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

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I N A S S E M B L Y

January 23, 2009

Introduced by M. of A. CLARK, SCARBOROUGH, TITUS, PAULIN, JACOBS, HEASTIE, BENJAMIN, BENEDETTO, GREENE, PEOPLES, N. RIVERA, COLTON, JOHN, CANESTRARI, GALEF, PHEFFER, FIELDS, PERRY, MAYERSOHN, BOYLAND, WALKER, ALFANO, BUTLER, ROBINSON, ARROYO, JAFFEE, COOK, SPANO -- Multi-Sponsored by -- M. of A. BARRA, CAHILL, CAMARA, CHRISTENSEN, CROUCH, EDDINGTON, ERRIGO, FARRELL, FINCH, GANTT, GOTTFRIED, HIKIND, HYER-SPENCER, LATIMER, LIFTON, McENENY, McKEVITT, MILLER, MILLMAN, MOLINARO, NOLAN, REILLY, SAYWARD, SWEENEY, TOWNS, TOWNSEND, WEISENBERG, WRIGHT -- read once and referred to the Committee on Children and Families

AN ACT to amend the executive law, in relation to the establishment of the office of the child 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 19-I to read as follows:

ARTICLE 19-I

OFFICE OF THE CHILD ADVOCATE

SECTION 533. OFFICE OF THE CHILD ADVOCATE; CREATION.
534. DEFINITIONS.
535. THE CHILD ADVOCATE.
536. DUTIES OF THE CHILD ADVOCATE.
537. POWERS OF THE OFFICE OF THE CHILD ADVOCATE.
538. DUTY TO MAINTAIN CONFIDENTIALITY.
539. ADDITIONAL PROVISIONS.

S 533. OFFICE OF THE CHILD ADVOCATE; CREATION. THERE IS HEREBY CREATED IN THE EXECUTIVE DEPARTMENT, AN OFFICE OF THE CHILD ADVOCATE, WHICH SHALL:

1. EXAMINE, EVALUATE AND REPORT TO THE GOVERNOR AND THE LEGISLATURE ON:

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

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(A) SYSTEMIC ISSUES IN PUBLICLY FUNDED PROGRAMS OVERSEEN BY THE OFFICE OF CHILDREN AND FAMILY SERVICES; AND

(B) MULTI-SYSTEMIC ISSUES THAT CHILDREN IN THE CARE, CUSTODY OR GUARDIANSHIP OF THE OFFICE OF CHILDREN AND FAMILY SERVICES OR LOCAL SOCIAL SERVICES DISTRICTS, AND THE FAMILY OF SUCH CHILDREN, EXPERIENCE IN ACCESSING NEEDED SERVICES ACROSS SYSTEMS; AND

2. ADVOCATE FOR, AND REPORT TO THE GOVERNOR AND THE LEGISLATURE ON SUGGESTED STATUTORY, REGULATORY OR POLICY CHANGES AIMED AT IMPROVING OUTCOMES AND SERVICES FOR CHILDREN AND FAMILIES IN NEW YORK STATE.

S 534. DEFINITIONS. AS USED IN THIS ARTICLE:

1. "CHILD" OR "CHILDREN" MEANS:

(A) A PERSON, OR PERSONS UNDER THE AGE OF EIGHTEEN;

(B) A PERSON OR PERSONS UNDER THE AGE OF TWENTY-ONE WHO HAS BEEN PLACED INTO THE CARE, CUSTODY, OR GUARDIANSHIP OF THE OFFICE OF CHILDREN AND FAMILY SERVICES OR A LOCAL SOCIAL SERVICES DISTRICT, PURSUANT TO ARTICLE THREE, SEVEN, OR TEN OF THE FAMILY COURT ACT, OR SECTIONS THREE HUNDRED FIFTY-EIGHT-A, THREE HUNDRED EIGHTY-THREE-C, THREE HUNDRED EIGHTY-FOUR-A OR THREE HUNDRED EIGHTY-FOUR-B OF THE SOCIAL SERVICES LAW; OR

(C) A PERSON OR PERSONS UNDER THE AGE OF TWENTY-ONE WHO IS PLACED IN RESIDENTIAL CARE AS DEFINED IN SUBDIVISION SEVEN OF SECTION FOUR HUNDRED TWELVE OF THE SOCIAL SERVICES LAW.

