved drug use, 18 domestic violence, and 6 both domestic violence and drug use. Twenty-five percent of the children involved were likely exposed to drug use and/or domestic violence.

GRAPH 4: Geographic Regions of contacts and requests.



Region I –3% of the contacts originated from the counties of Carter, Custer, Daniels, Dawson, Fallon, Garfield, McCone, Phillips, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Treasure, Valley, and Wibaux.

Region II – 31% of the contacts originated from the counties of Blaine, Cascade, Chouteau, Glacier, Hill, Liberty, Pondera, Teton, and Toole.

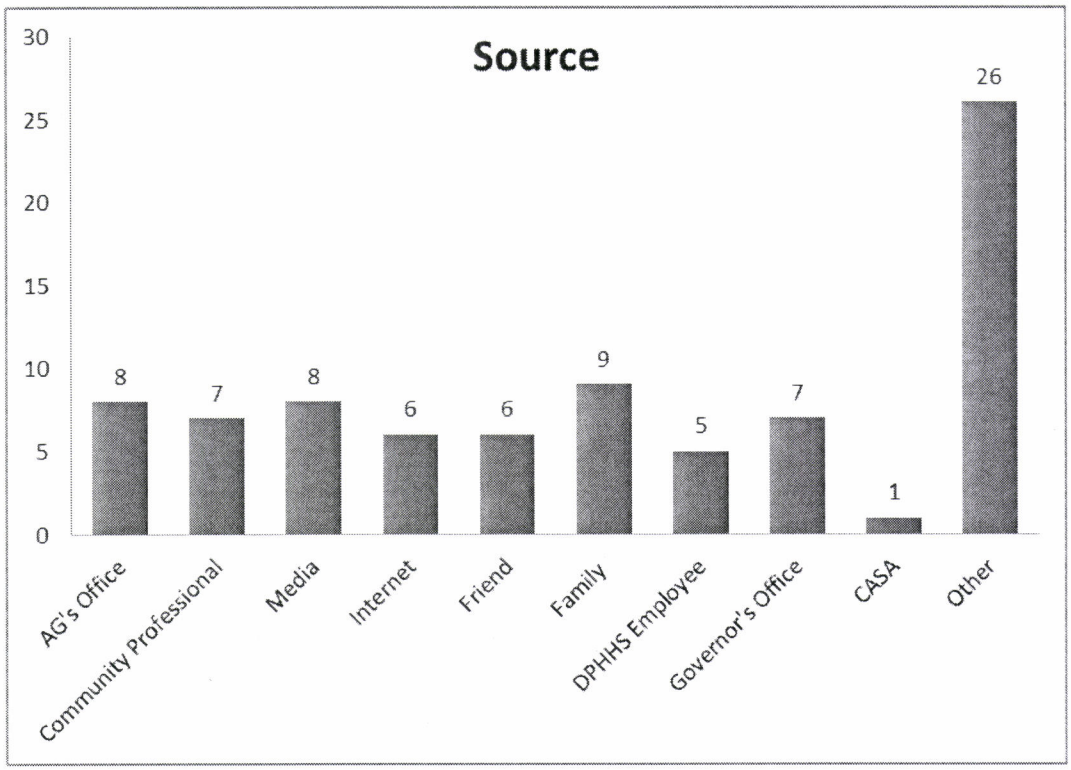
Region III – 6% of the contacts originated from the counties of Big Horn, Carbon, Fergus, Golden Valley, Judith Basin, Musselshell, Petroleum, Stillwater, Wheatland, and Yellowstone.

Region IV – 25% of the contacts originated from the counties of Beaverhead, Broadwater, Deer Lodge, Gallatin, Granite, Jefferson, Lewis & Clark, Madison, Meagher, Park, Powell, Silver Bow, Sweet Grass.

Region V – 28% of the contacts originated from the counties of Flathead, Lake, Lincoln, Mineral, Missoula, Ravalli, and Sanders.

Unknown – 7% of the contacts did not identify their geographic location.

GRAPH 5: How citizens learned about the Office of Child and Family Ombudsman



Aside from the Other category, which included refusals to identify the source of information, Family was the top referral source. Media outlets and the Attorney General's Office were the next highest referral sources.

