

CHAPTER 187

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

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

C.52:17D-1 Office of the Child Advocate.

1. There is established the Office of the Child Advocate in the Executive Branch of the State Government. For purposes of complying with Article V, Section IV, paragraph 1 of the New Jersey Constitution, the office is allocated within the Department of Law and Public Safety, but notwithstanding the allocation, the office shall be independent of any supervision or control by the department or board or officer thereof in the performance of its duties.

C.52:17D-2 Child Advocate, qualifications, appointment, term.

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

The child advocate shall be appointed by the Governor and shall serve for a term of five years and until the appointment and qualification of his successor. The Governor shall have the power to remove the child advocate for cause. The child advocate shall devote his entire professional time to the duties of this position and receive such salary as shall be provided by law. A vacancy occurring in the position of child advocate shall be filled in the same manner as the original appointment, except that if the child advocate dies, resigns, becomes ineligible to serve for any reason or is removed from office, the Governor shall appoint an acting child advocate who shall serve until the appointment and qualification of the child advocate's successor.

C.52:17D-3 Duties of the Child Advocate.

3. a. The child advocate shall:

- (1) administer the work of the Office of the Child Advocate;
- (2) appoint and remove such officers, investigators, stenographic and clerical assistants and other personnel, in the career or unclassified service, as may be required for the conduct of the office, subject to the provisions of Title 11A of the New Jersey Statutes (Civil Service), and other applicable statutes, except as provided otherwise herein;
- (3) formulate and adopt rules and regulations for the efficient conduct of the work and general administration of the office, its officers and employees, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.); and
- (4) institute or cause to be instituted such legal proceedings or processes consistent with the Rules Governing the Courts of New Jersey as may be necessary to properly enforce and give effect to any of the child advocate's power or duties.

b. Consistent with the provisions of law, the child advocate shall have access to, including the right to inspect and copy, any records necessary to carry out his responsibilities under this act.

c. The child advocate may issue subpoenas to compel the attendance and testimony of witnesses or the production of books, papers and other documents, and administer oaths to witnesses in any matter under the investigation of the office.

If any person to whom such subpoena is issued fails to appear or, having appeared, refuses to give testimony, or fails to produce the books, papers or other documents required, the child advocate may apply to the Superior Court, which may order the person to appear and give testimony or produce the books, papers or other documents, as applicable.

d. The child advocate shall disseminate information to the public on the objectives of the office, the services the office provides and the methods by which the office may be contacted.

e. The child advocate shall aid the Governor in proposing methods of achieving increased coordination and collaboration among State agencies to ensure maximum effectiveness and efficiency in the provision of services to children.

C.52:17D-4 Purpose of Office of the Child Advocate.

4. a. The child advocate shall seek to ensure the provision of effective, appropriate and timely services for children at risk of abuse and neglect in the State, and that children under State

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

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

C.52:27D-5 Powers of the Child Advocate.

5. The child advocate may:

a. Investigate, review, monitor or evaluate any State agency response to, or disposition of, an allegation of child abuse or neglect in this State;

b. Inspect and review the operations, policies and procedures of:

(1) juvenile detention centers operated by the counties or the Juvenile Justice Commission;

(2) foster homes, group homes, residential treatment facilities, shelters for the care of abused or neglected children, shelters for the care of juveniles considered as juvenile-family crisis cases, shelters for the care of homeless youth, or independent living arrangements operated by or approved for payment by the Department of Human Services; and

(3) any other public or private residential setting in which a child has been placed by a State or county agency or department.

c. Review, evaluate, report on and make recommendations concerning the procedures established by any State agency providing services to children who are at risk of abuse or neglect, children in State or institutional custody, or children who receive child protective or permanency services;

d. Review, monitor and report on the performance of State-funded private entities charged with the care and supervision of children due to abuse or neglect by conducting research audits or other studies of case records, policies, procedures and protocols, as deemed necessary by the child advocate to assess the performance of the entities;

e. Receive, investigate and make referrals to other agencies or take other appropriate actions with respect to a complaint received by the office regarding the actions of a State, county or municipal agency or a State-funded private entity providing services to children who are at risk of abuse or neglect;

f. Hold a public hearing on the subject of an investigation or study underway by the office, and receive testimony from agency and program representatives, the public and other interested parties, as the child advocate deems appropriate; and

g. Establish and maintain a 24-hour toll-free telephone hotline to receive and respond to calls from citizens referring problems to the child advocate, both individual and systemic, in how the State, through its agencies or contract services, protects children.

C.52:17D-6 Provision of findings, recommendations.

