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AB-317 Foster care. (2021-2022)

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Assembly Bill No. 317

CHAPTER 293

An act to amend Sections 16160, 16161, 16162, 16164, 16165, and 16167 of, and to add Section 16166 to, the Welfare and Institutions Code, relating to foster care.

[Approved by Governor September 24, 2021. Filed with Secretary of State September 24, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 317, Patterson. Foster care.

(1) Existing law requires the Office of the State Foster Care Ombudsperson to be established in the State Department of Social Services with prescribed powers and duties relating to the management of foster children, including the dissemination of information on the rights of children and youth in foster care. Existing law requires the Director of Social Services, in consultation with a committee of interested individuals chosen by the director, to appoint the ombudsperson for a term of 4 years. Under existing law, the office is required to keep information obtained by the office from a complaint confidential.

This bill would define "foster care" for purposes of the ombudsperson's duties to include voluntary or governmental placements in certain residential facilities, with a resource family, or with a family pending approval as a resource family, or placement pursuant to a juvenile court order, as specified. The bill would revise existing selection requirements for the position. The bill would also require the ombudsperson, in the performance of the duties and for the duration of the appointment, to be independent and would prohibit the ombudsperson, in exercising discretion, from being directly or indirectly controlled, supervised, or directed by the director. The bill would prohibit removal of the ombudsperson from their office for exercising their independence and discretion in furtherance of their duties and powers, and would set forth criteria for replacement of the ombudsperson in the event of a vacancy in the office.

The bill would require the ombudsperson to maintain confidentiality with respect to the identities of the complainants or witnesses coming before the ombudsperson, except as specified. The bill would authorize the office to establish policies and procedures for receiving and processing complaints, conducting investigations, and reporting findings. The bill would authorize the ombudsperson to access and inspect premises within the control of a state or local agency or a contractor with a state and local agency, and access and inspect a licensed or approved children's residential facility, as specified, for the purpose of carrying out the duties of the office.

(2) Existing law provides that, except as otherwise provided by statute, all relevant evidence is admissible. The California Constitution provides for the Right to Truth-In-Evidence, which requires a $\frac{2}{3}$ vote of the Legislature to exclude any relevant evidence from any criminal proceeding, as specified.

This bill would prohibit the ombudsperson or their staff from being compelled to testify or be deposed, or to disclose specified records, in a judicial or administrative proceeding. Because this prohibition would affect the admissibility of relevant evidence in criminal proceedings, the bill would require a $\frac{2}{3}$ vote of the Legislature. The bill would also immunize the ombudsperson and any

representative of the office from liability for exercising the investigative, complaint resolution, and technical assistance functions of the office, as specified.

(3) Existing law requires a toll-free telephone number to be established for the office and requires social workers to provide foster children with that telephone number and verbal or written information regarding the existence and purpose of the office.

This bill would require probation officers, as well as social workers, to provide foster children with the toll-free telephone number and additional information. By expanding the duties of probation officers, this bill would impose a state-mandated local program.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

(4) This bill would incorporate additional changes to Section 16164 of the Welfare and Institutions Code proposed by AB 1140 to be operative only if this bill and AB 1140 are enacted and this bill is enacted last.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 16160 of the Welfare and Institutions Code is amended to read:

16160. The Legislature finds and declares that the people of California have benefited from the establishment of a long-term care ombudsperson pursuant to Section 9710 of the Welfare and Institutions Code and a childcare ombudsperson program pursuant to Section 1596.872a of the Health and Safety Code. The Legislature further finds it is essential to maintain the nonpartisan nature, integrity, and impartiality of ombudsperson functions and services. It is the intent of the Legislature to provide similar protections for foster children by establishing a foster care ombudsperson program within the State Department of Social Services.

SEC. 2. Section 16161 of the Welfare and Institutions Code is amended to read:

16161. (a) The Office of the State Foster Care Ombudsperson shall be established as an autonomous entity within the department for the purpose of providing children who are placed in foster care, either voluntarily or pursuant to Section 300 and Sections 600 and following, with a means to resolve issues related to their care, placement, or services. The work of the office falls within the provisions of subparagraphs (I) and (J) of paragraph (1) of subdivision (a) of Section 827, and the office shall meet all of the provisions and requirements of that section with regard to access, confidentiality, and the use of information.

(b) For purposes of this chapter, "foster care" includes all of the following:

(1) Voluntary placement in a licensed or approved children's residential facility or with an approved resource family.

