
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1749 Session of
2019

INTRODUCED BY TOOHIL, OWLETT, MILLARD, KAUFFMAN, KENYATTA,
T. DAVIS, SCHLOSSBERG, JOHNSON-HARRELL, NEILSON, HOWARD,
THOMAS, CIRESI, BROWN, STRUZZI, PASHINSKI, YOUNGBLOOD, WARREN
AND SCHWEYER, AUGUST 16, 2019

REFERRED TO COMMITTEE ON CHILDREN AND YOUTH, AUGUST 16, 2019

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" or "child-care services." As
10 defined in section 6303 (relating to definitions). The term does
11 not include services provided by a child day-care center or
12 group and family day-care home.

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

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

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

20 § 6379.3. Children's Advocate.

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

23 (b) Appointment.--Within 60 days of the effective date of
24 this section, the Attorney General shall appoint a Children's
25 Advocate, subject to confirmation by a majority of the
26 membership of the Senate. The Children's Advocate shall be
27 qualified by training and experience to perform the duties and
28 exercise the powers of the Children's Advocate as provided in
29 this subchapter.

30 (c) Term of office.--The Children's Advocate shall hold

1 office for a term of five years and shall continue to hold
2 office until a successor is appointed. The Attorney General may
3 reappoint the Children's Advocate then serving for one
4 additional term, subject to Senate confirmation. A vacancy shall
5 be filled by appointment for the remainder of the unexpired
6 term. A Children's Advocate who has served part of an unexpired
7 term may serve up to two additional terms.

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

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

15 § 6379.4. Powers and duties of Children's Advocate.

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

18 (1) To receive, process and investigate complaints under
19 this subchapter.

20 (2) To pursue legislative advocacy in the best interests
21 of children.

22 (3) To examine policies and procedures utilized by
23 administrative agencies, including investigatory protocols,
24 reporting systems and emergency response procedures.

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

29 (5) To identify and make appropriate recommendations to
30 the department regarding uniformity of procedures utilized by

1 administrative agencies.

2 (6) Subject to annual appropriations, to employ
3 sufficient personnel to carry out the powers and duties
4 prescribed by this subchapter.

5 (7) To manage the expenditure of appropriated funds.

6 (8) To advise the public of services of the advocate,
7 the purposes of the Office of Children's Advocate and the
8 procedures to contact the Office of Children's Advocate.

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

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

13 § 6379.5. Investigative and remedial powers.

14 The Children's Advocate may:

15 (1) Investigate alleged remediable actions concerning
16 child welfare services throughout this Commonwealth.

17 (2) Investigate received complaints concerning child
18 welfare services in this Commonwealth.

19 (3) Investigate complaints involving violations of
20 applicable law or regulation or the alleged mismanagement of
21 the department or administrative agency which directly or
22 indirectly placed a child in danger.

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

27 (5) If necessary, administer oaths and compel the
28 attendance of witnesses and production of physical evidence
29 by subpoena.

30 (6) Report findings and recommendations under section

1 6379.9 (relating to report of findings and recommendations).

2 § 6379.6. Response to complaints.

3 (a) Notice.--

4 (1) If the Children's Advocate decides to investigate a
5 complaint, the Children's Advocate shall notify the
6 complainant, the department, county agency, provider of child
7 welfare services and other interested parties of the decision
8 to investigate.

9 (2) If the Children's Advocate declines to investigate a
10 complaint or to continue an investigation, the Children's
11 Advocate shall notify the complainant and the department,
12 county agency, provider of child welfare services and other
13 interested parties of the decision and the reasons for the
14 Children's Advocate's action.

15 (b) Professional discipline.--

16 (1) If the investigation of a complaint leads the
17 Children's Advocate to believe the matter complained of may
18 involve professional misconduct, the Children's Advocate
19 shall bring the matter to the attention of the licensing
20 authority responsible for professional discipline.

21 (2) If the complaint refers to conduct by a non-
22 attorney, guardian ad litem or court-appointed special
23 advocate, the Children's Advocate shall perform a preliminary
24 investigation and transmit the results of the investigation
25 to the court.

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

29 (c) Referrals.--In the case of a complaint brought to the
30 attention of the Children's Advocate but not within the

1 Children's Advocate's scope of authority under this subchapter,
2 the Children's Advocate shall refer the complainant to a person
3 or agency with the authority or ability to assist the
4 complainant.

5 (d) Alternative responses.--

6 (1) The Children's Advocate shall advise an individual
7 making a complaint to pursue all administrative remedies or
8 channels of complaint available to the individual before
9 pursuing a complaint with the Children's Advocate.

10 (2) Subsequent to the administrative processing of a
11 complaint, the Children's Advocate may conduct further
12 investigations.

13 (e) Criminal violations.--

14 (1) If the Children's Advocate finds in the course of an
15 investigation that an individual's action is in violation of
16 Federal or State criminal law, the Children's Advocate shall
17 immediately report that fact to the district attorney or the
18 Attorney General.