6. If the child advocate identifies a systemic problem in how the State, through its agencies or contract services, protects children, the child advocate shall provide its findings and recommendations to the agency affected by the findings and recommendations, and, except as provided in subsections b. and c. of section 11 of this act, make those findings and recommendations available to the public.

The agency shall have 30 days from the receipt of the findings and recommendations to develop a corrective action plan and submit the plan to the Department of Human Services for implementation. The child advocate shall monitor the department's implementation of the plan, and if the department fails to promptly implement the plan, the child advocate shall take such action as the child advocate deems necessary.

C.52:17D-7 Additional powers.

7. a. In addition to the powers granted in section 5 of this act, the child advocate may:

(1) intervene in or institute litigation, or

(2) intervene in or institute administrative proceedings before any department, commission, agency or State board, to assert the broad public interest of the State in the welfare of children and to protect and promote the rights of children.

In taking such actions, the child advocate shall consider whether a child or family may be in

need of assistance from the child advocate or whether there is a systemic issue in the State's provision of services to children that should be addressed. The child advocate shall make a good faith effort to resolve issues or problems, and shall have the authority to commence negotiations, mediation or alternative dispute resolution in its advocacy efforts prior to, or in lieu of, the initiation of any action brought pursuant to this section.

b. The child advocate shall have discretion to decide whether to intervene in any particular matter or to represent or refrain from representing the public interest in a proceeding. The child advocate shall consider, in exercising his discretion, the resources available, the importance and extent of the public interest involved, and whether that interest would be adequately represented without the action of the office.

C.52:17D-8 Approval for direct communication with child.

8. a. The child advocate shall seek the approval of a parent or guardian or obtain the approval of a court of competent jurisdiction so as to communicate directly with a child who is the subject of a complaint or allegation of child abuse or neglect, if necessary to conduct an investigation authorized under the provisions of this act. The communications with the child shall be conducted under such terms and conditions that protect the best interests of the child.

b. If court approval is sought, the court, in reviewing an application for approval, shall consider: (1) the best interests of the child, so as to minimize any detrimental effects on the child that may occur as a result of the communication; and (2) the investigative needs of the child advocate and law enforcement authorities, when applicable. Upon consideration of the factors in this subsection, the court may order any alternative methods for obtaining the required information.

C.52:17D-9 Protection of children institutionalized or in foster care.

9. The child advocate shall seek to ensure the protection of children who are in an institution or foster care by reviewing, evaluating and monitoring the operation and activities of the Institutional Abuse Investigation Unit in the Department of Human Services.

a. In order to enable the child advocate to carry out its responsibilities under this section, the Institutional Abuse Investigation Unit shall:

(1) promptly notify the child advocate of any allegations of abuse or neglect made against an institution or foster home serving children in this State;

(2) promptly provide the child advocate with a copy of the unit's response to the complaint and the actions taken by the unit to address the complaint;

(3) provide the child advocate with monthly updates of the status of actions proposed by the unit regarding an existing complaint that has not been resolved; and

(4) provide the child advocate with such other information as the child advocate may deem necessary to carry out his responsibilities to review, evaluate and monitor the operation and activities of the unit.

b. As used in this section, "institution" means a public or private facility, in this State or out-of-State, that provides children with out-of-home care, supervision or maintenance. Institution includes, but is not limited to: a correctional facility, detention facility, treatment facility, child care center, group home, residential school, shelter, psychiatric hospital and developmental center.

C.52:17D-10 Annual report to Governor, Commissioner of Human Services, Legislature.

10. The child advocate shall report annually to the Governor, Commissioner of Human Services and Legislature on: the activities of the office; priorities for children's services that have been identified by the child advocate; and recommendations for improvement or needed changes concerning the provision of services to children who are at risk of abuse or neglect, and are in State or institutional custody or receive child protective or permanency services by State agencies and State-funded private entities.

The annual report shall be made available to the public.

C.52:17D-11 Public reports; nondisclosure of certain information; confidentiality.

11. a. The child advocate shall make public its findings of any investigation reports or other studies undertaken by the office, including its investigatory findings to complaints received pursuant to section 5 of this act, and shall forward the findings to the Governor, the Commissioner of Human Services and the Governor's Cabinet for Children.

b. The child advocate shall not disclose to the public:

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

(2) the name or any other information identifying the person who filed a complaint with the office.

The information subject to the provisions of this subsection shall not be considered a public record pursuant to the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.) and P.L.2001, c.404 (C.47:1A-5 et al.).

c. The child advocate shall not disclose any information that may be deemed confidential by federal or State law, except when necessary to allow the Department of Human Services, Attorney General, Juvenile Justice Commission and other State or county department or agency to perform its duties and obligations under the law.

12. This act shall take effect immediately.

Approved September 26, 2003.