(2) Placement in a licensed or approved children's residential facility, with an approved resource family, or with a family pending approval as a resource family, or placement pursuant to a juvenile court order, pursuant to Article 6 (commencing with Section 300) and Article 14 (commencing with Section 601) of Chapter 2 of Part 1 of Division 2.

(3) Placement by a governmental entity in a residential facility or home subject to licensure, certification, or approval by the State Department of Social Services pursuant to the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code).

SEC. 3. Section 16162 of the Welfare and Institutions Code is amended to read:

16162. (a) The Director of Social Services, in consultation with, and after receiving a list of possible nominees from, a committee of at least five interested individuals that are described in this subdivision, and after obtaining the committee's input, shall appoint an ombudsperson who is qualified by training and experience to perform the duties of the office for a term of four years. The director may reappoint the ombudsperson for consecutive terms. The director shall select the committee members, the majority of whom shall be representatives of nonprofit children's advocacy organizations and current or former foster youth.

(b) The ombudsperson shall, in the performance of their duties during the duration of their appointment, 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. The ombudsperson shall devote their entire time to the duties and powers set forth in this chapter and may not be removed from office for exercising their independence and discretion in furtherance of those duties and powers.

(c) If the term of an ombudsperson expires without the appointment of a successor under this chapter, the incumbent ombudsperson may continue in office until a successor is appointed. If the ombudsperson dies, resigns, becomes ineligible to serve, or is removed or suspended from office, the director shall designate an acting ombudsperson until the ombudsperson is appointed. The director shall appoint a new ombudsperson pursuant to this section within the nine months from the date the office became vacant. In no event shall the acting ombudsperson remain in office longer than nine months before a new ombudsperson is appointed pursuant to this section.

SEC. 4. Section 16164 of the Welfare and Institutions Code is amended to read:

16164. (a) The Office of the State Foster Care Ombudsperson shall do all of the following:

(1) (A) Disseminate information and provide training and technical assistance to foster youth, social workers, probation officers, tribes' child welfare agencies, child welfare organizations, children's advocacy groups, consumer and service provider organizations, and other interested parties on the rights of children and youth in foster care, reasonable and prudent parent standards, and the services provided by the office. The rights of children and youth in foster care are listed in Section 16001.9. The information shall include methods of contacting the office and notification that conversations with the office may be disclosed to other persons, as necessary to adequately investigate and resolve a complaint.

(B) At the end of every two-year legislative session, review amendments to the laws applicable to foster youth and determine whether updates to the rights listed in Section 16001.9 should be recommended in the compilation prepared pursuant to paragraph (8). The office shall update the standardized information prepared pursuant to paragraph (1) of subdivision (e), and any training materials prepared pursuant to subparagraph (A), in accordance with the legislative review.

(2) Receive complaints made by or on behalf of children placed in foster care, related to their care, placement, or services.

(3) Decide, in its discretion, whether to investigate a complaint, or refer complaints to another agency for investigation. After rendering a decision to investigate a complaint, attempt to resolve the complaint without using a judicial or administrative proceeding.

(4) Upon rendering a decision to investigate a complaint from a complainant, notify the complainant of the intention to investigate. If the office declines to investigate a complaint or continue an investigation, the office shall notify the complainant of the reason for the action of the office.

(5) Update the complainant on the progress of the investigation and the attempts to resolve the complaint, and notify the complainant of the final outcome.

(6) Document the number, source, origin, location, and nature of complaints.

(7) Receive data from the State Department of Education regarding complaints about foster youth education rights made through the uniform complaint process.

(8) (A) Compile and make available to the Legislature all data collected over the course of the year, including, but not limited to, the number of contacts to the office, the number of complaints made, including the type and source of those complaints, the number of investigations performed by the office, the trends and issues that arose in the course of investigating complaints, the number of referrals made, the number of pending complaints, and a summary of the data received from the State Department of Education pursuant to paragraph (7). The office shall include recommendations consistent with this data for improving the child welfare system.

(B) Present this compiled data, on an annual basis, at appropriate child welfare conferences, forums, and other events, as determined by the department, that may include presentations to, but are not limited to, representatives of the Legislature, the County Welfare Directors Association of California, Chief Probation Officers of California, Indian tribes, child welfare agencies, child welfare organizations, children's advocacy groups, consumer and service provider organizations, and other interested parties.

