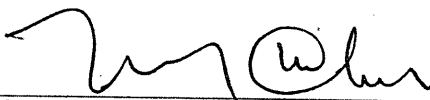
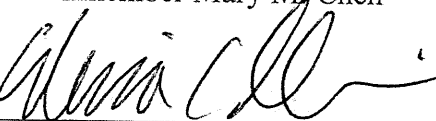


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2 Councilmember David Grosso

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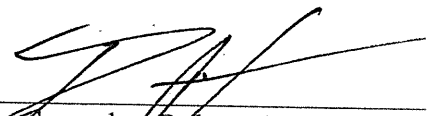
5 Councilmember Mary M. Cheh

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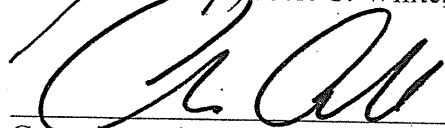
8 Councilmember Elissa Silverman

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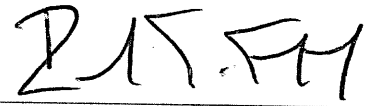
10 Councilmember Brianne K. Nadeau

11 

12 Councilmember Robert C. White, Jr.

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14 Councilmember Charles Allen

15 

16 Councilmember Brandon T. Todd

17 A BILL

18
19 _____
20
21 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
22
23 _____
24

25
26 To establish the Office of the Child Safety and Well-Being Ombudsperson.
27

28 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
29 act may be cited as the "Child Safety and Well-Being Ombudsperson Establishment Act of
30 2019".
31

32 Sec. 2. Definitions.

33 For the purposes of this title:

34 (1) "Agency" means the Child and Family Services Agency.

35 (2) "Administrative act" means any action, decision, adjudication, failure to act,
36 omission, rule or regulation, interpretation, recommendation, policy, practice or procedure of the
37 Child and Family Service Agency, its licensed or contracted service and place providers, and any
38 entity that works with Agency or the children, youth, and families it serves.

39 (3) "Child" has the same meaning as set forth in the "Child Fatality Review
40 Committee Establishment Act, October 3, 2001 (D.C. Law 14-28; D.C. Official Code § 4-
41 1371.02(1)).

42 (4) "Child Safety and Well-Being Ombudsperson" or "Ombudsperson" means the
43 individual responsible for administering the Office of the Child Safety and Well-Being
44 Ombudsperson.

45 (5) "Critical incident" means any child fatality, near fatality, or serious bodily
46 injury that comes to the attention of Agency staff.

47 (6) "District government agency" means any District government agency, office,
48 or program.

49 (7) "Near-fatality" means any act, as defined by a medical or other qualified
50 professional, that threatens the life of a child.

51 (8) "Record" means all records, documents, books, papers, files, photographs,
52 microfilms, sound recordings, video recordings, magnetic storage media, computer data and all
53 other materials, regardless of physical form or characteristics, created, generated, recorded,
54 received, possessed or controlled by or on behalf of any District government agency, or for
55 which any District government agency has the right to audit or otherwise access.

56 (9) "Serious bodily injury" means any significant impairment of a child's physical
57 or mental condition, as determined by qualified medical personnel, that includes sexual assault,
58 sex trafficking, broken bones, or any other trauma, injury, or condition of sufficient severity that,
59 if left untreated, would cause permanent physical disfigurement, permanent physical disability,
60 or death of a child.

61 Sec. 3. Establishment of Office of the Child Safety and Well-Being Ombudsperson

62 There is established, as part of the Citizen Review Panel on Child Abuse and Neglect of
63 the District of Columbia government, the Office of the Child Safety and Well-Being
64 Ombudsperson.

65 Sec. 4. Appointment.

66 (a) The Citizen Review Panel on Child Abuse and Neglect shall appoint the
67 Ombudsperson with a majority vote of attending members. Prior to the appointment, the Citizen
68 Review Panel on Child Abuse and Neglect shall consult with and may receive recommendations
69 from the Mayor and the Council of the District of Columbia, regarding the selection of the
70 Ombudsperson.

71 (b) The appointment of the Ombudsperson is subject to approval by a majority of
72 the Council.

