

Review Highlights



Joint Legislative Oversight
& Sunset Committee

Relocation Options for Non-Judicial Agencies
Focused Review, Released: February 2025

Positions on Relocation

→ Administrative Office of the Courts (“AOC”)

- **Separation of Powers:** NJAs function primarily as executive branch entities and report to executive branch commissions.
 - This interferes with the judicial branch’s ability to manage its own operations.
- **Authority Limits:** Judicial branch does not have supervisory authority over NJA personnel, data practices, or fiduciary accounts.
- **Comparison:** Other states do not place similar entities under judicial branch.

→ Non-Judicial Agencies (“NJAs”)

- **Cost Concerns:** Creating a new office or integrating into an existing executive branch agency would be costly.
- **Independent Department:** Propose becoming their own department under the Legal Section of the State of Delaware budget (15-04-00).
- **Conflict of Interest:** Moving to the executive branch would conflict with “watchdog” function.
- **Disruption:** Relocation would be disruptive and interfere with their work.

→ NJA Relocation Considerations

- NJAs require appropriate support and additional staff for administrative functions currently provided by AOC.
- NJAs want the freedom to advocate for their budgets with OMB and the General Assembly.

Preferred Relocation Option

- AOC recommends relocating the Office of the Public Guardian, Office of the Child Advocate, and Maternal and Child Death Review Commission as independent offices under the Legal Section. These NJAs agree with this proposal.
- **Any decision to relocate these NJAs should consider associated costs and avoid major disruptions to their work.**
- **Fiscal Impact: Transfer of 49 existing positions and budgets.**
 - **Additional staff needed for fiscal management, HR, and auditing.**

WHY WE DID THIS REVIEW

On June 8, 2023, the Joint Legislative Oversight and Sunset Committee (“JLOSC”) voted to provide staff assistance to AOC for discussions about the potential relocation of NJAs, based on the JLOSC staff’s recent work on related reviews.

OBJECTIVES

- Engage in meetings with AOC and NJAs.
- Identify concerns regarding relocation.

Note: The review’s objectives differ from other focused reviews because JLOSC did not assign a research topic.

BACKGROUND

→ Office of the Public Guardian

- Last resort for citizens of Delaware who cannot make decisions about their lives or property, also serves as representative payee of last resort.
- [12 Del. C. § 3981](#)
- Previously Reviewed Guardianship Commission: [2023](#)

→ Office of the Child Advocate

- Coordinates efforts on behalf of children. Recommend changes in statute and policy necessary to enhance the protection of children in Delaware.
- [29 Del. C. § 9001A](#)
- Previously Reviewed Child Protection Accountability Commission: [2018](#)

→ Maternal and Child Death Review Commission

- Review the circumstances of all deaths of children under the age of 18, stillbirths, and maternal deaths in Delaware
- [31 Del. C. §§ 320-324](#)

→ Delaware Nursing Home Residents Quality Assurance Commission

- Check and review the quality of Delaware’s long-term care facilities.
- [29 Del. C. §7907](#)
- Previously Reviewed: [2020](#)

Relocation Options for Non-Judicial Agencies

Focused Review – April 2024, Presented to JLOSC February 2025



Joint Legislative Oversight
& Sunset Committee

Objective, Scope, and Methodology

The Joint Legislative Oversight and Sunset Committee (“JLOSC or Committee”) voted on June 8, 2023, to provide staff assistance to the Administrative Office of the Courts (“AOC”) in discussions about the possible relocation of the 4 non-judicial agencies (“NJAs”) currently within the judicial branch. AOC provides administrative support to the NJAs but lacks oversight and authority, creating conflicts with their placement in the judicial branch.

The 4 NJAs include:

- **Office of the Public Guardian.**
- **Office of the Child Advocate.**
- **Maternal and Child Death Review Commission.**
- **Delaware Nursing Home Residents Quality Assurance Commission.**

Unlike a full review, a focused review does not follow the standard review process, which includes a self-report and formal presentation. JLOSC did not assign a research topic but instead tasked JLOSC staff with assisting AOC with discussions relating to the potential relocation of NJAs due to their recent work on related reviews.¹ The epilogue language in Section 49 of the fiscal year 2024 budget bill directed AOC to explore potential relocation of the NJAs and submit a report (“Section 49 report”) to the Joint Finance Committee (“JFC”) on February 1, 2024, detailing AOC’s findings, options, and relocation costs.²

To assist AOC, JLOSC staff met with both AOC and the NJAs to explore the feasibility of relocation and hear concerns about moving out of the judicial branch.³ Additionally, JLOSC staff conducted individual meetings with AOC and each NJA to understand their views on relocation.⁴

During meetings with JLOSC staff, NJAs expressed frustration with having provided extensive research and review of proposed relocations several times in the past. Compiling information for relocation proposals takes a lot of time, which they believe they could use more effectively to serve their clients. This JLOSC staff report summarizes the information gathered by JLOSC staff during these meetings, including the AOC-submitted Section 49 report and written statements from each NJA. Documents attached to this

¹ The reviews were: The Child Protection Accountability Commission, under Office of the Child Advocate (2018), Delaware Nursing Home Residents Quality Assurance Commission (2020), and the Guardianship Commission, under the Office of Public Guardian (2023).

² 152nd General Assembly, House Bill No. 195, enacted June 2024. The Section 49 report is attached to this report.

³ JLOSC staff met with AOC and all NJAs on October 9, 2023, and November 6, 2023.

⁴ JLOSC staff held meetings with AOC on August 24, 2023, and November 27, 2023; the Office of the Child Advocate on October 24, 2023; the Office of the Public Guardian on October 25, 2023; the Maternal and Child Death Review Commission on October 27, 2023; and the Delaware Nursing Home Residents Quality Assurance Commission on December 21, 2023.

JLOSC staff report include the Section 49 report and statements from each NJA explaining their stance on potential relocation and possible new locations for each NJA.

This JLOSC staff report also provides a summary of the history, issues, positions, and relocation options gathered from AOC and the 4 NJAs. JLOSC staff compiled this information during 2023 and 2024 and note updates pertinent to relocating an entity. This JLOSC staff report summarizes NJA relocation information into the following sections:

- **NJA Relocation Overview.**
- **Brief History of NJAs.**
- **Summary of AOC Reasons for Relocation.**
- **Summary of AOC Relocation Options, Top Preferred Option, Fiscal Impact, and NJA Relocation Considerations.**
- **Summaries of NJA Positions on Relocation.**

NJA Relocation Overview

The placement of the NJAs under the judicial branch has long been a matter of discussion. During joint and individual meetings, JLOSC staff learned this is not the first time AOC and the NJAs have addressed proposals to relocate. All parties understand that AOC and the judicial branch prefer the NJAs relocate. However, without an equal or better option, the NJAs prefer to stay. After multiple discussions, all parties agree that, in theory, relocating the NJAs from the judicial branch makes sense, but they also recognize that such a move would be expensive.⁵

AOC recommends housing the NJAs under the Legal Department⁶ with their own independent organizational designation. Currently, AOC handles all NJAs' support requests and human resources needs. The NJAs use office space controlled by AOC and rely on the judicial branch's IT services, the Judicial Information Center ("JIC"). Moving the NJAs to an established executive branch agency requires the receiving agency to absorb these costs and find suitable office space. Additionally, transferring from JIC to the Department of Technology and Information ("DTI") will incur extra costs for both the absorbing agency and DTI. An alternative, creating an independent executive branch agency to house the NJAs, might be beneficial but costly. Any move, whether to an existing executive branch agency or a new creation, will be expensive and require careful consideration. Any decision to move the NJAs from the judicial branch should consider the costs and potential challenges.

When JLOSC staff met with AOC and the NJAs, all parties understood that relocating NJAs would be expensive and challenging. Given that any move will be challenging and take time, improving communication between AOC and the NJAs is necessary to reduce underlying friction. Memoranda of Understanding ("MOUs") between AOC and the NJAs

⁵ The NJAs' primary concern is the potential impact of any move on their clients or stakeholders. All parties recognize the NJAs' work is invaluable and agree that any disruption to their services must be avoided if possible.

⁶ In the state budget, the "Legal Department" comprises the Department of Justice and the Office of Defense Services. If placed under the Legal Department, the NJAs would have their own distinct budget units.

may help bridge the communication gap. MOUs may also address AOC's concerns that NJAs seek changes without including AOC in the discussions.

Brief History of NJAs

Office of the Public Guardian ("OPG"): The OPG began in 1974 and is codified in § 3981, Title 12. The Public Guardian handles three main tasks: acting as the last resort for Delaware citizens who cannot make decisions about their lives or property, serving as the representative payee of last resort for Social Security benefits, and serving as the Department of Veterans Affairs ("VA") fiduciary of last resort for VA benefits. The Public Guardian advocates for clients and works with advocacy groups and state agencies to promote reform and recommend legal changes to best serve the public. The Governor appoints the Public Guardian, who must be a lawyer admitted to the Delaware Bar, for a 6-year term.

Office of the Child Advocate ("OCA"): The OCA began in 1999 and is codified in Chapter 90A, Title 29. OCA coordinates efforts on behalf of children, works with advocacy groups, promotes systemic reforms, and recommends statutory and policy changes to protect children in Delaware. The Child Advocate also serves as the Executive Director of the Child Protection Accountability Commission, which implements and coordinates programs that provide legal representation for children. The Commission's Executive Committee appoints the Child Advocate, who must be a lawyer admitted to the Delaware bar.

Maternal and Child Death Review Commission ("MCDRC"): The MCDRC originated in 1995 and is codified in §§ 320-324, Title 31. MCDRC reviews the circumstances of all deaths of children under the age of 18, stillbirths, and maternal deaths in Delaware. The Commission is composed of the chairperson of each regional child death review panel, each maternal death panel, and each Fetal and Infant Mortality Review Case Review Team. The Commission includes various members including the State Attorney General, the Secretary of the Department of Services to Children, Youth, and Their Families, the Child Advocate, the Secretary of Education, the Chief Medical Examiner, and the Director of the Division of Public Health. The Commission's Executive Committee appoints the Commission's Executive Director.

Delaware Nursing Home Residents Quality Assurance Commission ("DNHRQAC"): Established in 1999, the DNHRQAC is codified in § 7907, Title 29. DNHRQAC checks and reviews the quality of long-term care facilities in Delaware.⁷ DNHRQAC makes reports for the Governor and General Assembly, determining how well long-term care facility staffing levels work and evaluating the quality assurance system for long-term care residents. This Commission's members are composed of those serving by virtue of position and appointments that the General Assembly or the Governor make. The Commission hires the Executive Director, who serves at the pleasure of the Commission.⁸

⁷ This JLOSC staff report uses the term "long-term care facility," because "nursing home" is an outdated term.

⁸ In addition to the Executive Director, the Commission now has 2 full-time equivalents ("FTEs"). All positions, including casual/seasonal positions report to DNHRQAC. Introduced as Senate Bill 325 on June 18, 2024, the Fiscal Year 2025 budget bill appropriated the 2 FTEs under Section 46.

NJAs Removed from AOC: The General Assembly has placed other NJAs under AOC since the AOC's creation in 1971. These NJAs later moved to other agencies or dissolved. Below is the list of these NJAs and their status.

- **Educational Surrogate Parent Program:** Moved in Fiscal Year 2009 to the Department of Education.
- **Violent Crimes Compensation Board:** Moved to the Office of the Attorney General in Fiscal Year 2011 and became the Victims Compensation Assistance Program.
- **Child Placement Review Board:** Funding eliminated in Fiscal Year 2018 and positions eliminated in Fiscal Year 2019.
- **Conflict Attorneys Program:** A special line in AOC's budget used to manage contracts for the Conflict Attorneys Program, transferred in Fiscal Year 2012 to the Office of Defense Services and became the Office of Conflicts Counsel.

Summary of AOC Reasons for Relocation

The AOC and judicial branch believe that having the NJAs under the judicial branch "encroaches on the Chief Justice's constitutional authority as the administrative head of the judicial branch."⁹ AOC has 3 main arguments against the current structure:

1. **Separation of Powers Issue:** AOC asserts that the Chief Justice should hire and oversee all judicial branch employees, and that the current structure, where the NJAs report to executive branch commissions or are Governor-appointed, interferes with the judicial branch's ability to manage its own operations and "run its own house."¹⁰ AOC also contends that the NJAs function primarily as executive branch entities, reporting to executive branch commissions and adhering to open record and meeting laws. The Chief Justice's authority over the NJAs is limited to prioritizing their budget and personnel requests.
2. **Risks to the Judicial Branch:** AOC's next contention builds on their first point. NJAs create unique risks for the judicial branch because the judicial branch lacks authority over them. AOC identifies the following specific risks:
 - NJAs hire outside employees at up to 100% of midpoint and hire casual/seasonal employees, creating a personnel budget deficit that has exceeded \$400,000 in some years.¹¹ AOC absorbs these losses with limited control over NJAs' personnel spending.
 - NJAs cater to Delaware's most vulnerable populations and handle highly sensitive personal information. AOC cannot guarantee the adoption of best practices in the collection, storage, and distribution of this information due to their lack of supervisory authority over the NJAs.

⁹ Executive Summary of AOC's Section 49 report to JFC dated February 1, 2024.

¹⁰ AOC cites in the Section 49 report Delaware case law to support its contentions, including *State v. Sturgis*, 947 A.2d 1087 (Del. 2008), *Superior Court v. State, PERB*, 988 A.2d 429 (Del. 2010), and others.

¹¹ AOC notes that some NJAs have communicated with legislators directly and without the AOC for personnel requests. This is outside of the usual structure of budget requests and has created friction among the individual NJAs and between the NJAs and AOC.

- OPG manages fiduciary accounts for its clients outside of the State's accounting system. Many, but not all, of OPG's client accounts are subject to review by the Court of Chancery.¹² AOC is also concerned that OPG charges for its services, which the judicial branch believes creates an appearance of conflict of interest.
- OCA solicits and collects donations of both goods and money for the benefit of children under State care. The judicial branch believes that this solicitation of donations, no matter how laudable, conflicts with the judicial branch's code of conduct.

3. **Placement of Similar Entity Structure in Other States:** AOC contends that Delaware is unique in placing the NJAs under the judicial branch. AOC found that other states do not place similar entities within the judicial branch.¹³

Summary of AOC Relocation Options, Top Preferred Option, Fiscal Impact, and NJA Relocation Considerations

AOC supports a comprehensive solution that benefits NJAs and the judicial branch. NJAs have several concerns about relocation. Autonomy is a top priority for effective advocacy and minimizing conflicts. NJAs oppose a transfer to an executive branch department due to similar budgetary conflicts and concerns over the following:

- Losing the freedom to advocate for their budgets with OMB and the General Assembly.
- Losing the ability to collaborate directly with the Department of Human Resources on personnel and salary issues.
- The risk of no longer being exempt from the merit system, impacting the ability to attract and retain talent without impacting current employees.
- Ensuring that the NJAs have appropriate support, including additional staff, to replace the administrative functions that the AOC currently provides.

AOC discussed several relocation options with NJAs. AOC outlined the 5 following options, noted their preference on each, and provided additional details to include feasibility and fiscal impact in the Section 49 report.

1. NJAs exist independently under the Legal Department (recommended).
2. Create a new agency, such as an Office of Inspector General or an Office of Government Accountability, to include NJAs (recommended).
3. NJAs would exist independently under the executive department (not recommended).

¹² AOC states that "...although most of OPG's fiduciary accounts are subject to review or reporting requirements, the judicial branch has a general concern that not all fiduciary accounts are subject to court review, federal reporting requirements, and/or audit."

¹³ Again, the Section 49 report from AOC is attached to this JLOSC staff report and contains the AOC's research. Additionally, some NJAs have provided their own research to JLOSC staff, which is available on the JLOSC website.

4. Transfer NJAs to an existing agency such as Department of State or Department of Health and Social Services (not recommended).
5. Do not relocate and remain in the judicial branch (not recommended).

AOC Top Preferred Relocation Option: The top option agreeable to both the AOC and the NJAs involves establishing at least 3 of the 4 NJAs as independent offices under the Legal Department. This would allow the NJAs to maintain independence without creating a new standalone agency or affecting other executive branch departments or agencies. This option includes the following specifics and fiscal impact.

- NJAs to relocate: OPG, MCDRC, and OCA.¹⁴
- Requires 2 or 3 additional positions at paygrade (“PG”) 19 or higher.
- Transfer 1 existing accounting position from AOC.
- Additional statutory changes and written agreements will be needed.
- **Fiscal Impact:** Transfer of 49 existing positions and budgets from NJAs.
 - Additional positions will be needed for fiscal management, HR, and auditing.
 - Potential need for an additional Deputy Public Guardian for OPG.
 - If agencies do not share administrative staff, costs could increase significantly.
 - Not sharing staff for administrative functions (not recommended).

NJA Considerations if Moved from Judicial branch: The NJAs and AOC agree that AOC handles many, if not all, of the NJAs' administrative tasks. Additionally, NJAs send their budget requests to AOC, which must balance these requests with other responsibilities. In their Section 49 report, AOC outlined various positions that would need to be either transferred from the judicial branch or created at the new NJA location. AOC provided estimates of the current cost of various administrative positions that they currently handle for the NJAs. AOC also included additional costs that may arise if the Office of Management and Budget fulfills certain positions requested by the NJAs.

Summaries of NJA Positions on Relocation

In both meetings with JLOSC staff, AOC, and NJAs, all 4 NJAs expressed opposition to relocating from the judicial branch. Each NJA has unique circumstances, and each has concerns that moving could disrupt operations and harm vulnerable Delawareans. The NJAs believe that better communication between AOC and the NJAs would make staying within the judicial branch practical and cost-effective for the State. Each NJA has outlined its position on relocating.¹⁵

OPG: OPG believes it can operate independently, sharing support with the other 3 NJAs, as a department under the Legal Section of the State of Delaware budget (15-04-00). OPG believes placing the NJAs under the Legal Section of the State budget would save

¹⁴ The relocation options AOC explored considered but did not include DNHRQAC. AOC defers to JLOSC and their 2021 adopted recommendation for the relocation of DNHRQAC to the Department of Safety and Homeland Security. JLOSC adopted recommendations for the review of DNHRQAC is in Appendix A.

¹⁵ The NJAs each sent a memo in response to an early draft of AOC's Section 49 report. The NJA response memos outlined in more detail each agency's reasoning as to where they would prefer to be located. These responses have been summarized in this JLOSC staff report; the full responses are attached to this report.

the State from creating an additional department and allow for the sharing of administrative staff among the NJAs. OPG argues creating a new office or placing OPG within an existing executive branch agency is too costly for the State.

OPG understands AOC's concerns about the NJAs remaining in the judicial branch but believes that revisions to OPG's statute could help alleviate some of AOC's concerns.

OCA: OCA proposes 2 solutions to the relocation question. First, OCA suggests becoming its own department under the Legal section of the budget. OCA argues that its size and unique functions make it a perfect candidate for an autonomous department. OCA notes that much smaller agencies function as independent departments. OCA further suggests that this move would cost the State minimally.

Second, OCA supports creating a new and independent state agency that has authority to monitor executive branch agencies, such as an Office of Governmental Accountability or an Inspector General office.¹⁶ Placing OCA and other NJAs under this new office would benefit all parties involved. However, OCA acknowledges that creating such an office would take years, meaning the current friction between the NJAs and AOC would continue until then.

OCA opposes its placement within an existing executive branch agency. OCA argues that this would not resolve its current issues with budgetary and personnel requests. Additionally, OCA believes that placement under the executive branch would conflict with its "watchdog" status, creating conflicts of interest for both the executive branch and OCA.

OCA acknowledges that the current setup between the NJAs and AOC does not work. However, OCA believes that changes to its statutory language could resolve some of these issues, allowing it to enjoy full independent personnel and budget advocacy.¹⁷

MCDRC: MCDRC agrees with AOC's suggestion to become an independent department under the Legal Section of the budget. MCDRC believes moving out of the judicial branch but staying under the Legal Section would not disrupt many of its critical functions. MCDRC shares OCA's concern that moving under the executive branch may cause a conflict of interest since it also serves as a "watchdog" agency. Additionally, moving MCDRC to the executive branch would not solve its issues with budgetary and personnel requests. MCDRC suggests alleviating these issues by moving all four NJAs under the Legal Section to share resources.¹⁸ If no move occurs, MCDRC agrees with the other NJAs that adding statutory language to allow independent personnel and budget advocacy could help resolve some issues.¹⁹

¹⁶ This should not be construed as indicating an opinion, from either the OCA or JLOSC staff, on Senate Bill. No. 4 of the 153rd General Assembly.

¹⁷ OCA notes that AOC would most likely not agree to that change.

¹⁸ MCDRC indicates the need for MOUs or statutory changes to ensure a smooth working relationship between the NJAs.

