

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1311 Session of 2017

INTRODUCED BY PETRI, BOBACK, V. BROWN, CALTAGIRONE, DOWLING,  
FREEMAN, KAVULICH, MILLARD, MOUL, MURT, O'BRIEN, ROZZI, RYAN,  
TAYLOR AND WATSON, MAY 2, 2017

REFERRED TO COMMITTEE ON CHILDREN AND YOUTH, MAY 2, 2017

AN ACT

1 Amending Title 23 (Domestic Relations) of the Pennsylvania  
2 Consolidated Statutes, in child protective services, further  
3 providing for definitions and for release of information in  
4 confidential reports and providing for a Children's Advocate  
5 and remedial powers, for response to complaints, for  
6 cooperation of agencies and providers, for confidentiality of  
7 investigations and records, for findings and recommendations,  
8 for protection from retaliation and for nonexclusivity of  
9 remedy.

10 The General Assembly of the Commonwealth of Pennsylvania  
11 hereby enacts as follows:

12 Section 1. Section 6303(a) of Title 23 of the Pennsylvania  
13 Consolidated Statutes is amended by adding a definition to read:

14 § 6303. Definitions.

15 (a) General rule.--The following words and phrases when used  
16 in this chapter shall have the meanings given to them in this  
17 section unless the context clearly indicates otherwise:

18 \* \* \*

19 "Children's Advocate." The Children's Advocate established  
20 under section 6379.3 (relating to Children's Advocate).

21 \* \* \*

Section 2. Section 6340(a) of Title 23 is amended by adding a paragraph to read:

§ 6340. Release of information in confidential reports.

(a) General rule.--Reports specified in section 6339 (relating to confidentiality of reports) shall only be made available to:

\* \* \*

(19) The Children's Advocate.

\* \* \*

Section 3. Chapter 63 of Title 23 is amended by adding a subchapter to read:

SUBCHAPTER D.1

CHILDREN'S ADVOCATE

Sec.

6379.1. Scope of subchapter.

6379.2. Definitions.

6379.3. Children's Advocate.

6379.4. Powers and duties of Children's Advocate.

6379.5. Investigative and remedial powers.

6379.6. Response to complaints.

6379.7. Cooperation of agencies and providers.

6379.8. Confidentiality of investigations and records.

6379.9. Report of findings and recommendations.

6379.10. Annual report.

6379.11. Protection from retaliation.

6379.12. Obstruction.

6379.13. Nonexclusivity of remedy.

§ 6379.1. Scope of subchapter.

This subchapter relates to the Children's Advocate.

§ 6379.2 Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Administrative agency." A State or county agency that provides services to a child who is the subject of an investigation conducted by the Children's Advocate under this subchapter.

"Child welfare services." Foster homes, adoptive parents, boarding homes for children, juvenile detention center services or programs for delinquent or dependent children; mental health, mental retardation, early intervention and drug and alcohol services for children; and other child-care services which are provided by or subject to approval, licensure, registration or certification by the Department of Human Services or a county social services agency or which are provided pursuant to a contract with these departments or a county social services agency. The term does not include such services or programs which may be offered by public and private schools, intermediate units or area vocational-technical schools.

"Complainant." An individual who makes a complaint under this subchapter.

"Remediable action." An action by an administrative agency or an agent of the administrative agency that is:

(1) contrary to law, rule or policy;

(2) imposed without adequate statement of reason; or

(3) based on irrelevant or erroneous grounds.

§ 6379.3. Children's Advocate.

(a) Establishment.--The Office of Children's Advocate is established within the Office of Attorney General.

(b) Appointment.--Within 60 days of the effective date of

1 this section, the Attorney General shall appoint a Children's  
2 Advocate, subject to confirmation by a majority of the  
3 membership of the Senate. The Children's Advocate shall be  
4 qualified by training and experience to perform the duties and  
5 exercise the powers of the Children's Advocate as provided in  
6 this subchapter.

