S T A T E O F N E W Y O R K

8091

I N S E N A T E

June 7, 2010

Introduced by Sen. MONTGOMERY -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to amend the executive law and the family court act, in relation to establishing the office of the independent juvenile justice advocate

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The executive law is amended by adding a new article 43 to read as follows:

ARTICLE 43

OFFICE OF THE INDEPENDENT JUVENILE JUSTICE ADVOCATE

SECTION 930. OFFICE OF THE INDEPENDENT JUVENILE JUSTICE ADVOCATE; ORGANIZATION.
931. DEFINITIONS.
932. FUNCTIONS, POWERS AND DUTIES OF THE OFFICE.

S 930. OFFICE OF THE INDEPENDENT JUVENILE JUSTICE ADVOCATE; ORGANIZATION. THERE IS HEREBY CREATED WITHIN THE EXECUTIVE DEPARTMENT AN OFFICE OF THE INDEPENDENT JUVENILE JUSTICE ADVOCATE. THE OFFICE SHALL HAVE AN EXECUTIVE DIRECTOR APPOINTED BY THE GOVERNOR, WHO SHALL SERVE AT THE PLEASURE OF THE GOVERNOR. THE EXECUTIVE DIRECTOR MAY APPOINT EMPLOYEES AS NECESSARY TO CARRY OUT THE FUNCTIONS, POWERS AND DUTIES OF THE OFFICE, WITHIN AMOUNTS APPROPRIATED THEREFOR.

S 931. DEFINITIONS. 1. "OFFICE" MEANS THE OFFICE OF THE INDEPENDENT JUVENILE JUSTICE ADVOCATE CREATED BY THIS ARTICLE.

2. "YOUTH" SHALL MEAN ANY PERSON IN THE CUSTODY OF THE OFFICE OF CHILDREN AND FAMILY SERVICES OR THE CARE AND CUSTODY OF A COMMISSIONER OF A LOCAL DEPARTMENT OF SOCIAL SERVICES AS A JUVENILE DELINQUENT PURSUANT TO ARTICLE THREE OF THE FAMILY COURT ACT, OR WHO IS COMMITTED TO THE CUSTODY OF THE OFFICE OF CHILDREN AND FAMILY SERVICES AS A JUVENILE OFFENDER OR YOUTHFUL OFFENDER UNDER THE PENAL LAW.

3. "RESIDENTIAL PROGRAM" SHALL MEAN A RESIDENTIAL PROGRAM OPERATED BY THE OFFICE OF CHILDREN AND FAMILY SERVICES OR A RESIDENTIAL PROGRAM OPERATED BY AN AUTHORIZED AGENCY AS DEFINED IN PARAGRAPH (A) OF SUBDIVI-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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SION TEN OF SECTION THREE HUNDRED SEVENTY-ONE OF THE SOCIAL SERVICES LAW THAT ACCEPTS CHILDREN ADJUDICATED DELINQUENT UNDER ARTICLE THREE OF THE FAMILY COURT ACT. A RESIDENTIAL PROGRAM SHALL NOT INCLUDE A DETENTION FACILITY AS DEFINED BY SUBDIVISION THREE OF SECTION FIVE HUNDRED TWO OF THIS CHAPTER.

4. "SYSTEMIC ISSUES" SHALL MEAN THOSE ISSUES THAT AFFECT YOUTH IN MORE THAN ONE RESIDENTIAL PROGRAM, OR A SIGNIFICANT PERCENTAGE OF THE YOUTH IN A PARTICULAR RESIDENTIAL PROGRAM.

