

1052

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

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:

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2 is REPEALED.

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

5 ARTICLE 19-I

6 INDEPENDENT OFFICE OF THE CHILD ADVOCATE

7 SECTION 533. INDEPENDENT OFFICE OF THE CHILD ADVOCATE; CREATION.

8 534. DEFINITIONS.

9 535. THE CHILD ADVOCATE.

10 536. DUTIES OF THE CHILD ADVOCATE.

11 537. POWERS OF THE INDEPENDENT OFFICE OF THE CHILD ADVOCATE.

12 538. DUTY TO MAINTAIN CONFIDENTIALITY.

13 539. ADDITIONAL PROVISIONS.

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

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

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

21 (B) MULTI-SYSTEMIC ISSUES THAT CHILDREN IN THE JUVENILE JUSTICE SYSTEM
22 EXPERIENCE IN ACCESSING NEEDED SERVICES ACROSS SYSTEMS; AND

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

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

5 S 534. DEFINITIONS. AS USED IN THIS ARTICLE:

6 1. "CHILD" OR "CHILDREN" MEANS:

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

8 (B) A PERSON OR PERSONS UNDER THE AGE OF TWENTY-ONE WHO HAS BEEN
9 PLACED INTO A JUVENILE JUSTICE FACILITY IN THE CARE, CUSTODY, OR GUARDI-
10 ANSHIP OF THE OFFICE OF CHILDREN AND FAMILY SERVICES OR A LOCAL SOCIAL
11 SERVICES DISTRICT PURSUANT TO ARTICLE THREE OF THE FAMILY COURT ACT.

12 2. "CHILD ADVOCATE" MEANS THE PERSON APPOINTED PURSUANT TO SUBDIVISION
13 ONE OF SECTION FIVE HUNDRED THIRTY-FIVE OF THIS ARTICLE TO DIRECT AND
14 OVERSEE THE ACTIVITIES OF THE INDEPENDENT OFFICE OF THE CHILD ADVOCATE.

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

27 2. THE CHILD ADVOCATE MAY HIRE OR APPOINT PERSONS AS MAY BE DEEMED
28 NECESSARY TO CARRY OUT THE DUTIES OF THE INDEPENDENT OFFICE OF THE CHILD
29 ADVOCATE. THE DUTIES OF PERSONS EMPLOYED OR APPOINTED BY THE CHILD ADVO-
30 CATE SHALL BE PERFORMED UNDER THE ADVICE AND SUPERVISION OF THE CHILD
31 ADVOCATE. PERSONS EMPLOYED OR APPOINTED BY THE INDEPENDENT OFFICE OF THE
32 CHILD ADVOCATE SHALL BE INDIVIDUALS WITH EXPERTISE IN THE AREAS OF CHILD
33 WELFARE, JUVENILE JUSTICE, CHILDHOOD BEHAVIORAL HEALTH, FOSTER CARE,
34 PREVENTIVE SERVICES, OR CHILD CARE, AS EVIDENCED BY EXPERTISE IN THE
35 FIELD, PRACTICE, ADVOCACY OR BY ACADEMIC BACKGROUND, THE LEVEL AND
36 SUFFICIENCY OF WHICH SHALL BE DETERMINED BY THE CHILD ADVOCATE. THE
37 CHILD ADVOCATE SHALL FIX THE COMPENSATION OF PERSONS EMPLOYED OR
38 APPOINTED BY THE INDEPENDENT OFFICE OF THE CHILD ADVOCATE WITHIN AMOUNTS
39 APPROPRIATED THEREFOR.

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

41 (A) EXAMINE, EVALUATE, INVESTIGATE AND REPORT TO THE GOVERNOR AND THE
42 LEGISLATURE ON PARTICULAR AND SYSTEMIC ISSUES IN PUBLICLY FUNDED JUVE-
43 NILE JUSTICE PROGRAMS OVERSEEN BY THE OFFICE OF CHILDREN AND FAMILY
44 SERVICES AND LOCAL SOCIAL SERVICES DISTRICTS; AND

45 (B) EXAMINE, EVALUATE, INVESTIGATE AND REPORT TO THE GOVERNOR AND THE
46 LEGISLATURE ON MULTI-SYSTEMIC ISSUES THAT CHILDREN IN THE JUVENILE
47 JUSTICE SYSTEM EXPERIENCE IN ACCESSING NEEDED SERVICES ACROSS SYSTEMS;
48 AND

49 (C) MONITOR THE IMPLEMENTATION OF THE POLICIES, REGULATIONS AND STAT-
50 UTES OF STATE AGENCIES WHICH MAY BE APPLICABLE TO THE LEGAL RIGHTS OF
51 CHILDREN IN JUVENILE JUSTICE FACILITIES OVERSEEN BY THE OFFICE OF CHIL-
52 DREN AND FAMILY SERVICES OR A LOCAL SOCIAL SERVICES DISTRICT, OR THE
53 FAMILY OF SUCH CHILDREN; AND

