



Tuesday, June 20, 2006

Bill Summary - A06334

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A06334 Summary:

BILL NO A06334A

SAME AS Same as S 6877-A

SPONSOR Clark

COSPNSR Scarborough, Titus, Paulin, Jacobs, Heastie, Benjamin, Lavelle, Gordon, Benedetto, Karben, Greene, Peoples, Rivera N, Colton, John

MLTSPNSR Cahill, Christensen, DiNapoli, Eddington, Gantt, Gottfried, Grannis, Hikind, Latimer, Lifton, Mayersohn, McEneny, Millman, Perry, Pheffer, Sweeney, Towns

Add Art 19-I SS533 - 539, Exec L; rpld Art 6 Title 1-A, Soc Serv L

Creates the office of the child advocate to oversee the administration of state services provided to children; repeals certain provisions of social services law relating to the state commission on the quality of foster care.

A06334 Actions:

BILL NO A06334A

03/10/2005 referred to children and families

04/05/2005 reported referred to codes

05/03/2005 reported referred to ways and means

05/17/2005 reported

05/19/2005 advanced to third reading cal.652

06/20/2005 passed assembly

06/20/2005 delivered to senate

06/20/2005 REFERRED TO RULES

01/04/2006 DIED IN SENATE

01/04/2006 RETURNED TO ASSEMBLY

01/04/2006 committed to rules

02/07/2006 rules committee discharged and committed to children and families

05/31/2006 amend and recommit to children and families

05/31/2006 print number 6334a

06/06/2006 reported referred to codes

06/15/2006 reported referred to ways and means

06/19/2006 reported referred to rules

A06334 Votes:

BILL: A06334 DATE: 06/20/2005 MOTION:

YEA/NAY: 140/000

Abbate	Y	Carrozz	Y	Fields	Y	John	Y	Meng	Y	Pretlow	Y	Sweeney	Y
Alfano	Y	Casale	Y	Finch	Y	Karben	Y	Miller	Y	Quinn	Y	Tedisco	Y
Arroyo	Y	Christe	Y	Fitzpat	Y	Kirwan	Y	Millman	Y	Rabbitt	Y	Thiele	Y
Auberti	Y	Clark	Y	Galef	Y	Kolb	Y	Mirones	Y	Raia	Y	Titus	Y
Aubry	Y	Cohen	Y	Gantt	ER	Koon	Y	Morelle	Y	Ramos	Y	Tokasz	Y
Bacalle	Y	Colton	Y	Gianari	Y	Lafayet	Y	Mosiell	Y	Reilich	Y	Tonko	Y
Barclay	Y	Conte	Y	Glick	Y	Latimer	Y	Nesbitt	Y	Reilly	Y	Towns	ER
Barra	Y	Cook	Y	Gordon	Y	Lavelle	Y	Nolan	Y	Rive J	Y	Townsen	Y
Barraga	Y	Crouch	Y	Gottfri	Y	Lavine	Y	Norman	Y	Rive N	Y	Walker	ER
Benedet	Y	Cusick	Y	Grannis	Y	Lentol	Y	Oaks	Y	Rive PM	Y	Weinste	Y
Benjami	Y	Cymbrow	Y	Green	Y	Lifton	Y	O'Conne	Y	Robinso	Y	Weisenb	Y
Bing	Y	DelMont	Y	Greene	Y	Lopez	Y	O'Donne	Y	Saladin	Y	Weprin	Y
Boyland	Y	Destito	Y	Gunther	Y	Lupardo	Y	O'Mara	Y	Sanders	Y	Wirth	Y
Bradley	Y	Diaz LM	Y	Hayes	Y	Magee	Y	Ortiz	Y	Sayward	Y	Wright	Y
Brennan	Y	Diaz R	Y	Heastie	Y	Magnare	Y	Ortloff	Y	Scarbor	ER	Zebrows	Y
Brodsky	ER	DiNapol	Y	Hevesi	Y	Manning	Y	Parment	Y	Schimmi	Y	Mr Spkr	Y
Brown	Y	Dinowit	Y	Hikind	Y	Markey	Y	Paulin	Y	Schroed	Y		
Burling	ER	Eddingt	Y	Hooker	ER	Mayerse	ER	Peoples	Y	Scozzaf	Y		
Butler	Y	Englebr	Y	Hooper	Y	McDonal	Y	Peralta	Y	Seddio	Y		
Cahill	Y	Errigo	Y	Hoyt	Y	McDonou	Y	Perry	Y	Seminer	Y		
Calhoun	Y	Espail	Y	Ignizio	Y	McEneny	Y	Pheffer	Y	Stephen	Y		
Canestr	Y	Farrell	Y	Jacobs	Y	McLaugh	Y	Powell	Y	Stringe	Y		

A06334 Memo:

BILL NUMBER: A6334A

TITLE OF BILL : An act to amend the executive law, in relation to creating the office of the child advocate; and to repeal certain provisions of the social services law relating to the state commission on the quality of foster care

PURPOSE OR GENERAL IDEA OF BILL :

This bill would establish an independent Office of the Child Advocate, vested with broad powers to investigate practices within the State's child welfare and juvenile justice systems, to better protect children in the State's care.

