

May 3, 2022

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

EXECUTIVE SUMMARY

ALL COUNTY LETTER NO. 22-34

This All-County Letter provides information on the role of the California Foster Care Ombudsperson. The Office of the Foster Care Ombudsperson is to act as independent entity to review and resolve complaints made by or on behalf of children in foster care regarding care, placement, and services.



KIM JOHNSON
DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
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GAVIN NEWSOM
GOVERNOR

May 3, 2022

ALL COUNTY LETTER NO. 22-34

TO: ALL COUNTY WELFARE DIRECTORS
ALL CHIEF PROBATION OFFICERS
ALL INDEPENDENT LIVING PROGRAM MANAGERS
ALL INDEPENDENT LIVING PROGRAM COORDINATORS
ALL FOSTER CARE MANAGERS
ALL TITLE IV-E AGREEMENT TRIBES
ALL TRANSITIONAL HOUSING COORDINATORS

**SUBJECT: CHANGES TO THE OFFICE OF THE STATE FOSTER CARE
OMBUDSPERSON**

REFERENCE: [ASSEMBLY BILL \(AB\) 317 \(CHAPTER 293, STATUTES OF 2021\);](#)
[AB 175 \(CHAPTER 416, STATUTES OF 2019\)\(AB 175\);](#) [AB 2119 \(CHAPTER 385,](#)
[STATUTES OF 2018\)\(AB 2119\);](#) [AB 1067 \(CHAPTER 861, STATUES OF 2016\)\(AB](#)
[1067\);](#) [SENATE BILL \(SB\) 731 \(CHAPTER 805, STATUTES OF 2015\)\(SB 731\);](#)
[SENATE BILL \(SB\) 528 \(CHAPTER 338, STATUTES OF 2013\)\(SB 528\);](#) [AB 1856](#)
[\(CHAPTER 239, STATUTES OF 2012\)\(AB 1856\);](#) [SB 1353 \(CHAPTER 557,](#)
[STATUTES OF 2010\)\(SB 1353\);](#) [AB 1412 \(CHAPTER 640, STATUTES OF 2005\)\(AB](#)
[1412\);](#) [SB 1639 \(CHAPTER 668, STATUTES OF 2004\)\(SB 1639\);](#) [AB 458 \(CHAPTER](#)
[331, STATUTES OF 2003\)\(AB 458\);](#) [AB 899 \(CHAPTER 683, STATUTES OF](#)
[2001\)\(AB 899\);](#) [SB 933 \(CHAPTER 311, STATUTES OF 1998\)\(SB 933\);](#) [AB 1140](#)
[\(CHAPTER 297, STATUTES OF 2021\)\(AB 1140\);](#) [HEALTH AND SAFETY CODE](#)
[SECTION 1530.91;](#) [WELFARE AND INSTITUTION CODE \(WIC\) SECTIONS](#) [WIC](#)
[16001.9, WIC 16160, WIC 16161, WIC 16162, WIC 16163, WIC 16164, WIC 16165,](#)
[WIC 16166, AND WIC 16167](#)

PURPOSE

The purpose of this All County Letter is to inform child welfare agencies and juvenile probation departments of the amendments to WIC Sections 16160, 16161, 16162, 16164, 16165, 16167 and the addition of Section 16166 as prescribed by AB 317 and 1140 effective January 1, 2022.

Passage of AB 317 furthers the nonpartisan nature, integrity, and impartiality of the roles and functions of the California Foster Care Ombudsperson. These amendments clarify the role of the Ombudsperson and strengthen the autonomy of the Office of the Foster Care Ombudsperson (OFCO). With the passage of AB 317, the confidentiality protections for complainants and the independence and discretion of the Ombudsperson reflect the standards of practice and ethics of a governmental ombudsperson.

