

CHAPTER 417
FORMERLY
SENATE BILL NO. 188
AS AMENDED BY
SENATE AMENDMENT NO. 1 AND HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLES 13, 29, AND 31 OF THE DELAWARE CODE RELATING TO THE OFFICE OF THE CHILD ADVOCATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 31, Chapter 36 by striking Chapter 36 in its entirety.

Section 2. Amend Title 13, Chapter 25 by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2502 Definitions.

For the purposes of this chapter, unless the context indicates differently:

~~(11) "Guardian ad litem" is as defined in § 2302 of this title.~~

§ 2504 Hearing procedure and notice requirements.

(f) When a petition is filed under this chapter, the Court shall appoint an attorney authorized to practice law in this State ~~or a Court Appointed Special Advocate~~ to represent ~~the best interests of the child.~~ When appointing an attorney, the Court may also appoint a Court Appointed Special Advocate volunteer to work in conjunction with the attorney. ~~The Court, in its discretion, may also appoint an attorney to represent the child's wishes.~~ The rights, responsibilities and duties in representing the child ~~child's best interests~~ are set forth in § 9007A of Title 29 ~~and Chapter 36 of Title 31.~~ ~~When determining whether to appoint an attorney or Court Appointed Special Advocate, the Court, in its discretion, should assign the most complex and serious cases to attorneys through the Office of the Child Advocate.~~ For the purposes of the Child Abuse Prevention and Treatment Act [42 U.S.C. Section 5106a, et seq.], the attorney for the child and the Court Appointed Special Advocate volunteer, if one is appointed, shall fulfill the role of guardian ad litem for the child.

§ 2521 Powers and duties of the DSCYF as custodian of the child.

Upon the Court granting custody to DSCYF, DSCYF shall be vested with the following powers and duties:

(1) To provide for appropriate placement of the child, within or outside of this State, unless otherwise ordered by Court or controlled by statute, with reasonable notice prior to any change in placement given to the child's attorney and Court Appointed Special Advocate volunteer ~~guardian ad litem for the child~~;

(2) To consent to medical care for the child, including medical examination, medical treatment including surgical procedures and mental health treatment other than inpatient psychiatric hospitalization. DSCYF shall make reasonable efforts to obtain the consent of the parent, and to notify the child's attorney and Court Appointed Special Advocate volunteer ~~guardian ad litem~~, prior to obtaining medical care.

(4) To consent to educational decisions, subject to applicable state and federal law, including but not limited to, disciplinary proceedings and consequences, academic needs and extracurricular activities of the child, and to request the appointment of an educational surrogate parent when appropriate. DSCYF shall make reasonable efforts to obtain the consent of the parent, and to notify the child's attorney and Court Appointed Special Advocate volunteer ~~guardian ad litem~~, prior to making any educational decisions on behalf of the child;

Section 3. Amend Title 29, Chapter 90A by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9001A Intent and purpose.

The General Assembly hereby declares that the welfare of the children of this State shall be safeguarded by the establishment of an Office of the Child Advocate, with a Child Advocate who shall also serve as Executive Director of the Child Protection Accountability Commission. The Child Advocate shall be responsible for effectuating the purposes of the Commission. The Advocate shall also coordinate efforts on behalf of the children; work with advocacy groups; promote system reform; recommend changes in law, procedure and policy necessary to enhance the protection of Delaware's children; and to implement and coordinate ~~a program~~

programs providing legal representation on behalf of a child, including the Court Appointed Special Advocate Program. In order to effectuate these goals, the Child Advocate shall be an attorney duly licensed to practice law in Delaware.

§ 9002A Definitions.

For the purposes of this chapter, unless the context indicates differently:

(3) “Attorney” means an attorney authorized to practice law in the State of Delaware, who is employed or contracted by the Office, or who volunteers for the Office, including Deputy Child Advocates and attorneys who work in conjunction with Court Appointed Special Advocate volunteers.

(4) “Court Appointed Special Advocate volunteer” or “CASA” means a volunteer authorized and appointed under 9010A of this Title, who is supervised by a coordinator and who works in conjunction with the child’s attorney to accomplish the duties set forth in 9007A(c) of this Title.

(7) "Court" means primarily the Family Court, but may mean any Court of this State;

~~(11) "Guardian ad litem" means an individual appointed by the Court to represent the best interests of a child whether or not that reflects the wishes of the child, who by his or her appointment shall be a party to the child welfare proceeding. The guardian ad litem is charged with obtaining a clear understanding of the situation and needs of the child, and making recommendations to the Court as to what is in the best interests of the child.~~

§ 9005A Duties of the Child Advocate.

The Child Advocate shall perform the following duties:

(5) Make the public aware of the services of ~~the Office the Child Advocate~~ and the Commission, its purpose, and how it can be contacted.