¹⁹ This does not take into consideration that AOC is not likely to agree with a move that allows the NJAs to remain under the judicial branch and gain independent control over their personnel and budget.

DNHRQAC: JLOSC reviewed DNHRQAC in 2021 and recommended relocating its administrative and budgetary responsibilities to the Department of Safety and Homeland Security.²⁰ DNHRQAC disagreed with this suggestion and insisted that it and its judicial branch non-merit employee stay within the judicial branch.²¹ DNHRQAC fears that moving its staff would be disruptive and interfere with its work. If a move happens, DNHRQAC believes relocating all 4 NJAs together into an independent “watchdog” agency would benefit both AOC and the NJAs.

²⁰ The Delaware Department of Safety and Homeland Security is home to 2 advocacy councils that work to improve the quality of life for Delawareans with disabilities.

²¹ Section 46 of the Fiscal Year 2025 budget bill appropriated 2 FTEs to AOC for DNHRQAC. Both positions, including casual/seasonal positions report to DNHRQAC.

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TO: Senator Trey Paradee, Chair, Joint Finance Committee
Representative Kim Williams, Vice-Chair, Joint Finance Committee
Cerron Cade, Director of the Office of Management and Budget
Carla Cassell-Carter, Director of Budget Development and Planning
Ruth Ann Miller, Controller General

FROM: Gayle P. Lafferty ~~HA~~

RE: Administrative Office of the Courts' Report on Non-Judicial Agencies
Per Section 49 of FY24 Budget Epilogue

DATE: February 1, 2024

The Administrative Office of the Courts ("AOC") submits this Report for your consideration in accordance with Section 49 of the FY24 Budget Appropriations Bill (HB 195).

The General Assembly stated in Section 49:

Within the Judicial Branch (02-00-00) are several agencies, termed Non-Judicial Agencies (02-18-00), that provide advocacy and oversight of other government agencies. These agencies, which are overseen by statutory boards or commissions, include the Office of the Public Guardian (02-18-01), the Office of the Child Advocate (02-18-05), the Maternal and Child Death Review Commission (02-18-06), and the Delaware Nursing Home Residents Quality Assurance Commission (02-18-07). The Judicial Branch provides administrative support to these agencies, such as human resources, technology, and accounting services, but it has no supervisory authority. Locating these advocacy agencies within the Judicial Branch conflicts with its impartial administration of justice. It also puts the agencies in a difficult position of competing with the Judicial Branch for operational and budget priorities. To remedy the conflict and to allow these agencies to

advocate for their priorities, it is the intent of the General Assembly to explore the relocation of these agencies.

The General Assembly requests a report from the Administrative Office of the Courts, Office of the State Court Administrator (02-17-01), consulting with the Non-Judicial Agencies and the Executive Branch, recommending options and costs for budgetary and organizational relocation of these agencies. The report shall be submitted to the Director of the Office of Management and Budget, the Director of Budget Development and Planning, the Controller General, and the Co-Chairs of the Joint Finance Committee no later than February 1, 2024.

In drafting this report, AOC met several times, individually and collectively, with the managing directors of the Non-Judicial Agencies, with staff from Legislative Council, and with agency leaders within the Executive Branch. The Non-Judicial Agencies have had the opportunity to review this report and offer their respective views, as reflected in this report and in their responses appended to this report.¹

I. Executive Summary

The Judicial Branch's opinion is that the placement and reporting structure of the four Non-Judicial Agencies within the Judicial Branch encroaches on the Chief Justice's constitutional authority as the administrative head of the Judicial Branch.

As a mutually beneficial solution, AOC recommends that at least three of the four Non-Judicial Agencies could be established as independent Departments but sharing administrative resources under the Legal section of the budget, as explained more fully herein. Alternatively, for the benefit of the Non-Judicial Agencies, as well as similarly situated advocacy agencies throughout the Executive Branch, AOC recommends the transfer of these agencies to a newly created Governmental Accountability department or agency within the Executive Branch, where advocacy agencies can retain their independent decision-making authority while also sharing

¹ Appendices A-D are, respectively, the response from the Office of the Public Guardian, the response from the Office of the Child Advocate, the response from the Maternal and Child Death Review Commission, and the response from the Delaware Nursing Home Residents Quality Assurance Commission.

administrative resources to support the respective needs of each agency.

II. Brief Description of Current Non-Judicial Agencies²

Since the establishment of the AOC in 1971, the General Assembly has created and placed several Non-Judicial Agencies under AOC's budget umbrella.³ Other than the responsibility to provide administrative support to these agencies, AOC has no supervisory authority over the substantive work of these agencies and has no right to hire or supervise the agencies' directors or review the agency's performance. The Non-Judicial Agencies have no duty to report to the Chief Justice or the State Court Administrator in any way.

The four Non-Judicial Agencies that currently are part of the Judicial Branch budget are:

A. *Office of the Public Guardian*

The Office of the Public Guardian ("OPG") (**02-18-01**) was established in 1974 by 12 *Del. C.* § 3981. Section 3981 provides that the Public Guardian "shall serve as ... (1) [t]he guardian of last resort for the citizens of Delaware who have been determined to lack capacity to make decisions regarding their persons, their property, or both[;] (2) [t]he representative payee of last resort for Social Security benefits[; and] (3) [t]he VA fiduciary of last resort for Department of Veterans Affairs benefits." OPG also advocates on behalf of the agency and its mission and provides information to the public on guardianship services in Delaware.

OPG may collect fees for the provision of its services from the income or resources of any person for which it has been appointed guardian of the person or property or for whom it acts as representative payee. A person receiving services from the Office of the Public Guardian whose financial resources are deemed sufficient, pursuant to standards to be established by the Guardianship Commission and to be

² The term "Non-Judicial Agency" was adopted to distinguish the Judicial Branch agencies within the Administrative Office of the Courts—the Judicial Information Center, the Office of State Court Collections Enforcement, and the Law Libraries—whose substantive work and services directly support the mission of the Judicial Branch from the advocacy agencies that were placed in the Judicial Branch to ensure their independence and minimize conflict with Executive Branch agencies.

³ Other Non-Judicial Agencies that previously existed in the Judicial Branch's budget are: the **Educational Surrogate Parent Program** (02-18-04), which was moved in FY09 to the Department of Education; the **Violent Crimes Compensation Board** (02-18-02), which was moved to the Office of the Attorney General (15-01-01) in FY11 and became the Victims Compensation Assistance Program; and the **Child Placement Review Board**, which had its funding eliminated in FY18 and its positions eliminated in FY19. Also, in FY12, a special line in AOC's budget (02-17-01), which was used to manage contracts for the **Conflict Attorneys Program**, was transferred to the Office of Defense Services (15-02-02) and became the Office of Conflicts Counsel.

approved by the Court of the Chancery, shall be required to pay compensation for services related to guardianship or representative payee duties in accordance with such established standards. Per 12 *Del. C.* § 3986(c), the collected fees do not go to the General Fund but are held in a special fund to be expended by the Public Guardian in furtherance of its purpose and to support the Guardianship Commission. Under Section 3983(9), OPG is authorized to apply for and accept grants, gifts, and bequests from other governmental agencies as well as private firms, individuals, and foundations.

The Public Guardian must be a Delaware-barred lawyer who is selected by the Governor and appointed to six-year renewable terms. The FY24 budget for OPG includes \$858,000 General Funds (“GF”) and \$119,700 Appropriated Special Funds (“ASF”). There are 11 GF Full-Time Equivalent (“FTE”) positions and 1 ASF FTE. OPG has its main office in the Kent County Courthouse, with secondary offices located at the Delaware Hospital for the Chronically Ill and at 900 N. King Street in Wilmington. There is also a small office in Sussex County for the Guardian Case Manager at the Thurman Service Center.

B. *Office of the Child Advocate*

The Office of the Child Advocate (“OCA”) (**02-18-05**) was established in 1999 by 29 *Del. C.* ch. 90A. OCA’s mission is to safeguard the welfare of Delaware’s children. It accomplishes this mission through advocacy, education, collaboration, and evaluation, with a vision of safe and resilient children with supportive families. The Child Advocate must be a Delaware-barred lawyer who is hired and serves at the pleasure of the Executive Committee of the Child Protection Accountability Commission (“CPAC”), an Executive Branch Commission established by 16 *Del. C.* § 931. In FY16, the position of Child Abuse and Neglect Review Specialist, and the accompanying responsibilities for conducting reviews of deaths and near deaths of children due to abuse or neglect, was transferred to OCA from the Maternal and Child Death Review Commission (then called the Child Death, Near Death and Stillbirth Commission). In FY17, the Office of the Investigation Coordinator was transferred from the Department of Services for Children, Youth and their Families to OCA. That transfer included 2 FTEs and \$222,000 in personnel funds. Also in FY17, Senate Bill 188 transferred the Court Appointed Special Advocate (“CASA”) program from Family Court to OCA. OCA took over responsibility for administering the CASA program, which included the transfer of 12 FTEs and \$768,500 in personnel funds.

The FY24 budget for OCA includes \$3,513,000 GF and 30 FTEs. OCA also has five casual/seasonal employees and 10 contractors. OCA has offices in New Castle County at 900 N. King Street, in Kent County in the Family Court House, and in Sussex County at rental space located at 6 W. Market Street in Georgetown. OCA is scheduled to relocate its Kent and Sussex offices to the new Family Court Houses currently under construction. OCA also receives grant funding from multiple sources and solicits and collects donations of both goods and money, as authorized by 29 *Del. C.* §9005A(6).

C. *Maternal and Child Death Review Commission*

The Maternal and Child Death Review Commission (“MCDRC”) (**02-18-06**) was established in 1995 by 31 *Del. C.* ch 3. MCDRC is tasked with safeguarding the health

and safety of all the children, pregnant and postpartum persons of the state by reviewing the deaths of all Delaware children under 18 except that child abuse and neglect deaths are reviewed jointly with CPAC, stillbirths after 20 weeks, and all maternal deaths to alleviate practices and conditions that impact the mortality of children and pregnant and postpartum persons. The members of the Commission are appointed by the Governor or serve by virtue of their position. The Executive Director is appointed by the Executive Committee of the MCDRC.

The FY24 budget for MCDRC included \$485,700 GF and 5 FTEs. MCDRC also has 5 contractors. MCDRC receives grant funding for prevention initiatives. MCDRC has one office at 900 N. King St. in New Castle County.

D. *Delaware Nursing Home Residents Quality Assurance Commission*

The Delaware Nursing Home Residents Quality Assurance Commission (“DNHRQAC”) (**02-18-07**) was established in 1999 by 29 *Del. C.* § 7907. Section 7907(g) states the purpose of DNHRQAC “is to monitor Delaware’s quality assurance system for nursing home residents in both privately operated and state-operated facilities so complaints of abuse, neglect, mistreatment, financial exploitation, and other complaints are responded to in a timely manner to ensure the health and safety of nursing home residents.” By statute, DNHRQAC’s duties include examining policies and procedures and evaluating the effectiveness of the quality assurance system for long-term care residents, including the respective roles of DHSS, the Department of Justice and law enforcement agencies, and health care professionals and industry providers.

Of the 13 members of the Commission, one is appointed by the Speaker of the House, one is appointed by the President Pro Tempore of the Senate, seven are appointed by the Governor, and four serve by virtue of their position. Under § 7907(e), DNHRQAC may hire staff consistent within its annual budget appropriation. The FY24 budget for DNHRQAC included \$93,800 GF and 1 FTE, which is for an Executive Director position. The Executive Director has an office located within the Department of Health and Social Services at the Fox Run building in Bear, New Castle County.

Currently, the four Non-Judicial Agencies receive support from AOC in the form of accounting, personnel, and technology services. As previously noted, unlike the judicial agencies within AOC, none of the four Non-Judicial Agencies report to the Chief Justice or the State Court Administrator. Neither the Chief Justice nor the State Court Administrator exercise any supervisory powers over the four Non-Judicial Agencies, their substantive work, or the bank accounts that the OPG maintains outside of the State’s First State Financials (“FSF”) accounting system.

III. Judicial Branch Concerns with Non-Judicial Agency Placement

AOC recognizes that issues of agency placement also exist in Executive Branch departments, and that some state agencies with unique missions must share administrative support with larger agencies or Departments with whom their missions do not clearly align. As a separate branch of government, however, the Judicial Branch's concerns deserve singular consideration by our other coequal partners in state government.

A. Separation of Powers

Although it is not expressly written, a “defining principle of our constitutional governments in the United States, at both the national and state levels, is a separation of powers. The history of Delaware reflects that ‘from the beginning our state government has been divided into the three departments, legislative, executive, and judicial. It is likewise true that, generally speaking, one department may not encroach on the field of either of the others.’” *State v. Sturgis*, 947 A2d 1087, 1090 (Del. 2008). The function of the Legislative Branch is to make laws. The function of the Executive Branch is to carry out and administer the laws. *Opinion of the Justices*, 380 A.2d 109, 113 (Del. 1977). The function of the Judicial Branch is to act as a fair and neutral arbiter when legal disputes arise and “to say what the law is.” *Marbury v. Madison*, 5 U.S. 137, 177 (1803).

Although the General Assembly has the power to establish “courts” under Article IV, Section 1 of the Delaware Constitution, the Chief Justice is the administrative head of the Judicial Branch under Article IV, Section 13. And, “[t]here is persuasive authority to the effect that the Legislature is without power to limit the constitutional power of the Judiciary as a separate branch of government to run its own house including a limitation on the power to discharge employees or a limitation by legislation providing for an administrative review within the executive branch of government of a discharge of an employee by the judicial branch....”

Superior Court v. State, PERB, 988 A.2d 429, 433 (Del. 2010) (quoting *Family Court v. Dep't of Labor*, C.A. No. 438, Quillen, C. (Del. Ch. May 15, 1974).

This case law supports the Judicial Branch's position that all Judicial Branch employees must be hired by and ultimately report to the Chief Justice, not an Executive Branch commission or the Governor. The current statutory structure of the Non-Judicial Agencies has three of the agencies hired by and reporting to an Executive Branch commission and the fourth appointed by the Governor to six-year renewable terms. This statutory structure is an encroachment on the Judicial Branch's authority to "run its own house." *Superior Court v. State*, 988 A.2d at 433.

As the constitutional head of the Judicial Branch, only the Chief Justice should have the authority to establish agencies, boards, or commission within the Judicial Branch to aid the Judicial Branch in fulfilling its mission. The Chief Justice must have complete oversight over any agency, board, or commission existing within the Judicial Branch. In all important ways, the Non-Judicial Agencies function as Executive Branch agencies, reporting to Executive Branch commissions, and subject to Executive Branch open record and open meeting laws. The Chief Justice has no authority over the four Non-Judicial Agencies except that he may decide (as the Chief Justice may decide with all the Courts) how to prioritize their budget and personnel requests and whether to submit those requests to the other branches of government for further approval.

As a point of contrast, when the responsibility for collecting court judgments was transferred from the Department of Correction to the Judicial Branch, the transfer resulted from a collaborative, cooperative process between the branches of government. The positions that were transferred from the Executive Branch to the Judicial Branch became the agency known as the Office of State Court Collections Enforcement ("OSCCE"). OSCCE is an agency within the Administrative Office of the Courts. All the employees of OSCCE are employees of the AOC

and are appointed by the State Court Administrator. The Chief Justice has complete oversight of OSCCE's policies and procedures, and OSCCE is charged with carrying out the Chief Justice's vision as it relates to the Judicial Branch's collection of judgments in criminal cases.

B. *Risks to the Judicial Branch of Current Structure*

The Chief Justice and the Judicial Branch's lack of supervisory authority over the Non-Judicial Agencies creates unacceptable risk for the Judicial Branch. Some specific examples of risks include:

- The Non-Judicial Agencies make their own hiring decisions consistent with the Judicial Branch Personnel Rules, and may hire outside employees at up to 100% of midpoint. They also may hire casual/seasonal employees into available positions to meet their workload. These factors have led to one agency creating a personnel budget deficit that, even with the personnel contingency monies, in some years has exceeded \$400,000. The Judicial Branch budget absorbs this loss with limited ability to control the agency's personnel spending.
- The Non-Judicial Agencies serve the most vulnerable populations of Delaware citizens and collect very sensitive personal information, including health and financial information. Although the Non-Judicial Agencies are to be held to the same state standards regarding data security and PCI compliance, AOC has insufficient knowledge about whether the agencies are utilizing best practices in the collection, storage, and dissemination of such information because AOC does not supervise the agencies' substantive work.
- The Public Guardian maintains fiduciary accounts for its clients that are outside of the State's FSF accounting system. While many of these accounts are subject to property guardianships in which accountings are filed with the Court of Chancery, not all of OPG's clients are under a guardianship order for property. OPG also is authorized by statute to act solely as representative payee and/or VA Fiduciary. Many, but not all, of these accounts are subject to review by the Court of Chancery, and all representative payee accounts have reporting requirements to the Social Security Administration. Thus, although most of OPG's fiduciary accounts are subject to review or reporting requirements, the Judicial Branch has a general concern that not *all* fiduciary accounts are subject to court review, federal reporting requirements, and/or audit. Also, the Public Guardian has the authority to charge for its services pursuant to statute and Delaware Medicaid regulations. Charging potentially vulnerable people is a policy concern for the Judicial Branch and an issue over which the Chief Justice has no regulatory authority given OPG's statutory authority.

- OCA solicits and collects donations of both goods and money, which it uses for the benefit of children under State care. However laudable the use of the contributions, the Judicial Branch is uncomfortable with an agency within the branch soliciting donations and with having no authority to regulate how those donations are used.

Moreover, while the work that the Non-Judicial Agencies do is extraordinarily important, the lack of alignment between the Non-Judicial Agencies' respective missions as advocates and the Judicial Branch's mission to administer equal justice as a fair and neutral arbiter of the law has led to conflict and competition between the Non-Judicial Agencies and the Courts for scarce budgetary resources. As the constitutional head of the Courts, the Chief Justice generally must prioritize the needs of the Courts over the needs of the four small Non-Judicial Agencies,⁴ which has limited the ability of the Non-Judicial Agencies to receive needed budget resources. This has led some Non-Judicial Agency directors to lobby legislators directly for their own resources, in conflict with the Judicial Branch's stated budget priorities. These "backdoor" budget requests have created friction between the Non-Judicial Agencies and the Courts in the Judicial Branch whose own budget priorities are then placed in jeopardy.⁵ The placement of the Non-Judicial Agencies within the Judicial Branch is disadvantageous for both the Non-Judicial Agencies and the Courts.

⁴ This does not mean that the Non-Judicial Agencies' budget needs have never been prioritized in the Chief Justice's annual budget request. In FY22, for example, the Judiciary's budget request included a request to convert three grant-funded positions within OCA to three GF FTE positions, which ultimately was included in the budget appropriations bill for that year.

⁵ In August of each year, the individual Courts and Non-Judicial Agencies document their budget priorities for the next fiscal year and submit them to AOC. After a process of collaborative review and discussion, the Chief Justice ranks the priorities, considering input from the Courts and AOC. Not all of the Courts' or Non-Judicial Agencies' priorities make it onto the list of priorities that the Chief Justice presents to the other branches of government. The Courts accept the Branch's priorities, as articulated by the Chief Justice, and, unlike the Non-Judicial Agencies, do not engage in any individual lobbying for priorities that did not make it into the Judicial Branch budget request.

C. *Delaware does not Conform with Other States*

As outlined more fully below, Delaware is an outlier when it comes to the placement of these four Non-Judicial Agencies within the Judicial Branch. Delaware is the only state in the country in which an agency reviewing child and maternal deaths exists within the Judicial Branch. Delaware also is the only state in the country in which an agency monitoring the quality assurance system for nursing home residents exists within the Judicial Branch.

While many states embed their legal representation of children programs within the judiciary, only a handful of states have a child advocacy office within the state's Judicial Branch.⁶ Of most of those states, the Child Advocate either reports to a commission created by the Chief Justice of the State or is hired by and reports to the State Court Administrator. Similarly, only a small minority of states have a Public Guardian within the Judicial Branch. Again, in most of those states, the Public Guardian is an employee hired by and reporting to the State Court Administrator or a committee established by the Chief Justice.

IV. Comparison to Other States

Attached as Appendix E is a chart along with narrative descriptions summarizing the placement by other state governments of agencies similar to Delaware's Non-Judicial Agencies (if those agencies exist in the state's government). AOC's comparative research can be summarized as follows:

A. Office of the Child Advocate

The Office of the Child Advocate in Delaware has a multitude of functions that, in other

⁶ Legal representation of children, including Court Appointed Special Advocate ("CASA") and Guardian ad Litem ("GAL") programs, are separate programs in many states and not part of the Child Advocate's office. CASA and GAL programs in other states sometimes are administered by the state's Administrative Office of the Courts. In Delaware, the responsibility for legal representation of children was conferred upon OCA by statute in 1999, and the responsibility for administering the CASA program was transferred from the Family Court to the Office of the Child Advocate in FY18.

states, stretch across numerous departments and offices. For this reason, understanding the landscape of these services across the country is difficult. In Delaware, the Office of the Child Advocate provides legal representation of children through attorneys and the Court-Appointed Special Advocate program, ensures accountability by examining child welfare data, laws, and policies, develops quality training to increase expertise among child welfare professionals, reviews child deaths and near deaths due to abuse or neglect, and facilitates a multi-disciplinary team approach to child welfare investigations, among other duties.

