

ASSEMBLY, No. 1111

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblywoman CAROL A. MURPHY

District 7 (Burlington)

SYNOPSIS

Establishes Office of Child Advocate.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** establishing the Office of the Child Advocate and
2 supplementing Title 52 of the Revised Statutes.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. There is established the Office of the Child Advocate in the
8 Executive Branch of the State Government. For purposes of
9 complying with Article V, Section IV, paragraph 1 of the New
10 Jersey Constitution, the office is allocated within the Department of
11 Children and Families, but notwithstanding the allocation, the office
12 shall be independent of any supervision or control by the
13 department, or a division, office, or officer thereof, in the
14 performance of its duties.

15

16 2. a. The administrator and chief executive officer of the
17 office shall be the Child Advocate, who shall be an attorney
18 admitted to practice law in New Jersey and be qualified by training
19 and experience to perform the duties of the office.

20 b. The Child Advocate shall be appointed by the Governor and
21 shall serve for a term of five years and until the appointment and
22 qualification of his successor. The Governor shall have the power
23 to remove the Child Advocate for cause. The entire professional
24 time of the Child Advocate shall be devoted to the duties of the
25 position, and the Child Advocate shall receive such salary as
26 provided by law. A vacancy occurring in the position of child
27 advocate shall be filled in the same manner as the original
28 appointment, except that if the child advocate dies, resigns,
29 becomes ineligible to serve for any reason, or is removed from
30 office, the Governor shall appoint an acting Child Advocate who
31 shall serve until the appointment and qualification of the Child
32 Advocate's successor.

33

34 3. a. The Child Advocate shall seek to ensure the provision
35 of effective, appropriate and timely services for children at risk of
36 abuse and neglect in the State, and that children under State
37 supervision due to abuse or neglect are served adequately and
38 appropriately by the State.

39 b. The Office of the Child Advocate shall be deemed a child
40 protective agency for the purposes of section 1 of P.L.1977, c.102
41 (C.9:6-8.10a).

42

43 4. a. The Child Advocate shall:

44 (1) administer the work of the Office of the Child Advocate;

45 (2) appoint and remove such officers, investigators,
46 stenographic and clerical assistants, and other personnel, in the
47 career or unclassified service, as may be required for the conduct of
48 the office, subject to the provisions 26 of Title 11A of the New

1 Jersey Statutes, and other applicable statutes, except as provided
2 otherwise herein;

3 (3) formulate and adopt rules and regulations for the efficient
4 conduct of the work and general administration of the office, its
5 officers, and employees, in accordance with the "Administrative
6 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.); and

7 (4) institute or cause to be instituted such legal proceedings or
8 processes consistent with the Rules Governing the Courts of New
9 Jersey as may be necessary to properly enforce and give effect to
10 any of the Child Advocate's powers or duties.

11 b. Consistent with the provisions of federal and State law the
12 Child Advocate shall have:

13 (1) access to, and the right to inspect and copy, any records,
14 including pupil records in accordance with the provisions of
15 N.J.S.18A:36-19, necessary to carry out the responsibilities under
16 this act; and

17 (2) reasonable access to, and the right to copy any records from
18 the Department of Children and Families' Statewide Automated
19 Child Welfare Information System, or its successor, necessary to
20 carry out its responsibilities under this act, and only with regard to
21 persons who are or may be the subject of an investigation by the
22 child advocate, or to assess the status of an individual complaint or
23 inquiry to determine whether further action by the child advocate is
24 appropriate; except that, access provided to the Statewide
25 Automated Child Welfare Information System, or its successor,
26 shall be limited to information available through the system, unless
27 otherwise agreed to by the child advocate and the Department of
28 Children and Families.

29 c. The Child Advocate may issue subpoenas to compel the
30 attendance and testimony of witnesses or the production of books,
31 papers, and other documents, and administer oaths to witnesses in
32 any matter under the investigation of the office. If any person to
33 whom such subpoena is issued fails to appear or, having appeared,
34 refuses to give testimony, or fails to produce the books, papers, or
35 other documents required, the Child Advocate may apply to the
36 Superior Court, which may order the person to appear and give
37 testimony or produce the books, papers, or other documents, as
38 applicable.

39 d. The Child Advocate shall disseminate information to the
40 public on the objectives of the office, the services the office
41 provides, and the methods by which the office may be contacted.

42 e. The Child Advocate shall aid the Governor in proposing
43 methods of achieving increased coordination and collaboration
44 among State agencies to ensure maximum effectiveness and
45 efficiency in the provision of services to children.

