

SENATE No. 2270

The Commonwealth of Massachusetts

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In the One Hundred and Eighty-Ninth General Court
(2015-2016)
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SENATE, Monday, May 2, 2016

The committee on Children, Families and Persons with Disabilities to whom was referred the petition (accompanied by bill, Senate, No. 103) of Karen E. Spilka, David M. Nangle, Michelle M. DuBois, Paul R. Heroux and other members of the General Court for legislation relative to the office of the child advocate,- reports the accompanying bill (Senate, No. 2270).

For the committee,
Jennifer L. Flanagan

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An Act relative to the office of the child advocate.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. As used in this chapter, the following words shall have the following
2 meanings, unless the context clearly requires otherwise:—

3 “Advisory council”, the child advocate advisory council established by section 4.

4 “Child advocate”, the child advocate appointed under section 3.

5 “Critical incident”,(a) a fatality, near fatality, or serious bodily or psychological injury of
6 a child who is in the custody of or receiving services from the executive office of health and
7 human services or 1 of its constituent agencies; or (b) circumstances which result in a reasonable
8 belief that the executive office of health and human services or 1 of its constituent agencies
9 failed in its duty to protect a child and, as a result, the child was at imminent risk of, or suffered,
10 serious bodily injury.

11 “Department”, the department of children and families.

12 “Executive agency”, a state agency within the office of the governor that includes the
13 executive office of education, the executive office of public safety and security, executive office

14 of health and human services, the Massachusetts interagency council on homelessness and
15 housing established by Executive Order No. 492 and the executive office of housing and
16 economic development.

17 “Office”, the office of the child advocate.

18 “Serious bodily injury”, bodily injury which involves a substantial risk of death, extreme
19 physical pain, protracted and obvious disfigurement or protracted loss or impairment of the
20 function of a bodily member, organ or mental faculty.

21 SECTION 2. There shall be an office of the child advocate which shall be independent of
22 any supervision or control by any executive agency. The office shall act to investigate and ensure
23 that the highest quality of services and supports are provided to safeguard the health, safety and
24 well-being of all the children residing in the Commonwealth, including oversight to examine the
25 systemic issues of the child welfare system and provide recommendations to improve the quality
26 of those services in order to give each child the opportunity to live a full and productive life. The
27 office shall:

28 (a) ensure that children involved with an executive agency, in particular, children served
29 by the child welfare or juvenile justice systems, receive timely, safe and effective services;

30 (b) ensure that children placed in the care of the commonwealth or receiving services
31 under the supervision of an executive agency in any public or private facility shall receive
32 humane and dignified treatment at all times, with full respect for the child’s personal dignity,
33 right to privacy, and right to a free and appropriate education in accordance with state and
34 federal law;

35 (c) examine, on a system-wide basis, the care and services that executive agencies
36 provide children; and

37 (d) advise the public and those at the highest levels of state government about how the
38 commonwealth may improve its services to and for children and their families.

39 SECTION 3. There is hereby established an office of the child advocate, hereinafter
40 called the office, which shall be under the direction of the child advocate. There shall be in said
41 office a child advocate, who shall be the administrative head of said office and who shall devote
42 full time to the duties of this office. Said child advocate shall be appointed by a majority vote of
43 the attorney general, the state auditor, and the governor for a term of five years from among 3
44 nominees submitted by a nominating committee to recommend a child advocate. The nominating
45 committee shall consist of: the secretary of health and human services; the commissioner of
46 children and families; the commissioner of youth services; commissioner of mental health; the
47 executive director of the child abuse prevention board; a pediatrician experienced in treating
48 child abuse designated by the Massachusetts chapter of the American Academy of Pediatrics; a
49 child psychiatrist designated by the Massachusetts Psychiatric Society; a child psychologist
50 designated by the Massachusetts Psychological Association; a representative from the
51 Massachusetts Association of Mental Health; a representative of an organization which
52 advocates on behalf of children at risk of abuse designated by the Children's League of
53 Massachusetts; a lawyer experienced in care and protection cases designated by the
54 Massachusetts Bar Association; a social worker designated by the Massachusetts Chapter of the
55 National Association of Social Workers; a person with experience in the juvenile justice system
56 designated by the chief justice of the juvenile court department; and a representative of organized
57 labor to be designated by the president of the collective bargaining unit that represents the social

58 workers of the department. The work of the nominating committee will be coordinated by the
59 office of health and human services. The person so appointed shall be selected without regard to
60 political affiliation and solely on the basis of integrity and demonstrated ability in child welfare,
61 juvenile justice, auditing, law, management analysis, public administration, and investigation or
62 criminal justice administration. The child advocate may, subject to appropriation, appoint such
63 other personnel as he deems necessary for the efficient management of the office.

64 In case of a vacancy in the position of child advocate his successor shall be appointed in
65 the same manner for the unexpired term. No person shall be appointed for more than two five-
66 year terms.