(C) It is the intent of the Legislature that representatives of the organizations described in subparagraph (B) consider this data in the development of any recommendations offered toward improving the child welfare system.

(D) The compiled data shall be posted so that it is available to the public on the existing internet website of the office.

(E) Nothing shall preclude the office from issuing data, findings, or reports other than the annual compilation of data described in this paragraph.

(9) 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.

(b) The office may establish, in consultation with a committee of interested individuals, regional or local foster care ombudsperson offices for the purposes of expediting investigations and resolving complaints, subject to appropriations in the annual Budget Act.

(c) (1) Information obtained by the office from a complaint, regardless of whether it is investigated by the office, referred to another entity for investigation, or determined not to be the proper subject of an investigation, shall remain confidential under relevant state and federal confidentiality laws. Disclosure of information that is not confidential under state and federal confidentiality laws shall occur only as necessary to carry out the mission of the office, including as necessary to provide explanation and support for the office's recommendations for improving the child welfare system to the Legislature and state and local agencies that provide services and supports to children placed in foster care.

(2) The ombudsperson shall maintain confidentiality with respect to the identities of the complainants or witnesses coming before them, except insofar as disclosure may be necessary to enable the ombudsperson to carry out the duties of the office set forth in paragraphs (2) to (5), inclusive, of subdivision (a). The ombudsperson may not disclose a record that is confidential under relevant state and federal confidentiality laws.

(3) If a child or nonminor dependent is represented by counsel pursuant to Section 317, the office may notify the counsel of a complaint in order for counsel to satisfy their obligations specified under paragraph (3) of subdivision (e) of Section 317. If appropriate, the office may also share the outcome of any investigation performed by the office with the child's or nonminor dependent's counsel.

(d) The office shall provide administrative and technical assistance to county, regional, or local foster care ombudsperson's offices, including, but not limited to, assistance in developing policies and procedures consistent with the policies and procedures used by the office.

(e) (1) The office, in consultation with the County Welfare Directors Association of California, Chief Probation Officers of California, Indian tribes located in the state, foster youth advocate and support groups, groups representing children, families, foster parents, children's facilities, and other interested parties, shall develop standardized information explaining the rights specified in Section 16001.9. The information shall be developed in an age-appropriate manner, and shall reflect any relevant licensing requirements with respect to foster care providers' responsibilities to adequately supervise children in care.

(2) The office, counties, foster care providers, and others shall use the information developed in paragraph (1) in carrying out their responsibilities to inform foster children and youth of their rights pursuant to Section 1530.91 of the Health and Safety Code, Sections 27 and 16501.1, and this section.

(3) The office shall measure the distribution of the standardized materials for purposes of evaluating and improving the degree to which foster youth are adequately informed of their rights. This data shall be included in the compilation prepared pursuant to paragraph (8) of subdivision (a).

SEC. 4.5. Section 16164 of the Welfare and Institutions Code is amended to read:

16164. (a) The Office of the State Foster Care Ombudsperson shall do all of the following:

(1) (A) Disseminate information and provide training and technical assistance to foster youth, social workers, probation officers, tribes' child welfare agencies, child welfare organizations, children's advocacy groups, consumer and service provider organizations, and other interested parties on the rights of children and youth in foster care, reasonable and prudent parent standards, and the services provided by the office. The rights of children and youth in foster care are listed in Section 16001.9. The information shall include methods of contacting the office and notification that conversations with the office may be disclosed to other persons, as necessary to adequately investigate and resolve a complaint.

(B) At the end of every two-year legislative session, review amendments to the laws applicable to foster youth and determine whether updates to the rights listed in Section 16001.9 should be recommended in the compilation prepared pursuant to paragraph (8). The office shall update the standardized information prepared pursuant to paragraph (1) of subdivision (e), and any training materials prepared pursuant to subparagraph (A), in accordance with the legislative review.

(2) Receive complaints made by or on behalf of children placed in foster care, related to their care, placement, or services, including for children placed by the Office of Refugee Resettlement of the United States Department of Health and Human Services in state-licensed facilities and homes that are subject to regulation by the State Department of Social Services

pursuant to the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code) or pursuant to Article 2 (commencing with Section 16519.5) of Chapter 5.

(3) Decide, in its discretion, whether to investigate a complaint, or refer complaints to another agency for investigation. After rendering a decision to investigate a complaint, attempt to resolve the complaint without using a judicial or administrative proceeding.