S 932. FUNCTIONS, POWERS AND DUTIES OF THE OFFICE. 1. THE OFFICE SHALL HAVE THE FOLLOWING FUNCTIONS, POWERS AND DUTIES REGARDING YOUTH IN RESIDENTIAL PROGRAMS:

(A) TO EXAMINE, EVALUATE, INVESTIGATE, AND TO APPRISE THE GOVERNOR, THE LEGISLATURE AND THE COMMISSIONER OF CHILDREN AND FAMILY SERVICES ON, SYSTEMIC ISSUES REGARDING:

(I) THE QUALITY OF CARE PROVIDED TO YOUTH IN RESIDENTIAL PROGRAMS; AND

(II) THE ABILITY OF YOUTH IN RESIDENTIAL PROGRAMS TO ACCESS NEEDED SERVICES ACROSS SYSTEMS;

(B) TO INVESTIGATE REFERRALS FROM THE OFFICE OF THE OMBUDSMAN WITHIN THE OFFICE OF CHILDREN AND FAMILY SERVICES IN REGARD TO SYSTEMIC ISSUES AFFECTING YOUTH IN RESIDENTIAL PROGRAMS;

(C) TO MONITOR THE IMPLEMENTATION OF POLICIES, REGULATIONS AND STATUTES APPLICABLE TO THE QUALITY OF CARE OF YOUTH IN RESIDENTIAL PROGRAMS;

(D) TO RECOMMEND TO THE GOVERNOR, THE LEGISLATURE AND THE COMMISSIONER OF CHILDREN AND FAMILY SERVICES, STATUTORY, REGULATORY OR POLICY CHANGES TO IMPROVE OUTCOMES AND SERVICES FOR YOUTH IN RESIDENTIAL PROGRAMS;

(E) TO CONDUCT PERIODIC INSPECTIONS, EVALUATIONS OR REVIEWS OF RESIDENTIAL PROGRAMS FOR INVESTIGATION OF SYSTEMIC ISSUES AFFECTING YOUTH IN SUCH PROGRAMS, INCLUDING REVIEWS OF BOOKS AND RECORDS KEPT BY SUCH RESIDENTIAL PROGRAMS; AND

(F) TO REPORT TO THE STATEWIDE CENTRAL REGISTER OF CHILD ABUSE AND MALTREATMENT SUSPECTED INCIDENTS OF ABUSE OR NEGLECT OF A CHILD IN RESIDENTIAL CARE AS DEFINED IN SECTION FOUR HUNDRED TWELVE-A OF THE SOCIAL SERVICES LAW, AND TO REFER TO THE APPROPRIATE LAW ENFORCEMENT ENTITY OR THE NEW YORK STATE INSPECTOR GENERAL, AS APPROPRIATE, MATTERS CONCERNING POSSIBLE ILLEGAL CONDUCT.

2. TO CARRY OUT ITS FUNCTIONS, POWERS AND DUTIES UNDER THIS SECTION, THE OFFICE SHALL HAVE THE AUTHORITY TO:

(A) OBTAIN FROM THE OFFICE OF CHILDREN AND FAMILY SERVICES, UPON REQUEST, COPIES OF FINAL REPORTS OF INTERNAL INVESTIGATIONS COMPLETED BY THE OFFICE OF CHILDREN AND FAMILY SERVICES REGARDING SUCH RESIDENTIAL PROGRAMS;

(B) OBTAIN FROM THE OFFICE OF CHILDREN AND FAMILY SERVICES COPIES OF FATALITY REPORTS ISSUED PURSUANT TO SUBDIVISION FIVE OF SECTION TWENTY OF THE SOCIAL SERVICES LAW AND COPIES OF FINAL REPORTS ISSUED BY A FATALITY REVIEW TEAM PURSUANT TO SECTION FOUR HUNDRED TWENTY-TWO-B OF THE SOCIAL SERVICES LAW REGARDING THE DEATH OF A YOUTH IN A RESIDENTIAL PROGRAM;

(C) INSPECT RESIDENTIAL PROGRAMS FOR YOUTH, AND VISIT AND OBSERVE ANY AREA, PART, OR ASPECT OF SUCH RESIDENTIAL PROGRAM AT ANY TIME, WITH OR WITHOUT PRIOR NOTICE FOR INVESTIGATION OF SYSTEMIC ISSUES AFFECTING YOUTH IN SUCH PROGRAMS, INCLUDING REVIEWS OF BOOKS AND RECORDS KEPT BY SUCH RESIDENTIAL PROGRAMS WITH THE COOPERATION OF RESIDENTIAL PROGRAM STAFF; AND