According to AOC's research, there are 76 known child-advocate related programs throughout the country. These programs may provide legal representation of children or child welfare advocacy and oversight, or in some cases, other services designed to improve court processes and outcomes for children and families.⁷ Twenty-eight of these programs (37%), including Delaware's, are housed within the Judicial Branch. Those programs in other states, however, are primarily focused on the legal representation of children through management of Court-Appointed Special Advocate or Guardian ad Litem programs (20 of 28 programs). Arizona and Colorado are the only other states besides Delaware in which the Judicial Branch houses a child advocate program that performs greater advocacy work. The remainder of states' Judicial Branch programs are focused on children's justice within the court system.

Outside of legal representation of children programs, child advocate programs are most likely to exist as an independent office or agency providing child welfare system oversight within their state (23 programs, or 30%). Independent programs are most likely to have a mechanism of investigating complaints against other child welfare-related agencies and have a review

⁷ For some states, State Court Improvement Programs are included. All states, including Delaware, have a Court Improvement Program to monitor and evaluate dependency court proceedings to improve outcomes for children and families. This function is separate and distinct from the legal representation and advocacy roles filled by OCA and other similar child advocacy agencies.

process for state policies that effect children. One of these independent programs, Maine's is actually a state-designated nonprofit. Eleven child advocate programs (14%) are housed within a Department of Health and Human Services or Department of Children and Families; however, most of them are still regarded as independent within the Department and can engage in investigations in order to resolve complaints for children and families. The remaining programs are located within a Department of Justice or Attorney General's Office (11%) or the Legislative Branch (8%). Three states have no programs at all (Alabama, New Mexico, North Dakota).

B. Maternal and Child Death Review Commission

Maternal, child, and infant death review teams, panels, and commissions exist in all 50 states. States take different approaches as to the scope of each of their programs, and how they are formed. For example, Alabama has both a Child Death Review System, a Maternal Mortality Review Program, and a Fetal and Infant Mortality Review Program that are all located within the Department of Public Health but are comprised of different groups of people in order to fulfill each team's mission. Indiana, on the other hand, has a singular Statewide Fatality Review and Prevention Program that covers child, maternal, and fetal-infant deaths. Programs also vary in their composition, but many commission or team-based programs include a cross section of healthcare providers and public health experts, law enforcement, social services, other state officials, and members of the public.

Delaware is the only state in which a maternal, child, or infant death review program is located within the Judicial Branch. For the vast majority of programs (45), these groups were located within a Department of Health or a Department of Health and Human Services. Five states had programs within a separate Department specific to children or families (Florida, Illinois, Kentucky, New Jersey, New York), and three states had programs within the Medical Examiner's Office (Iowa, Massachusetts, Rhode Island). The remaining states had programs that

were either explicitly independent from other agencies, or were located somewhere else entirely, such as the State Law Enforcement Division (South Carolina) or a public university's school of medicine (North Dakota).

C. Nursing Home Residents Quality Assurance Commission

Only 12 states have commissions or programming similar in nature to the work done by the Delaware Nursing Home Residents Quality Assurance Commission, which is considered distinctly separate from the Long-Term Care Ombudsman, Quality Improvement Network-Quality Improvement Organizations, and State Boards of Nursing or Nursing Home Administrators.

Of the 13 programs (Maryland has two oversight commissions), Delaware is the only state in which the program is within the Judicial Branch. Eight programs are located within a Department of Health or Department of Human Services, one is located within the Medicaid program (Arizona), and the remaining three are independent commissions.

D. Office of the Public Guardian

Many states have some form of public guardian system at either the local or state level. These guardian programs vary in who can utilize them and who can be selected as guardian. In some instances, the state manages the operations of a volunteer-based or contract-based guardianship program (Indiana, Rhode Island, Washington) or approves a non-profit or other independent group to manage guardianship services (Kansas, Louisiana, Massachusetts, New Hampshire). In West Virginia and Wisconsin, the Departments of Health and Health and Human Services, respectively, solely approve nonprofits to serve as guardians, but do not provide guardianship services. Four states have no statewide public guardian programs at all (Michigan, New York, South Carolina, Wyoming)

Delaware is one of five states in which a public guardian is located within the judiciary.

In Colorado, the Office of Public Guardianship is located within the Office of Administrative Services for Independent Agencies (which is distinctly separate from the Administrative Office of the Courts). Both the Office of Administrative Services and the Office of Public Guardianship are governed by a board. In Hawaii, the Public Guardian is appointed by the Chief Justice. In Mississippi, the Chancery Court Clerk of the county in which guardianship proceedings are filed serves as the public guardian. In Nebraska, the Office of the Public Guardian is within the Administrative Office of the Courts and is appointed by the State Court Administrator.

Based on a study of the 50 states, the most common location for public guardianship services is within social service agencies. Approximately 20 states provide public guardianship through social service agencies. Several of these programs have a specific statutory mandate that the office must be administratively or functionally separate from the balance of agencies in their department providing services. There is no consistent design to social service models and several act more as an administrative oversight for subcontracted guardian services or volunteers.

V. Ideas for Relocation of Non-Judicial Agencies

Before discussing ideas for relocation of the Non-Judicial Agencies, it is important to note that AOC supports a comprehensive solution that would benefit the Non-Judicial Agencies as well as the Judicial Branch. It is also important to note that one of the Non-Judicial Agencies underwent sunset review in 2021 and was recommended for relocation outside of the Judicial Branch. That recommendation was not effectuated.⁸

⁸ In April 2021, the Joint Legislative Oversight and Sunset Committee completed its review of DNHRQAC and recommended, among other things, that “JLOSC shall sponsor legislation specifying that administrative and budgetary responsibilities related to DNHRQAC are the responsibility of the Department of Safety and Homeland Security.”

After this recommendation was voted into the final report, it is AOC’s understanding that DNHRQAC members and the Executive Director of the DNHRQAC expressed disagreement with the recommendation. AOC assured the JLOSC staff that, since one of the primary sticking

When discussing relocation options with the Non-Judicial Agencies, the agency directors expressed several over-arching concerns:

- As advocates, a top priority for the Non-Judicial Agencies is autonomy, as they often function as a “watchdog” of other state agencies or need to be independent to minimize conflicts.
- The Non-Judicial Agencies do not want to be structurally transferred to an Executive Branch department where similar budgetary conflicts or problems could arise. While this would resolve the issues for the Judicial Branch, the situation would not be improved for the Non-Judicial Agencies.
- The Non-Judicial Agencies want the freedom to advocate for their own budgets with the Office of Management and Budget (“OMB”) and the General Assembly.
- The Non-Judicial Agencies want the ability to work directly with the Department of Human Resources (“DHR”) on their personnel and salary issues.
- The Non-Judicial Agencies want to remain exempt from the merit system, primarily due to the salary limitations of the merit system. The concern would be an inability to attract and retain qualified talent. Additionally, the agencies do not want a relocation to have an adverse impact on its current employees and their benefits and compensation.
- If relocated outside the Judicial Branch, the Non-Judicial Agencies require appropriate levels of support and additional staff for administrative functions currently provided by AOC such as personnel, fiscal, and technology.

Specific staffing requests for relocation are included in the cost estimates below, but AOC recognizes that it will be up to the Office of Management and Budget and the Office of the Controller General to make final recommendations of appropriate staffing.

No additional fiscal notes have yet been developed or discussed for technology support. DTI has not yet been brought into this conversation. In all these various scenarios (outside of status quo), it is assumed technology services would be covered by DTI. DTI would be responsible for managing the technology for about 70 additional staff and contractors.

points seemed to be the employment location status of the Executive Director, AOC would permit the Executive Director to continue as a Judicial Branch employee until such time that the incumbent vacated the position. Other than being a Judicial Branch employee, the DNHRQAC could move into the Department of Safety and Homeland Security, and the position would be transferred before the next posting of the position. Despite AOC’s assurances, no changes have been made to the structure of DNHRQAC.

Additionally, although OCA and MCDRC have cloud-based case management systems, OPG's case management system is on the mainframe and hosted on Judicial Branch servers. AOC has not yet assessed the level of effort and cost to extract OPG's data and move it to a system maintained by DTI or to a new cloud-based platform.

A final cost that is not listed for each fiscal note is any existing personnel deficit. AOC may not be able to cover the entire deficit for the transfer of agencies but may be able to contribute to the personnel line in order to lower the cost. AOC is open to discussion.

Numerous ideas were discussed between the AOC and Non-Judicial Agencies and between the AOC and other state officials. These ideas include: (i) forming an independent department, such as an Office of Inspector General or Office of Advocacy, which would house advocacy and government accountability offices; (ii) moving the Non-Judicial Agencies into an existing department such as the Department of State; or (iii) allowing some or all of the Non-Judicial Agencies to exist as a small independent agency that answers to a board or commission, similar to DELJIS or the Criminal Justice Council. The ideas for moving the Non-Judicial Agencies are presented below in the order of preference of the Non-Judicial Agencies. This report also will address what problems could (and could not) be resolved in order for the Agencies to remain within the Judicial Branch.

A. Option 1: Non-Judicial Agencies Would Exist Independently under the Legal Department (Recommended)

Although the Attorney General (15-01-01) is a constitutional office and thus has a special status in Delaware's government, the Office of Defense Services (15-02-02) is a statutory Executive Branch agency that, like the Attorney General's office, operates as a merit-exempt agency, with many employees paid according to a special salary matrix. It seems possible that some or all of the Non-Judicial Agencies could be established as independent departments under the Legal Department in the budget and remain merit-exempt. Specifically, OCA and OPG

provide legal services to indigent populations in Delaware. Given OCA's size and with the right additional resources, OCA could be established as department 15-04-00 under Legal.⁹ OCA would request one high-level fiscal officer, one high-level human resources manager and one additional mid-level administrative officer, which could be a transferred accounting position from AOC's existing budget. With these three additional administrative positions, OCA believes that it could provide administrative support to both MCDRC and OPG if those agencies were set up as departments 15-05-00 and 15-06-00.¹⁰ OCA suggests that additional statutory language for independence as well as some MOAs between agencies would be helpful to creating this as a solution.

The benefits of this option include:

- Independence without creating a new department;
- Sharing of administrative resources for fiscal restraint; and
- Remaining exempt from the merit-system for personnel administration,

similar to ODS and DOJ.

Fiscal Note:

- The transfer of 49 existing positions (47.0 GF, 1.0 ASF and 1.0 NSF) from the Non-Judicial Agencies;
- The transfer of the existing budgets of the Non-Judicial Agencies;
- The transfer of 1.0 accounting position from AOC;

⁹ Budget code 15-03-00 was previously used and so may not be available.

¹⁰ AOC sees no reason why DNHRQAC could not also be considered for inclusion as part of this relocation of the Non-Judicial Agencies under the Legal Department, but AOC is mindful of the work already done by the Joint Legislative Oversight and Sunset Commission in 2021, which resulted in a recommendation that DNHRQAC be relocated to the Department of Safety and Homeland Security.

➤ Additional 1.0 Fiscal Manager, PG 19, totaling \$109,200 at 85%¹¹ of midpoint with OECs and health insurance;

➤ New HR Manager I, PG 19, totaling \$109,200 at 85% of midpoint with OECs and health insurance;¹²

➤ Either contractual funds to hire an external auditor, which would be the Non-Judicial Agencies' preference, or an additional budget position for an internal auditor. The additional costs of an Internal Auditor Manager, PG 19, totals \$109,200 at 85% of midpoint including OECs and health insurance.

➤ The Public Guardian also believes that OPG would require another Deputy Public Guardian, PG 16, position. As an independent department under the Legal section in the budget, the Public Guardian believes that it will acquire additional administrative duties and responsibilities that could not be handled by the additional shared administrative staff noted above and that an additional Deputy Public Guardian position, at a PG 16, will be needed to cover substantive duties related to medical and financial decision-making and related financial management duties in order to balance the additional workload.

If the Units Do Not Share Administrative Functions (Not Recommended):

If, however, the Agencies are split into different budgetary units without sharing administrative functions, this could potentially be the most expensive option as each Agency would require administrative positions to be added.

B. Option 2: Create a New Department to Include Non-Judicial Agencies (Recommended)

¹¹ The Non-Judicial Agencies would request funding this position at 100% of midpoint. If this position was funded at 100% of midpoint, the projected costs would be \$125,300.

¹² The Non-Judicial Agencies would request funding this position at 100% of midpoint. If this position was funded at 100% of midpoint, the projected costs would be \$125,300.

While the AOC understands that new departments must be created deliberately and cautiously, there are many good reasons to consider this option, and the cost of creating this department may be relatively reasonable.

What is a more important mission for State government than to care for those citizens who are unable to care for themselves, to give a helping hand to someone who is trying to navigate the system, or to safeguard the welfare of children? These agencies are critical because of the importance of their work; and legislators recognize their importance as they often need to find help for constituents who are at risk of getting lost or overlooked in complex and overworked social, government and healthcare systems in the State.

As noted in Section IV, a number of other states have created a specific office, division or department for agencies that do advocacy and government oversight work. These offices can be called “Office of Public Advocacy,” “Office of Government Accountability,” “Citizen Advocate Office,” “Office of Inspector General,” or “Office of Ombudsman.”

AOC would respectfully suggest that the Non-Judicial Agencies should be considered for inclusion if a new Inspector General or similar Department is created.

Both AOC and the Non-Judicial Agencies support this option as an alternative to establishing the Non-Judicial Agencies independently under the Legal Department.

The benefits of this option include:

- This solution eliminates the conflicts that the Judicial Branch faces when supporting the Non-Judicial Agencies.
- This solution does not create new conflicts with other existing departments within the State.
- The Non-Judicial Agencies would be able to advocate for their own budget. They would not be competing with any other department’s “core mission.”

- The Non-Judicial Agencies collectively can work with DHR for appropriate job classifications and compensation.

The downsides of this option include:

- There may be some reluctance to add new departments.
- The need for additional staff would depend on whether the new Department was limited to the Non-Judicial Agencies or if additional agencies or responsibilities were added. The State of Connecticut Department of Government Accountability includes their Board of Firearms Permit Examiners, which is currently under Superior Court in the State of Delaware. An office for victim advocates is also included in this agency in the State of Connecticut. The State of Delaware has numerous other offices in the State of Delaware which could be considered for inclusion.

- The four Non-Judicial Agencies, plus most other agencies that could be considered for such a department, are physically located in various locations throughout the State. If the Cabinet Secretary of this newly-created department had concerns over physical location, any movement of space for the agencies would certainly be a significant one-time cost to consider. This may not be required, however, especially with the convenience of remote meeting options that now exist.

- Some “departments” may not have Cabinet Secretaries per se, such as Department 70 (Elections), Department 75 (Fire Prevention Commission), and Department 77 (Advisory Council for Exceptional Citizens), but there would have to be a line-item Cabinet Secretary or Director to oversee the Department.

- Executive Department agencies follow the merit system for personnel administration. This is something the Non-Judicial Agencies are opposed to given their current merit-exempt status.

Fiscal Note:

➤ The transfer of 49 existing positions (47.0 GF, 1.0 ASF and 1.0 NSF) from Non-Judicial Agencies;

➤ The transfer of the existing budgets of the Non-Judicial Agencies;

➤ The transfer of 1.0 accounting position from AOC;

➤ If a Cabinet Secretary or Director is added, who would earn at least \$126,087 in salary based on the Compensation Commission recommendations plus OECs and health insurance, totaling \$184,300 in cost (for comparison, however, that is slightly lower than the Child Advocate earns, which is a line item salary of \$127,925 in FY 2024);

➤ One-Time Start-Up Costs (furniture, computers for new staff);

➤ Additional 1.0 Fiscal Manager, PG 19, totaling \$109,200 at 85% of midpoint with OECs and health insurance;¹³

➤ New HR Manager I, PG 19, totaling \$109,200 at 85% of midpoint with OECs and health insurance;¹⁴

➤ Either contractual funds to hire an external auditor, which would be the Non-Judicial Agencies' preference, or an additional budget position for an internal auditor. The additional costs of an Internal Auditor Manager, PG 19, totals \$109,200 at 85% of midpoint including OECs and health insurance.

➤ The Public Guardian also believes that OPG would require another Deputy Public Guardian, PG 16, position. As an independent agency, the Public Guardian believes that it will acquire additional administrative duties and responsibilities that could not be handled by the additional shared administrative staff noted above and that an

¹³ The Non-Judicial Agencies would request funding this position at 100% of midpoint. If this position was funded at 100% of midpoint, the projected costs would be \$125,300.

¹⁴ The Non-Judicial Agencies would request funding this position at 100% of midpoint. If this position was funded at 100% of midpoint, the projected costs would be \$125,300.

additional Deputy Public Guardian position, at a PG 16, will be needed to cover substantive duties related to medical and financial decision-making and related financial management duties in order to balance the additional workload.

C. Option 3: Non-Judicial Agencies Would Exist Independently under the Executive Department (Not Recommended):

AOC spoke with the Criminal Justice Council and DELJIS to learn more about how the Executive Department agencies are structured. These are Executive Department agencies which ultimately answer to OMB and the Governor. Therefore, they are not completely independent, but they do have autonomous qualities.

The Criminal Justice Council includes the Statistical Analysis Center, the Domestic Violence Coordinating Council, the Delaware Anti-Trafficking Action Council, and a number of the Commissions, Boards and Committees within the organization. While the agencies with Board and Commissions under the CJC answer to their Boards and Commissions on an operational level, those agencies still have to go through the CJC for approval on all budget and personnel activity. For example, while the DVCC attends the budget hearings with CJC and speaks to their activities for the year; the DVCC does not have the authority to advocate for their own budget at the budget hearing or any other time. Moreover, all of these Executive Department agencies follow the merit system for personnel administration. This is something the Non-Judicial Agencies are opposed to, given their current merit-exempt status.

D. Option 4: Transfer Non-Judicial Agencies to an Existing Department (Not Recommended)

When considering the best fit from existing departments in the State, to some it may seem obvious to put many of these Agencies in the Department of Health and Social Services or the Department of Services for Children, Youth and Their Families. It is true that many states have these advocacy positions directly in the department that relates to their focus, but from the

advocates point of view, there is an inherent conflict in positioning a “watchdog” directly in the department for which they have oversight responsibilities.

Numerous officials have suggested the Department of State as a new home for the Non-Judicial Agencies. The Department of State was suggested because it already has a number of agencies with Boards and Commissions including but not limited to:

Board of Pardons

Public Integrity Commission

Public Service Commission

Office of the State Bank Commissioner

Merit Employee Relations Board

Public Employee Relations Board

The Department of State is experienced with diverse objectives and structures including agencies with Boards and Commissions. From a conversation with one Commissioner with the Department of State, it appears that the individual agencies operate programmatically with independence and are able to do most of their work without Department intervention. Administratively, however, the Department of State operates in much the same way as the Judicial Branch currently works with the Non-Judicial Agencies; the Office of the Secretary (20-01-01) determines their annual budget requests and determines the classification and compensation requests that are submitted to DHR.

It is presumed that the Department of State would need additional resources to cover the additional administrative work that these four Agencies would require.

Option #4 is not recommended in this report because of the following downsides to this option:

- The Agencies would not be able to freely advocate for their own budget or personnel adjustments without approval for the Office of the Secretary. The agencies with Boards and Commissions still have to work with the Department for inclusion in their budget requests and or before working with DHR. In other words, this would resolve the conflict for the Judicial Branch, but would put the Agencies in a similar situation that they are currently in.
- Executive Department agencies follow the merit system for personnel administration. This is something the Non-Judicial Agencies are opposed to, given their current merit-exempt status.

Fiscal Note:

- The transfer of 49 existing positions (47.0 GF, 1.0 ASF and 1.0 NSF) from Non-Judicial Agencies
- The transfer of the existing budgets of the Non-Judicial Agencies
- The transfer of 1 accounting position from AOC to the Department of State
- A Department such as the Department of State may want additional staff beyond the transferred accounting position from the AOC. They may want a Division Director position, another fiscal manager or an HR manager to cover the additional workload. If a specific department was agreeable to taking on the Non-Judicial Agencies, and it was the will of the General Assembly, the AOC would be willing to discuss the anticipated workloads for further review.

➤ AOC also would recommend the addition of an Internal Auditor Manager, PG 19, totals \$109,200 at 85% of midpoint including OECs and health insurance. Alternatively, additional funds could be added as contractual money.