7 (c) Term of office.--The Children's Advocate shall hold  
8 office for a term of five years and shall continue to hold  
9 office until a successor is appointed. The Attorney General may  
10 reappoint the Children's Advocate then serving for one  
11 additional term, subject to Senate confirmation. A vacancy shall  
12 be filled by appointment for the remainder of the unexpired  
13 term. A Children's Advocate who has served part of an unexpired  
14 term may serve up to two additional terms.

15 (d) Removal.--The Attorney General may remove the Children's  
16 Advocate only for neglect of duty, misconduct or inability to  
17 perform duties. The Attorney General shall provide a report to  
18 the General Assembly citing the reasons for removal.

19 (e) Administrative support.--The Children's Advocate shall  
20 be established as an entity in the Office of Attorney General  
21 for purposes of administrative support.

22 § 6379.4. Powers and duties of Children's Advocate.

23 (a) General rule.--The Children's Advocate shall have the  
24 following powers and duties:

25 (1) To receive, process and investigate complaints under  
26 this subchapter.

27 (2) To pursue legislative advocacy in the best interests  
28 of children.

29 (3) To examine policies and procedures utilized by  
30 administrative agencies, including investigatory protocols,

1 reporting systems and emergency response procedures.

2 (4) To identify and make appropriate recommendations to  
3 the Governor, General Assembly, Supreme Court and Attorney  
4 General concerning issues affecting the welfare of children.

5 (5) To identify and make appropriate recommendations to  
6 the department regarding uniformity of procedures utilized by  
7 administrative agencies.

8 (6) Subject to annual appropriations, to employ  
9 sufficient personnel to carry out the powers and duties  
10 prescribed by this subchapter.

11 (7) To manage the expenditure of budgeted funds.

12 (8) To advise the public of services of the Children's  
13 Advocate, the purposes of the Office of Children's Advocate  
14 and the procedures to contact the Office of Children's  
15 Advocate.

16 (9) To prescribe procedures necessary to carry out the  
17 powers and duties of the Children's Advocate.

18 (10) To issue reports as necessary to carry out the  
19 powers and duties of the Children's Advocate.

20 (b) Limitation.--The Children's Advocate may not overrule or  
21 overturn an action by an administrative agency or court.

22 § 6379.5. Investigative and remedial powers.

23 The Children's Advocate may:

24 (1) Investigate alleged remediable actions concerning  
25 child welfare services throughout this Commonwealth.

26 (2) Investigate received complaints concerning child  
27 welfare services in this Commonwealth.

28 (3) Investigate complaints involving violations of  
29 applicable law or regulation or the alleged mismanagement of  
30 the department or administrative agency which directly or

1 indirectly placed a child in danger.

2 (4) Hold informal and formal hearings and request that  
3 individuals appear before the Children's Advocate and give  
4 testimony or produce documentary evidence that the Children's  
5 Advocate considers relevant to a matter under investigation.

6 (5) If necessary, administer oaths and compel the  
7 attendance of witnesses and production of physical evidence  
8 by subpoena.

9 (6) Report findings and recommendations under section  
10 6379.9 (relating to report of findings and recommendations).  
11 § 6379.6. Response to complaints.

12 (a) Notice.--

13 (1) If the Children's Advocate decides to investigate a  
14 complaint, the Children's Advocate shall notify the  
15 complainant and the department, county agency, provider of  
16 child welfare services and other interested parties of the  
17 decision to investigate.

18 (2) If the Children's Advocate declines to investigate a  
19 complaint or to continue an investigation, the Children's  
20 Advocate shall notify the complainant and the department,  
21 county agency, provider of child welfare services and other  
22 interested parties of the decision and the reasons for the  
23 Children's Advocate's action.

24 (b) Professional discipline.--

25 (1) If the investigation of a complaint leads the  
26 Children's Advocate to believe the matter complained of may  
27 involve professional misconduct, the Children's Advocate  
28 shall bring the matter to the attention of the licensing  
29 authorities responsible for professional discipline.

30 (2) If the complaint refers to conduct by a nonattorney,

1 guardian ad litem or court-appointed special advocate, the  
2 Children's Advocate shall perform a preliminary investigation  
3 and transmit the results of the investigation to the court.