73 Sec. 5. Qualifications.

74 (a) The Ombudsperson shall be a person of recognized judgment, objectivity, and
75 integrity who is qualified by training or experience to analyze problems of law, administration,
76 and public policy, with experience or familiarity with:

77 (1) Child welfare practice and policy of the Agency, in the region, and nationally;

78 and

79 (2) The Agency's child welfare data and case management system.

80 (b) The Ombudsperson shall be a member of the United States Ombudsman Association
81 ("USOA") and attend the New Ombudsman training offered by the USOA. If the Ombudsperson
82 is not a member of the USOA at the time of appointment, he, she, or they shall commit to joining
83 the organization in advance of Council confirmation.

84 (c) No person while serving as Ombudsperson:

85 (1) Shall be actively involved in political party activities or publicly endorse,
86 solicit funds for, or make contributions to political parties or candidates for elective office in the
87 District of Columbia;

88 (2) Shall be a candidate for or hold any other elective or appointive public office;

89 (3) Shall engage in any other occupation, business, or profession likely to detract
90 from the full-time performance of his, her, or their duties as Ombudsperson or to result in a
91 conflict of interest or an appearance of impropriety or partiality.”

92 Sec. 6. Term of Office.

93 The Ombudsperson shall serve for a term of 5 years and shall continue to serve until
94 reappointed or his, her, or their successor is appointed and qualified. He, she, or they may be
95 reappointed for additional terms.

96 Sec. 7. Removal and vacancy.

97 (a) The Council, by a vote of two-thirds of the members present and voting, may
98 remove the Ombudsperson from office, but only for mental or physical incapacity to perform the
99 duties of the office, or other grounds sufficient for removal of a judge from the Superior Court of
100 the District of Columbia.

101 (b) If the position of Ombudsperson becomes vacant for any reason, the Deputy
102 Ombudsperson shall serve as Acting Ombudsperson until an Ombudsperson has been appointed
103 for a full term.

104 Sec. 8. Organization of office.

105 (a) The Ombudsperson shall select, appoint, and fix the compensation of a person
106 as Deputy Ombudsperson and may select, appoint, and fix the compensation of such other
107 officers and employees as the Ombudsperson may deem necessary to discharge the

108 Ombudsperson's responsibilities under this act. Compensation shall be fixed within the amount
109 available by appropriation. All officers and employees shall serve at the Ombudsperson's
110 pleasure.

111 (b) At least one person in the Office of the Ombudsperson shall be a District
112 Licensed Independent Clinical Social Worker with expertise in child and youth welfare issues.

113 (c) At least one person in the Office of the Ombudsperson shall be an attorney
114 licensed to practice law in the District of Columbia with investigative experience.

115 (d) The Ombudsperson may delegate to staff members any authority, power, or
116 duty except this power of delegation and the Ombudsperson's duty to make any report under this
117 act. However, the Ombudsperson shall authorize the Deputy Ombudsperson to act in the
118 Ombudsperson's stead in the event of illness, absence, leave or disability, or when, in the
119 Ombudsperson's sole discretion, an appearance of impropriety or partiality or a conflict of
120 interest prevents the Ombudsperson from discharging his, her, or their duty in a particular matter.

121 (e) The Ombudsperson and his, her, or their staff shall be entitled to participate in
122 any employee benefit or retirement plan available to District government agency employees.

123 Sec. 9. Duties.

124 The Ombudsperson's duties include the following:

125 (1) Provide information as appropriate on the rights and responsibilities of
126 children, youth, and families receiving services from the Agency, its licensed or contracted
127 service and place providers, any entity that works with the Agency or the children, youth, and
128 families it serves, or to any children, youth, and their families that have come into contact with
129 the child welfare system;

130 (2) Investigate any administrative act without regard to the finality of the
131 administrative act in accordance with section 11;

132 (3) Monitor the policies, procedures, and directives, as established, implemented,
133 and practiced by the Agency to carry out its responsibilities in delivering family and children's
134 services with a view toward appropriate preservation of families and ensuring children's health
135 and safety;

136 (4) Recommend changes in the policies, procedures, and directives for addressing
137 the needs of children, youth, and families;

138 (5) Submit reports in accordance with section 16;

139 (6) Adopt, promulgate, amend and rescind rules and regulations required for the
140 discharge of the Ombudsperson's duties and implementation of this chapter, including
141 procedures for receiving and processing complaints, conducting investigations, performing
142 conflict resolution, and reporting findings, conclusions and recommendations. However, the
143 Ombudsperson may not levy any fees for the submission or investigation of complaints; and

144 (7) Prepare and administer a budget for the office of the Ombudsperson.