2. "CHILD ADVOCATE" MEANS THE OFFICE OF CHILD ADVOCATE, CREATED UNDER THIS ARTICLE.

S 535. THE CHILD ADVOCATE. 1. THE CHILD ADVOCATE SHALL BE AN INDIVIDUAL WITH AT LEAST FIVE YEARS EXPERIENCE IN THE GENERAL SUBJECT AREA OF EITHER CHILD WELFARE, JUVENILE JUSTICE OR CHILDHOOD BEHAVIORAL HEALTH, WHO SHALL BE APPOINTED BY THE GOVERNOR UPON THE ADVICE AND CONSENT OF THE SENATE FOR A TERM OF FIVE YEARS. THE CHILD ADVOCATE SHALL CONTINUE TO HOLD SUCH POSITION UNTIL HIS OR HER SUCCESSOR IS APPOINTED, BUT MAY BE REMOVED FROM HIS OR HER POSITION IF THE GOVERNOR SHALL DETERMINE THAT SUCH CHILD ADVOCATE HAS ABUSED HIS OR HER RIGHTS, POWERS, OR DUTIES ESTABLISHED PURSUANT TO THIS ARTICLE OR THAT HE OR SHE HAS WILLFULLY FAILED TO CARRY OUT THE DUTIES REQUIRED BY THIS ARTICLE. THE CHILD ADVOCATE SHALL REPORT TO THE GOVERNOR, WHO SHALL FIX THE COMPENSATION OF THE CHILD ADVOCATE WITHIN AMOUNTS APPROPRIATED THEREFOR.

2. THE CHILD ADVOCATE MAY HIRE OR APPOINT PERSONS AS MAY BE DEEMED NECESSARY TO CARRY OUT THE DUTIES OF THE OFFICE OF THE CHILD ADVOCATE. THE DUTIES OF PERSONS EMPLOYED OR APPOINTED BY THE CHILD ADVOCATE SHALL BE PERFORMED UNDER THE ADVICE AND SUPERVISION OF THE CHILD ADVOCATE. PERSONS EMPLOYED OR APPOINTED BY THE OFFICE OF THE CHILD ADVOCATE SHALL BE INDIVIDUALS WITH EXPERTISE IN THE AREAS OF CHILD WELFARE, JUVENILE JUSTICE, CHILDHOOD BEHAVIORAL HEALTH, FOSTER CARE, PREVENTIVE SERVICES, OR CHILD CARE, AS EVIDENCED BY EXPERTISE IN THE FIELD, PRACTICE, ADVOCACY OR BY ACADEMIC BACKGROUND, THE LEVEL AND SUFFICIENCY OF WHICH SHALL BE DETERMINED BY THE CHILD ADVOCATE. THE CHILD ADVOCATE SHALL FIX THE COMPENSATION OF PERSONS EMPLOYED OR APPOINTED BY THE OFFICE OF THE CHILD ADVOCATE WITHIN AMOUNTS APPROPRIATED THEREFOR.

S 536. DUTIES OF THE CHILD ADVOCATE. 1. THE CHILD ADVOCATE SHALL:

(A) EXAMINE, EVALUATE AND REPORT TO THE GOVERNOR AND THE LEGISLATURE ON SYSTEMIC ISSUES IN PUBLICLY FUNDED PROGRAMS OVERSEEN BY THE OFFICE OF CHILDREN AND FAMILY SERVICES AND LOCAL SOCIAL SERVICES DISTRICTS, INCLUDING BUT NOT LIMITED TO, CHILD WELFARE, JUVENILE JUSTICE, FOSTER CARE, CHILD PROTECTIVE, CHILD CARE AND PREVENTIVE SERVICES;

(B) EXAMINE, EVALUATE AND REPORT TO THE GOVERNOR AND THE LEGISLATURE ON MULTI-SYSTEMIC ISSUES THAT CHILDREN IN THE CARE, CUSTODY OR GUARDIAN-

SHIP OF THE OFFICE OF CHILDREN AND FAMILY SERVICES OR LOCAL SOCIAL SERVICES DISTRICTS, FAMILIES OF CHILDREN, EXPERIENCE IN ACCESSING NEEDED SERVICES ACROSS SYSTEMS;