E. Option 5: Remaining in the Judicial Branch (Not Recommended)

Of course, this would not be ideal for the Judicial Branch or for the Non-Judicial Agencies. Some level of conflict will always remain as long as the Non-Judicial Agencies fall under the Judicial Branch's budget without reporting to the Judicial Branch. There would also be conflicts if they reported to the Judicial Branch as well. While the Non-Judicial Agencies would like to be able to separate their budget from the Judicial Branch to be considered independently, they are indeed a part of the Judicial Branch budget.

The Non-Judicial Agencies do not wish for the Administrative Office of the Courts to become more involved in their daily operations. If the Agency Directors and staff were to report to the AOC, AOC would need resources in order to gain the bandwidth and expertise required to do so.

Here are some of the reasons that the AOC believes that taking on more of a management role with the Non-Judicial Agencies is not appropriate:

- The work of the Non-Judicial Agencies is very different than that of AOC. AOC has no expertise in Social Security Administration, Medicaid, Medicare and Disability policies and procedures, all of which are very complicated and integral to Guardianships. AOC has no expertise in the foster care system or direct social services to children, the programs and policies that concern the Office of the Child Advocate. AOC does not have the medical background to oversee reviews of infant deaths, infant abuse or maternal mortality; this background is important to the work of the Child

and Maternal Death Review Commission. And AOC has never been involved in the administration of nursing home care, nor has any specialized knowledge how to navigate the world of long-term care facilities, Medicare and Medicaid. And it is difficult to imagine one additional Deputy State Court Administrator closing that gap.

- The Office of the Public Guardian manages the financial affairs of many of their clients. These finances are maintained in bank accounts, trusts, and an independent case management system which does not interface with any state financial systems. If AOC were to be responsible for the work of the Office of the Public Guardian, AOC would need access to the systems, extensive financial reporting, and audits to either include a full-time auditor on AOC's staff or contractual funds which would be dedicated to a rotating audit of OPG client accounts.
- The Office of the Public Guardian maintains that the Court of Chancery reviews their financial records, and while this is true, AOC would require further reporting and auditing. Like all guardianship cases in the Court of Chancery, financial reports are required to show the beginning and end balances of the client's accounts, to include the detail of income and expenditures (first year of reporting is every 6 months, and then annually thereafter). The Office of the Public Guardian, however, is not required to submit receipts, bank deposit receipts or other banking statements to the Court of Chancery. While it is doubtful that all of the accounts would need to be reviewed on an annual basis, it would seem best practice to fully audit a sample of cases on an on-going basis.

- The Agencies' duties include the role of advocacy. At least one of the agencies seeks and accepts donations. The Judicial Branch remains uncomfortable with an agency soliciting donations and with not having any authority to regulate how those donations are used.

For the Agencies to stay, the distinction of separation between AOC and the Agencies needs to be documented in policy and clarified. They would continue to remain in the Judicial Branch budget, and continue to enjoy administrative support from AOC, but AOC has no authority. As such, AOC cannot be responsible for their work, decisions and activities. Even as such, because AOC is processing their financials, AOC would request an auditing function, whether that be with state positions or contractual funds. The Judicial Branch would continue to prioritize its own budget requests as it sees fit, which includes consideration of the impact of human resources decisions on the overall budget.

Fiscal Note:

- An Internal Auditor Manager, PG 19, totals \$109,200 at 85% of midpoint including OECs and health insurance. Funds could be added as an FTE or contractual.
- Additional personnel funds to cover the Non-Judicial Agencies within their own budget units.
- Additional Deputy Court Administrator

V. Conclusion

AOC recommends that at least three of the four agencies be established as independent offices, but sharing administrative resources, under the Legal Department as **15-04-00** (OCA), **15-05-00** (MCDRC), and **15-06-00** (OPG). This would require establishing two or three additional positions at PG19 or higher, plus the transfer of one existing accounting position from

the AOC's current budget. It also would require additional statutory changes and written agreements among the three agencies. This would allow the agencies to maintain their independence without creating a new department or affecting any other Executive Branch department or agency. DNHRQAC would also like to be considered for relocation under this model. Although AOC defers to the JLOSC's recommendation to relocate DNHRQAC to the Department of Safety and Homeland Security, AOC sees no reason that DNHRQAC could not also be relocated along with the other Non-Judicial Agencies as previously discussed.

Alternatively, AOC recommends the creation of an independent Executive Branch department or agency like the Office of Government Accountability in the State of Connecticut, which provides centralized administrative support services to that state's independent boards, commissions, and councils while allowing each board, commission and council to retain its independent decision-making authority. AOC believes that this alternative might be in the best long-term interests of all three branches of government, as well as the Non-Judicial Agencies and other watchdog-type agencies throughout the Executive Branch but recognizes that this alternative would be more costly and thus more challenging to pursue during an election year. Such an approach would require additional positions and resources (including a cabinet-level director), additional statutory changes, and special consideration of the Non-Judicial Agencies' current status as merit-exempt agencies. These costs and challenges are not prohibitive or insurmountable, however, given the long-term benefits of such an approach when the time is right for such a change.



STATE OF DELAWARE
OFFICE OF THE PUBLIC GUARDIAN

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TO: Gayle Lafferty, Esquire, State Court Administrator
FROM: Alexandra McFassel, Esquire, Public Guardian
DATE: January 31, 2024
RE: Office of the Public Guardian, Response to Section 49 Report

The Office of the Public Guardian (OPG) appreciates this opportunity to respectfully provide comment on primary points in the Administrative Office of the Courts' (AOC) Report. OPG is happy to provide further information and discuss proposed placements for the office.

OPG comment on Placement Solutions:

OPG believes that it could function independently, sharing support with the other Non-Judicial Agencies, as a Department under the Legal Section of the State budget (15-04-00), with appropriate support. This would not require creation of an additional department, would allow sharing of administrative support, and would preserve benefits for staff. OPG does not think creation of a new office or placement in an existing Executive Branch Agency are supported, due to cost, and due to conflicts with other agencies.

Remaining in the Judicial Branch is possible and cost effective, but OPG recognizes that the current structures would need to be evaluated to address the concerns of both OPG and the Judicial Branch. It is the position of OPG that recent statutory changes to benefit the program, particularly provisions for Fee Collection, should be maintained. Statutory language should be maintained allowing the Public Guardian the independence appropriate to advocate for systemic changes, program support, and on behalf of the individuals OPG serves. OPG supports statutory language allowing full independent personnel and budget advocacy.

OPG Clarification on Issues Raised in AOC Report:

1. Lack of Supervisory Authority: Citing a 2010 Supreme Court case, AOC states its position that "all Judicial Branch Employees must be hired and ultimately report to the Chief Justice". In 2011 AOC supported and participated in revising the enabling statute of OPG specifying the Public Guardian be selected by the Governor. Selection of the Public Guardian by an authority independent from AOC and the Courts prevents conflicts and the perception that the Court of Chancery has a guardian it employs who subsequently manages property and makes decisions on behalf of individuals with disabilities to the benefit of the State.

All employees of OPG, including the Public Guardian, have signed the Judicial Branch rules, and OPG follows all policies and direction from AOC regarding information management, budgetary and human resource matters.

2. Sensitive Personal Information: AOC raised the concern of informational security with OPG only once in 2018. OPG worked with JIC to resolve the issue, and JIC acquired a secured server for the OPG database. No concerns have been raised with OPG since that arrangement was created. JIC was instrumental with the original installation, and the continued upkeep, of the Financial Case Management system utilized by OPG, and OPG follows all requirements set by the Judicial Information Center regarding information management.

3. Oversight of OPG Accounts: All accounts in which OPG manages Social Security Benefits are managed through OPG acting as representative payee. OPG reports to the Court of Chancery and the Social Security Administration, or both. OPG provides information and accountings to the Court even in cases where they are waived. OPG has consulted with the Delaware Division of Accounting regarding best practices for money management.

AOC states “if AOC were to be responsible for the work of the Office of the Public Guardian, AOC would need access to the systems, extensive financial reporting, and audits to either include a full-time auditor on AOC’s staff or contractual funds which would be dedicated to a rotating audit of OPG Client Accounts.”

If additional oversight or audits of OPG accounts is felt to be necessary, it would be necessary regardless of the placement of the office, whether independent or in the Judicial Branch. OPG welcomes additional funds which could be utilized for independent neutral audits of its accounts. Financial security is a priority in the office.

4. Fee collection: Enacted by the General Assembly to address the need for more resources for OPG to expeditiously address acute care transitions, standards are established by the Delaware Guardianship Commission and approved by the Court. Fees are currently collected based on the amount allowed for Organizational Representative Payees by the Social Security Administration pursuant to a Medicaid Regulation allowing financial protection for Medicaid recipients institutionalized in LTC facilities to retain monies otherwise paid to the care provider to pay for guardianship costs. Guardianship fees are not paid out of the needs allowance of the individual.

5. Court models of public guardianship: Court models are the basis of recently intentionally established public guardianship offices. Other models nationwide were created in a piece-meal fashion. Delaware’s model includes an advocacy element and a neutral appointing authority element, reinforcing the impartiality of the office and separation from the Court, lessening conflicts of interests and enabling advocacy by OPG for the individuals it serves. It is vital that OPG not be placed in the Executive Branch with entities providing direct care or financially responsible for the direct care of individuals for who OPG acts as guardian of person or property.



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OFFICE OF THE CHILD ADVOCATE

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NEW CASTLE COUNTY
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□
SUSSEX COUNTY
6 WEST MARKET STREET, SUITE
2 GEORGETOWN, DELAWARE
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FAX: (302) 677-7027

TO: Gayle Lafferty, Esquire, State Court Administrator
FROM: Tania Culley, Esquire, Child Advocate
DATE: January 31, 2024
RE: Office of the Child Advocate Response to Section 49 Report

The Office of the Child Advocate (OCA) would like to thank the Administrative Office of the Courts (AOC) for the opportunity to have meaningful dialogue and to provide input into the FY24 Section 49 Budget Report regarding the potential relocation of OCA and the other agencies currently administratively housed within the Judiciary. OCA concurs with the primary recommendation set forth by AOC for it to become an independent Department under the Legal section of the State budget, and with its characterization of OCA's critical concerns for relocation. OCA provides this memo to provide further support and context to this proposal as well as to clarify a few concerns mentioned in the AOC report specifically under the section regarding risks to the Judicial Branch.

OCA Comments on Placement Solutions

- OCA as its own Department under Legal (15-04-00).** OCA asserts that, consistent with its size and unique functions, it is time to establish OCA as its own Department under the Legal section of the State budget (15-04-00). There are much smaller Delaware agencies that are autonomous Departments and independent budget units not within another agency's budget. To be successful, OCA would need three positions, as well as establishing technology support through DTI. OCA would also require statutory or epilogue language that its personnel remain exempt from the merit system and enjoy the same personnel rules, benefits, and supports as when housed in the Judicial Branch. If a similar relocation is considered for the other agencies, OCA's additional fiscal and personnel positions could be a resource for those agencies to be governed by statute and memoranda of understanding. Minimal additional resources may be needed to include the other agencies (namely contractual funds for periodic external audits and potentially one additional position). There is a relatively small cost associated with establishing OCA as an autonomous Department, making this option the most cost-effective solution that is mutually beneficial for the Judiciary and the agencies.
- Creation of an Office of Governmental Accountability/Inspector General.** While OCA supports the creation of an Office like this, and would be amenable to discussion regarding its future placement in such an Office with statutory language establishing its independence to control budget and personnel requests, OCA believes it may be several years before this solution could be implemented and likely at significant cost. This would not solve the immediate concerns of the

Judiciary or the agencies. In addition, if agencies governed by the merit system were co-located with merit exempt agencies that could be problematic.

3. **Placement within an existing Executive Branch Agency.** OCA does not support in any way its placement within an existing Executive Branch agency, where it would contend with the same hindrances to budget and personnel requests as it currently experiences in the Judicial Branch. Moreover, it is critical that OCA remain autonomous to minimize conflicts, as OCA acts as a “watchdog” over other Executive Branch agencies. The General Assembly thoughtfully and purposely placed OCA in the Judiciary when it created OCA in 1999 to ensure OCA’s watchdog functions would not be jeopardized. The only feasible way to maintain OCA’s autonomy if relocated to the Executive Branch at this time is for it to be its own independent Department.
4. **Remain in the Judicial Branch.** While all entities involved in this undertaking agree that the current structure is untenable, this could be resolved within the Judicial Branch at little cost, but likely with objection by the Judiciary, with the simple addition of statutory language allowing full independent personnel and budget advocacy. Several other states, including Colorado, have such language.

OCA Clarification on Issues Raised in AOC Report

1. **Lack of Supervisory Authority.** OCA concurs that the Chief Justice does not appoint or supervise the Child Advocate, although the Family Court Chief Judge is part of the CPAC Executive Committee which is responsible for hiring the Child Advocate and to whom the Child Advocate is accountable. However, the Judicial Branch Personnel Rules and budgetary rules fully govern the OCA and its employees. While AOC does not supervise OCA’s substantive work or possess expertise on OCA, OCA follows all statutory requirements, Judicial Branch rules, and other state policies and procedures regarding personnel, financial transactions, data storage, and technology.
2. **Personnel Deficit.** OCA has accrued a personnel deficit – one which has not been addressed through the budget process, and one which is absorbed by surpluses of Courts and agencies across the entire State budget. Most of the deficit has accrued due to the necessary utilization of unfunded casual/seasonal positions over the last decade to meet OCA’s increasing statutory mandates. OCA fully complies with the Judicial Branch Personnel Rules that authorize hiring personnel at 100% of midpoint. For positions OCA received in the last 20 years through the Joint Finance Committee process, sufficient funding was provided. For positions transferred to OCA from other agencies, insufficient personnel funds were provided. These transfers and subsequent payment of salaries at 100% of midpoint contributed to the OCA deficit albeit a much smaller portion. OCA is beyond grateful that AOC is willing to discuss and potentially assist with resolution of this deficit during the relocation efforts.
3. **Sensitive Personal Information.** OCA has collected for its entire existence sensitive personal information on child clients and their families. OCA stored this sensitive information in Excel spreadsheets for its first 17 years. In 2017, Family Court agreed to use federal funds to purchase a cloud-based data management system for OCA. This system was vetted by both DTI and JIC, and is now used by not only OCA, but also Family Court, DFS, DVCC, MCDRC, and DOJ. The Judicial Branch’s JIC has been fully supportive of this cloud-based system and its maintenance of sensitive personal information.

4. **Donations.** OCA does accept donations of monies and goods for the children it serves. It is statutorily charged with doing so, and it immensely benefits Delaware’s children experiencing foster care. The donations are spent on necessities and developmentally appropriate activities and experiences for children in foster care. OCA keeps meticulous records on funding requests and expenditures, and submits those receipts and documentation to AOC on a weekly basis. The largest and most consistent donors to this fund are Delaware attorneys and law firms.

5. **Budget Requests.** OCA agrees that its budget priorities are not the priorities of the Judicial Branch. OCA does not believe this creates competition. The conflict arises in that the Judiciary has never been willing to allow OCA, or any of the other agencies, to independently present their budget requests separate and apart from the Judicial Branch requests. AOC notes that in FY22, the Judiciary’s budget request included OCA’s request to convert three grant-funded positions into GF FTE positions. While OCA is grateful for this, OCA would like to emphasize that this is the first and only time in its 24-year existence that any of its budget needs were included in the Judiciary’s budget request, and that OCA requested those positions for 4 budget cycles before they were included. OCA agrees that as a result of these circumstances, it and its Commission have had to advocate for critical resources through the Joint Finance Committee process. With the exception of the 3 FY22 positions noted above, every position OCA has ever received in its entire 24-year history came from JFC directly, was attached to legislation creating new OCA responsibilities, or was “gifted” from another State agency together with significant responsibilities and insufficient funds.

In conclusion, thank you for the opportunity to provide additional commentary and context to the AOC Section 49 Report. We look forward to beginning a dialogue with the Joint Finance Committee, the Controller General, and the Office of Management and Budget on how best to meet the needs of OCA, the other impacted agencies and the Judicial Branch in a way that sets everyone up for success.



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GARRETT H.C. COLMORGEN MD
CHAIR

KIMBERLY LIPRIE
EXECUTIVE DIRECTOR

To: Gayle Lafferty, Esquire
State Court Administrator, Administrative Office of the Courts (AOC)

From: Garrett H.C. Colmorgen, M.D., MCDRC Chair
Kimberly Liprie, MCDRC Executive Director

Date: January 31, 2024

RE: Maternal and Child Death Review Commission, Response to Section 49 Report

On behalf of the Maternal and Child Death Review Commission, we would like to extend our gratitude to the Administrative Office of the Courts (AOC) for the opportunity to collaborate and allow our input, concerns, and needs into the FY24 Section 49 Budget Report regarding the potential relocation of the Maternal and Child Death Review Commission (MCDRC) and other agencies currently housed within the Judiciary. After much research and discussion, AOC has put forth the primary recommendation of MCDRC to become an independent Department under the Legal Section of the State Budget. MCDRC supports this recommendation. This memo is being provided to explain the reasons for support and highlight the critical concerns associated with other relocation options.

Becoming an independent Department under the Legal Section of the State budget would ensure that none of the critical functioning of MCDRC would be breached due to relocation. It is the MCDRC's utmost priority to remain autonomous and independent to minimize conflicts, as the Commission acts as a "watchdog" for other agencies. Due to this conflict, MCDRC cannot be structurally transferred to an Executive Branch department. It is also important to note that if transferred to an Executive Branch department, while it may resolve the budgetary issues for the Judicial Branch, it would not do so for MCDRC, because we would continue to be unable to advocate for our budgetary needs. This solution requires fiscal and personnel positions and technology support. Still, these resources could be shared with other relocated Non-Judicial agencies if governed by statute and memoranda of understanding. Additionally, MCDRC would require

statutory or epilogue language that its personnel remain except from the merit system and operate with the same personnel rules, benefits, and supports housed within the Judicial Branch.

In closing, while all agencies involved in the discussion of possible relocation options agree that the current structure is flawed, MCDRC believes it could be resolved by adding statutory language allowing fully independent personnel and budget advocacy.

Thank you for providing the opportunity for collaboration and additional context to the AOC Section 49 Report. We look forward to continued dialogue on best meeting the needs of the Non-Judicial agencies and the Judicial Branch in the least disruptive way possible.

Delaware Nursing Home Residents Quality Assurance Commission

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TO: Gayle P. Lafferty, Esquire
State Court Administrator, Administrative Office of the Courts (AOC)

FROM: Lisa Furber, DNHRQAC Chair
Margaret Bailey, DNHRQAC Executive Director

RE: Administrative Office of the Courts' Report on Non-Judicial Agencies Per
Section 49 of FY24 Budget Epilogue – DNHRQAC Response

DATE: January 18, 2024

The Delaware Nursing Home Residents Quality Assurance Commission (DNHRQAC), [29 Del. C. § 7907](#), would like to thank you for the opportunity to comment on the Administrative Office of the Courts (AOC's) Report regarding Non-Judicial Agencies and any potential placement relocation.

Currently, AOC recommends that the staff position for the DNHRQAC remain with the AOC while the Commission itself, along with budgetary control, move to the Department of Safety and Homeland Security (DSHS). The move to DSHS was a recommendation from the Joint Legislative Oversight and Sunset Committee (JLOSC) in 2021.

We wanted to insure you are aware that subsequent to the 2021 JLOSC recommendation, further discussions were held over a period of months regarding Commission staff employee benefits/compensation and program integrity should a move occur elsewhere within State Government. As a result of those discussions, it was understood that the administrative and budgetary aspects of the Commission would remain together within the Judicial Branch, specifically AOC, until current commission staff vacates the position. Separating the administrative and budgetary aspects of the Commission between two branches of State Government raises concern around future unintended consequences.

Respectfully, we recommend that the Commission and current Judicial Branch non-Merit employee remain together, preferably within the Judicial Branch, to protect the integrity and autonomy of the Commission and to avoid any possible conflicts of interest. Currently the Commission relies on a single staff member, who has built up experience and relations in the Judicial Branch. Moving this staff person and office operations from its current location would be extremely disruptive and would interfere with the work of the Commission. While we prefer that things remain as they are, we are asking for clarification as to the impact of this proposed change to the office location, Commission operations and other important details.

Autonomy and independence are absolutely necessary for the work of the Commission. The Commission monitors the long-term care quality assurance system in Delaware including the respective roles of the Delaware Department of Health and Social Services, the Attorney General's Office, law enforcement agencies, long-term care providers and healthcare professionals.

Since the 2021 recommendation by the JLOSC, new and better placement options have been discussed and may become available. As noted by the AOC and recommended in this report, the remaining three Non-Judicial Agencies, who also serve as Delaware advocates, are recommended for placement in the proposed Office of the Inspector General (OIG) or other similar Department. The opportunity to create an independent department with shared resources, such as OIG, was not an option in 2021 when DNHRQAC went through JLOSC review.

