

# STATE OF COLORADO

## OFFICE OF THE GOVERNOR

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**John W. Hickenlooper**  
Governor

April 7<sup>th</sup>, 2015

The Honorable Dickey Lee Hullinghorst  
Speaker  
Colorado House of Representatives  
State Capitol  
200 East Colfax Ave.  
Denver, CO 80203

The Honorable Bill Cadman  
President  
Colorado Senate  
State Capitol  
200 East Colfax Ave.  
Denver, CO 80203

### **RE: Senate Bill 15-204 (Autonomy of the Child Protection Ombudsman)**

Dear Speaker Hullinghorst and President Cadman:

In 2010, the General Assembly created the Child Protection Ombudsman (“Ombudsman”) within the Department of Human Services (“DHS”) by a unanimous vote of both the Colorado House of Representatives and Senate. The bill came to former Governor Bill Ritter from the Child Welfare Action Committee as a recommendation for systemic improvement to Colorado’s child protection system. The Ombudsman serves the important function of investigating grievances pertaining to Child Protection Services and serving as a resource for all involved with the child welfare system. Core functions include receiving complaints, conducting investigations, and educating the public on child mistreatment. The Ombudsman has exclusive authority to conduct independent and impartial case reviews over the state’s child protection system.

SB 15-204 would remove the Ombudsman from the Executive Branch, and reestablishes it as a General Assembly agency. The bill is ostensibly based on the faulty premise that the Ombudsman does not have autonomy from DHS leadership, which has the ability to frustrate or interfere with the Ombudsman’s mission for political or other improper purposes.

To date, we have seen no evidence that would support these allegations. In fact, the record reflects that the Ombudsman has exercised its authority independently, and that the DHS has followed recommendations advanced by the Ombudsman. Furthermore, the Office of the State Auditor recently conducted an independent performance audit of the Ombudsman. The State Auditor’s findings further support this position, stating that it “did not find evidence that [the DHS] had infringed upon the Program’s independence.”

We can all agree that a basic tenet for any ombudsman, auditor, or inspector general is structural and organizational independence. However, SB 15-204 fails to utilize the strongest autonomy available by not granting “Type 1 transfer” agency status to the Ombudsman. Crafting the Ombudsman and oversight board into a Type 1 agency, with additional statutory support, would provide for full autonomy from the DHS organizational structure, and would grant full independence in adjudications, operations, and management. Instead, SB 15-204

merely shifts the Ombudsman to a new location under the General Assembly, and under a new board, yet grants none of the autonomy that would be gained under Type 1 agency status.

Furthermore, the Ombudsman's statutory duties are responsibilities that fall within the purview of the Executive Branch. The Ombudsman's core functions include receiving complaints, conducting investigations, and educating the public on child mistreatment. The Colorado Constitution explicitly directs that one branch shall not exercise powers properly belonging to another. We are very concerned that the proposed bill may violate the separation of powers.

Like the General Assembly, we believe that transparency and autonomy can always be strengthened, and are critical for good government. We are also committed to protecting the Ombudsman's important role in ensuring children's safety, and that the Ombudsman must be independent. We urge the General Assembly to reconsider this legislation and pursue a different approach that: (1) establishes a "Type 1" agency and board to oversee the Ombudsman; (2) proscribes in statute the tools necessary to ensure independence, specifically independent budget, personnel, hiring/firing, and contract decision making; and, (3) remains consistent with executive functions, which the Ombudsman fulfills, by retaining them under the Executive Branch.

We stand ready to work with you on a better path forward – one that both strengthens the Ombudsman's independence, but also respects the proper roles of the different branches of state government.

Sincerely,

A handwritten signature in blue ink, appearing to read "John Hickenlooper". The signature is fluid and cursive, with a large initial "J" and "H".

John Hickenlooper  
Governor

cc: The Honorable Linda Newell, Colorado Senate  
The Honorable Kevin Lundberg, Colorado Senate  
The Honorable Jonathan Singer, Colorado House of Representatives