Child and Family Ombudsman Year One Summary

The Office of the Child and Family Ombudsman identified several initial trends, and at the conclusion of four case investigations, issued recommendations to the Director of DPHHS.

Three Initial Trends Identified

The Office of the Child and Family Ombudsman has notified DPHHS about these early trends.

Trend #1: Grandparents Rights

GRAPH 1 identifies grandparents were the second largest group of contacts to the Office. Grandparent's requests were identified as wanting more visits with their grandchildren, or if caring for their grandchildren, they requested more support for themselves and their grandchildren. Other grandparent contacts expressed concerns about CFSD not following policies and procedures. Grandparents' legal rights under Montana law are a source of confusion. Montana law allows for grandparents to request a court to grant the right to visit grandchildren; it does not state that grandparents have visitation rights automatically.

Trend #2: Parent/Child Visitation during out of home placements

Child and Family Services policy emphasizes the importance of visitation between parents and their children who are placed in out of home care. The policy emphasized the importance of more visitations for younger children. However, arranging and scheduling safe and supervised visitation is a challenge for Montana's child protection specialists. Visitation is an area where a more systematic review could reveal solutions and opportunity for more consistency with best practices.

***"This needs to continue to make sure someone is there protecting the rights of children."* - Grandparent**

Trend #3: Legal representation for parents and children

The Ombudsman is not able to provide legal advice or answer questions of law, nor can the Ombudsman intervene in a court case. Therefore, when legal questions arose, the Ombudsman referred individuals to their attorney or to seek the advice of an attorney. Overwhelmingly, obtaining legal representation was difficult for people due to the lack of financial resources, overworked public defenders, lack of communication between workers and attorneys, lack of representation of the children in care, conflicting Guardian ad Litem statutes, and untrained volunteers serving as Guardian ad Litem. The DPHHS Director is aware of this trend and concurs a systematic review of the legal resources for parents, children and child protection specialists is appropriate.

Recommendations to DPHHS

In 2014, the Office of Child and Family Ombudsman completed four case investigations. The Ombudsman is required to protect confidentiality, thus these recommendations are summarized to protect case specific identification.

1. Policy Reviews. The Ombudsman recommended that CFSD review and enhance training or directives on the following policies or procedures:
    a. Conducting diligent searches and locating a family placement.
    b. Submitting and monitoring Interstate Compacts.
    c. Utilizing termination of parental rights statutes, particularly as it applies to parents with documented drug abuse and/or mental illness who have prior terminations.
    d. Improving communication between Child Protection Specialists and county attorneys to assist in decision-making throughout the legal process.
    e. Documenting response to any critical incidents at foster homes.
    f. Improving understanding of the philosophy of child protection and best practice in family-centered practice and trauma-informed practice.
    g. Gathering more information from placement resources and providing clearer information to kinship providers.
    h. Using existing kinship placement documentation consistently.
    i. Improving reporting and investigating allegations of neglect or abuse by foster care providers, including unlicensed kinship care.
    j. Developing concurrent placements within 90 days of placement in out of home care.
    k. Destroying records of unsubstantiated reports as directed by statute consistently.
2. Non-policy recommendations. Where sufficient evidence existed, the Ombudsman also made recommendations for addressing case specific concerns, including:
    a. Take all available steps to establish, support, fund, and maintain a relationship between a child in care and the child's biological siblings.
    b. Provide written communication when it is difficult to communicate verbally.
    c. Develop a plan for identifying and assisting workers who may be experiencing burnout, compassion fatigue, and/or vicarious trauma. Teach workers how to identify signs and symptoms.

d. Contact concerned parties and confirm a commitment to thoroughly investigating allegations and best interests before removing a child from kinship care.

e. Hold a case planning meeting to identify the plan as adoption and identify steps for considering each potential placement, including foster care licensing.

f. Update the voluntary treatment plans for individuals.

g. Invite all relevant parties to Foster Care Review Committee meetings, court proceedings, and treatment team meetings.