(4) Upon rendering a decision to investigate a complaint from a complainant, notify the complainant of the intention to investigate. If the office declines to investigate a complaint or continue an investigation, the office shall notify the complainant of the reason for the action of the office.

(5) Update the complainant on the progress of the investigation and the attempts to resolve the complaint, and notify the complainant of the final outcome.

(6) Document the number, source, origin, location, and nature of complaints.

(7) Receive data from the State Department of Education regarding complaints about foster youth education rights made through the uniform complaint process.

(8) (A) Compile and make available to the Legislature all data collected over the course of the year, including, but not limited to, the number of contacts to the office, the number of complaints made, including the type and source of those complaints, the number of investigations performed by the office, the trends and issues that arose in the course of investigating complaints, the number of referrals made, the number of pending complaints, and a summary of the data received from the State Department of Education pursuant to paragraph (7). The office shall include recommendations consistent with this data for improving the child welfare system.

(B) Present this compiled data, on an annual basis, at appropriate child welfare conferences, forums, and other events, as determined by the department, that may include presentations to, but are not limited to, representatives of the Legislature, the County Welfare Directors Association of California, Chief Probation Officers of California, Indian tribes, child welfare agencies, child welfare organizations, children's advocacy groups, consumer and service provider organizations, and other interested parties.

(C) It is the intent of the Legislature that representatives of the organizations described in subparagraph (B) consider this data in the development of any recommendations offered toward improving the child welfare system.

(D) The compiled data shall be posted so that it is available to the public on the existing internet website of the office.

(E) Nothing shall preclude the office from issuing data, findings, or reports other than the annual compilation of data described in this paragraph.

(9) 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.

(b) The office may establish, in consultation with a committee of interested individuals, regional or local foster care ombudsperson offices for the purposes of expediting investigations and resolving complaints, subject to appropriations in the annual Budget Act.

(c) (1) Information obtained by the office from a complaint, regardless of whether it is investigated by the office, referred to another entity for investigation, or determined not to be the proper subject of an investigation, shall remain confidential under relevant state and federal confidentiality laws. Disclosure of information that is not confidential under state and federal confidentiality laws shall occur only as necessary to carry out the mission of the office, including as necessary to provide explanation and support for the office's recommendations for improving the child welfare system to the Legislature and state and local agencies that provide services and supports to children placed in foster care.

(2) The ombudsperson shall maintain confidentiality with respect to the identities of the complainants or witnesses coming before them, except insofar as disclosure may be necessary to enable the ombudsperson to carry out the duties of the office set forth in paragraphs (2) to (5), inclusive, of subdivision (a). The ombudsperson may not disclose a record that is confidential under relevant state and federal confidentiality laws.

(3) If a child or nonminor dependent is represented by counsel pursuant to Section 317, the office may notify the counsel of a complaint in order for counsel to satisfy their obligations specified under paragraph (3) of subdivision (e) of Section 317. If appropriate, the office may also share the outcome of any investigation performed by the office with the child's or nonminor dependent's counsel.

(d) The office shall provide administrative and technical assistance to county, regional, or local foster care ombudsperson's offices, including, but not limited to, assistance in developing policies and procedures consistent with the policies and procedures used by the office.

(e) (1) The office, in consultation with the County Welfare Directors Association of California, Chief Probation Officers of California, Indian tribes located in the state, foster youth advocate and support groups, groups representing children, families, foster parents, children's facilities, and other interested parties, shall develop standardized information explaining the rights specified in Section 16001.9. The information shall be developed in an age-appropriate manner, and shall reflect any relevant licensing requirements with respect to foster care providers' responsibilities to adequately supervise children in care.

(2) The office, counties, foster care providers, and others shall use the information developed in paragraph (1) in carrying out their responsibilities to inform foster children and youth of their rights pursuant to Section 1530.91 of the Health and Safety Code, Sections 27 and 16501.1, and this section.

(3) The office shall measure the distribution of the standardized materials for purposes of evaluating and improving the degree to which foster youth are adequately informed of their rights. This data shall be included in the compilation prepared pursuant to paragraph (8) of subdivision (a).

SEC. 5. Section 16165 of the Welfare and Institutions Code is amended to read:

16165. As part of the office's efforts to resolve complaints related to foster care, the ombudsperson may 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, but not limited to, both of the following:

(1) 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. The ombudsperson shall be granted access to records and residents at all times for the purpose of carrying out the duties of the office.

