

# STATE OF NEW YORK

2873--A

2017-2018 Regular Sessions

## IN SENATE

January 18, 2017

Introduced by Sens. PARKER, BAILEY, DILAN, KENNEDY, MONTGOMERY -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law, in relation to the establishment of the independent 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

#### 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.

§ 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 programs overseen by any executive agency with custody of children; and

(b) multi-systemic issues that children in the care, custody or guardianship of any state agency that has custody of children or a local social services district, and the families of such children 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 and their families in New York state.

4 § 534. Definitions. As used in this article:

5 1. "Child" or "children" means:

6 (a) a person, or persons under the age of eighteen; or

7 (b) a person or persons under the age of twenty-one who has been  
8 placed into the care, custody, or guardianship of any state agency that  
9 has custody of children or a local social services district pursuant to  
10 article three, seven, ten, ten-a, ten-b or ten-c of the family court act  
11 or section three hundred fifty-eight-a, three hundred eighty-three-c,  
12 three hundred eighty-four-a or three hundred eighty-four-b of the social  
13 services law; or

14 (c) a person or persons under the age of twenty-one who is placed in  
15 residential care as defined in section four hundred twelve of the social  
16 services law.

17 2. "Child advocate" means the person appointed pursuant to subdivision  
18 one of section five hundred thirty-five of this article to direct and  
19 oversee the activities of the independent office of the child advocate.

20 § 535. The child advocate. 1. The child advocate shall be an individ-  
21 ual with at least five years experience in the general subject area of  
22 either child welfare, juvenile justice or childhood behavioral health,  
23 who shall be appointed by the governor.

24 2. The child advocate may hire or appoint persons as may be deemed  
25 necessary to carry out the duties of the independent office of the child  
26 advocate. The duties of persons employed or appointed by the child advo-  
27 cate shall be performed under the advice and supervision of the child  
28 advocate. Persons employed or appointed by the independent office of the  
29 child advocate shall be individuals with expertise in the areas of child  
30 welfare, juvenile justice, childhood behavioral health, foster care,  
31 preventive services, or child care, as evidenced by expertise in the  
32 field, practice, advocacy or by academic background, the level and  
33 sufficiency of which shall be determined by the child advocate. The  
34 child advocate shall fix the compensation of persons employed or  
35 appointed by the independent office of the child advocate within amounts  
36 appropriated therefor.

37 § 536. Duties of the child advocate. 1. The child advocate shall:

38 (a) examine, evaluate, investigate and report to the governor and the  
39 legislature on particular and systemic issues in publicly funded  
40 programs overseen by a state agency that has custody of children and  
41 local social services districts, including but not limited to child  
42 welfare, juvenile justice, foster care, child protective, child care and  
43 preventative services; and

44 (b) examine, evaluate, investigate and report to the governor and the  
45 legislature on multi-systemic issues that children in the care, custody  
46 or guardianship of a state agency that has custody of children or a  
47 local social services district, and the families of such children, expe-  
48 rience in accessing needed services across systems; 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 the care, custody or guardianship of a state agency that has  
52 custody of children or a local social services district, or the families  
53 of such children; and

54 (d) monitor the implementation of policies, regulations and statutes  
55 which may have an impact on publicly funded programs overseen by the  
56 office of children and family services, including but not limited to

1 child welfare, juvenile justice, foster care, child protective, child  
2 care and preventative services; and

3 (e) recommend changes in state policies, statutes and regulations  
4 concerning children in the care, custody or guardianship of a state  
5 agency that has custody of children or a local social services district,  
6 and the families of such children; and

7 (f) recommend changes in state policies, statutes, and regulations  
8 concerning publicly funded programs that service children and families,  
9 including but not limited to child welfare, juvenile justice, foster  
10 care, child protective, child care and preventative services, adminis-  
11 tered by a state agency that has custody of children or local social  
12 services districts; and

13 (g) take appropriate actions aimed at promotion of the rights, safety,  
14 well-being, and best interests of children in New York state, including,  
15 but not limited to, undertaking legislative advocacy, conducting public  
16 hearings and making proposals for administrative or systemic reform; and

17 (h) provide administrative supervision and oversight to the independ-  
18 ent office of the child advocate and devote full-time to the duties of  
19 his or her office; and

20 (i) work collaboratively with state agencies and local social services  
21 districts having custody of children to arrange for the visitation of  
22 programs and facilities operated by or contracting with such state agen-  
23 cies or local social services districts; and

24 (j) report to the governor, the speaker of the assembly and the tempo-  
25 rary president of the senate as needed, but not less than twice per  
26 year. Such report shall be made available to the public, unless such  
27 materials are confidential pursuant to statute, and shall include but  
28 not be limited to:

29 (A) information concerning the number and types of reviews and evalu-  
30 ations conducted by the independent office of the child advocate; and

31 (B) any recommendations by the child advocate for legislative, regula-  
32 tory, or public policy changes.