To date, DPHHS responded positively to recommendations received and plans to address concerns. The Ombudsman was able to confirm enhanced training while attending Montana Child Abuse Neglect training. The Ombudsman will continue to work collaboratively with DPHHS to meet policies and procedures.

Challenges and Successes

The inaugural year of the Office of the Child and Family Ombudsman was a busy one. The following section outlines challenges and successes identified in the first year.

Challenge #1: Timeliness of Response to the Public

On April 1, 2014, when the doors of the office opened to the public, three families were waiting to contact the Ombudsman.

Outreach efforts of the office have been effective and have increased contacts from 2 to 4 per week and from 8 to 14 per month. At the time of this report, 77 contacts were made to the Office in nine months. In comparison, Colorado's child welfare Ombudsman Office had 131 contacts in its first twelve months. Colorado's population is five times that of Montana's. The increase in contacts has also increased the time it takes for the Ombudsman to respond to citizens.

Challenge #2: Immunity for the Ombudsman

Montana's current statute governing the Ombudsman does not provide for immunity for the Ombudsman from prosecution, outside of negligence or malfeasance, and from any information collected during the course of duties from being used in a court action. Immunity by law would protect the Ombudsman's independence, impartiality, and confidentiality. It also protects the Office from being used to create a lawsuit against the agency, as opposed to creating lasting change to better the system as a whole.

Success #1: Established Presence

The Office of the Child and Family Ombudsman's first year includes a great deal of success. People across the state contacted the Ombudsman to share their concerns, stories, and hope for improved outcomes for Montana's children. Overwhelmingly, individuals expressed their thanks and appreciation for the Office, even when the answer to their question was not what they hoped. Through the Department of Justice website, posters, brochures, rack cards, and "Meet the Ombudsman" presentations, information about the Office began to spread. CFSD invited the Ombudsman early on to meet with its regional administrators and establish a positive presence and clear communication.

Success #2: Clear review process

The Montana Office of the Child and Family Ombudsman procedures are consistent with the United States Ombudsman Association. Procedure for taking contacts, reviewing, intervening, and closing cases in the first months of 2014 is an important success. While the volume of cases exceeded expectations, the process allowed the Ombudsman to know the status of each case and respond based on the needs of the situation. The clear review process also means that each person contacting the Office is treated equally and fairly. A credible review process is a standard expectation for ethical and effective Ombudsman work.

"You can be my coach."

-Grandparent

"If you are there, I know I can trust you will tell me if I am being unreasonable."

- Mother

Success #3: Communication and Collaboration

Success for Montana's children and families and the child welfare system is completely dependent upon communication and collaboration with stakeholders statewide. The foundation for the Ombudsman's work is communication and collaboration with the Division of Child and Family Services at DPHHS. From the beginning, CFSD's administration has been very responsive and available to the Ombudsman. CFSD is revising an internal complaint process, which includes inviting the Ombudsman to participate. While the Ombudsman maintains independence to conduct a separate investigation, inviting the Ombudsman into the internal process identifies a willingness to be open and transparent and is an example of true collaboration and commitment to safe children and families.

Glossary of Acronyms

AG	Attorney General
BCBA	Board Certified Behavioral Analyst
BMR/BFR	Biological Mother/Biological Father
CASA	Court Appointed Special Advocate
CFSD	Child and Family Services Division
CJB	Children's Justice Bureau
CPS	Child Protection Specialist
CPSS	Child Protection Specialist Supervisor
DCI	Division of Criminal Investigation
DOJ	Department of Justice
DPHHS	Department of Public Health and Human Services
DV	Domestic Violence
FP	Foster Parent
GAL	Guardian ad Litem
LCSW	Licensed Clinical Social Worker
MCAN	Montana Child Abuse Neglect Training
MGM/MGF	Maternal Grandmother/Maternal Grandfather
MPA	Masters of Public Administration
PGM/PGF	Paternal Grandmother/Paternal Grandfather
RA	Regional Administrator for Child and Family Services Division
USOA	United States Ombudsman Association

MONTANA STATE SENATE

Roll Call

PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE

DATE: April 10, 2015

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SENATOR NELS SWANDAL	/	
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