46

47 5. The Child Advocate may:

- 1 a. investigate, review, monitor, or evaluate any State agency
2 response to, or disposition of, an allegation of child abuse or neglect
3 in this State;
- 4 b. inspect and review the operations, policies, and procedures
5 of:
 - 6 (1) juvenile detention centers operated by the counties and all
7 juvenile justice facilities operated by or under contract with the
8 Juvenile Justice Commission, including, but not limited to, secure
9 correctional facilities and residential and day treatment programs;
 - 10 (2) resource family homes, group homes, residential treatment
11 facilities, shelters for the care of abused or neglected children,
12 shelters for the care of juveniles considered as juvenile-family crisis
13 cases, shelters for the care of homeless youth, or independent living
14 arrangements operated, licensed, or approved for payment, by the
15 Departments of Children and Families, Community Affairs, or
16 Health; and
 - 17 (3) any other public or private setting in which a child has been
18 placed by a State or county agency or department;
- 19 c. review, evaluate, report on, and make recommendations
20 concerning the procedures established by any State agency
21 providing services to children who are at risk of abuse or neglect,
22 children in State or institutional custody, or children who receive
23 child protective or permanency services;
- 24 d. review, monitor, and report on the performance of State-
25 funded private entities charged with the care and supervision of
26 children due to abuse or neglect by conducting research audits or
27 other studies of case records, policies, procedures, and protocols, as
28 deemed necessary by the Child Advocate to assess the performance
29 of the entities;
- 30 e. receive, investigate, and make referrals to other agencies or
31 take other appropriate actions with respect to a complaint received
32 by the office regarding the actions of a State, county or municipal
33 agency, or a State-funded private entity providing services to
34 children who are at risk of abuse or neglect;
- 35 f. hold a public hearing on the subject of an investigation or
36 study underway by the office, and receive testimony from agency
37 and program representatives, the public, and other interested
38 parties, as the Child Advocate deems appropriate;
- 39 g. establish and maintain a 24-hour toll-free telephone hotline
40 to receive and respond to calls from members of the public referring
41 problems to the Child Advocate, both individual and systemic, in
42 how the State, through its agencies or contract services, protects
43 children;
- 44 h. in exercising the authority provided in subsection a. of this
45 section, the Child Advocate may conduct unannounced site visits to
46 any institution or facility to which children are committed or placed
47 if the Child Advocate, prior to conducting an unannounced site
48 visit, has initiated a project or investigation into the response or

1 disposition of an allegation of abuse or neglect and there is a
2 reasonable basis to believe that an unannounced site visit is
3 necessary to carry out the Child Advocate's responsibilities under
4 this act, provided, however, that any unannounced site visit shall be
5 conducted at a reasonable time and in a reasonable manner;

6 i. In exercising the authority provided under subsections a.
7 through e. of this section, the Child Advocate shall consult with any
8 appropriate State, county or municipal agency, or a State-funded
9 private entity providing services to children, and may request from
10 any such entity, and the entity is hereby authorized and directed to
11 provide, such cooperation and assistance as will enable the Office
12 of the Child Advocate to properly perform its responsibilities under
13 this act; and

14 j. notwithstanding the provisions of section 11 of P.L.1944,
15 c.20
16 42 (C.52:17A-11) to the contrary, hire independent counsel on a
17 case-by-case basis to provide competent representation in light of
18 the nature of the case, the services to be performed, the experience
19 of the particular attorney, and other relevant factors.
20

21 6. a. If the Child Advocate identifies a systemic problem in
22 how the State, through its agencies or contract services, protects
23 children, the Child Advocate shall meet with the State agency or
24 agencies with jurisdiction to provide a reasonable opportunity to
25 discuss the problem and identify possible responses the agency may
26 consider. Taking into account any information provided during the
27 meeting and discussion, the Child Advocate shall provide its
28 findings and recommendations to the agency affected by the
29 findings and recommendations, and, except as provided in
30 subsections b. and c. of section 11 of this act, make those findings
31 and recommendations available to the public.

32 b. Within 30 days from the receipt of the Child Advocate's
33 findings and recommendations, the agency shall develop a
34 corrective action response that addresses the findings and
35 recommendations of the Child Advocate and specifies what actions,
36 if any, the agency will take in response to the systemic problem
37 identified by the Child Advocate, which response may be developed
38 in conjunction with the Child Advocate.

39 c. The agency shall submit its corrective action response to the
40 head of the relevant department or departments with jurisdiction
41 over the agency and simultaneously provide a copy to the child
42 advocate.

43 d. The Child Advocate shall monitor an agency's
44 implementation of its corrective action response. An agency
45 implementing a corrective action response shall provide the Child
46 Advocate with periodic reports on the status of the actions taken by
47 the agency pursuant to its corrective action response. The Child
48 Advocate shall monitor the agency's implementation of its

1 corrective action response for a period of one year, during which
2 time the agency shall provide the Child Advocate with periodic
3 reports, except that the Child Advocate may determine that the
4 monitoring and periodic reports are required for a period of less
5 than one year. The agency's obligation to provide periodic reports
6 on the implementation of its corrective action response may exceed
7 a period of one year if the Child Advocate and the agency jointly
8 agree that an extended reporting period is appropriate.