SUMMARY OF SPECIFIC PROVISIONS :

Section one would establish the Office of the Child Advocate within state government, headed by the Child Advocate appointed by the Governor for a five year term. The Child Advocate would be authorized to appoint assistants and staff as deemed necessary. The Child Advocate would:

- 1) evaluate the delivery of services to children and families by the Office of Children and Family Services (OCFS) and those entities funded or regulated by OCFS,
- 2) periodically review procedures established by OCFS,
- 3) review complaints related to actions of OCFS, make referrals and investigate such complaints,
- 4) periodically review the facilities and procedures of any institution or residence where a child has been placed,
- 5) recommend changes in state policies and

regulations concerning children with the ability to monitor any corrective action plan initiated in response to the Child Advocate's findings, 6) take all possible actions to secure and ensure the legal, civil and special rights of children, 7) take steps to make the Child Advocate's presence in New York State widely known and create materials for children regarding their rights in foster care, detention centers, OCFS facilities, jails or prisons, and 8) establish a toll-free hotline to receive and respond to calls referring problems to the Child Advocate.

The Child Advocate would be authorized to access confidential records relating to the fulfillment of his or her duties, issue subpoenas, and apply for and accept grants.

The Child Advocate would create and disseminate materials for all youth in foster care and juvenile justice facilities or programs explaining services the Office can offer and how youth can contact the Office. All youth placed in foster care would have access to a toll-free hotline of the Office and be permitted to make calls in a setting where the youth's conversations are not monitored. Any such calls made would not count against any limit on phone calls placed by the youth according to the rules of the facility.

The Child Advocate would be authorized to commence a civil action on behalf of a child against the State, or any subdivision and private entity providing out-of-home residential services to children. Any judgment for compensation as a result of such civil action would be considered the estate of the child, to be held by the Office of the Child Advocate, and deposited in a trust account for the child.

Section two would repeal the Commission on the Quality of Foster Care.

Section three provides for an effective date on April 1, 2007

EFFECTS OF PRESENT LAW WHICH THIS BILL WOULD ALTER :

Current law does not provide for any office that performs the functions that would be performed by the Office of the Child Advocate. The Commission on the Quality of Foster Care, established in Title 1-A of Article 6 of the Social Services Law, is currently authorized to: investigate complaints brought to the Commission's attention; obtain copies of preliminary and final reports and fatality reports from OCFS; and notify OCFS of its investigations and make a report of its findings. The Office of the Child Advocate would replace this Commission as the primary means of investigating practices within state and local child welfare and juvenile justice systems.

JUSTIFICATION :

This bill would establish an independent Office of the Child Advocate, similar to offices that currently exist in numerous states including New Jersey, Connecticut and Rhode Island. This office is necessary to address some of the systemic problems within state and local child welfare and juvenile justice programs that exist not only in New York, but in many parts of the country. Some highly publicized cases, such as the New Jersey foster family in which four foster children nearly starved to death, have brought national attention to these issues. Unfortunately, New York is not immune to the crisis of children becoming the victims of further abuse or neglect once they are removed from their homes and taken into the State's care. Therefore, it is crucial that in order to provide our State's most vulnerable children

with the care they need to develop into healthy adults, New York should create this office with the exclusive purpose of protecting children's well-being.

Recently, there have been several incidents reported that point to serious flaws within New York's child welfare systems. Earlier this year, it was discovered that New York City's Administration for Children's Services (ACS) allowed over 100 HIV-positive foster youth in its care to be subjected to medical experiments involving the use of potentially dangerous medications. It is unclear at this point exactly what was done to investigate or resolve this gross mistreatment of infants in care. With the establishment of the Office of the Child Advocate, this situation could be thoroughly investigated, and a proper report and action could be taken to ensure that these children would be placed in a safe and caring home and would not be the victims of further harm.

In addition, a report produced by a grand jury investigating the deaths of two children by parents who regained custody of their children in Westchester County was harshly critical of the county's DSS and specifically cited inadequate supervision, procedural dysfunction and systematic failings. In these instances, DSS employees failed or were unable to properly follow procedures and communicate with law enforcement to ensure that children were safe in their homes. If the Office of the Child Advocate were in existence, it would have broad powers to deal with these types of cases and to monitor the implementation of a corrective plan of action to improve the way each agency it investigates handles its child welfare and juvenile justice cases.