(D) APPLY FOR AND ACCEPT, WITH THE APPROVAL OF THE GOVERNOR, AS AGENT OF THE STATE, ANY GRANT, INCLUDING FEDERAL GRANTS, OR ANY GIFT FOR ANY OF THE PURPOSES OF THIS SECTION. ANY MONEYS SO RECEIVED MAY BE EXPENDED

BY THE OFFICE TO EFFECTUATE ANY PURPOSE OF THIS SECTION, SUBJECT TO THE SAME LIMITATIONS AS TO APPROVAL OF EXPENDITURES AND AUDIT AS ARE PRESCRIBED FOR STATE MONEYS APPROPRIATED FOR THE PURPOSES OF THIS ARTICLE.

3. IN THE EXERCISE OF THE FUNCTIONS, POWERS AND DUTIES OF THE OFFICE, THE EXECUTIVE DIRECTOR IS AUTHORIZED TO ISSUE SUBPOENAS DUCES TECUM AND AD TESTIFICANDUM, ADMINISTER OATHS AND EXAMINE PERSONS UNDER OATH, IN ACCORDANCE WITH AND PURSUANT TO THE CIVIL PRACTICE LAW AND RULES; PROVIDED HOWEVER THAT A PERSON EXAMINED UNDER OATH PURSUANT TO THIS SUBDIVISION SHALL HAVE THE RIGHT TO BE ACCOMPANIED BY COUNSEL WHO SHALL ADVISE THE PERSON OF HIS OR HER RIGHTS SUBJECT TO REASONABLE LIMITATIONS TO PREVENT OBSTRUCTION OF, OR INTERFERENCE WITH, THE ORDERLY CONDUCT OF THE EXAMINATIONS; PROVIDED FURTHER, HOWEVER, THAT ALL SUCH COMMUNICATIONS WITH AND RECORDS PROVIDED TO THE OFFICE SHALL REMAIN CONFIDENTIAL SUBJECT TO THE LIMITATIONS SET FORTH IN SUBDIVISION SEVEN OF THIS SECTION;

4. NOTWITHSTANDING ANY LAW TO THE CONTRARY, THE EXECUTIVE DIRECTOR MAY REQUEST AND SHALL RECEIVE FROM ANY DEPARTMENT, DIVISION, BOARD, BUREAU, COMMISSION OR OTHER AGENCY OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, OR ANY RESIDENTIAL PROGRAM AS DEFINED IN SUBDIVISION THREE OF SECTION NINE HUNDRED THIRTY-ONE OF THIS ARTICLE, SUCH COOPERATION, INFORMATION AND DATA AS WILL ENABLE THE OFFICE TO CARRY OUT ITS FUNCTIONS, POWERS AND DUTIES, EXCEPT WHERE SUCH INFORMATION OR DATA IS PROTECTED FROM DISCLOSURE BY FEDERAL LAW OR ANY APPLICABLE PRIVILEGE.

5. WHERE THE OFFICE IDENTIFIES A SYSTEMIC PROBLEM REGARDING THE PROVISION OF SERVICES TO YOUTH IN RESIDENTIAL PROGRAMS, THE OFFICE MAY PROVIDE THE OFFICE OF CHILDREN AND FAMILY SERVICES WITH A WRITTEN REPORT OUTLINING THE FINDINGS AND RECOMMENDATIONS OF THE OFFICE. THE OFFICE OF CHILDREN AND FAMILY SERVICES SHALL RETAIN THE AUTHORITY AND RESPONSIBILITY TO DETERMINE ANY APPROPRIATE AND NECESSARY PREVENTIVE OR REMEDIAL ACTION. THE OFFICE OF CHILDREN AND FAMILY SERVICES SHALL, WITHIN NINETY DAYS OF RECEIPT OF SUCH REPORT, PROVIDE THE OFFICE WITH A WRITTEN RESPONSE OF ANY ACTIONS TAKEN REGARDING THE OFFICE'S RECOMMENDATIONS. UPON REQUEST, THE OFFICE MAY GRANT THE OFFICE OF CHILDREN AND FAMILY SERVICES AN ADDITIONAL NINETY DAY PERIOD OF TIME TO RESPOND.

