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McDowell & Sen. Blevins; Reps.
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Williams; Sens. Connor, Sokola,
Henry, Winslow

HOUSE OF REPRESENTATIVES

140th GENERAL ASSEMBLY

HOUSE BILL NO.

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO THE ESTABLISHMENT OF
THE OFFICE OF CHILD ADVOCATE.

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

1 Section 1. Amend Chapter 90A, Title 29 of the Delaware Code, by re-designating Chapter 90A as Chapter
2 90B, and by re-designating the capital "A" after each section number as capital "B".

3 Section 2. Amend Title 29 of the Delaware Code by creating a new Chapter 90A to read as follows:

4 "CHAPTER 90A. OFFICE OF CHILD ADVOCATE

5 § 9001A. Intent and purpose.

6 The General Assembly hereby declares that the welfare of the children of this State shall be
7 safeguarded by the establishment of an Office of Child Advocate, with a Child Advocate who shall serve as
8 Executive Director of the Child Protection Accountability Commission. The Child Advocate shall be
9 responsible for effectuating the purposes of the Commission. The Advocate shall also coordinate efforts on
10 behalf of children; work with advocacy groups; promote system reform; recommend changes in law,
11 procedure, and policy necessary to enhance the protection of Delaware's children; and to implement and
12 coordinate a program providing contractual legal representation on behalf of a child. In order to effectuate
13 these goals, the Child Advocate shall be an attorney duly licensed to practice law in Delaware.

14 § 9002A. Definitions.

15 For the purposes of this Chapter, unless the context indicates differently:

(1) 'abused child' means a child who has suffered any physical injury inflicted by a person responsible for the care, custody, and control of the child through unjustified force pursuant to 11 Del. C. § 468(1), emotional abuse, torture, criminally negligent treatment, sexual abuse, exploitation, maltreatment, or mistreatment;

(2) 'adequate care' means a type and degree of personalized attention that will tend to advance a child's physical, mental, emotional, and general well-being;

(3) 'adult' means a person who has reached his or her 18th birthday;

(4) 'child' or 'children' means persons who have not reached their 18th birthday;

(5) 'Commission' means the Child Protection Accountability Commission;

(6) 'Department' means the Department of Services for Children, Youth and Their Families of the State of Delaware;

(7) 'dependent child' means a child whose physical, mental, or emotional health and well-being is threatened or impaired because of inadequate care and protection by the child's custodian, who is unable to provide adequate care for the child, whether or not caused by the child's behavior; provided, however, that for the purposes of this chapter, 'dependent child' may include a child who has been placed in a non-related home on a permanent basis without the consent and approval of the Division of Family Services or any agency licensed thereby to place a child in a non-related home, or a child who has been placed with a licensed agency which certifies it cannot complete a suitable adoption plan; and

(8) 'neglected child' means a child whose physical, mental, or emotional health and well-being is threatened or impaired because of inadequate care and protection by the child's custodian who has the ability and financial means to provide for the child but does not or will not provide adequate care, or a child who has been abused or neglected as defined by 16 Del. C. § 902. For purposes of this chapter, no child whose parent, guardian, or other person legally charged with care or custody of the child, provides the child treatment in accordance with a religious method of healing, in lieu of medical treatment, shall for that reason alone, be considered a neglected child.

§ 9003A. Appointment and Dismissal.

The Child Advocate shall be appointed by the Executive Committee of the Child Protection Accountability Commission and shall serve at its pleasure.

§ 9004A. Appropriation for expenses.

The General Assembly may annually appropriate such sums as it may deem necessary for the payment of the salary of the Child Advocate, the assistants, and the staff, and for the payment of actual expenses incurred by the Office of Child Advocate.

§ 9005A. Duties of the Child Advocate.

The Child Advocate shall perform the following duties:

(1) Take all possible actions, including programs of public education and legislative advocacy, to secure and ensure the legal, civil, and special rights of the children;

(2) Review periodically relevant policies and procedures with a view toward the rights of children;

(3) Refer any person making a complaint or report required by Chapter 9 of Title 16 of the Delaware Code to the Division of Family Services, and, if warranted, to an appropriate police agency. If a complaint or report includes an allegation of misconduct against a Department employee, the complaint or report must also be referred to the Secretary of the Department;

(4) Recommend changes in the procedures for investigating and overseeing the welfare of children;

(5) To make the public aware of the services of the Child Advocate and the Commission, its purpose, and how it can be contacted;

(6) To 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 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;

(7) Examine policies and procedures and evaluate the effectiveness of the child protection system, specifically the respective roles of the Division, the Attorney General's Office, the courts, the medical community and law enforcement agencies;

(8) Review and make recommendations concerning investigative procedures and emergency responses pursuant to this chapter;

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

(10) Submit an annual report analyzing the work of the office that shall be included in the Child Protection Accountability Commission's annual report; and

(11) Take whatever other actions are necessary to help the Commission accomplish its goals.

§ 9006A. Confidentiality.

All records of the Office of Child Advocate pertaining to the care and treatment of a child are confidential. 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 interest of the child.

§ 9007A. Legal Representation of Children.

(1) The Child Advocate shall implement and coordinate a program providing for pro bono or contractual attorneys who shall represent the best interests as described in Section 722 of Title 13 of the Delaware Code of abused, neglected or dependent children. In determining whether to appoint or hire an attorney under this program, the Child Advocate may communicate with any child at issue and may have access to all information relating to that child held or maintained by the Division of Family Services. While the appointed attorney shall consider the wishes of the child, the attorney need not adopt such wishes in making his or her recommendations to the court unless they serve the child's best interests as described above. The appointed attorney shall also appear, when appropriate, on behalf of a child before the Victim's Compensation Board to pursue a claim for the child. When an attorney has been appointed to represent a child pursuant to this chapter, the Court shall allow the attorney to participate fully in all relevant proceedings.

(2) Notwithstanding any provision of this chapter to the contrary, the Office of Child Advocate shall in no way intervene in any pending criminal investigation or prosecution, and shall provide no legal representation or advice to any suspect, defendant or respondent in any open criminal investigation or prosecution.

§ 9008A. Indemnification from liability.

101 No attorney, director, investigator, social worker, or other person employed by the Office of Child
102 Advocate shall be subject to suit directly, derivatively, or by way of contribution or indemnification for any
103 civil damages under the laws of Delaware resulting from any act or omission performed during or in
104 connection with the discharge of his or her duties with the Office within the scope of his or her employment
105 or appointment, unless the act or omission was done with gross or wanton negligence, or maliciously, or in
106 bad faith.”

107 Section 3. If any provision of this Act or the application thereof to any person or
108 circumstance is held invalid, such invalidity shall not affect other provisions or applications of
109 the Act which can be given effect without the invalid provision or application, and to that end the
110 provisions of this Act are declared to severable.

SYNOPSIS

This Bill creates the Office of Child Advocate to assist the Child Protection Accountability Commission in protecting Delaware's children. Recent cases of child abuse point to the need for additional measures in addressing this problem. The Child Advocate will serve as Executive Director of the Child Protection Accountability Commission, which is a commission established to oversee the child protection system in Delaware. This Bill also provides that the Child Advocate shall oversee a program providing attorneys for abused or otherwise at risk children.