And on June 10, 2004, the New York Post reported the case of a baby boy, Colesvinton Florestal Jr., who was murdered by his parents in a City-run homeless shelter in Manhattan. The 3-month-old infant was found unresponsive with numerous fractured bones and bruises across his body, in addition to being malnourished and dehydrated. He weighed several ounces less than what he weighed at birth. In spite of ACS involvement with the family, nothing was done to prevent this horrible tragedy from occurring. This case urgently demonstrates the need for an independent investigatory state office to fully examine the failings in the state's system that led to the on-going abuse and

neglect of little 9-pound Colesvinton, and ultimately, to his death at only 3 months of age.

Marcia Robinson Lowry of Children's Rights, Inc., presented a speech entitled "Benevolent Complicity: The Myth of Protecting Children's Best Interests," at a symposium hosted by the Bar Association of New York City on March 11, 2004 defending the need for an Office of Child Advocate in New York State. According to an excerpt from her remarks, "there was a recent study of children in foster care from the Government Accounting Office which covered 50% of all kids in care nationwide, including New York, and it found that 12% of children in foster care had received no routine health care, 34% have received no immunizations, 32% continue to have at least one unmet health need, 78% were high risk for HIV, but only 9% were tested.

"There should be, in our view, national standards, and there sure should be standards in New York State for how agencies operate. We have no minimum standards for workers in the contract agencies, which provide the vast majority of care. For workers in the city agency that monitor the care provided by the contract agencies, the caseload is 54 average and usually averages are much higher when you look at all the

people who are actually carrying cases."

Beyond the need to address these grave issues, an Office of Child Advocate is necessary because children who are removed from their homes - whether due to abuse and neglect by their parents, or due to behavioral misconduct in the community - experience an extremely disruptive and emotionally painful period in their lives. Therefore, it is essential that the State provide these children with a supportive, nurturing environment once they are placed in care, whether it be in a foster home, group home, residential facility or other type of placement setting. In acting as an independent advocate for children and in offering a means through which both children and adults could report abuses in the system, the Office of the Child Advocate would serve as a beacon, casting light upon the treatment and protection of New York's children taken into custody by the State.

PRIOR LEGISLATIVE HISTORY :

2005: A.6334 (Clark) - Passed the Assembly.

2004: A. 11498 (Clark) - Referred to Codes.

FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS :

To be determined.

EFFECTIVE DATE :

April 1, 2007

Contact Webmaster

Page display time = 0.0352 sec



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STATE OF NEW YORK

6334--A

2005-2006 Regular Sessions

I N A S S E M B L Y

March 10, 2005

Introduced by M. of A. CLARK, SCARBOROUGH, TITUS, PAULIN, JACOBS, HEAST-IE, BENJAMIN, LAVELLE, GORDON, BENEDETTO, GREENE, PEOPLES, N. RIVERA, COLTON, JOHN -- Multi-Sponsored by -- M. of A. CAHILL, CHRISTENSEN, DiNAPOLI, EDDINGTON, GANTT, GOTTFRIED, GRANNIS, HIKIND, LATIMER, LIFTON, MAYERSOHN, McENENY, MILLMAN, PERRY, PHEFFER, SWEENEY, TOWNS -- read once and referred to the Committee on Children and Families -- recommitted to the Committee on Rules in accordance with Assembly Rule 3, sec. 2 -- Rules Committee discharged and 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 creating the office of the child advocate; and to repeal certain provisions of the social services law relating to the state commission on the quality of foster care

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

1 Section 1. The executive law is amended by adding a new article 19-I
2 to read as follows:

3 ARTICLE 19-I

4 OFFICE OF THE CHILD ADVOCATE

- 5 SECTION 533. APPOINTMENT, TERM AND ORGANIZATIONAL STRUCTURE.
- 6 534. DUTIES OF THE CHILD ADVOCATE.
- 7 535. RIGHTS AND POWERS OF THE CHILD ADVOCATE.
- 8 536. ACCESS TO THE CHILD ADVOCATE.
- 9 537. CONFIDENTIALITY OF INFORMATION AND PROHIBITION AGAINST
10 RETALIATION.
- 11 538. REPRESENTATION OF CHILDREN.
- 12 539. INDEMNIFICATION FROM LIABILITY.
- 13 S 533. APPOINTMENT, TERM AND ORGANIZATIONAL STRUCTURE. 1. THERE IS
14 HEREBY CREATED IN THE EXECUTIVE DEPARTMENT AN OFFICE OF THE CHILD ADVO-
15 CATE. THE GOVERNOR SHALL APPOINT AN ATTORNEY, QUALIFIED BY TRAINING AND