145 Sec. 10. Powers.

146 The Ombudsperson's powers include the following:

147 (1) Require the Agency's participation in alternative dispute resolution and to
148 facilitate meetings between the Agency and children, youth, and families to identify
149 recommendations and resolve concerns in adherence with local and federal laws, regulations, and
150 Agency policies and procedures;

151 (2) Undertake, participate in, or cooperate with persons and District government
152 agencies in such conferences, inquiries, meetings, or studies which might improve the
153 functioning of the agency or lessen the risks that objectionable administrative acts will occur;

154 (3) Make such inquiries and obtain such assistance and information from any
155 District government agency, the agency's contracted service providers and place providers, or
156 any entity that works with CFSA or the children, youth, and families it serves, that the
157 Ombudsperson shall require for the discharge of the Ombudsperson's duties;

158 (4) Notwithstanding any other provision of District law, have access to and to
159 examine and copy, without payment of a fee, any District government agency records that are
160 required for the discharge of the Ombudsperson's duties, including court dockets and records
161 which are confidential by District.

162 (5) Direct log-in access to the agency's data systems that service children without
163 having to first obtain agency consent or knowledge.

164 (6) Permission to enter and inspect without prior notice the premises of the
165 agency and all licensed or contracted placement providers, except for licensed single-family
166 foster homes;

167 (7) Permission to enter and inspect with prior notice all single-family foster
168 homes, contracted and licensed service providers, and any entity that works with the Agency or
169 the children, youth, and families it serves;

170 (8) Right to subpoena any person to appear, to give sworn testimony, or to
171 produce documentary or other evidence that is reasonably relevant to a matter under
172 investigation;

173 (9) Bring suit in the Superior Court of the District of Columbia to enforce the
174 provisions of this act; and

175 (10) Be an active member of the District Child Fatality Review Committee and
176 the internal Agency fatality review committee.

177 Sec. 11. Investigation of administrative acts.

178 (a) The Ombudsperson shall conduct a suitable investigation, on his, her, or their own
179 initiative or upon receipt of a complaint, of an administrative act if the Ombudsperson believes
180 that the administrative act might be:

181 (1) Inconsistent with District law, policy, regulation, or standards of good
182 practice;

183 (2) Based on mistaken facts or irrelevant considerations;

184 (3) Unsupported by an adequate statement of reasons;

185 (4) Performed in an unprofessional manner that is detrimental to the safety,
186 permanency, or well-being of children, youth, and families; or

187 (5) Unreasonable, unfair, or otherwise objectionable, even though in accordance
188 with law.

189 (b) The Ombudsperson shall investigate all critical incidents when the Ombudsman has
190 reason to believe that the injury or death is suspected to be caused by child abuse or neglect and
191 the family was involved with the Agency, its licensed or contracted service and place providers,
192 and any entity that works with Agency or the children, youth, and families it serves, during the
193 previous 12 months.

194 (c) The Ombudsperson, in the Ombudsperson's discretion may decide not to investigate
195 because:

196 (1) The complainant could reasonably be expected to use another remedy or
197 channel;

198 (2) The complaint is trivial, frivolous, vexatious, or not made in good faith;

199 (3) The complaint has been too long delayed to justify present examination;

200 (4) The complainant is not personally aggrieved by the subject matter of the
201 complaint;

202 (5) Resources are insufficient for adequate investigation; or

203 (6) Other complaints are more worthy of attention.

204 (c) The Ombudsperson's decision not to investigate a complaint shall not bar the
205 Ombudsperson from proceeding on his, her, or their own initiative to investigate an
206 administrative act whether or not included in the complaint.

207 Sec. 12. Investigation of administrative acts -- Rights of Complainant

208 (a) After the Ombudsperson has decided whether or not to investigate a
209 complaint, the Ombudsperson shall suitably inform the complainant.

210 (b) The Ombudsperson shall, if requested by the complainant, suitably report the
211 status of his, her, or their investigation to the complainant.