Therefore, DNHRQAC respectfully requests that, as with the other three Non-Judicial Agencies, the Commission (both staff position and budget) remain under the AOC until such time as a suitable alternative, such as an OIG or similar Department, is established and available.

Thank you so much for the opportunity to provide feedback.

cc: DNHRQAC Members

File

Location of Non-Judicial Agencies Nationally					
(1= Within Judiciary; 0= Outside Judiciary)					
States	Public Guardian	Child Advocate (CASA/GAL)	Child Advocate (Advocacy)	MCDRC	NHRQAC
Alabama,AL	0	0	0	0	0
Alaska,AK	0	0	0	0	0
Arizona,AZ	0	1	1	0	0
Arkansas,AR	0	1	0	0	0
California,CA	0	0	0	0	0
Colorado,CO	1	1	1	0	0
Connecticut,CT	0	0	0	0	0
Delaware,DE	1	1	1	1	1
Florida,FL	0	1	0	0	0
Georgia,GA	0	0	0	0	0
Hawaii,HI	1	0	0	0	0
Idaho,ID	0	1	0	0	0
Illinois,IL	0	0	0	0	0
Indiana,IN	1	1	0	0	0
Iowa,IA	0	0	0	0	0
Kansas,KS	0	0	0	0	0
Kentucky,KY	0	1	0	0	0
Louisiana,LA	0	1	0	0	0
Maine,ME	0	1	0	0	0
Maryland,MD	0	1	0	0	0
Massachusetts,MA	0	0	0	0	0
Michigan,MI	0	0	0	0	0
Minnesota,MN	0	0	0	0	0
Mississippi,MS	1	0	0	0	0
Missouri,MO	0	0	0	0	0
Montana,MT	0	1	0	0	0
Nebraska,NE	1	1	0	0	0
Nevada,NV	0	0	0	0	0
New Hampshire,NH	0	0	0	0	0
New Jersey,NJ	0	0	0	0	0
New Mexico,NM	0	0	0	0	0
New York,NY	0	0	0	0	0
North Carolina,NC	0	1	0	0	0
North Dakota,ND	0	0	0	0	0
Ohio,OH	0	0	0	0	0
Oklahoma,OK	0	0	0	0	0
Oregon,OR	0	0	0	0	0
Pennsylvania,PA	0	0	0	0	0
Rhode Island,RI	0	0	0	0	0
South Carolina,SC	0	0	0	0	0
South Dakota,SD	0	1	0	0	0
Tennessee,TN	0	0	0	0	0
Texas,TX	0	0	0	0	0
Utah,UT	0	1	0	0	0
Vermont,VT	0	1	0	0	0
Virginia,VA	0	0	0	0	0
Washington,WA	1	1	0	0	0
West Virginia,WV	0	1	0	0	0
Wisconsin,WI	0	1	0	0	0
Wyoming,WY	0	0	0	0	0
Total	7	20	3	1	1
Percentage	14%	40%	6%	2%	2%

Child Advocates in Other States

For the purposes of this research, all agencies and organizations that contain a responsibility that is shared by the Delaware Office of the Child Advocate (OCA) are identified. This sometimes included an ombudsman, who can independently investigate and make recommendations to other agencies. Not all ombudsmen are child-specific, but are still included because of their ability to investigate child-focused agencies. Children's Justice Centers are inherently not a part of this research.

In addition, any Judicial Branch involvement in children's matters in other states is recognized. Commonly, this is in the form of Court Improvement Programs, which are grant-supported by the federal government and given to the highest court of a given state.

Alabama

No provisions/Nonprofits only

- [Alabama Network of Children's Advocacy Centers \(ANCAC\)](#)
 - o Funded via Alabama Code Section 26-16-70
 - o Focus is on case reviews, court preparation, health services for children, and public education. Does not provide legal representation.
- [CASA programs](#) available, not state supported.

Alaska

Department of Administration

- The [Office of Public Advocacy](#) is created via Alaska Statutes Section 44.21.400-470
- The Governor appoints the Commissioner of the Department of Administration
- Carries out functions related to Guardian ad Litem, civil representation, public guardianship, elder fraud representation, and criminal defense
- [CASA programs](#) maintained within OPA via statute

Legislative Branch Independent Agency

- The [Alaska State Ombudsman](#) investigates complaints about administrative actions taken by state agencies, boards, commissions, and administrative operations of the courts.
- Located within the Legislative Branch, the Ombudsman is appointed by the legislature but able to vetoed by the governor.
- Created via [AS 24.55](#)

Arizona

Administrative Office of the Courts

- [Dependent Children's Services Division](#) of AOC's mission is "to advocate on a statewide level for appropriate services and safe permanent homes for children in foster care and to ensure timely permanency for these children by: Evaluating and improving dependency case processing in the juvenile court; Recruiting and training community-based volunteers who advocate for the best interests of abused and neglected children; Acting as a referral source to the community for

information regarding foster care, adoption, parent assistance, volunteer opportunities, volunteer training, and the child welfare and juvenile court processes.”

- [CASA program](#) managed by Dependent Children’s Services Division of AOC.
- One of eight divisions housed within the AOC
- Foster Care Review Board also housed within Dependent Children’s Services
- No relevant statutes found

Legislative Branch Independent Agency

- The [Arizona Ombudsman-Citizens Aide](#) exists to “improve the effectiveness, efficiency, and responsiveness of state government by receiving public complaints, investigating the administrative acts of state agencies, and, when warranted, recommending fair and appropriate remedies.”
- The Ombudsman is appointed to a 5-year term via the Ombudsman-citizens aid selection committee; they can only be reappointed for 3 terms.
- The Ombudsman is governed via [Title 41, Article 5](#).

Arkansas

Administrative Office of the Courts

- [Juvenile Division of the Courts](#) is a division of the AOC.
- Contains Commission on Children, Youth and Families, Attorney ad Litem program, CASA, a Court Improvement Program, and a Juvenile Justice Specialist.

Independent Agency

- [Juvenile Ombudsman](#) is mandated via A.C.A. §16-87-216 and within the Public Defender Commission
- Public Defender Commission is made of us 7 Governor appointees, who hire an Executive Director to oversee operations
- Juvenile Ombudsman provides these services:
 - o Observe the conditions of the facilities and advocate for improvement
 - o Review the operations and interaction of staff and youth
 - o Inform youth of available services and assist in obtaining them
 - o Investigation of complaints and work to uncover problems
 - o Reporting problems to DYS leadership, juvenile courts and attorneys as deemed necessary
 - o Coordinating with DYS to implement solutions
 - o Assisting public defenders in transfer court proceedings.

California

Office of the Attorney General/Department of Justice

- [Bureau of Children’s Justice](#) within Civil Rights Enforcement Section
- “BCJ’s investigative work addresses systemic issues that impact children and youth in the state of California, focusing on remedying patterns or practices of discriminatory policies or procedures. BCJ also brings and joins lawsuits against the federal government, local governments and private

organizations; files amicus (“friend-of-the-court”) briefs; promulgates guidance; and engages in policy advocacy.”

- “BCJ conducts investigations, participates in litigation and issues guidance to ensure that local educational agencies and authorities protect children and youth in California from abuse, harassment and neglect.”

Judicial Council

- [CASA programs](#) subject to guidelines created by [Family and Juvenile Law Advisory Committee](#) via California Welfare and Institutions Code, Section 102.

Independent Agency

- The [Ombudsman for Foster Care](#) is an autonomous entity “that is empowered to investigate and informally resolve complaints impacting foster youth, increase awareness about foster youth rights, and make recommendations to help support systemic change.”
- Only serves children in foster care.

Colorado

Judicial Branch Independent Agency

- [Child Protection Ombudsman of Colorado](#) is within the Judicial Branch and statutorily created by C.R.S. 19-3.3-101 – 111.
- Has an MOU with the Judicial Branch for limited support services.
- Ombudsman is hired by Child Protection Ombudsman Board, which has 4 chief justice appointees, 4 governor appointees, and 4 legislative appointees.
- “We are independent from the state and county agencies that work on behalf of children and families. We listen to the public about their experience with and concerns about child protection, research and investigate those concerns, and determine the best way to resolve each concern. Our work also allows us to collaborate with lawmakers, professionals and other stakeholders to advance legislation and policies that will have a lasting, positive impact on our children and families.”

Judicial Branch Independent Agency

- [Office of the Child’s Representative](#) is within the Judicial Branch and statutorily created by C.R.S. 13-91-101 – 106.
- Specifically aimed at “legal representation of and non-legal advocacy on behalf of children”
- Child’s Representative Board all appointed by Supreme Court
- Runs GAL programs, Counsel for Youth, and Child’s Legal Representative programs.

Connecticut

Executive Branch Independent Agency

- [Office of Government Accountability](#): “established in order to provide Human Resources, administrative and information technology support to six previously separate agencies. These six Boards, Commissions, Offices and Council retain their independent decision making authority, but now have unified support services provided by the office of Governmental Accountability.”

- Office of the Child Advocate is within Office of Government Accountability
- [OCA “monitors and evaluates public and private agencies that are charged with the protection of children, and reviews state agency policies and procedures to ensure they protect children's rights and promote their best interest.”](#)
- Authority granted under § 46a-13k through 13r

Florida

Judicial Branch Independent Agency

- [Justice Administrative Commission](#) (JAC) provides administrative services on behalf of 49 judicial-related offices such as Offices of State Attorney, Offices of Public Defender, Office of Criminal Conflict and Civil Regional Counsel, and more. JAC is within the Judicial Branch; their executive director is appointed by the commission.
- [Florida Guardian ad Litem Office](#) is a state-funded office within the Justice Administrative Commission, but JAC’s only role is to provide administrative support.
- JAC created under [Title V, 43.16](#)
- Guardian ad Litem Office created via [Title V, 39.8296](#)

Georgia

Independent Agency, Governor Established

- Office of the Child Advocate created via [O.C.G.A. § 15-11-740 – 747](#)
- Nominating committee formed by Governor to submit recommendation for Executive Director of OCA
- Assigned to Office of Planning and Budget for administrative purposes only
- Responsible for independent oversight of child welfare agencies, child abuse protocol, GAL training
- Mission is to provide “independent oversight of persons, organizations, and agencies responsible for providing services to or caring for children who are victims of child abuse and neglect or whose domestic situation requires intervention by the state”

Hawaii

Legislative Branch Independent Agency

- The [Office of the Ombudsman](#) is an independent agency that “investigates complaints about actions of executive branch agencies of the state and county governments in Hawaii.”
- The Ombudsman, governed by [Chapter 96](#), is appointed by the legislature for a 6-year term and cannot serve more than 3 terms.

Idaho

Judicial Branch Guardian ad Litem Grant Program

- [Judicial Branch Guardian ad Litem Grant Program](#) will provide funding to programs that maintain and train volunteers to be advocates for the children they serve, as created via [I.C. 16-1638](#)
- The Idaho AOC administers this funding to qualified programs, which are selected by the [GAL Grant Review Board](#).

Illinois

Department of Children and Family Services

- The [Office of the Inspector General](#) works to “to investigate misconduct, misfeasance, malfeasance and violations of rules, procedures or laws by Department of Children and Family Services employees, foster parents, service providers and contractors with the department”.
- The Office’s administrative rules [§430](#), state that it is independent of DCFS, but the IOG reports to the Director of DCFS and performs duties as designated by the Director.

Department of Juvenile Justice

- The Office of the Independent Juvenile Ombudsman (OIJO) is “an independent office co-aligned with the Department of Juvenile Justice” whose goal “is to ensure that the rights of youth committed to the Illinois Department of Juvenile Justice are fully observed, and to assist in pursuing services for committed youth and their families determined to be in need of assistance”.
- OIJO is governed by [730 ILCS 5/3.2](#).
- The OIJO reports to the Governor and General Assembly.

Administrative Office of the Illinois Courts

- The [Courts, Children and Families Division](#) (CCFD) oversees the Court Improvement Project, collaborations with the Illinois Department of Children and Family Services, the Child Protection Data Courts Project, and more.

Indiana

Judicial Branch Office of Court Services

- [The Office of Court Services](#) “assists the Supreme Court in its role as the head of Indiana's judicial system by developing education, programs, and projects for all courts to improve the administration of justice”; they also administer the [Office of Guardian Ad Litem/Court Appointed Special Advocates](#).
- The Office of Guardian Ad Litem/Court Appointed Special Advocates provides training and support to local programs in the state and is authorized by [IC 33-24-6-4](#)
- The Office of Court Services also contains committees and commissions as follows:
 - o [The Commission on Improving the Status of Children in Indiana](#)
 - o [Child Welfare Committee](#)
 - o [GAL/CASA Commission](#)
 - o [Guardian ad Litem Family Oversight Committee](#)
 - o [Juvenile Justice Improvement Committee](#)
 - o [Youth Justice Oversight Committee](#)
- The committees and commission of the Office of Court Services have varying levels of involvement with the Judicial, Executive, and Legislative Branches.

Independent Agency

- The [Department of Child Services Ombudsman Bureau](#) “has the authority to receive, investigate and attempt to resolve complaints concerning the actions of the Department of Child Services

(DCS) and to make recommendations to improve the child welfare system. The Bureau operates independently of DCS and is housed in the Department of Administration.”

- [Department of Administration](#) exists to provide support services to other agencies.
- Ombudsman is appointed by the Governor and must be an attorney licensed in IN or a social worker with a Master’s degree.

Iowa

Department of Health and Human Services

- The [Iowa Child Advocacy Board](#) (ICAB) is created “to provide for citizen involvement in child welfare issues” and “is composed of nine members appointed by the Governor of Iowa and confirmed by the Iowa Senate.”
- ICAB also establishes policy and procedures for the [CASA Program](#) and the [Foster Care Review Boards](#) program.
- Note: The Iowa Child Advocacy Board was placed within the Department of Health and Human Services, Compliance Division on July 1st, 2023. Previously, ICAB had been a part of the Iowa Department of Inspections and Appeals, now the [Department of Inspections, Appeals, and Licensing](#). ICAB did not support this realignment- the following are resources related to this move.
 - o [ICAB FY 2022 Annual Report \(See Recommendation #1\)](#)
 - o [ICAB Letter to the Governor](#)
 - o [ICAB July Bulletin: “HHS Compliance Division Welcomes New Departments”](#)
 - o [Government Alignment Model Press Release](#)

Legislative Branch Independent Agency

- The Iowa [Office of the Ombudsman](#) is an independent office within the Legislative Branch, as governed by [§2C](#).
- The Ombudsman is appointed by the legislative council and confirmed by the Senate and House of Representatives for a 4-year, renewable term

Kansas

Independent Agency

- The Kansas [Division of the Child Advocate](#) was created via [Executive Order 21-28](#) in October 2021. The Office of Public Advocates was already created at that time via [Executive Order 21-27](#).
- The Secretary of the Department of Administration and Department of Administration cannot exercise authority over DCA; they only provide technical support.
- The Child Advocate is appointed by the Governor for a 5 year term; they cannot be a current or former executive of the Department of Children and Families or a current child welfare case management grantee.
- Mission is “to ensure that children and families receive adequate coordination of child welfare services, for child maltreatment prevention, protection and care through services offered by the Department for Children and Families, the Department for Aging and Disability Services, the Department of Corrections, the Department of Health and Environment and juvenile courts.

Judicial Branch

- Court Administration contains multiple child-focused commissions, committees, and boards. The Supreme Court can create committees, but none are child advocacy focused. Statutorily, [the Juvenile Justice Oversight Committee and Kansas Children’s Cabinet](#) have been created within Court Administration.

Kentucky

Judicial Branch

- The [Department of Family & Juvenile Services](#) within the Kentucky Judicial Branch “provides direct services to children and family and offers education, programming and technical support to the judges and court personnel who handle juvenile and family law cases.” In addition, they are charged with the management of the Citizen Foster Care Review Board and Court Designated Worker Program.
- The Administrative Office of the Courts, Family Court, District Court, and/or Circuit Clerk can provide secretarial and support services for CASA programs via [620.510](#).
- Note: The Kentucky Department of Public Advocacy is their Public Defender’s Office

Cabinet for Health and Family Services

- [The Office of the Ombudsman and Administrative Review](#) is located within the Office of the Secretary within the Cabinet for Health and Family Services.
- They are “an advocate for citizens and [work] to ensure those seeking public services are treated fairly”. They answer questions and investigate customer complaints about CHFS programs, advise CHFA management of patterns of complains, and make recommendations and take corrective action when appropriate.
- The Ombudsman is appointed by the Secretary of CHFS with Governor approval

Louisiana

Legislative Branch Independent Agency

- The [State of Louisiana Child Ombudsman](#) was created on June 21st, 2023 via [Act 325](#)
 - o [Advocacy research & press release](#)
- The Ombudsman “monitors the different agencies that are responsible for children across the state, provides an avenue to report complaints, and can propose changes to help improve the services that agencies provide.” Much of the work includes reviewing policies, procedures, and complaints.
- Ombudsman is appointed by the legislative auditor and serves at their pleasure; [legislative auditor is elected by the House](#).

Judicial Branch

- [Children and Families Division](#) of the Judicial Administrator’s Office of the Supreme Court manages a Court Improvement Program, CASA funding, and the Families in Need of Services Assistance Program

Maine

Nonprofit funded by the Executive Department

- The [Child Welfare Ombudsman](#) is an independent non-profit funded by the Executive Department via contract and is created by [§4087-A](#).
- They help “anyone who has a concern or complaint about the way Maine’s DHHS Child Protective Services Department is handling a child’s case. The Ombudsman office often learns of children in need of our service from relatives, service providers or state legislators.”

Judicial Branch

- [CASA program](#) is contained within AOC; CASA employees are State employees
- Director of CASA serves at the pleasure of the State Court Administrator
- Program established via Title 4 [§1501](#)
- A CASA Advisory Panel is appointed by the Supreme Judicial Court to set policies and monitor CASA programs

Maryland

Judicial Branch

- [The Courts and Judicial Proceedings Article §3-830](#) states that the Administrative Office of the Courts will administer [the CASA program](#) and may adopt rules as necessary to run the program. The AOC website provides on information about this program.
- The AOC runs [Juvenile and Family Services](#), which “collaborates with the Maryland courts, legal organizations, and other stakeholders to advance initiatives that benefit Maryland’s children, youth, and families”.
- Family Services also offered at a Circuit/County Court level

Department of Human Services

- The [Foster Parent Ombuds](#) reports directly to the Secretary of DHS. This work is strictly limited to advocacy for foster parents.

Massachusetts

Executive Branch Independent Agency

- The [Office of the Child Advocate](#) is an independent agency with oversight and ombudsperson responsibilities; it is created under [Title II, Chapter 18C](#).
- The OCA “identifies gaps in state services and recommends improvements in policy, practice, regulation, and/or law”, and work to ensure “that children receive appropriate, timely and quality state service”
- The Child Advocate is appointed by a majority vote of the attorney general, state auditor, and governor from a list of three nominees submitted by a 13-person nominating committee (committee positions specified within law). They are appointed for a 5 year term, and can only serve up to 2 full terms.
- The Child Advocate is the chair of the 25-member Child Advocate Advisory Council.

Michigan

Executive Branch Independent Agency

- The [Office of Children's Ombudsman](#) is housed within the Department of Technology, Management and Budget. It was created via [Act 204 of 1994](#).
- Their primary mission is "to receive and investigate complaints concerning children who for reasons of abuse or neglect are under the supervision MDHHS or its private contracted agencies", and make "recommendations to the Governor, the Legislature, and MDHHS for changes in child welfare laws, rules, and policies to improve outcomes for children".
- The Ombudsman is appointed by the Governor with the advice of the Legislature.

Administrative Office of the Courts

- The [Child Welfare and Juvenile Justice Services](#) is a division within the Michigan AOC.
- The CWJJS "provides assistance to circuit court family divisions on child welfare matters, including child protective proceedings, foster care, adoption, termination of parental rights, permanency outcomes, and data collection and analysis".
- They administer the Court Improvement Program, Foster Care Review Board Program, and provide training on child welfare issues.

Minnesota

Independent Agency

- The [Office of the Ombudsperson](#) consists of three ombudspersons, each representing a community of color and their respective Council (Minnesota Council on Latino Affairs, Council for Minnesotans of African Heritage, and Council on Asian Pacific Minnesotans).
- The mission is "to provide a fair, neutral, and transparent environment between state and county agencies and families of color in Minnesota". They "aim to ensure that children and families are protected by law in all child placement proceedings conducted by public and private agencies"
- The Office is created under [§257.0755](#), and the individual councils are governed by [§257.0768](#)

Mississippi

Judicial Branch

- The Administrative Office of the Courts is charged with managing commissions, including the [Commission on Children's Justice](#), as created by the Supreme Court.
- They are charged with "developing a statewide comprehensive approach to improving the child welfare system; coordinating the three branches of government in assessing the impact of government actions on children who are abused or neglected; and recommending changes to improve children's safety, strengthen and support families, and promote public trust and confidence in the child welfare system."