BACKGROUND

In 1998, as part of the omnibus child welfare legislation (SB 933), the Legislature directed the California Department of Social Services (CDSS) to establish the OFCO. The primary purpose of the OFCO is to provide youth “placed in foster care, either voluntarily or pursuant to the section 300 and sections 600 and following, with a means to resolve issues related to their care, placement, or services.” ([WIC Section 16100 et seq](#))

The OFCO is an autonomous entity within the CDSS that independently reviews and responds to complaints regarding the care, placement, services, and rights of foster children¹. The OFCO has discretion in determining whether to investigate a complaint and seeks to informally resolve such complaints. The Ombudsperson maintains the authority to conduct any investigation they deem necessary. To support complaint resolution, the OFCO may submit a written plan with recommendations to the relevant state or county agency to which they are and such agency required to respond in writing to within 30 calendar days.

Additional responsibilities of the OFCO include dissemination of information and training on the rights of youth in foster care as well as reasonable and prudent parent standards. The OFCO is also required to collect data and report to the Legislature annually to include recommendations for improving the child welfare system.

CHANGES UNDER AB 317

WIC 16160

WIC 16160 established the foster care ombudsperson program within the CDSS for the purpose of providing protections for foster youth. AB 317 adds language to the law

¹ Section 16001.9 of California WIC

which states it is essential for the office to maintain the nonpartisan nature, integrity, and impartiality of their functions and services.

WIC 16161

This section further clarifies the scope of the Ombudsperson's authority to receive and respond to complaints regarding youth placed in foster care, by clarifying the definition of "foster care" to include a voluntary placement; a placement into any unlicensed or provisionally licensed placement including with a family pending resource family approval; a placement of a youth placed by a governmental entity in a residential facility or home subject to licensure, certification or approval by the CDSS; and as explicitly stated by AB 1140 (Chapter 297, Statutes of 2021), this includes youth placed by the Office of Refugee Resettlement ("ORR") in any of the above-mentioned placement types. Further, HSC 1530.91 was amended to require that children and non-minor dependents placed by the ORR be accorded the rights described in the foster youth bill of rights. This was addressed in Provider Information Notice 21-14-Children's Residential Program prior to the passage of AB 1140.

AB 317 further clarifies that the Ombudsperson and their staff are authorized under WIC 827(a)(1)(I) and (a)(1)(J) to access and review confidential information within child welfare records.

WIC 16162

This section reflects changes to the appointment of the Ombudsperson, clarifying the nature of the independence of the office, and process for addressing a vacancy of the Ombudsperson.

The Director of CDSS ("Director") is required to form a committee comprised of representatives of nonprofit children's advocacy organizations and/or current or former foster youth and shall identify a list of nominees to be considered for appointment as the Ombudsperson. The appointing power remains with the Director. The Ombudsperson is appointed to the office for a term of four years and may be reappointed for consecutive terms.

This section also defines the independence of the Ombudsperson and added protections from retaliation or termination for acting in the role and upholding the duties of the office. They may not be controlled, supervised, or directed, directly or indirectly, by the Director or any other official. The law further clarifies that the Ombudsperson may not be removed from office for exercising their discretion.

Should the Ombudsperson position be vacated, the Director must appoint a new Ombudsperson within nine months of the vacancy. The Director must designate an acting Ombudsperson until a new Ombudsperson is appointed. The acting Ombudsperson shall not remain in office more than nine months.

WIC 16164

AB 317 revises this section of the statute to further define the responsibility of the OFCO to uphold confidentiality in the course of exercising its duties, the type of information to be shared with the complainant, and the authority for OFCO to decide when to notify legal counsel of a child or non-minor dependent in care of an investigation and its outcome.

This section also extends the authority of the Ombudsperson to respond to complaints regarding children placed in California by the federal Office of Refugee Resettlement of the United States Department of Health and Human Services in any state-licensed facilities and homes that are subject to regulation by the CDSS pursuant to the California Community Care Facilities Act.

When the OFCO decides, in its discretion, to investigate a complaint, the OFCO will update the complainant on the progress of the investigation, including attempts made to resolve the complaint, and notify the complainant of the investigative outcome. This bill authorizes the OFCO to notify the dependent's counsel of the complaint and outcome in order for counsel to satisfy their obligations for the complainant.

