

Stronger Together with Children’s Ombudsmen

By Moira K. O’Neill, PhD, RN

“Stronger together”: This was the call at the 2023 CWLA National Conference. When contemplating partnerships for advancing change, are we including everyone we should? Do your state’s partnerships include a children’s ombudsman?

In June 2023, Louisiana became the latest to join the growing ranks of states to create an independent ombudsman for children. There is currently some version of a children’s ombudsman, at state, county, or municipal level in at least 42 states and the District of Columbia. Proposals for establishing an ombudsman have been raised in three of the remaining eight states. With an increasing presence of children’s ombudsmen, their potential as collaborators can be one more link in strengthening systems serving children. However, their origins may situate them as more of an obstacle than partner. Understanding the structure and function of ombudsmen will clarify their potential as a valuable resource.

What are Ombudsmen?

Perhaps because the word is nearly unpronounceable, the idea of an ombudsman feels new. However, the value of a channel dedicated to the expression of concerns about government may well be ancient. As far back as the seventh century, in a now legendary letter, the fourth Caliph of Islam, Ali ibn Abi Talib, advised the governor of Egypt, “Out of your hours of work fix a time for complaints and for those who want to approach you with their grievances.” Fourteen centuries later, the Caliph’s writings still inform human rights doctrines and ideal governance. His suggestion to create a safe space for citizens to bring complaints about the government is thought to be the first articulation of the idea of an ombudsman. Today, the U.S. Ombudsman Association (USOA) defines a public sector ombudsman as, “an independent, impartial public official with authority and responsibility to receive, investigate or informally address complaints about government actions, and, when appropriate, make findings and recommendations, and publish reports” (U.S. Ombudsman Association, 2003, p.1). The structure and function of an ombudsman office is dependent upon its enabling law or policy. There are four main types of ombudsmen: classical, executive, human rights, and organizational.

The classical model of ombudsman is located in the legislative branch, overseeing executive agencies with broad access to information. Their focus is compliance with laws and regulations. Many of the newer children’s ombudsmen in the United States have the characteristics of the classical model, but instead are located in the executive branch. These “executive ombudsmen” are codified as independent. They are attached to an executive agency “for administrative purposes only.”

The human rights model of ombudsmen is similarly structured to the classical with the added obligation to promote human rights. Setting out standards for ombudsman offices, the American Bar Association (ABA) included an “advocate ombudsman” who serves a particular population, for example children (U.S. Ombudsman Association, 2001). The advocate ombudsman operates on a human rights model by representing the “interests” or rights of the population, and promotes them in various forums, including legislatively. The organizational ombudsman is internal to the agency about which it receives complaints. Although it may be codified as independent, being part of the agency makes the perception of independence difficult.

Where Do Children’s Ombudsmen Come From?

Countries that have ratified the United Nations Convention on the Rights of the Child (UNCRC) established national children’s ombudsman to promote children’s rights and monitor compliance with the treaty. The United States stands alone as being yet to ratify the UNCRC. However, there have been past efforts to establish an ombudsman-type role for children at the national level. In the early 1970s, President Richard Nixon embraced a growing regard for the science of child development and early intervention by creating the Office of Child Development (OCD; Steiner, 1976). The OCD was intended to house the National Center of Child Advocacy (Green, 1972). The planned design for the Center included a Concern Center that would receive and respond to questions and concerns regarding children, child rearing, and child development. The expectation was to inform policy development addressing gaps and needs in services identified in those

inquiries. This was a national ombudsman (Green, 1972). Unfortunately, political priorities shifted unexpectedly. The Concern Center never came to be and efforts for a national ombudsman dissipated.

As frequently happens in a federalist system, when national initiatives fail, state governments step in. In 1979, the ABA approved and endorsed standards for juvenile justice that called for monitoring, oversight, and examination of state juvenile justice systems, including external mechanisms such as ombudsmen. That same year, the State of Rhode Island established the Office of the Child Advocate, the first children's ombudsmen in the United States.