212 (c) After investigation of a complaint, the Ombudsperson shall suitably inform the
213 complainant of his, her, or their conclusion or recommendation and, if appropriate, any action
214 taken or to be taken by the agency involved.

215 (d) A letter to the Ombudsperson from a person held in the care or custody of the
216 Agency, its licensed or contracted service and place providers, or any entity that works with
217 Agency or the children, youth, and families it serves, shall be forwarded immediately, unopened,
218 to the Ombudsperson. A letter from the Ombudsperson to such person shall be immediately

219 delivered, unopened, to the person. Telephone and personal contacts between the Ombudsperson
220 and a person in custody shall not be prohibited or monitored.

221 Sec. 13. Investigation of Administrative Acts -- Procedure after Investigation

222 (a) The Ombudsperson shall state any conclusions, recommendations, and reasons
223 therefore to the agency, if, after investigation, the Ombudsperson is of the opinion that an agency
224 should:

- 225 (1) Consider the matter further,
- 226 (2) Modify or cancel an act,
- 227 (3) Alter a regulation, practice or ruling,
- 228 (4) Explain more fully the act in question,
- 229 (5) Rectify an omission, or
- 230 (6) Take any other action,

231 (b) If the Ombudsperson so requests, the agency shall, within the time specified, inform
232 the Ombudsperson about the action taken on recommendations or the reasons for not complying
233 with them.

234 (c) After a reasonable period of time has elapsed, the Ombudsperson may issue his, her,
235 or their conclusions or recommendations to the Council, or any of its committees, the Mayor, the
236 Citizens Review Panel on Child Abuse and Neglect, a grand jury, the public, or any other
237 appropriate authority. The Ombudsperson shall include any brief statement the Agency may
238 provide in reply to the conclusion or recommendation.

239 (d) If the Ombudsperson believes that an action has been dictated by laws whose results
240 are unfair or otherwise objectionable, and could be revised by legislative action, the
241 Ombudsperson shall notify the Council and the Agency of the recommended statutory change.

242 (e) If the Ombudsperson believes that any Agency official or employee has acted in a
243 manner warranting criminal or disciplinary proceedings, the Ombudsperson shall refer the matter
244 to the appropriate authorities.

245 Sec. 14. Rights of Agency

246 (a) Before formally issuing a conclusion or recommendation that is significantly critical
247 or adverse to the agency, the Ombudsperson shall have consulted with the Agency and permitted
248 the Agency reasonable opportunity to remedy the concern and reply.

249 (b) If the Ombudsperson makes a conclusion or recommendation available to the Agency
250 to facilitate a reply, the conclusion or recommendation is confidential and may not be disclosed
251 to the public by the Agency unless the Ombudsperson releases it.

252 Sec. 15. Duties of the Agency.

253 The Agency shall:

254 (1) Notify the Ombudsperson in writing within 24 hours after an Agency
255 employee becomes aware of an allegation of a critical incident;

256 (2) Provide the Ombudsperson with copies of proposed revisions to current
257 policies or regulations, or proposed new policies or regulations, including administrative
258 issuances, at least 30 days prior to issuance. The 30 day notice shall not apply to issuances of
259 emergency regulations; and

260 (3) Provide the Ombudsperson with copies of all Agency staff directives.

261 Sec. 16. Reporting.

262 (a) The Ombudsperson may from time to time report on his, her, or their activities to the
263 Council, or any of its committees, the Citizens Review Panel on Child Abuse and Neglect, the
264 Mayor, relevant agencies, and the public.

265 (b) The Ombudsperson shall provide an annual report to the D.C. Council, or any of its
266 committees, the Citizens Review Panel on Child Abuse and Neglect, the Mayor, and the public
267 by December 31 of each year, which shall include the following information from the previous
268 fiscal year:

269 (1) The number of contacts made to the Agency by telephone, website address, or
270 otherwise;

271 (2) The number and types of concerns made known to the Agency;

272 (3) The general sources of the concerns;

273 (4) The number of investigations conducted by the Ombudsman;

274 (5) The number of pending concerns;

275 (6) The trends and issues that arose during the course of investigating concerns;

276 (7) The outcomes of the Ombudsman's investigations;

277 (8) The recommendations for resolution of the issue; and

278 (9) A summary of systemic themes from the previous year and recommendations.