67 The person so appointed may be removed from office, for cause, by a majority vote of the
68 attorney general, the state auditor, and the governor. Such cause may include substantial neglect
69 of duty, gross misconduct or conviction of a crime. The reasons for removal of the child
70 advocate shall be stated in writing and shall include the basis for such removal. Such writing
71 shall be sent to the clerk of the senate, the clerk of the House of Representatives and to the
72 governor at the time of the removal and shall be deemed to be a public document.

73 SECTION 4. There shall be a 25-member child advocate advisory council. The advisory
74 council shall consist of the child advocate, who shall serve as chair, the secretary of health and
75 human services, the secretary of public safety and security, the secretary of education, the
76 commissioner of the department of criminal justice information services, the undersecretary of
77 criminal justice from the executive office of public safety and security, the commissioner of
78 early education and care, the commissioner of elementary and secondary education, the
79 commissioner of mental health, the commissioner of developmental services, the commissioner

80 of public health, the commissioner of children and families, the commissioner of transitional
81 assistance, the commissioner of youth services, the deputy commissioner of the child support
82 enforcement division within the department of revenue, the president of the Massachusetts
83 District Attorneys Association, the commissioner of probation, the chief counsel of the
84 committee for public counsel services, the chief justice of the superior court department, the
85 chief justice of the juvenile court department, the chief justice of the probate and family court
86 department, the executive director of the child abuse prevention board, and 3 persons appointed
87 by the governor, 1 of whom shall be a representative of organized labor from the collective
88 bargaining unit that represents social workers, 1 of whom shall be a representative of an
89 organization which advocates on behalf of children at risk of being abused or neglected, and 1 of
90 whom shall be a pediatrician experienced in treating child abuse.

91 The child advocate shall meet with the advisory council at least annually and may
92 consult or request the assistance of members of the advisory council with respect to the duties
93 and responsibilities of the office.

94 The advisory council shall annually set the salary of the child advocate which salary shall
95 not exceed ninety per cent of the salary of the chief justice of the supreme judicial court.

96 SECTION 5. (a) An executive agency shall inform the child advocate when a critical
97 incident has occurred as soon as practicable and no more than 48 hours after the incident
98 occurred. The child advocate may conduct an investigation of the critical incident or may review
99 an executive agency's investigation of a critical incident. When the child advocate conducts his
100 own investigation, he shall determine: (1) the factual circumstances surrounding the critical
101 incident; (2) whether an agency's activities or services provided to a child and his family were

102 adequate and appropriate and in accordance with agency policies and state and federal law; and
103 (3) whether the agency's policies, regulations, training or delivery of services or state law can be
104 improved.

105 (b) Before investigating any critical incident, the child advocate shall determine whether
106 an executive or law enforcement agency is already conducting an investigation. If a law
107 enforcement agency is conducting an investigation, the child advocate shall, when appropriate,
108 defer to that agency or may conduct his own investigation. The child advocate shall coordinate
109 efforts to minimize the impact on the child, family or employees of the agency involved, unless
110 he determines such coordination would impede his investigation. If an executive agency is
111 conducting an investigation, the child advocate may defer to that investigation or may conduct
112 his own investigation. The child advocate may coordinate efforts to minimize the impact on the
113 child, family or employees of the agency involved. In every instance, the child advocate shall
114 notify the head of the relevant agency of his involvement before beginning any investigation.

115 (c) The child advocate shall receive complaints relative to the provision of services to
116 children by an executive agency and shall review and monitor the complaints that reasonably
117 cause him to believe that a child may be in need of assistance and to ensure that the complaint is
118 resolved. If the complaint is not resolved by the relevant executive agency within a reasonable
119 period of time in light of the circumstances, if the resolution is determined to be unsatisfactory to
120 the child advocate, or if the complaint reasonably causes the child advocate to believe that a
121 child may be in need of immediate assistance, he may conduct an investigation of the complaint,
122 after which he may convene a conference of the relevant executive agency staff to review the
123 investigation.

124 (d) The child advocate shall receive complaints from children in the care of the
125 commonwealth and assist such children in resolving problems and concerns associated with their
126 placement, plans for life-long adult connections and independent living, and decisions regarding
127 custody of persons aged between 18 and 22, including ensuring that relevant executive agencies
128 have been alerted to the complaint and facilitating intra-agency cooperation, if appropriate. For
129 the purposes of this section, the office shall develop procedures to ensure appropriate responses
130 to the concerns of youth in foster care.

131 (e) The child advocate shall periodically review, report and make recommendations, as
132 appropriate, with respect to system-wide improvements that may increase the effectiveness of the
133 care and services provided to children and their families and suggested legislative and regulatory
134 changes including, but not limited to, a review of the programs and procedures established by the
135 department to provide and administer a comprehensive child welfare program under section 2 of
136 chapter 18B.

137 (f) the child advocate shall perform oversight functions to ensure that agencies serving
138 children are fulfilling their obligations in the most effective and efficient manner.

139 (g) The child advocate shall undertake activities designed to educate the public regarding
140 the services of the office and of the mission of the executive agencies in providing services to
141 children and families.

142 (h) The child advocate shall be authorized to apply for, and accept on behalf of the
143 commonwealth, federal, local or private grants, bequests, gifts or contributions for the purpose of
144 carrying out the functions of the office.

