

THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE DEPARTMENT

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DEVAL L. PATRICK
GOVERNOR

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2007 DEC 20 PM 3:19
OFFICE OF THE SECRETARY OF STATE

By His Excellency

DEVAL L. PATRICK
GOVERNOR

EXECUTIVE ORDER NO. 494

Establishing the Office of the Child Advocate

WHEREAS, one of the highest duties of the Commonwealth is to safeguard the health, safety and well-being of all its children;

WHEREAS, it is critical to ensure the highest level of accountability within agencies that are charged with the care and protection of the Commonwealth's children; and

WHEREAS, independent and effective oversight of agencies responsible for the care and protection of children is essential to fulfilling the Commonwealth's responsibility to its children;

NOW, THEREFORE, I, Deval L. Patrick, Governor of the Commonwealth of Massachusetts, by virtue of the authority vested in me by the Constitution, Part 2, c. 2, § 1, Art. 1, do hereby establish the Office of the Child Advocate as follows:



ARTICLE I. Purpose and Scope of the Office of the Child Advocate

1.1 The Office of the Child Advocate shall:

- (a) seek to ensure that children involved with agencies within the Executive Office of Health and Human Services (Executive Office) and, in particular, children served by the child welfare or juvenile justice systems receive timely, safe, and effective services;
- (b) examine, on a system-wide basis, the care and services that agencies of the Executive Office provide to and for children; and
- (c) advise those at the highest levels of state government, as well as the public, how the Commonwealth can improve its services to and for children.

ARTICLE II. Appointment of the Child Advocate

2.1 The Office of the Child Advocate shall be established within the Executive Office and shall be under the direction of the Child Advocate.

2.2 The Governor shall appoint the Child Advocate to a term coterminous with that of the Governor, except that the Child Advocate shall continue to serve following the end of a governor's term until a successor is appointed.

2.3 The Child Advocate shall report directly to the Secretary of Health and Human Services.

2.4 The Governor shall select the Child Advocate from three names submitted to him or her by the Ad Hoc Committee to recommend a Child Advocate.

2.5 The Ad Hoc Committee shall consist of the following members: the Secretary of Health and Human Services; the Commissioner of the Department of Social Services; the Commissioner of the Department of Youth Services; a pediatrician experienced in treating child abuse designated by the Massachusetts chapter of the American Academy of Pediatrics; a child psychiatrist designated by the Massachusetts Psychiatric Society; a child psychologist designated by the Massachusetts Psychological Association; a representative from the Massachusetts Association of Mental Health; a representative of an organization which advocates on behalf of children at risk of abuse and neglect, designated by the Children's League of Massachusetts; a lawyer experienced in care and protection cases designated by the Massachusetts Bar Association; a social worker designated by the Massachusetts Chapter of the National Association of Social Workers; a person with experience in the juvenile justice system designated by the Chief Justice of the Juvenile Court Department; and a representative of organized labor to be designated by the Secretary of Labor and Workforce Development.

2.6 The Child Advocate shall devote full time to the duties of his or her office.

2.7 The Ad Hoc Committee shall recommend three names to the Governor no later than February 28, 2008.

2.8 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 ceases to serve for any reason, the Governor shall appoint an acting Child Advocate who shall serve until the appointment of a successor.

ARTICLE III. Powers and Duties of the Office of the Child Advocate

3.1 The Office of the Child Advocate will be empowered to investigate, review, monitor and evaluate "critical incidents" of child abuse or neglect. A "critical incident" is one in which (a) there has been a fatality or near fatality of a child who is in the custody of or receiving services from the Executive Office or one of its constituent agencies; or (b) the circumstances of the incident are such that there is reason to believe that the Executive Office or one of its constituent agencies failed in its duty to protect the child and, as a result, the child was at imminent risk of, or suffered, serious injury.