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

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1 EXPERIENCE, TO PERFORM THE DUTIES OF THE CHILD ADVOCATE AS DEFINED BY
2 SECTION FIVE HUNDRED THIRTY-FOUR OF THIS ARTICLE, AS THE CHILD ADVOCATE.
3 THE CHILD ADVOCATE SHALL BE APPOINTED FOR A TERM OF FIVE YEARS AND
4 SHALL CONTINUE TO HOLD SUCH POSITION UNTIL HIS OR HER SUCCESSOR IS
5 APPOINTED, PROVIDED THAT THE CHILD ADVOCATE MAY BE REMOVED FROM SUCH
6 POSITION ONLY IF THE GOVERNOR DETERMINES THAT THE CHILD ADVOCATE HAS
7 ABUSED HIS OR HER RIGHTS, POWERS AND DUTIES ESTABLISHED PURSUANT TO THIS
8 ARTICLE OR THAT THE CHILD ADVOCATE HAS WILLFULLY FAILED TO CARRY OUT THE
9 DUTIES REQUIRED BY SECTION FIVE HUNDRED THIRTY-FOUR OF THIS ARTICLE. THE
10 GOVERNOR SHALL FIX THE COMPENSATION OF THE CHILD ADVOCATE WITHIN THE
11 AMOUNTS APPROPRIATED THEREFOR.

12 2. THE CHILD ADVOCATE MAY APPOINT ASSISTANTS AS MAY BE DEEMED NECES-
13 SARY WHOSE DUTIES SHALL BE SIMILAR TO THOSE DESIGNATED TO THE CHILD
14 ADVOCATE BY LAW AND ANY OTHER STAFF AS THE CHILD ADVOCATE MAY DEEM
15 NECESSARY. THE DUTIES OF THE ASSISTANTS AND OTHER STAFF MEMBERS SHALL BE
16 PERFORMED UNDER AND AT THE ADVICE AND DIRECTION OF THE CHILD ADVOCATE.

17 S 534. DUTIES OF THE CHILD ADVOCATE. 1. THE CHILD ADVOCATE SHALL:

18 (A) EVALUATE THE DELIVERY OF SERVICES TO CHILDREN AND FAMILIES BY THE
19 OFFICE OF CHILDREN AND FAMILY SERVICES AND THOSE ENTITIES THAT ARE REGU-
20 LATED OR OVERSEEN BY, OR RECEIVE FUNDING FROM, THE OFFICE OF CHILDREN
21 AND FAMILY SERVICES;

22 (B) PERIODICALLY REVIEW THE PROCEDURES ESTABLISHED BY THE OFFICE OF
23 CHILDREN AND FAMILY SERVICES TO CARRY OUT THE PROVISIONS OF ARTICLE
24 NINETEEN-G OF THIS CHAPTER AND ARTICLE SIX OF THE SOCIAL SERVICES LAW,
25 WITH A VIEW TOWARD THE RIGHTS, SAFETY AND POSITIVE DEVELOPMENT OF CHIL-
26 DREN;

27 (C) REVIEW COMPLAINTS OF PERSONS CONCERNING THE ACTIONS OF THE OFFICE
28 OF CHILDREN AND FAMILY SERVICES; MAKE APPROPRIATE REFERRALS AND INVESTI-
29 GATE THOSE COMPLAINTS WHERE THE CHILD ADVOCATE DETERMINES THAT A CHILD
30 OR FAMILY MAY BE IN NEED OF ASSISTANCE FROM THE CHILD ADVOCATE OR THAT A
31 SYSTEMIC ISSUE IN THE STATE'S PROVISION OF SERVICES TO CHILDREN IS
32 RAISED BY THE COMPLAINT;

33 (D) PERIODICALLY REVIEW THE FACILITIES AND PROCEDURES OF ANY INSTI-
34 TUTIONS OR RESIDENCES, PUBLIC AND PRIVATE, WHERE A CHILD HAS BEEN PLACED
35 BY THE LOCAL DEPARTMENT OF SOCIAL SERVICES, THE FAMILY COURT OR THE
36 OFFICE OF CHILDREN AND FAMILY SERVICES;

