

Date of Hearing: April 7, 2021

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Lisa Calderon, Chair

AB 317 (Patterson) – As Introduced January 26, 2021

SUBJECT: Foster care

SUMMARY: Reassigns the responsibility for appointing the foster care ombudsperson. Specifically, **this bill:**

- 1) Requires the Secretary of the Health and Human Services Agency (CHHS), rather than the director of the California Department of Social Services (CDSS) to appoint a foster care ombudsperson.
- 2) Requires the ombudsperson, to be independent and not, in the exercise of their discretion, be directly or indirectly controlled, supervised, or directed by the director of CDSS.

EXISTING LAW:

- 1) States that the purpose of foster care law is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, neglected, or exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of harm. (Welfare and Institutions Code Section [WIC] 300.2)
- 2) Enumerates rights of minors and nonminors in foster care, including but not limited to the right to: live in a safe, healthy, and comfortable home where they are treated with respect; be free from physical, sexual, emotional, or other abuse, corporal punishment, or exploitation; receive adequate and healthy food, clothing, and, age-appropriate allowance; be placed in the least restrictive setting possible; have a placement that utilizes trauma-informed and evidence-based deescalation and intervention techniques; receive medical, dental, vision, mental health and substance use disorder services, and reproductive and sexual health care; have a caregiver, child welfare and probation personnel, and legal counsel who have received instruction on cultural competency and sensitivity relating to sexual orientation, and gender identity and expression; attend religious services and activities of their choice; be involved in the development of their own case plan and plan for permanent placement; review their own case plan and plan for permanent placement, if they are 10 years of age or older, and receive information about their out-of-home placement and case plan, including being told of changes to the plan; and, be provided with contact information for the ombudsperson, at the time of each placement, and be free from threats or punishment for making complaints. (WIC 16001.9)
- 3) Establishes CHHS as an agency in state government and requires the Secretary of CHHS to be generally responsible for the sound fiscal management of each department, office, or other unit within the agency. Further requires the secretary to review and approve the proposed budget of each department, office, or other unit; hold the head of each department, office, or other unit responsible for management control over the administrative, fiscal, and program performance of his or her department, office, or other unit; review the operations and evaluate the performance at appropriate intervals of each department, office, or other unit; and, seek continually to improve the organization structure, the operating policies, and the

management information systems of each department, office, or other unit. (Government Code Section [GOV] 12800)

- 4) Specifies that CDSS is within CHHS. (GOV 12803)
- 5) Requires the director of CDSS to be responsible for the management of the department; administer the laws pertaining to the administration of public social services, except health care services and medical assistance; observe and report to the Governor on the conditions on public social services; perform the disability determination function pursuant to the federal Social Security Act; formulate adopt, amend, or repeal relevant regulations and general policies; and, perform other duties as may be prescribed by law. (WIC 10553)
- 6) Establishes the State Foster Care Ombudsperson (Ombudsperson) as an autonomous entity within the department for the purpose of providing children who are placed in foster care with a means to resolve issues related to their care, placement, or services. (WIC 16161)
- 7) Requires the director of CDSS, in consultation with a committee of interested individuals, to appoint an Ombudsperson qualified by training and experience to perform the duties of the office for a term of four years. Further, authorizes the director to reappoint the Ombudsperson for consecutive terms. Further, requires the director to select the committee members, the majority of whom shall be representatives of children's advocacy organizations and current or former foster youth. (WIC 16162)
- 8) Requires the Ombudsperson to amongst other things, disseminate information and provide training and technical assistance to foster youth and relevant parties on the rights of children and youth in foster care, reasonable and prudent parent standards, and the services provided by the Office of the Ombudsperson; investigate and attempt to resolve complaints made by or on behalf of children placed in foster care, related to their care, placement, or services; and, have access to copies of any record of a state or local agency, and contractors with state and local agencies, that is necessary to carry out their responsibilities, and may meet or communicate with any foster child in their placement or elsewhere. (WIC 16164)
- 9) Authorizes the Ombudsperson, in his or her efforts to resolve complaints related to foster care, to conduct whatever investigation they deem necessary, attempt to resolve the complaint informally, and submit a written plan to the relevant state or county agency recommending a course of action to resolve the complaint. (WIC 16165)

FISCAL EFFECT: Unknown

COMMENTS:

Child Welfare Services (CWS): The purpose of California's CWS system is to protect children from abuse and neglect and provide for their health and safety. When children are identified as being at risk of abuse, neglect or abandonment, county juvenile courts hold legal jurisdiction; these children are served by the CWS system through the appointment of a social worker. Through this system, there are multiple opportunities for the custody of the child, or their placement outside of the home, to be evaluated, reviewed and determined by the judicial system, in consultation with the child's social worker, to help provide the best possible services to the child. The CWS system seeks to help children who have been removed from their homes reunify with their parents or guardians, whenever appropriate. However, the court may determine that an

alternate permanent placement is more fitting and give preference to relatives or nonrelative extended family members. As of October 1, 2020, there were 60,045 youth placed in California's child welfare system.