Information obtained by the OFCO, regardless of whether it is investigated by the office or referred to another entity for investigation shall remain confidential under relevant state and federal confidentiality laws. The identities of complainants and witnesses shall also be kept confidential except as necessary in order to carry out the mission of the office to receive, investigate and attempt to resolve complaints.

The OFCO may disclose information, including data not covered under state and federal confidentiality laws only as necessary to carry out the mission of the office, including providing explanations to support the OFCO's recommendations for improving the child welfare system to the Legislature and state and local agencies.

WIC 16165

This section clarifies the authority of the OFCO to meet with foster youth, and access facilities and records in carrying out its duties. This section also explains the authority of the OFCO to attend juvenile court hearings.

In the OFCO's efforts to resolve complaints related to the care, services, placement and rights of foster children, OFCO may establish procedures for receiving and processing complaints, conducting investigations and reporting findings. In conducting or determining whether to conduct an investigation, the OFCO may access and inspect any premises under the control of a state or local agency or a contractor of a state or local agency as well as any licensed or approved children's residential facility at any time, with or without prior notice.

Changes in this section clarify that “access” means the right to enter any licensed or approved children’s residential facility and to communicate privately and without restriction with any resident, caregiver, personnel, or volunteer. The OFCO may also review and copy the records of a foster youth or caregiver and all licensing records maintained by a state, county or local agency or their contractor, with the exception of sealed court records, which may be obtained by a subpoena or other court order. Access also includes the right to interview all relevant witnesses.

This section defines “record” to include, but not be limited to, a document, paper, memorandum, book, letter, file, drawing, map, photo, exhibit, electronic correspondence or images, or other item developed or received under law or in connection with official business, excluding material that is protected by privilege.

AB 317 also clarifies that the OFCO has a direct and legitimate interest in the proceedings and work of the juvenile court and may observe proceedings and attend hearings pursuant to WIC section 346 which allows a judge or referee to admit , into a juvenile court hearing, persons they deem to have a direct and legitimate interest in a case or the work of the court.

Lastly, this section is amended to clarify that the OFCO may send a written plan with recommendations to not only a state or county agency, but also to a contractor of a state or local agency. The section is also revised to reflect that when the OFCO sends a written plan with recommendations to a state or county agency or a contractor of a state or county agency the agency or contractor must respond to the OFCO within 30 calendar days instead of 30 business days.

WIC 16166

This section was added to reflect the standards of practice and guidelines that were developed in consultation with the American Bar Association to preserve the independence, impartiality and confidentiality of the Ombudsperson. This section adds protections for immunity and indemnification in judicial proceedings for OFCO records and staff. It further added procedures for the OFCO to address employee misconduct within county and agency personnel.

To encourage candor during the OFCO’s investigations and to maintain the OFCO’s ability to resolve complaints; the ombudsperson and staff of the OFCO shall not be compelled to testify or be deposed in a judicial and/or administrative proceeding. Records, notes, and drafts of the OFCO and the staff of the OFCO 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 provision of existing law.

If the OFCO believes, based on information received during 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 performance of the employees’ official duties, the ombudsperson shall refer the matter to the agency director or other responsible parties, and if the

conduct constitutes a crime, the OFCO shall report to an appropriate law enforcement agency.

WIC 16167

This section added probation officers in addition to social workers, to provide foster youth with the toll-free telephone number for the OFCO and provide verbal and/or written information regarding the existence and purpose of the OFCO. Social Workers, Probation Officers and anyone else informing youth of the Foster Youth Bill of Rights must use up-to-date material created by OFCO. Material can be ordered and accessed online at <https://fosteryouthhelp.ca.gov/foster-youth-rights/>. Youth who are in ORR custody are to be provided information about their rights by the California licensed facility where they are housed.

If you have any questions or need additional guidance regarding the information in this letter, contact the OFCO at (877) 846-1602 or via email at fosteryouthhelp@dss.ca.gov.

Sincerely,

Original Document Signed By

LARRY FLUHARTY, California Foster Care Ombudsperson
Office of the Foster Care Ombudsperson
Office of Equity

/s/ Larry Fluharty