4 (3) If the complaint refers to conduct by a licensed  
5 attorney, the Children's Advocate shall refer the complaint  
6 to the appropriate office within the Supreme Court.

7 (c) Referrals.--In the case of a complaint brought to the  
8 attention of the Children's Advocate but not within the  
9 Children's Advocate's scope of authority under this subchapter,  
10 the Children's Advocate shall refer the complainant to a person  
11 or agency with the authority or ability to assist the  
12 complainant.

13 (d) Alternative responses.--

14 (1) The Children's Advocate shall advise a person making  
15 a complaint to pursue all administrative remedies or channels  
16 of complaint available to the person before pursuing a  
17 complaint with the Children's Advocate.

18 (2) Subsequent to the administrative processing of a  
19 complaint, the Children's Advocate may conduct further  
20 investigations.

21 (e) Criminal violations.--

22 (1) If the Children's Advocate finds in the course of an  
23 investigation that an individual's action is in violation of  
24 Federal or State criminal law, the Children's Advocate shall  
25 immediately report that fact to the district attorney or the  
26 Attorney General.

27 (2) If the complaint is against a provider of child  
28 welfare services, the Children's Advocate shall refer the  
29 matter to the department for further action.

30 § 6379.7. Cooperation of agencies and providers.

1     (a) Investigations.--The department, county agency,  
2 administrative agency or provider of child welfare services  
3 shall:

4         (1) Upon the Children's Advocate's request, grant the  
5 Children's Advocate or the Children's Advocate's designee  
6 access to all information, records and documents in its  
7 possession that the Children's Advocate considers necessary  
8 to the investigation.

9         (2) Assist the Children's Advocate in obtaining the  
10 necessary releases for those documents that are specifically  
11 restricted.

12         (3) Provide the Children's Advocate upon request with  
13 progress reports concerning the administrative processing of  
14 a complaint.

15         (4) Provide the Children's Advocate with information  
16 requested within 10 business days after the written request  
17 of the Children's Advocate. If the department determines that  
18 release of the information would violate Federal or State  
19 law, the Children's Advocate shall be notified of that  
20 determination in writing within the 10-day deadline.

21     (b) Public awareness.--The department, county agency or  
22 provider of child welfare services shall provide written  
23 information to children and youth receiving child welfare  
24 services, a biological parent, prospective adoptive parent and  
25 foster parent regarding the provisions of this subchapter. The  
26 Children's Advocate shall develop written materials for public  
27 distribution regarding the provisions of this subchapter.

28 § 6379.8. Confidentiality of investigations and records.

29     (a) Matters under investigation.--

30         (1) The Children's Advocate shall treat all matters



1 under investigation as confidential, including the identities  
2 of recipients of information, individuals from whom  
3 information is acquired and persons seeking assistance from  
4 the Children's Advocate.

5 (2) Upon receipt of information that by law is  
6 confidential or privileged, the Children's Advocate shall  
7 maintain the confidentiality of the information and shall not  
8 further disclose or disseminate the information except as  
9 provided by Federal or State law or upon order of a court.

10 (b) Records.--

11 (1) A record of the Office of Children's Advocate is  
12 confidential, shall be used only for the purposes of this  
13 subchapter and is not subject to subpoena.

14 (2) Information contained in the records of the  
15 Children's Advocate may not be disclosed in such a manner as  
16 to identify individuals, except upon order of a court.

17 (3) The Children's Advocate or other agency may not  
18 disclose a record of the Children's Advocate or a record  
19 received from the Children's Advocate under the act of  
20 February 14, 2008 (P.L.6, No.3), known as the Right-to-Know  
21 Law, except upon order of a court.

22 (4) No person may disclose any record under this  
23 subsection without the written consent of the complainant.

24 § 6379.9. Report of findings and recommendations.

25 (a) Report.--The Children's Advocate shall make a report of  
26 the findings and recommendations for each investigation.

27 (b) Findings and recommendations.--The Children's Advocate  
28 shall establish findings and make recommendations to the  
29 department, county agency, provider of child welfare services  
30 and other appropriate entities if the Children's Advocate makes

1 any of the following determinations:

2 (1) A matter should be further considered by the  
3 department, county agency or provider of child welfare  
4 services.