6. THE OFFICE SHALL SUBMIT TO THE GOVERNOR, THE LEGISLATURE AND THE COMMISSIONER OF CHILDREN AND FAMILY SERVICES, AN ANNUAL REPORT CONCERNING ITS WORK UNDER THIS SECTION DURING THE PREVIOUS YEAR. SUCH REPORT SHALL CONTAIN ONLY NON-CONFIDENTIAL, NON-IDENTIFYING DETAILS AND SHALL INCLUDE, BUT NOT BE LIMITED TO: NON-IDENTIFYING INFORMATION REGARDING THE NUMBER AND TYPES OF INVESTIGATIONS COMPLETED BY THE OFFICE; THE RESULTS OF SUCH INVESTIGATIONS; AND ANY RECOMMENDATIONS FOR LEGISLATIVE, REGULATORY, OR PUBLIC POLICY CHANGES. SUCH REPORT SHALL BE MADE AVAILABLE TO THE PUBLIC.

7. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, ALL RECORDS OF THE OFFICE PERTAINING TO THE PERFORMANCE OF ITS FUNCTIONS, POWERS AND DUTIES PURSUANT TO THIS SECTION AND ALL RECORDS OBTAINED BY THE OFFICE SHALL BE KEPT CONFIDENTIAL; PROVIDED, HOWEVER THAT LIMITED INFORMATION CONTAINED IN SUCH RECORDS MAY BE RELEASED BY THE OFFICE IF SUCH INFORMATION IS NOT OTHERWISE PROTECTED AS CONFIDENTIAL BY LAW AND DOES NOT IDENTIFY THE YOUTH BEING SERVED OR THEIR FAMILIES, OR RESIDENTIAL PROGRAM STAFF WHO HAVE IDENTIFIED ALLEGED SYSTEMIC ISSUES OR WHO HAVE PROVIDED INFORMATION TO ASSIST IN THE INVESTIGATION OF SUCH ISSUES. NOTHING IN THIS SECTION SHALL LIMIT THE AUTHORITY OF THE OFFICE TO DISCLOSE ANY RECORDS OF THE OFFICE OR ANY INFORMATION CONTAINED IN ANY RECORD OF THE OFFICE TO THE INSPECTOR GENERAL OR TO LAW ENFORCEMENT TO

ASSIST WITH AN ACTUAL OR POTENTIAL CRIMINAL INVESTIGATION OR TO THE OFFICE OF CHILDREN AND FAMILY SERVICES TO ASSIST WITH AN ACTUAL OR POTENTIAL CHILD ABUSE OR NEGLECT INVESTIGATION.

8. THE OFFICE SHALL, TO THE EXTENT PRACTICABLE, COORDINATE ITS ACTIVITIES WITH ANY INVESTIGATIONS CONDUCTED BY THE OFFICE OF THE STATE INSPECTOR GENERAL, THE STATE COMMISSION OF CORRECTION OR ANY FEDERAL MONITOR, IN ORDER TO PROMOTE THE EFFICIENT USE OF THE OFFICE'S RESOURCES.

S 2. Section 505 of the executive law, as amended by chapter 465 of the laws of 1992, is amended to read as follows:

S 505. Directors of facilities. 1. There shall be a facility director of each [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES OPERATED facility. Such facility director shall be appointed by the [director] COMMISSIONER of [the division] CHILDREN AND FAMILY SERVICES and shall be in the noncompetitive class and designated as confidential as defined by subdivision two-a of section forty-two of the civil service law. The facility director shall have [two years] SUCH experience [in appropriate titles in state government. Such facility director shall have such] AND other qualifications as may be prescribed by the [director] DEPARTMENT OF CIVIL SERVICE, IN CONSULTATION WITH THE COMMISSIONER of [the division] CHILDREN AND FAMILY SERVICES, based on differences in duties, levels of responsibility, size and character of the facility, knowledge, skills and abilities required, and other factors affecting the position [and]. SUCH FACILITY DIRECTOR shall serve at the pleasure of the [director of the division] COMMISSIONER.