37 (E) RECOMMEND CHANGES IN STATE POLICIES AND REGULATIONS CONCERNING
38 CHILDREN INCLUDING, BUT NOT LIMITED TO, CHANGES IN THE SYSTEMS THAT
39 PROVIDE FOR JUVENILE JUSTICE, CHILD PROTECTIVE SERVICES, PREVENTIVE
40 SERVICES, FOSTER CARE, AND CHILD CARE. IF THE CHILD ADVOCATE IDENTIFIES
41 A SYSTEMIC PROBLEM IN HOW THE STATE, THROUGH ITS AGENCIES OR CONTRACT
42 SERVICES, OR ANY LOCALITY, THROUGH ITS AGENCIES OR CONTRACT SERVICES,
43 PROTECTS CHILDREN, THE CHILD ADVOCATE SHALL PROVIDE ITS FINDINGS AND
44 RECOMMENDATIONS TO THE AGENCY AFFECTED BY THE FINDINGS AND RECOMMENDA-
45 TIONS AND MAKE THOSE FINDINGS AND RECOMMENDATIONS AVAILABLE TO THE
46 PUBLIC. THE AGENCY SHALL HAVE SIXTY DAYS FROM THE RECEIPT OF THE FIND-
47 INGS AND RECOMMENDATIONS TO DEVELOP A CORRECTIVE ACTION PLAN AND SUBMIT
48 THE PLAN TO THE CHILD ADVOCATE FOR APPROVAL. THE CHILD ADVOCATE SHALL
49 MONITOR THE AGENCY'S IMPLEMENTATION OF THE PLAN, AND, IF THE AGENCY
50 FAILS TO PROMPTLY IMPLEMENT THE PLAN, THE CHILD ADVOCATE SHALL TAKE SUCH
51 ACTION AS HE OR SHE DEEMS NECESSARY;

52 (F) TAKE ALL POSSIBLE ACTIONS INCLUDING, BUT NOT LIMITED TO, CONDUCT-
53 ING PROGRAMS OF PUBLIC EDUCATION, UNDERTAKING LEGISLATIVE ADVOCACY AND
54 MAKING PROPOSALS FOR ADMINISTRATIVE CORRECTION OR SYSTEMIC REFORM AND
55 FORMAL LEGAL ACTION, IN ORDER TO SECURE AND ENSURE THE LEGAL, CIVIL AND
56 SPECIAL RIGHTS OF CHILDREN;

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1 (G) TAKE THE APPROPRIATE STEPS TO MAKE THE EXISTENCE AND AVAILABILITY
2 OF THE CHILD ADVOCATE WIDELY KNOWN, BY APPROPRIATE AND ACTIVE MEANS, TO
3 CHILDREN AND ADULTS;

4 (H) CREATE INFORMATIONAL MATERIALS FOR CHILDREN REGARDING THE RIGHTS
5 OF CHILDREN WHEN THEY ARE IN FOSTER CARE, DETENTION CENTERS, FACILITIES
6 OPERATED BY THE OFFICE OF CHILDREN AND FAMILY SERVICES, JAILS, OR PRIS-
7 ONS AND THE METHODS AND ASSISTANCE AVAILABLE TO ENFORCE THOSE RIGHTS;
8 AND

9 (I) ESTABLISH AND MAINTAIN A TOLL-FREE HOTLINE TO RECEIVE AND RESPOND
10 TO CALLS FROM ADULTS AND CHILDREN REFERRING PROBLEMS TO THE CHILD ADVOCATE.
11

12 2. THE CHILD ADVOCATE MAY:

13 (A) INVESTIGATE, REVIEW, MONITOR OR EVALUATE ANY STATE OR LOCAL AGENCY
14 RESPONSE TO, OR DISPOSITION OF, AN ALLEGATION OF CHILD ABUSE OR NEGLECT
15 UPON A DETERMINATION BY THE CHILD ADVOCATE THAT ANY INVESTIGATION OR
16 REVIEW OF SUCH RESPONSE OR DISPOSITION BY THE OFFICE OF CHILDREN AND
17 FAMILY SERVICES HAS BEEN INSUFFICIENT OR THAT THE OFFICE OF CHILDREN AND
18 FAMILY SERVICES HAS NOT ENGAGED IN ANY SUCH INVESTIGATION OR REVIEW;

19 (B) INSPECT AND REVIEW THE OPERATIONS, POLICIES AND PROCEDURES OF
20 JUVENILE DETENTION FACILITIES, FOSTER HOMES, GROUP HOMES, RESIDENTIAL
21 TREATMENT FACILITIES, FACILITIES OPERATED BY THE OFFICE OF CHILDREN AND
22 FAMILY SERVICES, SHELTERS FOR THE CARE OF ABUSED OR NEGLECTED CHILDREN,
23 SHELTERS FOR THE CARE OF PERSONS IN NEED OF SUPERVISION, SHELTERS FOR
24 THE CARE OF HOMELESS YOUTH, OR INDEPENDENT LIVING ARRANGEMENTS OPERATED
25 BY OR APPROVED FOR PAYMENT BY THE OFFICE OF CHILDREN AND FAMILY
26 SERVICES, AND ANY OTHER PUBLIC OR PRIVATE RESIDENTIAL SETTING IN WHICH A
27 CHILD HAS BEEN PLACED BY A STATE OR LOCAL DEPARTMENT OR OFFICE;

