

Date of Hearing: April 21, 2021

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Lisa Calderon, Chair

AB 31 (Lackey) – As Amended April 8, 2021

SUBJECT: Office of the Child Protection Ombudsperson

SUMMARY: Establishes the “Office of the State Child Protection Ombudsperson” (Office) within the State Department of Social Services (CDSS) for the purpose of reviewing individual casework, observing management structures, and suggesting systematic alteration of the child welfare system (CWS). Specifically, **this bill:**

- 1) Names this act Gabriel’s Law.
- 2) Makes Legislative findings and declarations pertaining to established ombudspersons in California.
- 3) Defines, for the purposes of this Act, “investigation” to mean an act of factfinding, document review, or systematic inquiry or examination to determine if there is a correlation between an administrative act and the death of a child, the outcome in a child’s case, or to determine if a trend or systematic issue is identified.
- 4) Establishes the Office as an autonomous entity within CDSS for the purpose of reviewing individual casework, observing management structures, and suggesting systematic alteration.
- 5) Requires the Governor to appoint the State Child Protection Ombudsperson (Ombudsperson), subject to Senate confirmation.
- 6) Requires the Ombudsperson to serve for a term of two years.
- 7) Requires the Ombudsperson, in consultation with CDSS, to hire the necessary personnel to perform the functions of the Office, giving priority to former foster youth in hiring decisions.
- 8) Requires the Office to perform the following duties:
 - a) Disseminate information on the rights of children and the services provided by the Office. The information shall include notification that conversations with the Office may not be confidential;
 - b) Upon rendering a decision to investigate a complaint, 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 that action;
 - c) Update the complainant on the progress of the investigation and notify the complainant of the final outcome;
 - d) Investigate all child deaths caused by abuse or neglect if, at the time of a child’s death, there was an active investigation by the CWS to determine if the child was being abused or neglected or there was a report that the child was subject to abuse or neglect, whether or not the report was investigated and whether or not the report was found to be

substantiated, unsubstantiated, or inconclusive, within 24 months prior to the child's death;

- e) Serve as the ombudsperson reviewing a county child welfare system operated by a county if the county does not have a local ombudsperson to conduct that review;
 - f) Provide for the operation of a toll-free telephone hotline to receive complaints related to child welfare; and,
 - g) Submit a report to the Legislature at the end of each two-year legislative session with data collected by the office describing the nature of the complaints received and systemic suggestions to improve the CWS.
- 9) Authorizes the Office to do any of the following:
- a) Investigate files relating to children taken into protective custody, including portions of files created prior to a child being taken into protective custody and files relating to the cases of children taken into protective custody that have been closed;
 - b) Investigate systemic issues and suggest corrective action accordingly;
 - c) Review the cases of children whose families have been referred to family maintenance and reunification services;
 - d) Except with regard to the investigation of a child death caused by abuse or neglect while there is an active investigation by the CWS, decide whether to investigate a complaint, or refer the complaint to another agency for investigation; and,
 - e) Work with a county-level ombudsperson, if available.

EXISTING LAW:

- 1) Requires the director of CDSS to be responsible for the management of the department; administer the laws pertaining to the administration of public social services, except health care services and medical assistance; observe and report to the Governor on the conditions on public social services; perform the disability determination function pursuant to the federal Social Security Act; formulate adopt, amend, or repeal relevant regulations and general policies; and, perform other duties as may be prescribed by law. (Welfare and Institutions Code Section [WIC] 10553)
- 2) Establishes the State Foster Care Ombudsperson 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)
- 3) 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. (WIC 202)
- 4) States that the purpose of foster care law is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, neglected, or

exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of harm. (WIC 300.2)

- 5) Declares that a child is within the jurisdiction of the juvenile court if the child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian. Permits the court to find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history or repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian that indicate the child is at risk of serious physical harm. (WIC 300(a))
- 6) Declares that a child is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court if they meet certain criteria, including, but not limited to: the child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of the child's parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or nonmedical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance use disorder. (WIC 300(b))

FISCAL EFFECT: Unknown

COMMENTS:

Child Welfare Services: The purpose of California's CWS system is to protect children from abuse and neglect and provide for their health and safety. When children are identified as being at risk of abuse, neglect or abandonment, county juvenile courts hold legal jurisdiction; these children are served by the CWS system through the appointment of a social worker. Through this system, there are multiple opportunities for the custody of the child, or their placement outside of the home, to be evaluated, reviewed and determined by the judicial system, in consultation with the child's social worker, to help provide the best possible services to the child. The CWS system seeks to help children who have been removed from their homes reunify with their parents or guardians, whenever appropriate. However, the court may determine that an alternate permanent placement is more fitting and give preference to relatives or nonrelative extended family members. There are currently nearly 60,000 children and youth in California's CWS system.