(6) Apply for and accept grants, gifts, and bequests of funds from other state, federal, and interstate agencies, as well as from private firms, individuals, and foundations, for the purpose of carrying out the Office’s and the Commission's lawful responsibilities. The funds must be deposited with the State Treasurer in a restricted receipt account established to permit funds to be expended in accordance with the provision of the grant, gift, or bequest.

(9) Develop and provide quality training to Division staff, Deputy Attorneys General, law-enforcement officers, the medical community, family court personnel, Court Appointed Special Advocate volunteers, educators, day care providers, and others on the various standards, criteria, and investigative technology used in these cases.

(10) Develop and administer programs to ensure the legal representation of children in this State, which includes the Court Appointed Special Advocate program.

(10) Submit an annual report analyzing the work of the Office ~~office~~ that may ~~shall~~ be included in the Commission's annual report, or submitted separately.

§ 9006A Confidentiality.

(1) All records of the Office of ~~Child Advocate~~ pertaining to the care and treatment of a child are confidential, including the identity of any person seeking assistance from the Office on behalf of a child. Information contained in those records may not be disclosed ~~in such a manner as to identify individuals,~~ except for good cause shown on order of a court, or if, in the judgment of the Commission, disclosure of identifying information to an appropriate governmental agency is in the best interests of the child.

§ 9007A Legal representation of children.

(a) *Purpose.* —

(1) The General Assembly has recognized the need to safeguard the welfare of abused, neglected and dependent children in this State. As such, it has charged the Office of the Child Advocate ~~and the Court Appointed Special Advocate Program~~ with ensuring legal representation of children's best interests in child welfare proceedings ~~through appointment of guardians ad litem.~~ To this end, the Office shall coordinate with the Family Court ~~and the Court Appointed Special Advocate program~~ to implement and administer a

program for ~~guardian ad litem~~ representation of children. The Office may assist the other Courts of this State as needed to coordinate legal representation of children.

(2) In determining whether to represent an abused, neglected or dependent child, ~~or a child at risk of same,~~ the Office may communicate with any child at issue and may have access to all information relating to that child and child's family held or maintained by the Department ~~and/or~~ the Family Court. ~~If the Office determines that a child needs guardian ad litem representation, the Court shall sign an order appointing the designated attorney as attorney guardian ad litem.~~

(3) This section shall be liberally construed so that these purposes may be realized.

(b) *Appointment of attorney guardian ad litem.* —

(1) In the event that the Family Court Judge determines that a child is in DSCYF Custody pursuant to Chapter 25 of Title 13, pursuant to the conditions set forth in § 701(e) of Title 13 [repealed] that an attorney guardian ad litem should be appointed, the Family Court Judge shall sign an order appointing an the attorney to represent the child ~~guardian ad litem~~. If a child is otherwise in need of legal representation in a child welfare proceeding, the Office may file a motion with the Court requesting appointment, which shall be granted if the Court determines it is in the best interests of the child. The Court may also issue an order appointing an attorney sua sponte under this statute subject to the resources of the Office. That order shall impose on the attorney guardian ad litem all the duties, rights and responsibilities set forth in this section. Upon request from the Office or any party, the Court may also appoint a Court Appointed Special Advocate volunteer to work in conjunction with the child's attorney to accomplish the duties set forth in subsection (c). Upon entry of the order, the attorney and Court Appointed Special Advocate volunteer, if one is appointed, ~~guardian ad litem~~ shall have the authority to review all documents and interview all pertinent persons having significant information relating to the child and the child's life circumstances.

(2) The appointment shall last until the attorney or Court Appointed Special Advocate volunteer ~~guardian ad litem~~ is released from responsibility by order of the Court, or until his or her ~~the attorney guardian ad litem's~~ commitment to the Court ends.

(3) Upon appointment of an attorney, the child ~~The attorney guardian ad litem~~ shall be a party to any child welfare proceeding in which the child is the subject, and shall possess all the procedural and substantive rights of a party including those set forth in § 732 of Title 13.

(4) Upon presentation of the order of appointment ~~by the attorney guardian ad litem,~~ any agency, hospital, school, organization, division or department of the State, doctor, nurse or other health care provider, treatment facility, psychologist, psychiatrist, police department or mental health clinic shall permit the attorney or Court Appointed Special Advocate volunteer ~~guardian ad litem~~ to inspect and copy any records relating to the child and parents, and guardian or petitioner where the Court deems appropriate, involved in the case of appointment without consent of the child, ~~or parents, guardian or petitioner.~~ Release of mental health and substance use records shall comply with applicable federal law requiring consent or a Court order.