5 (2) An administrative action should be modified or  
6 canceled.

7 (3) Reasons should be given for an administrative  
8 action.

9 (4) Other action should be taken by the department,  
10 county agency or provider of child welfare services.

11 (c) Subjects of report.--

12 (1) Before recording or disseminating a conclusion or  
13 recommendation that expressly or by implication criticizes an  
14 individual, the department, county agency or provider of  
15 child welfare services, the Children's Advocate shall provide  
16 the subject of the report with reasonable advance notice and  
17 an opportunity to respond.

18 (2) When making a report adverse to the department,  
19 county agency or provider of child welfare services, the  
20 Children's Advocate shall include in the report any written  
21 statement made to the Children's Advocate by the department,  
22 county agency or provider of child welfare services in  
23 defense or mitigation of the administrative action. The  
24 Children's Advocate may request to be notified in writing by  
25 the department, county agency or provider of child welfare  
26 services within a specified time of any administrative action  
27 taken on the recommendations of the Children's Advocate.

28 (d) Notice to complainant.--The Children's Advocate shall  
29 provide a person making a complaint with a copy of the  
30 Children's Advocate's report regarding the complaint and shall

1 notify the person of any action taken by the Children's Advocate  
2 and by the department, county agency or provider of child  
3 welfare services. The Children's Advocate may not release to the  
4 person any report information or other material required to be  
5 kept confidential under section 6339 (relating to  
6 confidentiality of reports).  
7 § 6379.10. Annual report.

8 (a) Annual report.--The Children's Advocate shall submit to  
9 the Governor, General Assembly, administrative office of the  
10 Supreme Court, Attorney General and department an annual report  
11 on the conduct of the Children's Advocate, including any  
12 recommendations regarding the need for legislation or for  
13 changes in rules or policies.

14 (b) Contents.--The annual report must include, but not be  
15 limited to, the following:

16 (1) A summary of complaints received, including:

17 (i) the number investigated by county;

18 (ii) the number of children involved in each  
19 complaint; and

20 (iii) a description of the nature of the complaints  
21 that were investigated.

22 (2) A summary of actions taken by the Children's  
23 Advocate, including the number of referrals to other entities  
24 and a description of the action taken in complaints that were  
25 investigated.

26 (3) A summary of collaboration with other entities.

27 (4) A summary of the utilization of funds.

28 (5) A summary of public awareness activity under section  
29 6379.7(b) (relating to cooperation of agencies and  
30 providers).

1 § 6379.11. Protection from retaliation.

2 (a) General rule.--An official, the department, county  
3 agency or provider of child welfare services may not penalize a  
4 person for filing a complaint in good faith or cooperating with  
5 the Children's Advocate in investigating a complaint under this  
6 subchapter.

7 (b) Penalties.--Violations of subsection (a) shall be  
8 subject to the penalties contained in section 6 of the act of  
9 December 12, 1986 (P.L.1559, No.169), known as the Whistleblower  
10 Law.

11 § 6379.12. Obstruction.

12 (a) General rule.--An individual, the department, county  
13 agency or provider of child welfare services may not hinder the  
14 lawful actions of the Children's Advocate or employees or  
15 designees of the Children's Advocate.

16 (b) Penalties.--Violations of subsection (a) shall be  
17 subject to the penalties in 18 Pa.C.S. § 5101 (relating to  
18 obstructing administration of law or other governmental  
19 function).

20 § 6379.13. Nonexclusivity of remedy.

21 (a) General rule.--The authority granted the Children's  
22 Advocate under this subchapter is in addition to the authority  
23 granted under the provisions of:

24 (1) any other statute or rule under which the remedy or  
25 right of appeal or objection is provided for a person; or

26 (2) any procedure provided for the inquiry into or  
27 investigation of any matter.

28 (b) Authority of Children's Advocate.--The authority granted  
29 the Children's Advocate shall not limit or affect the remedy or  
30 right of appeal or objection and is not an exclusive remedy or

1 procedure.

2       Section 4.   This act shall take effect immediately.