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September 7, 2021

The Honorable Gavin Newsom
Governor, State of California
1303 10th Street, Suite 1173
Sacramento, CA 95814
Submitted via email to Leg.Unit@gov.ca.gov

Re: AB 317 (PATTERSON) – REQUEST FOR SIGNATURE

Dear Governor Newsom:

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 you sign 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 bill is a consent bill with no opposition and broad support and has been crafted methodically and meticulously with the technical assistance of your Department of Social Services.

THE FOSTER CARE OMBUDSPERSON: A CRITICAL PART OF CARING FOR OUR MOST VULNERABLE CHILDREN.

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 ("Office") 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: 1) Inform foster children about their rights and what services are available through the office; 2) Investigate and resolve complaints made by foster youth regarding their care; and 3) Compile data regarding contacts, investigations, and unresolved complaints.

PROBLEM ADDRESSED BY AB 317.

In two ways, however, the Office lacks the unambiguous statutory authority required to fulfill its critical functions:

- 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. The Office lacks the substantive guarantees of independence of the Long Term Care Ombudsperson and other similar offices.

- Worse, the Office is hamstrung by sparse or ambiguous statutory authority. Its current enabling statutes do not provide the Office the kind of without-a-question statutory authority that motivates state agencies to act ambitiously, confidently, and powerfully, without fear of being second-guessed.

AB 317 addresses both problems:

Independence. The bill modifies the Office's findings, clarifies the source and process of appointments, and is unambiguously decreed to be "*be independent and the exercise of their discretion related to the duties and powers set forth in this Chapter shall not be controlled, supervised, or directed, directly or indirectly, by the Director or any other official.*"

Authority. Highlighting just its main reforms, the bill clarifies that documents created or obtained pursuant to the Office's complaint resolution function are treated with the same confidentiality as other dependency-related documents, clarifies the right of the Office to access files and placements, establishes its authority to issue policies and procedures governing its operations, requires the Office to report unlawful acts if discovered, and clarifies that Office has independent discretion in the implementation of its duties.

REFORM IS NEEDED NOW MORE THAN EVER.

Numerous stakeholders have explained why the COVID-19 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:

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.

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. ...

Respectfully,

Rochelle Trochtenberg, MSW (she/her)
Former 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 COVID-19, 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.

² Emails used with permission of the authors.

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.

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 – AFFIRMING AND CLARIFYING THE OMBUDSPERSON’S POWERS AND INDEPENDENCE.

AB 317 reforms the Ombudsperson to solidify its independence and clarify and affirm that the Office has the powers it needs to do its critical job. A reformed Office will save and improve lives of our most vulnerable children; children to whom we owe a matchless moral duty.

Please sign AB 317.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ed Howard', written in a cursive style.

Ed Howard
Senior Counsel, Children’s Advocacy Institute

cc Hon. Jim Patterson