Missouri

Independent Agency

- The [Office of the Child Advocate](#) is an “agent of accountability” for the Children’s Division, Department of Social Services, Department of Mental Health, and Juvenile Courts, and is operated under the Office of Administration. The OCA is created via [§37.700](#)
- They provide “an avenue through which citizens are able to obtain an independent and impartial review of disputed decisions, actions, and inactions regarding any child at risk of abuse, neglect, or other harm.”
- The Child Advocate is appointed by the governor and chief justice of the Missouri Supreme Court with advice and consent of the Senate for a 6-year term.

Montana

Department of Justice

- [The Office of the Child and Family Ombudsman](#), within the [Special Services Bureau](#) of the DOJ.
- The OCFO “responds to requests to protect the rights of children and families by improving case outcomes and strengthening Montana’s child welfare system.”
- The OCFO is established via [41-3-1208 – 1215](#).
- The Ombudsman is appointed by the Attorney General.

Citizens Advocate Office

- Single individual in the Governor’s Office who has the authority to assist Montanans in their interactions with all executive branch agencies. Functions as a referral service for public comments, suggestions, and requests for information. [Reference via budget program description.](#)
- Note: This program is not well promoted or highlighted within State resources and webpages.

Judicial Branch

- The [Court Services Division](#) within the Court Administrator’s Office provides support to programs like CASA/GAL, and administers the [Court Improvement Program](#).

Nebraska

Legislative Branch Independent Agency

- [Office of Inspector General of Nebraska Child Welfare](#) “provides an independent form of inquiry and review of the actions of individuals and agencies responsible for the care and protection of children in the Nebraska child welfare and juvenile justice systems.”
- Office was authorized in 2012 by [§43-4301 – 4331](#) and is located within the Office of Public Counsel (Ombudsman’s Office)
- The Inspector General is appointed by the Public Counsel with approval from the chairperson of the Executive Board of the Legislative Council and chairperson of the Health and Human Services Committee of the Legislature for a term of 5 years and may be reappointed.
- Public Counsel/Ombudsman is appointed by the Legislature.

Judicial Branch

- The Nebraska [Guardians ad Litem program](#) is managed by the Nebraska Supreme Court Mandatory Continuing Legal Education Commission (MCLE)

- Supreme Court office of Judicial Branch Education conducts required initial training, and the Administrative Office of the Courts conducts annual education
- Supreme Court can award grant funding to support CASA programs with certain conditions, as set via [§43-3719](#)

Nevada

Attorney General

- The [Nevada State Advocate for Missing & Exploited Children](#)'s mission is "to ensure that missing children are reunited with their families and to foster reunification and family stability by providing information to parents, children, and children's advocates about the law, court processes, research, and news that pertains to missing children." Their goal is for Nevada's children "to receive the best treatment possible".
- Focus is primarily on finding missing children.

Judicial Branch

- The [Commission on Juvenile Justice Reform](#), located within the Supreme Court, is focused on studying the juvenile justice system within the state and evaluating correctional commitment facilities, community based services and commitment alternatives.

New Hampshire

Independent Agency

- The [Office of the Child Advocate](#) is established as an independent office attached to the Department of Administrative Services for administrative purposes only.
- OCA is created via [Title 1, 21-V:1 – V:10](#)
- The Child Advocate is appointed by the Governor and their executive council for a term of 4 years and may be reappointed; nominees are selected by the Oversight Commission on Children's Services

Department of Health & Human Services

- The [Office of the Ombudsman](#) within the Department of Health and Human Services is designed to ensure that existing systems are effective and resolve differences fairly as they relate to DHHS, including Services to Children and Families and Juvenile Justice.
- The ombudsman has no authority to require DHHS or their contractors to change a decision.
- Office is established via [Title X, 126-A:4](#).

New Jersey

Department of Children and Families

- The [Office of Advocacy](#) "gathers feedback and identifies issues and trends to help DCF work in collaboration with its partner agencies to improve services to children and families. We do this through our interaction with the Office of Performance Management and Accountability, governmental leaders and agencies, partners, families and the community."
- The Office of Advocacy is a division of the department of Children and Families.

Department of Law and Public Safety

- The Department of Law and Public Safety, which is overseen by the Attorney General, contains the [Juvenile Justice Commission](#).
- The [Office of the Ombudsman](#) within the Juvenile Justice Commission is charged with providing an avenue of redress for juveniles placed in custody of the JJC by the courts. The Ombudsman “attempts to forestall problems for the juveniles in its care by facilitating early recognition of complaints and problems, and providing an avenue for prompt redress”.

Note: NJ established a Department of the Public Advocate in 1974. It was dissolved in 1994, reestablished in 2005, and eliminated again in 2010.

New Mexico

No current provisions/Managed by Nonprofits

- [Executive Order 2023-020](#) was signed in February 2024 in order to reform the Children, Youth, and Families Department and increase transparency within the Department.
- Advocates are calling for the creation of a Child’s Ombudsman or Child Advocate.

New York

Office of Children and Family Services

- The [Office of the Ombudsman](#) serves to “help protect the legal rights of youth who reside at certain sites” such as residential placements, county detention facilities, and voluntary agencies across the state. They are “a connection between youth and their placement administration, families, attorneys, and other offices within OCFS. The ombudsmen visit the sites regularly to counsel youth, take verbal reports, and provide recommendations to sites.”
- The ombudsman is appointed by the commissioner of OCFS.
- The Office of the Ombudsman is created via [Executive Law § 523](#)

Judicial Branch

- The [NYS Permanent Judicial Commission on Justice for Children](#) works to improve court proceedings and juvenile justice issues for children of all ages.

North Carolina

Judicial Branch

- The [Office of Guardian ad Litem \(GAL\) Services](#) is a division of the North Carolina AOC via N.C.G.S. 7B-1200.
- Staff recruits, trains, and maintains volunteer services.

Note: At one point there was an Foster Care Ombudsman Program in Gaston County, as evidenced by [NCSL research](#). However, no evidence of the pilot program was found; it is unclear why it was discontinued.

North Dakota

Judicial Branch

- The [Supreme Court of North Dakota has a variety of committees and boards](#), some of which are aimed at addressing the issues of juveniles. This includes the Court Improvement Project Taskforce and Juvenile Policy Board.

Note: During the 61st Assembly (2009-2011), [SB 2420](#) looked at improving programs for children and families. This included initiating [a study regarding an ombudsman program](#). [Testimonies can be found here](#). The Bill was not enacted.

Ohio

Department of Job and Family Services

- [The Youth and Family Ombudsmen Office](#) was opened in May 2022 via [§5101.891](#) as a result of feedback from foster youth and the Children Services Transformation Advisory Council’s recommendations. It is located within the Department of Job and Family Services. This Office also oversees job services & unemployment, cash, food & refugee assistance, child care, child support, and child and adult protection services.
- The Office “investigates and resolves concerns and complains submitted by or on behalf of children and families involved with public children services agencies, Title IV-E agencies, or private provider agencies”.
- There is both a Youth Ombudsman and a Family Ombudsman; both are appointed by the governor.

Judicial Branch

- The [Children & Families Section](#) of Court Services and the [Advisory Committee on Children & Families](#) serve to improve court performance for children and provide policy recommendations.

Oklahoma

Department of Human Services

- The [Office of Client Advocacy](#) “protects children residing outside of a home through investigations, protects vulnerable adults receiving community services through advocacy and investigations, and ensures foster parents and children served by Child Welfare Services have a voice through the grievance process and are free from retaliation or harassment.”
- OCA is established within the Department of Human Services via [§10A-1-9-112](#).

Judicial Branch

- The [Children’s Court Improvement Program](#), as advised by the Juvenile Justice Oversight and Advisory Committee, is located within the Judicial Branch to help improve child welfare systems and produce better outcomes for families.

Oregon

Independent Office

- The [Governor’s Advocacy Office](#) is designed to specifically address concerns or complaints regarding the Oregon Department of Human Services.

- The GAO is independent from the programs they review, but report regularly to the Office of the Governor and ODHS Director on patterns of complaints.
- A Children's Advocate is included within the ODHS Ombuds Program.
- No relevant statutes could be found.

Department of Justice

- [The Child Advocacy and Protection Division](#) within the Attorney General's office provides legal advice and court representation to the Department of Human Services Child Welfare Division

Judicial Branch

- The [Juvenile Court Improvement Program](#) is managed by the Office of the Court Administrator and contains an Advisory Committee and a Juvenile Justice Advisory Board. Their goal is to improve outcomes and court processes for those involved in the juvenile system.

Pennsylvania

Independent Office

- The Office of Advocacy and Reform was created via [Executive Order 2019-05](#) by Governor Wolf. This Office included the creation of a Child Advocate position and a Council on Reform.
- The Child Advocate is appointed by the governor and reports to the Executive Director of the Office of Advocacy and Reform and the Secretary of Human Services.
- Note: This Office has not been statutorily made a part of PA and can be eliminated upon another Executive Order.

Judicial Branch

- The [Office of Children & Families in the Courts'](#) mission is "to assist and support judicial districts in the identification and implementation of best practices that promote timely permanence for dependent children" and "to support the Children's Roundtable Initiative".
- This Office is a part of the Administrative Office of the Pennsylvania Courts and works in collaboration with the Department of Human Services and other stakeholders.

Rhode Island

Independent Office

- [The Office of the Child Advocate](#) is specifically designated as an oversight agency of the Department of Children, Youth and Families and is created via [§ 42-73](#).
- The Child Advocate is appointed by the governor with advice and consent of the Senate. The governor chooses from a list of at least 3 candidates selected by a committee.
- The OCA also serves as a Guardian ad Litem to you who are open to the Department by and through voluntary placement agreements.
- In 2016, the OCA was expanded to include a Child Fatality Review Panel.

South Carolina

Independent Agency

- The [South Carolina Department of Children’s Advocacy](#) was established in 2019 and is governed via [§ 63-11-2210 – 2295](#).
- The State Child Advocate is appointed by the Governor from a list of three candidates selected by the Joint Citizens and Legislative Committee on Children for a 6 year term that may be renewed.
- The Department of Administration provides technical, accounting, human resources, and logistical support to DCA.
- SCA also manages the Guardian ad Litem Program and the Division of Foster Care Review.
- Their mission is to champion “advocacy, accountability, and service to improve outcomes for children served by state agencies in South Carolina.”

South Dakota

Judicial Branch

- The Court Appointed Special Advocates Fund allows the Unified Judicial System to administer grants to organizations recognized by the National CASA Association.
- Grants are decided by the Court Appointed Special Advocates Commission, which is administered and staff by the Unified Judicial System.
- The program is created via [§16-2-50 – 54](#).

Tennessee

Independent Commission

- [The Tennessee Commission on Children and Youth](#) (TCCY), established via [§37-3-101 – 116](#), is an independent, non-partisan agency established by the General Assembly.
- All 21 members of the commission are appointed by the governor based on set criteria to serve 3 year terms.
- TCCY administers CASA grants and has an Ombudsman for Children and Families, among other programs.
- The [Ombudsman program](#) adheres to US Ombudsman Association standards, which includes a review process, confidentiality, impartiality, and independence.
- The Ombudsman program is not statutorily mandated/created.

Texas

Independent Agency

- The [Office of the Independent Ombudsman](#) (IO) is a part of the Juvenile Justice Department and governed via [The Texas Human Resources Code §261.001 – 153](#).
- While located within the Juvenile Justice Department, the IO reports to the Governor and Texas Legislature; they explicitly do not report to the Juvenile Justice Department Board or management. Fundings for IO is also appropriated separately from the rest of the Department.
- IO is appointed by the Governor with advice and consent of the Senate on a two-year, renewable term.

Department of Health and Human Services

- The [Office of the Ombudsman](#) within Texas Health and Human Services (HHS) provides dispute resolution, consumer protection, and advocacy functions on behalf of the people HHS serves.
- The Office of the Ombudsman is governed via The Texas Government Code [§523.0255](#)
- It is unclear who hires individuals within the Office, or how their administrative systems are related to HHS. There are multiple ombudsmen within the office, tied to different aspects of HHS services.

Judicial Branch

- [The Supreme Court of Texas Permanent Judicial Commission for Children, Youth, and Families](#) has the goal of “strengthening the child welfare system by increasing public awareness about the challenges facing children, youth, and families through encouraging judicial leadership, supporting best judicial and legal practices through training and education, and informing policy and practice affecting child welfare in Texas.”
- The Commission includes members from all three branches of government.

Utah

Department of Health and Human Services

- The [Child Protection Ombudsman](#) (CPO) is an “independent, objective team charged with investigating and resolving concerns from the public about the Division of Child and Family Services (DCFS) practice and staff”. They are governed via [§80-2-1104](#).
- The CPO team is within the Division of Customer Experience within the Department of Health and Human Services, and is therefore independent of the DCFS.
- The Ombudsman is appointed by the Executive Director of the Department of Health and Human Services

Judicial Branch

- The [Office of Guardian ad Litem](#) provides attorneys to represent children in combination with volunteers from CASA. The GAL Office also hires attorneys and trains and certifies Private GALs
- The GAL Office is governed via [§78A-2-8](#).
- The Guardian ad Litem Oversight Committee appoints the director of the Office of the Guardian ad Litem for the state.

Vermont

Independent Agency

- The Office of the Child, Youth, & Family Advocate is established independently of any State agency and is to advocate “for the welfare of children and youths receiving services from the Department [for Children and Families] directly, or through funds provided by the Department, and those involved in the child protection and juvenile justice systems.”
- The Advocate is appointed by the Governor and confirmed by the Senate from a list of qualified applicants provided by the [Oversight Commission on Children, Youths, and Families](#).
- The Office of the Child, Youth, & Family Advocate and the Commission is governed by Title 33 [§3201 – 3211](#).

Note: This Office was established upon the Governor’s signing of Act 129 in 2022; the first Advocate was hired in February of 2023.

Judicial Branch

- The [Guardian ad Litem Program](#) provides training and coordination for GALs across the state.
- The [Juvenile Court Improvement Program’s](#) goal “is to ensure children's safety, permanency, and well-being through effective court proceedings.”
- Both programs are managed by Office of the Court Administrator Staff.

Virginia

Office of the Governor

- The [Office of the Children’s Ombudsman](#) is located within the Office of the Governor and is appointed by the governor for a 4-year term. It was created via [§2.2-438 – 448](#).
- The Office is responsible for “effecting changes in policy, procedure, and legislation; educating the public; investigating and reviewing actions of the Department [of Social Services], local departments, child-placing agencies, or children's residential facilities; and monitoring and ensuring compliance with relevant statutes, rules, and policies pertaining to child protective services and the placement, supervision, and treatment of, and improvement of delivery of care to, children in foster care and adoptive homes.”

Department of Criminal Justice Services

- [Virginia’s CASA Program](#) is managed by two individuals at the state level who serve as the CASA Program Coordinator and CASA Grant Monitor and Quality Assurance Coordinator.

Washington

Independent Office

- The [Office of the Family and Children’s Ombuds](#) is an independent office that investigates complaints about any Washington state agency actions or failures to act if it involves children at risk of abuse, neglect, or other harm; a child or family involved with child protection or child welfare services; and the safety or welfare of children in the State’s care.
- The Office is governed via [§43.06A](#).
- The Ombudsman is appointed by the governor and confirmed by the senate for a 3-year, renewable term.

Judicial Branch

- The [Guardian ad Litem](#) program is managed by Superior Courts in each county. They provide training opportunities and maintain the registry.
- [The Family and Youth Justice Program](#) contains a variety of programs including the Court Improvement Program and Family and Juvenile Court Improvement Program, and is administered by the Administrative Office of the Courts.

West Virginia

Office of the Inspector General

- The [Foster Care Ombudsman](#) (FCO) was established via [§49-9](#) in the 2019 and 2020 legislative sessions.
- The Ombudsman is hired by the Office of the Inspector General.
- Note: This is strictly limited to children within the foster system.

Department of Health and Human Resources

- The [Office of Client Services](#) is responsible for answering questions and investigating complaints about programs and services provided by the WV Bureau for Social Services, such as Child Protective Services.

Judicial Branch

- The [Juvenile Justice Commission](#), established by the Supreme Court of Appeals, “is the mechanism whereby the Court can monitor and ensure that the system provides safe, nurturing living conditions as well as rehabilitative services.”
- The [Court Improvement Program](#) is separate from the Juvenile Justice Commission, but is also a part of the Supreme Court of Appeals.
- The Courts also provide training for [Guardian ad Litem](#)s, but it is unclear which court operates this programming.

Wisconsin

Judicial Branch

- The [Children’s Court Improvement Program](#) within the Office of the Director of State Courts consists of a variety of projects, including the Commission on Children, Families, and the Courts, Guardian ad Litem resources, E-Learning Projects, and the Judicial Committee on Child Welfare.

Wyoming

Judicial Branch

- The [Children’s Justice Project](#) is a part of the Court Improvement Program and is overseen by the Supreme Court and staffed by a Grant Coordinator.

Maternal and Child Death Review Commissions in Other States

In Delaware, the Maternal and Child Death Review Commission comprehensively covers the deaths of infants, children, and of those of who are currently pregnant or were pregnant in the year prior to their death. Some states have separate review programs for these three types of fatalities; this has been noted when applicable.

Alabama

Department of Public Health

- [The Alabama Child Death Review System](#) includes both local and state-level review teams.
- The [Child Death Review Law](#) was signed in 1997 and is governed by [Chapter 26, Article 5](#).
- The [Alabama Maternal Mortality Review Program](#), a part of the Bureau of Family Health Services' State Perinatal Program, was formed in 2018 and is guided by the [AL Maternal Mortality Review Committee](#).
- The [Fetal and Infant Mortality Review Program](#) is also a part of the Bureau of Family Health Services' State Perinatal program.

Alaska

Division of Public Health

- The [Alaska Maternal and Child Death Review](#), located within Women's Children's and Family Health of the Department of Health, is established via Alaska State Statute 12.65.120 – 140.

Arizona

Department of Health Services

- The Arizona Child Fatality Review Program is established via [§36-3501 – 3506](#).
- Maternal deaths are included within the Child Fatality Review Program.

Arkansas

Department of Health

- The [Infant and Child Death Review Program](#) is funded by the Department of Health, Family Health Branch, but is administered by the Arkansas Children's Hospital and University of Arkansas Medical Sciences Department of Pediatrics. This program is authorized via Act 1818 of 2005.
- The [Arkansas Maternal Mortality Review Committee](#) is governed via [HB 1440 of 2019](#).

California

Department of Public Health

- The [CA Pregnancy-Associated Mortality Review](#) was created in 2006 by the California Dept. of Public Health's Maternal, Child and Adolescent Health Division.

Local Only

- Child Death Review groups exist at the local level only, as funding has not been available for the State-level program since 2008. When funding is available, the state team exists within the Attorney General's Office.

Colorado

Department of Public Health & Environment

- The [Child Fatality Prevention System](#) has 43 local teams, a 46-member State Review Team, and a State Support Team. It is governed by [§26-1-139](#).
- The [Maternal Mortality Prevention Program](#) oversees the Maternal Mortality Review Committee, both of which are governed by [§25-52-104](#).

Connecticut

Department of Public Health

- The [Connecticut Maternal Mortality Review Program and Maternal Mortality Review Committee](#) was created in 2018 via [§19a-59h](#) and [§19a-59i](#).

Office of the Child Advocate

- The [Child Fatality Review Panel](#) is established within the Office of the Child Advocate, which is a part of the Office of Governmental Accountability, an independent agency.

Florida

Department of Health

- The [Fetal and Infant Mortality Review Committees](#) are contracted in local communities through the Department of Health. They are governed via [§382.21625](#).

Department of Children and Families

- The Department of Children and Families has the authority to conduct reviews of all child deaths “when there was a prior report with a verified finding to the Department in the previous 12 months”. These reviews are governed via [FAC 65C-30.021](#).

Georgia

Bureau of Investigation

- The [Georgia Child Fatality Review Program](#) is an independent program that provides training and technical assistance to local review committees. At the state-level, there is also the 17-member Child Fatality Review Panel. It is governed via [§19-15-1](#).

Department of Public Health

- The [Georgia Maternal Mortality Review Committee](#) is governed by [§31-2A-16](#).

Hawaii

Department of Health

- The [Hawaii Child Death Review System](#) is established through §321-345 and is within the Maternal and Child Health Branch of the Department of Health.
- The [Department of Health's Report](#) also includes information on Maternal Death.

Idaho

Governor's Task Force on Children at Risk

- The [Child Fatality Review Team](#) is formed within the Governor's Task Force on Children at Risk, created via Executive Order 2012-03.

Note: Idaho had a [Maternal Mortality Review Committee](#) from 2019 to 2023 within the Department of Health.