28 (C) REVIEW, MONITOR, AND REPORT ON THE PERFORMANCE OF STATE-FUNDED
29 PRIVATE ENTITIES CHARGED WITH THE CARE AND SUPERVISION OF CHILDREN BY
30 CONDUCTING RESEARCH AUDITS OR OTHER STUDIES OF CASE RECORDS, POLICIES,
31 PROCEDURES AND PROTOCOLS, AND CONDUCTING INTERVIEWS WITH STAFF AND CHILD
32 RESIDENTS AS DEEMED NECESSARY BY THE CHILD ADVOCATE TO ASSESS THE
33 PERFORMANCE OF THE ENTITIES. PROVIDED, HOWEVER, THAT SUCH REVIEWS MAY
34 ONLY BE CONDUCTED IN RESPONSE TO SPECIFIC COMPLAINTS MADE TO THE CHILD
35 ADVOCATE AND AFTER A DETERMINATION BY THE CHILD ADVOCATE THAT THE OFFICE
36 OF CHILDREN AND FAMILY SERVICES HAS FAILED TO ADEQUATELY ADDRESS SUCH
37 COMPLAINT OR IN RESPONSE TO AN INVESTIGATION BY THE CHILD ADVOCATE INTO
38 SYSTEMIC ISSUES;

39 (D) HOLD PUBLIC HEARINGS ON THE SUBJECT OF AN INVESTIGATION OR STUDY
40 UNDERWAY BY THE OFFICE, AND RECEIVE TESTIMONY FROM AGENCY AND PROGRAM
41 REPRESENTATIVES, THE PUBLIC AND OTHER INTERESTED PARTIES, AS THE CHILD
42 ADVOCATE DEEMS APPROPRIATE;

43 (E) ENTER INTO CONTRACTS WITH ANY PERSON, FIRM, CORPORATION, OR EDUCA-
44 TIONAL INSTITUTION IN ORDER TO INVITE EXPERT RESEARCH TO ASSIST THE
45 CHILD ADVOCATE IN ASSESSING, EVALUATING, REVIEWING AND IMPROVING THE
46 DELIVERY OF SERVICES TO CHILDREN AND FAMILIES IN NEW YORK; AND

47 (F) ENTER INTO CONTRACTS WITH ANY FIRM OR CORPORATION TO ASSIST THE
48 CHILD ADVOCATE IN THE PURSUIT OF FORMAL LEGAL ACTION PURSUANT TO SECTION
49 FIVE HUNDRED THIRTY-EIGHT OF THIS ARTICLE.

50 S 535. RIGHTS AND POWERS OF THE CHILD ADVOCATE. 1. NOTWITHSTANDING
51 ANY OTHER PROVISION OF LAW, THE CHILD ADVOCATE SHALL HAVE ACCESS TO,
52 INCLUDING THE RIGHT TO INSPECT AND COPY, ANY RECORDS NECESSARY TO CARRY
53 OUT THE RIGHTS, POWERS AND DUTIES OF THE CHILD ADVOCATE PURSUANT TO THIS
54 ARTICLE. SUCH ACCESS SHALL INCLUDE, BUT NOT BE LIMITED TO, ACCESS TO
55 RECORDS MAINTAINED BY THE STATEWIDE CENTRAL REGISTRY OF CHILD ABUSE AND
56 MALTREATMENT AND RECORDS OF LOCAL CHILD PROTECTIVE SERVICES MAINTAINED

3 PURSUANT TO SECTIONS THREE HUNDRED SEVENTY-TWO AND FOUR HUNDRED NINE-F
4 OF THE SOCIAL SERVICES LAW. THE CHILD ADVOCATE SHALL HAVE ACCESS TO
5 INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION TO THE EXTENT THAT THE
6 CHILD ADVOCATE DETERMINES NECESSARY TO FULFILL THE REQUIREMENTS OF THIS
7 SECTION. THE OFFICE OF THE CHILD ADVOCATE SHALL BE DEEMED A GOVERNMENTAL
8 AUTHORITY AUTHORIZED TO RECEIVE REPORTS OF CHILD ABUSE OR NEGLECT FOR
9 THE PURPOSE OF COMPLYING WITH 45 CFR S 164.512 AND OTHER FEDERAL RULES
10 AND REGULATIONS GOVERNING ACCESS TO INDIVIDUALLY IDENTIFIABLE HEALTH
11 INFORMATION. IF THE CHILD ADVOCATE IS DENIED ACCESS TO ANY RECORDS
12 NECESSARY TO CARRY OUT SUCH RESPONSIBILITIES, HE OR SHE MAY ISSUE A
13 SUBPOENA FOR THE PRODUCTION OF SUCH RECORDS AS PROVIDED IN SUBDIVISION
14 THREE OF THIS SECTION.