The most common event triggering the creation of a children's ombudsman is the death of a child in state custody or supervision (O'Neill, 2011). For example, in Maine, Massachusetts, and Missouri, children's ombudsmen were all established after public outcry and political reaction to the deaths of children in foster care.

The emphasis on system performance and perceived "system failure" underscores the deep contrast to the framework for human rights the rest of the world associates with children's ombudsmen. Government accountability, not human rights, is what has most moved U.S. states to create the positions. What was not understood

then, but is increasingly understood now, is that compliance-driven, adversarial oversight described, is not sustainably effective in system strengthening.

How do Children's Ombudsmen Fit in Bridging Divides?

The children's ombudsman role emerging as a "corrective action" to perceived failure may seem structurally at odds with the all-inclusive partnerships and cooperation envisioned for bridging divides in child welfare. In fact, in a 2011 study, children's ombudsmen acknowledged emerging recognition that collaborative approaches and oversight are actually more productive than adversarial relationships (O'Neill, 2011). Partners of system strengthening initiatives can help capitalize on the children's ombudsman's potential as a resource by recognizing the shared goal of improving care of children and getting beyond the anticipated bared teeth of the "watchdog."

In addition to receiving complaints, a well-designed children's ombudsman has authority to access information, make reports, educate the public, and advise state leaders. That authority positions the ombudsman to lead

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the dialogue about children, their needs, and the best way to mitigate these needs. Whether sharing summarized trends in complaints signaling areas for improvement or describing gaps in a child's narrative, children's ombudsmen have a platform to gain awareness of children and children's issues.

When partners engage with ombudsmen in conducting investigations grounded in approaches like safety science, the result is a safe space in which to examine the whole picture of what influences case decision-making. Input from agency experts provides credibility and predicts buy-in. The ombudsman's independent lens is a source of trust that the public demands and that children deserve. Ombudsmen represent the public in reviewing processes and information that must be kept confidential to protect children. They also can open avenues to dialogue with the public in ways that administration personnel may not, such as making frank recommendations for budget allocations that may be necessary but not politically appetizing.

The partnering, collaborative image of the children's ombudsman may be equally as unfamiliar to some ombudsmen as it is to traditional "adversaries." The USOA has objected to the ABA's inclusion of the advocate ombudsman in their standards, citing a threat to impartiality (USOA, 2001). However, mandates to promote the interests of children or simply to ensure good governance, when carefully considered, mean the same thing.

Good governance is the protection of children and their interests. As all partners, including children's ombudsmen, begin to recognize the potential of the role, systems serving children really will be stronger together. ■

Moira O'Neill, PhD, RN, served as the first Child Advocate for the State of New Hampshire Office of the Child Advocate from 2018-2022 and as Assistant Child Advocate for the State of Connecticut Office of the Child Advocate from 2000-2011. In 2011, she completed her doctoral dissertation, "Pulling Back the Curtain: Children's Ombudsmen at Work." Her research on children's ombudsmen continues. She also provides consultation to child-serving systems and champions seeking to establish children's ombudsman offices. Dr. O'Neill and Heather M. Kennedy contributed the article "Safety in Oversight: A New Approach for Children's Ombudsmen in Critical Incident Review" to the recently published Volume 101, Number 1 of Child Welfare journal.

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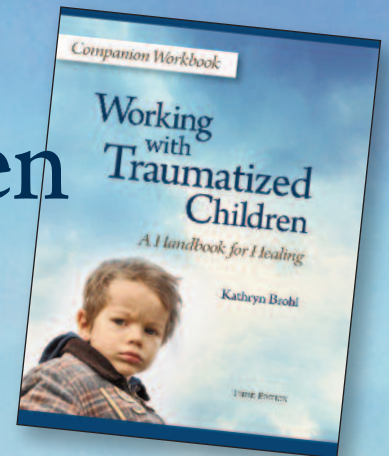
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