Illinois

Department of Children and Family Services

- There are multiple [Child Death Review Teams](#) throughout the state, joined together at the state level by an Executive Council.

Department of Public Health

- The [Maternal Morality Review Committee](#) reviews deaths suspected to be medically related to pregnancy.

Indiana

Department of Health

- The [Statewide Fatality Review and Prevention Program](#) includes local child fatality review teams, a statewide child fatality review committee, fetal-infant mortality review, and a maternal mortality review committee. Outreach and prevention work is also a part of the program.

Iowa

Office of the State Medical Examiner

- [Child Death Review Teams](#) are managed by the Iowa Office of the State Medical Examiner in accordance with [§135.43](#).

Department of Health and Human Services

- The [Maternal Mortality Review Committee](#) conducts yearly reviews to determine if a pregnancy-associated death was pregnancy-related or not, the cause of death, and whether it was preventable. No statutes or relevant code could be found.

Kansas

Attorney General's Office

- The [State Child Death Review Board](#) is established via [§22a-243](#).

Department of Health and Environment

- The [Kansas Maternal Mortality Review Committee](#) was formed in 2018 and consists of 25-35 members.

Kentucky

Cabinet for Health and Family Services

- The [Child Fatality Review and Injury Prevention Program](#) is part of the Division of Maternal and Child Health of the Cabinet for Health and Family Services.
- There is a Maternal Mortality Review Committee, but they have no program page or details within the Cabinet website and are not listed within the Kentucky Revised Statutes.

Louisiana

Department of Health

- The [Louisiana State Child Death Review Panel](#) works in conjunction with Local Child Death Review Teams and consists of 28 members. The Panel is located within the Office of Public Health, Bureau of Family Health. [It is established by RS 40:2019](#).
- The [Louisiana Pregnancy-Associated Mortality Review](#) was established by the Bureau of Family Health via authorization from [the LA Commission on Perinatal Care and Prevention of Infant Mortality](#).

Maine

Department of Health and Human Services

- The [Maternal, Fetal and Infant Mortality Review Panel](#) is located within the Division of Disease Prevention.
- The [Child Death & Serious Injury Review Panel](#) is a part of the DHHS Child Welfare Citizen Review Panels.

Maryland

Department of Health

- The [MD State Child Fatality Review Team](#) is composed of at least 25 members from a variety of agencies and disciplines, including members of the public; they are governed by [§5-701 – 709](#).
- The Maternal Mortality Review Program (MMR) and MMR Stakeholder Group are established and governed by [§13-1201 – 1213](#).

Massachusetts

Office of the Chief Medical Examiner

- The Massachusetts Child Fatality Review program is established via [Chapter 38, Section 2A](#) of Massachusetts General Statutes

Executive Office of Health and Human Services

- The [Maternal Mortality and Morbidity Initiative](#) is located within the Bureau of Family Health and Nutrition, in the Department of Public Health.

Michigan

Department of Health and Human Services

- The [Child Death Review Program](#) within the Michigan Fatality Review and Prevention team consists of a State Advisory Team, Citizen Review Panel, and 77 local Child Death Review Teams.
- The [Maternal Mortality Surveillance Program](#) is located within the Maternal and Child Health Epidemiology Section of the Lifecourse Epidemiology & Genomics Division of DHHS.

Minnesota

Department of Health

- The Minnesota Maternal Mortality Review Committee is a 25-member committee established via [Minnesota Statute §145.901](#) within the Department of Health.
- There is an [Infant Mortality Reduction Initiative](#) and reporting data provided on deaths before the age of one.

Mississippi

Department of Health

- The [Child Death Review Panel](#) consists of 17 voting members and is governed by [Miss. Code Ann. § 41-111-1](#).
- The [Infant and Maternal Mortality Surveillance](#) program works within the Office of Health Data and Research. The Infant Mortality Task Force is created via [Miss. Code Ann. § 41-89-5](#) and the Maternal Mortality Review Committee is created via [Miss. Code Ann. § 41-112-1](#).

Missouri

Department of Social Services

- The [Missouri Child Fatality Review Program](#) is county-based with a [state panel](#) that mirrors the construction of county programs. They are established via [§210.192](#).
- While located within DSS, the panels also work closely with the Department of Health and Senior Services.

Department of Health & Senior Services

- The [Pregnancy-Associated Mortality Review](#) program is governed by [§192.990](#).

Montana

Department of Public Health & Human Services

- The Fetal, Infant, Child & Maternal Mortality Review (FICMMR) and injury prevention program is established by the [Fetal, Infant, Child, and Maternal Mortality Prevention Act](#). Local teams can also be established.

Nebraska

Department of Health and Human Services

- The [Child Death Review Team](#) (CDRT) encompasses both child and maternal death reviews. Maternal deaths are managed by the [Maternal Mortality Review Committee](#).
- The program is established via the [Child and Maternal Death Review Act](#) (§71-3404 to §71-3411).

Nevada

Department of Health and Human Services

- The [Child Death Review Teams](#) exist at the county level and serve [the Executive Committee to Review the Death of Children](#). They are governed via [NRS 432B.403 through 403B.4095](#).
- The [Nevada Maternal Mortality Review Committee](#) was established in 2020 and is a part of the Division of Public and Behavioral Health within DHHS. MMRC is governed via [NRS 442.751 through 442.774](#).

New Hampshire

Department of Health and Human Services

- The [Child Fatality Review Committee](#) existed via Executive Order from 1998-2019. In 2019, it was permanently established via [SB 118](#). They are a part of numerous [Advisory Organizations](#) within DHHS.
- The Maternal Mortality Review Committee was created in 2010 and is governed via [§132:29 through §132:31](#).

New Jersey

Department of Health

- The [Fetal Infant Mortality Review and Maternal Mortality Review](#) programs are both statewide initiatives. The Maternal Mortality Review Committee is governed by [§26:18-4 through §26:18-12](#). The Fetal Infant Mortality Review program is funded through the Maternal Child Health Consortia.

Department of Children and Families

- The [Child Fatality and Near Fatality Review Board](#) is **independent** of the Department and includes four regional Community-Based Review Teams. The Board is established and governed by [§9:6-8.88 through §96-8.98.1](#).

New Mexico

Department of Health

- The Maternal & Child Health Epidemiology Program works with data related to the [Maternal Mortality Review and Child Fatality Review](#) programs.
- The Maternal Mortality Review Committee is governed by §24-32-3; no relevant statutes could be found as they related to Child Fatality Review programming.

New York

Office of Children and Family Services

- The [Office of Children and Family Services](#) is statutorily required to conduct a review of fatality investigations. Local and regional fatality review teams are governed [via Social Services, §422-B](#).

Department of Health

- The [Maternal Mortality Review Board](#) was established in 2019 by [Public Health Law §2509](#).

North Carolina

Department of Health and Human Services

- The [Child Fatality Prevention System](#) consists of four different teams within DHHS: Local Child Fatality Prevention Teams (Division of Child and Family Well-Being), Local Community Child Protection Teams (Division of Social Services), the State Child Fatality Prevention Team (Division of Public Health, Office of the Chief Medical Examiner), and the Child Fatality Task Force (Office of the Secretary). The system is created and maintained via [Chapter 7B, Article 14](#).
- The [Child Fatality Task Force](#), a legislative study commission, provides policy recommendations based on data collected.
- The [Maternal Mortality Review Committee](#) is within the Division of Public Health and governed by [§130A-33.60](#).

North Dakota

Department of Health & Human Services

- The Child Fatality Review Panel is chosen by the Department and governed via [Ch. 50-25.1, Child Abuse and Neglect](#).

External: Public University

- The North Dakota Maternal Mortality Review Committee is managed by the University of North Dakota School of Medicine and Health Sciences and mandated via [Ch. 23-51](#).

Ohio

Department of Health

- [Child Fatality Review](#) boards are required in each county or region and are established in such areas by an appointed health commissioner. These boards are governed via [§307.621 through §307.629](#).
- The Ohio Pregnancy Associated Mortality Review was established via [§3738](#). The Director of Health appoints the board members.

Oklahoma

Commission on Children and Youth

- The [Child Death Review Board](#) includes both state-level and regional review teams. It is governed by [Title 10, Chapter 51 -Section 1150](#).

Department of Health

- The [Maternal Mortality Review Committee](#) was established in 2019 via [HB 2334](#).

Oregon

Oregon Health Authority

- The [Oregon Child Death Review and Prevention](#) program consists of the State Child Death review Team, 36 County Death Review Teams, and a Critical Incident Review Team. Each team is established by different Statutes.
- The [Critical Incident Review Team](#) is specifically under the Oregon Department of Human Services, and is exclusive to deaths when there is a reasonable belief that it was caused by child abuse, and when the child was in custody of ODHS at the time of death or within the last 12 months, among other stipulations.
- The [Maternal Mortality and Morbidity Review Committee](#) was established in 2018 via [House Bill 4133](#).
- Note: The [Oregon Health Authority's](#) focus is to improve quality and access to healthcare in order to improve the lifelong health of Oregonians. OHA is overseen by a nine-member citizen Oregon Health Policy Board.

Pennsylvania

Department of Health

- The [Child Death Review Program](#) is run by 61 statewide and county-based teams throughout Pennsylvania.
- The [Maternal Mortality Review Committee](#) was established in 2018 via [Act 24](#); committee members are appointed by the Department of Health.

Department of Human Services

- The [Child Fatality and Near Fatality Review](#) Teams are initiated when there is a death of child that is suspected to be a result of abuse.

Rhode Island

Office of the Child Advocate

- In 2016, the [Office of the Child Advocate](#) was expanded by the Governor to include reviews of fatalities or near fatalities in prescribed circumstances. OCA conducts an investigation, which is then reviewed by the Child Fatality Review Panel. The OCA is an independent agency.

Office of State Medical Examiners

- The [Rhode Island Pregnancy and Postpartum Death Review Committee](#) is established via [§23-4-3](#). While maintained within the Office of State Medical Examiners, the Committee is developed by the Director of the Department of Health.

South Carolina

State Law Enforcement Division

- The [State Child Fatality Advisory Committee](#), part of the Department of Child Fatalities within the SC Law Enforcement Division, is established via [§63-11-1900 through §63-11-1990](#).
- The [Department of Social Services, SC Coroner's Association, and Department of Health and Environmental Control](#) also partake in investigating and reporting fatalities.

Department of Health and Environmental Control

- The [South Carolina Maternal Mortality and Morbidity Review Committee](#) is within the Bureau of Maternal and Child Health and is governed via [§44-1-310](#).

South Dakota

Department of Health

- The [Infant Death Review program](#) is run at the state-level and only covers deaths up to 1 year in age.
- The [Maternal Mortality Review Committee](#) was formed in 2021.
- No relevant statutes could be found for either program.

Tennessee

Department of Health

- The [Child Fatality Review](#) program has numerous local teams and a single statewide team. As stated in §68-142-102, the program is only within the Department of Health for administrative purposes, but the Commissioner of Health is the Chair of the State Team. The program is governed via the [Child Fatality Review and Prevention Act of 1995](#).
- The [Maternal Mortality Review program](#) is governed via the [Maternal Mortality Review and Prevention Act of 2016](#). The MMR [Committee](#) was established in 2017 and exists to review all deaths and report recommendations that would prevent maternal deaths.

Texas

Department of State Health Services

- The [Texas Child Fatality Review Team](#) includes both local teams and a state team. The [State Child Fatality Review Team Committee](#) is governed by [Texas Family Code 264.501](#).
- The [Maternal Mortality and Morbidity Review Committee](#) is governed by Chapter [34 of the Texas Health and Safety Code](#).

Utah

Department of Health & Human Services

- The Department of Health & Human Services is charged with maintaining [fatality reviews](#); the [Child Fatality Review Committee](#), while not statutorily mandated, is a part of this.
- The [Perinatal Mortality Review Committee](#) reviews both infant and maternal deaths; the most recent update available online is from 2018. No relevant statutes could be found.

Vermont

Department of Health

- The Child Fatality Review Team consists of 11 members at the state level and is governed by [18 VSA §1561](#).
- The Maternal Mortality Review Panel is governed via [18 VSA §1552](#); panel members are appointed by the Commissioner of Health.

Virginia

Department of Health

- The [State Child Fatality Review Team](#) is a part of the Division of Death Prevention within the Medical Examiner’s Office and governed by [§32.1-283.1](#). The Team consists of state officials, Governor appointees, and special advisors and advocates.
- There are also 5 [Local Child Fatality Review Teams](#) located in each Department of Social Services region.
- The [Maternal Mortality Review Team](#) is also a part of the Division of Death Prevention within the Medical Examiner’s Office; it is governed by [§32.1-283.8](#). The Chief Medical Examiner is co-chair of the Team.

Washington

Department of Health

- [RCW 70.05.170](#) authorizes local health jurisdictions to conduct [child death reviews](#); there are no programs at the state level.
- The [Maternal Mortality Review Panel](#) is governed by [RCW 70.54.450](#); members are appointed by the Secretary of the Department of Health.

West Virginia

Department of Health & Human Resources

- The [Fatality and Mortality Review Team](#) exists under the Bureau for Public Health and oversee deaths of children under the age of 18, infant, and maternal deaths, among other categories. It is governed by §61-12A-1 and consists of the Chief Medical Examiner, Commissioner of the Bureau for Public Health, Superintendent of the WV State Police, and a prosecuting attorney appointed by the governor.

Wisconsin

Department of Health Services

- The [Children’s Health Alliance of Wisconsin](#) was created through a partnership between the Department of Health Services and the Children’s Wisconsin and American Family Children’s Hospital. The Children’s Health Alliance is still financially supported by DHS and has both a [Child Death Review Team](#) and a [Fetal Infant Mortality Review Team](#).
- The [Maternal Mortality Review Team](#) exists within the Division of Public Health and is not statutorily mandated.

Wyoming

Independent

- The [Wyoming Citizen Review Panel](#) contains the Child Death Review and Prevention Team, which reviews all child deaths and major injuries that occur while a child is in protective custody of the state.

Department of Health

- The [Maternal Mortality Review Committee](#) is a combined program with Utah; it accepts applications for service from all and is not statutorily created.

Nursing Home Residents Quality Assurance Commission

*Note: Every state is required to have a Long-Term Care Ombudsman program. The difference between a Long-Term Care Ombudsman and the NHRQAC is a primary focus: Ombudsmen are specifically there to help residents and protect the rights of residents, whereas NHRQAC is focused on improving and ensuring the quality of systems within nursing homes. NHRQAC serves as an oversight organization over the state agencies that are charged with maintaining private and publicly-run nursing homes.

For the purposes of this research, NHRQAC-equivalent organizations are the focus. Long-Term Care Ombudsman, Quality Improvement Network-Quality Improvement Organizations, and State Boards of Nursing or Nursing Home Administrators will not be included.

Alabama

- No equivalent program.

Alaska

- No equivalent program.

Arizona

Arizona Health Care Cost Containment System

- The [Arizona Long-Term Care System Advisory Council](#) serves to assist the Long-Term Care System in developing and monitoring a work plan “that address opportunities for new service innovations or systemic issues” that impact Long-Term Care System members.

Arkansas

- No equivalent program.
- Note: There was a Long-Term Care Facility Advisory Board ([§20-10-301](#)), but it has since been repealed.

California

- No equivalent program.

Colorado

- No equivalent program.

Connecticut

- No equivalent program.
- Note: There is a [Nursing Home Financial Advisory Committee](#), but it’s main goal is to ensure solvency of nursing homes while maintaining high quality care.

Florida

- No equivalent program.

Georgia

- No equivalent program.

Hawaii

- No equivalent program.
- Note: In early 2023, Hawaii legislature put forward [HB838](#), which would have reestablished the Long-Term Care Commission; it was not passed and died in committee.

Idaho

Department of Health and Welfare

- The [Health Quality Planning Commission](#) includes 11 voting members of both the public and private sectors with expertise in health information technology, clinical quality, and patient safety. The commission monitors current practices, plans for the future, and makes recommendations to the Legislature and Department of Health and Welfare.
- The Commission is established via [§56-1054](#).
- NOTE: This is specifically focused on technology and technology improvement and is not exclusive to nursing homes and/or long-term care settings.

Illinois

Department of Public Health

- The [Long-Term Care Facility Advisory Board](#) is an advisory body for the Department of Public Health; all new rules must be approved by the Advisory Board before being implemented.
- The Board is established via [210 ILCS 45/2-204](#).

Indiana

- No equivalent program.

Iowa

- No equivalent program.

Kansas

- No equivalent program.

Kentucky

- No equivalent program.

Louisiana

- No equivalent program.

Maine

- No equivalent program.

Maryland

Department of Aging

- The [Oversight Committee on Quality of Care in Nursing Homes and Assisted Living Facilities](#), as established via [§19-1409 of Health](#), consists of a variety of independent and government officials who work together to evaluate the progress in improving nursing home care and assisted living facility quality statewide.

Independent Agency

- The [Maryland Health Care Commission](#) is an “independent regulatory agency whose mission is to plan for health system needs, promote informed decision-making, increase accountability, and improve access in a rapidly changing health care environment”. While not specifically dedicated to nursing homes, the commission is independent from both the Department of Health and the Department of Aging.

Massachusetts

- No equivalent program.

Michigan

- No equivalent program.

Minnesota

- No equivalent program.

Mississippi

- No equivalent program.

Missouri

- No equivalent program.

Montana

- No equivalent program.

Nebraska

- No equivalent program.

Nevada

- No equivalent program.

New Hampshire

- No equivalent program.

New Jersey

- No equivalent program.

- Note: A New Jersey Task Force on Long-Term Care Quality and Safety was enacted via [A4481/S2790](#) in 2020 and should have presented their findings to the Governor in late 2021.

New Mexico

- No equivalent program.

New York

- No equivalent program.

North Carolina

- No equivalent program.

North Dakota

Department of Health

- The [Long Term Care Advisory Committee](#) seeks to “provide an opportunity for members of the provider community to meet and discuss issues of mutual concern with state agencies and others”. They also seek to address statewide long-term care issues, communicate with the public, and learn about the latest innovations and ideas in the industry.

Ohio

Governor’s Office

- The [Governor’s Nursing Home Quality and Accountability Task Force](#) brings together 19 individuals, appointed by the Governor, to improve excellence and expectations in Ohio’s 960+ nursing homes.
- The first report was published in May 2023, but the Task Force can continue to work through December 2024.
- This was created via [Executive Order 2023-06D](#)

Oklahoma

Department of Health

- The [Long Term Care Facility Advisory Board](#) consists of 27 members appointed by the Governor, and serves as a professional advisory body to the State Commissioner of Health.
- It exists to make recommendations regarding the system of standards within the Department of Health, evaluate the administration and enforcement of the [Nursing Home Care Act](#), and review financial accountability standards, among other projects.

Oregon

Department of Human Services

- The Quality Measurement Council was formed in 2017 to “prescribe how the department shall implement the Residential Care Quality Measurement Program”; they have since been able to choose their own metrics to collect data with.
- The Council consists of 8 members, appointed by the Governor.

- Relevant documents: [HB 3359](#), [2022 Annual Report of the Quality Measurement Program](#)

Pennsylvania

- No equivalent program.
- Note: From 2015-2016, a [Nursing Home Quality Improvement Task Force](#) was initiated. Their final report included recommendations regarding data collection and staffing requirements, among other items.

Rhode Island

Independent Council

- The [Long Term Care Coordinating Council](#) within the Office of the Lieutenant Governor works to develop and coordinate state policy regarding all forms of long-term health care. Issues include standards and quality performance, personnel issues, enforcement of regulations, patient and client rights, and eligibility and access issues.
- The Council is established via [§23-17.3-1](#).

South Carolina

- No equivalent program.

South Dakota

- No equivalent program.

Tennessee

- No equivalent program.

Texas

Health and Human Services Commission

- The [Quality Monitoring Program](#) “helps address Texas nursing facilities (NFs) that could be detrimental to the health, safety and welfare of residents”. This program specifically addresses NFs that have a history of deficiencies or are at a high risk of being cited for significant deficiencies. The quality monitors may recommend changes to policies or procedures, conduct training, and educate staff about evidence-based best practices.

Utah

- No equivalent program

Vermont

- No equivalent program.

Virginia

- No equivalent program.

Washington

- No equivalent program.

West Virginia

- No equivalent program.

Wisconsin

Department of Health Services

- The [Division of Quality Assurance \(DQA\)](#) is responsible for protecting and promoting the health, safety, and welfare of residents living and receiving care in the health and residential care facilities regulated by the Division.
- The DQA manages complaints related to any issue or concern of quality of care or quality of life. This can include abuse, misconduct, lack of staffing, transfers, unsafe conditions, or health information privacy violations.
- The DQA also has a [Bureau of Nursing Home Resident Care](#), with 4 regional offices.

Wyoming

- No equivalent program.