2. Subject to regulations of the [division] OFFICE OF CHILDREN AND FAMILY SERVICES, the facility director of a state facility in the [division] OFFICE shall:

(a) operate and manage the facility,

(b) submit a monthly report on such matters as the [division] OFFICE may specify.

3. Subject to the regulations of the [division] OFFICE OF CHILDREN AND FAMILY SERVICES AND WITH THE CONSENT OF THE COMMISSIONER, the facility director may authorize the use of the buildings and grounds of the facility by a municipality, special district or non-profit association, corporation or organization for educational, recreational, social and civic purposes whenever such use may promote better relationships with the community in which the facility is located, provided, however, that such use does not interfere with the purposes and program of the facility.

S 3. Paragraph (a) of subdivision 2 of section 352.2 of the family court act, as amended by chapter 880 of the laws of 1985, is amended to read as follows:

(a) In determining an appropriate order the court shall consider the needs and best interests of the respondent as well as the need for protection of the community. (I) If the respondent has committed a designated felony act the court shall determine the appropriate disposition in accord with section 353.5 OF THIS PART. In all other cases the court shall order the least restrictive available alternative enumerated in subdivision one OF THIS SECTION which is consistent with the needs and best interests of the respondent and the need for protection of the community. (II) THE COURT SHALL NOT PLACE THE RESPONDENT WITH THE OFFICE OF CHILDREN AND FAMILY SERVICES UNLESS: (1) THE RESPONDENT HAS COMMITTED AN ACT THAT, IF HE OR SHE WERE AN ADULT, WOULD CONSTITUTE (A) A VIOLENT FELONY AS DEFINED BY SECTION 70.02 OF THE PENAL LAW, OR (B) A SEXUAL OFFENSE INCLUDED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW;

OR (2) BASED UPON THE TOTALITY OF THE RECORD OF THE RESPONDENT, BACKGROUND OF THE RESPONDENT AND NATURE AND CIRCUMSTANCES OF THE OFFENSE, THE COURT FINDS THAT THE RESPONDENT POSES A SIGNIFICANT RISK TO PUBLIC SAFETY AND NO LESS RESTRICTIVE ALTERNATIVE TO PLACEMENT WITH THE OFFICE IS AVAILABLE OR APPROPRIATE TO MITIGATE SUCH RISK. WHEN ORDERING PLACEMENT WITH THE OFFICE, THE COURT SHALL STATE IN ITS ORDER THE BASIS FOR ITS FINDING THAT SUCH PLACEMENT IS WARRANTED.

S 4. Subdivisions 3 and 4 of section 353.3 of the family court act, subdivision 3 as added by chapter 920 of the laws of 1982, paragraphs (a), (b) and (c) of subdivision 3 as amended by chapter 465 of the laws of 1992 and subdivision 4 as amended by chapter 41 of the laws of 2010, are amended to read as follows:

3. THE COURT SHALL NOT PLACE THE RESPONDENT WITH THE OFFICE OF CHILDREN AND FAMILY SERVICES UNDER THIS SECTION UNLESS: (I) SUCH RESPONDENT HAS COMMITTED AN ACT THAT, IF HE OR SHE WERE AN ADULT, WOULD CONSTITUTE (A) A VIOLENT FELONY AS DEFINED BY SECTION 70.02 OF THE PENAL LAW, OR (B) A SEXUAL OFFENSE INCLUDED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW; OR (II) BASED UPON THE TOTALITY OF THE RECORD OF THE RESPONDENT, BACKGROUND OF THE RESPONDENT AND NATURE AND CIRCUMSTANCES OF THE OFFENSE, THE COURT FINDS THAT THE RESPONDENT POSES A SIGNIFICANT RISK TO PUBLIC SAFETY AND NO LESS RESTRICTIVE ALTERNATIVE TO PLACEMENT WITH THE OFFICE IS AVAILABLE OR APPROPRIATE TO MITIGATE SUCH RISK. WHEN ORDERING PLACEMENT WITH THE OFFICE, THE COURT SHALL STATE IN ITS ORDER THE BASIS FOR ITS FINDING THAT SUCH PLACEMENT IS WARRANTED. Where the respondent is placed with the [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES, the court shall[, unless it directs the division to place him with an authorized agency or class of authorized agencies pursuant to subdivision four] authorize the [division] OFFICE to do one of the following:

(a) place the respondent in a secure facility without a further hearing at any time or from time to time during the first [sixty] NINETY days of residency in [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES facilities. Notwithstanding the discretion of the [division] OFFICE to place the respondent in a secure facility at any time during the first [sixty] NINETY days of residency in [a division for youth] AN OFFICE OF CHILDREN AND FAMILY SERVICES facility, the respondent may be placed in a non-secure facility. In the event that the [division] OFFICE desires to transfer a respondent to a secure facility at any time after the first [sixty] NINETY days of residency in [division] OFFICE facilities, a hearing shall be held pursuant to subdivision three of section five hundred four-a of the executive law; or

(b) place the respondent in a limited secure facility. The respondent may be transferred by the [division] OFFICE to a secure facility after a hearing is held pursuant to section five hundred four-a of the executive law; provided, however, that during the first twenty days of residency in [division] OFFICE facilities, the respondent shall not be transferred to a secure facility unless the respondent has committed an act or acts which are exceptionally dangerous to the respondent or to others[; or

(c) place the respondent in a non-secure facility. No respondent placed pursuant to this paragraph may be transferred by the division for youth to a secure facility.

4. Where the respondent is placed with the division for youth, the court may direct the division to place the respondent with an authorized agency or class of authorized agencies and in the event the division is unable to so place the respondent or, discontinues the placement with the authorized agency, the respondent shall be deemed to have been

placed with the division pursuant to paragraph (b) or (c) of subdivision three of this section. In such cases, the division shall notify the court, presentment agency, respondent's attorney and parent or other person responsible for the respondent's care, of the reason for discontinuing the placement with the authorized agency and the level and location of the youth's placement].

S 5. Subdivision 2 of section 355.1 of the family court act, as added by chapter 920 of the laws of 1982, is amended to read as follows:

2. An order issued under section 353.3 OF THIS PART, may, upon a showing of a substantial change of circumstances, be set aside, modified, vacated or terminated upon motion of the commissioner of A LOCAL DEPARTMENT OF social services or the [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES with whom the respondent has been placed. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION TWO OF SECTION 352.2 OR SUBDIVISION THREE OF SECTION 353.3 OF THIS PART TO THE CONTRARY, UPON A SHOWING BY THE COMMISSIONER OF A LOCAL DEPARTMENT OF SOCIAL SERVICES THAT A RESPONDENT PLACED WITH AN AUTHORIZED AGENCY HAS SHOWN HIMSELF OR HERSELF TO BE EXCEPTIONALLY DANGEROUS TO HIMSELF OR HERSELF OR TO OTHERS, OR HAS DEMONSTRATED BY A PATTERN OF BEHAVIOR THAT HE OR SHE NEEDS A MORE STRUCTURED SETTING THAN AFFORDED BY SUCH AUTHORIZED AGENCY, THE COURT MAY MODIFY THE PLACEMENT OF THE RESPONDENT TO PLACEMENT WITH THE OFFICE OF CHILDREN AND FAMILY SERVICES IN A SECURE OR LIMITED-SECURE FACILITY.

S 6. This act shall take effect immediately; provided however that section one of this act shall take effect January 1, 2011 and sections three, four and five of this act shall take effect on the first of November next succeeding the date on which it shall have become a law.