

Date of Hearing: April 25, 2023

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Corey A. Jackson, Chair

AB 772 (Jackson) – As Amended April 17, 2023

SUBJECT: State Foster Care Ombudsperson

SUMMARY: Clarifies the types of facilities the State Foster Care Ombudsperson (Ombudsperson), as part of the Office of the Foster Care Ombudsperson's (OFCO) efforts to resolve complaints related to foster care, has the right to enter any licensed or approved children's residential facility. Extends the length of time a state or county agency, or contractor has to submit a written response to the Ombudsperson, from 30 calendar days to 30 business days. Specifically, **this bill:**

- 1) Clarifies that the types of facilities the Ombudsperson is authorized to enter upon providing identification by cross referencing the corresponding code section, which includes the following definitions:
 - a) "Residential facility" means any family home, group care facility, or similar facility determined by the California Department of Social Services (CDSS), for 24-hour nonmedical care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual;
 - b) "Foster family agency" means any public agency or private organization, organized and operated on a nonprofit basis, engaged in any of the following:
 - i) Recruiting, certifying, approving, and training of, and providing professional support to, foster parents and resource families;
 - ii) Coordinating with county placing agencies to find homes for foster children in need of care; or,
 - iii) Providing services and supports to licensed or certified foster parents, county-approved resource families, and children to the extent authorized by state and federal law.
 - c) "Foster family home" means any residential facility providing 24-hour care for six or fewer foster children that is owned, leased, or rented and is the residence of the foster parent or parents, including their family, in whose care the foster children have been placed. The placement may be by a public or private child placement agency or by a court order, or by voluntary placement by a parent, parents, or guardian; and,
 - d) "Small family home" means any residential facility, in the licensee's family residence, that provides 24-hour care for six or fewer foster children who have mental disorders or developmental or physical disabilities and who require special care and supervision as a result of their disabilities.

- 2) Extends the amount of time, if the Ombudsperson makes a written recommendation to resolve a complaint, the state or county agency, or contractor, has to submit a written response to the Ombudsperson from within 30 calendar days, to 30 business days.

EXISTING LAW:

- 1) Establishes a state and local system of child welfare services, including foster care, for children who have been adjudged by the court to be at risk of abuse and neglect or to have been abused or neglected, as specified. (Welfare and Institutions Code Section [WIC] 202)
- 2) Establishes a system of juvenile dependency for children for specified reasons, and designates that a child who meets certain criteria is within the jurisdiction of the juvenile court and may be adjudged as a dependent child of the court, as specified. (WIC 300 *et seq.*)
- 3) Enumerates the 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 utilize trauma-informed and evidence-based de-escalation 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 identities 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)
- 4) Establishes the OFCO as an autonomous entity within CDSS 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)
- 5) Requires the Ombudsperson to, among 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 OFCO; investigate and attempt to resolve complaints made by or on behalf of children placed in foster care, related to their care, placement, or services; decide, in its discretion, whether to investigate a complaint, or refer complaints to another agency for investigation; update a complainant on the progress of the investigation and notify the complainant of the final outcome; document the number, source, origin, location, and nature of complaints; 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)

- 6) Authorizes the Ombudsperson, as part of OFCO's efforts to resolve complaints related to foster care, to do all of the following:
 - a) Establish policies and procedures for receiving and processing complaints, conducting investigations, and reporting findings;
 - b) Conduct whatever investigation reasonably related to the complaint and to foster care that the ombudsperson deems necessary, including: access to, and inspection of, premises within the control of a state or local agency or a contractor with a state and local agency, and access to, and inspection of, a licensed or approved children's residential facility, at any time, with or without prior notice, for the purpose of carrying out the duties of the office; and, grants the Ombudsperson access to records and residents at all times for the purpose of carrying out the duties of the OFCO;
 - c) Defines "access" to mean the right to: enter any licensed or approved children's residential facility, upon providing identification; communicate privately and without restriction with any resident, caregiver, personnel, or volunteer; review and copy any resident record or caregiver file; observe all resident and staff areas of a facility; review and reproduce administrative records, policies, and documents of any licensed or approved children's residential care facility; review and copy all licensing records maintained by the state, county, or agency, and review and reproduce any records, except sealed court records, which may be obtained only by subpoena or other lawful court order; interview all relevant witnesses; observe proceedings and attend hearings, consistent with existing law; attempt to resolve the complaint; submit a written plan to the relevant state or county agency, or a contractor with the state or local agency, recommending a course of action to resolve the complaint; and,
 - d) Requires, if the Ombudsperson makes a written recommendation, the state or county agency, or contractor, to submit a written response to the Ombudsperson within 30 calendar days. (WIC 16165)
- 7) Requires social workers to provide foster children with the toll-free number for the OFCO and verbal or written information regarding the existence and purpose of the office. (WIC 16167)
- 8) Defines the following terms: residential facility; foster family agency; foster family home and small family home to include a "community care facility." (Health and Safety Code Section 1502(a)(1)(4)(5)(6))