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

22 § 6379.7. Cooperation of agencies and providers.

23 (a) Investigations.--The department, county agency,
24 administrative agency or provider of child welfare services
25 shall:

26 (1) Upon the Children's Advocate's request, grant the
27 Children's Advocate or the Children's Advocate's designee
28 access to all information, records and documents in its
29 possession that the Children's Advocate considers necessary
30 to the investigation.

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

4 (3) Provide the Children's Advocate upon request with
5 progress reports concerning the administrative processing of
6 a complaint.

7 (4) Provide the Children's Advocate with information
8 requested within 10 business days after the written request
9 of the Children's Advocate. If the department determines that
10 the release of the information would violate Federal or State
11 law, the Children's Advocate shall be notified of that
12 determination in writing within the ten-day period.

13 (b) Public awareness.--

14 (1) The department, county agency or provider of child
15 welfare services shall provide information to a biological
16 parent, prospective adoptive parent or foster parent
17 regarding the provisions of this subchapter.

18 (2) The Children's Advocate shall develop written
19 materials for public distribution regarding the provisions of
20 this subchapter.

21 § 6379.8. Confidentiality of investigations and records.

22 (a) Matters under investigation.--

23 (1) The Children's Advocate shall treat all matters
24 under investigation as confidential, including the identities
25 of recipients of information, individuals from whom
26 information is acquired and persons seeking assistance from
27 the Children's Advocate.

28 (2) Upon receipt of information that by law is
29 confidential or privileged, the Children's Advocate shall
30 maintain the confidentiality of the information and may not

1 further disclose or disseminate the information except as
2 provided by Federal or State law or upon order of a court.

3 (b) Records.--

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

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

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

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

17 § 6379.9. Report of findings and recommendations.

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

20 (b) Findings and recommendations.--The Children's Advocate
21 shall establish findings and make recommendations to the
22 department, the county agency, the provider of child welfare
23 services and other appropriate entities if the Children's
24 Advocate makes any of the following determinations:

25 (1) A matter should be further considered by the
26 department, the county agency or provider of child welfare
27 services.

28 (2) An administrative action should be modified or
29 canceled.

30 (3) Reasons should be given for an administrative

1 action.

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

4 (c) Subjects of report.--

5 (1) Before recording or disseminating a conclusion or
6 recommendation that expressly or by implication criticizes an
7 individual, the department, the county agency or a provider
8 of child welfare services, the Children's Advocate shall
9 provide the subject of the report with reasonable advance
10 notice and an opportunity to respond.

11 (2) When making a report adverse to the department,
12 county agency or provider, the Children's Advocate shall
13 include in the report any written statement made to the
14 Children's Advocate by the department, county agency or
15 provider of child welfare services in defense or mitigation
16 of the administrative action. The Children's Advocate may
17 request to be notified in writing by the department, county
18 agency or provider within a specified time of any
19 administrative action taken on the recommendations of the
20 Children's Advocate.

21 (d) Notice to complainant.--

22 (1) The Children's Advocate shall provide an individual
23 making a complaint with a copy of the Children's Advocate's
24 report regarding the complaint and shall notify the
25 individual of any action taken by the Children's Advocate and
26 by the department, county agency or provider of child welfare
27 services.

28 (2) The Children's Advocate may not release to the
29 individual any report information or other material required
30 to be kept confidential under section 6339 (relating to

1 confidentiality of reports).

2 § 6379.10. Annual report.

3 The Children's Advocate shall submit to the Governor, the
4 General Assembly, the administrative office of the Supreme
5 Court, the Attorney General and the department an annual report
6 on the conduct of the Children's Advocate, including any
7 recommendations regarding the need for legislation or for
8 changes in rules or policies.

9 § 6379.11. Protection from retaliation.

10 (a) General rule.--An official, the department, the county
11 agency or a provider of child welfare services may not penalize
12 an individual for filing a complaint in good faith or
13 cooperating with the Children's Advocate in investigating a
14 complaint under this subchapter.

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

19 § 6379.12. Obstruction.

20 (a) General rule.--An individual, the department, the county
21 agency or a provider of child welfare services may not hinder
22 the lawful actions of the Children's Advocate or employees or
23 designees of the Children's Advocate.

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

28 § 6379.13. Nonexclusivity of remedy.

29 (a) General rule.--The authority granted the Children's
30 Advocate under this subchapter is in addition to the authority

1 granted under the provisions of:

2 (1) any other statute or rule under which the remedy or
3 right of appeal or objection is provided for an individual;
4 or

5 (2) any procedure provided for the inquiry into or
6 investigation of any matter.

7 (b) Authority of Children's Advocate.--The authority granted
8 the Children's Advocate shall not limit or affect the remedy or
9 right of appeal or objection and is not an exclusive remedy or
10 procedure.

11 Section 4. This act shall take effect immediately.