3.2 The Office of the Child Advocate will be authorized to review any agency investigation of a critical incident and conduct its own independent investigation of any critical incident, if needed. The purpose of the critical incident investigation shall be to determine (a) the circumstances surrounding the child's death or near fatality; (b) if the agency's activities and services provided to the child and his or her family were adequate, appropriate, and complied with agency policies; and (c) whether the agency's policy, regulations, training, and/or provision of services can be improved in any way.

3.3 Before investigating any critical incident, the Child Advocate shall determine whether an investigation is being conducted by a law enforcement agency, an agency within the Executive Office, and/or the Department of Early Education and Care, and if so, the Child Advocate may defer to such agency's investigation and/or coordinate efforts to minimize the impact on the child, family and/or staff of the executive branch agency involved. In every case, the Child Advocate shall ensure that the Commissioner of the relevant executive branch agency has been notified of the Child Advocate's involvement before the Child Advocate begins his or her investigation.

3.4 The Child Advocate shall be empowered to receive complaints regarding Executive Office agencies' provision of services to children, if such complaints have not been resolved, within a reasonable time, at the agency level. Before investigating any complaint, the Child Advocate shall consider whether the complaint can be addressed through other means.

3.5 Subject to applicable federal and state law, the Child Advocate or his or her designee shall have access at any and all reasonable times to any facility, residence, program, or part thereof, that is operated, licensed, or funded by an agency within the Executive Office, and to all relevant 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 agency within the Executive Office. 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.

3.6 At the request of the Governor or the Secretary of Health and Human Services, the Child Advocate will perform oversight functions to ensure that agencies serving children are fulfilling their obligations in the most effective and efficient manner. The Child Advocate will report and make recommendations, as appropriate, with respect to system-wide problems that might reduce the effectiveness of the care and services provided to children and their families, including suggested legislative and regulatory changes.

3.7 The Child Advocate may share with the Secretary of Health and Human Services, the Commissioner of the Executive Office agency involved, or other agency personnel the report of, or the results of, a critical incident or other investigation involving that agency. Any executive branch employees who receive or read such a document will be bound by the confidentiality provisions of this Article and any other applicable federal or state law.

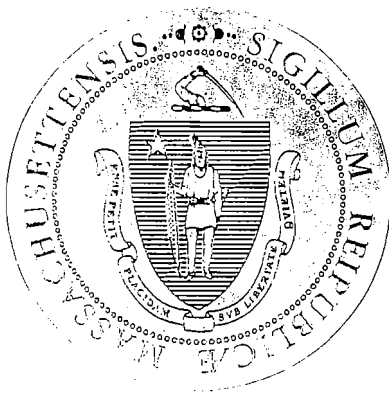
3.8 The Child Advocate, in consultation with the Executive Office and its agencies, shall develop internal procedures appropriate for the effective performance of his or her duties.

ARTICLE IV. Reports

4.1 The Child Advocate shall report annually to the Governor, the Speaker of the House, the Senate President and the Secretary of Health and Human Services on the activities of the Office of the Child Advocate, priorities for children's services, and recommendations regarding how the Commonwealth may better provide services to and for children. This report shall be made public.

ARTICLE V. Miscellaneous

5.1 To ensure the effective coordination and cooperation between the Office of the Child Advocate and agencies serving children, the Governor hereby directs each such agency within the Executive branch to make every reasonable effort to communicate and cooperate with the Office of the Child Advocate.



Given at the Executive Chamber in Boston this 20th day of December in the year of our Lord two thousand and seven and of the Independence of the United States two hundred and thirty-one.

A handwritten signature in black ink, appearing to read "Deval Patrick", written over a horizontal line.

DEVAL L. PATRICK
GOVERNOR
Commonwealth of Massachusetts

A handwritten signature in black ink, appearing to read "William Francis Galvin", written over a horizontal line.

WILLIAM FRANCIS GALVIN
Secretary of the Commonwealth

GOD SAVE THE COMMONWEALTH OF MASSACHUSETTS