54 (D) MONITOR THE IMPLEMENTATION OF POLICIES, REGULATIONS AND STATUTES
55 WHICH MAY HAVE AN IMPACT ON PUBLICLY FUNDED JUVENILE JUSTICE PROGRAMS
56 OVERSEEN BY THE OFFICE OF CHILDREN AND FAMILY SERVICES; AND

1 (E) RECOMMEND CHANGES IN STATE POLICIES, STATUTES AND REGULATIONS
2 CONCERNING CHILDREN IN THE JUVENILE JUSTICE SYSTEM AND THE FAMILIES OF
3 SUCH CHILDREN; AND

4 (F) RECOMMEND CHANGES IN STATE POLICIES, STATUTES, AND REGULATIONS
5 CONCERNING PUBLICLY FUNDED JUVENILE JUSTICE PROGRAMS THAT SERVICE CHIL-
6 DREN AND FAMILIES, ADMINISTERED BY THE OFFICE OF CHILDREN AND FAMILY
7 SERVICES OR LOCAL SOCIAL SERVICES DISTRICTS; AND

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

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

15 (I) CONDUCT PERIODIC INSPECTIONS, EVALUATIONS OR REVIEWS OF ANY JUVE-
16 NILE JUSTICE FACILITY OPERATED BY THE OFFICE OF CHILDREN AND FAMILY
17 SERVICES AT ANY TIME, WITH OR WITHOUT PRIOR NOTICE. JUVENILE JUSTICE
18 FACILITY DIRECTORS AND STAFF SHALL COOPERATE WITH SUCH INSPECTION, EVAL-
19 UATION OR REVIEW. AN ADVOCATE SHALL HAVE THE RIGHT TO INSPECT THE JUVE-
20 NILE JUSTICE FACILITY, VISIT ALL AREAS AND OBSERVE ALL PARTS AND ASPECTS
21 OF SUCH FACILITY PROGRAM; AND

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

26 (A) INFORMATION CONCERNING THE NUMBER AND TYPES OF REVIEWS, EVALU-
27 ATIONS AND INVESTIGATIONS CONDUCTED BY THE INDEPENDENT OFFICE OF THE
28 CHILD ADVOCATE; AND

29 (B) ANY RECOMMENDATIONS BY THE CHILD ADVOCATE FOR LEGISLATIVE, REGULA-
30 TORY, OR PUBLIC POLICY CHANGES.

31 2. IF AFTER EXAMINATION PURSUANT TO SUBDIVISION ONE OF THIS SECTION,
32 THE CHILD ADVOCATE IDENTIFIES A SYSTEMIC PROBLEM IN HOW SERVICES ARE
33 PROVIDED TO CHILDREN IN THE CARE, CUSTODY, OR GUARDIANSHIP OF THE OFFICE
34 OF CHILDREN AND FAMILY SERVICES OR A LOCAL SOCIAL SERVICES DISTRICT, BY
35 THE OFFICE OF CHILDREN AND FAMILY SERVICES, OR A LOCAL SOCIAL SERVICES
36 DISTRICT, OR ANY PUBLIC OR PRIVATE ENTITY WHICH CONTRACTS WITH THE
37 OFFICE OF CHILDREN AND FAMILY SERVICES OR A LOCAL SOCIAL SERVICES
38 DISTRICT TO PROVIDE SERVICES TO SUCH CHILDREN, THE CHILD ADVOCATE SHALL
39 PROVIDE SUCH OFFICE, DISTRICT, AGENCY OR ENTITY A WRITTEN REPORT OUTLIN-
40 ING THE FINDINGS AND RECOMMENDATIONS OF THE CHILD ADVOCATE.

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

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

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

1 THAT SUCH OFFICE, DISTRICT, AGENCY OR ENTITY FAILED TO ISSUE A TIMELY
2 WRITTEN RESPONSE TO THE REPORT BY THE CHILD ADVOCATE.

3 S 537. POWERS OF THE INDEPENDENT OFFICE OF THE CHILD ADVOCATE.
4 NOTWITHSTANDING ANY PROVISION OF LAW OR REGULATION TO THE CONTRARY, THE
5 INDEPENDENT OFFICE OF THE CHILD ADVOCATE SHALL HAVE ACCESS TO, INCLUDING
6 THE RIGHT TO INSPECT AND COPY, ANY RECORDS NECESSARY TO CARRY OUT ITS
7 RIGHTS, POWERS AND DUTIES PURSUANT TO THIS ARTICLE, INCLUDING BUT NOT
8 LIMITED TO, PERSONNEL RECORDS THAT BEAR ON ANY ISSUE BEING REVIEWED,
9 EVALUATED, OR INVESTIGATED AND RECORDS OF CHILDREN UNDER CARE OF THE
10 JUVENILE JUSTICE SYSTEM THAT BEAR ON ANY ISSUE BEING REVIEWED, EVALU-
11 ATED, OR INVESTIGATED. THE INDEPENDENT OFFICE OF THE CHILD ADVOCATE
12 SHALL ALSO HAVE THE AUTHORITY TO SUBPOENA RECORDS AND WITNESSES, AND TO
13 CONDUCT INTERVIEWS WITH ANY PERSON NECESSARY TO CARRY OUT ITS RIGHTS,
14 POWERS AND DUTIES PURSUANT TO THIS ARTICLE, INCLUDING BUT NOT LIMITED TO
15 STAFF AND CHILDREN UNDER CARE OF THE JUVENILE JUSTICE SYSTEM.