9 e. If an agency fails to promptly and adequately implement a
10 corrective action response, the Child Advocate shall take such
11 action as the child advocate deems necessary.

12 f. An agency shall make public the corrective action responses
13 and periodic status reports required by this section, except that the
14 agency may provide to the Child Advocate an additional response
15 or report containing confidential information.

16
17 7. a. In addition to the powers granted in section 5 of this act,
18 the Child Advocate may:

19 (1) intervene in or institute litigation, including appearing in the
20 capacity of an amicus curiae, as appropriate, or

21 (2) intervene in or institute administrative proceedings before
22 any department, commission, agency, or State board, to assert the
23 broad public interest of the State in the welfare of children and to
24 protect and promote the rights of children. In taking such actions,
25 the Child Advocate shall consider whether a child or family may be
26 in need of assistance from the child advocate or whether there is a
27 systemic issue in the State's provision of services to children that
28 should be addressed. The Child Advocate shall make a good faith
29 effort to resolve issues or problems, and shall have the authority to
30 commence negotiations, mediation, or alternative dispute resolution
31 in its advocacy efforts prior to, or in lieu of, the initiation of any
32 action brought pursuant to this section.

33 b. The Child Advocate shall have discretion to decide whether
34 to intervene in any particular matter or to represent or refrain from
35 representing the public interest in a proceeding. The Child
36 Advocate shall consider, in exercising the Child Advocate's
37 discretion, the resources available, the importance and extent of the
38 public interest involved, and whether that interest would be
39 adequately represented without the action of the office.

40
41 8. a. The Child Advocate shall seek the approval of a parent,
42 guardian, or law guardian, as applicable, or obtain the approval of a
43 court of competent jurisdiction so as to communicate directly with a
44 child who is the subject of a complaint or allegation of child abuse
45 or neglect, if necessary to conduct an investigation authorized under
46 the provisions of this act. The communications with the child shall
47 be conducted under such terms and conditions that protect the best
48 interests of the child.

1 b. If court approval is sought, the court, in reviewing an
2 application for approval, shall consider:

3 (1) the best interests of the child, so as to minimize any
4 detrimental effects on the child that may occur as a result of the
5 communication; and

6 (2) the investigative needs of the child advocate and law
7 enforcement authorities, when applicable. Upon consideration of
8 the factors in this subsection, the court may order any alternative
9 methods for obtaining the required information.

10
11 9. The Child Advocate shall seek to ensure the protection of
12 children who are in an institution or resource family care by
13 reviewing, evaluating, and monitoring the operation and activities
14 of the Institutional Abuse Investigation Unit in the Department of
15 Children and Families.

16 a. In order to enable the Child Advocate to carry out the child
17 advocate's responsibilities under this section, the Institutional
18 Abuse Investigation Unit shall:

19 (1) promptly notify the Child Advocate of any allegations of
20 abuse or neglect made against an institution or resource family
21 home serving children in this State;

22 (2) promptly provide the Child Advocate with a copy of the
23 unit's response to the complaint and the actions taken by the unit to
24 address the complaint;

25 (3) provide the Child Advocate with monthly updates of the
26 status of actions proposed by the unit regarding an existing
27 complaint that has not been resolved; and

28 (4) provide the Child Advocate with such other information as
29 the child advocate may deem necessary to carry out the Child
30 Advocate's responsibilities to review, evaluate, and monitor the
31 operation and activities of the unit.

32 b. As used in this section, "institution" means a public or
33 private facility, in this State or out-of-State, that provides children
34 with out-of-home care, supervision or maintenance. Institution
35 includes, but is not limited to: a correctional facility, detention
36 facility, treatment facility, child care center, group home, public and
37 nonpublic elementary or secondary school and school bus or other
38 similar vehicle used to transport students to and from school,
39 residential school, shelter, psychiatric hospital, and developmental
40 center.

41
42 10. The Child Advocate shall report annually to the Governor,
43 the Commissioner of Children and Families, and the Legislature,
44 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), on: the
45 activities of the office; priorities for children's services that have
46 been identified by the Child Advocate; and recommendations for
47 improvement or needed changes concerning the provision of
48 services to children who are at risk of abuse or neglect, and are in

1 State or institutional custody, or receive child protective or
2 permanency services by State agencies and State-funded private
3 entities. The annual report shall be made available to the public and
4 posted on the Department of Children and Families' internet
5 website.