279 Sec. 17. Ombudsperson's immunities.

280 (a) The substantive content of any finding, conclusion, recommendation, or report of the
281 Ombudsperson or member of the Ombudsperson's staff shall not be reviewable in any court.

282 (b) The Ombudsperson and the Ombudsperson's staff shall have the same immunities
283 from civil and criminal liabilities as a judge of this Superior Court of the District of Columbia.

284 (c) The Ombudsperson and the Ombudsperson's staff shall not be compelled to testify or
285 produce evidence in any judicial or administrative proceeding with respect to any matter

286 involving the exercise of their official duties except as may be necessary to enforce this act. All

287 related memoranda, work product, notes, and case files of the Ombudsperson's office are

288 confidential, are not subject to discovery, judicial or administrative subpoena, or other method of
289 legal compulsion, and are not admissible in evidence in a judicial or administrative proceeding.

290 Sec. 18. Confidentiality.

291 (a) The Ombudsperson shall treat all matters under investigation, including the
292 identities of service recipients, complainants, and persons from whom information is acquired, as
293 confidential, except as far as disclosures may be necessary to enable the Ombudsperson to
294 perform the duties of the office and to support any recommendations resulting from an
295 investigation.

296 (b) Upon receipt of information that by law is confidential or privileged, the
297 Ombudsperson shall maintain the confidentiality of such information and shall not further
298 disclose or disseminate the information except as provided by applicable District or federal law.

299 (c) Investigative records of the office of the ombudsperson are confidential and are
300 exempt from public disclosure under chapter 5 Subchapter II.

301 (d) Identifying information about complainants or witnesses shall not be subject to any
302 method of legal compulsion, nor shall such information be revealed to the Citizen Review Panel
303 on Child Abuse and Neglect, the Mayor, nor the Council of the District of Columbia except
304 under the following circumstances:

305 (1) The complainant or witness waives confidentiality; or

306 (2) Under a legislative subpoena when there is a legislative investigation for
307 neglect of duty or misconduct by the Ombudsperson or Ombudsperson's office when the
308 identifying information is necessary to the investigation of the ombudsperson's acts.

309 Sec. 19. Obstruction.

310 (a) The Agency shall not restrict the Ombudsperson's access to or communication with
311 Agency personnel, the Agency's contracted service providers and place providers, or any entity
312 that works with the Agency or the children, youth, and families it serves.

313 (b) Any person who willfully obstructs or hinders the proper and lawful exercise of the
314 Ombudsperson's powers, or willfully misleads or attempts to mislead the Ombudsperson in the
315 Ombudsperson's inquiries, shall be guilty of obstruction of justice under the "District of
316 Columbia Theft and White Collar Crimes Act of 1982", December 1, 1982 (D.C. Law 4-164;
317 D.C. Official Code § 22-722).

318 Sec. 20. Reprisals Prohibited

319 (a) No person, including an employee of the Agency, an employee of the Agency's
320 contracted service and place providers, an employee of any entity that works with the Agency or
321 the children, youth, and families it serves, a foster parent, or a recipient of family and children's
322 services, who files a complaint or participates in any investigation or proceeding pursuant to this
323 chapter shall be subject to any penalties, sanctions, or restrictions in connection with his, her, or
324 their employment or be denied any right, privilege, or benefit because of such action.

325 (b) A person who alleges a violation of this part may bring a civil action for appropriate
326 injunctive relief, actual damages, and punitive damages. Punitive damages shall not exceed
327 \$10,000.

328 Sec. 21. Relation to Other Laws.

329 The provisions of this act are in addition to and do not in any manner limit or affect any
330 other provisions of law under which any remedy or right of appeal is provided for any person, or
331 any procedure is provided for the inquiry into or investigation of any matter. The powers

332 conferred on the Ombudsperson may be exercised notwithstanding any provision of law to the
333 effect that any administrative action shall be final or unappealable.”.

334 Sec. 22. Fiscal impact statement.

335 The Council adopts the fiscal impact statement in the committee report as the fiscal
336 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
337 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

338 Sec. 23. Effective date.

339 This act shall take effect following approval by the Mayor (or in the event of veto by the
340 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
341 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
342 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
343 Columbia Register.

