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

6877

I N S E N A T E

February 19, 2010

Introduced by Sen. PARKER -- 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, in relation to the establishment of the independent office of the child advocate; and repealing certain provisions of such law relating to the office of the ombudsman

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

Section 1. Subtitle B of title 3 of article 19-G of the executive law is REPEALED.

S 2. The executive law is amended by adding a new article 19-I to read as follows:

ARTICLE 19-I

INDEPENDENT OFFICE OF THE CHILD ADVOCATE

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

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

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

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

(B) MULTI-SYSTEMIC ISSUES THAT CHILDREN IN THE JUVENILE JUSTICE SYSTEM 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 IN THE JUVENILE JUSTICE SYSTEM AND THEIR FAMILIES IN NEW YORK STATE.

S 534. DEFINITIONS. AS USED IN THIS ARTICLE:

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

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1. "CHILD" OR "CHILDREN" MEANS:
(A) A PERSON, OR PERSONS UNDER THE AGE OF EIGHTEEN; OR
(B) A PERSON OR PERSONS UNDER THE AGE OF TWENTY-ONE WHO HAS BEEN PLACED INTO A JUVENILE JUSTICE FACILITY IN THE CARE, CUSTODY, OR GUARDIANSHIP OF THE OFFICE OF CHILDREN AND FAMILY SERVICES OR A LOCAL SOCIAL SERVICES DISTRICT PURSUANT TO ARTICLE THREE OF THE FAMILY COURT ACT.
2. "CHILD ADVOCATE" MEANS THE PERSON APPOINTED PURSUANT TO SUBDIVISION ONE OF SECTION FIVE HUNDRED THIRTY-FIVE OF THIS ARTICLE TO DIRECT AND OVERSEE THE ACTIVITIES OF THE INDEPENDENT OFFICE OF THE CHILD ADVOCATE.

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 INDEPENDENT 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 INDEPENDENT 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 INDEPENDENT OFFICE OF THE CHILD ADVOCATE WITHIN AMOUNTS APPROPRIATED THEREFOR.

S 536. DUTIES OF THE CHILD ADVOCATE. 1. THE CHILD ADVOCATE SHALL:
(A) EXAMINE, EVALUATE, INVESTIGATE AND REPORT TO THE GOVERNOR AND THE LEGISLATURE ON PARTICULAR AND SYSTEMIC ISSUES IN PUBLICLY FUNDED JUVENILE JUSTICE PROGRAMS OVERSEEN BY THE OFFICE OF CHILDREN AND FAMILY SERVICES AND LOCAL SOCIAL SERVICES DISTRICTS; AND
(B) EXAMINE, EVALUATE, INVESTIGATE AND REPORT TO THE GOVERNOR AND THE LEGISLATURE ON MULTI-SYSTEMIC ISSUES THAT CHILDREN IN THE JUVENILE JUSTICE SYSTEM EXPERIENCE IN ACCESSING NEEDED SERVICES ACROSS SYSTEMS; AND
(C) MONITOR THE IMPLEMENTATION OF THE POLICIES, REGULATIONS AND STATUTES OF STATE AGENCIES WHICH MAY BE APPLICABLE TO THE LEGAL RIGHTS OF CHILDREN IN JUVENILE JUSTICE FACILITIES OVERSEEN BY THE OFFICE OF CHILDREN AND FAMILY SERVICES OR A LOCAL SOCIAL SERVICES DISTRICT, OR THE FAMILY OF SUCH CHILDREN; AND
(D) MONITOR THE IMPLEMENTATION OF POLICIES, REGULATIONS AND STATUTES WHICH MAY HAVE AN IMPACT ON PUBLICLY FUNDED JUVENILE JUSTICE PROGRAMS OVERSEEN BY THE OFFICE OF CHILDREN AND FAMILY SERVICES; AND
(E) RECOMMEND CHANGES IN STATE POLICIES, STATUTES AND REGULATIONS CONCERNING CHILDREN IN THE JUVENILE JUSTICE SYSTEM AND THE FAMILIES OF SUCH CHILDREN; AND
(F) RECOMMEND CHANGES IN STATE POLICIES, STATUTES, AND REGULATIONS CONCERNING PUBLICLY FUNDED JUVENILE JUSTICE PROGRAMS THAT SERVICE CHIL-

DREN AND FAMILIES, ADMINISTERED BY THE OFFICE OF CHILDREN AND FAMILY SERVICES OR LOCAL SOCIAL SERVICES DISTRICTS; AND

(G) TAKE APPROPRIATE ACTIONS AIMED AT PROMOTION OF THE RIGHTS, SAFETY, WELL-BEING, AND BEST INTERESTS 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; AND