(C) MONITOR THE IMPLEMENTATION OF THE POLICIES, REGULATIONS AND STATUTES OF STATE AGENCIES WHICH MAY BE APPLICABLE TO THE LEGAL RIGHTS OF CHILDREN IN THE CARE, CUSTODY, OR GUARDIANSHIP OF THE OFFICE OF CHILDREN AND FAMILY SERVICES OR A LOCAL SOCIAL SERVICES DISTRICT, OR THE FAMILY OF SUCH CHILDREN;

(D) MONITOR THE IMPLEMENTATION OF POLICIES, REGULATIONS AND STATUTES WHICH MAY HAVE AN IMPACT ON PUBLICLY FUNDED PROGRAMS OVERSEEN BY THE OFFICE OF CHILDREN AND FAMILY SERVICES, INCLUDING BUT NOT LIMITED TO, CHILD WELFARE, JUVENILE JUSTICE, FOSTER CARE, CHILD PROTECTIVE, CHILD CARE AND PREVENTIVE SERVICES; AND

(E) RECOMMEND CHANGES IN STATE POLICIES, STATUTES AND REGULATIONS CONCERNING CHILDREN IN THE CARE, CUSTODY, OR GUARDIANSHIP OF THE OFFICE OF CHILDREN AND FAMILY SERVICES OR LOCAL SOCIAL SERVICES DISTRICTS AND THE FAMILIES OF SUCH CHILDREN; AND

(F) RECOMMEND CHANGES IN STATE POLICIES, STATUTES, AND REGULATIONS CONCERNING PUBLICLY FUNDED PROGRAMS THAT SERVICE CHILDREN AND FAMILIES INCLUDING, JUVENILE JUSTICE, FOSTER CARE, CHILD CARE, CHILD WELFARE PROGRAMS, AND PREVENTIVE SERVICES, ADMINISTERED BY THE OFFICE OF CHILDREN AND FAMILY SERVICES OR LOCAL SOCIAL SERVICES DISTRICTS;

(G) TAKE APPROPRIATE ACTIONS AIMED AT PROMOTION OF THE RIGHTS, SAFETY, WELL-BEING, AND BEST INTEREST OF CHILDREN IN NEW YORK STATE, INCLUDING, BUT NOT LIMITED TO, UNDERTAKING LEGISLATIVE ADVOCACY, CONDUCTING PUBLIC HEARINGS AND MAKING PROPOSALS FOR ADMINISTRATIVE OR SYSTEMIC REFORM;

(H) PROVIDE ADMINISTRATIVE SUPERVISION AND OVERSIGHT TO THE OFFICE OF THE CHILD ADVOCATE AND DEVOTE FULL-TIME TO THE DUTIES OF HIS OR HER OFFICE; AND

(I) REPORT TO THE GOVERNOR AND THE LEGISLATURE AS NEEDED, BUT NOT LESS THAN TWICE PER YEAR. SUCH REPORT SHALL INCLUDE BUT NOT BE LIMITED TO:

(A) INFORMATION CONCERNING THE NUMBER AND TYPES OF REVIEWS OR EVALUATION CONDUCTED BY THE OFFICE OF THE CHILD ADVOCATE; AND

(B) ANY RECOMMENDATIONS BY THE CHILD ADVOCATE FOR LEGISLATIVE, REGULATORY, OR PUBLIC POLICY CHANGES.

2. IF AFTER EXAMINATION PURSUANT TO SUBDIVISION ONE OF THIS SECTION, THE CHILD ADVOCATE IDENTIFIES A SYSTEMIC PROBLEM IN HOW SERVICES ARE PROVIDED TO CHILDREN IN THE CARE, CUSTODY, OR GUARDIANSHIP OF THE OFFICE OF CHILDREN AND FAMILY SERVICES OR A LOCAL SOCIAL SERVICES DISTRICT, BY THE OFFICE OF CHILDREN AND FAMILY SERVICES, OR A LOCAL SOCIAL SERVICES DISTRICT, OR ANY PUBLIC OR PRIVATE ENTITY WHICH CONTRACTS WITH THE OFFICE OF CHILDREN AND FAMILY SERVICES OR A LOCAL SOCIAL SERVICES DISTRICT TO PROVIDE SERVICES TO SUCH CHILDREN, THE CHILD ADVOCATE SHALL PROVIDE SUCH OFFICE, DISTRICT, AGENCY OR ENTITY A WRITTEN REPORT OUTLINING THE FINDINGS AND RECOMMENDATIONS OF THE CHILD ADVOCATE.