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

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

33 2. NO STATE OR LOCAL AGENCY, DEPARTMENT, OFFICE, OR ENTITY SHALL
34 DISCHARGE, OR IN ANY MANNER DISCRIMINATE OR RETALIATE AGAINST, ANY
35 PERSON WHO IN GOOD FAITH MAKES A COMPLAINT TO, OR COOPERATES WITH, THE
36 CHILD ADVOCATE IN A REVIEW OR EVALUATION CONDUCTED BY THE CHILD ADVO-
37 CATE. NO EMPLOYEE OF ANY STATE OR LOCAL DEPARTMENT OR OFFICE OR OF ANY
38 PRIVATE ENTITY SHALL RETALIATE AGAINST ANY PERSON WHO MAKES A COMPLAINT
39 TO, OR WHO COOPERATES WITH THE INDEPENDENT OFFICE OF THE CHILD ADVOCATE
40 IN A REVIEW, INVESTIGATION OR EVALUATION CONDUCTED BY THE INDEPENDENT
41 OFFICE OF THE CHILD ADVOCATE.

42 3. ALL COMMUNICATIONS TO THE INDEPENDENT OFFICE OF THE CHILD ADVOCATE
43 SHALL REMAIN CONFIDENTIAL. ANY COMPLAINT FILED BY A YOUTH OR A STAFF
44 MEMBER OF A JUVENILE JUSTICE FACILITY WITH THE INDEPENDENT OFFICE OF THE
45 CHILD ADVOCATE SHALL REMAIN CONFIDENTIAL. ALL YOUTH RESIDING IN A JUVE-
46 NILE JUSTICE FACILITY SHALL BE PERMITTED REASONABLE ACCESS TO A TELE-
47 PHONE TO MAKE A TOLL FREE CALL OR SHALL BE SUPPLIED WRITING MATERIALS IN
48 ORDER TO WRITE LETTERS TO THE INDEPENDENT OFFICE OF THE CHILD ADVOCATE
49 UPON THE YOUTH'S REQUEST. ANY COMMUNICATIONS BETWEEN SUCH YOUTH AND THE
50 INDEPENDENT OFFICE OF THE CHILD ADVOCATE SHALL REMAIN CONFIDENTIAL AND
51 SHALL NOT BE MONITORED BY ANY MEMBER OF THE JUVENILE JUSTICE FACILITY'S
52 STAFF.

53 4. THE INDEPENDENT OFFICE OF THE CHILD ADVOCATE MAY APPLY FOR AND
54 ACCEPT GRANTS, GIFTS AND BEQUESTS OF FUNDS FROM PRIVATE INDIVIDUALS AND
55 FOUNDATIONS FOR THE PURPOSE OF CARRYING OUT STUDIES UNDER THIS ARTICLE.

1 THE FUNDS SHALL BE EXPENDED IN ACCORDANCE WITH THE PROVISIONS OF SUCH
2 GRANT, GIFT OR BEQUEST.

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

8 6. THE CHILD ADVOCATE SHALL TAKE THE APPROPRIATE STEPS TO MAKE THE
9 EXISTENCE AND AVAILABILITY OF THE CHILD ADVOCATE WIDELY KNOWN, BY APPRO-
10 PRIATE AND ACTIVE MEANS, TO CHILDREN AND ADULTS.

11 7. THE CHILD ADVOCATE SHALL CREATE INFORMATIONAL MATERIALS FOR CHIL-
12 DREN REGARDING THE RIGHTS OF CHILDREN WHEN THEY ARE IN DETENTION
13 CENTERS, FACILITIES OPERATED BY THE OFFICE OF CHILDREN AND FAMILY
14 SERVICES, JAILS, OR PRISONS AND THE METHODS AND ASSISTANCE AVAILABLE TO
15 ENFORCE THOSE RIGHTS.

16 S 3. Subdivision 16 of section 501 of the executive law, as renumbered
17 by chapter 170 of the laws of 1994, is renumbered subdivision 17 and a
18 new subdivision 16 is added to read as follows:

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

26 S 4. This act shall take effect April 1, 2012; provided, however, that
27 effective immediately, the addition, amendment and/or repeal of any rule
28 or regulation necessary for the implementation of this act on its effec-
29 tive date are authorized and directed to be made and completed on or
30 before the effective date.