

SENATE No. 2270

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

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

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

“Office”, the office of the child advocate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Notwithstanding chapter 66A, section 70 of chapter 111, section 11 of chapter 111B, section 18 of chapter 111E, sections 51E and 51F of chapter 119, chapter 112, chapter 123, or sections 20B, 20J, or 20K of chapter 233 to the contrary, the disclosure of information to the 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.

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

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