145 Section 6. The child advocate or his designee shall have access at any and all reasonable
146 times to any facility, residence, program, or portion thereof, that is operated, licensed or funded
147 by an executive agency, and shall have unrestricted access to all electronic information systems
148 records, reports, materials and employees in order to better understand the needs of children in
149 the custody of the commonwealth or who are receiving services from an executive agency. The
150 Child Advocate shall have access, including the right to inspect and copy, the records held by the
151 clerk of the juvenile or probate and family court. The child advocate shall be bound by any
152 limitations on the use or release of information imposed by law upon the party furnishing such
153 information, except as provided in subsection (e) of section 12.

154 SECTION 7. The child advocate may request the attendance and testimony of witnesses
155 and the production of documents, papers, books, records, reports, reviews, recommendations,
156 correspondence, data and other evidence that the child advocate reasonably believes is relevant.
157 If a request is denied, the child advocate shall have the power to issue a subpoena for witnesses
158 and the production of documents and any other data and evidence that the child advocate
159 reasonably believes is relevant.

160 If any person to whom a subpoena is issued fails to appear or, having appeared, refuses to
161 give testimony or fails to produce the evidence required, the child advocate may apply to the
162 Suffolk county superior court to issue an order to compel the testimony and production of
163 documents of any such witnesses. A failure to obey the order may be punished as contempt.

164 The district attorney may seek injunctive relief in Suffolk county superior court to defer a
165 subpoena issued by the child advocate.

166 Section 8. No discriminatory or retaliatory action shall be taken against any person who
167 communicates with or provides information to the office. Any person who knowingly or
168 willfully discriminates or retaliates against such a person shall be liable to such person for treble
169 damages, costs and attorney's fees.

170 Section 9. The child advocate shall develop internal procedures appropriate for the
171 effective performance of his duties.

172 The child advocate may, subject to chapter 30A, adopt, amend or repeal such rules and
173 regulations as are deemed necessary to carry out the functions of the office.

174 Section 10. The child advocate shall report annually to the governor, the president of the
175 senate, the speaker of the house, the senate and the house committees on ways and means, and
176 the chairs of the joint committee on children, families and persons with disabilities on the
177 activities of the office, including an analysis of the delivery of services to children, activities
178 undertaken to implement subsection (d) of section 5, recommendations for changes in agency
179 procedures which would enable the commonwealth to better provide services to and for children
180 and their families and priorities for implementation of those changes to services. The report shall
181 be made public.

182 Section 11. The following provisions apply to information and records obtained,
183 reviewed or maintained by the child advocate:

184 (a) Notwithstanding chapter 66A, section 70 of chapter 111, section 11 of chapter 111B,
185 section 18 of chapter 111E, sections 51E and 51F of chapter 119, chapter 112, chapter 123, or
186 sections 20B, 20J, or 20K of chapter 233 to the contrary, the disclosure of information to the
187 office of the child advocate pursuant to this chapter shall not be prohibited. Any information

188 considered to be confidential under the aforementioned sections shall be submitted for the child
189 advocate's review upon the determination of the child advocate that the review of said
190 information is necessary. The child advocate shall ensure that no information submitted for his
191 review is disseminated to parties outside the office. Under no circumstances shall the child
192 advocate or any employee of the office violate the confidentiality provisions set forth in the
193 aforementioned statutes, except as authorized under subsection (e).

194 (b) Any and all information and records acquired by the child advocate in the exercise of
195 the office's purpose and duties under this chapter shall be confidential and exempt from
196 disclosure under chapter 66 and clause Twenty-sixth of section 7 of chapter 4.

197 (c) Information, documents and records of the child advocate and his office shall not be
198 subject to subpoena, discovery or introduction into evidence in any civil or criminal proceeding;
199 provided, however, that information, documents and records otherwise available from any other
200 source shall not be immune from subpoena, discovery or introduction into evidence through
201 these sources solely because they were presented during the child advocate's investigation or
202 maintained by the office of the child advocate.

203 (d) When the child advocate has reasonable cause to believe that any public official,
204 employee, or other person has acted in a manner warranting criminal or disciplinary proceedings,
205 the child advocate shall report the matter, or cause a report to be made, to the appropriate
206 authorities.

207 (e) Statistical compilations of data which do not contain any information that would
208 permit the identification of any person may be disclosed to the public.

209 (f) The restrictions of this section shall not preclude the child advocate from sharing with
210 the governor, the attorney general, a district attorney, a secretary, an agency commissioner or
211 other agency personnel, or the chairs of the joint committee on children, families and persons
212 with disabilities, the report of, or the results of, a critical incident investigation involving that
213 agency. Any executive or legislative branch employees who receive or read such a document
214 shall be bound by the confidentiality requirements of this section.

215 SECTION 12. No person employed by or contracted by or volunteering for the office
216 shall be subject to suit directly, derivatively or by way of contribution or indemnification for any
217 civil damages under the laws of the commonwealth resulting from any act or omission performed
218 during or in connection with the discharge of his duties within the scope of his employment or
219 appointment, unless such act or failure to act was committed with gross negligence, maliciously,
220 or in bad faith.