(A) AN OFFICE, DISTRICT, AGENCY OR ENTITY NAMED IN A REPORT BY THE CHILD ADVOCATE AS DESCRIBED IN THIS SUBDIVISION SHALL HAVE THE OPTION TO RESPOND IN WRITING TO THE CHILD ADVOCATE'S FINDINGS, PROVIDED HOWEVER THAT SUCH WRITTEN RESPONSE MUST BE ISSUED WITHIN NINETY DAYS OF SUCH OFFICE, DISTRICT, AGENCY OR ENTITY'S RECEIPT OF THE APPLICABLE REPORT BY THE CHILD ADVOCATE.

(B) WITHIN THIRTY DAYS AFTER THE RECEIPT OF A RESPONSE FROM AN OFFICE, DISTRICT, AGENCY OR ENTITY AS DESCRIBED IN THIS SUBDIVISION, THE CHILD ADVOCATE SHALL ISSUE SUCH RESPONSE, AND THE REPORT ISSUED BY THE CHILD ADVOCATE PURSUANT TO THIS SUBDIVISION, TO THE GOVERNOR AND THE LEGISLATURE.

(C) IF A RESPONSE OR A WRITTEN REQUEST FOR AN ADDITIONAL THIRTY DAYS WITH AN EXPLANATION IS NOT RECEIVED BY THE CHILD ADVOCATE WITHIN NINETY DAYS FROM THE DATE THAT THE CHILD ADVOCATE SENT SUCH REPORT TO SUCH OFFICE, DISTRICT, AGENCY OR ENTITY, THE CHILD ADVOCATE SHALL PROVIDE SUCH REPORT TO THE GOVERNOR AND THE LEGISLATURE WITH A NOTICE STATING THAT SUCH OFFICE, DISTRICT, AGENCY OR ENTITY FAILED TO ISSUE A TIMELY WRITTEN RESPONSE TO THE REPORT BY THE CHILD ADVOCATE.

S 537. POWERS OF THE OFFICE OF THE CHILD ADVOCATE. NOTWITHSTANDING ANY PROVISION OF LAW OR REGULATION TO THE CONTRARY, THE OFFICE OF THE CHILD ADVOCATE SHALL HAVE ACCESS TO, INCLUDING THE RIGHT TO INSPECT AND COPY, ANY RECORDS NECESSARY TO CARRY OUT ITS RIGHTS, POWERS AND DUTIES PURSUANT TO THIS ARTICLE.

S 538. DUTY TO MAINTAIN CONFIDENTIALITY. ALL RECORDS OF THE OFFICE OF THE CHILD ADVOCATE PERTAINING TO THE FULFILLMENT OF THE CHILD ADVOCATE'S RIGHTS, POWERS AND DUTIES PURSUANT TO THIS ARTICLE, AND ALL RECORDS OBTAINED BY THE CHILD ADVOCATE SHALL BE KEPT CONFIDENTIAL, PROVIDED HOWEVER, THAT LIMITED INFORMATION CONTAINED IN SUCH RECORDS MAY BE RELEASED BY THE CHILD ADVOCATE, IF APPROPRIATE, AND UPON APPROVAL OF THE CHILD ADVOCATE, SO LONG AS THE INFORMATION TO BE RELEASED WOULD NOT IDENTIFY THE CHILD OR CHILDREN THE CHILD ADVOCATE WAS SERVING, OR THE NAMES OF THE PARENTS OR SIBLINGS OF SUCH CHILD OR CHILDREN.

S 539. ADDITIONAL PROVISIONS. 1. THE STATE SHALL PROTECT AND HOLD HARMLESS ANY PERSON EMPLOYED OR APPOINTED BY THE CHILD ADVOCATE, FROM FINANCIAL LOSS AND EXPENSE, INCLUDING LEGAL FEES AND COSTS, IF ANY, ARISING OUT OF ANY CLAIM, DEMAND OR SUIT FOR DAMAGES RESULTING FROM ACTS OR OMISSIONS COMMITTED IN THE DISCHARGE OF HIS OR HER RIGHTS, POWERS AND DUTIES WITHIN THE SCOPE OF HIS OR HER EMPLOYMENT OR APPOINTMENT WHICH MAY CONSTITUTE NEGLIGENCE BUT WHICH ACTS ARE NOT WANTON, MALICIOUS OR GROSSLY NEGLIGENT AS DETERMINED BY A COURT OF COMPETENT JURISDICTION.