15 2. IN PERFORMANCE OF HIS OR HER RIGHTS, POWERS AND DUTIES PURSUANT TO
16 THIS ARTICLE, THE CHILD ADVOCATE MAY COMMUNICATE PRIVATELY WITH ANY
17 CHILD OR PERSON WHO HAS RECEIVED, IS RECEIVING OR SHOULD HAVE RECEIVED
18 SERVICES FROM THE OFFICE OF CHILDREN AND FAMILY SERVICES OR ANY OTHER
19 ENTITY THAT IS REGULATED OR OVERSEEN BY, OR RECEIVES FUNDING FROM, THE
20 OFFICE OF CHILDREN AND FAMILY SERVICES.

21 3. THE CHILD ADVOCATE MAY ISSUE SUBPOENAS TO COMPEL THE ATTENDANCE AND
22 TESTIMONY OF WITNESSES OR THE PRODUCTION OF BOOKS, PAPERS AND OTHER
23 DOCUMENTS AND TO ADMINISTER OATHS TO WITNESSES IN ANY MANNER UNDER HIS
24 OR HER INVESTIGATION. IF ANY PERSON TO WHOM SUCH SUBPOENA IS ISSUED
25 FAILS TO APPEAR OR, HAVING APPEARED, REFUSES TO GIVE TESTIMONY OR FAILS
26 TO PRODUCE THE EVIDENCE REQUIRED, THE CHILD ADVOCATE MAY APPLY TO THE
27 SUPREME COURT WHICH SHALL HAVE JURISDICTION TO ORDER SUCH PERSON TO
28 APPEAR AND GIVE TESTIMONY OR TO PRODUCE SUCH EVIDENCE, AS THE CASE MAY
29 BE.

30 4. THE CHILD ADVOCATE MAY APPLY FOR AND ACCEPT GRANTS, GIFTS AND
31 BEQUESTS OF FUNDS FROM OTHER STATES, FEDERAL AND INTERSTATE AGENCIES AND
32 INDEPENDENT AUTHORITIES AND PRIVATE FIRMS, INDIVIDUALS AND FOUNDATIONS,
33 FOR THE PURPOSE OF CARRYING OUT HIS OR HER RESPONSIBILITIES. THE FUNDS
34 SHALL BE EXPENDED IN ACCORDANCE WITH THE PROVISIONS OF SUCH GRANT, GIFT
35 OR BEQUEST.

36 S 536. ACCESS TO THE CHILD ADVOCATE. 1. THE CHILD ADVOCATE SHALL
37 CREATE AND DISSEMINATE MATERIALS FOR ALL YOUTH IN FOSTER CARE AND JUVE-
38 NILE JUSTICE FACILITIES OR PROGRAMS DETAILING THE SERVICES THAT THE
39 CHILD ADVOCATE CAN OFFER SUCH YOUTH AND HOW SUCH YOUTH CAN CONTACT THE
40 OFFICE OF THE CHILD ADVOCATE.

41 2. ALL YOUTH PLACED IN FOSTER CARE OR A FACILITY OPERATED BY THE DIVI-
42 SION OF REHABILITATIVE SERVICES SHALL BE PERMITTED ACCESS TO A TELEPHONE
43 TO CALL THE TOLL FREE HOTLINE OF THE OFFICE OF THE CHILD ADVOCATE UPON
44 THE YOUTH'S REQUEST. SUCH YOUTH SHALL BE PERMITTED TO COMPLETE ANY PHONE
45 CALL TO THE TOLL FREE HOTLINE AND ANY SUBSEQUENT PHONE CALLS WITH THE
46 OFFICE OF THE CHILD ADVOCATE IN A PRIVATE SETTING IN WHICH THE YOUTH'S
47 CONVERSATIONS ARE NOT MONITORED. ANY CALLS PLACED BY A YOUTH TO THE
48 OFFICE OF THE CHILD ADVOCATE SHALL NOT COUNT AGAINST ANY LIMIT ON PHONE
49 CALLS PLACED ON THE YOUTH PURSUANT TO THE RULES OF THE FACILITY IN WHICH
50 HE OR SHE RESIDES.

51 S 537. CONFIDENTIALITY OF INFORMATION AND PROHIBITION AGAINST RETALI-
52 ATION. 1. ALL RECORDS OF THE CHILD ADVOCATE PERTAINING TO THE FULFILL-
53 MENT OF THE CHILD ADVOCATE'S RIGHTS, POWERS AND DUTIES PURSUANT TO THIS
54 ARTICLE AND ALL CONFIDENTIAL RECORDS OBTAINED BY THE CHILD ADVOCATE
55 SHALL BE CONFIDENTIAL. PROVIDED, HOWEVER, THAT INFORMATION CONTAINED IN
56 THOSE RECORDS MAY BE DISCLOSED PUBLICLY IN SUCH A MANNER THAT WOULD NOT

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1 IDENTIFY THE INDIVIDUALS FROM WHOM SUCH INFORMATION WAS OBTAINED. SUCH
2 CONFIDENTIAL RECORDS SHALL BE AVAILABLE TO PERSONS APPROVED, UPON APPLI-
3 CATION FOR GOOD CAUSE, BY THE FAMILY COURT.