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

(I) CONDUCT PERIODIC INSPECTIONS, EVALUATIONS OR REVIEWS OF ANY JUVENILE JUSTICE FACILITY OPERATED BY THE OFFICE OF CHILDREN AND FAMILY SERVICES AT ANY TIME, WITH OR WITHOUT PRIOR NOTICE. JUVENILE JUSTICE FACILITY DIRECTORS AND STAFF SHALL COOPERATE WITH SUCH INSPECTION, EVALUATION OR REVIEW. AN ADVOCATE SHALL HAVE THE RIGHT TO INSPECT THE JUVENILE JUSTICE FACILITY, VISIT ALL AREAS AND OBSERVE ALL PARTS AND ASPECTS OF SUCH FACILITY PROGRAM; AND

(J) REPORT TO THE GOVERNOR AND THE LEGISLATURE AS NEEDED, BUT NOT LESS THAN TWICE PER YEAR. SUCH REPORT SHALL BE MADE AVAILABLE TO THE PUBLIC, UNLESS SUCH MATERIALS ARE CONFIDENTIAL PURSUANT TO STATUTE, AND SHALL INCLUDE BUT NOT BE LIMITED TO:

(A) INFORMATION CONCERNING THE NUMBER AND TYPES OF REVIEWS, EVALUATIONS AND INVESTIGATIONS CONDUCTED BY THE INDEPENDENT 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 INDEPENDENT OFFICE OF THE CHILD ADVOCATE. NOTWITHSTANDING ANY PROVISION OF LAW OR REGULATION TO THE CONTRARY, THE INDEPENDENT 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, INCLUDING BUT NOT LIMITED TO, PERSONNEL RECORDS THAT BEAR ON ANY ISSUE BEING REVIEWED, EVALUATED, OR INVESTIGATED AND RECORDS OF CHILDREN UNDER CARE OF THE JUVENILE JUSTICE SYSTEM THAT BEAR ON ANY ISSUE BEING REVIEWED, EVALUATED, OR INVESTIGATED. THE INDEPENDENT OFFICE OF THE CHILD ADVOCATE SHALL ALSO HAVE THE AUTHORITY TO SUBPOENA RECORDS AND WITNESSES, AND TO CONDUCT INTERVIEWS WITH ANY PERSON NECESSARY TO CARRY OUT ITS RIGHTS, POWERS AND DUTIES PURSUANT TO THIS ARTICLE, INCLUDING BUT NOT LIMITED TO STAFF AND CHILDREN UNDER CARE OF THE JUVENILE JUSTICE SYSTEM.

S 538. DUTY TO MAINTAIN CONFIDENTIALITY. ALL RECORDS OF THE INDEPENDENT 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 INDEPENDENT OFFICE OF THE CHILD ADVOCATE IN A REVIEW, INVESTIGATION OR EVALUATION CONDUCTED BY THE INDEPENDENT OFFICE OF THE CHILD ADVOCATE.

3. ALL COMMUNICATIONS TO THE INDEPENDENT OFFICE OF THE CHILD ADVOCATE SHALL REMAIN CONFIDENTIAL. ANY COMPLAINT FILED BY A YOUTH OR A STAFF MEMBER OF A JUVENILE JUSTICE FACILITY WITH THE INDEPENDENT OFFICE OF THE CHILD ADVOCATE SHALL REMAIN CONFIDENTIAL. ALL YOUTH RESIDING IN A JUVENILE JUSTICE FACILITY SHALL BE PERMITTED REASONABLE ACCESS TO A TELEPHONE TO MAKE A TOLL FREE CALL OR SHALL BE SUPPLIED WRITING MATERIALS IN ORDER TO WRITE LETTERS TO THE INDEPENDENT OFFICE OF THE CHILD ADVOCATE UPON THE YOUTH'S REQUEST. ANY COMMUNICATIONS BETWEEN SUCH YOUTH AND THE INDEPENDENT OFFICE OF THE CHILD ADVOCATE SHALL REMAIN CONFIDENTIAL AND SHALL NOT BE MONITORED BY ANY MEMBER OF THE JUVENILE JUSTICE FACILITY'S STAFF.

4. THE INDEPENDENT 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 STUDIES UNDER THIS ARTICLE. THE FUNDS SHALL BE EXPENDED IN ACCORDANCE WITH THE PROVISIONS OF SUCH GRANT, GIFT OR BEQUEST.

5. 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 REFORM AND FORMAL LEGAL ACTION, IN ORDER TO SECURE AND ENSURE THE LEGAL, CIVIL AND SPECIAL RIGHTS OF CHILDREN.

6. 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.

7. THE CHILD ADVOCATE SHALL CREATE INFORMATIONAL MATERIALS FOR CHILDREN REGARDING THE RIGHTS OF CHILDREN WHEN THEY ARE IN 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 3. 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, FACILITIES, ENTITIES OR PROGRAMS UNDER THE JURISDICTION OF THE OFFICE OF CHILDREN AND FAMILY SERVICES SHALL RESTRICT OR PROHIBIT ACCESS TO FACILITIES, RECORDS OR INDIVIDUALS TO THE INDEPENDENT OFFICE OF THE CHILD ADVOCATE UPON REQUEST, UNLESS THE DISCLOSURE OF SUCH RECORDS ARE OTHERWISE PROHIBITED BY FEDERAL LAW OR REGULATION.

S 4. This act shall take effect 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.