6
7 11. a. The Child Advocate shall make public its findings of
8 investigation reports or other studies undertaken by the office,
9 including its investigatory findings to complaints received pursuant
10 to section 5 of this act, and shall forward any publicly reported
11 findings to the Governor, the Legislature, the Commissioner of
12 Children and Families, and the affected public agencies.

13 b. The Child Advocate shall not disclose:

14 (1) any information that would likely endanger the life, safety,
15 or physical or emotional well-being of a child, or the life or safety
16 of a person who filed a complaint or which may compromise the
17 integrity of a State or county department or agency investigation,
18 civil or criminal investigation, or judicial or administrative
19 proceeding; and

20 (2) the name of or any other information identifying the person
21 who filed a complaint with, or otherwise provided information to,
22 the office without the written consent of that person. The
23 information subject to the provisions of this subsection shall not be
24 considered a public record pursuant to the provisions of P.L.1963,
25 c.73 (C.47:1A-1 et seq.) and P.L.2001, c.404 (C.47:1A-5 et al.).

26 c. The Child Advocate shall not disclose any information that
27 may be deemed confidential by federal or State law, except when
28 necessary to allow the Department of Children and Families,
29 Attorney General, Juvenile Justice Commission, and other State or
30 county department or agency to perform its duties and obligations
31 under the law.

32
33 12. Pursuant to the "Administrative Procedure Act," P.L.1968,
34 c.410 (C.52:14B-1 et seq.), the Child Advocate and the Department
35 of Children and Families may adopt any rules and regulations
36 necessary to effectuate the purposes of this act.

37
38 13. This act shall take effect immediately
39
40

41 STATEMENT

42
43 This bill establishes the Office of the Child Advocate in, but not
44 of, the Department of Children and Families (DCF). The bill
45 provides that the child advocate would seek to ensure the provision
46 of effective, appropriate, and timely services for children at risk of
47 abuse and neglect in the State, and that children under State

1 supervision due to abuse or neglect are served adequately and
2 appropriately by the State.

3 The Office of the Child Advocate would be deemed a child
4 protective agency for the purposes of N.J.S.A.9:6-8.10a.

5 The bill allows the Child Advocate to: investigate, review,
6 monitor, or evaluate any State agency response on, or disposition
7 of, an allegation of child abuse or neglect in this State; inspect and
8 review the operations, policies, and procedures of juvenile detention
9 centers, resource family homes, group homes, residential treatment
10 facilities, shelters for the care of abused or neglected children,
11 shelters for the care of juveniles considered as juvenile-family crisis
12 cases, shelters for the care of homeless youth, or independent living
13 arrangements; and any other public or private residential setting in
14 which a child has been placed by a State or county agency or
15 department; review, evaluate, report on, and make
16 recommendations concerning the procedures established by any
17 State agency providing services to children who are at risk of abuse
18 or neglect, children in State or institutional custody, or children
19 who receive child protective or permanency services; review,
20 monitor, and report on the performance of State-funded private
21 entities charged with the care and supervision of children at risk of
22 abuse or neglect by conducting research audits or other studies of
23 case records, policies, procedures, and protocols, as deemed
24 necessary by the child advocate to assess the performance of the
25 entities; receive, investigate, and make referrals to other agencies or
26 take other appropriate actions with respect to a complaint received
27 by the office regarding the actions of a State, county or municipal
28 agency, or a State-funded private entity providing services to
29 children who are at risk of abuse or neglect; hold a public hearing
30 on the subject of an investigation or study underway by the office,
31 and receive testimony from agency and program representatives, the
32 public, and other interested parties, as the child advocate deems
33 appropriate; establish and maintain a 24 hour toll-free telephone
34 hotline to receive and respond to calls from members of the public
35 referring problems to the child advocate, both individual and
36 systemic, in how the State, through its agencies and contract
37 services, protect children; and intervene in or institute litigation, or
38 intervene in or institute administrative proceedings before any
39 department, commission, agency, or State board, to assert the broad
40 public interest of the State in the welfare of children and to protect
41 and promote the rights of children.

42 The bill provides that the Child Advocate would seek to ensure
43 the protection of children who are in an institution or resource
44 family home by reviewing, evaluating, and monitoring the operation
45 and activities of the Institutional Abuse Investigation Unit in DCF.

46 The bill also provides that the Child Advocate would report
47 annually to the Governor, Commissioner of Children and Families,

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1 and Legislature on: the activities of the office; priorities for
2 children's services that have been identified by the child advocate;
3 and recommendations for improvement or needed changes
4 concerning the provision of services to children who are at risk of
5 abuse or neglect, and are in State or institutional custody, or receive
6 child protective or permanency services by State agencies and
7 State-funded private entities, and make the annual report available
8 to the public and post the report on DCF's website.