Public Guardian in Other States

For the purposes of this research, all forms of adult public guardianship were considered, even if it had limitations on who it could serve as a guardian for. If there are such restrictions to public guardianship, it is documented as such.

Alabama

County Model

- In each county, the judge of probate may appoint a general conservator; they serve the same term as the judge. If there is no conservator, the sheriff must be appointed.
- Relevant statutes: [§26-2-26](#), [§26-2-50](#), [§26-3-5](#)

Alaska

Independent

- The Office of Public Advocacy within the Department of Administration includes the [Public Guardianship Section](#). They employ staff in Anchorage, Fairbanks, Palmer, and Juneau.
- Relevant statutes: [§13.26.700 through §13.26.750](#)

Arizona

County Model

- Each County Board of Supervisors must establish and appoint a Public Fiduciary, to be certified by the Supreme Court.
- Relevant statutes: [Title 14, Article 6](#)

Arkansas

Department of Human Services

- The Office of Public Guardian for Adults is within the [Office of Chief Counsel](#) of the Department of Human Services.
- The Office of Chief Counsel or their designee appoint the Public Guardian for Adults.
- Relevant statutes: [§28-65-701 through §28-65-707](#)

California

County Model

- The County Board of Supervisors can create an Office of Public Guardian (not mandated).
- The Board of Supervisors appoints the Public Guardian (may be a person or agency). Public Administration can also be ex officio Public Guardian.
- Additional details from the [California State Association of Counties](#)
- Relevant statutes: [Government Code, §27430 through §27436](#)

Colorado

Judicial Branch

- The [Colorado Office of Public Guardianship](#) is within the Office of Administrative Services for Independent Agencies ([created in April 2023](#)), which is governed by an administrative board and separate from the Administrative Office of the Courts.
- 5-member Public Guardianship Commission (3 supreme court appointees, 2 governor)
- 7-member Public Guardianship Board of Directors (3 supreme court appointees, 4 governor)
 - o Board appoints the Director of the Office of Public Guardianship
- Relevant statutes: [C.R.S. 13-94-101 through 13-94-111](#)

Connecticut

Department of Social Services

- No definitive office of public guardian/conservator.
- The Commissioner of Social Services can be appointed as a conservator for individuals sixty years of age or older. The Commissioner can delegate conservator duties to other employees of the Department of Social Services.
- The Commissioner of Social Services is appointed by the Governor via [§17b-1](#).
- Relevant statutes: [§45a-651](#)

Florida

Department of Elder Affairs

- The [Office of Public & Professional Guardians](#) appoints local public guardians to individuals of all ages and manages 16 local offices statewide.
- The Executive Director of the Office is appointed by the Secretary of Elder Affairs.
- Relevant statutes: [Chapter 744, Part II](#)

Georgia

County Model and Department of Human Services

- If no one is available, a volunteer to the court can be appointed as guardian. If there is none, the county guardian can be appointed. If there is no county guardian, the Department of Human Services can be appointed as guardian.
- County administrators serve as the ex officio county guardian and conservator.
- Relevant statutes: [OCGA §29-4-3](#), [OCGA §29-8-1](#)

Hawaii

Judicial Branch

- The Public Guardian is appointed by the Chief Justice of the Supreme Court.
- Relevant statutes: [Chapter 551A](#)

Idaho

County Model

- The Board of County Commissioners can create a Board of Community Guardian; counties in the same judicial district can share a single Board. Board members are volunteers.

- The Board can locate guardians and/or conservators or serve as the guardian/conservator themselves.
- Relevant statutes: [15-5-601 through 603](#).

Illinois

Independent

- The [Office of State Guardian](#) is within the Illinois Guardianship and Advocacy Commission. The Commission is comprised of 11 citizens appointed by the Governor as volunteers. The OSG has 9 regional offices.
- The Governor also appoints a public guardian in each county (The Office of the State Guardian can serve as an interim public guardian if there is a vacancy in a county with a population of less than 500,000)
- In counties with a population of 1,000,000, the chief judge of the Circuit Court appoints a public guardian.
- Relevant statutes: [Guardianship and Advocacy Act](#), [Probate Act of 1975](#)

Indiana

Volunteers, Administered by Judicial Branch

- The Office of Court Services contains the [Adult Guardianship Office](#). The Adult Guardianship Office oversees Volunteer Advocates for Seniors & Incapacitated Adults (VASIA) programs.
- No state-mandated public guardian exists.
- Relevant statutes: [IC 29-3-8.5](#), [Volunteer Advocates for Seniors or Incapacitated Adults](#)

Division of Aging Services

- As funding is available, an Adult Guardianship Services program should be established and administered by a director on a statewide basis.
- NOTE: There is no evidence that this program is currently being deployed.
- Relevant statutes: [IC 12-10-7](#), [Adult Guardianship Services](#)

Iowa

Department of Health & Human Services

- The Office of the Public Guardian is within the Department of Health and Human Services; the director of DHHS appoints the State Public Guardian, who is the administrator of the state office.
- The OPG establishes local offices of public guardian based on available funding.
- Relevant statutes: [§231E.3](#)

Kansas

Independent, volunteer-based

- The [Kansas Guardianship Program](#) is an independent council with a 7-member board, 6 of which are appointed by the governor. This council appoints volunteers to serve as guardians when needed.
- Relevant statutes: [§74-96](#)

- NOTE: The [Judicial Branch website](#) claims the program is located within the branch and has a 10-member board, but this cannot be statutorily confirmed.

Kentucky

Cabinet for Health and Family Services

- The Division of Adult Guardianship is the public guardianship program for the state; they have offices in all regions of the state to serve the need.
- Relevant statutes: [§210.290](#)

Louisiana

Nonprofit Only

- [Louisiana Guardianship Services](#) is a private, not-for-profit organization that has contracts with the Office of Elderly Affairs and the Department of Health in order to provide guardians when needed.

Maine

Department of Health and Human Services

- The Department of Health and Human Services serves as the public guardian or conservator.
- Relevant statutes: 18-C [§5-701](#) through 713

Maryland

Department of Human Services

- Statutorily, DHS is responsible for implementing the Adult Protective Services Program, which includes guardianships. See [Title 14, Adult Protective Services](#).

Department of Social Services

- For those 18-64, public guardians are provided by local Department of Social Services offices.

Department of Aging

- For those 65 and older, the Department of Aging serves as public guardian.

Local

- An [Adult Public Guardianship Review Board exists](#) in each county and reviews cases every 6 months to evaluate public guardianships.

Massachusetts

Nonprofit only

- [Public Guardian Services](#) is a non-profit organization that provides guardianship services to select Massachusetts counties. They are currently serving as a pilot project in collaboration with state agencies and courts to evaluate and document unmet needs in these counties.

Michigan

No Statutes

- There are no state statutes requiring local public guardians, but some counties have an Office of the Public Guardian to fulfill the need.
- NOTE: HB 4909-49012 and HB5047 are currently in the legislature. These would create an Office of State Guardian within the Department of Health & Human Services as an autonomous entity with a Board. The Executive Director would be a Governor appointee.

Minnesota

Department of Human Services

- For individuals with intellectual disabilities, the Commissioner of Human Services may be nominated to act as public guardian. The Commissioner can reject the nomination but the person, parents, spouse, or near relatives can file a petition regardless. Counties will carry out day to day management of guardianships.
- Relevant statutes: [§9525.3010 through §9525-3100](#)
- No other public guardian information available. Previous structures appear to have been appealed.

Mississippi

Judicial Branch

- If no other guardian can be found, the Chancery Court Clerk of the county in which the proceedings were filed will serve as the respondent's guardian.
- Relevant statutes: [§93-20-308](#).

Missouri

County Model

- Public administrators, elected every four years, serve as the ex officio public guardian and conservator in that county. St. Louis has an appointed public administrator.
- Under specific circumstances related to county classification, a social service agency can serve as guardian.
- Relevant statutes: [§473.730](#), [§475.055](#)

Montana

Department of Public Health and Human Services

- The court can appoint an agency of the state or federal government that is authorized or required by statute to provide services, or a designee of the agency.
- [Adult Protective Services](#) is the designated agency within Montana that serves as guardian.
- Relevant statutes: [§72-5-312](#)

Nebraska

Judicial Branch

- The [Office of the Public Guardian](#), as established in 2014, provides guardianship services for the state and recruits individuals to serve as guardians and conservators.
- The Office is guided by an [Advisory Council](#); members are appointed by the Administrator of the Courts.
- The Public Guardian is appointed by, and directly responsible to, the State Court Administrator
- Relevant statutes: [§30-4101 through 4118](#), Public Guardianship Act

Nevada

County Model

- The Board of County Commissioners must establish an Office of Public Guardian
 - o The Board can appoint a public guardian, designate a county official as ex officio public guardian, designate another county officer to serve as public guardian, contract with another county to have the same designated public guardian, or, if the county has a population of less than 100,000, contract with a private professional guardian.
- Relevant statutes: [NRS 253.150 through NRS 253.250](#)

New Hampshire

Nonprofit

- The [Office of Public Guardian](#) is a private, non-profit corporation; it was a state agency from 1979 to 1983, at which point it became independent.
- Statutorily, the Department of Health and Human Services, with approval of the Governor and NH Supreme Court, must contract with an organization to provide guardianship services.
- Relevant statutes: [Chapter 547-B, Public Guardianship and Protection Program](#)

New Jersey

Independent

- The [Office of the Public Guardian for Elderly Adults](#) is allocated to the Department of Human Services but is statutorily independent of any supervision or control by the Department.
- The Public Guardian is appointed by the Governor with advice and consent of the Senate.
- The Office only serves adults over the age of 60.
- Relevant statutes: [52:27G, Public Guardian for Elderly Adults Act](#)

New Mexico

Independent

- The [Developmental Disabilities Council](#) is an Adjunct Agency of the Executive Branch (See §9-1-6)
- The [Office of Guardianship](#) is located within the Developmental Disabilities Council; guardianship can be provided to any income-eligible adult who is alleged to be incapacitated.
- The head of the office must be an attorney and is hired by the Executive Director of the DDC.
- Relevant statutes: [Chapter 28, Article 16B, Office of Guardianship Act](#); [Chapter 28, Article 16A, Developmental Disabilities Act](#)

New York

No State Statutes

- No formal public guardian designated.
- A corporation or public agency, including a local department of social services, can be appointed as guardian.
- Community guardian programs are nonprofits contracted with local social services agencies to provide conservatorship or committee services. [Committee services are not defined]
- Relevant statutes: [§81.03](#), [§473-d](#)

North Carolina

County Model

- Every county clerk can appoint a public guardian for a term of eight years.
- Employees of the [Department of Health and Human Services](#) are often appointed as public guardians.
- Relevant statutes: [§35A-1270](#)

North Dakota

Department of Health and Human Services

- An individual from an agency, nonprofit group home, or suitable institution can be designated as a guardian, provided they are not providing direct care to the individual, posing a conflict of interest.
- The Department of Health and Human Services can create a unified system of guardians for eligible adults via [§50-06-24](#).
- There is no direct public guardian.
- Relevant statutes: [§30.1-28-11](#)

Ohio

Department of Developmental Disabilities

- Any agency providing protective services under contract with the Department of Developmental Disabilities can be nominated as guardian of a person with developmental disabilities. The agency can accept or reject the nomination.
- No direct public guardian.
- Relevant statutes: [§5123.55 through 59](#)

Oklahoma

Department of Human Services

- The Office of Public Guardian pilot program is subject to the availability of funds until it is expanded statewide.
- Relevant statute: [§30-6-101](#)

Oregon

Independent

- The [Oregon Public Guardian](#) program is within the Office of the Long-Term Care Ombudsman, and independent agency (§441.403)
- The Public Guardian is appointed for a four-year term by the Long Term Care Ombudsman in consultation with the Residential Ombudsman and Public Guardianship Advisory Board
- Counties can also create an office of public guardian
- Relevant statutes: [§125.675 through §125.694](#)

Pennsylvania

Various support agencies

- Agencies should provide guardianship services as of [Title 20 §5551 through §5555](#).
 - o Unclear which agencies should be providing services
- The Department of Human Services, Bureau of Administrative Services, Support Services, has a [Guardianship Program](#). It provides guardianship services to individuals in state hospitals, state centers, and the South Mountain Restoration Center.

Rhode Island

Volunteer-Only, State Run

- Good Samaritan guardians can be appointed if the proposed ward is unable to pay for the services of a guardian.
- The Office of Healthy Aging operates a [Volunteer Guardianship Program](#) to find guardians for individuals 60 years or older.
- No direct public guardian.
- Relevant statutes: [§33-15-4.1](#)

South Carolina

No State Statutes

- No public guardian program available at the state level.
- The Director of the Department of Mental Health or their designee can serve as a conservator if they are a patient of a state mental health facility, in accordance with [§62-5-104](#).

South Dakota

Department of Human Services

- The Secretary of the [Department of Human Services](#) can be appointed as a guardian for an adult under the Department's care, or to whom it is providing services or financial assistance if there is no other suitable guardian.
- Any adult, public agency, bank or trust, or nonprofit corporation can be appointed as a guardian, conservator, or both.
- Relevant statute: [§29A-5-110](#)

Tennessee

Independent

- The Commission on Aging & Disability runs the [Public Guardianship for the Elderly](#) program.
- The Commission contracts with agencies in each of the nine development districts to hire a district public guardian. Districts can also use volunteer guardians and develop programs to train volunteer guardians.
- Relevant statutes: [71-2-101 through 71-2-118](#) (Commission on Aging and Disability), [34-7-101 through 34-7-105](#) (Public Guardianship for the Elderly)

Texas

Department of Health and Human Services

- Texas Health and Human Services will provide [guardianship](#) for adults with a disability or who are age 65 or older, and a victim of abuse, neglect (including self-neglect), or exploitation. The Department of Family and Protective Services can also refer adults or youth aging out of conservatorships to HHS.
- Relevant statutes: [Texas HR Code §48.209](#)

Utah

Department of Health and Human Services

- The [Office of Public Guardian](#) provides guardians to adults in need, and can also utilize volunteer guardians and contract guardian services. The Office can only be appointed guardian or conservatory if the office agreed to the appointment in advance or specifically requested it.
- The executive director of DHHS appoints the Director of the Office of Public Guardian
- Relevant statutes: [§26B-6-301 through §26B-6-309](#)

Vermont

Agency of Human Services

- The [Office of the Public Guardian](#) within the Department of Disabilities, Aging, and Independent Living, provides services to adults with developmental disabilities or who are age 60 or older with mental disabilities, in addition to representative payee services.
- The Commissioner of the Department hires individuals to serve as public guardians, and also may be directly appointed as guardian to adults with developmental disabilities. If directly appointed, the Commissioner can delegate their duties as guardian to staff.
- Relevant statutes: [13 VSA §3091 through §3096](#), [18 VSA §9301 through §9317](#)

Virginia

Department for Aging and Rehabilitative Services

- The Division of Community Living within the Department for Aging and Rehabilitative Services is authorized to contract with human service agencies to provide public guardianship services as a part of the [Virginia Public Guardianship Program](#).
- The program is currently capped at serving 1,349 individuals; space is limited.

- The Public Guardian and Conservator Advisory Board assists in the coordination and management of local and regional programs appointed to act as public guardians and conservators and consists of 15 governor-appointed members
- Relevant statutes: [§51.5-149 through §51.5-151](#)

Washington

Judicial Branch

- The [Office of Public Guardianship and Conservatorship](#) exists within the Administrative Office of the Courts.
- The Office Administrator serves at the pleasure of the Supreme Court.
- The Office contracts with professional guardians and conservators or agencies to provide services to adults whose income does not exceed 200% of the Federal Poverty Level.
- The Office and Office Administrator is explicitly not allowed to serve as guardian; their mandate is to contract with others for guardianship services.
- Relevant statutes: [§2.72.005 through §2.72.055](#)

West Virginia

Nonprofit Supported, Department of Health and Human Services

- There is no designated public guardian, but the Department of Health and Human Services licenses nonprofit corporations to be guardians and conservators.
- Relevant statutes: [§44A-1-8](#)

Wisconsin

Nonprofit Supported, Department of Health Services

- A private nonprofit or unincorporated association approved by the court can be appointed as guardian if no other suitable individual is available and if approved by the Department of Health Services, this is called [Corporate Guardianship](#).
- Relevant statutes: [§54-15](#)

Wyoming

No State Statutes, Nonprofit Supported

- The Wyoming Public Guardianship laws were repealed in 1998 (§3-7-101)
- The [Wyoming Guardianship Corporation](#) is one such organization that provides guardians and conservators when no individuals are available.

RECOMMENDATIONS

Adopted on April 1, 2021 for DNHRQAC Review



Joint Legislative Oversight
& Sunset Committee

The Joint Legislative Oversight & Sunset Committee (“JLOSC” or “Committee”) adopted the following recommendations for the review of the Delaware Nursing Home Residents Quality Assurance Commission (“DNHRQAC”).

JLOSC considered staff drafted recommendations after their completion of research and analysis, and observations made during the DNHRQAC presentation meeting on February 16, 2021.

JLOSC adopted the following recommendations on April 1, 2021.

Adopted Recommendation 1, Option 1: Continue¹

Option 1: The Delaware Nursing Home Residents Quality Assurance Commission shall continue, subject to any further recommendations that JLOSC adopts.

—OR—

~~Option 2:~~ The Delaware Nursing Home Residents Quality Assurance Commission is terminated, and the Committee will sponsor legislation to implement this recommendation. Option 2 not adopted.

Adopted Recommendation 2: General Statutory Updates & Technical Corrections

JLOSC will sponsor a bill to make any technical corrections to DNHRQAC’s entire governing statute, Chapter 79, Title 29.²

¹ Under §10213(a), Title 29, the Committee must first determine whether there is a genuine public need for an agency under review. To meet this requirement, the Committee may select to continue or terminate the entity under review.

² The Committee’s legislative attorney will draft any legislation resulting from approved recommendations, unless otherwise noted.

Adopted Recommendation 3, Option 1: Administrative and Budgetary Responsibility

Option 1: JLOSC shall sponsor legislation specifying that administrative and budgetary responsibilities related to DNHRQAC are the responsibility of the Department of Safety and Homeland Security.³

~~-OR-~~

~~Option 2:~~ ~~JLOSC shall sponsor legislation specifying that administrative and budgetary responsibilities related to DNHRQAC are the responsibility of the Department of Health and Social Services.~~⁴

Adopted Recommendation 4: Name Change

DNHRQAC shall explore changing its name to one more easily recognizable to long-term care residents, the public, and other stakeholders.

Example: DCARES: Delaware Commission for Aging Residents' Safety.

Adopted Recommendation 5: Criteria for Facility Visits

DNHRQAC shall develop a criteria and rubric for visits to long-term care facilities. This rubric shall be published to its website and included in the annual report.

Adopted Recommendation 6: Eagle's Law Update

DNHRQAC shall engage the necessary stakeholders to report and recommend to the Department of Health and Social Services and the General Assembly needed changes to Eagle's Law, Chapter 11, Title 16 of Delaware Code, no later than January 31, 2022.

Adopted Recommendation 7: Staffing Ratios at Assisted Living Facilities

DNHRQAC shall conduct the required research to report and recommend to the Department of Health and Social Services and the General Assembly the necessary policy to adopt staffing ratios at assisted living facilities no later than January 31, 2022.

³ The Delaware [Department of Safety and Homeland Security](#) is home to two advocacy councils that work to improve the quality of life for Delawareans with disabilities.

⁴ Recommendation 1, Option 2 not adopted.

Recommendation 8: Elder Caucus

~~DNHRQAC shall provide information to the General Assembly relating to the creation of an Elder or Aging Caucus with a focus on the structure other legislatures and governing bodies have utilized.~~

Recommendation 8 tabled on April 1, 2021, not adopted.

Adopted Recommendation 9: Annual Report Updates

DNHRQAC shall add the following information to its annual report:

- a. Rubric, criteria, findings, and recommendations from facility visits.**
- b. Any recommendations, including all correspondence, made to the Department of Health and Social Services, the Governor, the General Assembly, and other stakeholder organizations.**
- c. Summary of legislative lobbying efforts, including the Commission's position on legislation and regulations effecting long-term care residents.**
- d. Policy, advocacy, and legislative goals for the upcoming year.**
- e. Breakdown of Executive Director duties including the percentage of time devoted to each duty.**

Adopted Recommendation 10: Follow Up Reporting

DNHRQAC shall submit a status report, no later than January 31, 2022, updating the JLOSC on the implementation process of the adopted recommendations as well as a succession plan for the role of Executive Director, including a job description.

Adopted Recommendation 11, Option 1: Release from Review

Option 1: DNHRQAC is released from review upon enactment of JLOSC-sponsored legislation and submission of the status report.

~~-OR-~~

~~Option 2: DNHRQAC is held over and shall report to the Committee in January 2022.~~⁵

⁵ Recommendation 11, Option 2 not adopted.