(A) For purposes of this section, "access" means the right to do all of the following:

(i) Enter any licensed or approved children's residential facility, upon providing identification.

(ii) Communicate privately and without restriction with any resident, caregiver, personnel, or volunteer.

(iii) Review and copy any resident record or caregiver file.

(iv) Observe all resident and staff areas of a facility.

(v) Review and reproduce administrative records, policies, and documents of any licensed or approved children's residential care facility.

(vi) Review and copy all licensing records maintained by the state, county, or agency, and review and reproduce any records of a state, county, or local agency and their contractors, except sealed court records, which may be obtained only by subpoena or other lawful court order.

(vii) Interview all relevant witnesses.

(B) For purposes of this section, "record" means a document, paper, memorandum, book, letter, file, drawing, map, plat, photo, photographic file, motion picture, film, microfilm, microphotograph, exhibit, magnetic or paper tape, punched card, or other item developed or received under law or in connection with the transaction of official business, but does not include material that is protected by privilege.

(2) Observe proceedings and attend hearings, consistent with Section 346.

(c) Attempt to resolve the complaint.

(d) 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. If the ombudsperson makes a written recommendation, the state or county agency, or contractor, shall submit a written response to the ombudsperson within 30 calendar days.

SEC. 6. Section 16166 is added to the Welfare and Institutions Code, to read:

16166. In order to encourage candor during the ombudsperson's investigation of complaints made by or on behalf of foster youth and to facilitate the ombudsperson's ability to resolve complaints, all of the following shall apply:

(a) The ombudsperson and staff of the ombudsperson shall not be compelled to testify or be deposed in a judicial or administrative proceeding regarding matters coming to their attention in the exercise of their official duties, except as may be necessary to enforce or implement this chapter.

(b) The records of the ombudsperson and the staff of the ombudsperson, including notes, drafts, and records obtained from an individual or agency during the intake, review, or investigation of a complaint, and any reports not released to the public shall not be subject to disclosure or production in response to a subpoena or discovery in a judicial or administrative proceeding, except as necessary to enforce or implement the provisions of this chapter.

(c) When exercising the investigative, complaint resolution, and technical assistance functions of the Office of the State Foster Care Ombudsperson, the ombudsperson and staff of the ombudsperson shall have all immunities under Article 2 (commencing with Section 815) of Chapter 1 of Part 2 of Division 3.6 of Title 1 of the Government Code afforded to the discharge of discretionary duties by public entities and their employees.

(d) If the ombudsperson believes, based on information received during the exercise of their official duties, that there is a breach of duty or misconduct by an employee of a state or local agency or their contractors in the conduct of the employees' official duties, the ombudsperson shall refer the matter to the agency director or other responsible officer, and if the conduct would constitute a crime, to an appropriate law enforcement body or agency.

SEC. 7. Section 16167 of the Welfare and Institutions Code is amended to read:

16167. (a) A toll-free number shall be established for the office.

(b) Social workers and probation officers shall provide foster children with the toll-free telephone number for the office and verbal or written information regarding the existence and purpose of the office.

SEC. 8. The Legislature finds and declares that Section 4 of this act, which amends Section 16164 of, and Section 6, which adds Section 16166 to, the Welfare and Institutions Code, impose limitations on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to preserve confidential information of children in foster care and protect the identities of complainants or witnesses coming before the State Foster Care Ombudsperson, it is necessary to limit the disclosure of certain information that is obtained by the ombudsperson and the staff of the ombudsperson in the performance of their duties.

SEC. 9. Section 4.5 of this bill incorporates amendments to Section 16164 of the Welfare and Institutions Code proposed by both this bill and Assembly Bill 1140. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2022, (2) each bill amends Section 16164 of the Welfare and Institutions Code, and (3) this bill is enacted after Assembly Bill 1140, in which case Section 4 of this bill shall not become operative.

SEC. 10. To the extent that this act has an overall effect of increasing the costs already borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation within the meaning of Section 36 of Article XIII of the California Constitution, it shall apply to local agencies only to the extent that the state provides annual funding for the cost increase. Any new program or higher level of service provided by a local agency pursuant to this act above the level for which funding has been provided shall not require a subvention of funds by the state or otherwise be subject to Section 6 of Article XIII B of the California Constitution.