(c) *Duties and rights.* — The attorney ~~guardian ad litem's~~ duty is to the child. The scope of the representation of the child is the child's best interests. The attorney and the Court Appointed Special Advocate volunteer, in addition to other Office employees, contractors and volunteers ~~guardian ad litem~~ shall have the duty of confidentiality to the child unless disclosure is necessary to protect the ~~child's best interests~~ child. As such, the attorney or Court Appointed Special Advocate volunteer ~~guardian ad litem~~ shall:

(1) Represent the best interests of the child in all child welfare proceedings, and explain to the child, taking into account the child's ability to understand the proceedings, the duties of the attorney, the role of the Court Appointed Special Advocate volunteer, and the rights of the child set forth in § 2522 of Title 13, if the child is in DSCYF Custody ~~guardian ad litem litem~~;

(2) Be trained by the Office of the Child Advocate or a course approved by the Office prior to representing any child before the Court. The attorney or Court Appointed Special Advocate volunteer

~~guardian ad litem~~ shall be required to participate in ongoing multidisciplinary training regarding child welfare. ~~The attorney shall be employed, contracted and/or appointed by the Office;~~

(3) Be employed, contracted or an approved volunteer with the Office and shall be appointed by the Court;

(7) Have access to all records regarding the child and his or her family maintained by the Department Division;

(8) Monitor cases to which ~~he or she is~~ they are appointed to assure that the terms of the Court's orders are fulfilled and permanency for the child is achieved through reunification, adoption, permanent guardianship, guardianship, placement with a fit and willing relative, or alternatively, by another planned permanent living arrangement so long as the child is at least 16 years of age;

(14) Ascertain the wishes of the child, give appropriate weight to the child's wishes understanding his or her age and emotional development, and make the child's wishes known to the Court. If the attorney ~~guardian ad litem~~ concludes that the child's wishes conflict with his or her ~~differ from the position or the position of the Court Appointed Special Advocate volunteer, if one is appointed, of the attorney guardian ad litem~~, he or she will make the child's wishes known to the Court, and notify the Court of the conflict so the Court can determine if a conflict exists. If the Court determines a conflict exists, the Court shall determine how to remedy the conflict such that the child's best interests and wishes are represented.

9010A. Court Appointed Special Advocate Program.

The Court Appointed Special Advocate Program shall provide legal representation to children through the Office of the Child Advocate, and shall be administered as follows:

(a) The program shall include volunteers who have demonstrated an interest in children and their welfare and have participated in background checks, interviews and training courses conducted by the Office to determine his or her fitness to serve. Volunteers will serve at the pleasure of the Child Advocate, but may also be removed by Court order. Volunteers shall participate in ongoing training as determined by the Office. Volunteers will be sworn in by the Court upon completion of all requirements and shall not serve as a volunteer prior to being sworn.

(b) Volunteers shall be supervised by coordinators and a Program Director employed by the Office of the Child Advocate.

(c) The Child Advocate will establish the number, qualifications and responsibilities of the coordinators and the Program Director. The Program Director and coordinators shall be exempt from Chapter 59 of Title 29, and notwithstanding any provision of this Code to the contrary, the Program Director and coordinator positions shall not be covered by Chapter 13 of Title 19 and shall have no rights thereunder.

(d) Attorneys shall be hired or contracted by the Child Advocate to provide legal representation to children appointed under this Section. Volunteers and coordinators will work in conjunction with the child's attorney to accomplish the duties set forth in 9007A(c) of this Title.

(e) The CASA shall be a party to any child welfare proceeding or any other proceeding in which the Court has appointed the CASA.

Section 4. The Program Director, coordinators and other employees and their respective positions who are employed by the Family Court in the Court Appointed Special Advocate Program under Chapter 36 of Title 31, which has been superseded by Chapter 90A of Title 29, shall be transferred from the Family Court to the Office of the Child Advocate on the effective date of the establishment of the program in the Office of the Child Advocate pursuant to Chapter 90A of Title 29. Such employees and their respective positions who are covered by Chapter 59 of Title 29 (Merit System of Personnel Administration) through their employment with the Family Court, may elect to be governed by the Judicial Branch Personnel Rules or continue to be governed by the Merit System. Notwithstanding which personnel system such employees choose to be governed by, no transferred employees and their respective positions shall be covered by Chapter 13 of Title 19 and shall have no rights thereunder. If an incumbent elects to remain within the Merit System of Personnel Administration, he or she may retain their Merit status until such time as he or she separates from the position for any reason. Thereafter, upon the position becoming vacant, the position will become exempt from Chapter 59 of Title 29 and shall be governed by

the Judicial Branch Personnel Rules. If an incumbent elects to be governed by the Judicial Branch Personnel rules, the employee and his or her respective position shall immediately become exempt from Chapter 59 of Title 29 and shall be governed exclusively by the Judicial Branch Personnel Rules.

Section 5. This bill shall become effective in law 180 days after enactment.

Approved September 06, 2016