33 2. If after examination pursuant to subdivision one of this section,  
34 the child advocate identifies a systemic problem in how services are  
35 provided to children in the care, custody, or guardianship of a state  
36 agency that has custody of children or a local social services district,  
37 by a state agency that has custody of children, or a local social  
38 services district, or any public or private entity which contracts with  
39 the office of children and family services or a local social services  
40 district to provide services to such children, the child advocate shall  
41 provide such office, district, agency or entity a written report outlin-  
42 ing the findings and recommendations of the child advocate.

43 (a) An office, district, agency or entity named in a report by the  
44 child advocate as described in this subdivision shall have the option to  
45 respond in writing to the child advocate's findings, provided however  
46 that such written response must be issued within ninety days of such  
47 office, district, agency or entity's receipt of the applicable report by  
48 the child advocate.

49 (b) Within thirty days after the receipt of a response from an office,  
50 district, agency or entity as described in this subdivision, the child  
51 advocate shall issue such response, and the report issued by the child  
52 advocate pursuant to this subdivision, to the governor, the speaker of  
53 the assembly and the temporary president of the senate.

54 (c) If a response or a written request for an additional thirty days  
55 with an explanation is not received by the child advocate within ninety  
56 days from the date that the child advocate sent such report to such

1 office, district, agency or entity, the child advocate shall provide  
2 such report to the governor and the legislature with a notice stating  
3 that such office, district, agency or entity failed to issue a timely  
4 written response to the report by the child advocate.

5 § 537. Cooperation of other agencies. To effectuate the purposes of  
6 this article, the independent office of the child advocate may request  
7 from state agencies and local social services districts having custody  
8 of children such assistance and data as is necessary to fulfill the  
9 child advocate's duties. Such information shall be provided to the inde-  
10 pendent office of the child advocate unless otherwise protected by law.

11 § 538. Duty to maintain confidentiality. All records of the independ-  
12 ent office of the child advocate pertaining to the fulfillment of the  
13 child advocate's rights, powers and duties pursuant to this article, and  
14 all records obtained by the child advocate shall be kept confidential.

15 § 539. Additional provisions. 1. The state shall protect and hold  
16 harmless any person employed or appointed by the child advocate, from  
17 financial loss and expense, including legal fees and costs, if any,  
18 arising out of any claim, demand or suit for damages resulting from acts  
19 or omissions committed in the discharge of his or her rights, powers and  
20 duties within the scope of his or her employment or appointment which  
21 may constitute negligence but which acts are not wanton, malicious or  
22 grossly negligent as determined by a court of competent jurisdiction.

23 2. No state or local agency, department, office, or entity shall  
24 discharge, or in any manner discriminate or retaliate against, any  
25 person who in good faith makes a complaint to, or cooperates with, the  
26 child advocate in a review or evaluation conducted by the child advo-  
27 cate. No employee of any state or local department or office or of any  
28 private entity shall retaliate against any person who makes a complaint  
29 to, or who cooperates with the independent office of the child advocate  
30 in a review, investigation or evaluation conducted by the independent  
31 office of the child advocate.

32 3. All communications to the independent office of the child advocate  
33 shall remain confidential. Any complaint filed by any person with the  
34 independent office of the child advocate shall remain confidential.

35 4. All youth residing in a juvenile justice facility shall be permit-  
36 ted reasonable access to a telephone to make a toll free call or shall  
37 be supplied writing materials in order to write letters to the independ-  
38 ent office of the child advocate upon the youth's request. Any communi-  
39 cations between such youth and the independent office of the child advo-  
40 cate shall remain confidential and shall not be monitored by any member  
41 of the facility's staff.

42 5. The independent office of the child advocate may apply for and  
43 accept grants, gifts and bequests of funds from private individuals and  
44 foundations for the purpose of carrying out studies under this article.  
45 The funds shall be expended in accordance with the provisions of such  
46 grant, gift or bequest.

47 6. The child advocate shall take all possible actions including, but  
48 not limited to, conducting programs of public education, undertaking  
49 legislative advocacy and making proposals for administrative correction  
50 or reform, in order to secure and ensure the legal, civil and special  
51 rights of children.

52 7. The child advocate shall take the appropriate steps to make the  
53 existence and availability of the child advocate widely known, by appro-  
54 priate and active means, to children and adults.

55 § 2. This act shall take effect April 1, 2018; provided, however, that  
56 effective immediately, the addition, amendment and/or repeal of any rule

1 or regulation necessary for the implementation of this act on its effec-  
2 tive date are authorized and directed to be made and completed on or  
3 before the effective date.