FISCAL EFFECT: Unknown, this bill has not been analyzed by a fiscal committee.

COMMENTS:

Background: *Child Welfare Services (CWS)*. California's CWS system exists to protect children from abuse and neglect, and in doing so, to provide for their health, safety, and overall well-being. When suspicions of abuse or neglect arise, often as a result of a report by a mandated reporter like a healthcare provider or teacher, Child Protective Services (CPS) is tasked with investigating the report. If the allegation of abuse or neglect is substantiated, it is then

determined whether it is in the best interest of the child to remain in their parent's custody or be placed within the CWS system. If a child is suspected to be at risk of neglect, abuse, or abandonment, the juvenile court holds legal jurisdiction, and the CWS system appoints a social worker to ensure that the needs of the youth are met.

CDSS secures federal funding to support child welfare services programs, provides statewide best practices training for social workers, and conducts program regulatory oversight and administration, and is responsible for the development of policy while also providing direct services such as adoption placements. Foster parents receive a monthly payment to meet the needs of the youth placed in their care and is intended to cover food, clothing, transportation, and vary based on the child, their age and any special needs they may have.

As of January 1, 2023, there are 52,265 youth between birth and up to 21 years old in foster care.

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 OFCO 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.

The Foster Youth Bill of Rights has been amended to add and clarify rights over time and includes 41 enumerated rights, such as the right to receive adequate food, clothing, including the right to receive grooming and hygiene products regardless of sexual orientation and gender identity and expression; the right to an allowance to all youth regardless of placement type; and specifying that the allowance be age-appropriate.

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 OFCO is responsible for investigating and resolving complaints made by foster youth regarding their care and compiling data regarding contacts, investigations, and unresolved complaints. The OFCO 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 OFCO 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.

Author's Statement: "This bill will bring transparency to facilities where foster youth are residing, by clarifying the types of facilities the Office of the Foster Care Ombudsperson is allowed to access and inspect to ensure that the care, placement, and services of California's foster youth are being appropriately addressed. In an effort to guarantee that there is sufficient time for agencies to respond to any written recommendations made by the Ombudsperson as a result of a complaint, this bill would extend the timeline for an agency to respond."

Need for this bill: This bill clarifies the types of facilities the foster care Ombudsperson is authorized to access when the OFCO is attempting to resolve complaints related to foster care. In order to reduce ambiguity as it relates to the facilities that the Ombudsperson has the right to access and inspect upon providing identification, this bill seeks to define the specific facilities.

Equity Implications: Foster youth are among the most vulnerable when it comes to having a voice to resolve complaints related to their care, placement, or services. Often, these youth are caught between a maze of court hearings, placement changes, and uncertainty in their home life. The role that the OFCO plays in serving as these youth's voice is an imperative and it is equally important that there is transparency when it comes to the types of facilities and manner that the Ombudsperson can access in an effort to resolve complaints on behalf of these youth. Without the benefit of a stable family to look out for, the Ombudsperson can advocate on their behalf to resolve complaints and level a playing field for foster youth who are too frequently at a disadvantage when compared to their non-foster youth peers.

RELATED AND PRIOR LEGISLATION:

AB 317 (Patterson), Chapter 293, Statutes of 2021, clarified the role of the foster care Ombudsperson and allowed the Ombudsperson to notify the dependency counsel of a complaint; limiting investigations to those reasonably related to the complaint and to foster care; and, adding other lawful court orders to ways the Ombudsperson may access sealed records for the purpose of an investigation.

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, among other things, made changes to the OFCO'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 OFCO; requiring the materials used to inform foster children and youth of their rights be those materials disseminated by the OFCO; and, requiring the OFCO 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

None on file

Opposition

None on file

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