

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1311 Session of 2017

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

1 * * *

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

4 § 6340. Release of information in confidential reports.

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

8 * * *

9 (19) The Children's Advocate.

10 * * *

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

13 SUBCHAPTER D.1

14 CHILDREN'S ADVOCATE

15 Sec.

16 6379.1. Scope of subchapter.

17 6379.2. Definitions.

18 6379.3. Children's Advocate.

19 6379.4. Powers and duties of Children's Advocate.

20 6379.5. Investigative and remedial powers.

21 6379.6. Response to complaints.

22 6379.7. Cooperation of agencies and providers.

23 6379.8. Confidentiality of investigations and records.

24 6379.9. Report of findings and recommendations.

25 6379.10. Annual report.

26 6379.11. Protection from retaliation.

27 6379.12. Obstruction.

28 6379.13. Nonexclusivity of remedy.

29 § 6379.1. Scope of subchapter.

30 This subchapter relates to the Children's Advocate.

1 § 6379.2. Definitions.

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

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

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

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

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

- 25 (1) contrary to law, rule or policy;
26 (2) imposed without adequate statement of reason; or
27 (3) based on irrelevant or erroneous grounds.

28 § 6379.3. Children's Advocate.

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

1 (b) Appointment.--Within 60 days of the effective date of
2 this section, the Attorney General shall appoint a Children's
3 Advocate, subject to confirmation by a majority of the
4 membership of the Senate. The Children's Advocate shall be
5 qualified by training and experience to perform the duties and
6 exercise the powers of the Children's Advocate as provided in
7 this subchapter.

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

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

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

23 § 6379.4. Powers and duties of Children's Advocate.

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

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

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

30 (3) To examine policies and procedures utilized by

1 administrative agencies, including investigatory protocols,
2 reporting systems and emergency response procedures.

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

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

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

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

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

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

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

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

23 § 6379.5. Investigative and remedial powers.

24 The Children's Advocate may:

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

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

29 (3) Investigate complaints involving violations of
30 applicable law or regulation or the alleged mismanagement of

1 the department or administrative agency which directly or
2 indirectly placed a child in danger.

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

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

10 (6) Report findings and recommendations under section
11 6379.9 (relating to report of findings and recommendations).

12 § 6379.6. Response to complaints.

13 (a) Notice.--

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

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

25 (b) Professional discipline.--

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

1 (2) If the complaint refers to conduct by a nonattorney,
2 guardian ad litem or court-appointed special advocate, the
3 Children's Advocate shall perform a preliminary investigation
4 and transmit the results of the investigation to the court.

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

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

14 (d) Alternative responses.--

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

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

22 (e) Criminal violations.--

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

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

1 § 6379.7. Cooperation of agencies and providers.

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

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

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

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

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

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

29 § 6379.8. Confidentiality of investigations and records.

30 (a) Matters under investigation.--

1 (1) The Children's Advocate shall treat all matters
2 under investigation as confidential, including the identities
3 of recipients of information, individuals from whom
4 information is acquired and persons seeking assistance from
5 the Children's Advocate.

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

11 (b) Records.--

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

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

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

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

25 § 6379.9. Report of findings and recommendations.

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

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

1 and other appropriate entities if the Children's Advocate makes
2 any of the following determinations:

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

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

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

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

12 (c) Subjects of report.--

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

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

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

1 Children's Advocate's report regarding the complaint and shall
2 notify the person of any action taken by the Children's Advocate
3 and by the department, county agency or provider of child
4 welfare services. The Children's Advocate may not release to the
5 person any report information or other material required to be
6 kept confidential under section 6339 (relating to
7 confidentiality of reports).
8 § 6379.10. Annual report.

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

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

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

18 (i) the number investigated by county;

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

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

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

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

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

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

1 providers).

2 § 6379.11. Protection from retaliation.

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

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

12 § 6379.12. Obstruction.

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

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

21 § 6379.13. Nonexclusivity of remedy.

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

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

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

29 (b) Authority of Children's Advocate.--The authority granted
30 the Children's Advocate shall not limit or affect the remedy or

1 right of appeal or objection and is not an exclusive remedy or
2 procedure.

3 Section 4. This act shall take effect immediately.