2. NO STATE OR LOCAL AGENCY, DEPARTMENT, OFFICE, OR ENTITY SHALL DISCHARGE, OR IN ANY MANNER DISCRIMINATE OR RETALIATE AGAINST, ANY PERSON WHO IN GOOD FAITH MAKES A COMPLAINT TO, OR COOPERATES WITH, THE CHILD ADVOCATE IN A REVIEW OR EVALUATION CONDUCTED BY THE CHILD ADVOCATE. NO EMPLOYEE OF ANY STATE OR LOCAL DEPARTMENT OR OFFICE OR OF ANY PRIVATE ENTITY SHALL RETALIATE AGAINST ANY PERSON WHO MAKES A COMPLAINT TO, OR WHO COOPERATES WITH THE OFFICE OF THE CHILD ADVOCATE IN A REVIEW OR EVALUATION CONDUCTED BY THE OFFICE OF THE CHILD ADVOCATE.

3. THE OFFICE OF THE CHILD ADVOCATE MAY APPLY FOR AND ACCEPT GRANTS, GIFTS AND BEQUESTS OF FUNDS FROM PRIVATE INDIVIDUALS AND FOUNDATIONS FOR THE PURPOSE OF CARRYING OUT SYSTEMATIC STUDIES UNDER THIS ARTICLE. THE FUNDS SHALL BE EXPENDED IN ACCORDANCE WITH THE PROVISIONS OF SUCH GRANT, GIFT OR BEQUEST.

4. THE CHILD ADVOCATE SHALL TAKE ALL POSSIBLE ACTIONS INCLUDING, BUT NOT LIMITED TO, CONDUCTING PROGRAMS OF PUBLIC EDUCATION, UNDERTAKING LEGISLATIVE ADVOCACY AND MAKING PROPOSALS FOR ADMINISTRATIVE CORRECTION OR SYSTEMIC REFORM AND FORMAL LEGAL ACTION, IN ORDER TO SECURE AND ENSURE THE LEGAL, CIVIL AND SPECIAL RIGHTS OF CHILDREN.

5. THE CHILD ADVOCATE SHALL TAKE THE APPROPRIATE STEPS TO MAKE THE EXISTENCE AND AVAILABILITY OF THE CHILD ADVOCATE WIDELY KNOWN, BY APPROPRIATE AND ACTIVE MEANS, TO CHILDREN AND ADULTS.

6. THE CHILD ADVOCATE SHALL CREATE INFORMATIONAL MATERIALS FOR CHILDREN REGARDING THE RIGHTS OF CHILDREN WHEN THEY ARE IN FOSTER CARE, DETENTION CENTERS, FACILITIES OPERATED BY THE OFFICE OF CHILDREN AND FAMILY SERVICES, JAILS, OR PRISONS AND THE METHODS AND ASSISTANCE AVAILABLE TO ENFORCE THOSE RIGHTS.

S 2. Subdivision 16 of section 501 of the executive law, as renumbered by chapter 170 of the laws of 1994, is renumbered subdivision 17 and a new subdivision 16 is added to read as follows:

16. THE COMMISSIONER OF THE OFFICE OF CHILDREN AND FAMILY SERVICES SHALL PROMULGATE REGULATIONS REQUIRING THAT NO SERVICES OR PROGRAMS UNDER THE JURISDICTION OF THE OFFICE OF CHILDREN AND FAMILY SERVICES SHALL RESTRICT OR PROHIBIT ACCESS TO RECORDS OR INDIVIDUALS TO THE OFFICE OF THE CHILD ADVOCATE UPON REQUEST, UNLESS THE DISCLOSURE OF SUCH RECORDS ARE OTHERWISE PROHIBITED BY FEDERAL LAW OR REGULATION.

S 3. This act shall take effect on April 1, 2011; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before the effective date.