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February 28, 2021

The Hon. Lisa Calderon:
Chair, Assembly Human Services Committee
1020 N Street, Room 124
Sacramento, CA 95817

Re: SUPPORT AND SPONSORSHIP OF AB 317 (PATTERSON)

Dear Chair Calderon:

The Children's Advocacy Institute at the University of San Diego School of Law, which for 30 years has worked to improve the well-being of children in California through regulatory, legislative, and judicial advocacy, respectfully requests your support for AB317 (Patterson), a bill that, because of the COVID19 pandemic and the havoc it has caused in our state's foster care system, has been transformed from a good bill into an urgently needed one.

THE FOSTER CARE OMBUDSPERSON

It is widely accepted that when the State by force of law removes a child from the care of their parents and raises the child in its foster care system, the State incurs a moral responsibility to the child like no other. And, because children in foster care are by definition mostly incapable of effectively complaining about the system, it is critical that an independent agency monitor the effectiveness of this government program charged with raising children and independently respond to their complaints.

For this reason, the Office of the State Foster Care Ombudsman was created in 1998 by the Legislature in response to the need to protect California's children raised in the foster care system. The office 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.

PROBLEM

Ombudspersons are supposed to be free and independent from the agencies they watchdog. For example, the inspector general of the Department of Corrections is a separate entity from the

Department, with a governor-appointed director to ensure its independence. The Long Term Care Ombudsman has strict, federally-mandated rules ensuring its independence. Most if not all such programs 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.¹

Not so when it comes to our foster children. It has neither the substantive guarantees of independence of the Long Term Care Ombudsperson nor the appointment independence. Indeed, 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.”

INDEPENDENCE NEEDED NOW MORE THAN EVER

Numerous stakeholders have explained why the COVID19 pandemic’s influence on the foster care system has made the need for greater independence not just a good reform but an urgent one as the Ombudsperson deals with unprecedented COVID-related complaints:

During these unprecedented times and the uncertainty ahead, the Foster Care Ombudsperson needs the maximum discretion and latitude to triage cases and independently responds to policy decisions in an expeditious manner and under the judgement and authority of the office. It is my opinion that preserving the independence of the office is critical. In addition to the current language proposed in AB 1988, there are other prescriptive protections that ought to be added to the bill to fully protect and enhance the independence and autonomy of the Foster Care Ombuds Office and I would be happy to assist in providing technical assistance to address the protections.

Also, the Ombuds Office is now operating our hotline 7 days a week to be available and responsive to the concerns of foster youth and caregivers during the COVID crisis. We have the responsibility to ensure the safety, wellbeing, and due process of foster children in California and especially in these times, we have to act with urgency to protect the rights of foster youth.

One more thing to add. Given that the courts are not holding any other hearings except emergency hearings, the due process rights and oversight of the monitoring of foster children is paramount. It is my belief that preserving the role and independence of the Office of the Foster Care Ombudsperson will continue to be a need over the next year and beyond as we address the many impacts and complaints related to the COVID-19 pandemic.

¹ For example, the Office of Patient Advocate is appointed by the Governor (Government Code section 13600(a)(2)), the Deputy Insurance Commissioner Ombudsperson is too. (Insurance Code section 12907(h)) So is the ombudsperson in the Uniformed Service Employment and Reemployment Rights Act (Military and Veterans Code section 395.6(b)). The Office Of Sexual Abuse In Detention Elimination uses an independent inspector general (Penal Code section 2641(A)). Nationally, twenty-seven of the thirty-five states that have foster care ombudspersons had ombudspersons that were entirely independent of the organization that the monitored. Details can be provided upon request.

Respectfully,

Rochelle Trochtenberg, MSW (she/her)
California Foster Care Ombudsperson
California Department of Social Services²

My name is David Meyers and I am the Managing Attorney at Dependency Legal Services. I have been involved in child welfare for more than 25 years. I spent seven years at the Judicial Council as a senior attorney the past eight years in my current role representing children and parents in eight counties throughout Northern and Central California.

COVID 19's impact on the adjudication and administration of child welfare have transformed the need for Ombudsperson independence from a good idea into an urgent one. Indeed, it should be made into an urgency measure.

The primary job of the Ombudsperson is to serve as a child-centered voice in the "system." In this regard, its primary job is to receive, investigate, and resolve complaints about foster youth care, placement, services, and violations of the rights of California's most vulnerable children.

In my 25 years in child welfare, never has the system been cast into as much confusion and disarray as it has been now. Timelines established to protect children are being ignored or pushed indefinitely. Children are stranded with strangers who were supposed to be temporary placements but now are semi-permanent. Visitation is scattershot at best. The ability of counsel to reach and communicate with clients impaired. Social worker visits and investigations are reduced. Court hearings have been cancelled. All of this profoundly implicates the children in "the system;" the children the Ombudsperson is supposed to aid.

Thus, because of COVID19, there will be more and more serious complaints than ever, before. These complaints will continue to roll in through the summer and fall. They will need to be addressed and resolved both this year and next year with decreasing frequency and need in the years after this one and the next one.

For these reasons, the Ombudsperson will as never before and, hopefully, as never again this year and next need total and complete independence in triaging and addressing these complaints to aid children, free from tacit or overt influence of the Department and system the office watchdogs.

My name is Jessica Heldman and I am the Professor in Residence in Child Rights at the University of San Diego School of Law. In this role, and in previous roles, I have studied and advocated for best practice in child welfare and juvenile justice systems nationwide.

² Emails used with permission of the authors.

I am deeply concerned about the impact of COVID 19 on the functioning of the child welfare system. While the role of foster care Ombudsperson is always an important one, during this time the independence of the Office is more critical than ever. With confusion and concern regarding timelines for reunification, obstacles to visitation, and suspension of needed services, among many other things, the Ombudsperson's ability to receive, independently prioritize and investigate and independently resolve complaints is a vital part of ensuring the protection of the rights of vulnerable children and families than at any other time. These important duties must now more than ever before or ever again be performed by the Ombudsperson with complete independence and autonomy in order to be legitimate and effective.

Best,

Jessica Heldman

AB 317 – SIMPLE AND STRAIGHTFORWARD

Current law permits the head of the very department that is supposed to be watchdogged by the Ombudsperson to appoint the Ombudsperson. AB 317 reforms this to require appointment by the over-arching agency Secretary instead. AB 317 also formally memorializes the intended Ombudsperson's independence by adding the following: “*The ombudsperson appointed pursuant to subdivision (a), in the performance of the duties and for the duration of the appointment, shall be independent and, in exercising discretion, shall not be directly or indirectly controlled, supervised, or directed by the director.*”

Sincerely,



Ed Howard
Senior Counsel, Children's Advocacy Institute

cc Hon. Members of the Committee: