



TITLE 29

State Government

PART VIII

Departments of Government

CHAPTER 90A. OFFICE OF THE CHILD ADVOCATE

§ 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 Child Advocate, with a Child Advocate who shall 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 providing legal representation on behalf of a child. In order to effectuate these goals, the Child Advocate shall be an attorney duly licensed to practice law in Delaware. (72 Del. Laws, c. 167, § 2; 72 Del. Laws, c. 451, § 5.)

§ 9002A. Definitions.

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 § 468(1) of Title 11, 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) "Best interests" as defined in § 722 of Title 13;

(5) "Child" or "children" means persons who have not reached their 18th birthday;

(6) "Child welfare proceeding" means any Family Court proceeding and subsequent appeal therefrom involving custody, visitation, guardianship, termination of parental rights, adoption and other related petitions that involve a dependent, neglected or abused child or a child at risk of same as determined by a Family Court judge;

(7) "Commission" means the Child Protection Accountability Commission;

(8) "Court" means the Family Court;

(9) "Department" means the Department of Services for Children, Youth and Their Families of the State;

(10) "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

(11) "Division" means the Division of Family Services of the Department of Services for Children, Youth and Their Families;

(12) "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.

(13) "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 § 902 of Title 16. 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.

(14) "Office" means the Office of the Child Advocate.

(15) "Permanency" means the safe, stable, custodial environment in which a child is raised and the life-long relationship that child establishes with a nurturing caregiver. (72 Del. Laws, c. 167, § 2; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 451, § 6.)

§ 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. (72 Del. Laws, c. 167, § 2.)

§ 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. (72 Del. Laws, c. 167, § 2.)

§ 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 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. (72 Del. Laws, c. 167, § 2.)

§ 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.

(2) Anyone participating in good faith in seeking assistance from the Office on behalf of a child pursuant to this chapter shall have immunity from liability, civil or criminal, that might otherwise exist, and such immunity shall extend to participation in any judicial proceeding resulting from such a referral. (72 Del. Laws, c. 167, § 2; 72 Del. Laws, c. 451, §§ 7, 8.)

§ 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 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.

(2) In determining whether to represent an abused, neglected or dependent child, the Office may communicate with any child at issue and may have access to all information relating to that child 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, pursuant to the conditions set forth in § 701(c) of Title 13 that an attorney guardian ad litem should be appointed, the Family Court Judge shall sign an order appointing the attorney guardian ad litem. That order shall impose on the attorney guardian ad litem all the duties, rights and responsibilities set forth in this section. Upon entry of the order, the attorney 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 guardian ad litem is released from responsibility by order of the Court, or until the attorney guardian ad litem's commitment to the Court ends.

(3) 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 guardian ad litem to inspect and copy any records relating to the child and parents involved in the case of appointment without consent of the child or parents.

(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 guardian ad litem shall have the duty of confidentiality to the child unless disclosure is necessary to protect the child's best interests. As such, the attorney 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 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 guardian ad litem shall be required to participate in ongoing training regarding child welfare. The attorney shall be employed, contracted and/or appointed by the Office;

(3) Conduct an independent investigation of the circumstances of a case of appointment, which shall include but not be limited to interviews and/or observations of the child and relevant individuals, as well as a review of all relevant records and reports;

(4) Present evidence to the Court in support of his or her position;

(5) Be provided with notice of every Court proceeding and receive copies of every pleading;

(6) Participate in all depositions, negotiations, discovery, pretrial conferences, hearings and appeals;

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

(8) Monitor cases to which they are appointed to assure that the terms of the Court's orders are fulfilled and permanency for the child is achieved;

(9) Receive reasonable notice from the Division of changes in placement, school or any other change of circumstances affecting the child;

(10) Receive reasonable notice from the Division of any founded complaint involving: (1) the child, where the child is the alleged victim; (2) the residence in which the child lives; and/or (3) the home-based daycare which the child attends;

(11) Request a hearing before the Court when the plan on behalf of the child is not implemented, is not meeting the child's needs, or upon completion of a Division investigation;

(12) Request any appropriate relief from the Court on behalf of the child;

(13) Appear, when appropriate, on behalf of a child before the Violent Crimes Compensation Board, to pursue a claim on behalf of the child, as set forth in Chapter 90 of Title 11; and

(14) Ascertain the wishes of the child and make the child's wishes known to the Court. If the attorney guardian ad litem concludes that the child's wishes differ from the position of the attorney guardian ad litem, he or she will notify the Court of the conflict.

(d) Criminal investigations and/or prosecutions. -- Notwithstanding any provision of this chapter to the contrary, the Office of the 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. (72 Del. Laws, c. 167, § 2; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 451, § 9; 73 Del. Laws, c. 277, §§ 1-4, 6.)

§ 9008A. Indemnification from liability.

No attorney, director, investigator, social worker or other person employed or contracted by or volunteering for the Office of Child Advocate shall be subject to suit directly, derivatively or by way of contribution or indemnification for any civil damages under the laws of Delaware resulting from any act or omission performed during or in connection with the discharge of his or her duties with the Office within the scope of his or her employment or appointment, unless the act or omission was done with gross or wanton negligence, or maliciously, or in bad faith. (72 Del. Laws, c. 167, § 2; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 451, § 10; 73 Del. Laws, c. 277, § 5.)

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