4 2. NO STATE OR LOCAL DEPARTMENT OR OFFICE OR PRIVATE ENTITY SHALL
5 DISCHARGE, OR IN ANY MANNER DISCRIMINATE OR RETALIATE AGAINST, ANY

6 EMPLOYEE WHO IN GOOD FAITH MAKES A COMPLAINT TO THE CHILD ADVOCATE OR
7 COOPERATES WITH THE OFFICE OF THE CHILD ADVOCATE IN AN INVESTIGATION. NO
8 EMPLOYEE OF ANY STATE OR LOCAL DEPARTMENT OR OFFICE OR OF ANY PRIVATE
9 ENTITY SHALL RETALIATE AGAINST ANY CHILD WHO MAKES A COMPLAINT TO THE
10 CHILD ADVOCATE OR WHO COOPERATES WITH THE OFFICE OF THE CHILD ADVOCATE
11 IN AN INVESTIGATION.

12 S 538. REPRESENTATION OF CHILDREN. 1. IN ADDITION TO THE RIGHTS,
13 POWERS AND DUTIES SET FORTH IN THIS ARTICLE, THE CHILD ADVOCATE, OR HIS
14 OR HER DESIGNEE, SHALL HAVE THE POWER TO COMMENCE A CIVIL ACTION AGAINST
15 THE STATE, ANY SUBDIVISION OF THE STATE AND ANY PRIVATE ENTITY PROVIDING
16 OUT-OF-HOME RESIDENTIAL SERVICES TO CHILDREN ON BEHALF OF ANY CHILD
17 WHOSE CARE AND CUSTODY OR CUSTODY AND GUARDIANSHIP HAS BEEN ASSIGNED TO
18 ANY AGENCY OR DEPARTMENT UNDER THE OVERSIGHT OF THE OFFICE OF CHILDREN
19 AND FAMILY SERVICES.

20 2. ANY JUDGMENT FOR COMPENSATION OR ORDER FOR SETTLEMENT OF THE CLAIM
21 FOR COMPENSATION ENTERED BY THE COURT PURSUANT TO SUBDIVISION ONE OF
22 THIS SECTION SHALL BE CONSIDERED AS THE ESTATE OF THE CHILD FOR WHOSE
23 BENEFIT THE JUDGMENT OR ORDER IS ENTERED, TO BE HELD BY THE OFFICE OF
24 THE CHILD ADVOCATE AS GUARDIAN OF SUCH COMPENSATION, AND SHALL BE DEPOS-
25 ITED INTO A TRUST ACCOUNT ESTABLISHED BY THE OFFICE FOR THE PURPOSE OF
26 DISTRIBUTING SUCH FUNDS TO SUCH CHILD IN ACCORDANCE WITH THE PLAN
27 ADOPTED BY THE COURT ISSUING THE JUDGMENT.

28 S 539. INDEMNIFICATION FROM LIABILITY. THE STATE OF NEW YORK SHALL
29 PROTECT AND HOLD HARMLESS ANY ATTORNEY, DIRECTOR, INVESTIGATOR, SOCIAL
30 WORKER OR OTHER PERSON EMPLOYED BY THE OFFICE OF THE CHILD ADVOCATE AND
31 ANY VOLUNTEER APPOINTED BY THE CHILD ADVOCATE FROM FINANCIAL LOSS AND
32 EXPENSE, INCLUDING LEGAL FEES AND COSTS, IF ANY, ARISING OUT OF ANY
33 CLAIM, DEMAND OR SUIT FOR DAMAGES RESULTING FROM ACTS OR OMISSIONS
34 COMMITTED IN THE DISCHARGE OF HIS OR HER RIGHTS, POWERS AND DUTIES WITH-
35 IN THE SCOPE OF HIS OR HER EMPLOYMENT OR APPOINTMENT WHICH MAY CONSTI-
36 TUTE NEGLIGENCE BUT WHICH ACTS ARE NOT WANTON, MALICIOUS OR GROSSLY
37 NEGLIGENT AS DETERMINED BY A COURT OF COMPETENT JURISDICTION.

38 S 2. Title 1-A of article 6 of the social services law is REPEALED.

39 S 3. This act shall take effect April 1, 2007.

Contact Webmaster

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