Foster Care Ombudsperson: 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 Office of the Foster Care Ombudsperson is responsible for investigating and resolving complaints made by foster youth regarding their care and compiling data regarding contacts, investigations, and unresolved complaints. The Office of the Foster Care Ombudsperson 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 Office of the Foster Care Ombudsperson 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.

Offices in Other States: Twenty-two states, including California, have a children's ombudsperson or child advocate office that handles and investigates complaints from citizens and families related to government services for children and families. The jurisdiction of these offices varies across the states, covering some of or all of child protective services, foster care, adoption, and juvenile justice services. A number of states, including Georgia and Missouri, have an Office of the Child Advocate whose jurisdiction covers both child protective services and foster care to ensure that both at-risk children and foster children are safe. Two states, Arkansas and Texas, have two separate offices to review complaints. Arkansas has a Public Defender Commission's Juvenile Ombudsman to provide for independent oversight of the Division of Youth Services' facilities and programs that are unlicensed or unaccredited and a Foster Parent Ombudsman who serves as an advocate for foster parents. Texas has an Independent Ombudsman for the Texas Juvenile Justice Department who investigates, evaluates, and secures the rights of the children committed to the Texas Juvenile Justice Department and a Health and Human Services Commission's Office of the Ombudsman which broadly resolves complaints for the Texas Health and Human Services Commission which oversees the Department of Family and Protective Services programs and foster care.

Need for this bill: In May 2013, eight-year-old Gabriel Fernandez died after several months of severe abuse and torture by his mother and her boyfriend. Gabriel's mother regained custody of Gabriel—who had previously been living with other family members—in 2012, despite reports from family members that Gabriel's mother was neglectful and abusive to her other children. A teacher from Gabriel's school and a security guard reported suspected abuse after noticing injuries and bruising on Gabriel. A caseworker investigated the allegations of abuse, concluded there was no evidence of abuse, and Gabriel was not removed from the home. Less than a year of living with his mother, Gabriel was taken to the hospital after reports that he was not breathing. He sustained multiple injuries including a fractured skull, BB pellets in his lungs and groin, two missing teeth, broken ribs, and cigarette burns, and subsequently died from his injuries the following day. Both Gabriel's mother and her boyfriend were charged and convicted of murder. Gabriel's death also led to criminal charges against several social workers, who left the boy in the home, based on a theory that their actions amounted to criminal negligence.

This bill creates an Office of the State Child Protection Ombudsperson to investigate deaths caused by abuse or neglect if, at the time of a child's death, there was an active investigation by CWS to determine if the child was being abused or neglected. Additionally, the Office serves as the ombudsperson for a county if the county does not have a local ombudsperson, and can review the cases of children whose families have been referred to family maintenance and reunification services. These duties differ from the Foster Care Ombudsperson in that the State Child Protection Ombudsperson is anticipated to protect and serve at-risk children who have not yet entered into foster care.

According to the author, "The death of Gabriel Fernandez was a shock to the system felt by everyone in the Antelope Valley and beyond. This sweet-natured boy highlighted how significantly we are failing innocent children.

"Through the work of the CA Surgeon General, we are keenly aware that adverse childhood experiences can have life-long effects on how individuals process stress: an undetected cause of

suffering later in life.

“We must do better for our children by establishing a statewide office with the sole purpose of child advocacy.”

Staff comments: One of the responsibilities of the State Child Protection Ombudsperson is to disseminate the rights of children; however, children who are not in the foster care system are not covered by the Foster Youth Bill of Rights or any other specified rights. It is therefore unclear what particular rights are to be disseminated to serve the children that are covered by this Office.

Other states have established a Child’s Advocate or Ombudsperson that serves both at-risk children and foster youth. It is important that at-risk youth are protected, and have an advocate to serve in their best interest. It would be worthwhile to explore the possibility of incorporating the duties of the Office of the State Child Protection Ombudsperson into the existing Office of the Foster Care Ombudsperson to serve all at-risk and foster youth, rather than creating a new and separate office.

REGISTERED SUPPORT / OPPOSITION:

Support

Peace Officers Research Association of California (PORAC)

Opposition

None on file

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