Foster Youth Bill of Rights: AB 899 (Liu), Chapter 683, Statutes of 2001, adopted California's Foster Youth Bill of Rights and required: social workers and probation officers to periodically inform children of these rights in an age-appropriate manner; the Office of the State Foster Care Ombudsperson (Office) to, in consultation with stakeholders, develop and disseminate information on these rights; and any facility licensed to provide foster care for six or more children to post a listing of these rights. Two previous bills—AB 2923 (Bates) of 1994 and SB 1974 (Watson) of 1996—sought to codify the rights of children in foster care but were vetoed by then-Governor Pete Wilson. Proponents of AB 899 acknowledged that regulations at the time contained a number of rights of foster children, but they argued that the lists of these rights tended to vary and were not conveyed consistently to foster youth. Staff of the Office also acknowledged at the time that most of the rights contained in AB 899 were consistent with those provided by the Office to youth, but the Office struggled to uniformly convey this information. The Office also pointed to the lack of a clear process of accountability when youth were not provided with this information.

The Foster Youth Bill of Rights has been amended to add and clarify rights over time, most recently with AB 175 (Gipson), Chapter 416, Statutes of 2019, which clarified that all children placed in foster care, either voluntarily or after being adjudged a ward or dependent of the juvenile court have their rights delineated in the Foster Youth Bill of Rights. Additionally, it provided that these rights also apply to nonminor dependents except in circumstances when they conflict with nonminor dependents' retention of their legal decision-making authority as an adult. The current list of rights for all minors and nonminors in foster care includes 41 enumerated rights, such as the right to: live in a safe, healthy, and comfortable home where they are treated with respect; be free from any abuse, including physical, sexual, emotional, or corporal punishment; receive adequate and healthy food, clothing; receive medical, dental, vision, mental health services, and substance use disorder services; and the ability to be involved in the development of their own case plan.

Foster Care Ombudsperson: The Office of the Foster Care Ombudsperson was created to provide foster youth with an independent forum for review and resolution of concerns related to the care, placement, or services provided to children and youth in foster care. The Office is responsible for investigating and resolving complaints made by foster youth regarding their care and compiling data regarding contacts, investigations, and unresolved complaints. The Office is also responsible for disseminating information relating to the Foster Youth Bill of Rights and ensuring that children and youth in foster care know their rights. Additionally, the Office is responsible for reviewing amendments to laws applicable to foster youth at the end of every two-year Legislative Session and determining whether updates to the Foster Youth Bill of Rights should be recommended as a result of legislation passed during the previous legislative session.

Need for this bill: According to the author's office, "The Office of the State Foster Care Ombudsman ("Ombudsperson") was created in 1998 by the Legislature in response to the need to protect California's children raised in the foster care system. The Ombudsperson has three main responsibilities: inform foster children about their rights and what services are available through the office; investigate and resolve complaints made by foster youth regarding their care; and compile data regarding contacts, investigations, and unresolved complaints.

“Ombudspersons are supposed to be free and independent from the agencies they watchdog. Most, if not all, such entities are either appointed by an authority that is different from the authority it is supposed to watchdog or have substantive guarantees of its functional independence.

“Not so when it comes to our foster children. Their Ombudsperson has neither the substantive guarantees of independence of the Long Term Care Ombudsperson nor the appointment independence. It is appointed, funded, and housed by the department it is supposed to watchdog. As one child advocacy group noted: “This structure creates direct conflicts of interest—or, at the very least, the appearance of conflicts—because the department director controls all aspects of the program’s operation and allocation of resources. This means the ombudsman has no independent authority to recommend policy or program improvements.”

“[This bill] will provide much-needed independence to the office of the Foster Care Ombudsman by making the office an appointee of the Secretary of California Health and Services, rather than the Director of the department which this ombudsperson oversees (Department of Social Services).”

PRIOR AND RELATED LEGISLATION:

AB 1988 (Patterson) of 2020, would have required the Governor to appoint the Foster Care Ombudsperson, subject to confirmation by the Senate. AB 1988 was set to be heard in the Assembly Human Services Committee but the hearing was postponed by the committee.

AB 175 (Gipson), Chapter 417, Statutes of 2019, amongst other things, made changes to Office’s responsibilities including collection and sharing of data related to the complaints by or on behalf of children placed in foster care, including a requirement that the California Department of Education share education rights complaints with the Office; requiring the materials used to inform foster children and youth of their rights be those materials disseminated by the Office; and, requiring the Office to review amendments to laws applicable to foster youth at the end of every two-year Legislative Session and determine whether updates to the Foster Youth Bill of Rights should be recommended as a result of legislation passed during the previous legislative session.

REGISTERED SUPPORT / OPPOSITION:

Support

Children’s Advocacy Institute (Sponsor)
Children Now

Opposition

None on file

Analysis Prepared by: Debra Cooper / HUM. S. / (916) 319-2089